MEXICAN CLAIMS.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A report and accompanying papers relative to the payment of claims specified in the fifth section of the act of Congress approved June 18, 1878.

FEBRUARY 25, 1884.—Referred to the Committee on Foreign Affairs and ordered to be printed.

To the House of Representatives:

In answer to so much of the resolution of the House of Representatives of the 17th ultimo as calls for the correspondence with the Mexican Government respecting the payment of claims specified in the fifth section of the act of Congress approved June 18, 1878, I transmit herewith the report of the Secretary of State and its accompanying papers.

CHESTER A. ARTHUR.

EXECUTIVE MANSION,
Washington, February 25, 1884.

To the President:

The Secretary of State, to whom was referred the resolution of the House of Representatives of the 17th of January, 1884, requesting the President, "if in his opinion not incompatible with the public interest, to communicate to this House any correspondence with the Mexican Government relative to the claims specified in the fifth section of the act of Congress approved June 18, 1878, and to inform the House if any payment or payments have been made on said claims, and if so, at what date and of what amount," has the honor to report in response:

First. In relation to the case of Benjamim Weil:

The first and second installments of indemnity paid by Mexico yielded a distributive quota of $67,208.60 on account of this award, which sum was paid on the 16th of August, 1880, as follows:

Lambert B. Cain	$43,888 16
John J. Key	14,629 38
Sylvanus C. Boynton	8,691 06
	67,208 60

The third installment paid by Mexico yielded a distributive quota of $34,893.68, which sum was also paid on the 16th of August, 1880, as follows:

Lambert B. Cain	$22,786 19
John J. Key	7,595 39
Sylvanus C. Boynton	4,512 10
	34,893 68

The fourth installment, of the same amount as the third, yielded a like quota for the Weil award, and was paid on the 16th of August, 1880, in the same manner, namely:

Lambert B. Cain	$22,786 19
John J. Key	7,595 39
Sylvanus C. Boynton	4,512 10
	34,893 68

The fifth installment, as paid, yielded to the Weil award a like distributive quota as the preceding, namely, $34,893.68. This amount was paid on the 8th of March, 1881, as follows, under assignments filed since the date of the preceding payment:

Lambert B. Cain	$13,545 13
John J. Key	7,595 39
Sylvanus C. Boynton	4,512 10
William W. Boyce	1,519 08
Robert B. Warden	1,329 19
Sanders W. Johnston	1,329 19
Jacob O. De Castro	2,531 80
Henry E. Davis	2,531 80
	34,893 68

From this it will be seen that the gross amount distributable on the Weil award under the five payments made by Mexico, and heretofore distributed by the Department, is $171,889.64, all of which has been paid to the authorized representatives of the claim.

Second. In relation to the award in the case of the Abra Silver Mining Company:

The first and second installments of indemnity paid by Mexico yielded a distributive quota of $94,106.75 on account of this award, which sum was paid on the 17th of September, 1879, to Sumner Stow Ely.

The third installment paid by Mexico yielded a distributive quota of $48,858.77, which was paid out in accordance with due assignments filed in the Department of State, in the following manner and at the dates given:

Sumner Stow Ely, September 17, 1879	$38,858 77
Henry C. Hepburn, December 6, 1879	2,909 94
Sumner Stow Ely, January 20, 1880	2,690 06
Charles T. Parry and Joseph Hopkinson, February 14, 1881	1,257 20
Sumner Stow Ely, February 14, 1881	3,142 80
	48,858 77

The fourth installment paid by Mexico yielded a like quota of $48,858.77, distributed as follows:

Sumner Stow Ely, August 16, 1880	$32,706 64
George H. Williams, August 16, 1880	1,152 13
Frederick P. Stanton, January 26, 1881	3,333 34
Miller & Lewis, for T. W. Bartley, January 26, 1881	3,333 33
W. W. Boyce, January 26, 1881	3,333 33
Shellabarger & Wilson, January 26, 1881	5,000 00
	48,858 77

Of the fifth installment received, a like quota of $48,858.77 was thus distributed:

Sumner Stow Ely, March 5, 1881	$34,545 85
Thomas W. Bartley, March 5, 1881	666 66
Frederick P. Stanton, March 5, 1881	666 66
W. W. Boyce, March 5, 1881	936 94
Bellabarger & Wilson, March 5, 1881	2,633 00
Charles T. Parry and Joseph Hopkinson, March 5, 1881	314 28
George H. Williams	1,152 13
Cyrus C. Camp, March 5, 1881	909 10
Sumner Stow Ely, November 25, 1881	2,034 15
Thomas W. Bartley, November 25, 1881	2,500 00
Frederick P. Stanton, November 25, 1881	2,500 00
	48,858 77

From this it will be seen that the gross amount distributable on La Abra award, under the five payments made by Mexico and heretofore distributed by the Department, is $240,683.06, all of which has been paid to the authorized representatives of the claim.

The sixth, seventh, and eighth installments of the indemnity under the awards of the Commission organized under the treaty of 1868 have been received from Mexico. The payment of the distributive quota, however, on account of the Weil and La Abra awards, is suspended by an Executive order.

The payments heretofore made by the Department of State, on account of these two awards, aggregating $412,572.70, were made in pursuance of the orders of the President, in the exercise of the discretionary power conferred upon him by the fifth section of the act of June 18, 1878.

Respectfully submitted.

FRED'K T. FRELINGHUYSEN.

DEPARTMENT OF STATE,
February 25, 1884.

LIST OF ACCOMPANYING PAPERS.

I.—PROCEEDINGS OF THE MIXED COMMISSION IN THE WEIL AND LA ABRA CLAIMS.

1. Convention between the United States and Mexico of July 4, 1868.
2. Convention of April 29, 1876, extending the functions of the umpire under the convention of July 4, 1868.
3. Final report of J. Hubley Ashton, agent of the United States, January 29, 1877.
4. Mr. Fish to the Committee of Foreign Affairs, January 19, 1877, with inclosures.
5. Decision of the American Commissioner in the claim of Benjamin Weil.
6. Decision of the Mexican Commissioner in the claim of Benjamin Weil.
7. Award of the umpire in the Benjamin Weil claim, October 1, 1875.
8. Decision of the American Commissioner in claim of La Abra Silver Mining Company.
9. Decision of the Mexican Commissioner in the claim of La Abra Silver Mining Company.
10. Award of the umpire in the claim of La Abra Silver Mining Company, December 27, 1875.

II.—MOTION FOR THE REHEARING OF THE WEIL AND LA ABRA CASES BEFORE THE UMPIRE.

11. Motion for rehearing in the claim of Benjamin Weil.
12. Motion for rehearing in the claim of La Abra Silver Mining Company.
13. Declaration of the umpire in regard to the motions for rehearing, October 20, 1876.

III.—PROCEEDINGS ON THE WEIL AND LA ABRA CLAIMS UNDER PRESIDENT GRANT'S ADMINISTRATION.

IV.—PROCEEDINGS ON THE WEIL AND LA ABRA CLAIMS UNDER PRESIDENT HAYES' ADMINISTRATION.

I.—*PROCEEDINGS OF THE MIXED COMMISSION IN THE WEIL AND LA ABRA CLAIMS.*

No. 1.

Convention of July 4, 1884, for the settlement of claims between the United States and Mexico.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a convention between the United States of America and the Republic of Mexico, providing for the adjustment of the claims of citizens of either country against the other, was concluded and signed by their respective plenipotentiaries, at the city of Washington, on the fourth day of July, in the year of our Lord one thousand eight hundred and sixty-eight, which convention being in the English and Spanish languages, is word for word as follows:

Whereas it is desirable to maintain and increase the friendly feelings between the United States and the Mexican Republic, and so to strengthen the system and principles of republican government on the American continent; and whereas since the signature of the treaty of Guadalupe Hidalgo, of the 2d of February, 1848, claims and complaints have been made by citizens of the United States, on account of injuries to their persons and their property by authorities of that republic, and similar claims and complaints have been made on account of injuries to the persons and property of Mexican citizens by authorities of the United States; the President of the United States of America and the President of the Mexican Republic have resolved to conclude a convention for the adjustment of said claims and complaints, and have named as their plenipotentiaries the President of the United States; William H. Seward, Secretary of State; and the President of the Mexican Republic, Matias Romero, accredited as envoy extraordinary and minister plenipotentiary of the Mexican Republic to the United States, who, after having communicated to each other their respective full powers, found in good and due form, have agreed to the following articles:

ARTICLE 1.

All claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the Government of the Mexican Republic arising from injuries to their persons or property by authorities of the Mexican Republic, and all claims on the part of corporations, companies, or private individuals, citizens of the Mexican Republic, upon the Government of the United States arising from injuries to their persons or property by authorities of the United States, which may have been presented to either Government for its interposition with the other since the signature of the treaty of Guadalupe Hidalgo between the United States and the Mexican Republic of the 2d of February, 1848, and which yet remain unsettled, as well as any other such claims which may be presented within the time hereinafter specified, shall be referred to two Commissioners, one to be appointed by the President of the United States, by and with the advice and consent of the Senate, and one by the President of the Mexican Republic. In case of the death, absence, or incapacity of either Commissioner, or in

the event of either Commissioner omitting or ceasing to act as such, the President of the United States or the President of the Mexican Republic, respectively, shall forthwith name another person to act as Commissioner in the place or stead of the Commissioner originally named.

The Commissioners so named shall meet in Washington within six months after the exchange of the ratifications of this convention, and shall, before proceeding to business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to public law, justice, and equity, without fear, favor, or affection to their own country, upon all such claims above specified, as shall be laid before them on the part of the Governments of the United States and of the Mexican Republic, respectively; and such declaration shall be entered on the record of their proceedings.

The Commissioners shall then name some third person to act as an umpire in any case or cases on which they may themselves differ in opinion. If they should not be able to agree upon the name of such third person, they shall each name a person, and in each and every case in which the Commissioners may differ in opinion as to the decision which they ought to give, it shall be determined by lot which of the two persons so named shall be umpire in that particular case. The person or persons so to be chosen to be umpire shall, before proceeding to act as such in any case, make and subscribe a solemn declaration in a form similar to that which shall already have been made and subscribed by the Commissioners, which shall be entered on their record of their proceedings. In the event of the death, absence, or incapacity of such person or persons, or of his or their omitting, or declining, or ceasing to act as such umpire, another and different person shall be named, as aforesaid, to act as such umpire, in the place of the person so originally named, as aforesaid, and shall make and subscribe such declaration as aforesaid.

ARTICLE II.

The Commissioners shall then conjointly proceed to the investigation and decision of the claims which shall be presented to their notice, in such order and in such manner as they may conjointly think proper, but upon such evidence or information only as shall be furnished by or on behalf of their respective Governments. They shall be bound to receive and peruse all written documents or statements which may be presented to them by or on behalf of their respective Governments in support of or in answer to any claim, and to hear, if required, one person on each side on behalf of each Government on each and every separate claim. Should they fail to agree in opinion upon any individual claim, they shall call to their assistance the umpire whom they may have agreed to name, or who may be determined by lot, as the case may be; and such umpire, after having examined the evidence adduced for and against the claim, and after having heard, if required, one person on each side, as aforesaid, and consulted with the Commissioners, shall decide thereupon finally and without appeal. The decision of the Commissioners and of the umpire shall be given upon each claim in writing, shall designate whether any sum which may be allowed shall be payable in gold or in the currency of the United States, and shall be signed by them, respectively. It shall be competent for each Government to name one person to attend the Commissioners as agent on its behalf, to present and support claims on its behalf, and to answer claims made

upon it, and to represent it generally in all matters connected with the investigation and decision thereof.

The President of the United States of America and the President of the Mexican Republic hereby solemnly and sincerely engage to consider the decision of the Commissioners conjointly, or of the umpire, as the case may be, as absolutely final and conclusive upon each claim decided upon by them or him respectively, and to give full effect to such decisions without any objection, evasion, or delay whatsoever.

It is agreed that no claim arising out of a transaction of a date prior to the 2d of February, 1848, shall be admissible under this convention.

ARTICLE III.

Every claim shall be presented to the Commissioners within eight months from the day of their first meeting, unless in any case where reasons for delay shall be established to the satisfaction of the Commissioners, or of the umpire in the event of the Commissioners differing in opinion thereupon, and then and in any such case the period for presenting the claim may be extended to any time not exceeding three months longer.

The Commissioners shall be bound to examine and decide upon every claim within two years and six months from the day of their first meeting. It shall be competent for the Commissioners conjointly, or for the umpire if they differ, to decide in each case whether any claim has or has not been duly made, preferred, and laid before them, either wholly or to any and what extent, according to the true intent and meaning of this convention.

ARTICLE IV.

When decisions shall have been made by the Commissioners and the arbiter in every case which shall have been laid before them, the total amount awarded in all the cases decided in favor of the citizens of the one party shall be deducted from the total amount awarded to the citizens of the other party, and the balance, to the amount of three hundred thousand dollars, shall be paid at the city of Mexico, or at the city of Washington, in gold or its equivalent, within twelve months from the close of the Commission, to the Government in favor of whose citizens the greater amount may have been awarded, without interest or any other deduction than that specified in Article VI of this convention. The residue of the said balance shall be paid in annual installments to an amount not exceeding three hundred thousand dollars, in gold or its equivalent, in any one year, until the whole shall have been paid.

ARTICLE V.

The high contracting parties agree to consider the result of the proceedings of this Commission as a full, perfect, and final settlement of every claim upon either Government arising out of any transaction of a date prior to the exchange of the ratifications of the present convention; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said Commission, shall, from and after the conclusion of the proceedings of the said Commission, be considered and treated as finally settled, barred, and thenceforth inadmissible.

ARTICLE VI.

The Commissioners and the umpire shall keep an accurate record and correct minutes of their proceedings, with the dates. For that purpose they shall appoint two secretaries versed in the language of both countries to assist them in the transaction of the business of the Commission. Each Government shall pay to its Commissioner an amount of salary not exceeding forty-five hundred dollars a year in the currency of the United States, which amount shall be the same for both Governments. The amount of compensation to be paid to the umpire shall be determined by mutual consent at the close of the Commission, but necessary and reasonable advances may be made by each Government upon the joint recommendation of the Commission. The salary of the secretaries shall not exceed the sum of twenty-five hundred dollars a year in the currency of the United States. The whole expenses of the Commission, including contingent expenses, shall be defrayed by a ratable deduction on the amount of the sums awarded by the Commission, provided always that such deduction shall not exceed five per cent. on the sums so awarded. The deficiency, if any, shall be defrayed in moieties by the two Governments.

ARTICLE VII.

The present convention shall be ratified by the President of the United States, by and with the consent of the Senate thereof, and by the President of the Mexican Republic, with the approbation of the Congress of that republic, and that the ratifications shall be exchanged at Washington within nine months from the date hereof, or sooner if possible.

In witness whereof the respective plenipotentiaries have signed the same and have affixed thereto the seals of their arms.

Done at Washington, the fourth day of July, in the year of our Lord one thousand eight hundred and sixty-eight.

WILLIAM H. SEWARD. [L. S.]
M. ROMERO. [L. S.]

And whereas the said convention has been duly ratified on both parts, and the respective ratifications of the same have this day been exchanged:

Now, therefore, be it known that I, Andrew Johnson, President of the United States of America, have caused the said convention to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington this first day of February, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-third.

[SEAL.] ANDREW JOHNSON.

By the President:
WILLIAM H. SEWARD,
Secretary of State.

No. 2.

Convention of April 29, 1876, extending the functions of the umpire under the convention of July 4, 1868.

[By subsequent conventions of April 29, 1871, November 22, 1872, and November 20, 1874, the duration of the convention was extended. By convention of April 29, 1876, further time was given the umpire, until November 20, 1876, by the committee.]

Convention between the United States of America and the Mexican Republic for extending the functions of the umpire under the convention of July 4, 1868. Concluded April 29, 1876.

* * * * * * *

ARTICLE II.

It is further agreed that, so soon after the twentieth day of November, one thousand eight hundred and seventy-six, as may be practicable, the total amount awarded in all cases already decided, whether by the Commissioners or by the umpire, and which may be decided before the said twentieth day of November, in favor of citizens of the one party, shall be deducted from the total amount awarded to the citizens of the other party, and the balance to the amount of three hundred thousand dollars shall be paid at the city of Mexico, or at the city of Washington, in gold or its equivalent, on or before the thirty-first day of January, one thousand eight hundred and seventy-seven, to the Government in favor of whose citizens the greater amount may have been awarded, without interest or any other deduction than that specified in Article VI of the said convention of July, 1868. The residue of the said balance shall be paid in annual instalments on the 31st day of January in each year, to an amount not exceeding three hundred thousand dollars, in gold or its equivalent, in any one year, until the whole shall have been paid.

ARTICLE III.

The present convention shall be ratified, and the ratifications shall be exchanged at Washington as soon as possible.

In witness whereof the above-named plenipotentiaries have signed the same and affixed thereto their respective seals.

Done in Washington the twenty-ninth day of April, in the year one thousand eight hundred and seventy-six.

HAMILTON FISH. [SEAL.]
IGNO. MARISCAL. [SEAL.]

No. 3.

Final report of J. Hubley Ashton, esq., agent of the United States before the United States and Mexican Claims Commission, to the Secretary of State.

WASHINGTON, *January* 29, 1877.

SIR: As the agent of the United States before the Commission constituted by the convention of July 4, 1868, for the adjustment of claims between the United States and the Mexican Republic, I had the honor,

on the 23d of November last, to report to you the general results of the action of the Commission upon the claims laid before it by the respective Governments, and to transmit schedules respectively of the claims on the part of the citizens of the United States against the Mexican Republic, and of the claims on the part of citizens of the Mexican Republic against the United States, in which awards of money were made by the Commissioners and the umpires, showing the amounts of the respective awards, and of the several balances in favor of citizens of the United States, in the three kinds of money in which the awards are expressed.

The schedules transmitted, under cover of my letter of the 23d of November, contain only the names and docket numbers of the several cases laid before the Commission by the two Governments, in which awards of money were made by the Commissioners or the umpires in favor of the respective claimants.

I have now the honor to transmit the accompanying schedules, containing all the claims presented to the Commission on the part of citizens of the United States against the Mexican Republic, and on the part of the Mexican Republic against the United States, in their order, as filed and numbered on the American and Mexican dockets, respectively; showing the names of the claimants, the general subjects-matter of their respective claims, the times when and the places where they arose, the amounts claimed, the nature of the final decisions thereon, whether by the Commissioners or the umpire, and where allowed, the amounts of money awarded the respective claimants, as stated in my previous report of the 23d of November ultimo.

These schedules exhibit, in a condensed form, of course, the general nature and character of the claims referred to the Commission by the respective Governments, and the results of its labors in the investigation and decision of those claims; and they will doubtless be found very useful to the Department as means of obtaining ready information, from time to time, in regard to the action of the Commission in particular cases. There is also transmitted an index to the schedule of American claims by docket numbers.

The convention of July 4, 1868, was the second treaty concluded between the United States and the Mexican Republic, for the adjustment of private claims through the instrumentality of a joint or mixed commission.

The convention of April 11, 1839, provided for the submission of the claims of citizens of the United States upon the Mexican Government to a Board composed of four Commissioners, two appointed by the President of the United States and two by the President of the Mexican Republic, and, in case of their disagreement, to an arbiter or umpire appointed by and acting in behalf of His Majesty the King of Prussia.

Under that convention the Hon. William L. Marcy and the Hon. John Rowan (the latter succeeded by the Hon. H. M. Brackenridge) were appointed the Commissioners on the part of the United States, and Señors Pedro Fernandez del Castillo and Joaquin Valasquez de Leon the Commissioners on the part of the Mexican Republic. His Majesty the King of Prussia appointed the Baron von Roenne to act as umpire in his behalf.

This Commission adjudged a number of the claims laid before it, but its time expired before the completion of its work, and the undecided cases remained unsettled until after the conclusion of the treaty of peace of February 2, 1848, known as the treaty of Guadalupe Hidalgo.

By the thirteenth article of that treaty the United States engaged to

assume the claims decided against Mexico under the convention of 1839; and by the fifteenth article they exonerated that republic from all claims of American citizens, not theretofore decided, which had arisen prior to February 2, 1848, and agreed to make compensation for such claims to an amount not exceeding three and a quarter millions of dollars.

By the fifteenth article of the treaty of 1848 it was also agreed that, to ascertain the validity and amount of the outstanding and undecided claims from which Mexico was thus exonerated, a Board of Commissioners should be established by the United States, whose awards should be final and conclusive.

The act of March 3, 1849, provided for such a Board, and the Hon. George Evans, the Hon. Robert T. Paine, and the Hon. Caleb B. Smith, were appointed the Commissioners.

All claims on the part of citizens of the United States against the Mexican Republic, arising out of transactions prior to the 2d of February, 1848, were thus finally adjusted by means of the Mixed Commission under the convention of 1839, and the *ex parte* Commission under the treaty of Guadalupe Hidalgo.

The convention of July 4, 1868, under which the late Commission derived its authority, was entered into for the purpose of adjusting the claims of citizens of the United States against the Mexican Republic, and the claims of citizens of the Mexican Republic against the United States, arising out of transactions of a date subsequent to the 2d of February, 1848; and the object of the convention, as declared by its preamble, was "to maintain and increase the friendly feeling between the United States and the Mexican Republic, and so to strengthen the system and principles of republican government on the American continent."

The jurisdiction of the Commission extended to all claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the Government of the Mexican Republic, arising from injuries to their prisons or property by authorities of the Mexican Republic, and of all claims on the part of corporations, companies, or private individuals, citizens of the Mexican Republic, upon the Government of the United States, arising from injuries to their persons or property by authorities of the United States, which may have been presented to either Government for its interposition with the other since the signature of the treaty of Guadalupe Hidalgo of the 2d of February, 1848, and which remained unsettled, as well as to any other such claims which might be presented within eight months from the day of their first meeting.

The convention provided that every claim should be presented to the Commissioners within eight months from the day of their first meeting, unless in cases where reasons for delay should be established, when the period for presenting the claims might be extended to a time not exceeding three months longer.

These claims were to be impartially and carefully examined by the Commissioners, and decided "to the best of their judgment according to public law, justice, and equity," and the high contracting parties agreed to consider the result of the proceedings of the Commission "a just, perfect, and final settlement of every claim upon either Government, arising out of any transaction of a date prior to the exchange of the ratifications of the convention."

The jurisdiction of the Commission embraced, therefore, claims arising out of transactions subsequent to the 2d of February, 1848, and prior to

the 1st of February, 1869, the date of the exchange of the ratifications of the convention.

The respective Governments agreed to give full effect to the decisions of the Commissioners or umpire, "without any objection, evasion, or delay whatsoever"; and further engaged that all claims within the jurisdiction of the Commission, whether presented or not for its consideration, should, from and after the conclusion of its proceedings, "be considered and treated as finally settled, barred, and thenceforth inadmissible."

One Commissioner was to be appointed by each Government; and the two were to name some third person to act as umpire in cases in which they might differ in opinion, and if they failed to agree upon such person, each Commissioner was to name an umpire, and the umpire in every case in which the Commissioners disagreed was to be selected by lot from these two.

The convention provided that each Government might name one person to attend the Commissioners as agent on its behalf, to present and support claims in its behalf, and to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision of the claims.

The Commissioners and the umpire were required to keep an accurate record and correct minutes of their proceedings, and for that purpose to appoint two secretaries versed in the language of both countries to assist them in the transaction of the business of the Commission.

Such were some of the more important provisions of the convention of July 4, 1868, which was apparently framed upon the general model of the British and American convention of February 8, 1853, for the adjustment of private claims between the United States and Great Britain.

The Hon. William Henry Wadsworth, of Kentucky, was appointed the Commissioner on the part of the United States, and Señor Don Francisco Gomez Palacio was first appointed Commissioner on the part of the Mexican Republic. He was succeeded by General Leon Guzman, who was succeeded by Señor Don Manuel Maria de Zamacona.

The Commissioners, after various conferences, named Dr. Francis Lieber, of the State of New York, to act as umpire.

Dr. Lieber having died on the 2d of October, A. D. 1872, the Commissioners agreed upon the Right Honorable Sir Edward Thornton, K. C. B., envoy extraordinary and minister plenipotentiary to the United States of Her Majesty the Queen of Great Britain, as umpire.

Joseph Hubley Ashton, esq., of Pennsylvania, was named by the President of the United States the agent of the United States before the Commission, and the Hon. Caleb Cushing, of Massachusetts, was named by the President of the Mexican Republic the agent to attend the Commission on behalf of that Government. Mr. Cushing was succeeded by Señor Don Manuel Aspiroz, and he, in turn, by Señor Don Eleuterio Avila, who continued in the performance of his duties to the termination of the Commission.

The agent of the United States was assisted in the performance of his duties, at different times, by the Hon. William Marvin, of New York, and the Hon. Charles P. James, of Ohio.

Mr. George G. Gaither, of Kentucky, and Señor Don J. Carlos Mexia, of the city of Mexico, were appointed the secretaries of the Commission. Upon the resignation of Mr. Gaither, Mr. Randolph Coyle, of the city of Washington, was appointed one of the secretaries, and continued in the execution of his duties till the close of the Commission.

The first meeting of the Commissioners occurred on the 31st of July,

1869. At the expiration of eight months therefrom the Commissioners, under the authority of the third article of the convention, extended the time for presenting claims to a further period of three months.

As the convention provided that all claims which might have been presented to either Government for its interposition with the other, since the signature of the treaty of Guadalupe Hidalgo of February 2, 1848, as well as claims which might be presented within the time specified in Article III, should be referred to the Commission; and, further, that all claims not presented to the notice of, made, preferred, or laid before the Commission, should be considered and treated as finally settled and barred, the respective Governments caused all applications for redress coming within the period prescribed by the convention to be submitted for the action of the Commission.

Mr. Seward, writing to Mr. Corwin, the American minister to Mexico, on the 6th of April, 1862, said:

> I find the archives here full of complaints against the Mexican Government for violations of contracts and spoliations and cruelties practiced against American citizens. These complaints have been lodged in this Department from time to time during the long reign of civil war, in which the factions of Mexico have kept that country involved, with a view to having them made the basis of demands for indemnity and satisfaction whenever Government should regain in that country sufficient solidity to assume a character of responsibility.

Soon after the organization of the Commission the claims and complaints lodged in the Department of State and in the American legation at the city of Mexico since the 2d of February, 1848, were transmitted by the Secretary of State to the Commission, and the cases were placed upon the docket of American claims. The greater number of American claims laid before the Commission were brought, for the first time, to the notice of the Government after the conclusion of the convention, and within the eleventh months allowed for the submission of claims to the Commission.

The American claims presented to the Department of State prior to the conclusion of the convention, and referred to the Commission at its organization, numbered 330, while the American claims brought to the attention of that Department after the organization of the Commission, and referred by the Secretary of State within the eleven months from the date of the first meeting of the Commissioners, numbered 687.

The following is a statement of the number of claims against each Government laid before the Commission and the conventional period within which they were referred:

Period.	Against Mexico.	Against the United States.
Within the eight months from the first meeting, which expired March 31, 1870	894	908
Within the additional three months, which ended June 30, 1870	123	90
Total	1,017	998

In my letter of November 23, 1876, it is stated that the 1,017 claims on the part of citizens of the United States against Mexico aggregated, including damages and interest, $470,126,613.40; and that the 998 claims on the part of Mexican citizens against the United States aggregated the sum of $86,661,891.15.

The convention of July 4, 1868, limited the period for the duration of the Commission to two years and six months from the day of the

first meeting of the commissioners, which period expired on January 31, 1872.

By the subsequent conventions of April 19, 1871, November 27, 1872, and November 20, 1874, the time for the duration of the Commission was prolonged until the 31st day of January, 1876.

The convention of November 20, 1874, provided that, if the umpire should not have decided all the claims referred to him by the 31st day of January, 1876, when the functions of the commissioners would terminate under that convention, he should be allowed a further period of not more than six months for that purpose.

It appearing that the umpire would probably be unable to decide all the cases referred to him by the 31st of July, 1876, it was agreed by the convention of April 29, 1876, that he should be allowed a further period until the 20th day of November, 1876, for that purpose.

By the labors of the accomplished umpire, Sir Edward Thornton, all the claims laid before the Commission by the respective Governments were finally disposed of within that period and the business brought to a close.

It is not surprising that the Commission required more than the time originally allowed for the completion of the task assigned to it. It was not until June 30, 1870, that its dockets were fully made up, and then they disclose the existence of over 2,000 cases to be investigated and decided. The area of time covered by these cases was over twenty years. The transactions involved in them had occurred principally in the territory of the Mexican Republic, where the evidence both for the claimants and the defendant Governments was chiefly to be obtained. The proofs were to be taken in two languages, those adduced by the Mexican Government being wholly in the Spanish language, and when presented they were to be translated into English for the use of the Commission. The documents accompanying the claims, when referred to the Commission ,contained very meager information in regard either to the citizenship of the claimants or the merits in their cases. In very few instances had the claims undergone any examination previous to their reference to the Commission; and no case was ready for hearing, even on the part of the claimant, when it came before the Commission. It may be said that all the work of preparing the cases for hearing, as well on the part of the claimants as on the part of the Governments, was to be done after the cases were placed upon the dockets.

Justice to the Governments defending against the claims required that they should be allowed time for investigating the facts and obtaining evidence in answer to the claimants' proofs; and after the presentation of the defensive evidence, the same consideration rendered it proper that the claimants should be allowed some opportunity to file rebutting evidence.

It was unfortunate that no provision could be made for printing the records and the arguments in all the cases. The rules of the Commission required nothing to be printed except the memorials. The proofs and the arguments were in all cases, except the few instances when the claimants or the Governments incurred the expense of printing, submitted in writing, and the Commissioners, as well as the umpire and counsel, were obliged to study them in the original manuscripts.

The proof, if printed and bound, would no doubt have filled at least three hundred octavo volumes of six hundred or eight hundred pages each.

The Spanish proofs generally, and very often the English documents,

were required to be translated before the cases were ready for submission.

As disagreement between the Commissioners was the rule and agreement the exception, the decision of the umpire was invoked in a large proportion of the contested cases; and in all the cases referred to the umpire two separate and independent hearings occurred upon the proofs and arguments.

The Commissioners deemed it proper, at the outset of their labors, to give reasons for their judgments and action in carefully-prepared opinions, and this practice was followed by each of the gentlemen who acted as umpire. The opinions of the Commissioners and the umpire are recorded, and they will be found to contain valuable contributions to the law of international reclamations.

The functions of the Commission were suspended for a time by an occurrence which transpired shortly after Mr. Commissioner Guzman took his seat as a member of the Board.

Among the claims referred to the Commission by the Mexican Government were a large number of claims against the United States growing out of depredations alleged to have been committed in the territory of Mexico by Indians coming from the territory of the United States between the 2d of February, 1848, and the 30th of December, 1853, the date of what is known as the Gadsden treaty.

These claims were some 366 in number, and involved an aggregate sum of over thirty-one millions of dollars. They were founded upon the supposed obligations of the eleventh article of the treaty of Guadalupe-Hidalgo, relative to the restraint by the Government of the United States of the incursions of Indians from its territory into the territory of the Mexican Republic, and involve important questions touching the construction of the second article of the treaty of 1853.

Mr. Commissioner Wadsworth and Mr. Commissioner Palacio having failed to agree upon the questions involved in those cases, the Commissioners, on the 8th of May, 1872, filed their disagreeing opinions, and referred the claims, upon the motion of the agent of the United States to dismiss them, to the umpire, Dr. Lieber, by an order duly entered of record, which also directed the Mexican secretary to deliver the papers to the umpire.

On the 24th of June following, General Guzman took his seat as a member of the Commission, and the papers in these cases not having been delivered to the umpire, General Guzman assumed the right, upon various pretenses, to interfere with the execution by the Mexican secretary of the order of the Commissioners entered on the 8th of May.

After making every effort to maintain the authority of the Board and of the umpire, and to secure the objects of the convention, and finding Mr. Commissioner Guzman to be fixed in his determination to prevent the due execution of the order of the Board of May 8, and withhold the claims for Indian depredations from the umpire, and thus defeat the objects of the convention, Mr. Commissioner Wadsworth, on the 20th of July, 1872, filed his written protest against the action of his colleague, and referred the difficulty to the two Governments, through their respective agents. The matter was adjusted by the withdrawal of General Guzman, and the appointment of Señor Zamacona as commissioner on the part of Mexico.

That gentleman took his seat as a member of the Board on August 19, 1873. Dr. Lieber having died before that time, the first duty devolving upon the Board, after Mr. Commissioner Zamacona became a member of it, was the selection of an umpire.

The selection was not made until October, 1873, when the Commissioners agreed to name his excellency Sir Edward Thornton as their umpire.

It may be mentioned that, soon afterward, the leading test case in the class of so-called Indian depredation claims (that of Rafael Aguirre *vs.* The United States) was submitted to the umpire, who rendered his decision, allowing the motion to dismiss the same filed by the agent of the United States; and, pursuant to that judgment, all the claims of that class were finally dismissed by the Commissioners.

The following is a statement of the mode in which the cases upon the two dockets were disposed of by the action of the Commissioners and the umpire and otherwise:

Action.	American docket.	Mexican docket.
Number of cases decided by concurrence of Commissioners Wadsworth and Palacio	227	314
Number of cases decided by concurrence of Commissioners Wadsworth and Guzman	0	0
Number of cases decided by concurrence of Commissioners Wadsworth and Zamacona	353	594
Number of cases decided by Dr. Lieber, as umpire	20	15
Number of cases decided by Sir Edward Thornton, as umpire	398	62
Number of cases consolidated with other cases	12	13
Number of cases withdrawn, as arising too late, or for other reasons	7	0
Totals	1,017	998

Of the American claims decided by concurrence between Commissioners Wadsworth and Palacio, money awards were made in 40, and 187 were dismissed; while of the Mexican claims decided by concurrence of the same Commissioners, money awards were made in 154, and 160 were dismissed.

Commissioners Wadsworth and Zamacona concurred in money awards in favor of 3 American claimants, and in the dismissal of 350 American claims; while of the Mexican claims they concurred in making money awards in 8 cases, and in the dismissal of 586 cases.

It appears from the foregoing table that Sir Edward Thornton decided 460 cases. He states in his final opinion that he had decided 464 cases. This discrepancy of four cases arises, no doubt, from the fact that several cases were referred to him twice; once upon some preliminary question, such as citizenship, and again upon the merits.

The cases were investigated by Sir Edward Thornton with conscientious care, without the aid and the facilities afforded by printed records and printed arguments; and the four hundred and odd opinions from his pen, in the records of the Commission, manifest the labor, ability, diligence, and intelligence with which he performed his arduous duties.

The evidence in the cases of the American claims against Mexico was taken, and the special arguments in those cases on the facts were prepared, by the private agents or counsel of the claimants, the agent of the United States assuming no responsibility in regard to the proofs.

In many cases of that class, however, involving general or important questions of law, especially of public law, affecting classes of cases, the agent of the United States deemed it his duty to prepare such arguments upon those questions as he thought would be useful to the Commissioners and the umpire.

A considerable period of time at the outset of the Commission, before the completion of the proofs, was occupied in the discussion of general

questions of law raised by way of exceptions or motions to dismiss in the nature of demurrers to the memorials.

This discussion was conducted almost wholly by written or printed arguments between the agents of the two Governments.

But in the cases of the Mexican claims against the United States, the duty and responsibility of preparing the defense of the Government devolved throughout entirely upon the agent of the United States. He endeavored to make a thorough investigation of those claims through all accessible sources of information, and to collect and present to the Commission all evidence in answer to them in the possession of the Government, or obtainable by the examination of witnesses cognizant of the transactions. With this view special agents, by his advice, were sent out to Mexico by the Government, charged with the duty of investigating several of the more important classes of Mexican claims in the localities where they were said to have arisen, and much valuable and important testimony was thus obtained and laid before the Commission on the part of the United States.

It would require careful reports of the cases to exhibit the difficulty, variety, and importance of the questions, both of fact and municipal and public law, submitted to the determination of this Commission, and the results of the decisions rendered by the Commissioners and the umpires.

The Commissioners, at the outset of their labors, as has been stated, deemed it proper to state the reasons for their decisions in written opinions carefully prepared after the submission of the cases upon the evidence and the written or printed arguments of counsel. This practice was adopted by each of the gentlemen who acted as umpire.

The Commissioners wrote out their opinions, not only in those cases where they were able to agree, but also in those cases where they failed to agree, and called the umpire to their assistance.

Where they were able to agree as to the disposition proper to be made of a particular case, their opinion was sometimes prepared and delivered by one member of the Board, while in most such cases they filed separate opinions. Where they differed, each Commissioner habitually stated, more or less at length, his own views in writing, and the opinions of the two Commissioners were transmitted with the documents, evidence, and arguments of counsel on file in the particular case, to the umpire, who had thus before him in writing the conflicting views and arguments of the two Commissioners.

The opinions of the Commissioners and the umpires were recorded by the secretaries in both languages, and fill several large books now in the possession of the Department.

It may be deemed proper at some future time to print the more important opinions, and then an intelligible and useful report of the cases adjudged by the Commission may be prepared.

A book of such reports would be found useful to the Government and all future commissions in the investigation and decision of international claims.

In closing this report, I feel constrained to express my sincere acknowledgments and profound thanks to you, Mr. Secretary, for the great and unfailing courtesy and kindness which I have received from you throughout the whole period, when it was my duty and my pleasure alike to confer with you or to receive your instructions in regard to the business of the Commission. I shall always remember with pleasure the patient consideration you gave to every subject connected with that business, which I had occasion to bring before you, and the wisdom of all your sugges-

tions, whenever I sought your advice, not only on account of the personal obligations under which your kindness placed me, but because I obtained some slight insight into those high qualities which have enabled you to crown your administration of the foreign affairs of the country with great achievements.

I have the honor to be, very respectfully, your obedient servant,

J. HUBLEY ASHTON.

Hon. HAMILTON FISH,
Secretary of State.

No. 4.

Letter from the Secretary of State, transmitting protocol between the Secretary of State of the United States and the envoy extraordinary and minister plenipotentiary of the Mexican Republic accredited to the Government of the United States, concerning the adjustment of claims under the convention of July 4, 1868.

DEPARTMENT OF STATE,
Washington, January 19, 1877.

SIR: I have the honor to invite the attention of your honorable committee to the necessity of making provision for carrying into effect the awards made by the Commission under the convention between the United States and Mexico of July 4, 1868.

The Commission has closed its labors, and awards have been made against Mexico in favor of citizens of the United States to the amount of $4,125,622.20. Awards were made against the United States in favor of citizens of Mexico to the amount of $150,498.41.

By the terms of the treaty the first payment on account by the Government against which the larger amount has been awarded is payable on or before the last day of this month.

A very recent dispatch from our minister in Mexico states that he has assurances from the gentleman in charge of the foreign office that the payment will be made.

An appropriation by Congress will be necessary for the payment of the amount of the awards against the United States, which sum, by the terms of the treaty, is to be deducted from the awards against Mexico and from the amount to be paid by Mexico.

Provisions should also be made for the distribution among the several parties entitled to the money as it may be received, and also for the reimbursement to the United States of the amount paid by the United States toward the joint expenses of the Commission, and which, by the terms of the treaty, is to be deducted from the awards. This sum amounts to $114,948.74 paid by the Uuited States, Mexico having paid $63,789.72 of such joint expenses, the total expenses chargeable to the Joint Commission under the provision of the treaty having been $178,738.46, being less than 5 per cent. on the whole amount of the awards.

The amount chargeable to the Joint Commission as above does not constitute the whole amount paid by the United States, as each Government bore the expenses of its respective agent and of its clerical force, and expenses of translation, &c.

I inclose herewith a copy of the final account between the two Governments, and of the protocol signed on the 14th day of December last; and also a draught of a bill entitled "An act to provide for the distri-

bution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the fourth day of July, one thousand eight hundred and sixty-eight," which I venture to submit to the consideration of your honorable committee.

I have the honor to be, sir, your obedient servant,

HAMILTON FISH.

Hon. THOMAS SWANN,
Chairman of the Committee on Foreign Affairs.

[Inclosures.]

Final account between the United States and Mexico.
Protocol of December 14, 1876.

Statement of account of United States and Mexican Claims Commission.

AWARDS AND EXPENSES OF COMMISSION.

Awards against Mexico:			
I. In Mexican gold dollars	$3,296,055 18		
II. In U. S. gold coin	426,624 98		
III. In currency	402,942 04		
	4,125,622 20	at a percentage of 4.17992, yields	$172,447 75
Awards against the United States:			
I. In Mexican gold dollars	$50,525 57		
II. In U. S. gold coin	10,559 67		
III. In currency	89,410 17		
	150,498 41	at a percentage of 4.17992, yields	6,290 71
Total	4,276,120 61	at a percentage of 4.17992, yields	178,738 46
Expenses of Commission, one-half to be borne by each Government			178,738 46
Moiety of expenses			89,369 23

Paid by Mexico:			
Salary of Commissioner from July 1, 1869, to January 31, 1876, 6 years and 7 months, at $4,500		$29,625 00	
Salary of secretary from May 1, 1869, to December 31, 1876, 7 years and 8 months, at $2,500		18,750 00	
Umpire, Dr. Lieber, from September 6, 1869, to October 1, 1872, at $3,000	$6,139 72		
Umpire, Sir Edward Thornton, from October 17, 1873, to November 20, 1876, 3 years and 1 month.	9,275 00		
		15,414 72	
Total amount paid by Mexico		63,789 72	
Paid by United States:			
For same services, same rates and time	$63,789 72		
Also joint contingent expenses	51,159 02		
Total amount paid by United States		$114,948 74	
Total amount of expenses paid as above			$178,738 46
Moiety of same as above			89,369 23

HAMILTON FISH,
Secretary of State.
IGNO. MARISCAL.

BALANCE OF ACCOUNT.

From sheet No. 1. Award against United States.	$150,498 41 at 4.17992%		$6,290 71
From sheet No. 1. Award against Mexico.....	4,125,622 20 at 4.17992%		172,447 75
	4,276,120 61 at 4.17992%		178,738 46
From sheet No. 1. Expenses paid by United States.....	114,948 74		
From sheet No. 1. Expenses paid by Mexico..	63,789 72		
Total expenses.....			178.738 46

Account of the United States.

	Dr.	Cr.
To amount of percentage on award against Mexico.....	$172,447 75	
By amount of disbursements on account of expenses	.....	$114,948 74
Balance	.....	57,499 01
	172,447 75	172,447 75
Balance against the United States.....	57,499 01	

Account of Mexico.

	Dr.	Cr.
To amount of percentage on award against United States ..	$6,290 71	
By amount of disbursements on account of expenses		$63,789 72
Balance	57,499 01	
	63,789 72	63,789 72
Balance in favor of Mexico.....		57,499 01

HAMILTON FISH,
Secretary of State.
IGNO. MARISCAL.

PROTOCOL.

Whereas the Commission for the adjustment of claims provided for by the convention between the United States and the Mexican Republic of the 4th of July, 1868, stipulates in its sixth article that the compensation to be paid to the umpire shall be determined by mutual consent at the close of the convention:

And whereas the said Commission, though continued from time to time by subsequent conventions, has concluded its functions and come to a close;

And whereas the same article stipulates that the whole expenses of the Commission, including contingent expenses, shall be defrayed by a ratable deduction on the amount of the sums awarded by that Commission: *Provided always*, That such deduction shall not exceed five per cent. on the sums so awarded, the deficiency, if any, to be defrayed in moieties by the two Governments:

Now, therefore, the undersigned, Hamilton Fish, Secretary of State, and Don Ignacio Mariscal, accredited to the Government of the United States as envoy extraordinary and minister plenipotentiary of the Mexican Republic, have this day met for a consideration of these subjects, and have determined that the compensation of the umpire aforesaid shall be at the rate of six thousand dollars a year. Consequently, deducting the advances made by each Government to Dr. Lieber during the time of his service as umpire, there remains the sum of eighteen thousand five hundred and fifty dollars ($18,550) for compensation of the umpire, one-half payable by each Government.

The advances and payments made to Dr. Lieber were six thousand one hundred and thirty-nine dollars and seventy-two cents ($6,139.72) paid by each Government, in all twelve thousand two hundred and seventy-nine dollars and forty-four cents ($12,279.44).

The expenses of the Commission contemplated in Article VI of the convention, including the contingent expenses, have amounted to one hundred and seventy-eight thousand seven hundred and thirty-eight dollars and forty-six cents ($178,738.46), equal to four per cent. and seventeen thousand nine hundred and ninety-two one

hundred thousandths ($4\frac{17992}{100000}$) of one per cent. on the total amount of awards on both sides.

The undersigned have also caused the account hereunto annexed to be stated, and have approved the same under their respective hands.

HAMILTON FISH,
Secretary of State.
IGNO. MARISCAL.

WASHINGTON, *December* 14, 1870.

No. 5.

BENJAMIN WEIL *vs.* MEXICO. } No. 447, A. D.

The Commissioners having differed in opinion in this case, Mr. Commissioner Wadsworth delivered the following opinion:

In the face of so many witnesses of respectability, I am unwilling to decide that the facts detailed by them are not true.

I must decide on the proofs and documents filed in the case, and nothing else. These remain without contradiction by the Government, and to remove all misapprehension I state that I am willing to give every opportunity in my power, as a Commissioner, to the Government to make a full and ample investigation of the claim, and respond to it, and very much wish that this might be done.

But as this is declined I must act on the proofs before me. It is now my decision that the United States must have an award for the value of the property at the time and place of its seizure, with interest. And the umpire can finally dispose of the case.

No. 6.

BENJAMIN WEIL *vs.* MEXICO. } No. 447, A. D.

The Commissioners having differed in opinion in this case, Mr. Commissioner Zamacona delivered the following opinion:

As the undersigned burrows into the business pending before this Commission a peculiar feature connected with it impresses itself on his mind; and that is, the great number of claims relating to a remote period, in which the proceedings of the parties interested, and the proofs concerning the claims bear dates subsequent to the convention of the 4th of July, 1868, which provides for the settlement of Mexican and American claims. This circumstance is peculiarly significant with regard to claims submitted by citizens of the United States against Mexico, since, while this is not intended to imply any offensive censure of the people of the former of these countries, it is only a repetition of what some American writers have said when describing the customs of their country, that it is well known that in the United States diplomatic claims are not neglected for any great length of time. When one is presented for three or four hundred thousand dollars, with a statement that ten or twenty years ago a scandalous robbery was committed

in Mexico; that all the documents which might have established it have been lost; that the victim of the outrage has borne it in silence, and only now has, wherewith to prove it, some friends ready to give favorable evidence concerning it.

I repeat, that with regard to a claim of this kind my judgment refuses to consider it as proven upon two or three affidavits.

The first suggestion that immediately presents itself is, that by such means, and through the weakness of human nature, which presents so many facilities for obtaining false witnesses, when they know that they are not to be submitted to the severe test of a cross-examination, it would be very easy to carry out with success the most fraudulent claims.

The record of those which have been examined and decided in this Republic loudly proclaims it, and at every step one recalls that of Dr. Gardner as a specimen.

This is the reason why the undersigned Commissioner, when he opens a file of papers containing a claim, first searches for some authentic document relating to the time of the date of the claim, and in which there are undeniable traces of the facts alleged. If the evidence of witnesses, unsupported by any documentary evidence, is dangerous and unsatisfactory, even with regard to facts which leave long traces behind them, and with regard to which the counter-testimony and a personal inspection of visible objects might serve to establish the truth, how must it be with regard to a fact which left no trace, was consummated in the middle of a desert, and which is stated by two or three witnesses, without any other human being being able to say anything more than that they never heard of any such occurrence.

The foregoing remarks characterize the present claim. The claimant states that in September, 1864, he imported into Mexico, by the frontier, a large train of carts, containing 1,914 bales of cotton, and that General Cortina robbed him of the whole cargo betwen Laredo and Piedras Negras. Weil claims for this loss three hundred and thirty-four thousand nine hundred and fifty dollars.

The evidence consists of the affidavits of certain persons who state that they witnessed it, and of others who testify that Weil, at the time alluded to in the claim, carried toward the Mexican frontier from Texas a train of carts loaded with cotton; or who state that they afterwards heard of the occurrence of the robbery on which the claim is founded.

With regard to documents, the principal witness and the claimant himself state, or give it to be so understood, that they were all lost, and that nothing remains but the personal recollections contained in the affidavits in the claim. Neither the papers relating to the purchase of so large a parcel of cotton, nor the vouchers for any of the trifling expenses and transactions which must have occurred on so long a journey as that made by the train, nor the certificates of any custom-house operations, nor the draft of any letter or petition or protest which the ruined trader, by reason of that gigantic robbery, may have made at the time of the commission of that scandalous outrage, nothing, absolutely nothing, of any of three things are found among the papers in the case, and upon the statements of some few witnesses it is demanded that Mexico be declared bound to make compensation for this monstrous and improbable robbery.

The total loss of all documents connected with this case, though improbable, might yet be understood, but nobody can fail to see that the replacing of some of them was an exceedingly easy matter, and the

not having attempted it, shows that the strength of the claim rests solely upon the affidavits before alluded to; and most certainly some of them, and perhaps the most important, is well calculated to confirm the suspicions before expressed by the undersigned. This refers to the evidence of George D. Hite, whose affidavits appear in Exhibits Nos. 10 and 23.

Not content with having given the first of these affidavits, and thinking that his evidence would throw much light upon the business and give great weight to the claim, he gave his evidence a second time, extending it to the fullest particulars, which it is singular that he should not have mentioned in his first testimony. But between the two affidavits furnished by this witness the contradiction is noticeable that in the first he calls himself a contractor permanently established at Matamoros, while in the other he says that he was an agent of the claimants, commissioned to prepare the shipments of cotton in Texas.

It was necessary for him to assume this last character to spatter his deposition over with so many details, and put in, by the way, that most important explanation as to the loss of all the papers connected with the business.

The defense, in its argument, has raised objections which are very worthy of consideration; but nothing has had so much weight with the undersigned as the entire absence of any documentary evidence.

The claimant has further alleged, laying much stress upon the evidence submitted by him, and giving great weight to the want of defensive testimony on the part of Mexico, that this implies an admission of the claim. In this there is a statement which is far from being true. Mexico has forwarded her evidence, although with the delay consequent upon obtaining negative proof in a matter of this nature. The said evidence was submitted to the Commission; and under the rule which has been put in practice for some time past, and which is now in force, the agent of Mexico met with difficulties. But in the brief which he submitted at the time of offering the evidence, he gives it to be understood that there is much evidence, both documentary and of testimony, contradictory of the occurrence on which the claim is founded.

The United States Commissioner, without disregarding the more than suspicious aspect of the case, proposed to the undersigned, at the moment of the session at which the case was about to be disposed of, to admit the evidence offered in behalf of Mexico, and at the same time allow the claimant an opportunity to rebut it by new evidence.

The undersigned had several reasons for not considering the proposal desirable. In addition to that, in the present condition of the labors of the Commission, the method of deciding the cases in their numerical order having been adopted, and the declaration made that all cases should be closed, and it being desirable that in proceeding no cases should be left behind undecided, there is in the present case the still more serious considerations that there is sufficient evidence upon which to judge of the claim, and that by opening the door to new testimony it would only serve to show the claimant wherein the edifice which he had erected upon his imagination was weak, and by enlightening him as to how to crown his intrigue by new efforts, which, although they would not change the aspect of the case, might lead to confuse it. Unfortunately, it is not the practice of the Commission, nor perhaps would it be possible for us to send for the witnesses to subject them to a rigorous examination.

If this could be so, then the admitting of further testimony would not present so many objections; but to advise the claimant by inform-

ing him of the impression created on the mind of the Commission by the papers presented by him, authorize him to obtain further evidence, and even give him time to manufacture documents, all of which is unfortunately easy at the places in question (see the testimony of Colonel Haynes, submitted by the United States in case No. 733 of P. J. de la Garza), and this when the labors of the Commission are about expiring without a possibility of any further investigation, would be a proceeding in which all the advantages would be on the claimant's side, and would furnish greater probabilities of making intrigue and fraud successful than truth and justice.

The demonstration made by the undersigned has to a certain extent been useless, because the question involved in this case has been discussed and very correctly decided by the umpire in another similar case. The considerations expressed by that officer, when he decided the case of Jaroslowski, No. 896, are very applicable to this case. The following are his words:

> It is said that the Mexican officers gave Wolf a receipt for the said goods, and that while Wolf and Cohen were on their way to Texas, they were both attacked and robbed of everything they had. They afterwards returned to Matamoros. Why they should have crossed and recrossed in this manner the river which forms the frontier of Texas is something which is not shown by the evidence. But the absence of other evidence, which it would have been very easy for them to obtain, is even more remarkable. If the receipts of the export duties paid at Matamoros, and those for the cost of the carts and mules, were stolen from Wolf, it would have been very easy for him to have procured duplicates of those papers on his return to Matamoros. The claimant might also have worked up evidence, that there was a Mexican force at the aforesaid place at the time stated, and that that force took his goods; these facts must have been well known. But during all the time which elapsed from May of 1865, which was the time of the capture, up to March of 1870, it does not appear that the claimant made the least effort to obtain evidence, since he never even applied to Wolf and Cohen for their affidavits.
>
> Even in the event of its being true that the claimant's goods and merchandise were captured by the Mexican troops, the umpire holds that the authorities of that country, under the general laws of war, and also according to the law of Mexico of the 16th of August, 1863, had the right to seize and confiscate them. If the claimant thought that the capture was unlawful, it was his duty to have presented his claim to the Mexican Government, which he certainly might have done under the law of the 19th of November, 1867.

The last paragraph of this quotation may be applied to this case, because the operation which the claimant describes himself as being engaged in might perhaps have been considered unlawful according to the laws of both the United States and Mexico.

As the undersigned deems the foregoing considerations conclusive, he has not referred to others of a similar character and upon which he founds his opinion that the present claim should be dismissed.

No. 7.

Award of the umpire in the Weil claim.

In the case of Benjamin Weil *vs.* Mexico, No. 447, the umpire considers that the proof is amply sufficient that the claimant is a citizen of the United States, and he cannot doubt that he is so and was so at the time of the origin of the claim. The claim arises out of the alleged seizure by troops under General Cortina of cotton belonging to the claimant, for which no compensation has been granted by the Mexican

Government. It is stated that the occurrence took place between Piedras Negras and Laredo on the 20th of September, 1864.

The umpire considers that the facts put forward by the claimant are sufficiently proved, viz, that the cotton belonged to him; that it was seized and taken by troops belonging to the Mexican Government and under the command of General Cortina; that the place at which the seizure took place was between Piedras Negras and Laredo, which must therefore have been in one of the Mexican States of Coahuila and Tamaulipas; and that the cotton, which was avowedly on its way to Matamoros for export, was seized on or about the 20th of September, 1864.

These facts are not disproved by evidence of the part of the defense. The argument of most weight which has been suggested by the latter is that all communication with points occupied by the enemy was forbidden. But there is no proof that any of the territory through which the cotton had passed, or was intended to pass, was occupied by the enemies of the Mexican Government. It is true that the states of Coahuila and Tamaulipas were under martial law; but that State of things did not justify the Mexican authorities in seizing the goods of private persons and neutrals without giving them compensation; or if they thought it necessary to seize the cotton in order that it might not fall into the hands of, or even pay duty to, the enemy, they were still bound to indemnify its owner. The umpire has been unable to discover any proclamation or other manifesto by the Mexican Government to the effect that either Coahuila or Tamaulipas was occupied by the enemy, and it is a historical fact that the city of Matamoras was first occupied by the French forces on the 26th of September, 1864.

The umpire is, therefore, of opinion that the claimant was committing no illegal act in transporting his cotton through Coahuila and Tamaulipas with destination to Matamoros on the 20th of September, 1864, and that as it was seized by Mexican authorities, for whatever reason it may have been seized, the Mexican Government is bound to indemnify the claimant.

The claimant asserts that there were 1,914 bales of cotton. The witnesses agree that there were not less than 1,900, which latter number the umpire will therefore adopt. The average weight of each bale is shown to be 500 pounds and the value 35 cents per pound. But with regard to the value, it must be remembered that the cotton was still a long way from Matamoros when seized, and that there is always some risk of damage being done to it during the journey. The umpire therefore thinks that it will be fairer to put the value at 30 cents the pound.

The umpire therefore awards that there be paid by the Mexican Government on account of the above-mentioned claim the sum of two hundred and eighty-five thousand Mexican gold dollars ($285,000), with interest at 6 per cent. per annum from the 20th of September, 1864, to the date of the final award.*

EDWARD THORNTON.

WASHINGTON, *October* 1, 1875.

* The interest amounted to the sum of $224,250.26 up to the 31st of July, 1876, which date was designated by the umpire as that of the final award, and consequently the whole sum awarded to the claimants was $683,041.32.

No. 8.

LA ABRA MINING COMPANY
vs.
MEXICO. } No. 489, A. D.

The Commissioners having differed in opinion in this case, Mr. Commissioner Wadsworth delivered the following opinion:

The company in my opinion is entitled to indemnity for the seizures of its money, supplies, mule trains and other property by the Mexican armed forces (under command of their officers, undoubtedly) for the use of such troops; and for the destruction of the mining property and interests of the company, by the various Mexican authorities, civil and military.

The amount of money seized and taken by force, according to the proof as I read it, was altogether $2,978. The value of the several mule trains and supplies seized and appropriated for the public use, I make, say, $75,000. The property and interests destroyed in addition, by the arbitrary, lawless, and malicious acts of the authorities, amounted to a large sum, difficult to estimate, but equal in my judgment to the total investment made by the company less the aggregate of the money, teams, and supplies taken as above stated.

Upon these sums the claimant should have interest in lieu of prospective profits.

The profits of mining in Mexico during civil war (that is, at all times nearly) and under the extraordinary circumstances surrounding claimant are more than doubtful.

But I do not consider prospective profits even a part of the measure of damages in such cases. They are at best speculative, while interest is a definite and moderate allowance that may, with great propriety, take their place.

It is, however, idle for me to go into this important case with any particularity, since it must go to the umpire to be disposed of by him according to his views alone.

No. 9.

THE ABRA SILVER MINING COMPANY
vs.
MEXICO. } No. 489, A. D.

The Commissioners having differed in opinion in this case, Mr. Commissioner Zamacona delivered the following opinion:

Many in number are the claims which have been submitted to this Commission on account of damages alleged to have been experienced by the owners of mining enterprises in Mexico.

The demands against the Mexican Government on this account have a characteristic precedent in their history, and, although not the only one of its class, such was the claim of Dr. Gardner for an enormous sum which was paid him, and which it was afterwards discovered was for mines which never existed, except in the claimant's imagination.

When the damages which the mining companies at times complain of do not reach such an extreme of invention, at the bottom of them is

found one of these two facts, either that the losses complained of are due to one of those disappointments so frequent in the hazardous business of mining, particularly when this is embarked in without sufficient knowledge or adequate capital, or else it is accounted for by the general disquiet of the country, and the imprudence of claimants themselves in having gone, as they state, to Mexico to engage in mining undertaking, selecting the time and place most convulsed by those civil and foreign wars of which that republic was the theater during the decade from 1857 to 1867.

If the matters submitted to our Commission are considered as an aggregate, and with an impartial and investigating spirit, they will furnish very important lessons; lessons which may be of advantage both to Mexico and to the United States.

The former may learn from them what she should in future avoid in order to give no just ground of complaint to honest and industrious foreigners, and the evil devices made use of by certain unscrupulous speculators to work on the weakness and embarrassed condition of the Mexican Republic in the setting up of international claims. The United States might on its side learn from the archives of this Commission the monstrous and exceptional extent to which claim speculations have grown in this country, and the evil influences which they must exert on public morals and the harmony of its intercourse with other nations.

The claims submitted to this Commission make a long catalogue, and the most numerous on it are those of mining companies for the total destruction of their undertakings, and among such one of the most notable is the one which heads this opinion.

The first thing which merits attention is the progressive and rapid increase of the claim from the time of its origin.

When the claimants made use of the services of only two lawyers, Robert Rose and Frederick Stanton, and these gentlemen stated their complaint to the State Department, with the request that the matter should be submitted to our examination, the amount for which the Mexican Government was alleged to be responsible was one million nine hundred and thirty thousand dollars. (See Exhibit No. 1, received by the State Department March 17, 1870.)

Some three months later, the United States having submitted the case to our Commission, the same counsel, re-enforced by a third assistant, Mr. W. W. Boyce, submitted the memorial on behalf of the company, and which appears to have been signed and sworn to on the 28th of May of the same year by Mr. Robert Rose. During this short space of seventy-two days the claim had swollen from one million nine hundred and thirty thousand dollars to three millions.

Of course, the makers of this rapid accretion took care to enter into no explanations, and not only kept quiet with regard to the letter sent a short time before to the State Department, in which the claimants designated the amount that they considered themselves entitled to, but they also abstain from stating figures, by which means the mine as a claim continued to produce more than the "Abra Mine," and in a little more than two months had suffered an increase of more than a million.

The memorial is not accompanied by any statement or account whatever; the claim is made in gross, and demands the sum of over three millions for losses and damages sustained.

Subsequently, when the brief was made, a printed copy of which was filed on the 3d of April last, it became apparent that the accretion was to be continued both as regards the number of counsel and the

amount of the claim. The former were now four in number, and the latter had grown to three million nine hundred and sixty-two thousand dollars.

The items constituting this enormous sum are given upon the occasion of the brief, as may be seen on page 8 and the ones following, under the head of the seventh charge. As there set forth, the items composing the three million nine hundred and sixty-two thousand dollars are stated under four heads, as follows:

First. All that was expended in the working of the mines and for the responsibilities contracted on account of the undertaking. This amounts to the sum of three hundred and forty-one thousand and seven hundred and ninety-one dollars and six cents. But as there is added to this amount, for forced loans and other charges, a sum amounting to twenty-two thousand three hundred and seventy-eight dollars, the total of the charge under this head becomes three hundred and sixty-four thousand one hundred and sixty-nine dollars and six cents. The conscientious scruples of the claimants, however, would not permit them to charge some fifteen hundred dollars for robberies committed by the imperialists, and, carefully deducting this amount, the sum thus becomes reduced three hundred and sixty thousand six hundred and ninety-nine dollars and six cents.

Second. Six hundred thousand dollars, as the value of the ores extracted from the mines, and left after they were abandoned on the 20th of March, 1868, without calculating the interest which should be reckoned from that time.

Third. One million, for what is termed a fair allowance of prospective profits, on account of the sudden interruption and utter destruction of the prosperous business of the company.

Fourth. Two millions, for what is termed a fair value of the mines in March of 1868, the time of their abandoning them.

These four amounts added together make a total of three million nine hundred and sixty-two thousand dollars and six cents, for which claim is here made.

It will be seen by the above that the claimants were fortunate in making the timely discovery that in their first application to the Secretary of State for the protection of the United States they had overlooked certain charges, which, however, might have been easily forgotten, as they only amounted to the trifling sum of two million and sixty-two thousand dollars.

It is not a slight advantage for us in examining this bulky case to find that the claimants have stated their demands with precision.

The explanation, contained in the brief, permits us without much difficulty to strike out one considerable item of a million of dollars, which is claimed for the prospective profits which the company should have made.

In a most useful book, published by the State Department of the United States, containing the treaties existing between this and other countries, together with copious notes and commentaries explaining the "interpretation, executive, legislative, and judicial," given by the United States to such treaties, among other points decided, on page 966, will be found:

Prospective earnings cannot properly be made the subject of compensation.

The word "earnings," if the undersigned is not mistaken, embraces the idea of profits, or even goes a little farther. It therefore appears by the principle established by the Government, under whose protection

the claim is submitted, that the third item of the claim should be stricken out, and the amount diminished by a million of dollars.

This same must be done with regard to the fourth charge, for the value of the mines.

The company claiming demand not only their integral value, as though the Mexican Government had appropriated them, but increase this value to two millions of dollars.

The papers in the case show that when they purchased these mines they paid a total of fifty thousand dollars for them, and it also appears that this sum, so different from the one claimed, was thought to be a high one, as both the seller and the people in the neighborhood considered the transaction a most advantageous one to the vendor.

Counsel for the company have presented the title deeds, and on page fourteen of the printed book containing the case, as arranged and translated by the plaintiff, will be found the instrument of sale executed at Mazatlan, on the 25th of September, 1865, by which the vendor, Don Juan Castillo del Valle, transferred all his right and title to the said mine for the sum of fifty thousand dollars.

Castillo del Valle, when afterwards deposing, and whose testimony shows a commendable care not to go beyond the limits of his own personal knowledge (pages 175 and 176), confirms the fact, that the price of the said mines was fifty thousand dollars, and adds, that their yield was from 80 to 100 cargas or loads per month, and at times as much as 200. This enterprise, the witness states, was never considered as productive of great profits, and only yielded enough to keep the mines in a condition to make them salable, as the translation says.

However this may be, and by what process this property, which on the 25th of September was worth fifty thousand dollars, in March of 1868 (two and a half years) had risen to the value of two and a half millions, is something which is not easily understood and which the company have not taken the trouble to explain.

There can be no doubt whatever that property, by the improvements made on it and in proportion to the amount of money invested in increasing its products, is susceptible of an increase in value. But when, as in the present case (item No. 1), two hundred and forty-one thousand seven hundred and ninety-one dollars is charged as the whole amount expended in the working and for all the responsibilities incurred in carrying on the business, this amount and the original cost constitute their total value and all which can rationally be demanded for the property.

To demand, on the one hand, the value of the improvements and the expenses incurred for carrying on the business, and, on the other, the original cost of the property, together with the cost of the improvements, is a repetition condemned alike by justice and common sense.

Again, industrial enterprises of any kind are susceptible of immense value, when by virtue of the improvements made, the capital invested, the toil expended, and other circumstances, they may have been placed in a prosperous and flourishing condition. But nothing of this kind could have occurred in the present case, because, judging from the complaints and disputes in which the company were involved for during the two and a half years of its operations, from the time of the acquisition of the mines up till the time of their final abandonment, it experienced nothing but difficulties and embarrassments. The history of the company, as related by itself, is nothing but the uninterrupted series of struggles with the populace and authorities of the place, each vying with the other in rapacity and malevolence.

If this be true, and if the damages growing out of this persecution

reach the sum of a million dollars—the third charge—how is it comprehensible that the mines could have had the immense increase in value as stated? How is it possible that under circumstances so unfavorable mines which have been purchased for fifty thousand dollars could, two years and a half later, have been worth two millions?

The witness James Granger, who was in the company's employ as superintendent, does not manifest any very exalted opinion of the value of the enterprise. In his deposition (page 48) he makes use of these words: "Formerly these mines were much talked about, but now they are good for nothing." At the end of his deposition, and in reply to the question whether it was true that the mines produced a million of dollars a year, he stated with a peculiar emphasis "that they had never yielded a cent of profit; on the contrary, that they yielded a loss." It would, then, on this, be an evidence of blind credulity to accept the fourth item of the claim.

Again, why should the Mexican Government be called upon to pay the whole value of the mine, whatever this may be? If any of the Mexican authorities had without just cause taken possession of the mines, and to the injury of the owners, it would be rational to demand the restitution of the property, or payment for the same. But when it is not proven, or even alleged that the Mexican Government took possession of the mines, or anything belonging to them, they being, as the witness Granger states in his deposition of October (page 148 of the printed book), in the same state they were left by the company, the demand in question becomes not only exorbitant, but absurd. The Mexican Government cannot be held responsible for property left abandoned by foreigners within its confines.

Striking out thus the third and fourth items of the account, which amount to three millions, the two which precede them remain only for examination. It will be more easy to do so by taking them up in an inverse order, that is, by commencing with the second.

This refers to the value of all the ores extracted from the mine, and which were there abandoned in 1868. It amounts to six hundred thousand dollars.

The first thing which calls attention is the method made use of to ascertain the quantity of ores. It is not stated or proven, or even attempted to be shown, that upon such or such a date so many cargas of ores were extracted, were of such or such an amount, and so on, with regard to subsequent operations.

Facts go for nothing, and are substituted by estimates. An average is struck, not between the quantities extracted at different times, but between the statements of the witnesses, and the quantity is thus fixed at eleven hundred tons, and the value established at five hundred and fifty dollars per ton.

What would be said of a court of justice which, when receiving evidence as to a claim, and two witnesses being before it, one of these should state the amount to be two dollars and the other twenty, and the court should thereupon decide that it was fully proven that the amount of the claim was eleven dollars, because eleven is the average of two and twenty? This is the sort of logic made use of in the brief when arguing concerning the charge to which this remark refers.

In addition to the fact that in fixing this amount they did not take previous facts as a base, there is one fact which the claimant has overlooked.

According to Granger's deposition (page 147), the greater part of the ores extracted by the company was still (October, 1871) in the yard of

the reducing works, and were good for nothing. All that had been extracted, and which were good for anything, had been reduced by the company. It is thus shown that the eleven hundred tons of ores left in the yard of the reducing works were worthless rock, and that they were still there in 1871, after this claim had been made.

It is as absurd to value this rock at six hundred thousand dollars as it is to hold the Mexican Government, which never had, nor is it pretended that it ever had it, responsible.

There now remains for examination but the first item of the claim, which refers to all the amounts invested in the working of the mines during the two and one-half years that the enterprise was in operation, and the debt and responsibilities incurred on account thereof. To this sum is added the amount of certain forced loans and taxes, which brings the total amount up to sixty-four thousand one hundred and sixty-nine dollars and six cents.

If this account be carefully examined, it will be found that the company claiming assume the fact that the business was one that was completely ruinous; that it absolutely produced nothing during the whole of the time that it was worked, not even a cent, as Granger expresses it. It is stated that Exall, the first superintendent, succeeded in reducing a quantity of ores and obtained seventeen thousand dollars from it, but the whole of this sum was again employed in the mine, and, with the rest, disappeared in that bottomless pit.

In addition to the fact that this furnishes new reasons for surprise at the exaggeration displayed by the Abra company in piling into their claim the millions they failed to realize out of their undertaking, it fixes the profit at one million, the value of the mines at two, and the value of the ores extracted at more than half a million (six hundred thousand), this first charge furnishes a reason which is decisive against the claim.

If the undertaking was a runious one, if only through rashness or ignorance could any one have invested their money in it, if the price of fifty thousand dollars paid for the mines appeared an excessive one to all the people thereabouts, and even to the vendor, why should Mexico be called upon to pay for what was so injudiciously and so imprudently risked in such an undertaking? Is the Mexican Government by chance an insuring institution, compelled or bound to indemnify foreigners for losses incurred in their wild and ill-advised speculations?

In the consideration of this claim, the undersigned has endeavored to view it under all its aspects, and even do the claimants the favor to not consider it as an absurdity, but place it in a light from which it might seem to be rational in the event of certain imputations which they more or less directly urge against the authorities were found to be true. But even under this aspect, and relieving the claim from its fabulous exaggerations, it is seen to be an imposture.

The claimant might, in fact, abandon his scale of millions, and reason in this way: The Mexican authorities injured the company either directly by persecuting and robbing it, or indirectly by inciting and sustaining the people against it instead of restraining them; consequently the Mexican Government is responsible, and it ought to make compensation for such injuries.

It might have gone a step farther, and have assumed that the total ruin of the company's business was due to these acts of aggression and hostility on the part of Mexico, and to no other cause. Even in such a case, then, the compensation could never be made extensive to what is known as vindictive damages, which to a certain extent involve a pen-

alty against the nation on which the claim is made, nor for such damages as are of a more or less contingent or prospective character. But the claim of the Abra company is so destitute of all foundation that not even making such a transfer of it would it bear a close examination.

Upon reaching the third charge of the brief, the counsel for the company comprehended the necessity of defining facts, and have endeavored to relieve the claim from that vagueness which pervades it in the memorial and other papers in the case. They could not conceal from themselves that it was indispensable to define the injuries to which the claimants attribute their ruin, and with this view counsel have formed eleven distinct charges, or accusations, which are enumerated in their brief, and each designated by a different letter.

It would, perhaps, have been more methodical on the part of the claimant, and perhaps the undersigned would also have done better, to have distributed the said charges in the series to which they logically pertain; but in a certain sense it is preferable, even at the expense of brevity, to take each of the imputations up in its order, without altering either the idea or the accusation.

That designated by the letter A consists of forced loans alleged to have been imposed on the company.

> Préstamos were levied on the company at its hacienda of San Nicolas, one thousand dollars and upward.

This charge, even though it had been proved, would of course have to be dismissed under the decision of the umpire in case No. 348, Macmanus Brothers *vs.* Mexico. The umpire says:

> After examination of the treaties between the two countries, I can find no mention of forced loans and stipulations which accord or imply the exemption of citizens of the United States from their payment.

The point having thus been decided by the present Commission, that forced loans are not and cannot be a matter of diplomatic claim, the charge A and the following one, B, must be dismissed. But as an examination of the grounds of these furnish ample data for qualifying this demand, it will not be labor lost to extend the examination of the matter a little. The pecuniary disbursement referred to in Exhibit Z, and which will be found on page 53 of the printed book so frequently referred to, is styled a forced loan. This document is christened with the name of an order, and is submitted to us as evidence that the loan was in fact imposed. I might begin by saying that the assumed order is no proof whatever of the exaction of the money; this should be vouched for by a receipt and not an order, which may or not have been obeyed, or which may have been countermanded at the moment of its execution. But supposing that the twelve hundred dollars, the repayment of which are now demanded, were paid, can it be considered that the fact is proved by the presentation of an order to pay? If it could, Exhibit Z is not of this character; it is nothing more than a simple private and friendly letter.

It is to be regretted that in the English translation, words "private correspondence," stamped on the upper left-hand corner of the original, were omitted.

These words, as also the general style of the letter, would be sufficient to convert this supposed order into an ordinary and private letter, where a friendly spirit is stamped in every line and where prudence and not power speak to private interests to obtain not obedience, but convic-

tion. This letter is written by Jesus Valdespino to D. I. A. Lagual, on the 27th of July, 1866, and is as follows:

["Private correspondence."]

MY DEAR SIR: Both Mr. Laenz and the gefe of the partido will inform you of the commission with which I am charged by superior orders, and the powers vested in me to procure the necessary means for the maintenance of the forces under my command.

But informed as I fully am of the injury which my continuance in the district would cause to its residents, and particularly those having large business and property, for the maintenance of my force, I have resolved to leave immediately, as I think that it will be for the interests of your business, and upon the sole condition that the residents of the district furnish me with twelve hundred dollars for my departure. I am confident that I take this step as the least burdensome, because if I remain here I must obtain means wherever they may be found.

But, as I have before stated, my purpose is to individual guarantees which the laws accord to the people. I hope that you will attentively weigh my reasons, and, convinced of their soundness, you will contribute your share towards completing the contribution levied by the gefatura of the partido on your place.

I avail myself of the opportunity of offering myself as your friend and obedient servant,

JESUS VALDESPINO.

The translation of this document, which is on page 53 of the printed book and was made by the claimant, is not sufficiently correct, and leads to the formation of an erroneous judgment. In addition to what has been already said as to the translator's having omitted to insert the words "private correspondence," which immediately changes its character from an official order to a friendly letter, a most important error was committed in the translation. The text of the last paragraph of the letter says:

Espero pues que Vd. pese con atencion mis razones y que convencido do ellas, hará cuanto esté de su parte, para dar el lleno al impuesto que la gefatura de este partido, asigna á ese punto.

This was translated:

I hope that you will attentively weigh my reasons, and, convinced of their soundness, you will contribute your share towards completing the contribution levied by the gefatura of the partido on your place.

Valdespino did not ask his friend Lagual to complete anything, nor to complete the contribution imposed on the locality where he was. What he did was to state the situation, explain that by the sacrifice of twelve hundred dollars the people of the district might free themselves from the inconvenience of having a military force in their neighborhood, which necessarily had to live off of the country, and begging him, in view of all this, on his side, to do what was possible, in order that the place where he resided, or the mines (one only among the many which the district embraces, as the Spanish text says) should carry out the idea or plan which was recommended.

But, laying aside this circumstance, the character of Valdespino's communication will be still better understood, if the other one which he addressed to the gefe politico of the place, on the 27th of July, 1866, be examined. This is official in its character, is stamped, sealed, and countersigned, and translated into English on pages 158 and 159 of the English book.

In this communication Valdespino, after explaining that he is compelled to support and feed his troops, adds that the political authority has no wish to levy and tax or exact any loan. For this reason he had determined to leave the place, and in order to do so he desired to obtain from the people of the district and the towns adjoining, who were in

better circumstances, the sum of twelve hundred dollars. This letter is written in the same spirit of moderation as the other letter, and its text, without forcing, shows two things:

First. That in the measure projected by Valdespino there was no intention of violence, or any indications whatever of hostility against the inhabitants of San Dimas; but, on the contrary, it manifested strong evidences of the consideration which officers in the field do not always practice.

Second. That the twelve hundred dollars which was to be collected was not demanded (that is, if it was paid by them) exclusively from the Abra company, but that it was distributed on all people of means in the district, and on those of the towns and farms embraced in it. But a portion of this assessment could have fallen on the company, and it is not comprehensible why they should have demanded the whole twelve hundred dollars.

The second charge of the claim, B, consists in that the authorities exacted forced loans for more than three thousand dollars from the provision trains of the company.

The witness Granger (page 45) says, "Préstamos on mule trains, I have no personal knowledge." W. G. S. Clark, pages 64 and 66, says that—

> Col. Donato Guerra, of the Republican army of Mexico, and who at that time was in command of the district, levied upon the trains a tax of six hundred dollars.

Thomas G. Bartholow, page 223, says:

> I was compelled by the Republican authorities of Mexico to pay a number of préstamos, or forced loans, from three to six hundred dollars, levied upon the Abra company's stamp-mill, machinery, and supplies by the command of General Couna.

The last witness, Pedro Echeguren, recollects having heard Bartholow speak of préstamos which he, Bartholow, had been compelled to pay upon the machinery and provisions he was carrying to the mines.

These statements instead of strengthening the claim, serve as the grounds for inferences such as were made with regard to the first charge.

Whether the sum obtained for préstamos was three hundred, or six hundred, or three thousand dollars, such exactions, if in fact they ever took place, constitute no wrong to those by whom they were paid, nor is this the court to which the parties should apply for reimbursement. In addition to all this, there is neither receipt nor account nor anything else showing the payment, and it is scarcely necessary to say that without proper vouchers this claim is out of place here in its demand for repayment.

The third charge, C, consists in the appropriation of eleven hundred and seventy-eight dollars, which was taken from George Scott, an employé of the company. Neither of the three witnesses who depose upon this point designate who the military of the Liberal army were that took this money, but although two of them state that it was a robbery by armed men, as they make use of the word "robbery," the fact appears to have been that it was another tax similar to those already mentioned. The witness Clark calls it a préstamo, and although the others call it a robbery, the circumstances under which they describe it makes the term used very improper.

It is said, page 42, that Scott had with him three thousand dollars in American gold, and of this money the one thousand one hundred and seventy-eight dollars in question was stolen. Robbers so considerate as to only take a little more than one-third of what the party may have

had are not often encountered. Be this, however, as it may, Mexico is not bound to answer for robberies committed on the highway.

Whether this was a robbery or a duty on circulation, according to law, it was the duty of the claimant, as the umpire has decided, to prove that the crime was committed by a body of troops under the orders of an officer whose acts involved the responsibility of the Mexican Government.

Even accepting the figures of the brief, the three said charges only amount to fifty-four hundred dollars.

In order to jump from this small beginning to the immense amount which the Abra company now demands a scale of many degrees was necessary, and the claimants were compelled to connect it with another series of wrongs.

The charge which is marked with the letter *d* consists of the murder of Mr. Gross, who was quartermaster of a provision train. There is also another, marked *e*, for the seizure and confiscation at different times of the said trains, with the mules, materials, and provisions, while on the road from Mazatlan to the mines. The amount of loss caused by the death of Mr. Gross is not stated, but that caused by the seizure of the trains is estimated at a total of eighty-five thousand dollars.

The thing which first strikes us as incomprehensible is, by what rights the company claim for the death of Mr. Gross, who was nothing more than a clerk on a salary, engaged in the care of the cart train. In order to show that the personality of the alleged victim was still more independent of the company, it is further seen that at the time of the death Mr. Gross was alone, and not in charge of the train.

According to the principles established in the decision of cases No. 102, Snow & Burgess *vs.* Mexico, and No. 82, of Caroline Sprotts *vs.* Mexico, the injuries done to the agents or employés of a person or corporation are not held to be injuries done for that person or corporation. Gross was not the slave of the mining company who now claim on his behalf, nor do we know that the company is his heir or the legal representative of those who have a right to his succession.

The evidence of the homicide, however, is so vague and undefined, that two of the witnesses who deposed with regard to it hardly knew the name of the victim. The murderers are simply designated under the general terms "authorities of the republic," "soldiers of the Liberal army," and others of the same kind.

The deposition of Clark, before referred to, shows that Gross could not have been robbed of supplies in his charge. The fact of the murder not having been established, still less is it shown that it was committed by the Mexican authorities. The charge involved in this point is destitute of all foundation.

The different robberies and appropriations of property referred to in charge E are based on statements as vague as those of the murder. The dates and names are never mentioned; the witness Exall even says, "I cannot state names and dates with any degree of certainty. Mexican names are always difficult for me to recollect." All say: "Mexican authorities, military authorities of the Republic of Mexico, Mexican soldiers." According to the decision of the umpire recently made, in case No. 52, José Ma. Anaya *vs.* The United States, this vague and general designation of persons and officers is not sufficient to fix a responsibility. No mention is made of any officers, nor is it shown that an officer was present or that the plunderers were under the control or command of any officer. If they were robbers, the Mexican Government cannot be held responsible for the losses suffered by claimants, who,

however, might have made a representation of the fact to the officer in authority or command, with a view to the punishment of the offenders and perhaps the recovery of the property.

Charge No. 6, F, states that the local authorities interfered with the operations of the company at times by directing them to work their mines in the manner they directed, at others, by compelling them to employ laborers who were out of employment, &c. These assertions are proved by the original documents as Exhibits V, W, X, and Y, which are translated into English and printed on pages 52 and 53. It is worth while to stop a moment and examine this evidence, which is most unmethodical in its arrangement, as if it was intended to create confusion and not clearness.

The last of these documents, which is the first in order as to date, is as follows:

"Gefatura politica del partido de San Dimas."

Por el oficio de Vd. se ha impuesto con bastante desagrado esta Gefatura de los abusos de estos señores Americanos, que habiendo convenido por primera vez pagar á los operarios en pura moneda, y por segunda pargarles mitad y mitad, y por tercera pagarles una tercera parte, haga V. presente por el *conducto* de ese Jusgado y por mi órden, *que cumplan á lo menos el ultimo contrato*, quiere decir, pagarles la tercera parte en dinero; y de lo contrario dejen las minas, que las trabajen las operarios á la manera que puedan, pues ni la ordinanza de mineria previene que se les pagnen en puros efectos, in el gobierno consiente semejantes abusos, pues ya está consado de recibir miles de quejas sobre este particular. Este mismo oficio le hara Vd. presente al C. Americano que haga cabeza en ese mineral.

Independencia y Reforma.

San Dimas, Junio 3 de 1867.

M. MORA.

C. INEZ GUADALUPE SOTO, *Unico Conciliador de Tayoltita.*

This document is incorrectly translated, because the phrase "de lo contrario dejen las minas que las trabajen los operarios á la manera que puedan," the exact version of which is, "otherwise, let the operatives work the mines as they can," was interpreted as an order of ejectment by writing it, "that the company were to vacate the mines and to allow the operatives to work them as they can."

The Spanish verb "dejar," which is equivalent to the English verb "to let," when used in connection with another active verb, as "dejar caer," "dejar trabajen," or "dejar que trabajen," does not signify to remove from, to dislodge, &c., nor involve any of the ideas conveyed by the English word "vacate."

The violence done to the meaning of the sentence in question above, by the translation, is shown by the fact that in the Spanish text there is but one sentence of what is called in grammar the infinitive mode—"dejar las minas que las trabajen"—the determining verb of which is "dejar" and the thing determined "que las trabajen." In English there are two different expressions, one "to vacate the mine," and the other "to allow the operatives to work them as they can." By this discrepancy what was simply a well-intentioned notice or admonition by the local authorities assumed the aspect of an act of despotism or a threat against property. The history of this matter fully shows how little truthfulness has been employed by the claimant on this point.

According to the statements of several witnesses, and among them Victoriano Sandoval, a servant of the company, the superintendent required Mexican operatives for work at the mines, offering to pay them for their labor, night or day, in cash. After he had made this arrangement with the operatives the superintendent changed his mind and refusing to fulfill his agreement, made a new arrangement for paying

them, agreeing to pay $1.25 for all the work done from 6 a. m. to 6 p. m. A short time after he also broke this agreement and proposed to pay them for their labor half in money and half in goods. He afterwards refused to carry out this arrangement, and the operatives brought suit against him, and upon this suit a compromise was made by which the superintendent agreed to pay them one-third of their wages in cash and the balance in goods. Some days later he also refused to carry out this arrangement, and then the operatives appealed to the authorities and decided to strike and suspend work until they should be paid.

It was under these circumstances that the gefe potico of the district addressed the communication in question to the authorities of Tayoltita, after being tired out with the thousand complaints made by the operatives, while at the same time the three contracts made with them having been broken, the gefe politico directed that the owners or superintendent should be notified to at least carry out the last agreement, which was to pay them one-third in money and two-thirds in goods.

In order to fully understand the interference of the political authorities in this matter, it is desirable to understand that in Mexico, even after the abolishment of slavery, a vestige of it remained in what was called "peonage," a term which expresses a certain sort of connection, against law and justice, between capital and labor. The carrying out of this system in Mexico has assumed various shapes and been done in various ways. One of these has been to refuse the operative work, in order to compel him to labor under hard conditions, among which that of making him receive goods for part of his wages is very common. By this means and charging the goods delivered at high prices, the proprietors of certain enterprises succeeded in depriving the laborer of a portion of his wages. The abuse became so great that the law interfered to prevent it, and the political authorities exercise a guardianship and vigilance to prevent the development and continuance of this corruption.

By virtue of the order addressed to the local authority at Tayoltita, this authority addressed a communication of July 4, 1867 (it ought to be June), to the superintendent of the mine. This is Exhibit V, and is as follows:

JUZGADO 2°.—CONCILIADOR DE TAYOLTITA.

Con demasiado disgusto vé este juzgado que hace veinte y cuatro horas, que le pure una comunicacion y no se ha dignado contesta mela; de lo que prevengo a Vd. que en el término de dos horas arregle V. su trabajo con los operarios, y si no convienen desocupen las minas para que estos no pierdan mas tiempo.

Libertad y Reforma.

Tayoltita, Junio 5 de 1867.

GUADALUPE SOTO CNO.,
Administrador de la Hacienda La "Abra" Presente.

The result of this was that the superintendent came to an arrangement with his operatives, and the work was continued without interruption. The stoppage produced by this strike, according to the witnesses, lasted three days.

This is what is called "interference by the local authorities with the operations of the company"; this is what is called "ordering the company to work its mines in a manner directed by the said authorities." How would it have been if, in order to compel the superintendent to fulfill his contracts with the operatives and save the company from the agitations and disorders which strikes produce, the means had been appealed to which are now being employed in the enlightened State of

Pennsylvania, where thousands of dollars are daily being spent solely for the payment of the troops sent to maintain order in the coal-mining districts, which are in the same condition as the Abra mines were. There may be some traces of rudeness incidental to a country magistrate in the foregoing document, but they disclose no spirit except a desire to preserve the relations subsisting between the mining company and its operatives on a footing of justice and equity, and prevent the recurrence of disturbances which would prejudice the interests of a whole town.

Exhibit X, the fourth, refers to a somewhat different subject. After the arrangement of the strike, and the superintendent had promised to fulfill his engagements with his workmen, all of which was in consequence of the correspondence of the 3d, 4th, and 5th of June, 1867, above copied, it happened that the company, a month later, stopped work. This resulted in a panic at the locality, which is easily understood. In consequence of this the gefe politico addressed the company's representative the following communication:

Gefatura politica del partido de San Dimas.

Sabiendo esta gefatura que tienen Vd. paralizado los trabajos en ese mineral, digo á Vd. que este no ha sido el compromiso que tenieron conmigo, por lo que creo que Vds. no estiman su palabra en nada. Sin embargo, so no quieren trabajar, den Vd. licencia al pueblo para pepenar metal en las minas porque no soy responsable á las consecuencias que resultan en un pueblo sin trabajo.

Independencia y Reforma.

San Dimas, Julio 10 de 1867.

M. MORA.

The stoppage of the work and the discharge of the people was in fact a virtual breaking of the engagement made two months before, but the gefe politico, respecting the rights of the proprietors to work their mines or not, confined himself to expressing his dissatisfaction, and advising that in the event of work not being resumed, that the people should be permitted to *pepena* ores with a view of preventing disturbances for which the authorities did not choose to be responsible.

As my colleague remarked, when exculpating the Indians for certain depredations, "as the Indian will not starve without a struggle, starve he must when the white man drives away the buffaloes or kill him." This extreme case was what the local authorities of San Dimas wished to avoid.

To *pepena* the metal is something analogous to what the gleaners do who follow the mowers in the grain field. This precept, which the Bible inculcates as one not only of charity, but also of law, with regard to the crops, the Christian customs of Mexico have made extensive to mines, and the act is so frequently practiced that it has given rise to the making of a word expressly for the occasion; and precisely because *pepena* is a gratuity due to the charity of the possessor, it requires his consent, and this is what the gefe politico of San Dimas asked in behalf of the people to keep them from starvation, as they were without work.

Consequently, "to *pepena* metals in the mines" is not precisely the same as "to collect ores in the mines" as is translated on page 53 or "that they may work the mines," as is still more incorrectly said on page 154 of the other translation.

It is as unjust to bring a charge against Mexico because the gefe politico of San Dimas, under the circumstances, asked the superintendent of the mines to grant the people permission to *pepena* metals, as it would

be to say that Ruth was committing an unlawful act when she was discovered by Boaz.

The result of this communication, whatever it may have been, is not shown by the papers. The truth, however, is that none of the acts contained in the four exhibits above copied constitute an interference by the authorities, nor an avowed hostility to the company, nor a wrong for which a claim can be made.

The amount of compensation demanded for this offense is not stated. The claimants throughout have endeavored to invest these things with an air of uncertainty, calculated to bewilder the imagination and give the claim gigantic proportions. But, under the unfailing hand of scrutiny, one finds that there is no substance beneath the garbs in which counsel, and even the printers, have so gaudily dressed this claim.

In the charge marked G there is presented as attributable to the already stated interference of the local government in the operation of the mines, and its hostility towards the company that was working them, the robbery of certain mules and a large quantity of ores which were stored in the yards of the San Nicolas reducing works. All this it is said was due to the rapacity and violence of the people.

It is shown by the Exhibits Nos. 1, 2, and 3 of the defensive testimony that the company never had any mule trains; that when they had any extraordinary work to do they were compelled to hire mules; that they only owned eleven, of which three were lost and paid for; that of the remainder four were sold to Pioguinto Nuñez, one to Calixto Sarreta, and three were carried away by Superintendent Exall when he left the company.

The robbery of the mules, stated in this charge, and of which none of the witnesses presented in support of the claim speak in precise terms or give the particulars, could not thus have occurred.

With regard to the valuable ores at the reducing works, it is shown by the depositions of twenty-three witnesses, and among them that of Superintendent Granger (Exhibits 1, 2, and 3 of defensive testimony), that neither the authorities nor the people ever took a single stone belonging to the company without the express permission of the superintendent, and that he gave permission to some of the operatives to *pepena* ores for the purpose of protecting the mines (according to the mining ordinances) which were not being worked, and thus prevent them from being denounced as abandoned.

The robberies in question, due to the cupidity and lawless violence of the people, can in no wise be made a matter of responsibility for the Mexican Government, unless it could be satisfactorily proved that the authorities intervened in it and co-operated in its execution.

Charge H refers to the alleged confinement of Charles Exall, the superintendent, and represents this as a proof of hostility and the cause of the great damage to the company. It is proved by the statements of four unimpeachable witnesses that the imprisonment in question, which only lasted four days, was imposed by Judge Nicanor Perez for an offense committed by the said Exall against his authority. The works at the mines were not interrupted by this act, of which there is proof, nor has the company any right to claim for an injury which, if true, only affects Exall. He never made any complaint, as he might legally have done if the penalty in question had been unjust.

The last charges, H, I, J, K, L, refer to different acts of violence, and the parties committing them are all designated by the pronoun *they*. Does this *they* refer to the Mexican authorities, to the operatives at the

mines, or to the people of San Dimas? There is no way of finding out by the brief, but some of the witnesses presented by the claimant solve the enigma.

All of these acts, if they really occurred, are to be attributed to the exasperation of the operatives on account of the repeated violation of their contracts and the arbitrary manner in which they were constantly being treated by the Abra Company. Charge H, for example, says:

> They made armed attacks on the company's hacienda of San Nicolas, breaking its doors and endangering the lives of its superintendent and other American employés.

Witnesses produced in support of this charge state that it was committed by an armed mob of forty or fifty men.

Charge L consists in that the company was surrounded by an ignorant people, whose animosity was excited and directed by the authorities themselves.

It will be seen that in all these charges the parties committing the wrong were not the local authorities nor yet the central Government of Mexico, and that in order to involve the responsibility of the Government a studied endeavor is made to impute to it an indirect participation, by asserting that the local authorities favored and excited this mutinous spirit. The evidence shows precisely the contrary; the only acts of the authorities which appear proven show the reverse, that they endeavored to avoid the evil, and for this purpose tried to prevail upon the company to fulfill its duty and not exasperate the operators.

These vague and noisy imputations of exciting the people to mutiny and robbery are unaccompanied by any specific proof, and should be classed among the devices already so well known and which form part of the tactics of the claimant.

After having so fully examined this voluminous case, nothing now remains but to make some important reflections on the character of the evidence.

The most of that submitted by the Abra Company was obtained by fraud. Thirty witnesses, and among them many who had previously declared in support of the claim, explain in the defensive testimony how their evidence was obtained. In certain cases money was used; in others the affidavits were made up by the lawyer who was charged with obtaining them, and then the witnesses were carried before the United States consul, without their reading them and without their knowing what they contained, to swear to them.

In addition to this, the greater part of the deponents, when they do not contradict themselves, solely state what they know by hearsay, on suppositions or rumors, and never what they know personally.

James Granger (page 147) and Marcus Mora (page 143) are highly unfavorable to the party by whom they were presented.

The final result of this gigantic claim is, after all, nothing; it verges almost in the absurd. After burrowing among this mountain of papers, we find at last, as in the mountain of the fable, *ridiculus mus*.

The claimants expect to see something else come out of it, in the shape of a greater or less pecuniary award. The undersigned cannot vote for it, because he thinks that it will be the triumph of a system of which this claim is a sample, and which consists in demanding enormous sums, however unjust, believing that when *much* is demanded, *something* will always be obtained.

In the opinion of the undersigned Commissioner, these claimants are entitled to nothing.

No. 10.

Award of the umpire in the La Abra claim.

LA ABRA MINING COMPANY *vs.* MEXICO. } No. 489.

This case having been referred to the umpire for his decision, upon a difference of opinion between the commissioners, the umpire rendered the following decision:

With reference to the case of La Abra Silver Mining Company *vs.* Mexico, No. 489, the umpire is fully satisfied, and cannot doubt that the company is entitled to be considered a corporation or company of citizens of the United States in accordance with the terms of the convention of July 4, 1868, having been duly chartered in conformity with the laws of the State of New York. He is also of opinion that the enterprise upon which the claimants entered, of purchasing, denouncing, and working certain mines in the State of Durango, in Mexico, was a serious and honest business transaction on their part, and that there was nothing rash, deceitful, or fraudulent in it, but that it was engaged in with the sole intention of carrying out legitimate mining operations.

There is no doubt that the Mexican Government was very desirous of attracting foreigners to the Republic, and of inducing them to bring capital into it, and raising up industrial establishments of all kinds. With this view it issued proclamations encouraging the immigration of foreigners and promising them certain advantages and full protection. It cannot be denied that the claimants were justified in placing confidence in these promises. They complain, however, that the local authorities of the district in which their mines and works connected with them were situated did not fulfill their engagements entered into by their Government, but, on the contrary, behaved toward them in an unfriendly and hostile manner. The ground of their claim is that these hostilities were carried to such an extent that they were finally compelled to abandon their mines and works and to leave the Republic.

The evidence on the part of the claimants is, in the umpire's opinion, of great weight; the witnesses are for the most part highly respectable and men of intelligence, and their testimony bears the impress of truth. Notwithstanding what is stated to the contrary by the witnesses produced by the defense, the umpire is constrained to believe that the local authorities at Tayoltita and San Dimas, far from affording to the claimants that protection and assistance which had been promised them by the Mexican Government, and to which they were entitled by treaty, not only themselves showed a spirit of bitter hostility to the company, but encouraged their countrymen who were employed by the claimants in similar behavior, and even frightened them into refusing to work for their American employers. The conduct of these authorities was such, and the incessant annoyance of and interference with the claimants were so vexatious and unjustifiable, that the umpire is not surprised that they considered it useless to attempt to carry on their operations, and that for this reason, as well as from the well-grounded fear that their lives were in danger, they resolved to abandon the enterprise. These facts are not, in the umpire's opinion, at all refuted, or even weakened,

by the evidence submitted by the defense; on the contrary, he believes that the local authorities were determined to drive the claimants out of the country.

It appears that the superintendent of the mines took such steps as he could to obtain protection from these authorities, and finding his efforts in vain, he appealed, through a lawyer of high character, to the highest authorities in the State, who declined to interfere in the matter. To suppose that when so determined a spirit of hostility on the part of the local authorities, one of whom was the gefe politico, who wielded great power, and so much indifference by the State government were displayed toward the claimants, it would have been of any avail to appeal to the courts of justice, would be puerile. In short, the umpire does not see what else, in presence of such opposition to their efforts, the claimants could do but abandon the enterprise.

The umpire is of opinion that the Mexican Government, which, with a spirit of liberality which does it honor, encouraged all foreigners to bring their capital into the country, is bound to compensate the claimants for the losses which they suffered through the misconduct of the local authorities. What the amount of this compensation should be it is very difficult to decide. The umpire is of opinion that the claimants should be reimbursed the amount of their expenditures and also the value of the ores extracted, which they were forced to abandon, with interest upon both these sums. He cannot consent to make any award on account of prospective gains nor on account of the so-called value of the mine. Mining is proverbially the most uncertain of undertakings; mines of the very best reputation and character suddenly come to an end either from the exhaustion of the veins, or from flooding, or from some of the innumerable difficulties which cross the miner's path. A certain interest upon the money invested is a much surer compensation than prospective gains. The latter are, in fact, the interest upon the sums invested; they may be greater or less, or none at all, and there may even be great losses of capital. To award both interest and prospective gains would be to award the same thing twice over. The so-called value of the mines must depend upon the prospective gains. It may be great, small, or nothing, and may be but a mere snare to lead one on to utter ruin. It is, in the opinion of the umpire, equally inadmissible that the Mexican Government can be called upon to pay a value, the amount of which, even approximately, it is impossible to decide. A moderate interest on the amount invested in the business, and upon the amount of the ores reduced, and of those extracted and deposited at the reduction works, is a further compensation, which, in the opinion of the umpire, that Government ought to pay.

The evidence of George C. Collins with regard to the amount invested is clear and straightforward He states it to be—

From subscriptions and sales of stock	$235,000 00
Lent and advanced	64,291 06
Due for rent, expenses, salaries, law expenses	42,500 00
Total	341,791 06

Any so-called "forced loans" and contributions must have been paid out of this amount. To charge them, therefore, separately, is to make the same charge twice over. The umpire takes occasion, however, here to observe that a forced contribution exacted upon a train of goods, the property of the company, in transit from a seaport or elsewhere to the

mines, is not in the nature of a forced loan. The latter should be recovered by the proper authorities, at the headquarters of the company, and should be in the same proportion as that imposed upon all the inhabitants of the country. The former is an arbitrary exaction, which is frequently much more prejudicial than the actual money loss, on account of the detention and abstraction of goods, without which the mining operations cannot proceed.

To the above-mentioned amount of $341,791.06 should be added $17,000, which is shown to have been the amount derived from reduced ores.

The umpire is satisfied, from the respectable evidence produced, that a large quantity of valuable ore had been extracted from the mines and deposited at the company's mill, and that it was there when the superintendent was compelled, by the conduct of the local authorities, to abandon the mines and cease working them. But the umpire is of opinion that there is not sufficient proof, nor indeed such proof as might have been produced, that the number of tons stated by the various witnesses were actually at the mill, or at the mines, at the time of the abandonment. In so well-regulated a business, as the umpire believes that it really was, he cannot doubt that books would have been kept in which the daily extraction of ores would have been regularly noted down, and that periodical reports would have been made to the company at New York. Neither books nor reports have been produced, nor has any reason been given for their non-production. The idea formed, even by persons intelligent in the matter, of the quantity of a mass of ore, must necessarily be vague and uncertain, and that of its average value still more so. Still the umpire is strongly of opinion that the claimants are entitled to an award upon this portion of the claim. He will put it at $100,000. It is possible that it is much less than the real value of the ores; but in the absence of sufficient documentary proof, and considering the fact that the expenses of reduction are great, and sometimes even much greater than is anticipated, he does not think that he would be justified in making a higher award. Neither should interest be allowed on this amount so soon as on the others; for the reduction of the ores would have taken time, say a year. It is not shown that the company had received any dividends before the period of the forced abandonment of the mines, about March 20, 1868. Neither ought interest to be awarded before that date.

The umpire, therefore, awards that there be paid by the Mexican Government, on account of the above-mentioned claim, the sum of three hundred and fifty-eight thousand seven hundred and ninety-one Mexican gold dollars and six cents ($358,791.06), with an annual interest of 6 per cent. from March 20, 1868, to the date of the final award, and further the sum of one hundred thousand Mexican dollars ($100,000), with the same interest from March 20, 1869, to the said date of the final award.*

EDW. THORNTON.

WASHINGTON, *December* 27, 1875.

*The interest amounted to the sum of $224,250.26 up to the 31st of July, 1876, which date was designated by the umpire as that of the final award, and consequently the whole sum awarded to the claimants was $683,041.32.

II.—*MOTION FOR THE REHEARING OF THE WEIL AND LA ABRA CASES BEFORE THE UMPIRE.*

No. 11.

Motion for rehearing on the claim of Benjamin Weil vs. *Mexico. A. D. No.* 447.

ARGUMENT ON MOTION FOR A REHEARING.

When the party who has been condemned to pay the enormous amount of half a million of dollars offers to show to the judge who passed sentence on him that he, the judge, has erred in examining the case, said judge, who can only be guided in his decision by justice, equity, and the principles of public law, can by no means refuse to take into consideration whatever may be represented to that end.

The undersigned, of his own accord, and following likewise the instructions received from his Government, has refrained from asking revision of certain cases, in which, according to his judgment, there were sufficient grounds for revising, simply because he did not wish to increase the labors of the umpire, whose laboriousness and well-known desire to bring to an end the difficult task he so kindly accepted, deserve the greatest consideration from the two Governments concerned in the arbitration.

There has been a case for alleged loss of merchandise (Dunbar & Belknap) in regard to which, after the umpire had given his decision, the undersigned had the opportunity to peruse in the files of another case a document in which the interested party had freely stated, shortly after the occurrence of the fact, that prior to that very fact he, claimant, had taken out from the place all the goods for the robbery of which he afterwards presented his claim before the Commission. The agent of Mexico, nevertheless, did not ask for rehearing.

Again, in another case (heirs of Schreck), in which the agent of the United States obtained a rehearing, the undersigned could have asked for a second rehearing on the ground that the acts complained of had been committed by an officer declared to be a rebel by several decisions at the time those very acts were perpretrated.

The relatively small importance of those two cases, in which, as it appeared, there were sufficient grounds to move for a rehearing, decided the Government of Mexico not to make such a motion, preferring rather to suffer the burden their decisions entailed than to multiply the labors of the umpire.

But in the case of Benjamin Weil, where Mexico has been condemned to pay a sum amounting to nearly half a million of dollars, the Government, feeling perfectly certain that a re-examination of the circumstances of the case cannot but lead to the discovery of the absolute lack of ground on which to base the claim, believes it would not fulfill an imperious duty to the country whose interests it represents should it not employ its best endeavors to obtain reconsideration of the case.

Under this impression the Mexican Government has given its instructions to the undersigned, who, for his part, requests that the umpire should be pleased to peruse carefully this argument, and to weigh, with his characteristic rectitude and impartiality, all the reasons it contains.

The sum of $487,810.68 awarded in favor of the interested parties in this claim, adding the interest up to the 31st of next July, date

in which the umpire can make his final award, is indeed a very large sum for a country like Mexico, impoverished by more than half a century of civil and foreign wars, and which cannot stand an increase in her taxes without retarding, at least, her regeneration, just now in its inception.

The undersigned by no means pretends that this consideration alone should decide the umpire's mind to revoke the decision we are referring to; although it must, of course, go a great way towards inclining his mind to take into consideration the reasons I am about to offer with this object.

It certainly matters little or nothing that Mexico should have to impose on itself extraordinary sacrifices, and even to renounce all hopes of its prosperity, in order to cover a debt; but undoubtedly the larger the debt, the more plain and unquestionable must be the justice of condemning her to its payment.

The undersigned, therefore, again requests, with all due respect, that the umpire should examine the reasons he will set forth; because those reasons tend to show that through error a debt has been considered as just, which not being so will have to weigh on a country to which it will be enormously onerous.

It has been alleged in this case that 1,914 bales of cotton belonging to Benjamin Weil, starting from Texas to Matamoros, in the Republic of Mexico, for exportation, were seized by the troops of that country under the command of General Cortina, on the 20th of September, 1864, between Piedras Negras and Laredo.

The umpire has considered the case as one of expropriation of goods belonging to neutrals, without a corresponding indemnification.

The points of fact are as follows:

1. Whether there ever was on the 20th of September, 1864, a cargo of 1,914 or 1,900 bales of cotton belonging to Benjamin Weil between Piedras Negras and Laredo.

2. Whether any troops of the Mexican Government belonging to the command of General Cortina did seize said cargo.

As to the points of law, they seem to be the following:

1. Admitting said facts, was the act claimed legal and justifiable?

2. Is it the duty of the Mexican Government to indemnify Weil for the seizure of the cotton?

3. Has said Government refused to fulfill such a duty, denying the indemnification demanded of it?

The undersigned cannot comprehend why, when the question of the responsibility of a Government for certain facts is at stake, the same proof as to these facts should not be required as is required when the responsibility attaches to a private individual.

In one case, as well as in the other, we can only admit satisfactory evidence on the following points:

A. How and from whom did claimant acquire the cotton?

B. Who were the owners and conductors of the wagons employed in the transportation?

C. Where and at what date did those wagons cross the Rio Bravo to enter on Mexican territory?

D. At what custom-house, if any, were the duties paid, and the permit to introduce into the country, or the corresponding *guia*, obtained?

E. What is the name of the commander or officer who ordered or even witnessed the seizure of the cotton?

F. What steps, if any, did the interested party take in order to prove

at the time such seizure, to obtain a voucher for it, and to request an indemnification?

A.

As to the first of these points, in lieu of any satisfactory evidence, which could be no other in this case but the presentation of the books, vouchers, and accounts, or, at least, the designation of the parties from whom the property was acquired, we have two testimonies conflicting with each other in material points, viz, the testimony of George S. Hite, in his fifth deposition, and that of S. B. Shackelford.

The former said (Exhibit No. 10, on the 15th of December, 1869) that when the facts in regard to which he deposed took place he resided in Matamoros, Mexico, and his business was that of a contractor.

That in or about the month of September, 1864, Weil was residing in Mexico—without designating any particular place—doing business as a merchant or speculator.

That deponent *knew Weil much*—he only knew him—and Weil then had a large amount of cotton.

That deponent *should say* that the cotton amounted to about 1,900 bales.

This same individual, who on December 15, 1869, expressed himself in such a doubtful tone, simply saying that he *knew* Weil at the time referred to, on the 12th of March, 1872, two years and three months after having subscribed said deposition, said in another (Exhibit No. 23):

That during the year of 1864 he was *employed* by Weil as an agent to buy and get cotton for him in the State of Texas, which he did, paying for the cotton he bought in *gold and greenbacks* which Weil *had supplied him with.*

How can it be reconciled that Hite should be residing in Matamoros in 1864 as a contractor, and during the same year should be employed in making purchases of cotton for Weil in Texas? How is it that Hite in his first deposition should simply say that he knew Weil in the year 1864, if it was true that during the same year he was in Weil's employ? How could he have any doubt about the amount of cotton that Weil had if he himself had bought it? Moreover, Hite, Weil's so-called agent for the purchase of cotton in Texas, does not designate a single one of the parties from whom he purchased, limiting himself to say that they resided in Texas—"from parties in Texas." What court in the world would attach the slightest importance to such a doubtful and vague testimony as this is?

As to the times Hite made the purchases, he only designates them by the departure of the train from Allaton, for which he assigns the month of *May*, 1864, "according to his best belief in regard to dates."

The other witness on the point we are considering, S. B. Shackelford, said (Exhibit No. 21), on February 17, 1872:

That in the months of August, *September*, and October, 1864, he was in the Republic of Mexico in the capacity of agent of the Confederate Government. That he was present in *Alleytown*, Texas, about the 1st *of September*, 1864, when *Benjamin Weil, the claimant*, was *taking out the train loaded with cotton.*

So far, we immediately find that Shackelford contradicts himself and contradicts Hite. If Shackelford was in the Republic of Mexico during the months of August and September, it is a physical impossibility that on the 1st of September he should have been in *Alleyton*, which place, if as it appears, is the same that Hite calls *Allaton*, is 700 miles distant from the Rio Bravo or Rio Grande, according to Hite's testimony, No. 23.

But the other contradiction to which we have alluded is still more glaring. Hite says that the train loaded with Weil's cotton was sent off from Allaton in *May*, 1864, and Shackelford that it was on the *1st of September*, 1864; that is, about four months later.

How can we possibly reconcile this difference of dates on such a material point?

Besides this, we notice that nowhere in the whole deposition of Shackelford is Hite's name mentioned as agent of Weil, and rather it is given to be understood that said Weil intervened personally in the purchases of cotton, the drawing and paying of drafts, &c.

But, above all, in all the many words by which this individual has swelled his deposition, not once can we find the name of any of the persons from whom the purchases were made, nor any particular circumstance in reference to them.

Here is all the evidence that Weil did get the cotton we are referring to: The testimonies of two witnesses which are conflicting in themselves and conflicting with each other; two witnesses who, according to their depositions, could not have been in Allaton and Matamoros at the time when they say the purchases of cotton were made at Allaton or Alleyton; two witnesses, in a word, who, calling themselves eye witnesses, do not give the names, nor any particular sign, of the persons with whom the valuable transactions they relate were carried on.

How can a contradictory proof of such vague assertions be required? It would be tantamount to ask for an impossibility to pretend that it should be proved that nobody ever did sell any cotton in Allaton or Alleyton to Benjamin Weil before May or September, 1864. To obtain such evidence it would have been necessary that all and every one who could have sold any cotton at the time, not only in Allaton, but also in other places not designated, where Hite says he made some purchases on Weil's account, should present their books or give their deposition. Is this reasonable? Is it even possible? Evidently not, and the undersigned feels perfectly sure in stating that claimant has not proved where, when, and from whom did he get the cotton in question.

B.

Who were the owners and who the conductors of the wagons on which the cotton was shipped?

Neither Hite nor Shackelford says a single word about this, but, far from it, they contradict each other in regard to the nature of the contract entered into for said shipment.

In Hite's deposition (Exhibit No. 23) it was originally written that the train, consisting of wagons and mules, belonged to Weil, but these words were stricken out and ahead of them were written these others: "That the wagons and mules, or the train, as it is called, had been hired by Weil, and was under his orders and directions."

Shackelford says that claimant was the *only owner and master* of the cotton, of the *train*, and of the expedition. (Exhibit No. 21.)

John McMartin says that (Exhibit No. 9) he was riding, accompanying the train; but he does not say that he was the conductor, and though he speaks of the team-master, he doesn't give us his name. One Justice says that he was with the cotton train at the time of its capture, but he doesn't mention either the name of the conductor or of any of the persons under whose charge it was. This being the case, can it possibly be required that the Government against whom this claim is brought should prove that no owner of wagons ever sold or hired to Weil the

train on which he might have shipped his cotton, and that no American or Mexican teamster did conduct such train? It would have been necessary to this end to ascertain who all were the owners of wagons in Allaton or Alleyton during the months of May and September, 1864, and who were the conductors; and, this once accomplished, to get all and every one of them to give their depositions on this particular. This would have been absolutely impossible; whilst, on the other hand, should the fact we refer to be true, nothing would have been easier for claimant than to produce the depositions of the wagon owners or conductors, or to designate them, at least, by their names.

Is it likely, is it credible, that claimant should not know who were those persons, or some of them, at least?

In a case similar to the present, where it was alleged that a robbery of goods and seizure of mules had been committed by troops under the command of Cortina (James Ford *vs.* Mexico, No. 851), the Commissioner of the United States in dismissing the claim used the following language:

> Thus Ford was robbed of property of the value of $105,000. He never complained of it to the authorities of his own country or of Mexico, but patiently sat down under a loss of that magnitude. * * * The largest item consists of the goods taken at Bagdad in May, 1865. The only proof a *merchant with that capital* condescends to offer us of such a loss is the *ex parte* affidavit of one Hite to the effect that *he was his clerk*, and that he sustained such loss. That is all. * * * *No invoices, no books of account, no merchants in Bagdad* or New Orleans to corroborate, no charter party of a vessel, or *bills of lading, only Hite.* When he comes to prove the loss of a train worth $30,000, with eight mules, drivers, train-master, &c., he brings in *the train-master*, an accidental looker on, * * * and one Townsend, who says the stock of goods has been sent on the trains and was captured *between* Bagdad and Matamoros by Cortina.

It looked strange and unlikely to Mr. Wadsworth that Ford should see impassibly his loss of $105,000; that he should not have complained of it, either to the American or to the Mexican authorities; that he should produce no other proof as to the existence of the goods than the *ex parte* affidavit of one Hite, so-called clerk of Ford; no invoices, no books of account, no testimony whatever of the *merchant's living at the place in which claimant* said he lived, nor of the place where *he made his purchases; no vouchers of freights of the vessels on which he shipped the goods* to Bagdad—nothing, in a word, but Hite's assertion.

It seemed likewise strange to Mr. Wadsworth that to prove the seizure of the train that must have been in charge of least a train-master and eight drivers, the only evidence produced was the testimony of *the former*, that of an accidental looker-on, and another fellow who never said how did he come to know the fact.

What shall we say, then, when no voucher at all is presented of the charter of a train said to have been seized, when *not a single* individual, *out of a hundred and ninety, instead of nine*, has ever declared as to the capture; and when, finally, there is nothing more than another *Hite*, who, transferring himself, by way of enchantment, from one place to another, at a distance of over 800 miles, and appearing now as a contractor, and now as a simple clerk of Weil, pretends to give his testimony about the principal facts of the case.

C.

Where and at what date did the wagons carrying the cotton cross the Rio Bravo?

On this point, decisive in its importance, we have no other data than the pretended testimony of G. Hite.

He says (Exhibit No. 23):

The train and cotton passed the Rio Grande into the United States of Mexico about, between the lines, one hundred and sixty miles (160) above Brownsville, in the earlier part of September, 1864.

It appears that at first it was written in the affidavit, both in letters and figures, "sixty miles;" but it must have seemed too small a figure, and a hundred was added thereto.

But evidently the person who did that, whoever he may be, never knew the places we refer to, and did not even take the trouble to consult with a map.

The undersigned annexes to this argument a map, and in it will be seen that Laredo is at least 75 Mexican leagues, or 225 miles distant from Brownsville.

Hite and all the witnesses, and even claimant himself, say that the capture took place *between Piedras Negras and Laredo* on the 20th of September, 1864; that is, about fifteen days later than the time the wagons crossed the river, according to Hite. The crossing-point then must have been far above Laredo, about 300 miles up the river, which distance, added to that from Laredo to Brownsville, makes a total of over 500 miles. It follows, therefore, either that it is false the train crossed at 160 miles above Brownsville, or that it is false the capture of the cotton took place between Piedras Negras and Laredo on the 20th of September, 1864.

Hite's affidavit well deserves a special study, in so far as it relates to the point we are examining.

Following the words just quoted we read:

That point of crossing was made for the sake of better roads there afforded.

Hite ought to have said what route did the train follow from Allaton to the Bravo, and how was the crossing of the river accomplished, for although, as it is well known, this river is fordable at several places, nowhere can it be crossed by wagons, which must be crossed over on flat-boats. Such places, where they exist, have their names: how is it that Hite did not designate the name of the place where the train crossed?

I did not travel [says he] with the train in Mexico, but went on to Matamoros. Whilst I was in Matamoros the men belonging to the train—(who were they; what were their names?)—came into town and announced that the train and cotton had been captured by troops and forces belonging to the liberal or Juarez Government under the command of Cortina. This same statement was also made to me by men and officers belonging to Cortina's command, and who assisted in capturing the train and cotton. The question suggests itself again: Who were they? what were their names? This statement they made to me *whilst I was still in Matamoros.*

Whoever may read Hite's affidavit up to this point will surely be left under the impression that affiant never heard anything more about the train from the time it got off from Allaton until the report of its capture was made.

But immediately afterwards he says:

After the train left Allaton, Tex., in May, 1864, I left the employ of Mr. Weil and proceeded directly to Matamoros, in Mexico, on business of my own, as a contractor.

This paragraph of the affidavit was written with the intention of reconciling Hite's intervention in the purchase and shipping of cotton from Allaton, with the occupation, which, in his first affidavit, he said he had at the time of that purchase in Matamoros.

It is believed that by simply saying that up to May he was in Alla-

ton as Weil's clerk, and after that date in Matamoros as a contractor, those two conflicting notions have been explained.

At the time of the happening of the events I am about to relate, I was residing in Matamoros, Mexico, and my occupation was that of a contractor. *I was well acquainted with him*, Weil, at the time he had a very large amount of cotton.—(Affidavit of December 15, 1869—Exhibit No. 10.)

During the year 1864 I was employed by the complainant, Weil, as his agent, &c.—(Affidavit of May 12, 1872—Exhibit No. 23.)

The year is, therefore, divided into two parts: One, up to May, during which Hite was employed by Weil, a circumstance which he did not remember in 1869, but he could recollect in 1872, and the other during which he was a contractor acting on his own account.

But as my business [he adds] called me up to the Rio Grande in September, 1864, whilst so attending to my own business, I met said train and cotton at the point where it crossed the Rio Grande, 160 *miles* above Brownsville, and assisted in crossing it to Mexico.

In this affidavit likewise the figure 1, at the left hand of the 60, seems to have been written afterwards, as it stands out on the margin [N. B.—Had this statement been made with a knowledge of the localities, instead of a number 1, *four* should have been written, thus avoiding the untimely trip made by Hite from Matamoros to a place *whose name he did not want to recall*, in order to attend to his own business, which he did not particularize, said trip giving him the opportunity to engage in Weil's affairs, in which he did not remember in 1869 having taken any part whatever, and in which it is clear he took none before the preparation of this claim.]

It seems useless to the undersigned to insist that Hite overthrows completely the claim relating the physical impossibility that the train crossed the river at 160 miles above Brownsville at the beginning of September, 1864, on its way to Matamoros, and that it was captured above Laredo, distant, at least, 225 miles from Matamoros.

D.

It has been said at the beginning that the place at which the cotton was introduced on Mexican territory is a point of *decisive importance* in the case. So it is really.

Let the concocters of this claim say what they wish about no duties being collectable in 1864 on cotton introduced into Mexican territory, nobody can reasonably believe that said introduction should be allowed to be made at any place whatever and without due notice being given to the revenue officers of that Republic.

The "ordenanza general de aduanas maritimas y *fronterizas*" (articles for the collection of duties at the maritime and *frontier* custom-houses) of 31st of January, 1856, was in vigor at that date. In said "ordenanza" we find the following enactments:

ARTICLE 1. The frontier ports and custom-houses opened to foreign trade are:

* * * * * * *

On the northern frontier: Matamoros, Camargo, Mier, *Piedras Negras*, Monterey, Laredo, Presidio del Norte, Paso del Norte.

ART. 7. All foreign goods, products, and effects introduced by the ports opened to foreign trade, shall pay the following duties.

Numerical order:

Cotton, fixed rates:

1. Raw cotton, with or without seed, brute weight, $1.50 the quintal.

ART. 10. *Payment of duties.*—The duties imposed by this *ordenanza* shall be paid in two installments, one half of them at forty days and the other half at eighty days, counting from the day following the unloading of the vessel. *One half* of the amounts

that correspond to each installment *shall be paid at the ports*, and the balance at the capital of the Republic.

The goods introduced by the frontiers shall enjoy for the payment of duties the same privilege of forty days established for the ports.

ART. 21. Any person residing in a foreign country not at war with Mexico can send merchandise and goods to the Republic, provided they be not prohibited by this *ordenanza*.

The captain of the vessel carrying said goods has the obligation to present a general manifest according to model No. 2.

The person or persons sending the goods must form a detailed invoice of the same, according to model No. 3.

Immediately after any vessel carrying a cargo of goods shall have anchored, the *comandante del resguardo* [custom-house officer] shall go on board and demand of the captain the manifest or manifests of all the cargo, &c.

ART. 23. Of contrabands.

Are cases of contraband;

1. The clandestine introduction of merchandise by the seacoasts, ports, *rivers*, or any other place *not opened by law to foreign trade*.

2. The introduction of merchandise by the ports or *frontiers*, uncovered by the documents established in this *ordenanza*, or at unusual hours, &c.

3. The unloading, transfer, or *transportation of merchandise* without previous knowledge of the custom-house officers, or without the formalities established in the preceding articles.

4. *The transfer of goods into the interior without the proper documents to show they were legally imported, and all the duties established by the tariff paid.*

ART. 26. In the cases specified in paragraph 1, article 23, the penalty shall be of *confiscation and loss of the whole cargo* of merchandise, and of the vessels, wagons, and mules on which carried.

2. For paragraph 2 of same article, the same penalties as fixed by the first part of this article are imposed.

3. For the cases determined by the third paragraph of said article 23, *confiscation and the total loss of the goods* is imposed.

Therefore, contrary to the assertions of Weil's witnesses, we have a law which explicitly and verbatim prescribes:

That foreign goods can *only* be introduced into the Republic of Mexico through certain ports and *frontier custom-houses*.

That the introduction must be made under certain formalities.

That at the same ports or *frontier* custom-houses of entry one-half of the import duties must be paid.

That the introduction of foreign effects through places not duly authorized for that purpose, without the legal formalities and due knowledge of the corresponding officers, is a contraband punishable with the penalty of *confiscation and total loss of the effects*.

Besides this law, the knowledge and fulfillment of which was obligatory on the part of Weil, the Mexican Government, then at Monterey, at the date in which it was pretended—by Hite, not by Shackelford—the cotton had left Allaton, issued the following circular:

Cotton transferred into the interior through the frontier custom-house of Piedras Negras only pays *there* in the shape of transit duties, one dollar per quintal, in view that the largest portion of it is destined to be sent abroad; but as another portion of it is carried into the interior for the consumption of the national factories, this portion must pay a dollar and a half as *established by the ordenanza*. Monterey, May 17, 1864. (Diccionario de Legislacion Mexicana; verb. *algodon*, vol. 1, p. 36.)

Therefore, at the beginning of September, 1864, Weil's cotton could *only* have been introduced into Mexican territory, through the frontier custom-house of Piedras Negras, and paying at that one dollar per quintal, *under penalty of confiscation* and *the total loss* of the cargo, which is the penalty established by the *ordenanza* referred to in the circular.

The fact sworn to by some witnesses, that the introduction of the cotton was made without touching any custom-house opened to foreign trade, and, consequently, without due knowledge of the corresponding custom-house officers, *should it be true*, would of itself constitute *a manifest infraction of the law, implying confiscation and the total loss of the cotton.*

We have, therefore, on the one hand, that *it is not possible* that the cargo, supposed to be Weil's property, should have passed from American to Mexican soil *at* 160 *miles* above Brownsville at the beginning of September, 1864, to appear on the 20th of the same month and year 300 *miles at least above Brownsville;* and on the other, that, even admitting its possibility, it would not have been lawful.

E.

When this claim was for the first time initiated on the 10th of September, 1869, five years after the occurrence which, it is said, gave rise to it, claimant stated that his cotton had been seized and taken from him by representative forces of the Republic of Mexico, who at the time were in command of that portion of the country lying between Piedras Negras and Laredo (Paper No. 4).

No designation was then made of such forces or of the officer under whose command they were.

Laredo is the furthest village in the northwestern part of Tamaulipas, at a distance of hardly 6 Mexican leagues from the boundary line with the State of Coahuila.

As it was not determined in the memorial, nor has it been stated afterwards, whether the alleged capture was made in the State of Coahuila or in that of Tamaulipas, the simple assertion that it was made by the republican troops in command of that portion of the country lying between Piedras Negras and Laredo is tantamount to no designation at all.

Emily Lanndner, in his affidavit of the 15th of September, 1869, declared having heard that *some time* in 1864 Weil *lost* over a thousand bales of cotton, captured by the forces of the Liberal party *in Mexico.* He does not designate the forces nor the place where the capture was made (Paper No. 10).

Anchus McCullock repeats exactly what Lanndner had declared, only adding that the forces who made the capture belonged to the Liberal or *Juarez party* (Paper No. 10).

George D. Hite, in his testimony of December 15, 1869, only said that the cotton was confiscated by the forces of the Liberal or Juarez party, between Piedras Negras and Laredo (Paper No. 10).

The so-called Justice, on February 7, 1870, said that the troops who took the cotton *claimed to belong* to the forces under the command of General Cortina (Paper No. 12).

John McMartin, on July 26, 1870, said that the troops who took possession of the cotton were under the *immediate command* of General Cortina (Paper No. 9).

S. B. Shackelford, on February 17, 1872, said that the train and its contents were seized near Laredo by an armed force *under* General Cortina (Paper No. 21).

Finally, George L. Hite, in his last deposition of March 12, 1872 (Paper No. 23), said that the train and cotton were captured by troops and forces under General Cortina, and that deponent was told so by soldiers and officers who *assisted* in the capture of the train and cotton.

It is seen by this reference of all the testimonies relating to the point we refer to, that at first the capture was attributed to some undetermined force, but at the end it was imputed to Cortina, by a single pretended witness, Martin.

This testimony, if of any weight, designates Cortina as the author of the act claimed.

The decision in the case seems to be based on the same idea, if the undersigned does not misinterpret the following phrase:

That it—the cotton—was seized and taken by troops belonging to the Mexican Government, and under the command of General Cortina.

What principally suggests to the undersigned this interpretation is the fact that the umpire has established the just rule not to hold any of the two Governments sued before him responsible for acts of their respective troops, unless when the commander or officer who authorized, or, at least, witnessed the act in question, is personally designated.

Bearing on this point, the undersigned can cite the following decisions:

In the case of the Siempre Viva Mining Company *vs.* Mexico, No. 98:

But neither he (Mr. Leya) nor the old man who was subsequently in charge, nor do any of the witnesses, give detail as to the amount or value of the stores or number of animals said to have been seized, or *the names of the officers who seized them.*

In the case of Juan Manuel Silva *vs.* Mexico, No. 92:

But whoever were the persons who destroyed the property, they are insufficiently designated, for *no names are given,* and the mere appellation of "revolutionist" would show that the Mexican Government is not responsible for the losses suffered by the claimant. The umpire cannot, *upon mere conjecture,* condemn the Mexican Government to pay compensation.

In the case of W. C. Tripler *vs.* Mexico, No. 144:

There is also as much more evidence that nothing was touched in the house by Orozco's force, as that it was robbed and destroyed. But if even the latter statement be true, it is not clearly shown by whom the acts were committed, *or that they were done by order or in presence of an officer;* and if the robbery and destruction were committed by soldiers only, without the order *or presence of an officer,* the umpire does not consider that the Mexican Government can be expected or called upon to make compensation for such acts.

In the case of Christian Gatter *vs.* Mexico, No. 343:

With regard to the robbery of goods from claimant's store, there is no proof that it was done *by the order, under the control, or in presence of any military or other authority.* Indeed, the robbery was evidently committed by lawless and plundering soldiers; and, however deplorable it may be, it unfortunately happens occasionally in all armies, *whilst the Governments to which they belong cannot be held responsible for such unauthorized violence.*

In the case of Charles C. Haussler *vs.* Mexico, No. 580:

The precise date of the occupation of claimant's farm by Mexican troops is not stated; *nor is it shown that they were under the control of an officer, or, if so, who was that officer. The witness Hartman says that "the farm was in possession of a mixed force of Mexicans and Indians belonging to the command of General Angel Martinez," but no mention is made of any officer who was in charge of these men.*

In the case of José Maria Anaya *vs.* The United States:

No mention is made of *any officer, nor is it shown that an officer was present, or that the plunderers were under the control or command of an officer.*

The undersigned, in citing these decisions, does not pretend to apply them entirely to the case under consideration, but only in so far as to the spirit that prevails in them all, viz, *not to make a Government responsible for acts committed by its troops, when the name of the commander or officer who, at least, authorized them with his presence is not given.*

Seeing, therefore, in the decision of Weil's case that the Mexican Government is held responsible for the alleged seizure it refers to, and that the only name mentioned is that of General Cortina, the undersigned has concluded that *Cortina is considered to be the author of the act claimed.* This being so, the undersigned can show in the most conclusive manner the impossibility of the fact.

General Cortina was in the city of Matamoros on the 20th of September, 1864.

In the file of John W. Hanson, No. 760, paper 11, fol. 23, there is an order signed by the general in that city and at that date. The undersigned promises to show another order of the same date, signed also by General Cortina at Matamoros. But leaving this aside, there is a *public document*, unobjectionable in its character, that places out of any shadow of doubt the fact that on that day said Cortina was in Matamoros.

This document is the official report made by the imperialist General Tomas Mejia to his Government, about the surrender of Matamoros by Cortina on the 26th of September, 1864. It is found in the *Diario Oficial* of the Empire, corresponding to the 13th of October of the same year, a copy of which is annexed hereto, and the undersigned can present the original in the set of said *Diario*, now in his hands.

Mejia reports to have commenced his movement from Cadereyta to Matamoros on the 15th of September, 1864, and to have received on his way, *the 23d*, a communication addressed to him *by Cortina*, military commander of *Matamoros*, making inquiries about Mejia's intentions.

Mejia continued to move on Matamoros, and he reached this place on the 26th. Between Matamoros, therefore, and the place where Mejia received the communication, there is a distance that the bearers of the dispatch could not have saved in less than two days.

In addition, the undersigned can present numerous testimonies he also possesses, of persons residing in Matamoros, all of which declare unanimously that General Cortina remained *permanently in Matamoros from August* 24, 1864. Amongst those persons, there are two of those commissioned by Cortina to make arrangements with Mejia about the surrender of the place: Don Rafael Cervantes and Don Miguel de la Peña.

It is evident, by what has been said, that it was impossible for Cortina to have seized on the 20th of September a load of cotton between Piedras Negras and Laredo, at 280 miles at least from Matamoros, where he was at that date; and, as no other commander or officer is given as author of such capture, its responsibility cannot be imputed to the Mexican Government.

To establish this responsibility it does not suffice to say that those who made the capture *belonged* to the troops under Cortina, as it did not suffice in the case of Haussler to say that the troops in possession of the farm were *under General Angel Martinez*, without mentioning the officers who were at *the immediate* command of said troops.

The very fact that it is not determined whether the capture was made in the State of Coahuila or in that of Tamaulipas, renders it extremely uncertain that the troops whom the deed is attributed to should belong to the command of Cortina, whose authority did not extend beyond the limits of the last-named State.

The simple assertion that a force belongs to a Government is not enough to hold that Government responsible for the acts attributed to said force, unless these two points are satisfactorily shown: First, that such a force did really exist at the place named; and, second, that it belonged to the Government, who it is claimed is responsible.

In the case of Jacob Jaroslowski *vs.* Mexico, No. 896, the umpire said:

> The claimant might also have sought and obtained evidence *that a Mexican force was actually at the place and at the time stated, and that it seized the goods, facts which must have been notorious; but from May*, 1865, *the date of the seizure of his property, till March*, 1870, *he does not seem to have made the slightest effort to collect evidence.*

Which is, then, in Weil's case, the evidence that there actually was a Mexican force at the place where the cotton was seized, a fact that ought to have been notorious?

The omission begins by not designating such place, and it is absolute as to the existence of any force in it.

In Jaroslowski's case, the fact was supposed to have occurred in May, 1865, and it was not until March, 1870, that any attempt was ever made to prove it.

In Weil's, the fact is supposed to have occurred in May, 1865, and the first attempt at any proof was on the 15th of December, 1869. Three months short of five years in the first case; three months *over* five years in the latter.

And what has been the evidence produced in one case and the other?

In the case of Jarolowski, a witness (Cohen) declares to have intervened in preparing the transportation of the merchandise to the interior of Mexico, giving the number of mules, wagons, &c., forming the train, describing the road over which it went, and the exact spot at which it is pretended the seizure was made at 10 miles from Rio Alamo.

Another witness, Wolf, *who was the conductor of the train*, related also the same details, adding that the force which made the seizure was under the immediate command of a colonel and some other officers.

Two other witnesses, who said they were drivers on the train, Rodriguez and Stevens, also gave details of the event, as if they had really witnessed it.

Nevertheless, this late and suspicious proof, with great propriety, was never considered as sufficient.

We read in the decision:

> Two witnesses Wolf and Cohen, and subsequently two others, Dominguez and Stevens, allege that the goods and train were seized by Mexican troops between Mier and the Alamo River; but the evidence that these troops *really belonged to the Mexican army* does not seem to the umpire to be sufficient.

In Weil's case we only have three witnesses who present themselves as eye-witnesses of the alleged capture of the cotton.

McMartin, who does not say wherefrom the train did start, where did it cross the river, what road did it follow, at what precise point was it seized, and only mentions as the immediate commander of the capturing force, General Cortina, who could not have witnessed the seizure.

Justice, who does not state either those essential details, and Shackelford, who pretends that the train composed of 190 wagons had run a distance of about seven hundred or more miles, from the 1st of September, 1864, up to the date of the seizure, between the 10th and the 25th of said month and year. He, of course, does not describe the road so swiftly made by the train. This evidence was produced on the following dates: McMartin's deposition, July 26, 1872; Justice's, February 7, 1870; Shackelford's deposition, March 12, 1872.

Can it be said that such evidence was more seasonable and satisfactory than that filed in Jaroslowski's case? Quite the reverse; as far as the number of the so-called eye-witnesses, and the details of their respective declarations, and the time when they were produced are concerned, we find every advantage on the part of Jaroslowski's case; and nevertheless his evidence could not deserve any consideration, and very justly it did not obtain any.

F.

Let us now examine the last point on which satisfactory evidence should have been produced.

What are the steps claimant took to prove in due time the fact of the seizure of his property, to obtain vouchers for it and to ask for compensation?

We find no data whatever on these points in the file. In the memorial signed by John J. Key, who styles himself attorney for claimant without pretending even to prove his representation, it was said on the 25th of April, 1870—paper No. 11—that he had often asked compensation of his losses *from all the Mexican authorities he was able to approach.* But neither in that paper nor in any other of the file is a single one of those authorities designed.

In the first statement of the case, filed by Weil—paper No. 4—he said he had *often* solicited the release of his property, but could never obtain any satisfaction. And following immediately after those words we read:

> I have *never* laid my claim before either the United States or the Mexican Governments asking payment thereof.

In the said case of Jaroslowski the decision begins by saying:

> The umpire observes some very remarkable circumstances. The claimant, although he alleges that he suffered great losses by the acts of the Mexican officers which were committed in May, 1864, never made any representation upon the subject to his own or to the Mexican Government for nearly five years afterwards.

In Weil's case it is said that he suffered a loss even greater than Jaroslowski's on the 20th of September, 1864, and it was not until September 10, 1869, that for the first time a vague complaint was presented, five years, minus ten days, after the occurrence.

The only witness who speaks of the *demarches* of claimant to have his property restored to him is Shackelford, and he does it in these words:

> That claimant *personally* and through his agents and attorneys requested the cotton be restored to him, and this was refused; but he was told that the Government of the United States of Mexico was good for the cotton or its value.

Even admitting that some weight should be attached to the *dictum* of this witness, is there any precision in it with regard to the point under investigation?

Where and to whom did Weil make personally the application Shackelford speaks of? Did he, by chance, witness the seizure? It seems not, if Hite, who gives as his place of residence the city of Matamoros, is to be believed.

Weil himself has not condescended to say in the only paper emanating from him—the statement bearing date of September 10, 1869—where was he the day of the seizure of his cotton, although if we are to understand literally his vague statement, he was present when the occurrence took place.

"My property," he says, "was taken *from* me." On this point, therefore, as on many others, we cannot help either disbelieving Hite or disbelieving Shackelford, as their so-called testimony seem to conflict with each other.

In regard to the *demarches* of Weil's agents or attorneys, we want to know who were those agents?

The only individual who comes to invest himself with this character so late as March, 1872, and who in December, 1869, had forgotten his investiture, says that he preserved it up to May, 1864, a short time after

he had made the purchases and shipped the cotton at Allaton. Outside of this, even Hite does not say that he ever took any step to claim Weil's property.

In regard to proofs, we have repeatedly remarked that none at all were procured until December 15, 1869.

From this date forward not a single document has been presented bearing on the fact under investigation.

The proofs consist in simple affidavits or testimonies received at long distances from the places where the facts occurred, but not one from those who sold the cotton, from the owners or drivers of the wagons on which the cotton was transported, or from merchants residing at the places through which the train passed. Nothing, as Mr. Wadsworth said in the case of J. Ford, nothing else but *Hite*, and always *Hite*.

In the so-often cited case of Jaroslowski it was alleged that the officer or commander of the troops who made the seizure issued a receipt, but that it was stolen in Texas with all the papers relating to the wagons, mules, &c., by stragglers of the confederate troops of that State.

The umpire said:

> But the absence of proofs which might have been obtained is still more remarkable. If Wolf had been robbed of the receipts for the export duty paid at Matamoros and for the value of the wagons, mules, &c., he could easily have procured duplicates on his return to Matamoros.

In the present case there is something still more remarkable. It is pretended that the train did not pass by any custom-house of Mexico, and should this be true it would of itself justify the confiscation of the cotton, as has been shown; it is also pretended that there were no *written vouchers* in any of the transactions relating to the purchase of cotton, purchase or charter of *not less than* 190 wagons and their corresponding number of mules, &c.; but only a *simple memorandum* kept by Hite, who was lucky enough to go to Texas some time after the event, there to be, in his turn, despoiled by stragglers also of his memorandum; but not a word is said about the receipt for the cotton, signed by the commander or officer who made the seizure.

In the decision of the case of Charles H. Brittell *vs.* Mexico, No. 905, the umpire said:

> It seems most extraordinary that in this, as in the case of Henry C. Boyd, the claimants should *neither have taken nor even asked for*, as it would appear, *any receipts* for the property, such as mules, horses, wagons, &c., which was alleged to have been *taken from them.*

With these decisions in view, the undersigned feels fully authorized to state with perfect security, that in Weil's case, like in the cases of Jaroslowski, of Brittell, and of Boyd, the absence of *all documentary evidence* on such points as the interested party could have collected it, is inexcusable, and that even admitting that it was lost, Weil *could* and *should* have replaced it *in due time.*

The undersigned can only attribute, therefore, the decision given in Weil's case, to an involuntary misapprehension of its circumstances. We read in said decision:

> These facts are not disproved by evidence on the part of the defense.

Neither did the defense file any rebutting evidence in Jaroslowski's case. In Weil's case the undersigned did offer it, and special mention is made of this circumstance in his argument before the umpire. But leaving this aside, it was shown in the same argument that the facts, ground of the claim, had not been proved, and it is a principal of eternal justice, always prevailing in the rectitude of the umpire's judgment, that

when claimant's proofs are insufficient, the defendant cannot be condemned, even should he show nothing on his part.

Actore non probante, reus etiamsi nihil præstiterit, absolvitur.

But there is a circumstance that shows to the undersigned that his said argument did not deserve the umpire's full attention.

After the words just quoted, we read the following in the decision:

The argument of most weight which has been suggested by the latter—the defense—is that all communication with points occupied by the enemy was forbidden.

In the undersigned's argument no great weight was attached to such a suggestion. Mr. Cushing, the first agent of Mexico, had made it, being undoubtedly under the impression that portions of the States of Coahuila, Nuevo-Leon and Tamaulipas were in the hands of the invading forces and their allies at the time the occurrence we are referring to took place. And it was actually so.

Saltillo, Monterey, and Ciudad Victoria, the capitals of those States, were occupied by the French or the Imperialists, and the Boca del Rio or Bagdad, had been occupied since the 22d of August, 1864. But the undersigned did not consider the question at issue from this standpoint. His efforts were directed to show that claimant's proofs were less than insufficient, and more than suspicious. Under this impression he did not think it necessary to give to the legal point of the case all the development that it might have received had the facts been satisfactorily proved.

The undersigned remarked, however, that all the witnesses in the claim testified that the cotton had not been introduced through any custom-house into Mexican territory, and, therefore, the act was not lawful on the part of Weil in regard to Mexico; nor was it lawful in regard to the United States the fact of taking a cargo from territory occupied by the Southern rebels.

The Commissioner of the United States, deciding the case of George B. Cochran *vs.* Mexico, No. 865, said:

He complains that General Cortina did not allow him to pass into Texas from Matamoros with a lage mule train loaded with goods.

This was in *August*, 1864. In July, 1864, the United States troops withdrew from Brownsville and left *the whole State* to the Confederates, except the port of Brazos Santiago, where a small force was left.

The restraint, then, put on claimant's trade with the rebel territory of the United States *was not an injury for which the Government of that country can claim here.* It was a friendly and beneficial act to the United States to stop all trade with Texas, only carried in violation of the laws of the United States and the proclamation of the President. It was *one good deed done by Cortina.*

It strikes the undersigned that in Weil's case the same reason prevails for not admitting the claim set forth by the Government of the United States, and on this ground alone it might be dismissed.

But above all, since the fact on which it is based has been considered as proved, it is absolutely impossible to overlook the palpable, the confessed violation of the fiscal laws of Mexico, a fact of itself implying the justification of the act claimed.

It is shown that even admitting that the facts occurred just as the witnesses of the claim state them, viz, introducing the cotton in question into Mexican territory without due knowledge of the corresponding custom-house officers, without fulfilling the requirements of the law, and paying the custom duties established by tariff, the cargo should be confiscated and a total loss to its owner.

Neither claimant nor his witnesses have said why was the cotton seized; and, nevertheless, it was for claimant, the interested party,

to find it out and to enforce all his rights before the proper authorities and in due form of law.

The umpire has declared it so in the following words of his decision in the case of Wilkinson and Montgomery, No. 105:

> The umpire considers it *quite unjustifiable* on the part of Wilkinson and Montgomery's agent that *immediately after the seizure of the merchandise* he should have abandoned it, and should not even have taken the trouble to inquire on what ground the seizure was made, or of what cause the goods were subsequently confiscated. There seems, likewise, to have been great negligence *in not applying to the superior authorities*, as, for instance, to the minister of finance, demanding an investigation.

It truly goes beyond the limits of credibility that a man should suffer a spoliation of over $300,000 without taking any steps whatever to know, at least, the cause of such a proceeding.

Was it a penal confiscation? The party interested should, then, have used his rights, if he did not consider it authorized by law.

Was it an expropriation for public use? He ought to have applied for some voucher at least, and, in case of denial by the authorities, to have procured some subsidiary proof.

The undersigned will refer again to the umpire's decision in Jaroslowski's case:

> But even, he says, if it be true that the goods of the claimant were seized by Mexican troops, the umpire considers that the Mexican authorities had, by the general laws of war, as well as by the Mexican law of August 16, 1863, *the right to confiscate them. If the claimant thought that the seizure was illegal, it was for him to present his claim to the Mexican Government, as he certainly might have done, in accordance with the law of November* 19, 1867.

In order that this part of the decision should suit exactly Weil's case, we need only to change the legal ground, and instead of the *general laws of war*, and the *Mexican law* of August 16, 1863, cite "the *universal fiscal law* and the *Mexican law* of January 31, 1856."

Can it be said that a seizure made in virtue of accidental supervening circumstances, and of the general laws of war, is more justifiable than a seizure emanating from fiscal laws of a permanent character, the knowledge and observation of which was binding on complainant?

"The citizens of the two countries respectively," says Article III of the treaty between Mexico and the United States, "shall have liberty * * * to come with their cargoes to such places, ports, and rivers of the United States of America and of the United Mexican States *to which other foreigners are permitted to come*," that is, to places opened to foreign trade, * * * "but *subject always to the laws, usages*, and *statutes* of the two countries respectively."

The undersigned has had an opportunity to see the argument of counsel for claimant before the umpire, and he deems it proper to say a few words in regard to it.

It does not contain any analysis of the proofs of the claim, because its counsel well knew that under analysis those proofs could deserve no consideration whatever. Counsel do not even mention any other testimony but Hite's, taking good care not to make any allusion whatever to that of Shackelford, with which it is in open contradiction.

All their efforts are concentrated in the allegation that no rebutting evidence was filed in due time.

Counsel say the Mexican Government knew of the claim since March 8, 1870; and that is incorrect, as it was not until the 8th of October of that year that the case was entered on the docket paper No. 14, and from that date the time to put in rebuttal was to be counted. Up to that date the proofs filed to base the claim were of such a nature that

they required no defensive evidence, as they did not contain any precise data in regard to the circumstances of the case. This is the reason why after the time for filing evidence on claimant's part had expired, and it was so declared at his own petition, he still kept filing other proofs up to June 27, 1873. (Paper No. 26.)

If claimant, therefore, took so much time to complete his evidence, a delay in sending the defensive evidence ought not to be considered strange, especially when the Mexican Government has explained said delay, stating that at the time the investigation was promoted there was no competent judge in Matamoros to do it.

But even admitting that the delay was culpable, is it just that the penalty should be the declaration that the claim is proved when it is not? Certainly not. If the proofs are not sufficient to convince the mind of the truth of the fact they relate to, it matters little their not having been refuted. Besides, there are in claimant's argument the following assertions on points of fact which show the very foundation of the claim to be false:

1. That the seizure was made by Cortina. "The train and cotton was seized by Cortina." (Page 4.)

2. That the train crossed to Mexican territory at 160 miles from Brownsville.

3. That Weil, after finishing his arrangement in Allaton, left for Matamoros, leaving an agent there. (Page 5.)

5. That the country was in a state of commotion on account of the war. (*Ibid.*)

6. That claimant, being a subject of the *de facto* Government of the Confederacy, could not have applied for protection to the Government of the United States.

7. That he could neither apply to the Mexican authorities, because at the time of the occurrence they did not exist.

The following conclusions are then drawn:

1. That the cotton belonged to Weil.

It would have been necessary first to show that such cotton *had really existed.*

2. That Weil's trade was not unlawful nor in violation of the law of Mexico.

It has already been shown that it was.

3. That admitting it to be so, the seizure ought to have been put on trial.

Supposing it possible, bearing in mind the state of commotion of the country, as described by the allegators, it was for Weil or his agents to promote the trial.

4. That there is no law in Mexico authorizing the army officers to take private property.

Therefore, if those who made the seizure had no authorization, the Mexican Government is not responsible for it, and said officers committed a crime for which claimant might have pursued them criminally.

5. That the facts of the seizure and expropriation are conclusively proved by unobjectionable testimonies.

The undersigned has proved the impossibility of those facts. What is physically impossible cannot be *conclusively* proved.

6. That the convention of July 4, 1868, released the Americans from the obligation of using the remedy granted to them by the Mexican law of November 19, 1867, and if their claims are not attended now by the Commission, they could never be presented afterwards to the Mexican Government.

The first part of this assertion is incorrect, because the convention only submitted to arbitration claims for *injuries;* and when the injuries can *only* consist in the circumstance that certain complaints were not attended to when the acts which gave rise to them were entirely unknown to the Mexican Government, and are moreover justifiable by law, as it happens in Weil's case, in which the regulations of the maritime and frontier custom-houses were clearly violated; the convention, far from dispensing with the application of the remedy alluded to, has made it indispensable in order that the claim might be attended.

As to the second part of the assertion, it is true, but then claimant would well deserve the penalty for his incredible neglect. As an excuse for this neglect, it is said that there was no authority to whom claimant might present his complaint, but this is notoriously false.

It is said that claimant was in Matamoros when the report reached there of the seizure of his cotton.

We have already seen that it could not have been Cortina who made the capture, but even admitting that he was the captor, Cortina and all his forces surrendered to the Empire on September 26, 1864. It is not to be believed that at this day Weil's cotton should have entirely disappeared.

To nobody better than to the Imperialist General Mejia, for whose Government the Southern Confederacy professed very warm sympathies, could Weil have presented his complaint. He would then either have recovered all his cotton, or, at least, have left some written evidence of its seizure.

But supposing that he was unable to accomplish this in Matamoros for some reason or other, which the undersigned cannot imagine even in view of the position in which Cortina was placed from that date, Weil could, with perfect security, have produced his proofs in Brownsville, opposite Matamoros. Why didn't he do it so? Why hasn't he produced any written document whatever of that time?

Counsel for claimant say that documents only constitute a complementary evidence; that the principal evidence consists in the affidavits of witnesses, produced here and there, many years after the event took place.

The undersigned's opinion, and, if he is not mistaken, the umpire's also, go the other way.

It is not as easy to forge a document of eight or ten years' date as it is to obtain one or more affidavits; or rather, that is impossible, this, exceedingly facile.

It is stated in the brief that the United States Court of Claims awarded $1,000,000 to a house in Liverpool for cotton seized during the war by American authorities, when the evidence *in chief* of the ownership of the cotton consisted in the testimony of one witness *and his acts;* if this is so, the undersigned will say that testimony, and the other less principal proofs, might have been of such a character as to have been deemed sufficient by said court, and that it does not appear, nor is it alleged, that there was no documentary evidence at all in the case.

But leaving this aside, said court is bound to take that kind of proofs into consideration, however suspicious they may appear to it, whilst this Commission, in point of proofs, is only obliged to follow common sense.

The system of proofs to which said court must submit itself has been found so deficient that the President of the United States, in his last message to Congress, said:

> It is to devise some better method of verifying claims against the Government than at present exist through the Court of Claims growing out of the late war. Nothing

is more certain than that a very large percentage of the amounts passed and paid are either wholly fraudulent or are far in excess of the real losses sustained.

The large amount of losses proven—*on good testimony according to existing laws, by affidavits of fictitious and unscrupulous persons*—to have been sustained on small farms and plantations are not only far beyond the possible yield of those places for any one year, but, as every one knows who has had experience in tilling the soil, and who has visited the scenes of these spoliations, are in many instances more than the individual claimants were ever worth, including their personal and real estate.—(Message of the the President of the United States to Congress, December 7, 1875.)

To few witnesses could the epithet of *unscrupulous* be better applied than to George S. Hite and to Shackelford, whose testimonies are the main pillars of this claim.

As the purpose of this argument is to show the motives that constitute a ground for the revision of the case, the undersigned believes to be sufficient what is heretofore written, and, to conclude, he will respectfully invite the umpire's attention to the following issue:

1st. *It is a physical impossibility* that the train should have crossed from American into Mexican territory a hundred and sixty miles above Brownsville, bound to Matamoros, and that ten or more days later it should have been captured at a place between Piedras Negras and Laredo.

2d. *It is likewise a physical impossibility* that the seizure should have been made by General Cortina, who was in Matamoros.

3d. Admitting as true the confiscation and total loss of the cotton, it would have been justifiable, according to the Mexican law, in view of the circumstances of the case.

4th. If claimant believed he had any right to enforce, he should have deducted it before the superior authorities, and would be be entitled to compensation, he ought to have claimed it from the Mexican Government.

The undersigned hopes the honorable umpire will examine these points and the others he touches in this argument, and will reconsider the case.

Its importance renders this further labor of the umpire indispensable, as if, at any time hereafter he should be convinced that through error he had imposed such a heavy burden on the meager Mexican treasury, induced by the technical allegations and the fallacious proofs of the parties interested in the claim, he would undoubtedly lament it exceedingly.

Can there be any reason why an involuntary error should not be corrected when it is still time to do it?

Can it be possible that even in case the umpire should be convinced that no cotton was ever seized from Weil by Mexican authorities, or, admitting it had been seized, that the seizure was wholly justifiable by law, he should still refuse to modify his decision?

The agent of Mexico cannot believe that the umpire should act so, when, as it has been said at the beginning, he follows no other rules in his decisions than justice, equity, and the principles of public law, and when he recalls the case in which the umpire, believing that he had incurred an error in point of law, had no difficulty in rectifying his decision at the request of the agent of the United States.

The Mexican Government renders due tribute of justice to the impartiality and good faith displayed by the umpire, and with this foundation he hopes that the umpire will weigh the reasons he has set forth requesting that the decision in this case be revoked.

If, after taking them into consideration—if, after a re-examination of all the circumstances of the act claimed—the umpire should still believe just that Mexico should pay nearly half a million of dollars involved in this case, be whatever the sacrifice that the payment may entail, the Government of Mexico and its agent will at least have a right to expect that those who are posted with the case, especially in Mexico, will do justice to the efforts used to obtain it.

ELEUTERIO AVILA.

DECISIONS OF THE UMPIRE IN THREE CASES SIMILAR TO THAT OF WEIL.

HUGH LEWIS *vs.* MEXICO. } No. 653.

In the case of Hugh Lewis *vs.* Mexico, No. 653, the umpire is of opinion that there is not sufficient evidence to justify an award in favor of the claimant. It is alleged that on a certain day 25 bales of cotton were seized by troops *under the command of General Cortina, at a place near Reynosa*, in the State of Tamaulipas, Mexico. To these facts there are only two witnesses. John Delworth declares that *at the time of the occurrence he resided* in Gonzalez County, Texas, which must be about 250 miles from Reynosa, so that though he declares that he knew the facts to which he deposes he can have done so only by hearsay and not for personal acquaintance with them. The umpire cannot admit the validity of such evidence.

There remains, then, but one witness, William F. Laird. His testimony, however, is extremely vague. He states that on June 18, 1865, *the Mexican Liberal forces under the command of General Cortina, at a place near Reynosa*, forcibly seized and took possession of the cotton in question. *He does not say whether Cortina or any other officer was actually present at the seizure nor does he give the name of the place or its distance from Reynosa.* The witness adds that he paid duties on the cotton *on entering the Mexican territory at Reynosa*, and received permits which he has mislaid; but no attempt seems to have been made to prove by the custom-house records that these duties were so paid *or to obtain duplicates of the permits. Nor does any protest appear to have been made at the time against the alleged act of the Mexican troops.*

Upon such evidence given by this solitary witness the umpire does not consider that the Mexican Government can be condemned to compensate the claimant, and he therefore awards that the claim be dismissed.

EDWARD THORNTON.

WASHINGTON, *February* 2, 1876.

In the case of William F. Laird *vs.* Mexico, No. 994, the umpire is of opinion that the proofs in support of the claim are not sufficient to justify him in holding the Mexican Government responsible for the losses alleged to have been suffered. *It seems to him that it would have been easy, if the claim be* well founded, *to have furnished proofs which would have been much more satisfactory.* The cotton was imported into Mexico at Reynosa, and it is said to have paid duties there. It must surely have been easy to have obtained from the custom-house at that place a record of the transaction or to prove that it was impossible to obtain it. In the memorial of Laird and Mathis *vs.* Mexico, No. 995, which is connected with this claim, it is stated that the property was seized by *a portion of the military forces under General Cortina. It must, therefore, be inferred that General Cortina was not there himself at the time, nor is it stated who was the officer in command, by whose order the acts complained of were committed, or whether there was any official at all. It is incredible that so large a sum of money as* $15,000 *should have been paid to General Cortina or to any of his officers, without a receipt being obtained for it. Nor is it to be believed that the claimant on his arrival at Matamoros should not have laid his complaint before the United States consul at that port.*

It is further to be observed that the memorial is not signed by the claimant himself, but by his attorney, who naturally cannot swear of his own knowledge that the facts stated in it are true.

In view of the insufficiency of proofs, the umpire awards that the above-mentioned claim be dismissed.

EDWARD THORNTON.

WASHINGTON, *August* 1, 1876.

In the case of William F. Laird and John M. Mathis *vs.* Mexico, No. 995, which is connected with that of William F. Laird *vs.* Mexico, No. 994, the umpire refers to the observations made in his decision in the latter case as applicable to the former.

It is further to be noted in the present case that it is stated that the train of wagons, mules, &c., was sold at Matamoros. *Proof of his sale might certainly have been furnished by the purchasers. Yet none is produced.*

The umpire, for this and the reasons given in his decision on No. 994, awards that the above-mentioned claim be dismissed.

EDWARD THORNTON.

WASHINGTON, *August* 1, 1876.

Additional remarks to the argument on rehearing.

BENJAMIN WEIL
vs.
MEXICO. } No. 447.

On the 29th of January of this year the undersigned filed an argument—the perusal of which he most earnestly recommends to the umpire— in which it is shown that, by the very papers of the file, it appears that the fact, ground of the claim, is a physical impossibility, and that, even admitting it to have occurred as related, the confiscation of the cotton in question would have been justifiable.

After having filed said argument, the umpire has dismissed three cases very similar to Weil's claim, on grounds exactly applicable to it.

In the case of Hugh Lewis, No. 653, it was alleged that on June 18, 1865, some troops under command of General Cortina seized 25 bales of cotton near Reynosa, in the State of Tamaulipas, Mexico.

But the evidence was exceedingly vague, as it did not determine *whether Cortina or some other officer* had been present to the seizure; it did not state *the name* of *the place* where said seizure was made, nor express *its distance from* Reynosa.

This is exactly our case. No other circumstances of the capturing force are given but that they *belonged to the troops under the command of General Cortina*—" under General Cortina"—and as to the place of the capture, it has only been said that it was *between Piedras Negras and Laredo, without stating at what distance from these places.* In the case of Lewis it was alleged that *duties had been paid* at Reynosa in order to introduce the cotton, but that the permits had been lost. The decision *did not consider* this excuse enough to dispense with the presentation of *documentary evidence*, duplicates of which should have been procured.

In Weil's case it is averred that the cotton had been introduced into Mexican territory *as contraband;* that is, *without touching at any custom-house, and without procuring any fiscal documents.* Is this default more excusable, by chance, than the presentation of custom-house permits?

It was also remarked in the decision of the case of Lewis that *it did not appear that any protest had been filed against the alleged act of the Mexican troops at the time it occurred.*

The same remark applies in Weil's case.

In the case of William F. Laird, No. 994, the subject-matter was likewise seizure of cotton, attributed to forces " under Cortina." The decision reads:

> It is related that the cotton was seized by a party of the military forces " under the command of General Cortina." *It must, therefore, be inferred* that General Cortina *was not present at the act* of *seizure,* and *it is not stated who was the officer in command* of the capturing force or by whose order the act claimed was executed.
>
> It is incredible that the large sum of $15,000 should have been paid to General Cortina, or to any of his officers, without obtaining a receipt for it, and, notwithstanding, no receipt has been filed.

In Weil's case the value of the property said to have been seized amounts, if we believe claimant, to *over* $300,000; more than *twenty times* $15,000. And still, *no receipt either* has been filed.

The decision in Laird's case says, moreover:

> *It cannot be believed* that claimant on arriving at Matamoros *should not have presented his complaint* to the United States consul at that port.

Neither did Weil ever file, before presenting his claim here, *any com-*

plaint or *protest whatever,* in regard to the seizure of his immense cargo of cotton.

In the decision of the case of W. F. Laird and Jno. M. Mathis, connected with the one just cited, besides reference being made to the remarks heretofore quoted, another is added, viz: that *no proof had been produced of a* sale *alleged to have been made in Matamoros*, when that proof might certainly have been furnished *by the purchasers.*

In Weil's case it is pretended that not less than 1,914 bales of cotton had been purchased in Alleyton, and no proof whatever has ever been filed of such an important transaction when it might have been furnished by the vendors.

On the very same ground, therefore, by which the above-mentioned claims were dismissed, the decision given, in a reverse way, in Weil's case, should now be revoked, rectifying the appreciation of the weight of the proofs filed by the interested party.

But the fact foundation of the claim is not any more *only* doubtful or improbable.

The Government of Mexico presents the fullest evidence that it is entirely false, and that the claim is the most stupendous and scandalous fraud ever attempted before this Commission. That evidence—found after the decision had been given—consists in the authentic statement, written and signed by Benjamin Weil himself, of all his affairs and transactions from the surrender of New Orleans up to the month of October, 1864; in seventy-three original letters from Weil, among which are two dated at Opelousas, the 29th of August, 1864; one dated at Alexandria, La., the 5th of September of the same year; one dated at Shreveport, on the 10th of the same month; one at the same place on the 20*th of September*, 1864, the very day on which, it is alleged, his cotton was seized *from him*, between Laredo and Piedras Negras; one dated also at Shreveport on the 22d of September; one on the 23d of the same; one on the 24th of October, also at Shreveport; two others on the 5th of December, at Brownsville; one on the 8th of the same month; one on the 12th, one on the 19th, and one on the 26th. *In none of these letters and in none of many others, written before and after, does Weil make any allusion whatever to this seizure, notwithstanding that he relates very minutely all his affairs.*

Benjamin Weil, being then in mercantile partnership with Messrs. Isaac Levy, Max. Levy and Jacob Levy, under the mercantile style of Isaac Levy & Co., entered into, at Opelousas, on the 11th of March, 1863, an agreement with the house of Bloch, Firnberg & Co., forming a new partnership for all kinds of business transactions, under the style of Levy, Bloch & Co. The clauses of their contract were the following: All profits and losses were to be divided by halves, and any transaction business made by a member of the firm, at any time or place, during the existence of the partnership, should be for the benefit of the partnership. The partnership was dissolved on the 15th of November, 1865, and the corresponding declaration was duly solemnized on the 19th of the ensuing December, without any allusion being made of the pretended loss that has given rise to Weil's claim.

The undersigned presents authenticated copies of the deed of partnership, and also of its dissolution.

On the 16th of September, 1863, Max. Levy granted a power of attorney to S. E. Loeb to act as agent in the execution of a contract made by said Levy and Benjamin Weil with the governor of the State of Louisiana, to import arms and ammunition and to export cotton, giving him the commission to ship to Mexico, or to any other foreign country

the cotton he would receive, and authorizing him to sign all the documents in the name of Levy and Weil.

The undersigned presents the original of this power of attorney.

Many of Weil's letters, already mentioned, and letters of the following persons: Max. Levy; Governors More and Allen, of Louisiana; Emory Clapp, agent of said State; Isaac Levy, J. C. Baldwin, of Alleyton; Bloch; Matt. Barrett, and, in a word, all the original correspondence relating to said contract and to all affairs of Weil is presented by the undersigned; and this correspondence shows that *not a single bale of cotton* belonging to Weil, or to Weil and Levy, or to Levy, Bloch & Co., *was ever seized on Mexican soil*, though a small amount of cotton was seized *on American territory by order of a Confederate general.*

On the 15th of September, 1864, Benjamin Weil filed a petition at Shreveport with General E. Kirby Smith, stating that on the 7th of January, 1863, he (Weil) had been appointed with his partner, Max. Levy, agents of the State of Louisiana for the exportation of cotton, and the purchasing of stores with the proceeds of its sales; that he, as such agent, bought *fifty bales* of cotton in Freestone, Texas, and paid its freight up to Brownsville at the rate of 11 cents per pound, and that, by order of General Bee, military commander of the Rio Grande, it had been seized at Brownsville, and *ten bales* retained, notwithstanding that he had shown the order authorizing the export of the cotton belonging to the State of Louisiana. Weil asked that he should be compensated of said ten bales of cotton by as many others, placed in Brownsville.

He also stated that on the 18th of November, 1863, S. E. Loeb had sent him from Alleyton, Texas, *eighty-three bales of cotton;* that the cotton was detained—on account of disease of the animals hauling the train—at a point 10 miles distant from San Antonio, and there Colonel Hutchins had seized half of the cotton. He asked that he should be compensated for said thirty-seven bales of cotton so seized. The undersigned also presents this original petition, with the report and decision passed on it.

The matter it refers to was the topic of several of Weil's letters dated in September, 1864, in which it is mentioned as *his most important*, if not his only business.

In a letter dated September 20, 1864, he said to S. E. Loeb he had heard that his partner, Jenny, was in trouble on account of a schooner, but that he (Weil) would not help him, as the other matter pending before General Smith was of more importance, since the governor had promised him that he should be compensated for the bales of cotton, the seizure of which constituted his claim, as soon as the cotton office of Texas should deliver to Louisiana a thousand bales belonging to this State. He also said that General Smith took some interest in his case, because he was very anxious to get him into Mexico.

There is not a single word in this letter, nor in any of the others written both before and after, relating to any cotton he expected by Piedras Negras, nor any other place on the Mexican territory.

Those letters prove, moreover, that from May to December, 1864, *Weil never was in Matamoros*, where some of his witnesses pretended that he resided, nor on the road from Alleyton to Matamoros; but that he was in Houston, Opelousas, Alexandria, and Shreveport, and not until the end of November in Brownsville. They also prove that Weil was far from being a merchant doing business on a large scale, as his witnesses pretend, since on May 18, 1864, he wrote to Mr. Loeb: "I am not able to send you any goods, as *the credit is dead* and *money I have none.*"

As to the authenticity of Weil's letters it is proved by respectable wit-

nesses, and should any doubt be cast upon them it could be dispelled by simply comparing the signatures of those letters with Weil's signature found in the file.

The statement of Benjamin Weil's transactions, which is mentioned above, reads as follows:

Statement of my proceedings since the fall of New Orleans.—In August, 1862, Governor Moore proposed to me to load the schooner Washington, then a prize and anchored at Lake Charles. I went to work, got the cotton and transportation, but before the cotton reached the lake the Yankees came with a fleet and destroyed the schooner partly. I had to give up this expedition; was naturally in for all expenses. I next took an interest in the schooner Lehman, which sailed from Lake Charles in March, 1863; the vessel landed in Tampico; the supercargo, after taking advances on the cotton, handed her over to another man whom he appointed supercargo on the Lehman, and himself went with the whole of cotton to England and never returned. The new supercargo, after taking in a cargo at the mouth of the Rio Grande, ran into Galveston and disposed of the cargo, and I have never been able to collect one dollar. About the same time I took an interest in the schooner Ceciliad. She also ran into Tampico, sold her cargo, invested the whole amount in medicines and cotton cards, but was unfortunately captured on her trip in, and sold in New Orleans as a prize. Loaded about the same time a small schooner in Permenton River, but up to date never heard spoken of—nobody knows what became of her. I started for Mexico, and as quick as there *invested all my ready cash in the schooner Star*, loaded her with ordnance stores, started her off with Mr. Levy, my partner, as supercargo. She made the trip safe in and out, but on her trip back she was chased by the Yankees, and Mr. Levy set her afire within a mile of Brazos; she was loaded with powder, shot, percussion caps, spades, axes, &c. We are interested in the schooners Hyer and Gibberson; both came in January last, loaded with ammunitions of war and ordnance stores, but up to this day have never been able to get out. After the schooner Star had left the port of Matamoros, I *remained expecting* 50 *bales of cotton, the proceeds of which I intended to use as traveling expenses to go to Europe.* My credit in Europe would have enabled me to purchase any amount of goods for the State of Louisiana. *These* 50 *bales of cotton were first seized,* 40 *afterwards released, and I obliged to sell at the low prices of the Matamoros market, say at* 17 *cents per pound,** so that after paying freight *I had nothing left worth speaking of.* Then I send to Mr. Loeb my [there is a spot of ink in this place, seemingly covering the words "*agent in*"] Houston for more cotton, who late in the fall started 87 *bales of cotton;* the winter being very hard, the cattle died on the road, while in the mean while *one colonel took one half of said cotton, and this expedition left me again in debt.* Last I got in with Mr. Jenny, encouraged him to jointly take in this stock, and you know the remainder. The schooner Delfina is still lying in Calcasieu River, and cannot tell whether she will get out. I submit this statement to your examination. It will prove you I have done all I could to forward the interest of the State.

Shreveport, La., October 18, 1864.

B. WEIL.

NEW ORLEANS, *August* 5, 1876.

I hereby certify that the foregoing is the handwriting and signature of B. Weil. I have seen him write and sign his name very often during the period to which this memorandum relates, say *from May,* 1862, as well as afterwards until May, 1865.

E. W. WALSEY,
Late private secretary to Gov. L. O. Moore, and to Gov. W. Allen.

Sworn to and subscribed before me, this 5th day of August, 1876.

TH. BUISSEN,
Notary Public.

The undersigned believes that this statement alone, of undoubtable authenticity, is enough to put in a clear light the fraudulency of the claim.

But he presents in addition a large number of letters from persons connected in business with Weil at the time, viz:

Seventeen letters of Isaac Levy, dated in 1864 and 1865, all on business, containing intelligence, instructions, &c., in regard to affairs in

* The award puts the cotton pretended to have been seized—when far distant from Matamoros—at 30 cents per pound.

Louisiana, Texas, and Mexico, *and no reference is ever made in them to any large amount of cotton* in Alleyton, nor to any loss by capture of cotton *by Mexican authorities.*

Letters of Matt. Barrett, dated at Eagle Lake, Tex., as to the hire of animals, &c. This place is not far distant from Alleyton.

Letters of J. C. Baldwin & Co., of Alleyton, Tex., the consignee and agents of Benjamin Weil in said place, written on different dates of 1864 and 1865. They contain accounts, acknowledgment of receipts of letters, &c.; they refer to the shipment of cotton; its current prices are quoted; the remittance of some goods is asked for, with urgency, &c., without making the slightest allusion to the 1,900 bales of cotton. In the letter of *January* 30, 1865, acknowledgment is made of one delivered by Geo. D. Hite, promising to help him in his undertaking; and this letter shows that *this was Hite's first visit to Alleyton.*

Letters of Max. Levy, of 1864, some dated at Houston, and others at Matamoros. In the former, dated in February, he speaks of vessels loaded with cotton, ready to sail. In his letter of July 31, dated in Matamoros, not a word is said about the 1,900 bales of cotton that ought to have been then on their way, as alleged in the claim. In the letters of 6th and 10th of October, Weil, Loeb, and Bloch are spoken of, and no mention is made of the capture of the cotton, which is alleged was made a few days before.

Letters of Joseph Bloch, of 1864 and 1865. In one bearing date of January 19, 1864, it is thought strange that Weil should be in Matamoros when he ought to be in Paris, and the query is propounded, "Is this the Paris to which he went?" In a letter dated February, 1864, the wish is expressed that Weil should leave Matamoros, where he was *doing nothing.* In another dated Shreveport, July 9, of the same year, Bloch says he saw Weil at that place, and speaking of cotton transactions, not the least reference is made to any load proceeding from Alleyton.

Letters of Gustave Jenny, of 1864 and 1865, dated at Galveston, Houston, Alleyton, Matamoros, and Navasota. In the letter dated Houston, December 24, 1864, and addressed to Loeb, Jenny says that *Geo. D. Hite would probably go into the employ of Weil and Jenny*, and that he *would reach Houston about the middle of January*, 1865.

The undersigned likewise presents sundry papers, receipts of loads of cotton and of other merchandise, which show all the transactions of the different partners of Benjamin Weil, and of the firm of which he was a member, and prove conclusively that *neither said firm nor Weil individually ever had any large amount of cotton*, and that he never found himself in a pecuniary condition that would enable him to make large purchases of this article. All the cotton he ever received—and that in small amounts—was shipped immediately. Not the slightest mention is made of the 1,900 bales of cotton proceeding from Alleyton nor that *a single bale was ever captured by Mexican authorities or forces.*

The documentary nature of these proofs; their authenticity—any doubt in regard to which can be dispelled by simply seeing them—and the circumstances that the Government of Mexico was unable to obtain and present them before Weil's claim was decided are, undoubtedly, sufficient reasons for admitting them now, and for constituting them a ground for revoking the decision passed.

A court of equity, as this commission is, cannot refuse to reconsider the case, when additional evidence—*newly discovered*—is presented to it, especially when it is of documentary character.

Besides the above-mentioned proofs of this kind, the undersigned presents the following:

Deposition of S. E. Loeb, given before Thomas Buisson, a notary in New Orleans. He gives the history of the partnership of which he was agent, and designates Benjamin Weil's partners; he speaks of their pecuniary condition, of the loads of cotton received, from whom, where they were sent to, &c. He specifies the date on which Geo. D. Hite entered the employ of Weil & Jenny; he says, Hite *was never in the employ of any of them at any time during the year* 1864; that the books, papers, &c., of the several firms of which Weil was a partner are in existence to-day and *have never been destroyed.* That *he never heard* of any capture of cotton by Mexican authorities or troops *until* late, *when Weil's claim was published in the newspapers*; that there never was 1,900 bales of cotton in Alleyton, Tex., belonging to Weil; that Hite was not Weil's purchasing agent; that the books and papers of the firms referred to must be in Opelousas, La., &c. He speaks of the small amount of cotton the partners had in *the spring and summer of* 1864, and mentions the places where deposited; that satisfactory accounts were given of all of said cotton, and he adds that Weil owned no other property outside of the partnership.

Deposition of S. Firnberg, authorized by the same notary as the above. He was a partner of the firm "Bloch, Firnberg & Co.," which was consolidated with that of "Isaac Levy & Co.," under the style of "Levy, Bloch & Co.," composed of Isaac Levy, Benjamin Weil, Matt. Levy, and Jacob Levy. None of these partners ever did make business transactions on their individual account. "*I have never heard*," he says, "*of any claim against the Government of Mexico, and well know that Weil's claim against that Government is fraudulent.* At the time of the origin of said claim I was Weil's partner, and was interested in all the transactions and in the profits and losses, and remained so until the dissolution of the partnership on the 19th of December, 1865. I had access to the books and papers. *The first time I ever heard of such a claim was through the public press.*"

Deposition of Louis Schreck, of August 5, 1876. He was a partner of Gustave Jenny, and knows Benjamin Weil. He says that Jenny & Co., furnished Weil with goods in order that he might carry his contract with the State of Lousiana into effect. "I helped him," he adds, "to deliver said goods to the agent of the State of Lousiana *in the summer of* 1864; I afterwards returned to Matamoros and was there at the latter part of said year. *I never heard that any cotton had been captured, and certainly would have heard of it had it been true, and had the cotton belonged to Weil.* Weil had no resources of his own. All he could manage were facilitated to him by C. F. Jenny, whose power of attorney I had. I recognize Gustave Jenny's letters that have been shown to me marked E. W. H. in red ink." He also recognizes Benjamin Weil's letters.

Deposition of R. F. Briton to the effect that Geo. D. Hite was in Government office in Shreveport *during all the year* 1864, without leaving that place, not even *for* 30 *days* consecutively.

Deposition of B. L. Breut. He says Hite was in Shreveport, and that in the spring of 1864 was captain of the steamboat "Countes," after which he served under the order of Governor Allen, and was employed in the office of the quartermaster of the State of Louisiana. "*I know he was in Shreveport*," he adds, "*during the months of August, September, and October*, 1864; that he there went in business in partnership with one James Parsons, who was under the immediate command of Colonel

Wise. I know J. M. Martin, a pilot on the Colorado River, and consider him unworthy of credit. I also knew T. B. Shackelford, a lieutenant in the Confederate army; he was a sort of a gambler. I do not know his whereabouts."

Deposition of F. W. Halsey, private secretary of governors P. S. Moore and U. W. Allen, from 1860 to 1865. He knew Weil and his partner Levy. He heard Weil had a contract with said governors. By the frequent conversations he had with Weil he heard that the capital was furnished by Gustave Jenny, or Jenny & Co. He never knew they ever had, at any time, more cotton than that furnished by said governors. It was very difficult to obtain a permit from the military authorities to export cotton. Permits were necessary for the transportation of cotton. Weil and Jenny did not receive cotton enough to reimburse themselves of the goods they had furnished, and *Weil brought forth a claim against the State of Louisiana for the balance, which was awarded in his favor.* "Although I had intimate relations with Weil during these transactions he never spoke to me of having lost any cotton *by way of capture on the Rio Grande*, or of exporting any other cotton than that which he received from Governor Allen or through him. *Had he suffered such a loss I certainly would have known it.*" He identifies the signatures in several letters of Weil, Jenny, and other, on which are marked in red ink the initials E. W. H.

Deposition of Jack Levy. He identifies the signatures of Isaac Levy, Max. Levy, and Benjamin Weil. He is Max. Levy's brother, and Isaac's cousin. He knew that said three individuals were partners in the firm of "Levy, Bloch & Co.," doing business in Mexico, Louisiana, and Texas during the war.

Deposition of L. G. Aldrich. He was a captain in the Confederate army and adjutant of the general stationed at Brownsville. He explains the manner in which cotton was exported, by what ports it was done, of the permits necessary to that effect, of the regulations established by the Mexican Government for the importation of cotton, &c. He says that prompt intelligence was given as to the acts of the Mexican authorities; that *amicable relations existed among the authorities of both sides of the river;* that *no report was ever made of any capture of cotton* and that *it was impossible that* 1,900 *bales of cotton should have been captured by the authorities of Mexico without the headquarters knowing it.*

Deposition of W. R. Boggs. He was a brigadier-general and chief of staff of General E. Kirby Smith, who was in command of the trans-Mississippi department. He was stationed at Shreveport in 1863, 1864, and 1865. He knew Geo. D. Hite, and knows that he was in Shreveport during the whole year of 1864, having seen him there from time to time. He never heard of any capture of cotton. "In my capacity," he says, "any capture of cotton would have been known to me."

Deposition of John C. Evins. He was before the war a custom-house officer of the United States, at Laredo, where he remained during all the war and up to 1869. He knows almost everybody that lives hundreds of miles up and down the river. He is thoroughly acquainted with the country. *There are no crossings for wagons from Laredo upwards towards Piedras Negras. Duties were always paid to the Mexican Government at the local custom-houses.*

The distance between Alleyton and Rio Grande is about 260 miles. There are *no ferries between Eagle Pass and Laredo.* "*I never heard,*" he says, "of *the capture of any cotton at any place of the Rio Grande; and none could have taken place without my knowing it.*"

The custom-house officers, on both sides of the river, were very vigi-

lant. *I don't believe that any train of* 1,900 *bales of cotton belonging to a single individual ever crossed from Texas into Mexico*, and I must add that *the capture of such a train, had it taken place on any point of the river, and especially in the neighborhood of Laredo, would have been brought into my notice.* The report of such a capture *would have circulated in Texas, and frightened all the traders.*

In September, 1864, the roads were *full of trains going and coming from Mexico.* The rivers are generally overflowing in June and July, and *I do not believe the Rio Grande is fordable in September;* it is only fordable at very few points during all the seasons of the year.

Deposition of John C. Ransom. He was a captain in the quartermaster department of the Confederate army, and was stationed at San Antonio, Tex., from *May* 1, 1864, *up to May* 1, 1865. He was constantly in close business connection with the contractors and other persons occupied in the transportation of cotton to the Rio Grande. *Never heard of Benjamin Weil. He does not believe it possible that the Mexican authorities could have seized* 1,900 *bales of cotton, without the fact coming into his knowledge.* Such a capture would have frightened the owners of cotton, and the persons employed in its transportation. In his opinion *there never was a train carrying* 1,900 *bales of cotton.* He speaks of the regulations for the exportation of cotton, permits required, &c.

The undersigned likewise presents the following document:

A letter of E. C. Belling, judge of the Federal district court of Louisiana, showing that Bloch & Brothers, last April or May, filed before said court a petition about their failure, which petition was contested because in the list of assets a claim of "Benjamin Weil *vs.* the Republic of Mexico," for cotton, was fraudulently omitted. The Bloch Brothers answered the charge through counsel, saying that when the lists were filed, within the last two years, they knew nothing of said claim. The court gave credence to the Bloch, and they were *reinstated.*

The Mexican Government presents, therefore, evidence, as clear as noon day-light, showing that the claim of Benjamin Weil is *the most scandalous fraud* ever committed before this Commission; because there is *not a single word of truth in the statement of the fact on which it is based.*

To refuse a revision of the case now when such proof exists would be to close the eyes voluntarily to evidence, and to sanction knowingly a fraud, outraging justice.

The undersigned appeals to the umpire's sentiments of justice, to his feelings as an honest man, to his sense of probity which has won for him a spotless reputation.

Can there be any reason in the world to award a premium on crime?

Must the poor Mexican treasury suffer an enormous burden to the benefit of infamous speculators, just to avoid correcting an involuntary error, when it is yet time to correct it?

No, it is not possible that such should be the proceeding of an honest judge, whose only rules of action are truth, justice, and equity.

ELEUTERIO AVILA.

Presented September 19, 1876.

No. 12.

Motion for rehearing in the claim of "La Abra Mining Company" vs. Mexico, No. 489.

[Translation by J. Carlos Mexia, Mexican secretary of the Commission.]

"LA ABRA" MINING COMPANY *vs.* MEXICO.

No. 489.

AWARD OF THE UMPIRE.

With reference to the case of "La Abra Silver Mining Company *vs.* Mexico," No. 489, the umpire is fully satisfied and cannot doubt that the company is entitled to be considered a corporation, or company *of citizens of the United States*, in accordance with the terms of the convention of July 4, 1868, *having been duly chartered in conformity with the laws of the State of New York.*

He is also of opinion that the enterprise upon which the claimants entered, of purchasing, denouncing, and working certain mines in the State of Durango, in Mexico, was a serious and honest business transaction on their part, and that there was nothing rash, deceitful, or fraudulent in it, but that it was engaged in with the sole intention of carrying out legitimate mining operations.

There is no doubt that the Mexican Government was very desirous of attracting foreigners to the Republic, and of inducing them to bring their capital into it and raising up industrial establishments of all kinds. With this view *it issued proclamations* encouraging the immigration of foreigners and promising them certain advantages and full protection. It cannot be denied that the claimants were justified in placing confidence in these promises. They complain, however, that the local authorities of the district in which their mines and works connected with them were situated did not fulfill the engagements entered into by their Government, but, on the contrary, behaved towards them in an unfriendly and hostile manner. The ground of their claim is that *these hostilities were carried to such an extent that they were finally compelled to abandon their mines and works* and to leave the Republic.

The evidence on the part of the claimants is, in the umpire's opinion, of great weight; the witnesses are for the most part *highly respectable, and men of intelligence;* and their testimony *bears the impress of truth.* Notwithstanding what is stated to the contrary by the witnesses produced by the defense, the umpire is constrained to believe that the local authorities at Tayoltita and San Dimas, far from affording to the claimants that protection and assistance which had been promised them by the Mexican Government, and to which they were entitled by treaty, not only showed themselves a spirit of bitter hostility to the company, but encouraged their countrymen who were employed by the claimants in similar behavior, and even frightened them into refusing to work for their American employers. The conduct of these authorities was such, and the *incessant annoyance* of and *interference* with the claimants was so vexatious and unjustifiable, that *the umpire is not surprised that they considered it useless to attempt to carry on their operations*, and that for this reason, as well as from the *well-grounded fear that their lives were in danger* they resolved to abandon the enterprise. These facts are not, in the umpire's opinion, at all refuted or even weakened by the evidence

submitted by the defense; on the contrary, he believes that the local authorities were determined to drive the claimants out of the country.

It appears that the superintendent of the mines took such steps as he could to obtain protection from these authorities, and, finding his efforts in vain, he appealed, *through a lawyer of high character, to the highest authorities in the State*, who declined to interfere in the matter. To suppose that when so determined a spirit of hostility on the part of the local authorities, one of whom was the jefe político, who wielded great power, and so much indifference by the State government were displayed towards the claimants, it would have been of any avail to appeal to the courts of justice, would be puerile. In short, the umpire *does not see what else*, in presence of such opposition to their efforts, *the claimants could do but abandon the enterprise.*

The umpire is of the opinion that the Mexican Government, which, *with a spirit of liberality which does it honor, encouraged all foreigners to bring their capital into the country*, is bound to compensate the claimants for the losses which they suffered through the misconduct of the local authorities. What the amount of this compensation should be, it is very difficult to decide. The umpire is of opinion that the claimants should be reimbursed *the amount of their expenditures* and also *the value of the ores extracted* which they were forced to abandon, with interest upon both these sums. *He cannot consent to make any award on account of prospective gains, nor on account of the so-called value of the mines. Mining is proverbially the most uncertain of undertakings; mines of the very best reputation and character suddenly come to an end, either from the exhaustion of the veins, or from flooding, or from some of the innumerable difficulties which cross the miner's path.* A certain interest upon the money invested is *a much surer compensation than prospective gains;* the latter are, in fact, the interest upon the sums invested; *they may be greater or less, or none at all, and there may even be great losses of capital.* To award both interest and prospective gains would be to award the same thing twice over. The *so-called* value of the mines must depend *upon the prospective gains.* It may be great, small, or *nothing*, and may be but *a mere snare to lead one on to utter ruin.* It is, in the opinion of the umpire, equally inadmissible that the Mexican Government can be called upon to pay a value, the amount of which, even approximately, it is impossible to decide. A moderate interest on the amount invested in the business, and upon the amount of the ores reduced and of those extracted and deposited at the reduction work, is a further compensation which, in the opinion of the umpire, that Government ought to pay.

The evidence of George C. Collins, with regard to the amount invested, is clear and straightforward. He states it to be—

From subscriptions and sales of stock	$235,000 00
Lent and advanced	64,291 06
Due for rent, expenses, salaries, law expenses	42,500 00
	341,791 06

Any so-called "forced loans" and contributions must have been paid out of this amount. To charge them, therefore, separately is to make the same charge twice over. The umpire takes occasion, however, here to observe that a forced contribution, exacted upon a train of goods the property of the company, in transit from a seaport, or elsewhere, to the mines, is not in the nature of a forced loan. The latter should be recovered by the proper authorities, at the headquarters of the company, and should be in the same proportion as that imposed upon all the inhabitants of the country. The former is an arbitrary exaction, which is

frequently much more prejudicial than the actual money loss, on account of the detention and abstraction of goods without which the mining operations cannot proceed.

To the above-mentioned amount of $341,791.06 should be added $17,000, which *is shown* to have been the amount derived from reduced ores.

The umpire is satisfied, from the *respectable evidence* produced, that a large quantity of *valuable* ore had been extracted from the mines and deposited at the company's mill, and that it was there when the superintendent was compelled, by the conduct of the local authorities, to abandon the mines and cease working them. But the umpire is of opinion that *there is not sufficient proof, nor indeed such proof as might have been produced*, that the number of tons stated by the various witnesses were actually at the mill, or at the mines, at the time of the abandonment. *In so well regulated a business*, as the umpire believes that it really was, he cannot doubt that *books would have been kept in which the daily extraction of ores would have been regularly noted down* and that *periodical reports would have been made to the company at New York. Neither books nor reports have been produced, nor has any reason been given for their non-production.* The idea formed even by persons intelligent in the matter of the quantity of a mass of ore *must necessarily be vague and uncertain, and that of its average value still more so. Still*, the umpire is strongly of opinion that the claimants *are entitled to an award upon this portion of the claim.* He will put it at $100,000. It is *possible* that it is much less than the *real value* of the ores; but in *the absence of sufficient documentary proof*, and considering the fact that the expenses of reduction are great and sometimes even *much greater than is anticipated*, he does not think that he would be justified in making *a higher award.* Neither should interest be allowed on this amount *so soon* as on the others; for the reduction of the ores would have taken time, say a year. *It is not shown that the company had received any dividends before the period of the forced abandonment of the mines*, about March 20, 1868. Neither ought interest to be awarded *before that date.*

The umpire, therefore, awards that there be paid by the Mexican Government, on account of the above-mentioned claim, the sum of *three hundred and fifty-eight thousand seven hundred and ninety-one Mexican gold dollars and six cents* ($358,791.06), with an annual interest of 6 per cent. from March 20,1868, to the date of the final award, and *further the sum of one hundred thousand Mexican gold dollars* ($100,000), with the same interest from March 20, 1869, to the said date of the final award.*

EDW. THORNTON.

WASHINGTON, *December* 27, 1875.

Motion of the Agent of Mexico for a Rehearing.

A. D. No. 489.

MOTION OF THE AGENT OF MEXICO FOR A REHEARING.

The Government of Mexico has been condemned to pay the enormous sum of $683,041.31, capital and interest, to a company established in New York, because that company alleges that it had to stop working

*The interest amounted to the sum of $224,250.26 up to the 31st of July, 1876, which date was designated by the umpire as that of the final award, and consequently the whole sum awarded to the claimants was $683,041.32.

some rich mines on account of the hostilities of the Mexican authorities.

The foundation or grounds of such an important decision are the following:

I.

RIGHT OF CLAIMANTS TO BE COMPENSATED.

A. That the claimant must be considered as an American company, according to the convention of July 4, 1868, because it was chartered in conformity with the laws of the State of New York.

B. That the enterprise of said company to purchase, denounce, and work certain mines in the State of Durango, Mexico, was a formal and honest business transaction on their part, and there was nothing rash, deceitful, or fraudulent in it, but that the company undertook it with the sole intention of carrying out legitimate mining operations.

C. That there can be no doubt that the Mexican Government was very desirous of attracting foreigners to the Republic and of inducing them to bring their capitals and raising up industrial establishments of all kinds, to which effect it issued proclamations encouraging the immigration of foreigners, promising them certain advantages and full protection; and that it cannot be denied that the claimants were justified in placing confidence in such promises.

D. That claimants complain that the local authorities of the district where those mines were situated did not fulfill the engagements entered into by their Government; but, on the contrary, they behaved towards them in a very unfriendly and hostile manner, the ground of this claim being that the hostilities were carried to such an extent that claimants were obliged to abandon their mines and leave the Republic.

E. That claimant's evidence is of great weight, the majority of their witnesses being men of respectability and intelligence, and that their testimonies bear the impress of truth.

F. That notwithstanding the affirmations of the witnesses of the defense, we must believe that the authorities of Tayoltita and San Dimas, far from affording claimants the protection and assistance promised to them by the Mexican Government, and to which they were entitled by treaty, not only did show a spirit of bitter hostility to the company, but encouraged some Mexicans employed by claimants in similar behavior, and even frightened them into refusing to work for the Americans who had employed them.

G. That the conduct of those authorities was such, and the incessant annoyance of and interference with the claimants was so vexatious and unjustifiable, that it is not surprising that they should consider useless to attempt to carry on their operations, and that for this reason, as well as from the well founded fear that their lives were in danger, they resolved to abandon their enterprise.

H. That these facts have not been refuted nor even weakened by the defensive evidence, and the umpire does believe that the local authorities were determined to drive the claimants out of the country.

I. That the superintendent of the mines took such steps as he could to obtain protection from said authorities, and finding vain all his efforts, appealed through a lawyer of high character to the highest authorities of the state, who declined to interfere in the matter.

J. That there being such a decided spirit of hostility on the part of the local authorities, one of whom was the *jefe político* who wielded great power, and so much indifference displayed by the state govern-

ment towards the claimants, it would be puerile to suppose they could have found any remedy by applying to the courts of justice; and that, in short, the umpire does not see what else could have been done than to abandon the mines and enterprise.

K. That the Mexican Government, which, with a spirit of liberality which does it honor, encouraged foreigners to bring their capitals into the country, is bound to compensate the claimants for the losses which they suffered through the misconduct of the local authorities.

II.

AMOUNT OF COMPENSATION.

L. That claimants must be reimbursed the amount of their expenses, and the value of the ores they had already extracted and they were obliged to abandon; and interest on both these sums.

L, *bis.* That nothing can be granted to them in the shape of prospective gains, nor for the so-called value of the mines; as the working of mines is proverbially one of the most uncertain of undertakings, for even those of the very best reputation suddenly come to an end, either because the veins are exhausted, or from flooding, or from some other of the innumerable difficulties which cross the miner's path.

That the pretended value of the mines must depend on the magnitude of prospective gains, these being greater, smaller, or none at all, and even change into a snare, leading to ruin.

M. That a certain interest on the money invested is a safer compensation than prospective gains, they being really an interest on the capital employed, that may be larger, or smaller, or none whatever; as the capital itself is subject to great losses.

N. That to grant, at the same time, both interest and prospective gains, would be to grant the same thing twice.

N, *bis.* That it is inadmissible that the Government of Mexico should pay a sum, the real amount of which is impossible to determine, even approximately.

O. That besides the interest on the capital invested in the enterprise, the Government must also pay it on the value of the ores reduced, and on those extracted and deposited for reduction.

P. That the evidence of George C. Collins with regard to the amount invested is straightforward, and, according to it, said amount consisted in the following:

From subscriptions and sale of shares	$235,000 00
From loans and advances	64,291 06
Due for rents, salaries, and law expenses	42,500 00
	341,791 06

Q. That whatever forced loans and taxes the company may have paid must have been paid out of this amount, and to charge them, therefore, separately would be to make the same charge twice.

R. That the contribution exacted upon a train of goods of the company, in transit from a seaport or some other place to the mines, cannot be considered in the nature of a forced loan. In order to consider it so, it would have been necessary that it should have been imposed by competent authorities at the headquarters of the company, and in the same proportion as that imposed upon the rest of the inhabitants of the country. That contribution must be considered as an arbitrary exaction, that produced more injury than the actual loss of money, on account of

the detention of the goods, without which the company could not continue working the mines.

S. That to said sum must be added $17,000, amount *shown* of reduced ores.

T. That the proof produced is satisfactory as to a large amount of valuable ores had been extracted from the mines and deposited in the company's mill, and that it was there when the superintendent was compelled, by the acts of the local authorities, to abandon the mines and cease their work.

U. That the proofs that the number of tons designated by several witnesses were actually at the mill or mines at the time of their abandonment are insufficient.

V. That in such a well regulated negotiation as the umpire believes this to be, it cannot be doubted that books were kept in which the daily extraction of ores was regularly annotated, and that notice of the same was periodically sent to the company in New York; and, nevertheless, neither the books nor such notice have been presented, nor even an excuse for not presenting them has been alleged.

W. That the estimate made, even by intelligent persons, about the amount of ore contained in a large mass, must necessarily be vague and uncertain, and even more so as to the average value of said ore.

X. That still claimants are entitled to be compensated for the value of their ores, which will be fixed in $100,000, though it is possible that this sum be less than the true value; but in default of documentary evidence, and taking into consideration that the reducing expenses are considerable, sometimes greater than their estimate, it would not be justifiable to grant a larger sum.

Y. That the interest granted on this amount should not be computed from the same date of the others, because the reduction of the ores requires some time, say about one year.

Z. That it has not been shown that the company received any dividends prior to the time of the forced abandonment of the mines, the 20th of March, 1868, and, therefore, no interest should be granted before that date.

The undersigned will now proceed to make his remarks in regard to these grounds, with all due respect to the umpire, and animated by the desire not to wound his susceptibility; still he must, by way of introduction, request the umpire to bear in mind whilst perusing this motion that the undersigned can only accomplish his object by using that ample liberty granted to the defense in all courts; and that in case he condescends to revise, he should not consider the decision as his own work, but rather as if written by an utter stranger; for thus only will he be able to rectify its grounds in an independent and unbiased manner, and to render a sure judgment in an affair that sooner or later must receive great publicity and be the object of commentaries.

I.

A.

The company has been considered as a citizen of the United States, because it was chartered according to the laws of the State of New York.

Does this meet the intent of the convention of July 14, 1868?

The undersigned sustains the negative, for the following reasons:

1. Because the law of the State of New York of February 17, 1848, by virtue of which the company was chartered, could only give it a

legal capacity to sue and be sued before the courts of the same State, but could not invest it with any rights in, or in regard to a foreign country.

2. It is not even a well-established fact whether the privileges granted to a company by virtue of the law of one of the States can have effect in all the States of the American Union.

3. No nation is bound to recognize a company intending to do business in its own territory as invested with the citizenship of another, by virtue of an authorization emanating from a foreign State, and, even less, when such a State has not, by itself, international powers.

The first of these reasons needs no amplification. It is enough to see the text of the law just quoted, to feel convinced that its effects are restricted to the State of New York.

We put the case even stronger, and say that it is not even necessary to see said text, because it is a well-known principle of public law that no State—especially when its sovereignty is restricted by a Federal compact—can extend its authorizations beyond its own territory.

The second reason is based on the following decisions of the Federal courts of the United States:

A controversy arose early, and was continued with great earnestness and with varying fortunes through many years, touching the capacity of corporations aggregate to sue and be sued in the courts of the United States. The question was, whether it was necessary to ascertain who were the persons composing these bodies and to show that each one of them, individually, possessed the requisite character. It was so decided in the "Hope Insurance Company *vs.* Boardmen," and the "Bank of the United States *vs.* Devan" (5 Cranch, 57, 61); and the decisions in these cases were followed—though, as we learn from a subsequent case, with great reluctance—in the "Commercial Bank of Vicksburg *vs.* Slocum" (14 Peters, 60). *The decision was that a corporation could not, in its corporate capacity, be a citizen, and could not, therefore, litigate in the courts of the United States, except in consequence of the citizenship of the individual members composing it.* Each of the corporators must be a person capable of suing where the corporation was plaintiff, and of being sued where it was defendant, and, it appearing that some of them were citizens of the same State with the plaintiff, it was held that the circuit court had no jurisdiction.

But in the case of Louisville, Cincinnati and Charleston Railroad Company *vs.* Lettson (2 Howard, 497) the Supreme Court saw fit to subject this doctrine to a severe and searching re-examination; and upon mature deliberation declared its unanimous dissent from the narrow and inconvenient rule laid in the antecedent cases, and holding *that a corporation created by, and doing business in a particular State, is to be deemed, to all intents and purposes, as a person, although an artificial person, capable of being treated as a citizen of that State as well as a natural person,* and that as such it may, in strict conformity with the language of the section of the judiciary act, sue and be sued by a citizen of another State, *without regard to the citizenship of the persons of whom it is composed.* It matters not, therefore, in a suit against a corporation, if some of the corporators are citizens of the same State with the plaintiff, *provided he is a citizen of another State* than that in which the corporation is established, and where the suit must be prosecuted.

The doctrine of this case is firmly established. It was fully discussed, re-examined, and affirmed in Marshall *vs.* The Baltimore and Ohio R. R. (16 Howard, 314), and applied in the Lafayette Insurance Company *vs.* French (18 Howard, 404), in the Covington Drawbridge Company *vs.* Sheperd (20 Howard, 225), and in the Ohio and Mississippi R. R. Company *vs.* Wheeler (1 Black, 226). In the two last cases the Chief Justice, in pronouncing the judgment of the court, reviewed the antecedent cases, and reasserted the rule laid down in Lettson's case, as he did also the decision of the court in the prior case of the Bank of Augusta *vs.* Earle (13 Peters, 512), *in which it was held that a corporate body can have no existence beyond the limits of the State or sovereignty which invests it with its faculties and powers. It must dwell in the place of its creation.*

It is therefore plain that there has been several decisions declaring that a corporation cannot be considered in the enjoyment of the privileges of citizenship of the United States unless all its members are entitled to it and *within the limits* of the sovereignty which invested it with its faculties.

But the most essential point is whether the simple fact of a company

being organized according to the law of one of the United States makes it binding on all the nations of the world to consider it as a citizen of the United States within their own territory even when no compact exists on this subject.

International law recognizes no other persons than the representatives of the nations and their citizens or subjects individually considered.

Nobody is ever considered as a citizen or subject of a nation simply because he is connected in interest or otherwise with persons who are such: it is necessary that he individually should bear that character, and hence his rights to the protection of alien sovereignties.

We can assign for this, among other reasons, that it is more difficult to recognize an individual by the relations he bears with a private corporation than by his direct relations with the country he belongs to; and if on account of this nationality he is to enjoy certain rights in foreign countries the means of proving it should be easy and unquestionable.

Now, a nation cannot be compelled to ascertain what requisites are established in any fraction of every other country for the organization of private corporations, and whether, in a given case, said corporations have fully complied with such requisites. It can, therefore, only be called upon to recognize as citizens or subjects of a state those who are such, according to its fundamental law, or its general laws, unless some other course is explicitly stipulated by a treaty.

And as between Mexico and the United States there has been no special stipulation making it binding to recognize as citizens private corporations organized according to the local laws, the Government of Mexico cannot be required to recognize and treat a corporation as a citizen of the United States, simply because this corporation was organized according to a law of the State of New York.

It cannot be considered as a citizen of the United States so far as the effects of the convention of July 4, 1868, are concerned, even admitting that it had an unquestionable right to be so considered in the municipal courts of the United States, because the convention, when speaking of corporations and companies, could not have meant those who only enjoyed *some* of the privileges of citizenship *within* the United States, but referred to those only who enjoyed all of them *in conformity with international law, or with the treaties celebrated with Mexico;* and according to neither one of these causes can said company be considered as a citizen of the United States.

The Constitution of the United States has laid down the rule that the Federal Congress alone can legislate in matters of citizenship, and it is, h erefore, illegal to consider the claiming company as invested with it, on the sole ground of a law of the State of New York.

In Mexico, and in all countries of the world, said law can produce no effect whatever; and in order that this company might be considered as an American citizen there, it ought to have been organized according to the laws of Mexico, and only then could any of its collective rights be enforced to sue and be sued.

Without this essential requisite, the company has no existence either for the Government of Mexico or this Commission, and the individuals who constitute or did constitute it can only be considered as private individuals; it being, therefore, a duty incumbent on them to state and prove their nationality, according to the order of the Commission of January 21, 1870.*

* The umpire, dismissing the claim No. 996 of the San Marcial Mining Company, said "There is no proof whatever that the persons who constituted the company and who are the claimants were citizens of the United States."

In the present case, therefore, as in the cases of Jennings, Laughland & Co., No. 374; Rudolph Brach, No. 462; Hayward & McGroarty, No. 414, and in all other of companies organized in Mexico no other claims can be set forth than those belonging to such members of the company as are citizens of the United States, and, evidently, there were less reasons to recognize as a citizen of the United States in regard to Mexico one company, simply because it was organized and established in New York, than another composed mostly of American citizens, and organized and established in Mexico.

Before closing this matter, we must remark that not one of the individuals who appear as directors or stockholders of this company has obeyed said order of January 1, 1870, the terms of which are absolute and without any exception, and which fulfillment is very easy indeed, as the Commission has repeatedly declared.

There is certainly more reason to consider as a Mexican citizen an individual whose name appears on the registry of the national guard—an institution to which only Mexican citizens can belong—than to consider as American citizens every shareholder of a company, in which any person can be such; and, still, sundry Mexican claims have been dismissed for want of proof of citizenship, notwithstanding that it appeared on record that the parties interested were inscribed in said registry.

Finally, what proof is there that all and every one of recipients of the indemnification granted in this case are American citizens? None whatever.

How must we reconcile that this circumstance should have been overlooked in the present case, when in several others against Mexico, in which small awards were granted, it was made a proviso that those who were to receive such awards should prove their American citizenship?

In deciding the case, No. 232, of Herman F. Wulff, it was said: "An award can only be made on condition that the recipient of the award shall be a citizen of the United States," and in the case of Robert M. Couch, No. 234: "The umpire presumes, however, that care *will be taken* not to pay awards to persons who are not entitled to receive them."

We have cited these decisions only because they consign the necessity that the recipients of awards should show that they really are entitled to the citizenship they claim, but as to their additionl form, containing provisos to be fufilled in the future, they certainly constitute an irregularity in a tribunal called to decide whether or not the party interested in a claim has shown to be entitled to have said claim adjudicated.

The least that can be said of that conditional form, used only in a few cases, is that it constitutes an irritating privilege.

In so many cases dismissed for want of proof of citizenship, why was not an opportunity given to claimants to amend this deficiency, especially when, in some of them, there were good reasons to believe that it was only the result of mere carelessness?

Since according to international law this company had a *legal existence* only in the State of New York, or in the States of the American Union, at best, it cannot be considered as a citizen of the United States in regard to Mexico and before this Commission; and since the parties interested in the case have not proved their citizenship individually, it must be disallowed *in toto*.

B.

NATURE OF THE ENTERPRISE UNDERTAKEN BY THE COMPANY IN MEXICO.

The business of this company, organized in New York in November, 1865, to buy, denounce, and work certain mines in the State of Durango, Mexico, is considered to be "serious and honest," and it is declared that nothing in it was rash, deceitful, or fraudulent, but that it was undertaken with the sole intent of carrying into effect *legitimate mining speculations.*

In the first place, whatever might have been this company's purpose in organizing itself in New York, the fact is that it never denounced or bought any mines at all in Durango. The denounce of some mines and the purchase of others was *individually* made by Thomas J. Bartholow and D. Garth, who afterwards sold their rights to the company, beyond the limits of the Mexican Republic, in New York. (See Papers Nos. 10, 11, and 14.)

It has not even been alleged that the company did ever make known in the district where the mines were situated their title to the ownership of such mines, by presenting it to some functionary invested with public faith. In that district, therefore, and in all Mexico, the company was not the legal owner of those mines, and they continued to belong to the persons who had denounced and purchased them, whatever might have been their transactions with the company, celebrated afterwards in the city of New York.

Whether the business was a serious and honest one in regard to Bartholow and Garth, it is, at least, a questionable point, if we recall all the circumstances of the case; but we will return to these afterwards. It will now suffice to investigate whether on the part of the company there was anything rash, or any want of prudence to undertake the speculation in the mines sold by Bartholow and Garth, or an excessive confidence placed in the intelligence and rectitude of these individuals.

We must always keep in mind the condition of that part of the country where such a speculation was to be undertaken.

In regard to this point the undersigned will only cite some of the many decisions of this Commission when the matter was at stake.

In the decision of the "Arco Mining Co.," No. 937, for damages suffered in 1865, we read: "*The umpire does not doubt that the company was subject to great losses, but they were due to the unfortunate state of war which prevailed.*"

In the case of "D. O. Shattuck *et al.*," No. 600: "The umpire is not surprised that the claimants deemed expedient, *considering the state of war which existed in the country*, to abandon their farm."

In the case of Aaron Brooks, No. 898, the first umpire of the Commission, referring to the time of the French intervention in Mexico, expressed himself in these words: "*It was an ill time* to begin cotton planting."

How, then, could an enterprise undertaken at that time in the State of Durango, invaded as it was by the enemies of Mexico, be considered as prudent and discreet?

Could it be less dangerous to begin cotton planting than to undertake a mining speculation under the same circumstances?

We find the answer in the decision of this very case: "Mining," it is there said, "is proverbially the most uncertain of all undertakings—innumerable difficulties cross the miner's path."

This being so, how could it be said that there was nothing imprudent or rash in undertaking an uncertain mining speculation at a place the scene then of war, which of itself brings innumerable difficulties to all kinds of enterprises?

But worse even. George C. Collins, the president of the company, declared:

Before organizing the company, Thomas Bartholow and David T. Garth, in their own behalf and in the behalf of other parties, afterwards members of it, went to Mexico to examine and buy the mines; but the company *never sent out a commissioner*. These individuals did not give false information in regard to the mines, &c.

That means that the company relied entirely on the information of Bartholow and Garth, and on their intelligence and veracity. Is there any reason to take these individuals as infallible, as it is necessary they should be, if there is nothing indiscreet in undertaking a doubtful speculation on their simple information?

Had the company sent out a scientific commission to examine the mines thoroughly and extend afterwards a minute report of the result of their examination, describing all the circumstances of the mines, their present condition, and the difficulties that necessarily had to be overcome to make them productive; if, in view of such a report, and in consequence of its being favorable, the company had undertaken the speculation, and if such a report had been properly presented to this Commission, with a view of impressing on its mind the bright prospect of the enterprise, then, and only then, could the opinion be expressed, with some shadow of reason, that it had been undertaken not without rashness, as has been said—because such a thing can never be affirmed of mining operations, even when they might have constituted a good business previously—but apparently under favorable conditions.

"Mines of the best reputation and character," says the decision in this very case, "suddenly come to an end, either from the exhaustion of the veins or from flooding, &c."

If this is true in regard to all mines, what must we say of these, when Juan Castillo del Valle sold them to Bartholow and Garth "on account of the insecurity of those deserted places distant from the superior authorities of the State, a cause which had produced, some time before, the death of the vendor's brother and the abandonment of their work." (See Castillo's second affidavit, paper No. 47.)

But of all the notions we have proposed to analyze in this section, the least correct is that asserting that the working of the mines in Mexico by a company established in New York was a *legitimate* business, that is, a business authorized by law.

It cannot be supposed that there was a pretension to judge of its legitimacy in view of a law of the State of New York; it would be preposterous to pretend that the legislative power of that State could reach Mexico, so that its laws would be efficacious and obligatory there.

It certainly could never occur to anybody that because a company had been organized according to a law of the State of New York to purchase lands on the Mexican frontier, the purchase, if made, was legitimate, even though forbidden, as it is, by the laws of Mexico.

No law of the State of New York, nor even of the Congress of the United States, could render an act *legitimate in Mexico*, when said act is not so according to the Mexican law.

Such a law could only produce the effect of rendering obligatory in the State of New York the contracts celebrated there, whatever might be their object in view beyond the limits of the State. Suppose, for instance, that Bartholow should attempt to deny in New York the per-

sonality of the company in regard to the contract he made with them, then the company could enforce the State law; but if this same company, in order to prove in Mexico the legitimacy of the mines, should plead the State law before any Mexican court, why, it would deserve to be punished for its disrespect to the national sovereignty.

That the granting to foreigners of the right to acquire real estate is the sole and exclusive attribute of the sovereignty of a country is a point that needs no demonstration. In some States of this country the acquisition of such property by foreigners is not legitimate. Perhaps it is not legitimate in New York, and if so, could it be legitimate throughout the Republic of Mexico *by virtue of a law of said State?*

Now, can any law of Mexico allowing a company established abroad to acquire mines in said country be cited? Certainly not, because in all the provisions granting to foreigners the permission to acquire real estate it has always been made a proviso that they should reside within the national territory; so much so, that by the very fact of being absent two years they forfeit the right to preserve the property acquired. This, however, is not escheated, as perhaps is the case in some of the States of the American Union in regard to real estate of foreigners who die, but it is sold, and its product is delivered over to the owners, who lose all rights to be considered as such afterwards.

Article 1 of the law of February 1, 1856, reads:

All foreigners *established and residing* in the Republic may acquire and possess real estate, both in the cities and the country, *including mines* of all kinds of metals and coal, be it by purchase, adjudication, &c.

The same provision is contained in Articles 1 and 2 of the law of March 14, 1842. Article 8 of this law, which has not been abrogated, says:

Should the foreigner, owner of real estate, be absent with his family from the Republic for over two years witout obtaining permission from the Government, or should the property be transmitted, by inheritance or otherwise, to a *non-resident of the Republic*, said foreigner shall be compelled to sell it within two years counted from the day of the absence or of the transfer of property, as the case may be. Should he not comply, the property will be officially sold, with all the formalities of law, and of the proceeds of the sale one-tenth will be applied to the denouncer and the remaining nine-tenths shall be placed in safe deposit, subject to the call of the owner. *The same proceeding will be followed whenever it shall be proved that the owner of the estate resides abroad*, and that the person claiming to be the owner is only such in trust of the absentee.

It follows, from what has been said in this section, that this company did not acquire in Mexico the ownership of the mines for the speculation of which it was formed, but only Bartholow and Garth individually acquired it; nor could it acquire legitimately, since it was residing abroad; and, moreover, that it has not proved the favorable prospect of its enterprise, which can never be called safe under any circumstances, much less under the peculiar ones of the country where the enterprise was to be established.

C.

OFFERS OF PROTECTION MADE BY THE MEXICAN GOVERNMENT TO FOREIGNERS WHO WOULD ESTABLISH INDUSTRIES OF ANY KIND IN THE COUNTRY.

Parties interested in this claim have said so much about proclamations inviting foreigners to immigrate to Mexico, that though they present none of those proclamations, and do not even cite their dates with any precision, people have come to believe not only in their simple existence,

but that the Government assumed to grant special protection and immunities *to all industry undertaken with foreign capital.*

And still, though the Mexican Government very sincerely desired to see laborious foreigners starting useful industries in the country, *not a single document can be shown or cited* emanating from that Government in which any promises were ever made to foreigners residing abroad different from those made to resident foreigners.

As to immunities, they have only occasionally been offered to immigrants dedicated to agriculture.

The undersigned entertains some doubts as to the utility to be derived by his country from giving guarantees to all foreign capitals sent there from abroad, with a view of establishing industries with more or less grades of intelligence and discreetness; but should it be useful, it might, perhaps, be charged to the Mexican Government that they did not comprehend their true interests, but never that they had not fulfilled their promises, *as they have never made promises to protect foreigners residing abroad.*

Bartholow and Exall, therefore, and all the other foreigners who managed the interests of the company, might claim *for themselves* that protection offered to foreigners residing in the country; but the company itself, established beyond the limits of the Mexican territory, could claim nothing, absolutely nothing, from Mexico, much less on the ground of promises *that have never been made by the Mexican Government.*

D.

ALLEGED CAUSE OF THE CLAIM.

It is generally said that the authorities of the district where the mines of the company were situated did not fulfill the engagements contracted by their Government, but acted in hostility towards the company.

When a burden of paying over three millions of dollars is pretended to be imposed on a nation, if it is material at all to show that justice, equity, and the principles of public law so demand it, the charges brought forth against the authorities, whose responsibility is to be enforced, ought to be made with all due precision.

What were those hostilities so vaguely mentioned?

It seems that reference is here made to the complaint of the company; "the complaint," it is said, "that the local authorities," &c.

Let us see, then, what were the complaints made in the memorial of the claim.

> These [the authorities] always maintained an intense and constant prejudice against the Americans, participating in it not only the civil and military authorities, but also the populace of Mexico, directing their ill-will especially against those who were dedicated in working the mines, and consequently against the company they represented.
>
> This prejudice was still exasperated by the belief that the United States intended to annex the States of Durango, Sinaloa, and others; and it was commonly said and repeated by everybody that this company had been established and was working to obtain that object. The company's property and the lives of its employés were threatened by the authorities and the people. The superintendent of the company was arrested without cause, and without having committed any crime or fault; and without submitting him to trial, nor allowing him to make his defense, he was kept in prison and fined; and when said superintendent applied to the civil and military authorities of Durango and Sinaloa for protection, his endeavors were rejected with asperity.
>
> Some acts of violence were also committed against the effects and property of the company and against its employés, counting on the support and stimulated by the acts of the authorities, and the employés of the company were thereby so much alarmed that it became impossible to keep them at their work. The authorities frequently

seized the mule trains of the company, loaded with provisions, and appropriated to their private benefit said animals and provisions. They likewise despoiled the company of a large amount of ores extracted from the mines, and to that effect they threatened the employés who resisted such a spoliation. Matters came finally to such a strait that one of the company's employés, in charge of the mule trains, was publicly assassinated by the Liberal troops, and the animals and load captured, and this act was the object of the praise and eulogy of the Mexican officers. The authorities of San Dimas entertained the manifest purpose of driving the company and all the Americans from the place, and to take their property.

The memorialist adds that one of the determining motives of said persecution was to compel the company to leave the country, and to allow the Mexicans to acquire the valuable property of the company. And in consequence of these persecutions, annoyances, outrages, and insecurity, it became impossible for the company to work the mines, and no other course was left to it but to abandon said mines, as heretofore explained.

The causes therefore alleged by claimants were the following:

1st. Prejudice or ill-will of the authorities against Americans in general and against the company in particular.

2d. Threats against the company's property, and against the lives of the employés.

3d. False imprisonment of the superintendent.

4th. Harsh rejection of the application for relief to the superintendent by the superior authorities of Durango and Sinaloa when he occurred to them for protection.

5th. Acts of violence against the company's property and its employés, supported and stimulated by the authorities.

6th. Frequent seizures by the authorities of the mule trains of the company, loaded with provisions.

7th. Spoliation of the company's ores in large amounts.

8th. The assassination of an employé of the company by the Liberal troops; their name is not mentioned nor any detail given.

9th. Manifest design of the authorities to expel the company from the country.

It is seen that *not one* of these causes was specified in the memorial with that precision necessary in a claim.

Neither this Commission nor any other municipal court can pass judgment on mere intentions or acts of the will, and they can only do it when facts are stated. If the persons invested with public authority in the district of San Dimas, actuated by fears more or less founded that the agents of the company were conspiring against the integrity of the Mexican territory, did not sympathize with them, this circumstance cannot constitute of itself a good ground for a trial, so long as that want of sympathy did not pass into acts.

To fine a nation because its citizens harbored some fear that some individuals of another country, having already grabbed from it one-half of its territory, and entertaining, as nobody can deny, ambitious aspirations to increase its own to the detriment of its neighbors, would be the greatest injustice.

It is certainly to be desired that between Mexicans and Americans the greatest harmony should exist; but whilst said aspirations are not only maintained but are openly shown, it cannot be expected that the threatened shall love and sympathize with the threateners, and among the masses of the people, at least, who have no means of discriminating between such aspirations and the prevailing spirit of the thinking men of this country, but have only had a chance to come in contact with the adventurers who have left it for the Mexican States of the frontier and the Pacific coast, there to promote annexation, either by filibusterism

or under cover of immigration, or of mining speculation, the ill-will they profess to all Americans, whom they see undertaking more or less deceitful schemes, cannot be even matter of censure.

The charges of threats on the part of the authorities, acts of violence directed or stimulated by them, seizure of trains, assassination of one of the company's employés, and the purpose of expelling its agents from the country, made in a vague manner, without any precision as to dates, and without stating minutely the facts, are as deficient as the general imputations of hostilities, and of false imprisonment of the superintendent of the company, neglecting to give his name or any other data that could enable us to determine the event, and cannot be esteemed a sufficient ground on which to base a claim.

The American Commissioner, of whom nothing could be said with less foundation than that he carried his exigencies too far when parties interested in claims *against* Mexico were involved, in delivering his opinion in the case of the "Arco Minco Mining Company," No. 937, and alluding to the requirements to be fulfilled in presenting claims before this Commission, said:

> *The least* claimant should have done was to have stated *in the memorial* what taxes and forced loans were levied, on whom, and at what date, and what quantity and description of property, and the value thereof. This information we were entitled to have *in the printed statement of the case.*

Had he acted in this case consistently with his theory, he would not have taken the claim of the Abra Company into consideration, because it is still more vague and indefinite than the Arco claim, in which, at least, it was stated that a body of Mexican troops camped near the mines and carried from them powder, implements, &c. This is certainly more definite than the seizures of trains with provisions, without stating when and where they were made, and yet the Commissioner deemed that inculpation to be an "*indefinite charge*," and refused to take it into consideration.

But the absolute want of precision is not the greatest defect in this case; it has still a greater one, to which no attention whatever has been paid, viz, the time when it was originally initiated.

The undersigned does not propose to examine this point under its legal aspect, but simply on the ground of common sense. Leaving aside that the claim was not presented within the term specified by the Convention, and that when it was presented it did not even appear in the vague shape we now find it in the memorial, but in that of a simple notice given in a letter dated March 18, 1870, the undersigned calls the attention of all impartial readers of this argument to the singular fact of a company—an American company at that, who, compelled to abandon a brilliant speculation when there were millions in it—*should abstain absolutely during two years from taking any step towards getting the indemnification to which it now pretends to be entitled.*

How did this company abandon the speculation?

George C. Collins, its president ever since October 23, 1866, has testified that "he had no knowledge of the circumstances causing the abandonment," *and that after* it took place "nobody has ever given any account of the mines to the company," whose interests were in charge of Charles Exall.

Here we have a company established in New York, investing hundreds of thousands of dollars in an enterprise, in charge of a superintendent; that this superintendent abandons it without giving any account whatever; that two years are allowed to elapse, and only at the end of them it occurs to the company to inquire into the circumstances

that had caused the abandonment, *in order to lay all the responsibility on the Mexican Government.*

Is this the proper course for sensible persons, business men, and American speculators to follow?

The undersigned entertains no fear of being accused of selecting a partial judge, to his part, when he points to the American Commissioner to decide this question of common sense.

In the case of James Ford *vs.* Mexico, No. 851, the question at issue was the seizure by Mexican troops of merchandise amounting to $105,000, said Commissioner decided it in the following manner:

> Thus Ford was robbed of property of the value of $105,000.
> *He never complained of it* to the authorities of his own country, or of Mexico, *but patiently sat down under a loss of that magnitude* until the 30th of May, 1870, when he telegraphed to a Mr. Giddings in this city to file his claim, &c.

On the strong presumption, not to say full conviction, that such carelessness suggested of untruthfulness as to the alleged cause of the claim, the Commissioner could not help rejecting it with disdain.

What, then, can we say of a company managed by New York merchants, who having lost, not a hundred thousand, but millions of dollars, as they pretend, heard with perfect impassibility of such enormous loss without even procuring to know the cause of the disaster?

It is said that the speculation was abandoned on March 20, 1868, and the first written report that the company ever received of the cause of the abandonment—this is at least the oldest date presented—was the affidavit of Charles H. Exall, produced in New York, December 20, 1869, one year and ten months after the abandonment had occurred.

It is said in this affidavit that it was determined upon by reason of the annoyances caused by the citizens, and by the civil and military authorities; these are mentioned in a way less vague than in the memorial, and the *imperial troops* are likewise designated as authors of the injuries; but not a word is said about the formalities and manner in which the abandonment was effected.

This same Exall in another affidavit in behalf of the company, *June* 11, 1874, says that his departure from the place of the mines was sudden and in secret, for fear of losing his life, because the day before Macario Olvera, the prefect, told him that it would be better for him to abandon the mines, as he, the prefect, was unable to defend the company against public sentiment, and that the Mexican residents of the district were determined *not to remain any longer out of work, &c.*

Let us suppose for a moment that all this was true; what would any man of common sense have done in Exall's place? What should any honest man, in charge of interests of such magnitude, have done?

Nobody evidently who considers himself worthy of this title would hesitate to answer that above all Exall should have consigned in a formal document the state in which those interests were left, and the cause that had determined him to abandon them; and supposing he was unable to find one single honest man in the place he was about to leave, willing to authorize with his signature such a document, as soon as he reached some other place where his life was safe, his first care should have been to produce such a document.

Exall has not said where did he go to after leaving the mines, but the witness Antonio Peña, a resident of Mazatlan, said that he lent Exall there $250 to pay his passage to the United Sates, adding that he had not been reimbursed of that amount.

This proves three things: 1st, that the last superintendent to the mines

after their abandonment, went to Mazatlan; 2d, that he then had no funds; and 3d, that the funds of the company were also exhausted.

Now, what could have prevented Exall in Mazatlan to enter a protest or to produce such a document as we have been referring to?

All this is very improbable, and is rejected by common sense.

Let any honest man put himself in Exall's place and compare the course of action he would have followed, supposing true the inculpations made against the authorities of Mexico with that followed by Exall, who can by no means be considered an idiot, and the forcible conclusion can be no other than that there are no signs of truthfulness in the tardy story of the causes of the abandonment.

When a person has a ground for complaint against some subordinate authority of a foreign country where his own maintains a representative, allowing that for want of confidence in the higher authorities of the country he should not apply to them for redress—a course that ought never to be approved—nothing more natural and proper than to present his complaint to the representative of his own country.

If the speculation had actually failed in consequence of the hostilities of the local authorities when in itself it presented a good prospect, Exall would not likely have abandoned it without first soliciting through the nearest consul and the minister of his own country such protection as was necessary to counteract those hostilities.

And if the representatives of the United States did not inspire him with more confidence than the superior authorities of Mexico, what pretext can he invoke for not having rendered a justified account of the abandonment of the mines to the company, who had placed their interests under his charge? And if the company did not compel him to fulfill this duty, or if he did render the account soon after the occurrence, and it has not been presented to this Commission because of its being adverse to the interest of the company, then a person must either be entirely bent on seeing such pretensions succeed, or opposed to common sense, in order to admit as the determinating cause of the abandonment, acts of hostility now for the first time brought to light after the lapse of so long a period, and to suppose that the speculation would have been a perfect success had said alleged acts not intervened.

E.

NATURE OF CLAIMANT'S EVIDENCE.

The admission of this evidence on the opinion formed of the respectability and intelligence of the majority of the persons whose testimonies constitute it, and of the truth believed to be found in them, is the result of a purely personal appreciation that the undersigned can hardly expect to see modified on account of these observations.

The witnesses considered as respectable are unworthy of any faith, in the undersigned's opinion, on account of the notorious falsehoods found in their testimonies, their manifest partiality in favor of the company, and of the means employed by some of them to further the claim.

In the undersigned's judgment those witnesses cannot deserve credit "who do not tell the truth, all the truth, and only the truth," according to the form used by the English law in taking testimonies, and witnesses are to be judged according to the well-known rule in law, *bonum ex integra causa, malum ex quocumque defectu.*

The undersigned, therefore, cannot consider as a respectable witness John Cole, who filed before this Commission a claim false in most of

its parts at least, nor can he find any signs of truthfulness in a testimony in which the sole item of improvements in the mines are pushed to over half a million of dollars, and in which it is said that *all* the employés were ejected, when *the only one alleged to have been ejected was Exall.*

Neither can be considered as a respectable witness Alfred Green, the pretended liberator of Mexico, who tried to defraud that nation by presenting a fraudulent claim.

Nor can he admit Exall, the superintendent who abandoned the interests placed under his care, and never gave an account of them as such.

As to John C. Brissel, the facts that his knowledge is derived from mere hearsay, and that he, being an American, should have resided at the very place from whence, it is alleged, the company was expelled on account of *hatred to the Americans*, and that during the same month of March, 1868, in which the pretended expulsion took place, are enough to discard his testimony.

Neither was William H. Smith an eye-witness of the causes that determined the abandonment of the mines, and he, too, an American, resided in the district of San Dimas, working at some mines, and yet was not expelled.

John C. Cryder, who calls himself the second superintendent of the Guadalupe mines, does not pretend to have been expelled on account of hatred to the Americans. He was not an eye-witness.

Juan Castillo del Valle, the one who sold the mines, has given depositions in favor of the company and for the defense. They differ as to the amount of the product of the mines, but not as to the causes of their abandonment, as stated by Exall.

Nobody will ever consider Matias Avalos, who has given conflicting testimonies on both sides, and who says that he can neither read nor write, as a respectable and intelligent witness.

William Clark, John Cole's partner, pretends to have paid on behalf of the company a loan of $600, for which no voucher has ever been filed. He must indeed be considered very respectable if his simple word is to be credited.

Francis Dana, an ex-soldier in the service of Mexico, a witness in many a claim against that country, and the interpreter of the individual who forged the proofs of this claim, limits his exertions to recommending the merits of said proofs, in the production of which he took a part.

Charles Boutier, another claimant against Mexico, is a witness by hearsay as to the principal part of the claim.

James or Santiago Granger, who has given his testimony in the claim, *pro and con*, and who being in charge of the company's property, sold a part of it, is far from deserving the appellation of a respectable witness.

As to José Maria Loaiza, of whose deposition Carlos F. Galan was the *translator*, the undersigned has the following reason not to respect him.

He filed before this Commission a complaint against the United States, of which Galan was counsel, through the agency of Alonzo A. Adams—the same individual who went to Durango and Sinaloa to forge proofs in this claim—pretending that he should be indemnified in a large amount because a young woman, whom he tried to pass before this Commission as his wife, was hung in California by a mob, *from which, though, he well knew how to make his own escape.*

The undersigned received from his Government proofs as to the falsehood of the complaint, whereupon he discarded it, notwithstanding that Adams gave him some proofs to sustain it.

It appears that George C. Collins, the president of the company, is one of the witnesses considered most respectable, since with the sole foundation of his simple testimony to the amount of the company's capital, and the amount of the loans made by witness, and of the outstanding debts, have been considered as proved.

But though the witness declared he had no knowledge of the causes of the abandonment of the mines, still he empowered those who had been pulling the wires in this claim to charge it to the Mexican Government. Such a course is certainly unworthy of a respectable person.

If he believed that he would assume no responsibility by saying he had no knowledge of the causes of the abandonment, he simply imitated Pontius Pilate's example of washing his hands amongst the innocents.

Collins, moreover, is one of the most interested in the claim, because, should it fail, how would he ever be reimbursed of the sums he invested in the unlucky mining scheme? He, therefore, did not speak the truth when saying he had no interest in the claim.

Francisco Gamboa, one of the witnesses through whom Carlos F. Galan knew confidentially of the threats made by the Mexican authorities, only speaks of a contract for the transportation of provisions entered into between himself and the company, and which contract could not be carried into effect on account of the abandonment of the mines; he does not express any cause whatever for it.

Isaac Sisson, United States consul at Mazatlan, whose course in claims against Mexico cannot but be censured by those who have had a chance to know of it, as the umpire, certifies, that being once in a store, Adams went in and read in a loud voice Antonio Peña's testimony, stating the advances of money that he had made to the company, and that an old Mexican who heard the reading and that the document was to be sent on to Washington, snatched it from his hands, and tore it to pieces, and immediately escaped, and that this old man's name could never be ascertained, though both Adams and the consul did their best to find it out.

Notwithstanding the formal style in which this statement is certified to, with a view of showing the pains taken by the Mexicans to prevent any testimonies being presented against their country, it can hardly be believed that in a place like Mazatlan it should be impossible to ascertain the name of the author of such a mischief; but let us admit it to be true, it can only prove Adam's indiscreetness in going about boasting of his success as to the steps he had taken in favor of the company, and the disgust that falsehoods are apt to inspire when published in the presence of people who can detect them. Perhaps in Mazatlan Peña's assertion that he had supplied money to the company in amounts greater than the whole stock he actually managed in his mercantile establishment was considered simply scandalous, as undoubtedly when other testimonies in which still grosser falsehoods are stamped to sustain this bogus claim come to be published they will cause surprise and indignation, not in Mazatlan and Durango alone, but all over the Republic of Mexico.

It was the good luck of claimants that Adams did not read out loud or publish in Mazatlan other testimonies more important still than Peña's, and it has been one of the principal disadvantages at which Mexico has stood before this Commission, that only the memorials have been known and served there to prepare the defensive evidence, particularly in cases like the present, where it seems a special study has been made not to precise any data.

And, since we have mentioned the alleged dissatisfaction of the Mexicans at the testimonies adverse to their country, it may be opportune to remark that those Mexicans who condescended to sign testimonies of this kind must have had some special reasons to do so, as, unless we suppose them animated by the highest sentiment of love of justice capable of overpowering their patriotism or the interest felt in the common wealth of their country, we must admit that such testimonies were not disinterested, but that the so-called General Adams knew well how to employ such means as are efficacious with people deprived of the most natural sentiments of the human heart.

We must, therefore, either exalt those witnesses to heroism, or else humble them into dust; erect an altar to their abnegation that prompted them to sacrifice the interests, if not the honor, of their country, or look on them with that supreme indifference well deserved by those who sell their country for miserable personal interests

But the witnesses Galan, Peña, Gamboa, Loaiza, Avalos, and the lawyer, Chavarria, are very far from appearing surrounded with the aureola of heroic virtues, and the undersigned cannot conceive under what title can they deserve any respect.

Following our judgment of the witnesses by the order of their testimonies on file, we stumble with that of Nicholas Alley, who, prompted by his conscience, thought it his duty to reveal to Adams that a Dr. Rapp had tried to buy him into defeating this claim. According to this conscientious witness, Rapp had fallen out with Adams on account of political questions, and had spoken in a manner scurrilous to the company and favorable to the defense of Mexico. Of course the matter originated with Rapp, without any provocation on the part of Adams; but let this be as it may, the fact is that Rapp, not satisfied with insulting the peaceful Adams, proposed to destroy his honest efforts and invited Alley to help him in the undertaking, in which there was plenty of money—millions in it, as Colonel Sellers would say—because the Mexican authorities were determined to fight and defeat the claim, and to pay liberally if this was accomplished. But this is not all: Rapp pretended that Alley should declare that Adams had tried to buy him over to give his testimony in favor of the claim, and this was repugnant to Alley, who had always considered Adams's course in the matter as very *honorable*. Rapp enjoined secrecy on Alley, who gave him no answer, but went that very day to Adams and advised him of Rapp's scheme.

The undersigned would consider as an insult to the umpire if he were to place Alley among the witnesses considered as respectable.

The man who debases himself to such an extreme, if not of forging a slander, but of propagating such tales, deserves to be despised by all honest people.

If those tales prove anything at all, it is that Adams's conduct needed some vindication.

Whoever may read what Adams forged in self-defense cannot help receiving an impression entirely adverse to this individual.

Pedro Echeguren, a Spaniard, who had for many years resided in Mazatlan, where he made a fortune, speaks in favorable terms of the company, of the little or no protection given to foreigners in the States of Sinaloa and Durango, referring exclusively to exactions and forced loans, and complaining of the amount of money his house had had to pay under this title in many years, though, he never, of course, alludes to his gains, without which, he evidently would not have continued so long the business; but in order to form an opinion of this individual, it

is enough to read the words of another deposition he gave in the claim of Benjamin H. Wyman, No. 911—Paper No. 17:

> That he knows, and it was notorious that all the authorities respected the persons and properties of foreigners, *and particularly of the Americans*, and he, being a foreigner, had never suffered in his property and interests other annoyances than those that are an inevitable consequence of political disturbances and hazards of war, and no injuries whatsoever from international acts.

By this phrase it seems that he meant injuries which might give rise to international claims.

Can it now be said that when he tried to sustain this claim with his testimony, referring to loans and exactions and difficulties caused by the war, he did not declare falsely in the matter?

But if, all this notwithstanding, Echeguren is to be held as a respectable witness, his testimony must not be mistaken for that of others, in which the alleged causes for the abandonment of the mines are specified, since on this point he simply says: "That he did not think it prudent nor safe for the company to intend to undertake again their mining operations in Tayoltita, nor to go into any expense there, after 1868, when they abandoned their work *on account of the circumstances.*" To what circumstances does he refer to? May it not be to the circumstances of the speculation itself, to the quality of the mines, to the amount of the expenditure, &c.?

The next witness whose respectability we must examine, is the Mexican Marcos Mora, ex-prefect of the district of San Dimas. This man moved, as it seems, by the remorse of a scrupulous but sluggish conscience, declares that the authorities of that district expressed themselves adversely to the Abra Company, and decided to expel them, "*although it cannot be said that they acted the same way in regard to other companies,*" and that he never heard that the employés worked for the annexation of Mexican territory to the United States, which proves either that he was deaf, or that Exall and all the rest who, with or without reason, declared that this was a charge generally made against them, lied.

But the most curious thing is that this same witness says in this very same deposition that the governor of the State of Durango, Señor Ortiz de Zarate, applied to him for information in regard to the company; that he gave it in terms very unfavorable to the company, stating that "it was composed of Americans who, like all foreigners, were trying to ruin Mexico," and that it was precisely on account of this information that said governor denied the protection he was asked for.

A villain that in this manner acknowledges himself as the principal cause of this claim, and who contradicts himself with so little delicacy, can only deserve the most profound and utter contempt.

Let us next see what opinion can we form of the lawyer Jesus Chavarria, another Mexican, who pretends to make us believe that he constituted himself in the accuser or denouncer of the authorities of his own country, simply for his love of justice, without any personal interest in the claim of the company *who is his client, and paid or owe him fees for his services.*

This great apostle of truth says that the company employed him to solicit the protection of the government of the State of Durango in order to put a stop to the robberies and outrages it was a victim to in Tayoltita; and though he repeatedly asked for said protection it was without any result, as the governor answered that he did not wish to meddle in private matters.

Exall, paraphrasing freely this answer, related that Ortiz de Zarate

had said to Chavarria that he was determined to drive all the Americans from that part of Mexico. Perhaps Mexico may be thankful that Chavarria did not *carry so far his love of truth* as to *say the whole truth* in relating this answer, but he left Exall to do it, rendering the omission palpable; which of the two said an untruth?

But the one thing in which the justified Chavarria found no difficulty was in estimating the value of the mines of the company in $5,000,000, and he did not hesitate either in testifying as to all the hostilities against the company, as if he had been an eye-witness to them.

These circumstances show that if Chavarria's respectability is more than doubtful his want of intelligence as a lawyer is unquestionable.

The least that could be expected of him is that he should have known the fundamental law of his own country and the manner it has established to enforce the rights it guarantees.

This instrument in its eighth article declares inviolable the right of petition respectfully exercised *by writing*, and that to every petition there shall be a corresponding resolution which shall be communicated to the party interested.

This first-rate lawyer ought then to have started by presenting *in writing* his application for protection to the governor. If he did so, but the resolution was not communicated to him in writing, he ought to have resorted to the corresponding remedy which he would have found in article 101 of the constitution, and in the writ called "*amparo*." If the district judge paid no attention to his complaint he should have applied to the circuit court; and if even there it was disregarded he should have appealed to the supreme court of the nation. It would have been absolutely impossible that in all these efforts he should have failed to get some documentary evidence to present.

Without some document of the kind no court can believe upon his word a lawyer pretending to have done all he could and ought to have done in the interest of his client, nor will common sense recognize him as an intelligent lawyer.

After Chavarria comes Charles B. Dahlgren, who, to show us his respectability, begins by telling us that he is a son of the late Admiral Dahlgren, and a consul of the United States in Durango.

All this, though, can be of little service to the company, because deponent refers to the state of the mines and property after the abandonment, and he speaks of mere hearsay as to its causes.

Deponent says that in the enterprise of which he is a superintendent, the only American one that has escaped the fury of the Mexican authorities, he availed himself of the opportunity by purchasing a part of the property at mere nominal prices from private individuals, in the acquisition of which he was sustained by the judge of the first instance of San Dimas, according to a contract.

Here, then, we have the son of an admiral and consul taking advantage of robberies, but sustaining the claim to which said robbers serve as a cover. If a person who acts in this manner is a reputable witness, the undersigned must then candidly confess that he does not understand the meaning of the word.

In the rebutting evidence, besides the president of the company, and the superintendent, Exall, we have as witnesses Ralph Martin, Thomas Bartholow, the intiator of the enterprise and the principal party in the claim, Sumner Stow Ely, as of counsel for claimant, Alonzo Adams, attorney of the claim, and to cap the climax, the celebrated Carlos F. Galan.

There is no necessity for us to examine whether all those notoriously

interested in the claim are entitled to be considered as reputable men, and it would suffice to say something in regard to the first name; but the undersigned will not spare a special mention to Galan, although he has already spoken in general of the Mexican witnesses.

Rapp Martin says that he began to reside in San Dimas the very same year that Exall went away from there, and this shows that if there was actually any animosity against him, it was not as an American, but for personal reasons.

He says that Adams was recommended to him by a friend in New York, when said Adams undertook his trip to Durango, in order to procure evidence in this claim, and he endeavors to praise the recommendation trying to give weight to Adams' proofs, running down those who attack them, as the result of fraud and intimidation, going so far in this respect as to say magisterially that one of the witnesses of the defense does not know the meaning of the word "extra-judicial."

He says he had in charge some mines near San Dimas, but does not say that he ever was hostilized. Was it, perhaps, because he gave a share in them to authorities, or did he slander them when saying that this was the only way to obtain protection?

If this, notwithstanding he must be considered as a reputable witness, he will not at least be considered as infallible, and his appreciations in regard to his guest, the well-recommended Adams, will not be enough to invest Adams with respectability, not even to convince us that he behaved well and honestly in procuring proofs, which is the tendency of deponent's testimony.

Carlos F. Galan is a native of Spain, as he says, but he went to Mexico when fourteen years old, and remained there up to 1872, having been a member of the assembly, judge of the first instance, governor, &c.

"When, in 1870 and 1871, *there was an* excitement in Mexico on account of the claims filed before this Commission, he got posted *in many things* relating to said claims, was consulted in several cases, and *examined some witnesses*." These words of his are corroborated in many claims in which he appears in partnership with the United States consul for the preparation of proofs.

He says that the governor of the State of Sinaloa, General Domingo Rubi; his secretary, Don José D. Martinez, the judge of the first instance of Mazatlan; J. Aldrete, and the district attorney Gaona, used all their efforts to defeat the claims against Mexico; that said judge destroyed a testimony he had received, and which was favorable to the claimant, George Briggs; that Gaona retained in his power some depositions in the same case until it was too late to file them—as if there had been any limitation as to time for filing evidence in this Commission for American claimants; that Martinez declared that he would punish any one that should give testimony in favor of "the *gringos*"; that Trinidad Gamboa said to witness that Rubi had threatened him with having him pressed into military service if he did not recant a certain deposition; that Rubi said to witness himself that he would do all in his power to defeat the claims, as the great object was to snatch from Mexico another portion of its territory; that he, Galan, wrote the depositions of Trinidad and Francisco Gamboa and José Maria Loaiza in the consulate of the United States, and that Adams had no intervention in them—was there any necessity for him to interfere when Galan was there?—and that Adams gave no money at all to the witnesses who testified for him, but only paid their traveling and other expenses; *according to law* there is no Mexican law granting such expenses.

Deponent knows that Corona and his officers and soldiers levied

forced loans, not only because he heard it from the officers, *but also from those who suffered the injuries.*

With this foundation, he affirms that sometimes provisions were taken, &c.

In view of this abstract of deponent's testimony shall we need say a word as to his respectability and disinterestedness in denouncing and slandering the authorities of his once adoptive country, where he received his education and was honored with distinguished posts in civil office?

F.

FAVORABLE ESTIMATE OF CLAIMANT'S PROOFS—DISREGARD TO THE DEFENSIVE EVIDENCE.

The words "notwithstanding what is stated to the contrary by the witnesses produced by the defense, the umpire is constrained to believe, &c.," clearly reveal that the proofs in behalf of Mexico have not received due consideration; but as I will take up this point in section H it is advisable now to limit our observations to what has been thought that claimant's proofs present as certain, viz:

That the authorities of Tayoltita and San Dimas, far from giving claimants that protection and assistance offered to them by the Mexican Government, and to which they were entitled by treaty, did not only show themselves animated by a spirit of bitter hostility against the company, but stimulated the Mexicans employed by the company to follow a similar course, and even intimidated them into refusing to work for the Americans, who had employed them.

We must refer in the first place to what has already been said, that it is not true that the Mexican Government ever made such special offers of protection and assistance to foreigners employed in mining speculations, but only to agricultural colonists, and much less to corporations residing abroad.

As to the allusion in regard to the treaty between Mexico and the United States, we must remark that the only protection offered in that instrument to American citizens in Mexico, refers only to those already established there, and not to those who live out of the country.

The stipulation relating to this point is article 14 of the treaty of 1831, which reads:

> Both contracting parties promise and oblige themselves to give special protection to the persons and properties of the citizens of each *that may be found in their respective territories, subject to their respective jurisdictions*, whatever may be their occupations, and *whether they reside in the country or are transients, &c.*

As this company has never been in Mexico, neither as resident or transient, since it is permanently established in New York, a right introduced only for foreigners residing in Mexico and subject to its jurisdiction, cannot be invoked in its favor.

Has this company resided in Mexico, subject to its jurisdiction?

Could the Mexican Government extend its jurisdiction to New York, in order that it might reach this company residing there?

Certainly not, and there are no proofs whatever that the authorities of Mexico were advised of the *legal existence* of this company *in the United States*, by the presentation of their charter duly legalized.

It has also been shown that this company could not have any legal existence because the law does not authorize its acts there.

Therefore, though in the common language it might be said that an American company was the owner of the Abra mines, such company

had no standing before the Mexican law, nor could it have enforced any right in such a capacity.

It was only personally that either Exall or some other individual in charge of the interests of the company might have claimed the protection of the authorities, as if said property was their own, and so far as their said interests were concerned, it was immaterial whether they belonged to a company residing abroad.

But as to this Commission it is indeed very material to determine who is the real claimant, and not to overlook the fact whether the company had any legal personality in Mexico, and could exact any protection there.

As to the other individuals who might have asked for protection, Bartholow, Laguel, and Exall, the first and the last named said they had no interest in the claim, which is tantamount to saying that they did not prefer it for their personal injuries nor in their own behalf. As to Laguel, why, not even as a witness does he appear in the claim.

Still, let us suppose that, although Bartholow and Exall were the only individuals who had any right to the protection of the authorities so far as Mexico was concerned; as to this Commission, a company organized and established in New York might have right to claim for injuries caused to those individuals without its being an impediment for them to be admitted as witnesses of their own wrongs; and let us assume as a basis for the examination of these wrongs the testimonies of said witnesses, notwithstanding that they were produced at a time when they could never serve as a foundation to investigate the facts.

Thomas H. Bartholow, the founder, a shareholder and the first superintendent of the business, in his deposition of June 22, 1874, said on this very topic:

"The local authorities went two or three times to the mines and ordered the men employed to quit their work, under the pretext that we did not employ all the men who needed employment, and that we did not work the mines as it pleased them."

Who were the persons who committed such high-handed proceedings under cover of being authorities? When were these outrages committed? Who witnessed them? Bartholow does not say a word in regard to this, and if we examine all the testimonies one by one, we will not find in them any of these essential points.

Will such a vague testimony, and of a person notoriously interested at that, be sufficient to receive as true the facts he states?

Exall, the third and last superintendent of the concern, in his testimony of June 11, 1874, says:

> Soto and the Prefect *Marcos Mora*—we must not forget the latter's testimony in favor of the company—incited the workmen to mutiny, telling them falsely that it had gone there to annex Durango and Sinaloa to the United States, and ordered those who were at work to quit. Aquilino Calderon tried once to work in the Cristo mine, and he had to leave the service of the company by force of arms, and through the orders of Soto and Mora.

As Exall is the *sole witness* who relates these facts, we are left to understand that part of the decision referring thereto is based on his simple assertion.

And still, there is no testimony in the whole file that deserves less credit than Exall's, because, in all the attempts imputed to the local authorities of Tayoltita and San Dimas, we always find him playing the part individually of a victim; because he had some resentment with some of those authorities, if not with all; because, as the superintendent of the mines, it was his duty to give an account of the interests he had

under his care to the company, and he did not fulfill his duty; because he has been charged by the witnesses of the defense of having squandered money belonging to the company in gambling; because he has a manifest interest in sustaining this claim; and finally, because his testimony is interspersed with the grossest falsehoods, such as the assertions that *all the trains* and mules of the company captured by the imperialists were not worth over $1,500; that the pile of *tepetate* out of the mines was placed there after the abandonment of said mines by the company; that some twenty tons of ore produced about $17,000 worth of silver, and that the ores produced on an average $675 per ton, and notwithstanding which he charges a million of dollars for about one thousand tons of all kinds of ore.

The sole circumstance that this charge was not consigned in the memorial, and could not therefore have been a matter for rebuttal, would be enough in any court to disallow it.

Can there be anything more iniquitous than to condemn a party on a fact the imputation of which was not brought in time to his notice, or more unjust than to accept as proved such a fact by the simple affirmation of the pretended victim of the wrong?

The undersigned defies any person, even the most prejudiced in favor of these claimants, to designate which are the satisfactory proofs presented in time that the local authorities of Tayoltita and San Dimas intimidated the inhabitants into desisting from the further prosecution of the works of the mines, mentioning the dates and circumstances of such intimidation.

G.

IMPORTANCE OF THE ACTS OF THE LOCAL AUTHORITIES IN REGARD TO THE COMPANY.

What the *incessant* and vexatious annoyances of the employés of the company by the authorities of Tayoltita and San Dimas consist in?

What constitutes their unjustifiable intervention in the business of the company?

The only fact that can be considered as approved is that, from the 3d to the 24th of June, the Judge Guadalupe Soto and the Prefect *Marcos Mora*—the same individual whose testimony this company has filed in evidence—addressed some communications to the manager of the Abra smelting works about the wages of the workmen, calling his attention to the necessity of coming to some arrangement with them, and requesting that they should be allowed to pick up some ores whilst the works of the mines were paralyzed.

In order to pronounce as unjustifiable this intervention, it would be necessary to weigh all the circumstances that produced it, and see whether the common interest of the locality and the necessity of preserving public tranquillity and of preventing greater evils, could not, at least, be an excuse for it.

But since, without bearing in mind such circumstances, it is pretended that even though the superintendent of the mines paid his laborers in goods, and at the prices he chose to fix on them, and even though the laborers seemed to be inclined to commit excesses, thereby endangering public tranquillity and the interests of the whole community, the local authorities should have refrained from making any suggestion whatever to the superintendent, said communications can only prove that *once* in June, 1867, the local authorities tried to interfere in the business, but not that they *incessantly* annoyed those in charge of it.

And is Mexico to be condemned to pay such an enormous fine on account of this momentary intervention, the immediate results of which have not been demonstrated?

How can we help being surprised that an American company, who, just at the beginning of 1868, had extracted from 20 tons of ore not less than $17,000, should abandon the mines yielding such products just because nine months previous, and when their works were paralyzed, its permission was requested to allow some laborers out of work to search amongst its worthless ores something that might cover their wants?

It was also said that claimants' lives were in danger. "For this reason, as well as for the well-grounded fear that their lives were in danger, they resolved to abandon the enterprise."

It can easily be understood that this observation does not refer to all the bondholders or managers of the business who are the claimants in this case, and whose lives certainly were not in danger at the mines; but it refers to the persons employed there by the company.

But who were those persons? Who were the individuals who abandoned the mines?

Nobody else but Exall. At least his is the only name we find on the files.

But what proof is there that Exall's life was in danger? Solely and exclusively Exall's own word. There is not a single person in his company at the time of the abandonment to testify that the danger really existed.

Not even James Granger, who, in his first affidavit, produced before Consul Sisson, of Mazatlan, on the 20th of May, 1870, said that he was the second superintendent of the mines, and that he kept a memorandum of the names of the persons employed in them, has told us a single word about their lives ever having been in danger.

And if anybody's life besides Exall's should have been in danger it would certainly have been his lieutenant's. But we notice that, either by Exall's orders, as Granger pretends, or without it, as Exall and the president of the company say, the fact is that Granger did not only remain at the mines, but disposed of the property, and is now, as it appears, one of the actual possessors of said mines.

Unless, therefore, that we give to Exall's word full probatory force, we cannot take it for granted that his life, and much less the lives of the other employés of the company, whose names are not given, were in danger at the time of the abandonment of the mines.

H.

THE DEFENSIVE EVIDENCE CONSIDERED AS FAVORABLE TO THE CLAIM.

As immediately after saying that the facts on which this claim is founded have not been refuted nor even weakened by the defensive evidence, it is added, "On the contrary, he (the umpire) believes that the local authorities were determined to drive the claimants out of the country," we must necessarily infer that said evidence is considered as corroborative of such a belief.

And still that evidence only shows:

1st. That there was no ill-will against the Americans in the neighborhood of the mines, in corroboration of which the American companies working, without suffering any hostility, the mines of "La Candelaria" and "Bolaños," are cited.

2d. That the mines we are speaking of were productive only when worked with economy, its ores being smelted at a very reduced cost.

3d. That the agents of the company destroyed the old mill, introduced some expensive machinery, kept numerous employés, and, in short, that they intended to carry the speculation on such an expensive plan and at such a cost beyond the yield of the mines; and

4th. That for this reason, *and for no other, much less on account of hostilities on the part of the authorities*, they determined to abandon the business as soon as they realized that it did not correspond to their expectations.

True it is that some of the witnesses say that the laborers were not willing to receive their wages in goods; but in order that this statement should be received as corroborating the claim, it would be necessary to establish as a rule that the Mexicans were bound to work for the Americans, receiving their wages in the shape they chose to fix.

On the contrary, the defensive evidence, far from sustaining the claim, based on the abandonment of the mines on account of the persecution declared by the authorities—being in accord with claimant's proofs *simply* on the fact of the abandonment—show as its true cause bad management as to the scale on which the enterprise was carried and the want of funds to continue it.

Leaving aside, therefore, all that part of the defensive evidence referring to the criminal means employed to obtain proofs in behalf of the claim—strong presumptions of which exist even outside of said proofs—it is left for common sense to decide between these two explanations of the abandonment:

1st. A business, with a fair prospect of reaping immense products, and having at its disposal sufficient funds to overcome any difficulty, is abandoned on account of the persecution declared by one or two persons invested with local authority.

2d. The business fails because the products are less than the disbursements necessary to obtain them.

Is this last extreme, by chance, anything unusual, surprising, or improbable?

Is the first reasonable, and, above all, is it in keeping with the energy of American speculators, whose perseverance in lucrative undertakings is proverbial all over the world?

I.

DENIAL OF PROTECTION BY THE LOCAL AND THE SUPERIOR STATE AUTHORITIES.

Let us overlook the denial of protection from the local authorities, from whom appeal was taken, it is said, to the superior officers of the State, and examine what proofs are there that such an appeal was ever made.

The expression "superior authorities," used in plural, seems to involve some equivocation, since it has not been alleged that application was ever made to any other officer but to governor of the State of Durango.

We have already spoken of Chavarria's testimony, showing the want of intelligence, if not of character, of this witness and actor in the matter.

We next find *Marcos Mora's* affidavit, in which he says that in July, 1867, he saw Chavarria in Tayoltita, and in that same month, or the ensuing, he went with him to the Abra mines and smelting works,

where they remained two days together, examining the mines; that in October Chavarria told witness that the company had employed him to present a complaint to Governor Ortiz de Zárate, for the injuries and persecution they had suffered at San Dimas, in order to get the protection of said governor; that in consequence of this complaint, Sr. Ortiz de Zárate called Mora and questioned him in regard to the behavior of the company, and Mora said to him that it was composed of Americans, who, like all foreigners, were trying to ruin Mexico, and the governor denied his protection; that said governor had appointed deponent as prefect of San Dimas on March 1, 1867, and that *he accepted deponent's resignation* in July of said year.

It must be remembered that this is the very same Marcos Mora who, in June and July, 1867, addressed to the manager of La Abra mill the official notes we have spoken of, in regard to the wages of the workmen, requesting that they should be allowed to pick out some ores. We must remember, likewise, that in the same month of July, or in the ensuing August, Mora and Chavarria visited the mill, and that it was in July too that, as he says, he *sent in his resignation.* If we read Chavarrai's testimony, we will find that there is no truth in Mora's resignation, but that he was tried on account of his bad behavior as prefect of San Dimas, and Chavarria, the company's lawyer, was his counsel. What credit can we give to the testimonies of the persecutor of the company and of its defender, both declaring in its favor?

Let the umpire compare the two testimonies, and then decide whether they deserve any attention.

The other witness who testifies about Sr. Ortiz de Zárate having denied his protection is Exall, who, in his affidavit of May, 1874, says:

> I personally solicited the protection; Jesus Chavarria, *the most distinguished lawyer in the State of Durango*, also solicited it in the name of the company. It was denied in both cases. Chavarria told me that Zárate was determined to drive all the American companies from that part of the country. In 1867—I believe it was in July—I applied to Governor Zárate, trying to get not more than a letter directed to the prefect and district judge of San Dimas, requesting them not to trouble me in my work. I then received from said governor the answer that the company ought to abandon the enterprise, as popular sentiment was opposed to *the proclamations of President Juarez.*

Señor Ortiz de Zárate could never have referred to proclamations which *have never existed;* but leaving apart this allusion made by Exall, trying to induce belief in their existence, it will be noticed that he pretends to have made his complaint in July, 1867, *the very month precisely in which Mora addressed him the communications above referred to*, and the same in which Mora was dismissed and tried, a proceeding that could certainly have been more efficacious than to address a simple letter of recommendation; as it would have been more proper for a *distinguished lawyer*, like Chavarria, to accuse Mora than to *stand for him as of counsel.*

But let us suppose that Mora's dismissal from office had nothing to do with Exall's complaint, and that said complaint and Chavarria's were actually presented during the month of October.

Should they be satisfied with a simple verbal denial of the governor? Was the governor the highest irresponsible authority of the Mexican Republic?

Certainly not. They could have complained of the negligence of that officer to the President of the Republic, and only in case that he should refuse to interfere could it be said that all the *administrative* resources had been exhausted. In October, 1867, the Constitutional Government had been reinstated at the capital of Mexico, and nothing could have been easier than to apply to it.

Recapitulation.—As the only proofs of the denial of protection on the part of the governor of Durango we have the simple assertions of Chavarria and Exall, *without any documentary evidence.* Against that, we have the data furnished by these same individuals of the dismissal and trial of Mora on account of his bad behavior as prefect of San Dimas, and we have too the testimony of this wretch, upholding his defender Chavarria in parts, and contradicting him in others, and conflicting with himself in regard to his inculpation against the agents of the company, since he denies ever having heard any inculpation against them, and still says that he informed Governor Ortiz de Zárate that those agents were trying to ruin Mexico.

With such testimonies, can we accept as true that the protection of the governor of Durango was asked for and denied?

J.

CLAIMANTS DID NOT USE THE JUDICIAL RESOURCES.—A REMEDY THAT WAS NOT EMPLOYED.

The undersigned has heard with great surprise of the theory that when the political authority of a place shows some animadversion to a foreigner and the governor of the State is indifferent to the complaint made on this account, the foreigner is, thereby, excused from using any judicial remedy to defend his rights, and the country is to be held responsible for the injuries that he may resent.

This theory implies that the judiciary of a country under a constitutional regime is subordinate to the political or administrative power, so that against the acts of the latter the course of justice is inefficacious.

Without entering into this general question of public law, it will be enough to say that the fundamental law of the United States of Mexico has placed under the protection of the federal judiciary all the individual guarantees, prescribing that "all complaints on account of laws or acts of any authority that violate or curtail these guarantees" shall be brought before the judiciary. (Article 101 of the constitution.)

See the law regulating this article, issued November 30, 1867, in force in 1868.

In Mexico, therefore, there is no authority, no matter however so high, against whose acts it may not be possible to appeal for the protection of the federal judiciary, the courts of justice being organized on a basis of absolute independence from all State authorities and tribunals.

The judges who constitute those courts are appointed by the President of the Republic, through the nomination of the supreme court, and they cannot be removed from office without first being tried and found derelict in the fulfillment of their duties.

The protection of the federal judiciary, thus organized, has been and is efficacious, even against the acts of the Presdent, which more than once have remained without effect through the instrumentality of the judiciary.

At the beginning of 1868 the federal courts had been re-established all over the country, and nothing could have been easier to the agent of the company than to file his complaint against the authorities of San Dimas and Tayoltita with the district judge of Durango.

Why should we believe that this legal remedy would have been useless?

In the case No. 374 of "Jennings, Laughland & Co.," the charge was brought against Mexico not simply of ill-will of the local authorities against claimants or their attorney, but of an unjust and illegal sentence, as it was alleged, passed on claimants by the judge of the 1st instance of Minatitlan.

In the decision of this case it was said:

The umpire does not feel himself called upon to decide whether the above-mentioned sentence was just or not. If the claimants considered that it was not so, *they failed in their duty* in not appealing to a higher court against the conduct of an inferior judge, *with a view to his punishment and to the recovery of the damages;* but they appear to have taken no steps whatever either themselves or through their agent *to avail themselves of the resources open to them.* * * *

The umpire does not conceive *that any Government can thus be made responsible for the misconduct of an inferior judicial officer* when no attempt whatever has been made to obtain justice from a *higher court.*

The parties interested in the claim, not satisfied with this decision, attempted to prove that at the time there was no superior court to appeal to.

Their petition for a rehearing was, nevertheless, disallowed, amongst other reasons, for the following:

The umpire has been given to understand that there existed at the time a court of appeal at the city of Vera Cruz; but if this was not the case * * * he cannot doubt that as the circumstances of the revolution had prevented the claimant, through his agent, from presenting his appeal before that court, he would have been permitted to do so upon the re-establishment of the authority of President Juarez in Jalapa and from the moment of the renewed sitting of a legal court.

Is there any substantial difference between this case and that of the claiming company?

None whatever. Because if there was a judicial decree against the attorney of Jennings, Laughland & Co., ordering him to deliver some property he had under his charge, there was also, as it is pretended, a judicial order against the agent of this company for him to vacate the mines. If in that case it was the attorney's duty to appeal from the judicial decree which was notified to him, Exall in this case should have answered that he would not submit to the decree, and if the judge insisted, then he should have appealed from the judge's determination to the superior court of the State.

If, at the time, said court did not exist, he should have waited until it was re-established, when the war should be over.

And if instead of litigating before the state courts he preferred to apply for protection to the federal courts against the local authorities, he also had this resource at his disposal at the termination of the war, and was as much in duty bound to employ it, as the attorney of Jennings, Laughland & Co. was bound to follow the appeal.

What difference could it make, that the judge of Tayoltita in the district of San Dimas should have the support of the Prefect, even granting that he had great power, in order to prevent the superior court of Durango from amending the outrages of that judge, and from inflicting on him the condign punishment?

To take for granted that the influence of the prefect of San Dimas, and even that of the governor of Durango, would have prevented the superior court of that State from administering justice, is certainly worse than to admit that a judge appointed by a governor should not have sufficient independence to decide against said governor a case submitted to his decision.

And still, when in the case of Kennedy and King, No. 340, it was alleged that the reason why the right to a property seized by General

Garza, then governor of Tamaulipas, was not enforced, was because the judge who had to decide the case, had been appointed by Garza, and did not inspire any confidence to the allegators, the umpire said:

> The reason given by Mr. Chase for not acquiescing in the proposal of General Garza *cannot be maintained by one Government against another.*

In one of the last decisions of the umpire—that given in the case of Alfred Howell *vs.* Mexico, No. 970, we read:

> The vague assertions of the witnesses that the general's—Lozada—influence was supreme in the district of Tepic *cannot possibly be taken as proof that he dictated the action of the judges and tribunals of the land.*

How can it then be said, that because the prefect of San Dimas showed some ill-will to the manager of the enterprise, there was no independent tribunal in the State of Durango who could do justice to him, or that in the whole Republic of Mexico there was no power capable of protecting him in his individual guarantees?

The special protection that the Mexican Government is bound to dispense to the Americans *resident or transient* in Mexico, consists in giving them free scope to employ the same legal remedies that the Mexican citizens may employ in defending their rights (Article 14 of the treaty of 1831).

If the same tribunals that are open to the Mexicans are likewise open to the Americans in Mexico, how can it be maintained that the want of confidence in the result of their efforts excuses them from applying to said courts?

What other guarantees could Mexico grant them than the same that are granted to the natives?

Do claimants pretend that for the Americans special courts should be established, composed of such persons as would inspire them with full confidence, and who should be exempt from the possibility of submitting themselves to the influence of the local authorities?

The undersigned has failed to find among the allegations of the company any statement to the effect that when they abandoned the mines, there were no superior court of justice and no district judge in Durango. These authorities certainly existed at the time, as constitutional order had been re-established all over the country from about the end of 1867.

Señor Ortiz de Zárate was not then the governor of the State, because he had only been provisionally in charge of the Government, and the constitutional governor was elected in October or November, 1867.

Therefore, if we leave aside the want of confidence that all the public functionaries of Mexico may inspire generally to the citizens of the United States, there is no reason whatever to justify the course followed by the agent of the company in not applying to the courts of justice in quest of protection, before he should have abandoned the business under his care.

To consider, then, as puerile the requirement that the parties in this case should have exhausted all the judicial remedies before initiating any diplomatic claim, is tantamount to consider as unfounded the pretension of Mexico that the Americans should submit to the courts of the country, good or bad as they may be; to belittle a solemn compact entered into between Mexico and the United States, and to create a special jurisprudence only for this case, deviating even from that applied to other American claims against Mexico.

We can cite among others that of Alfred Green, No. 776, who, like

Exall, complained of false imprisonment in San Dimas, and hostility from the local authorities. It was said in the decision:

"If the judge illegally imprisoned the claimant, *it was certainly in his power to appeal to a higher court*, and to sue Judge Perez for false imprisonment. It is shown that he was at Durango shortly after his imprisonment and that *he had a lawyer there*. Nothing could have been more easy for him than to seek his remedy *through the courts*. But it does not appear that he took any steps in *that direction*.

Having already shown that the agent of the company could and should have employed judicial remedies, both before the superior court of Durango and the federal judiciary, before abandoning the interests placed under his charge, we can still indicate another remedy, very easy indeed, that he might have employed after having exhausted the others, viz, ask for protection to the Government of Mexico, through the representative of the United States there.

We have remarked that any man placed in Exall's circumstances, however negligent in the fulfillment of his duties he might be, would never have abandoned those interests without forming an inventory, and that at arriving at the nearest place where his life was not in danger —admitting that it actually was at the mines—his first act should have been to make a detailed statement of the occurrence, either in the form of a protest before the United States consul, or in the shape of any other document, founding his intention to abandon the business, and throwing the responsibility on the Mexican Government.*

Before carrying through such an intention he should have done two things, viz: 1st, he should have consulted with the managers of the company, and, 2d, he should have made a statement of the facts to the representative of his Government, in order that he might have applied for the protection needed by the company, or, in case of being unable to obtain it, that said representative might have authorized the abandonment of the mines, giving due notice in either case, and stating his reasons to said Government.

Is there any exaggeration in pretending that this course should have been followed?

Is there anything impracticable or very hard to accomplish in it? Nothing that we can think of.

What we do find exaggerated, not to say preposterous, is the pretension that we should believe that the manager of such a large property should have abandoned it without being authorized to do so by its owners, and that a foreigner—and especially an American—entitled to the protection of his Government, should not apply for it before abandoning an enterprise in which there were millions in prospect, and in which hundreds of thousands of dollars had been spent.

In all the papers of the file the idea is repeated that the President of Mexico was very favorably disposed towards foreigners. If the subaltern authorities did not second that sentiment, what could have been more natural than to complain to the President of Mexico?

K.

OBLIGATION IMPOSED ON THE MEXICAN GOVERNMENT ON ACCOUNT OF ITS LIBERALITY WITH FOREIGNERS.

The Mexican Government must decline the honor conferred on it as to its liberality towards foreigners, because its motive is incorrect.

* In the decision of case 994, "W. L. Laird *vs.* Mexico," we read: "Nor is it to be believed that the claimant on his arrival to Matamoros should not have laid his complaint before the United States consul at that port." Why, then, should we believe that Exall should not have laid *his* complaint before the United States consul at Mazatlan?

As we have already remarked, it has been so repeatedly said in this claim that the Government issued proclamations, from 1856 to 1864, *inviting foreigners to invest their capitals in Mexico, in any kind of industrial pursuits*, that a belief has been formed that such proclamations really did exist, *when they only do in the minds of the forgers of this claim.*

The undersigned, therefore, prays the umpire to rectify this error in which he has been induced by claimants, and not to take fictitious offers as a ground for his final decision.

The Government of Mexico has never made any offers to foreigners residing abroad, and its treaty engagements are reduced to give to foreigners *residing within the national territory*, and *their properties*, the same protection as to the native citizens and their properties, but without granting *any special privilege* to foreigners.

It is only to foreigners who should *establish in Mexico agricultural colonies* that certain advantages have sometimes been offered. (See law of March 13, 1861.)

The principles of international law, and the treaties between Mexico and the United States, certainly do not bind the Government of the former to secure to the citizens of the latter residing within its territory that the subordinate authorities will never annoy them, but simply that *they will enjoy the same resources as the native citizens* against all arbitrary acts to their persons and properties.

How can those principles and treaties bind the Mexican Government to guarantee to the American citizens the impeccability of all and every one of the persons constituted in public authority, and that they will understand their duties always and under any circumstances without making any mistake?

We have already cited two of the umpire's decisions that answer this question, and among several others in that direction we will quote the case No. 135, William J. Blumhardt *vs.* Mexico.

The decision reads:

> The umpire is of opinion that the Mexican Government cannot be held responsible for the losses occasioned by the illegal acts of an inferior judicial authority when the complainant has taken no steps *by judicial means* to have punishment inflicted upon the offender and to obtain damages from him. The umpire does not believe that the Government of the United States, or of *any nation in the world, would admit* such a responsibility under the circumstances which appear from the evidence produced on the part of the claimant, showing that Judge Alvarez was the person to blame, and that it was against him that proceedings should have been taken.

So it is admitted that no Government can be held responsible for the errors or illegal acts of its inferior judicial authorities, until all the resources created by law have been exhausted in vain for the punishment of the culpable and the indemnification of the damages; and why is this? Because no Government can be made responsible that all and every one of the persons invested with public authority will always act with rectitude.

If Governments could find persons to place in office exempt from all passions and human weaknesses, and if instead of selecting such persons they should appoint men who, for the very reason of being men, are always subject to commit errors; then only could they be held responsible for the faults committed by their subordinate officers.

And if we admit that neither international law nor existing treaties can hold Mexico responsible for the acts of the inferior judicial authorities, when the judicial resources have not been exhausted, what reason of difference can there be in regard to the inferior political officers, when equal resources can be employed against their arbitrary acts and errors?

Is it by chance more binding on the Mexican Government to employ in its executive administration beings superior to human frailties than to employ beings of this kind in its judiciary?

It should be enough, therefore, that no such special engagement has ever been made to revoke the decision founded on it.

On the other hand, who can say that it has been satisfactorily shown that the company lost all the capital invested in the mines, *solely* on account of the annoyances caused to their agents by the local authorities of San Dimas and Tayoltita?

Let us overlook the very suspicious character of the proofs of such annoyances, and see what did they consist in, and what could have been their result.

In order that the ill-will of the local authorities to the company or its agents might constitute a motive for inculpation, it would have been necessary to determine the facts showing its existence.

It was alleged that these facts were:

1. Exall's imprisonment ordered by Judge Nicanor Perez, for alleged contempt to said judge.

2. Intimidation that if the laborers were not paid one-third of their wages in money, or some other arrangement made with them, the company should vacate the mines and allow the laborers to work them.

3. Suggestions to the laborers not to work for the company, and intimidation to those who were disposed to work.

4. Threats to Exall.

As to the first fact, if we do not pay exclusive attention to Exall's word, but we take also into account the defensive evidence, it will be found that the alleged imprisonment had a cause, and lasted only a short time—two or three days.

This fact, therefore, cannot be judged in a different manner in this case from what a similar fact was disposed of in case No. 776, of Alfred Green, in the decision of which we read:

> With reference to the imprisonment at San Dimas, of which the claimant complains, the first inference *must always be* that the sentence of a judge or court *must be a just one. The strongest proof must be produced to justify a contrary belief.* In this instance the claimant represents that he was imprisoned because he refused to pay $34, on the ground that the exaction was illegal. Witnesses testify that the act of the judge, Camilo Perez, was illegal; but they do not give the grounds of this opinion. No proceedings of the court are produced, and the exact reason of the imprisonment is not shown. * * *
>
> If the judge illegally imprisoned the claimant, it was certainly in his power to appeal to a higher court, and to sue Judge Perez for false imprisonment. But it does not appear that he took any steps in that direction.

The claim was dismissed. For the same reason the fact mentioned in the first place as a ground for the present claim must be disregarded. Exall's imprisonment, lasting two or three days, and originating out of a purely personal cause, could not have produced the ruin of the business.

As to the second fact. Admitting that the agent of the company really was intimidated into vacating the mines, this occurred in June or July, 1867, and their alleged abandonment did not take place until March, 1868. It was not, therefore, the immediate result of the intimidation.

After this, the *Prefect Mora*, the one who made the intimidation, was removed from office, and, if we are to believe his word, he visited afterwards the mines with the company's lawyer, and found them in a flourishing condition.

Guadalupe Soto, the other individual who, in his capacity of an authority, transmitted said order to the manager of "La Abra Mill," was

on such good terms afterwards with Exall that in February, 1868, they entered into an agreement by which Soto was allowed to occupy the *hacienda* of Guadalupe, belonging to the company, for six months without paying any rent.

Moreover, at the beginning of 1868, Exall, as he says, reduced some 20 tons of ore, and got from this operation the handsome sum of $17,000, and this proves that the intimidations of Mora and Soto did not prevent him from continuing his works, nor were they the cause of the abandonment of the mines; and we are left to believe either that Exall made some new arrangements with the laborers, or else that Mora's successor in office did not carry through the intimidation made by him.

As to the suggestions made by the local authorities to the laborers not to work for the company, the proof is reduced exclusively to the assertions of Exall, and Chavarria, who was not an eye-witness, and could only speak from the information he received from Exall.

In contradiction with this we have Exall's own statement that at the beginning of 1868 he benefited some ore, which he certainly could not have done without the help of the workmen.

Exall is likewise the *only witness* who says there were threats of death if the business was not abandoned.

In this particular, therefore, this case is identical to the dismissed case of the "Siempreviva Mining Company," No. 98, in the decision of which we read:

> The claimants further charge that Mr. Leya was forced by threats to fly from the mines of which he was in charge. The fears inspired by threats which induced Mr. Leya to abandon his post are not, in the umpire's opinion, sufficient ground for making the Mexican Government responsible for losses arising from his flight, if it really caused any such losses. But the proof that any such threats were made by Mexican officers or authorities is of the weakest kind. *It is only Leya himself who speaks of threats* daily uttered against him individually by the officers and soldiers of the forces of the Republic, without even testifying that they were made to him directly and personally. *Other witnesses make no mention whatever of these threats.* One witness, Adolfo Laguel, speaks of them as being made generally against the company as well as its agents, on account of their being foreigners.

II.

AMOUNT OF THE AWARD.

L.

Considering as well founded the responsibility of the Mexican Government on account of the alleged hostile acts of the local authorities of San Dimas and Tayolitta against the company, and likewise that these acts were the exclusive cause of the abandonment of the mines, and overlooking entirely the absolute want of all formality in which it was made, the umpire proceeds to determine the amount of the compensation.

The first basis fixed with this view is that the company is entitled to be reimbursed in the amount of their expenditures and of the value of the ores extracted from the mines, with interest on both sums.

In order to establish such a basis it is necessary to suppose that the speculation *of itself could never have been subject to any loss*, and that without the annoyances caused, as is believed, by the local authorities, it would at least have saved the whole amount of the expenses, obtaining moreover a net profit of 6 per cent. per annum, besides the products of the ores extracted.

L *bis.*

PROSPECTIVE GAINS.—VALUE OF THE MINES.

Says the decision:

Mining speculations are proverbially the most uncertain of all undertakings. Mines of the very best reputation and character suddenly come to an end, either from the exhaustion of the veins, or from flooding, or from some of the innumerable difficulties which cross the miner's path.

This being an unquestionable truth, what positive data have we to set down that the mines of this company would have produced any gains whatever, even insignificant, up to the day of their abandonment, and that, had they not been abandoned, they should have continued their products?

The decision consigns the very reverse, declaring that it had not been shown that the company received any dividends before the time of the abandonment of the mines, and establishing the basis that it could not count on sure gains in the future.

Let us, then, suppose that on the last day of 1867 this company should have decided to strike a balance of its business.

Let us also suppose that on that day its expenditure amounted to $341,791.06, a sum fixed by the president of the company on September 29, 1870, all expenses told, including salaries of the employés, office rent, fees of attorneys and judicial costs.

Let us suppose, too, that the stock in ores is to be estimated, as it has been, in $117,000 (including the product of the 20 tons that Exall says rendered $17,000 at the beginning of 1868).

The account or liquidation should have been:

Expenditures	$341,791 06
Products	117,000 00
Difference	224,791 06

It was, therefore, necessary that the mines and the improvements made in them should have been worth $224,791.06, in order that there should be no loss to the company.

But to suppose that they were actually worth that much, would be tantamount to take for granted that the mines would be productive in the future, and, for good reason, this was not done in the decision.

If, on the 20th of March, 1868, the mines would have become exhausted for any of the innumerable causes given in the decision, what would they have been worth afterwards? Nothing at all, and even the machinery would have been worth much less than it cost.

Now, if the value of the mines could not form an item in the liquidation of the business at the time of their abandonment, *there were undoubtedly losses in lieu of gains.*

It is on this ground that interest is granted *as safer than prospective gains.*

M.

WHY INTEREST IS GRANTED.

Whilst acknowledging that a mining speculation is one of the most uncertain of all undertakings, producing at times great profits, at others none whatever, and even causing the ruin of the speculators, it is taken as a standpoint, that claimants were not only free from losses *but that they would have obtained, at least, regular profits.*

N.

WHY PROFITS ARE NOT ALSO GRANTED, BESIDES INTEREST.

And yet, as if to secure moderate utility in the shape of interest seemed to be too little, it was thought advisable to give a reason for the denial of prospective gains by saying that to grant them would have been to grant twice the same thing.

This seems to corroborate the idea that interest is granted under the impression that the capital would *necessarily* have produced profits or gain, as if this company was placed beyond all the difficulties that ordinarily cross the miner's path, and frequently cause their ruin.

N *bis*.

THAT THE GOVERNMENT OF MEXICO IS NOT CONDEMNED TO PAY THE VALUE OF THE MINES.

The company paid a certain sum as purchase money for the mines it was going to work; it sent out some machinery, and undertook certain works, which the witnesses for the defense esteemed disproportionate to the circumstances of the mines.

The Government of Mexico is charged with the amount of the purchase money, the cost of the machinery and of the works, as it is compelled to pay *all that is said to have been expended;* and yet it is added that it has not been condemned to pay for the value of the mines, because it cannot be estimated, even approximately; alluding to the capital represented by the enterprise on account of its *possible* products.

Even admitting that it was just and equitable that the Mexican treasury should reimburse this company of all its positive losses, it is a well-known principle that prospective gains are never included in this class of compensations, even when speculations of known and undoubtful products were involved.

But in that case what certainly ought to have been shown are the actual and positive losses, the true amount of the capital invested, and that it was really spent in the object to which it is supposed to be destined.

Because if the expenses were of no use nor the speculation, or were made without any intelligence and discretion, how could it be just to condemn defendant to reimburse them?

O.

INTEREST ON THE PRODUCTS OF THE MINES.

The Mexican Commissioner, after showing with numerous reasons the want of foundation in this claim, concluded by saying that claimants asked much, to obtain something; but that absolutely *nothing* ought to be given to them.

But the American Commissioner, without going to the trouble of stating the reasons for his opinion, proposed to give claimants only the amount of the expenses they had disbursed in the speculation—and which he did not take the pains either to determine—with interest, at six per cent., in lieu of prospective gains.

Consequently, the disagreement of opinions between the two Commissioners consisted in whether claimants should receive *nothing*, or be reimbursed *of all the expenses they incurred.*

Both Commissioners agreed that nothing else should be given to claimants than said expenses and interest thereon.

The point, therefore, submitted to the umpire's decision was simply whether claimants were entitled to be reimbursed of the expenses they had incurred in their speculation in Mexico, with interest thereon, *and no more.*

There is not a single word in the American Commissioner's opinion in regard to the actual products of the mines, but, on the contrary, it very clearly determined that only the capital invested should be reimbursed, granting interest for all kind of profits.

It is, therefore, unquestionable that the assignment of a certain amount for the products of the mines is the exclusive work of the umpire, and it constitutes a point foreign to the question submitted to his decision. We have, therefore, three different opinions of the three members of the Commission, viz, the opinion of the Mexican Commissioner, declaring that *nothing* should be given to claimants; that of the American Commissioner in the direction that they should have the amount they spent in the speculation, with *interest;* and, finally, the umpire's opinion, granting the amount of those expenses with interest, *plus the products of the speculation, also with interest.*

As this Commission is formed by a Board, it is only the concurring vote or opinion of a majority of its members that can prevail in it; in other words, the umpire, or third Commissioner, as we may say, can only decide the points on which the other two have disagreed.

This has been the view and practice of all international Commissions, and it has been the view and practice that have shaped the proceedings of this Commission. For instance:

In the case of Bernard Turpin against Mexico, No. 90, there were two points to be decided; the Commissioners agreed on one of them, and the umpire said:

> With regard to the second claim, it appears that the Commissioners have agreed; the umpire is not, therefore, *called upon to say anything about it.*

In the decision of the case of Bartolo Hicks, No. 487, we read:

> The case involves a variety of claims, most of which the Commissioners have agreed to dismiss. There remain *but two upon which they differ,* and with regard to these the umpire is of *the same opinion* as the Commissioner of the United States.

It is, therefore, seen that the umpire believed that he was only called upon to decide such points in which the Commissioners were unable to agree, and on these he was decided by the opinion of one of the Commissioners.

Sometimes he did not entirely adopt one of the disagreeing opinions, but even then his opinion never went beyond that one from which he deviated, but was restricted to its limits, whence it always resulted that there were two agreeing votes up to a certain point, and the decision of this court by the vote of a majority of its members covered that point.

So in the case of Augustus Belknap, No. 185, the Mexican Commissioner was of opinion that the whole claim ought to be dismissed, the American Commissioner that claimant ought to receive an award of $25,000 or more, and the umpire granted $20,000, there being in consequence *two opinions in accord covering this last sum.*

The rule of not deciding any point foreign to those contained in the dissenting opinions, nor to exceed their limits, has been universally followed by the umpire, so much as that this case is the only one that can be cited in which he has deviated from it.

We cannot doubt the fact that the umpire has granted to these claim-

ants in his decision *more than the Commissioner of the United States*, if we only compare the words of the two decisions, nor can we question the practice to the contrary so universally followed, and the grounds on which this practice is based.

P.

PROOF AS TO THE CAPITAL INVESTED IN THE SPECULATION.

The simple affidavit of the president of the company, Mr. George C. Collins, has been considered as a clear and straightforward proof of the expenses disbursed by this company in its mining operations.

And yet who are the parties interested in this claim?

Evidently those who advanced the funds to meet the expenses of the enterprise, inasmuch as whatever might have been the true cause of their loss, their only hope of being reimbursed was through the award they expected to get from the umpire; in other words, the bondholders and creditors, apart from those who concocted and have promoted the claim, by all manner of means, fair or foul, and who would carry a large portion, if not the largest, of the award that might be granted.

Of the latter we are acquainted with those who appear on the files, viz, Sumner Ely, *Alonzo Adams*, *Robert Rose*, Frederick Stanton, W. W. Boyce, and Thomas H. Nelson, formerly minister of the United States to Mexico. Other persons, very likely, whose names do not appear on the files, will also have a share in the award.

But those interested in it in an ostensible manner are undoubtedly the bondholders and creditors, since without the award they could have no expectation of ever being reimbursed of what they lost in "the most uncertain of all speculations."

No complete list has ever been presented to this Commission of the bondholders, expressing their separate shares, as it ought to have been done, to dispel—if for no other reason—the well-founded doubt that has puzzled the Commission in other cases, as to whether the recipients of the awards were citizens of the United States or not.

With this view, it ought to have been shown, at least, that no others but citizens of the United States could acquire shares in the speculation.

The names of twenty-eight persons have been mentioned as bondholders, but, if we are to judge by their names, the only thing we can say positively is that not one of them is of Spanish origin, it appearing that almost all are of English extraction. If those whom they belong to have this nationality, or any other of English descent, is a matter utterly impossible to be guessed at.

Of these twenty-eight names only three are mentioned with the designation of their shares, viz:

George C. Collins	50
Thomas Bartholow	160
Dabney C. Garth	250
	460

There are only three persons, therefore, who are entitled to claim before this Commission, and if they, at least, would have fulfilled the order of the Commission of January 21, 1870, and presented the titles to their respective shares, the most that could have been granted to them would have been the value of those shares, say $46,000, with interest—if it so pleased—from the day on which they might have re-

ceived their dividends, admitting the possibility of designating that day.

Instead of doing this, it seems that the persons entitled to receive an award have been entirely overlooked, and there has been an intention to designate it by figures taken from the affidavit *of one of the few persons notoriously interested in obtaining the award.*

Collins, owner of fifty shares, worth $5,000, and the company's creditor to the amount of $21,145.17, which *he says* to have been lent to it, and for his salaries as president—time and amount not specified—*is the witness on whose affidavit* the umpire *relies.*

Is there any court in the world where any weight would have been attached to such a proof as this?

The very least that a court would have required from a company to prove its expenses, would have been to present its books, kept in due form.

Whatever degree of confidence the president of such a company might have inspired personally to the judges forming the court, and, supposing he had no personal interest in the claim, as the decision must appear as given on grounds of justice, *even for the adverse party,* that personal confidence could never have sufficed, and he ought to have been compelled to present documents sufficent in themselves to convince anybody that might see them.

In order to judge whether, in giving a decision, the guarantees of the defendant have been respected, we must put ourselves in the defendant's position. Who could ever be satisfied of being condemned on the sole foundation of the testimony of his plaintiff, or of the president of a company, pretending to be his creditor?

Are we all obliged to believe, perchance, in the infallibility of the presidents of speculating companies?

In the memorial of this claim it is said that the company had invested in its undertaking the amount of $303,000, when the stock capital with which it was organized only amounted to $300,000.

This expenditure, and nothing else, is what ought to have been proved by documentary evidence.

But instead of documents, the only proof we receive is the simple assertion of the president of the company, according to which the subscriptions and sale of shares produced the sum of $235,000.

Now, if this be true, either the shares of the company were not all sold, or they were sold for less than their face value, and either extremity contradicts the assertion made by Sumner Ely, the lawyer of this company, who, in his affidavit, said that the expectation of success was so great that all the shares were taken by the founders and their friends, and three of these only sold theirs, because they were in needy circumstances. Had it been so, all the shares would have produced to the company their face value.

Still we see by the president's testimony that they produced $65,000, less than their whole value.

This deficit was, according to said testimony, almost all covered by loans to the company, there remaining only a difference of $708.94.

Mr. Collins also says that up to date of his testimony—September 28, 1870—the company was owing for office rent, salaries of its employés, fees of counsel and attorneys, judicial costs, &c., the sum of $42,500, and as it was said in the memorial that all the expenses disbursed in the purchase of the mines and works amounted to $303,000, we necessarily infer that the difference of $38,791.06 between this

amount and the total of ingress and debts of the company correspond to expenses made after the abandonment of the mines.

And what are the "other expenses," salaries of the employés, *counsel and attorney's fees and judicial costs*, that, it is pretended, Mexico must pay?

How much is due to each creditor of the company and what for?

Has not Mexico a right to know it?

Has she not a right to object to each creditor's account?

How much is due *Ely and to Adams* for their *good services* to the company, and their *ability* in changing a bad speculation into a productive one, at the expense of the meager Mexican treasury?

What can be more severe than to say to a defendant, "Pay whatever plaintiff pretends to have spent, it matters little what for; compensate even those who forged and concocted the claim against you"?

The umpire, in cases submitted to his decision, has never granted to any claimant before, not even the sum of $100 that the American Commissioner was wont to allow for cost of printing, probably because the Convention, far from authorizing it, makes claimants contribute to defray the expenses of this Commission, deducting up to 5 per cent. of the awards they might obtain.

But in the present case, by admitting the charge of $42,500, in which are included lawyer's and attorney's fees, and the judicial expenses without any specifications whatever, the expenses incurred in the preparation of the claim are surely compensated.

Mexico, at least, has every right to believe it so, because she does not know to what dates, attorneys, witnesses, or judicial proceedings do these expenses charged in her account correspond.

Perhaps Counsellor Chavarria's fees for the verbal petition he made to Governor Ortiz de Zárate, or, more likely, for the testimony he gave in the behalf of this claim, are included.

Perhaps Consul Sisson's fees for his certificate in regard to the destruction of a testimony—which, nevertheless, was presented—in favor of the claim, by an unknown Mexican, and for the depositions he furnished Adams with, are also charged.

May be the traveling expenses of said Adams to go to Durango and Sinaloa to *make* proofs in behalf of this claim, and the amount he paid to his witnesses, "not for the purpose of suborning them, but simply as a compensation for the loss of their time," as it is pretended, are likewise included.

May be Galan and Dana's fees as *translators only* of the testimonies in favor of the company are charged.

Perhaps, finally, that other expenses are charged of which no traces can be found on the files.

Because not all those persons who lend their names to sustain a claim, still more uncertain than the speculation which gave rise to it, consent to do it only for the contingent interest of a percentage they may get.

We read in Bartholow's deposition:

> Assessments have been made by the company from time to time since the *celebration of the treaty* of July 4, 1868, *pro rata* against the individual stockholders for money with which to prosecute this claim for damages against the Mexican Government.

And in the memorial we find this very significative idea:

> That in addition to the expenditures in said mines, as aforesaid, said company *have expended* $30,000 in *conducting their business otherwise than in expenditures of said mines.*

Unfortunately, corruption has gained so much ground nowadays, that even persons in good social standing do not seem to be afraid of losing

their character by associating their names to a speculation of this stamp, in which the interests, not of private individuals, but of a whole nation, are attacked.

It seems that the belief is generally accepted that to get from the public treasury something to which we have no right, is not indecorous nor contrary to the principles of morality, still less when the defrauded treasury is not that of our own country, nor is there any investigation in the future to be dreaded, unless in times like the present when everything is being investigated.

Even admitting the justice that Mexico should compensate claimants for the expenses incurred in their mining speculation, it would not be just to make her pay the expenditures incurred *in conducting otherwise the business of the company.*

Q.

FORCED LOANS NOT COMPENSATED TWICE TO THE COMPANY.

Accepting the basis that this company had spent in its mining speculation and owed, up to May, 1870, the sum of $341,791.06, *simply because its president has said so*, it is presumed that in this amount all loans and taxes paid by the company in Mexico are included.

Recourse must be had to obtain this result to a conjecture, as Mr. Collins did not see fit to specify the expenses and payments made by the company.

When the machinery and all the necessary provisions were sent out, Mazatlan, the landing place, was occupied by the French. Some duties must necessarily have been paid to them, *and now Mexico is condemned to reimburse amounts paid to its foreign foe!*

She is also condemned to reimburse to the company all the amounts paid to the legitimate authorities by way of taxes and forced loans, for which no American claimant has yet obtained any compensation.

There can certainly be no justice in condemning Mexico to pay the same thing twice: first by compensating the company to the full amount of its expenditures in the enterprise, and then to reimburse also the amount of taxes and loans, when it is not even known.

But why is she condemned *once* to this reimbursement?

However prosperous we might *suppose the speculation to be, the amount paid by the company to the enemies of Mexico and the amount it lost by robberies ought to be charged to losses.* Why should the Mexican treasury be compelled to compensate them?

R.

TAX ON A TRAIN OF WAGONS IN TRANSIT.

Although when Mexico is condemned to reimburse all amounts paid for loans and taxes, *no discrimination is made between those imposed by the legitimate and the illegitimate authorities*, it was thought advisable to make a special mention of an exaction of which William Clark speaks in the following manner:

> Once, when Laguel was superintendent, I was in charge of a large quantity of provisions of the company that was to be carried to the mines of Tayoltita; but one Colonel Donato Guerra of the republican army of Mexico, in command at the time of that district, exacted a contribution of $600 on the provisions, and I had to pay it before they were permitted to continue their way.

Admitting the fact to be true as stated, we have that a large cargo *from Mazatlan, a port occupied at the time by the enemies of Mexico*, on its way to the mines, was taxed in the sum of $600 by an officer of the army.

In the case of J. Jaroslowski, No. 896, claimant asked for compensation not of a simple tax he had paid, but for the alleged confiscation by the republican troops of a load proceeding from Matamoros in 1865, and we read in the decision:

> But even if it be true that the goods of the claimant were seized by Mexican troops, the umpire considers that the Mexican authorities had by the general laws of war and the Mexican law of August 16, 1863, *the right to confiscate them.*

In other cases too, and recently in the cases of "Schlenning & Pentenrieder," No. 864, the same declaration was repeated.

> The claim—it is said—arises out of the seizure of merchandise by troops belonging to the forces under the command of General Cortina. The goods were dispatched by the claimants in June, 1865, from Matamoros to Piedras Negras. *But Matamoros was at that time occupied by the imperialist forces*, and all intercourse with it was prohibited by the Mexican Government. *The forces of that Government* were, therefore, justified in seizing and confiscating articles coming from that part, unless their owners or carriers were furnished with a special license, which does not appear to have been the case in this instance.

Neither in this case has the existence of a special permit been proven or even alleged, and it is only by overlooking all the circumstances of the fact that anything can be made of it to exaggerate the vexations to which this company was said to be a victim, since no attention whatever is paid to consider whether its intercourse with the enemy was legal or illegal before condemning the pretended exaction.

Were we to take into account the time at which this company undertook in Mexico a speculation, "the most uncertain of all speculations," instead of accumulating charges against Mexico we might turn them all against claimants for their notorious temerity and for the trade they held with the enemy of that country.

It almost seems that this company had vinculated its speculation with the state of war, since, as soon as it ceased and precisely when the company might expect to receive some protection, which it was not even entitled to before, for trading with the enemy, they desisted entirely of all efforts.

Is it just, is it equitable, that the Mexican people, who suffered so many direct wrongs by that war, should now have to pay even the imprudence of those foreign speculators who went to establish "the most uncertain of speculations" in the very midst of combatting forces?

S.

PRODUCT "SHOWN" OF THE ORE REDUCED BY THE COMPANY.

To the amount designated by the president of this company as the sum total of its ingress it has been seen fit to add the product of the ores benefited at the mines, of which he had not said a word.

And still, however badly organized this company might have been, its president should have known what were the products of the mines.

Why, then, is it taken for shown that the ores did produce $17,000?

There is no other data on record about this point than Exall's simple word for it. (See his affidavit of *June* 11, 1874.)

Does Exall enjoy, like Collins, the privilege of being believed under his simple word?

What guarantees of veracity do we find in the testimony of this agent of the company, who was so negligent in the fulfillment of his duty?

True it is that some of the witnesses for the defense speak of the ores reduced by the company, but let us see in what terms.

Aquilino Calderon says:

Don Juan and Don Carlos Elde disposed of the silver extracted by the company from the best ores produced.

Refugio Fonseca adds:

The silver extracted by the company was taken to Durango and Mazatlan. Carlos Mudo—Exall says that this was the name he was known by—paid with it a credit contracted in gambling.

But Exall comes afterwards, saying that he extracted $17,000 from 20 tons of ore, and that it is false that the silver extracted was carried to Durango to pay with it a gambling debt, and this is enough to *accept as proven such a product*, and to consider the charge of its misapplication as destroyed.

And still few things can be more improbable than that 20 tons of ore should have produced $17,000, and that immediately after having obtained this fabulous result from the speculation it should have been abandoned by American speculators.

T.

PROOF AS TO THE ABANDONMENT OF A LARGE AMOUNT OF VALUABLE ORES.

The proofs we find on file in this particular are these:

Exall says:

At the time of the abandonment we had extracted and carried to the mill from 650 to 750 tons of ore, having an existenee at hand of 250 tons more. These ores would have produced to the company $1,000,000.

So this honest and discreet superintendent pretends that, as 20 tons of ore had produced $17,000, *i. e.*, at the rate of $850 per ton, 1,000 tons could yield at the rate of $1,000 a ton.

Alfred Green says:

When the company abandoned the mines, I believe there were over 1,000 tons of ore that in my estimation would have yielded at least a half million of dollars.

George C. Collins:

As to the amount of ore extracted from the mines, I only know what I have heard from others.

What a fine president of a company!

James Granger, testifying in behalf of the company:

I believe that the amount of ores extracted was a little over 1,000 tons, or about 7,000 loads.

John Cole:

I am posted in the fact that the company had extracted and abandoned from a thousand to *a thousand five hundred* tons of ore, that would have produced from a hundred to a thousand dollars of pure silver a ton, and some even up to two thousand dollars.

He therefore knew of more existence on hand than the superintendent himself.

Francisco Gamboa:

The piles of ore that I saw might contain from six to eight thousand loads, and yield from three to eight *marcos* for load, or more.

This witness says he was damaged by the abandonment of the enterprise, because he had made arrangements with Exall for the transportation of the ore from the mines to the mill at so much a load.

Loaiza says that at the time of the abandonment there were from a thousand to *a thousand five hundred* tons of ore extracted.

Chavarria believes, judging by what he heard from persons well posted—who were they?—"that the value of the ore was about $2,000,000." He avers not being an expert in the matter. We are not surprised, since he has given so little sign of being an expert in his own profession.

Marcos Mora, *the authority hostile to the company*—if any was so—says that the company had about 6,000 tons of ore.

Charles Dahlgren, the admiral's son, saw the ore of the company in 1870, and testifies, without giving any reason for it, that not one-half of the amount remained then, and there were some signs that what was there *had been thrown away as of no use.* Still the ore covered about a fourth of an acre of land.

He cannot fix the value of the ore he saw, but believes that even *what was thrown away might have yielded something.* Still nobody availed himself of it. How rich must those people have been when they did not take the ores, having them at their disposal.

The admiral's son estimates the value of the rejected ores, of which nobody availed himself, in no less than $100,000.

Thomas Bartholow says that when he ceased to be superintendent there were only about two hundred tons of ore at the mill. His estimate in regard to its probable yield is based upon the information he received from the person who sold the mines.

In behalf of the defense we have the following testimonies:

Patricia Camacho:

The company at a great expense extracted many loads of ore *that could not yield enough to cover the expenses.*

The sixty loads that Guadalupe Soto took and benefited, with Granger's permission, did not meet the expenses.

Bartolo Rodriguez, Ramon Aguirre, Aquilino Calderon, and Refugio Fonseca testify in the same direction.

James Granger, testifying in behalf of Mexcio, says:

The ores are yet—1882—to be found at the mill, *and they are worthless. The speculation could not produce a cent.*

Andrés Serrano:

The mines have not produced any productive ores. Those abandoned by the Americans *are pure tepetate.*

Petronilo Santos, Leandro Martinez, and Pioquinto Nuñez:

The minerals extracted are nothing else but tepetate.

N. A. Sloan:

At the time I was a clerk of the company, I learnt from the superintendent that a little less than $6,000 of silver had been extracted. I know there were some ores, but not their amount. The ores exist at the mill and may yield *about $5 per ton.*

Ignacia Manjarrez:

The company, at a great cost, extracted an immense amount of worthless ore. When the mines were abandoned, Guadalupe Soto obtained permission to take and benefit as much ore as he could, but he failed to get anything out of sixty tons he benefited. Those mines might have been rich previously, but they were not so in the hands of the company. The company extracted over three thousand loads, which it divided in three classes, but they were entirely worthless.

Its first essays yielded *three or four ounces of silver per load.*
It then benefited sixty loads *that did not yield enough even to pay the laborers employed in picking the ores.*

Martin Delgado:

I know, because it is of public notoriety, that the company piled up a *large* amount of minerals that contained no silver.

Miguel Laveaga:

I know, and it is a notorious fact, that they piled up a large amount of tepetate that contained no gold nor silver.
A part of this stone was benefited, *and it did not cover the wages of the laborers employed in selecting it.* Guadalupe Soto did not obtain anything out of the amount he benefited with Granger's permission.

Agapito Arnoldi:

It is possible that the company's mines may produce from eighty to a hundred loads a month, not of good ores but of *tepetate. It is a notorious fact that they won't produce anything else.*

Nepomuceno Manjarrez:

The company extracted about three thousand loads of stone.
In May, 1866, Laguel came to take charge of the mines and made a favorable report to the company, but as soon as he got posted in the true state of matter, he ordered Bartolo Rodriguez to separate the ores from the *tepetate,* and having obtained in this manner sixty loads, they yielded very little silver.

So claimant's witnesses and the witnesses in behalf of the defense agree in this point, viz, that the company extracted a large amount of ores, but they disagree *in toto* as to whether said ores were or not of any value.

Why should we receive as reputable claimants' witnesses and their testimony as satisfactory when we find so much exaggeration in the value they attribute to the ores?

Is it more likely that ores of such an extraordinary fineness should have been abandoned than that an unproductive speculation should have been given up?

U.

INSUFFICIENCY OF THE EVIDENCE AS TO THE AMOUNT OF ORES ABANDONED.

As we have already remarked, it seems that it has been taken for granted that 20 tons of ore produced $17,000 to Exall, simply because he says so, as there is certainly no other proof on the subject; but perhaps his word is not taken as to the number of tons of ore existing at the mill, and of those extracted from the mines at the time of their abandonment, considering that he fluctuates between 650 and 750 tons when designating the number of those already transported to the mill, or perhaps because the president of the company said that he knew nothing about it except what he saw *in the testimonies prepared for the present claim.*

V.

PROOF CONSIDERED AS VERY IMPORTANT, BUT FOR THE ABSENCE OF WHICH—NOT EXPLAINED—THE COMPANY IS EXCUSED.

Far from entertaining any doubts as to the business being managed with all due regularity, a full conviction is expressed that it was, on the ground, very likely, of data *aliunde* the record, as on the files, on the contrary, we find great signs of irregularity.

It seems somewhat strange that a well regulated company should not present the books where the entries were made of the daily extraction of ores from the mines, but it does not seem strange that the company should *not present its books of* money *ingress and egress;* it seems strange that the reports that the superintendent of the mines must have sent periodically to the company about the number of tons of ore extracted should not have been presented, but the total absence of any scientific report on the result of benefit of the ores, or of its product, or the reports relating to the different phases of the business, its decadence and causes, and the special reasons that existed for abandoning the mines does not seem strange; and lastly, *the absolute want of* record of *proceedings of the board of bondholders, or of the managing board of the company,* does not seem strange either.

Instead of these documentary data—*the only ones that might constitute a ground for a critical judgment on the true prospect of the business and the real causes of its abandonment*—testimonies notoriously partial and procured *ad hoc* for, and given by persons selected by claimants, are accepted as satisfactory evidence, and it is only when certain data are needed not for the reimbursement of sums actually expended—because so far as these are concerned, the simple affirmation of the president of the company is considered enough—but to award a positive gain "in the most uncertain of speculations" that the books are missed.

And yet, when even the few required data which, as it is said, claimants could have produced, are not to be found on file, why should this willful default be excused, when claimants have not even taken, as it is added, the trouble of explaining its absence?

W.

It has been said that the superintendent of the mines estimated in about a thousand the number of tons of ore extracted from the mines at the time of their abandonment, and he valued them with notorious exaggeration in the sum of one million of dollars.

A large number of tons, but of less value, are mentioned by other *witnesses* in behalf of claimants.

But, without denying to Exall and such witnesses their knowledge in the matter, it is admitted, not that they told an untruth to benefit the company, but that they might have made a mistake in their estimates, because even in sight of a large amount of ores the most intelligent persons may be deceived as to its quantity, especially as to its average value.

With regard to the witnesses for the defense *no merit whatever is attached to their assertions on this point.*

The assertion that the ores abandoned by Exall should be so poor that its benefit should not pay is rejected as an impossibility.

X.

VALUE OF THE ABANDONED ORES; MANNER IN WHICH IT IS DETERMINED.

Notwithstanding the difficulty of determining the value of the ore extracted from the company's mines, *their quantity and quality not being known,* it is declared in the decision that it ought to produce necessarily some profit, as if it was an impossibility that anything else but valuable ores could be extracted from mines that were once rich; and as if it

was impossible that Exall should have selected and benefited for his own profit the best ores, as is stated by the witnesses for the defense.

And still, the very fact that Exall abandoned the mines as soon as he benefited the ores for the first time, employing a new proceeding at a very high cost, as he himself says, should be considered as a proof of the improductiveness of the speculation.

Were it true that at the beginning of 1868 twenty tons of ore had really produced $17,000 to Exall, how can we believe that on the 20th of March of the same year, *when the war in Mexico was all over, the legitimate authorities had been reinstated, and when, consequently, he might expect to obtain an efficacious protection by applying for it, even to the supreme authority of the Republic, if it was necessary, that he should have abandoned such a fabulously rich enterprise?*

When the amount of $100,000 is assigned as the value of the ores extracted from the company's mines, the possibility is admitted that this amount might be *less* than the true value of the ores; *but there seem to be no doubts entertained that it could be more than its true value.*

The injury that this estimate might inflict on the company's interests is attributed to the absence of all documentary evidence, *but no reason whatever is given as to the greater injury that such an estimate, if excessive, might cause to the defendant.*

And yet, who is to blame for the absence of the data necessary to form an estimate with some accuracy?

Nobody else but claimants, whose duty it was to present such data by showing their books and such other vouchers as would conduce to the desired effect.

It was impossible for the Mexican Government to present those documents.

How, then, can there be any justice in making the Mexican Government resent the consequences of a neglect imputable to the other party?

In all the courts of the world when the plaintiff does not prove satisfactorily what amount has he a right to perceive, nothing is granted to him, and this Commission has recognized in its decisions the justice of such a practice.

In the decision of the case of Hale and Parker, No. 548, we read:

> The umpire is unable to make an award, even if the evidence justified his doing so, *because it is not shown what were the number of the cattle in question.*

Even the American Commissioner has sometimes recognized the justice of this practice In deciding the case No. 614 of Lambert Ireland, he said:

> If Mexican authorities appropriated or destroyed property, the proof should show who the authorities were, when they committed the acts complained of, what property they took or destroyed, *and what its value was.* Nothing of this sort is done, *although a mining company is supposed to keep books,* to possess plenty of evidence of the wrongs, and *to be managed by intelligent superintendents.* The claim *must* now be rejected.

For the identical reason the claim of this company should have been rejected *in toto.*

But since it has been granted the privilege of having its pretensions attended to, when it has not even made an excuse for not having presented any documentary evidence, all the advantages ought not to be thrown on its side, disregarding entirely the danger of imposing unjustly a burden, very heavy indeed, on Mexico.

If, then, besides granting to the company, instead of profits, an inter-

est of 6 per cent. on all the capital its president *says* was invested, not in the speculation alone, but also in house rent in New York, lawyers' and attorneys' fees, judicial expenses, &c., there is a determination to estimate, by mere *conjecture*, the value of the ores extracted from the mines, notwithstanding the admission that it is through the company's fault that the necessary data are wanting; at least, the estimate of said value ought to be reduced to its *minimum*.

How many tons of ore are supposed to have been abandoned outside of the mines?

Perhaps one thousand, the *largest amount* designated by the superintendent.

Now, as the American ton contains six Mexican *cargas* [loads] and two hundred pounds over, a thousand tons would be equivalent to 6,006 *cargas*, 200 pounds.

The value of the *carga* of ore, placed out of the mine, must be $6, the lowest figure, in order that its reduction may pay, as this operation costs from $4 to $5.

In a thousand tons of ore extracted from a mine there must be a large portion the reduction of which cannot pay, and we have the best proof that there was such ore in the thousand tons, in the fact that even the most partial witnesses in behalf of the claim testified that in 1870 and 1872 there still existed a big pile of the ore, which anybody could have taken; and only Exall could have entertained the queer notion that the *tepetate* that existed out of the mines *had been placed there by the enemies of the company*.

It is possible, though not probable, that a portion of the abandoned ores should produce a little over $2, free of cost, per *carga;* but, as a larger portion would not produce anything at all, the largest figure at which the whole concern can be estimated at is $12,012.

The undersigned has obtained the data on which this estimate is based from Sr. Don Mariano Bárcena, professor of mineralogy, and Sr. Don José María Becerra, expert in the mines of the State of Chihuahua, who knows well the mines of the district of San Dimas, in Durango, speaking of which he says that its ores are what is called "rebeldes" (rebellious), because their reduction requires more expense and labor than the generality of ores. Both these gentlemen are now in Philadephia.*

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* Under the heading of "*Really productive mines,*" we read in the *Minero Mexicano:* The official data furnished by the inspector of mines of Nevada give us the opportunity of valuing the considerable profits reaped by some of the companies of that mineral district. We give here the estimates we have been able to form in view of those data.

During the first three months of the present year the Belcher Company extracted 39.292 tons of ore, producing in bulk $1,025,738; the cost of extraction amounted to $779,714.66, leaving a net profit of $249,023.34.

The "Consolidated Virginia" extracted 64,462 tons; total product, $8,362,876; expenditure, $1,582,596; leaving as net profit, $6,680,280.

The "Ophir Company" extracted 8,130 tons, producing $326,075.03; deducting $175,860 for expenses, a balance of $147,215.03 remained as profit.

It follows, from these data, that mines really productive are considered those yielding as follows:

The mines of the Belcher company produced, for every thousand tons of ore, $6,840.58.

The "Consolidated Virginia mines," for every thousand tons, $10,631.28.

The Ophir mines, for every thousand tons, $18,107.63.

We have, then, that only one of these companies obtained a little over $100,000 for a thousand tons of ore, whilst of the other two, one obtained $18,107.63, and the other $6,340.58. Still even the mines of the last-named company are considered as *really productive,* thus placing the mines of the Consolidated Virginia in the category of the *immensely rich* mines.

The mines of the claiming company are placed by the decision in the same category, since the products of *one thousand tons, or less, of its ores are estimated at* $100,000.

Y.

TIME THAT MIGHT BE REQUIRED FOR REDUCING THE ABANDONED ORES.

One year may be enough to benefit as many as one thousand tons of ore; but had the company sufficient funds to cover the necessary expenses?

If we are to believe in the memorial, when the mines were abandoned the company had not only exhausted all the capital to which it could legally extend its engagements, but three thousand dollars over.

When the superintendent left Mexico he had to borrow money to cover his traveling expenses, and, according to the person who lent him the money, he has not been reimbursed of it yet.

It is, therefore, not only possible that the company might not have been able to benefit the ores during a whole year, but it might also happen that it should never have had sufficient funds to that effect, in which case the ores would have been entirely unproductive to the company.

Z.

THE REASON WHY NO INTEREST IS ALLOWED BEFORE THE ABANDONMENT OF THE MINES TOOK PLACE.

According to the decision, it has not been shown that the company received any dividends before the 20th of March, 1868.

President Collins says:

> Said company has not made any dividend, nor received any returns, nor been reimbursed for said expenditures in whole or in part. And the silver ores which said company had extracted from the mines was their reliance for getting back the moneys so expended and owing by them, said company.
>
> As to the circumstances causing and attending said abandonment, the situation and condition of said mines and property of said company at the time, *the quantity of silver ore which the company had then extracted at the mines*, * * * deponent has no knowledge except what is derived from the statements of others, and the deposition of others *made in this matter*, which deponent believes to be true.

Therefore, the president of the company, without having any reliable documents as to the quantity and value of the ores extracted from the mines, relied on *such possible value to cover the expenditures of, and the debts contracted by the company*.

In speaking of the mines, the value of which he estimates in not less than $3,000,000, he adds:

> Had said company been left in the quiet possession of said mines and property, *as deposed to by others in the matter*, deponent, as already stated, having no personal knowledge of the quantity and value of those ores * * *.

Mr. Collins, relying on what others said, believed that the product of the ores extracted would suffice only to cover the expenses of the company and its debts, and that not until afterwards would they have commenced to perceive any profits.

This being the case, if, as it is presumed in the decision, the ores could produce $100,000—admitting that the necessary funds for its benefit could be counted on—the company would not have been able to pay even its debts, if these amounted to the sum fixed by Mr. Collins in his testimony of September, 1870, and much less to pay any dividend out of the profits.

Therefore no interest should be granted from November 20, 1868, on

the value of the bonds, since the interest is awarded in lieu of the dividends.

Admitting as a standpoint that up to March 20, 1869, the company would have received the sum of $100,000 as the first product of its mines, even then it could not have paid its debts, because if it did, why, it would have been left without any funds to prosecute the works.

Therefore, at the very best, and admitting that *the speculation was really a productive one*, it can only be supposed that it would begin to yield profits for the bondholders from 1870, or afterwards.

There is, then, no ground whatever to grant interest from the day of the alleged abandonment of the mines, which took place exactly at the beginning of the works, and when the company had no funds left.

CONCLUSION.

The undersigned, fearing that a *résumé* of his remarks on the final decision of this case would only increase the length of this argument without any object, will confine himself now to request the umpire, with all due respect, that if he finds in them anything deserving his attention, not to decline, on any account, to take them into consideration, thus affording additional proof that, as a strict judge and an honest man, he is only guided in the fulfillment of his high functions by the inspirations of justice and equity.

Should he finally confirm the decision, thus compelling the Mexican people to take away from their meager rents $300,000 annually for over two years out, in the benefit of a foreign company, let it be after examining carefully all the circumstances of the case; *and with the most perfect conviction that his decision is entirely just and in strict conformity with the principles of public law, and that there is not any error to amend, committed in the first appreciation of said circumstances.*

But should it appear that an error has been committed, why should it not be corrected? Is there any kind of considerations that can prevent an honest man, a depositary of the confidence of two nations, a judge whose only rules of action are equity, justice, and good faith, from rectifying an error?

At some future time, if not to-day, the attention of the world, or at least of those who may study the decisions of this international commission, will be called to the following facts:

A company organized in New York, without even the knowledge of the Government of Mexico, sent its agents to that country, when in a state of war, to undertake the most uncertain of speculations—a mining speculation. These agents bought some mines from its owner, whose principal reason for selling was the want of security in the district where they were located, it being a desert and at a great distance from the superior authorities; the capital of the company being partly exhausted by robberies and exactions committed by the forces of the two contending parties, between whom said agents carried on an illegal trade, and partly in fitting out the speculation, when the expenditures made were already in excess of the amount of the capital; and at the very beginning of the works, when the war was over, the speculation is abandoned. No complaint or protest was then produced against the authorities of the country, charging them with the responsibility of the abandonment. Nearly two years afterwards the testimonies of the employés of the company were for the first time procured, imputing the failure of the speculation to said authorities. One person was sent out to prepare some other testimonies in that same direction of persons also addicted

to the company. *No document of any kind was ever presented to prove the course taken to obtain the protection of the superior authorities, nor the circumstances of the speculation, its prospects of success, expenditures, products, &c.* Neither were certain proclamations and offers to foreigners inviting them to send their capitals to that country, *on the existence of which the claim was founded*, ever presented. Sundry claims entirely similar to this were dismissed even by the American Commissioner. He, nevertheless, proposed that this company should be indemnified only in the amount *it had actually spent in the speculation and interest thereon.* The umpire fixed said amount *on the sole ground of the testimony of the president of the company, and granted moreover a considerable sum for the conjectural value of the ores extracted from the mines.* The Government of Mexico, presenting some remarks about the foundation of the decision, requested the umpire to reconsider the case, and, in view of said remarks, and, above all, *taking again conscientiously into consideration the circumstances of the case, he revoked, modified, or confirmed his decision definitely.**

The public opinion will give its verdict.

Heavens grant that it may reflect all honor to the author of the final decision!

ELEUTERIO AVILA.

Filed September 19, 1876.

No. 13.

Declaration of the umpire in regard to the motions for rehearing.

The umpire, having completed and transmitted to the Commission his decisions upon all the claims which have been submitted to him, numbering four hundred and sixty-four, has now received from the secretary of the Commission motions of the agents of the United States and of Mexico respectively that some of those cases should be reheard.

The wording of the convention of July 4, 1868, by which the Commission was established, and which laid down the duties of the umpire, was to the effect that when the Commissioners should fail to agree in opinion upon any individual claim they should call to their assistance the umpire whom they may have agreed to name; and such umpire, after having examined the evidence adduced for and against the claim, and after having heard, if required, one person on each side on behalf of each Government on each and every separate claim, and consulted with the Commissioners, shall decide thereupon finally and without appeal. There is also a stipulation in the convention that the President of the United States of America and the President of the Mexican Republic solemnly and sincerely engage to consider the decision of the Commissioners conjointly, or of the umpire, as the case may be, as absolutely final and conclusive upon each claim decided upon by them or him, respectively, and to give full effect to such decisions, without any objection, evasion, or delay whatsoever.

The umpire understands from the above mentioned wording that he was called upon to examine and decide upon the claims precisely as they were sent to him, and to peruse no more and no fewer documents, statements, or testimonials than had been before the Commissioners previously to their having formed their disagreeing opinion; and,

* For the declaration of the umpire in regard to this motion, see the pamphlet containing the documents relating to Weil's claim.

further, to hear, if required, one person on each side on behalf of each Government on each and every separate claim. The umpire has performed this duty to the best of his ability.

It cannot be doubted that he had no right whatever to examine or take into consideration other evidence than that which had already been before the Commissioners, had been examined by them, and transmitted to the umpire. If he had done so, such a course would have been contrary to the dictates of the convention, and would have been eminently unjust until the opposite side should have had an opportunity of rebutting such posthumous evidence. If, then, it were in the power of the umpire to rehear any of the cases which have now been returned to him, he could only re-examine the same documents and evidence, and no more, upon which he has formed his opinions. As he has already examined all these documents and evidence with all the care of which he is capable, it is not likely that a re-examination of them would tend to alter his opinion.

The decision of the umpire, without his wishes being consulted, have generally been made public both here and in Mexico. It is known that by the convention they are final and without appeal. It is not impossible, and indeed it is very probable, that some of the claimants, in whose favor awards have been made, may have been able to obtain, on the credit of these final decisions, advances of money or other values, or may have sold and entirely signed away to other persons, not previously interested in the claims, the whole amount of the awards. The umpire is aware that by the law of the United States (Revised Statutes, sec. 3477) transfers and assignments of claims against the United States are null and void unless made after the issuing of a warrant for the payment thereof. But he does not believe that this law comprises claims against Mexico, although they may finally be paid through the Treasury of the United States; and there is no doubt that what is supposed, on the faith of the convention, to be a final decision of a claim, would give the claimant a credit of which he would be able and likely to avail himself. It is, therefore, highly probable that the alteration or reversal of a decision might seriously prejudice the interest of other parties besides the claimant-parties who were in no way concerned in the origin of the claim.

But the umpire believes that the provisions of the convention debar him from rehearing cases on which he has already decided. By it the decisions are pronounced to be final and without appeal, and the two Governments agree to consider them as absolutely final and conclusive, and to give full effect to them without any objection, evasion, or delay whatsoever. He believes that in view of these stipulations *neither* Government has a right to expect that any of the claims shall be reheard.

In the single case of Schreck, No. 768, the umpire listened to the request of the agent of the United States to reconsider, because it appeared that there was a law of Mexico which concerned the citizenship of the claimant to which the Commissioners, of course, had access, but no new evidence was offered or taken into consideration in that case.

In view, therefore, of the above-mentioned reasons, the umpire feels bound to decide that he cannot and ought not to rehear the cases which have been returned to him.

This decision covers the cases No. 58, Joseph W. Hale *vs.* Mexico; No. 73, F. W. Latham, assignee, &c., *vs.* Mexico; No. 158, George W. Hammeken *vs.* Mexico; No. 302, J. M. Burnap *vs.* Mexico; No. 447, Benjamin Weil *vs.* Mexico; No. 489, La Abra Mining Co. *vs.* Mexico;

No. 493, Thadeus Amat *et al. vs.* Mexico; No. 518, R. M. Miller *vs.* Mexico; No. 244, Geo. White *vs.* Mexico; No. 748, M. del Barco & Roque de Gárate *vs.* Mexico; No. 295, Augustus E. St. John *vs.* Mexico.

The case No. 776, "Alfred A. Green *vs.* Mexico," the umpire thinks it but fair to re-examine, because it is shown that certain evidence which was before the Commissioners was not transmitted to the umpire with the other documents upon which he made his decision. The umpire will, therefore, reconsider this case as far as that evidence is concerned, but not with reference to the fresh arguments which have been submitted by the counsel for the claimant.

The motions to rehear which accompany the above-mentioned cases are not merely a request to reconsider them, but are a critical review, particularly on the part of the agent of Mexico, of the grounds upon which the umpire has founded his decision. It is argued that they are all ill-founded and erroneous. This may be the case: the umpire does not pretend to be infallible; but he has decided to the best of his ability and conscience upon the papers which have been submitted to him. It is clear that, whichever way his decision may have turned, the claimant or defendant could always have found arguments to dispute its correctness and justice; indeed, an impartial umpire is generally subjected to such criticisms.

In his motions to rehear, the agent of Mexico has stated many facts which may be capable of proof, but which have not been proved by the papers submitted to the umpire. He has also shown immense ability in disputing the observations made by the umpire in support of his decisions, and in examining and discussing the merits of the claims with the greatest minuteness and detail; and the umpire is painfully impressed with the feeling that he might with fairness have been allowed the advantage of the searching examination of the agent of Mexico when these claims were first submitted to him rather than after he had decided upon them. There was at that time better cause for doing so than there is now; for one of the two Commissioners had already decided in favor of these claims before they came to the umpire. The latter is but one of three judges, and he would have been glad to have been favored and assisted by the minute criticism which the Mexican agent has now bestowed upon some of these claims.

In the case No. 489, "La Abra Mining Company *vs.* Mexico," the Mexican agent appeals to authorities as to the value of ores, who, he states, are at Philadelphia. Why were not the statements of these gentlemen—of whose existence the umpire was not aware, and to whom he had not access—reduced to evidence and produced before the Commission?

In one case, where both the Commissioners had agreed upon a certain portion of the claim, the agent of Mexico asserts that the umpire must have approved of their decision, because he did not express his dissent. The umpire does not accept this argument; for where the two Commissioners are agreed the umpire had nothing more to do in the matter, either to approve or disapprove.

In another case the Mexican agent complains that the umpire had awarded more than the United States Commissioner. So that in one case the agent of Mexico would give the umpire the power of overruling the decision agreed upon by both the Commissioners, and in the other he would not allow him to disagree with one of them whose decision was contrary to that of the other.

In the above-mentioned case, No. 489, the Mexican agent would wish the umpire to believe that all witnesses for the claimant have perjured themselves, whilst all those for the defense are to be implicitly believed.

Unless there had been proof of perjury the umpire would not have been justified in refusing evidence to the witness on the one side or the other, and could only weigh the evidence on each side, and decide to the best of his judgment in whose favor it inclined. If perjury can still be proved by further evidence, the umpire apprehends that there are courts of justice in both countries by which perjurers can be tried and convicted, and he doubts whether the Government of either would insist upon the payment of claims shown to be founded upon perjury. In the case No. 447, "Benj. Weil *vs.* Mexico," the agent of Mexico has produced circumstantial evidence which, if not refuted by the claimant, would certainly contribute to the suspicion that perjury has been committed, and that the whole claim is a fraud. For the reason already given, it is not in the power of the umpire to take that evidence into consideration, but if perjury shall be proved hereafter no one would rejoice more than the umpire himself that his decision should be reversed and that justice should be done.

With regard to the case No. 493, Thadeus Amat *et al. vs.* Mexico, the umpire must repeat his regret that the observations made by the agent of Mexico in his motion to rehear had not been transmitted to him before he pronounced his decisions, and that the facts by which he sustains those observations had not been proved before the Commission. In that motion the agent states that if observations had not been previously made and evidence presented by the defense with regard to the amount of the sum claimed in this case, it was not because the Mexican Government recognized such an amount, but because the previous question was to be decided whether the case by its nature came within the cognizance of the Commission. But the order of the Commission, which was transmitted to the umpire, was to the effect that Mr. Commissioner Wadsworth being in favor of making an award to the claimant, and Mr. Commissioner Zamacona being in favor of rejecting the claim, it was referred to the umpire for his final decision. He was therefore clearly entitled to suppose that all the observations which the defendant had to make had been made, and that all the evidence which was in the possession of the Mexican Government had been produced. Indeed, the umpire was firmly convinced that it was intended that he should finally decide upon the case with such evidence as had been submitted to the Commissioners and was forwarded to him.

If there be an arithmetical error in one of the calculations which the umpire has made, as is stated by the agent of Mexico at paragraph 66 of his argument, dated September 19, 1876, there can be no objection to its being corrected, and the umpire will examine the case with that view.

The umpire has been forced into the conclusion that he has no authority to rehear the above-mentioned cases. At the same time, he will not admit, but wholly denies, the inference which will generally and naturally be drawn from the observations made by the agent of Mexico, that any stain can attach to his honor by reason of his refusal to rehear those claims.

EDWARD THORNTON.

WASHINGTON, *October* 20, 1876.

III.—*PROCEEDINGS ON THE WEIL AND LA ABRA CLAIMS UNDER PRESIDENT GRANT'S ADMINISTRATION.*

No. 14.

Mr. Mariscal to the secretary of foreign affairs of Mexico.

REPUBLIC OF MEXICO.—DEPARTMENT OF FOREIGN AFFAIRS.—SECTION OF AMERICA.

No. 159.] LEGATION OF MEXICO IN THE UNITED STATES OF AMERICA,
Washington, November 23, 1876.

(Note to Mr. Fish communicating certain statements of the agent of Mexico at the close of the umpire's labors.)

After conferring with Sr. Avila I wrote down with his agreement the statements he was going to present at the last meeting that the agents and secretaries of the Commission would have, for the purpose of publishing the last decision of the umpire. Sr. Avila intended that those statements should be spread on the journal of the meeting, but having failed in his object because the agent of the United States was opposed to this course, he addressed me a communication, the copy of which is herewith annexed, marked "No. 1."

To-day I address a note to the Secretary of State (a copy of which is also annexed, marked "No. 2"), inclosing a copy of Sr. Avila's communication, adding that this gentleman's views were in conformity with the instructions given by my Government.

I reiterate the protestations of the high estimation with which I am, sir, your most obedient,

IGNACIO MARISCAL.

To the SECRETARY OF FOREIGN AFFAIRS, *Mexico.*

Mr. Avila to Mr. Mariscal.

No. 1.] WASHINGTON, *November* 21, 1876.

In the meeting that the agents and secretaries of the Commission held yesterday, for the purpose of publishing the umpire's last resolutions, I presented, in writing, certain statements, with a view that they should be inserted in the record of the proceedings of the day; but it was not done so because both the agent and the secretary of the United States did not think it proper. They are as follows:

1st. The Mexican Government, in fulfillment of article 5 of the convention of July 4, 1868, considers the result of the proceedings of this Commission as a full, perfect, and final settlement of all claims referred to in said convention, reserving nevertheless the right to show, at some future time, and before the proper authority of the United States, that the claims of Benjamin Weil, No. 447, and La Abra Silver Mining Company, No. 489, both on the American docket, are fraudulent and based on affidavits of perjured witnesses; this, with a view of appealing to the sentiments of justice and equity of the United States Government, in order that the awards made in favor of claimants should be set aside.

2d. In the case No. 493, of Thadeus Amat and others *vs.* Mexico, the claim presented to the United States Government on the 20th of July, 1859, and to this Commission during the term fixed for the presentation of claims in the convention of July 4, 1868, was to the effect that the "Pious fund" and the interest accrued thereon should be delivered to claimants; and though the final award in the case only refers to interest accrued in a fixed period, said claim should be considered as finally settled *in toto*, and any other fresh claim in regard to the capital of said fund or its interest, accrued or to accrue, as forever inadmissible.

3d. That the umpire having allowed compensations in several cases with the proviso that the interested parties should prove their American citizenship and that they were legitimately entitled to be the recipients of such compensations, the Mexican Government expects that the amounts corresponding to such cases will be deducted from the sum total of the awards if, within a prudent term, said conditions are not fulfilled.

All of which I communicate for your information, renewing to you the assurances of my consideration.

ELEUTERIO AVILA.

Sr. IGNACIO MARISCAL,
Envoy Extraordinary and Minister Plenipotentiary of Mexico, present.

Mr. Mariscal to Mr. Fish.

No. 2.] MEXICAN LEGATION IN THE UNITED STATES OF AMERICA,
Washington, November 22, 1876.

Mr. SECRETARY: I have the honor to annex herewith, for the information of the Government of the United States, a copy of a communication, dated yesterday, addressed to me by Sr. Eleuterio Avila, agent of Mexico before the United States and Mexican Claims Commission, adding, for my part, that the manifestations contained in the annexed note of Sr. Avila are in accord with the instructions he has received from the Government of Mexico.

I avail myself of this opportunity, Mr. Secretary, to renew to you the assurances of my high consideration.

IGNACIO MARISCAL.

To the Hon. HAMILTON FISH,
&c., &c., &c., present.

True copy.

MARISCAL.

No. 15.

Mr. Mariscal to the secretary of foreign affairs of Mexico.

No. 170.] LEGATION OF MEXICO IN THE UNITED STATES,
Washington, December 8, 1883.

(Answer of Mr. Fish to the above and my reply.)

Referring to my note, No. 159, of the 23d of last November, I will say that I have received from Mr. Fish an answer to the note which I have already communicated to that Department. I send herewith a copy and a translation of said answer under Nos. 1 and 2. In it Mr. Fish endeavors to prevent that his silence should be construed into an assent to Sr. Avila's manifestations. He would be glad to see that my notification relating thereto should be inoperative.

I annex herewith, under No. 3, a copy of my note of to-day, containing the reply I thought advisable to make him in order to show that our object was not to give rise to any question or difficulty whatever, nor to evade the fulfillment of the obligations imposed on us as the result of the decisions of the Commission.

I renew to you the assurances of my consideration.

IGNACIO MARISCAL.

To the SECRETARY OF FOREIGN AFFAIRS.

Mr. Fish to Mr. Mariscal.

No. 1.] DEPARTMENT OF STATE,
Washington, December 4, 1876.

SIR: I have received your note of 22d, accompanied by a communication of the 21st ultimo, addressed to you by Don Eleuterio Avila, the agent on behalf of Mexico before the Commission under the convention of the 4th of July of 1868.

Mr. Avila states that this communication was presented at the last meeting of the agents and secretaries of the Commission, but was not inserted in the minutes, it being deemed improper to do so. He thereupon addresses you and objects to the binding effect of certain of the awards made, and states his understanding of the effect of others.

You inform me that you transmit a copy of his communication for the information of the Government of the United States.

By article 2 of the convention the two Governments bind themselves to consider the decisions of the Commissioners and of the umpire as absolutely final and conclusive, and to give full effect to such decisions, without any objection, evasion, or delay whatsoever, and by the fifth article the high contracting parties agree to consider the result of the proceedings of the Commission as a full, perfect, and final settlement of every claim upon either Government arising from transactions prior to the exchange of ratifications thereof.

It may be quite proper that Mr. Avila should advise you of his views as to any particular awards, or as to any points connected with the closing labors of the Commission, and you may have felt it your duty to bring to the notice of this Government those views so communicated to you.

I must decline, however, to entertain the consideration of any question which may contemplate any violation of, or departure from, the provisions of the convention as to the final and binding nature of the awards, or to pass upon, or by silence to be considered as acquiescing in, any attempt to determine the effect of any particular award.

With your appreciation of the objects in contemplation in this method of settlement of difference between two Governments, and with your intimate acquaintance with the particular provisions of this convention, as with reference to the binding character of the awards made by the Commissioners or by the umpire, you will readily appreciate my extreme unwillingness to consider that at the moment when the proceedings relating to the Commission have been brought to a close, and the obligation upon each Government to consider the result in each case as absolutely final and conclusive becomes perfect, the Government of Mexico has taken or purposes to take any steps which would impair this obligation.

I avail myself of this occasion, sir, to offer to you a renewed assurance of my highest consideration.

HAMILTON FISH.

Sr. D. IGNACIO MARISCAL, *&c., &c.*

WASHINGTON, *December* 8, 1876.

A true copy.

CAYETANO ROMERO,
Second Secretary.

Mr. Mariscal to Mr. Fish.

No. 3.] LEGATION OF MEXICO IN THE UNITED STATES OF AMERICA,
Washington, December 8, 1876.

Mr. SECRETARY: I have had the honor of receiving your note of the 4th instant, in answer to mine of the 22d ultimo, to which I annexed a copy of the statements made by Sr. Avila, agent of my Government before the Claims Commission. You are pleased to state that it is not possible for you, even by keeping silent, to give to understand your assent to take up any question brought forth with a view of evading the fulfillment of the convention in regard to the final issue of the decisions, nor as a consent to any attempt to modify the effect of any particular decision.

It is not my intention, nor the intention of Sr. Avila, to open any question whatever, nor to put in doubt the final and conclusive character of the above-mentioned awards. As a proof of this, Sr. Avila begins his first statement by saying "that the Mexican Government, in fulfillment of article 5 of the convention of July 4, 1868, considers the result of the proceedings of this Commission as a full, perfect, and final settlement of all claims referred to said Commission." I beg leave to call your attention to the fact that Sr. Avila only expresses afterward the possibility that the Mexican Government may, at some future time, have recourse to some proper authority of the United States to prove that the two claims he mentions were based on perjury, with a view that the sentiments of equity of the Government of the United States, once convinced that frauds have actually been committed, will then prevent the definite triumph of these frauds. It seems clear that if such an appeal should be made, it will not be resorted to as a means of discarding the obligation which binds Mexico, and that, should it prove unsuccessful, the Mexican Government will recognize its obligation as before.

In his second statement, Sr. Avila intended only to express his Government's opinion as to the impossibility of claiming at any future time the capital of the Pious fund, the accrued interest on which is now going to be paid in conformity with the award. He endeavors to avoid, if possible, a future claim from the interested parties, through the United States Government, but does not pretend to put in doubt the present award.

The third statement is an unavoidable consequence of some decisions in which it is left to the United States Government to decide whether the claimant is or not a legitimate successor to the injured party, and whether he is or not an American citizen; on the decision of which points it will naturally depend whether the award that Mexico is to pay is applicable to anybody.

It is not, then, the spirit of these statements to raise any doubt or difficulty in regard to the obligation of the Mexican Government to submit to the results of the Commission. Sr. Avila has presented them, in fulfillment of instructions received from his Government, with the only view I have endeavored to explain, and, for my part, I have communicated them to that Department without any idea of raising questions of any kind whatever.

I congratulate myself to renew to you on this occasion the assurances of my very high consideration.

IGNACIO MARISCAL.

Hon. HAMILTON FISH,
&c., &c., &c.

WASHINGTON, *December* 8, 1876.

A true copy.

CAYETANO ROMERO,
Second Secretary.

No. 16.

Mr. Vallarta to Mr. Mariscal.

MEXICAN REPUBLIC.—DEPARTMENT OF FOREIGN AFFAIRS.—SECTION OF AMERICA.—NO. 40.—STATEMENT OF THE AGENT BEFORE THE JOINT CLAIMS COMMISSION.

MEXICO, *May* 1, 1877.

Your note, No. 170, of the 8th December ultimo, was received at this department on the 27th of last March, and its inclosures Nos. 1 and 2 inform me that the Secretary of State, Hon. Hamilton Fish, construing the statements of the Mexican agent that you had transmitted to him as an objection to the obligatory effect of the awards of the Joint Commission, refused to take them into consideration, and even thought it necessary not to keep silent about them, fearing that his silence might be construed into an assent of the endeavor to determine the effect of some of the awards.

The explanations you have given to said Secretary of State are wholly in conformity with the construction that the Mexican Government gives to the statements of its agent.

Far from intending to elude the fulfillment of the obligations it contracted through the convention of the 4th July, 1868, the same Government has already given a conclusive proof of its resolution to fulfill them, having made, amidst very difficult circumstances, the first installment of the balance awarded against it.

And, however painful it may be for Mexico to give away the considerable amounts of the awards allowed in the cases of Benjamin Weil and the Abra Mining Company, when the fraudulent character of these claims is once known, if the appeal to the sentiments of justice and equity of the United States Government, announced in the first of the statements in question, should, for any cause whatever, be ineffective, the Mexican Government will conscientiously fulfill the obligations imposed on it by that international compact.

In regard to the case of the archbishop and bishops of California, the Mexican Government, far from putting in doubt the final effects of the awards, has declared in the second of said statements that, in conformity to article 5 of the convention, the whole claim presented to the Commission must be considered and dealt with as finally arranged and as dismissed and forever inadmissible anything solicited by claimants but not allowed by the Commission. In other words, the Mexican Government recognizes itself bound to pay the awards allowed by the umpire to the claimants in behalf of the Catholic Church of Upper California, but this settles finally the claim in regard to everything belonging to the Pious fund of the missions of California, and none other can ever be presented, and much less sustained by the United States Government, or admitted at any future time by Mexico, in conformity with the spirit and letter of the convention of 4th July, 1868.

Finally, in the cases in which the umpire made awards without having any assurance that there were proper parties living entitled to be the recipients thereof, and leaving it to the United States Government to ascertain who were the parties entitled to receive them, if any, it is possible, undoubtedly, that there be none to claim them with any perfect right, and, in this case, those awards shall have no effect through an impossibility, and not by opposition of the Mexican Government, who has done nothing else but express the expectation that the amount unpaid for this reason shall be returned to it, as the convention was entered into only in behalf of private individuals, and that the United States Government will find it just to make such a deduction, when, on being made by Mexico the last installment, it may appear that no persons with legitimate rights are to be found to receive the above-mentioned awards.

But if such a hope should not be realized it will not prevent the Mexican Government from satisfying the amount of these awards, preferring always to bear this burden rather than to give cause of being suspected of a determination to elude, even in small parts, the fulfillment of its engagements.

Be kind enough to bring into the notice of the Secretary of State all the points contained in this note, and even to leave with him a copy of it, should he request it so.

Receive the assurances of my consideration.

VALLARTA.

To the ENVOY EXTRAORDINARY AND MINISTER PLENIPOTENTIARY *of Mexico in the United States of America, Washington, D. C.*

MEXICO, *May* 7, 1877.

A true copy.

JOSÉ FERNANDEZ,
Chief Clerk.

No. 17.

Mr. Fish to Mr. Foster.

No. 357.] DEPARTMENT OF STATE,
Washington, December 20, 1876.

SIR: Your dispatch No. 465 of the 28th ultimo has been received. It represents that the Government of Porfirio Diaz had applied for a loan of $500,000, and had represented that $300,000 of the amount would be

payable to this Government in the course of next month. The exact sum payable will, however, depend upon the construction placed upon the fourth and sixth articles of the original convention of the 4th of July, 1868, and the second article of the convention for extending the functions of the umpire of the 29th of April last. According to one construction, the deduction from the amount awarded of Mexico's share of the expenses of the Joint Commission might be distributed through the several periods at which payments are to be made by her, including that of the 31st of next month. Pursuant to another construction, Mexico would have the privilege of deducting the whole sum due to her on that account from her first payment.

I transmit a copy of a protocol, with an accompanying account of the expenses of the Joint Commission, signed by Mr. Mariscal and myself on the 14th instant.* These papers have been framed with deliberation and care, and, as is believed, state fully and accurately all necessary particulars for a comprehension of the subject at a glance. The account shows that there is a balance of $57,499.01 in favor of Mexico. If, therefore, she should think proper to deduct this amount from the first installment payable to the United States, that sum would be correspondingly lessened. If, however, she should prefer to distribute the sum over the several periods at which the payments are to be made, the amount due from her on account of the first payment would be increased accordingly.

We are not indisposed to allow Mexico her option in this matter. The pecuniary amount of the difference between the one course and the other is to us at least comparatively unimportant.

We are not aware of the method which Mexico will adopt for making the payment. If, however, it should be offered in dollars at the city of Mexico, there would be more or less risk and expense in remitting that amount hither in specie. It is consequently preferable that the remittance should be in good bills either on the United States or on England.

It is not deemed necessary to send you a formal power to receive the payment, but if it should be made to you, and any questions should arise as to your authority, you may show this instruction as proof in the matter.

I am, &c.,

HAMILTON FISH.

No. 18.

Mr. Foster to Mr. Fish.

No. 490.] LEGATION OF THE UNITED STATES,
Mexico, January 20, 1877. (Received January 30.)

SIR: Your dispatch No. 357 of the 20th ultimo, transmitting a copy of the protocol and account of expenses of the Joint Commission agreed upon between you and Mr. Mariscal, was received yesterday. The Government of General Diaz had already sent to Vera Cruz, for embarkation to New Orleans, $300,000, with which to make the first payment on the 31st instant, in accordance with the claims treaty; but being satisfied that it would be glad to take advantage of the construction which your dispatch allows to be placed upon the fourth and sixth sections of the

* For inclosures see inclosures to document No. 4.

treaty, and deduct from the $300,000 the balance on account of expenses of the Commission found to be in favor of Mexico, I called upon Mr. Vallarta on yesterday, left with him a copy of the protocol and account, and stated to him the substance of your dispatch. He at once submitted the matter to the consideration of the acting president, and within two hours he called at the legation to inform me that it had been determined to deduct the total amount of the balance of expenses, to wit, $57,499.01, from the first payment, in view of the pressing financial necessities of the Government. He, at the same time, expressed his profound appreciation of the liberality of construction which you had permitted to be placed upon the treaty. He said that as the coin had already been sent to Vera Cruz, and was now ready for embarkation, it had been thought best to carry out the original intention, and have Mr. Mata make the payment in Washington, which he hopes to do on or before the 31st instant.

I am, &c.,

JOHN W. FOSTER.

IV.—*PROCEEDINGS ON THE WEIL AND LA ABRA CLAIMS UNDER PRESIDENT HAYES'S ADMINISTRATION.*

No. 19.

Mr. Cuellar to Mr. Evarts.

MEXICAN LEGATION,
Washington, October 6, 1877.

MR. SECRETARY: I have the honor to accompany you, by my Government's instructions, as you will be pleased to see by the inclosed copy, two printed pamphlets containing copies of important documents concerning the awards in the case of Benjamin Weil (No. 447) and in that of the Abra Mining Company (No. 489). You will see by the above copy to which I refer that this appeal of my Government is not intended to prevent the fulfillment of the awards made by the umpire of the late Claims Commission, but only to make clear the fraud committed by the interested parties, and is directed by a sentiment of righteousness and justice.

I have, &c.,

JOSÉ I. DE CUELLAR.

Mr. Vallarta to Mr. Cuellar.

MEXICAN REPUBLIC,
DEPARTMENT OF FOREIGN AFFAIRS, BUREAU OF AMERICA,
Mexico, September 7, 1877.

With the intention of making the appeal to the sentiments of justice and equity of the United States Government, announced by the Mexican agent at the close of the proceedings of the Mixed Claims Commission in regard to the claim of Benjamin Weil, No. 447, and to that of La Abra Mining Company, No. 489, both against Mexico, the Government has had printed in two pamphlets some very important documents bearing on these claims, and I forward you four hundred copies of each one of said pamphlets.

Be pleased to have them distributed among the public officials and other persons to whom, in your opinion, it might be convenient to make known the reasons we have to make the appeal above referred to, as also the true attitude of the Mexican Gov-

ernment in the matter, which does not imply in any way the purpose to begin and maintain a controversy in order that the decisions of the umpire on the aforesaid cases should not be carried out, but simply to demonstrate the fraudulent character of the claims to which they refer, hoping that the United States Government, becoming convinced that the grounds of such claims are surely false, and that its principal evidence consists in affidavits of perjured witnesses, will not find just and equitable that the authors and abettors should receive the award granted them erroneously, and which would constitute a reward of their criminal demeanor, that ought, on the contrary, to deserve a severe punishment.

But if, as I said to that legation in my dispatch of the 1st of May (page 104 of the pamphlet, claim of Benjamin Weil), the appeal of the Mexican Government to the sentiments of justice and equity of that of the United States should by any reason be inefficacious, said Government will faithfully perform the duties imposed on it by the convention of the 4th of July, 1868, which it has not tried to elude, nor intends to elude, by means of such appeal.

Before the day fixed for the payment of the second installment there will be in that capital the necessary funds to do it, which installments will continue to be paid every year with the greatest exactness till the balance against Mexico is settled according to the convention.

In transmitting to the State Department, as requested, copies of the pamphlets above referred to, you will inclose copy of this communication and a translation of the same into English, accompanying an English translation to each pamphlet distributed.

I renew, &c.,

VALLARTA.

To the MINISTER OF MEXICO *at Washington, D. C.*

(The pamphlet annexed to Sr. Vallarta's preceding letter and sent by Sr. Cuellar to Mr. Evarts, contains the motion of rehearing submitted by Mr. Avila on the 19th of September, 1876, to the umpire, and appears before the decision of Sir Edward Thornton, under No. 12 of the present set of documents.)

CLAIM OF BENJAMIN WEIL vs. MEXICO, No. 447.

AWARD BY THE UMPIRE OF THE UNITED STATES AND MEXICAN CLAIMS COMMISSION—MOTION FOR REHEARING, SHOWING THE FRAUDULENT CHARACTER OF THE CLAIM, AND DECLARATION OF THE UMPIRE IN REGARD TO IT—AN APPEAL TO THE SENTIMENTS OF JUSTICE AND EQUITY OF THE UNITED STATES.

[Translation by J. Carlos Mexia, Mexican secretary of said Commission.]

Copy of Weil's application.

I, Benjamin Weil, a citizen of the United States of America, do by these presents declare that on or about the twentieth of September, eighteen hundred and sixty-four, I had on several trains in the Republic of Mexico and under my special control the following-described property belonging solely to myself: Nineteen hundred and fourteen bales of cotton, average weight of five hundred pounds, or nine hundred fifty-seven thousand pounds at thirty-five cents per pound, making three hundred thirty-four thousand nine hundred and fifty dollars. Said property was at that time, then and there, on the Mexican territory between Piedras Negras and Laredo, &c., that it was seized and by force taken from me by the representative forces of the Republic of Mexico, then in command of that portion of the country. That I often solicited the release of my property, but could obtain no satisfaction whatsoever; that I have never laid this claim before either the United States or Mexican Governments asking payments thereof; that I have never transferred my rights or any portion thereof to any other person or persons.

That I was at the time of the seizure of my cotton by the Mexican Government a citizen of the United States, as per annexed certificate of oath of my naturalization. That at the time of the seizure of my cotton by the Mexican Government I was and am now a citizen of New Orleans, Louisiana. That I was born in Bonywiller, Bas Rhin, France; am now forty-six years old, and have resided in the State of Louisiana since the twelfth of June, eighteen hundred and fifty; am a merchant by occu-

pation. That I was at the time of the seizure of my cotton stopping at Matamoros, Mexico. That my property was not insured, from the fact that no insurance could be effected on wagon or land transportation.

New Orleans, September 10th, 1869.

B. WEIL.

Sworn to and subscribed before me this 13th September, 1869.

[SEAL.] H. LOEW, *U. S. Com.*

I, the undersigned, hereby certify that the above statement is correct.

GEO. D. HITE.

Sworn to and subscribed before me by G. D. Hite this 13th September, 1869.

[SEAL.] H. LOEW, *U. S. Com.*

Evidence-in-chief for the claimant.

Deposition of John M. Martin, taken before me, the undersigned, a notary public in and for the parish of Orleans, State of Louisiana, on this 26th day of July, A. D. 1870, and intended to be used before the Joint Commission between the United States and Mexico, now sitting at Washington City, D. C., in the matter of the claim of Benjamin Weil against the Republic of Mexico, arising out of the illegal seizure of a large number of bales of cotton belonging to said Benjamin Weil, which was forcibly and unlawfully taken possession of by the liberal forces of Mexico under the command of General Cortinas, who commanded the entire district where this unlawful seizure occurred, and who was known to be acting under orders from Don Benito Juarez, President of said Republic of Mexico.

Deponent being sworn in accordance with law declares on his oath that he was born in Belmont County, Ohio, is now forty-five years of age, and that he now resides at New Orleans, La., and is by occupation a steamboat pilot.

That on or about the 20th September, A. D. 1864, he was riding in company of a large wagon train loaded with cotton belonging to said Benjamin Weil, and to his certain knowledge this train had over nineteen hundred bales of cotton belonging solely to said B. Weil, which was destined to be delivered at the city of Matamoros in the Republic of Mexico; and that on arriving with said train of cotton at a place (do not remember the exact name, but knows this to be between Piedras Negras and Laredo) that the entire train as well as the cotton was taken possession of by the forces under the immediate command of General Cortinas; that the deponent was present at the time of this unlawful seizure, and that besides his own knowledge that the said property did so belong to the said Benjamin Weil, he was likewise informed by the team master (?) in charge of said team that the entire contents, say over nineteen hundred bales of cotton, was the sole property of said Benjamin Weil and intended to be delivered by said B. Weil's order at Matamoros. He further states that the entire account of over nineteen hundred bales of cotton was forcibly taken possession of by said forces under command of General Cortinas, who represented the Liberal Government of Mexico, and he affirms that he witnessed and was present at the taking of said property by said Liberal forces, and likewise of the turning loose of the mules and horses and team conveying said cotton, that he witnessed all these at the place between Piedras Negras and Laredo at the time and date above stated and that the unlawful seizure was forcibly made by the Liberal soldiers under command of General Cortinas, and that the destination of said cotton was the city of Matamoros, where all produce was taken, then and there passed through the regular Mexican custom-houses, and then shipped abroad. He further declares that the said cotton at the time of seizure had not reached any Mexican custom-house where the proper duty could have been demanded and would have been paid. He further declares on oath, that said Benjamin Weil, the entire owner of the cotton seized, was considered at Matamoros, Mexico, a large operator in cotton, and he knows to his certain knowledge that said Weil has always paid duty at Matamoros to the Mexican Government (?) on all cotton which he received and exported at and from Matamoros, this being the place where the said Weil temporarily resided for business purposes: he further declares on oath that he has known the said B. Weil for many years and had often transaction with him, and from his own observation as well as other parties who also transacted business with said Weil, he cannot but state that he has ever found him acting with honesty and integrity towards all. He also declares on oath that he is in no way connected or interested in this claim whatever, and that he is convinced by his own personal witness and presence of said seizure that the said cotton, say over nineteen hundred bales of cotton, was the sole propert of said B. Weil, and that they were forcibly taken by the Liberal forces of General Cortinas representing and known then to be an officer of high rank in the Liberal army in Mexico, the President of which Republic was Don Benito Juarez, and further deponent says not.

JOHN M. MARTIN.

Parish of Orleans, State of Louisiana.

Personally appeared before me, the undersigned, a notary public in and for the parish and State aforesaid, John M. Martin, who signed the foregoing affidavit in my presence and swore to the same before me according to law. I certify that the said John M. Martin is well known to me to be the person represented in said affidavit. I further certify that I have no interest in this or any other claim before the Mexican Joint Commission now in session at Washington, D. C.

In testimony whereof I have hereunto set my hand and affixed my notarial seal of office this 26th day of July, A. D. 1870, at the city of New Orleans, State of Louisiana.

[SEAL.] ANDREW HERO,
Not. Pub.

Joint Commission of the United States of America and the United States of Mexico.

STATE OF LOUISIANA,
Parish of Orleans, city of New Orleans, ss:

BENJAMIN WEIL
vs.
THE UNITED STATES OF MEXICO.

Testimony on behalf of complainant taken before me, George William Christy, a duly qualified notary public, on this 15th day of December, A. D. 1869.

EMILE LANNDNER, being first duly sworn, deposes and says:

I am thirty years of age; I was born in the State of Mississippi; at present I reside in the city of New Orleans, and my occupation is that of a cotton broker; I am not in any manner interested in the within, either directly or indirectly, nor am I agent or attorney of claimant or of any person having an interest in the claim. At the time of the happening of the events I am about to relate, I resided in the Republic of Mexico (?) and was engaged in the occupation of a supercargo. I have known complainant, Benjamin Weil, since the year 1861; have always known him to be a just, upright, and honest man in all his transactions; he was wealthy and speculated largely in cotton during the late Mexican war. From what I have heard from others upon the subject, and general report in Mexico and elsewhere, I believe that some time in the year 1864 the complainant Weil lost a large amount of cotton (over one thousand bales) captured and taken from him by the forces of the Liberal party in Mexico. The cotton then was worth about one hundred and sixty dollars per bale in gold.

EMILE LANNDNER.

Sworn to and subscribed before me this 15th day of December, 1869.

GEORGE W. CHRISTY,
Notary Public.

ANCHUS J. MCCULLOCH, being first duly sworn, deposes and says:

I am 29 years of age; I was born in New Orleans, Louisiana, and at present reside in said city, and my occupation is that of a speculator in cotton. I am not in any manner interested in the within claim, nor am I agent or attorney of complainant, or of any other person having an interest in the claim. At the time of the happening of the events I am to relate, in the Republic of Mexico, I was engaged in the occupation of a supercargo. I have known complainant, Benjamin Weil, since the year 1862, and have always known him to be an upright and honest man, just in all his dealings. He is a man of wealth, and during the late civil war in Mexico speculated very extensively in cotton. From general report on the subject, and from what I have heard stated by others in Mexico and other places, I believe that said complainant Weil, in the year 1864, had over one thousand bales of cotton taken forcibly away from him by the forces of the Liberal or Juarez party in Mexico, and that said cotton at the time of its capture or forcible detention by the forces of the Liberal party, as aforesaid, was worth one hundred and sixty dollars per bale in gold.

A. J. MCCULLOCH.

Sworn to and subscribed before me this 15th December, 1869.

GEO. W. CHRISTY,
Not. Pub.

GEORGE D. HITE, being first duly sworn, deposes and says:

I am 33 years of age; I was born in Richmond, Va.; at present I reside in New Orleans, La.; my occupation is that of a steamboat agent. I am not in any manner interested in the within claim, either directly or indirectly, nor am I agent or attorney of claimant, or of any person having an interest in the said claim. At the time of the

happening of the events I am about to relate, I was residing in Matamoros, Mexico, and my occupation was that of a contractor. On or about the month of September, 1864, the complainant, Benjamin Weil, was residing in Mexico and doing business as a trader or speculator. I was well acquainted with him. At the time he had a very large amount of cotton; I should say about nineteen hundred bales (1,900). Said cotton, with other cotton (?), was forcibly seized and taken possession of by the forces of the Liberal or Juarez party and detained; said seizure was made in Mexican territory, between Piedras Negras and Laredo; said cotton, when seized, was worth about one hundred and seventy-five dollars per bale in gold. Complainant Weil, at the time of the seizure of his cotton, was a citizen of the United States of America. I have known him since about 1855. During the civil troubles in Mexico he was a large speculator in cotton; had the reputation at one time of being one of the heaviest speculators in Matamoros. He was wealthy, and I have always known him to be a man of strictly honorable and upright principles, whose word could be depended upon at all times.

GEORGE D. HITE.

Sworn to and subscribed before me this 15th December, 1869.

[SEAL.] GEORGE W. CHRISTY, *N. P.*

Joint Commission of the United States of America and of the United States of Mexico.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans, ss:

BENJAMIN WEIL
vs.
THE UNITED STATES OF MEXICO.

Testimony on behalf of complainant taken before me, George William Christy, a duly-qualified notary public, on this seventh day of February, A. D. 1870.

JOHN J. JUSTICE, being first duly sworn, deposes and says:

I am 37 years of age; I was born in the State of Louisiana; at present I reside at Alexandria, La., and my occupation is that of a stage agent; I am not in any manner interested in the within claim, either directly or indirectly, nor am I agent or attorney of claimant, or of any person having an interest in the claim; at the time of the happening of the events I am about to relate, say in September, 1864, I was residing in the town of Matamoros, in the Republic of Mexico, and was engaged in driving a stage from Matamoros to Piedras Negras and other points on the road in Mexico.

I am well acquainted with Mr. Benjamin Weil, the complainant in this case; that on or about the 20th (twentieth) day of September, 1864, I was with a train of wagons, loaded with cotton, say a little over nineteen hundred bales (I think nineteen hundred and fourteen bales); said cotton was worth thirty-five cents per pound;* it was worth in round numbers about three hundred and thirty thousand dollars; the bales would average five hundred pounds (500) to the bale; said cotton was owned by Mr. Benjamin Weil; said cotton was taken possession of by force by an armed force of the Liberal or Juarez party of the Mexican States on the route between Piedras Negras and Laredo in the Republic of Mexico.

That I was present and witnessed the taking of said property; the party taking of possession of the property at the time claimed, and, as I afterwards learned, belonged to the command of General Cortinas; they stated that Mr. Weil would get his cotton back, or he would be paid for it.

JOHN J. JUSTICE.

Sworn to and subscribed before me this 7th February, 1870.

GEORGE W. CHRISTY,
Not. Pub.

Joint Commission of the United States of America and the United States of Mexico.

STATE OF LOUISIANA,
Parish of Orleans, city of New Orleans:

BENJAMIN WEIL
vs.
UNITED STATES OF MEXICO.

Testimony taken before Geo. W. Christy, notary public, February 17, 1872.

SAMUEL B. SCHACKELFORD, being first duly sworn, deposes and says:

I am 36 years of age. I was born in Marengo County, State of Alabama. I reside at present in the city of New Orleans, and my present occupation is that of a merchant. I am not in any manner interested in the within claim, either directly or indirectly,

*See the statement of B. Weil in the second motion of the Mexican agent.

nor am I agent or attorney of claimant or of any person having an interest in the claim. In the months of August, September and October of the year 1864, I was in the Republic of Mexico, acting as agent of the Confederate Government in the clothing department on the trans-Mississippi department of said Government. I had previously known the complainant Weil well; I knew him to be a man of large means, and dealing extensively in cotton. I was present at Alleyton, Texas, about the 1st Sept., 1864, when the complainant, Benjamin Weil, was taking out a large train loaded with cotton as I understood to penetrate the territory of the United States of Mexico toward Laredo. The train was loaded with or had on board about two thousand (2,000) bales of cotton, to the best of my observation and the general reports at the time, and I had an opportunity of knowing, as I was in company and contact with his clerks and agent daily. Saw bills of lading signed in name of Benjamin Weil for cotton, saw drafts paid by Benjamin Weil drawn on him for cotton, also orders, bill, &c. Saw bills paid for wagons, labor, transportation, &c., connected with the cotton, in name of said Benjamin Weil, and generally saw that all the details of the business connected with said cotton was carried on and conducted in the name of said complainant Benjamin Weil, &c., &c., said complainant at the time being the largest operator in cotton in that section of the country. He was the free owner and master of the cotton train and expedition. I do not know the exact value of the cotton, but it was generally supposed to be worth half a million of dollars or thereabouts, and I so regarded it at the time. I think the price of cotton at the time was somewhere between 30 and 40 cents per pound, nearer 40 than 30. The bales of cotton were larger than the average size, and, according to the best of my recollection from the bill of lading, would average about 500 pounds in weight. My business as agent of the Confederate Government called me from time to time both to Texas and the United States of Mexico. After having left Alleyton I went over into Mexico in the prosecution of my business as agent aforesaid, where I again met complainant Benjamin Weil's said train, loaded with cotton, on the road near Laredo in Mexico. This was somewhere between the 10th and 25th of September, 1864. I camped with the train, and the next day after I joined it the train and its contents was seized and taken possession of by an armed force under General Cortinas, by violence. The complainant Benjamin Weil made demand in person and through his agents and attorneys for the return of the cotton, which was refused, but the answer to his demand was that the Government of the United States of Mexico was good for the cotton or its value. The complainant, Benjamin Weil, has often requested me to give my testimony in this case, but my absence from the city and necessity for travelling in my business has prevented me from complying with his request until this time.

SAMUEL B. SCHACKELFORD.

Sworn to and subscribed before me this 17th February, 1872.

GEORGE W. CHRISTY,
Not. Pub.

GEORGE D. HITE, being first duly sworn, deposes and says:

I am 35 years of age. I was born in Richmond, Virginia; at present I reside in New Orleans, and my occupation is that of a merchant.

I am not in any manner interested in the within claim, either directly or indirectly, nor am I agent or attorney of claimant or of any person having an interest in said claim. I have been a merchant in New Orleans for the last 15 years, except during the war. During the war I was in Texas and the trans-Mississippi department; during the year 1864 I was employed by the complainant, Benjamin Weil, as his agent to purchase and procure cotton for him in the State of Texas, which I did, paying for the cotton so purchased in gold and greenbacks furnished to me by complainant, Benjamin Weil, for that purpose; I also procured cotton for him by trading it from parties in Texas who were indebted to him, and giving them receipts and discharges in full, in the name of said Weil, for their indebtedness to him.

Whenever I so purchased and procured cotton, I hired teams and send it to Allaton, in Texas, as a depot or starting point, from when it was shipped by trains through the United States of Mexico, via Matamoros, to foreign ports, Matamoros being the only point at which duties could be paid. I purchased and procured the cotton from planters, who kept no books nor clerks; I kept memoranda of the amount of cotton so purchased and procured and the prices paid for the same, as also receipts, but all these memoranda and receipts, together with other valuable papers belonging to Mr. Weil, were destroyed at the close of the war by disbanded Texas troops; valuable papers belonging to myself were also so destroyed at the same time. I was in Allaton, Texas, the place of depot or starting point, and assisted in making up the train which was to take complainant Weil's cotton to the United States of Mexico, as aforesaid. The train consisted fully on one hundred and ninety (190) wagons, averaging eight (8) mules to each wagon, the mules being small, the soil on the black prairies being very stiff and hard, and the sand roads being very deep and heavy. The wagons

averaged about ten bales of cotton each; at the least computation (1,900) nineteen hundred bales of cotton were loaded and shipped on the train. The whole cotton belonged to and was paid for by complainant, Benjamin Weil; he was by far the largest and wealthiest operator in cotton in the country. I was Weil's principal agent in purchasing cotton and superintending the getting up of the train and shipping the cotton. I repeat, that all the cotton shipped by the train, and amounting to at least nineteen hundred bales, belonged to and was paid for by complainant Weil. The wagons and mules, or the train itself, so called, was hired by Mr. Weil, and was subject to his orders and directions. The cotton as it came into Allaton was overhauled for the purpose of being put in order, and where bales were small I enlarged them by packing and baling so as to make them weigh over five hundred (500) pounds to the bale.

This was done for the convenience of packing and transportation. All of the cotton averaged over five hundred pounds (500) to the bale, and cotton at that time was worth from forty-five (45) to forty-eight (48) cents per pound in gold, irrespective of classification. I started the train with complainant's cotton (amounting to at least 1,900 bales) from Allaton, in Texas, in its way to the United States of Mexico, in May, 1864, to the best of my recollection with regard to dates. The train and cotton crossed the Rio Grande into the United States of Mexico about one hundred and sixty miles (160) above Brownsville, in the early part of September, 1864. That point of crossing was made for the sake of better roads there afforded. I did not travel with the train in Mexico, but went on to Matamoros. Whilst I was in Matamoros the men belonging to the train* come into town and announced that the train and cotton had been captured by troops and forces belonging to the Liberal or Juarez Government under the command of Cortinas.

This same statement was also afterwards made to me by men and officers† belonging to Cortina's commands and who assisted in capturing the train and cotton. This statement they made to me whilst I was still in Matamoros. After the train left Allaton, Texas, in May, 1864, I left the employ of Mr. Weil, and proceeded directly to Matamoros in Mexico on business of my own as a contractor, but as my business called me up the Rio Grande in September, 1864, whilst so attending to my own business, I met said train and cotton at the point where it crossed the Rio Grande 160 miles above Brownsville, and assisted in crossing it into Mexico. When I first gave my statement or testimony in this case on the 15th day of December, 1869, before Geo. W. Christy, notary, neither Mr. Weil or his attorney was present; not having been informed by either Mr. Weil or his attorney upon what points my testimony was desired, I simply made a general statement, without entering into details, but having since learned from the attorney of Mr. Weil, that when I made my first statement he was ignorant of my knowledge of facts and details, which he now deems of importance, at his instance, request, and summons I now extend my testimony and give this statement in detail. In answer to a question by Weil's attorney, I add that the distance from Allaton, Texas, to the point where the train crossed the Rio Grande is called seven hundred miles. Such a train would hardly average eight miles a day in travel. I repeat that I met the train at the point where it crossed the Rio Grande whilst on business of my own. That I assisted at its crossing and immediately left it, proceeding directly to Matamoros on my own business.

GEO. D. HITE.

Sworn to and subscribed before me this 12 March, 1872.

GEO. W. CHRISTY,
Not. Pub.

Award of the umpire.

In the case of Benjamin Weil *vs.* Mexico, No. 447, the umpire considers that the proof is amply sufficient that the claimant is a citizen of the United States, and he cannot doubt that he is so, and was so at the time of the origin of the claim. The claim arises out of the alleged seizure by troops under General Cortina of cotton belonging to claimant, for which no compensation has been granted by the Mexican Government. It is stated that the occurrence took place between Piedras Negras and Laredo on the 20th of September, 1864.

The umpire considers that the facts put forward by the claimant are sufficiently proved, viz, that the cotton belonged to him; that it was seized and taken by troops belonging to the Mexican Government and under the command of General Cortina; that the place at which the seizure took place was between Piedras Negras and Laredo, which must therefore have been in one of the Mexican States of Coahuila and Tamaulipas; and that the cotton, which was avowedly on its way to Matamoros for export, was seized on or about the 20th of September, 1864.

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*No names are given.
†No names.

These facts are not disproved by evidence on the part of the defense. The argument of most weight which has been suggested by the latter is that all communication with points occupied by the enemy was forbidden. But there is no proof that any of the territory through which the cotton had passed, or was intended to pass, was occupied by the enemies of the Mexican Government. It is true that the States of Coahuila and Tamaulipas were under martial law; but that state of things did not justify the Mexican authorities in seizing the goods of private persons and neutrals without giving them compensation; or if they thought it necessary to seize the cotton, in order that it might not fall into the hands of, or even pay duty to, the enemy, they were still bound to indemnify its owner. The umpire has been unable to discover any proclamation or other manifesto by the Mexican Government to the effect that either Coahuila or Tamaulipas was occupied by the enemy, and it is a historical fact that the city of Matamoros was first occupied by the French forces on the 26th of September, 1864.

The umpire is, therefore, of opinion that the claimant was committing no illegal act in transporting his cotton through Coahuila and Tamaulipas, with destination to Matamoros, on the 20th of September, 1864, and that as it was seized by Mexican authorities, for whatever reason it may have been seized, the Mexican Government is bound to indemnify the claimant.

The claimant asserts that there were 1,914 bales of cotton. The witnesses agree that there were no less than 1,900, which latter number the umpire will therefore adopt. The average weight of each bale is shown to be 500 lbs., and the value 35 cents per lb. But with regard to the value, it must be remembered that the cotton was still a long way from Matamoros when seized, and that there is always some risk of damage being done to it during the journey. The umpire, therefore, thinks that it will be fairer to put the value at 30 cents the lb.

The umpire, therefore, awards that there be paid by the Mexican Government on account of the above-mentioned claim the sum of two hundred and eighty-five thousand Mexican gold dollars, ($285,000), with interest at 6 per cent. per annum from the 20th of September, 1864, to the date of the final award.*

EDWARD THORNTON.

WASHINGTON, *October* 1, 1875.

(The next document is Mr. Avila's argument to the umpire on a motion for a rehearing of the case of Benjamin Weil, contained in this correspondence under No. 11.)

Declaration of the umpire in regard to the motions for rehearing.

The umpire having completed and transmitted to the Commission his decisions upon all the claims which have been submitted to him, numbering four hundred and sixty-four, has now† received from the secretary of the Commission motions of the agents of the U. S. and of Mexico, respectively, that some of those cases should be reheard.

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* The umpire having declared, on the 31st of July, 1876, that one decision signed by him on that date was to be considered as the final award in regard to interest allowed, those corresponding to the Weil's case award amounted to the sum of $202,810.68 cents, and the total awarded to the sum of $487,810.68 cents.

† On the 29th January, 1876, the Mexican agent presented to the Commission his motions for rehearing in the cases of Geo. L. Hammeken, No. 158; Benjamin Weil, No. 447; "La Abra Mining Co., No. 489, and Thadeus Amat *et al.*; the bishops of California, No. 493, all *vs.* Mexico, "which motions were by the Commissioners ordered to be filed and transmitted to the umpire for decision," as the record of the American secretary reads.

Said motions were transmitted as ordered, and the aforesaid secretary received the following letter from the umpire:

"The secretary of the United States and Mexican Claims Commission has transmitted to the umpire on the 5th ult. various motions of the agents of Mexico and the United States, respectively, having for their object the amendment and modification of certain awards and the rehearing by him of several cases mentioned therein.

"The umpire has already before him a number of cases and will receive several more, which have been or are to be sent to him for decision, by order of the Commissioners. He thinks it incumbent upon him to examine and decide upon all the cases before taking into consideration any motions made by the respective agents, and he would not be justified in delaying his decisions by reason of the aforesaid motions. The consideration of claims now before him will occupy several months, whilst the arguments submitted by the agents in support of the motions above mentioned are of some length, and will require much thought and time.

"The umpire feels, therefore, bound to decline even to consider for the present whether the awards and cases in question ought to be amended, modified, or reheard. After the whole of the cases ordered by the Commissioners to be referred to the umpire shall have been disposed of, he will have no objection to take into consideration any motions which may then be made to him by the respective agents.

"The umpire has, therefore, the honor to return the motions above referred to, with the papers connected with them, and begs to express his hope that the agents of the United States and Mexico will not transmit to him any such motions until the whole of the fresh cases ordered by the Commissioners to be forwarded to him shall have been disposed of.—Edward Thornton—Washington, March 1, 1876." [Note by the Mexican agent.]

The wording of the Convention of July 4, 1868, by which the Commission was established, and which laid down the duties of the umpire, was to the effect that when the Commissioners should fail to agree in opinion upon any individual claim, they should call to their assistance the umpire whom they may have agreed to name; and such umpire, after having examined the evidence adduced for and against the claim, and after having heard, if required, one person on each side on behalf of each Government, on each and every separate claim, and consulted with the Commissioners, shall decide thereupon finally and without appeal. There is also a stipulation in the Convention that the President of the U. S. of America and the President of the Mexican Republic solemnly and sincerely engage to consider the decision of the Commissioners conjointly, or of the umpire, as the case may be, as absolutely final and conclusive upon each claim decided upon by them or him, respectively, and to give full effect to such decisions without any objection, evasion, or delay whatsoever.*

The umpire understands from the above-mentioned wording that he was called upon to examine and decide upon the claims precisely as they were sent to him, and to peruse no more and no fewer documents, statements, or testimonies than had been before the Commissioners previously to their having formed their disagreeing opinion; and, further, to hear, if required, one person on each side, on behalf of each Government, on each and every separate claim. The umpire has performed this duty to the best of his ability.

It cannot be doubted that he had no right whatever to examine or take into consideration other evidence than that which had already been before the Commissioners, had been examined by them, and transmitted to the umpire. If he had done so, such a course would have been contrary to the dictates of the convention, and would have been eminently unjust until the opposite side should have had an opportunity of rebutting such posthumous evidence. If, then, it were in the power of the umpire to rehear any of the cases which have now been returned to him, he could only re-examine the same documents and evidence, and no more, upon which he has formed his opinions. As he has already examined all these documents and evidence with all the care of which he is capable, it is not likely that a re-examination of them would tend to alter his opinion.†

The decisions of the umpire, without his wishes being consulted, have generally been made public both here and in Mexico. It is known that by the convention they are final and without appeal. It is not impossible, and indeed it is very probable, that some of the claimants in whose favor awards have been made may have been able to obtain, on the credit of these final decisions, advances of money or other values, or may have sold and entirely assigned away to other persons, not previously interested in the claims, the whole amount of the awards. The umpire is aware that by the law of the United States (Revised Statutes, sec. 3477) transfers and assignments of claims against the United States are null and void, unless made after the issuing of a warrant for the payment thereof. But he does not believe that this law comprises claims against Mexico, although they may finally be paid through the Treasury of the U. S.; and there is no doubt that what is supposed, on the faith of the convention, to be a final decision of a claim, would give the claimant a credit or which he would be able and likely to avail himself. It is, therefore, highly probable that the alteration or reversal of a decision might seriously prejudice the interest of other parties besides the claimant, parties who were in no way concerned in the origin of the claim.‡

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* The 5th article of the Convention says:

The high contracting parties * * * further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said Commission, shall, from and after the conclusion of the proceedings of said Commission, be considered and treated as finally settled, barred, and thenceforth inadmissible.

When the Mexican agent first presented his motions for rehearing the proceedings of the Commission had not concluded. [Remark of the agent of Mexico.]

† Certainly not, unless the re-examination should be made in a spirit free from all prejudice. It was under this impression that the Mexican agent said to the umpire, in his motion for rehearing the "La Abra" claim:

"And that in case he [the umpire] condescends to revise, he should not consider the decision as his own work, but rather as if written by an utter stranger, for thus only will he be able to rectify its grounds in an independent and unbiased manner, and to render a sure judgment in an affair that sooner or later must have great publicity and be the object of commentaries." [Note of the A. of M.]

‡ Although many observations can be made on this paragraph, the following seem sufficient:

The revocation or modification of an award can proceed from no other cause than a judgment in a contrary or different way of that taken at first. In other words, that the persuasion that the burden thrown upon the condemned party was not just in the whole or in certain points, and is it, perhaps, more in conformity with the equity to sustain an unjust sentence given against a Government—the Government of Mexico—than to prejudice the interests of persons really or apparently not previously concerned in the claims, and who ventured themselves to enter into speculations upon its result?

Why should the Mexican Government be less entitled to consideration than some speculators whose existence is doubtful, and whose good faith is more doubtful still?

Since the transfers or assignations of the awards of the Commission against the Government of the U. S. are null and void, how can it be that the awards of the same Commission against Mexico be lawfully transferable?

Ought there not to be a reciprocity in all the effects of the convention which created the Commission? [Note by the Mex. Ag.]

But the umpire believes that the provisions of the convention debar him from rehearing cases on which he has already decided. By it the decisions are pronounced to be final and without appeal, and the two Governments agree to consider them as absolutely final and conclusive, and to give full effect to them, without any objection, evasion, or delay whatsoever. He believes that in view of these stipulations *neither* Government has a right to expect that any of the claims will be reheard.

In the single case of Schreck, No. 768, the umpire listened to the request of the agent of the United States to reconsider, because it appeared that there was a law of Mexico* which concerned the citizenship of the claimant, to which the Commissioners, of course, had access, but no new evidence was offered or taken into consideration in that case.†

In view, therefore, of the above-mentioned reasons the umpire feels bound to decide that he cannot and ought not to rehear the cases which have been returned to him.

This decision covers the cases:

No. 58. Joseph W. Hale *vs.* Mexico.
" 73. F. W. Latham, assignee, &c.
" 158. George W. Hammeken, "
" 302. J. M. Burnap, "
" 447. Benjamin Weil, "
" 489. La Abra Mining Co., "
" 493. Thadeus Amat *et al.*, "
" 518. R. M. Miller, "
" 244. Geo. White, "
" 748. M. del Barco and Roque de Gárate.
" 295. Augustus E. St. John, &c.

The case No. 776, "Alfred A. Green *vs.* Mexico," the umpire thinks it but fair to reexamine, because it is shown that certain evidence which was before the Commissioners was not transmitted to the umpire with the other documents upon which he made his decision. The umpire will, therefore, reconsider this case as far as that evidence is concerned, but not with reference to the fresh arguments which have been submitted by the counsel for the claimant.

The motions to rehear which accompany the above-mentioned cases are not merely a request to reconsider them, but are a critical review, particularly on the part of the agent of Mexico, of the grounds upon which the umpire has founded his decision. It is argued that they are all ill-founded and erroneous. This may be the case. The umpire does not pretend to be infallible, but he has decided to the best of his ability and conscience upon the papers which have been submitted to him. It is clear that whichever way his decision may have turned the claimant or defendant could always have found arguments to dispute its correctness and justice. Indeed, an impartial umpire is generally subjected to such criticisms.‡

In his motions to rehear, the agent of Mexico has stated many facts which may be capable of proof, but which have not been proved by the papers submitted to the umpire.§ He has also shown immense ability in disputing the observations made by the umpire in support of his decisions, and in examining and discussing the merits of the claims with the greatest minuteness and detail; and the umpire is painfully impressed with the feeling that he might with fairness have been allowed the advantage of the searching examination of the agent of Mexico when these claims were first submitted to him, rather than after he had decided upon them. There was at that time better cause for doing so than there is now, for one of the two Commissioners had already decided in favor of these claims before they came to the umpire. The latter is but

*The Mexican constitution, art. 30.

†Neither, in the case of G. L. Hammeken *vs.* Mexico, and in that of "La Abra," was any new evidence presented by the agent of Mexico. Nor was it necessary to take any new evidence into consideration to form the conviction that the fact alleged in the case of B. Weil is physically and morally impossible. The Mexican agent called the attention of the umpire to certain laws, but the umpire did not find it proper to say anything about them, as he did when the quotation was made by the agent of the United States. [Note by the Mexican agent.]

‡Indeed, any judge impartial or partial, is subject to criticism, with the only difference that such a criticism shall appear manifestly unfounded when there is no satisfactory reason for it. But independently of the partiality or impartiality of a judge, he is subject to error, and the umpire himself professes not to be infallible. The Mexican agent has never made against Sir Edward Thornton the charge of partiality in his briefs and arguments, and, on the contrary, he has availed every opportunity to do justice to the fairness and rectitude of judgment shown by the said Hon. gentleman in many of his decisions. But the Mexican agent must be allowed to repeat that Sir Edward could have erred in some of his appreciation. The agent of Mexico does not pretend, of course, to be infallible. He is undoubtedly as much or even more subject to error than the umpire, and only submitted to him his observations in a candid, but in no way offensive, manner. [Note by the M. A.]

§The Mexican agent stated also in his motions several facts of decisive importance which did not require any proof, being evident in themselves. Was it necessary, for instance, to prove the physical impossibility of the alleged fact that a train loaded with cotton crossed the Rio Grande 160 miles *above* Brownsville, *on its way to Matamoros*, and was captured at three hundred or more miles *above* Brownsville, between Piedras Negras and Laredo? [Remark by the Mex. Ag.]

one of three judges, and he would have been glad to have been favored and assisted by the minute criticism which the Mexican agent has now bestowed upon some of these claims.*

In the case No. 489, La Abra Mining Co. *vs.* Mexico, the Mexican agent appeals to authorities, as to the value of ores, who, he states, are at Philadelphia. Why were not the statements of these gentlemen—of whose existence the umpire was not aware, and to whom he had not access—reduced to evidence and produced before the Commission? †

In one case where both the Commissioners had agreed upon a certain portion of the claim the agent of Mexico asserts that the umpire must have approved of their decision, because he did not express his dissent.‡ The umpire does not accept this argument, for where the two Commissioners are agreed the umpire has nothing more to do in the matter, either to approve or to disapprove.

In another case the Mexican agent complains that the umpire had awarded more than the United States Commissioner. So that in one case the agent of Mexico would give the umpire the power of overruling the decision agreed upon by both the Commissioners,§ and in the other he would not allow him to disagree with one of them whose decision was contrary to that of the other. ‖

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* The agent of Mexico does not deserve the commendation made by the umpire of his ability, but he thinks that the inculpation which follows such a commendation is not more deserved by him. He always has endeavored in his arguments before the umpire to present every case as clearly as he was able to understand them, and to discuss—sometimes at a length perhaps greater than the umpire would find it proper—all the grounds of the opinions rendered by the American Commissioner; but this gentleman in some cases, as in that of La Abra, for instance, did not take the trouble of founding his opinion, and the agent of Mexico called the attention of the umpire to this circumstance in his first motion for the rehearing of said case by the following remark: "The counsel for the claimant asked for and obtained *twice* extension of time for the presentation of their arguments, *when they had before them the grounds of the opinion contrary to their claim, whilst that favorable to it, which discussion would be the matter* for the argument *of the defense, had no foundation at all, as the aforesaid counsel themselves had remarked in their argument before the umpire.*"

In the above-mentioned case, as well as in some others, the agent of Mexico didn't know, nor even could guess the grounds of the decision favorable to American claimants until it was given by the umpire. He, nevertheless, always endeavored to the best of his—unfortunately for him, not *immense*, but very limited—ability, to show that the claims were groundless in themselves whenever the American Commissioner gave to the interested parties the *chance*, as it was called by him, of being transmitted to the umpire for decision. [Annotation by the M. A.]

† Because neither the Mexican Government, nor probably anybody else but claimants, could ever have believed that a pile of stone known in Mexico by the name of "tepetate" should have been converted for the benefit of said claimants in valuable ore, for, as the umpire says in his award, *there was not sufficient proof nor indeed such proof as might have been produced* about the quantity and quality of the ore extracted from the mines, because nobody could have foreseen that, notwithstanding that, as the umpire also says, "the idea formed even by persons intelligent in the matters," referring to the witnesses for claimants, of the quantity of a mass of ore, *must necessarily be vague and uncertain*, and that of its average value *still more so*, the highest possible value should have been fixed to the so-called ore of the claimants; and, moreover, because *even the American Commissioner* did not allow anything to them on this account, so that not only before the Commissioners rendered their disagreeing opinions, but even when the case was transmitted to the umpire there was no reason whatever for producing any evidence in regard to that point.

What the Mexican agent intended to show to the umpire, not only by the authorized statement of Sr. D. Mariano Barcena, a distinguished professor of mineralogy, but with reference to the products of the richest mines—those of Nevada—was that in allowing to the Abra Co. one hundred thousand dollars for the value of their ore, the umpire allowed them as much, if not more, than the richest mines can produce. [Note by the M. A.]

‡ It was precisely the contrary assertion the one which the agent of Mexico intended to lay down in the following paragraphs of his motion for rehearing the Abra case:

Inasmuch as this Commission is a Board, there cannot prevail in it any other vote or opinion than that of the majority of its members, or in other words, the third of these members can only *decide such points upon which a disagreement of opinions between the Commissioners had actually occurred.*

So it has been understood and practiced in all the International Commissions of this kind, *and the same understanding and practice has regulated* the proceedings of this Commission. For instance:

In the case of Bernard Turpin *vs.* Mexico, No. 90, there were two points for decision; the Commissioners agreed upon one of them, and the umpire said, "With regard to the second claim it appears that the Commissioners have agreed, *the umpire is not, therefore, called upon* to say anything about it."

The Mexican agent's mind was to show that the practice of not touching in the final decision any point upon which the Commissioners were not in disagreement—which practice struck the same agent as being the proper one—had been followed by the umpire. [Note by the Mex. Ag.]

§ If there is anything in the motions of the Mexican agent that could be taken in that sense he most solemnly declares that it never was his intention to acknowledge in the umpire the power of overruling the decision agreed upon by both the Commissioners. How could he acknowledge such a power when he had just stated that *only* the vote of the majority could prevail in the Commission? [Note by the Mexican agent.]

‖ It was not the agent of Mexico, but the nature of the umpire's functions, which did not allow him to decide any point not referred to in his examination and decision. When one of the Commissioners was of opinion that nothing ought to be awarded to a claimant, and the other Commissioner proposed that such claimant should be indemnified with the sum of one thousand dollars, the umpire could decide either that nothing was to be paid, or that claimant should receive an indemnification *within or up to the amount fixed in the* affirmative opinion, but not of a higher sum, because whatever additional sum the claimant might receive would emanate from the *single* vote or opinion of the umpire; and if, as in the "Abra" case, the Commissioner in favor of the claim had expressed the opinion that nothing more should be awarded than what he especially designated, the decision granting something additional cannot be considered as a decision of the Commission passed by the vote of its majority, but, on the contrary, as given *against* such vote.

Therefore the agent of Mexico found irregular and improper that the umpire should have awarded something to claimants in the above-mentioned case expressly *against* the opinion of both the Commissioners, thus deciding in the benefit of claimants a point not only unreferred to his decision, but set aside before referring the case. [Note by the Mex. Ag.]

In the above-mentioned case, No. 489, the Mexican agent would wish the umpire to believe that all witnesses for the claimant have perjured themselves, whilst all those for the defense are to be implicitly believed. Unless there had been proof of perjury the umpire would not have been justified in refusing evidence to the witnesses on the one side or the other, and could only weigh the evidence on each side, and decide to the best of his judgment in whose favor it inclined. *If perjury can still be proved by further evidence*, the umpire apprehends that there are courts of justice in both countries by which perjurers can be tried and convicted, and *he doubts whether the Government of either would insist upon the payment of claims shown to be founded upon perjury. In the case No.* 447, "*Benj. Weil vs. Mexico*," *the agent of Mexico has produced circumstantial evidence which*, if not refuted by the claimant, *would certainly contribute to the suspicion that perjury has been committed, and that the whole claim is a fraud.* For the reason already given, it is not in the power of the umpire to take that evidence into consideration; *but if perjury shall be proved hereafter no one would rejoice more than the umpire himself that his decision should be reversed and that justice should be done.*

With regard to the case No. 493, Thadeus Amat *et al. vs.* Mexico, the umpire must repeat his regret that the observations made by the agent of Mexico in his motion to rehear had not been transmitted to him before he pronounced his decisions, and that the facts by which he sustains those observations had not been proved before the Commission.* In that motion the agent states that if observations had not been previously made and evidence presented by the defense with regard to the amount of the sum claimed in this case, it was not because the Mexican Government recognized such an amount, but because the previous question was to be decided whether the case by its nature came within the cognizance of the Commission. But the order of the Commission, which was transmitted to the umpire, was to the effect that Mr. Commissioner Wadsworth being in favor of making an award to the claimant, and Mr. Commissioner Zamacona being in favor of rejecting the claim, it was referred to the umpire for his *final decision.* He was therefore clearly entitled to suppose that all the observations which the defendant had to make had been made, and that all the evidence which was in possession of the Mexican Government had been produced. Indeed, the umpire was firmly convinced that it was intended that he should finally decide upon the case with such evidence as had been submitted to the Commissioners, and was forwarded to him.†

If there be an arithmetical error in one of the calculations which the umpire has made, as is stated by the agent of Mexico at paragraph 66 of his argument dated Sept. 19, 1876, there can be no objection to its being corrected, and the umpire will examine the case with that view.

The umpire has been forced into the conclusion that he has no authority to rehear the above-mentioned cases; at the same time he will not admit, but wholly denies, the inference which will generally and naturally be drawn from the observations made by the agent of Mexico, that any stain can attach to his honor by reason of his refusal to rehear those claims.‡

EDWARD THORNTON.

WASHINGTON, *Oct.* 20, 1867.

*The first and principal point discussed in the argument of the Mexican agent before the umpire, was that the case was not one of those referred to the Commissioners, and the umpire did not take this point into consideration. None of the facts by which the Mexican agent sustained his motions for rehearing in the case of Thadeus Amat *et al.* need be proved. The award of the umpire is founded on the erroneous intelligence of a law, and to show this, no facts were necessary, but only to study the wording and the spirit of said law in order to make a proper application of the same. The only fact at stake has always been unquestionable, to wit: that the claim arose out of a transaction of a date prior to the 2nd of February, 1848; the law of Feb. 8, 1842, by which the Bishop of the Californias was released from the administration of the Pious fund, and the law of October 24th, 1842, by which such properties of the fund as had actual products, were incorporated into the National Treasury, the Government promising to pay to the same fund not to the aforesaid Bishop interest at six per cent. upon the amount of the proceeds of the sales of said properties. [Note by the Ag. of Mex.]

†There had also been transmitted to the umpire *for final decision* many other cases upon which he only decided that they did not come under the cognizance of the Commission. So he did in the case of Treadwell and Co. vs. Mex., No. 149, and in all the cases where the violation of contracts voluntarily entered into was alleged; and so he did also in the case of McManus Brothers *vs.* Mex., No. 348, for forced loans, and all other cases of the same cause.

In trasmitting a case to the umpire for his decision it would never have been intended to deprive him of the first of his natural powers: that of examining and deciding whether or not such a case was within the cognizance of the Commission, and whether or not there was in it any injury, according to to the convention. [Note by the ag. of Mex.]

‡The observations to which allusion is made here, are probably the following:

"To refuse a revision of the case—that of B. Weil—now that such proof exists, would be tantamount to close the eyes to evidence, and to sanction knowingly a fraud, outraging justice."

"The undersigned appeals to the umpire's sentiments of justice, to his feelings as an honest man, to his probity which has won for him a spotless reputation."

"Can there be any reason in the world to award a premium on crime?"

"Must the poor Mexican Treasury suffer an enormous burden to the benefit of infamous speculators just to avoid correcting an involuntary error, when it is yet time to correct it?"

"No, it is not possible that such should be the proceeding of an honest judge, whose only rules of action are truth, justice, and equity."

It is seen that the basis of these observations was the understanding that it was time yet for the

DIPLOMATIC CORRESPONDENCE IN REGARD TO CERTAIN STATEMENTS OF THE MEXICAN AGENT BEFORE THE UNITED STATES AND MEXICAN CLAIMS COMMISSION.

REPUBLIC OF MEXICO.—DEPARTMENT OF FOREIGN AFFAIRS.—SECTION OF AMERICA.

LEGATION OF MEXICO IN THE UNITED STATES OF AMERICA,
Washington, November 23, 1876.

Number 159.—*Note to Mr. Fish communicating certain statements of the agent of Mexico at the close of the umpire's labors.*

After conferring with Sr. Avila I wrote down with his agreement the statements he was going to present at the last meeting that the agents and secretaries of the Commission would have, for the purpose of publishing the last decision of the umpire. Sr. Avila intended that those statements should be spread on the journal of the meeting, but having failed in his object because the agent of the United States was opposed to this course, he addressed me a communication, the copy of which is herewith annexed, marked No. 1.

To-day I address a note to the Secretary of State (a copy of which is also annexed, marked No. 2) inclosing a copy of Sr. Avila's communication, adding that this gentleman's views were in conformity with the instructions given by my Government.

I reiterate the protestations of the high estimation, with which I am, sir, your most obedient,

IGNACIO MARISCAL.

To the SECRETARY OF FOREIGN AFFAIRS, MEXICO.

(Copy No. 1.)

WASHINGTON, *Nov.* 21, 1876.

In the meeting that the agents and secretaries of the Commission held yesterday, for the purpose of publishing the umpire's last resolutions, I presented, in writing, certain statements, with a view that they should be inserted in the record of the proceedings of the day; but it was not done so, because both the agent and the secretary of the U. S. did not think it proper. They are as follows:

1st. The Mexican Government, in fulfillment of Art. 5th of the convention of July 4th, 1868, considers the result of the proceedings of this Commission as a full, perfect, and final settlement of all claims referred to in said convention, reserving, nevertheless, the right to show, at some future time and before the proper authority of the U. S., that the claims of Benjamin Weil, No. 447, and "La Abra Silver Mining Co.," No. 489, both on the American docket, are fraudulent and based on affidavits of perjured witnesses; this with a view of appealing to the sentiments of justice and equity of the U. S. Government, in order that the awards made in favor of claimants should be set aside.

2d. In the case No. 493 of "Thadeus Amat and others *vs.* Mexico," the claim presented to the U. S. Government on the 20th of July, 1859, and to this Commission during the term fixed for the presentation of claims in the convention of July 4, 1868, was to the effect that the "Pious fund," and the interest accrued thereon, should be delivered to claimants; and though the final award in the case only refers to interest accrued in a fixed period, said claim should be considered as finally settled *in toto*, and any other fresh claim in regard to the capital of said fund or its interest, accrued or to accrue, as forever inadmissible.

3d. That the umpire having allowed compensations in several cases with the proviso that the interested parties should prove their American citizenship, and that they were legitimately entitled to be the recipients of such compensations, the Mexican Government expects that the amounts corresponding to such cases will be deducted from the sum total of the awards, if, within a prudent term, said conditions are not fulfilled.

All of which I communicate for your information, renewing to you the assurances of my consideration.

ELEUTERIO AVILA.

Sr. IGNACIO MARISCAL,
Envoy Extraordinary and Minister Plenipotentiary of Mexico, Present.

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umpire to correct his involuntary errors; and as the umpire has been of a contrary opinion in regard to that basis, it is to be understood that in refusing the rehearings asked for, he did not intend to sanction any fraud; and less so, when he has clearly and emphatically stated in pronouncing his decision upon those motions, that "if perjury shall be proved hereafter no one would rejoice more than the umpire himself that his decision should be reversed and that justice should be done." [Note by Mex. Ag.]

(Copy No. 2.)

MEXICAN LEGATION IN THE U. S. OF AMERICA,
Washington, Nov. 22, 1876.

MR. SECRETARY: I have the honor to annex herewith, for the information of the Government of the United States, a copy of a communication, dated yesterday, addressed to me by Sr. Eleuterio Avila, agent of Mexico before the U. S. and Mexican Claims Commission, adding, for my part, that the manifestations contained in the annexed note of Sr. Avila are in accord with the instructions he has received from the Government of Mexico.

I avail myself of this opportunity, Mr. Secretary, to renew to you the assurances of my high consideration.

IGNACIO MARISCAL.

To the Hon. HAMILTON FISH, *&c., &c., &c., Present.*

True copy.

MARISCAL.

Number 170. *Answer of Mr. Fish to the above and my reply.*

LEGATION OF MEXICO IN THE UNITED STATES OF AMERICA,
Washington, December 8, 1876.

Referring to my note, No. 159, of the 23d of last November, I will say that I have received from Mr. Fish an answer to the note, which I have already communicated to that Department. I send herewith a copy and a translation of said answer under Nos. 1 and 2. In it Mr. Fish endeavors to prevent that his silence should be construed into an assent to Sr. Avila's manifestations; he would be glad to see that my notification relating thereto should be inoperative.

I annex herewith, under No. 3, a copy of my note of to-day containing the reply I thought advisable to give him in order to show that our object was not to give rise to any question or difficulty whatever, nor to evade the fulfillment of the obligations imposed on us as the result of the decisions of the Commission.

I renew to you the assurances of my consideration.

IGNACIO MARISCAL.

To the SECRETARY OF FOREIGN AFFAIRS.

(Copy No. 1.)

DEPARTMENT OF STATE,
Washington, December 4, 1876.

SIR: I have received your note of the 22d, accompanied by a communication of the 21st ultimo, addressed to you by Don Eleuterio Avila, the agent on behalf of Mexico before the Commission under the convention of the 4th of July of 1868. Mr. Avila states that this communication was presented at the last meeting of the agents and secretaries of the Commission, but was not inserted in the minutes, it being deemed improper to do so. He thereupon addresses you and objects to the binding effect of certain of the awards made, and states his understanding of the effect of others.

You inform me that you transmit a copy of his communication for the information of the Government of the United States.

By article 2 of the convention the two Governments bind themselves to consider the decisions of the Commissioners and of the umpire as absolutely final and conclusive, and to give full effect to such decisions, without any objection, evasion, or delay whatsoever, and by the 5th article the high contracting parties agree to consider the result of the proceedings of the Commission as a full, perfect, and final settlement of every claim upon either Government arising from transactions prior to the exchange of ratifications thereof.

It may be quite proper that Mr. Avila should advise you of his views as to any particular awards or as to any points connected with the closing labors of the Commission, and you may have felt it to be your duty to bring to the notice of this Government those views so communicated to you.

I must decline, however, to entertain the consideration of any question which may contemplate any violation of or departure from the provisions of the convention as to the final and binding nature of the awards, or to pass upon, or, by silence, to be considered as acquiescing in any attempt to determine the effect of any particular award.

With your appreciation of the objects in contemplation in this method of settlement of difference between two Governments, and with your intimate acquaintance with the particular provisions of this convention as with reference to the binding character of the awards made by the Commissioners or by the umpire, you will readily appreciate my extreme unwillingness to consider that at the moment when the proceedings relating to the Commission have been brought to a close, and the obligation upon each Government to consider the result in each case as absolutely final and conclusive becomes perfect, the Government of Mexico has taken or purposes to take any steps which would impair this obligation.

I avail myself of this occasion, sir, to offer to you a renewed assurance of my highest consideration.

HAMILTON FISH.

Sr. D. IGNACIO MARISCAL, *&c., &c.*

WASHINGTON, *December* 8, 1876.

True copy.

CAYETANO ROMERO,
2d Sec'y.

(Copy No. 3.)

WASHINGTON, *December* 8, 1876.

MR. SECRETARY: I have had the honor of receiving your note of the 4th inst. in answer to mine of the 22d ult., to which I annexed a copy of the statements made by Sr. Avila, agent of my Government before the Claims Commission. You are pleased to state that it is not possible for you, even by keeping silent, to give to understand your assent to take up any question brought forth with a view of evading the fulfillment of the convention in regard to the final issue of the decisions, nor as a consent to any attempt to modify the effect of any particular decision.

It is not my intention, nor the intention of Sr. Avila, to open any question whatever, nor to put in the doubt final and conclusive character of the above-mentioned awards. As a proof of this, Sr. Avila begins his first statement by saying: "that the Mexican Government, in fulfillment of Art. 5 of the convention of July 8, 1868, considers the result of the proceedings of this Commission as a full, perfect, and final settlement of all claims referred to said Commission." I beg leave to call your attention to the fact that Sr. Avila only expresses afterwards the possibility that the Mexican Government may, at some future time, have recourse to some proper authority of the United States to prove that the two claims he mentions were based on perjury, with a view that the sentiments of equity of the Government of the United States, once convinced that frauds have actually been committed, will then prevent the definite triumph of these frauds. It seems clear that if such an appeal should be made, it will not be resorted to as a means of discarding the obligation which binds Mexico, and that, should it prove unsuccessful, the Mexican Government will recognize its obligation as before.

In his second statement Sr. Avila intended only to express his Government's opinion as to the impossibility of claiming, at any future time, the capital of the Pious fund, the accrued interest on which is now going to be paid in conformity with the award. He endeavors to avoid, if possible, a future claim from the interested parties through the U. S. Government, but does not pretend to put in doubt the present award.

The third statement is an unavoidable consequence of some decisions in which it is left to the U. S. Government to decide whether the claimant is or not a legitimate successor to the injured party, and whether he is or not an American citizen; on the decision of which points it will naturally depend whether the award that Mexico is to pay is applicable to anybody.

It is not, then, the spirit of these statements to raise any doubt or difficulty in regard to the obligation of the Mexican Government to submit to the results of the Commission. Sr. Avila has presented them, in fulfillment of instructions received from his Government, with the only view I have endeavored to explain, and, for my part, I have communicated them to that Department without any idea of raising questions of any kind whatever.

I congratulate myself to renew to you on this occasion the assurances of my very high consideration.

IGNACIO MARISCAL.

Hon. HAMILTON FISH, *&c., &c., &c.*

WASHINGTON, *December* 8, 1876.

A true copy.

CAYETANO ROMERO,
2d Sec'y.

MEXICAN REPUBLIC.—DEPARTMENT OF FOREIGN AFFAIRS.—SECTION OF AMERICA.

No. 40.—*Statements of the agent before the Joint Claims Commission.*

MEXICO, *May* 1, 1877.

Your note No. 170, of the 8th Dec. ultimo, was received at this department on the 27th of last March, and its inclosures Nos. 1 and 2 impose me that the Secretary of State, Hon. Hamilton Fish, construing the statements of the Mexican agent, that you had transmitted to him, as an objection to the obligatory effect of the awards of the Joint Commission, refused to take them into consideration, and even thought it necessary not to keep silent about them, fearing that his silence might be construed into an assent of the endeavor to determine the effect of some of the awards.

The explanations you have given to said Secretary of State are wholly in conformity with the construction that the Mexican Government gives to the statements of its agent.

Far from intending to elude the fulfillment of the obligations it contracted through the convention of the 4th July, 1868, the same Government has already given a conclusive proof of its resolution to fulfill them, having made amidst very difficult circumstances the first installment of the balance awarded against it.

And, however painful it may be for Mexico to give away the considerable amounts of the awards allowed in the cases of Benjamin Weil and the Abra Mining Company, when the fraudulent character of these claims is once known, if the appeal to the sentiments of justice and equity of the U. S. Government, announced in the first of the statements in question, should, for any cause whatever, be ineffective, the Mexican Government will conscientiously fulfill the obligations imposed on it by that international compact.

In regard to the case of the archbishop and bishops of California, the Mexican Government, far from putting in doubt the final effect of the awards, has declared in the second of said statements that in conformity to article 5 of the convention the whole claim presented to the Commission must be considered and dealt with as finally arranged, and as dismissed and forever inadmissible anything solicited by claimants but not allowed by the Commission. In other words, the Mexican Government recognizes itself bound to pay the awards allowed by the umpire to the claimants in behalf of the Catholic Church of Upper California; but this settles finally the claim in regard to everything belonging to the Pious Fund of the missions of California, and none other can ever be presented and much less sustained by the United States Government, or admitted at any future time by Mexico, in conformity with the spirit and letter of the Convention of 4th July, 1868.

Finally, in the cases in which the umpire made awards without having any assurance that there were proper parties living entitled to be the recipients thereof, and leaving it to the United States Government to ascertain who were the parties entitled to receive them, if any, it is possible, undoubtedly, that there be none to claim them with any perfect right, and, in this case, those awards shall have no effect through an impossibility, and not by opposition of the Mexican Government, who has done nothing else but express the expectation that the amount unpaid for this reason shall be returned to it, as the convention was entered into only in behalf of private individuals, and that the United States Government will find it just to make such a deduction, when on being made by Mexico the last installment it may appear that no persons with legitimate rights are to be found to receive the above-mentioned awards.

But if such a hope should not be realized, it will not prevent the Mexican Government from satisfying the amount of these awards, preferring always to bear this burden rather than to give cause of being suspected of a determination to elude, even in small parts, the fulfillment of its engagements.

Be kind enough to bring into the notice of the Secretary of State all the points contained in this note, and even to leave with him a copy of it, should he request it so.

Receive the assurances of my consideration.

VALLARTA.

To the ENVOY EXTRAORDINARY AND MINISTER PLENIPOTENTIARY
OF MEXICO IN THE UNITED STATES OF AMERICA,
Washington, D. C.

MEXICO, *May* 7, 1877.

A true copy.

JOSÉ FERNANDEZ,
Chief Clerk.

[From the New York Herald of the 20th of February, 1877.]

FROM OUR REGULAR CORRESPONDENT.

SIR EDWARD THORNTON AND HIS DEFENSE OF THE PROCEEDINGS IN THE MEXICAN COMMISSION—HE MAKES A DENIAL OF ALL CHARGES OF FAVORITISM.

WASHINGTON, Feb. 19, 1877.

There is no truth whatever in the report that a diplomatic complication prejudicial to Sir Edward Thornton is likely to arise out of his decision, as umpire of the Mexican Commission, in the matter of the claim of Benjamin Weil for nearly $500,000 which he awarded in favor of the claimant according to testimony which had been submitted to the Commission. On the contrary, Sir Edward *expresses the hope that the claim which he was constrained by the testimony to award to Weil, may be set aside eventually, because he is convinced by evidence submitted subsequent to the session of the Commission, that the claim was improper, if not fraudulent.* This secondary testimony he could not, however, take into consideration. He was bound to render his decision as umpire only upon the original testimony, which was strongly in the claimant's favor. Sir Edward having had his attention called this evening to this matter and to the case of Alfred A. Green, he protested against the imputation which had been put upon his decisions and action in connection therewith. So far as the case of Green is concerned, he says that there is nothing in it, and that he has notified the claimant of this. There is nothing in it whatever, and he thinks it is not worth while to say anything about it.

Speaking generally about the character of the business which he has had to perform in the discharge of his duty as referee, Sir Edward added that in the vast amount of paper and evidence which he had to go over *it was impossible, of course, to guard against frauds, and more particularly perjury.* He used the utmost care and precaution in going over the multiplicity of details and facts, together with the questions of law, poor chirography and bad way of putting the cases—all of which were in Spanish. It must be remembered that he took the cases just as they were made up by the Commissioners, and investigated them according to the standard of equity, justice and common sense. During three years past he has examined 464 cases, as umpire, from an original aggregate of claims amounting in money to over $400,000,000. He had reduced the sum total to about $3,500,000. The task had been no slight one. He had gone over every case himself from the papers. He had heard no oral argument, but had required parties to submit them in writing. So far as any feeling on his part against American citizens is concerned he pronounced such an allegation simply absurd, because in the settlement of claims he has been obliged to decide against Mexicans. But with all the care, caution and conscientiousness which he has been able to exercise *he has no doubt there have been perjury and misrepresentation,* which, of course, he could not guard against, as that was a department of the subject which was to be passed upon by the Commissioners. As to the case of Weil, claiming nearly $500,000, *he should be glad to see it re-opened, reconsidered or defeated, because it bears on its face in the additional subsequent proof submitted to him the evidences of great fraud, if not perjury, and he thinks and he hopes steps will be taken by the proper authorities against it accordingly.* He has not been in a position by a mere examination and judicial investigation of the papers before him to decide where perjury has existed until it was subsequently brought to his notice, but in the Weil case, if it is, as *he has reason to believe, a fraudulent case, he hopes it will be upset.* So far as any taint of corruption or bribery is concerned the insinuation is rejected with the utmost indignation. He refused to receive anything from either the Mexican or American Governments in consideration of his services, although he has had an untold amount of labor which he would not on any account undertake again of his own free will. He has even used his own stationery, which is something, to say nothing of his services. In reference to the aspersions made upon his clerk's integrity he repels the allusions as utterly unfounded and impossible, for the reason that it was one of his secretaries of the legation, the Hon. Henry Le Poer Trench, who copied all his decisions, about which no one knew anything but himself until they were all made out, when they were simply copied by the secretary. No one but the British minister had access to them to know what they would be, and hence there could be no connivance at fraud or bribery. The assertion is simply preposterous. Besides being one of the most exalted of men in his integrity Mr. Le Poer Trench is of a distinguished family in Ireland, and of great wealth, to which reference Sir Edward Thornton added that he would depend upon him to the very last degree, and put his hand in the fire for him.

It is only proper to say in this connection that Sir Edward Thornton, as the dean of the diplomatic corps, has always held the most agreeable relations with our Government and the American people, officially and socially here.

The case to be submitted to the Judiciary Committee of the Senate in opposition to

the claim of Benjamin Weil, will be argued by General James E. Slaughter, of Mobile, who says that he will make the following showing of facts:

The claimant is a Frenchman who resided in Louisiana before and during the war in the year 1864. Weil claims to have bought in Texas and transported across the Rio Grande for shipment at Matamoros a convoy of 300 wagon-loads of cotton. On the Mexican side the cotton was captured and taken from him by Cortina's band of guerillas. The loss he suffered by this robbery, including interest to 1876, amounted to nearly $500,000. He proved the claim to the satisfaction of the American Commissioner and Sir Edward Thornton, and was awarded its amount, and under the provisions of the bill pending in Congress, would receive his *pro rata* of the $300,000 which Mexico sent to Washington a few weeks ago as the first installment of her settlement of all claims adverse to her.

General Slaughter will oppose the allowance to Weil on the several grounds following: He charges that Weil was not a loyal citizen of the United States, and that the shipment of cotton in the time of war was in contravention of law. Therefore Weil had no standing before the Commission. He says that he will show from the books and papers of Weil that no such transaction as the purchase and transportation of so immense an amount of cotton is recorded by him. He will cite bankruptcy proceedings, involving the business partners of Weil to show, from affidavits of these partners that they knew of no such transaction, and that the terms of copartnership, which covered the time of the transaction expressly forbade any independent operation or speculation on the part of individuals of the firm. *He will also endeavor to make it evident, from the geographical nature of the country said to have been traversed by the convoy, that it would have been impossible for such an expedition to have taken the route on which the robbery is said to have been effected.* The claim will be stoutly defended by the lawyers of Mrs. Weil, who are here in force. The original claimant is said to be now a lunatic in confinement in France. His interest is prosecuted by his wife.

No. 20.

Mr. F. W. Seward to Mr. Cuellar.

DEPARTMENT OF STATE,
Washington, October 13, 1877.

SIR: I have the honor to acknowledge the receipt of your note of the 6th instant, inclosing two documents relating to the claims of Benjamin Weil, No. 447, and La Abra Mining Co., No. 489, *vs.* Mexico, respectively.

Accept, &c.,

F. W. SEWARD,
Acting Secretary.

No. 21.

DEPARTMENT OF STATE,
Washington, January 31, 1877.

Received of Don Ignacio Mariscal, accredited to this Government as envoy extraordinary and minister plenipotentiary of the Mexican Republic, a check of the Southern Bank of New Orleans on the Chemical Bank of New York, for two hundred and forty-two thousand five hundred and one dollars gold, payable to J. M. Mata, or order, by him indorsed to the said envoy extraordinary and minister plenipotentiary, and by the latter to the undersigned, which check, when paid, will be a discharge of the first installment of the indemnity this day due from that republic to the United States under the convention between the two Governments of the 4th of July, 1868.

HAMILTON FISH,
Secretary of State.

No. 22.

Mr. Evarts to Mr. Swann.

DEPARTMENT OF STATE,
Washington, November 6, 1877.

SIR: I have the honor to invite the attention of your honorable committee to the necessity of immediate legislation to enable the prompt payment of the awards in favor of our citizens under the convention of July 4, 1868, between the United States and Mexico.

On the 31st of January last, in due observance of the terms of the convention and of the subsequent agreement and protocols, the Mexican Republic paid to the United States a certain sum in satisfaction of the first installment then due.

The actual amount then received from Mexico was $242,501 in coin, explained as follows:

Amount due as first installment	$300,000 00
Less balance in favor of Mexico on adjustment of joint expenses of the Commission, as shown in the statement annexed to the protocol of December 19, 1876, and accordingly withheld by Mexico	57,499 01
Balance	242,500 99

The distribution of this sum, at least, has been urgently pressed on this Department without waiting for the appropriation by Congress of the sum assumed by the Government of the United States according to the terms of the convention, to wit: the sum of awards in favor of Mexican citizens against the Government of the United States. This sum, in pursuance of the convention, is withheld by Mexico from the aggregate awards in favor of our citizens. No doubt the prompt distribution of money awarded to our citizens, and paid over to the Government of the United States for that purpose, is an obligatory duty, which this Government should be most anxious to discharge. All delay is at the cost of the claimants, as the Government does not charge itself with interest on the money in its hands. In the present case, I am informed that many of the claimants are needy, and that there is danger that their necessities may expose them to much greater loss than that of interest.

I have, however, hesitated to make this distribution of the money on hand, which would be according to the practice of the Government, because of some legislation being necessary to make good to the fund the amount with which the Government of the United States is chargeable, and because it is desirable that the form and manner of the reservation, from the installment in hand, of the expenses of the Government, should not be settled. Besides, my predecessor had submitted a bill to carry out these purposes to the last Congress, which passed the House unanimously, and received the approval of the Committee on Foreign Relations and of the Judiciary in the Senate.

The final passage of the bill in the Senate was arrested in the last days of the session, by a suggestion that evidence might be presented that two of the awards were based upon fraudulent testimony, and that some delay should be allowed for that reason.

Since that time the Mexican Government has simply presented in a pamphlet form the motions made for a rehearing before the umpire (Sir Edward Thornton) in the cases of "Benjamin Weil" and of "La Abra Mining Company," adding thereto the correspondence between the

Mexican minister, Don Ignacio Mariscal, and my predecessor, Mr. Fish, in reference to these two cases.

These motions were denied by the umpire, and these awards, standing upon the same footing of finality, under the convention, with all the others, are awaiting distribution.

In a communication accompanying these pamphlets, Señor Cuellar, the Mexican chargé d'affaires *ad interim*, states that the object of this appeal of his Government is—

> not to prevent the payment of the awards made by the umpire in the now extinct Mixed Claims Commission, but only in the interest of rectitude and justice, to render manifest the fraud committed by the parties interested.

I beg leave to inclose a copy of the bill of the last session, and to ask that it may be promptly considered, that this Department may be relieved from the importunities of the claimants, an installment on whose awards is now in the hands of the Government of the United States.

I have, &c.,

WM. M. EVARTS.

Hon. THOMAS SWANN,
Chairman of the Committee on Foreign Affairs,
House of Representatives.

Same, *mutatis mutandis*, to Hon. Hannibal Hamlin, chairman of the Committee on Foreign Relations, Senate.

No. 23.

Mr. Zamacona to Mr. Evarts.

WASHINGTON, *January* 14, 1878. (Received January 14.)

SIR: The special commission which the Government of General Diaz has given me to arrange the payment of the second installment of the Mexico-American claims awards, makes [it] very desirable for me to have a conversation with you on the subject. I would be obliged to you if you would favor me by appointing, at your convenience, the time and place most suitable for a short interview.

I remain, &c.,

M. DE ZAMACONA.

No. 24.

Mr. Evarts to Mr. de Zamacona.

[Unofficial.]

WASHINGTON, *January* 17, 1878.

MY DEAR Mr. DE ZAMACONA: In reply to your note of the 14th instant, I have to inform you that I will with pleasure see you at the Department to-day, or at such other time as may best suit your convenience.

Very respectfully, yours,

WM. M. EVARTS.

No. 25.

Mr. Cuellar to Mr. Evarts.

[Translation.]

MEXICAN LEGATION IN THE
UNITED STATES OF AMERICA,
Washington, January 21, 1878. (Received January 22.)

MR. SECRETARY: In all the communications which this legation has had the honor to address to your Department concerning the claims of Benjamin Weil and the La Abra Mining Company, it has protested, in conformity with its instructions, that nothing is further from the intent of the Government of Mexico than to withhold recognition of the effect of the findings pronounced by the Mixed Commission which investigated those claims, or of the articles of the convention of the 4th of July, 1868, which give to those findings the force of a final and decisive judgment. It is, perhaps, unnecessary for this legation to persist in such protests. It reiterates them, nevertheless, once more in the name of the Mexican Government, in order that there may remain not even the least appearance of doubt as to that Government's accepting and respecting alike the results of the said convention and those of the arbitration which took place conformably therewith.

But this respect for international stipulations and for the decisions of the Mixed Commission is not incompatible with the desire entertained by the Government of Mexico that it be made clear, provided there be opportunity therefor, whether any one or more of the claims admitted by the Commission of Arbitration were fraudulent, and were accepted on the faith of evidence based on falsification or on perjury. The investigations upon this point, in case of leading to the discovery of the fraud, would not only be a service rendered to morality, but would clearly exhibit such defective (*vicioso*) elements as there may be in the methods of investigation customarily adopted by international commissions, leading, perhaps, to preventing in the future speculation and greed from converting so honorable an institution into an instrument of their own interests.

The Government of Mexico has become convinced that its conduct would not be blameless if it still kept from recognition, and to a certain extent in concealment, the proofs in its possession as to the fraudulent character of the two claims cited at the beginning of this note. With so much the more reason, seeing that one of the branches of this Government has shown a laudable desire to know the truth as to the character of these claims, and seeing that the self-same umpire of the Commission who decided them favorably declared afterwards, at least with respect to one of them, that unless the proofs, presented too late in his opinion by the agent of Mexico, were refuted, the whole claim should be considered as a fraud, in which case the umpire would be the first to rejoice that his finding remained without effect. Such is the tenor of one of the decisions of Sir Edward Thornton, and it can be seen on page 92 of the pamphlet which I had the honor to send to your Department with my note of the 6th of October of last year.

In virtue thereof, and obeying the instructions of my Government, I make known to your Department that there are in the possession of this legation documentary data concerning the fraud involved in the claims presented by Benjamin Weil and by La Abra Mining Company, and that it is easy to make manifest the perjury and falsehood to which

are due the proofs which served as a basis for those claims, especially if there be instituted an investigation which would permit of requiring the evidence of persons who, perhaps, will not present themselves to testify voluntarily.

I improve, &c.,

JOSÉ T. CUELLAR.

No. 26.

Mr. Evarts to Mr. Cuellar.

DEPARTMENT OF STATE,
Washington, January 24, 1878.

SIR: I have the honor to acknowledge the receipt of your note of the 21st instant, concerning the awards made in the cases of Benjamin Weil and La Abra Mining Company, under the convention of the 4th of July, 1868, between the United States and Mexico.

In reply, I have to state that upon being first advised of certain grounds of complaint on the part of the Mexican Government in relation to the awards in particular cases the Department submitted the question to the consideration of Congress. A bill is now pending before that body providing for the distribution of the fund, it reserving to the President the right of inquiry into the particular claims to which your note refers. When the question shall have been determined by Congress, if that feature is retained in any act that may be passed providing for the distribution of the fund, due weight and consideration will be given to the points and suggestions now presented by you.

I avail, &c.,

WM. M. EVARTS.

No. 27.

Memorandum in relation to the payment of the indemnity this day due from the Mexican Government under the Convention of July 4, 1868.

The awards of the United States and Mexican Claims Commission, organized under the aforesaid convention, were as follows:

In favor of citizens of the United States:	
In currency of the United States	$402,942 04
In gold coin of the United States	426,624 98
In gold dollars of Mexico	3,296,055 18
Total in three values	4,125,622 20
In favor of citizens of Mexico:	
In currency of the United States	89,410 17
In gold coin of the United States	10,559 67
In gold dollars of Mexico	50,528 57
Total in the three values	150,498 41

By the terms of the convention of July 4, 1868, the balance or difference between the awards in favor of the United States and those in favor of Mexico constitutes the liability of the Mexican Government, to be discharged by the payment of three hundred thousand dollars in

gold, or its equivalent, within twelve months from the close of the Commission, and by annual payments thereafter, not exceeding three hundred thousand dollars in gold, or its equivalent, until the whole shall have been paid.

The amounts due from Mexico to the United Stutes, after the stipulated deduction of the amounts due from the United States to Mexico, are found to be:

In currency of the United States	$313,531 87
In gold coin of the United States	416,065 31
In Mexican gold dollars	3,245,526 61
Nominal total	3,975,123 79

The proportionate amounts required to make up the nominal sum of $300,000 in the three currencies, on the basis of the above net nominal total, are:

Of currency	$23,662 05
Of United States gold	31,400 18
Of Mexican gold	244,937 77
Total	300,000 00

By a convention concluded between the two countries on the 20th of November, 1874, the term of the labors of the Commission was finally fixed to close on the 31st of January, 1876, whereby the payment of the first installment fell due on or before the 31st of January, 1877.

A protocol was signed on the 14th of December, 1876, between Señor Mariscal and Mr. Fish, adjusting the statement of the expenses of the Commission, and showed a balance due to Mexico on that account of $57,499.01. By a subsequent understanding the Mexican Government deducted the whole of the said balance of expenses from the first installment.

In pursuance of the above-mentioned convention, protocol, and understanding, the Government of Mexico paid to that of the United States on the 31st of January, 1877, in the City of Washington, the sum of $242,501, in gold coin of the United States, being the stipulated first installment less the above balance of expenses.

That payment has not yet been distributed.

These preliminary facts being understood, Señor Zamacona stated that the Government of Mexico was ready to pay the second installment this day due.

After mutual conference it was agreed that for greater mutual convenience a plan should be adopted to obviate the difficulties in the way of the proper distribution of the awards, arising from their expression in three different standards of value, while but one was provided for payment of the indemnity money.

A plan was therefore agreed upon as follows:

First. The Government of Mexico shall be held to discharge the obligation imposed upon it under the convention by paying, in currency of the United States or its equivalent, the proportion of the awards expressed in currency, and the respective gold awards in gold, or its equivalent, having regard to the relative value of the gold coinage of the two countries.

Second. That for the calculation of the equivalence of value the gold dollar of Mexico shall be held equal to $98\frac{3939}{10000}$ cents in gold coinage of the United States.

Third. That an annual payment shall be held to comprise $23,662.05 in currency of the United States; $31,400.18 in gold coin of the United

States, or its equivalent; and $244,937.77 in gold dollars of Mexico, or their equivalent, thus extinguishing claims to the amount of $300,000 (nominal) each year.

Fourth. That the first installment having been computed and satisfied in gold, Mexico shall now pay, to the end of equalizing the account two currency installments, or $47,324.10 in currency, and shall pay besides in gold coin of the United States a sum sufficient, when taken in conjunction with the previous payment, to extinguish two annual payments of the awards severally due in gold as above set forth.

This amount is found to be:

In gold coin of the United States	$62,800 36
In gold dollars of Mexico, reducing the same to the equivalent value in United States gold coin at the stipulated rate	482,007 65
Total United States gold	544,808 01
Less first installment	300,000 00
Balance	244,808 01

In accordance with this agreement Señor Zamacona tendered to Mr. Evarts two checks drawn by himself on the National City Bank of New York to his own order, and indorsed to the order of Mr. Evarts, one check being for $47,324.10 in currency, and the other $244,808.01 in gold; for which checks Mr. Evarts gave receipt according to the annexed form.

Mr. Evarts took occasion to express his satisfaction at this prompt payment on the part of Mexico.

Señor Zamacona declared that Mexico desired not to be precluded by the fact that the actual payments of the two installments had been made at the city of Washington from claiming that future payments might under the convention be rightfully made at the city of Mexico.

Mr. Evarts asserted that the alternative of the convention as to the place of payment was only open until the award should show to which nation the balance would prove to be payable, and thereupon the payment would be fixed as at the seat of Government of the nation receiving the payment. Mr. Evarts, however, assented that the question should stand upon the terms of the convention unprejudiced by the past payments.

MANUEL MA. DE ZAMACONA.
ALVEY A. ADEE.

WASHINGTON, *January* 31, 1878.

No. 28.

Receipt for the Second Instalment.

DEPARTMENT OF STATE,
Washington, January 31, 1878.

Received of Don Manuel Ma. de Zamacona, confidential agent of the Mexican Government, two checks drawn by himself upon the National City Bank of New York to his own order, and by him indorsed to the undersigned, one check being for two hundred and forty-four thousand eight hundred and eight dollars and one cent ($244,808.01) gold, and the other for forty-seven thousand three hundred and twenty-four dol-

lars and ten cents ($47,324.10) currency, which checks, taken together, when paid, will be a discharge of the balance of the indemnity this day due from that Republic to the United States under the convention between the two Governments of the 4th of July, 1868, according to an adjustment this day made of the payment of the first installment in connection with the present payment.

WM. M. EVARTS,
Secretary of State.

No. 29.

Mr. Zamacona to Mr. Evarts.

LEGATION OF MEXICO IN THE UNITED STATES,
Washington, June 20, 1878.

MR. SECRETARY: On the 21st of January last this legation had the honor to address a note to the Department under your charge, stating that the Government of Mexico was in possession of conclusive evidence concerning the fraud committed in the case of the claims of Benjamin Weil and the Abra Mining Company, which were decided against that Republic by the umpire of the Mixed Commission appointed in pursuance of the convention of July 4, 1868. The representative of Mexico thought proper at the time to explain that he was induced to make that statsment by the laudable desire of which the Congress of the United States was giving evidence, that, in the distribution of the sums which have been paid by the Republic of Mexico in accordance with the aforesaid convention, the very serious charges of fraud, falsehood, and perjury that have been so publicly made against the two claims might not pass unnoticed. It would, indeed, have been inexplicable if the Mexican Government, whose peculiar interest in the investigation of the crimes referred to is so obvious, had shown less concern than the Congress of this Republic in preventing the success of a guilty speculation which was placed under the protection of an international arbitration.

The Department of State was pleased to reply on the 24th of the same month of January, stating that the question had been submitted to Congress; that a bill was pending whereby the President was empowered to investigate the nature of the two claims objected to, and that, if this power was included in the pending legislative measure, the Department of State would give due attention to the statements of this legation.

It now takes the liberty to express the opinion that the time referred to in the note of the Department of State has arrived, since the Congress of the United States has just authorized the distribution of the amounts paid by Mexico, recommending to the Executive that an investigation be held as to the foundation of the charges of fraud in the case of the claims of the Abra Company and of Benjamin Weil, and that, in case said charges appear to be well founded, payment be suspended and means be adopted to subject these two casos to a re-examination.

Another juncture now arises, in which it becomes the imperative duty of this legation to state, repeating the declarations made in its previous correspondence on this subject, that not only is the evidence referred to in the note from this legation of January 21 in possession of the undersigned, but several other corroborative documents which have been received since.

The undersigned would fail to perform his duty if he did not immediately lay all this evidence before the Department of State.

The bill, whereby the Forty-fifth Congress of this country has just left a monument of its integrity and rectitude, cannot do otherwise than to encourage Mexico to insist upon its appeal to the sentiments of equity and justice which are certainly common to all the branches of this Government. The request which the undersigned takes the liberty to make, viz, that an arbitration which will ever be respected by Mexico may be cleared of two blots which unfortunately sully its good name, will undoubtedly meet with the same favor within the sphere of the Executive branch as in both legislative bodies. The nature of the affair and the laudable spirit of rectitude shown in it by the Congress of the United States lead the undersigned to hope that an impartial and vigorous investigation will spare the Mexican Republic the painful sacrifice of paying a heavy tribute to perjury and fraud.

I have, &c.,

M. DE ZAMACONA.

No. 30.

Mr. Evarts to Mr. Zamacona.

DEPARTMENT OF STATE,
Washington, July 1, 1878.

SIR: I have the honor to acknowledge the receipt of your note of the 20th ultimo. It refers to your previous note of the 21st of January last, representing that your Government had proof of fraud in the cases of Benjamin Weil and the Abra Mining Company, which were decided against Mexico by the umpire of the Mixed Commission under the convention of the 14th of July, 1878.

This Department replied to you under date the 24th January that a bill was pending before Congress providing for the distribution of the money received and to be received from Mexico pursuant to that convention, and reserving to the President the right of inquiry into the claims adverted to, and that if the provisions should be retained in the bill when it became a law, due weight would be given to the points and suggestions of your Government on the subject.

As the act as it passed Congress embraces the provisions referred to, I have to request an explicit statement as to what Mexico has to say and expects to prove in regard to each of the cases in question.

I avail, &c.,

WM. M. EVARTS.

No. 31.

Mr. Zamacona to Mr. Evarts.

LEGATION OF MEXICO IN THE UNITED STATES,
Washington, July 25, 1878.

MR. SECRETARY: I have the satisfaction to reply to the note with which the Department of State was pleased to honor me on the 1st instant, and which refers to the offers made by this legation to furnish

proof of the fraudulent character of the claim of Benjamin Weil and that of the Abra Mining Company, which have been decided against Mexico.

The Department of State is pleased to inform me that a proviso to the effect that the President may inquire into the real nature of the two claims objected to having been inserted in the bill for the distribution of the money paid by Mexico in pursuance of the convention of July 4, 1868, it is proper for this legation to state in explicit terms what Mexico has to say and proposes to prove with regard to them.

In reply I have the honor to inform the Department of State that my Government is prepared to prove the fraudulent character of the two claims aforesaid by means of original books, documents, and letters of the claimants, as likewise by the depositions of credible witnesses, which evidence has been obtained since the umpire of the Commission to which they were submitted decided the two cases in question.

As regards the case of Weil, in addition to the contradictions and improbable assertions that are observed in analyzing the evidence furnished by the claimant, it will be easy to show that the cotton of which he says that he was robbed by the troops of Mexico must have belonged, admitting it to have really existed, to the State of Louisiana, which was then in rebellion against the Government of the United States; that, this being the case, its value would have been expended for provisions and munitions of war in aid of the rebellion, so that its capture cannot be made the basis of a claim to be advocated by the United States; that by reason of the nature of the country in which the act is said to have occurred the aforesaid cotton cannot have been carried across the Rio Grande at the place stated by the claimant, who commits geographical errors implying differences of 100 miles; that permits were never issued relative to the cotton in question by the Confederate Government, and that the lack of custom-house papers, with which the claimant does not say that he was furnished, would have subjected the cotton, even admitting its existence and transportation to Mexico, to capture as contraband; that the most important witness in favor of the claim, inasmuch as he says that he assisted in preparing the cargo and witnessed the robbery, was at the time when the events are said to have occurred an employé of the Confederate Government, residing hundreds of miles away; and, finally, that the cargo of cotton on which the claim is based never existed.

As to the claim relative to the Abra mine, without proposing now to specify the innumerable perjuries committed by the witnesses of the claimant, the Government of Mexico intends to prove, by books and papers of the company, which were not presented to the Commission of arbitration, that the said mine is extremely poor; that it was abandoned because the company could not obtain in New York the funds necessary to excavate metals which were valueless in Mexico, and that the military and civil authorities of that Republic, far from persecuting the employés of the mining company, afforded them protection, notwithstanding the disturbed state of the time chosen by the managers of the enterprise to establish their business.

I have the honor to inclose, for the information of the Department of State, a printed extract containing a portion of the evidence which shows the fraudulent character of the claims in question.

In addition to the foregoing my Government is aware of the existence of certain witnesses who will not testify in favor of Mexico of their own accord, but who, if compelled to testify, would not only add weight to

the evidence referred to, but would raise the veil that now covers the conspiracy by the aid of which the two frauds to which this note refers succeeded in eluding the vigilance of the Mixed Commission.

In making these explanations to the Department of State, I have, &c.,

MANUEL M. DE ZAMACONA.

APPENDIX A.

Cursory extract of the evidence of fraud in the case of Benjamin Weil vs. Mexico.

Weil swears he had no partners.

No. 1. Power of attorney of Max Levy to S. E. Loeb, dated the 25th of September, 1863, authorizing the said Loeb to act for Max Levy and Benjamin Weil.

No. 2. Power or attorney, same to same, dated September 16, 1863, to act for Max Levy and Benjamin Weil.

No. 3. Affidavit of S. E. Loeb, dated New Orleans, August 7, 1876, before Thomas Buisson. This affidavit sets forth the history of the copartnership and names of partners of Benjamin Weil, business done by the same, pecuniary condition, account of cotton received, and from whom, when sold, &c.; states at what time George D. Hite entered the service of Weil & Jenny; also that Hite was *not* in the employment of Weil & Jenny at any time during the year 1864; that books, papers, &c., of the various firms of which Weil was a partner exist to-day, and were never destroyed as alleged; that he never heard of a seizure of cotton by the Mexican authorities until the claim of Weil was published in the newspapers; that no such amount of cotton as 1,900 bales belonging to Weil was ever at Alleyton, Tex.; that George D. Hite was not a purchasing agent of Benjamin Weil; that he believes all the books of the firm in which Weil was a partner are at Opelousas, La.; states how much cotton they had in the spring and summer of 1864, and the points at which it was deposited; states that this cotton was satisfactorily accounted for; states that Weil had no property outside of the partnership.

No. 4. Affidavit of S. Firnberg, dated August 4, 1876. He was a member of the firm of Bloch, Firnberg & Co., which firm combined with that of Isaac Levy & Co., under style of Levy, Bloch & Co. The firm of Isaac Levy & Co. was composed of Isaac Levy, Benjamin Weil, Max Levy, and Jacob Levy. None of the firm had any individual property, real or personal. Benjamin Weil was a party to a contract with the State of Louisiana. He had no resources to carry out the contract. In 1864, Weil, for the firm of Levy, Bloch & Co., entered into a contract with Gustave Jenny, of Matamoros, under the name of Weil & Jenny. "I have never heard of any claim against the Government of Mexico," and "I know of my personal knowledge that the claim of Benjamin Weil against the Government of Mexico is fraudulent. I was at the time of the origin of this claim a partner of Weil and interested in all transactions, gains, or losses up to the dissolution of the partnership on the 19th of December, 1865. Had access to all books and papers, &c. First I heard of it was in the public press."

No. 5. Affidavit of Louis Scherck, dated the 5th of August, 1876. Was a partner of Gustave Jenny. Knows Benjamin Weil. Jenny & Co. furnished goods to Benjamin Weil to carry out his contract with the State of Louisiana. I assisted them in delivering the stock to the agent of the State of Louisiana This was in the summer of 1864. I then returned to Matamoros, and was there the latter part of that year. Never heard of any cotton being seized. Would certainly have heard of it had it been there and belonged to Benjamin Weil. Weil had no means of his own. All the means were furnished by C. F. Jenny. I held C. F. Jenny's power of attorney. The letters shown to me, marked E.W. H., in red ink, I recognize as letters of Gustave Jenny. I also recognize the letters of Benjamin Weil.

No. 6. Thirty-one original letters of Benjamin Weil, running through the year 1863, giving full accounts of his doings, prospects, hopes, and fears, and directed to his partners in business.

No. 7. Twenty-four original letters of Benjamin Weil to partners, to the same effect as those mentioned in No. 6, running the entire year of 1864, many of them dated in September, October, November, and December, 1864. Among these letters is a statement of Benjamin Weil, commencing at the fall of New Orleans and giving a full statement of his doings until after the war, showing all his transactions. No mention is made of the 1,900 bales of cotton.

No. 8. Eighteen letters of Benjamin Weil on the same subject as mentioned in No. 6, and to the same parties. In none of these letters is any loss of cotton by seizure

mentioned, nor is there any allusion to any large amount of cotton at Alleyton in the spring or summer of 1864.

No. 9. Letters of Isaac Levy (seventeen in number), running through 1864 and 1865, all on business, no mention being made of any loss by seizure or of any large quantity of cotton at Alleyton. All these letters give details, accounts, and instructions about business going on Louisiana, Texas, and Mexico. No loss is referred to on account of cotton seized by Mexican authorities.

No. 10. Letters of Max Levy (six in number) and one of Joseph Weil, dated in 1864, and running through the whole year, showing the same facts as in No. 6.

No. 11. Letters of J. C. Baldwin & Co., of Alleyton, Tex. (who acted as consignees and agents of Benjamin Weil at that point), in closing accounts, &c.

No. 12. Letters of Joseph Bloch, running through the years 1864 and 1865. They are seven in number, and show condition of the firm at that time. Letters of Emory Clapp, agent of the State of Louisiana, dated in October and November, 1864.

No. 13. Letters of Matt. Barrett, at Eagle Lake, Tex. (This point is a short distance from Alleyton.) These letters are in regard to the hire of teams, &c.

No. 14. Letters of Gustave Jenny (sixteen in number), running through the years 1864 and 1865. These letters prove the same as the letters of Benjamin Weil mentioned in No. 6.

No. 15. Letters of George D. Hite (original), the principal witness for the claimant, Benjamin Weil. These letters show Hite to be at Shreveport in the year 1864, and that he only entered the service of Weil & Jenny in 1865.

No. 16. Affidavit of R. F. Britton, setting forth that Hite was at Shreveport in some department of the Government in 1864, during the whole year.

No. 17. Affidavit of B. C. Brent. He testifies that Hite was at Shreveport. In the spring of 1864 he was captain of the steamboat Countess. After that he was detailed to Governor Allen and was on duty in the quartermaster's department of the State of Louisiana. "I know he was at Shreveport during the months of August, September, and October, 1864." He did business in Shreveport in partnership with one James Parsons. He was under the immediate command of Colonel Wise. I know J. M. Martin, a pilot on Red River, another witness. "I would not believe him on oath." I knew S. B. Shackleford, another witness. He was a lieutentant it the Confederate army. He was a sort of gambler. I do not know where he is. I have seen the letter signed George D. Hite. The signature is genuine.

No. 18. Affidavit of E. W. Halsey. Was private secretary to Governor T. O. Moore and H. W. Allen, from 1860 to 1865. Knew Weil and Levy, his partner. Knew they had a contract with the above-named governors. From frequent conversations with Weil, knew that capital was furnished by Gustave Jenny, or Jenny & Co. Do not know of their ever having any cotton except that furnished by the governors. "Was very difficult to get permits from the military authorities to export cotton. These permits were indispensable for the transportation of cotton. Weil & Jenny did not receive sufficient cotton to pay them for goods supplied, and Weil brought a claim against the State of Louisiana for a large amount, which claim was paid. Although intimate with Mr. Weil during these transactions, he never spoke to me of losing cotton by seizure on the Rio Grande, or of exporting other cotton than that received from or through Governor Allen. Had he met with such loss I would certainly have known it." Testifies to the signatures of various letters of Weil, Jenny, and others, on which is written in red ink, E. W. H.

No. 19. Affidavit of Jaques Levy, testifying to the signatures of Isaac Levy, Max Levy, and Benjamin Weil, and he signs his name across several of them to identify them. He is a brother of Max Levy and a cousin of Isaac Levy. Knew all three of them to be partners in the house of Levy, Bloch & Co., doing business in Mexico, Louisiana, and Texas during the war. This affidavit is dated the 7th of August, 1876.

No. 20. Affidavit of L. G. Aldrich. Was a captain in the Confederate army, and adjutant-general, stationed at Brownsville. States how the exports of cotton were conducted, by what ports it should be exported, permits required, and all regulations thereto. Regulations of Mexican Government for import of cotton. That all outrages by the Mexican authorities were promptly reported, and friendly relations between the authorities on both sides of the river at that time existed; that no capture of a train of cotton was ever reported; that the "capture of 1,900 bales of cotton by the Mexican authorities, without any knowledge of it reaching headquarters, I deem next to an impossibility."

No. 21. Original articles of copartnership between the firms of Bloch, Firnberg & Co., and Isaac Levy & Co. Original articles of dissolution of the partnership. The first is dated the 11th of March, 1863, and the latter is dated New Orleans, the 11th of October, 1865. These are the original copies. The originals, according to the civil law, are kept in the recorder's office, as shown by these copies.

No. 22. It consists of various papers, telegrams, accounts current, bills of lading of cotton and merchandise, receipts, &c., all showing the transactions of the various partners of Benjamin Weil, and of the firm of which he was one, and all proving con-

clusively that that firm never had any large amount of cotton at any one time; and that it never was in a pecuniary condition to have made large purchases of cotton, but all cotton received was in small lots, which were shipped at once, and no mention is made whatever of the 1,900 bales alleged to have been at Alleyton, and subsequently captured by Mexican authorities.

Accounts current show when George D. Hite drew money, and in what sums.

No. 23. Affidavit of W. R. Boggs, dated 17th day of August, 1876. Was a brigadier general and chief of staff of General E. Kirby Smith, commanding trans-Mississippi department. Was stationed at Shreveport in 1863, 1864, and 1865, and knew George D. Hite. That Hite was at Shreveport throughout the year 1864. That he saw him from time to time. Never heard of Benjamin Weil. Never heard of any seizure of cotton. Any seizure of cotton would have been heard of by me in my position.

No. 24. Affidavit of John E. Evins. Was United States collector at Laredo before the war. Remained there during the war. Was engaged in the freighting business during the war, hauling cotton. Remained at Laredo until 1869. Is acquainted with nearly everybody up and down the river for one hundred miles; knows the country thoroughly.

There are no crossings for wagons above Laredo, between Laredo and Piedras Negras. Duties were always paid to the Mexican Government at the local custom-houses. The distance from Alleyton to the Rio Grande is about 260 miles. (Testimony of George D. Hite says it is 700 miles.) There are no ferries between Eagle Pass and Laredo. "I have never heard of Benjamin Weil. I have never heard of the seizure of any cotton. In my opinion, it would have been impossible for the Mexicans to take violent possession of 1,900 bales of cotton anywhere on the Rio Grande without my hearing of it." The custom-house officials on both sides of the river were very vigilant. "I do not believe that any one train of 1,900 bales of cotton belonging to one individual ever traveled across Texas to Mexico, and I will add that the seizure of such a large quantity of cotton would certainly have been heard of by me if made at any point on the Rio Grande, much less in the neighborhood of Laredo. The news of such seizure would have circulated throughout Texas and frightened all traders." The roads in September, 1864, were filled with trains passing to and from Mexico. The rivers are generally high in June and July, and I do not think the Rio Grande fordable in September. It is only fordable at a few points at any season.

No. 25. Affidavit of John C. Ransom. Was a captain in the quartermaster's department, Confederate army, stationed at San Antonio, Texas, from the 1st of May, 1864, to the 1st of May, 1865; had a large and extended acquaintance and constant intercourse and business connections with contractors and persons engaged in transporting cotton to the Rio Grande; never heard of Benjamin Weil; do not believe it would have been possible for 1,900 bales of cotton to have been seized by the Mexican authorities without his hearing of it. Such seizure would have caused terror in the minds of all persons owning cotton, and those engaged in transporting the same. In his judgment, there never was a train of wagons transporting 1,900 bales of cotton. Sets forth the regulations for exporting cotton, permits required, &c.

No. 26. Letter of E. C. Billings, judge of the United States district court of Louisiana, stating that Messrs. "Bloch Brothers filed a bill in bankruptcy" before his court in April or May last, which "was opposed on the ground that they had fraudulently omitted from the schedule a claim of Benjamin Weil against the Republic of Mexico, for cotton. The Blochs met this charge by their counsel and by their testimony, so far as I can remember, by stating and testifying that at the time the schedules were filed (within the last two years), they knew nothing of the said Weil's claim." The court believed the Blochs, and they got their discharge in bankruptcy. (The judge has made a mistake in spelling Black instead of Bloch, which is correct.)

No. 27. A number of telegrams signed by J. Jenny, Weil, Governor Allen, and others, running through September, October, November, and December, 1864, and for a large part of the year 1865. They refer to business and to the *letters* which have been *proved*, so their genuineness must be admitted.

Account current of S. E. Loeb with Weil and Jenny, showing moneys paid out, moneys, &c., paid to George D. Hite. Among other items, eleven cents gold, per pound, was paid for cotton from Falls County, Texas, to Matamoros, May, 8, 1863.

Certificate of Ch. Russell shows that Benjamin Weil and Max Levy belong to the firm of Isaac Levy & Co.

Letter of A. Webahn to George D. Hite, dated April 21, 1865, from San Antonio, Texas.

General Smith's order shows that cotton belonged to Weil and Max Levy. It is signed by General W. R. Boggs.

The certificate that William Andrus was a notary is among these papers.

Account of Jalonic, with a note of Weil on back.

Regulations of cotton office. Cotton permit. Show how the business was done.

Letters of Joseph Bloch, dated February, 1864. Wants Weil to leave Matamoros where he is doing nothing.

Another letter of same, dated March 27, 1865 (this date wrong), complains that

business goes badly. Wants to settle up. Written from Shreveport, directed to S. E. Loeb.

Another letter of same, dated July 9, 1864, written from Shreveport, where he had met Weil, and Weil had told him "all." Speaks of cotton at various places, but nothing of cotton at Alleyton. Addressed to S. E. Loeb. States that Weil owes over $40,000 gold. Complains of bad luck.

Another letter of same, dated January 19, 1864, speaks of going to New Orleans, shipment of tobacco, &c., and of business generally. Wants to know what Weil is doing at Matamoros. Says, had he been in his place he would have rather gone to hell than remain. Is that the Paris he started for? Complains that the contract was not being carried out.

Another letter of same, dated November 29, 1865, in regard to settling up affairs. Speaks of losses, &c.

Another letter of same, of May 31, 1864, acknowledges letters from Loeb and Weil. Relates to business. Neither Weil nor Loeb to settle with the man who had charge of some tobacco at Lake Charles, Louisiana.

LETTERS OF JENNY.

Receipt of money for account of Weil and Jenny of March 27, 1864.

Receipt of Loeb, of firm of Levy, Bloch & Co., November 29, 1864.

Letter of Loeb (November 20, 1864), in regard to money due schooner Delphina by Weil and Jenny.

Another letter of same of June 2, 1864, written from Navasosa. Letter on business. Says Weil "writes about for a few days." Will want $1,000.

Another letter of the same, dated Galveston, Tex., September 12, 1865. States he wants to arrange his account with the State of Louisiana, and send it to Weil, who is now in New Orleans.

Another letter of same, dated Matamoros, January 18, 1865, inclosing draft for $3,000, and stating that detention of schooner was for the interest of Weil & Loeb. On same sheet Bloch writes he is consulting with Jenny and Weil "what we will do," and concluded to take the cotton due from Louisiana to New Orleans, and Weil is to go by first good chance to Europe.

Another letter of same, of August 31, 1865, about old business. Weil in Alexandria, La.

Another of September 17, 1865, asking that all cotton accounts, and all other accounts, be sent to him. Dated at Galveston.

Another, dated Alleyton, July 26, 1864, stating that he had shipped at eight cents per pound to Roma, and one cent from there to Matamoros. Also had drawn $150 draft in favor of J. C. Baldwin (this should have been the time Weil had the 1,900 bales of cotton at this place, and George D. Hite should have been there).

Another, dated Houston, Tex., December 24, 1864, addressed to S. E. Loeb. States receipt of account current of Weil and Jenny. Gives instructions about cotton and money. Says George D. Hite will probably be detailed to Weil and Jenny, and will arrive at Houston about the middle of January, 1865. Recommends him, and suggests that he be employed in arranging cotton at Alleyton.

No. 11. Letters of J. C. Baldwin & Co., Alleyton, Tex., April, 1864. Forwards account 16 bales of cotton.

Alleyton, Tex., March, 1864: Acknowledges receipt of letter, and stating cotton weight 182 pounds short, &c.

Alleyton, December 26, 1864: Acknowledges receipt of cotton, 19 bales.

Alleyton, December 17, 1864: In regard to cotton, stating weight, advances, &c.

Alleyton, January 30, 1865: Acknowledges receipt of a letter through the hands of George D. Hite. States that he will do all in his power to assist the captain (George D. Hite) in his work. "We have as yet received no permits from either you or Messrs. Weil, Jenny & Co." Military permits to export cotton.

Alleyton, February 6, 1865: Acknowledges receipt of 19 bales of cotton.

Alleyton, January 13, 1865: Acknowledges receipt of letter and asks to whom they shall consign the 19 bales of cotton. All these letters to urge forward the cotton as quick as possible.

Alleyton, February 13, 1865: Inclosing bills of lading for cotton. States that they have written to Weil & Jenny, care Governor Allen, at Shreveport.

Alleyton, January 20, 1865: Asking for permits of cotton and acknowledging letters.

Alleyton, March 13, 1865: States that he continues to send Weil & Jenny's cotton as fast as possible. Sends list of weight and bills of lading of 50 bales, shipped per Corcoran's train.

Alleyton, March 24, 1865: Has commenced loading 100 bales for Weil & Jenny on a Mexican mule train, paid freight through to Matamoros, 12½ cents per pound. Advances $300. Hopes to ship 50 bales to-morrow. Draws for charges and advances, &c., a draft for $664.37.

Alleyton, March 8, 1865: In regard to cotton, tobacco, &c. A long account of J. C. Baldwin & Co., with Weil & Jenny for repairs of cotton.

No. 10. Contents of letters of Max Levy.

Houston, March 2, 1864: Mentions that Weil speaks of a house in Piedras Negras; that a Mr. Scherck, of the house of Jenny & Co., will attend to the cotton at that place.

Houston, Tex., February 22: Says he has received a letter from Weil, saying that he is coming here with $100,000 of goods. Advises shipment of cotton to Europe; States that he bought 69 bales of cotton; that vessels loaded with 500 bales are ready to go to sea, &c.

Matamoros, October 10, 1864: Acknowledging receipt of letter; asks that cotton be forwarded; speaks of Weil, but mentions nothing of any seizure of cotton (said to be made twenty days before).

Matamoros, October 6, 1864: Regrets that Loeb complains of not receiving letters; says that he has written several letters to Benjamin Weil, which he was certain he would have showed Loeb; and complains of scarcity of money, difficulty of sending goods; advises to buy cotton and send it; says he has not received a word from Weil; had a letter from Bloch in New Orleans; writes about business generally. (This letter was written seventeen days after it is alleged that one thousand nine hundred and fourteen bales of cotton had been seized.)

Houston, February 27, 1864: About leaving with a vessel loaded with cotton, and setting forth his doings and acts.

Matamoros, July 31, 1864: Written to Weil; acknowledges receipt of the 29th; says he has sent Jos. Weil to New York to fill a bill; that he will not go to Europe; recounts the difficulty he had with Scherck; writes about general business. (Says nothing about the one thousand nine hundred and fourteen bales of cotton, which at that time must have been en route.)

Matamoros, November 24, 1864: Acknowledges receipt of letter of the 6th (directed to Weil & Loeb), with particulars about Weil; complains that goods bought on Joseph Weil's memoranda in New York were shipped to Weil & Jenny, and that Scherck refuses to give them up; calls Weil & Loeb's attention to this; speaks of purchases and sales, makes suggestions, &c.

On the same sheet there is a letter in German from Joseph Weil to his brother. Letter from Rosenfield to Loeb, dated January 11, 1864, state that the train which had taken cotton to San Antonio had lost some of his oxen, and had to buy more, but had no money. The owner wants $500 in species. The Confederate Government had taken half the cattle.

WEIL LETTERS.—No. 7.

Navasota, Tex., May 30, 1864: Announcing that he expects a tain of goods; he is sorry for it; the cotton bureau could not furnish the cotton to pay for the goods; directs Loeb on certain contingencies to seize money in the hands of Jenny. "Seize in the name of Levy, Bloch & Co."

Shreveport, January 17, 1864: To Loeb. "If any cotton arrives freight it in my name as agent of the State of Louisiana." In this letter, J. Bloch adds that he will be exempted from conscription on account of being a French subject. Isaac Levy adds on the same sheet that he lost everything at Alexandria; that he shall return and try again.

Shreveport, September 23, 1864 (directed to Mr. Soloman): Acknowledges letter of the 16th; says he has been doing nothing since he left you. Government puts him off from day to day; has received letters for Loeb; sold three hundred and twelve reams of paper; receives seventy-five bales of cotton as pay. Loeb speaks of going to the Rio Grande. Money is wanted in Texas. Speaks of sending flour to Isaac, Confederate money, &c. Speaks of a suit and some evidence. Wants to hear from Bloch; asks to be telegraphed. States prices of articles. Government wants to buy cotton at fifty cents in State money.

Shreveport, September 27, 1864: To G. Jenny. Is without views from Jenny. Governor has turned over to General Smith $60,000 of our goods. He refuses to settle before having the full amount of the bill which Mr. Clapp is now engaged in making. Expects to get through to-morrow. Inclosed find detail of Mr. Wolfe. He will report to Captain Bouten. Tell Mr. Loeb that Mr. Firnberg is here; Bloch in New Orleans.

Shreveport, September 20, 1864: To Loeb. Speaks of a schooner. Says Government is doing all for Weil & Jenny. Wolfe's application is gone to headquarters. I have $1,000 in gold which I shall bring on. If Jenny wants money you must get it for him if in your power. Had news from Solomon and Isaac, but nothing from Joe. Your trade with the Government is all right. I am at work to get the cotton back taken from you. Gives general news of business, whereabouts of partners and their doings.

Shreveport, September 15, 1864: To General E. Kirby Smith, commanding Trans-Mississippi Department. Informs him that on the 1st of January, 1863, that he with Marx Levy, his commercial partner, were appointed agents of the State of Louisiana, with authority to buy and export cotton, and to buy stores with the proceeds. States that some of this cotton was seized by General Bee. He wishes the ten bales to be returned to him in Brownsville.

November 18, 1863: Mr. Loeb shipped eighty-three bales of cotton. This train was detained by sickness among the cattle near San Antonio, and Colonel Hutchins (of the cotton bureau) seized one-half of said cotton, all of which was in violation of your order. He asked that this cotton be returned. This letter has indorsements of various officers of the Army.

Shreveport, September 10, 1864: Directed to Loeb. Had received no letters from Loeb & Jenny. So far Joe's expedition is a failure. Schooner Delphina is all right. Remember me to Jenny, and I will work for him as much as myself.

Alexandria, La., September 5, 1864: To Mr. Borne, in French, in regard to prices of articles, &c.

Shreveport, October 24, 1864: "Not only have I [not] received any news since Jenny arrived, but none before, and none through him, and not a word since he is here. I have not news of Bloch. Mr. Jenny will leave here soon."

Brownsville, December 5, 1864: Letter from Jenny to-day. Max is here; has a letter from Joseph. He is still in the same fix. I am again without funds. Mr. Scherck not very rich. I hate to call on him. Should Mr. Jenny need any more money let him have it, as it is our duty to advance some funds. Business dull, &c. I shall not more till Jenny arrives. Inclose a letter for Isaac.

Brownsville, December 5, 1864: Cotton took a fall since last night—32 to 34 cents. Cotton cards rising. Hope Jenny will arrive.

Matamoros, December 26, 1864: Received letter from Joseph Bloch, dated the 12th, requesting me to tell you not to lose any more time in the interior, but come here at once; hope you will do it. Jenny has not arrived. Should Jenny need any more money let him have it. Joe is coming out and promises to bring money. Write to Isaac and inform him of my whereabouts. Max left for New York.

Matamoros, December 19, 1864: Has written many letters since he arrived here. Max left for Havana. No further news from Joe. Jenny has not arrived. I am here without knowing what to do. Will not undertake anything without he being present. If these lines find Jenny still there and in need of money, pay him as much as he needs. Write often.

Brownsville, December 12, 1864: Jenny still absent. Am afraid he is sick, which will place me in a critical position. Do not look for any cloth or anything else on his house. Mr. Scherck has sold out. Money scarce. Cotton dull. Should this letter find Jenny, come to an agreement with him about money matters; you might turn over to him all your ready cash, and get paid here, or make all payable to me. If possible, I'd like you to go to Opelousas; see Solomon and Isaac. You must not sacrifice these men. No other balance of the property over there. Get everything into money. Judge, however, for yourself, as you ought to know best. Max will leave for Havana in a few days.

December 5, 1864: Jenny not arrived. Joseph B. still in New Orleans. Is not yet through with the cotton. Should I get news from Joe, I will inform you. Should you want to come out, leave half your money in safe hands at my disposal. It will take a mint to get through. We must do all we can. As long as Jenny does not come, I can't do anything.

Opelousas, August 29, 1864: Have received only two letters from you. Recollect I left with you papers and power to settle with all parties. You know as much of the business as I do. Why do you want me to go to Calcasieu? My business here is more important; I must do the business myself. I can't see any reason why these do not receive settlement from Jenny; let Jenny settle. Bloch has been gone three weeks. I'll leave to-morrow for Alexandria, from there to Shreveport, and thence to Houston. Will ask at headquarters for cotton in Texas. I feel uneasy in one respect that the news from Texas is not satisfactory, namely, that matters are still in suspense with the cotton bureau. Direct my letters to Shreveport. Why is Jenny silent? I am working for the best. I came down only to get the money for 200 bales of cotton or exchange. If I fail nobody can be to blame.

Opelousas, August 29, 1864: To Joseph Bloch. Can't wait any longer; must go to Shreveport. If you get any exchange, bring it or send it. I leave everything with Mr. Borne. Will probably go to Houston and Calcasieu.

Alexandria, La., July 21, 1864: To Joseph Bloch. Isaac Levy and self will visit you Sunday. I've a permit from General Smith for 220 bales of cotton, and not any money. Nothing decided about the vessel. All going on smoothly. Trust your luck. I've received a letter from Max; had a few lines from Loeb; nothing of importance.

Alexandria, July 21, 1864: To Loeb. Acknowledges reception of Max's letter. For news refers to Jenny's letter. I have no news; will write from Opelousas. Both

Isaac and Joe are doing well; they are confident that neither you nor Jenny neglect your business. States prices of coffee, &c.

Alexandria, July 13, 1864: To Joseph Bloch. In regard to business, cotton permits, &c.

Navasota, June 2, 1864: Glad to hear once from Bloch. I have taken $1,000 of Jalonie. Jenny will pay them back if necessary. Should Jenny call on you for $1,000 let him have it; he will return it in eight or ten days. He needs it to pay freight on forty bales of cotton on to San Antonio, which I do not wish to be sold.

Matamoros, May, 1864: To Loeb, acknowledging letter of 7th. Times are getting worse. I am unable myself to send you any goods, as credit is dead and money I have none. Mr. G. Jenny has written and expresses his views. I could have got the consent of his brother to send you stock, but I can't under the circumstances. He himself is short of funds. I can't tell what I am going to do hereafter. Circumstances will determine. First, I must finish with Messrs. J. & C. Write to Isaac and Joe and keep them posted.

Houston, April 11, 1864: Schooner has arrived safe. The goods will be stored; Max is still in port. No news of Isaac and Bloch. My business is all fixed. The Government takes everything. Inform Scherck he might come to San Antonio to see us. Heard of his selling out. Jenny will be glad to see him.

Matamoros, February 3, 1864, to Loeb: Speaking of cotton at Alleyton, which Scherck was to attend to; I'll leave in two days for Laredo, and thence to Alleyton. Scherck will tell all my arrangements with Jenny. Try and get money enough to pay freight on your cotton, and ship it to this place. I have made arrangements to ship it to Europe, or sell and trade. Do the best you can till we meet again, which I hope will be in the fall. Write me to Houston. No news from Max. The schooner Lehman will leave in a few days. Half of the cargo is ours. I have laid out all my money, which you know was not a great deal. Little do I like the idea of going to the interior, but I am willing to risk all for the benefit of our large family. We take in for upwards of $60,000 of goods. Have a train of large mule teams chartered to carry cotton back to this place at the rate of ten cents. The freight and duty alone to get off is near $20,000. If no bad luck, I'll make it count. A train can take 300 bales of cotton. No news of Isaac nor Bloch; very strange. No further news.

February 10, 1865: Since writing the above, no news except the fact that Max is really taken into New Orleans. I've no letter, but a party who was also captured and released came up and confirmed it.

No. 8. Matamoros, April 2, 1865, to Loeb: Acknowledges the receipt of a letter of Captain Hite. (This is the first appearance of the name of Hite in Weil's letters.)

Matamoros, April 9, 1865, to Loeb: Acknowledges receipt of the 28th and 30th, and one from Mr. Hite of the 28th acknowledges the reception of cotton, &c. Mentions business of all sorts, and says he sends Hite three letters from his wife. Tells of the condition of the country and the want of safety on the road.

Matamoros, March 12, 1865, to Loeb: States that business is getting worse daily, and the rates are enormous. Thirty-two bales of cotton shipped in December had arrived, but the 216 shipped by G. Jenny had not arrived. Ask what is Hite doing. He ought to write from time to time. No news of Bloch; no news from Jenny from New York. Max is expected daily.

CASH-BOOK OF WEIL & JENNY.

The name of George D. Hite appears in this book for the first time on February 22, 1865.

Affidavit of Henry Langford, phonographer of the United States district court, stating remark of Judge Billings, United States district judge of Louisiana, characterizing the claim of Weil as a fraud, and asking if the authorities at Washington had been advised of it. The evidence on which Judge Billings formed his opinion was the testimony of S. E. Loeb, S. Firnberg, and Max Levy, whose affidavits are mentioned above.

No. 11. J. C. Baldwin & Co.'s letters, dated at Alleyton.

January 30, 1865, mention the arrival of Mr. Hite at that place, and shows that that was his first visit. (J. C. Baldwin & Co. were the merchants who did the business of Weil at Alleyton, Tex., and whose accounts were rendered to S. E. Loeb.)

[There is also information of the existence among the Confederate archives in the War Department of a letter of Weil & Jenny, dated in October, 1864, and addressed to Col. J. C. Wise, at Shreveport, La., asking the detail of George D. Hite to their service. Also, of the existence of certain letters written in the latter part of 1877 to the Treasury Department, by A. F. Wild, a special agent in Louisiana and Texas, showing the fraudulent character of the said claim of Benjamin Weil, and giving the details of the conspiracy by which it was prosecuted.]

APPENDIX B.

THE STORY OF THE MINE.

HACIENDA LA ABRA SILVER MINING COMPANY,
Tayoltita, January 16, 1866.

MESSRS. ECHEGUREN, QUINTANA & CO., *Mazatlan.*

GENTLEMEN: I am in receipt of your esteemed favor of the 10th instant, and have noted its contents. For your kind attention in receiving, mailing, and forwarding my correspondence I beg to return you my thanks.

In the lot of letters received by Mr. Carell, I have two from our mutual friend, David J. Garth, esq., treasurer of La Abra Silver Mining Company, New York, in which he says that the credit of the company shall be at all times fully maintained, and that my drafts for such amounts of funds as are necessary to vigorously prosecute our work to an early completion shall at all times meet with due honor. I am under obligations to my friend, Dr. Juan Castillo, for his kindness in assuming the charge of my Atlantic correspondence, and should you have occasion to write to him during his absence, have the goodness to express to him my thanks. I beg to advise you that, to meet mining expenses and to pay hands for getting timbers for our mill and other necessary outlays, I have, under this date, drawn upon you, in favor of Dr. W. B. Hardy, for $1,500, in three drafts of $500 each. They are thus drawn so as to enable Dr. H. to sell them at San Ygnacio or San Juan, thus obviating the necessity of going to Mazatlan to obtain the money.

* * * * * * *

Your friend,

TH. J. BARTHOLOW,
Superintendent.

HACIENDA LA ABRA SILVER MINING COMPANY,
Tayoltita, February 6, 1866.

D. J. GARTH, Esq., *New York.*

DEAR SIR: * * * After I had gotten all of our machinery completed in San Francisco, and the belting, bolts, extras, and tools shipped and paid for, I found that instead of having between 30 and 40 tons, which you had estimated the mill would weigh, I found I had nearly 80 tons, and instead of all costing $10,500, as you had estimated it, and me also, in my report to the company, I found that—

The entire cost was	$15,500 00
The freight and duties	2,500 00
And the packing in Tayoltita, in consequence of the operations of Corona around Mazatlan, will average $16 to $18 a carga, or	9,000 00
The lumbers and timbers will probably cost	4,000 00
Lime will also have to be increased to	1,200 00
Mechanics and laborers, I think, will be about former estimate	7,000 00
Corn, salt, quicksilver, and other supplies	10,000 00
Castillo, for balance of account	7,000 00
	$56,200 00

The difference in estimate is caused principally by the weight of the mill, and its cost being first so greatly underestimated, and of course all calculations based upon the weight and cost of the mill in my former estimates are not reliable; and, besides, when I left here for San Francisco in September mules could be contracted for to pack at from $8 to $10 per carga, bnt after the Liberals took possession of the country and confiscated large numbers of mules, it was with the greatest difficulty that I could get any one to agree to pack at all; and had I not succeeded in getting military protection our mill would now be lying at Mazatlan. * * * By the March steamer I will have to draw for $10,000.

Yours, truly,

TH. J. BARTHOLOW.

HACIENDA LA ABRA SILVER MINING COMPANY,
Tayoltita, Mexico, February 21, 1866.

W. C. RALSTON, Esq., *Cashier, San Francisco, Cal.*

DEAR SIR: Inclosed I hand yon a draft in favor of Bank of California and on David J. Garth, esq., New street, New York, for $10,000 (gold coin), which you will please negotiate and place proceeds, with current rate of exchange, to my credit. I beg also

to advise you that I have also drawn upon you, at even date, in favor of Messrs. Echeguren, Quintana, & Co., Mazatlan, for $10,000, which said draft you will please honor when presented. Mr. Garth has embarked in the banking and exchange business, in connection with two of his old friends in New York and Richmond, Va., under the firm of Harrison, Garth & Co., of which he has most likely advised you.

I am now starting 150 mules, which are sufficient to transport all the balance of my machinery, and, if they meet with no accident, all will be here by March 10, and I will be ready to crush and beneficiate ore by June 1.

My miners in one of our mines a few days ago struck a small vein, about six inches wide (an off-shoot), which is exceedingly rich, and the vein is widening daily. The ore will assay $500 per ton. I have now on hand 325 tons ore.

Your obedient servant,

TH. J. BARTHOLOW.

HACIENDA LA ABRA SILVER MINING COMPANY,
Tayoltita, March 7, 1866.

Michael Kirch, of the city of San Francisco and State of California, is hereby authorized and empowered to cast the vote for the stock owned and held by this company, viz, five hundred and fifty shares of the capital stock of Nuestra Señora de Guadalupe Silver Mining Company, at the general election for officers of said company, to be held in the city of San Francisco in this month, and also at any other election which may be held subsequently, until this proxy shall be revoked.

TH. J. BARTHOLOW,
Superintendent.

HACIENDA LA ABRA SILVER MINING COMPANY,
Tayoltita, March 7, 1866.

DAVID J. GARTH, Esq.

DEAR SIR: * * * In my last letter I informed you that one of my employés, William Grove, esq., formerly of Saline County, Mo., was missing, and I feared had been waylaid and murdered. Since then my worst fears have been realized; for, after a search of two weeks, his body was found buried in the sand on the bank of the Piastla River, some ten miles above the mouth of Candelero Creek, near where he had been murdered. At the time of the discovery of the body it was in such an advanced state of decomposition that it was impossible to ascertain the manner in which he had been killed. His mule, pistol, and clothing have not yet been found. The mule is, however, likely to turn up, as it had our hacienda brand, "U. S.," on the left shoulder. These facts were promptly laid before the commander of the Liberal troops at San Ignacio, Señor D. Jesus Vega, who took great interest in the matter and promised to use all the means in his power to discover the murderers and bring them to justice, and he had arrested and placed in confinement two men charged with the crime, and his soldiers are in pursuit of the third. These we are assured will be tried by court-martial, and, if found guilty, will be summarily executed.

Mr. Grove, I think, lost his life by imprudence in talking.

Your friend,

TH. J. BARTHOLOW,
Superintendent.

HACIENDA LA ABRA SILVER MINING COMPANY,
Tayoltita, March 7, 1866.

Messrs. ECHEGUREN, QUINTANA & CO., *Mazatlan.*

GENTLEMEN: One of my mechanics desires to make a remittance of two hundred and fifty dollars to his brother, residing in Scotland, and I will thank you to invest this sum in a sterling bill on London or Liverpool, payable to the order of John Weir, and inclose the same in a letter to him, directed as follows: John Weir, baker, Lamlash, island of Arran, Scotland. You will also please inclose the letter herewith to the some party. This sum you will place to the debit of my account.

Mr. James M. Wilson, the bearer of this, goes to Mazatlan with a small pack-train to bring up some goods which I expect have arrived by this steamer. Please have them passed at the custom-house and delivered to Mr. Wilson as speedily as may be, so he will not be unnecessarily detained with his mules on expense in Mazatlan.

You will also do me the favor to forward by Mr. Wilson one thousand dollars ($1,000), which said sum you will charge to my account. I forward by Mr. Wilson a package of letters and a small package of silver ore, all of which please forward per Wells, Fargo & Co.'s express, charging expenses to my account. I have now on hand fully

four hundred tons of ore (400 tons), and am mining over thirty tons per week. The ore of La Luz continues to improve in quantity and quality. I now believe that by the time the mill is completed I will have enough to pay for the entire cost of the mill and improvements.

Your friend,

TH. J. BARTHOLOW.

HACIENDA LA ABRA SILVER MINING COMPANY,
Tayoltita, April 6, 1866.

Messrs. ECHEGUREN, QUINTANA & CO., *Mazatlan.*

GENTLEMEN: * * * By the May steamer I will draw for ten thousand dollars, which draft I will forward you in due time. Messrs. Weil & Co., San Francisco, of whom I purchased the tobacco which came by the last steamer, request me to have forwarded to them the landing certificates of this tobacco, to enable them to cancel their bond. * * * Our pile of ore is now increased to fully if not over five hundred tons.

Your friend,

TH. J. BARTHOLOW.

HACIENDA LA ABRA SILVER MINING COMPANY,
Tayoltita, April 10, 1866.

DAVID J. GARTH, Esq., *New York.*

DEAR SIR: * * * Our ore pile is regularly and steadily increasing. The stock on hand is between 550 and 575 tons. * * * To give you a better idea than I could do by detailing the transaction in this letter, of one of the many difficulties I have to meet and overcome, I inclose you a letter that I wrote to the collector of taxes at San Ignacio, which explains itself. The result was, instead of paying taxes to amount of three or four thousand dollars, as was demanded, we only paid about $30, and there was no necessity of troubling General Corona with the matter. * * * I wrote you fully in my last letter, detailing the circumstances of the murder of William Grove and the finding of his body. Since then the Liberal authorities have taken the matter in hand and arrested one of the murderers at this place. The villain was actually in our employ, doubtless for the purpose of ascertaining when an opportunity should offer to waylay and murder another of our men, if the prospect for plunder was sufficient to warrant the risk.

When the officers arrested, I had him conveyed to the blacksmith's shop and securely ironed. The next day he was conveyed to San Ignacio and thence to Cosala, where he was tried. We failed to convict him for the murder of Grove, but [he] was convicted for the murder of a woman whom he had killed previously, and sentenced to be shot. Before the execution of the sentence he confessed the murder of Grove, and revealed the names of his two confederates. These two would have been arrested before this but for the expulsion of the Liberals from the country. Now, we have to wait for the Imperialists to put their officers in power before we can act any further in the matter. * * * Up to April 1st our ore from La Luz and El Cristo mines—say, at that time five hundred tons, four hundred of which was on the patio—had cost nine thousand dollars. This included the amount paid Castillo for working La Luz from June till we took possession, and the expense of making the new tunnel in El Cristo, or an average of $18 per ton. We have reduced the average to $15, delivered on the patio, and I think a further reduction may be calculated upon. You wrote me for a statement of the books up to the 1st January. This I do not send, for the reason that everything is in an unfinished state, and it would be impossible for me to render any statement that would give satisfactory information to the company; but when the works are completed and I return, I will have a full statement of every account on our books, which show the entire cost of mill and buildings, the amount of ore on hand and its cost, together with a statement of the business of the store. In short, a full and complete statement of the whole affair while in my charge. * * *

Your friend,

TH. J. BARTHOLOW.

HACIENDA LA ABRA SILVER MINING COMPANY,
Tayoltita, May 4, 1866.

Señor DN. ANGEL CASTILLO DE VALLE, *Durango.*

DEAR SIR: I am in receipt of your favor of 24th ultimo, advising me of your having forwarded the tallow which I had ordered. For your prompt compliance with my request in this case I thank you. Inclosed please find my check on Messrs. Echeguren,

Quintana & Co., Mazatlan, in your favor for $2,760.59. Add goods furnished Dr. Juan James, $74.18; add cash furnished same, $10; total, $2,844.77.

This is the amount of your invoice of January 8, and which you will please pass to my credit. My clerk, in rendering you the account made by Dn. Juan James, forgot to add to it the ten dollars which that gentleman [borrowed], and which he will doubtless recollect. Col. J. A. de Lagnel has been sent by the company in New York to relieve, which is a source of great satisfaction to me, as my health has become seriously impaired, rendering it necessary that I leave the country. You will find the colonel a gentleman of intelligence, and I trust your business relations with him will be as pleasant and satisfactory as mine has been to me.

Very truly, your friend,

TH. J. BARTHOLOW.

HACIENDA LA ABRA SILVER MINING COMPANY,
Tayoltita, May 5, 1866.

Col. J. A. DE LAGNEL.

SIR: In reply to your note of this date, I beg to say that I am too unwell to collect up, credit, and pass same on the books of the company the wages due our white employés, but you will find over the name of each employé on the ledger a memoranda of when he commenced work, with the rate of wages we are to pay. I will, however, call in to-day and to-morrow all our employés and get them to acknowledge the correctness of money and merchandise charged to them. I inclose a memorandum of outstanding contracts yet to be filled, either partially or wholly. I also inclose a memorandum of the mines, their names, location claimed by the company. All that we are not now working are under "prorogue" until July, when you should make application through Dn. Angel Castello de Valle, Durango, for an extension of the prorouge. I also inclose a memorandum of goods and supplies, which I think the company will requirie to aid its operations during the rainy season. The company owns 12 mules and 10 aparajos. The title to these mules I believe to be good.

With respect,

TH. J. BARTHOLOW.

MAZATLAN, MEXICO, *June* 16, 1866.

W. C. RALSTON,
Cashier Bank of California, San Francisco.

SIR: Inclosed herewith I send duplicate drafts on D. J. Garth, of New York, for fifteen thousand dollars, payable at sight in gold coin. Against this I have drawn on the Bank of California for the following amounts, viz:

In favor of Echenique, Peña & Co	$12,951 24
In favor of Sanjierjo, Argeres & Pujol	1,318 50
In favor of Brodie & Co	15 20
Edward H. Parker	290 00
Weaver, Wooster & Co	375 00
	15,000 00

You will credit me with the current rate of premium, whatever that may be, and advise me of your action by return steamer. Should you deem it requisite, communicate with Mr. Garth by telegraph, as requested in your letter of May. I feel some surprise that I did not hear from you by this steamer. You will perceive an erasure both in this letter and on the draft. I made it to correct an error.

Very respectfully,

J. A. DE LAGNEL,
Superintendent La Abra Silver Mining Company.

List of names of persons at the La Abra Company's works for whom letters from Europe or the United States may arrive.

Alfred Bryant, J. Edgar, A. B. Elder, Dan. Sullivan, James Cullins, J. W. Green, J. Keeghan, Richard Howith, Charles E. Norton, Francisco Dominguez, and mail matter for myself, private or otherwise.

N. B.—Please remember to make a list of names of the persons for whom *letters* are sent up by the carriers and charge opposite each the number of letters sent and ac-

count of postage or express charges paid on each account, in order that I may collect the same here. I will further request you to make a close and water-tight package of letters and seal the same.

Very respectfully.

J. A. DE LAGNEL, *Superintendent.*

Messrs. ECHENIQUE, PEÑA & CO., *Mazatlan.*

HACIENDA DE LA ABRA,
Tayoltita, July 31, 1866.

MR. J. G. RICE, *Superintendent Durango Silver Mines.*

DEAR SIR: I hasten to acknowledge the receipt of your note of the 29th instant, and also of one hundred dollars in silver paid on account. I inclose herewith a statement of your account, as appears by our books, differing from yours a few dollars—in your favor, however. If there should be anything omitted by me please correct such error and inform me of it. I send you two bottles of mustard as requested—price, $1 each. As to the forced voluntary (?) loan, it was an impossibility to meet the demand, and I so stated in my note to the prefect. You cannot have failed to notice that the exact half of the whole levy was laid upon you and myself, a fact I brought to the attention of the parties interested. * * *

Yours, truly,

J. A. DE LAGNEL.

MAZATLAN, MEXICO, *August* 16, 1866.

D. J. GARTH, ESQ., *La Abra Silver Mining Company.*

DEAR SIR: * * * The ore on hand has been overstated, unintentionally, a fact which I found out on making exmination of the books. I have had the large pile of second-class ore, about which much doubt has arisen, cleaned, and the amount of clean from the rocks, as declared by the expert, Vimpiador, is very small. The ore cleaned from it, however, is very good. The other pile of first-class metal is not only better in quality, but, in as far as has yet been made manifest, but little waste matter. Besides these there is a third pile of almost equal amount to either of the others from El Cristo. * * *

Yours, respectfully,

J. A. DE LAGNEL.

TAYOLTITA, MEXICO, *September* 7, 1866.

D. J. GARTH, ESQ.,
Treasurer La Abra Silver Mining Company.

DEAR SIR: As promised, I send you full and complete statements of the liabilities left unsettled by General Bartholow, and of the moneys received and expended by me, and of the property found at this place at the time of my arrival.

I have already informed you that the general would not consent to make the inventory of property asked for by me, and it was not done until some weeks after I took possession, I being absent and having no one to do it before a proper assistant arrived.

It was, however, carefully compiled and allowance made for the sales between 1st May and the day on which taken. The tools I received myself. You may accept these papers in full confidence, all possible care having been bestowed upon them.

* * * * * * *

As to your remark in reference to borrowing a few thousand upon the strength or good credit in Mazatlan, let me assure you that nothing can be done in that quarter. But little confidence is felt in American mining companies, and the present condition of affairs enhances the doubt entertained. Your company is about the last actually at work, the others having suspended for cause and waiting for something to turn up. I have asked, and know nothing can be had. * * * As yet the yield of ore from the mine does not fill the measure of our needs for the mills, but I reduced the working force (it being costly) in June for the sake of keeping down expenses until the mill-work should be complete, or nearly so. I deemed it best to do so in view of the accumulation of ore, now heavy, though at the same time I did not know how large a part of it was worthless. I note your remarks about working rock less rich than that treated by Castillo. In reply, I would inform you that everything that is believed to contain enough to pay for packing down and beneficiating is saved. * * *

I am, yours, with respect,

J. A. DE LAGNEL.

HACIENDA DE LA ABRA,
Tayoltita, October 8, 1866.

DAVID J. GARTH, Esq.,
Treasurer La Abra Silver Mining Company.

DEAR SIR: * * * The work is progressing, the flume is completed, and we to-day for the first time let water onto the wheel, in order to dress the face of some pulleys; but, the ditch incomplete, the supply of water drawn from the arroyo was wholly inadequate.

I doubt whether your expectations will be ever realized respecting the looked-for yield of metal from the mines, though sufficient may be had to repay well, I trust. * * * I am troubled exceedingly that better success has not attended my efforts, but the rainy season has proved a sore trial to my patience and been a serious drawback.

I have striven to meet your wishes and expectations, and regret that my success has not been commensurate with my efforts to serve you and to discharge my duties. As to sending a successor, I deem it best to tell you now that no money could tempt me to remain in the country longer than next 1st March. * * *

I remain, yours, with respect,

J. A. DE LAGNEL.

MAZATLAN, *November* 17, 1866.

D. J. GARTH, Esq.,
Treasurer La Abra Silver Mining Company.

DEAR SIR: I have to acknowledge the receipt of your letters of the following dates, viz: 31st July, 10th, 29th, and 30th August, 10th and 20th of September, and letter of introduction, all brought from Mazatlan and delivered to me by Mr. Exall, at Camacho 30 miles from this place, about the 16th or 18th of October. * * * Had nothing occurred to interrupt the work, I feel sure that at this time the mill would be in operation and the proofs at last being developed. Unfortunately, I was unable in September or October to communicate with this place; and the ready money giving out at the hacienda, the workmen (not miners) refused to continue, and left, thus bringing the ditch work to a stand-still.

I tried in vain in the country to obtain relief, but the doubt and distrust of American companies is so great that I failed utterly, and am here on the same mission.

Yesterday I used every effort with the best houses, beginning with E. Q. & Co., but could effect nothing. * * * In the utter impossibility of obtaining aid here, I have, despite the tone of your letters, drawn upon you for the sum of $7,000. * * * In all my letters I have written with a view to avoid exciting false hopes and ideas, and think it but right so to do, although I know that a more flattering tone would, perhaps, be more acceptable to many persons. I have done so because of several reasons: first, because it was my desire to avoid giving rise to expectations which might not be realized; and, again, because I did not feel sufficiently familiar with the subject to indulge too freely in comment. As to the circumstances mentioned in your letter, that certain parties had stated that the specimen ore had been "salted" for my especial benefit and deception, I can only refer you to the mention made of it in one of my letters, I forget which; but that it was done *purposely* is more than I am prepared to say. If I understand the term as used by miners, the facss are not as stated. It is, however, true that though I requested to have the second-class ore of the Luz mine crushed for assay, specimens were taken from the first-class pile and prepared for my use; but I cannot say that it was designedly done. As already stated, the ore has been and is being repicked, and though a large quantity is pronounced without value, I do not accept it as gospel truth, but will satisfy myself of the fact by trial. The mill itself may be pronounced completed, the last touches being given when I left. That there are faults in the planning is evident, but the work had advanced too far to correct it when I took charge. * * * As I have already stated to you, all the mining property is covered by prorogues up to January next.

What will be the result of another application I cannot say, but should the worst come to worst, a force, limited, can be put to work; and this, with the interval of some months before it can be denounced, will, I trust, serve our purpose. The political condition changed quickly and quietly a few days since, the French Imperial forces retiring from this and going down to San Blas. Their final departure seems nigh, and the ——— are very much elated, of course. As yet no authorities are installed. We are dragging along in the dark, and hoping, but not knowing, that any advantage will be derived from the change of rule.

I remain, yours, with respect,

J. A. DE LAGNEL.

HACIENDA DE LA ABRA, *December* 15, 1866.

D. J. GARTH, Esq.,
Treasurer La Abra Silver Mining Company, New York.

SIR: Inclosed herewith I send you two papers, one a balance sheet drawn from General B.'s ledger, the other an exhibit of receipts and expenditures during his administration. * * *

First, as to amount of cash received from the company by General B. I find that it agrees with the books, provided a necessary correction be made.

In deducting the $200 (January premium from Messrs. Echeguren, Quintana & Co., which is improperly charged to me in the statement) from $102,172, the remainder is put down as $101,962 instead of $101,972; and, again, in putting in a condensed form the sum with the overdrafts and outstanding debts, it is put as $101,902 instead of $101,972. * * *

I trust that the papers forwarded will meet your approval.

I remain, sir, yours, with respect,

J. A. DE LAGNEL.

MAZATLAN, MEXICO, *January* 5, 1867.

Mr. D. J. GARTH,
Treasurer La Abra Silver Mining Company.

SIR: I hasten to acknowledge the receipt of your three letters of the 1st, 10th, and 20th of November, respectively, and in response will endeavor to place you in possession of all the necessary information to enable you to judge of our condition and prospects here. In your last letter, the 20th November, you there inform me that you can meet no further drafts upon you, yet I had already, about the 17th November, drawn on you, as ———,* for the sum of $7,000.

I wrote to you fully by the same mail and hoped to be able to send the letter via Acapulco, and thus reach you before the draft. In this I was disappointed, and my letter, having gone via San Francisco, will reach you at the same time that the draft comes in for payment. I trust that, despite what you say, you will find some way to satisfy the draft, for if it goes to protest it will be of incalculable injury to the best interests of the company. To me the consequences of such a thing would be both mortifying and most embarrassing, but to the company's interests they would prove far more serious. It is, therefore, that I urge upon your serious consideration the interest at stake, and pray that a prompt settlement be given upon presentation. * * *

As to the amounts received from cash sales of merchandise, it is very small, the number of people about Tayoltita being less than formerly. As those employed by me receive two-thirds of their earnings in goods, they have no great need to purchase more. Then there are other points within striking distance which are endeavoring to attract the little trade there is, and so between a diversity of causes the receipts of cash are very small indeed. * * * Don Juan Castillo is here, will go in time to Durango, and proposes visiting Tayoltita. He called on me, and showed me a letter he had received from you in response to one he had written you from Bilboa, Spain.

He expresses great interest in the enterprise and its success, but makes no disguise of the fact that he thinks one hundred thousand too much has been spent; that a different plan would have been his, namely, to work with improved battery to perfect the crushing, but to use no other American machinery—to use the arrastras and patio as of old. He thinks that the mode, under the circumstances, there is not the slightest probability of his taking a dollar's worth of stock or advancing a cent, unless he sees, with his own eyes, good grounds for the investment. American credit is poor, and American success as miners in this country is doubted, I find. * * *

The prospect from the mines is not so good as formerly, though they vary so constantly that I have ceased to permit myself to be readily elated or depressed by their condition. Inclosed I send the monthly papers. * * *

Yours, respectfully and truly,

J. A. DE LAGNEL,
Superintendent.

MAZATLAN, MEXICO, *February* 5, 1867.

WM. C. RALLSTON, Esq.,
Cashier Bank of California, San Francisco.

SIR: I inclose herewith duplicate draft on D. J. Garth, esq., of New York, for $7,500 in your favor.

Please place this amount to my credit, as also the premium you may allow, accord-

*The drafts drawn by de Lagnel and paid were as follows: June 16, $15,000; August 16, $10,000; November 18, $7,000; February 5, 1867, $7,500. An aggregate of about $39,500, which, added to $101,972, gives cash expended by company $141,472.

ing to ruling rates at dates of reception. Against this draft and the balance of four hundred and seventy dollars (being accrued premiums on former drafts) previously to my credit, I have drawn in favor of Echenique, Peña & Co., of this place, for $7,970.

I am, sir, very respectfully, your obedient servant,

J. A. DE LAGNEL,
Superintendent La Abra Silver Mining Company.

MAZATLAN, *April* 10, 1867.

WM. C. RALLSTON, Esq.,
Cashier Bank of California.

SIR: I herewith inclose duplicate drafts for $5,000 (gold coin) in your favor against D. J. Garth, esq., of New York.

Against this amount I have drawn on your bank in favor of Echenique, Peña & Co., of this place.

Please place the above amount, with premiums, to my credit, and oblige,

Yours, respectfully,

J. A. DE LAGNEL.

TAYOLTITA, DURANGO, MEX., *May* 6, 1867.

D. J. GARTH, Esq.,
Treasurer La Abra Silver Mining Company.

Yours of the 24th April was received some days previous to the departure of Colonel de Lagnel, who will no doubt reach New York some time prior to the reception of this. Colonel de Lagnel, will, of course, give you a full and detailed account of affairs as he left them, making it useless for me to make a further mention of them. Since his leaving, I have, as far as I think safe, reduced the number of hands at the mines, keeping only a sufficient number to show that they are still being worked. I have a light force in the Cristo; no improvement in the metal. A light force in La Luz; the metal about the same. The La Abra, which we started on a month or two since, is daily improving, and I am in hopes will yet give some returns. Mr. Cullins seems quite sanguine in reference to it. Colonel de Lagnel will give you an account of the mill and its work, which did not exceed our expectations. * * *

Hoping that my next may be of a more cheering nature, I remain yours, with respect,

C. H. EXALL.

OFFICE OF GARTH, FISHER & HARDY, BANKERS,
18 *New Street, New York, May* 20, 1867.

Mr. CHARLES H. EXALL,
Tayoltita, Mexico.

DEAR SIR: I wrote as usual by last steamer, which left here on 11th instant. You will see that Colonel de Lagnel was expected by the steamer then about due, but he failed to come, and we are yet without any advices from the mines later than 5th February last, dated at Mazatlan. At that date we were advised that everything, after long delay, was about complete, and that we might soon look for good results from the enterprise; but that, the supplies being exhausted, it was found absolutely necessary to draw on us for $7,500.

This draft arrived on 2d April last and was paid by one of the directors of the company, as it was considered that it was *surely the last* that could be needed, and we expected to return the money by an early remittance of bullion from Mexico. You can judge of our surprise and chagrin, when the last steamer arrived, instead of bringing Col. de L. with some fruits of our works, a draft for $5,000, gold, was presented for payment by Lees & Waller, drawn by de Lagnel, favor of Bank of California, and dated 10th April last, and of which we had not received any notice or advice whatever, and have not yet received any. As I had so often and fully advised the superintendent of the condition of affairs here and requested him not to draw further, I was much surprised that he did so, and that without giving any notice or reason for so doing. As it was found impossible to raise the means to pay this draft, it was protested and returned unpaid, and you must make some provision for its payment when it gets back. I do trust that before that date you will have plenty of means to do so. I would now again repeat that I have made every effort possible to raise money here and have failed, and I have advanced all I can possibly do, and the other directors have done the same; the stockholders will do nothing, and it is probable the company will be sold out and reorganized. I must again urge you to use all possible dispatch in remitting us bullion, and use the greatest possible economy in working.

We wish you to give us very full and particular accounts of amount of ore on hand and amount you raise daily, the number of hands employed, cost, &c., and amount crushed, yield, &c., and the cost of beneficiating, and also a regular monthly statement of receipts and expenses. In this we earnestly insist on and hope you will not fail to do it.

I expect Colonel de Lagnel now daily.

With best regards, I remain very truly yours,

D. J. GARTH, Jr.

(Indorsed:) D. J. Garth, May 20, 1867, to C. H. E.

OFFICE OF GARTH, FISHER & HARDY, BANKERS,
18 *New Street, New York, May* 30, 1867.

Mr. CHARLES H. EXALL,
Tayoltita, Mexico.

DEAR SIR: We wrote you on the 20th instant informing you that we had nothing from you or Colonel de Lagnel, but that a draft drawn by Colonel de L. from Mazatlan, 10th April last, had been presented, and there being no funds on hand and no means here of meeting it, that it was protested and returned not paid; it is hoped by the time it gets back you will be prepared to meet it. Since my last letter, Colonel de Lagnel has arrived, and made known to us something of the state of things with you. I must confess that we are amazed at the results; it seems to be incredible that every one should have been so deceived in regard to the value of the ore, and I can but still hope that the true process of extracting the silver has not been pursued, and that before this time better results have been obtained. Mr. de Lagnel expected Mr. Sundel, of San Dimas, would come to your aid soon after he left, and as this gentleman was said to be a practical chemist and metallurgist, he hoped some means would be discovered to get at the silver; if, however, the ores are indeed worthless, I don't see that any process of working will be of any avail, and have the worst fears that our enterprise will, after all, be fruitless of good.

In regard to the working of the ore, I would advise that you don't waste it by running it through the mill when you find the yield is not satisfactory.

I would suggest that you run, say two or three tons of metal through the mill and see what the results are by the pan process, and then take a like amount of the same sort of metal and crush it and grind as fine as possible in the pans, and then take it to the "patio" and beneficiate it and carefully compare the results of the trials; this is what I urged long ago, and think it well to do at once. I would advise that very frequent assays be made of the ores as raised out of the mines, and take out nothing that will not certainly be rich enough to pay well for working.

All expenses must be cut down to the lowest point, and you and Mr. Cullins must try and bring this enterprise into paying condition if the thing is possible; at any rate, no further aid can be rendered from here, and what you need must come from the resources you now have. Neither must you run into debt; cut down expenses to amount you can realize from the mines. I cannot yet say what can be done in the future; no meeting of the stockholders has been held, and nothing done to pay off the debts here, now pressing on the company. For the present all I can say is, that the whole matter is with you; take care of the interests and property of the company; don't get it involved in debt, and advise us fully of what you are doing. Everything here excessively depressed and dull.

With best regards to Mr. Cullens and yourself,

I am, very truly, yours,

D. J. GARTH.

You must be very careful in regard to the tailings or "pulvios," and try and save them, and not let anything be wasted, for future use.

(Indorsed): David J. Garth to C. H. Exall, May 30, '67.

OFFICE OF GARTH, FISHER & HARDY, BANKERS,
18 *New Street, New York, June* 10, 1867.

Mr. CHAS. H. EXALL,
Tayoltita, Mexico.

DEAR SIR: I had the pleasure on 30th ultimo [of] sending the letter by a gentleman going direct to Mazatlan. We have not heard from you since Colonel de Lagnel left Mexico, but hope that you are well and getting along as well as could be expected.

The account which Colonel de L. gave us of the quality of the ores on hand was most unexpected and a fearful blow to our hopes.

We trust, however, that a fuller examination will show better results. We have in previous letters to you and to de Lagnel, so fully informed you of the condition of affairs here that it is hardly necessary to say anything further on that subject.

There is no money in the treasury, and we have no means of raising any, and a few of us have already advanced all that we can do, and you have been advised that the draft last drawn by de L., on 10th April, was returned protested, and I hope you will be able to take it up when it gets back, promptly. Everything now depends upon you, and to your judgment, energy, prudence, and good management of the resources in your hands, and we hope you will be able to command success.

Very respectfully and truly, yours,

D. J. GARTH, *Tr.*

(Indorsed): D. J. Garth to C. H. E., June 10, '67.

MAZATLAN, *June* 11, 1867.

D. J. GARTH, Esq.,,
Treasurer La Abra Silver Mining Company.

DEAR SIR: * * * My principal reason for writing now is to inform you that I will be compelled to draw on you by this steamer for $3,000. * * *

Hoping this will not inconvenience you, I remain, respectfully,

C. H. EXALL,
Acting Superintendent La Abra Silver Mining Company.

OFFICE OF GARTH, FISHER & HARDY, BANKERS,
18 *New Street, New York, July* 10, 1867.

Mr. CHAS. H. EXALL, *Toyoltita, Mexico,*
Care ECHENIQUE, PEÑA & CO., *Mazatlan.*

DEAR SIR: I had the pleasure on 30th May and 10th June last after the return of Colonel de Lagnel, and we had learned something of the condition of affairs in Mexico. In these, as well as in preceding letters, you were fully advised of the condition of the company here; that there had been no funds in the treasury for a long time; that appeals have been made in vain for aid to the stockholders, and that the parties here who had made heavy advances to the company were anxious for its return, and refused to make any further payments; and that the draft for $5,000, drawn on me as treasurer by Colonel de Lagnel on 10th April last, had been protested and returned to California, and, we suppose, to parties in Mazatlan who advanced the money on it, and who would have to look to you for payment of same; and we expressed the hope that by that time you would have taken out sufficient money to meet it and all other expenses, and hoped soon to have a remittance of bullion from you to aid in payment of the large indebtedness here. We have since received your letter of the 6th May from the mines, and 17th May from Mazatlan. We are also in receipt of the sample of bullion sent at same time by express, the value of which is not yet ascertained, having not yet been able to get it from the assay office, but hope to do so to-morrow. I fear, however, that it is worth but little more than what it cost to get it from the custom-house to Mazatlan and the expenses on it here.

I am glad to hear that you are taking out rich metal, and hope it will turn out valuable. It seems almost incredible that all parties should have been so mistaken in the value of the ore now on the "patio," and I don't see how it is that Mr. Cullins and Mr. Sloan, old and experienced miners as they are, should have been so deceived as to the value of the ore. If it so much resembles rich metal, I don't see how you can tell the good from the worthless except by actual fire assays. You should make these very often, and not go on and get out large quantities of worthless ore at great expense, thinking all the time it was rich metal. You will see, from all my letters that no further aid can be given you from here, and that you must rely upon the resources you now have, and which, we think, ought to be ample to pay off the debts and to sustain you in current expenses, which you should cut down to the lowest possible point. I can but think that in the vast quantities of ores now on the grounds of the hacienda there must be a considerable amount of rich material, and which you should beneficiate as soon as possible, taking care not to throw away or waste any that would pay to work. Of course you keep an accurate account of the cost, not only of raising and transporting the ore to the mill, but of the cost of crushing it and converting into coin or bullion, and as it is a matter of simple calculation, you will soon see if it will pay or if it is a losing business.

If it costs more than it comes to, the sooner we find it out the better, and the sooner we stop the better for all parties concerned. I have heretofore called your attention to this point and wish you to give careful attention to it; and would request that you furnish us such full and detailed statements on this point that we can see for ourselves. Give us the full particulars of expenses, amount of ore raised and its value, and the results after beneficiating, &c. Be careful about leaks and expenses, cut off all that is possible, and watch very closely every department with that view. Don't run into debt or get into difficulty with the authorities, if there are any such things existing; but, at the same time, be firm in maintaining your rights, and don't submit to imposition except by force, and then make a legal and formal protest as a citizen of the United States, and as an American company duly organized and prosecuting a legitimate business under the protection of the law, and our rights will be protected by our Government. We wish you also to ascertain and fix definitely the extent and boundaries of our properties, mines, hacienda, &c., and to send us a copy of same. I suppose Castillo has furnished such an one, or, if not, that he will do so. Please attend to this as it may become important some time or other.

I hope the next advices from you will be favorable, and to learn that you will soon send us plenty of money to pay off the debts here. With regards to Messrs. Cullins and Sloan, as well as to yourself,

I remain, yours, truly,

D. J. GARTH, *Treasurer.*

(Indorsed:) David J. Garth, July 10, 1867. To C. H. E.

[Translation.]

TAYOLTITA, *July* 11, 1867.

To the GEFE POLITICO OF SAN DIMAS.

DEAR SIR: Your letter of the 10th instant was received last evening, and from its contents I thought that no answer was expected, and I had no intention to reply to it. This morning I was advised that the answer was expected by you. In respect to the compromise of which you spoke, it was made while I was at Mazatlan, to last until I should return, and then I was to arrange with you as best I could. And if you had known the circumstances and causes which led to the paralyzation of the works it would have been apparent to you that it was not possible to do otherwise. I have offered to the operatives all the mines, to be worked on shares by the carga, and some are already at work; and desiring that with this there may be the most friendly understanding about this affair,

I am, your most humble servant,

CHARLES H. EXALL,
Superintendent La Abra Silver Mining Company.

HACIENDA LA ABRA, *July* 13, 1867.

D. J. GARTH, Esq.,
Treasurer La Abra Silver Mining Company, 18 *New Street, New York.*

DEAR SIR: * * * I am sorry that Colonel de L.'s draft could not be paid, as its being protested, I fear, will injure the interests of the company, both in Mazatlan and San Francisco. All your previous letters to me were to follow out the instructions given to Colonel de L. I took charge of affairs at a time when the expenditure of money was absolutely necessary to purchase supplies for the rainy season. Colonel de L. left me with only moderate means to buy these various supplies, payment of sundry bills which were coming due, and pay of the workmen, who had accounts outstanding of three, four, and six months' standing. (As I had the money in Mazatlan, deposited with E., P. & Co., and getting nothing for it, I settled up all time bills, getting a discount.) After these various amounts were considered, I saw that it was impossible to meet all obligations and have a sufficient surplus to keep me in operation during the rainy season, as it was absolutely necessary to have at the hacienda from —— to $1,500. Under these circumstances, I draw on you, through B. of California, for $3,000. E., P. & Co., who have always bought Colonel de L's drafts on you, did not want money on San Francisco. I found it impossible to sell it to other houses, so sent it to Mr. Rallston, cashier, Bank of California, with request to send me negotiable paper for it. This paper I could, of course, easily dispose of anywhere. On the strength of this draft I bought my goods, my bill at E., P. & Co.'s amounting to $577.38—four months. The other bills, amounting to $728.34, I bought for cash, which E., P. & Co. settled. In addition to this, I borrowed $500 cash to take with me to the hacienda. Before leaving Mazatlan I made other purchases, making the whole amount which E., P. & Co. settled for (including the $500 borrowed) $1,252.94

cash. This cash was lent and paid for me on my promise of payment by return steamer, which is the one now coming. I informed you by an early opportunity of my intention to draw. I had not then heard from you in reference to Colonel de L'a draft; did not know it had been protested, which, if I had known, I certainly would not have drawn. My draft will, of course, be returned by coming steamer.

I wrote you fully when I was down last, informing you of my doings. When I received your letter by Sr. M. I was working the Abra, Cristo, Luz, Arrayan—a small force in each. Seeing the decided manner in which all further aid for the present was refused, and the injunction to cut down all expenses, necessitated by my stopping off the whole force from the mines. As I had only a short time previous reduced a cash payment from one third to —— (which occasioned a stop for eight or ten days, which I was glad of, as it was so much clear gain, and a little spat with the officials, which was gotten through without much trouble), I thought it best not to stop off immediately, but prepare the miners for the change.

I let them work on one week longer, and during that week informed them of my intentions. They said nothing offensive, but of course were disappointed, as it would be a bad time for them to be without work—in the rainy season. Since stopping off we have been trying to make arrangements with the men to work by shares and by the cargo. I have succeeded in getting four miners to work by the carga. They are working in the Arrayan, and getting out some good metal. I hope to be able to keep them there. By doing so, it will secure the mines in every way. Four miners is all that they had there before. Mr. Cullins thinks that in a short time he will be able to get more men to work in the other mines. We can do better with them when they are a little hungry.

Working in this way is much better and attended with the least expense. They are provisioned for a week, and charged with what they get. What metal they get out is assayed. If it assays an amount worth working, we pay them in goods (a little money now and then), about one-half its assay value. They, of course, will get out nothing but good metal, if it can be found. You see in this way we get metal out free of cost, buy it at one-half its value, pay in goods, and make a handsome profit on them.

As long as the men will work in this way (which they will not do unless they get good metal), it will be our best way of working the mines. We must not expect them to get out any amount, but what is gotten out in this way will pay for packing down from the mountains.

I am privileged by the mining laws of the country to stop working in mines four months in the twelve. As these mines have been steadily worked over a year, I can safely take advantage of this privilege. * * *

Respectfully,

CHARLES H. EXALL.

OFFICE OF GARTH, FISHER & HARDY, BANKERS,
18 *New Street, New York, July* 20, 1867.

Mr. CHARLES H. EXALL,
Tayoltita, Mexico.

DEAR SIR: The steamer is just starting, and I have only time to say that your letter of the 11th, by private hand, has been received, advising us that you had drawn on me for $3,000, gold. In former letters you will have learned the condition of things here, and that there is no money to pay same, and that former draft of De Lagnel has been returned unpaid, and that you were urged to try and get along with what resources you had. These letters, no doubt, reached you in time to prevent your drawing, as no draft has been presented, and we hope by this time there is no necessity for doing so. I have no time to-day to write more, but hope you are getting on well; will write you fully, as requested.

I inclose several letters from your friend.

Yours, truly,

D. J. GARTH, *Treasurer.*

(Indorsed:) David J. Garth, July 20, 1867.

MAZATLAN, *August* 5, 1867.

D. J. GARTH, Esq.,
Treasurer of La Abra Silver Mining Company, 18 *New Street, New York.*

DEAR SIR: I am just in receipt of yours of 10th and 20th of May and 10th of June. I wrote you from hacienda a day previous to my departure from Durango. I was, the day before, quite sick with chills and fever, and at the time of writing very much unwell; fear my letter was very imperfect and unsatisfactory, which please excuse. The trip to Durango consumed 11 days—the weather severe and roads rough. I in-

close statement with remarks. When I returned from Durango I learned that the second day after my leaving the river had swollen to such an extent that it carried away a considerable portion of the dam and a portion of the ditch adjoining the dam. Also the immense rush of water down the arroyo had done considerable injury to ditch, overflowing it and washing a large quantity of dirt in it. This mishap occasioned the stoppage of the mill. The ditch was cleaned out, and as the water in the river was too high to do anything to the dam, had to get water from arroyo, which is sufficient to keep the mill in operation, and I hope it will last during the rainy season. This occurrence kept the mill idle for 8 days. The mill is now running on the same ore as I last worked. This run will finish it, and what ore to work on then I know not.

There is, of course, some little good ore in the great heaps on the patio, but it will have to be closely assorted, and the greater portion requires roasting, which is a slow operation and costly. I will at any rate do my best. I am now working 20 men by carga; pay them not over $1 per week in cash. I must give them some little money. These are working in the Arrayan and on the dumps of the Rosario. The Cristo is now idle, also La Luz and Abra. I can get no metal from them which will pay. The Cristo and La Luz, which have been worked for over a year, I am privileged to stop for four months. The Abra I must work; will put in some men and see what can be found. No further prorogues will be given, and, although I have no fear of any one denouncing the mines, I must not leave [them] unprotected. The ore which is now being gotten out will average per assays about $75 per ton, but it comes in small quantities. The returns I brought from mint I brought down to E. P. & Co. to settle money borrowed from them to buy goods; their bills will be due next month, and most of the returns from present run will have to be paid them. I hope to be able to settle up all indebtedness of the company both here and at the mines. E. P. & Co. are the only ones I am owing here.

Colonel de L.'s draft was presented to me here on yesterday. I told them I could do nothing. My draft, which I spoke of in my last, was returned. Please inform me what can or will be done. I can't see very far ahead in money matters. Can count on nothing positive from the ores now on hand.

I leave to-morrow for the mines. All have been frequently quite sick. I manage to keep up better than the rest.

Hoping that this and my last together will give you the information you require,

I remain, respectfully,

CHARLES H. EXALL,

Acting Superintendent La Abra Silver Mining Company.

Account of run by mill from May 27 to July 13, inclusive.

Amount of rock crushed, 89 tons 1,676 pounds, producing 131 marcos 5 ounces refined silver, yielding at mint	$1,672 29	
Less mint expenses	147 47	
		$1,525 82
Cost of chemicals used	665 81	
Labor	380 54	
Wood, 75 varas, 62 cents	59 38	
		1,105 73
		420 09

During the above time the mill was stopped for three days to enlarge pulleys to settlers. By enlarging these pulleys it gives greater rapidity and its working is greatly improved. Three days, from the 10th to the 13th July, were consumed in cleaning up. After 7th June there was not water enough to run both battery and pans, and at this season, a month previous to the rainy season, the water in the river is very low, which of course reduces the capacity of the mill just one-half. The mill works well, the battery particularly. The great objection to the whole arrangement is its having been put too low down in the ground, thereby losing a fall of at least eight feet, which if we had would be of the greatest advantage, as we then could put sluices wherever they are needed and run the crushed ore to any part of the mill and patio.

It would also enable us to save the tailings, which we now lose. The ore mentioned in statement above is from Cristo mine, which is of the lot Colonel de L. mill-worked a little of. The assays which were made from samples taken from battery sluices, and which were made daily, vary in value; the greatest number gave $13.50 per ton (silver), some others went $20, and again $22.50, but none over. The ore at the bot-

tom of the pile seemed a little better than at the top. I have built a much larger battery tank, which catches all that wastes from the battery, which before was to a great extent lost. This I work over. The oven, which has been completed, I have not yet used, as I have worked no metal which required roasting. The boiler is a very indifferent one, very old style, and consumes a great amount of fuel, but answers its purpose.

The yield from the 89 tons in statement is small, and the time great, when we compare result, expenses, &c., but take in consideration that ore of ten times the value of this would require no greater expenditure, no greater cost to work, &c.

I am at present working some ore; will send a like statement at the end of the run, or when the ore is exhausted.

CHARLES H. EXALL.

MAZATLAN, MEXICO, *August* 5, 1867.

MAZATLAN, MEXICO, *October* 6, 1867.

D. J. GARTH, Esq.,
Treasurer La Abra Silver Mining Co., 18 *New Street, New York:*

By this steamer I am in receipt of yours of 10th and 20th of July and 10th of August. I was much disappointed that my urgent demand for money was not favorably answered. I have complied with the requests in your various letters in reference to giving you exact information concerning affairs here. I now have to urge you to send me means. I have heretofore been keeping above water by using the stock which I fortunately had on hand; that is now entirely exhausted. I have neither money, stock, nor credit. The latter I would not use, even if I had it, as in this country it is an individual obligation and no company affair. Now, you must either prepare to lose your property here or send me money to hold it (and that speedily) and pay off debts of the concern. I have worked as economically as possible, and have cut down expenses to the lowest point. Mr. Cullins speaks of leaving in a short time. Mr. Slone is still here, but doing nothing; he is awaiting news from the company, expecting that they may decide to run the tunnel, when he would be able to get employment. If Mr. Cullins leaves I don't think I will employ any one else. Mr. Slone I should like to retain; but as I am unable to give any guarantee for the payment of wages, fear to do so. Am owing him and others. These payments must be made.

I am working the mines with as few hands as possible. What little good metal is taken out amounts to almost nothing. The $5,000 draft of De Lagnel's was sent to a house in this place to be collected, with instructions to seize the property in case it was not paid. It troubled me a great deal and I had much difficulty in warding it off. The concern to which the draft was sent showed me his instructions, and also the original draft. Fortunately for the company there was a flaw in the draft. De Lagnel failed to sign his name as superintendent La Abra Silver Mining Company—simply signed his name—making it an individual affair. This was the only thing that kept them from seizing the property here, as the company were not obliged to pay the draft. I have exhausted all the ore that I had on hand that was worth working. That which I worked was very poor and the yield small. The La Luz on the patio won't pay to throw it in the river. I have had numerous assays made from all parts of each pile; the returns won't pay. Amparos are not now granted, and mines are to be held only by working. I am compelled to keep men in mines which yield nothing merely to hold them. This I can do no longer, as I have nothing to give the men for their labor, and must now take the chances and leave the mines unprotected.

You ask for boundaries of mines, hacienda, &c. On this point I can give you no information, as these matters are of course to be found in the original titles, and I have no papers in reference to it. Recently the Government has ordered that all holders and workers of mines must present to the authorities the title-deeds of said mines. The prefect in San Dimas sent for the titles of the La Abra Company's mines. I informed him that they were in New York. He gave me four months to produce them. One month of the time has passed, so you will please send immediately all the titles to the mines or certified copies of them. They must be here in the specified time. By last steamer I sent you full statement of business of hacienda, the runnings, returns, and expenses of the mill, account of ores, &c.

I neglected to add forty tons of tieres which were run through and should have been in statement sent, but was overlooked. I am sorry not to be able to send you statement of the months since. On my return from Durango I stopped at the hacienda so short a time before starting for this point that it was impossible for me to make it up in time for this mail. By next steamer I will send you full statement of past months. The returns from Durango were small. I turned it over to E. P. & Co., as I was owing them. There are no difficulties about authorities, boundaries, or anything else concerning the mines and hacienda, provided there is money on hand, and money must be

sent. I hope that I have urged this point sufficiently so that you may see fit to send me something to hold the mines. I should be sorry to see them lost on this account. Please telegraph me if you intend sending money. I fear that before I can get a reply to this that something may have occurred.

Of course Colonel De Lagnel informed you the conditions and terms on which I took charge of affairs here, which was the same that he was getting, and if I had known at the time what difficulty I was going to have in procuring means to keep the concern in motion, I would have refused on any terms. I am much in need of money, as I wish to use it here. I will in a month or so draw on you through Wells, Fargo & Co., San Francisco, for $1,500. Please inform me by the earliest opportunity that you will meet the draft. My health is very bad and I fear is much injured since being here. Another summer I could not stand; hope you will soon send some one to relieve me. Cullins and all the others have been or are now sick. The weather has been almost melting. Please have mailed the inclosed letters.

I hope that before this reaches you that some steps will have been taken to procure means to operate with.

Trusting that you are in good health, I remain, respectfully,

CHARLES H. EXALL,
Acting Superintendent L. A. S. M. Co.

NEW YORK, *October* 10, 1867.

Mr. CHAS. H. EXALL,
Tayoltita, Mexico.

DEAR SIR: Since ours of the 30th September we have yours of 5th August from Mazatlan, and note contents. We are deeply pained to find that you are not well and that you are still without favorable results in the enterprise from which we all had such high hopes of success.

I am very sorry to say that it is not possible to aid you from here, and that you must rely entirely upon the resources of the mines and mill to keep you going and to relieve you of debts heretofore contracted. It is not possible for us to direct any particular course for you, but only to urge you to try and work along as well as you can, cutting down expenses and avoid embarrassing yourself with debts.

The Bank of California has again sent Colonel de Lagnel's draft for collection, but it was not possible to pay same, and it will have to return to Mexico, and we do hope you will be able to make some satisfactory arrangement to pay it.

I inclose letter from your friend.

Very truly yours,

D. J. GARTH,
Treasurer.

(Indorsed:) David J. Garth, 10th October, 1867.

MAZATLAN, *November* 17, 1867.

D. J. GARTH, Esq.,
Treasurer La Abra Silver Mining Company, New York.

DEAR SIR: Yours of the 30th September is just in hand, and contrary to my expectation contains nothing of an encouraging nature. I expected, after having previously written so positively in reference to the critical state of affairs with me, that you would have sent me by this mail some means to relieve me from my embarrassing position. I have in former letters laid before you the difficulties under which I was laboring, and begged that you would send me means, and was relying much on the present mail, expecting that some notice would have been taken of my urgent demands for assistance to protect the property belonging to the company. To add to my further embarrassment, Mr. Cullins, whose time expired on the 16th instant, since my leaving Tayoltita (I left there on the 10th for this point), intends to commence suit in the courts here for his year's salary. I am endeavoring to get him to delay proceedings until the arrival of next steamer (don't know as yet if I will succeed in getting him to delay), when I hope you will have seen the necessity of acting decidedly and sending means to prosecute the works and pay off the debts of the company, or abandoning the enterprise at once.

Nothing can be done without a further expenditure of money.

I am now doing little or nothing in the mines, and will when I return discharge the few men which are now at work in them. This I am compelled to do, as I have no money and my stock is almost entirely exhausted, and I fear if money is not very soon sent some of the mines will become open to denouncement. In my last letter I mentioned the amount required for immediate demands, $3,000, which must be sent out. By next steamer Mr. Elder Sloan and Cullins, if paid off, will sail for San Francisco. If not

paid off, suit will be commenced, and, as I have no means to defend the case, fear it will go against me. When these parties leave, the hacienda will be left almost entirely alone, there being only myself, Mr. Granger, who I am also owing, and I away much of the time. What you intend doing must be done promptly. Please send me Mr. Cullins's contract with you.

The political state of the country just now is rather discouraging. I hope by the time this reaches you, you will have received statement sent.

Everything at mines is as it was when I last wrote, only more gloomy in appearance on account of not being able to employ the people and put things in operation. Please do something immediately, and inform me as speedily as possible.

Yours, most respectfully,

CHARLES H. EXALL,
Acting Superintendent La Abra Silver Mining Company.

Please forward inclosed letters.

MAZATLAN, MEX., *December* 18, 1867.

D. J. GARTH, Esq., *&c., &c., &c.*

DEAR SIR: I arrived here a few days since. Received by steamer yours of October 10, informing me of your inability to send me the means to operate with and meet my obligations. I have in previous letters expressed the condition of affairs with me and begged that you would do something.

Thus far I have been able to protect your interests here, but affairs have gotten to such a point that I am unable to do so longer without money. Mr. Cullins, who I informed you in a previous letter would leave, insisted upon doing so by this steamer. He demands a settlement; otherwise he will immediately commence suit, and had made preparations to do so.

To keep the matter from the courts, I was compelled to borrow money to pay him off. The balance due him and the amount I had to borrow was $1,492. He has troubled me a great deal—has been exceedingly unreasonable. On yesterday the agent of the Bank of California informed me that he had received the draft by the last steamer (which arrived a few days ago) and would immediately commence legal proceedings, and sent the draft on to the courts here. I am utterly unable to oppose them. First, I have no means, and, again, I am not your agent here, never having received a power of attorney from you, which will be necessary, for I cannot act in these courts without it.

The Bank of California will do something to recover the amount of the draft, and before the amount is doubled by the expenses, for God's sake, telegraph to and pay them.

Matters of this nature once getting into the courts it takes large sums to oppose them. The first steps taken by the courts will be to send some one to the hacienda to see to and secure everything there. This will, of course, stop everything, and make it impossible for me to protect your interests. For your own sake in the matter, pay them before things go further. My position is extremely embarrassing and I know not what to do, and will have to be guided entirely by circumstances. I will, of course, do everything in my power, and may have to act in a very cautious manner, and will probably act in a manner which may occasion censure. Now, all I ask of you is to judge my actions justly and consider my circumstances and believe I am doing the best for your interests. I am doing nothing at the mines and have only one person left with me. Please attend to this matter promptly. I am writing very hurriedly, as there is a war steamer just leaving for San Francisco, which will arrive there some days prior to the regular mail. I leave for the mines in a few hours. Attend to this at once and telegraph me.

I remain your obedient servant,

CHARLES H. EXALL.

SAN DIMAS, DURANGO, MEX., *December* 25, 1867.

This day received of Sr. D. Miguel Laveaga a draft of $5,000, drawn by J. A. de Lagnel on D. J. Garth, esq., New York.

Not being in any manner connected with or responsible for said draft of $5,000, I refuse to recognize it.

Respectfully,

CHARLES H. EXALL,
Administrator La Abra Silver Mining Company.

MAZATLAN, *January* 24, 1868.

D. J. GARTH, Esq.,
Treasurer La Abra Silver Mining Company:

DEAR SIR: I came down to meet steamer from San Francisco, in hopes of receiving letters from you, but received none, and now, being entirely out of funds and stock, and being sued by the agents from Bank of California for the payment, have to let things take their own course, as I am unable to protect your interests here. In previous letters I have given you full and detailed accounts of affairs here, and such frequent repetitions I find useless, and will simply state that I am doing nothing whatever at the mines, and cannot until I receive money to operate with. I have not means to protest now and they are liable to be denounced at any moment.

Some months since I wrote you for titles. The Government demanded them. They have not been received. By December steamer I sent you a telegram from San Francisco. No reply. The parties I sent the dispatch to in San Francisco sent it on to New York. I am owing considerable and no means of paying. What is your intention? Is it to let your interests here go to the dogs? You have either to do this or send money out to protect them. If by next steamer I receive no assistance from you I intend leaving for the east. I will go via San Francisco. Will from there telegraph you what further steps I shall take. I have been doing everything in my power to keep the Bank of California from getting possession. Thus far have succeeded, but can prevent them no longer, and fear they will eventually have things their own way. Mr. Cullins (who is not the man he was represented to be) left by last steamer. I have only one man with me now; am compelled to keep some one. Please telegraph me in San Francisco, care of Weil & Co., immediately on receipt of this. You can judge by what has been done in New York and sent to me, whether or not I may have left. Please let me know your intentions.

Respectfully,

CHARLES H. EXALL.

Please forward inclosed letters.

TAYOLTITA, *February* 21, 1868.

MR. JAMES GRANGER:

SIR: As circumstances are of such a nature as to compel me to leave for San Francisco, and probably for New York, to inquire into the intentions of this company, I place in your hands the care and charge of the affairs of the La Abra Silver Mining Company, together with its property. You are invested hereby with all power confided to me, of course acting in all your transactions with an eye to the interest of the company. This will to you, should occasion require it, be ample evidence of the right possessed by you to act in their behalf.

Very respectfully,

CHAS. H. EXALL,
Administrator La Abra Silver Mining Company.

NEW YORK, *May* 8, 1868.

DEAR GRANGER: Yours from Tayoltita, of March 25, reached me day before yesterday; was much pleased to hear from you and to know that you were getting along in some shape. I wrote to you from San Francisco just previous to sailing for this point, giving you a statement of my doings while there, so no need of repetition. As I stated in my letter to you, I came by the opposition route across the Isthmus—Walker's old ground—and while crossing it, I can safely say I had the damnedest roughest time imaginable.

It was awful low water in the small streams or rivers; heavy rains while on the journey; in water, pushing flats, &c. It was an undescribably mean and rough trip. We were four days getting across; got pretty good sea-steamer on this side; 27 days from San Francisco to New York.

Of course, on the first day of my arrival here, I saw nothing of the company. The day after, I went down and saw Garth; had a long talk concerning affairs; and, contrary to our expectations, gave me no satisfaction; didn't seem to intend to do anything more. I have seen him several times, but have got nothing from him of an encouraging nature; he seems disgusted with the enterprise, and so far as regards himself, intends to do nothing more, or have nothing more to do with it. Well, I then went to see one of the stockholders and directors, who talked a little better.

It seems there is a party here who has been after Garth and this stockholder mentioned, to sell the mines to a wealthy party who are now successfully mining in California. This party have been after these gentlemen repeatedly, endeavoring to get them to sell the mines, &c., they bearing all expense and giving the present com-

pany so much stock. This party are not now in New York. One of them has gone to hunt up de Lagnel to get all possible information concerning Tayoltita, &c. In addition, the party will pay all debts against the company. From what this director tells me, they seem in earnest. They are not aware of my arrival; have been written to, informing them of the fact, and I will probably be brought in contact with them before long. Now, as you and I are the principal creditors—I haven't been able to get a cent from them, the company—and the thing being in my hands, if this party intend buying, we can and will make a good thing out of it. Those of the company I have seen have turned the affairs to me; so, in case anything can be done with this party don't be afraid of your interests—all accounts at the mines are under my control—as yours will be looked to in conjunction with mine. All now depends in what can be done with this party, and more information concerning it I am unable to give until seeing them. I have informed the company that they shall do nothing until you and I were paid, which seemed satisfactory. This will be mailed by steamer of 11th instant.

If you do not hear from me by steamer of 21st, it will be on account of affairs not having been concluded. You may certainly expect a letter by mail of 1st June; hope previous to that time that I may have made satisfactory arrangements, &c. Just at this crisis it will be necessary to keep all secure at the mines. In my conversation with these gentlemen I will represent things in a secure state; if possible, get prorogues on mines where times are expiring; keep them secure if possible in some way; don't be uneasy or spend a thought on Cullins or Bank of California; find out in a quiet way when and where you may dispose of the remaining property, but do not sell until you hear again from me. I hope to be able to make something for ourselves out of this thing; at present we are in the dark, but I will soon know something definite and will immediately write you. In case this party should purchase, I will accompany them to the mines. You can extend Ariza's "Guarisimey" privilege "if he wants it," another three, four, or six months; don't extend Guadalupe's more than a month at a time; do the best you can under the circumstances, using your own judgment, being guided to an extent by what I have written. * * * I wish I could send you some means to get along with, knowing you must be having quite a rough time, but am unable; I expected to be paid up here; it's not having been done plays the devil with my arrangements. Since my arrival here the weather has been exceedingly unpleasant, raining nearly all the time.

New York is exceedingly dull, business much depressed; the political state of affairs, of course, has everything to do with it. Johnson is not yet impeached, and heavy odds are bet in Washington against the impeachment. Many changes have taken place since I was here last. Old friends I left bookkeepers, clerks, &c., many are now doing business on their own account, but have a hard time of it on account of the state of affairs here.

To-morrow I intend to take a run down to old Virginia to see my folks. My mother and a sister are in exceedingly ill health; expect to be gone from here only a few days. I have now written all that bears on the important subject with us. Would write more definite, but, as you see, I am now unable to do so. I will write immediately on receipt of news. Let me hear from you every opportunity, and direct via Acapulco, as they get here sooner than by 'Frisco. I will send this that way. My kind regards to Slone "Manuelitta" (I think that's the way to spell the name), Guadalupe's family generally, Cecilla, and the Tayoltitians generally. How are you and Cecilia now?

Hoping this may find you well and getting enough to eat, I remain, as ever,

Your friend,

CHARLES H. EXALL.

The contents of this keep to yourself.

NEW YORK, *June* 15, 1868.

DEAR GRANGER: In my letter written in May I informed you of the possibility of my being able to do something with the Abra affairs through other parties. (The old company manifest the utmost indifference regarding or in reference to everything belonging to or connected with their affairs in Mexico, and have virtually given everything into my hands.) I also informed you I would communicate with you by mail of the 1st of June, giving you something definite. This I was unable to do, which [I] will show to you by reasons which I will give. After my arrival here I was informed that some parties had been here consulting with one of the stockholders in reference to purchasing their affairs in Tayoltita. This party, on my arrival, was in Philadelphia; so I was unable to see them. After remaining here some eight or ten days awaiting them, I went to Virginia, remained there some days, when I was informed of the arrival in New York of the parties above mentioned. I hurried on immediately; it was then too late to write by 1st of June mail. Since being here I have seen these people daily, and have given every information which would tend to make them think

favorably of the property—given statements, accounts, inventories, indebtedness, &c., besides speaking as favorably of the property as possible.

The prime mover in the affair is a man who knows a good deal concerning the property, and who expects (if he succeeds in organizing a company) to get a position at the mines. This man has friends, who live here and in Philadelphia; he is trying to induce them to enter into the enterprise, and form a company, and from what I gather from him he has to an extent succeeded, but has not yet come to final terms.

The proposition of this company that is to be formed is, to pay off you and I to start with and give a certain interest to the old company. (The old company refuse to pay us our dues, and we are totally unable to recover anything from them.) I have given these parties a condensed summary of accounts of La Abra Silver Mining Company. I inclose a copy. You will see it *does not* accord with the books, but I gave it this way, as requested by the party who is endeavoring to start the company. An inventory of stock, as nearly as I could recollect, endeavoring not to go over the amount which I supposed on hand. I inclosed a copy, liabilities, also inventory of tools and material, as given by de Lagnel in April, 1867. The one I gave them is a copy of the one de Lagnel brought home with him, and of which you have a copy at hacienda. It is exactly like his, with these exceptions: One silver-mounted saddle, $35; three Cal. saddles, $30, and in place of ten mules at $600, I put four at $60—$240.

With exceptions, it is exactly like the list de Lagnel brought on. My object in leaving these items out was on account of some not being there, and others for our own uses, which I will hereafter mention. I do not send a copy of this last list, as there is or was one at the hacienda. It is necessary, as near as possible, that in event of this party taking hold of the works, that these things should be there as represented, and show for themselves in event of parties being sent out to investigate. The mine which they think most of and will work, and on which the company is formed, "if it is formed," is the La Abra. So you see the great necessity of keeping that mine, as well as the rest, protected. Use your best judgment in affairs, then, keeping things in such shape as will advance the interest of affairs. Make the inducement as great as possible to induce parties to take hold, and in case any one should be sent out, or you written to, let your statements correspond with mine as regards stock.

If possible, let them go beyond mine. The indebtedness of the company to us I have represented to these parties as being to James Granger, $2,850; to C. H. Exall, $5,113.32; Bank of California, $5,000.

The statement regarding your account and mine, as represented, is over and above any and everything which we have gotten from the company. To be a greater inducement to these parties to purchase, and let them see I had confidence in the mines, at their request I have agreed to take in stock to the amount of $2,000, and have taken upon myself to act for you to the extent of stock of $850. This, I hope, will meet with your approval. Should anything occur, let your statements accord with mine. These parties leave for Philadelphia in a day or two, and will be able to report definitely in a week or two, when I will write you immediately, giving you all points in detail. I should not like these parties to come in contact with Green, Martin, or any one who would prejudice them, &c.

If we can succeed, as I have stated here, *we will* be doing well as things are situated. Send me, as soon as possible, power to act for you. I can imagine your feelings away out in that damned gloomy place, and truly sympathize with you and doing all in my power to get you away as soon as possible. Affairs here are very dull, little business doing. My health has been very much shaken since coming; suppose it results in change of climate. The weather has been, since my arrival, so damp, rainy, and disagreeable. Please do, as far as in your power, as I have suggested. The books don't let any one see, for reason which will occur to you. My kind regards to Mr. Sloan. De Lagnel is at Fort Hamilton. I have not seen him; understand he will study divinity; don't know with what truth the report. Be assured you shall hear from me at the earliest moment. Kind regards to all. With best wishes and kindest feelings to yourself, I remain,

Your friend,

CHARLES H. EXALL.

Address in care of Ginter & Colquitt, 15 New street, New York.

RICHMOND, *July* 18, 1868.

DEAR GRANGER: In my last to you it informed you of the probability of a company being started, and on the formation of said company depended our salaries. Since writing my last I have seen the parties frequently, and have had long conversations with them in reference to raising this company and the payment of its indebtedness. The indebtedness to you and me they seemed willing to liquidate and take their chances with the rest. In my previous letter I instructed you in reference to the figures representing your and my amount; keep it as it is, but make no entry.

This party have gone to work, and, I believe, will succeed in raising a company in a month or two. I have not been with them for the last week. My time has been spent partly in New York and partly in Virginia. Was in New York during Democratic conventions. An immense concourse of people assembled there to take part and see what was going on. The weather during that time was oppressively hot—almost unendurable. I arrived here on the 14th, and, as I have nothing to do, will remain here awhile. In New York, and, in fact, all the States, it is excessively dull—a complete stagnation of business. There is one other thing I did some weeks ago, as I thought I had best make as sure as possible about getting my pay. It was this: I entered suit against the company, not with the expectation of recovery just yet, but something to fall back on in case this company was not formed; recently there has been a better show for raising the company than ever before. So I just let the suit remain over in a manner in which it can be revived at any moment. I want you to send me your statement and your power of attorney to act for you in case I found it necessary to continue the suit; if I succeed in recovering for self could probably recover for you. The amount to be sued for is just the amount due me at $3,500 up to time of my demand on them in person for a payment and for my traveling expenses, &c. I will inform you in time to make proper entries, sending a list of expenses, &c. If I have to deal with a new company I want to get out of them all I can; if with the old one, I must deal with them strictly. I will in time write you as things develop. By all means keep the mines secure, particularly the Abra—don't allow any one to touch the books, or don't give any statements—these affairs are now in our hands, and without satisfaction we must not do ourselves injustice.

Before leaving New York the other day I went to Fort Hamilton to see de Lagnel; he seemed much pleased to meet with me. I spent some hours with him very pleasantly; his wife is a very fine woman. De L. is and has been doing nothing since leaving Mexico. He is pretty hard up, I reckon. In fact, there are many men in a like condition, your humble servant included, though not starving.

A day or two before leaving New York I heard Bartolow had arrived there; I did not see him. What do you think of the nomination of Seymour and Blair? People seem to think that the carrying the Democratic ticket is the only hope of saving the country from the devil. I have great hopes that this party may succeed. I expect to return to New York again in a short time to watch how things get along, and will inform you accordingly. Remember me kindly to Mr. Stone and all friends, and you, dear old fellow, look upon me as ever your true friend.

CHARLES H. EXALL.

Direct as in former letter.

[Translation.]

TAYOLTITA, *August* 13, 1868.

Señor D. REMIGIO ROCHA:

DEAR SIR: I have received the communication calling upon this company to pay $52.50 each month for taxes imposed by the legislature of the State, and presume it to be correct, but as I am only acting in the absence of the superintendent, and as there is no money nor effects to pay this tax, I beg you to wait until the month of November, at which time said superintendent is to come, and then the sums due by this company on account of this tax will be paid.

Your most humble servant,

SANTIAGO GRANGER.

No. 32.

Mr. Evarts to Mr. Zamacona..

DEPARTMENT OF STATE,
Washington, August 17, 1878.

SIR: I have the honor to acknowledge the receipt of your note of the 25th of July, in reply to mine of the 1st of that month, stating that the Government of Mexico is prepared to lay before the Department certain evidence in regard to the awards in favor of Benjamin Weil and of the Abra Mining Company against Mexico under the late convention between the two Governments.

The attention of the Department, at present, must be necessarily confined to the consideration of such proofs as the Government of Mexico

is prepared to submit to its examination, and as may show, or tend to show, that these awards, or either of them, should not be held conclusive between the two Governments as is provided by the terms of the convention under which they are made.

I do not observe that your note intimates that these awards, or either of them, are vitiated by any fault or negligence on the part of the Commissioners, or of the umpire, in their examination of the cases, or that any error has supervened in the reduction of their conclusions to the formal award which they made in the cases. The grounds, therefore, upon which the cases are sought be made, anew, the subject of consideration between the two Governments, notwithstanding the finality insisted upon by the terms of the convention of all awards made under the same, are limited to imputations upon the conduct of the claimants in these cases, respectively, in the presentation of their proofs, and the management of the trials before the Commission. In them, it is urged, fraud and falsehood have been successfully imposed upon the Commissioners and the umpire, and it is insisted that this wrong and injustice to Mexico should be redressed by annulling the awards and opening the cases to a new trial in such manner as may thereupon be provided by the two Governments.

It is apparent, upon this statement, that any inquiry into the justice or soundness of the conclusions of the Commissioners or the umpire upon the proofs as actually submitted to them in these cases is, at this stage of the matter, wholly inadmissible. I must, therefore, desire that your Government should, in the first instance, and as completely as possible, lay before me the evidence in these cases, to which you refer in your note as "obtained since the umpire of the Commission to which they were submitted decided the two cases in question," and which, as you also state, "will prove the fraudulent character of the two claims aforesaid by means of original books, documents, and letters of the claimants, as likewise by the depositions of credible witnesses." You will, I cannot doubt, at the same time see the importance of exhibiting, on the part of Mexico, both the reasons why the proofs now to be brought forward were not adduced at the trials before the Commission, and the grounds of assurance that, upon any renewed examination of the cases, these proofs would be accessible in a form to satisfy judicial requirements as to certainty and verity.

I beg to invite your attention to the present suspension of the apparent rights of the parties interested in these two cases to share in the distribution of the installments already paid to this Government by Mexico, to satisfy the awards under the convention, and to respectfully suggest that this suspension should be determined as promptly as may consist with an adequate presentation by your Government of the particular proofs above indicated and their proper examination by this Department.

I avail, &c.,

WM. M. EVARTS.

No. 33.

Mr. Zamacona to Mr. Evarts.

LEGATION OF MEXICO IN THE UNITED STATES,
Washington, September 25, 1878.

MR. SECRETARY: My prolonged absence from Washington on account of my health and on account of the necessity of my visiting Chicago and Pittsburgh, in compliance with the special invitation with

which I was honored by the merchants and manufacturers of those cities, has prevented me hitherto from replying to the note of your Department of the 18th ultimo (really 17th), which reached this legation twelve days afterwards, and which refers to the claims of Benjamin Weil and of the Abra Mining Company.

The Department of State is pleased to request the Government of Mexico, by the aforesaid note and through me, to present the proofs of the fraud which has been alleged against these claims, to explain the reasons why those proofs were not laid before the Commission of arbitration appointed in pursuance of the convention of July 4, 1868, and to state what certainty exists that they fulfill the judicial requirements.

The note to which I am replying also hints what is the opinion of the Department as to the tendency and scope which the proofs offered by Mexico should possess in order to justify a re-examination of the two cases in question.

Subsequently, calling my attention to the state in which they are, your Department is pleased to express the desire that the presentation of the proofs and explanations aforesaid may take place with as little delay as possible.

The circumstances referred to at the beginning of this note, and the desire that the proofs and explanations promised by the Government of Mexico may be of the character and in the form desired by your Department, especially as regards the reasons why the proofs in question were not laid before the Mixed Commission, will require a still further brief delay, which this legation will endeavor to have made as brief as possible, in compliance with the desire expressed in the note to which this is a reply. This legation, moreover, will not forget to state the grounds of the certainty which it feels that, on a re-examination of the two contested claims, the proofs to be presented by Mexico will fulfill all judicial requirements so far as certainty and credibility are concerned.

The undersigned, who has always bowed with respect before the convention of July 4, 1868, and before the decisions of the Commission thereby appointed, does not think it necessary to touch upon the point of the final effect of those awards; since what is really important in the practical aspect of this correspondence is that the Department of State considers itself, as it states in its notes on the subject, authorized by the resolution of Congress not only to suspend the payment of the claimants concerned, but also to make arrangements with my Government, after the grounds therefor shall have been suitably stated, for a reinvestigation, which may eventually show that Mexico is not responsible in the two aforesaid cases. This spirit, which does so much honor to the Government of the United States, and which is similar to that shown by the umpire of the Mixed Commission after having pronounced his decisions relative to the claims of Benjamin Weil and the Abra Company, renders it quite superfluous to examine the scope which may be reached, juridically, by the finality of the two aforesaid decisions.

The respect with which my Government regards all the decisions of the Commission, to whose appointment it agreed in 1868 by a convention with the United States, has caused me to avoid, as your Department observes, what might seem unnecessary criticism of the acts of the Mixed Commission, collectively, or those of any of its members. So far as the exigencies of the case will permit, this legation will continue to abstain from criticising the awards made by those functionaries, not forgetting that they were made on the basis of the evidence furnished by the

claimants, and during the performance of an amount of labor whose proportions would account for the lack of very searching criticism.

The Government of Mexico, however, has sufficiently made known its opinion that even the evidence which the Commission had before it would have been sufficient, in view of its defective and contradictory character, to cause the rejection of the claims of the Abra Company and of Weil. In the former of these two cases, moreover, the decision of the umpire altered one point on which the two dissenting commissioners were agreed, viz, the exclusion from indemnity of the value of its metal still in the ore.

I shall, nevertheless, insist upon repeating that it is not the purpose of this legation to busy itself with a review of the proofs furnished by the claimants or of the decisions of the Mixed Commission in the two cases under consideration, save as far as this is absolutely necessary in order to demonstrate the admissibility of the newly discovered proofs, and the difficulties with which Mexico had to contend, being obliged to defend herself against fraud and perjury and to prove a negative in innumerable instances similar to the present one; instances in which the claims, amounting to hundreds of millions, were, for the most part, rejected by the Commission.

In fine, the defense of Mexico against the two claims which furnished to me the occasion of having the honor of this correspondence, will be based upon proofs of such a character that, under any known system of jurisprudence, they would justify the request for a re-examination and a reversal of the decision rendered.

I have, &c.,

M. DE ZAMACONA.

No. 34.

Mr. Zamacona to Mr. Evarts.

[Translation.]

LEGATION OF MEXICO IN THE UNITED STATES,
Washington, November 2, 1878.

MR. SECRETARY: The professional counsel who are aiding this legation in the work of organizing the proofs which the Government of Mexico is about to present with respect to the old La Abra and Weil claims, believe it needful to correct certain points by consulting the documents relative to those cases, which were transferred from the archives of the Mixed Commission to the archives of your Department. I permit myself, therefore, to beg the State Department, if there be no objection to doing so, to be pleased to give its orders to the end that the corrections adverted to may be made.

I have, &c.,

M. DE ZAMACONA.

No. 35.

Mr. Seward to Mr. Zamacona.

DEPARTMENT OF STATE,
Washington, November 4, 1878.

SIR: I have the honor to acknowledge the receipt of your note of the 31st ultimo, requesting that the advocates employed by the Mexican legation be permitted to examine the documents on file in this Depart-

ment relative to the awards in favor of Weil and La Abra Mining Company.

In reply, I have to inform you that I have much pleasure in acceding to your request, and if the gentlemen you mention will present themselves at the Department with a line of introduction, they will have every facility shown them for the purpose indicated.

I avail, &c.,

F. W. SEWARD,
Acting Secretary.

No. 36.

Mr. Zamacona to Mr. Seward.

WASHINGTON, *November* 5, 1878.

MR. SECRETARY: I have the honor to acknowledge your note of yesterday, and thanking you for the courtesy extended to this legation to request for Mr. John A. J. Creswell and Mr. Robert B. Lines, the professional advisers of the legation in the preparation of the proofs in the Weil and La Abra cases, the facilities you have so kindly offered for the examination of the papers in that Department bearing upon those claims.

I have, &c.,

M. DE ZAMACONA.

No. 37.

Mr. Zamacona to Mr. Evarts.

LEGATION OF MEXICO IN THE UNITED STATES,
Washington, D. C., December 11, 1878.

MR. SECRETARY: As I had the honor to state in the interview with which I was honored by you on Thursday last, the transmission of the documents showing the fraudulent character of the claim of Weil and that of the Abra Mining Company has been delayed because the printing of the analytical statement which is to accompany those documents was not finished, and because it was desired to take certain steps calculated to give to the evidence a character that would satisfy all judicial requirements. These steps have now been taken and the printing is very nearly at an end. Desiring, however, that the evidence furnished by the Mexican Government may be examined by the Department of State with as little delay as possible, I inclose with this note that which refers to the case of Benjamin Weil, together with an analysis of the same, and in a very few days I will do the same in respect to the documents relative to the claim of the Abra Company.

I reiterate, &c.,

M. DE ZAMACONA.

NOTE.—The original proofs herein referred to were returned to Mr. Navarro in October, 1880. See Mr. Navarro's receipt therefor, Document No. 77. The printed case

was sent again to the Department with Mr. Romero's letter to Mr. Frelinghuysen of December 5, 1883, and is the following:

CASE OF MEXICO UPON THE NEWLY DISCOVERED EVIDENCE OF FRAUD AND PERJURY IN THE CLAIM OF BENJAMIN WEIL.

INTRODUCTION.

Under the Claims Convention of July 4, 1868, between the United States and Mexico, 873 claims, aggregating $470,126,613.40, and 144 claims, whose amounts were not stated, were brought by the Government of the former country in behalf of its citizens against the Government of the latter, for adjudication by the Mixed Commission organized in accordance with the provisions of that convention.

Of this number 580 cases were decided by the Commissioners and 418 were decided by the Umpire, the remaining 19 claims being either withdrawn or consolidated with others.

Money awards were made by the Commissioners in 43 cases, and by the Umpire in 143. The remaining 812 claims were dismissed. The total of the awards was $4,125,622.20, less than one *per cent.* of the amount claimed.

The claims were alleged to have originated within the space of twenty years since the treaty of Guadalupe Hidalgo. They comprised in their subject-matter every species of transaction, and their total amount was sufficient to provide comfortably for every American who had visited or had business in Mexico for a much longer period.

In only 330 of these claims, however, had the aid of the United States been invoked prior to the convention of 1868. The remaining 687 cases, although more or less remote in their alleged origin, made their first appearance after the conclusion of that convention.

In that large class of claims called into being by the convention of 1868 were found those of Benjamin Weil, No. 447, and La Abra Silver Mining Co., No. 489, on the American docket, which are the subjects of the representations now made by the Mexican Government.

Before proceeding to state the grounds on which the propriety of a retrial of those cases will be urged, it is proper to give a brief history of each of them, as they were presented to the Commissioners and the Umpire.

On the 8th of March, 1870, the Government of the United States, and through it the Mixed Commission, first received notice, in the form of a letter from the claimant's attorney, that in September, 1864, Benjamin Weil, alleged to be a naturalized citizen of Louisiana, had been despoiled by Mexican authorities of the large amount of 1,914 bales of cotton, in compensation for which he asked an award from the Commission of $334,950.

Accompanying this notice of his claim was the sworn statement of the claimant, Weil (dated Sept. 10, 1869, and certified under oath by George D. Hite to be correct), to the effect that this cotton, "belonging solely to himself," was taken "from him" while "on several trains in the Republic of Mexico," "under his special control," "between Laredo and Piedras Negras," "on or about the twentieth of September, 1864," "by the representative forces of the Republic of Mexico;" that he was, at the time of the seizure, "stopping at Matamoros;" that he often, but in vain, solicited the return of his property, and that he had never laid his claim before either Government, asking payment thereof.

The following papers were also transmitted at the same time:

Certificate of naturalization of Weil, issued Dec. 4, 1869, by Judge J. O. Osborn, in Rapides Parish, La., on evidence (not transmitted) of his naturalization in that parish in 1853, and the destruction of the record thereof.

Affidavits dated Sept. 10, 1869, of J. O. Osborn, Daniel Taylor, and George D. Hite, to the effect that Weil was a just, upright and honest man, and that "to their certain knowledge" the losses he experienced in Mexico "were very great."

Affidavits dated Dec. 15, 1869, of Emile Landner and A. J. McCulloch, whose credibility was attested by George D. Hite, stating, in almost identical terms, that Weil was a man of character, and had been a man of wealth and a large speculator in cotton during the late civil war in Mexico; that "at the time of the happening of the events they were about to relate" they were respectively "engaged in the occupation of a supercargo," and relating that "from general report" and "what they had heard from others," they "believed" Weil had over one thousand bales of cotton taken from him by the forces of the Liberal party in Mexico, some time "in the year 1864."

And lastly, the affadavit of George D. Hite, of the same date as the two last mentioned, and substantially of the same tenor, except that "at the time of the happening of the events," which was "on or about the month of September, 1864," he was a contractor, residing in Matamoros; that the amount of cotton seized was "about

1,900 bales"; that it was seized "with other cotton" (whose ownership was not stated), between Laredo and Piedras Negras, and that deponent did not base his assertions upon the reports of others.

On the 30th of April, 1870, was filed the memorial of the claimant, and with it the affidavit of John J. Justice, who, first of the witnesses, pretended to have seen the cotton in Mexico, unless the ambiguous statements of the claimant that the cotton was taken "from him" between Piedras Negras and Laredo, while he was "stopping at Matamoros," be given a liberal construction. "At the time of the happening of the events" Mr. Justice was "about to relate," he said he was engaged in driving stage from Matamoros to Piedras Negras and other points, and on or about the 20th of September he was with "a train" of about 1,914 bales of cotton, "owned by Mr. Benjamin Weil," and saw the said cotton taken possession of between Piedras Negras and Laredo, "by an armed force of the Liberal or Juarez party," who "claimed, and, as I afterwards ascertained, belonged to the command of General Cortinas." "They stated that Mr. Weil would get his cotton back, or he would be paid for it."

August 3d, 1870, the Commission received the affidavit of John M. Martin, another pretended witness of the seizure. Mr. Martin stated that he was by occupation a steamboat pilot, but did not mention his business in Mexico at the time of the happening of the events which he relates. That on or about Sept. 20th, 1864, he was riding in company with a large train, loaded with over 1,900 bales of cotton, which, from his own knowledge and from the statements of the train-master (not named), he knew to belong to Benjamin Weil. That the cotton had not reached any Mexican custom-house, but was on its way to Matamoros, where duties would have been paid, as deponent knew, "to his certain knowledge," that Weil always paid duty at that point on all cotton which he received. That on arriving at a place between Piedras Negras and Laredo, whose "exact name he did not remember," the train, "as well as the cotton," was unlawfully taken possession of by forces "under the command of General Cortinas, who represented the Liberal Government of Mexico," and who (according to the preamble to Mr. Martin's affidavit) "was known to be acting under orders from Don Benito Juarez, President of said Republic of Mexico." Mr. Martin added that these liberal forces "turned loose the mules and horses and teams conveying said cotton."

October 8, 1870, the claimant gave notice that he had closed his proofs, and filed his brief asking an award on the above testimony.

Up to this time, as will be seen, the evidence, except as to naturalization, consisted entirely of *ex parte* affidavits from accidental witnesses. None of the numerous wagon-masters, teamsters, or other persons naturally connected with a train carrying 1,900 bales of cotton had testified; no names of officers or men of the capturing party had been given; nor had any information been vouchsafed the Commission as to how the claimant acquired this extraordinary quantity of cotton, where it came from, or how it got into Mexico; though from Martin's allusion to duties which would have been paid at Matamoros if it had not been seized before it got there, a slight presumption might have been raised that it was the product of a foreign soil, possibly of one of those States then in rebellion against the United States.

Acting on this presumption, the claimant having closed his proof without furnishing any other clue to the defense, the agent for Mexico moved to dismiss the claim on the ground that the claimant, as a citizen of Louisiana, was, at the time of the alleged seizure, an enemy of the United States; that he was engaged in a contraband trade between its enemies and Mexico, as well as between Mexicans and the French; that the claimant was domiciled in Matamoros, and that his proofs were insufficient.

On the 1st of March, 1872, the claimant filed the affidavit of S. B. Shackelford, who stated, in substance, that in August, September, and October of 1864 he was "in the Republic of Mexico, acting as agent of the Confederate Government"; that he was present in Alleyton, Texas, about the first of September, 1864, when Weil "was taking out a large train loaded with cotton, as I understood, to penetrate the territory of the United States of Mexico toward Laredo," and that he saw bills of lading in Weil's name, drafts paid by him for cotton, and bills for wagon hire, labor, &c. Mr. Shackelford further said that after leaving Alleyton he went over to Mexico, where his business called him, and again encountered the train near Laredo, between the 10th and 25th of September; that he camped with the train, and the next day it was seized by an armed force under General Cortinas; that Weil made demand "in person" (though he does not say that Weil was with the train) and "through his agents and attorneys" (not named) for the return of the cotton, and was answered that the Government of Mexico "was good for the cotton or its value"; that Weil had often asked deponent to give his testimony in the case, but that his absence from the city and the necessity for traveling in his business (which was that of a merchant) had prevented him from before complying with the request.

On the first of April, 1872, the Commission was favored with the reappearance of Mr. George D. Hite, whose memory had been refreshed, and who added materially to his own previous testimony and to that of the other witnesses, stating that he did so

at the request of the attorney of Weil, who had not been present when he had last testified, and who had then, curiously enough, been ignorant of his relations to Weil and his knowledge of the facts on which the claim was based. In an affidavit, dated March 12, 1872, Mr. Hite stated that he had been the principal agent of Weil in collecting the cotton at a point which he called "Allaton," 700 miles from the Rio Grande; that he purchased it from planters, who kept no books, and whose names were not given, paying for it in gold and greenbacks furnished him by Weil, or giving receipts to those who were indebted to the claimant; that he, Hite, kept memoranda of these transactions, which, with other valuable papers of Weil and himself, were destroyed at the close of the war; that Weil hired the teams and that deponent assisted in making up the train, which consisted of 190 wagons, drawn by eight mules each, and was able to travel about eight miles per day; and in starting it from "Allaton" to the Rio Grande, on its way to Matamoros, in May, 1864; having done which he left Mr Weil's employ and went to Matamoros on business of his own as a contractor.

Early in September, 1864, Mr. Hite proceeded to say, he came up the river on his own business, and met the train and helped it across the river at a point 160 miles above Brownsville, and then returned to Matamoros, where, some time later, he learned from the men belonging to the train (not named) and from officers and men belonging to Cortina's command (also not named), who had assisted in its capture, "that the train and cotton had been captured by troops and forces belonging to the Liberal or Juarez Government, under the command of Cortinas." Further affidavits were filed alleging the respectability of Weil and his witnesses, and the case was closed in June, 1872.

The representatives of Mexico did not regard this as a very complicated case of perjury. They failed to discover any particular ingenuity in the manufacture of this claim to distinguish it from the hundreds of millions of dollars worth of other claims (afterwards decided to be without merit) against which they were obliged to defend their Government. They felt unable to prove, if the statements of the claimant's witnesses did not themselves prove, that the entire claim was a bungling attempt at fraud. They could not undertake to show, by direct evidence, that the cotton was not collected at and shipped from "Allaton," Texas, a place not known to the Gazetteer, as being 700 miles or any other distance from the Rio Grande in May, 1864, and that the same cotton was not collected at and shipped from Alleyton, Colorado County, Texas, which is 260 miles from the Rio Grande, about the first of September of the same year. Nor could they prove, if mathematics did not prove, that such a train, traveling eight miles a day and leaving "Allaton" 700 miles off in May, must have reached the river about the middle of August; or if it arrived in September, then it should have started in June; that it could not have left Alleyton, 260 miles off, about the 1st of September, and reached the river before the 3d of October; or that it could not have crossed the river 160 miles above Brownsville, and been captured between Laredo and Piedras Negras without going 100 miles up the river in a contrary direction from Matamoros.

They thought it remarkable that the claimant did not allege that the cotton was exported by the permission of the Confederate authorities, which, as was well known, was rigidly required at that time; or that it was imported into Mexico by the permission of and on payment of duties to the Mexican authorities, in default of which it would have been liable to seizure under the law. Still more surprising was it that nobody from whom Weil had purchased cotton or hired teams testified in his behalf; that no account was given of the disposition of the cotton which, according to Martin, was left on the highway; and that none of the employés attached to the train who, according to Hite, went to Matamoros after the capture, appeared as witnesses in support either of this claim or of the protests and demands which the claimant was alleged to have made in person and "through his agents and attorneys," none of which, and no documentary proofs of which, were shown to the Commission. And most extraordinary of all was the fact disclosed by the dockets of the Commission that no claim was ever made by anybody for the 190 wagons captured, and the 1,560 "mules, horses, and teams" turned loose by the liberal brigands who captured them.

Against the claim thus presented Mexico made the best defense possible from the facts at her command. Called upon to prove a negative, without the slightest indication from the claimant which could lead her to the discovery of evidence, the most that she could do was to secure some affidavits from persons who had never heard of Weil or the capture of any cotton, but who, from their position on the frontier at that time, would have been likely to know of it if it had taken place. This evidence was not received until 1874. The time limited by the rules of the Commission for the presentation of evidence had expired, and it could only be admitted by special agreement. In the following year, when the labors of the Commission were drawing to a close, the American Commissioner proposed to admit this evidence, provided the claimant should be given leave to file further proofs. This proposition the Commissioner for Mexico declined on the ground that it would only be an invitation to the claimant to bolster up his case by further perjury, which could not be rebutted within the time

allowed to the Commission. The American Commissioner expressed an unwillingness to reject the claim, and it was referred to the Umpire, who, on the 1st of October, 187[illegible] made an award to the claimant of $285,000, with interest from September 20th, 1864—in all, $487,810.68.

Before the adjournment of the Commissioners the agent of Mexico filed with them a motion for a rehearing, supported by all the additional proofs which up to that time he had been able to obtain. These proofs were to the effect that General Cortinas, the district commander and the only Mexican officer named by the claimant, was in Matamoros on September 20, 1864, and had been for some time prior to that date. This evidence was not deemed to be of much importance, for nothing would have been easier than for the claimant to show that while the capturing party was "under the command" of Cortinas, as were all the republican troops in that section, it was not led by him, but by somebody else. The claimant had not burned the frail bridge behind him. If he could satisfy the Commission and the Umpire that his cotton was bought and shipped in May, and also in September, he might with equal facility have proved that it was captured in September and also in the following January.

The motion was referred by the Commissioners to the Umpire, who postponed a decision upon it until he should have decided all the claims then before him.

In March, 1876, after the adjournment of the Commissioners, but before the expiration of the time allowed the Umpire by the convention of November 20, 1874, the Government of Mexico, by accident, discovered for the first time a person who was not a witness for Weil, but who had known him and his transactions during the year 1864. This person was General James E. Slaughter, a gentleman well known on both sides of the Rio Grande as a former officer of the United States Army, and as a general in the army of the Confederate States, and for some years after the war a resident of Mexico.

Informed of the existence of this claim he promptly declared it, from his own knowledge, to be a fraud, and through his exertions, and with the utmost possible dispatch, the Government of Mexico brought to light the most important and positive documentary evidence, showing the fraud and perjury which had been perpetrated. Immediately on its receipt, to wit, on or about the 19th day of September, 1876 (the time of the Umpire having been again extended by the convention of April 29, 1876), this evidence was laid before the Umpire, with a supplementary argument on the motion for rehearing. On the 20th of October the Umpire decided that he could not take the evidence into consideration, as it had not been before the Commissioners. He added, however, "In the case No. 447, Benj. Weil *vs.* Mexico, the agent of Mexico has produced circumstantial evidence which, if not refuted by the claimant, would certainly contribute to the suspicion that perjury has been committed, and that the whole claim is a fraud. For the reason already given it is not in the power of the Umpire to take that evidence into consideration, but if perjury shall be proved hereafter, no one would rejoice more than the Umpire himself that his decision should be reversed and that justice should be done."

Having now reviewed the first of these claims, it is proposed to lay it aside for the present, and to examine the character of the other and the action of the Commission upon it.

La Abra Silver Mining Company, chartered Nov. 18, 1865, under the general law of the State of New York (some of whose stockholders swore, as did certain other witnesses, that all were American citizens), pretended before the Mixed Commission that it had been induced, in the year above named, during the French occupation and war with Mexico, by representations (not specified) made in Humboldt's "Essai Politique," published in 1808, and by allusions made in Ward's book on Mexico, published in 1828, as to the richness of certain silver mines in Tayoltita, State of Durango, Mexico; and further, by the representations to the same effect of Wm. H. Smith, agent of Juan Castillo de Valle, a Spaniard, part owner of some of said mines, of de Valle himself, and of Thomas J. Bartholow and David J. Garth, who were sent to Mexico as agents of the persons proposing to form said company (and to whom de Valle exhibited his books, showing a net profit as high as $650 silver per ton of ore) to purchase, for $57,000, gold, through said Bartholow and Garth (by draft, as stated by Bartholow, on San Francisco or New York, "he did not remember which," but by certificates of deposit and drafts on San Francisco for $58,500, as stated by the person who pretended to have cashed them), the mines, reduction works, and appurtenances from said de Valle, and for $22,000 gold (how paid, or by whom, is not stated) twenty-two-twenty-fourths of La Abra mine, owned by certain Americans. That the Company relied upon certain proclamations of the Mexican Federal authorities (not specified or introduced in evidence) in which, it alleged, investments of American capital were invited and protection promised thereto. That it made heavy and judicious expenditures, through skilled and experienced officers, upon said property for stamp mill, machinery, buildings, and other improvements, and extracted large quantities of ore of surprising richness, a reduction of twenty tons (the only one made by the Company), yielding $17,000 (after the richest ores had been carried off

by Mexicans). That it was subjected to threats, robberies, seizure of its mule trains, forced loans, onerous taxes, armed assaults upon its buildings, imprisonment of its officers, murder of its employees, and other persecutions by the Mexican people and civil and military authorities. That this hostility, according to some witnesses, had for its object the expulsion of the Company, so that its valuable property might fall into the hands of said authorities and people; while, according to others, it arose from a groundless belief on their part that the Company favored American annexation of the interior States of Sinaloa and Durango. It was alleged to have been directed against other American companies as well—some of which, however, survived it, and are still operating in that vicinity.

The Company pretended that on account of these persecutions it was compelled to abandon its mines, works, and ores in March, 1868, when the French had been driven out and peace re-established, and when it was just about to realize the fruits of its investment and labors. That C. H. Exall, the Superintendent, being in fear of his life, fled from Tayoltita to Mazatlan, and borrowed money (which the Company had not repaid in 1872) to take him to New York, and dared not return to resume operations; and that thereafter the Mexican people carried off the ores remaining, and Mexican officials assumed to dispose of the property of the Company.

Without seeking redress in the judicial tribunals of Mexico (in which it had, in January, 1868, according to its own witnesses, gained a civil suit against one of the alleged persecuting officials involving the title to a portion of its property); without appealing to the Federal Executive for that protection alleged to have been guaranteed in his supposed proclamations; without invoking the aid of the American consular or diplomatic representatives in Mexico, or of the State Department at Washington, without even requiring for its own satisfaction a formal statement of the abandonment and its causes from the superintendent, the Company brooded in silence over its enormous wrongs for two years, to wit, until March 18, 1870, when, the Claims Convention with Mexico having been concluded, it filed with the Secretary of State, through two Washington attorneys, a letter which was subsequently sent to the Commission, asking the sum of $1,930,000 as indemnity. Three months thereafter, a third attorney having assisted in the preparation of the memorial to the Commission, the claim was increased to $3,000,030; and when, for the purpose of arguing the cause, other counsel became necessary, it rose to the respectable sum of $3,962,000.

One Alonzo W. Adams (whose character and career in the civil, military, and criminal courts will be hereafter referred to) became the agent of the Company for the collection of proofs, and in that capacity proceeded to Mexico and elsewhere and procured the greater part of the evidence which was submitted on its behalf. With the exception of the imperfect evidence of title, no documentary proofs were filed, except five pretended original threatening letters, the latest of which is dated in July, 1867, eight months prior to the alleged enforced abandonment of the mines, and six months before the Company gained its civil suit above referred to against one of the threatening officials, after which it extracted $17,000 from twenty tons of ore. (The other threatening official was compelled to resign in the same month of July, 1867, and criminally prosecuted in the same year, and in 1872 appeared as a witness for the Company, but denied that he had threatened it.) Except the above, the evidence consisted entirely of *ex parte* testimony, in the composition of most of which the guiding hand and the peculiar diction of Adams himself are plainly apparent. The books of the Company were not brought from its headquarters in New York, nor were any extracts given from them to show its receipts from sales of stock or other sources, or its expenditures; nor was the correspondence of the Company with its officers in Mexico adduced to prove either the richness of the mines or the hostility of the Mexicans. On this point the Umpire in his decision said: "In so well regulated a business, as the Umpire believes it really was, he cannot doubt that books would have been kept in which the daily extraction of ores would have been regularly noted down, and that periodical reports would have been made to the Company at New York. Neither books nor reports have been produced, nor has any reason been given for their non-production."

It was contended on behalf of Mexico that the proof of citizenship of the stockholders, not having been made as to each separately, was insufficient; that some of the mines had long been abandoned as worthless, and that such of them as had been worked by de Valle had yielded such moderate returns as to make the price alleged to have been paid for them a most extravagant one; that if Garth and Bartholow did not deceive the Company they were themselves deceived as to their value; that the Company's agents were totally incompetent and inexperienced in mining, and their expenditures, though much exaggerated, were yet reckless and ill-directed, inasmuch as the new buildings and works were poor and badly located, and the old reduction-works were destroyed before the new were commenced, rendering it impossible for the current expenses to be paid from the product of the mines, if they had been adequate to that purpose; that the so-called ores were generally worthless rock or "tepetate," and that what little silver was finally extracted was gambled away or made

use of by Sup't Exall; that there were no robberies, persecutions, or enmity to the Company on the part of the Mexican people, or civil and military authorities; but that, on the contrary, ample protection was extended to it, and frequently extraordinary safeguards given its officers during the hostilities with the French; that as early as the summer of 1867 the Company failed to pay its workmen, but soon compromised, and agreed to pay them a smaller amount in cash than formerly and a larger amount in goods; that later, its money and credit being exhausted, and the worthlessness of its "ores" demonstrated, it was unable to carry out even this agreement and ceased operations altogether; that the Superintendent, Exall, gave the "persecuting" judge written permission (which was produced in evidence) to occupy the Company's hacienda, the subject of the lawsuit above referred to, and went to New York, leaving the clerk, Granger, in charge of the mines and works; that Granger, as the representative of the Company, extended this permission in August, 1868, five months after the pretended forcible expulsion of the Company; that no ores were taken by the people, and no attempt made by the authorities to possess themselves of the Company's property; but that Granger, as shown by the records and admitted in his own testimony, himself sold and removed a portion thereof for his own benefit; that at length, the time having expired for which, under the Mexican law, the Company could hold its mines without working them, and Exall not having returned, Granger himself, as also appeared from the record, had denounced and entered into possession of some of them, and was holding them at the time the claim was being tried; and further, that some of the testimony in behalf of the claimant was forged, and some obtained by bribery and other unlawful means.

The company's witnesses in rebuttal reiterated in the main the statements of its former witnesses, with the discrepancies which will appear in the succeeding analysis of the testimony. They denied that the old reduction works had been destroyed, but did not claim that they had ever been used during the eighteen months the company's stamp mill was being erected to reduce, in aid of the current expenses, the ores which de Valle's books, according to Bartholow, had shown to have yielded, by the old methods, $650 per ton. They admitted the amicable agreement with the "threatening" judge for the occupation by him of their hacienda, but denied that Granger had any authority to extend it, or that he had been left in charge of the mines.

The Mexican Commissioner, deeming the proofs submitted by the company to be not only insufficient, but inconsistent with each other, and with the company's long silence and delay in presenting its claim, rejected it *in toto*.

The American Commissioner gave it as his opinion that the company should be paid what it had expended, with interest, but as the claim was to go to the umpire, fixed no amount.

The umpire accepted the statement of the president of the company, from which the statements of the other witnesses differed materially, as to the expenditures, added the $17,000 alleged to have been realized from the twenty tons of ore reduced, and awarded their sum, with interest, in lieu of the "prospective profits" claimed by the company, which he expressly, and with much instructive argument, excluded. Having done this, however, he turned his attention to the ores alleged to have been mined and abandoned, the cost of extracting which had been included in his award covering the expenditures, and from which, if at all the "prospective profits" of the company were to have been derived. Expressing his surprise in the language above quoted, that the books and reports of the company had not been produced, and no reason given for their non-production, he estimated the amount and value of these ores from the conflicting statements of claimant's witnesses, allowed $100,000 for this portion of the claim and added interest on that. Altogether the award amounted to $683,041.32.

The agent for Mexico asked the umpire to review his decision on the grounds that the claimant's witness had committed perjury, and that the umpire in making an allowance for the ores, which had been excluded by the American Commissioner, had exceeded his authority and gone beyond the submission, inasmuch as this part of the award depended upon his single vote.

In overruling this motion the umpire did not admit that he had exceeded his powers by granting to the claimant payment for the abandoned ores. Referring to the charge of perjury he said, "if perjury can still be proved by further evidence, the umpire apprehends that there are courts of justice in both countries by which perjurers can be tried and convicted, and he doubts whether the Government of either would insist upon the payment of claims shown to be founded upon perjury."

It is unnecessary to repeat here the assurances so frequently given by the representatives of Mexico of the high regard in which they have always held, and still hold, the character of Sir Edward Thornton. However mistaken they may have thought his judgments and his refusal to review his judgments in certain claims to be, they have never for one moment doubted that his action throughout the most difficult and arduous labors imposed upon him as umpire of the Mixed Commission

was prompted solely by worthy and conscientious motives. But if such a doubt could have existed it would have been removed by the honorable declarations with which he accompanied his final decisions in these two claims.

The Government of Mexico felt that no more fatal blow could be leveled against the convenient and usually just system of international arbitration, for the promotion of which the United States are entitled to so much credit, than to allow it to become the vehicle of fraud, by insisting upon the finality of a judgment in the face of convincing proofs, or even of suspicions, that the award has been obtained by perjury on the part of a claimant. In the settlement of political questions, doubtless, the finality of an award is its essential feature, although even such judgments have been set aside by one of the parties. But a convention for the adjudication of private claims is intended, as it seemed to the Mexican Government, to secure the admission of aliens, excluded from national tribunals, to a court which may pass upon their claims and render *some* judgment. Such a court is, from the nature of things, temporary in its character. But it cannot be intended that the mere expiration of its term should lift its decisions above the universal rule of law with regard to fraud, and prevent the review of a judgment upon newly-discovered evidence, which would secure a new hearing under any known system of jurisprudence.

But, without insisting on this view, the representatives of Mexico were confident on other grounds that the honorable declarations of the umpire would be echoed by the American Government.

They remembered the action of the United States in the claim of the insurers of the brig Caroline, paid, after extreme diplomatic pressure, and under protest, by the Government of Brazil, which action is thus stated in the language of Secretary Fish (Sen. Doc., 1st sess. 43d Cong., Ex. Doc. No. 52, p. 165): "When the amount had been realized the question of paying it to the holder of the claim arose in the mind of my predecessor, Mr. Seward. This question involved that of the liability of the Brazilian Government in such a case, and Mr. Seward referred it to the Attorney-General. It has remained with that officer until recently, when it was by him decided in the negative. * * * It was then deemed advisable to return the sum received to the Government of Brazil."

Not only was the money received by the United States returned to Brazil, but when it was found that more had been collected and withheld from the Government, the United States paid that sum also, and commenced prosecution against the offender. If such disposition could be made of a claim in which the facts were not disputed, and the representative of the United States was only shown to have erred as to a question of legal responsibility, Mexico was certain that similar action could not fail to be taken in a case where the representative could be shown to have been deceived by the grossest fraud and perversion of fact.

The representatives of Mexico did not fear that an application to the United States for a review of these cases would be met by the argument that the United States had bound themselves (to Mexico) to protect the judgments of the Commission (in claims against Mexico), and by so doing had created an indefeasible right in the claimants. They knew that very different doctrines had been constantly acted upon by the Government of the United States. They remembered that that Government had maintained its right to revise the awards made by the Commission organized under the Florida treaty, of whose judgments it had bound itself to Spain to "make satisfaction" to the claimants. They heard it asserted that for years the United States had declined to make satisfaction for claims of their citizens, which, it was said, they had released to France in return for important political concessions; and further, that it was also claimed that in the distribution of the Geneva award they had adopted methods not contemplated by the Tribunal of Arbitration.

It was matter of history, very familiar to them, that when the Commission established by the treaty of Guadalupe Hidalgo (Art. XV of which provided that its awards should be "final and conclusive," and that the United States should "make satisfaction" of the same) gave an award in favor of Dr. Gardner for the value of mines from which he pretended to have been driven by the authorities of Mexico, the Government of the United States, upon the slightest suggestion of fraud, even after the payment of the money, instituted a thorough investigation, in the pursuance of which it sent a Commission to Mexico, and as a result of which it prosecuted the perjured claimant to conviction and sentence, whose execution was only arrested by his suicide in the halls of justice. It is true that in that proceeding, so tragically ended, the United States (having assumed the payment of the claims against Mexico in consideration for the territory acquired from her) had a pecuniary interest. But it could not be doubted that had Mexico been the direct sufferer from the fraud of Gardner the United States would have felt impelled to the same course from other and vastly more important considerations than any mere money interest could have involved. Whatever the United States would do to protect their Treasury, Mexico felt confident they would do to prevent the consummation of a fraud by their citizens, and under their auspices, upon a friendly nation.

To doubt that the United States would assert their control over the claims of Weil and La Abra, as they had over the claims above referred to, would have been to assume either that the United States would not act impartially towards all friendly nations, and with the same jealous care with which they would protect their own interests against fraudulent claimants, or else to assume that some especial sacredness was attached, in their opinion, to the constitution of a Mixed Commission, rendering an award by it—no matter by what gross deception obtained—peculiarly the property of the claimant, to the exclusion of all interference by his own Government, even upon the application of the other high contracting party to the convention. In other words, that the United States, with whom a treaty is the supreme law, should find themselves able to defeat the rights of a claimant acquired by the "final and conclusive" award of an *ex parte* Commission, of whose judgments they solemnly engaged themselves, by treaty, to "make satisfaction," and should yet be unable to withhold from a perjurer the payment of a judgment given in their own favor by a Commission under a treaty which says not a word about the distribution of moneys to individual claimants.

The first of these assumptions could by no means have been entertained by the representatives of Mexico. And in contradiction to the second was the fact that at a very recent date the United States had, upon the representations of Venezuela, suspended the payment of all judgments of a Mixed Commission organized under a treaty with that country containing the same provisions with regard to finality as the treaty of 1868. It is true that the charges of Venezuela went to the integrity of the Commission itself. But it appeared to the representatives of Mexico that the principles of international arbitration, which that Government, equally with the United States, was anxious to preserve, would suffer (if at all) less from the rehearing of two claims singled out from a number upon charges of fraud and perjury, accompanied by offers of proof, than from the suspension of an entire arbitration by the admission of sweeping charges affecting only a few of the judgments, but directed against the integrity of the Commissioners of the country making the complaint. A nation desiring to evade its just obligations, and having these two courses open to it, would, it was believed, invariably choose the latter.

In this case, therefore, it seemed clear that no question of "vested rights" in the claimants would stand in the way of justice to Mexico, and that the United States would not, on that ground, insist upon receiving moneys from Mexico for the purpose of handing them over to criminals, whom the laws would consign to prison to enjoy the fruits of their crimes.

The Government of Mexico was not unfamiliar with the doctrine of Vattel (p. 277), that an award "evidently unjust and unreasonable * * * should deserve no attention," nor did it forget that this doctrine had been successfully maintained by the United States in setting aside the award, not of a Mixed Commission of citizens, but of a friendly sovereign, upon a political question of infinitely more importance than the settlement of a private claim, to wit: the boundary between the United States and the British Possessions. But it was far from the intention of the Mexican Government to assert this doctrine with regard to the two claims in question. Desirous of fulfilling to the utmost its treaty obligations, and confident of the intention of the United States to render it full justice, it has made to the latter the stipulated payments with no reservation as to these claims, although it has with great difficulty secured the most positive proofs of their fraudulent character, and has contented itself with making such representations as it hoped would induce that Government to consider whether in equity and honor it ought not to release Mexico from their payment. Had it foreseen how soon the Government of the United States was to adopt a similar course towards another power, in relation to an award, against which no charge of fraud or mistake of fact could be made, it would have been more than ever convinced of the wisdom of its decision.

In complete fulfillment of the just expectations of Mexico, she is now invited by the Government of the United States to present the proofs relied upon by her to establish the fraudulent character of the claims of Weil and the La Abra Company; to explain why they were not presented to the Commission, and to give the necessary assurances that they will be at hand in a shape to satisfy the requirements of that judicial investigation which she understands the United States to be ready to accord in case they appear *prima facie* to substantiate the charges of fraud and perjury on the part of the claimants.

In explanation of their non-presentation to the Commission it is to be remarked that they consist for the most part of original letters, reports, and documents of the claimants themselves, the production of which should, in the opinion of the Government of Mexico, have been required of them to prove their claims. That their location, and even their existence, were unknown, and could not have been known to that Government at the time of the trial; that they have only been discovered by accident since the decision of the Umpire, and that they have been procured from the partners

and agents of the claimants, who, in the Weil case, were ignorant of the claim and innocent of participation in the fraud.

It is believed that the more important of them are now in form to satisfy judicial requirements, and such are at the disposition of the Department of State. Where that is not the case, the papers themselves suggest, or the Mexican Government will furnish, the names of witnesses whom it is presumed (the claims being now upon a fund controlled by the Government of the United States) the Department can have examined under, with the authority conferred upon it by sections 184 *et seq.* of the Revised Statutes of the United States.

An extended analysis of the proofs is appended hereto, showing their bearing on the testimony before the Commission, which is printed for the convenience of the Department of State. It is believed they prove conclusively the following facts:

In the Weil case, that the claimant, for a number of years prior and down to the month of May, 1864, the date given by Hite for the purchase and collection of his cotton at "Allaton," was possessed of very limited means, which were involved in a general partnership, lasting to December, 1865, with a number of persons, some of whom claimed to be French subjects, none of whom were parties to this claim, and several of whom denounce it, under oath, as a fraud. That his ability to purchase any large amount of cotton was by no means increased between May and September, the date at which Shackelford swears he saw the train in his charge at Alleyton, and that the cotton transactions of Weil and his partners were very small, and were never interfered with by any Mexican authorities. That, as a matter of fact, neither Weil nor his pretended agent, Hite, were at Alleyton (the one of the two places named which is to be found in the Gazetteer) at either of the dates specified. That both Weil and Hite were in Shreveport, Louisiana, and not in Mexico at the time of the pretended seizure, and that the latter did not enter the service of the former until the following year. That Weil's business at Shreveport at that time was to obtain payment in cotton from the State government of Louisiana for goods just furnished it by Jenny & Co., of Matamoros, in aid of a contract which Weil and his partner had made with the rebel governor of that State in 1863, the object of which contract was to supply the States with arms and munitions of war, to be imported through Mexico or by running the blockade, and upon which contract little had been done prior to the connection of the firm with Jenny; that the State was unable to pay in full for the goods of Jenny, and had not done so down to the close of the war, in 1865, and that out of this deficiency of cotton arose a claim against the rehabilitated State of Lousiana, which was prosecuted by Weil on a percentage, and at the expense of the foreign creditors of Jenny, and on which a large amount was paid. That having received his proportion of this payment Weil conceived the strikingly original idea of charging the Mexican Government with seizing from him this cotton, which his partner did not get from the State, and some 1,200 bales in addition. And finally, that the claim has been prosecuted by a *quasi* joint stock association, among whose shareholders were several of the claimant's witnesses, and that some of the witnesses have for some time been endeavoring to sell confessions of their own perjury.

In La Abra claim the papers now transmitted to the Department (consisting of the press-copy book, duly authenticated, of the Company's office at Tayoltita, covering the correspondence of its officers from January, 1866, to August, 1868, original letters of its treasurer and superintendent before and after the alleged abandonment, and other documents, all of which have been secured by the Mexican Government since the decision of the umpire,) show that the company was deceived as to the value of the mines, and that Bartholow, at least, aided in the deception. That its expenditures were ignorantly directed, and were much exaggerated by the company, the books showing them to have been not more than $141,472 up to the spring of 1867, when, after the company had tried to raise means in Mexico and failed, the superintendent's draft for $5,000 was refused by the treasurer. That part of this expenditure, which the witnesses swear was for 550 feet of the Nuestra Señora de Guadalupe mine, was in reality paid for 550 shares of the stock of Nuestra Señora de Guadalupe Company, whose claim for damages for the enforced abandonment of its mines was rejected by the umpire. That the company issued stock for the twenty-two-twenty-fourths of La Abra mine, instead of paying for it in gold, as sworn to by Bartholow, and that the remaining two-twenty-fourths belonged to a person, who, although an unsuccessful claimant against Mexico, did not charge her with having driven him from that valuable property. That there was no general hostility to Americans or special hostility to this company on the part of the Mexican people or authorities, but that, on the contrary, their relations to its officers were friendly, and that "prorogas" or extensions of title, were frequently granted to the company. That no onerous taxes were enforced and no loans not of a general character levied upon the company, and that these were refused payment with impunity, under the plea of lack of means. That no mule trains were ever taken from the company, and that it never owned any. That its employé was murdered by another of its employés, who was promptly tried, convicted, and shot by the military authorities. That no assault was made upon its buildings.

That the difficulty with the local authorities in June and July, 1867, (styled by the superintendent, in a letter to the treasurer, "a little spat with the officials, which was gotten through without much trouble,") was due to the cause stated by the witnesses for the defense, to wit, that the superintendent had, as expressed by him in the letter above referred to, "reduced the cash payment from one-third," and that the "spat" occasioned no inconvenience to the company. That the "ores" were worthless, the reduction of ninety tons yielding, according to the superintendent's report of August 5, 1867, less than $5 per ton, and the rest being so poor that, according to his report of October 6, 1867, it would not "pay to throw it in the river." That for this reason, if for no other, they were not carried off by Mexicans, and are still at the mines. That as early as July, 1867, the company was in debt at Tayoltita over $3,000, exclusive of the $5,000 draft above mentioned, upon which suit was afterwards brought by the Bank of California. That at the same time judgment by default was entered against the company in New York for over $50,000 in favor of J. H. Garth (a stockholder in but not a witness for the company) on certain notes of the company in a suit in which Ely, who swears he was the company's attorney from its inception, appeared for the plaintiff. That then all supplies from New York being cut off by the company, the superintendent was obliged, in order to keep up the semblance of operating the mines, to employ four Mexican miners, (of whom he says in his report to the treasurer, "We can do better with them when they are a little hungry,") on a promise to pay them in goods, at a heavy profit, one-half the value of the ore they might get out. That the superintendent was not imprisoned, but only told to consider himself in arrest (at his own hacienda) for alleged contemptuous treatment of a judge, and that he straightway complained to the prefect, after which no further restraint seems to have been imposed upon him. That no redress was denied the officers of the company, because no wrongs were inflicted upon them, although they seem to have written some truculent letters to officials in anticipation of difficulty. That the officers of the company were not ignorant of their rights as American citizens, inasmuch as Superintendent Bartholow proposed, if certain taxes were imposed upon him, to hoist the American flag, and to have them taken from under it by the military, the result of which threat was, as he explained it to Treasurer Garth in his letter of April 10, 1866, that instead of paying three or four thousand dollars he only paid thirty. That when Garth instructed Superintendent Exall, in his letter of July 10, 1867, to be firm in maintaining his rights as an American citizen in any difficulties with the authorities, the latter replied, on the 6th of October: "There is no difficulties about authorities, boundaries, or anything else concerning the mines and hacienda provided there is money on hand, and money *must* be sent." That Exall's trip to New York, which has been tortured into an enforced abandonment of the mines, was talked of for some time previously, and that it was made by him "to inquire into the intentions of the company," as stated in his letter of February 21, 1868, turning over to Granger the mines and property of the company. That Exall's relations to the company's property at Tayoltita did not cease until long after March, 1868, inasmuch as his letters to Granger up to July of that year direct him to extend the permission given to Judge Soto, not to let anybody see the books, &c., and detail a negotiation he was carrying on with some parties in the United States, hoping to inveigle them into the purchase of the mines in order to get the arrears of salary due himself and Granger, which, he says, "the old company refuse to pay us;" and moreover, that Exall was expected to return, since Granger, in August, 1868, promised the collector at Tayoltita that the taxes should be paid on the return of the superintendent in November. That the paid-up stock of the company, according to their report for 1877, the first made since 1868, when they swear the stock became worthless, had increased since 1868 from $157,000 to $235,000, which latter amount the president of the company, in his affidavit of Semptember 28, 1870, swore had been received from sales and subscriptions.

Finally, that some of the testimony offered by the company in its claim was forged by Adams, and that so much of it, not forged by him or others, as goes to sustain any allegation of the company on which the slightest claim against Mexico could be founded is rank and unblushing perjury.

In further elucidation of the questions involved in these claims the Government of Mexico refers to the printed arguments of Mr. Avila, which have been heretofore transmitted to the Department of State.

BENJ. WEIL vs. MEXICO.

No. 447.

CLAIMANT'S MEMORIAL.

To the Honorable William H. Wadsworth and Don Francisco Gomez Palacio, Commissioners on the Joint Commission of the United States of America and the United States of Mexico.

The memorial of Benjamin Weil, residing in the city of New Orleans, State of Louisiana, United States of America.

(1.) That the claimant has a just claim against the United States of Mexico, arising from injury to his property by the authorities of that republic, to the amount of three hundred and thirty-four thousand nine hundred and fifty dollars, gold currency, with interest thereon from 20th September, 1864, at the rate of twelve per cent. per annum, being the legal and customary rate of interest in the republic of Mexico, where the loss occurred.

(2.) Such claim arose on or about the 20th day of September, 1864, in the territory of the United States of Mexico, between Piedras Negras and Laredo, &c., by reason of loss and damage suffered by the claimant by the forcible and unlawful seizure of nineteen hundred and fourteen bales of cotton, average weights of bales five hundred pounds, or nine hundred and fifty-seven thousand pounds, of the value of thirty-five cents per pound, amounting to the said sum of three hundred and thirty-four thousand nine hundred and fifty dollars, which said cotton was, as aforesaid, unlawfully seized and taken possession of by the forces of the Liberal or Republican Government of Mexico, the President or Chief of which was Don Benito Juarez, which said cotton was on trains and being transported through said territory to the city of Matamoras, Mexico; and the said cotton, this claimant declares, was his individual property, and he was the sole owner thereof at the time of said seizure.

(3.) The claimant says that he then suffered loss of his said cotton of the value and to the amount of three hundred and thirty-four thousand nine hundred and fifty dollars, and that no part of the same was ever returned to him, or to any person for him, although he often requested and demanded the same from all persons in authority under said Government that he could approach.

(4.) The said claimant says that the facts and circumstances attending the loss and injury out of which the claim arises, and the facts and circumstances upon which the claim is founded, are as follows:

That in the year 1864 the said claimant was temporarily residing in the republic of Mexico, making the city of Matamoras generally his place of residence, and was engaged in buying cotton for the purpose of exportation, and was engaged in a lawful and legitimate business, and while his cotton was *in transitu*, and at the points heretofore mentioned, to the city of Matamoras, it was seized by the forces of the said Liberal, Constitutional, or Republican Government of Mexico, of which Don Benito Juarez was the President or Chief, and was forcibly taken by said forces from the possession of the claimant, and the same was done under no right or claim of said Government against said claimant.

(5.) The claimant says that this claim is preferred by him for and on his own behalf.

(6.) The claimant says that he was born in Bonywiller, Bas Rhin, France, and that his present place of residence or domicil is in the city of New Orleans, State of Louisiana, United States of America, and that my home or domicil at the time of the seizure of said cotton was in the said city of New Orleans, and that I am a naturalized citizen of the United States of America, and was so at the time of the seizure of my cotton, and still am a citizen of said Government, and have never owed allegiance to any other Government since I became a citizen of the Government of the United States; and I herewith file the naturalization papers showing that fact.

(7.) The claimant says the entire amount of the claim does now, and did at the time when it had its origin, belong solely and absolutely to me, and no other person is or ever has been in any way interested therein, or in any part thereof.

(8.) The claimant says that he has not, nor any person for him, ever received any sum of money or other equivalent or indemnification for the whole or any part of the loss or injury upon which his claim is founded.

(9.) The claimant says that this claim was not presented prior to the first day of January, 1869, to the Department of State of either Government, or to the Minister of the United States at Mexico, or to that of the Mexican Republic at Washington.

(10.) Proofs in support of said claim are filed with this memorial, and the claimant prays leave to call in and refer to any other proofs to be presented before this honorable Commission in support of his said claim, or to amend or add to his said memorial

or proofs, as may be deemed advisable and necessary, and in accordance with the facts and evidence.

(11.) That Fouke & Key, attorneys and counsellors-at-law, Washington, D. C., are duly authorized to act for this claimant in relation to said claim, and John J. Key, of Washington, D. C., is his attorney in fact, having full authority and power thereto.

Wherefore the claimant respectfully asks this honorable Commission to examine into the allegations and proofs in this matter, to the end that claimant may be paid the amount of this aforesaid just claim against the United States Government of Mexico.

And this claimant will ever pray.

BENJAMIN WEIL,
By JOHN J. KEY,
His Atty. in Fact.

FOUKE & KEY, *Solicitors and Attys. for Benjamin Weil.*

DISTRICT OF COLUMBIA,
County of Washington, ss:

John J. Key, being first by me duly sworn, says on his oath that he is the attorney in fact of the memorialist described in the foregoing memorial; that the said memorialist is absent from the District of Columbia, and that the facts stated in said memorial are true to the best of his knowledge, information, and belief.

JOHN J. KEY,
Attorney in Fact for Benjn. Weil.

Sworn to and subscribed before me, a notary public in and for said county and district, this twenty-fifth day of April, A. D. eighteen hundred and seventy.

[SEAL.] N. CALLAN,
Notary Public.

APPLICATION OF CLAIMANT AND TESTIMONY OF HIS WITNESSES.

I, Benjamin Weil, a citizen of the United States of America, do by these present declare that on or about the twentieth of September, eighteen hundred and sixty-four, I had on several trains in the Republic of Mexico and under my special control the following-described property, belonging solely to myself: Nineteen hundred and fourteen bales of cotton, average weight of five hundred pounds, or nine hundred fifty-seven thousand pounds, at thirty-five cents per pound, making three hundred thirty-four thousand nine hundred and fifty dollars. Said property was at that time then and there on the Mexican territory between Piedras Negras and Laredo, etc.; that it was seized and by force taken from me by the representative forces of the Republic of Mexico then in command of that portion of the country; that I often solicited the release of my property, but could obtain no satisfaction whatsoever; that I have never laid this claim before either the United or Mexican Governments asking payment thereof; that I have never transferred my rights or any portion thereof to any other person or persons; that I was at the time of the seizure of my cotton by the Mexican Government a citizen of the United States, as per annexed certificate of oath of my naturalization; that at the time of the seizure of my cotton by the Mexican Government I was and am now a citizen of New Orleans, Louisiana; that I was born in Bonywiller, Bas Rhin, France; am now forty-six years old, and have resided in the State of Louisiana since the twelfth of June, eighteen hundred and fifty; am a merchant by occupation; that I was at the time of the seizure of my cotton stopping at Matamoros, Mexico; that my property was not insured from the fact that no insurance could be effected on wagon or land transportation.

B. WEIL.

NEW ORLEANS, *September* 10, 1869.

Sworn to and subscribed before me this 13th September, 1869.

H. LOEW, *U. S. Com.* [SEAL.]

I, the undersigned, hereby certify that the above statement is correct.

GEO. D. HITE.

Sworn and subscribed before me by G. D. Hite this 13th September, 1869.

H. LOEW, *U. S. Com.* [SEAL.]

On the above date Daniel Taylor, J. O. Osborn, and George D. Hite testified that they had known Benjamin Weil to be a just and honest man, and that the losses he had experienced in Mexico were very great. On the 4th of December, 1869, naturalization papers were granted to Benjamin Weil by Judge J. O. Osborn in Rapides par-

ish, Louisiana, on evidence (not transmitted to the Commission) that Weil had been naturalized in that parish in 1853, and the record destroyed by the burning of the court-house in May, 1864. Subsequently E. N. Cullom, Alphonse Cazabat, William Hyman, Migue Rosenthal, and Ed. Weil testified to the citizenship of Benj. Weil. The credibility of the three former witnesses was certified to by Notary George W. Christy. Ed. Weil, David Goodman, and Alex. Marks testified to Ben. Weil's character and wealth, and René Klopman testified to the credibility of Goodman.

Hite's various affidavits and the certificates of character given by him to other witnesses were supported at different times by the testimony of F. T. Herron, Webster Flanagan, and Ed. J. Davis as to the character and credibility of Hite himself.

The following affidavits comprise all the evidence submitted in proof of the material allegations of the claimant:

Joint Commission of the United States of America and the United States of Mexico.

BENJAMIN WEIL
vs.
THE UNITED STATES OF MEXICO.

STATE OF LOUISIANA, PARISH OF ORLEANS,
City of New Orleans, ss:

Testimony on behalf of complainant, taken before me, George William Christy, a duly qualified notary public, on this 15th day of December, A. D. 1869.

EMILE LANDNER, being first duly sworn, deposes and says: I am thirty years of age; I was born in the State of Mississippi; at present I reside in the city of New Orleans, and my occupation is that of a cotton broker; I am not in any manner interested in the within claim, either directly or indirectly, nor am I agent or attorney of claimant, or of any person having an interest in the claim. At the time of the happening of the events I am about to relate I resided in the Republic of Mexico, and was engaged in the occupation of a supercargo; I have known complainant, Benjamin Weil, since the year 1861; I have always known him to be a just, upright, and honest man in all his transactions; he was wealthy, and speculated largely in cotton during the late Mexican war. From what I have heard from others upon the subject, and general report in Mexico and elsewhere, I believe that some time in the year 1864 the complainant, Weil, lost a large amount of cotton [over one thousand bales], captured and taken from him by the forces of the Liberal party in Mexico. The cotton then was worth about one hundred and sixty dollars per bale in gold.

EMILE LANDNER.

Sworn to and subscribed before me this 15th Dec., 1869.
GEORGE W. CHRISTY, *Notary Public.*

George D. Hite testifies to Landner's credibility and veracity.

ANCHUS J. MCCULLOCH, being first duly sworn, deposes and says: I am 29 years of age; I was born in New Orleans, Louisiana, and at present reside in said city, and my occupation is that of a speculator in cotton; I am not in any manner interested in the within claim, nor am I agent or attorney of complainant, or of any other person having an interest in the claim. At the time of the happening of the events I am about to relate, in the Republic of Mexico, I was engaged in the occupation of a supercargo. I have known complainant, Benjamin Weil, since the year 1862, and have always known him to be an upright and honest man, just in all of his dealings. He was a man of wealth, and during the late civil war in Mexico speculated very extensively in cotton. From general report on the subject, and from what I have heard stated by others, in Mexico and other places, I believe that the said complainant, Weil, in the year 1864, had over one thousand bales of cotton taken forcibly away from him by the forces of the Liberal or Juarez party in Mexico, and that said cotton, at the time of its capture or forcible detention by the forces of the Liberal party as aforesaid, was worth one hundred and sixty dollars per bale in gold.

A. J. McCULLOCH.

Sworn to and subscribed before me, this 15th Dec., 1869.
GEO. W. CHRISTY, *Not. Pub.*

George D. Hite testifies to McCulloch's credibility and veracity.

GEORGE D. HITE, being first duly sworn, deposes and says: I am 33 years of age. I was born in Richmond, Va. At present I reside in New Orleans, La. My occupation is that of a steamboat agent. I am not in any manner interested in the within claim, either directly or indirectly, nor am I agent or attorney of claimant, or of any person having an interest in said claim. At the time of the happening of the events I am about to relate, I was residing in Matamoras, Mexico, and my occupation was that of a contractor. On or about the month of September, 1864, the complainant, Benjamin Weil, was residing in Mexico, and doing business as a trader or speculator. I was well acquainted with him. At that time he had a very large amount of cotton —I should say about nineteen hundred bales (1,900). Said cotton, with other cotton, was forcibly seized and taken possession of by the forces of the Liberal or Juarez party, and detained. Said seizure was made in Mexican territory, between Piedras Negras and Laredo. Said cotton when seized was worth about $175 per bale. Complainant, Weil, at the time of the seizure of the cotton, was a citizen of the United States of America. I have know him since about 1855. During the civil troubles in Mexico he was a large speculator in cotton; had the reputation at one time of being one of the heaviest speculators in Matamoras. He was wealthy, and I have always known him to be a man of strictly honorable and upright principles, whose word could be depended upon at all times.

GEORGE D. HITE.

Sworn to and subscribed before me, this 15th Dec., 1869.

GEORGE W. CHRISTY, *N. P.* [SEAL.]

Christy certifies to credibility of Hite.

Joint Commission of the United States of America and of the United States of Mexico.

BENJAMIN WEIL
vs.
THE UNITED STATES OF MEXICO.

STATE OF LOUISIANA, PARISH OF ORLEANS,
City of New Orleans, ss:

Testimony on behalf of complainant taken before me, George William Christy, a duly qualified notary public, on this seventh day of February, A. D. 1870:

JOHN J. JUSTICE, being first duly sworn, deposes and says: I am thirty-seven years of age; I was born in the State of Louisiana; at present I reside at Alexandria, La., and my occupation is that of a stage agent. I am not in any manner interested in the within claim, either directly or indirectly, nor am I agent or attorney of claimant or of any person having an interest in the claim. At the time of the happening of the events I am about to relate, say in September, 1864, I was residing in the town of Matamoras, in the Republic of Mexico, and was engaged in driving a stage from Matamoras to Piedras Negras and other points on the road in Mexico. I am well acquainted with Mr. Benjamin Weil, the complainant in this case. That on or about the 20th (twentieth) day of September, 1864, I was with a train of wagons loaded with cotton, say a little over nineteen hundred bales (I think nineteen hundred and fourteen bales.) Said cotton was worth thirty-five cents per pound. It was worth in round numbers about three hundred and thirty thousand dollars. The bales would average five hundred pounds (500) to the bale. Said cotton was owned by Mr. Benjamin Weil. Said cotton was taken possession of by force by an armed force of the Liberal or Juarez party of the Mexican States on the route between Piedras Negras and Laredo, in the Republic of Mexico. That I was present and witnessed the taking of said property. The party taking possession of the property at the time claimed, and as I afterwards learned, belonged to the command of General Cortinas. They stated that Mr. Weil would get his cotton back, or he would be paid for it.

JOHN J. JUSTICE.

Sworn to and subscribed before me this 7th February, 1870.

GEORGE W. CHRISTY,
Notary Public.

Marcus and Pierre Solomon testify to the credibility of Justice, and Christy to that of the Solomons.

Deposition of John M. Martin, taken before me, the undersigned, a notary public in and for the parish of Orleans, State of Louisiana, on this 26th day of July, A. D. 1870, and intended to be used before the Joint Commission between the United States and Mexico, now sitting at Washington City, D. C., in the matter of the claim of Benjamin Weil against the Republic of Mexico, arising out of the illegal seizure of a large number of bales of cotton belonging to said Benjamin Weil, which was forcibly and unlawfully taken possession of by the Liberal forces of Mexico, under the command of General Cortinas, who commanded the entire district where this unlawful seizure occurred, and who was known to be acting under orders from Don Benito Juarez, President of said Republic of Mexico.

Deponent being sworn in accordance with law, declares on his oath that he was born at Belmont Co., Ohio; is now forty-five years of age, and that he now resides at New Orleans, Louisiana, and is by occupation a steamboat pilot.

That on or about the 20th September, A. D. 1864, he was riding in company of a large wagon-train loaded with cotton belonging to said Benjamin Weil, and to his certain knowledge this train had over nineteen hundred bales of cotton belonging solely to said B. Weil, which was destined to be delivered at the city of Matamoros, in the Republic of Mexico; and that on arriving with said train of cotton at a place (do not remember the exact name), but knows this to be between Piedras Negras and Laredo, that the entire train, as well as the cotton was taken possession of by the forces under the immediate command of General Cortinas. That he, deponent, was present at the time of this unlawful seizure, and that besides his own knowledge that the said property did so belong to the said Benjamin Weil, he was likewise informed by the train-master in charge of said train that the entire contents, say over nineteen hundred bales of cotton, was the sole property of said Benjamin Weil, and intended to be delivered by said B. Weil's order at Matamoros. He further states that the entire amount of over nineteen hundred bales of cotton was forcibly taken possession of by said forces under command of General Cortinas, who represented the Liberal Government of Mexico, and he affirms that he witnessed and was present at the taking of said property by said Liberal forces, and likewise of the turning loose of the mules and horses, and team conveying said cotton. That he witnessed all these at the place between Piedras Negras and Laredo at the time and date above-stated, and that the unlawful seizure was forcibly made by the Liberal soldiers under command of General Cortinas, and that the destination of said cotton was the city of Matamoros, where all produce was taken, then and there passed through the regular customs, Mexican, and then shipped abroad. He further declares that the said cotton, at the time of seizure, had not reached any Mexican custom-house, where the proper duty could have been demanded, and would have been paid. He further declares, on oath that said Benjamin Weil, the entire owner of the cotton seized, was considered at Matamoros, Mexico, a large operator in cotton, and he knows to his certain knowledge that said Weil has always paid duty at Matamoros, to the Mexican Government, on all cotton which he received and exported at and from Matamoros, this being the place where the said Weil temporarily resided for business purposes; he further declares, on oath, that he has known the said B. Weil for many years, and had often transaction with him, and from his own observation, as well as other parties who also transacted business with said Weil, he cannot but state that he has ever found him acting with honesty and integrity towards all. He also declares, on oath, that he is in no way connected or interested in this claim whatever, and that he is convinced, by his own personal witness and presence, of the said seizure; that the said cotton, say over nineteen hundred bales of cotton, was the sole property of said B. Weil, and that they were forcibly taken by the Liberal forces of General Cortinas, representing and known then to be an officer of high rank in the Liberal army of Mexico, the president of which Republic was Don Benito Juarez; and further deponent saith not.

JOHN M. MARTIN.

Personally appeared before me, the undersigned, a notary public in and for the parish and State aforesaid, John M. Martin, who signed the foregoing affidavit in my presence and swore to the same before me according to law. I certify that the said John M. Martin is well known to me to be the person represented in said affidavit. I further certify that I have no interest in this or any other claim before the Mexican Joint Commission, now in session at Washington, D. C. In testimony whereof I have hereunto set my hand and affixed my notarial seal of office, this 26th day of July, A. D, 1870, at the city of New Orleans, State of Louisiana.

ANDREW HERO, *Not. Pub.* [SEAL.]

In 1872 L. P. de la Houssaye and L. T. Murlock testified to the credibility of Martin.

Joint Commission of the United States of America and the United States of Mexico.

BENJAMIN WEIL
vs.
UNITED STATES OF MEXICO.

STATE OF LOUISIANA, PARISH OF ORLEANS,
City of New Orleans.

Testimony taken before Geo. W. Christy, notary public, February 17, 1872:

SAMUEL B. SHACKELFORD, being first duly sworn, deposes and says: I am 36 years of age; I was born in Marengo County, State of Alabama; I reside at present in the city of New Orleans, and my present occupation is that of a merchant; I am not in any manner interested in the within claim either directly or indirectly, nor am I agent or attorney of claimant, or of any person having an interest in the claim. In the months of August, September, and October of the year 1864, I was in the Republic of Mexico, acting as agent of the Confederate government in the clothing department, in the trans-Mississippi department of said government. I had previously known the complainant, Benjamin Weil, well; I knew him to be a man of large means, and dealing extensively in cotton. I was present at Alleyton, Texas, about the 1st Sept., 1864, when the complainant, Benjamin Weil, was taking out a large train loaded with cotton, as I understood, to penetrate the territory of the United States of Mexico toward Laredo. The train was loaded with or had on board about two thousand (2,000) bales of cotton, to the best of my observation and the general reports at the time, and I had an opportunity of knowing, as I was in company and contact with his clerks and agent daily; saw bills of lading signed in name of Benjamin Weil, for cotton; saw drafts paid by Benjamin Weil drawn on him for cotton, also orders, bills, &c.; saw bills paid for wagons, labor, transportation, &c., connected with the cotton. in name of said Benjamin Weil; and generally saw that all the details of the business connected with said cotton was carried on and conducted in the name of said complainant, Benjamin Weil, including payments of drafts, orders, labor, bills, &c., &c.; said complainant at the time being the largest operator in cotton in that section of the country; he was the sole owner and master of the cotton train and expedition; I do not know the exact value of the cotton, but it was generally supposed to be worth half a million of dollars or thereabouts, and I so regarded it at the time; I think the price of the cotton at the time was somewhere between 30 and 40 cents per pound, nearer 40 than 30; the bales of cotton were larger than the average size, and according to the best of my recollection from the bill of lading would average about 500 pounds in weight. My business as agent of the Confederate government called me from time to time both to Texas and the United States of Mexico. After having left Alleyton, I went over into Mexico in the prosecution of my business as agent aforesaid, where I again met complainant, Benjamin Weil's, said train loaded with cotton, on the road near Laredo, in Mexico; this was somewhere between the 10th and 25th of September, 1864; I camped with the train, and the next day after I joined it the train and its contents was seized and taken possession of by an armed force, under General Cortinas, by violence. The complainant, Benjamin Weil, made demand in person and through his agents and attorneys for the return of the cotton, which was refused, but the answer to his demand was that the Government of the United States of Mexico was good for the cotton or its value. The complainant, Benjamin Weil, has often requested me to give my testimony in this case, but my absence from the city, and necessity for traveling in my business, has prevented me from complying with his request until this time.

SAMUEL B. SHACKELFORD.

Sworn to and subscribed before me, this 17th February, 1872.
GEORGE W. CHRISTY, *Not. Pub.*

J. H. Hardy testifies to the credibility of Shackelford and Christy to that of Hardy.

GEORGE D. HITE, being first duly sworn, deposes and says: I am thirty-five years of age; I was born in Richmond, Virginia; at present I reside in New Orleans, and my occupation is that of a merchant; I am not in any manner interested in the within claim either directly or indirectly, nor am I agent or attorney of claimant or of any person having an interest in said claim; I have been a merchant in New Orleans for the last fifteen years, except during the war. During the war I was in Texas and the trans-Mississippi Department. During the year 1864 I was employed by the complainant, Benjamin Weil, as his agent to purchase and procure cotton for him in the State of

Texas, which I did, paying for the cotton so purchased in gold and greenbacks furnished to me by complainant, Benjamin Weil, for that purpose. I also procured cotton for him by taking it from parties in Texas who were indebted to him, and giving them receipts and discharges in full, in the name of said Weil, for their indebtedness to him. Whenever I so purchased and procured cotton, I hired teams and sent it to Allaton, in Texas, as a depot or starting point, from where it was to be shipped by trains through the United States of Mexico, via Matamoros, to foreign ports, Matamoros being the only point at which duties could be paid. I purchased and procured the cotton from planters, who kept no books or clerks. I kept memoranda of the amount of cotton so purchased and procured and the prices paid for the same, as also receipts; but all of these memoranda and receipts, together with other valuable papers belonging to Mr. Weil, were destroyed at the close of the war by disbanded Texas troops. Valuable papers belonging to myself were also destroyed at the same time. I was in Allaton, Texas, the place of depot or starting point, and assisted in making up the train which was to take complainant Weil's cotton into the United States of Mexico as aforesaid. The train consisted fully of one hundred and ninety (190) wagons, averaging eight (8) mules to each wagon, the mules being small, the soil on the black prairies being very stiff and hard, and the sand roads being very deep and heavy. The wagons averaged about ten bales of cotton each; at the least computation (1,900) nineteen hundred bales of cotton were loaded and shipped on the train. The whole cotton belonged to and was paid for by complainant, Benjamin Weil. He was by far the largest and wealthiest operator in cotton in the country. I was Weil's principal agent in purchasing cotton and superintending the getting up of the train and shipping the cotton. I repeat, that all the cotton shipped by the train, and amounting to at least nineteen hundred bales, belonged to and was paid for by complainant Weil. The wagons and mules, or the train itself, so-called, was hired by Mr. Weil, and was subject to his orders and directions. The cotton as it came into Allaton was overhauled for the purpose of being put in order; and where bales were small I enlarged them by repacking and baling, so as to make them weigh over five hundred (500) pounds to the bale. This was done for the convenience of packing and transportation. All of the cotton averaged over five hundred (500) pounds to the bale, and cotton at that time was worth from forty-five (45) to forty-eight (48) cents per pound in gold, irrespective of classification. I started the train with complainant's cotton (amounting to at least 1,900 bales) from Allaton, in Texas, in its way to the United States of Mexico in May 1864, to the best of my recollection with regard to dates. The train and cotton crossed the Rio Grande, in the United States of Mexico, about one hundred and sixty miles (160) above Brownsville, in the early part of September, 1864. That point of crossing was made for the sake of better roads there afforded. I did not travel with the train in Mexico, but went on to Matamoros. Whilst I was in Matamoros the men belonging to the train came into town and announced that the train and cotton had been captured by troops and forces belonging to the Liberal or Juarez Government, under the command of Cortinas. This same statement was also afterwards made to me by men and officers belonging to Cortinas' commands, and who assisted in capturing the train and cotton. This statement they made to me whilst I was still in Matamoros. After the train left Allaton, Texas, in May, 1864, I left the employ of Mr. Weil and proceeded directly to Matamoros, in Mexico, on business of my own as a contractor; but as my business called me up the Rio Grande in September, 1864, whilst so attending to my own business, I met said train and cotton at the point where it crossed the Rio Grande, 160 miles above Brownsville, and assisted in crossing it into Mexico. When I first gave my statement or testimony in this case on the 15th day of December, 1869, before Geo. W. Christy, notary, neither Mr. Weil or his attorney was present. Not having been informed by either Mr. Weil or his attorney upon what points my testimony was desired, I simply made a general statement, without entering into details; but having since learned from the attorney of Mr. Weil that when I made my first statement he was ignorant of my knowledge of facts and details, which he now deems of importance, at his instance, request, and summons, I now extend my testimony and give this statement in detail. In answer to a question by Weil's attorney, I add that the distance from Allaton, Texas, to the point where the train crossed the Rio Grande is called seven hundred miles. Such a train would hardly average eight miles a day in travel. I repeat that I met the train at the point where it crossed the Rio Grande whilst on business of my own. That I assisted at its crossing and immediately left it, proceeding directly to Matamoros on my own business.

GEO. D. HITE.

Sworn to and subscribed before me this 12 March, 1872.

GEO. W. CHRISTY, *Not. Pub.*

I.—PURCHASE OF COTTON.

Evidence before the Commission.

Neither the claimant's memorial sworn to by his attorney in 1870, nor his "application" or statement of his case sworn to by himself in September, 1869, nor any of the testimony filed by him prior to March, 1872, gave the Commission any information as to how, when, or where the large amount of 1,914 bales of cotton came into his possession. Up to that time the few witnesses testifying in behalf of the claimant had treated of the cotton as having been on the Mexican side of the Rio Grande on or about the 20th of September, 1864, without saying where it came from or how it got there. At that late day it seemed important to Mr. Weil or his representatives to give some account of the history of the cotton prior to its appearance in Mexico. Two witnesses were therefore brought forward, the first in point of time being Mr. Samuel B. Shackelford.

Mr. Shackelford says:

"In the months of August, September, and October of the year 1864, I was in the Republic of Mexico, acting as agent of the Confederate government in the clothing department in the trans-Mississippi department of said government. I had previously known the complainant, Benjamin Weil, well; I knew him to be a man of large means, and dealing extensively in cotton. I was present at Alleyton,* Texas, about the 1st September, 1864, when the complainant, Benjamin Weil, was taking out a large train loaded with cotton, as I understood to penetrate the territory of the United States of Mexico toward Laredo. The train was loaded with or had on board about two thousand (2,000) bales of cotton to the best of my observation and the general reports at the time, and I had an oportunity of knowing, as I was in company and in contact with his clerks and agent daily; saw bills of lading signed in name of Benjamin Weil for cotton; saw drafts paid by Benjamin Weil drawn on him for cotton; also orders, bills, &c.; saw bills paid for wagons, labor, transportation, &c., connected with the cotton in name of said Benjamin Weil, and generally saw that all the details of the business connected with said cotton was carried on and conducted in the name of said complainant, Benjamin Weil, including payments of drafts, orders, labor, bills, &c., &c., said complainant at the time being the largest operator in cotton in that section of the country. He was

* "Alleyton" is in Colorado county, Texas, about 260 miles from the Rio Grande. There is no such place as "Allaton" in Texas.

New Evidence offered by Mexico.

It is proposed under this head to show that the claimant was a man of very limited means for a long time prior and down to the month of May, 1864, the date given by Hite, and adopted by claimant's counsel, as that of the collection of the cotton at "Allaton," and that his resources, such as they were, were involved in a partnership with a number of other persons, some of whom claimed to be French subjects, none of whom are parties to this claim or witnesses in its behalf, and several of whom denounce it as a fraud; that the circumstances of the claimant were in no manner changed down to the 1st of September, 1864, the date given by Shackelford as that on which he saw the cotton and train at Alleyton; and that neither Weil nor Hite were at "Allaton," or Alleyton, at the dates specified, engaged in hiring teams, or collecting 1,914 bales, or any other amount of cotton.

In proof of these facts affidavits, original letters and documents are herewith transmitted, from which the following extracts are made:

Certified copy of articles of co-partnership of Levy, Bloch & Co., entered into before Joel H. Sandoz, notary public, Opelousas, La., March 11, 1863, and signed by J. Bloch for Bloch, Firnberg & Co., and Isaac Levy for Isaac Levy & Co.: "The partnership is to commence on the first day of March instant, and is to end six months after the war. All transactions made by any member of said firm, and at whatever time and place, during the time of co-partnership are and shall be for the benefit of said firm."

Certified copy of the agreement for the dissolution of the above partnership, dated New Orleans, Oct. 11, 1865.

Marx Levy, of 281 Baronne street, New Orleans, testifies, July 30, 1877, before Robert J. Ker, notary public, New Orleans: Has known Benjamin Weil from boyhood, in Alsace, Europe, and subsequently, since 1852, in Louisiana. In that year Weil was a pedlar; some time during the year Weil was employed as bookkeeper for the firm of Isaac Levy & Co., composed of deponent, Isaac and Jacob Levy. In 1854 Weil was admitted to partnership in said firm. In 1863 said firm formed a partnership with Bloch, Firnberg & Co., composed of Joseph Bloch, Salomon Firnberg, and Samuel E. Loeb. Isaac Levy and Joseph Bloch were to attend to the business in Louisiana, Loeb in Texas, Benjamin Weil to be in foreign countries, and deponent to be in Matamoros. Weil and deponent were together in Matamoros for some time. During a six

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the sole owner and master of the cotton train and expedition. I do not know the exact value of the cotton, but it was generally supposed to be worth half a million of dollars or thereabouts, and I so regarded it at the time. I think the price of the cotton at the time was somewhere between 30 and 40 cents per pound, nearer 40 than 30. The bales of cotton were larger than the average size, and according to the best of my rocollection from the bill of lading would average about 500 pounds in weight."

On the 1st of April, 1872, was filed the deposition of George D. Hite, who, although he had twice in 1869 given his testimony in behalf of the claim, and had certified to the character of his fellow-witnesses, had neglected to make any mention of the facts surrounding the acquisition of the cotton by Weil and its transportation to Mexican territory. In 1872, Mr. Hite learning that these facts were deemed important by the attorney of Mr. Weil, proceeded to supply their omission in the following terms:

"During the war I was in Texas and the Trans-Mississippi department; during the year 1864 I was employed by the complainant, Benjamin Weil, as his agent to purchase and procure cotton for him in the State of Texas, which I did, paying for the cotton so purchased in gold and greenbacks furnished to me by complainant, Benjamin Weil, for that purpose. I also procured cotton for him by taking it from parties in Texas who were indebted to him, and giving them receipts and discharges in full, in the name of said Weil, for their indebtedness to him. Whenever I so purchased and procured cotton, I hired teams and sent it to Allaton, in Texas, as a depot or starting point from where it was to be shipped by trains through the United States of Mexico *via* Matamoras to foreign ports, Matamoras being the only point at which duties could be paid. I purchased and procured the cotton from planters, who kept no books or clerks; I kept memoranda of the amount of cotton so purchased and procured, and the prices paid for the same, as also receipts, but all of these memoranda and receipts, together with other valuable papers belonging to Mr. Weil, were destroyed at the close of the war by disbanded Texas troops; valuable papers belonging to myself were also so destroyed at the same time. I was in Allaton, Texas, the place of depot or starting point, and assisted in taking up the train which was to take complainant, Weil's, cotton into the United States of Mexico, as aforesaid. The train consisted fully of one hundred and ninety

New Evidence offered by Mexico.

weeks' absence of deponent at Havana, Weil remained at Matamoros, doing nothing, supporting himself from the partnership means. Deponent has often given him money to pay his current expenses. Weil had no means outside of the partnership. On his return from Havana deponent met Weil at Houston, Texas, and was informed by him that he had arranged with C. F. Jenny, from Switzerland, to import Jenny's stock of goods at Matamoras for the State of Louisiana. The Governor of Louisiana turned over to Weil and Jenny small lots of cotton; owing to difficulties with the Texas cotton bureau only a few hundred bales came through. The goods were delivered at Navasota, Texas, to the authorized agent of the State of Louisiana. "I know this claim of Benjamin Weil against the Republic of Mexico is a base fabrication, and a fraud from its beginning to the end."

S. Firnberg testifies before notary Theodule Buisson, New Orleans, August 4, 1876; was a member of the firm of Bloch, Firnberg & Co., of Opelousas, which consolidated in March, 1863, with Isaac Levy & Co., of Alexandria, under the name of Levy, Bloch & Co.; Benjamin Weil was a member of the firm. None of the firm had any property outside of the partnership. Benjamin Weil was a party to the contract with Governor Moore, of Louisiana, ratified by Governor Allen, his successor, to import for the State ammunition, cotton cards, clothing, arms, &c., receiving cotton in exchange. Weil had no individual resources to carry out this contract. In 1864 Weil formed a partnership with Gustave Jenny, of Matamoros, for his firm of Levy, Bloch & Co., his name only being used. "Since the time of our partnership I have never heard of any claim against the Government of Mexico, by our firm; and I know of my personal knowledge that the claim of Benjamin Weil against the Government of Mexico was fraudulent. At the time he made that claim, as being a claim of his own, he willfully stated what he knew to be untrue, I was then a partner and interested in all transactions, gains or losses, up to the dissolution of the partnership, which took place on the 19th day of December, 1865, and I know that claim to be a fraudulent one. I had access to the books and papers, and have never seen or heard of any such claim existing. The first I ever heard of it was through the public press, and that was in the latter part of last year. I then denounced it as a swindle, and now pronounce it to be so."

Samuel E. Loeb testifies, in answer to interrogatories, before the above notary,

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(190) wagons, averaging eight (8) mules to each wagon, the mules being small, the soil on the black prairies being very stiff and hard, and the sand roads being very deep and heavy. The wagons averaged about ten bales of cotton each; at the least computation (1,900) nineteen hundred bales of cotton were loaded and shipped on the train. The whole cotton belonged to and was paid for by complainant, Benjamin Weil. He was by far the largest and wealthiest operator in cotton in the country. I was Weil's principal agent in purchasing cotton and superintending the getting up of the train and shipping the cotton. I repeat that all the cotton shipped by the train, and amounting to at least nineteen hundred bales, belonged to and was paid for by complainant, Weil. The wagons and mules, or the train itself so called, was hired by Mr. Weil, and was subject to his orders and directions. The cotton, as it came into Allaton, was overhauled for the purpose of being put in order, and where bales were small I enlarged them by repacking and baling, so as to make them weigh over five hundred (500) pounds to the bale. This was done for the convenience of packing and transportation. All of the cotton averaged over five hundred pounds (500) to the bale, and cotton at that time was worth from forty-five (45 cts.) to forty-eight (48 cts.) cents per pound in gold, irrespective of classification. I started the train with complainant's cotton (amounting to at least 1,900 bales) from Allaton, in Texas, in its way to the United States of Mexico, in May, 1864, to the best of my recollection with regard to dates. * * * * When I first gave my statement or testimony in this case on the 15th day of December, 1869, before George W. Christy, notary, neither Mr. Weil or his attorney was present, not having been informed by either Mr. Weil or his attorney upon what points my testimony was desired, I simply made a general statement, without entering into details, but having since learned from the attorney of Mr. Weil that when I made my first statement he was ignorant of my knowledge of facts and details, which he now deems of importance, at his instance, request, and summons, I now extend my testimony, and give this statement in detail. In answer to a question by Weil's attorney, I add that the distance from Alleyton, Texas, to the point where the train crossed the Rio Grande is called 700 miles."

New Evidence offered by Mexico.

August 7, 1876: Has known Benjamin Weil since 1859 as a member of the firm of Isaac Levy & Co., of Alexandria. "In February or March, 1863, this firm, through Marx Levy and Ben Weil, proposed to form a partnership with Bloch, Firnberg & Co., of Opelousas, Louisiana, consistimg of Joseph Bloch, Salomon Firnberg, and S. E. Loeb. Mr. Weil showed documents to establish that he and Marx Levy had been appointed as State agents for the State of Louisiana, on the strength of which a partnership was formed, taking effect from the first of March, 1863, under the style of Levy, Bloch & Co. I think the articles of agreement were executed before Joel H. Sandoz, a notary in Opelousas; the main office of said combined firms was located at Opelousas, the place where the books and papers were to be kept; the understanding was then to import such goods as the State of Louisiana might require *via* Mexico, as far as practicable. Mr. Weil was to start at once for Europe to make the necessary purchases, Mr. Marx Levy was to remain at Matamoras to receive the goods and expedite shipments, and myself was to be located at Houston, Joseph Bloch in Opelousas, Isaac Levy in Alexandria, for the purpose of dividing the goods as the State government might require. I remained at Houston all the time, with the exception of sixty days during the year 1863. I was also absent from Houston during the month of April and the first days of May, 1864, on a visit to Eagle Pass, passing through Alleyton, St. Antonio, &c. I stopped in Alleyton, on my way out, fully one week with my agents, John Rosenfield and Sons, and on my return I staid there at least two days. Mr. Weil remained in Matamoros instead of going to Europe, during 1863. Mr. Marx Levy made one or two trips to Havana.

Q. How were these goods to be paid for that you import? A. Isaac Levy & Co. not having funds sufficient, applied to us for that partnership for the purpose of obtaining ample means. The means used by the joint firms arose from the sale of sugar which had to be transported by land to Houston, and by the shipment of Louisiana cotton to Houston also; also several hundred barrels of Louisiana rum. The rum and sugar were sold in Houston by me and my agents, and I bought cotton for the same, shipped it out by water to Havana and Europe. Marx Levy while in Havana had purchased for the account of the firm an interest in two schooners known as the Hyde and Anna Gibberson. He was also commanding the schooner Star, subsequently schooner Rosalie. These schooners were laden in part by the

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Evidence before the Commission.	*New evidence offered by Mexico.*
	cotton received from Louisiana, and from the proceeds of the rum and sugar sold in Houston. Q. What was Weil doing in Matamoros at that time? A. Not a thing, to my knowledge. Q. Did you furnish any goods to the State of Louisiana in 1863? A. Some goods came in by schooners, and they were seized by order of General Magruder, for which I subsequently received eighty-three bales of cotton. Q. In 1864, in the month of April, you say you went to Alleyton and returned in May following; had you at that time any cotton there? A. I had there some fifty or sixty bales, and some thirty-two bales at Eagle Lake, in the hands of Matt. Barrett. I shipped that cotton to Matamoras. Q. Did you ever hear of the safe arrival of that cotton? A. Owing to the requirements of the Cotton Bureau, established some time during the year, great difficulties were encountered to get the permits from the State of Louisiana for the passage of this cotton to Mexico, permits being required from the military authorities to transport cotton into Mexico. After a long delay I finally ascertained of the safe arrival of these cottons. Q. Were you in constant correspondence with Mr. Weil, and did he keep you posted with his doings? A. Yes; we exchanged letters, and were in constant communication on all subjects. During my stay in San Antonio I received a letter from him in which he informed me that he was coming to Houston, via Laredo I think, with a large stock of goods obtained through some connection formed with the house of Jenny & Co., through Gustave Jenny, destined for the State of Louisiana. Q. When did these goods arrive? A. I never saw the goods myself, though I know that the goods were delivered to Mr. Emory Clapp, agent and commissioner of the State of Louisiana, at Navasota, Texas, during the month of May, 1864. Q. Where was Weil when these goods were delivered? A. I think he informed me by letter that he was at Navasota. Q. How were you paid for these goods? If in cotton, state how it was exported, and did it arrive safely? A. There was cotton enough received from the State to pay freight and duties on the imported goods delivered; the balance of cotton due for the goods the Governor of the State had promised to deliver it at certain given points within ninety days after the reception of the goods. Q. What became of the cotton you received, mentioned above? A. All such

Evidence before the Commission.	*New evidence offered by Mexico.*
	cotton received by me in part payment of the above goods was shipped to J. C. Baldwin & Co., at Alleyton; the bulk of the cotton, however, was shipped from from Navasota to Alleyton direct to the same firm, J. C. Baldwin & Co. Q. How do you know this cotton was shipped to J. C. Baldwin & Co.? A. Mr. Gustave Jenny, who represented the house of Jenny & Co., of Matamoras, from whom these goods had been obtained, and for whose benefit this cotton was shipped, made a deposit of money with me to defray the expenses, such as freight from Navasota to Alleyton, storage, rebaling and shipping, upon the presentation of bills from J. C. Baldwin & Co., of Alleyton. Q. Did Baldwin & Co. ever ship that cotton to Matamoras, and did it arrive there safely? A. They did on different trains, and at different times, as fast as permits for exportation could be obtained, and it arrived safely, for I never heard of any loss. Q. How was that cotton marked, and in what form were the bills of lading? A. I don't recollect the shipping mark; the bills of Baldwin & Co. came to me always in the name of Weil & Jenny. Q. Did Weil & Jenny supply you with funds for the payment of these charges, or did Weil do it alone? A. Exchange drawn in Matamoras was sent to me by Jenny & Co., of Matamoras, to be placed to the credit of Weil & Jenny, at various times. I had to advance funds appertaining to the firm of Levy, Bloch & Co., for the payment of charges on cotton for Weil & Jenny. The bulk of their exchange was received in the latter part of 1864 and beginning of 1865. Q. Did not Weil, in the firm of Weil & Jenny, represent the firm of Levy, Bloch & Co.? A. I so understood it from the articles of agreement and from correspondence with the partners, and from Weil himself. Q. You say you were acting for these parties, and in behalf of the State of Louisiana—by what authority did you represent them? A. By powers of attorney which I held. Q. Had you accumulated at Alleyton or in its neighborhood, or did you have at any time during the months of May, June, July or August and September, any large amount of cotton? A. No, I had in Houston about two hundred and thirty bales, some 150 to 200 bales at Alleyton, and some 30 bales at Columbia, which the schooner could not load. Q. Was this cotton shipped, and was it

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	satisfactorily accounted for? A. It was shipped and accounted for satisfactorily, to the best of my knowledge. * * * * Q. What became of the books and papers of the firm of Levy, Bloch & Co? A. The main books of the firm, I believe, are yet in Opelousas—some of the correspondence and the cash-book of Weil & Jenny I once had in my possession. Q. Did you ever hear of any of the valuable papers of Weil & Jenny being lost or destroyed? A. No; not to my knowledge. Q. Was the partnership of Levy, Bloch & Co., dissolved? A. It was. The information of the dissolution of the firm of Weil & Jenny I obtained first from a letter of Ben. Weil, and subsequently by Mr. Jenny. Q. Among the assets, were there any large claims unsettled and uncollected? A. No; as will more fully appear by the act of dissolution, passed before Abel Dreyfoos, notary in this city, the date of which I cannot recollect." *Affidavit af E. W. Halsey:* "Before me, Theodule Buisson, a notary public for the parish of Orleans and the city of New Orleans, therein residing, personally came and appeared Mr. E. W. Halsey, of this city, who being duly sworn, deposes and says: I was private secretary to Gov. T. O. Moore during his term of office, beginning in January, 1860, and also to Gov. Henry Watkins Allen during his administration, which closed with the surrender of the Confederate forces in May, 1865; I was cognizant of the transactions between Gov. Moore and Benjamin Weil, then representing the firm of Weil & Levy. Gov. Moore made Weil & Levy, his partner, agents for the State for importing supplies, then much needed. This agency was recognized subsequently by Gov. Allen as to B. Weil and his partner, Levy, and also as to his partner, Gustave Jenny. I had thorough knowledge of these transactions at the time, and prepared much of the correspondence and many of the contracts and orders relating thereto. The goods imported by Weil & Levy by the schooner Delphina, and those imported *via* Matamoros by wagon train were received by Gov. Allen, and employed for the relief and benefit of the distressed citizens of Louisiana and adjoining sections of Texas and Arkansas. To the best of my knowledge and belief, the said Weil, Levy, and Jenny acted exclusively with Gov. Moore and Gov. Allen, and at no time for the military department. Their supplies were employed for the relief of the impoverished people. They were paid for

Evidence before the Commission.	*New Evidence offered by Mexico.*
	in cotton chiefly, and permission to export the same was obtained by Gov. Allen from military commanders. From frequent conversations with Weil and Jenny I was led to believe that the capital for these transactions was furnished, wholly or chiefly, by Mr. Gustave Jenny, or Jenny & Co., of Matamoros. All these transactions during the year 1863 and 1864 were at the time familiarly known to me. I have no knowledge of transactions in cotton for export during the above designated period by Weil, Levy, Jenny, or either of them, except in cotton furnished, as above stated, by Gov. Allen, representing the State of Louisiana. The latter had a great deal of difficulty in obtaining cotton suitable for export in sufficient quantity to meet his obligations to Weil & Jenny. There was much difficulty in obtaining the requisite military orders and permits for the export of cotton from the then existing cotton bureau, established by order of Gen. E. Kirby Smith, commanding trans-Mississippi Department, during the year 1864. Permits from the cotton bureau were indispensable for the transportation of cotton through Texas or Louisiana to seaport or Mexico." *Affidavit of Louis Scherck:* "Before me, Theodule Buisson, a notary public for the parish of Orleans, and the city of New Orleans, therein residing, personally appeared Mr. Louis Scherck, of this city, who being duly sworn deposes and says: I am familiar with the writing and signature of Mr. Ben. Weil and of Mr. Gustave Jenny, for having seen them write and sign very often. I have been in the employ of Jenny & Co., of Matamoros, and subsequently an interested partner in the year 1864. In the end of 1863 Ben. Weil was in Matamoros doing nothing; he then informed Gustave Jenny that he had a contract with the Governor of the State of Louisiana, and that if Jenny was willing to furnish the stock of goods he had on hand they would take it to the State of Louisiana, Ben. Weil not investing any money to my knowledge; they took the stock and delivered it, with my assistance, by request of C. F. Jenny, to Emory Clapp, the State agent of Louisiana at Navasota, Texas; they received some cotton in part payment for those goods; this transpired during the summer of 1864. I afterwards returned to Matamoros; I was there in the latter part of the year. I have never heard of any cotton having been taken by the Cortina forces belonging to Benjamin Weil. If such a thing had happened I would certainly have heard of it at the time. I am aware that Weil & Jenny

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	never got paid for the above-mentioned goods during the time I was with them. In the latter part of 1863 C. F. Jenny offered me all the merchandise they had at my disposal, giving me half the profits the stock may realize and keep me harmless for all losses except my labor. I then proposed to Ben. Weil, who was anxious to get in some business, to furnish the means of transporting the goods and pay duties on same, giving him one-half of my share in the profits. He agreed at the time to the same. After engaging wagons, he flew the track and withdrew. After my leaving Matamoras with a stock of merchandise for Pietras Negras (Mexico) Ben. Weil proposed to Gustave Jenny to make to him the offer he (Jenny) had made to me, that he would accept, which was consummated by Gustave Jenny. C. F. Jenny hearing of it, authorized me to go and look after these goods, which I did. Weil had no means of his own; the means came through C. F. Jenny. I, as an interested partner of C. F. Jenny, had occasion to know this, and the transaction bearing upon the subject, having access to the papers and books. I then held C. F. Jenny's power of attorney." *J. C. Ransom*, the Confederate Quartermaster in charge of the purchase and shipment of cotton, at San Antonio, from May, 1864, to May, 1865, testifies, August 14, 1876, before J. W. Culpepper, notary public of Fulton county, Georgia: "I never heard of Benjamin Weil. * * * * I had a very large and extended acquaintance, and constant intercourse and business connections with contractors and persons engaged in transporting cotton from the interior of Texas to the Rio Grande river. * * * In my judgment, there never was, during the war between the States, any one team of wagons that transported nineteen hundred bales of cotton. The time necessary to collect so large amount of cotton, the capital that would be required to pay for so large a quantity of cotton, and the amount necessary to pay for advance freights, and the scarcity of water and grass along the routes for such a large number of animals, would preclude all reasonable possibility." *J. C. Evins*, a former United States deputy collector of customs at Laredo, Texas, and a resident of that place from 1858 to 1869, testifies before J. W. Culpepper, notary public, of Fulton county, Georgia, August 14, 1876: "I am well acquainted with all the principal persons on both sides of the Rio Grande, from its mouth to Piedras Negras, * * * I never heard of Benjamin Weil; * * * I do not be-

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	lieve that any one train of nineteen hundred bales of cotton, belonging to one individual, ever traveled across Texas into Mexico." *S. E. Loeb* testifies: "Q. Do you know Geo. D. Hite? A. I do. Q. What connection had he with Weil & Jenny, and when did he enter their service or join their firm? A. As near as I can recollect, Mr. Gustave Jenny informed me that if Mr. George Hite arrives at Houston, that I should take good care of him, recommending him as a clever, good New Orleans boy. I think Mr. Hite presented himself at Houston some time during January, 1865. Mr. Hite was not doing anything for sometime. I requested him to go to San Antonio and look after the collection of a piece of exchange which I had sent down for collection for the interest of Weil & Jenny. Q. Did Hite ever have any business connection with Weil and Jenny prior to January, 1865? A. None whatsoever to my knowledge. Q. Did you ever hear of his being at Alleyton in May, June, July, August, or September, 1864, purchasing cotton on account of Weil & Jenny? A. No; I know they had no cotton buyer, and I never heard of Hite's being in Texas at that time; and, if my recollection serves me right, he was detailed from the State service by Governor Allen in 1865, to assist Weil & Jenny to fix the cotton in order at various places, and get it started from Alleyton to Rio Grande. I recollect that the bridge at Richmond Texas, was broken, and that Mr. Hite attended to the crossing of some cotton. Q. Was all this in the year 1865? A. It was." *B. C. Brent* testifies before Theodule Buisson, notary public, of New Orleans, August 6, 1876, that he was stationed at Shreveport, Louisiana, as transportation agent of the trans-Mississippi department, under General E. Kirby Smith, in 1864. Knew George D. Hite; in the spring of that year Hite was captain of the steamboat Countess. After that time he went into the Quartermaster's Department of the State of Louisiana; is certain that Hite was there in August, September, and October, 1864. "I knew S. B. Shackelford, also; he was said to be a Lieutenant in the Confederate States army; he was a sort of a *quasi gambler*." *R. F. Britton*, steamboat agent, testifies, before Theodule Buisson, notary public, New Orleans: "Was in Shreveport with intervals of short periods, during the whole year 1864, George D. Hite was at

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that time in some department of the Government, at Shreveport, I think in the department of the State of Louisiana."

John J. Hope testifies before John W. Wheaton, notary public for Caddo parish, Louisiana: "I know George D. Hite, personally, and that he lived in the city of Shreveport, Louisiana, during a part of the months of May, June, July, and August, A. D. 1864, his occupation at that time was steamboating, and was also connected with the Quartermaster's Department of the confederate army."

W. R. Boggs, late Brigadier General C. S. A., Chief of Staff to General E. Kirby Smith, testifies before John W. Corson, notary public, District of Columbia, August 17, 1876: "I was at Shreveport, Louisiana, headquarters of the Department, throughout the year 1864; that I knew George D. Hite, and that he was there from time to time throughout the year—that is to say, that I saw him frequently and continually throughout the year aforesaid. Also, I do not know Benjamin Weil.

Colonel J. C. Wise, former quartermaster at Shreveport, Louisiana, writes to Colonel I. W. Patton, Adjutant General of Louisiana: "Rapides parish, Louisiana, September 28, 1877: Dear friend, your letter of the 12th ult. has just been received, and I hasten to reply; you wish to know where Mr. George D. Hite was in 1864; he was a clerk in the post quartermaster's office, at Shreveport, under Captain T. W. Meure; I think Mr. Hite left Shreveport in the latter part of sixty-four, or the winter of sixty-five, I am not positive as to dates."

In identification of certain original letters and papers which are herewith submitted:

Jacques Levy, of 281 Baronne street, New Orleans, testifies before Theodule Buisson, notary public, New Orleans, August 7, 1876, that he is familiar with the handwriting of Isaac Levy, Marx Levy, and Benjamin Weil,* having seen them for more than 20 years write and sign their names; has examined a bundle of letters written by each of them, and recognizes the handwriting and signatures as theirs, and has written his name across several of them to identify them.

E. W. Halsey testifies: "I have this day certified to the genuineness of a letter, wholly written and signed by Thos. O. Moore, Governor, dated at Alexandria,

* A comparison of Weil's signature attached to his "application" with that of the letters written by him would alone establish their authenticity.

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Sept. 4, 1863; also to a statement wholly written and signed by B. Weil, dated Oct. 18, 1864, having often seen each of them write and sign their names. I have also certified to the genuineness of two official letters addressed to S. E. Loeb, both wholly written and signed by myself as private secretary to Gov. Allen, dated Nov. 28, 1864, and Dec. 31, 1864; also to a copy of a military order dated Dec. 15, 1864. I am familiar with the writing and signature of Benj. Weil. I have this day examined a number of letters written and signed by him in 1864 and 1865, all of which letters I have identified by writing my name in red ink across the face thereof. I am less familiar with the writing and signature of G. Jenny, but believe the letters to which I have attached my initials in red ink (E. W. H.) are genuine, and wholly written and signed by him."

Louis Scherck testifies: "The letters shown to me marked [E. W. H.] in red ink I recognize to be in the writing of Gustave Jenny, and under his signature, and those signed E. W. Halsey, in red ink, are written and signed by Benjamin Weil, all of which I recognize as being written and signed by them."

EXTRACTS FROM ORIGINAL LETTERS AND DOCUMENTS.

B. Weil to Bloch, dated Grande Cheniére, (Cameron parish, La.,) March 17, 1863, post-marked March 21, two five cent Confederate postage stamps canceled, outside address Messrs. Bloch, Firnberg & Co., Opelousas. The first part of letter refers to schooners. "Cotton is selling here at 20c. You better buy if you can get it at 11. * * * * After I get to Houston I shall let you know how I intend to get off. It depends a good deal how Magruder will receive me."

Weil to Bloch, Lake Charles, March 19, '63: Is back to the lake; "schooner had not arrived when I left." Is waiting for stage to go on to Houston; no news. "Let Isaac know what I am about. * * * * Should the schooner come while I am gone, Goos will send you an express."

Weil to Bloch, Nibletts' Bluff, (Calcasieu parish, La.,) March 27, 1863: Has been here a week, and heard from nobody. "Shall leave on the boat for Houston, if she ever comes." Learns that rum is falling in Houston, liquors being brought in from Mexico, and advises sale. "Marx tells me that him and Loeb chartered a schooner at Orange; 70 bales cotton; ignorant on what terms. * * * * Tell Isaac that the Bayou Bœuf teams have not come yet.

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	It seems that permission is granted by our othorities to sudden men to run the blockade to N Orl and back; may be your Genl knows something about it. It is now over a month I left home, and ought to be in Mexico by this time." *Weil to Bloch*, Niblets' Bluff, March 30, 1863: "I can't well advise you, but it seems to me that I would keep all the Rhum at home, and sell at about $15, if you can. * * * * It is strange that neither Marx nor Loeb wrote to me. I shall write to Isaac also. Any letters for me from Houston. I shall have them forwarded to you and you might open them and communicate with Isaac." *Weil to I. Levy*, "Houston, May 5, 1863: Dear Isaac—Yours of the 27th came to hand this morning; glad to hear that all is not lost yet. This letter will, if possible, be handed to you by Col. * * * * of whom I spoke to you in my letter previous, and with whom I entered into a contract for exporting cotton. Mr. * * * interested as his partner. We bought 18 teams, and chartered 6 or more in Falls county, where Gassway lives, also Williams, whom I wanted to get as wagonmaster, but as he belongs to a Reg't I couldn't get him out, and therefore need De Solo again worst than ever. Marx went up there to get cotton, and I have not heard from him since. * * * * Negroes sell, average, 3,500 to 4000 piece. We were waiting for Meyer with the money, as Rhum can only be sold below cost, and we wish to hold on to it, and we will try to get along till reinforcement comes on. * * * * Cotton 45 c.; falling in Mexico, only worth 30 c. in Matamoros." "*Received of Levy, Bloch & Co.*, in Falls county, Texas, (50) bales of cotton, containing or weighing ——— pounds, in good order, which I agree to deliver at Brownsville, Texas, to John Marks & Co., in the like good order (unavoidable accidents excepted.) They paying freight on forty-two bales of same at the rate of eleven cents (11 cts.) per pound in gold; 8 (eight) bales of said cotton being paid for. Signed and received this May 6th, 1863. W. G. THOMPSON. (Original.)" Duplicate of above endorsed, "Received on the within bill of lading two hundred dollars. July 1st, 1863. W. G. THOMPSON." *Weil and Isaac Levy to Bloch*, Houston, May 29, 1863: "Nothing new since Loeb left. Hope he arrived there safe. Marx left this morning for Falls Cty. So far no teamsters yet. * * * * Rum is doing little. Longcope sold 2 B. at $18, and we leave it here. It must either

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	bring the price, or let it go to hell. Marx and me will leave next Tuesday a week, if nothing happens, and try our luck out there; if possible we will strike for big licks, and if we don't succeed it will not be our fault; hope for the best. The Lehmann arrived safe at Matamoros; hope the rest of them will meet with the same luck. Gentlemen, I shall probably strike for Havana, to see if I can get anybody in with me. * * * * Loeb probably told you that everything here failed; this is one hell of a place; Bloch don't you never come here if you don't wish to get sick and disgusted at mankind; nothing but a cut-throat, picayune business, and I am not sorry to get away from it. * * * * B. WEIL. Dear Bloch; * * * * I would return home to-morrow, but shall waid till Marx returns, which will be in four days; matters looks cloomey here, and I am not pleased wathever. * * * * The goods between here and the Bluff I shall take to Alex., except I am informed by you otherwise. * * * * ISAAC LEVY. P. S.—I shall not sell the rum for less than $18.00." *W. G. Thompson* receipts, at Brownsville, Texas, July 4, 1863, to J. Levy & Co., for $2,119 in full for balance due on freight for 50 bales of cotton. *Weil to Loeb*, dated "Matamoros, Empire du Mexique, Aug't 8, '63." Hopes Marx "is landed near Houston by this time with a cargo of goods. * * * * Our 50 bales cotton went for freight, com'on, and other extra expenses we went into on Blum's account; hope, however it will all come right in the long run. Him and Raas are two d. rascals, and talk very sweet till they have you in their claws, and then they make all they can out of you; but enough of that. Marx left on the schooner Star, Capt'n Risk, with about 7,000 of good, and intends, if successful, to run to Tampico; but *l'homme propose Dieu dispose.* These goods were bought for Conf. money at pretty low prices. C. money to-day is worth nothing, and no prospect for getting any better, the cotton sold, delivered on this side for 20 c. only. I had to leave 10 bales behind for the 20 per cent. I have no sett't yet, but know that after paying what money Marx borrowed and other expenses, there will be nothing left, and I have to live very poorly to make both ends reach. Money is very scarce here, and goods cheap, the market overstocked, and business dull; board and lodging very high and very bad. * * * * It seems that the Conf. is gone; this is the opinion here; and I advise you to ship as much cotton

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	as possible. Freight has gone down considerably, and we must prepare for the future. Should cotton arrive I shall ship it to France or England unless ordered to do otherwise. Cotton is looking up a little. Consign your cotton to B. Weil, care of Greenleeve & Block. I shall try and see Maj. Russel in order not to pay any percentage; but no matter—ship all you can get to buy for Conf. money. I have some $14,000 Con. mon. on hand; cannot do anything with it. I shipped the goods Beauchamp (unfortunately) bought of Blum; they are consigned to them. See to it and receive them yourself, and do with the goods as you please. Bloch is oughing us a few 1000. See to it and settle up with him if possible. How about rum? and about the little schooner, of which I never heard? Try to get all away from home we can. Bank of Amer'a, Canal Citizen, is selling at 60 c. cash here, the balance about 25 c. Should you or Isaac be able to get any money send it out here or hold on to it; but better send it on. Bloch had not done anything when heard from him last, and not much prospect. I pray to God that Marx will meet you in Houston just in good time, and I think luck turned. If any exchange on hand send it to me. So far, I am loafing; but as quick as I hear of Marx I shall try to do something." *Weil to Loeb*, "Matamoros, Aug. 13, 1863. Dear Friend Loeb: Nothing new since my last, which I hope you received by this time. I have not heard of any of the boys, and am getting uneasy about Marx, of whose arrival at Houston I like to hear. I am, as I have now done for four months past, still doing nothing; but doing better than these men who have large stocks of goods on hand, heavy expenses, and no trade. Everything is stopped short, very little coming from Texas, and selling in Matamoros from 18 to 22 c., of which about 3 cents go of for expenses, and no prospect for any better, as money is still very tied. These same things I told you in my last. The Yankees are doing here at the mouth what they please. They seized a steamer named Celt, and it seems that they have official order to seize several other English vessels, under the excuse they bring in goods to the Confederacy in exchange for cotton. How long England will look is no telling. We have not heard any war news here for the last fifteen days. Conf. *geld* is still *nicht werth*. Hope you received the goods bought by Beauchamp, and sen in by us to the care of Blum & Br. If you can favorably dispose of goods in the interior let me know. I can get plenty

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	of them in exchange for cotton, and even on tick; only I wouldn't have money to pay duty across the river." *Weil to Loeb*, Matamoros, Aug. 17, 1863: No news; cotton rising on account of small receipts, attributed to impressment law. If next shipment don't turn out better, advises cotton to be kept in the interior or sold for 9 or 10 c. cash, if possible. "If cotton comes out I shall save a great deal, as I am now acquainted with the business and will not need anybody else, except for the advancing of funds if I should have to pay out any large amount. Business are still very dull, and money very tied. Drygoods could be bought at low figures and I could get plenty of them on time if I only knew that you could get good money for them, either specie or bank bills; but only Citizen, Canal, or Amer'a. Conf is still dead, and without any war news. Tell Marx that after payment the debts I have $308 left of the cotton. *A l'instant Mr. Parisot me dit qu'il partira demain, et je n'ai pas le compte de vente sous la main. Seulement dites a Marx qu'apres avoir moiméme vendu le coton Blum m'a chargé la commission pour la vente, commission pour les avances, interêts, en tout* $400. *En fin il y' avait* $609 *de dépenser pour recevoir de coton de l'autre bord.*" *Weil to Loeb*, Matamoros, Aug. 30, 1863. Received Oct. 10: "I am still doing noth. ing, and nobody doing much. * * * * What is Marx doing? What is Isaac doing? Or what does Bloch do? If all do as I do, then, good-bye Jone. *Adieu la boutique et au diable les affaires.* * * * * Tell Mrs. Bloch I have not forgotten her. (Between us, if I had always been short in funds I would have send her a present, and also to Mrs. Dupre,) but as soon as I get able I shall do so." *Certified copy* of order of Lieut.-Gen'l Smith. "Headquarters Dept. trans. Miss., Shreveport, La., Sept. 1, 1863. Gen'l: Lieutenant-General Smith directs the cotton belonging to the State of Louisiana in the hands of Benj. Weil and Marx Levy be released from impressment unless immediately required to fill the contracts of the vessels now lying at the mouth of the Rio Grande. I remain, General, very respectfully, your ob'd't serv't. (Signed) W. R. Boggs, Brig.-Gen'l and Chief of Staff. Official: H. P. Pratt, A. A. Gen'l. Maj.-Gen'l J. B. Magruder, Comd'g District of Texas, etc., Houston." "Executive Office, Alexandria, La., *4th Septr* 1863. "Messrs. Weil and Levy, *Houston, Texas:* "I enclose to-day to Majr Gen Magruder an order not to trouble the cotton in

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your hands belonging to the State of Lou'a. I wrote the General the cotton did not belong to the State, but that I had contracted with you for arms, munitions, and that the cotton was the only means of raising gold or exchange to make the purchases, and begged him to permit you to proceed unmolested, which I trust will be done, and must earnestly request your compliance with the contract as quick as practicable.

"Your obt serv, THO. O. MOORE, *Governor.*"

"I certify that the foregoing letter is written and signed by Governor Thos. O. Moore. Sworn to and subscribed before me, this 5th of August, 1876. E. W. HALSEY, *late Private Secretary to Gov. T. O. Moore.* TH. BUISSON, *Notary Public.*" [NOTARIAL SEAL.]

Weil to Loeb and Marx Levy, Matamoros, Sept. 4, 1863, received Oct. 10: No change in affairs; things look rather worse. "I had a sort of trade on hand with a Spanish house; they backed out, and they tell me that they are sending all their means to England on ac't of the French. They get scared and have trouble between themselves, and unless I can get in with an influential and solid house I prefer doing nothing and look on. * * * * You mention me something about the twelve teams you brought back without stating what you intend to do with them. I suppose you intend to run them, but where? * * * * It is rumored here that all the cotton is impressed by the Gov't. Should this be the case, you better make use of my contract and get all the cotton out you can. I think that they will not interfere by showing our contract, and now might be the time to use it to advantage. You will recollect that my letter to Gen. Magruder is endorsed, and if needed I will send it in to you, and by taking in Shalonick we might make a good thing of it. * * * * I am on the lookout, and if I see a chance to get into a favorable speculation, where no money is needed, I shall do so, and then write for Loeb; but up to this time nothing done. * * * * I stay altogether in Matamoros, and don't go to Texas at all; keep myself altogether with Charles at Levy, Simons & Co., who send you his respects; also Jos. Weil, who stays here."

Weil to Leob, Matamoras, Sept. 8, 1863: No news. The French expected daily. People scared.

Duplicate certificate on printed form of Charles Russell, chief Q. M., 1st Div. of Texas, C. S. A., dated Fort Brown, Sept. 8, 1863, that there is due Isaac Levy & Co.,

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	5,105 lbs. of cotton "this day loaned to the government of the Confederate States," and that a like amount and quality will be paid on the presentation of this certificate to officers hereafter to be designated (at an early date, of which due public notice will be given,) together with further amount of cotton to pay freight on the above to the Rio Grande, and 10 per cent. additional for interest, losses, and detention. *Weil to Leob*, Matamoros, Sept. 10, 1863; received Oct. 10. "My position is still about the same. I shall, however, try to make my expenses. I bought a little goods, which Jos. Weil is selling, at the store of Levy, Simon & Co., where I keep myself. * * * * Loeb, you recollect Martinez, his father-in-law, told me this morning that he sends sixteen mule teams to Alleyton to be loaded. He don't think that he has cotton enough to load them all, and therefore give me his agent's name, who you will find either at H. or A. Patricio Rodriguez, and who will let you have the teams at 10½ c. * * * * * I could make a good business this minute, but it requires cash, and this I can't raise now. * * * * Beauchamp it seems spend all his money, and only took a few heavy goods on board, but was taken sick at the mouth of the Rio Grande, and laid there a good while. Marx has seen him, and loaned him $10. He acted like a * * * * You have no idea how scarce cash is. * * * Neither Marx nor me could get one 1,000 advanced from nobody. Hardly think that we could borrow a 100 from any. * * * The 20 per cent. law on cotton will be enforced. * * * As there is no prospect for peace, we must try to close out and get out all we can, or else we will be poor men, and the chances to make it again very scarce and hard to find." *Powers of attorney* dated Sept. 16 and 25, from Marx Levy to S. E. Loeb, executed before Wm. Anders, notary public of Harris county, Texas, constituting the latter his attorney for the execution of the contract held by Marx Levy and Benj. Weil with the State of Louisiana for importing arms and ammunition and exporting cotton. *Weil to Leob*, Matamoras, September 29, 1863, received October 10: No news. An English schooner has been seized by a French man-of-war, with $100,000 of arms and ammunition for the Confederacy, and on this account the impressment of cotton has stopped except the 20 per cent. "I have never shown my contract, and am waiting on you to get the special permit from Magruder or Curby Smith to instruct

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	these fellows in reference to these 20 per cent., in order to be released from them. * * * I am 225 in debt, which I shall not pay before I receive funds from some of you." *Weil to Bloch,* (in New Orleans,) Matamoros, September 30, 1863: "I am in for a contract, and if I succeed will get conveyance. Send also about 20 doz. twilled drawers, brown and white; a few doz. long top horse-leather boots; but if you can't get these goods at reasonable prices, or should not be in funds, you might let it alone." *Weil to Loeb,* Matamoros, October 1, '63: "You must try to make out without clothing from me until I get funds, and then I will buy good goods for you and me both." *Weil to Loeb,* Matamoros, October 7, 1863: "No news from you, neither Isaac Marx or Bloch. In my last I wrote to you about the confirmation of a contract which I expected to obtain from the commander-in-chief, in Brownsville; but up to this time nothing has been done. General Bee is to be superceded by Major Slaughter, and the last one is waiting on the first to give up the books, but has not done it up to date. * * * Have you shipped any cotton this way? If you could get Mex. teams it would be preferable; but if I can get things fixed I will have done in such way that they can't touch no team of ours, no matter what laws come out; but always ship to me, because my contract will hold good, notwithstanding I had never shown it; but for this I had reason at the time. Impossible to send any goods unless I have money. *Weil to Loeb,* Matamoros, October 13, 1863: "Now, my dear fellow, let me tell you that I went to see Gen. Bee, and inquired whether this order of Gen. Smith will be respected, and he asked me whether this cotton belong to the State of Louis'a or to us. As a matter of course, I told him it was our cotton. His answer then was that I would have to pay the 20 per cent., as everybody, or have to furnish the amt of govt goods in advance, and then he would let the whole of the cotton go. I told him that the Gov. of Louisa was well aware that we had no hard cash, and give us permission to export cotton in order to get money to buy the articles needed. His reply was, he is very sorry if I have no money, but that I can only claim the whole of my cotton when my contract is fulfilled, or else, if the cotton belong to the State and I can show wouchers, the cotton can go. Now, between us, this man is an ——— and an

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———, and you must, in order to cut matters short, get a positif order from Gen. Smith or Magruder, directed to headquarters here, to let the whole of our cotton come over—number of bales named, say, 200 or 300, and unless you get this we will not be exempt, and will again work for nothing, as the 20 per cent. eat up our prin. and profit. * * * To get goods on credit to go to the interior is impossible. * * * It wouldn't do for us to give up the ship and be ruined, when everybody else is making money; with money money can be made, but without any nothing can be done. Friends in need I have none. I have a few dollars invested, which barely make my board. Conf. money I wouldn't sell. I spoke to Dr. Kirkmann, that should the Leemann land safe I would like to invest the funds, but he refused positively; stated that he had made previous arrangements, and couldn't let me have any funds without telling me how he intends to use the money. This is poor satisfaction, and I don't like it at all. I opened a letter directed to him, by Mochling, dated from Tampico, June 20 last, and it looks not very pride. Those men will take advantages over us wherever they can. * * * If I had money I would charter a schooner and run the blockade, as this is the most profitable business of all if successful. The Cecilia D. is advertised to be sold, with her cargo. I read it in the Era of the 2d inst. This much gone. * * * If you succeed, and we get a good lot of cotton out, say 200 B., both of us will take a trip over to the old country, and buy stock for it for this market. * * * Read the order you have of Gen. Smith, and you will see it reads thus: Cotton belonging to the State of Louisa, in the hands of B. Weil. It ought to read—cotton belonging to B. W., of Louisa." (Postscript added by *J. S. Sandfeldt:*) "This man is a d. Yenser. Yours, truly, B. Weil. A white Yens cost $10 in this place, and I have to dispense to eat *schwartz brod.* Jos. Weil sends you his respects."

(See application of Weil to Gen. Smith, dated September 15, 1864, in its place in Head II.)

Weil to I Levy, Matamoros, Oct. 13, 1863: "I suppose Loeb kept you posted about my doing nothing." Relates his interview with Gen. Bee: "The fifty bales cotton, of which the Govt took ten after we had paid freight on it, didn't leave anything, because when said cotton was sold t was only worth 18 cts., and we had to pay 11 for freight. To-day cotton is worth from 28 to 30, and looking up. See the Gov, and tell him about all these Texas

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laws; that they don't respect nothing. Loeb promised to ship cotton out, and if he does, I intend to fulfill our contract, and will send you a bill of goods such as the Govr and my other friends ordered as quick as possible. This place is crowded with conf's. of all parts, all speculating or runaways. Credit there is none out here; you might die for $5; no friends; I am reduced to so little that for fear of getting broke I invested it, and it cost close work to make my board. Should we have our means here we could do business. The conf. have more friends on this side than in Texas. France is doing all in our favor; they are at the mouth of the river, and help the blockaders all they can; they had seized some arms, because it was reported they were intended for Mexico, but have afterwards given them up. * * * Isaac, don't you think hard of my remaining here without making anything."

Weil to Loeb, Matamoros, Oct. 19, 1863, refers to his last letter: "I didn't even try to get the goods; besides we have no cotton of our own except ten bales what the Gov took. About your stating being without funds, this astonishes me; what become of the money proceeds of Rhum. Marx goods ought to paid for his cargo of cotton, besides you informed me that you are receiving sugar, and all at once no money; you state you only have thirty-seven bales cotton, and I thought you had a good deal; now all at once you are a poor devil: such might be the case, and I am sorry to see it so, but can't understand how it came so. * * * Had you written to me positively six weeks ago that you had a sudden number of bales of cotton at Alleyton, or even later, I could have made arrangement with Cavazas to get it out * * * I am doing nothing here just because I have nothing to do it with, and am compelled to look on. Times are such that I can't buy goods on credit, and I dispense asking. * * * From Bloch I have not heard a word. * * * Should the French try to land here tomorrow all the foreigners would have to leave. But I leave all this for you and Isaac to decide; anyway suits me; if you all wish to quit in there and come out here I am satisfied, but in doing so try to finish in the interior, leave nothing unsettled what belong to the compy, and bring all out, even conf. money. * * * Cotton is still going up here and in N York, but that don't do us no good for the present. Hope, however, that all will yet come right. The same old man is yet above, and I have full confidence. *Wenn*

I.—PURCHASE OF COTTON.

Evidence before the Commission.	*New Evidence offered by Mexico.*
	die Noth am grössten ist, ist die Hülf am nächsten. *Loeb to Weil*, Houston, Oct. 23, 1863, speaks of schooner Lehman: "Four weeks I have been laboring and detained from all work to attend to business which does not pay. * * * I have a letter of Isaac under date of the 13th inst., telling me that our Mr. Bloch did not get paid in N O, and that Isaac will remain at home; anxious to hear what we are doing. I had to neglect all business to attend to the schooner Lehman, otherwise I would have shipped some cotton. I think to go to Alleyton to-morrow and see what I am able to do. * * * I will consign the cotton to Halff and Moses in case that you should not be there (Moses is willing to go in some arrangement to ship goods here on halfs) do not mention this to any one. * * * P. S.—We would have done well if you could have sent some goods, no matter how little." *Weil to Loeb*, Brownsville, Oct. 29, 1863: "Isaac's letter is very discouraging, but what can I do; I cannot help; Moehling is in England with the cotton, and I can't dispose of the money, and my contract with Louis'a when Texas refused me assistance and treaded me as a private individual, stopped short, as my contract was to export cotton before I could import anything, and 40 B cotton, costing 40c. per lb. and 11c. freight, left 508 D., and I think this is evidence enough to prove that I acted honorably with our State. Should I, however, be successful and make a raise, I will and am anxious to fulfill my contract. Here I have not done anything, and until now not able to do anything. From Marx I have not heard yet, neither from Bloch. I am sorry the Lehman is detained, as I intended to use her funds, or at least our part. * * * I am making my expenses, and this is all. * * * Should Bucherel come to see you, get him to write a letter to the Gov, on his own responsibility, and expose my position, and let it be known that we didn't swindle, and don't intend to do so, and that we never got more than 50 B cotton, out of which the Gov took ten." *Weil to Loeb*, Matamoros, November 2d, '63: "Yesterday I had made a splendid arrangement to get any amount of goods in the interior, when, this morning, the news reached here that the Yankees were landing at the mouth of the Rio Grande, and everybody from Brownsville is moving on this side, and all my business knocked in the head again until further news. * * * For the present moment, all business are stopped, and should the Yankees make a

Evidence before the Commission.	*New Evidence offered by Mexico.*
	landing, Monterey and Roma will do the business. * * * Myself and Joseph Weil are together making expenses." *Weil to Loeb*, Matamoros, November 17, 1863: Schooner Lehman arrived at Matamoras in distress, but escaped from the Yankees. * * * Loeb, these men played off on you, I can't imagine how, after being detained for three months, on their ac't, and loose the best part of the season, and then you don't even get the expenses of the vessel and crew paid, but I shall try my hand and come in. I am not yet paid, but, as the cotton is entered in our name, it is all right. Kirkman is still here. I shall try to sell the schooner, and do something with the money. Cotton keeps coming in by way of Roma, worth to-day 34–35c. * * * Without money we are nobody. You are not even looked on. Money makes the mare go. * * * Patriotism don't pay very well, and I thought Bloch would be able to get in with the big thieves." (M. Halff writes a postscript, sending a message to his brother, at Liberty.) *Original and duplicate receipts* to J. Rosenfield & Son, dated November 17, 1863, and signed by Alejandro Valderas, for 83 bales of cotton, marked L., consigned to S. E. Loeb, at Eagle Pass, to go through from San Antonio in 15 days from the 10th of March, 1864, freight at 10 cents, specie, per pound, and for $1.50 in gold, and $1,000 in Confederate money, at the rate of ten for one, advanced freight. (See receipts on same document for $200, and $50 gold in addition to the above, dated February 23, and March 4, 1864.) *Weil to Loeb*, Matamoros, November 23, 1863, urges shipment of cotton. No money, no news; trade all going up to Roma. *Weil to Loeb*, Matamoros, November —, 1863: Acknowledges receipt of letter of 22d October; urges shipment of cotton, complains of commissions charged him in Matamoras. "The French don't seem to trouble themselves about this point which is, however, very important. I shall look on, as I have no funds to get away or do better. I am doing enough to clear expenses, without any investment, and might, by and by, do better. If I had the right kind of goods, I could make money also for the present; all is dead, and living very high." *Weil to Loeb*, Matamoros, December 2d, '63: Here I have a house, but hardly anything in it, still I am earning my daily bread, or would long since have been without money * * * conf m is dead. I have still $9,000 on hand and hold on to it."

Evidence before the Commission.	*New Evidence offered by Mexico.*
	Weil to Loeb, Matamoras, December 4, 1863: "If we don't get cotton out, we are all gone. M. Halff got nearly all his cotton out safe. * * * It is no use of your coming out here now, as everybody is leaving here; no more business, and I can easily attend to all our business. Hoyt arrived, and all we could get out of him was $137 and an agreement with security, that if the business has not been settled with you, and proof to show for, that his partner, Mr. Compton, will settle with the Doctor. * * * If possible I shall swap the Leh for another schooner, or buy one, if any money and a chance. * * * Get in with Goos in all the little schooners you can get, and send them out."
	Weil to Loeb, Matamoros, Dec. 17, 1863: Cotton must be shipped to Laredo or as high up as Piedras Negras. "A good many are going up the country with goods, and I could get goods to go, but, having only about $4,000 on hand, I am afraid to invest them for fear you might have started cotton, and it would take money to pay freight. * * * The French are far off yet, should they come, then I think I will be able to do something in the way of arms."
	Weil to Loeb, Matamoros, Dec. 26, 1863: No news except the Mexicans are making barricades and a fight is expected every minute, the two parties between themselves. "Had I a stock of goods on hand of my own, I could even do business here. Should you go to Piedras Negras, inquire for Mr. Shurk, of the house of Jenny & Co. He will give you informations about me, and should you need funds and he has got them you can get them from him. At all events, should I leave for any point I will leave some money with Jenny & Co. to your disposition. At present I am not doing anything. The stores are all closed and every body in suspense. * * * The Lehman is working at the mouth of the river, and the Doctur is there receiving the money, and I can't oppose it, as all papers are in his hands and name; he is tricky."
	Weil to Loeb, Matamoros, Dec. 27, 1863: "Every body who has goods rushes up to Piedras Negras. Not having any goods on hand, I am not very anxious. Also, I could get goods, but buying on tick is paying high in this place. . . . . I told you in my previous that should you get to P. N. inquire for Mr. Shurk, of the house of Jenny & Co. He will give you all informations and assistance in his power; he is a friend of mine. . . . . Should my plan not suit, and you have made other arrangements, I shall submit."

I.—PURCHASE OF COTTON.

Evidence before the Commission.	*New Evidence offered by Mexico.*
	Barrett to Loeb, Eagle Lake, January 5, '64: Has received Loeb's letter of 3rd, with permit for 32 bales of cotton, and will do his utmost to get teams to forward it. *Permit* dated headquarters Texas cotton office, Houston, Jan. 7, '64, to S. E. Loeb to ship cotton which, "together with the wagons and teams engaged in transporting it, is free from molestation and exempt from impressment." *I. Rosenfield & Son to Loeb*, Alleyton, January 11, 1864: Have heard "that the train of Valdeira, who took your cotton, is in San Antonio, and that the government will take one-half of the cotton, and that V—— has lost some of his oxen and has to buy more oxen, but has not got the money." V—— wants $500 specie. You had better attend to it or send us the money and we will. (See application of Weil to Gen. Smith, dated Sept. 15, 1864, in its place in head II.) *Bloch to Loeb*, Opelousas, January 19, 1864: Has shipped 18 boxes tobacco with instructions. Don't sell less than $10. Is going to New Orleans to-morrow on very important business. No details until it is certain. Did nothing in his 4 months' stay. "I feel sorry about the loss of the Rosalia, but would feel glad to know that Weil arrived at Houston from Matamoros. Is that the city of Paris where he started to go to? I would feel ashamed to remain there in his place. . . . . I hope Marx will have a better luck next time. . . . . Was I not right when I opposed the transportation of cotton through Texas? But you would have it, and during my absence you took cotton out, which I am sure will not realize more than expenses, if that. Now, I want you to know that if it takes a fortune, as it did last year, before we can get a vessel, and eight months or nine months before a trip can be made, and then very doubtful, and then, if successful, so many dogs to eat out of one pan, I can never sanction any such doings; and we better do something else, and each for himself. When B. F. & Co. and I. Levy & Co. started this business understandings were based upon a very different plan from what it is to-day. First of all, Weil was to go to Paris. The blockade was not to be run with the ammunition and arms. It was to go to Matamoras or some other place. Was not Marx Levy to remain at Matamoras and ship the goods to you to forward to Opelousas and Alexandria? Was anything received? When I see that others went there and brought merchandise upon which they made heavy profits. But do not send any now, for I can get them cheaper now than you can send them. I tell you what you have done in the west.

Evidence before the Commission.	*New Evidence offered by Mexico.*
	You have drained us of capital. You received our sugar and cotton and we never received a cent, and besides we had to pay heavy amounts for the freights, and we had always to work without capital. I don't blame anybody, nor do I call it anybody's fault. But when we can do better for the benefit of all we must do so. You must all stir up, and unless we see the thing profitable we will close. Isaac and myself, we had a long talk about it. We agree very well. But do not let the traces get slack unless any one of the parties wishes to stop altogether, then unhitch the carriage and take the buggy again." *T. C. Twichell*, agent Texas cotton office, to Loeb, San Antonio, January 22, 1864: Has received communication enclosing exemption for 83 bales of cotton. The agency has not received nor released the cotton; should it arrive, permits will be issued. *Weil to Loeb.* "Matamoros, February 3, 1864. My dear Loeb: According to rumor, this ought to find you in Piedras Negras, and I hope it will be so, if only on account of the cotton, although I have the promise of Mr. Sherck to attend to it; but as he has probably plenty to do to attend to his own affairs on the other side, I am sorry not to find you any more in Houston, as I would have had plenty to do for you. I shall leave in two days for Laredo, and from there direct to Alleyton. Mr. Scherck, whose acquaintance I hope you will form, can tell you all about my affairs, as his house has made him acquainted with our plan of operation. Now, if you should be in Piedras Negras, try to get money enough to pay freight on your cotton, and ship it to this place. I have made necessary arrangements for the advances, and the cotton will be shipped to Europe. Cotton to-day is worth 31 here; but if you think otherwise you can come to this place, sell your cotton and buy groceries, and return with them to Piedras Negras, as most money is to be made on groceries, and try to do the best you can until we meet again, which I hope will be in the fall, unless you return to the interior. At any rate, write to me immediately, to Houston. From Marx I am still without news. No doubt he landed in Habana; but, unfortunately, it is rumored at the mouth of the river that he was captured 20 miles off of the Brazos, with his whole cargo, consisting of ammunition, and taken to N. Orl. If so, I am much afraid; trust, however, that he will work out; bad luck, but can't be helped. I will write to N. Or., and find out all particulars. The schooner Leh-

Evidence before the Commission.	*New Evidence offered by Mexico.*
	man will leave in a few days. Half of the cargo is ours, and, if successful, a very good thing. I have laid out all my money, which you know was no great deal. Little do I like the idea of going to the interior, but I am willing to risk all for the benefit of our large family. We take in for upwards of $60,000 of Conf. goods, have a train of 19 large mule teams, chartered to bring cotton back to this place at the rate of 10c. in and 19 out; the freight and duty alone to get off is near $20,000. If no bad luck, I will make it count. The train can take 300 bales cotton. If any need here of anybody, address yourself to Joseph Weil, care of Jenny & Co.; he will attend to their business here. Up to this day I had made fully my expenses. No news of Isaac, neither of Jos. Bloch; very strange. Farther news, none. Blum settled with me for the spool thread and shoes, but not for the rest, also got 229 more out of another fellow for Beauchamp affairs. In hopes to hear from you soon, I remain yours, truly, B. WEIL. *February* 10.—Since the above no news except the fact that Marx is really taken, and is in N. Or. I have no letter, but a party who was also captured and released came up and confirmed it. The cotton, if any comes at all, will be turned over to O. Taloman, Dessammer & Co., who will make necessary advances and ship the cotton to Europe. If you should need money they will advance, and take your exchange. No farther news." *Bill of J. C. Baldwin & Co.* to Loeb, February 13th, for receiving and forwarding 16 bales of cotton, $80. *Bloch to Loeb or Marx*, Opelousas, February 18, '64: "This is to inform you of my return from New Orleans. My trip has so far not been successful, but what will happen yet I don't know. I shall go to Alexandria this week, after which I can give more decisive answer." Postscript to Lieut. A. T. Mure, with regard to non-payment of draft of $500. *Receipt of Alexander Valdera* (on bill of lading of Nov. 17, '63, above mentioned) for $200, gold, dated San Antonio, February 23, '64. *M. Levy to Loeb*, Houston, March 2d, '64: Shall go out "as soon as we have a north wint. . . . . Weil hase not arrived yet. He speaks of a house in Piedras Negras, a Mr. Scherck, of the house of Jenny & Co., and says probably would attend to your cotton matter." *Receipt of Alexander Valdera*, San Antonio, March 4, 1864, on bill of lading of Nov. 17th, 1863, for $50.

I.—PURCHASE OF COTTON.

New Evidence offered by Mexico.	*Evidence before the Commission.*
	Scherck to Loeb, Eagle Pass, March 17, 1864, acknowledges letter of 9th. Cannot pay freight on Loeb's cotton, as he is without means or instructions from Mr. Jenny. Promised Mr. Weil to attend to his cotton should it arrive without any person to attend to it, "but as you intend carrying on a business you cannot expect me to attend to the same." Think you would do as well to sell here. Cotton 22 to 24 c.
	Receipt of Alexander Valdera, dated Piedras Negras, April 9, 1864, for $3,000, balence of freight on 83 bales cotton.
	Weil to Loeb: "Houston, April 11, '64. Dear friend Loeb: I shall start to-morrow by private conveyance, in com. with Mr. Clapp, State ag. for Louis., to St. Antonio, and as Mr. Shalonick is very anxious to see you coming back you might try to meet me there. The schooner came in safe, and I am just from the Lake, all right. The goods will all come to be stored at the store until I return. Shalonick has a good thing with Ryan, and, if properly managed, a good deal can be made. Bags and rope is very scarce, and worth 61 cash here still; if you can buy any do so, as it can be exchanged for cotton to an advantage. Marx, according to rumors, is still in port. No news of Isaac or Bloch. I was on my way to Alexa. when the Yankees came, and I turned back. Isaac must have stayed. My business are all fixed; the Govr. takes everything. Inform Mr. Sherck thereof; he might come on to St. Anto. and see us. I received his letter, and heard of his selling out, and got a little the best of Rosenfield; well done. Jenny would be glad to see him, and we might give him an order to fill, and make a good thing of it. Give him my best wishes. Yours, truly, B. WEIL."
	Loeb to Weil and M. Levy, Houston, May 2, 1864: Reports payment by cotton bureau of half of 83 bales of cotton burned by M. Levy on board schooner Rosalie to prevent its falling into the hands of the enemy. The shipment of said cotton from Alleyton, Nov. 18, 1863, and its seizure by the Confederate authorities near San Antonio.
	List of drugs, instruments and hospital stores to be bought for the State of Louisiana, Shreveport, May 3, 1864.
	Weil to Loeb, "Matamoros, May 18, '64: My dear Loeb—Your letter of the 7th inst. came to hand, but Mrs. Schulde has left here for Europe without remitting me either coupons or anything else. Your letter only reached me yesterday, and she was gone. Times are daily getting worst.

New Evidence offered by Mexico.	*Evidence before the Commission.*
	Marx proposed to send you his whole stock, but his partners wouldn't agree to it. I am not able myself to send you any goods, as the credit is dead, and money I have none. Had Mr. Gust. Jenny written and expressed his views, I could have got the consent of his brother and send you stock, but I can't under the circumstances advise him to invest in anything. He himself is short of funds. Pray tell Mr. Jenny to write. I can't tell what I am going to do hereafter; circumstances will have to guide me. First, I must finish with Mrs. J. & Co. Lots of goods are shipped back to N. O. and N. Y. Write to Isaac and Jos.; keep them parted. Remember me to Mr. Jenny. Yours, truly. B. WEIL." *Bloch to Loeb*, Opelousas, May 21, 1864: Glad to hear from Loeb and also from Ben. Weil. Business has been pretty good, considering that there has been three Yankee raids. Isaac has been a victim. "You advise me to bring gold to Houston. I do think it is an extremely bad calculation, to sell any gold now. What can you do there with the Co. money now? Can you invest? At all events it is no use in talking. The gold I have realized is not within immediate reach. And I am utterly opposed to employ gold for any other purpose except to purchase the cargoes in foreign countries to run the blockade." *Weil to Loeb*, "Navasota, May 30, 1864: My dear Loeb—At last the train will be here, and I am really sorry for it. Just imagine that last Wednesday the cotton bureau directed a letter to Mr. Clapp, stating that owing to the interference of the State with the cotton bureau, they wouldn't be able to furnish the cotton which they agreed to pay in return for the goods, and decline to fulfill their contract in a very polite way; and here I am now; but it is all right, the State will have to foot the bill. I shall leave for Shreveport on Vednesday; if any letters on hand send them to me care of Cap. Vedders; after Wednesday care Col. James S. Wise, chief quar. mast. of the State of Louis'a, Shreveport. Hatcher has been to Shreveport, suppose to get a contract. Should the Doct'r insist on Jenny paying him, then get at once the best lawyer in Houston, and seize the money in the hands of Jenny, and let Jenny give secury, if needed; seize in the name of Levy Bloch & Co., and Daniel Goos, or in our name alone. I suppose you heard from Goos ere this, and he probably will tell yon what to do; he promised to have a statement made by Sewell and send it to you. Should they inter-

Evidence before the Commission.	*New Evidence offered by Mexico.*

fere with the schooner, then you must despatch or write to the Governor. I shall at all events try to see Isaac and Jos. Let me know what is going on in Houston, and how did Shalonick succeed? Yours. B. WEIL."

Jenny to Loeb (no date): "Cannot leave to-day. It was well worth my while to come down, but I have to stay till next train. Let Scherck come down to look at Galveston. Please send me without fail by return train $1,000, C. S. money, to the care of C. L. Beisner, Washington Hotel."

Jenny to Loeb, Navasota, May 31, 1884: Telegram. "Send up the saddle from San Antonio; put the extra bit and cabras on trunk in store; be sure and do so to-morrow, it is important. Will be down in a day or two. Weil leaves to-morrow."

It is apparent from the above correspondence, that neither Weil nor any of his partners were engaged up to May, 1864, the date assigned by Hite, and adopted by claimant's counsel, as that of the shipment, in collecting 1,900 bales, or any like amount, of cotton, at "Allaton," or any other point, and that none of them were in a position to engage in such transactions. But Shackelford says the cotton was shipped from "Alleyton" in September, 1864, and Shackelford may have been right, and Hite and the counsel of Weil a few months wrong as so dates. Let us, therefore, examine further the interesting correspondence of the claimant:

Jenny to Loeb, Navasota, June 2, 1863 "The saddle comes per express from San Antonio to either your care or Mr. Laurent's; please enquire about it. I cannot leave before Monday, still it might be possible yet that I could come down to-morrow. Have secured y'r black cloth, brandy, and champagne. I may need the $1,000 Weil writes about for a few days. Tell Dreyfuss he can keep $4,000, C. S., at 40 for one for me against check on Mat's. .....I am writing under difficulties. Have you nothing from the capt'n of the sch'r Delfina."

Weil to Loeb, "Navasota, June 2, 1864: My dear Loeb: I expected to get off yesterday but could not get through, and, therefore, will only leave to-morrow, as I will then have a receipt for all the goods. The govr. send on a dispatch that cotton enough will be here to load the train in a few days; therefore I expect all will work satisfactory. Your letter is on hand. Glad to hear once more for Bloch. If possible I shall work it through him. At all events I intend to see him. I have taken $1,000 of Jalonick. Jenny will pay them

Evidence before the Commission.	*New Evidence offered by Mexico.*
	back if necessary, unless you have more than needed. Should Mr. Jenny call on you for $1,000 in cash let him have it; he will return it again in 8 or 10 days; it is to our interest to do all we can to facilitate his transactions; he needs it to pay freight on 40 B. cotton send on to St. Antonio, which I don't wish to be sold. Again write to me to Shreveport; I shall do the same and keep you posted. If any letters for me, send them on. No further news. Why did you not send the saddle? I wish to take it on to Shreveport to give to the gov.; don't neglect sending it; it should come from Detan to St. Antonio. Yours, truly, B. WEIL." *Weil to Loeb*, Navasoto, June 3, 1864 (telegram): "Inquire for saddles at Laurent. Will only get off to-day." *Weil to Loeb*, Shreveport, June 17, 1864: "Here we are, all of us—Jos., Isaac and me—consulting, and came to the conclusion that it is best for you to dissolve with Mr. Sh. Be a free and independent man, ready to move at any moment's notice. If any cotton on hand, put it in my name as agt. of the State of La., as the new law will again interfere with you. Goods are very scarce about here. Safe your gold. Yours, B. WEIL." *Bloch* adds postscript about his having been conscripted. Expects to be discharged as a French subject. Expects to go to New Orleans forthwith on business. Tells Loeb to prepare to wind up with his partner Jalonick. *Isaac Levy* adds postscript: "I am here with Joe and Ben, as I have no other home. We lost everything at Alexandria, still I shall return to-morrow. You may write to me to that place. We may bouilt again. My respects to Jalonick. Keep the whole contents of this to yourself." *Block to Loeb*, Opelousas, July 9, 1864: Refers to his letter from Shreveport. Was not discharged from the service but was detailed at request of Gov. Allen. Believes that 130 bales cotton were sent to Niblett's Bluff, besides about 40 from Alexandria, but only found receipts for 118 bales from this place. "Would like to sell all our sugar here—close out altogether everything here, for I think I must be on the other side. We have hard work yet to get out right side up. Remember B. Weil is $40,000, gold, in debt. Some bad luck or ill management would overthrow the concern." *Weil to Bloch*, Alexandria, July 14, 1864: "The governor arrived to-day. I am just from there. General Smith is expected Saturday, and has promised me the permits positively. He says he will try

Evidence before the Commission.	*New Evidence offered by Mexico.*

to get a boat to run up here permanently. If so you will get the job. I hope now nothing will interfere. Get your cotton ready. I have full confidence now that all will turn out right. I told the gov that between us we will be able to supply him in goods and money both. Gov. Moore had written him a letter in reference to my business, and it took effect. No further for the present. Should the 31 bales of cotton be gone then let it be. I will get a permit for 220 bales."

I. Levy to Bloch, July 16, 1864: (Postscript on the above.)

"If possible, the steamer Relief will leave here soon for Washington, then we can ship your sugar by her. * * * General Smith will be here soon. If the permit will be obtained I will come down. Respecting the goods, I am realy astonished at your prices. You charge, for instance, $100 for one inkstand, which is really not worth 8 c.; and all the Hartware are overcharged by 200 per cent. I was ashamed to share the swintall. However, I have solt the stock to my Frenchman for 8,000 profit in new issue. I fear he will never git cost for it."

Weil to Bloch, Alexandria, July 21, 1864. "I have the permit from General Smith for the 220 B. cotton, and not any more. About bringing up a vessel, nothing has been decided yet. I was present at the interview between the gov and the gen. They both left togother last night, and if they come to any decision will write to me immediately to your place. I still think it will work; all is going on smoothly. I have an order from the gen. Trust to luck; more about verbally. Now, be ready. Isaac has about 30 B. flour on hand. I received a letter from Marx; he left for England with an unlimited credit and expect to be back by Oct. Thus far, all well. I had a few lines from Mr. Loeb; nothing of importance. I state to him that we will decide how to dispose of him when we meet. Try to have Salomon on hand; I like to see the soldier. The order for protection of cotton is directed to Lieut.-Col. L. A. Bringer. You dare not take out over 220 B. Strict orders are given to that effect, and no permits granted from this out to nobody; and if any caught at smuggling, sentenced to be shot. Therefore, take notice, and warn the community at large."

Postscript by I. Levy. "I have nothing to say, only have something good to trink on hand."

Weil to Loeb, Alexandria, July 21, 1864. Has received Marx letter. Will go with Isaac to Opelousas. "Both Isaac and Jo-

Evidence before the Commission.	*New Evidence offered by Mexico.*

seph are doing well and in splendid order, *jensen stüder* by wholesale, and so do I; and I am confident that neither you or Jenny neglect that part of the business."

I. Levy to Loeb, (postscript on above.) "Business here are nominell. Still, expence we allways make. How is Mr. Jalonick; have not heart from him. Joe will go to the city soon."

Marx Levy to Weil. "Matamoros, July 23, '64. Dear Weil: I have received yours of the 19th ult.; contents nodet. As for Mr. Chirck, I must tell you a little history of him. In one of my former letters I told you that I have giving out the itey of going to Europe; namely, I send Joe Weil to New York to fill that bill, as it will not amount to so much as we hate calcauladate; and as one of Redgate & Co. clerks went to England at the same time, I send for some other articles latly wandet, wich will be here as soone as if I hate gone myself. I gip store for Joe until he returns satisfactory to Mr. Stansey. Here comes Mr. Chirck, the same morning he arrives; asks me have got charge of store; I told him that Joe left me here until he returns; say he wants porsetion. I told him he cannot git it of me until Joe comes home; but should he wish the goods he can have them, and I help him packing up myself, as Joe may vant to kip the store. He says Joe hase nothing to do with it & co one wort brougth on a other; he told me we are now in Mexico, and not in Texas; that he is the big buck know. I told him to go aheath; he cannot git out of me the store, but the goods he can have, and everything else belonging to Messrs. Jenny & Co. in the house. I tell he warse tetermined to take his revenge on me; but you know that is hart do to. Also, he broke the letter oben you send by him. I shall stay here until the goods frome England comes. Leon Levy is here with a stock of goods; coold not find a house to put them in. I led him put them in here until he find one. Last knigth he got one, to take porsetion on the first of nexst month. I have written to Noblam, but got no answer yet; loock for one nexst weeck by the sam party I send mine, namely, Morris Kaufman. I also instrucdit him to write to you to Alex, or send you a express if can get true with it. You say in your last Isaac was in Shrefport. Wy dit he not sign his name on the letter? The reporst in N O is, he is death, and also here. If I hate not got your letter I would not know otherwise. If he is mate, he can signe his name on a letter. I shall try to git tus articles you men-

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tioned in your letter. About Jacque you have not said a worth, wat hase become of him, or wheire he is at, or if you got him out to assist you. Futher news I have none. So I remaine, yours, &c., MARX LEVY. Should you go to New Orleans, I would settle up with everryboty, as greenbacks are low. Exchange $300 on the 16th inst.; to-day gott none. Same."

G. Jenny to Loeb, Alleyton, July 26, 1864: "I can't leave to-day, but will come down by next train. I shall ship to Roma @ 8 cents, from there to Mat @ 1 cent per steamer. I have drawn on you, favor J. C. Baldwin & Co., for one hundred and fifty dollars, which please protect, and oblige."

I. Levy to Weil, Alexandria, August 9, '64: "Yours of 7th, by Robert, just received, as regard the tripp of Joe. Trust, you must say nothing; our chance may turn out better than we expect. I send that letter to Jenny. There is no news here; Levin, this morning, told me had you offered one-half of all the profits, he would likely went in with you, but he has $35,000 of his own, and need no one."

I. Levy to Weil, Alexandria, August 19, 1864: Encloses draft drawn by W. K. Hornsby on B. F. & Co., for $130, new issue for balance due on one sack of flour. "There is no news since my last. I advised you to go to Houston, to finish the affairs of that schooner. Do so, take some one with you. I am making expenses here, and playing hell in full. Have you seen the article in the Democrat, about L.? Just what I expected. Truth will come out sometimes."

Weil to Loeb, Opelousas, August 29, 1864: Complains of hearing nothing about business since leaving Shreveport. Loeb has power to settle affairs in Houston, but Weil will do so on his return. Does not want to interfere with Mr. Jenny's business; will go to Houston, or else write Mr. Jenny to come to Shreveport. Block has been gone three weeks; think he will be three weeks longer, and I am tired of waiting. The yankee lines were open to the 15th instant, but are now closed, "and nothing is allowed to go in or out, and this is the cause of Jos's delay, which sets us back, as this is a very good way to get cotton through; still, as time passes, and I have never had a word from Mr. Jenny, I shall not delay here any longer, and proceed to headquarters and ask for cotton in Texas. I am not in the least uneasy, as General Smith and Allen are both anxious to see us paid and satisfied. It is true, that I feel uneasy in one respect, for the

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very reason that the news from Texas are not satisfactory, namely, it seems that matters are still in suspense with the cotton bureau, besides I never had any news from the governor since I am down here. All these matters combined are the cause of my going to Shreveport. If anybody tries to detain the schooner from going out, show the papers. It seems to me that they are sufficient, and if not so, inform the governor thereof. As far as I can learn, Calcasieu is still blockaded, and nothing can get out. However, should Bloch succeed, then she shall go. Hope to have news from all of you in Alex or Shreveport, to which place you will address my letters, namely, Shreveport. I can't imagine what can be the cause of Mr. Jenny's silence. God knows I am trying to get things through to the best advantage, and had I accepted the Governor's first proposition, and gone to work, I would be through now, still I am satisfied, and must be so. I came down only in order to get money for about 200 B of cotton, or exchange, still, if I fail, nobody can be blamed. Hope it is all for the best."

Weil to Bloch, Opelousas, August 29, 1864: Cannot wait any longer; "I leave for Shreveport, and will see what can be done there. Should you succeed and bring out any exchange, send it or bring it, just as you like. I shall take your letter along. I will, if possible, get cotton in Texas, and have that business for you to work. I will try to get John Lyons appointed as your assistant, and you make your own arrangements with him. Jos., I hope you will do your best, beyond all, act honest with the Gov, a useless recommendation, still people will talk, and I want you to be guarded. Lewin is called to headquarters; has been reported. I leave everything with Mr. Borne. I will write immediately from Shreveport, and inform you of my success. I shall probably go to Houston, and from there to Calcasieu, and then, if necessary, will come back to this place. Adieu, till we meet again."

It is reasonably clear from the foregoing that Weil had not collected at Alleyton or elsewhere, up to September, 1864, any of the cotton which Hite and Weil's counsel claim was shipped from "Allaton" in May, but which Shackelford swore Weil took out from Alleyton early in September. But to place the matter beyond all doubt, Mr. Weil was good enough to furnish, on the 18th day of October, 1864, the following

"*Statement of my proceedings since the*

I.—PURCHASE OF COTTON.

Evidence before the Commission.	*New Evidence offered by Mexico.*
	fall of N. Orleans. In August, 1862, Govr. Moore proposed to me to load the schooner Washington, then a prize, and anchored in Lake Charles. I went to work, got the cotton and transportation, but before the cotton reached the lake the Yankees came with a fleet and destroyed the schooner partly. I had to give up this expedition; was naturally in for all expenses. I next took an interest in the schooner Lehman, which sailed from Lake Charles in March, 1863. The vessel landed in Tampico; the supercargo, after taking advances on the cotton handed them over to another man whom he appointed supercargo on the Lehman, and himself went with the whole of cotton to England and never returned. The new supercargo, after taking in a cargo at the mouth of the Rio Grande, run into Galveston and disposed of the cargo, and I have never been able to collect one dollar. About the same time I took an interest in the schooner Cecilia D. She also run into Tampico, sold her cargo, invested the whole amount in medicines and cotton cards, but was unfortunately captured on her trip in and sold in N Orleans as a prize. Loaded about the same time a small schooner in Vermenton river, but up to date never heard her spoken of. Nobody knows what became of her. I started for Mexico, and as quick as there, invested all my ready cash in the schooner Star, loaded her with ordonance stores, started her off, with Mr. Levy, my partner, as supercargo. She made the trip safe in and out, but on her trip back she was chased by the Yankees, and Mr. Levy set her afire within a mile of the Brazos; she was loaded with powder, shot, percussion caps, spades, axes, etc. The loss on this vessel alone amts to $30,000 in hard cash. We are interested in the schooners Hyer and Gibbertson. Both came in in January last loaded with ammunitions of war and ordonnance stores, but up to this day have never been able to get out. After the schooner Star had left the port of Matamoros I remained, expecting fifty bales of cotton, the proceeds of which I intended to use as traveling expenses to go to Europe. My credit in Europe would have enabled me to purchase any amount of goods for the State of Louisiana. These fifty bales of cotton were first seized, forty bales afterwards released, and I obliged to sell at the low prices of the Matamoros market—say at 17 cts. per lb., so that, after paying freight, I had nothing left worth speaking of. Then I send to Mr. Loeb, my agent in Houston, for more cotton, who, late in the fall, started 87 bales

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	of cotton. The winter being very hard the cattle died on the road, while, in the meanwhile, the cotton took one half of said cotton, and this expedition left me again in debt. Last I got in with Mr. Jenny, encouraged him to jointly take in his stock, and you know the remainder. The schooner Delfena is still lying in Calcasieu river, and no telling whether she ever will get out. I submit this statement to your examination. It will prove to you that I have done all I could to forward the interest of the State. B. WEIL. Shreveport, La., Oct. 18, 1864." "New Orleans, August 5, 1876.—I hereby certify that the foregoing is the handwriting and signature of B. Weil. I have seen him write and sign his name very often during the period to which this memorandum relates—say from May, 1862, as well as afterwards, until May, 1865. E. W. HALSEY, *late Private Secretary to Gov. T. O. Moore and to Gov. H. W. Allen.* Sworn to and subscribed before me this 5th of August, 1876. TH. BUISSON, *Not. Pub.* [SEAL.]" In corroboration of the testimony of Loeb, Brent, Britton, Hope, and Boggs, and the letter of Col. Wise, quoted at the beginning of this head as to the whereabouts of Mr. Hite, there appears a letter from Weil and Jenny to Governor Allen of Louisiana, dated Shreveport, October 27, 1864, a certified copy of which is herewith transmitted, the original being in the Confederate archives in the War Department at Washington. I this letter Messrs. Weil and Jenny say:

II.—SHIPMENT OF COTTON.

	"In respect to Mr. George D. Hite we offer your Excellency our thanks for the promise to detail him to our service should Col. Wise be able to spare him. We will be sadly in want of an energetic and trustworthy agent, as we will have to import money from Mexico to make your permits for cotton available. If, therefore, Col. Wise should be able to spare Mr. Hite, we hope that the latter will report in Alleyton in thirty days from to-day. It will be necessary that Mr. Hite should be provided with all necessary papers to travel backwards and forward between Mexico and this place with all security." December 24, 1864, G. Jenny writes from Matamoros to Loeb at Houston: "Mr. George D. Hite, from Shreveport, formerly from New Orleans, will probably be

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Evidence before the Commission.	*New Evidence offered by Mexico.*

The affidavit of S. B. Shackelford of February 17th, 1872, and the one made by George D. Hite on the 12th March, 1872, furnish the only account to be found in claimant's evidence of either the purchase of the cotton or its shipment from Alleyton, (or Allaton, as it is called by Hite,) the memorial and the testimony of claimant himself, Justice, Martin and Hite in his affidavit of December 15, 1869, treating of the cotton only as having been in possession of the claimant in Mexican territory.

Shackelford says: "I was present at Alleyton, Texas, about the 1st September, 1864, when the complainant, Benjamin Weil, was taking out a large train

detailed to Weil and Jenny, and he may call on you towards the middle of January. I, as his friend, recommend him to you warmly. Any favor you may confer on him will be thankfully appreciated by me. Instructions for him will be sent from Matamoros; but in the meantime he might attend to the cotton in Alleyton, to see it sampled and put in order, and if any shipment is made, to see that such be *in order*. He is energetic and a good business man, as you will find out."

January 9, 1865, Weil writes to Loeb from Matamoras: "Should Cap Hite arrive at Houston take good care of him."

January 11, 1865, Hite himself writes to Loeb from Shreveport: "You will please say to Mr. G. Jenny, of Matamoros, that I will leave here (under a transfer to Messrs. Weil and Jenny for "90," ninety days) on the 15th January, 1865, for your city. If Mr. Jenny has left for Matamoros, please write him on the subject, and by so doing you will much oblige."

On the 3d of February Hite appears to have passed through Houston and reached San Antonio, from which point he writes to Loeb. Further letters of Hite to Loeb and Jenny from Richmond, Texas, and Fairfield, dated from March to May, 1865, are herewith transmitted. Reference to Hite are also found in Weil's letter of April 9th, and in telegrams of Jenny, dated March 5th and 22d, in the latter of which, addressed to "S. E. Loeb or George D. Hite," he announces that Hite's furlough has been extended.

On the 22d of February an entry appears to have been made in the cash-book of Weil and Jenny at Houston, in which Loeb kept the accounts of the deposit made with him by Jenny to the credit of the firm. This is the first appearance of Mr. Hite's name in the book, the entries in which extend from November 17, 1864, to June 30, 1865.

If neither Weil nor his pretended agent, Hite, had collected 1,900 bales of cotton at Alleyton or "Allaton" at any time prior to September, 1864, no proof can be necessary to show that such cotton was not shipped from "Allaton" in May, nor from Alleyton early in September. It is nevertheless interesting to examine the correspondence of the claimant and his associates during the period mentioned.

Hite says expressly that he did not accompany the train on its 700-miles trip from "Allaton" to the Rio Grande, nor does he give the name of any person who did. From the evidence submitted under head I it is clear that Weil himself was occupied with entirely different matters

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loaded with cotton, as I understood, to penetrate the territory of the United States of Mexico toward Laredo. The train was loaded with or had on board about two thousand (2,000) bales of cotton, to the best of my observation and the general reports at the time, and I had an opportunity of knowing, as I was in company and contact with his clerks and agent daily. . . . . He was the sole owner and master of the cotton train and expediton."

Hite says: "I was in Allaton, Texas, the place of depot or starting point, and assisted in making up the train which was to take complainant, Weil's, cotton into the United States of Mexico as aforesaid. The train consisted fully of one hundred and ninety wagons, averaging eight mules to each wagon, the mules being small, the soil on the black prairies being very stiff and hard and the sand roads being very deep and heavy. The wagons averaged about ten bales of cotton each. At the last computation nineteen hundred bales of cotton were loaded and shipped on the train. . . . . I was Weil's principal agent in purchasing cotton and superintending the getting up of the train and shipping the cotton. . . . . The wagons and mules, or the train itself, so called, was hired by Mr. Weil and was subject to his orders and directions. The cotton, as it came into Allaton, was overhauled for the purpose of being put in order, and where bales were small I enlarged them by repacking and baling so as to make them weigh over five hundred pounds to the bale. This was done for the convenience of packing and transportation. All of the cotton averaged over five hundred pounds to the bale, and cotton at that time was worth from forty-five to forty-eight cents per pound in gold, irrespective of classification. I started the train with complainant's cotton (amounting to at least nineteen hundred bales) from Alaton, in Texas, in its way to the United States of Mexico in May, 1864, to the best of my recollection with regard to dates. . . . . After the train left Allaton, Texas, in May, 1864, I left the employ of Mr. Weil and proceeded directly to Matamoros, in Mexico, on business of my own as a contractor. . . . . When I first gave my statement or testimony in this case on the 15th day of December, 1869, before George W. Christy, notary, neither Mr. Weil or his attorney was present. Not having been informed by either Mr. Weil or his attorney upon what points my testimony was desired, I simply made a general statement without entering into details, but having since learned from the

New Evidence offered by Mexico.

from May to September, 1864. But Shackelford says that "about the 1st Sept., 1864," Weil "was taking out" the train from Alleyton. The following papers show the whereabouts and operations of Weil from "about the 1st Sept." to the the time when the train should have crossed the Rio Grande in order to have been captured on the 20th:

Weil to Borme, (in French,) Alexandria, September 5, 1864: "I shall leave to-day for Shreveport, and remain there several days, and hope in the interval to have good news from Mr. Block." Isaac Levy adds proscript.

I. Levy to Loeb, Alexandria, September 7, 1864: "Your letter of 16th July to B. Weil just to hand, which I forwardet to Shreveport. Weil left here three days ago for that place. Joe B. was to go to N. O. with 220 B. cotton, but still on the bark near Plaquemine. You wish to know what I am a doing. As I was conscripted I am now State agt, and have to attend to stores here. I have dun a good deal of trading before the Yankees came here, but all burned and disdroid. I have now a good stock of flour and tobacco on hand; making expences. I have no storehouse, and none to be had."

I. Levy to Loeb, Alexandria, September 10, 1864: "Joe Block is below. I have not heard from him. Weil is in Shreveport. You can communicate with him."

Weil to Loeb, Shreveport, September 10, 1864: "I arrived here this morning, perfectly astonished not to find any late letters either of you or Mr. Jenny. If I was guilty of any rascality I would judge that you are both suspicious and mad, but as my conscience is clair I am not uneasy; only think it very strange. I came in time to see Mr. Clapp for a few minutes. He is gone, and will not be back in less than ten days. I have seen the Gov to-day, who end me back until Monday next; then I will write to Mr. Jenny, full particulars. So far Jo's expedition is a failure. Schooner Delfina all right. Nobody will interfere according to the Gov's say so. . . . . Do at least remember me to Mr. Jenny, and let him know that I worked as much for him as for myself."

Weil to Jenny, care of Loeb, Shreveport, September 12, 1864, (telegram:) "Arrived Saturday; waiting at request of Governor. Wrote yesterday; will write to-morrow. Clapp gone; expected back in a week. Write."

Governor Allen to Loeb, Shreveport, September 12, 1864, (telegram:) "I will take all your printing paper and give cotton for it at Houston or Navasota,"

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attorney of Mr. Weil that when I made my first statement he was ignorant of my knowledge of facts and details which he now deems of importance, at his instance, request and summons I now extend my testimony and give this statement in detail. In answer to a question by Weil's attorney, I add that the distance from Allaton, Texas, to the point where the train crossed the Rio Grande is called seven hundred miles. Such a train would hardly average eight miles a day in travel.

The statement of Hite as to the date of shipment and the distance from Alleyton to the Rio Grande is the one adopted by claimant's counsel in their argument.

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Governor Allen to Loeb, Shreveport, September 13, 1864, (telegram:) "Will take paper at Navasota at twenty-five dollars specie, and pay in permitted cotton at Navasota at market price. How much paper have you, and where is it?"

Governor Allen to Loeb, Shreveport, Sept. 14, 1864: (Telegram.) "For three hundred reams printing paper delivered at Navasota, I will deliver at same place, in two weeks, fifty thousand pounds cotton, with permit to pass it out. Weil is here waiting for a letter from you and Mr. Jenny."

Weil to General Smith, "Shreveport, September 15, 1864: General E. Kirby Smith, com'dg trans-Miss Dept. Sir: I beg leave to submit for your inspection the inclosed papers. On or about the 1st January, 1863, I was appointed, with Marx Levy, my commercial partner, agent of the State of La, with orders and authority to export cotton, and buy stores therewith, for the State. In pursuance of this agency, I bought 50 bales of cotton, at Freestone, Texas, and paid 11 c. per pound, specie, freight to Brownsville, where it was seized by order of General Bee, then comdg on the Rio Grande, and ten bales thereof retained. Your order of September 1, 1863, (a certified copy of which is herewith enclosed,) was shown to General Bee, but he refused to return the said ten bales of cotton, on the ground that it did not belong to the State of Louisa, according to the words of your order. I respectfully request an order for that quantity of cotton (10 B.) at Brownsville, free of charge, in payment for that quantity unjustly taken from me. November 18th, 1863, S. E. Loeb, Esq., shipped 83 bales of cotton from Alleyton, for me, before the cotton bureau was established. The train was detained, by disease among the cattle, at a point 10 miles east of St. Antonio, where Col Hutchins seized one-half of said cotton, but agreed to take an equivalent quantity (37 bales) at Houston, which was given (see Col. Hutchins' receipt and certificate, and the statement of Mr. Loeb.) This was equally in violation of your order and of my contract with the State of La, which had the approbation of Gen Magruder as well as of yourself. I have the honor to request, therefore, that you give me an order for cotton, of equal weight and value, (say 37 bales,) at Houston. I would state that I and my partner have faithfully fulfilled our contract, as you are doubtless aware. Relying upon your characteristic sense of justice, and begging your early attention to this matter, I remain, very respectfully, yr. obt. st.,

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	B. Weil." Endorsements: "W. 1240. Shreveport, La., Sept. 15, 1864, B. Weil, agt., La. Respectfully requesting re-payment of cotton wrongfully impressed at Brownsville and San Antonio. Enclosures—"A." Certificate of C. Russell, Ch. Q. M. 1 Div., Texas—C. S. A. "B." Copy of Gen. Smith's order, Sep. 1, 1863. "C." Letters of Gov. Moore. "D." S. E. Loeb's Power of Atty. "E." S. E. Loeb's statement. "F." Permit 83 B. C., by Col. Hutchins. "G." Receipt 37 B. C., Col. Hutchins. "H." Permit 37 B. C., Col. Hutchins. Respectfully forwarded with the request that Mr. Weil be granted the relief which the accompanying papers show to be due him. Ex. office, Sep. 15, 1864. Henry W. Allen, Gov. La.—Cotton bureau, Shreveport, 28th Sep., 1864. General: The certificate of Major Russell is one of those innumerable cases where cotton has been taken under military orders, as a military necessity, and which some mode of payment should be provided—but in the present dearth of cotton, to meet the wants of this Dept'mt, I cannot recommend its payment *in kind*. The receipt of Lt. Col. Hutchins was in accordance with the rules of his office, exemption from which these gentlemen cannot claim under their contract with the State, as the cotton was their private property, and as such, not more entitled to exportation privileges than the property of others. W. C. Black, Captain & A. Q. M. for chief of bureau.

III.—TIME AND POINT OF CROSSING THE RIO GRANDE.

In getting the train across the river the claimant finds his staff of witnesses reduced to one, and that one the faithful Hite. Neither the counsel in their memorial, the claimant in his application, nor any of the other affidavit-makers, including the ready Shackelford and Hite himself in his earlier efforts, were willing to undertake this difficult task. But in his deposition of March, 1872, Hite, having started the train from "Allaton" in May, 1864, (which Shackelford saw Weil taking out of Alleyton "about the 1st Sept., 1864,") goes on to say: "The train and cotton crossed the Rio Grande into the United States of Mexico about one hundred and sixty* miles above Brownsville, in the early part of September, 1864. That point of crossing was made for the sake of better roads, there afforded. . . . . After the train left Allaton, Texas, in May, 1864, I left the employ of Mr. Weil and proceeded directly to Matamoras, in

Admitting the mathematical and geographical possibility of a train starting from "Allaton," Texas, (wherever that may be,) in May, 1864, traveling 8 miles a day and reaching a point on the Rio Grande 700 miles off and 160 miles above Brownsville in the early part of September, 1864, at least one hundred days thereafter, and of the same train leaving Alleyton, Texas, about the 1st of September, 1864, and crossing the Rio Grande in time to be met by Shackelford between Laredo and Piedras Negras in Mexico between the 10th and 25th of September, such a train would have to overcome certain physical obstacles which are thus described by Mr. John C. Evins in his affidavit of Aug. 14, 1876: "In the year 1858 I was appointed deputy collector of U. S. customs for the port of Laredo, on the Rio Grande, under Kinchen L. Harrolson, chief collector, who was stationed at Brazos de Santiago, which position I held

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Mexico, on business of my own, as a contractor; but as my business called me up the Rio Grande in Sept., 1864, whilst so attending to my own business I met said train and cotton at the point where it crossed the Rio Grande, 160 miles above Brownsville, and assisted in crossing it into Mexico. . . . . In answer to a question by Weil's attorney I add that the distance from Allaton, Texas, to the point where the train crossed the Rio Grande is called seven hundred miles. Such a train would hardly average eight miles a day in travel. I repeat that I met the train at the point where it crossed the Rio Grande, whilst on business of my own; that I assisted at its crossing and immediately left it, proceeding directly to Matamoras on my own business."

The above is all the evidence filed by the claimant of the fact and circumstances of the passage of the cotton from Confederate to Mexican territory. Shackelford only swears that he saw it in Texas about the first, and in Mexico between the 10th and 25th of September.

*An inspection of the original affidavit will show that it at first read, "sixty miles above Brownsville," and that the words "one hundred and" are interlined. But even this correction failed to bring the point of pretended crossing within one hundred miles of the point of pretended capture, as the latter is stated to have been above Laredo, which, by the map, is nearly 260 miles above Brownsville.

New Evidence offered by Mexico.

until Texas seceded from the Union. I then remained at Laredo as my home or headquarters, until the year 1869, and was there during the entire war. I was engaged in the freighting business and acted as agent in passing cotton over the Rio Grande, and made frequent trips with wagons from the interior to the Rio Grande. I am perfectly familiar with all the roads and watering places from the interior of Texas to the Rio Grande, or Mexican frontier, and from long residence and the opportunities afforded me, I am well acquainted with all the principal persons on both sides of the Rio Grande, from its mouth to Piedras Negras on the Mexican side, Eagle Pass or Fort Duncan on the Texan side of the river. The distance from Alleyton, on the Colorado river to the Rio Grande is about two hundred and sixty miles, and after passing the city of San Antonio there are but three roads leading to the Rio Grande. The upper road leads direct to Piedras Negras, Eagle Pass or Fort Duncan, and the second leads direct to Laredo; the third or lower road divides and leads to Roma, Rio Grande City, Brownsville, &c., &c. There is no road running to the Rio Grande between Piedras Negras and Laredo, nor any ferry between these two places. The country on the Texan side of the Rio Grande is dry and scarce of water, and on the Mexican side it is rough and full of deep ravines, and not practicable for the passage of large trains heavily laden; hence all trains are compelled to travel by the regular public road in order to get water, &c., and these roads terminate as above specified. In 1864 there were no ranches on the Rio Grande on either side of the river from about thirty miles above Laredo to El Presidio, thirty or thirty-five miles below Piedras Negras. Trains to cross at the ranches above Laredo would have to go within fifteen miles of Laredo, or cross at Presidio, thirty-five miles below Piedras Negras. It would be a matter of the greatest difficulty and delay to cross wagons. It would be necessary to unload and probably to take them to pieces. The cheapest way would be to float the cotton across the river. . . . . The roads about that time (September, 1864) were filled with trains passing to and from Mexico. The rivers are generally high in June and July, and I don't think the Rio Grande is fordable in September. It is only fordable at a few points at any season of the year. About the year 1866 there was a ferry and custom-house temporarily established at Palafox, about 40 miles above Laredo. The banks of the river are generally very precipitous between Laredo and Piedras Negras."

IV.—PERMITS FOR EXPORTATION.

Evidence before the Commission.	*New Evidence offered by Mexico.*
There is no allegation by the claimant that his cotton was exported by permission of the Confederate authorities under the strict regulations then in force.	The improbability that such a large amount of cotton as the 1,900 bales claimed by Weil, supposing it to have existed as his property, and to have overcome the difficulties attending its passage to the Rio Grande, could have been exported without the permission of the Confederate authorities, is illustrated by the affidavits of Marx Levy, S. E. Loeb, E. W. Halsey, and J. C. Ransom. They all speak of the difficulty of securing permits for the exportation of cotton, and of the rigidness with which the authorities seized all cotton which it was attempted to cross without permission. On this point J. C. Evins says: "The military authorities of the Confederate States also required permits from the cotton bureau, and cavalry companies were stationed on all the roads leading to the Rio Grande, and all trains were inspected, and those found west of San Antonio without the permits were detained." L. G. Aldrich, in an affidavit made August 3d, 1876, before Thos. Buisson, notary public, of New Orleans, says: "I was a captain and asst. adjt. genl. in said army from and after Sept., 1862, until the last of June, 1865. That in that capacity I served in district of Texas, New Mexico, and Arizona, from and after Sept., 1863, a large portion of the time as adjt. genl. of frontier or western sub-district, say from July of 1864 until last of June, 1865. That my headquarters during that time were in Brownsville, from which point I was in regular and constant communication with commanders of all troops in our district, as also with commanding officers in the interior. That by law all cotton found west of Goliad and San Antonio, Texas, was subject to seizure and confiscation unless covered by a permit from the cotton bureau, and that semi-weekly I received from agents of said bureau regular abstracts, showing what cotton had regularly and legally passed such points, which abstracts were posted publicly in my office for general information, and certified copies forwarded by me to the commander of troops in our district—at all points in our district—it being one of their special duties to watch out for and examine papers of all trains loaded with cotton passing through district. . . . . That I consider it next to an impossibility for a train of 150 wagons and 1,900 bales of cotton to have passed through our district without being discovered." That no one was better aware of this state of affairs than the claimant himself, and his partners, is evident from their papers and correspondence. Without recounting the story of the seizure, under the 20 per cent. law, of the 10 bales out

IV.—PERMITS FOR EXPORTATION.

Evidence before the Commission.	*New Evidence offered by Mexico.*
	of their first lot of 50, received at Brownsville, and the impressment, near San Antonio, of 37 bales out of their second lot of 83 bales, and of their unsuccessful efforts to recover the same, aided, as they were, by the Executive of Louisiana, it will be sufficient to refer to the following papers, mention of which will be found under Head I. Order of Lieut. General Smith, dated September 1, 1863, and addressed to Maj. Gen. J. B. Magruder, directing the lease of "cotton belonging to the State of Louisiana in the hands of Benj. Weil and Marx Levy." Letter of Gov. T. O. Moore, of Louisiana, dated September 4th, 1863, enclosing the above to Messrs. Weil and Levy. Certificate of Chief Q. M. C. Russell, dated September 8th, 1863, showing the impressment of the ten bales. Permit of Lieut. Col. Hutchins, dated January 7th, 1864, covering eighty-three bales of cotton. Letter of T. C. Twichell, agent Texas cotton office, dated January 22, 1864, with regard to the above lot of 83 bales. Under Head II is given the application of Weil to Gen. Smith, dated September 15th, 1864, for the replacement of the cotton seized in Texas, with the endorsement of Gov. Allen and the military authorities thereon. Among the papers transmitted herewith appears a receipt of E. Menières, collector, to S. E. Loeb, dated Eagle Pass, April 14th, 1864, for $64.56, for export duty on two lots of cotton. In his letter to Bloch, of July 21st, 1864, Benj. Weil says: "You dare not take out over 220 B. Strict orders are given to that effect, and no permits granted from this out to nobody, and if any caught at smuggling sentenced to be shot. Therefore take notice, and warn the community at large." "The community at large" was not compelled to rely on Mr. Bloch for information as to the regulations controlling the exports of cotton. For on the 1st of September, 1864, Lieutenant Col. W. A. Broadwell, chief of cotton bureau, published a full description of the organization and duties of the cotton office, copy of which is herewith transmitted. The stations and duties of Lieut. Col. Hutchins, Major Charles Russell, Captain T. C. Twichell, and Captain J. C. Ransom are defined and described. J. C. Baldwin appears as county agent of Colorado county, post office, Alleyton. "Each of the said district officers is held responsible for the acquisition of one half the cotton of the various counties under his control, in accordance with general order No. 34 from dept. headquarters."

V.—PAYMENT OF DUTIES.

Evidence before the Commission.	*New Evidence offered by Mexico.*
It was not pretended by claimant or any of his witnesses that the cotton at the time of its entry into Mexico paid the duties then imposed by the Mexican Government. Martin says "that the destination of said cotton was the city of Matamoras, where all produce was taken, then and there passed through the regular customs, Mexican, and then shipped abroad. He further declares that the said cotton, at the time of seizure, had not reached any Mexican custom-house where the proper duty could have been demanded and would have been paid. He further declares, on oath, that said Benjamin Weil, the entire owner of the cotton seized, was considered at Matamoras, Mexico, a large operator in cotton, and he knows to his certain knowledge that said Weil has always paid duty at Matamoras to the Mexican Government on all cotton which he received and exported at and from Matamoras, this being the place where the said Weil temporarily resided for business purposes." Hite, in his affidavit of March 12, 1872, says that Matamoras was "the only point at which duties could be paid."	It cannot be thought important to justify the seizure of a hypothetical cotton train on the ground that if it had existed and entered Mexican territory at the time and place described by Hite, it would have been justly liable to such seizure for evasion of the Mexican revenue laws. Yet even this might be done by reference to the accompanying papers. Captain J. C. Ramson swears that "the military authorities required all cotton to be exported through the following ports, viz: Brownsville, Edinburg, (opposite Reynosa,) Rio Grande City, Laredo, and Eagle Pass. All cotton found west of San Antonio without permit was liable to seizure. All cotton was required to pay a small export duty to the Confederate States government, and an import duty to the Mexican authorities at the towns opposite the above named towns, viz: Matamoras, Reynosa, Camargo, New Monterey, and Piedras Negras." J. C. Evins says: "Trains to cross at the ranches above Laredo would have to go within fifteen miles of Laredo or cross at Presidio, thirty-five miles below Piedras Negras. It would be a matter of the greatest difficulty and delay to cross wagons. It would be necessary to unload and, probably, to take them to pieces. The cheapest way would be to float the cotton across the river. The Mexican officials were very vigilant, and if any considerable amount had passed it would have been known to them. . . . . The custom-house authorities on each side of the Rio Grande are very vigilant, and all cotton was required to pass regularly through the custom-houses, and pay the duty in specie at the place of crossing; then permits were granted." Captain L. G. Aldrich says: "The Mexican Government required all cotton arriving in its territory to be regularly entered at one of its custom-houses, which were established at Piedras Negras, Laredo, Guerero, Mier, Camargo, Reynosa, and Matamoras. . . . . That our relation with authorities on Mexican side were of the most friendly character." The Mexican law of January, 1856, established as ports of entry the following places: Matamoras, Camargo, Mier, Piedras Negras, Monterey, Laredo, Presidio del Norte and Paso del Norte. It fixed the duty on cotton and prescribed confiscation and absolute loss as the penalty for smuggling.

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Evidence before the Commission.

The train having been sworn safely across the river, Hite and Shackelford are reinforced by several witnesses, including the claimant himself, (who now for the first time appears in that capacity,) and there is even some approach to precision in and harmony between their statements. In his application or statement of the case, sworn to Sept. 13, 1869, the claimant, Weil, says: "That on or about the twentieth of September, 1864, I had on several trains in the Republic of Mexico and under my special control the following described property, belonging solely to myself. . . . . Said property was at that time then and there on the Mexican territory, between Piedras Negras and Laredo, etc.; that it was seized and by force taken from me by the representative forces of the Republic of Mexico, then in command of that portion of the country. . . . . That I was at the time of the seizure of my cotton stopping at Matamoras, Mexico."

Reference has heretofore been made to the affidavits of Daniel Taylor, J. O. Osborn, and George D. Hite, of Sept. 10, 1869, in which they say that "to their certain knowledge, the losses he (Weil) experienced in the Republic of Mexico were very great."

In the batch of affidavits made December 15, 1869, Emile Landner says: "from what I have heard from others upon the subject, and general report in Mexico and elsewhere, I believe that sometime in the year 1864 the complainant, Weil, lost a large amount of cotton, (over one thousand bales,) captured and taken from him by the forces of the Liberal party in Mexico. The cotton then was worth about one hundred and sixty dollars per bale, in gold."

Anchus J. McCulloch says: "From general report on the subject, and from what I have heard stated by others in Mexico and other places, I believe that the said complainant, Weil, in the year 1864, had over one thousand bales of cotton taken forcibly away from him by the forces of the Liberal or Juarez party, in Mexico, and that said cotton, at the time of its capture or forcible detention by the forces of the Liberal party as aforesaid, was worth one hundred and sixty dollars per bale, in gold."

George D. Hite says: "Said cotton, with other cotton, (?) was forcibly seized and taken possession of by the forces of the Liberal or Juarez party and detained; said seizure was made in Mexican territory, between Piedras Negras and Laredo. Said cotton when seized was worth about

New Evidence offered by Mexico.

It is natural that a cotton train which was made up at and left "Allaton," 700 miles from the Rio Grande, in May, traveling at the rate of eight miles a day, and was again made up and started from Alleyton, 260 miles from the Rio Grande, about the first of September, and crossed the river 160 miles above Brownsville "in the early part of September," should be a little erratic after its arrival on Mexican territory. It is not surprising, therefore, that all the witnesses should agree that on the 20th of September this extraordinary caravan was found between Laredo and Piedras Negras, 100 miles up the river from the point of crossing, on its way to Matamoros, apparently *via* the Northwest Passage.

Hite "did not travel with the train in Mexico, but went on to Matamoros," (being probably in a hurry to get there, and knowing a shorter route, as he had just come "up the Rio Grande on his own business.")

But Justice and Martin happening casually to meet the train, accompanied it, and Shackelford camped with it the night before the seizure.

Weil himself, according to the evidence filed in his behalf, would appear to have been the able conductor of the train, for he says "it was seized and by force taken from me," and, although he adds "that I was at the time of the seizure of my cotton stopping at Matamoros, yet the evidence as to his demands in person for the release of his cotton and the answer of the capturing party thereto, (see Head VII,) would seem to indicate that he was actually with the train which Shackelford saw him taking out from Alleyton about the 1st of September, and that the phrase "stopping at Matamoros" was merely intended to designate his place of residence. But his own letter and the telegram from Governor Allen to Loeb, (see Head II,) shows him to have been in Shreveport as late as the 15th of September. A letter is now submitted dated Shreveport, September 20, 1864, and addressed by him to Loeb, and other papers, including a telegram of September 26th, a letter of I. Levy of September 29th, another of October 11th, Weil's statement of October 18th, (see Head I;) a letter from Weil to Loeb of October 24th, a telegram from Weil and Jenny to Loeb of October 25th, a certified copy of their letter to Governor Allen of October 27th, (see Head I,) and two letters of Isaac Levy, dated October 27th and November 3d, respectively, showing Weil to have been in Shreveport continuously up to a

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one hundred seventy-five dollars per bale, in gold."

John J. Justice, on the 7th of February, 1870, says: "On or about the 20th (Twentieth) day of September, 1864, I was with a train of wagons loaded with cotton, say a little over nineteen hundred bales, [I think nineteen hundred and fourteen bales.] Said cotton was worth thirty-five cents per pound. It was worth, in round numbers, about three hundred and thirty thousand dollars. The bales would average five hundred pounds [500] to the bale. Said cotton was owned by Mr. Benjamin Weil. Said cotton was taken possession of by force by an armed force of the Liberal or Juarez party of the Mexican States, on the route between Piedras Negras and Laredo, in the Republic of Mexico. That I was present and witnessed the taking of said property. The party taking possession of the property at the time claimed, and, as I afterwards learned, belonged to the command of General Cortinas."

John M. Martin, in his affidavit of July 26th, 1870, says: "That on or about the 20th September, A. D. 1864, he was riding in company of a large wagon train loaded with cotton belonging to said Benjamin Weil, and to his certain knowledge this train had over nineteen hundred bales of cotton belonging solely to said B. Weil, which was destined of be delivered at the city of Matamoros, in the Republic of Mexico; and that on arriving with said train of cotton at a place, (do not remember the exact name,) but knows this to be between Piedras Negras and Laredo, that entire the train, as well as the cotton, was taken possession of by the forces under the immediate command of General Cortinas. That he, deponent, was present at the time of this unlawful seizure, and that besides his own knowledge that the said property did so belong to the said Benjamin Weil, he was likewise informed by the trainmaster in charge of said train that the entire contents, say over nineteen hundred bales of cotton, was the sole property of said Benjamin Weil, and intended to be delivered by said B. Weil's order at Matamoros. He further states that the entire amount of over nineteen hundred bales of cotton was forcibly taken possession of by said forces under command of General Cortinas, who represented the Liberal government of Mexico, and he affirms that he witnessed and was present at the taking of said property by said Liberal forces, and likewise of the turning loose of the mules and horses and team conveying said cotton; that he witnessed all these at the day between the two last named, and apparently unconscious of the fate which had overtaken his 1,914 bale train of cotton in Mexico.

New Evidence offered by Mexico.

The affidavits of S. E. Loeb, B. C. Brent, R. F. Britton, John J. Hope, and W. R. Boggs, the letter of Col. J. C. Wise, the application of Weil and Jenny, dated October 27, 1864, for the detail of George D. Hite to their service, their cash-book, and the letters of Hite himself, dated in 1865, (for all of which see Head I,) would seem to indicate that Hite was also in Shreveport on or about the 20th of September, 1864, and to cast a doubt upon his statements as to his personal knowledge of the capture of cotton at that time in Mexico.

The Mexican Government cannot impeach the testimony of Martin, Justice and Shackelford by proving that they were not between Laredo and Piedras Negras at the time designated. But it did endeavor to put in question the veracity of their statements by proving an *alibi* for the officer who was charged with being in command of the capturing party. Landner, McCulloch and Hite, in their affidavits of 1869, had merely characterized this band as belonging to the forces of the Liberal or Jaurez party, and Weil called them "the representative forces of the Republic of Mexico." Justice says he learned after the capture that they belonged to the command of General Cortinas. Hite swore in 1872 that the men belonging to the train and "men and officers belonging to Cortinas' commands and who assisted in capturing the train and cotton," informed him in Matamoras of the seizure "by troops and forces belonging to the Liberal or Juarez Government under the command of Cortinas." Shackelford says: "The train and its contents was seized and taken possession of by an armed force under General Cortinas by violence." And Martin says "that the entire train as well as the cotton was taken possession of by the forces under the immediate command of Genl. Cortinas." And further on, "that he witnessed and was present at the taking of said property by said Liberal forces, and likewise of the turning loose of the mules and horses and team conveying said cotton. It is probable that any other than a Liberal commander would have appropriated these animals, or at least have used them to convey the wagons and cotton to some point where they might have been disposed of, instead of allowing them to remain on the highway between Laredo and Piedras Negras.

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place between Piedras Negras and Laredo, at the time and date above stated, and that the unlawful seizure was forcibly made by the Liberal soldiers under command of General Cortinas, and that the destination of said cotton was the city of Matamoras, where all produce was taken, then and there passed through the regular customs, Mexican, and then shipped abroad. . . . . He also declares on oath that he is in no way connected or interested in this claim whatever, and that he is convinced by his own personal witness and presence of the said seizure that the said cotton, say, over nineteen hundred bales of cotton, was the sole property of said B. Weil, and that they were forcibly taken by the Liberal forces of General Cortinas, representing and known then to be an officer of high rank in the Liberal Army of Mexico, the president of which Republic was Don Benito Juarez; and further deponent says not."

S. B. Shackelford, says, in his affidavit of February 17th, 1872: "My business as agent of the Confederate government called me, from time to time, both to Texas and the United States of Mexico. After having left Alleyton, I went over into Mexico in the prosecution of my business as agent aforesaid, where I again met complainant, Benjamin Weil's said train loaded with cotton, on the road near Laredo, in Mexico. This was somewhere between the 10th and 25th of September, 1864. I camped with the train, and the next day after I joined it, the train and its contents was seized and taken possession of by an armed force, under General Cortinas, by violence."

Geo. D. Hite, in his affidavit of March 12, 1872, says: That after assisting the train across the river, "I did not travel with the train in Mexico, but went on to Matamoros. Whilst I was in Matamoros the men belonging to the train came into town and announced that the train and cotton had been captured by troops and forces belonging to the Liberal or Juarez government, under the command of Cortinas. This same statement was also afterwards made to me by men and officers belonging to Cortinas' commands, and who assisted in capturing the train and cotton. This statement they made to me whilst I was still in Matamoros."

New Evidence offered by Mexico.

Although even Martin's statement was not sufficient to identify General Cortinas as being personally engaged in the seizure, the testimony above quoted pointed so strongly to him as the wrong-doer that it was deemed important to ascertain his whereabouts on the day mentioned. Certain proofs were, therefore, collected which arrived too late to be submitted to the Commission under the rules, which were offered to the Umpire, together with certain of those now submitted in support of the argument on the motion for a rehearing made by the agent of Mexico, and which are now on file with the papers in the claim in the State Department. Among these is a copy of the official report of the Imperialist General Tomas Mejia, dated Matamoros, September 26th, 1864. In this report General Mejia stated that he left Cadereyta, Sept. 15th, moving towards Matamoros; that on the 23d he received a letter from General Cortinas, in command of that place, proposing certain terms of surrender, which he rejected; and that General Cortinas surrendered unconditionally on the 26th and gave in the adhesion of himself and command to the Imperial Government. Affidavits were also presented from members of the deputation sent out from Matamoros by General Cortinas. Cortinas could not have left Laredo, 260 miles above, after capturing the cotton on the 20th and arrived in Matamoros in time to address a letter to Mejia, which the latter should receive on the 23d, even if he had been free to move in that part of the country. But the deposition of Col. Miguel de la Peña, who was a member of Cortinas' staff, and of the deputation sent out with him on the 25th to Mejia with the offer of surrender, (under instructions, a sworn copy of which is attached to the deposition,) shows not only that Cortinas was in Matamoros on the 20th of September, but that his excursions up the river had for a long time been limited to the vicinity of Camargo on account of the presence of the enemy.

If neither Weil nor General Cortinas were on the ground where the capture is alleged to have taken place at the time specified, it is more than improbable that any cotton should have been taken by the latter from the former, and if Hite was not in Matamoros shortly after the 20th of September he could not have heard then and there of such capture, either from the men belonging to the train (who must have numbered nearly 200, and the entire absence of whose testimony is a remarkable feature of this case,) or from

VI.—CAPTURE OF COTTON.

Evidence before the Commission.	*New Evidence offered by Mexico.*
	officers and men of Cortinas' command who assisted in the seizure. A strong presumption arises from the correspondence of Weil and his partners that no train of 1,900 bales of cotton belonging to him left Texas at either of the dates given by Hite and Shackelford found its way into Mexico, and was there taken possession of by the military authorities. If further proof of the negative which Mexico has been called upon to establish in this case could be required it is found in the affidavits of the claimant's partners; of Scherck, the agent of Jenny; of Halsey, the private secretary of Governors Moore and Allen; and of General Boggs, Captains Ransom and Aldrich, and Mr. J. C. Evins. Marx Levy says, after detailing his relations to Weil as a partner; "Benjamin Weil never mentioned to me of his losing 100 wagons, or 190 wagons, carrying 1,914 bales of cotton, from the very fact that he knew it to be false. . . . . I know this claim of Benjamin Weil against the Republic of Mexico is a base fabrication, and a fraud from its beginning to the end." Solomon Firnberg says: "Since the time of our partnership I have never heard of any claim against the Government of Mexico by our firm, and I know of my personal knowledge that the claim of Benjamin Weil against the Government of Mexico was fraudulent. At the time he made that claim, as being a claim of his own, he wilfully stated what he knew to be untrue. I was then a partner, and interested in all transactions, gains, or losses, up to the dissolution of the partnership, which took place on the 19th day of December, 1865, and I know that claim to be a fraudulent one. I had access to the books and papers, and have never seen or heard of any such claim existing. The first I ever heard of it was through the public press, and that was in the latter part of last year. I then denounced it as a swindle, and now pronounce it to be so." Louis Scherck says: "I have never heard of any cotton having been taken by the Cortinas forces belonging to Benjamin Weil. If such a thing had happened I certainly would have heard of it at the time." E. W. Halsey says: "Although intimate with Mr. Weil during these transactions, he never spoke to me of losing cotton by seizure on the Rio Grande, or of exporting other cotton that that received from or through Governor Allen. Had he incurred any considerable loss by such seizure the fact would in all probability have come to the knowledge

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Evidence before the Commission.	*New Evidence offered by Mexico.*
	of Gov. Allen and myself, as his private secretary, had it occurred before June, 1865." General W. R. Boggs, chief of staff to General Kirby Smith, says: "I do not know Benjamin Weil; that I never heard of any seizure of cotton by the Mexican authorities or others. Any seizure of cotton would, I think, have been heard of by me in my position." Captain J. C. Ransom, Confederate agent for the purchase of cotton in Texas from May, 1864, to May, 1865, says: "I never heard that any cotton had been seized by the Mexican authorities. I had a very large and extended acquaintance, and constant intercourse and business connections with contractors and persons engaged in transporting cotton from the interior of Texas to the Rio Grande river, and I do not believe that it would have been possible for nineteen hundred bales of cotton to have been seized by the Mexican authorities without my hearing of it. Such seizure would have caused terror in the minds of all persons owning cotton or those engaged in transporting the same. The Mexican authorities at one time seized an amount of funds belonging to the Confederate States government, which was the talk of the whole country. These funds were subsequently released. In my judgment there never was, during the war between the States, any one team of wagons that transported nineteen hundred bales of cotton. The time necessary to collect so large an amount of cotton, the capital that would be required to pay for so large a quantity of cotton, and the amount necessary to pay for advance freights, and the scarcity of water and grass along the routes for such a large number of animals, would preclude all reasonable possibility." Captain L. G. Aldrich, adjutant general of the frontier district from July, 1864, to June, 1865, says "that any outrages perpetrated by Mexican authorities were promptly reported at our headquarters, and our relations with the Mexican authorities being of the most amicable kind, satisfaction was promptly afforded; that no capture of train of cotton was reported to me as having occurred in September or October, 1864; that I consider it next to an impossibility for a train of 150 wagons and 1,900 bales of cotton to have passed through our district without being discovered, or to have been seized by Mexican authorities without some intelligence of it reaching our headquarters; that I never heard at that time, or subsequently until now, of Mr. Benjamin Weil having lost any property." John C. Evins, formerly a deputy col-

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Evidence before the Commission.	*New Evidence offered by Mexico.*
	lector of customs, long a resident, and during the war a freighter and cotton agent on the Rio Grande, says: "I never heard of Benjamin Weil, nor of any seizure of cotton by the Mexican authorities in 1864, neither during the war nor since. In my opinion it would have been impossible for the Mexicans to have taken violent possession of 1,900 bales of cotton anywhere on the Rio Grande without my hearing of it. . . . . I do not believe that any one train of 1,900 bales of cotton belonging to one individual ever traveled across Texas into Mexico, and I will add that the seizure of such a large quantity of cotton would certainly have been heard of by me, if made at any point on the Rio Grande, much less in the neighborhood of Laredo. The news of such seizure would have circulated throughout Texas, and frightened all traders. The roads about that time (September, 1864,) were filled with trains passing to and from Mexico."

VII.—STEPS TAKEN BY CLAIMANT FOR RECOVERY.

The memorial alleges that demand was made by Weil for the release of his property (which must have been left within easy reach, if, as Martin says, the "mules and horses and team" of the train were turned loose at the time of capture) from all persons in authority whom he could approach; but it also says "that this claim was not presented prior to the first day of January, 1869, to the Department of State of either Government, or to the Minister of the United States at Mexico, or to that of the Mexican Republic at Washington."

In his application or statement of his case, dated September 13, 1869, the claimant, Weil, says: "I often solicited the release of my property but could obtain no satisfaction whatsoever; that I have never laid this claim before either the United States or Mexican Governments asking payment thereof."

John J. Justice says, February 7th, 1870, the party taking Weil's cotton "stated that Mr. Weil would get his cotton back, or he would be paid for it."

S. B. Shackelford, in his affidavit of February 17, 1872, says: "The complainant, Benjamin Weil, made demand in person and through his agents and attorneys for the return of the cotton, which was refused; but the answer to his demand was that the Government of the United States of Mexico was good for the cotton or its value."

The papers mentioned under the preceding heads, together with other documents herewith transmitted, ranging in date from September, 1864, to March, 1866, contain no allusion to any efforts on the part of the claimant for the recovery of cotton from anybody but the authorities of the Confederacy, and no comment upon them is necessary under this head.

VIII.—ORIGIN AND MANNER OF PROSECUTING CLAIM.

Evidence before the Commission.

From the memorial quoted under the preceding head it will be seen that this is one of the innumerable claims brought into life by the treaty of 1868.

The claimant, Weil, in his application or statement of the case, sworn to September 13, 1869, says: "I have never laid this claim before either the United States or Mexican Governments asking payment thereof; that I have never transferred my rights or any portion thereof to any other person or persons."

S. B. Shackelford, in his affidavit of February 17, 1872, says: "The complainant, Benjamin Weil, has often requested me to give my testimony in this case, but my absence from the city and necessity for traveling in my business has prevented me from complying with his request until this time."

George D. Hite, in his affidavit of March 12, 1872, says: "When I first gave my statement or testimony in this case on the 15th day of December, 1869, before Geo. W. Christy, notary, neither Mr. Weil or his attorney was present. Not having been informed by either Mr. Weil or his attorney upon what points my testimony was desired, I simply made a general statement, without entering into details, but having since learned from the attorney of Mr. Weil that when I made my first statement he was ignorant of my knowledge of facts and details, which he now deems of importance, at his instance, request, and summons, I now extend my testimony and give this statement in detail." The active intervention of Hite in the preparation of this case is shown by the number of times at which he appears either as a witness to the facts involved or as supporting the testimony of other witnesses.

The presence and the testimony of the witnesses who appeared for the claimant are even less remarkable than is the absence of those who ought to have appeared, namely, the teamsters and employees attached to the train. They were not "turned loose" like the mules, for Hite got his first information of the capture of the train from some of them who came into Matamoros immediately afterward; and yet not one of these persons has ever raised his voice in behalf of the claimant.

Not less remarkable is the fact that no claim was ever presented to the Commission for the 190 wagons and 1,520 mules which were necessary to transport the cotton. So extraordinary was this circumstance that the claimant's attorney (according to the statement which he interjects into his argument before the Um-

New Evidence offered by Mexico.

The time at which this claim was first instituted is shown by the date of the affidavits in its support. If any testimony were needed to the character of at least two of the witnesses, it is furnished by Mr. B. C. Brent:

"I know J. M. Martin, a pilot on Red River. I found him at Alexandria, Louisiana, on my arrival there, during the spring of 1864. He stayed about Alexandria, and left there, I think, on the steamboat Warrior, which was burned, and he escaped and found his way to New Orleans. I know him to be a man unworthy of trust. I would not believe him under oath. I knew S. B. Shackelford, also. He was said to be a lieutenant in the Confederate States army. He was a sort of a *quasi* gambler. I don't know where his whereabouts are now."

The kind of joint-stock arrangement, by means of which the claim was prosecuted, is shown by the certified copy of an agreement (recorded in the office of the Register of Deeds of the District of Columbia) between L. B. Cain, of New Orleans, "attorney-in-fact of Alice Weil, for herself and as *curatrix* of Benjamin Weil, her husband, a person of unsound mind," of the first part, and Sylvanus C. Boynton, of the city of Washington, D. C., Harry T. Hays and Jacob O. De Castro, of the city of New Orleans, Philip B. Fouke and Jon J. Key, now residents of the District of Columbia, and W. W. Boyce, attorney-at-law, of Washington, D. C., of the second part; and by the testimony of Marx Levy, who, early in 1875, (whether or not prior to the decision of the American Commissioner, dated April 2d of that year, does not appear,) found some of the stock in the hands of the witness Landner, and also of Mr. P. W. Solomon, who kindly had certified to the credibility of the witness Justice.

Mr. Levy says: "Some time during the early part of the year one thousand eight hundred and seventy-five he told me that he had set up a claim against the Mexican Government—he did not state for what, neither the amount of said claim. I therefore paid little attention to his claim, so called. Although I thought then but little of it I bought on a venture one of Benjamin Weil's notes based on his Mexican claim, namely, Mr. Alexander Marks, of the firm of A. Marks, Levy & Co., and myself; we bought for the sum of two hundred and fifty dollars a promissory note of Ben Weil calling for two thousand and five hundred dollars, each of us paying one hundred and twenty-five dollars for the venture. This note we bought from a Mr. P. W. Solomon, who

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pire) wrote to Weil asking him to explain it, and Weil, like an honest man, replied that he did not own the train, and therefore could not properly make claim for its loss. But nothing could have been more natural than to refer his inquiring counsel to the person who had been despoiled of such valuable property, and who ought to have had such a magnificent claim against Mexico.

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sold it to us for the sum of above mentioned of "$250." Another party, by the name of Emile Landner, offered to sell to me one of Benjamin Weil's Mexican claim papers—its face calls for ($5,000) five thousand dollars—for which he asked me ($750,) seven hundred and fifty dollars, which I declined to buy. As far as my recollection bears me, these Weil Mexican claim notes read about as follows: 'New Orleans—date and year I don't recollect—out of the proceeds of my claim against the Government of Mexico, whenever paid to me, I promise to pay to the order of P.W. Solomon the sum of two thousand and five hundred dollars, for value received. Signed, B. Weil.' To the best of my knowledge, the note which Emile Lardner offered to sell to me is worded in about the same style."

Whether Martin and Hite did not get thair share of the Weil certificates, or whether they had disposed of them and felt at liberty to turn an honest penny by depressing the market, it is certain that soon after the award of the Umpire they commenced, and for some time continued, an active "bear" movement against the stock. Their methods of operating are shown by the subjoined affidavits:

"New Orleans, August 20, 1877: At the request of General James E. Slaughter, I called upon Captain J. M. Martin, about one year ago. I knew that Captain Martin was connected with the Weil cotton claim, and my object in seeing him was, if possible, to induce him to give a truthful statement of the conspiracy to obtain a large claim against said govt. I told him that the object of my visit was to get information on that subject. He replied that he preferred not to converse upon that subject without first seeing his attorney, Judge Dooley. He made an appointment to meet me at Judge Dooley's office; at the appointed hour I called at said office, where I found Martin had already arrived. On broaching the subject, Judge Dooley stated in substance, at that meeting, that before he could enter on the subject it would be necessary to arrange about what he was to be paid, or what they were to be paid, and that if I was not empowered to enter into that branch of the subject, it would be better to see the principal, or words to that effect. I told him that I was not so empowered, but that I was acting for Gen'l Slaughter, who would no doubt call upon him. I left his office, and reported the result of the interview to Gen'l Slaughter, who said he would go to see him. He subsequently informed me that he had seen Judge Dooley. I. W. Patton, Adjt. Gen'l

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State of Louisiana. District of Louisiana, before me, Robert I. Ker, United States Commissioner, for the district of Louisiana, personally came I. W. Patton, Adjutant General of the State of Louisiana, who, being duly sworn by me, declares and says, that all the allegations, comments and statements in the foregoing are true. I. W. Patton, sworn to and subscribed before me this 13th day of October, A. D. 1877. Robert I. Ker, United States Commissioner, for the district of Louisiana."

"Personally appeared before me, James E. Slaughter, a citizen of Mobile, State of Alabama, who deposes and says: That in March, 1875, he first heard of the claim of Benjamin Weil *versus* Mexico; that having been in command as a brigadier general of the Confederate States army of the western district of Texas, during the greater portion of 1864, with headquarters at Brownsville, and San Antonio, he was satisfied that no such seizure of cotton as claimed by Benjamin Weil could have taken place; that he knew Weil, who was frequently in his office, and that an arrangement between the Confederate authorities, and both Republican and Imperial parties, and authorities of Mexico, for the carrying on of trade between Texas and Mexico, existed at that time; that Weil never said a word about having any cotton or property seized.

That on investigating this case he went to New Orleans, and found the witness, J. M. Martin, who testifies to being present when the cotton was seized by Mexican authorities, and sent Col. I. W. Patton to see Martin; that Martin told Patton that he would go to his lawyer on the next day. This is what Patton reported to affiant. That on the next day Patton met Martin, and Martin took him to the office of a lawyer by the name of *Dooley*, No. 20 St. Charles street, New Orleans, La. Patton reported to him, affiant, that Dooley wished to see him; affiant called on Dooley, and recognized Dooley as the writer of several letters offering to the Mexican Government to furnish evidence of fraud in the claim of Benjamin Weil. Dooley then offered to sell to affiant the evidence of J. M. Martin which, he said, would show the fraud. There was present at this interview a man by the name of Wild, who was the amanuensis of Dooley, and who wrote the letters to the Mexican Government above mentioned offering to sell evidence of fraud. Wiid told affiant that the letters were written at the dictation and in the presence of J. M. Martin, and that Martin told him that another witness in this case, George D.

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Hite, was a party to the offer of sale. After inquiring about the character of Martin, and after many interviews with Dooley, affiant determined not to buy the evidence offered by Dooley. This man, Wild, is now in the employment, I believe, of the Treasury Department in New Orleans, and has an office at No. 20 St. Charles street, New Orleans, La. Affiant believes also that a man by the name of Janey, a steamboat agent, accompanied I. W. Patton, and was present at his first interview with Martin. The original letters of Dooley, written by Wild to the Mexican Government, are, I believe, among the papers in this case. I. W. Patton is now the Adjutant General of the State of Louisiana; Janey lives in New Orleans, and is steamboat agent. JAS. E. SLAUGHTER. Subscribed and sworn to before me, this 22d day of October, A. D. 1877. HENRY SKAATS, *U. S. Commissioner, Sou. Dist. Ala.*"

The Mexican Government has information to the effect that Mr. Wild himself has been approached by Martin on behalf of himself and Hite with offers to negotiate for the sale of their confessions, and presumes that in the course of his duty as a government official he may have made some communication to his superiors in the Treasury Department upon the subject.

The confession of Martin at least has been made and offered to the Mexican Legation, at Washington, for a consideration, but the offer has been declined.

How it occurred to Benjamin Weil, in the year of our Lord 1869, to bring a claim against the Government of Mexico, for losses in 1864, of a character so purely imaginary, cannot, perhaps, be shown with any degree of certainty. There is evidence, however, not confined to such declarations as those of Charles F. Galan, filed in the cases of James Tobin and La Abra Mining Co., that the treaty of 1868, establishing the Mixed Commission, created "a certain excitement about claims against Mexico." As a result of this excitement, claims were brought against the Mexican Government to the amount of $470,000,000, a sum which, if equally divided, would yield a handsome fortune to every American who has set foot in that country or held relations with it since the treaty of Guadalupe-Hidalgo.

This excitement may have extended to New Orleans. In this case, however, there is ground for the supposition that the claimant was influenced to bring his contribution to the list of fictitious claims by his success in another enterprise of a not less extraordinary character, but not

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	in any way connected with affairs in Mexico. It is of no special importance to adduce evidence in support of this theory But it may not be uninteresting to examine further the career of Weil, and review the circumstances which have conspired to make him one of the most extraordinary "claimants" of his time.
	Writing to Loeb from Matamoras, February 3, 1864, he had said: "We take in upwards of $60,000 of Confederate goods. . . . . The freight and duty alone to get off is near $20,000."
	On the 30th of May, 1864, Mr. Weil wrote from Navasota to Mr. Loeb, at Houston, a letter, which has been heretofore alluded to, announcing the arrival at that point of the train of goods which Mr. Jenny had furnished under his arrangement with Weil, to carry out the latter's contract with the State of Louisiana. He said: "At last the train will be here, and I am really sorry for it. Just imagine that last Wednesday the cotton bureau directed a letter to Mr. Clapp, stating that owing to the interference of the State with the cotton bureau they wouldn't be able to furnish the cotton which they agreed to pay in return for the goods, and declining to fulfill their contract in a very polite way, and here I am now; but it is all right; the State will have to foot the bill. I shall leave for Shreveport on Vednesday; if any letters on hand, send them to me, care of Capt. Vedders; after Wednesday, care of Col. James S. Wise, chief quartermaster of the State of Louisiana, Shreveport."
	Weil went on to Shreveport to straighten matters with the Governor. On the 9th of July Joseph Bloch describes Weil as being $40,000 gold in debt, and said: "We have hard work yet to get out right side up."
	July 14th, Weil wrote to Bloch from Alexandria: "The Governor arrived today. I am just from there. General Smith is expected Saturday, and he promised me the permits positively."
	On the 21st of July, Weil wrote to Bloch saying: "I have the permit from General Smith for the 220 B. cotton, and not one more. . . . . You dare not take out over 220 B. Strict orders are given to that effect, and no permits granted from this out to nobody, and if any caught at smuggling, sentenced to be shot."
	This cotton was taken by Joseph Bloch down the river, where he hoped to get the "Yankee permit" to take it through the lines.
	August 29, 1864, Weil wrote to Loeb,

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that Block had been gone three weeks, and had not gotten through.

September 10th, I. Levy wrote Loeb, saying, that Block was below, and Weil in Shreveport.

On the same date Weil wrote from Shreveport, that he was to have an interview with the governor, on Monday. "So far Jos. expedition is a failure.

September 20, Weil wrote to Loeb, that the governor was anxious to settle with Weil and Jenny.

September 22d, Weil wrote to Jenny: "The governor has turned over to General Smith $60,000 of our goods, cost and charges, and he refuses settling (so far as I can learn) before having the full act. of his bill, which couldn't be given before Mr. Clapp had made his returns. Mr. Clapp is now engaged at the office making out accounts, and the governor promised me just now to get it through to-morrow. . . . . Jenny, I fear Gen'l Smith. He finds fault to many things, but can't help it. Shall try to get out the best I can. . . . . Block in N. O.; without farther news from him."

The next day Weil wrote to Firnberg and J. Levy: "Still nothing positif. Imperatif calls have been made by the gov on the cotton bureau, and Gen'l Smith and they put him of. How it will end I don't know,—hope for the best. . . . . I ough more than I have. . . . . Your letter and Block's are at hand; will answer them to-morrow. I am now at headquarters, but nothing to communicate, as I have not had a hearing yet."

September 29th, Isaac Levy wrote to Firnberg: "Yours, of the 27, with Jos., came to hand. I informed Weil of the contants. I received letter of Weil stating that he has not dun anything yed, but has hopes. He tells me should Jos. come out, to come at once to Shreveport. It would be a great thing if he could bring out 1,000 ounces of quinine."

October 6th, Marx Levy wrote to Loeb from Matamoras: "I hate a letter of Joe Bloch from N. O. He says he got 220 bales outside of the city. Trying to permition to bring it in, so fare he hase not sucsidet, but things he will."

Weil's letters to Jenny seem to have alarmed him, as, on the 12th of Oct. Jenny himself appears in Shreveport and telegraphs to Loeb that nothing is concluded yet.

In his statement of Oct. 18th, Weil details to the governor his misfortunes since the fall of New Orleans, and says: "Last I got in with Mr. Jenny, encouraged him to jointly take in his stock, and you know the remainder."

As late as Oct. 27 no payments seem to

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	have been made for the goods furnished the State of Louisiana, for on that date was written the letter of Weil and Jenny to the governor, which appears in the Confederate archives. In this letter they ask the governor "to have the 500 B. C. from the C. States, on which we implicitly count, consigned to Messrs. J. C. Baldwin & Co., in Alleyton, in good order, for our account. . . . . We have, as your excellency is aware of, an agent in N. O.—Mr. Bloch. So far we have no positive news from him except that he arrived in N. Orl. with 220 B. C. bought by us under your permit; that the cotton was seized and Bloch himself detained in the city. Still we have yet hope that Mr. Bloch will get a Yankee permit for cotton to be brought from our lines and to get a Y. boat to come up the Ouachita for same. Have we understood your excellency right if we interpreted your words to the effect that you probably could get from the C. States about 500 bales on the Ouachita, and that you would with pleasure let us have that amount so obtained? At any rate we would beg of your excellency, in case Mr. Bloch succeeds in his enterprise, to let him have all the necessary permits for our account and protection for the safety of the vessel he may bring up the Ouachita under flag of truce, and the cotton he takes out." December 24, Bloch was still in New Orleans and not through with cotton. Weil had returned to Matamoras and Jenny to Houston. On that date Jenny wrote Loeb authorizing him to use the balance of $1,643.25 stated in favor of Weil and Jenny "to pay freight on cotton from the State of La., sent here for our account. . . . . I enclose you permits for 270 bales of cotton. If you can sell them do so. I write to the govr. that I have authorized you to sell these permits." On the 18th of January, 1865, Mr. Bloch appeared in Matamoras and joined Mr. Jenny, who had reached there from Houston, in writing a letter to Loeb, in which he says: "I arrived here the evening before last. I am now in consultation with Mr. Jenny and Weil. We have not yet come to a final decision yet what we will do, that is to say, how we will proceed. We have concluded to take the cotton yet due by the State of Louisiana to New Orleans, as can be done now under existing regulations." It is not clear from the correspondence of Weil and his partners exactly how much cotton had been furnished by the State of Louisiana in payment for Jenny's goods for shipment through Texas up to the time the above determination was reached, but

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	it must have been a trifling quantity. Much of the correspondence relates to some small lots of cotton which the Governor proposed to furnish to Loeb for his own account in payment for the paper, medicines, and other stores needed by the State, and some of the cotton shipped through Baldwin and Co. appears to have been that of other parties to whom Loeb sold permits, as authorized by Jenny. On the 5th of February appears the following letter: "Alexandria, Feb. 5, 1865. S. E. Loeb, Esq.: Dear sir: Inclosed find a letter; please forward to Ben. I have received his letter, and this is an answer. Nothing from nowhere since my last. Weil says he has not received any cotton at all; when last in Alatine he only saw 40 bales there. This I plaim him, as I would never took a new contract without the payment was made. If he would be here now he could, I think, git permit both ways to git his cotton to N. O., which would be cheaper and quicker. Bouisness here are Dull; goods nominal; no money in this coundry of no kind; all gone to Texas. I will have to stay here for awhile longer, by order of Governor. Truly yours, Isaac Levy. Write often." Jenny went back to Shreveport, and telegraphed his arrival to Loeb on the 20th of February, stating that the Governor would not be there until the middle of the week. In a second dispatch of the same day he says: "If capture of Brownsville proves true, stop cotton at Alleyton; if some shipped, alter direction to a safer point above. Inform Baldwin. Answer. Jenny." March 12th, Weil wrote from Matamoros to Loeb: "Your 32 B. cotton arrived long ago, but the 113 Bales shipped in Augt. last by Mr. Gust. Jenny have not yet arrived." March 17th, Jenny telegraphs from Shreveport to Loeb: "Have settled so far. Write to Matamoros. Shall leave as soon as papers in order. What is freight from San Antonio to Brownsville? Answer More by letter." March 20th, Weil writes Loeb from Matamoros that he could use coupons "as cash to pay duties on cotton whenever any is coming, as up to this day not a bale of W. and J. has reached. Loeb, do try and have cotton forwarded as quick as possible. The house here owes heavy in Europe, and Mr. C. F. Jenny is discouraged and bitterly complaining, and withright." March 22d, Jenny telegraphs Loeb from Shreveport, as follows: "All settled. Write to Matamoros. I leave in two days, positively, via Jefferson, and, if possible,

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	Fairfield. What is freight from San Antonio to Brownsville? Answer. Hite's furlough extended." March 24th, Baldwin & Co. advise Loeb that they are loading 100 bales for account of Weil and Jenny on a fine Mexican mule cart train, through to Matamoras, via Rio Grande City, at 12½ cents freight and an advance of $300. On the 27th of March Joseph Bloch writes Loeb from Shreveport that he has heard very bad news from his brother. "It will be a heavy loss, but an able lawyer advises me to bring a suit against the United States for damages." The next day Bloch telegraphed Loeb that Jenny had left that morning, and that he would leave to-morrow. Bills of J. C. Baldwin, rendered to Weil & Jenny, from Jany. 1 to March 31, '65, appear to show that 373 bales of cotton passed through the hands of former for acct of the latter. April 2d, Weil advises Loeb to get Jenny to sell cotton in Houston, as he could hardly do better in Matamoras. April 4th, J. Levy writes to Loeb from Alexandria that Jos. Bloch had lost $10,000 greenbacks on cotton shipped to New York. April 9th, Weil writes from Matamoras to Loeb that he has heard from the 113 bales shipped last August, which will be there soon. May 4th, Governor Allen telegraphs and writes to Jenny, at Houston, to take two-thirds of the cotton bought by the State from Gatlin and Johnston. May 13th, Isaac Levy writes, from Alexandria, to Loeb: "Two commissioners came from Yankeedom to Shreveport on the subject of a surander this dept. . . . . . I am quite uneasy about the affairs of Weil and Jenny. Is Jenny at Houston yet; if so, I would advise him to return to Shreveport at once. Should he be gone, write for him to come and git some kind pay from Government, otherwise they will never be able to settle." May 15th, Weil advises Loeb that 91 bales, out of the lot of 113 shipped by Jenny, has "arrived in such order that they are not worth the freight; of all the other the 100 b. at 14 c., are the only cotton yet received." In the same letter Jenny's brother advises that no more cotton be sent to Matamoras, but that it be kept back under a neutral name. May 18th, Governor Allen telegraphs State agent Clapp to deliver to Jenny 200 bales of cotton at Orange. May 22d, Weils writes to Loeb complain-

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	ing of the expenses on his shipments of cotton. May 25th, Weil writes Loeb that cotton is hardly worth freight at 11 c. From account current of Loeb with Weil and Jenny, rendered May 27th, 1865, and extending back to Nov. 29th, 1864, Loeb appears to have paid freight, in February, 1865, on 394 bales of cotton. But on the 29th of November, 1865, Bloch, writing to Loeb, on the subject of settling up the partnership, inquires "what interest had we in the 500 bales of cotton that successfully ran the blockade?" June 2d, Isaac Levy writes to Loeb, from Shreveport: "This to inform you that I came here yesterday to see after the affairs of Weil & Jenny, as I knew both are in Mexico, and not perhaps aware of the state affairs here, namely, this whole department has surrendered, and the Federals will be here soon; the Governor, I learned, was to leave the coundry. I was in time but to not much good. I called on him this morning he Replyed that the Best part of 700 Bales cotton Due to W. & J. were shipped By confederate gov ladley and the 40,000 he owed to them in specie was not able to pay and offered me in 3 lots cotton amounting to 374 Bales of which I send you a coppy for you to attend to the lots in Texas and forward said coppy to Madamoras should not one of them be on the way to this place. I had given notice to you & them a month ago to what will be the consequences about here. This is the Best I could Do and more Then any one Else has got although I fear we may never find half of those lots as there is nothing but sdeeling and Robbing all over the Coundry; nothing any longer secure. I was to Telegraph you but the wire is down. Respecting my affairs in Alexandria have not Don any thing and I now find myself with a gread Deal of Confederate Bonds and notes and no cash. Badly Don. can not be helpt. as for Joe he is selling the Texas goods an auction and private and make no profit of any consequense, still Doing better, then myself as it turned out. I had no letter of you in 2 months, neader of Weil, etc. please write. the governor will leave this Evening for Madamoras. I am sorry for him; the Yankees will be here in a Day or two." June 7, 1865, I. Levy writes to Bloch that he has seen the governor "respecting Weil & Jenny affairs of Madamoras. He tells me that the Confederate Gov. has shipped them 700 bales cotton, and respecting the 45,000$ cash he said he must owe it for the present, in cause of the day

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	I saw him again and got order for 375 bales part in Texas and part on Sabine. This may be safe for them but I doubt of ever seeing any of it, it appears that the governor owes to everybody and but little left to pay should those 700 bales have been shipped to them it would be not so hart on them." It seems then that at the surrender the State had paid for Jenny's goods, which cost about $60,000, over 300 bales of cotton and acknowledged a debt of 700 bales and $45,000 more. The state was defunct, but its heirs had succeeded to its property, and, in the opinion of this enterprising firm of blockade-runners and arms and ammunition importers, to its liabilities. Who they were and how to collect this debt was the next question. July 24, Jenny writes from Galveston to Loeb that he has had an interview with General Granger in regard to securing the cotton for which he had the orders of Gov. Allen. He states that it is the opinion of some of the officers that cotton turned over by either the Confederacy or the State to parties engaged in *bona fide* transactions will not be interfered with. Others think that the order of the governor does not constitute a delivery. Requests Loeb to follow and secure the cotton left at Orange, which had been taken by unauthorized parties. August 16th, Isaac Levy writes to Loeb from Alexandria asking if the cotton at Orange had been secured. "As for the 200 bales, I had order of Allen at Sabine, they were stolen 6 months before I had the order." August 31st, Jenny writes to Loeb from Galveston: "Now in regard to what I did in N. Orl. I arrested all the Gatlin & Johnson cotton. Clapp is under $35 m. security, and the case will come up in November. I have every right to believe that I saved about 250 bales." September 12th, Jenny writes to Loeb from Galveston: "Please send me my account by detail, closed against me with a balce. of some $47. All transactions afterwards will have to come into brother's ac. *I want to make my claim on the State of La.* through Govr. Wells and send it to Weil who still is in N. Orleans, and therefore have to draw out of the ac. all the items." November 18th, 1865, Weil writes to Loeb from New Orleans: "I settled up with Mr. Jenny in full and without any trouble. He treated me fair, even fully so. Our sett't is this: I loose all invested, even your 32 B. cotton, and he releases me in full hereafter. I turned over to

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him the claim against the Ste. of Louis. but I must attend to the collection without, however, any farther recourse against me in case it should not be paid. I, for my share, get 20 per cent. of net proceeds of all what can be collected. Had Mr. Jenny been hard with me he could have brought me in pretty deeply. Again, I repeat to you, he acted very fair."

The business-like activity with which Weil and Jenny prosecuted their claim against the loyal State of Louisiana, for payment for supplies furnished the rebel government of that State, is illustrated by the statements of the following witnesses: Marx Levy says: "Sometime after, I received a letter from Benjamin Weil informing me that he had succeeded in the dissolution of Levy, Block & Co., and that Mr. Charles F. Jenny, whom he 'Weil' met in New Orleans, made the following proposition to him: For Weil to go to Switzerland, with the view to see the creditors of Chles. F. Jenny, and effect a settlement with them, if possible, for to them Jenny owed the amount, the very stock which was furnished to the State of Louisiana, and ascertaine further whether Jenny's creditors will advance money enough to prosecute the claim which Jenny held against the State of Louisiana, for the Governor of Louisiana had not paid enough on the stock which was delivered to him even to pay for the expenses, still less for the goods, for Jenny's claim amounted to five hundred thousand dollars, including expenses, &c.; all of this transpired during the year one thousand eight hundred and sixty-five. In the year one thousand eight hundred and sixty-four, Weil and myself were never apart more than about six weeks. When Benjamin Weil returned from Europe, he, 'Weil,' stated to me that the creditors of Jenny, in Switzerland, had agreed, that as far as the expense for carrying on the claim against the State of Louisiana was concerned, they authorize Mr. Charles F. Jenny to value on them for same, and they further agreed to compensate him, Weil, for his trouble, if the claim is collected to allow him twenty-five per cent. of net amount received from the State of Louisiana."

E. W. Halsey says: "The amount of cotton supplied by Gov. Allen, and actually received by Weil and Jenny, was not sufficient to pay them, owing to the disorder which prevailed at the time of the surrender; for the deficit a claim against the State was urged by Weil, and a large amount received thereon."

It thus appears that the rehabilitated State of Louisiana was persuaded to pay to an American citizen a large sum for

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	goods furnished a State in rebellion against the United States, under a contract calling for arms, ammunition, and medical supplies, the rebellious State having previously given, in part payment for the same, the large amount of from 300 to 500 bales of cotton, and acknowledged an indebtedness of 700 bales more, and $45,000 cash. which it could not liquidate. Mexico has no right to criticise this transaction, but it is manifestly unjust that she should be compelled to pay nearly $500,000 for the seizure of this cotton, which Mr. Weil did *not* receive from the State of Louisiana, and never had, and of some 1,200 additional bales, which never existed except in the imagination of Mr. Weil and his witnesses.

No. 38.

Receipt for papers in Weil case.

DECEMBER 12, 1878.

Received from Señor D. José T. de Cuellar, secretary of the legation of Mexico in this city, two hundred and thirty-three papers, numbered from 1 to 233, inclusive; one paper numbered 158½; one manuscript account book, and one printed pamphlet; all said to refer to the claim of Benjamin Weil against the Republic of Mexico; the document numbered 203 being imperfect.

SEVELLON A. BROWN,
Chief Clerk.

No. 39.

Mr. Evarts to M. Zamacona.

DEPARTMENT OF STATE,
Washington, December 19, 1878.

SIR: I have the honor to acknowledge the receipt of your note of the 11th instant, communicating documents in relation to the claim of Benjamin Weil against the Government of Mexico.

Accept, &c.

WM. M. EVARTS.

No. 40.

M. Zamacona to Mr. Evarts.

LEGATION OF MEXICO IN THE UNITED STATES,
Washington, January 11, 1879.

MR. SECRETARY: On the 24th of January, 1878, the Department of State was pleased to inform this legation that, by reason of the bill then pending with regard to the distribution of the money paid by Mexico for the settlement of claims of American citizens, the Congress of the United States had taken into consideration the objections of the Mexican Government to the awards made in favor of Benjamin Weil and of the Abra Mining Company, incorporating in the bill a clause which reserved to the President the right of investigating the two aforesaid cases. The Department of State was also pleased to inform this legation that if the aforesaid clause should be *definitively* incorporated in the bill, due weight would be given to the observations made on the part of Mexico and based upon the fraudulent character of the claims in question.

By a note dated July 1 this legation was also informed that the bill had been passed, including the aforesaid clause, and the desire was expressed by the Department of State that the Government of Mexico should specify the grounds of its complaint, and state what it proposed to prove with respect to the two cases in question.

The undersigned had the honor to reply on the 25th of July, furnishing such explanations as he thought opportune, and, on the 17th of August following, he was requested to exhibit the evidence relative to the two cases aforesaid, to state the reasons why it had not been laid before the Mixed Commission, and likewise to state the degree of certainty possessed by the Mexican Government that, in the event of a new examination, the evidence would fulfill all the requirements of a judicial investigation. At the same time, this legation was requested to act with all possible promptness in the matter, inasmuch as the payment of the claims objected to was meanwhile suspended.

On the 12th December last this legation informally delivered to the Department of State the evidence of the fraud committed in the Weil case, together with an analysis of the same, preceded by an introduction referring to both cases.

The undersigned now has the honor to send with this note the evidence of the fraudulent nature of the Abra Company's claim. A cursory examination of this evidence will suffice to make it appear that the accompanying analytical statement has been very laboriously prepared, and that to this circumstance is due the fact that it has not been presented sooner.

The undersigned flatters himself, however, that this delay has rendered it possible to present the documents in a form which will facilitate their examination, thus rendering a more speedy decision practicable as to whether there is or is not any foundation for a re-examination of the two cases in question.

I avail, &c.,

M. DE ZAMACONA.

[Inclosures filed with the papers of the United States and Mexican Claims Commission relating to the claim.]

1. Printed case.
2. Press copy book, pp. 1 to 189; pp. 77 and 154 gone. Between pp. 80 and 81 are pasted copies of 4 letters dated Mazatlan, June 16, 1866, signed de Lagnel, and addressed to E. H. Parker, W. C. Ralston, Brodie & Co., and Weaver, Wooster & Co., San Francisco.

Between pp. 98 and 99 are pasted copies of letters dated Mazatlan, signed de Lagnel, as follows: August 17, 1866, to Garth, New York; August 16, 1866, to Pfeiffer, San Francisco; August 16, to Wiel & Co., San Francisco; August 16, to Stoud, San Francisco; August 16, to Colonel Taylor, San Francisco; August 16, to W. C. Ralston.

Between pages 124 and 125 are pasted copies of letters dated Mazatlan and signed de Lagnel, as follows: November 17, 1866, to A. Stoud, San Francisco; November 18, to Wiel & Co., San Francisco; November 18, to Mills, San Francisco; November 18, to Ralston, San Francisco.

Between pp. 125 and 126 is pasted the copy of the letter dated Mazatlan, November 17, 1866, to Garth, signed de Lagnel (eight pages).

Between pp. 136 and 137 are pasted copies of letters dated Mazatlan signed de Lagnel, as follows: January 5, 1867, to Nolte. [There are four letters, of which two are to Ralston, one to Nolte, and one to Garth.] January 5, 1867, to Ralston (two letters), Garth (six pages).

Between pp. 144 and 145 are pasted copies of letters dated Mazatlan, signed de Lagnel, February 5, 1867, to Ralston; February 5, 1867, to Garth (two pages).

Between pp. 152 and 153 is pasted copy of letter dated Mazatlan, April 10, 1867, signed de Lagnel, to Ralston, San Francisco.

Between pp. 156 and 157 are pasted copies of letters dated Mazatlan, signed Exall, as follows: May 17, 1867, to Garth (two pages); June 13, 1867, to Ralston; June 11, 1867, to Garth.

Between pp. 171 and 172 is pasted copy of letter dated Mazatlan, signed Exall, August 5, 1867, to Garth (four pages).

Between pp. 172 and 173 is pasted copy of letter dated Mazatlan, signed Exall, October 6, 1867, to Garth (three pages).

Between pp. 170 and 177 is pasted copy of letter dated Mazatlan, November 17, 1867, signed Exall, to Garth (four pages).

Between pp. 187 and 188 is pasted copy of letter dated Mazatlan, January 24, 1868, signed Exall, to Garth (two pages).

3. Attached to press copy book affidavit of J. A. de Lagnel.
4. Attached to press copy book letter, Garth to Exall, May 10, 1867.
5. Attached to press copy book letter, Garth to Exall, May 20, 1867.
6. Attached to press copy book letter, Garth to Exall, May 30, 1867.
7. Attached to press copy book letter, Garth to Exall, June 10, 1867.
8. Attached to press copy book letter, Garth to Exall, July 10, 1867.
9. Attached to press copy book letter, Garth to Exall, July 20, 1867.
10. Attached to press copy book letter, Garth to Exall, August 10, 1867.
11. Attached to press copy book letter, Garth to Exall, October 10, 1867.
12. Certified transcript of press copy book.
13. Exall to Granger, Tayoltita, February 21, 1868
14. Exall to Granger, Mazatlan, March 15, 1868.
15. Exall to Granger, San Francisco, April 1, 1868.
16. Exall to Granger, New York, May 8, 1868.
17. Exall to Granger, New York, June 15, 1868.
18. Exall to Granger, Richmond, July 18, 1868.

18½. Deposition of Frederick Limdell.

19. Secretary of War to R. B. Lines, November 8, 1877 (2 inclosures.)
20. Secretary of War to R. B. Lines, December 21, 1877 (2 inclosures.)
21. Certified copy of indictment of A. W. Adams.
22. F. B. Van Buren to R. B. Lines, November 14, 1877.
23. Decree of court, fourth judicial district of California.
24. C. B. Dahlgren to R. B. Lines, November 12, 1877.
25. Depositions of J. F. and Trinidad Gamboa.
26. Depositions of J. M. Loaiza
27. Affidavit of William R. Gorham.
28. Certified copy of commitment of J. P. Cryder.
29. Certified copy of certificate of incorporation of La Abra Company.
30. Certified copy of report of La Abra Company, January 16, 1866.
31. Certified copy of report of La Abra Company, November 20, 1867.
32. Certified copy of report of La Abra Company, January 20, 1868.
33. Certified copy of report of La Abra Company, January 20, 1877.
34. Certified copy of report of La Abra Company, January 18, 1878.

35. Certified copy of judgment roll in suit of J. H. Garth *vs.* La Abra S. M. Co., July 3, 1867.
36. A. B. Elder to Sr. Mata, November 12, 1877.
37. A. B. Elder to R. B. Lines, December 6, 1877.
38. A. B. Elder to R. B. Lines, December 26, 1877.
39. A. B. Elder to R. B. Lines, January 4, 1878.
40. A. B. Elder to R. B. Lines, January 29, 1878.
41. A. B. Elder to R. B. Lines, March 4, 1878.
42. A. B. Elder to R. B. Lines, April 8, 1878.
43. A. B. Elder to R. B. Lines, December 8, 1878.
44. B. Wilson to T. J. Bartholow and reply, June 6, 1878.
45. Deposition of Ciprians Quiros, Dionisio Gutierrez, Paz Gurulu, and Martin Delgato, together with certified copy of letter of C. B. Dahlgren to Quiros, May 23, 1872.

Examined and compared.

C. ROMERO.
A. A. ADEE.

NOTE.—The original papers mentioned in the inclosure herewith have all been returned.

CASE OF MEXICO UPON THE NEWLY DISCOVERED EVIDENCE OF FRAUD AND PERJURY IN THE CLAIM OF LA ABRA SILVER MINING COMPANY.

LA ABRA MINING COMPANY vs. MEXICO.

No. 489.

I.—HISTORY AND VALUE OF MINES PRIOR TO PURCHASE BY COMPANY.

Evidence before the Commission.

IN CHIEF.

Claimant's Memorial.—Washington, D. C., May 28, 1870, sworn to before N. Callan, not. pub., by Robert Rose, atty.-in-fact, (Fred'k P. Stanton, Robert Rose, and W. W. Boyce, counsel for La Abra Co.,) p. 5, claimants printed book of evidence: "Said mines were of extraordinary richness, so much so that they had become of historical interest,* being

New Evidence offered by Mexico.

The most important of the evidences now offered by Mexico, to show the fraudulent character of this claim, consists of the official letters of the superintendents and the treasurer of La Abra Company, in the original or press copies. Learning at a very late day, that Col. J. A. de Lagnel, (the second superintendent, of whose whereabouts the company professed ignorance at the time of bringing its claim, and to whose nationality, antecedents or connections, the witnesses gave not the slightest clue,) was in San Francisco, the Mexican Government secured his testimony, identifying these letters which is as follows:

District of California. In the matter of the Claim of LA ABRA SILVER MINING COMPANY *vs.* THE UNITED STATES OF MEXICO. } No. —.

Be it remembered, that on this 2d day of December, A. D. 1878, at my office, room 1, in the United States court building, in the city of San Francisco, district of California, personally appeared before me, L. S. B. Sawyer, clerk and commissioner, duly appointed by the circuit court of the United States for the ninth circuit, and

*On the very first page of the claimant's case, and almost in the first paragraph, the character of the speculation in which it was engaged stands revealed. That a company of Americans, even at the height of the excitement about mines prevailing in 1865, should, on the testimony of books published half a century before, send a commission, composed of a banker and a tobacconist, to a country engaged in a foreign and civil war to inspect, and, if they thought proper, to purchase mines whose pillars had been extracted, and which had lain full of water for more than fifty years; and that they should confide their management in turn to a banker, a soldier, and a clerk, must seem to the average mind, extraordinary. But still more extraordinary must seem their action when it appears that one of their witnesses, to wit, Humboldt, never gave any testimony whatever about their mines, and that what both he and Ward say concerning the mines of that region ought, if properly understood, to have discouraged any venture without the most careful and scientific investigation, and experienced and

I.—HISTORY AND VALUE OF MINES PRIOR TO PURCHASE BY COMPANY.

Evidence before the Commission.

specially mentioned for the abundance and richness of their ores by Baron Von Humboldt and Mr. Ward, in their respective works." P. 6: "When said co. acquired said Abra mines, though said mines were of immense richness, it was impossible, from their neglected state, to extract ores except by heavy expenditures. That in connection with said principal Abra mines were buildings of great cost and other permanent structures; but, owing to the abandoned condition of said mines, they are of no present value."

enlightened management, backed by enormous capital. Yet such is the fact. The closest reading of the "Essai Politique" fails to disclose a single mention of any mine purchased by La Abra Co.

In that exhaustive treatise on Mexico, pp. 487 to 502, the mines are divided into eight groups, comprising 500 *reales*, or districts, and, it is estimated, over 3,000 mines. The group of Durango and Sonora has 128 *reales*, and proportionally nearly 770 mines, distributed over a territory of 2,800 square leagues. Among the 61 *reales*, in the Intendance of Durango are counted those of San Dimas, Guarisamey, and San Joseph de Tayoltita, and the *real* (not mine) of Topia, (not Tapia or Tolpa.) In the list of the Intendance of Sonora the name Exalpa occurs twice, and Talpan and El Rosario once. These names are merely given in lists, and there is not a word about the richness of the districts, although descriptions are given of many of the celebrated mines of Mexico. The annual product of the mines of Durango and Sonora is set down at 400,000 marcs, ($3,409,697.08.)

On page 510 Humboldt says: "It is an idea very widely entertained in Europe that masses of native silver are extremely common in Mexico and Peru, and that, in general, the mines whose ores must be reduced by almalgamation or smelting contain more ounces or marcs than the poor minerals of Saxony and Hungary. Imbued with this same idea I was doubly surprised on arrival in the Cordilleras to find that the number of poor mines much surpasses that of those which we in Europe call rich." P. 512: "M. Garces, whom we have above quoted, says expressly that the great mass of American minerals is so poor that the three millions of marcs which the kingdom produces in good years are extracted from ten millions of quintals," (500,000 tons). "This result contrasts singularly with the assertion of a traveller, otherwise very estimable, who reports that the veins of New Spain are of such extraordinary richness that the natives neglect to work them when the ores contain less than a third of their weight in silver." P. 513: "In Guanaxuato, the richest mineral district, the mine of the Count de la Valenciana, which furnished from 1787 to 1791 1,737,052 marcs, had an average richness of 5½ ounces (dollars) per quintal, (100 pounds.) To-day the richness of the belt of Guanaxuato may be estimated at four ounces the quintal. In the Pachuca district the mines were divided into three classes, the good yielding 4 8–10 @ 5 3–10 ounces per quintal, the mediocre 1 8–10 @ 2 7–10, and the least 1 3–50. In the Tasco district the mines had an average richness of 2 @ 3 6–10 per quintal." P. 514: "It is not, therefore, the *richness* but the abundance of the ore and the facility of the exploration of the mines that distinguishes these mines from those of Europe. They are much poorer than the mines of Annaberg, Johann-Georgenstadt, Marienberg, and others in Saxony." P. 29:5 "The yied of the rich mines has considera-

New Evidence offered by Mexico.

district or California, Julius A. De Lagnel, a witness on behalf of the U. S. of Mexico, in the above-entitled matter.

Solomon Heydenfeldt, Jr., Esq., appeared as counsel for the United States of Mexico, and M. G. Pritchard, as counsel of the United States of Mexico, resident of San Francisco, Cal.

And the said witness, having been by me first cautioned, and sworn to testify to the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did thereupon depose and say as follows, that is to say:

Examination-in-chief by Solomon Heydenfeldt, Jr., Esq.

Question. What is your name, age, occupation, and place of residence?

Answer. My name is Julius A. D. Lagnel; my age is 50 years and upwards; my occupation is purser of Pacific Mail S. S. Co., and my place of residence is the city and county of San Francisco.

Q. Were you prior to the year 1861 an officer of the United States army, and subsequently an officer in the army in the confederate States of America?

A. I was an officer in the United States army for fourteen years, and subsequently served four years in the army of the confederate States.

Q. Were you, from May, 1866, to May, 1867, the superintendent of the La Abra Silver Mining Company's mines and works, at Tayoltita, State of Durango, Mexico?

A. I was superintendent of the said company's mines and works during that year, and I think the dates are about right.

Q. What has been your occupation, and residence, since you left the service of that company?

A. For a little more than a year after my return I was unemployed, part of the time in New York, and during the winter at my home in Virginia. Then, from the fall of 1868 until the late spring or summer of 1869 or 1870—I forget which—I was purser on one of the steamers running from New York to Fernandina, Florida, belonging to Marshal O. Roberts. Then from the fall of 1870, until the present time, I have been with the Pacific Mail Steamship Company, employed as purser between San Francisco and China.

Q. Are you a man of family?

A. I am not—I am a widower.

Q. While you were superintendent of La Abra Silver Mining Company did you have charge of the property and books of said company, at Tayoltita?

A. I had full charge of everything.

Q. State whether you recognize this book, and if so, what book is it?

I.—HISTORY AND VALUE OF MINES PRIOR TO PURCHASE BY COMPANY.

Evidence before the Commission.

Alonzo W. Adams, (Born Caroline, Tompkins co., N. Y.; aged 48; has resided for 19 years in N. Y. city; went as attorney for La Abra co., to Mexico in 1870 and '72, to collect evidence in support of their claim; has no relation to co. except that of attorney. See affidavit, pp. 233 to 247, claimant's book,) pp. 11 to 17, claimant's book, June 4th, 1872, as "stockholder in and attorney-in-fact of the

bly diminished, and the expenses have increased in a frightful progression since the shafts have attained a perpendicular depth of 500 metres. The sinking and walling of the three old shafts cost the Count de la Valenciana nearly 6,000,000 francs." On page 533 it is stated that at this mine, the richest in Mexico, it cost 225,000 marcs at the end of last century to extract 360,000 marcs from 720,000 quintals of ore.

Let us now make a few citations from Ward. Vol. 2, p. 22: The Guarisomey and San Dimas districts produced in fifteen years $461,176. Pp. 63, *et seq.*, show the speculation induced by even the careful and guarded representations or Humboldt, and the attempt of English, German and American companies to work mines with small capital. P. 74: "In every other commercial enterprise *some previous acquaintance with the subject* might have been thought necessary; but the mines were to be an exception to all ordinary rules, and on the principle, I suppose, of taking *omne ignotum pro magnifico*, vast sums were embarked in schemes of which the very persons who staked their all upon the result know literally nothing except the name." P. 75: "Nine-tenths of those who engaged in the arduous task did so under the conviction that *water* was the only obstacle which they had to overcome, and that the possibility of surmounting this by the aid of English machinery was unquestionable. * * * The practical experience of the native miners was underrated; their machinery condemned, without any previous inquiry as to its powers or the different degrees of perfection which it had attained in the different districts. Gradual improvement was pronounced too sluggish a process, and Cornwall was drained of half its population in order to substitute an entirely new method for that which had been endeared to the Mexicans by the experience of three centuries. The total failure of this attempt was the natural consequence of the want of consideration with which it was made." * *

* P. 77: "The Anglo-Mexican Co. alone had expended in September, 1826, nearly £30,000 in salaries to men, almost all of whom have now been dismissed, and full £100,000 in machinery, (including duties and carriage from the coast,) not one-twentieth part of which either has been or ever can be made use of, the machinery of the country having been found fully adequate for the drainage of their mines."

Pp. 80, 81: "In general the selection of mines among the first adventurers, was determined by a reference to Humboldt. * * * Humboldt never asserted, or meant to assert, that a mine, because it was highly productive in 1802, must be equally so in 1824. * * * Unfortunately, the consequence of these statements was to direct the attention of the world exclusively to spots which, from the enormous quantity of mineral wealth that they have already yielded, may fairly be supposed *to have seen their best days.*"

P. 82: "On the preparations for draining the first, (the great Biscaina Vein,) nearly $2,000,000 had been expended when I left Mexico; and at

New Evidence offered by Mexico.

[Witness is shown a book.]

A. I recognize it as the letter-book of the La Abra Silver Mining Company, in which was copied my official correspondence.

[The said book is now introduced as evidence in all matters of investigation connected with the claim of La Abra Silver Mining Company against the Government of the United States of Mexico, and the witness identifies the same, and the commissioner marks the same on the inside page of the cover as Exhibit A, and the witness subscribes his name thereon, and the commissioner attests the execution thereof, and identifies the book as the book shown the witness and attached hereto.]

Q. Now, as you have identified this book, marked Exhibit A, please to state, to the best of your knowledge and belief, if it is the book in which pressed copies were taken of the letters written by yourself as such superintendent of said company, and whether the copies of letters appearing therein between pages 69 and 153 inclusive, signed J. A. De Lagnel, and dated from May the 23d, 1866, to April the 10th, 1867, are pressed copies of letters written or signed by you as such superintendent?

[The witness examines the book marked Exhibit A, from pages 69 to 153 inclusive, and answers:]

A. The letters contained in said book from pages 69 to 153, both inclusive, are letters written or signed by me as superintendent of said company except the letter on page 100, and the letter on page 101, both of which are signed by Charles E. Norton. I am familiar with the handwriting of said Chas. E. Norton, and recognize that the letter on page 101 is in his handwriting. The letter on page 100 is too indistinct for me positively to recognize or identify it, but I believe that is in his handwriting. The letter on page 125 is too indistinct for me to testify concerning the same. The letter on page 138 is written by the said Norton and addressed to me. I recognize the handwriting of said letter. The letter on page 144 is not written by me. It is signed J. A. De Lagnel per C. H. Exall. I cannot recognize or identify the handwriting of said letter. The other letters between pages 69 and 153, both inclusive, are letters either written or signed by me as such superintendent.

Q. Do you recognize either from your memory of their contents or your knowledge of their handwriting the copies of

I.—HISTORY AND VALUE OF MINES PRIOR TO PURCHASE BY COMPANY.

Evidence before the Commission.

Abra Silver Mining Co.," asks from Governor Durango certified copies of denouncements of co.'s mines and works, as follows:* Cristo, Santos Inocentes, San Felipe, San Antonio y Bartholow, Guadalupe and Abra mines, and 3 haciendas, 1 called San Nicolas and 2 Guadalupe. The following is the "chain of title" said by claimant to be "complete," pp. 11 to 15: *Hacienda of Guadalupe* transferred Jany. 8, 1854, by Mariano Tajo to José Maria Valle, for $350. Same transferred Dec. 14, 1863, by Vicente Rubio and Benigna Valle de Rubio, his wife, to Vicente Melicos, for $200. Same transferred Dec. 21, 1863, by Arcadio Laveaga, in name of his father, Miguel Laveaga, to Juan C. de Valle, for $600. *Rosario* mine "denounced" Dec. 30, 1854, by Juan C. de Valle and Candido Farin. April 28, 1855, possession given to de Valle and Ygnacio Manjarrez, to whom Farin had sold his interest for $1,400.† *Hacienda San Nicolas* denounced March 16, 1855, by Juan C. de Valle and Ygnacio Manjarrez. *Arrayan* mine denounced Dec. 31, 1861, by same. *Cristo* mine denounced Sept. 9, 1863, by same. *Exemption* granted June 6th, 1865, to Juan C. de Valle, upon his petition and in accordance with mining ordinances, in view of the difficulties attending the working of the Arrayan, Cristo, Santos Ynocentes, and Abra* mines. *Santos Ynocentes* mine denounced Aug. 5, 1865, by de Valle.

Guanajuato, the Valenciana mine had cost, on the 1st of September, 1826, $672,264. Further advances will be required in both cases, before the drainage can be completed.

Much more could not well be said to illustrate the folly of the pretentions of La Abra Company. But what shall we say of this enterprise when it appears, as it does from the testimony of claimant's own witnesses, quoted under this and succeeding heads, that Smith tried to sell de Valle's mines on the strength of allusions, by Ward, to La Abra mine, which de Valle did not own, and that La Abra, the only one of the mines mentioned by Ward to which the company shows title, (and that not complete, being only the transfer deed from Garth and Bartholow—see Head II,) was never worked by the company.

* On comparing this list with that given under Head II. it will be seen that Adams did not even ask for, much less receive, from the Governor an abstract of title to all the mines alleged to have been purchased by the company. Why he should have asked the Governor, in June, for such papers, when the banker, Echeguren, (according to his testimony under Head II,) had turned over to him in April, "the perfected title deeds and evidence of original denouncements," which Bartholow had left with him "for safe keeping," is incomprehensible. And how, having asked for a copy of the denouncement of La Abra mine, by Luke and Luce, in 1863 or 1864, he should get a copy of an exemption granted to de Valle, 1865, on account of difficulties in working that mine, which Garth and Bartholow bought from Luke and Luce, in 1865, is equally inexplicable.

† Compare these prices with the prices alleged to have been paid by the company, (Head II.) and with Bartholow's statement below, that the mines yielded de Valle $650 per ton.

New Evidence offered by Mexico.

letters appearing from page 1 to page 68 in said book, marked Exhibit A, signed Th. J. Bartholow and dated from January the 10th, 1866, to May the 5th, 1866, as pressed copies of letters written or signed by Thomas J. Bartholow your predecessor as superintendent of said company?

A. I am not familiar with the handwriting of Thomas J. Bartholow; I do not know the contents of said letters; I have no recollection of ever having read them; I doubtless must have read them, but have no present recollection of having done so. Finding them immediately precedent to my own, I have every reason to believe that they are his.

Q. What relation did Thomas J. Bartholow bear to the company before your superintendency?

A. He was my only predecessor in the office of superintendent of said company, appointed by the same authority that appointed me.

Q. Are you familiar with the handwriting and signature of Charles H. Exall, who succeeded you as such superintendent?

A. I am not.

Q. Are you familiar with the handwriting and signature of James or Santiago Granger?

A. Having done some writing for me, I am more familiar with his handwriting.

Q. Please examine the pressed copy of letter on page 176, dated November 8, 1867, and the letter on page 189 of said book, dated August the 12th, 1868, and state whether you recognize them to be in the handwriting of James or Santiago Granger?

A. I believe them to be his.

Q. Are you familiar with the handwriting and signature of David J. Garth?

A. I am.

Q. What position did he occupy at that time towards the company?

A. He was treasurer of said company.

Q. Examine letters bearing date at New York, May 10th, May 20th, May 30th, June the 10th, July 10th and July 20th, August 10th and October 10th, in the year 1867, as being the handwriting of and signed by the said Garth?

A. I have examined them; I believe them to have been written and signed by him.

The witness marks letter dated May 10th, 1867, as Exhibit B, and attaches his signature thereto; and marks the letter dated May 20th, 1867, as Exhibit C; and marks the letter dated May 30, 1867, as Exhibit D; and marks the letter dated June 10th, 1867, as Exhibit E; and marks the letter dated July 10, 1867, as Exh bit F; and marks the letter of July 20, 1867, as Exhibit G; and marks the letter of

I.—HISTORY AND VALUE OF MINES PRIOR TO PURCHASE BY COMPANY.

Evidence before the Commission.

A. A. Green, (born in Norton, N. B.; age 41; miner; resides San Francisco, temporarily in N. Y.; Has lived in Mexico greater part of last 20 years; testifies, Dec. 13th, 1869, before Judge Barnard, N. Y., who certifies to credibility of Wm. R. Gorham, who certifies to Green,) p. 27, claimant's book: Mine reported second richest in Durango; ores worth $100 to $2,000 per ton.

Wm. H. Smith, (born in Whitehall, Washington, co., N. Y.; age 52; miner; resides San Francisco; lived in San Dimas, Durango, from 1861 to 1868; worked mine five miles from La Abra; in 1863 was agent of de Valle to sell his mines in N. Y. for $150,000, but failed, testifies, Jany. 24, 1870, before U. S. Com'r Geo. E. Whitney, San Francisco, who certifies to credibility,) p. 32, claimant's book: "Said mines were well known, and generally spoken of as exceedingly valuable property; one of the richest of the mines of San Dimas." They were favorably spoken of by Baron Humbolt, in his "Essai Politique," (page not given.) Ward, vol. I, pp. 559 and 573, says: "The great streets" (of Durango) "the Plaza Mayor, the theatre, and all the principal public edifices were built by Zambrano, who is supposed to have drawn from his mines at San Dimas and Guarisamey upwards of $30,000,000. A little below Guarisamey, and in the same ravine, is the district of San José Tayoltita, which contains the celebrated mines* of La Abra, one of the last worked by Zambrano. It was opened in bonanza, and continued so to the depth of 100 varas, when the progress of the work was impeded by water, and this was never drawn off, in consequence of the death of the proprietor, (Zambrano,) which took place at Durango in 1807. His nephew, at the commencement of the revolution, collected what money he could by extracting the pillars of all the mines belonging to the house of Zambrano, and fled to the peninsula with the produce. The mine now belongs to Don Antonio Alcade, one of executors of Zambrano, and would, if worked anew, with a little science and activity, probably yield immense profits. The whole should be undertaken, however, as one negotiation, as in such insulated districts to make roads and organize supplies for a small establishment is a very unprofitable task.† Of

*This is "mine," in Ward's book.

†This is another of Ward's warnings not heeded by the purchasers of La Abra. Several of Zambrano's mines, including Bolaños and Candelaria, were bought by the Durango Mining Company, of New York, at about the time La Abra was purchased, and that company is still working them without molestation.

New Evidence offered by Mexico.

August 10, 1867, as Exhibit H; and marks the letter of October 10th, 1867, as Exhibit I; and the said witness affixes his signature to the said exhibits, and the commissioner attests and identifies the same as the exhibits shown to the witness, by subscribing to the same, which are attached hereto.

J. A. DeLAGNEL.

Subscribed and sworn to before me, this 2d day of December, 1878.

L. S. B. SAWYER,

Commissioner of the U. S. Circuit Court, 9th Cir., Dist. Cal.

UNITED STATES OF AMERICA, *District of America*, } ss:

I, L. S. B. Sawyer, commissioner and clerk of the U. S. circuit court, in and for the district of California, do hereby certify that Julius A. de Lagnel, the witness in the foregoing deposition named, was by me duly sworn, as hereinbefore certified; that said deposition was taken by me at the time and place in the caption thereto mentioned, and was reduced to writing by me, and when completed was carefully read to said witness, and being by him corrected, was by him subscribed in my presence.

Witness my hand, this 2d day of Dec'r, 1878.

[SEAL.] L. S. B. SAWYER,

Clerk and Com'r U. S. Circuit Court, 9th Cir., Dist. Cal.

In addition to the identification of this book by Col. de Lagnel, his own and Bartholow's signatures may be verified by the records of the War Department at Washington, and Bartholow's and Exall's from the depositions filed in this case.

The letters which are found in the correspondence of the Co. make but little mention of the history of the mines. Some few letters appear, however, which seem to indicate that the company was continuing the methods of Smith and de Valle.

Pp. 12 and 14 press copy book: "Hacienda La Abra Silver Mining Co. Tayoltita Feb'y 6, 1866. D. J. Garth, Esq, New York. Dear Sir: . . . . . You also state that I failed to forward the report of the Guarisamey mines, and instead enclosed a report of the mines and property purchased of Castillo. There must be some mistake about this. I forwarded you as follows: First, report and map of survey of the Promonto o Animas mines, Guarisamey, by Fred Weid-

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the amount of the silver drawn from the Sierra Madre by Zambrano during the twenty-five years that he continued his labors nothing *certain* is known; but Mr. Glenine, from whose notes I have borrowed the whole of the details given above, states that he himself saw in the books of the custom-house of Durango, $11,000,000 registered as the sum paid by Zambrano as the 'King's fifth,' and this fact was confirmed to me by the Governor, who examined the register himself in order to ascertain it. It is likewise corroborated by the number of mines opened at Guarisamey and the surrounding districts, by the peculiar richness of their ores, and by the immense wealth of Zambrano, (diminished as his profits must have been by the expenses of working,) of which so many splendid monuments remain. (P. 130.) These immense riches were derived principally, the five great mines, La Candelaria, (at San Dimas,) San Juan Nepomuceno, Cinco Senores, La Abra,‡ and Tapia, (Talpa.)' On another page, which I have failed to enter upon my note-book,§ he says: 'These mines often yield twenty and even as high as thirty marks per carga of 300 lbs.' The mines La Abra and Tapia, spoken of in Ward's Mexico, with some adjoining veins or lodes at Tayoltita, are the same that were owned and worked by La Abra Silver Mining Company, in whose behalf this deposition is taken." (P. 34.) Deponent failed to sell mines in N. Y., as agent for de Valle, on account of French invasion. (P. 35.) "I advised General Thomas J. Bartholow, a wealthy banker of St. Louis Mo., whom I met in New York, and David J. Garth, Esq., a banker and now wholesale tobacco dealer of New York, to purchase said La Abra property at Tayoltita." De Valle had, "I know by my own searches of the proper records, a good Mexican title."

James Granger, (British subject; miner; clerk for two years and asst. supt. of La Abra Co., now bookkeeper for Ralph Martin, of San Dimas; testifies, May 14, 1870, before U. S. Commercial agent Sisson, at

‡How much of these immense riches La Abra mine furnished, is nowhere stated by Ward.

§The page is 130, the same Smith has just quoted from, and his quotation is somewhat inaccurate. The following is what Ward actually says, commencing after the names of the mines: "Of one of which (La Candelaria) I possess the regular returns for five years, which prove the annual profits never to have been less than $124,000, while in some years they amounted to $223,082. The ores of the mine, ("not these mines,") during the whole of this period, appear to have produced from five to six marcs per carga, (of 300 pounds,) and often to have yielded twenty, and even thirty marcs. Indeed, nothing of a quality inferior to the first could have covered the expense of extraction."

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ner with samples of ore and silver. Second. History of same (in Spanish) by Antonio Arriza. I also forwarded a history of this property which I got Castillo to write and from a letter of Mr. Nuckolls to Mr. J. V. Hardy which I read stating that the matter was in his hands for sale and that he was getting the Spanish documents translated. I am led to think that the papers must all have come to hand as nothing relating to the Guarisamey property was in Spanish except this history and the title papers. In your next please be more explicit as to what the missing paper was, if any is missing. . . . . Don Juan Castillo has gone to Spain. . . . . Before leaving he sent to Durango all the requisite documents, necessary under the laws of the country to divest Farrell of his interest in the Guarisamey property and his brother Don Angel Castillo will promptly attend to it. . . . . Yours truly, TH. J. BARTHOLOW."

Translation, "Hacienda de La Abra July 26, 1866. Senor D. Antonio Araiza, Guarisamey. My Dear Sir: In your letter of the 5th of May last direct to Senor Cervantes, you mentioned the history of the mine Promontorio which you offered to send to the Supt of this Hacienda General Bartholow as he had—As this letter reached here just before the departure of that gentleman for the United States, I was charged by him as well as by the proprietors with the duty of receiving from you the said history and forwarding it to them. I therefore take the liberty of begging you to send me the history for that purpose. I have moreover an interest in learning the history of a mine so much renown. I am, &c. J. A. DE LAGNEL."

"Tayoltita, Mexico, 7 Sept. 1866. D. J. Garth Esq., Treasurer La Abra S. M. Co. Dear Sir. . . . . The history of the Promontorio mine I send herewith, this having only arrived a few days since. This, as all the other mines we hold, is secured by prorogues newly obtained. . . . . I am, yours with respect. J. A. DE LAGNEL.

The deposition of Frederick Sundell, a Swede, who, from 1865 to the end of 1868, was assayer of the Durango Mining Company of New York and San Dimas, and who was temporarily in Mazatlan in 1877, where his testimony was taken on the 9th of August, is also herewith transmitted. He states that he has never heard that La Abra mines had produced great quantities of ores, but that he has heard Ygnacio Manjarrez say that when he was interested in said mines they produced very little

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Mazatlan, who certifies to credibility,) p. 41, claimant's book. Mines were exceedingly valuable. The richest lodes have not yet been reached for lack of sufficient expenditures on La Abra and Rosario, which should be opened by tunnelling.

John Cole, (raised Wayne co., N. C.; was U. S. soldier in Mexican war; resides San Francisco; lived in Mexico and California since 1849; in 1866, '67, '68 lived about half his time on his ranche at Camacho Sinaloa, the rest mining at San Dimas; part owner of Guadalupe mine; was transportation agent of La Abra Co.; testifies March 15, 1870, before U. S. Com'r Whitney, at San Francisco, who certifies to credibility of Aaron Brooks, who certifies to Cole,) p. 55, claimant's book: La Luz, Cristo, Rosario and Tapia veins were of the richest in the State. Believes de Valle had good Mexican title to property.

J. F. Gamboa, (born San Ignacio, Sinaloa; age 40; resides at Limon; farmer and transportation contractor; had contract with co. for supplying provisions and transporting ores from mines to works; testifies May 14, 1870, before com'l ag't Sisson, at Mazatlan, who certifies to credibility; Carlos F. Galon certifies as translator,) p. 62, claimant's book: Knows that mines were valuable. "They were considered as being very abundant in silver ores, of the best quality."

Jno. P. Cryder, (born in Calcutta; age 49; resides in Limon; miner, farmer and lawyer; was ass't sup't of Guadalupe Co.; testifies May 24, 1870, before U. S. Com'l Ag't Sisson at Mazatlan, who certifies to credibility,) p. 73, claimant's book: Mines very rich. La Abra alone reputed to be worth much more than the company paid for all.

José M. Loaiza, (born San Ignacio; age 44; resides San Ignacio; miner, muleteer and merchant; in 1865, '66, '67, and '68 purchased and transported supplies for La Abra Co.; was acquainted with some members of the co. and intimately with three of the principal sup'ts; testifies May 14, 1870, before U. S. Com'l Ag't Sisson at Mazatlan, who certifies to credibility; Galan certifies as interpreter,) p. 78, claimant's book: Mines very rich; yield from three to six marks per carga. Believes La Abra and Rosario, with properly constructed adit, would yield two or three times that amount.

* DEFENSIVE.

The witnesses for the defense testifying under this head comprised *Patricio Cam-*

* The whole of the evidence for the defense, covering pp. 120 to 187 in claimant's book, was taken

good ore. Sundell further states that Juan Nepomuceno Manjarrez was a man of property and good character, and that Bartolo Rodriguez and Patricio Camacho were industrious miners of good reputation.

Alonzo W. Adams, whose name appears on the opposite page, was the acknowledged agent of La Abra Co. for the purpose of securing evidence in its behalf in this claim. He accompanied the first witnesses testifying for the Co. to the office of Judge George G. Barnard, in New York city, in Dec'r, 1869, and went to Mexico in the following year, and again in 1872. With few exceptions the depositions filed by the Co. were procured by Adams. To show the fitting character of the instrument selected by the Co. to serve its fraudulent purposes, the following papers are submitted, touching the career of Adams for thirty years past.

Letter from the Secretary of War to Robt. B. Lines, dated Nov. 8, 1877, inclosing a report of the Adjt. General U. S. A., showing the date of Adams' appointment as captain and commissary U. S. A., and his service in such capacity from February to August, 1848. His stations are reported as follows: "March New Orleans, April Puento Nacional, May not given, June Jalapa, July 'unknown' he was discharged Aug. 31, 1848. Station at date of discharge not given."

Letter of Secretary of War, dated Dec'r 21, 1877, addressed as above, inclosing a further report of the Adjt. General, dated Dec'r 8, 1877, stating that "the Historical Register of the Army shows that Capt. Adams 'disbanded' Aug. 31, 1848. The Army Registers of 1848 and 1849 furnish no information as to his discharge. . . . . It is remarked that the records of this office show the receipt of and reference to the Quartermaster General Oct. 1, 1848 of a communication dated Clarkesville, Texas, Sept. 9, 1848, from J. K. Oliver relative to a fraud of Capt. A. W. Adams in the U. S. Army." Also the following report from the Commissary General U. S. A. "War Department, Office Com. Gen'l Sub's. December 17th, 1877. Respectfully returned to the Hon. Secretary of War. The records of this office show that Capt. A. W. Adams, C. S. Vols, rendered accounts for 2d. and 3d. quarters of 1848, in which he reports having received funds in April, May and June, 1848, and of having had $1700 thereof stolen from him July 18, 1848, at Vera Cruz, Mexico. February 21 & 22, 1849, he transferred to Captain A. E. Shiras, C. S., $1790.60, being amount reported by him as lost by robbery and a portion of the balance reported as due the

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acho, aged 70, who had known the mines from infancy. *Bartolo Rodriguez*, the "ore cleaner" of the Co., who had known them for 15 years, and other old miners of the vicinity; *Juan Castillo de Valle* and *Ygnacio Manjarrez*, who had sold the mines to Co.; *J. Nepomuceno Manjarrez*, a brother of the latter; *Jesus Torres*, a lawyer, and *Francisco Acosta*, a merchant of Durango; *Miguel Laveaga*, a mine owner of San Dimas, and *James Granger*, the former clerk of the Co., who swore that he had been left in charge of the mines by Sup't Exall at the time of the alleged abandonment. *De Valle*, and *Granger* appear also as claimant's witnesses. For the defense *Granger* swore, p. 147 claimant's book, that "formerly these mines were much talked about, but that they now are good for nothing." *De Valle* swore, p. 176, that the mines had yielded him "from 80 to 100 cargas per month and sometimes as high as 200 cargas, but that it never was a business productive of large gains and only yielded enough to enable the mines to be kept in such condition as to make them salable." *Ygnacio Manjarrez*, his partner, swore, p. 179, "that in ten years that the deponent and Castillo (De Valle) worked, they never made more than enough to economically carry on the works which they had begun." *J. Nepomucino Manjarrez*, p. 184: De Valle made regular profits in some mines and lost in others. "Through economy he kept up his business for ten years, owing to the excellence of his management." *Torres, Acosta* and the miners corroborated these statements, one of them stating some of the ore was rich but there was "very little in quantity," the yield being mostly rock or "tepetate." With regard to the transactions immediately preceding the purchase, *Torres & Acosta* stated, p. 173, that in 1863 some Americans offered de Valle $50,000 for La Luz and Rosario mines, provided they should succeed in organizing a Co. in the U. S. and that they subsequently returned and purchased them. *De Valle*, p. 176: That Bartholow and Garth, being among the principal owners of La Abra mine, offered to purchase La Luz & Rosario representing that they were going

in San Dimas, fifteen miles from the company's mines, with the exception of the depositions of Torres, Acosta and de Valle, which were taken in Durango. There were 34 witnesses, and the dates of their testimony ran from Jan'y 15, 1871, to Oct. 16, 1872. Aquilino Calderon testified twice, Martin Delgado three times, Refugio Fonseca three times, James Granger four times, Maria Cecilia Jiminez twice, Arcadio Lavega three times, Ygnacio Manjarrez three times, Bartolo Rodriguez four times, Gil Ruiz twice, and Guadalupe Soto three times.

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United States, viz: $200, leaving a balance still due the United States of $109.40. It is not known in what manner Captain Adams was discharged the service. (Signed) R. MACFEELY, Com. Gen'l Subs." (The military career of Mr. Adams in the late war is described in the records of various court-martials in the Judge Advocate-General's office, and in "The Story of a Trooper," by Capt. F. C. Adams.)

Certified copy of indictment brought by the grand jury of Butte county, Cal., in April, 1851, against Alonzo W. Adams, for obtaining goods by false pretences in his capacity as collector of licenses to foreign miners in said county.

Letter from Thos. B. Van Buren, U. S. Consul General, in Japan: "The Union League Club, Madison avenue, cor. twenty-sixth street, New York, Nov. 14, 1877. Robt. B. Lines Esq Washington, D. C. Dr sir. On overhauling my papers I find that Alonzo W. Adams was a member of the Senate of California of 1851, as I had supposed. His seat was contested on the ground of his non-residence in the district a sufficient time to make him eligible, and from the fact that most of his votes came from two polls which he had caused to be fraudulently opened in a county outside of the senatorial district. The committee was unanimous in its action, and prepared to report against him, but as the report would have disgraced him he was permitted to resign, or withdraw in favor of the contestant. When elected to the Senate he was acting as collector of a State tax on foreign miners, and he was charged with using that position not only to buy votes for himself, but to extort money in various scandalous ways. For these and other offences complaints were made agst him and my impression is he was indicted. At all events he employed me to defend him in the courts and as a retainer gave me his note for $500. I went to work to examine into the matter but before he could be arrested he went to Monterey and by means of a small boat, boarded the steamer to Panama and thus escaped the country. Sometime after that being in N. Y. I was requested to go to Jersey City to the house of Mr. * * * who was anxious to save his young daughter from the clutches of this scoundrel who represented himself as a member of the California Senate, a partner of Genl. Fremont, a prominent candidate for the U. S. Senate. I exposed his true character in the presence of Adams himself and of the * * * family and of counsel and saved the girl for the time—after I left the country, however, he succeeded in marrying her, and as you know, failing to

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to organize a Co. in the U. S. That they subsequently made the purchase. *Ygnacio Manjarrez*, p. 179: La Abra mine being abandoned was denounced by some Americans who went to the U. S., and others came back probably to represent them. "After some time had passed one of the Americans who went back, returned in company with others, among whom were one Thomas J. Bartholow and one David J. Garth and then, in 1865, contracted for the mines." *Agasito Arnold*, p. 183: Castillo's profits were small. "Deponent believes what was publicly said, that the Americans deceived themselves in regard to these mines, because, when they sought to make their purchase, they saw at the establishment of Castillo, in Tayoltita, a considerable quantity of silver which proceeded from the small yield he obtained and the remainder from what he had purchased at these mines and from Gavilanes. *Nepomucino Manjarrez*, p. 184: In June, 1865, deponent was in Tayoltita and saw Bartholow, Dr. Ardi (Hardy ?), his brother, Mr. Garth, Mr. Grifis (Griffith ?) and others in treaty with De Valle for the mines. *Bartolo Rodriguez*, p. 185: Those who bought de Valle's mines were not those who denounced the Abra, though they may have owned it.

REBUTTING.

Juan C. de Valle, (Spaniard, merchant, resides Durango, lived at San Dimas and Tayoltita from 1846 to 1865; testifies, June 27, 1872, before Judge Pedro J. Barraza, Durango, who, at request of A. W. Adams, certifies to credibility,) p. 86 claimant's book. The expedientes of the denouncements had been duly presented to the State Department in Durango to obtain title deeds. If denouncements are not to be found in the archives deponent does not know where they are. Pp. 87, 88: Commissioned Wm. H. Smith to sell the mines, which deponent subsequently sold to Bartholow & Garth for more than $100,000. Does not "recollect whether the price fixed was exactly $150,000." Considers Wm. H. Smith to be an honest and honorable man. Asked "if it be true that said mines, belonging to La Abra Mining Co. were previously worked with great success by the celebrated Zambrano, and if said mines were mentioned by Baron Von Humboldt and also in Ward's celebrated work on Mexico, and whether it is publicly well know that the old reducing works and aqueducts there were constructed by the said Zambrano. Ans. In the affirmative."

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get possession of her property, he so ill-used her that she obtained a divorce. I obtained judgt agst him in 1856 for nearly $700 on my note which remains unpaid. I believe him capable of any villainy which does not require courage. Expect to be in Washington next Monday. Very truly yours, THOS. B. VAN BUREN."

A sketch of the character of Mr. Adams and of his career since the events related by General Van Buren, is found in the decision of Judge Beasley, in the case of Adams *vs.* Adams, bill for divorce, 2d Green, New Jersey Equity Reports, February term, 1866, from which the following extracts are taken. P. 325: "The parties were married on the 27th of May, 1854; that they resided with the mother of the wife, in Jersey city, until Mar. 1855, when they removed to New York, and remained there until February, 1861, when it is alleged, the husband failing to provide a sufficient support for the wife, she was compelled to leave him and return to the parental house where, with her only child she has been supported by her mother ever since; that the defendant in August 1861, joined the army of the United States and went to the seat of war, and was, till the commencement of this suit, engaged in active service, having no house, home, or fixed place of residence. Then follow articles of crimination charging that the defendant, at divers times in the months of March and April in the year 1864, committed adultery,"&c..... P. 330: "The next general topic alluded to by counsel, and on which much stress was laid, was the allegation that this suit had not originated with the petitioner, but has been promoted against her wishes and conviction of right, by her mother. But the case is, I think, destitute of all evidence to sustain this hypothesis. It does, indeed appear that this lady, has at times expressed great abhorrence of the defendant, and has been vehement in her denunciations of his conduct. But in judging of her in this respect, her position relative to him must be taken into account. In the year 1853, the defendant was introduced into her family. She had then living but one child, the petitioner, who, as the only descendant of a wealthy family had large expectations. The defendant, immediately upon his introduction, addressed her. A number of his letters, received during the period of this courtship, are among the proofs. They are addressed to the petitioner, or to her family and they purport to come from different places in the South. They describe the

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Jesus Chavarria, (lawyer; resides Durango; testifies, July 12, 1872, before Judge Barraza, by order of the Judge given at the request of A. W. Adams; Judge Barraza certifies to credibility,) p. 91 claimant's book: "The mines were of silver, and of great importance for the abundance of their ores and their percentage of silver." "It is impossible for him to give a description of them, as he is not an expert in mining." P. 93: Was shown "the constructions which had been made by Juan Zambrano, the first owner of the mines, at great cost."

Marcos Mora, (merchant; resides Durango; was *gefe politico*, or prefect, of San Dimas from March to Sept., 1867; resigned in July, '67; testifies, July 19th, 1872, before Judge Barraza, by order of Judge given at the request of A. W. Adams. The Judge states that "Mora having failed to appear on the two subpœnas sent him it was necessary to compel his appearance by means of the police,") p. 101 claimant's book: Has no knowledge of mining, but La Abra Co.'s mines "are unquestionably the best mines in the district of San Dimas."

Matias Avalos, (for personal description see Head X,) p. 110 claimant's book: Many people laughed because the witnesses for the defense called merchants and miners, when they were bar-room loafers. Hopes the consul "will not oblige" him to mention names.

Charles B. Dahlgren, (born Harttsville, Pa.; son of Rear Admiral John A. Dahlgren, U. S. N.; age 32; assayer, machinist, mining engineer, and general sup't of Durango Mining Co. of San Dimas; also U. S. Consul for Durango; testifies, Sept. 18, '72, before U. S. Com'l Ag't Sisson, who certifies credibility; corrections noted; H. Diaz Peña witness,) p. 115 claimant's book: The mines "are undoubtedly among the best and most valuable of all the silver mines of Mexico, and some of them are not unknown to fame for their rich and abundant productions. I refer more particularly to La Abra, El Rosario, La Talpa and El Cristo veins. I should like to own them, if it were possible to raise capital to work them and secure protection." P. 117: Considers Matias Avalos strictly honest, truthful, trustworthy, conscientious and reliable. Has heard of parties being compelled by threats to testify for defense. P. 118: Heard "Granger say that if he had not complied with the demand of the Judge of the first instance of San Dimas in testifying against La Abra Co., the claimant, that he knew he would have been compelled to give up his journeyings and adventures of the writer; he is at one time exposed to the cholera; a travelling companion in the same vessel dies and is hurriedly buried in a "desert place" on the shore of the Mississippi; the defendant has made his last will, leaving his entire estate to the petitioner, "excepting only ten thousand dollars," which has been given to a nephew then at college in Tennessee; he is then hurrying away to New Orleans to save a large amount of gold dust, on deposit at a banking house which he has been credibly informed would fail within a few weeks. It is not necessary to dwell longer on these details. He is married to the petitioner. They resided with her mother nearly a year. He expresses his desire to put up a costly dwelling house as a home for his family, and his mother-in-law for this purpose conveys to him a tract of land; this he raises money upon by mortgage. He then with his wife goes to boarding in New York. Sometime elapses and then comes the discovery; the defendant was not a man of property; he had not travelled, as he pretended, from place to place in the South; he was a mere impostor and his letters were from first to last a deception and falsehood. But this was not all: it was further ascertained that at the time he had engaged himself to the petitioner he was the husband of another, and that there was every reason to suppose that when he offered himself to his present wife he was on his bridal tour with his first. He was divorced on the 26th of April 1854, and the 27th day of the following month was married to the petitioner. It was thus that the defendant stood revealed to this lady, the mother of the petitioner. She could not do otherwise than regard him as a man destitute alike of honor and of truth; as a mere adventurer who had entrapped her daughter into the degradation of marriage with himself by the use of the lowest arts. Under these circumstances she appears to have received information that induced her to believe that the defendant had a wife living in California. It was not unnatural that she should give easy credence to such an accusation and accordingly she had the defendant prosecuted for bigamy" . . . . P. 342: "Upon the whole case my conclusion is, that the case of the petitioner is fully made out by the proofs adduced, and that her prayer should be granted." The testimony of the Rev. Wm. Collier and of Catharine McLoughlin in the above case discloses that Adams was married June 14, '53, to a lady in Pennsylvania,

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mining interests in that district and leave the country."

Charles H. Exall, (is cashier of Washburn, Thayer & Co. For further personal description see Head III, testifies June 12, 1874, before U. S. Com'r Stilwell, N. Y., who certifies to credibility.) P. 193 claimant's book: All but five of the witnesses for the defense, resided at San Dimas or elsewhere, and never visited the *patios* of the Co. in the day time while deponent was Supt. unless they came to carry off ores. Pp. 206, 207: Ygnacio Manjarrez lived at Ventanas, and afterwards at Durango. Torres was a lawyer and Acosta a merchant in Durango. Gurrola and Delgado sold mescal and cigars in San Dimas. Miguel Laveaga owned mines. Arcadio Laveaga was a politician; both lived at San Dimas.

Ralph Martin, (born in New York; age 41; lives on his means at No. 45 west 22 street; from Sept., 1868, to Oct., 1870, lived at the Hacienda of the Candelaria Co., near San Dimas:) Gurrola and Delgado sold mescal, corn, beans, cigarettes and soap at San Dimas. Miguel and Arcado Leveaga, father and son, were mine owners at San Dimas. Arcadio was also a merchant and politician. Romero lived in a cave. P. 214: Knows Avalos well; employed him as a servant. "He was an honest reliable man, of good character for truth."

Thomas J. Bartholow, (born Howard Co., Md.; age 48; banker; resides St. Louis; was one of originators and first Supt. of La. Abra Co.; testifies June 22, 1874, before U. S. Com'r Enos Clarke, St. Louis; Clarke and U. S. Judge Treat certify to credibility,) p. 216, claimant's book: Certain mines, &c., in Tayoltita were brought to notice of deponent and several other gentlemen residing at New York, Baltimore, Wheeling, and St. Louis, who afterwards became stockholders of La Abra Co., by Gen. Wm. H. Smith, himself the owner of a valuable mine in the same district. Smith "was agent for the owners of Said Abra property." Smith proposed to sell one-half or two-thirds of the property in order to raise money to buy a stamp-mill and work mines on a larger scale. They wished to retain an interest. Failing this, Smith was authorized to sell the whole property for $150,000. (P. 21.) "We had also noticed the flattering accounts of the wealth of said mines by Baron Von Humboldt, and by the English explorer, Ward, in his history of the successful working of said mines at Tayoltita by the celebrated Zambrano." "We called a meeting of capitalist, being one

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and lived for about six months with her father, who then paid F. P. Stanton and Col. Black $500 to obtain a divorce. One of these gentlemen, at least, signed the argument before the Umpire in behalf of La Abra Co., and injected into it a certificate to the high character of Alonzo W. Adams.

The decree of the district court of the 4th judicial district of California, a copy of which is herewith transmitted, shows that Adams had yet another wife, from whom he was divorced on the 2d of Oct., 1876,

The methods pursued by Adams in securing testimony in the claim of La Abra Co., are illustrated by the following:

Letter from Captain C. B. Dahlgren, (which also shows the value of Dahlgren's deposition, filed in behalf of the Co.:)

"San Francisco, Cala., Nov. 12, 1877. Mr. Lyons, U. S. Senate P. O., Washington. Sir: I have good reason for knowing that the testimony under my signature as offered by A. W. Adams in the La Abra case or claim has been perverted and is therefore fraudulent and should be treated as such. My testimony was taken in rough notes and left for him to copy or fill in over my signature on a clean sheet, as I was called off on important business. I know now that said testimony has been perverted and by said A. W. Adams. Very truly, C. B. Dahlgren. My address here is Capt. C. B. Dahlgren, Pacific Refining and Bullion Exchange, Cor. Brannan & 7th S. F. P. S. I understand said A. W. Adams boasted he had obtained my signature by the use of a 'good round sum of gold.' Advise me how I can bring him before a court to substantiate said statement C. B. D. I refer to Gen. Sherman & Rev. Byron Sunderland."

Mr. Dahlgren having been U. S. Consul in Durango his signature is doubtless on file at the Department of State and may be compared with that of the above letter.

Adams' methods are further illustrated and the value of the evidence secured by him from J. F. Gamboa in behalf of the Co., shown by the—

Depositions of J. F. and Trinidad Gamboa, made in June, 1877, and herewith transmitted. In these depositions J. F. Gamboa testifies that he does not remember the purport of the deposition signed by him before U. S. Commercial Agent Sisson in Mazatlan, May, 1870, as he was intoxicated at the time. That if the translation of his deposition, as it appears to have been filed for the company, is correct, then said deposition is false, inasmuch as he was not acquainted with the

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of them myself, who subsequently became stockholders in said Co. We resolved to investigate the matter, and said gentlemen voted to send David J. Garth one of the stockholders, and myself to investigate the same by a through examination of said mines and property at Tayoltita, Mexico, with instructions that if we should find said mines and haciendas as represented, and the prospect of realizing upon our investments and of receiving the protection of said authorities as flattering as represented in said proclamation of the Mexican Government, that we should then make said purchase to the best possible advantage in our judgment before returning to the United States, and that said capitalists should then form a corporation to own and work the same, which was subsequently done." Garth and deponent accordingly arrived at Tayoltita in June, 1865. They examined the mines and ores, and tested their richness "by reducing to silver average samples taken out by us promiscuously from La Luz, El Rosario, El Cristo, La Talpa, and other mines belonging to said property. We also tested an average lot taken from La Abra mine, which we subsequently purchased from J. Hardy and a Mr. Luce. We also thoroughly examined the haciendas and old reduction works of said owners, Don Juan Castillo de Valle and Ygnacio Manjarrez, before we made them an offer for said property." P. 221: Garth never visited mines but once, on the occasion of the purchase, "and I never returned after that to said mines and hacienda until I returned as Supt. to put up said stamp-mill," purchased in San Francisco. Torres' statements are untrue. Nepomucino Manjarrez was a bad character, whom deponent discharged from his service. P. 226: "The parties named in the question, Ygnacio Manjarrez and Don Juan Castillo de Valle, represented to the said Garth and myself, both before and after the purchase of said mines and property, that the said mines, El Rosario, El Cristo, La Luz and its appurtenances, El Arrayan, with Talpa and El Sauz among its appurtenances, were among the most valuable of all the mines of Durango and Sinaloa; and they, said Manjarrez and de Valle, produced and exhibited to said Garth and myself their books, in which was written down and stated with particularity the profits with which they had worked said mines for a number of years preceding said sale, showing that the ores from said mines which they had reduced, averaged from six to ten marks per carga of pure silver, with an addition of about

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mines of the Co., and had never made any contract with the Co. to supply provisions or pack its ores. That he remembers that he at first refused to sign the paper, but being solicited by Adams, James Granger and Charles F. Galan, he at length agreed to sign it. That Granger promised him and his brother Trinidad $200 which Adams had offered them to accompany him to Mazatlan and testify in favor of the claim. That being at Cabazan, in the District of San Ignacio, Adams invited him and his brother Trinidad to go with him to the chief town of that district and testify before the judge of the first instance, offering to pay their expenses and remunerate them for their services. That they asked a hundred dollars each, which Adams paid. He does not know why Adams did not have their depositions taken at that place. That Adams returned to Cabazan and made an agreement with them to go to Mazatlan for their expenses and $200. That Adams quartered them at the Hotel Iturbide, and that one evening, deponent having taken several drinks, Adams took them to the house of the American Consul where, after some resistance, and the persuasions of Adams, Granger and Galan, he signed the paper as aforesaid, and he and his brother Trinidad received the $200 in the place Machado. That John Cryder and J. M. Loaiza were paid for their testimony, the latter $ 100 at the same time as deponent. Trinidad Gamboa tells the same story as his brother, and states that he declined to sign the paper prepared for him.

J. M. Loaiza, in his deposition taken June, 1877, transmitted herewith, states that he made a deposition before the U. S. Consul at Mazatlan, May 14, 1870, in Spanish; that as it appears to have been filed it is false. That he was not a muleteer, as stated in said deposition, and that he consequently had never served the Co. by transporting its supplies; that he had never inspected the mines; that Adams, in passing through San Ignacio on his way to Dimas, spoke to deponent about testifying in favor of the Co., and also on his return. Deponent offered to state what he knew before the local court, but Adams refused, proposing that he should give his testimony before the American Consul in Mazatlan and offering to bear the expenses of his trip, to pay him $180, which was due him for wages, and to secure the effective influence of the company in favor of deponent's claim against the United States, which was in the hands of the lawyer Charles F. Galan. De-

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ten *per cent.* of gold, and they represented to said Garth and myself at the same time that if said mines were worked on a larger scale and with improved machinery, (such as we then contemplated erecting and subsequently did erect on said premises,) that they would produce much larger profits; and they stated that the metals which they had reduced from the said El Rosario mine had yielded them an average profit of eleven marks, or one hundred dollars per carga of three hundred pounds in pure silver, with an addition of ten *per cent.* of gold, and during our examination of said mines and immediately before we made said purchase they blasted and took out an average lot of ores from said La Luz mine and reduced the same in the presence of said Garth and myself as tests of the value of said mine and its ores, and the same yielded of pure silver six marks per carga of 300 pounds, and they represented the veins of ore in said mines as being inexhaustible in supply, which from my subsequent examination I believe to be true."	ponent went to Mazatlan, and between 9 and 10 o'clock they took him to the house of the consul, where were Adams and Galan. Deponent was intoxicated. They presented to him a deposition, reading it in Spanish; its contents were different from that now presented. At their solicitation deponent signed the deposition without seeing whether it was written in English or Spanish as it had been read to him. Deponent remained in Mazatlan eight or ten days, and they only gave him for expenses $60 or $70, and did not pay the amount due him. Deponent believes that Adams solicited other witnesses. James Granger, Maria Cecelia Jimenez and others whom he does not remember came at the same time from San Dimas, and J. F. and Trinidad Gamboa from Cabazan. *The deposition of William R. Gorham,* Washington, Mar. 23, 1872, states that the deposition of Alfred A. Green, purporting to have been made before Judge George G. Barnard, New York, Decr. 13, 1869, was not read to said Green or signed by him. That deponent accompanied Green and A. W. Adams to the office of Judge Barnard on the date mentioned and certified to the credibility of Green. Judge Barnard's reputation does not forbid the suspicion of complicity on his part in fraudulent transactions. Attention may be called here, as well as in any other place, to the more than suspicious attempts of judicial officers, and principally of the consul at Mazatlan, since removed for cause, to bolster up the reputation of witnesses in this case. That Adams found at least one worthy coadjutor among the witnesses whose testimony is quoted in the opposite column, is shown by the— *Certified copy* herewith transmitted of the commitment of John P. Cryder to the State penitentiary of California, June, 3, 1855, for the crime of forgery; term of sentence, five years.

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IN CHIEF.

Memorial, p. 5, claimant's book: "Shortly after the date of their charter the said company purchased and became the owners and proprietors of certain mines and haciendas of great value in Mexico, to wit: the mines *Rosario*, *La Luz*, *El Cristo*, *Los Innocentes*, 550 feet of the mine *Nuestra Señora de Gaudalupe*, 22 equal undivided 24th parts of the mine *La Abra*, and the haciendas *St. Nicholas* and *Gaudalupe*, and the water power appertaining thereto, all situated at Tayoltita, in the State of Durango; and the mines *La Arrayan*, *El Sauz* and *La Talpa*, situated in La Talpa mountain, in the State of Sinaloa, and the following mines were denounced by the then Supt. of the Co. for the Co., to wit: San Felipe, San Antonio, and Bartholow, all situated at Tayoltita, aforesaid.

Bill of sale, p. 14, claimant's book, of *Rosario*, *Arrayan*, *Cristo*, *Santos Ynocentes*, *Luz*, and 550 feet of *Nuestra Señora de Gaudalupe* mines, and of the *Haciendas* of *San Nicholas* and *Gaudalupe*, by Juan C. de Valle, for himself and partner, Ygnacio Manjarrez, to Thomas J. Bartholow and David J. Garth, for $50,000. Executed Sept. 25, 1865, before Antonio Aldrete, notary public, Mazatlan. On Aug. 9, 1872, Gov. Flores, of Sinaloa, certifies to the signature of the notary. U. S. Consul at Mazatlan certifies to signature of Governor.

Deed of transfer (p. 14, claimant's book) of *Rosario*, *Luz*, *Cristo*, *Santos Ynocentes* and *Arrayan* mines, 550 feet of *Nuestra Señora de Gaudalupe* mine and ¾ of *La Abra** mine, together with the haciendas of *San Nicholas* and *Gaudalupe*, by David J. Garth and Thomas J. Bartholow, to La Abra Silver Mining Co., executed Octo-

* This is the first appearance of the Abra mine in claimant's "complete chain of title." Why Garth, Bartholow and Griffith, did not transfer to the Co. the Promontorio mine and the Tamborlita reducing works, at Guarisamey, for which de Valle says they paid him $10,000, or what became of that valuable property, does not appear from the printed record. As Bartholow forgot how he paid for the mines he did transfer, he may have forgotten to charge this expenditure to the company. But he might at least have remembered this transaction in 1874, with de Valle's testimony before him, as he then remembered the payment of $7,000 for the "improvements" which de Valle had said in 1870 was paid for the "stock and fixtures of the store," which does not appear in the bill of sale. De Valle himself, while not remembering in 1870 the sale of the "550 feet of the Guadalupe mine" or of the Guadalupe hacienda, both in the bill of sale, recalls that he sold the Sauz and Talpa mines, (which Collins, a few months later, corroborates,) and the hacienda of Lower Chica, none of which appear in the bill of sale as printed by the claimant.

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The general incorporation acts of the State of New York, under which this company was organized required it, before the 20th day of January of each year, to publish and file in the county clerk's office sworn reports of its capital, its paid-up stock, and its debts. Certified copies of all the reports so filed by that co. down to 1878, (which cover only the years 1866, 1867, 1868, 1877, and 1878,) are herewith transmitted. The report for 1866, dated Jany. 17th, and sworn to by Wm. L. Hearn, president, states that "the Co. have issued in payment for La Abra Silver Mine $22,000 of the stock of the Co." Mr. Bartholow's statement that the payment was made in gold would seem to be incorrect.

It also appears that Mr. A. A. Green, who made no claim for the loss of his interest in this mine, and whose claim, No. 776, was disallowed by the Umpire, was the owner of the two twenty-fourth parts of La Abra mine not purchased by this Co. The following letters, bearing on this subject, are taken from the company's press copy-book:

"Hacienda La Abra Silver Mining Co., Tayoltita, Feb'y 6, 1866.—D. J. Garth, Esq., New York. Dear Sir: * * * In one of your last letters I found a power of attorney from Mr. A. A. Green, in favor of Mr. Garnin, (secretary of Durango Silver Mines, New York,) authorizing him to dispose of his interest in La Abra Mine, and you do not mention for what purpose it was enclosed to me. Please enlighten me on this subject. * * * Yours, truly, Th. J. Bartholow."

"Hacienda La Abra Silver Mining Co., Mar. 7. 1866. David J. Garth, Esq. Dear Sir: * * * You will cause to be forwarded to me as soon as issued the certificates of stock in favor of Messrs. Hardy and Wilson, which I will deliver to the parties as soon as all is paid up. The original stock to them of $22,000 is to be divided equally between James M. Wilson and Irby V. Hardy. * * * Your fr'd, Th. J. Bartholow, sup't."

It is difficult to understand how La Abra Co. should be driven away from 550 feet of a mine owned and worked by another Co. and the latter should not be driven away from the remainder. Yet such was the decision of the Umpire dismissing claim No. 821 of the Guadalupe Co. *vs.* Mexico. But the following letters show the very important fact that, instead of purchasing 550 feet of the Guadalupe Co.'s mine, as alleged by the company's witnesses, the Abra Co. merely became the owner of 550 *shares of the stock of the Guadalupe Co.*

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ber 22d, 1866, before Henry Snell, notary public, New York. The deed sets forth that said mines and haciendas were acquired by grantors in trust for and with funds furnished by said Co. *By separate deed*, of same date, Thomas J. Bartholow transfers to La Abra Co. mines of *San Antonio*, *San Felipe* and *Bartholow*, denounced by him as Supt. of Co. Deed executed before Henry Snell, Not. Pub., N. Y.

George C. Collins, (born South Hadley, Mass., age 61, wholesale tea merchant, has resided in N. Y. since 1842, President La Abra Co. since Oct. 23, 1866, before that time Vice Pres't, testifies Sept. 28, 1870, before Judge Calvin E. Pratt, who certifies credibility,) p. 29, claimant's book: Company purchased *Rosario*, *La Luz*, *El Cristo* and *Los Ynocentes*, 550 feet of *Guadalupe** and $\frac{1}{24}$ of *La Abra* mines haciendas *San Nicolas* and *Guadalupe* and water power appertaining thereto, all situated at Tayoltita, Durango, and the mines *La Arrayan El Sauz** and *La Talpa*,* in La Talpa mountains, Sinaloa. *San Felipe*, *San Antonio* and *Bartholow* mines, at Tayoltita, were denounced by Bartholow as Sup't for the Company. All mines and haciendas purchased by Co., except $\frac{1}{24}$ of *La Abra* were bought of de Valle and Manjarrez, Sept. 25, 1865, at Mazatlan. The $\frac{1}{24}$ of *La Abra* mine were purchased, in July, 1865, of J. V. Hardy, in Mazatlan, for $22,000. The mines at Tayoltita were commonly known, collectively, as *La Abra*.

Wm. H. Smith, p. 34, claimant's book: Knows that the Company paid de Valle $50,000 for their mines in the early spring of 1865, to the best of his recollection. Garth & Bartholow, coming to Tayoltita, after deponent had recommended purchase to them in New York, became "acquainted with said Don Juan Castillo de Valle, at Tayoltita, and they there purchased said property of him."

Juan C. de Valle (testifies May 11, 1870, before Felipe Villaneal, notary public of Durango, at the request of A. W. Adams,) p. 71, Claimant's book: Sold in Sept., 1865, to La Abra Silver Mining Co. "the mining enterprise at the mineral of Tayoltita, district of San Dimas, State of Durango, comprising the mine of the *Rosario*, in which is included the *La Luz* mine, *El Cristo*, *Los Inocentes*, and *Arrayan*, together with the *Sauz** and *Talpa** mines, the reducing works of *San Nicolas* and *Lower Chica*,* for the sum of $50,000, which was paid to him in American gold to his entire satisfaction." Also "the stock and fixtures of the store" for $7,000, American gold.* Further, "as the lawful attorney

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"Hacienda La Abra Silver Mg. Co., Tayoltita, Mar. 7, 1866. David J. Garth, Esq. Dear Sir: * * * In my last letter I reported that I had paid $1,100 assessment to the Guadalupe Co. Since then I am informed that you had sent a check to the Co in San Francisco for one assessment of $550, and Mr. Corell has paid back to me this sum; consequently I have only paid $550 on this account. This co's mine is in a good fix. The tunnel has intersected the vein, and they are now taking out a fair quantity of good ore; but I think at too heavy expense under the present management. I have written to the President of the Co. that a change was absolutely requisite in the management here, and asked him to send a competent man to take charge of their business here—one that would work in harmony with us, and regard the interests of both as identical, which is the case. But Mr. Corell does not appear to regard the matter in this light, and instead of assisting me to manage and control the population (Mexican) he endeavored to thwart my authority, and has in consequence given me no little trouble. Lately, however, I have told him plainly that he must change his course, or he or I one would have to leave. Since then I have got along better, but still by no means satisfactory. Mr. Kirch, one of the trustees of this Co., who spent nearly two months here, fully agreed with me in my views of management, and promised me to urge a change. I advised the Co. to send Mr. Kirch here as supt., and hope they will do so. By this steamer I forward to Kirch a proxy, authorizing him to vote the stock owned by our Co. at the general election, to be held in San Francisco the last of this month. This will enable him, I think, to oust Corall, and I am very anxious that this should be done as speedily as possible. * * * Your fr'd, Th. J. Bartholow, Supt."

"Hacienda La Abra Silver M'g Company, Tayoltita, Mar. 7, 1866. Michael Kirch, Esq., San Francisco. Dear Sir: Herewith I enclose you a proxy authorizing you to vote the stock owned by this Co. at the general election to be held, as I understand from Mr. Corall, very soon, and, of course, you will vote as your best judgment will dictate. For on this subject I have no instructions to give. Hoping soon to have the pleasure of seeing you here with authority to take charge of the business of your Co. I am, &c., TH. J. BARTHOLOW, *Supt.*"

"Hacienda La Abra Silver M'g Co., Tayoltita, Mar. 7, 1866. Michael Kirch, of the city of San Francisco and State of

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of Don Antonio Arrayaza and Don Francisco Yzurieta, he sold to Messrs. Thos. J. Bartholow, D. J. Garth, and George Griffith the mining enterprise located in Guarisamey, district of San Dimas, consisting of *Nuestra Senora de Guadalupe del Promontorio* and the reducing works of *Tamborlita de Arriba* and *Tamborlita de Abajo*,* for the sum of $10,000, which was paid to him in cash in American gold at the port of Mazatlan." P. 72: Delivered title deeds to Bartholow and Garth in presence of Aldrete, not. pub., Mazatlan.

John P. Cryder, p. 73, claimant's book: Has heard from good authority at Tayoltita that the company paid "de Valle $57,000 for a number of mines belonging to them, and that they also paid to a Mr. Luce and one Hardy, of California, $32,000 for La Abra mine. All of their mines, property, and works passed underthe title of and were known and called La Abra at Tayoltita."

DEFENSIVE.

Of the witnesses for the defense testifying as to the purchase of mines, &c., *Torres* and *Acosta*, p. 173, claimant's book, stated that in 1863 some Americans offered de Valle $50,000 for the Luz and Rosario mine, the only ones worked at that time, provided they should succeed in forming a Co. in the United States, and that they afterwards returned and bought the mines at that price, and gave the enterprise the name of La Abra; that on account of the large price the transaction came to be widely known in Durango as well as in San Dimas; that deponent, knowing the small yield of the mines, "could not help but show that said Americans had been away for the purpose of deceiving the capitalists of the United States in order to carry into effect a profitable speculation for themselves." Deponent was convinced of this by the manner in which they subsequently worked the mines. *De Valle*, p. 176, stated that Garth and Bartholow, being among the principal owners of La Abra mine, offered to buy from him the Luz and Rosario, representing that they were going to organize a Co. in the United States. They subsequently purchased the Luz, Rosario, Cristo, Ynocentes, and Arrayan mines, and the hacienda San Nicolas from deponent for $50,000. Asked if the Americans speculated upon the credulity of those who constituted the Co., he answered that he had heard various stories, generally unfavorable to the reputation of the parties, but knows nothing, as he removed from Tayoltita. *Ygnacio*

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California, is hereby authorized and empowered to cast the vote for the stock owned and held by this company, viz, five hundred and fifty shares (550) of the capital stock Nuestra Señora de Guadalupe Silver Mining Company, at the general election for officers of said company to be held in the city of San Francisco in this month, and also at any other election which may be held subsequently until this proxy shall be revoked. TH. J. BARTHOLOW, *Superintendent*."

On the 16th of Aug., 1866, Col. de Lagnel, Supt. La Abra Co., notified the Sec'y of the Guadalupe Co. that an assessment then levied on the Guadalupe stock held by La Abra Co. would be paid in San Francisco. On the same date he writes to the President of the Guadalupe Co. a letter in which, after alluding to proposed arrangements for crushing the ores of the Guadalupe Co., and stating that La Abra Co.'s mill is not yet completed, he regrets that the Guadalupe Co. should have found it necessary to levy further assessments, and hopes that the arrangements for having them paid direct from New York will be satisfactory. On the same date De Lagnel writes Col. Taylor, U. S. Commissary of Subsistence at San Francisco, asking him to send the following telegram to David J. Garth, No. 18, New street, New York: "Fifth assessment, one dollar per share of Guadalupe stock, payable immediately. If desired please pay by transfer." On the 7th of September, reporting to the Company the result of an examination of Bartholow's books as superintendent, Col. De Lagnel states that Bartholow has omitted a credit of $550.00 for one assessment on Guadalupe stock; that he, De Lagnel, has paid two assessments since his arrival and received notice of another, which he has referred to Garth, and has telegraphed through Col. John McLean Taylor, U. S. Commissary at San Francisco. On the 8th of October, De Lagnel again writes Garth, stating that the Guadalupe Co. "is doing poorly, the tunnel handsomely driven and work well done, but no metal. A small quantity at the mine is all the result obtained, and I am led to believe that they will suspend operations." On the 17th November, 1866, De Lagnel writes A. Stroud, President Guadalupe Co., San Francisco, stating that the Abra Co.'s mill is ready with the exception of the water; calls attention to the proposed arrangement for crushing ore, and urges the suspension of the erection of works by the Guadalupe Co. as occasioning heavy expenditure and additional assessments. On the 18th Novem-

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Manjarrez, p. 179: La Abra mine had been denounced by some Americans who went to the U. S., and others came back, probably to represent them. "After some time had passed one of the Americans who went back returned in company with one Thomas J. Bartholow and one David J. Garth, and then, in 1865, contracted for the mines called Rosario, La Luz, Arrayan, and Ynocentes, with Don Juan Castillo, partner of the deponent, in the sum of $50,000," which was paid. "Believes that the Americans speculated upon the credulity of those who constituted the Co. in the U. S. by representing to them that the acquisition of said property was of great importance, when in reality it was only limited as regards its productiveness, as he has stated." *Miguel Laveaga*, p. 181, corroborated the above as to the purchase and the price. *Agapito Arnold*, p. 183: Knew the fact of the purchase. "Deponent believes what was publicly said, that the Americans deceived themselves in regard to these mines, because when they sought to make their purchase they saw at the establishment of Castillo, in Tayoltita, a considerable quantity of silver which proceeded from the small yield he obtained and the remainder from what he had purchased at these mines and at Gavilanes." *Nepomuceno Manjarrez*, p. 183: Was in Tayoltita in June, 1865, and saw Bartholow, Dr. Ardi, (Hardy?) his brother, Mr. Garth, Mr. Griffs, (Griffith?) and others in treaty with de Valle for his mines. In October met de Valle in Mazatlan, and learned that the mines had been sold for $50,000.

REBUTTING.

Juan C. de Valle, (deposition of 1872,) p. 86 claimant's book: Sold to Bartholow and Garth, the Rosario, Luz, Cristo, Santos Ynocentes, and 550 feet of Guadalupe mine, for $50,000, received at Mazatlan, "and delivered them the title deeds of the property and the possession which I had acquired, under full legal title." The rest of the Guadalupe mine had been previously transferred, by deponent and his partner, to the Guadalupe Co., represented by John Cole and John J. Correll. P. 88, considers the price an exceedingly low one.

Pedro Echeguren, (Spanish subject, age 46, head of house of "Echeguren Hermnos y Ca." successors of "Echeguren, Quintana & Co.," Mazatlan, testifies, Dec. 9, 1872, before U. S. Com'l Ag't Sisson, who certifies to credibility.) P. 124, claimant's book: "The amount of money

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ber, 1866, De Lagnel writes to Messrs. Weil and Co. and to Mr. Mills, President of the Bank of California, San Francisco, asking them to ascertain the value of the Guadalupe Co.'s stock.

On the 17th Nov. Col. De Lagnel writes Garth explaining the matter of his telegram from San Francisco, through Col. Taylor, states that he writes "by this steamer to parties in San Francisco respecting the value and possible sale of this stock." He insists that the Co. shall meet the Guadalupe Co.'s assessment direct or shall instruct him positively to dispose of the stock. The condition of the Guadalupe mine is poor. January 5, 1867, de Lagnel writes to Garth that the Guadalupe mine is not improved. Thinks the property is now without value. Has heard from the president of the bank of California, who gives a very vague idea of the value of the Guadalupe stock. It is doubtful whether the Guadalupe Co. intend to build works. The supt. is trying to sell the Five stamp battery which the Co. has had for two years. The metal from their mine "beneficiated at Guarisamey gave only about $56 to $60 per ton." Renews his request that the disposition of La Abra Co.'s interest be determined at headquarters. No further mention of the Guadalupe Co. appears in this correspondence. But as de Lagnel states in his letter to Garth on the 7th September, "that your Co. is about the last actually at work, the others having suspended for cause and waiting for something to turn up," it is to be presumed that La Abra Co. did not realize largely on its investment in Guadalupe stock.

If Green was not driven from La Abra and the Guadalupe Co. was not driven from the Guadalupe mines, as the Umpire decided it was not, it is clear that that portion of La Abra Co's. investment which was sunk in those two mines, was not lost through any acts of Mexican officials.

The question as to where the instruments of title were deposited (left in so much doubt by the claimant's witnesses) will not be decided by the new evidence offered by Mexico. In writing to Garth, Mar. 7, 1866, Bartholow says: "I have not yet gotten our title papers from Durango. As soon as they are to hand I will make out and forward the deed you have requested." It will, however, be shown by the following extracts from the claimant's press copy-book that the titles expired and were repeatedly renewed by the authorities. On May 5, 1866, Bartholow writes to de Lagnel, turning the mines over to him as supt., and saying: "I also

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agreed upon for the said mines and haciendas bought from Don Juan Castillo de Valle, by Gen. Bartholow and Mr. David J. Garth, for that Co., was paid to Mr. Castillo de Valle himself, in certificates of deposit and drafts on San Francisco, which we cashed, and they were duly paid when presented by our house in San Francisco. The first amount so paid was $50,000 gold coin. The second amount paid by the same, to the same, for mines and haciendos, was $8,500* gold coin." Deponent received from Bartholow for safe keeping "the perfected title deeds and evidence of original denouncements" of the mine, &c., "which were turned over to A. W. Adams, attorney for said Co., in April, 1872."†

George C. Collins, (testifies, May 23, 1874, before Judge Pratt, N. Y., who certifies to credibility.) P. 189, claimant's book: Bartholow and Garth went to Mexico before the organization of Co. They practiced no deception on the Co. in the purchase of the mines.

Thos. J. Bartholow,† p. 217 claimant's book: Deponent and Garth purchased mines, &c., "paying the said owners, de Valle and Manjarrez, $50,000 in gold coin for said mines, and $7,000 in gold coin for their improvements, mining tools, furniture, and all other personal property belonging and appertaining to said hacienda, San Nicolas, and its reduction works, making $57,000 in gold coin, which we paid for said mines and property into the hands of said Don Juan Castillo de Valle, for himself and as attorney for said Ygnacio Manjarrez, his partner, over the counter of the banking house of Echeguren, Quintana & Co., of Mazatlan, Mexico, who paid to said owners for claimant, in my presence, the $57,000 gold coin, said bankers accepting my drafts for the same, which were duly honored and paid upon presentation by them at San Francisco or New York, I do not now remember which. We then took from the owners the legal and original evidences of denouncement and possession, and the title deeds of said mines and property, in the name of said Garth and myself, for the reason that said Abra Co. was not at that time formed or legally organized; and we also purchased

*Mr. Echeguren's figures do not agree with either the bill of sale or affidavits of de Valle, Collins and Bartholow any more than those papers agree with each other or than Mr. Echeguren's statement as to the disposition of the "evidences of denouncement" agree with the record of Adams' hunt for them in Durango. But Mr. Echeguren's testimony on any subject is of very little value, as is shown by the note under Head XI.

†See note under Head I.

†See note under Head I.

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enclose a memorandum of the mines, their names, location claimed by the company. All that we are now working are under 'prorogue' until July, when you should make application through Dn. Angel Castillo de Valle, Durango, for an extension of the prorogue." On the 9th of June, 1866, de Lagnel asked from Señor Gurrola an extension of six months for all the mines of the Co. not then being worked. On the 31st of Aug., 1866, de Lagnel writes Señor Gurrola acknowledging the receipt of the "proroga" applied for above and expressing his thanks. Sep. 7, 1866, de Lagnel, enclosing the history the Promontorio mine to Garth, says: "This as all the other mines we hold is secured by prorogues newly obtained." Oct 8, 1866, de Lagnel informs Garth that "The Guarisamey property I have secured until next January by prorogue, but I doubt whether I will be able to cover it after that date, as I suspect certain parties of being on the watch to denounce it, desiring to work it, therefore they will operate to prevent the grant to me of further indulgence." On the 17th of November, 1866, de Lagnel writes as follows to Garth: "As I have already stated to you, all the mining property is covered by prorogues up to January next. What will be the result of another application I cannot say, but should the worst come to the worst, a force, limited, can be put to work; and this, with the interval of some months before it can be denounced, will, I trust, serve our purpose." December 5, 1866, de Lagnel writes Senor Gurrola, asking prorogues for the mines Promontorio, La Abra, Animas, Rosario, Los Ynocentes, San Antonio, and San Felipe.

May 6, 1867, Exall, then supt., writes to Garth, saying: "If you have any papers which refer to the boundaries of the different mines belonging to the Co. please send them out by earliest opportunity, as we may need them here."

Garth writes to Exall, July 10, 1867, as follows, (see original letter transmitted herewith:) "Office of Garth, Fisher and Hardy, Bankers, 18 New street, New York, July 10, 1867. Care Echenique, Peña, and Co., Mazatlan. Mr. Chas. H. Exall, Tayoltita, Mexico . . . . . We wish you also to ascertain and fix definitely the extent & boundaries of our properties, mines, hacienda, etc., etc., and to send us a copy of same. I suppose Castillo has furnished such an one, or, if not, that he will do so. Please attend to this, as it may become important some time or other. We hope the next advices from you will be favorable, and to learn that you will soon send us plenty of money

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of J. V. Hardy and said Luce $\frac{23}{24}$ parts of of the Abra mine, for which we paid $22,000 gold, and we received from them the legal denouncement papers and title deeds to the same, which title deeds I forwarded to the proper officers at the city of Durango for record." These facts being reported to the capitalists, the company was organized, "and said mines and haciendas were duly conveyed to said company by said Garth and myself." After receiving titles Garth went to N. Y., and deponent to San Francisco, to make purchases. Pp. 221, and 224, (see Head I.)

Sumner Stow Ely, (born Clarksville, Otsego Co, N. Y.; age 48, lawyer; resides N. Y.; has been attorney of La Abra Co. since its inception. Has no interest in this claim.* Testifies, Sept. 24, 1874, before Judge Pratt, of N. Y., who certifies to credulity.) P. 231: "Garth and Bartholow did not deceive the Co. They would only have been deceiving themselves. After Garth's return to the U. S., Bartholow remained and held mines for Co., conducting business in its name until a sup't could be selected. "Such a person having been selected and sent forward, said Bartholow ceased to be sup't, and returned to the U. S. in the summer of 1866, but could not come to the city of New York, where said Garth resided, and said Co's office was located until October, 1866,† for which reason the formal documentary transfer of said mines and property by them to said Co. could not before then be conveniently made, and was at that time made, though the Co. paid for the same immediately upon its organization, and was regarded as the owner thereof from that time, by all the parties. Said Garth and Bartholow did not, nor did either of

*If Mr. Ely has no interest in the claim, it would be interesting to know who is to be paid the "attorney and counsel fees, court and legal expenses, &c., for which Collins swore in 1870 the Co. owed $42,500, (see Head V,) and which went to make up the award.

†It was quite proper that some explanation should be offered of the length of time intervening betweenthe purchase of the mines by Garth and Bartholow and their transfer to the company which had paid for them nearly a year before, but Mr. Ely's will hardly do. Garth and Bartholow were in Mexico together and could have made conveyance of the property under Mexican laws, or, if it be admitted that it was safer and more convenient that a conveyance of real estate in Mexico should be executed in New York, Garth could easily have taken a proper power from Bartholow in his pocket. That the stockholders should have been willing to wait until Bartholow, who was in imminent danger from the persecutions of the Mexicans, should discover (see Head III) that his business in St. Louis required his a ttention, is a proof of confidence unusual in business transactions.

New Evidence offered by Mexico.

to pay off the debts here. With best regards to Messrs. Cullins and Sloan, as well as to yourself, I remain y'rs truly, D. J. GARTH, *Tr.* (Endorsed: 'David J. Garth, July 10, '67.') 'To C. H. E.'"

Aug. 5, 1867, Exall again writes to Garth, saying: "The Cristo and La Luz, which have been worked for over a year, I am privileged to stop for four months. The Abra I must work; will put in some men and see what can be found. No further prorogues will be given, and although I have no fear of anyone denouncing the mines, I must not leave unprotected." Sep. 9, 1867, Exall writes to Prefect Olvera at San Dimas, stating that he has been notified by Judge Soto to present at the prefect's office the titles of La Abra Co.'s mines for examination. He informs the prefect that the papers are in New York, and if thought necessary he will write for them, or will get a statement of them from the records at Durango. Oct. 6, 1867, Exall writes Garth as follows: "Amparos are not now granted, and mines are to be held only by working. I am compelled to keep men in mines which yield nothing merely to hold them; this I can do no longer, as I have nothing to give the men for their labor, and must now take the chances and leave the mines unprotected. You ask for boundaries of mines, hacienda, &c. On this point I can give you no information, as these matters are of course to be found in the original titles, and I have no papers in reference to it. Recently the Government has ordered that all holders and workers of mines must present to the authorities the title deeds of said mines. The prefect in San Dimas sent for the titles of the La Abra Co.'s mines. I informed him that they were in N. Y. He gave me four months to produce them. One month of the time has passed, so you will please send immediately all the titles to the mines or certified copies of them. They must be here in the specified time. . . . . There is no difficulties about authorities, boundaries or anything else concerning the mines and hacienda, provided there is money on hand, and money must be sent."

Oct. 14, 1867, Exall writes to Senor D. Antonio Armiento, President of the Mining Board of the District of San Ygnacio, making application, "according to the instructions of Senor Armiento, for amparo of six months on the mine of Arryan, including the mines Sauz and Jalpa, Exall "being obliged to suspend work" on those mines "until he can receive instructions from the Co. relative to the manner of carrying on the works and

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Evidence before the Commission.	*New Evidence offered by Mexico.*
them, in or by means of the purchase and transfer of said mines and property, make any personal speculation, for the company paid for the same precisely the sum, and no more that the sellers received for the same, through said Garth and Bartholow." (For Avalos', Dahlgren's, Exall's, Martin's, Bartholow's and Adams' opinions of witnesses for defense, see Heads I and XXVI.)	sufficient funds for that purpose." On the 8th day of May, 1868, (long after the alleged abandonment,) Exall writes from New York (where, as will hereafter appear, he was trying to inveigle strangers into a purchase of the worthless mines in order to secure his arrears of pay) to Granger, whom he had left in charge at Tayoltita, (see original letter herewith transmitted:) "Just at this crisis it will be necessary to keep all secure at the mines. In my conversation with these gentlemen I will represent things in a secure state; if possible, get prorogas on mines where times are expiring; keep them secure if possible in some way." (For evidence as to the character of the witness Cryder, for letter of C. B. Dahlgren, charging Alonzo W. Adams with the forgery of his deposition filed by claimant, and for the deposition of Frederick Sundell as to the good character of J. N. Manjarrez, Bartolo Rodriguez and Patricio Camacho, witnesses for the defense, see Head I.)

III.—ORGANIZATION, CAPITAL, OFFICERS AND EMPLOYEES OF COMPANY.

IN CHIEF.

Memorial, p. 5, claimant's book: The La Abra Co. was formed Nov. 18, 1865, under the general incorporation act of New York State. Principle office in New York city. Stock, $300,000. Existence limited to fifty years. Charter allowed Co. to carry on part of its business in Tayoltita, Durango, and the mineral districts of San Dimas, both in Mexico.

Certificate of Incorporation, Nov. 18, 1865. Signed before Gratz Nathan, not. pub. by David J. Garth, Stephen F. Nuckolls, and Hiram P. Bennett, names seven trustees, to wit: Wm. L. Hearn, David J. Garth, Stephen F. Nuckolls, Weston F. Birch, Lewis Morris, Hiram P. Bennet, and Dabney C. Garth.

Chas. H. Exall. (Born, Petersburg, Va., age, 29, merchant, lives in New York, was supt. La Abra Co's. mines. Has no interest in claim. Testifies Dec. 2, 1869, before Judge Geo. G. Barnard, New York, who certifies to credibility of G. W. Hardie, who certifies to Exall. Judge Barnard also certifies that Exall's deposition was reduced to writing by Henry Snell, who has no interest and is not the agent or attorney of any person having any interest in this claim,) p. 18, claimant's book: From about Sept. 11, 1866, to about March 20, 1868, "resided

The report of the Co., dated January 17, 1866, filed Jan'y 18th, shows the trustees to have been the same as in the certificate of incorporation, with the exception of Dabney C. Garth, whose name was dropped from the list. The report for 1867 does not appear to have been made until the 20th of November, and filed Nov. 25, and this violation of law was made a part of the complaint in the suit brought Oct. 16th, 1869, by the Bank of California against La Abra Co. for non-payment of the draft drawn by J. A. Lagnel, its superintendent at Tayoltita, which will hereafter alluded to. In that report D. J. Garth, W. N. Worthington, and John H. Garth appear as trustees. The next report is dated January 20th, 1868, but is endorsed filed January 21st, and this is also complained of by the Bank of California. The trustees appearing in this report are Geo. C. Collins, W. N. Worthington, and A. H. Gibbes. No report was filed for 1869, and this fact is also complained of by the Bank of California. Nor was any further report filed until January 20th, 1877, when J. G. Baldwin appeared as President, and J. G. Baldwin, D. J. Garth, J. M. C. Bartholow, and S. S. Ely as trustees. The last report was filed January 19th, 1878, sworn to by J. G. Baldwin as President, himself, S. S. Ely, A. H. Gibbes, and Th. J. Bartholow appearing as trustees.

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at Tayoltita, in the District of San Dimas, in the State of Durango, in Mexico, and I was engaged for and in the employ of La Abra Silver Mining Co., superintending their mines and mining works and operations at their mines called La Abra, at Tayoltita, aforesaid." "William L. Hearn, then of the city of Brooklyn, in the State of New York, now residing in the State of Missouri, was its president when I was first employed by said Co., but subsequently George C. Collins, of the city of New York, was made and still is its president."

George C. Collins; p. 29, claimant's book. Has been president of La Abra Co. since Oct. 23, 1866, p. 30, San Felipe, San Antonio, and Bartholow mines, "were denounced by Thomas J. Bartholow, as supt. of and for said Co."

James Granger, p. 41, claimant's book, deposition of May 14, 1870. "From April, 1867, until March, 1868, I was employed as one of the clerks and asst. sup. of La Abra Silver Mining Co." "Ques. No. 2. State the names of the mines belonging to La Abra Silver Mining Co., of which you were asst. supt." P. 43. A letter "came into my possession a clerk of the Co. and which letter has never, since its receipt, passed out of my possession." P. 44. Deponent got supt. Exall released from prison "by personal influences I brought to bear and by securing the payment of the fine imposed upon him." P. 45. "Before I entered the service of the Co. as asst. supt. and clerk," &c. Received a letter from Marcus Mora, "as clerk of the Co., and after showing to the supt., Mr. Exall, I filed it away with some other papers of the kind, and subsequently turned it over together with two or three others from Guadalupe Soto to the attorney of said La Abra Co." P. 68 (deposition of May 23, 1870.) "I was one of the asst. supts., and was also a clerk of said Co. for about two years, and I had all the memorias, showing the names of all the men working for said Co.

Wm. G. S. Clarke, (born in England, "as he believes;" age, 53; merchant and farmer; citizen for many years of the United States of Mexico; has resided at Camacho for last seven years; was engaged with John Cole in forwarding machinery and supplies for La Abra, Nuestra Senora de Guadalupe, and other mining companies; testifies May 14, 1870, before U. S. Com'l Ag't Sisson at Mazatlan, who certifies to credibility,) p. 64, claimant's book: Deponent "knew General Thomas J. Bartholow, Col. de Lagnel, and Charles H. Exall, the first, second, and third

New Evidence offered by Mexico.

The following letters give tolerably full information as to the *personnel* of the Co. at Tayoltita, and the duties and authority of employes:

Feb'y 6, 1866, Bartholow writes to Garth: . . . . "I go to Mazatlan to-morrow . . . . J. V. Hardy will be in charge during my absence." April 10th, 1866, Bartholow writes to Garth "to manage successfully this business in all its varied branches will require one of the most thorough and practical men of business that can be found. The fact that a man understands the amalgamation of ores and the process of working them is not evidence that he is competent to be your supt., unless he possesses the qualification above mentioned in addition. Competent amalgamators can be employed in California and Nevada, and some are here out employment, and I could employ one to come when we are ready for him; but from the tenor of your last letter I judge you intended to take this matter out of my hands. This, however, is usually the case with many men; they imagine while sitting in a comfortable office in New York that they are more competent to manage the details of a large busines in Mexico than the person on the ground and in charge of it."*

On the 4th of May, 1866, Bartholow writes Don Angel Castillo de Valle, Durango, as follows: "Col. J. A. de Lagnel has been sent by the company in New York to relieve me, which is a source of great satisfaction to me, as my health has become seriously impaired, rendering it necessary that I leave the country. You will find the Col. a gentleman of intelligence, and I trust your business relations with him will be as pleasant and satisfactory as mine has been to me. Very truly, your friend, TH. J. BARTHOLOW.

July 6, 1866, De Lagnel gives the following: "List of names of persons at the La Abra Co.'s works, for whom letters from Europe or the United States may arrive: Alfred Bryant, J. Edgar, A. B. Elder, Dan Sullivan, James Cullins, J. W. Green, J. Keeghan, Richard Honith, Charles E. Norton, Francisco Dominguez, and mail-matter for myself, private or otherwise. N. B.—Please remember to make a list of names of the persons for whom *letters* are sent up by the couriers, and charge opposite each the number of letters sent and account of postage or express charges paid on each account, in order that I may collect the same here. I will further re-

* The plea for the retention of his place accords illy with the following letter and with the testimony of Bartholow on the opposite page.

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sup'ts, and, as he believes, all the sup'ts that have ever been employed by said Co."

José M Loaiza, p. 77, claimant's book: "Am well and intimately acquainted with three of the principal sup'ts—Gen. Thomas J. Bartholow, Col. de Lagnel, and Chas. H. Exall."

DEFENSIVE.

Patricio Comacho, p. 130, claimant's book: "D. Santiago Granger gave permission to D. Guadalupe Soto to take out all the the ore he could." P. 131: "D. Santiago Granger sold, as before explained, tools and other things belonging to the hacienda."

Bartolo Rodriguez, for the defense, p. 132, swears that he "is certain that *the Sup't D. Santiago Granger* has sold all that he could of what there was in the hacienda."

Ramon Aguirre, Aquilino Calderon, Refugio Fonseca, Ygnacio Manjarrez, and many others, corroborate the above. *James Granger*, p. 137: "It is true that he did sell some things, with the object of furnishing himself with means." *Bartolo Rodriguez*, p. 140: "Mr. Granger and Mr. Klin, *who were left in charge of the works*, have sold a large lot of the tools and other things." *James Granger*, p. 147: "*When deponent was in charge of the works*" he did not see the names of the Co. *N. A. Sloan*, p. 148: Deponent was clerk of Co. *Letter of Santiago Granger*, p. 150, to the Judge of the first instance at San Dimos, dated June 4, 1871, states that he has disposed of a counter and other articles, and asks "that you may be pleased to appoint assessors to place a valuation upon them, so that any time when the Co. shall call on me I may be able to deduct the amount of their value from what said Co. owe me." *James Granger*, p. 162: "At first I was a dependent or clerk; afterwards, when Charles H. Exall left, I remained in charge as his representative." Soto reduced ores brought to him by some workmen which they had extracted "by permission, and for they had paid him." *Guadalupe Soto*, p. 166, produces agreement between Sup't Exall, "representative of the Mining Co. of the Abra," and deponent, dated San Dimas, Feb'y 7, 1868, allowing Soto to use the works on the Guadalupe estate for six months, Soto pledging himself not to injure the same, and to turn them over with all improvements "to Mr. Exall, *or his successor*," without charge for improvements; agreement may be extended or a new one entered into. Signed GUADALUPE SOTO, CHAS. H. EXALL. Also the extenquest you to make a close and water-tight package of the letters and seal the same. Very respectfully, &c., J. A. DE LAGNEL, *Supt.* Messrs. ECHENIQUE, PENA & Co., *Mazatlan.*"

New Evidence offered by Mexico.

Aug. 16, 1866, De Lagnel writes Garth: "The death referred to above was that of my clerk Mexican speaking English, a most worthy, honest and faithful gentleman. I trust to replace him with a young gentleman of good standing and character, at $40 per month. Therefore you need not send any one from the States, as the book-keeper and clerk are enough, and salaries are loopholes." Sept. 2d, 1866, Chas. E. Norton signs a letter "by order of the supt." Oct. 8, 1866, De Lagnel writes Col. C. E. Norton asking if he intends to return to Tayoltita. Oct. 8, 1866, De Lagnel writes Garth as follows: "I have striven to meet your wishes and expectations and regret that my success has not been commensurate with my efforts to serve you and to discharge my duties. As to sending a successor I deem it best to tell you now that no money would tempt me to remain the country longer than next first March. The trials and separations from friends, lack of association and utter waste of life forbid the thought of longer continuance. I speak now because ample time should be given to send out a successor. As to subordinate assistance, that is not required. Nov. 17, 1866, De Lagnel writes to Garth, as follows:

"Mazatlan, 17th Nov., 1866. D. J. Garth, Esq., Treas'r La Abra S. M. Co. Dear Sir: I have to acknowledge the receipt of your letters of the following dates, viz.: 31st July, 10th, 29th and 30th August, 10th and 20th September, and letter of introduction, all brought from Mazatlan and delivered to me by Mr. Exall at Camacho, thirty miles from this place, about the 16th or 18th of October. . . . . I accept your high recommendations of Mr. E. Am so far much pleased with him. . . . . By the October steamer I received from Mr. Mills, President Bank of California, a note. . . . . Mr. Exall, who saw and talked with Mr. M. on the 4th of Oct., tells me that the assessment had been paid." From this letter it appears that Exall perjured himself, apparently without motive, in stating that he was sup't at Tayoltita from Sept. 11, 1866.

January 13, 1867, Chas. E. Norton, as Supt. pro tem., writes De Lagnel expressing anxiety for his return to the Hacienda. January 15, 1867, De Lagnel writes Col. C. E. Norton directing him to secure the services of G. A. Nolte as amalgamator

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sion, as follows: "We, the undersigned, *the parties to the foregoing contract*, mutually agree by these presents that said contract shall continue in all its force and effect, and upon the same terms and conditions, for another term, which shall not exceed seven months, as follows: Beginning on the 7th of August of the present year and ending on the 7th of March, 1869. To conclude this we have signed this day, August 7th, 1868, appending signature and seal. Signed GUADALUPE SOTO, JAMES GRANGER." *Miguel Lavaega*, p. 181 "They afterwards left, leaving the said business in the charge of the American or Englishman, D. Santiago Granger, who gave D. Guadalupe Soto permission to beneficiate said ore or *tepetate* thus piled up, upon what terms he was not aware. The result of which was that said Soto abandoned the pulp he had ground from said rock."

REBUTTING.

C. B. Dahlgren, P. 118 (as to Granger's evidence for defence see Heads I and XXVI.)

George C. Collins, p. 187, claimant's book (deposition of May 23, 1874,) was Vice President of Company previous to October 23, 1866. The principal employé in Mexico was the superintendent P. 188. "The first was Thos. J. Bartholow: he was succeeded by Julian A. de Lagnel, who was appointed in March and reached Mexico in May, 1866, and was superintendent only for a short time, and he in turn was succeeded by Charles H. Exall, who continued to be and was such superintendent at the time the company abandoned their said mines and property in March, 1868." James Granger never was a superintendent. The company never put the mines under his control or that of any other person since abandonment. Exall had no authority to transfer his power to any one else. Granger's authority has never been recognized by the company. P. 189. "Question 12. Where is said Superintendent Julian A. de Lagnel and what reason, if any, exists for not having his deposition taken in this cause? Answer. The company has made diligent inquiry to find him for the purpose of obtaining his deposition as evidence in this cause, but they were unable to learn where he resided, or could be found, and do not know whether he is now living or not. The company was informed and believe that before the filing of the memorial in this cause, he went to the State of Florida and afterward to South America and then to China, but could get no definite informa-

New Evidence offered by Mexico.

and assayer. January 30, 1867, De Lagnel finding it necessary to leave for a few days suspends Norton and leaves Exall in charge. Mar. 9, 1867, De Lagnel gives a letter to Victoriano Sandoval, who is sent for supplies. May 6, 1867, Exall writes his first letter as Supt., which is addressed to Garth. In a statement of receipts and expenditures of the Co. appear the names of A. B. Elder, J. J. Skinker, Daniel Sullivan, N. A. Sloan, Geo. Cullins, M. Avalos, Sandoval, R. Emerson, Wm. Carr, James Granger, R. Fonseca, and J. Carson. The latter is put down July 1st, 1867, as a watchman, Sloan as a miner, Elder in charge of mill, Skinker second in charge of mill, Carr as a mason, and Granger as bookkeeper. Nov. 8, 1867, Granger writes Garth, Exall being absent.

Just before leaving the mines for New York Exall writes the following letter: (See press copybook and also original herewith submitted.) "Tayoltita, Feb'y 21, 1868, Mr. James Granger, Sir: As circumstances are of such a nature as to compel me to leave for San Francisco, and probably for New York, to inquire into the intentions of this company, I place in your hands the care and charge of the affairs of the La Abra S. M. Co., together with its property. You are invested hereby with all power confided to me, of course acting in all your transactions with an eye to the interests of the Company. This will to you, should occasion require it, be ample evidence of the right possessed by you to act in their behalf. Very respectfully, Charles H. Exall, Adm'r La Abra S. M. Co." Exall's letters from Mazatlan, San Francisco, New York, and Richmond to Granger give the lie to his statement that their relations ceased on abandonment. Aug. 12, 1868, Granger writes Don Remigio Rocha (P. Press copy-book) that the taxes of the Co. will be paid on the return of the Supt. in November; that he (Granger) is merely left in the place of the Supt., and that there is neither money or goods to pay the taxes.

Frederick Sundell testifies that he knew intimately J. A. De Lagnel and Charles H. Exall, superintendents of La Abra Co.; that to the best of his recollection Exall arrived at the mines in October, 1866, and became Supt. when De Lagnel left about April, 1867; deponent also knew James Granger and N. A. Sloan, employees of the company. Accompanying his affidavit is the original of a translation into Spanish of Exall's letter confiding the Company's property to Granger, which translation Sundell made at Granger's request.

(For statement of the witness Loaiza as

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Evidence before the Commission.	*New Evidence offered by Mexico.*
tion as to his whereabouts; for these reasons his evidence could not be and has not been obtained on behalf of the claimant in this cause." Chas. H. Exall, (Cashier of Washburne & Thayer, bankers and brokers, N. Y., testifies June 11, 1874, before U. S. Com'r. R. E. Stilwell, who certifies to credibility) p. 191, claimant's book. "Col. Julian A. de Lagnel preceded me as superintendent. I was his assistant superintendent. I cannot say where he is, other than this. When I returned from Mexico to the city of New York, in the spring of 1868, I saw him in this city, which was then his headquarters. He was unmarried, I believe, and has no fixed or permanent residence. Soon afterward he engaged in business which took him to the State of Florida, and I saw no more of him. I have been reliably informed and believe that he afterwards went to South America, and thence to China, and he has not returned to this country." "Said de Lagnel was always called and known as Colonel and I as Don Carlos, and sometimes as Carlos Mudo which in English means speechless or silent Charles." P. 194: Granger "is an English subject of much talent, for whom I entertain respect and friendship." Deponent employed him as bookkeeper and clerk. His relations to deponent and to company ceased on abandonment about March 20, 1868. He never was superintendent and did not remain in charge as deponent's representative or otherwise. Deponent had no authority to delegate his power, and did not assume to do so. "I left there so hurriedly and secretly, with my American friends, to save my life, as I believed and still believe, that I had no time, even if I had possessed the right and wished to make such arrangement. Besides, I was satisfied that the Co's. interests there could never be preserved under any possible management." Does not believe that Granger ever made such a statement under oath. P. 196: acknowledges having made the agreement with Soto, produced by the defence, but denies that Granger had authority to extend it. *Thomas J. Bartholow*, p. 216 claimant's book: Was one of originators and first sup't. of Co. P. 219. "I had already requested said stockholders, and subsequently the company, after its organization, to appoint a superintendent to relieve me, as my business in St. Louis was of greater importance to me than my interest in the mining enterprise. My successor was appointed and relieved me at said mines in the month of May, 1866."	to his pretended deposition in behalf of the Co., for letter of C. B. Dahlgren, charging Alonzo W. Adams with the forgery of his deposition, and for the deposition of Frederick Sundell as to the good character of J. N. Manjarrez, Bartolo Rodriguez, and Patricio Camacho, witnesses for defense, see Head I.)

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Deponent had then mined about 200 tons of ore, worth eight or nine marks per carga. P. 227: a correct list of stockholders has been furnished deponent "by the Secretary of the Co. at each assessment from 1869 up to the present month" (June, 1874.) *Sumner Stow Ely*, p. 229, claimant's book: Deponent was consulted by Garth, Bartholow and others prior to their departure for Mexico in 1865 as to the formation of Co. in the event of the acquisition of the mines. After Garth's return deponent drew the certificate of incorporation and became and has ever since continued the attorney of the Co. P. 231: "The only persons sent from the United States by said Co. were Julian A. de Lagnel and subsequently Charles H. Exall, and they were sent as superintendents." (For Avalas', Dahlgren's, Exalls', Martin's, Bartholow's, and Adams' opinions of witnesses for the defense, see Heads I and XXVI.)	

IV.—LIST OF STOCKHOLDERS AND EVIDENCE OF THEIR AMERICAN CITIZENSHIP.

IN CHIEF.

Memorial, p. 5, claimant's book: "The shareholders of La Abra Silver Mining Co. were at the time of its said formation thence, hitherto, and now are citizens of the United States of America." p. 7: "Stockholders are all citizens of said United States."

Alonzo W. Adams, p. 15, claimant's book: Writes Governor of Durango for copies of title deeds, &c., describing himself as "a stockholder in and attorney in fact of" the company.

Chas. H. Exall, p. 22, claimant's book: "The Company was and is now composed of American citizens."

A. A. Green, p. 25, claimant's book: Knows La Albra Co., and believes that its officers and stockholders are American citizens.

George C. Collins, p. 31, claimant's book: "The following are the names of the stockholders of said Co., all of whom are citizens of the United States, viz: Thos. J. Bartholow, Miss Henrietta Bartholow, J. Wilcox Brown, G. C. Chase, Geo. C. Collins, Isaac C. Day, Thomas Dougherty, M. J. Freedsom, Thomas M. Finney, Dabney C. Garth, D. J. Garth, John H. Garth, A. H. Gibbs, George F. Griffith, Irby V. Hardy, William L. Hearn, C. F. Mason,

Feb'y. 6, 1866, Bartholow writes to Garth: "Your explanation about the increase of capital to $300,000, but not sell any more than is requisite to put the concern in a paying condition, meets my full approval, for this is in accordance with the original understanding. Wilson and Hardy have paid $4,500 balance upon their original stock, but as yet Mr. Wilson has not paid the $3,000 new stock. I have paid $4,000 on my stock, leaving a balance of $5,000, which I will draw for whenever needed. Mr. Griffith says that he has the means in the hands of S. F. Nuckolls, Esq., to pay the balance of his stock, and that Mr. N. has instructions to pay it. Dr. Porter's stock should be forfeited. Mr. J. V. Hardy says emphatically that he never agreed to pay it, and does not owe Doctor Porter a dollar, and, of course, will not pay any portion of it."

March 7, 1866, Bartholow writes to Garth: "You will cause to be forwarded to me as soon as issued the certificate of stock in favor of Messrs. Hardy & Wilson, which I will deliver to the parties as soon as all is paid up. The original stock to them of $22,000 is to be divided equally between Jas. M. Wilson and Irby V. Hardy, the $5,000 subscribed in New York by I. V. Hardy is paid *in full*, and the certificate is to be issued to him. Mr.

IV.—LIST OF STOCKHOLDERS AND EVIDENCE OF THEIR AMERICAN CITIZENSHIP.

Evidence before the Commission.	*New Evidence offered by Mexico.*
Frederick Mead, Mrs. A. J. Nettleton, S. F. Nuckolls, John D. Perry, William H. Ross, Sydney Shackelford, J. Oswald Swinney, F. Westwray, W. N. Worthington, Montague Ward, White & Erickson.* Deponent owns $5,000 stock at par value. DEFENSIVE. (The defense filed no evidence on this point, merely arguing that the stockholders of a company in which aliens as well as citizens might acquire an interest should prove their citizenship separately.) REBUTTING. George C. Collins, p. 189 (deposition of 1874). Bartholow and Garth practiced no deception on the stockholders. "On the contrary, at the organization of the Co. they became, and ever since have been, among the largest of its stockholders, and have always warmly supported it, and readily advanced it money when required, and it is now largely indebted to Mr. Garth therefor." *T. J. Bartholow*, p. 216, claimant's book: All stockholders were citizens of the United States; p. 218: Deponent and David J. Garth were among the largest stockholders; p. 227: Deponent knows who present stockholders are because assessments have been made from time to time since the celebration of the treaty of July 4, 1868. A correct list of stockholders, with their amounts of stock and their residences, "was furnished me by the secretary of the Co. at each assessment from 1869 up to the present month," (June, '74.) They are the original stockholders, with one or two exceptions. Deponent and Garth were "among the very largest stockholders;" p. 221; Deponent bought fifty shares, which he subsequently increased to ninety, and then to 160, paying $16,000 in gold coin. David J., John, and Dabney C. Garth took 250 shares, paying $25,000 in gold coin. *Sumner Stow Ely*, p. 229, claimant's book: The stockholders were all men of means and high standing; p. 230: They are all citizens of the United States. With three exceptions, they are the same now as at the origin of the Co.; p. 231: Garth and Bartholow have always been among the largest stockholders. *Alonzo W. Adams*, p. 246: "I have no interest in this case except that which arises from the relation of attorney and client."	Wilson agrees to pay in this month one-half of his new subscription of $3,000 and the balance next month. Send all these certificates to me by next steamer, and I will deliver them to the parties. My stock is paid, but the company will retain my certificate until my return. Mr. Griffith has given me no instructions regarding his certificate, in my last I wrote you what he said about payment of the balance due." December 15, 1866, De Lagnel writes to Garth that "the payment on I. V. Hardy's stock by Wilson and T. J. B.'s stock are duly noted in their accounts and correspond." (For testimony of Wm. R. Gorham as to the alleged deposition of A. A. Green in favor of the Co., and for evidence of the character of the witness Alonzo W. Adams, see Head I.)

*A list of the amounts of stock held by each of these parties ought to have been furnished.

V.—PAYMENTS OF STOCK, RECEIPTS, AND DEBTS OF COMPANY.

Evidence before the Commission.

IN CHIEF.

George C. Collins, p. 30, claimant's book: The company received from sales of stock $235,000* and borrowed $64,291.06, and owes "for office rent and expenses, salaries of officers, attorney and counsel fees, court legal expenses," $42,500 (total $341,791.06).† P. 31. Deponent loaned Co. $21,145.17, which is still unpaid.

DEFENSIVE.

Under this head several of the miners called by the defense testified that Exall, Elder and others made use of "what little silver they extracted from the ores," some of them stating that Exall gambled it away in Durango. *N. A. Sloan*, p. 148, claimant's book, says when he "was a clerk for the Co. he saw, according to the statement of the supt., that they had . . . . . taken out less than $6,000. *James Granger*, p. 150, writes a letter to the judge of the first instance at San Dimas, dated Oct. 11th, 1871, informing him that he had disposed of certain property of the Co., and asking the judge to appoint assessors to fix its value, "so that any time when the Co. shall call on me I may be able to deduct the amount of their value *from what said Co. owe me.*" *Ygnacio Manjarrez*, p. 180, stated that at first they made an assay of some of the ore which yielded three or four ounces to the carga. On this showing they put Mexican operatives at work and sorted out about sixty cargas, which they called first-class ore, "which they beneficiated and which would not pay, as it was publicly said, not even the expense of the labor of the operatives employed in assorting it." *Nepomuceno Manjarrez*, p. 184: In May, 1866, an American, Col. Lagnel, "came there to take charge of the establishment at Tayoltita, and as soon as he had arrived he forwarded a report to the Co. in the United States, in which he stated that he had found a great establishment on the margin of a beautiful river, with a large quantity of silver ore in the yard of the buildings; but a few days afterwards, having made himself acquainted with the state of things

*If the stock was sold at par, and the stockholders were "sanguine" and "had ample means," as stated below by Ely, how came the stock to realize only $235,000? Or did $65,000 go to the promoters? And why did the Co. borrow $64,291.06 when, according to Bartholow, it levied assessments on the stock (after the abandonment of its mines had rendered the latter worthless) to enable it to prosecute this claim?

†If the company had ample means before it was driven out of Mexico, why did it not pay its office rent and salaries?

New Evidence offered by Mexico.

In its report, dated Jan'y 17, 1866, the Abra Co. says: "The amount actually paid in $76,000. . . . The Co. have no indebtedness ascertained." In its report of Nov. 20, 1867, the capital paid in is set down at $157,000, and the debts not exceeding $70,000. In its report of Jan'y 20, 1868, the capital paid in is set down at $157,000, and the debts not to exceed $72,000.

This increase of indebtedness from 1866 to 1867, is explained in part by the statements of Exall as to the debts of the Co. at Tayoltita, which appear under Head VI. Another portion is accounted for by the court records in the suit of John H. Garth *vs.* La Abra Silver Mining Co., (transcript herewith,) from which it appears that on the 3d of July, 1867, Mr. Garth obtained judgment by default on various notes in the sum of $53,670.11. In this suit the versatile Mr. Ely, counsel of La Abra Co. "since its inception," appears in the singular position of attorney for the plaintiff.

According to the company, Exall was compelled to abandon the mines in March, 1868, three months from the date of its report for that year, showing the paid up stock to be $157,000 and debts $72,000, and no reports were made by it for nine years. The witnesses swear that the stock of the Co. was rendered utterly worthless by the abandonment of its mines. Yet the report of January 20, 1877, reveals the astounding fact (if the officers making it have not perjured themselves) that the paid up stock had increased during that time to $235,000 and the debts to $154,531.06, which figures are also given in the report for 1878. We have Mr. Collins' testimony on the opposite page, to the fact that this increase in paid up capital took place before Sept., 1870. It follows either that the stockholders up to that time supposed the mine to be in a flourishing condition, or else that they regarded the claim to be a much more promising speculation than the mine. The increase of the capital stock of the claim from $1,930,000 to $3,000,030, and again to $3,962,000 seems to favor the latter supposition.

V.—PAYMENTS OR STOCK, RECEIPTS, AND DEBTS OF COMPANY.

Evidence before the Commission.

at the establishment, he saw that it was an accumulation of useless rocks which were found there, and therefore he directed Bartolo Rodriguez to separate the silver ore from the rest." The result was sixty cargas, which produced very little silver. *Bartolo Rodriguez*, pp. 185, 186: All kinds of rock were sent to the receiving houses. "Out of this accumulation of rocks deponent, by direction of the Colonel, superintendent, selected something like sixty loads." Part of this, reduced, yielded no silver.

REBUTTING.

Antonio de la Peña, p. 123, claimant's book: Deponent loaned the last supt. of Co., Exall, $250‡ to pay his passage to New York, which "is all that remains unpaid."

George C. Collins, (deposition of 1874,) p. 189: Both Bartholow and Garth have advanced money to the Co. when required. The latter is largely its creditor.

Charles H. Exall, p. 201, claimant's book: "That was in 1868. I beneficiated, in all, about twenty tons, the most of it as a trial to our new machinery,§ which worked admirably, and the proceeds, about $17,000, was put into the general fund of the Co. and used in said works immediately before we were compelled to leave, and it was lost with all the other expenditures there. This was all the beneficiation done by or under de Lagnel or myself." The silver was extracted by amalgamation. P. 203: The silver taken from the ores tested by Col. de Lagnel was, to the deponent's personal knowledge, put into the funds of the Co. P. 202: Deponent was "at times assisted by Dr. Elder, a practical chemist and assayer, and such reduction found them as rich as stated in my previous deposition." Deponent did not gamble the silver away, as charged by witnesses for defense.

Thomas J. Bartholow, p. 221: "Upon my own suggestion the Co. was organized and the stock issued upon a strictly cash basis, at its par value of $100 per share, in gold coin, and neither the Co. nor its stockholders ever contemplated selling their said mines and property at Tayoltita, nor did they never place the stock of the Co., or any part of it, upon the market for sale; but, on the contrary, it is still held and owned by the same parties who originated

‡ What had become of the $17,000 extracted from 20 tons of ore a few days before.

§ Is this the machinery that Bartholow bought in 1865?

New Evidence offered by Mexico.

The letters of Feb'y 6th and March 7th, 1866, from Supt. Bartholow to Treasurer Garth, which are quoted under Head IV, comprise all the information contained in the press copy book, as to the payments on stock of the Co. Its receipts from other sources at the mines were composed of the cash from sales of goods and returns of the mill. With regard to the former the press copy book is filled, commencing at the very first page with accounts against the Durango and other Mining Cos. In his letter of March 7, 1866, to Garth, Supt. Bartholow says: "I have in store 200 cargas corn, 100 cargas beans, 100 cargas salt, some $2,000 worth lard, besides a large stock of flour, powder, drill steel, &c., and will require in addition 700 cargas more corn, 500 cargas salt, and if dry goods continue to sell as fast as they have for the past month, will have to have $10,000 more of them. Our sales ranged from $80 to $100 per day cash, besides what we sell to our employees, which is charged on the books. The store, under good management, will, I think, yield a net profit of twenty thousand dollars per annum, but it requires close and constant attention, for the reason that these people buy everything of general consumption in very small quantities, usually from 3c. to 6¼c. at a time. I have seen women stand at the counter and make three purchases of cheese of 3 c. each. They do this under the impression that they get more in the aggregate by buying in such small quantities. Yet when they come to purchase a dress, a rebozo, or shawl, they will cheerfully pay the highest price if they have the money, and rarely complain of the prices asked. Our staple goods and provisions yield a profit of at least 50 per cent., and fancy dry goods from 60 to 100 per cent., and the most difficult task I now have is to keep an ample supply on hand to meet the demand." April 10, 1866, Bartholow writes to Garth as follows: "Our store is doing an excellent business, our goods and supplies pay liberal profits, and I am confident when our mill and buildings are completed, and our mining and mill work systematized as it should be, the store, if kept well supplied, will run the entire concern, thus reducing the cost of our labor about 50 per cent."

On the 6th of July, 1866, De Lagnel writes Garth saying: "The payments made formerly to workmen and others in cash are now made in cash and goods, one part of the former and two of the latter." Sept. 7th, 1866, De Lagnel says in a letter to Garth: "You will observe that the

V.—PAYMENTS OR STOCK, RECEIPTS, AND DEBTS OF COMPANY.

Evidence before the Commission.

and organized said enterprize, except in one or two instances of transfers of small amounts of stock where parties were not able to hold it. I invested, at the organization of the Co., $5,000 in gold coin for fifty shares of said stock, which I soon after increased to $9,000, and subsequently to $16,000, gold coin, for 160 shares of said stock, and the said David J. Garth, and his brother, John Garth, and his cousin, Dabney C. Garth, took 250 shares of said stock, for which they paid $25,000 in gold coin." Deponent D. J. Garth, Collins, Hearn, Brown, Nuckolls, and other stockholders, "being informed of the great expense attending the opening of the said mines and other preparations for carrying on said enterprise, and of the robbery of the Co.'s mule trains of supplies and other property "by the Mexican military authorities," found it necessary to advance the Co. large sums of money, with which to purchase and replace the same, while said works were going on under the superintendence of Mr. Exall.¶ P. 227: Assessments have been made from time to time since the celebration of the treaty of July 4, 1868, down to the present month, (June, 1874,) "for moneys with which to prosecute this claim against the Mexican Government."

Sumner Stow Ely, P. 229, claimant's book: "From the first inception of said company to the present time I have been and am the attorney and counsel of said Co. at the City of New York." P. 230. When deponent drew the certificate of incorporation he inquired if the organizers of the Co. desired to make a speculation by the sale of stock, or to make a legitimate business investment. If the former, deponent advised them that their course would be fix the capital at a large sum, and to issue the greater part of it to Garth and Bartholow for the mines at a large price. If the latter, they should put the stock at what should be sufficient for the actual cost of the mines and improvements and of carrying on the business, and "issue the stock for money." They instantly chose the latter course, and determined not even to take U. S. currency for the stock, but to organize the Co. on a purely gold basis. The stock was taken by these gentlemen and

¶ The recklessness with which this speculation was first entered upon could only be exceeded by the prodigality with which the American stockholders kept throwing good money after bad in the purchase of new supplies to be seized "by the Mexican military authorities." Can anybody believe that the Government at Washington should never have heard of these robberies until two years after the company was forced to cease operations in Mexico?

New Evidence offered by Mexico.

sales (cash) for the months of May and June are large, while afterwards they fall away to a few hundreds per month; the explanation lies in the fact that *all* sales here under the old system consisted in cash sales, though for the most part the merchandise was paid directly over for the indebtedness incurred towards the miners and other workmen. The result of this course was to swell the apparent receipts and disbursements of cash. Now only the amount actually paid in coin is considered as cash, and merchandise is called by its own name, while the same rule is observed in the matter of receips." January 5, 1867, De Lagnel writes to Garth as follows: "As to the amount received from cash sales of merchandise it is very small, the number of people about Tayoltita being less than formerly. As those employed by me receive two-thirds of their earnings in goods they have no great need to purchase more. Then there are other points within striking distance which are endeavoring to attract thelittle trade there is, and so between a diversity of causes the receipts of cash are very small indeed."

July 13, 1867, Exall writes to Garth, explaining new arrangements which he had made with the miners: "They are provisioned for a week and charged with what they get. What metal they get out is assayed. If it assays an amount worth working we pay them in goods, (a little money now and then,) about one-half its assay value. They of course will get out nothing but good metal, if it can be found. You see, in this way we get the metal out free of cost, buy it at one-half its value, pay in goods, and make a handsome profit on them." According to Exall's statement of receipts and expenditures, the cash sales of store in April, 1867, was $82.98; in May, 1867, $103.60; in June, 1867, $128.47.

With regard to the returns from the ores reduced, the following correspondence appears:

De Lagnel to Garth, Nov. 17, 1866: "I notice in you letters the frequent use of the terms 'Bullion' and 'Bricks.' Now, you cannot be ignorant of the fact that the exportation of bullion is totally prohibited, and coin shipped only after paying duty. Therefore it is self-evident that the attempt to pass it to the coast for shipment would involve a risk which no subordinate would be justified in assuming. I will inform myself to the utmost respecting all these points, and am now doing so; but before *running any risk with the Co.'s money* I must be *positively and*

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their personal friends, who were "sanguine of large profits," and, with three exceptions, the stock remains in original hands. P. 231: They had ample means to conduct it to a successful issue. The moneys for the purchase of the mines from Garth and Bartholow by the Co. "were obtained from its stockholders for stock issued to them at its par value in gold." Garth and Bartholow have always been among the largest stockholders, and have advanced money to the Co. P. 232: "I have no interest whatever, direct, contingent, or otherwise, in said claim."

(For Avalos', Dahlgren's, Exall's, Martin's, Bartholow's, and Adams' opinions of witnesses for defence, see Heads I and XXVI.)

New Evidence offered by Mexico.

clearly instructed in writing to do so. Heavy losses from above causes have happened in this vicinity lately, showing that the apprehension of loss is well founded, though it may be that it happens but rarely. I know full well how much more satisfactory the bars would be than the coin, how far it would go as an evidence of the true worth of the mine, and how great advantage might be produced to the comp'y by having for exhibition and use; but what I have said above will meet your approval, I feel sure, and call out such directions, or orders, as you may wish carried out."

Feb'y 5, 1867, De Lagnel to Garth: "I shall immediately upon the completion of the work above alluded to put the mill in operation, and hope to be able to meet your expectations. I am in hopes of being able to export by authority, upon the payment of a certain percentage, the bullion, or a part of it, direct to New York. This I desire to do, believing that a few bars of the metal, to speak for itself, would be of more value to the company than the proceeds in coin."

May 17, 1867, Exall to Garth: "I succeeded in recovering the bullion which the authorities here took from Col. de L. by the payment to the different Government officers and getting it aboard steamer, of the sum of $247. I had either to pay the amount mentioned or allow them to retain the silver. Its value being much more—there being a large percentage of gold in it—I would as a business transaction have bought it back from them. Aside from this my desire to get it to N. Y. in its present state, and the probability of its being of much value to you. These motives induced the expenditure in its recovery. I have it shipped by Wells, Fargo & Co. Valuation I gave $300. Expenses $15, to be paid in N. Y.

July 10, 1867, Garth to Exall (see original letter herewith transmitted): "We are are also in the receipt of the sample of bullion sent at same time by express, the value of which is not yet ascertained, having not yet been able to get it from the assay office, but hope to do so to-morrow. I fear, however, that it is worth but little more than what it cost to get it from the custom-house to Mazatlan and the expenses on it here. We hope the next advices from you will be favorable, and to learn that you will soon send us plenty of money to pay off the debts here. With best regards to Messrs. Cullins and Sloan, as well as to yourself, I remain y'rs truly,

D. J. GARTH, *Tr.*

(Endorsed: "David J. Garth, July 10, '67.") "To C. H. E."

V.—PAYMENTS ON STOCK, RECEIPTS, AND DEBTS OF COMPANY.

Evidence before the Commission.

New Evidence offered by Mexico.

Aug. 5, 1867, Exall to Garth: "The ore which is now being gotten out will average per assay about $75 per ton, but it comes in small quantities. The returns I brought from mint I brought down to E. P. & Co. to settle money borrowed from them to buy goods; their bills will be due next month, and most of the returns from present run will have to be paid them. I hope to be able to settle up all the indebtedness of the company, both here and at the mines. E. P. & Co. are the only ones I am owing here. . . . . .

Acct. of run by mill from 27th May to 13th July, inclusive:

Amount of rock crushed	89 tons,	1,676 lbs.	
Producing 131 marcos 5 ounces refined silver, yielding at mint	$1,672 29		
Less mint expenses.	147 47		
			$1,525 82
Cost of chemicals used	665 81		
Labor	380 54		
Wood, 75 varas, 62 cents	59 38		
			1,105 73
			$420 09

The yield from the 89 tons in statement is small and the time great when we compare results, expenses, &c., but take into consideration that ore of ten times the value of this would require no greater expenditure, no greater cost to work, &c. I am at present working same ore. Will send a like statement at the end of the run or when the ore is exhausted. Charles H. Exall. Mazatlan, Mo., Aug. 5, 1867."

Oct. 6th, 1867, Exall to Garth: "By last steamer I sent you full statement of business of hacienda, the runnings, returns and expenses of the mill, acc't of ores, &c. I neglected to add forty tons of *tieres* which were run through and should have been in statement sent, but was overlooked. I am sorry not to be able to send you statement of the months since. On my return from Durango I stopped at the hacienda so short a time before starting for this point that it was impossible for me to make it up in time for this mail. By next steamer I will send you full statement of past months. The returns from Durango were small. I turned it over to E. P. & Co., as I was owing them."

Frederick Sundell testifies that he had never heard that Exall had extracted $17,000 from 20 tons of ore; that according to his recollection Exall stated to him that all the ores had been reduced at an

V.—PAYMENTS ON STOCK, RECEIPTS, AND DEBTS OF COMPANY.

Evidence before the Commission.	*New Evidence offered by Mexico.*

expense of $12 per ton; that the quicksilver man, (azoguero) who was called Doctor Elder, told deponent that the average result of the reduction of the ores was $9 per ton; that when the Co.'s mill commenced to work in February, 1867, Supt. de Lagnel brought to the hacienda of the Durango Co. some bars which contained a good deal of copper, saying that they were the product of the mine, and that he desired to take to New York a bar of silver for the Co. Deponent refined the same and delivered it to de Lagnel, and understands that it was seized as contraband and released on the payment of its value.

The following letters in the original, with envelopes and postmarks, are herewith transmitted. As will be seen by his letters under Head XXVI, Mr. Elder belongs to that class of witnesses whose statements are valuable only when corroborated by other evidence.

Lone Pine, Cal., *Dec'r* 6, '77. Mr. Robert B. Lines, *Atty.* Dear Sir, yours of Nov. 23 came to hand yesterday, and in answer I have to say that I built most of the mill. I was the assayer. I worked all the ores worked by the La Abra Co. I think it doubtful if Mr. Exall worked any ores at all. I can testify truthfully as to what the ores assayed. No such assays as you say Mr. E. testified to, Will be difficult to impeach my evidence. I have a Letter of Recommendation from Mr. Chas. E. Exall as to my Efficiency. Mr. E. was there when I left, but he was ondly in charge of the Hacienda. My Evidence would evidently defeat the La Abra Co. Yours truly, A. B. Elder.

"Lone Pine, Cal., Jan. 4, 1878, Robt. B. Lines, Att'y, 604 F street, Washington, D. C. . . . . When I started the mill—the stamp—in an hour I was assaying, I found everything terribly overrated, there was about 250 tuns from the El Cristo mine that would barely pay expenses for working, out of nearly 500 tuns from other mines that instead $320 pr tun give assay of $12.50. This was from the La Luz & La Abra mine. The El Cristo ores I worked assayed $11.50. I worked ten tuns and assayed when Col. De Lagnel became disgusted & sailled for New York. I worked all the El Cristo, got my wages out of the proceeds, and left for the reason their was nothing more to be done. The mines were long ere this considered a failure. . . . . Hoping, &c., yours, Dear Sir, A. B. Elder."

Touching the indebtedness of the Co., the following extracts from letters of Exall to Granger (see originals transmitted herewith) are given:

"NEW YORK, *May* 8, 1868.

"Now, as you and I are the principal

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Evidence before the Commission.	*New Evidence offered by Mexico.*

creditors—I haven't been able to get a cent from them, "the Company"—and the thing being in my hands, if this party intend buying we can and will make a good thing out of it. Those of the Company I have seen have turned the affairs to me; so, in case anything can be done with this party, don't be afraid of your interests—all accounts at the mines are under my control—as yours will be looked to in conjunction with mine. All now depends on what can be done with this party, and more information concerning it I am unable to give until seeing them. I have informed the Company that they shall do nothing until you and I were paid, which seemed satisfactory. I wish I could send you some means to get along with, knowing you must be having quite a rough time, but am unable. I expected to be paid up here; it's not having been done plays the devil with my arrangements."

"NEW YORK, *June* 15, 1868.

"The proposition of this Co. that is to be formed is to pay off you, and I to start with and give you a certain interest to the old Co. (The old *Company refuse to pay us our dues, and we are totally unable to recover anything from them.*) The indebtedness of the Company to us, I have represented to these parties, as being to Jas. Granger, $2,850.00; to C. H. Exall, $5,113.32; Bank of Cal., $5,000. The statement regarding your account and mine, as represented, is over and above any and everything which we have gotten from the Co. To be a greater inducement to these parties to purchase, and let them see I had confidence in the mines, at their request I have agreed to take in stock to the amount of $2,000, and have taken upon myself to act for you to the extent in stock of $850. This, I hope, will meet with your approval. Should anything occur, let your statements accord with mine."

"RICHMOND, *July* 18, 1868.

"DEAR GRANGER: In my last to you it informed you of the probability of a company being started and on the formation of said company depended on our salaries. Since writing my last I have seen the parties frequently and have had long conversations with them in reference to raising this company and the payment of its indebetedness. The indebtedness to you and me they seemed willing to liquidate and take their chances with the rest. In my previous letter I instructed you in reference to the figures representing your and my amt., keep it as it is but make no entry. This party have gone to work and

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Evidence before the Commission.	*New Evidence offered by Mexico.*
	I believe will succeed in raising a company in a month or two. There is one other thing I did some weeks ago as I thought I had best make as sure as possible about getting my pay. It was this: I entered suit against the company, not with the expectation of recovery just yet, but something to fall back on in case this company was not formed; recently there has been a better show for raising the company than ever before. So I just let the suit remain over in a manner in which it can be revived at any moment. I want you to send me your statement and your power of attorney to act for you in case I found it necessary to continue the suit; if I succeed in recovering for self could probably recover for you. The amount to be sued for is the just amount due me at $3,500 up to the time of my demand on them in person for a payment and for my traveling expenses, &c. I will inform you in time to make proper entries, sending a list of expenses, &c. If I have to deal with a new company I want to get out of them all I can, if with the old one I must deal with them strictly. I will in time write you as things develop. By all means keep the mines secure, particularly the Abra—don't allow anyone to touch the books or don't give any statements—these affairs are now in our hands, and without satisfaction we must not do ourselves injustice." (For the letter of C. B. Dahlgren, charging Alonzo W. Adams with the forgery of his deposition filed by claimant, and for the deposition of Frederick Sundell as to the good character of J. N. Manjarrez, Bartolo Rodriguez, and Patricio Comacho, witnesses for the defense, see Head I.)

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IN CHIEF.	
Memorial, p. 5, claimant's book: "They sent intelligent agents to Mexico; employed large numbers of miners, machinists, and laborers; purchased great numbers of mules and their equipments," provisions, machinery, etc. P. 6: "They expended in the purchase of said mines and their working the sum of $303,000." P. 7: "Said Co. have expended $30,000 in conducting their business otherwise than in the expenditures at said mines."*	The press copy book of La Abra Co. contains a number of letters relating to the ordinary current purchases of the Co., to which no reference will be necessary. The Co. kept an account with Echeguren, Quintana & Co., and subsequently with Echenique, Peña & Co., in Mazatlan, and with the Bank of California, in San Francisco. The following extracts from the press copy book will serve to show the manner in which the expenditures were directed, and their amount: Hacienda La Abra Silver Mining Company, Tayoltita, January 16, 1866. Messrs. Echeguren, Quintana & Company, Mazatlan. "Gen-

* The discrepancies in the statements of expenditues made by the different witnesses are most

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Charles H. Exall, p. 20, claimant's book: Question No. 10. What was the work done by Co., &c.? Ans. "Opening of the mines La Abra, † etc. The ten stamp-mill and machinery cost the Co. to purchase in San Francisco and place it on the ground "over $60,000 in gold. Said Co. expended on mill-house and things pertaining thereto over $50,000 in gold, and the precise amount expended by said Co. for mules, mining implements, mining stores, labor and transportation of provisions, stores, and other necessaries in and for the opening of their said mines and construction of their mill-races, river dams, tanks, reduction works, &c., and erection of machinery I do not know, but the same is not less, I believe, than $270,000 in gold, and may have been very much more than that amount." Transportation was on mules' backs, over mountainous roads, 160 miles from Mazatlan. P. 23: The Co. employed "from 30 to 150 employees in all."

A. A. Green, p. 25, claimant's book: Knows that Co. "was doing everything requisite to a working of said mines on a grand scale and in the most effective manner." The Co. "had erected, constructed, and built, and had in progress of erection,

glaring. Including the purchase money, (say $79,000,) they were, according to Green, $379,000; according to Cole, $554,000, not to mention the cost of mules, of which the Co. lost $100,000 worth; according to Loaiza, $579,000; according to Chazarria, 179,000; and according to Mora, $579,000. These were all accidental witnesses; but the memorial ought to have given the figures accurately, and Exall, Collins, Granger and Bartholow were in position to speak from the books, though none of them, not even Collins, whose figures the Umpire adopted without question, pretend to have such authority. Let us see how they agree. The memorial says $303,000; Exall $459,000; Collins $299,291.06, exclusive of Exall's $17,000 obtained from the ores; and Bartholow is strangely silent, even as to the stamp-mill which he bought long before Exall went to the mines, but whose cost Exall alone seems to know. Echeguren and de la Peña both pretend to speak from their books. The former paid out for the Co. $58,500 for the mines, and $50,100 for other expenses. De la Peña became the Co.'s banker in August, 1866, and disbursed $67,000 down to March, 1868, when he gave Exall $250 to get home with. According to these two bankers, therefore, the expenditures would be, including cost of mines, about $175,000, except for Echeguren's saving clause as to purchases not made through him. The Umpire thought it remarkable that the books showing the extraction of ores were not produced, and no reason given for their non-production, (overlooking the statement of Granger that the hacienda had been "sacked.") Why it did not occur to him to ask for the books in New York to settle the above extraordinary conflict of testimony?

† The historical mine was apparently good to form a company on in New York, but not good enough to put the Co.'s money into in Mexico. See Exall in rebuttal; also Granger, Loaiza and Bouttier below.

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tlemen: . . . . . In the lot of letters received by Mr. Corell I have two from our mutual friend, David J. Garth, Esq., Treasurer of La Abra Silver Mining Co., New York, in which he says that the credit of the company shall be at all times fully maintained, and that my drafts for such amounts of funds as are necessary to vigorously prosecute our work to an early completion shall at all times meet with due honor. . . . . I beg to advise you that to meet mining expenses and to pay hands for getting timbers for our mill and other necessary outlays, I have, under this date, drawn upon you in favor of Dr. W. B. Hardy for fifteen hundred dollars, in three drafts of $500 each. They are thus drawn so as to enable Dr. H. to sell them at San Ygnacio or San Juan, thus obviating the necessity of going to Mazatlan to obtain the money. . . . . Your friend, Th. J. Bartholow, Supt."

"Hacienda La Abra Silver Mining Company, Tayoltita, Feb'y 6, 1866. D. J. Garth, Esq., New York. Dear sir: Your letters, dated in November, one the 30th, came to hand by the January steamer, but did not reach the hacienda in time to answer them by the return steamer. I however wrote you about the 1st Jan'y, giving you a report of my operations up to that date. I notice your remarks about the importance of getting out, and delivered on patio sufficient ore to guarantee that our mill can be kept running day and night. I intend to have on the patio, if industry and management can effect it by the time our mill is ready to start 1,000 tons of ore, and with this start I have no fear of our ablity to keep the mill running. We are weekly improving La Luz mine, getting the metal laid bare gradually, so that we can increase the number of laborers in it almost weekly. We are getting out weekly 15 tons of cleaned metal; last week we increased the quantity to 18 tons. Next week, if more tools (mining) arrive, I will commence to work in "El Cristo," and shall work it on this principle, viz.: start a new tunnel *on the vein* about 100 feet below Castillo's old works, then, at the same time, commence *the sinking of a shaft in the old works* (on the vein) to intersect the new tunnel. Thus when the intersection is completed there can be laid bare sufficient of the vein to work fifty hands to advantage, and all the ore can be dropped into the new tunnel and taken out with wheelbarrows, thus dispensing with the labor of "tenateros" to a great extent, and, in addition, I shall as soon as possible commence work in "Innocentes." These three mines alone, I think, without doubt,

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construction, and building, sheds, stables, dwelling houses for its employees, stamp-mill house, reduction works, tanks, patio, blacksmiths' shops, and ten stamp-mill and machinery for the same; also large mill-races."* P. 28: I am well acquainted with the cost and value of mining labor, materials, stamp-mills, machinery, constructions and erections for mining purposes in the State of Durango and transportation in Mexico in and prior to the year 1868, and in my opinion the stamp-mill, machinery, mining structures and works which I have mentioned as having been and being done by said La Abra Co. in January, February, and March, 1868, were worth and were of the value of when said Co. was compelled to abandon them in the latter part of March, 1868, not less than $300,000 in gold. In my opinion they must have cost the Co. that sum or more."

George C. Collins, p. 30, claimant's book: The Co. expended $299,291.06 ($235,000 derived from sale of stock and $64,291.06 borrowed) "in the purchase of the said mines as aforesaid, and in the purchase of supplies, mules, machinery, and a ten-stamp mill to be used at said mines, and for transportation of the same, and in the construction and erection of said mill and machinery, houses, dam, raceway, and mining works generally at said mines, and in work upon said mines and the extraction of ores therefrom."

James Granger, p. 41, claimant's book: "The richest of their lodes or veins have yet not been reached, for the want of the necessary expenditures in opening them up by tunneling, such expenditures are particularly needed in opening La Abra and El Rosario by tunnel." P. 46: "They had completed, at the time they were forced to leave there, everything that could be required for carrying on silver mining and the reduction of ores upon an extensive scale, all at an expense of about $300,000 or a little more, perhaps. I cannot, without access to the books of the Co. in New York, state the exact amount of money paid out by the Co., as the hacienda has long since been sacked, of books, receipts, invoices and other papers, furnishing the necessary data upon which to make anything like an exact statement on the subject."

John Cole, p. 55, claimant's book: Deponent had control of forwarding the machinery and supplies in 1866 and 1867,† by

† As to the time of completion of the works see Granger and Gamboa below, and Exall in rebuttal.

Why should the Co., owning so many valuable mules, have been obliged to contract with Gamboa and Loaiza for transportation?

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will supply more than our machinery can work. If, however, I am mistaken in this opinion, and I do not think I am, we have "La Jalpa" and La in working condition to make up any deficiency.

I have put our mines and mining in charge of Mr. Geo. Cullins, a gentleman of much experience in mining, who has been working in the mines of Lower California for over two years, and I am highly pleased with his practical good sense and sound judgment; he knows more about working a mine than all the rest of us put together, and he says that in his opinion, after seeing a large number of silver mines in Mexico and the United States, and worked in quite a number, he has never anywhere seen so good a property as this. I have succeeded in getting our business pretty well systematized, as follows. As above stated, Mr. Cullins has charge of mines and mining, and works his hands according to his own judgment; discharges any that do not suit, and no one has a right to instruct or interfere with him but himself, he being responsible to me alone. J. V. Hardy has charge of the store on pretty much the same principle. Mr. Griffith, Wm. Grove, (a new man from Salinas Co., Mo.,) and Dr. Hardy has charge of all the pack trains; each manages and controls a train. This is necessary for the reason that if some American in the employ of the company is not constantly with the trains there is great danger, if not a certainty, that the animals would be taken by the military authorities; and besides, I could not get the Mexicans to pack for us unless I agreed to do this; besides with this arrangement I have a guarantee that my men, animals, and effects will not be interfered with. With regard to the change of the mill site, I found on my return, after careful measurements and calculation, that it would be cheaper and better *to put the new mill on the site of the old one, and am doing so.* The wheel-pit is almost dug, or rather blasted out, for the whole ground was filled with volcanic and granite boulders; have burnt 100 pounds of powder in the grading already, and will have to burn a good deal more. We commenced to-day to lay the walls of the wheel-pit, and we have blasted out more rock already than we can possibly use in the walls, and much of it is splendid building rock. We have also 70 pieces of timber down and ready to frame into the mill, and plenty more in the yard to keep the hands at work for two weeks. There are yet 100 pieces in the woods to be brought down, 54 of which I contracted for yesterday. These comprise all. The very large sticks are in-

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three and sometimes four mule trains, owned by the Co. There were about 40 mules to the train, never less than 30, of the very best quality. Transportation was very difficult. The machinery and supplies so transported in 1866 and 1867 "must have cost the said Co. not less than $175,000, and the stamp-mill, including the tools, implements, sheds, out-houses, and improvements of all kinds on the said property, in the judgment of the deponent, must have cost not less than $300,000, and they may have cost much more than that amount." P. 59: Knows "of his personal knowledge" of three trains of about 120 mules being captured by Liberal soldiers. Believes that other trains were captured not less than six or seven times; does not know their value, "but it was a common report amongst Mexicans there" that the Co. "had lost mules, pack-saddles, and supplies, in the three years named, to the amount of $75,000 to $100,000."

J. F. Gamboa, p. 62, claimant's book: Had a contract for transporting ores from the mines to the reducing works. P. 63: American companies have been compelled to leave the country before realizing anything, "and some of them, as the La Abra Silver Mining Co., before they had completed their preparations for extracting and reducing their ores."

Wm. G. S. Clark, p. 64: While deponent was "engaged in forwarding machinery and supplies in spring and summer of 1866," while de Laguel was supt., Col. Donato Guerra levied a prestamo, which deponent was obliged to pay for Co. The supplies were detained four days, "and in consequence of this delay a barrel or carga of oil for the mill and machinery of said La Abra Co. was so injured by the shrinkage of the casks, (*sic*,) that the said oil had all run out of the casks when delivered by said military commander, and that in consequence thereof said Co. was deprived of the necessary oil for their said machinery for many weeks thereafter." Mazatlan being in French possession, no one was allowed to enter for some months. The supt. tried to get in to replace the oil, but was refused permission. Deponent heard the supt. complain that this "circumstance, trifling as it might appear to those not acquainted with the uses and value of such oil for machinery, had caused a complete paralysis in the work of putting up said machinery at their mining hacienda."

John P. Cryder, p. 73, claimant's book: Improvements must have cost Co. $300,000 or $400,000.

Jose M. Loaiza, p. 78, mines yield from

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cluded in this contract; the rest are all small, and can be had at any time needed. The rafters, those 14 feet long, I have contracted for their cutting, barking, and delivery at 62½ c. each. This is cheap; but these large and heavy sticks, which require 20 men to handle, are costing high. I first tried to get them down by hiring the Mexicans by the day and working them under the superintendence of an American, but found this would not do at all, as the cost was entirely too high; so I contracted with a Mexican to deliver the 54 large pieces at an average of $23 per stick. You may think this is a very high price, but when you consider that 20 to 24 men are employed to do the work, and one-half the sticks requiring two days' hard work to get them to the hacienda, it is as cheap as it can be done for. After I had gotten all our machinery completed in San Francisco, and the belting, bolts, extras, and tools shipped and paid for, I found that instead of having between 30 and 40 tons, which you had estimated the mill would weigh, I found I had nearly 80 tons, and instead of all costing $10,500, as you had estimated it, and me, also, in my report to the Company, I found that the

entire cost was	$15,500 00
The freight and duties	2,500 00
And the packing to Tayoltita, in consequence of the operations of Corona around Mazatlan, will average $16 to $18 a carga, or	9,000 00
The lumber and timbers will probably cost	4,000 00
Lime will also have to be increased to	1,200 00
Mechanics and laborers, I think, will be about former estimate	7,000 00
Corn, salt, quicksilver, and other supplies	10,000 00
Castillo, for balance of account	7,000 00
	$56,200 00

The difference in estimate is caused principally by the weight of the mill, and its cost being first so greatly under estimated, and of course all calculations based upon the weight and cost of the mill in my former estimate are not reliable; and besides, when I left here for San Francisco in September, *mules could be contracted for to pack* at from $8 to $10 per carga; but after the Liberals took possession of the country and confiscated large numbers of mules, it was with the greatest difficulty that I could get any one to agree to pack at all, and had I not succeeded it getting

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three to six marks per carga. Deponent believes that Rosario and La Abra,* *with properly constructed adit* would yield two or three times that amount. The Co. must have expended not less than $500,000 in material, transportation, and labor, "and, perhaps, much more." Co. employed from 100 to 150 men. Company employed deponent to assist John Cole in transporting mill and machinery; also, to purchase and transport 200 cargas of salt, also large quantities of corn, meal, lard, sugar, and other provisions during 1865, 1866, and part of 1867. P. 79. "I also know that the Co. constructed very expensive conduits for water and other necessary works for the proper working of the said mines."

Charles Bouttier, (born Havre, France; age, 40; physician and practical chemist: "I have resided in the U. S. of America for more than twenty years last past. I now reside in the city and Port of Mazatlan, State of Sinaloa, in the Republic of Mexico; I have resided in Mexico for about sixteen years last past;" was sup't and part owner of a mine in Sinaloa, but was driven out in 1869. Testifies July 14, 1870, before M. Meagher, not. pub., San Francisco, who certifies to credibility.) P. 82. "I saw a fine stamp-mill, and heavy machinery for the same, being transported to said Company on the backs of mules, under the superintendence of said Bartholow." Pp. 82, 83. In the spring of 1868, deponent tested the Co.'s ores with a view to purchasing their mines on behalf of a Co., to be formed with deponent as sup't. Found La Abra "almost an inexhaustible mine of rich ores, which, however, will require a large capital to work it profitably, as it should, in my judgment, be tunneled at a heavy expense, of course." Also, tested the other mines. I saw, too, that it would require a large outlay of money to properly develope those hidden treasures."

DEFENSIVE.

(The testimony under the preceding head (V.) as to the amount of silver extracted from the ores refutes any allegation as to moneys derived from that source and used for current expenses. Nearly all the witnesses testified that the Co. did not proceed in the ordinary manner, and that it mined large quantities of worthless rock. Torres and Acosta stated that this was covered by some real ore for the inspection of a "Commissioner" sent out by the Co., [who, it is clear from the

* For note see preceding page.

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military protection our mill would now be lying at Mazatlan. . . . . By the March steamer I will have to draw for $10,000, (ten thousand dollars.) Yours, truly, Th. J. Bartholow."

"Hacienda La Abra Silver Min'g Co., Tayoltita, Mexico, Feb'y 21, 1866. W. C. Ralston, Esq., Cashier, San Francisco, Cal. Dear Sir: Enclosed I hand you my draft in favor of Bank of California, and on David J. Garth, Esq., New street, New York, for ten thousand dollars, (gold coin,) which you will please negotiate and place proceeds, with current rate of exchange, to my credit. I beg also to advise you that I have also drawn upon you at even date in favor Messrs. Echeguren, Quintana & Co., Mazatlan, for ten thousand dollars; which said draft you will please honor when presented. Mr. Garth has embarked in the banking and exchange business, in connection with two of his old friends, in New York and Richmond, Va., under the firm of Harrison, Garth & Co., of which he has, most likely, advised you . . . . . Your ob't serv't, Th. J. Bartholow."

"Hacienda La Abra Silver Min'g Co., Tayoltita, February 21, 1866. Messrs. Echeguren, Quintana & Co., Mazatlan. Gentlemen: On my way home from your city I passed 174 mules loaded with my machinery, about half of which have arrived, and the rest will be here to-morrow, when Dr. Hardy will start back with 150 of them, which will be sufficient to transport *all* I have of machinery and goods left in Mazatlan. This is quite gratifying to me, and to pay the packers I have on hand, at least two thousand dollars more, and have drawn in favor of Dr. W. B. Hardy for this sum, which draft please do me the favor to honor; it overdraws my act., but to make it good I have drawn a draft in favor of Bank of California for Ten thousand Dollars on Mr. D. J. Garth, New York, and herewith enclose you my draft on Bank of California for an equal sum, the proceeds of which please pass to my credit. . . . . Your ob't serv't, Th. J. Bartholow."

February 27, 1886: Bartholow writes to J. G. Rice, Supt. of Durango Mining Co., stating that he will not have sufficient money to pay his hands, and asking for $200 or $250. February 28, 1866, Bartholow again writes to Rice, thanking him for the offer of the loan of his Boletas, but stating that if he is obliged to resort to this class of currency his own, of which he had issued the fractional parts of a dollar to a limited extent, would answer the purpose. Has been furnished with more mules than

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testimony of Nep. Manjarrez and Rodriguez, under head V., was the second sup't, Col. De La Lguel.] De Valle stated that he heard of this operation. A number of witnesses, including *Granger* stated that the Co. worked principally the Rosario mine. Granger said, p. 137, "they began some works in the Luz and Cristo mines, but does not know whether they did anything in the Ynocentes or not. *Camacho*, p. 130, and *Rodriguez*, p. 132. claimants book said they destroyed the hacienda of reduction by removing the fixtures, intending to substitute machinery. *Aguirre*, p. 133, that they burned up the woodwork of the old hacienda and others to the same effect. As to the new constructions of the Co., *Andres Serrano*, p. 141, and *Pio Quinto Nunez*, p. 143, stated that they had put up some machinery and buildings which had become dilapidated. *Julian Romero*, p. 146, that they had erected machinery and rustic dwellings, which were not well built and have all fallen down. *Nepomuceno Manjarrez*, p. 183, "they were building fragile houses without foundation. The first sup't was ignorant of his business and received an exorbitant salary." Freight was increased from thirty to fifty cents. "47 Americans were employed in the buildings at high wages, and consumed large amounts of provisions." *N. A. Sloan*, p. 148: The Co. brought out mechanics and set up machinery, "good, but not of the first-class. *Benigno Galvan*, p. 142: "The Americans inaugurated the system of paying in *cartons* or promissory paper, and that they also paid the Mexicans a very low rate of wages as compared with that allowed to their American employees." *Nepomuceno Manjarrez*, p. 185: Col. Lagnel commenced to reduce expenses. The Mexican interpreter being absent he had some difficulty with the Mexican laborers with regard to their pay, which was settled by paying them. (As to the difficulties with the employees on account of non-payment, even in goods see head XV.) *James Granger*, p. 147: The Co. had about fifteen mules. *N. A. Sloan*, p. 148: When he was clerk for the Co. "he only saw from ten to twele mules. Ygnacico Manjarrez, p. 149: Only saw twenty odd mules. *James Granger* p. 148: The mines and buildings "probably cost $303,000, counting all the labor expended on them." *N. A. Sloan*, p. 148: When "he was" clerk for the Co. he saw, according to the statement of the sup't, that they had expended $303,000 and had taken out a little less than $6,000.

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he can employ, and proposes to Rice to arrange for their joint employment by the two Cos. On the 7th of March, 1866, Bartholow writes Garth, detailing his progress, and stating in his opinion the mill will be completed and crushing ore in June. March 13th, he says: "All my machinery except about 10 cargas, which will be here to-morrow or next, has been received as well as all the goods I purchased in Mazatlan. Considering that these effects weighed over 80 tons and all packed up through a country in a state of war in less than three months is quite good evidence of industry and energy. B."

March 17th, 1866, Bartholow writes to the administrator of taxes protesting against excessive taxes on this Co. and stating that they have purchased a hacienda and mines here for which they paid *cash* $50,000. And are now building machinery which will cost besides $65,000.

"Hacienda La Abra Silver Mining Company, *Tayoltita*, *April* 6, 1866. Messrs. Echeguren, Quintana & Co., *Mazatlan*. Gentlemen. . . . . By the May steamer I will draw for ten thousand dollars, which draft I will forward you in due time. My work here is progressing very well. Some delay has occurred from sickness of some of my mechanics. Ague and fever is quite prevalent here, all of us have been more or less affected by it. Our water-wheel is completed, the battery is built and set up in its place, and nearly all the other wood work is finished; the stone work of the mill walls are partially built, on this stonework we will build brick walls; are now burning a kiln of 85,000 bricks for this and other purposes; our iron work is a little behind hand, but I am trying hard to get it up, and hope to do so soon. Our pile of ore is now increased to fully, if not over, five hundred tons. Your friend, Th. J. Bartholow."

"Hacienda La Abra Silver Mining Co., Tayoltita, April 10, 1866. David J. Garth, Esqre., New York. Dear Sir: . . . . . Our water wheel is complete, ready to receive the gearing, the wooden portion of the battery composed of over sixty large sticks of square timber, all of which are dressed, bolted together, and set up in their proper place, all solid and on an enduring foundation, and now ready to receive the iron mortar bed. The walls of the mill house, that is the rock portion of them, are progressing. The one nearest to, and running parallel with the river, is completed to its entire height. A portion

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REBUTTING.

Jesus Chavaria, p. 91, claimant's book: Deponent cannot give a description of Co.'s mines and works, "as he is not an expert in mining." P. 93: From statements of well-informed persons, thinks it no exaggeration to estimate that "the value of the buildings and improvements was $150,000, the value of the ores $200,000, and the Co.'s expenditures there $100,000. From all he saw he was convinced of the immense amount of money that had been expended, and that its value, including the mines, was four or five millions.

Marcos Mora, p. 101, claimant's book: "The Co. built several houses for the use of their employees; he does not recollect how many. They built a large house at their reducing works, and various other improvements, such as erecting a ten-stamp mill for grinding their ores; that the value of these, including the extraction of ores and their transportation to the reducing works could not have been less than $500,000."*

Antonio de la Peña, (Spanish subject; age 39; wholesale grocer in Manzatlan; testifies Dec. 2, 1872, before U. S. Com'l Ag't Sisson, who certifies to credibility.) P. 122, claimant's book. Knew La Abra Co. Dealt with it principally after August, 1866. From the year 1865 up to March, 1868, when their business was destroyed, we did a large amount of business with them. We supplied this Co. with provisions and other articles for their mining operations at Tayoltita, and a considerable amount of money for the payment of the Co.'s mechanics and other employes. We have disbursed in money and provisions for the Co. a total of a little more than $67,000. All has been reimbursed by drafts on San Francisco or New York except the sum of $250, which we loand to the last Sup't, Mr. Exall," "to pay his passage to the U. S.," in March, 1868.

Pedro Echeguren, pp. 125, 124 claimant's book: From July, 1865, to August, 1866, deponent's firm paid "to La Abra Silver Mining Co.'s agents, in supplies for its mines, money, and freight on machinery forwarded to said mines, in the aggregate, $50,100, making in all $108,600, in gold and silver coin, paid over my counter for said Co.'s mines and works." "Much of the Co.'s supplies, machinery, and even

* This is the principal villain of the party who drove the Co. away in order to get possession of its immense property, but who let Soto, his brother villain, and Granger, the company's clerk, take it all.

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of the side walls are up to a considerable height, these I will cap with walls of brick and build cross walls of same, and in the top of all we will erect brick columns to support the roof. Have just burned a kiln of 85,000 American brick for this and other purposes. The tail race is graded by blasting for most of the distance through large granite boulders, and is ready for the walls and arch. We have yet a little more blasting to do to get the floor of the mill down to a proper level. You would be astonished to see the quantity of rock we took out of the foundations, and the debris caused *by tearing down Castillo's old works*. Most of it will be used in the new walls and in filling around the new battery, besides nearly all the timbers which are required to build up foundations and supports for the pans, settlers, and concentrators are all dressed and ready to be set up. The pulleys, seven in number, with the exception of two of the smallest, are framed and completed; these two will be finished in a few days. In short, the carpenter's work is finely ahead. The blacksmith's work is somewhat behindhand, and must be so for some time, as we have but one forge, and only tools for it. Consequently, but one man can be worked to good advantage, but as our blacksmith is a fast worker I think we can manage to get this branch up in due time. Sickness, to some extent, has also impeded us, as at different times nearly every man on the hacienda has had ague and fever; then, of course, one to two days' time lost by the party affected. I have had two attacks myself since my return from California, and they have pulled me down in flesh considerably. Why this country, at this season of the year, where there has been no rain since last October, should engender ague and fever, I am at a loss to divine, yet such is the fact. Our ore pile is regularly and steadily increasing; the stock on hand is between 550 and 575 tons, and hereafter 'El Cristo' will steadily increase its yield, as we have 'struck' ore in the new tunnel; consequently, the quantity taken out of the tunnel will be in excess and in addition to what comes from the shaft in the upper works. This tunnel, which has not cost over $500, is one of the best investments the company has made, for all the ore detached in it, can be taken out in wheelbarrows, thus dispensing with the packing in leather bags, which is slow and expensive. When the shaft from above shall be intersected with this tunnel, which will lay bare and expose 75 feet perpendicular of the vein, almost any req-

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money was received from the steamer or vessel direct, and their mule teams, packed at the wharf for their mines without being consigned to any house here."

C. B. Dahlgren, p. 112, claimant's book: "The improvements of that Co. consisted of a ten-stamp mill of the first class, a suitable mill-house for the same, two haciendas, the St. Nicolas and the Guadalupe, a large number of out houses for the residences of the Co.'s employees and their families constituting in appearance a small village; together with supplies of every kind needed for carrying on silver and gold mining for beneficiating the same on a very large scale."

Chas. H. Exall, p. 192, (June 11, 1874:) The statements of witnesses for defense that the Co. worked the mines improperly and untrue. Deponent and de Lagnel had both had several years experience in silver mining and understood it scientifically, having studied the art of all kinds of silver and gold mining.* "The work was done properly and strictly in accordance with Mexican law and the usages of the mining district." The expenditures were judiciously and economically made. Only current wages were paid. The old hacienda was not taken down or destroyed at all but was enlarged and improved.† The machinery and fixtures removed were of the simplest kind, old-fashioned, much worn and completely but of use except by Mexicans. The new machinery "erected there to supercede the old was of the best kind," and increased the effectiveness and working capacity of all the works of the Co. for crushing ores more than twenty fold, and for the beneficiation of ores more than seven fold. The stamp-mill, machinery and fixtures and the new hacienda adjoining the old one, erected by said Co., and the mill-house, races and other outer buildings and works necessary to their use were of the best material and sudstantially built, and upon good foundation, and were just completed and perfected and in readiness for full operation at the time said Co. was forced to abandon the same and their mines and property in Mar. 1868. The

*Where Exall (then 25 years of age) and de Lagnel got their experience is not stated, nor does it appear that the banker, Bartholow, was either a scientific or practical miner.

† Bartholow says he had mined 200 tons, worth about $650 per ton (eight or nine marks per cargo); but being, like Exall, a man of large views, he did not consider this so important as to induce him to stay at the mines. But why did not somebody, in a leisure moment, reduce this unimportant quantity of ore in the old works left standing and use the $130,000 of silver, trifling though such a sum might be, in the payment of current expenses?

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uisite amount of ore can be obtained from this mine. This intersection, Mr. Cullins thinks, can be accomplished in 8 months, and the beauty of it is the company is reimbursed all the time in ore for the outlay. . . . . .

Our store is doing an excellent business, our goods and supplies pay liberal profits, and I am confident when our mill and buildings are completed and our mining and mill-work systematized as it should be the store, if kept well supplied, will run, the entire concern, thus reducing the cost of our labor about fifty per cent. To manage successfully this business in all its varied branches will require one of the most thorough and practical men of business that can be found; the fact that a man understands the amalgamation or ores and the process of working them is not evidence that he is competent to be your supt. unless he possesses the qualifications above mentioned in addition. Competent amalgamators can be employed in California and Nevada, and some are here out of employment, and I could employ one to come when we were ready for him, but from the tenor of your last letters I judge you intended to take this matter out of my hands. This, however, is usually the case with many men; they imagine while sitting in a confortable office in New York that they are more competent to manage the details of a large business in Mexico than the person on the ground and in charge of it. I have learned a good deal from experience in my management here, and after a task and labor that has been almost herculean, I have succeeded in bringing it out of chaos, and got our affair well systematized and working with harmony and regularity in all its branches. Up to April 1st our ore from La Luz and El Cristo mines—say at that time five hundred tons, four hundred of which was on the patio—had cost nine thousand dollars. This included the amount paid Castillo for working La Luz from June until we took possession, and the expense of making the new tunnel in El Cristo, or an average of $18 per ton. We have reduced the average to $15, delivered on the patio, and I think a further reduction may be calculated upon. You wrote me for a statement of the books up to the 1st January. This I do not send, for the reason that everything is in an unfinished state, and it would be impossible for me to render any statement that would give satisfactory information to the Co.; but when the works are completed and I return, I will have a full statement of every account on our books, which shall show the en-

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witnesses for defense were incompetent to express an opinion of the machinery if they had ever seen it, which deponent doubts. P. 196.: "The ores which the Co. took out were almost wholly from their mines, Rosario, La Luz, and El Cristo, and none of any considerable amount was taken from their mine Abra, which was only being opened by the Co. when driven away." P. 201: No important mining of ores took place until some time after De Lagnel became sup't. The work principally done "was in opening them and cleaning them out." Early in 1868 I beneficiated in all about 20 tons, the most of it as a trial to our new machinery which worked admirably, and the proceeds, about $17,000, was put into the general fund of the Co. and used in said works immediately before we were compelled to leave, and it was lost with all the other expenditures there." Had previously beneficiated some sample ores, for tests, "in which I was at times assisted by Dr. Elder, a practical chemist and assayer, and such reduction found them as rich as stated in my previous deposition." The mill, mill-house and other works were not completed until long after De Lagnel left and just before abandonment. "The ores were taken out of the Co's mines mainly while I was sup't, but a small part of them were taken out while I was asst. supt. to Col. De Lagnel. They were taken principally from Rosario, La Luz, and El Cristo." Before the completion of the works the principal energies of the Co. had been directed to their erection and getting out ores "so as to commence their reduction on a large scale."

T. J. Bartholow, p. 218, claimant's book: After receiving titles to mines deponent went to San Francisco and purchased a ten stamp-mill and machinery and supplies, "and shipped the same to the port of Mazatlan, Sinaloa, by steamships and sailing vessels, and from there said machinery and supplies were transported by mule trains over the mountains of Sinaloa and Durango, to said hacienda of La Abra Co., San Nicolas, near Tayoltita, and I commenced, as sup't, the work of erecting a mill-house for said stamp-mill, a new hacienda adjoining the old hacienda San Nicolas, outhouses for officers and employees, and the opening of said mines, with general preparations for carrying on said mining enterprises on a large scale, as was anticipated by said stockholders." P. 279: But little ore had been mined when de Lagnel took charge in May, 1866—possibly 200 tons. "The work principally done by me was in purchasing and transporting to said mines the stamp-mill

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tire cost of mill and buildings, the amount of ore on hand and its cost, together with a statement of the business of the store. In short, a full and complete statement of the whole affair while in my charge. Your fr'd, Th. J. Bartholow."

"Hacienda La Abra Silver Mining Co., *Tayoltita, May* 5, 1866. Col. J. A. de Lagnel. Sir: In reply to your note of this date, I beg to say that I am too unwell to collect up, credit and pass same on the books of the Company, the wages due our white employees, but you will find over the name of each employee on the ledger a memorandum of when he commenced work with the rate of wages we are to pay. I will, however, call in to-day or to-morrow all our employees and get them to acknowledge the correctness of money and merchandise charged to them. I enclose a memorandum of outstanding contracts yet to be filed, either partially or wholly. I also enclose a memorandum of the mines, their names, location claimed by the Company. All that we are now working are under "prorogue" until July, when you should make application through Dn. Angel Castillo de Valle, Durango, for an extension of the prorogue. I also enclose a memorandum of goods and supplies which I think the Company will require to aid its operations during the rainy season. *The Company own* 12 *mules and* 10 *aparejos.* The title to these mules I believe to be good.

With respect, Th. J. Bartholow."

"The financial statement of affairs of the La Abra Silver Mining Co., as per the books at the hacienda," (pp. 76 and 77, press copy book,) shows that down to May 31, 1866, the sup't had received and expended $19,148.54; that Bartholow had incurred debts amounting $13,404.45, and that 202 tons of ore had been mined at an average cost of $13.50, 72 tons of which had been delivered at the hacienda at an average additional cost of $3.50.

"Mazatlan, Mexico, 16 June, 1866. W. C. Ralston, Cashier Bank of California, San Francisco. Sir: Enclosed herewith I send duplicate drafts on D. J. Garth, of New York, for fifteen thousand dollars, payable at sight in gold coin. . . . . Very respectfully, J. A. De Lagnel, Sup't La Abra S. M. Co."

June 28, 1866, De Lagnel writes J. G. Rice: "The Mexican mason from San Dimas left a day or two since because I was unwilling to continue him at $2.50. His work has all fallen down and I want him to restore it, the other masons being stone workers only. Please endeavor to get him back if you can. Send him over to work at old rates, if we can do no better."

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and machinery, powder, quicksilver, provisions and supplies, erecting said buildings, and opening the mines as aforesaid. No commissioner was ever sent out by Co., as stated by Torres, and no pile of rock was covered with ore." P. 222: "I commenced to build the new hacienda adjoining the old one without taking down or destroying any part of the old hacienda San Nicolas or other buildings and improvements found there at the purchase of said property. No such tearing down or demolition of the old building was ever thought of or contemplated by me; nor was it necessary to give room to the new buildings and other improvements, as we found it necessary to extend the mill-races and to put up the mill-houses and stamp-mill about 300 feet from the old reduction works, and made use of the old patios as a convenient place upon which to pile up the assorted ores." P. 224: The supt's and subordinate officers of the Co. were scientifically and practically qualified for their positions, and the works were properly, skilfully, and lawfully conducted. P. 225: Paid only usual salaries and wages, "much less than was paid for the same services in Nevada and California." Witnesses for defense knew nothing of the manner of conducting the works. P. 226: Employed 160 mechanics, miners and laborers, including muleteers. Provisions and supplies were packed from Durango, 160 miles distant, Mazatlan, about the same distance, and from the valleys of Sinaloa. Some of the provisions used were purchased in Sinaloa by contractors, "of whom I now recollect José Maria Loaiza, of San Ygnacio." "Mule trains were the only possible means for the transportation of supplies." Deponent estimates damages "from the richness and abundance of the ores thus developed; the capacity and reliability of the stamp-mill and mahinery erected." s

S. S. Ely, p. 241: No commissioner wa ever sent out by Co.; the only persons sent were de Lagnel and Exall "and they were sent as sup'ts."

Alonzo W. Adams, p. 245: "The old hacienda was still standing in 1870.

(For Avalos', Dahlgren's, Exall's, Martin's, Bartholow's and Adams' opinion as to witnesses for defense, see heads I and XXVI.)

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July 6, 1866, De Lagnel writes to Garth: "Since my last the roof of the mill has been nearly completed, and will be entirely in a very few days. During my absence at Mazatlan the first heavy rain fell, and, owing to the want of a good foundation in a part of our mill wall, the heavy pressure of water from the hillside done it some damage, and which, owing to the great scarcity of masons, could not be repaired at once, but is now rapidly being put in a better condition than at first. There now remains to complete the reverberating ovens, refining furnace, and retort furnace, and I am about to commence to grade off a place near the mill for them, which will be a comparatively short job. The grading for the site of the boiler is complete, and the necessary walls will be commenced next week. The iron work is progressing slowly, havng but one smith and helper, but I trust that by another month the pans will be up and in their place. The ditch, as I said in my last, I look upon as an independent work, and which should have been finished before the rainy season. I have quite a long stretch of ditch walled up and the arch thrown over a part of it to prevent its being filled in by the wash of a small creek, which crosses its route at right angles. The rain came upon us, however, before the masonry got well hardened, and the waters of the creek carried a part of the arch away, and I have concluded to spend no more upon this work at a risk, but await the dry season. I can, by cleaning out the ditch, bring water enough to the mill to run it when we may be ready so to do, and this without much expense. In consequence of the heavy outstanding indebtedness, and which I must meet to re-establish the credit of the Co., I decided to lessen the expenditures, and reduced the working force at the mines nearly one-half, being obliged also to suspend the working of the Cristo on account of foul air in the lower level. The payments made formerly to workmen and others in cash are now made in cash and goods, one part of the former and two of the latter. I enclose here a statement of my cash account, to which and to my explanation I beg your attention. I am now in bed with a severe chill, and am writing this by an amanuensis."

Aug. 16, 1866, De Lagnel writes Garth: "The wheel-battery and mill-house are completed, the and roof being finished, the machinery in its place arranged save the boiler for heating the patio—this was improperly sent from San Francisco in small pieces, when much of this work

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	should have been done in the foundry there. The object of my being here* is to secure a competent person to rivet together the boiler, and though it might possibly be done successfully with the labor we have, yet I have deemed it preferable to leave nothing to chance, and I think I have the man I want. . . . . The one drawback is in the ditch, though I fear that if it could be rendered available under Mr. Castillo's control no insuperable difficulty exists now. The old stone work of the ditch I have had carefully repaired, and floored where it is wanting, and will I trust soon have it in condition to put the water on the wheel. Of this last I had grave doubts before the rainy season. Time demonstrates that they were not well founded. I feared the wheel was too low would be seriously interfered with by the back water, but up to the time of my leaving the greatest height it had reached (the river) did not raise the water sufficiently to cause any apprehensions. Therefore I think that while detention may happen from floods or excessive high stage of water, that it will but rarely happen; and that the progress of the work will not be seriously interfered with. The hacienda is gradually assuming a neat and orderly appearance, the store and rooms in new building are finished and occupied; the end of the two ranges of buildings being connected by cross walls of stone, strong and safe. The foreign (white) force I have reduced to the minimum, thinking it to be a most fertile source of expense, with none of the corresponding advantages. The ore on hand has been overstated, unintentionally, a fact which I found out on making examination of the books. I have had the large pile of 2d-class ore, about which much doubt has arisen, cleaned, and the amount of clean from the rocks, as declared to by the expert Limpiador, is very small. The ore cleaned from it, however, is very good. The other pile of 1st-class metal is not only better in quality but, in as far as has yet been made manifest, but little waste matter. Besides these, there is a third pile of almost equal amount to either of the others from the El Cristo. I remark what you ask respecting inventory and statement, it has been made or partially so, and will be forwarded with full and explicit statement by next steamer. It is but just to myself to say that your letters by last steamer did not reach me till near the close of the month, and as sickness and death had done their work in our little circle, it was out of my

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power to comply with your wishes, my time being entirely taxed to wait on the store. Thanking you for your encouraging words, I would say that the first experience was the most bitter. I am more comfortable and contented now, and am provided with assistance, which I always find ready and willing.

The death referred to above was that of my clerk, a young Mexican, speaking English, a most worthy, honest, and faithful gentleman. I trust to replace him with a young gentleman of good standing and character, at $40 per month, therefore you need not send any one from the States, as the bookkeeper and clerk are enough, and salaries are loopholes. I am as anxious as yourself to meet with results, from different motives, but I trust no less operative. I am in hopes of gaining ground instead of falling away, despite the many drawbacks and trials I have had to stand. Mr. Collins, of whom you speak, former head miner, with Dr. Hardy, left by July steamer. I presume you have seen them by this time. Though regretting his departure at the time, I do not feel his loss, having an equally competent, reliable, and steady man to fill his place. Up to August I have been working in La Luz and El Cristo mines, the others being under prorogue till January next. The results from La Luz not corresponding with the outlay, I reduced the force there, working in one place where the metal justified, and also a cross-cut to strike the true vein, which has been left to the right. This took place under Cullins, and conscious of the fact, he commenced the work I am now driving, but ceased upon the sale and transfer to you. Since then it has been resumed, and the metal in the left-hand branch becoming scarcer and less rich, I determined to drive across to cut the vein in the main level, being able to trace it; it is an old working, both above and below the level on which the work is now being done. The distance to go is only a matter of a few yards. As the Cristo was dangerous to work for a while in consequence of the presence of carbonic acid gas in the mine, I ceased operations there temporarily, (now resumed,) and have also put gangs (small ones) into the Talpa and Arrayan, said to be among the richest of the mines. Yesterday in talking with old Mr. V. Laveaga, of this place, who is personally and practically acquainted with the mines, I asked his opinion respecting the best course to pursue, and was gratified at his approval of what I had done. When I

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	arrived in Tayoltita the payments were made mostly in cash; after the first month I reduced it to one-half, and the next to one-third cash and rest in goods. . . . . The supply of goods and necessaries is ample for some time to come, but the bills are not yet all paid, and I am compelled to draw on you, despite the inconvenience I may cause you. By this steamer I have drawn on you for $10,000, (ten thousand dollars.) On this I received premium of course, heretofore 2 per cent., and is now worth 3 per cent. On tne former drafts I received from Bank of California ¾ and —— per cent. respectively." On p. 102, press copy book, appears a statement of indebtedness contracted by Bartholow, from which it appears that the indebtedness was $24,170.46, of which De Lagnel had paid $20,000.24. It appears, however, that no impression was taken of a portion of this statement: "Tayoltita, Mexico, *7th September*, 1866. D. J. Garth, Esq., *Treasurer La Abra S. M. Co.:* Dear Sir: As promised, I send you full and complete statements of the liabilities left unsettled by Gen'l Bartholow, and of the moneys received and expended by me, and of the property found at this place at the time of my arrival. I have already informed you that the Gen'l would not consent to make the inventory of property asked for by me and it was not done until some weeks after I took possession, I being absent and having no one to do it before a proper assistant arrived. It was, however, carefully compiled and allowance made for the sales between 1st May and the day on which taken. The tools I received myself. You may accept these papers in full confidence, all possible care having been bestowed on them..... As to your remark in reference to borrowing a few thousand upon the strength of good credit in Mazatlan, let me assure you that nothing can be done in that quarter. But little confidence is felt in American mining companies, and the present condition of affairs enhances the doubt entertained. Your company is about the last actually at work, the others having suspended for cause—and waiting for something to turn up. I have asked, and know nothing can be had. .....I am happy to inform you that the mill is fast assuming shape and giving promise of early usefulness. The ditch we are getting along with very well, and the wall, a solid stone one, being well under way, and the old portion thoroughly repaired. The place has a new appearance, although there are many improvements

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	I would like to make in time, after the work becomes self-sustaining. The fall to the ditch is greatly less than I had been led to believe, in the absence of instruments, a recent partial survey giving me *data* for this opinion. It will however be found sufficient, I think. The difficulties to contend with at this season in doing outdoor work, and especially masonry, are many and great, but the work is going on, not having been suspended tho' delayed. In reference to the mines I have to inform you that we are working in the La Luz, El Cristo, and the Arrayan with the came force as before. The first of these mines has not so far answered expectations, it yielding but comparatively little paying ore, requiring great labor and expense to get it out. The better vein in the cancero or cross-cut was reached in my absence and promises well. The Cristo, so far, gives better promise than the others, the metal abundant and good, showing largely and well in the vein, and lowest tunnel now being driven to connect with a shaft for draining and clearing the mine. The work on the Arrayan is too recent to expect much return as yet, tho' the miner in charge expresses the most lively expectations. He knows the mine and takes great interest and pride in the prosecution of the work, it having been attempted partly because of his knowledge of its worth and capacity. As yet the yield of ore from the mines does not fill the measure of our needs for the mills, but I reduced the working force (it being costly) in June, for the sake of keeping down expenses until the mill-work should be complete, or nearly so. I deemed it best to do so in view of the accumulation of ore, now heavy, though at the same time I did not know how large a part of it was worthless. I note your remarks about working rock less rich than that treated by Castillo. In reply, I would inform you that everything that is believed to contain enough to pay for packing down and beneficiating is saved.....I am, yours, with respect, J. A. DE LAGNEL." "Hacienda de la Abra, Tayoltita, 8 October, 1866. David J. Garth, Esq., Treasurer La Abra S. M. Co. Dear Sir:..... The work is progressing, the flume is completed, and we to-day, for the first time, let water on the wheel, in order to dress the face of some pulleys; but the ditch being incomplete, the supply of water, drawn from the arroyo, was wholly inadequate. The boiler is completed and in position, and the ditch is pretty well advanced; it is however, a heavy piece

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	of work, being about 2,000 feet in length that is to be walled, and much of that passes over ground filled with huge boulders that must be blasted away before the walls can be laid, or the grade given. From the river we shall have an ample supply of water, I think; though some work must be done on the dam and upper part of the ditch to make it properly available. The La Luz Mine proving unremunerative, and the small yield of ore being wholly rebellious, I transferred the force to the Cristo, in which the metal has increased in quantity and quality. It shows gold largely, and promises well, the mine being not so well opened as the other, being newer, requires attention now; as it is, or appears to be the mine that will be looked to, to supply the mill in great part. I doubt whether your expectations will be ever realized respecting the looked-for yield of metal from the mines, though sufficient may be had to repay well, I trust.....About the mill but little remains to done, and were it not for the ditch, we could speedily be at work. As it is, however, now that the walls have been so far laid, I deem it best to carry the thing to completion and put it in thoroughly good order now so that no after delays or suspensions may occur. I am troubled exceedingly that better success has not attended my efforts; but the rainy season has proved a sore trial to my patience, and been a serious drawback. I have striven to meet your wishes and expectations, and regret that my success has not been commensurate with my efforts to serve you and to discharge my duties. As to sending a successor, I deem it best to tell you that no money could tempt me to remain in the country longer than next 1st March.....I remain yours, with respect, J. A. DE LAGNEL." November 18, 1866, De Lagnel draws on Garth for $7,000. November 17, 1866, De Lagnel writes Garth from Mazatlan: Had nothing occurred to interrupt the work, I feel sure that at this time the mill would be in operation and the proofs at last being developed. Unfortunately, I was unable in Sep. or October to communicate with this place; and the ready money giving out at the hacienda, the workman (not miners) refused to continue, and left, thus bringing the ditch work to a standstill. I tried in vain in the country to obtain relief, but the doubt and distrust of American companies is so great that I failed utterly, and am here on the same mission. Yesterday I used every effort with the best houses, beginning with E. Q. & Co.,

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	but could affect nothing.....Laveaga I did not approach because of his Jewish nature, and the fact that he would exact guarantees I could not give, and mortgages of the property which I would be unwilling to execute. Don Juan Castillo has not yet arrived, tho' expected by every vessel; had he been here I should have endeavored to effect some arrangement with them; but the fates were adverse, and I could do nothing. Enclosed herewith you receive account current for the month of September and October; the balance of funds available at that date (31st Oct.) was $2,542.04; but it was inside of Mazatlan, and could not be made available. Consequently, the work on the ditch has been at a standstill, and I am now hastening to get back, to again a sufficient force and push it to completion. Since the date above referred to, accruing engagements and current expenses have absorbed the amount, and somewhat more. In the utter impossibility of obtaining aid here, I have, despite the tone of your letters, drawn upon you for the sum of seven thousand dollars ($7,000.) . . . . . I feel sure that you will experience no greater feeling of annoyance in receiving the intelligence than I do in communicating the fact; but after debating the thing long and carefully, I am satisfied that it is the best course to pursue. Longer delay in executing the work would be injurious, perhaps fatal; the only obstacle to our being actively engaged with the mill lies in the unfinished condition of the ditch; this can only be remedied by the use of ready money. I have therefore asked for it, from the only source to which I can look for assistance. Do not let the delay and cost already experienced cause you or others to lose heart; but bear awhile longer, and give an opportunity to make manifest the value of the metal and the mines. In all my letters I have written with a view to avoid exciting false hopes and ideas, and think it but right so to do, although I know that a more flattering tone would, perhaps, be more acceptable to many persons. I have done so because of several reasons; first, because it was my desire to avoid giving rise to expectations which might not be realized; and, again, because I did not feel sufficiently familiar with the subject to indulge too freely in comment. As to the circumstances mentioned in your letter, that certain parties had stated that the specimen ore had been "salted" for my especial benefit and deception, I can only refer you to the mention made of it in one

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	of my letters—I forget which; but that it was done *purposely* is more than I am prepared to say. If I understand the term as used by miners, the facts are not as stated. It is, however, true that, though I requested to have the second class ore of the Luz mine crushed for assay, specimens were taken from the first-class pile and prepared for my use; but I cannot say that it was designedly done. As already stated, the ore has been and is being repicked, and, though a large quantity is pronounced without value, I do not accept it as gospel truth, but will satisfy myself of the fact by trial. The mill itself may be pronounced completed, the last touches being given when I left. That there are faults in the planning is evident, but the work had advanced too far to correct it when I took charge. The best has been done and if the American machinery is what it is represented to be we need have no fear. If, on the other hand, it does not fulfill all that is claimed for it, then a few faults of design or execution will make but little difference. In getting into operation it will be my study to avoid loss or waste, and your suggestions will be duly considered. . . . . I cannot close my letter without noticing what you say in one of your letters lately received, viz, that Dr. Hardy stated that the mill was nearly completed when he left, and but little remained to be done. It only remains for me to say that either the Dr. failed in his observation sadly or forgot what he saw. The seasons are sufficiently well known to you to render a description of the difficulties under which we labored unnecessary. Trusting that my action will meet with your approval, I remain, y'rs, with respect, J. A. DE LAGNEL, Supdt." Dec. 15, 1866, de Lagnel writes Garth, enclosing an exhibit which shows that Bartholow received from and disbursed for the Co. $101,972. This evidently includes the price paid for the mines. "Mazatlan, Mo., *5th January*, 1867. Mr. D. J. Garth, *Treasurer La Abra S. M. Co.*: Sir: I hasten to acknowledge the receipt of your three letters of the 1st, 10th, and 20th of November, respectively, and in response will endeavor to place you in possession of all the necessary information to enable you to judge of our condition and prospects here. In your last letter—the 20th November—you there inform me that you can meet no further drafts upon you; yet I had already, about the 17th of November, drawn on you, as—for the sum of seven thousand dollars. I wrote to you fully by the same mail and hoped to be

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	able to send the letter *via* Acapulco, and thus reach you before the draft. In this I was disappointed, and my letter having gone *via* San Francisco will reach you at the same time that the draft comes in for payment. I trust that despite what you say you will find some way to satisfy the draft; for if it goes to protest, it will be of incalculable injury to the best interests of the Company. To me the consequences of such a thing would be both mortifying and most embarrassing; but to the Company's interest they would prove far more serious. It is, therefore, that I urge upon your serious consideration the interests at stake, and pray that a prompt settlement be given upon presentation. The prospect at the present is most favorable; the mill is in working order, the retort and furnaces ready for the separation and preparation of the silver for market, and the ditch so far advanced, when I left, that I expect to find it completed on my return. The stock of ore is large, and I believe good, though that remains to be seen. Of the success I have strong hopes, and the few rough notes on the back of your letter, made by Col. Gilham respecting the composition and class of ores, gives additional ground for hope. I have just received application from a German metallurgist, said to be both competent and reliable. I have written to him for testimonials, etc. He has been in this country three years, and has worked as amalgamator at the Dayton mills in Washoe or Nevada. I am here for the purpose of securing some articles needed for the store to keep up the stock and meet the wants of our people. Articles are scarce and prices high, because of a difference or difficulty between the merchants and the government respecting the duties to be paid for the goods ordered, and now in ships almost in sight. . . . . Respecting what you say about the contraction of bad debts, large or small, I would inform you that I have endeavored to carry out your instructions. As to the amount received from cash sale of merchandise it is very small, the number of people about Tayoltita being less than formerly. As those employed by me receive two-thirds of their earnings in goods they have no great need to purchase more. Then there are other points within striking distance which are endeavoring to attract the little trade there is, and so between a diversity of causes the receipts of cash are very small indeed. . . . .
	Don Juan Castillo is here, will go in time to Durango, and proposes visiting Tayoltita. He called on me, showed me

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	a letter he had received from you in response to one he had written you from Bilboa, Spain. He expresses great interest in the enterprise and success, but makes no disguise of the fact that he thinks one hundred thousand too much has been spent; that a different plan would have been his, namely, to work with improved battery to perfect the crushing, but to use no other American machinery; to use the arastras and patio as of old. He thinks that the mode. Under the circumstances, there is not the slightest probability of his taking a dollar's worth of stock or advancing a cent, unless he sees, with his own eyes, good grounds for the investment. American credit is poor, and American success as miners in this country is doubted, I find. The property at Guarisamey is in *statu quo*. The works have caved in during the last rainy season and I thought of putting some men in and working upon it to restore it so that you might get in, which is prevented now by the fallen mass. After we get to work, there is much work to do, to put the mines, the hacienda, etc., in that order which is desirable. Now we strive to begin to mill and yield, to be self-sustaining and do somewhat more if possible. I have, in my letter to Mr. Hearn, which is not official, stated that you had spoken about my remaining here. To this I desire to give an immediate and distinct answer. I could not under any circumstances or for any consideration consent to remain longer than the period contracted for. I desire to do rightly in all things, but regard for myself and my immediate family demand that I should be elsewhere as soon as possible. You will please therefore bear in mind what I long since communicated to you, viz.: my desire and determination to relinquish the position upon the close of my year as contracted for. To this course I adhere and shall expect to have a successor sent out or named. Mr. Cullins and Mr. Exall are both with me, the two mines are again at work or being worked, and I desire to make an addition of one or two more soon. The prospect from the mines is not so good as formerly, though they vary so constantly that I have ceased to permit myself to be readily elated or depressed by their condition. Enclosed I send the monthly papers. Yours respectfully and truly, J. A. de Lagnel, Supt." "Hacienda de La Abra, January 13, 1867. J. A. de Lagnel, Supt. La Abra S. M. Co. Sir: . . . . The ditch, dam, &c., will be entirely completed by Wednesday next, and I would have your instructions as to what to employ the masons upon

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	after that time, or discharge them. Hoping to see you soon, safe and well, and that you may experience no trouble on the road, I remain, sir, yours, most respectfully, Chas. E. Norton, Supt. *pro tem.* (All well here.)"
	January 18, 1867, De Lagnel writes to G. A. Nolte, stating that the mill will be ready within a week and desiring to engage his services as amalgamator and assayer. On the same date De Lagnel writes C. E. Norton, authorizing him to offer $150 to $200 per month to Mr. Nolte. January 30, 1867, De Lagnel writes Don Antonio Arraiza, asking if he would consent to take care of the Promontorio mine.
	"Mazatlan, Mexico, 5th February, 1867. D. J. Garth, Esq., Treasurer La Abra S. M. Co. Sir: I had hoped, and fully expected, to be able by this time to send forward some return for the outlay incurred by the company in the prosecution of its enterprise; but am disappointed in not yet having succeeded in bringing on the water in sufficient amount to drive all the machinery. I have therefore set to work upon the dam and ditch again, and by this time fully expect that it meets the requirements of the case. I shall immediately upon the completion of the work above alluded to put the mill in operation, and hope to be able to meet your expectations. I am in hopes to be able to export by authority, upon the payment of a certain percentage, the bullion, or a part of it, direct to New York. This I desire to do, believing that a few bars of the metal, to speak for itself, would be of more value to the Co. than the proceeds in coin. The supplies laid in during the past year being in great part exhausted, and a new supply being absolutely necessary to keep the mines, etc., going, and there being necessity for ready money in order to purchase the requisite supplies, I have drawn upon you for seven thousand five hundred dollars in favor of the Bank of California. This I would not have done had it been possible to do otherwise; but no assistance can be had in this country. I have satisfied myself on this point, and had only the alternative to stop operations or draw on you. Thinking that the latter would be the less objectionable course, despite the difficulties in the way, and believing that the mill will give it back more speedily in this than any other course to be adopted, I have acted as my best judgment dictated, and as I trust you will approve. The mines are looking better, yielding more and, I believe, richer metal, and the outside attendant expenses of building and improvements will be

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suspended as soon as the ditch and dam serve their purpose. In explanation of my presence here I desire to state that it was absolutely necessary I should be here in person to arrange for the funds needed and to purchase supplies, requisite at once. The country hereabouts is quiet, though perfectly stagnant, and exhausted by the past year's work. It is difficult to procure transportation, in consequence of the seizure, sales, or confiscations that have occurred within the period named. Trusting that my action may be approved, I remain, yours, with respect, J. A. de Lagnel, Supt."

"Mazatlan, April 10, 1867. Wm. C. Rallston, Esq., Cashier Bank California. Sir: I inclose herewith duplicate drafts for five thousand dollars (gold coin) in your favor against D. J. Garth, Esq., of New York. Against this amount I have drawn on your bank in favor of Echenique, Peña & Co., of this place. Please place the above amount, with premiums, to my credit, and oblige, yours, respectfully, J. A. de Lagnel."

This draft was not paid, as will appear hereafter. The aggregate of previous drafts by de Lagnel is $39,500, which, added to $101,972, disbursed by Bartholow, gives $141,472 as the total expenditure of the company in Mexico.

"Tayoltita, Durango, Mo., May 6, 1877. D. G. Garth, Esq., Treasurer La Abra S. M. Co.: Yours of the 24th April was received some days previous to the departure of Col. de Lagnel, who will no doubt reach New York some time prior to the reception of this. Col. de Lagnel will, of course, give you a full and detailed account of affairs as he left them, making it useless for me to make a further mention of them. Since his leaving I have, as far as I think safe, reduced the number of hands at the mines, keeping only a sufficient number to show that they are still being worked. I have a light force in the Cristo; no improvement in the metal. A light force in the La Luz; the metal about the same. The La Abra, which we started on a month or two since and which should have been worked long ago, is daily improving, and I am in hopes will yet give some returns. Mr. Cullins seems quite sanguine in reference to it. Col. de Lagnel will give you an account of the mill and its work, which did not exceed our expectations. The Col. was to have sent from ——, on his way through, a set of screens, much finer than the ones we had been using. I expect them down by next steamer. The new screens may be a great improvement on the old ones,

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at all events I will give them a trial, and with the best possible advantage. I have discharged the greater portion of the hacienda hands. The oven for roasting the ore, which was commenced before the Col. left, is nearly completed. . . . . Hoping that my next may be of a more cheering nature, I remain yours, with respect, C. H. Exall."

"Mazatlan, May 17, 1867. D. J. Garth, Esq., Treasurer La Abra S. M. Co. Dear Sir: . . . . . Since being here I have bought lightly of dry goods and groceries. My supply for the rainy season will be enough provided we work a limited number of hands, not knowing what may be your intention in reference to working the mines—whether with a large or small force, induced me to be on the safe side and to make my purchases as small as possible. . . . . In my next I can give you a more correct idea of the La Abra metal, as by that time the different *labores* which are now being worked will have undergone a better test. The screens arrived by last steamer. I will start the mill working the Cristo ores, or if that will not pay, will work the ore that does, as soon as I get back. Respectfully, C. H. Exall."

Office of Garth, Fisher & Hardy, Bankers, 18 New Street, New York, May 20, 1867. Mr. Chas. H. Exall, Tayoltita, Mexico. Dear Sir: I wrote as usual by last steamer, which left here on the 11th inst. You will see that Col. De Lagnel was expected by the steamer then about due, but he failed to come and we are yet without any advices from the mines later than 5th February last, dated at Mazatlan. At that date we were advised that everything, after long delay, was about complete and that we might soon look for good results from the enterprise, but that, the supplies being exhausted, it was found absolutely necessary to draw on us for $7,500. This draft arrived on 2d April last and was paid by one of the directors of the company, as it was considered that it was *surely the last* that would be needed, and we expected to return the money by an early remittance of bullion from Mexico. You can judge of our surpise and chagrin, when the last steamer arrived, instead of bringing Col. De L. with some fruits of our works, a draft for $5,000, gold, was presented for payment by Lees & Waller, drawn by De Lagnel, favor Bank California, and dated 10th April last, and of which we had not received any notice or advice whatever and have not yet received any. As I had so often and fully advised the superintendent of

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the condition of affairs here and requested him not to draw further, I was much surprised that he did so, and that without giving any notice or reason for so doing. As it was found impossible to raise the means to pay this draft, it was protested and returned unpaid, and you must make some provision for its payment when it gets back. I do trust that before that date you will have plenty of means to do so. I would now again repeat that I have made every effort possible to raise money here and have failed, and I have advanced all I can possibly do, and the other directors have done the same; the stockholders will do nothing, and it is probable the company will have to be sold out and reorganized. I must again urge you to use all possible dispatch in remitting us bullion and use the greatest possible economy in working. We wish you to give us very full and particular accounts of amount of ore on hand and amount you raise daily; the number of hands employed, cost, &c., and amount crushed, yield, &c., and the cost of beneficiating, and also a regular monthly statement of receipts and expenses. In this we earnestly insist on and hope you will not fail to do it. I expect Col. de Lagnel now daily. With best regards, I remain very truly yours,

D. J. GARTH, Tr."

(Indorsed:) "D. J. Garth, May 20, '67, to C. H. E."

"Office of Garth, Fisher & Hardy, Bankers, 18 New street, New York, May 30, 1867. Mr. Chas. H. Exall, Tayoltita, Mexico. Dear Sir: We wrote you on 20th inst., informing you that we had nothing from you or Col. de Lagnel, but that a draft drawn by Col. de L. from Mazatlan, 10th April last, had been presented, and there being no funds on hand, and no means here of meeting it, that it was protested and returned not paid; it is hoped by the time it gets back you will be prepared to meet it. Since my last letter Col. de Lagnel has arrived, and made known to us something of the state of things with you. I must confess that we are amazed at the results; it seems to me incredible that every one should have been so deceived in regard to the value of the ore, and I can but still hope that the true process of extracting the silver has not been pursued, and that before this time better results have been attained. Mr. de Lagnel expected that Mr. Sundel, of St. Dimas, would come to your aid soon after he left, and as this gentleman was said to be a practical chemist and metallurgist, he hoped some means would

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	be discovered to get at the silver; if, however, the ores are indeed worthless, I don't see that any process of working will be of any avail, and have the worst fears that our enterprise will, after all, be fruitless of good. In regard to the working of the ore, I would advise that you don't waste it by running it through the mill when you find that the yield is not satisfactory. I would suggest that you run say 2 to 3 tons of metal through the mill and see what the results are by the pan process, and then take a like amount of same sort of metal and crush it and grind as fine as possible in the pans, and then take it to the "patio" and beneficiate it and carefully compare the results of the trials; this is what I urged long ago, and think it well to do at once. I would advise that very frequent assays be made of the ores as raised out of the mines, and take out nothing that will not certainly be rich enough to pay well for working. All expenses must be cut down to the lowest point, and you and Mr. Cullins must try and bring this enterprise into paying condition if the thing is possible—at any rate, no further aid can be rendered from here, and what you need must come from the resources you now have. Neither must you run into debt; cut down expenses to amount you can realize from the mines. I cannot yet say what can be done in the future; no meeting of the stockholders has been held, and nothing done to pay off the debts here, now pressing on the company. For the present, all I can say is that the whole matter is with you; take care of the interests and property of the company; don't get it involved in debt, and advise us fully of what you are doing. Everything here excessively depressed and dull. With best regards to Mr. Cullins and yourself, I am, very truly yours, D. J. Garth. You must be very careful in regard to the tailings or "pulvios," and try and save them, and not let anything be wasted, for future use." [Endorsed—"David J. Garth. To C. H. Exall. May 30, '67."] "Office of Garth, Fisher & Hardy, Bankers, 18 New street, New York, June 10, 1867. Mr. Chas. H. Exall, Tayoltita, Mexico—Dear sir: I had this pleasure on the 30th ult., sending the letter by a gentleman going direct to Mazatlan. We have not heard from you since Col. de Lagnel left Mexico, but hope that you are well and getting along as well as could be expected. The account that Col. de L. gave us of the quality of the ores on hand was most unexpected and a fearful blow to our

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	hopes. We trust, however, that a fuller examination will show better results. We have in previous letters to you and to de Lagnel so fully informed you of the condition of affairs here that it is hardly necessary to say anything further on that subject. There is no money in the treas ury, and we have no means of raising any, and a few of us have already advanced all that we can do, and you have been advised that the draft last drawn by De L., on 10th of April, was returned protested, and I hope you will be able to take it up when it gets back, promptly. Everything now depends upon you, and to your judgment, energy, prudence, and good management of the resources in your hands, and we hope you will be able to command success. Very respectfully and truly yours, D. J. Garth, Tr." (Endorsed:) "D. J. Garth to C. H. E.," June 10, '67.
	"Mazatlan, June 11, 1867. D. J. Garth, Esq., Treasurer La Abra S. M. Co. Dear Sir: . . . My principal reason for writing now is to inform you that I will be compelled to draw on you by this steamer for three thousand ($3,000) dollars. I am compelled to have funds to lay in supplies, have not enough on hand to go on. Hoping this will not inconvenience you, I remain, respectfully, C. H. Exall, Actg. Supt. L. A. S. M. Co."
	On pp. 158 to 163 press-copy book will be found statements of expenditures for the months of April, May, and June, 1867. In the month of April the total expenditures, including the payment of a number of what are apparently quarterly bills, were $4,059.37. Of this sum the pay rolls of the mines La Luz and La Abra represent $227.65, and the pay-roll of the machinery and building $75.20. In the month of May the total expenditures appear to have been $1,842.66. The pay-rolls of the mines $272 84, and the machinery and building pay-rolls $101.69. In the month of June the expenses appear to have been $1,598.72. The following items appear: "Mule acct. paid M. Avalos, $3.97; La Abra mine memorias during month, $86.71; La Luz, $65; El Arrayan, $9.38; machinery and building, $49.56; El Cristo mine, $11.72.
	On page 164 the debts at Tayoltita are stated to be, on July 1st, 1867, $3,211.70,
	"Office of Garth, Fisher & Hardy, Bankers, 18 New street, New York, July 10. 1867. Care Echenique, Pena & Co., Mazatlan. Mr. Chas. H. Exall, Tayoltita, Mexico. Dear Sir: I had this pleasure on 30th May and 10th June last, after the return of Col. de Lagnel, and we had learned something of the condition of affairs in Mexico. In these, as well as in preced-

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	ing letters, you were fully advised of the condition of the company here; that there had been no funds in the treasury for a long time; that appeals had been made in vain for aid to the stockholders, and that the parties here who had made heavy advances to the company were anxious for its return, and refused to make any further payments; and that the draft for $5,000, drawn on me as treasurer by Col. de Lagnel, on the 10th April last, had been protested and returned to California, and, we suppose, to parties in Mazatlan who advanced the money on it, and who would have to look to you for payment of same; and we expressed the hope that, by that time, you would have taken out sufficient money to meet it and all other expenses, and hoped soon to have a remittance of bullion from you to aid in payment of the large indebtedness here. We have since received your letters on the 6th May, from the mines, and 17th May, from Mazatlan. We are also in receipt of the sample of bullion sent at same time by express, the value of which is not yet ascertained, having not yet been able to get it from the assay office, but hope to do so to-morrow. I fear, however, that it is worth but little more than what it cost to get it from the custom-house to Mazatlan and the expenses on it here. I am glad to hear that you are taking out *rich* metal, and hope it will turn out *valuable.* It seems almost incredible that all parties should have been so mistaken in the value of the ore now on the "patio," and I don't see how it is that Mr. Cullins and Mr. Sloan, old and experienced miners as they are, should have been so deceived as to the value of the ore. If it so much resembles rich metal, I don't see how you can tell the good from the worthless, except by actual fire assays. You should make these very often, and not go on and get out large quantities of worthless ore at great expense, thinking all the time it was rich metal. You will see, from all my letters, that no further aid can be given you from here, and that you must rely upon the resources you now have, and which, we think, ought to be ample to pay off the debts and to sustain you in current expenses, which you should cut down to the lowest possible point. I can but think that in the vast quantities of ores now on the grounds of the hacienda there must be a considerable am'nt of rich metal, and which you should beneficiate as soon as possible, taking care not to throw away or waste any that would pay to work. Of course, you keep an accurate amount of the cost, not only of raising and transporting

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	of the ore to the mill, but of the cost of crushing it and converting into coin or bullion, and as it is a matter of simple calculation, you can soon see if it will pay, or if it is a losing business. If it costs more than it comes to, the sooner we find it out the better, and the sooner we stop the better for all parties concerned. I have heretofore called your attention to this point, and wish you to give careful attention to it; and would request that you furnish us such full and detailed statements on this point that we can see for ourselves. Give us the full particulars of expenses, am'nt of ore raised and its value, and the results after beneficiating, etc. Be careful about leaks and expenses, cut off all that is possible, and watch very closely every department with that view. . . . . We hope the next advices from you will be favorable, and to learn that you will soon send us plenty of money to pay off the debts here. With best regards to Messrs. Cullins and Sloan, as well as to yourself, I remain, y'rs truly, D. J. Garth, Tr." (Endorsed: "David J. Garth, July 10, '67.") "To C. H. E." [Translation.]—"Tayoltita, July 11, 1867. To the Gefe Politico of San Dimas. Dear Sir: Your letter of the 10th inst. was received last evening, and from its contents I thought that no answer was expected and I had no intention to reply to it. This morning I was advised that the answer was expected by you. In respect to the compromise of which you spoke it was made while I was in Mazatlan, to last until I should return, and then I was to arrange with you as best I could. And if you had known the circumstances and causes which led to the paralyzation of the works it would have been apparent to you that it was not possible to do otherwise. I have offered to the operatives all the mines, to be worked on shares by the carga, and some are already at work, and desiring that with this there may be the most friendly understanding about this affair. I am your most humble servant. Charles H. Exall, Supt. La Abra S. M. Co." "Hacienda La Abra, July 13, 1867. D. J. Garth, Esq., Treasurer La Abra S. M. Co., 18 New street, N. Y. Dear Sir: . . . I am sorry that Col. de L's draft could not be paid, as its being protested, I fear, will injure the interests of the Co. both in Mazatlan and San Francisco. All your previous letters to me were to follow out the instructions given to Col. de L. I took charge of affairs at a time when the expenditure of money was absolutely necessary to purchase supplies for the

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	rainy season. Col. de L. left me with only moderate means to buy these various supplies, pay't of sundry bills which were coming due, and pay of the workmen who had accounts outstanding of three, four, and six months standing, (as I had the money in Mazatlan, deposited with E. P. & Co., and getting nothing for it, I settled up all time bills, getting a discount.) After these various amounts were considered, I saw that it was impossible to meet all obligations and have a sufficient surplus to keep me in operation during the rainy season, as it was absolutely necessary to have at the hacienda from —— to fifteen hundred dollars. Under these circumstances, I drew on you through B. of Cal. for $3,000. E. P. & Co., who have always bought Col. de L's drafts on you, did not want money on San F'co. I found it impossible to sell it to other houses, so sent it to Mr. Ralston, cashier B'k of California, with request to send me negotiable paper for it. This paper I could, of course, easily dispose of anywhere. On the strength of this draft I bought my goods, my bill at E. P. & Co.'s amounting to $577.38—4 mos. The other bills, amounting to $728.34, I bought for cash, which E. P. & Co. settled. In addition to this, I borrowed $500 cash to take with me to the hacienda. Before leaving Mazatlan, I made other purchases, making the whole amount which E. P. & Co. settled for, (including the $500 borrowed,) $1,252.94 cash. This cash was lent and paid for me on my promise of payment by return steamer, which is the one now coming. I informed you by an early opportunity of my intention to draw. I had not then heard from you in reference to Col. de L.'s draft; did not know it had been protested, which, if I had known, I certainly would not have drawn. My draft will, of course, be returned by coming steamer. I wrote you fully, when I was down last, informing you of my doings. When I received your letter by Sr. M., I was working the Abra, Cristo, Luz, Arrayan—a small force in each. Seeing the decided manner in which all further aid for the present was refused, and the injunction to cut down all expenses, necessitated my stopping off the whole force from the mines. As I had only a short time previous reduced the cash payment from one-third to ——, (which occasioned a stop for 8 or 10 days, which I was glad of, as it was so much clear gain and a little spat with the officials, which was gotten through without much trouble,) I thought it best not to stop off immediately, but prepare the

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	miners for the change. I let them work on one week longer, and during that week informed them of my intentions. They said nothing offensive, but, of course, were disappointed, as it would be a bad time for them to be without work—in the rainy season. Since stopping off we have been trying to make arrangements with the men to work by the carga. I have succeeded in getting four miners to work by shares and by the carga. They are working in the Arrayan and getting out some good metal. I hope to be able to keep them there. By doing so it will secure the miners in every way. Four mines is all that they had there before. Mr. Cullins thinks that in a short time he will be able to get more men to work in the other mines. We can do better with them when they are a little hungry. Working in this way is much better and attended with the least expense. They are provisioned for a week and charged with what they get. What metal they get out is assayed. If it assays an amount worth working we pay them in goods, (a little money now and then) about one-half its assay value. They, of course, will get out nothing but good metal, if it can be found. You see, in this way, we get the metal out free of cost, buy it at one-half its value, pay in goods, and make a handsome profit on them. As long as the men will work in this way, (which they will not do unless they get good metal,) it will be our best way of working the mines. We must not expect them to get out any amount, but what it is gotten out in this way, will pay for packing down from the mountains. I am privileged by the mining-laws of the country to stop working in mines four months in the twelve. As these mines have been steadily worked over a year, I can safely take advantage of this privilege. . . . . Sunday, 14th. Since the first of July I have been running the mill day and night. Being thrown on my own resources, and having no way to get money except from the metal. The returns from the mill I will not be able to get for some days. I have had the mill cleaned up, and everything in shape of metal put in vase to be melted. In the morning I start for Durango with what bullion I may have. I should like to be able to give you results, but will not be able to do so, as the metal will not be out of the vase before late at night. I start this early for Durango, hoping to be able to get back in time to go to Mazatlan to meet steamer. What returns I get for the little silver I will turn over to E. P. & Co. I hope to be able to get

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	along for a time, at least, without assistance, but if it can be gotten, I would like to know, for fear I will not be able to keep things with what little I have or may be able to get from the ore. The letter you seem so desirous for me to answer has not yet arrived. I expect it by next steamer. Will answer it if I get down in time. The rainy season has set in, although a very mild one, so far. We had no rain of consequence until 3d or 4th of this month, the river is just high enough to notice it. Our dam holds good yet, but much of a rise in the river will wash it away. The ditch at the upper end has been for some days overflowing. I fear before the season is through that it will be nearly destroyed, or at least rendered useless until heavy repairs are made. It is a poor piece of work. The officials are getting daily more troublesome; their demands are foolish and unjust, but we have to do the best we can with them and take things as quietly as possible. Inclosed, you have a full statement of the cash transactions. I had it made out as clearly as possible. I have just gotten out of bed, having been confined to it nearly all day with severe attack of ague and fever; feel very weak. We have all been more or less sick this season—some one of us down nearly all the time. I will send this down to M. to be mailed. If possible for me to get from Durango in time to go down to meet the steamer I will write you further. Mr. Cullins joins me in best regards, &c. Respectfully, Charles H. Exall." "Office of Garth, Fisher & Hardy, Bankers, 18 New street, New York, July 20th, 1867. Mr. Chas. H. Exall, Tayoltita, Mexico. Dr. Sir: The steamer is just starting & I have only time to say that your letter of the 11th, by private hand, has been rec'd, advising us that you had drawn on me for $3,000, gold. In former letters you will have learned the condition of things here, and that there is no money to pay same, and that former dr'ft of de Lagnel has been returned unpaid, and that you were urged to try and get along with what resources you had. These letters, no doubt, reached you in time to prevent your drawing, as no draft has been presented, and we hope by this time there is no necessity for doing so. I have no time to-day to write more, but hope you are getting on well; will write you fully as requested. I enclose several letters from y'r friend. Y'rs truly, D. J. Garth, Tr." [Endorsed—"David J. Garth, July 20, 1867.] "Mazatlan, Aug. 5, 1867. D. J. Garth, Esq., Treasurer of La Abra S. M. Co., 18 New st., New York. Dear Sir: I am in

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	receipt of yours of 10 and 20 of May and 10 of June. I wrote you from hacienda a day previous to my departure from Durango. I was, the day before, quite sick with chills and fever, and at the time of writing very much unwell; fear my letter was very imperfect and unsatisfactory, which please excuse. The trip to Durango consumed 11 days—the weather severe and roads rough. I enclose statement with remarks. When I returned from Durango I learned that the second day after my leaving the river had swollen to such an extent that it carried away a considerable portion of the dam and a portion of the ditch adjoining the dam. Also the immense rush of water down the Arroyo had done considerable to ditch, overflowing it and washing a large quantity of dirt in it. This mishap occasioned the stoppage of the mill. The ditch was cleaned out, and as the water in the river was too high to do anything to the dam, had to get water from Arroyo, which is sufficient to keep the mill in operation, and I hope it will last during the rainy season. This occurrence kept the mill idle for 8 days. The mill is now running on the same ore as I last worked. This run will finish it, and what ore to work on then I know not. There is, of course, some little good ore in the great heaps on the patio, but it will have to be closely assorted, and the greater portion requires roasting, which is a slow operation and costly. I will at any rate do my best. I am now working 20 men by carga, pay them not over $1.00 per week in cash. I *must* give them some little money. These are working in the Arrayan and on the dump of the Rosario. The Cristo is now idle, also La Luz and Abra. I can get no metal from them which will pay. The Cristo and La Luz, which have been worked for over a year, I am privileged to stop for four months. The Abra I must work; will put in some men and see what can be found. No further prorogues will be given, and although I have no fear of any one denouncing the mines, I must not leave unprotected. The ore which is now being gotten out will average per assays about $75 per ton, but it comes in small quantities. The returns I brought from mint I brought down to E. P. & Co. to settle money borrowed from them to buy goods; their bills will be due next month, and most of the returns from present run will have to be paid them. I hope to be able to settle up all the indebtedness of the company, both here and at the mines. E. P. & Co. are the only ones I am owing here.

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Col. de L.'s draft was presented to me here on yesterday. I told them I could do nothing. My draft, which I spoke of in my last, was returned. Please inform me what can or will be done. I can't see very far ahead in money matters. Can count on nothing positive from the ores now on hand. I leave to-morrow for the mines. All have been frequently quite sick. I manage to keep up better than the rest. Hoping that this and my last together will give you the information you require, I remain, respectfully, Charles H. Exall, Acting Sup't La Abra S. M. Co.

Acct. of run by mill from 27th May to 13th July, inclusive:

Amount of rock crushed. 89 tons, 1,676 lbs.		
Producing 131 marcos 5 ounces refined silver, yielding at mint	$1,672 29	
Less mint expenses	147 47	
		$1,525 82
Cost of chemicals used	665 81	
Labor	380 54	
Wood, 75 varas, 62 cents	59 38	
		1,105 73
		$420 09

During the above time the mill was stopped for three days to enlarge pulleys to settlers. By enlarging these pulleys it gives greater rapidity and its working is greatly improved. Three days, from the 10 to 13 July, were consumed in cleaning up. After 7th June there was not water enough to run both battery and pans, and at this season, a month previous to the rainy season, the water in the river is very low, which of course reduces the capacity of the mill just one half. The mill works well, the battery particularly. The great objection to the whole arrangement is its having been put too low down in the ground, thereby losing a fall of at least eight feet, which if we had would be of the greatest advantage, as we then could put sluices wherever they are needed and run the crushed ore to any part of the mill and patio. It would also enable us to save the tailings which we now lose. The ore mentioned in statement above is from Cristo mine, which is of the lot Col. de L. mill worked a little of. The assays which were made from samples taken from battery sluices, and which were made daily, vary in value; the greatest number gave $13.50 per ton (silver,) some others went $20, and again $22.50, but none over. The ore at the bottom of the pile seemed a little better than that on top. I have built a much

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	larger battery-tank, which catches all that wastes from the battery, which before was to a great extent lost. This I work over. The oven, which has been completed, I have not yet used, as I have worked no metal which required roasting. The boiler is a very indifferent one, very old style, and consumes a great amount of fuel but answers its purpose. The yield from the 89 tons in statement is small and the time great, when we compare result, expenses, &c., but take in consideration that ore of ten times the value of this would require no greater expenditure, no greater cost of work, &c. I am at present working some ore; will send a like statement at the end of the run or when the ore is exhausted. Charles A. Exall. Mazatlan, Mexico, Aug. 5, 1867." "Mazatlan, Mo., Oct'r 6, 1867. D. J. Garth, Esq., Treasurer La Abra S. M. Co., 18 New street, N. Y.: By this steamer I am in receipt of yours of 10 and 20 of July and 10 of August. I was much disappointed that my urgent demands for money was not favorably answered. I have complied with the requests in your various letters in reference to giving you exact information concerning affairs here. I now have to urge you to send me means. I have heretofore been keeping above water by using the stock which I fortunately had on hand; that is now entirely exhausted. I have neither money, stock, or credit. The latter I would not use, even if I had it, as in this country it is an individual obligation and no Co. affair. Now, you must either prepare to lose your property here or send me money to hold it (and that speedily) and pay off debts of the concern. I have worked as economically as possible, and have cut down expenses to the lowest point. Mr. Cullins speaks of leaving in a short time. Mr. Slone is still here, but doing nothing; he is awaiting news from the Co., expecting that they may decide to run the tunnel, when he would be able to get employment. If Mr. Cullins leaves I don't think that I will employ any one else. Mr. Slone I should like to retain, but as I am unable to give any guarantee for the payment of wages, fear to do so. Am owing him and the others. These payments *must* be made. I am working the mines with as few hands as possible. What little good metal is taken out amounts to almost nothing. The $5,000 draft of de Lagnel's was sent to a house in this place to be collected, with instructions to seize the property in case it was not paid. It troubled me a great deal, and I had much difficulty in warding it off. The concern

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to whom the draft was sent showed me his instructions, and also the original draft. Fortunately for the Co. there was a flaw in the draft; de Lagnel failed to sign his name as Supt. L. A. S. M. Co.; simply signed his name, making it an individual affair. This was the only thing that kept them from seizing the property here, as the company were not obliged to pay the draft. I have exhausted all the ore that I had on hand that was worth working. That which I worked was very poor and the yield small. The La Luz on the patio won't pay to throw it in the river. I have had numerous assays made from all parts of each pile; the returns won't pay. Amparos are not now granted, and mines are to be held only by working. I am compelled to keep men in mines which yield nothing, merely to hold them; this I can do no longer, as I have nothing to give the men for their labor, and must now take the chances and leave the mines unprotected. . . . . There is no difficulties about authorities, boundaries, or anything else concerning the mines and hacienda provided there is money on hand, and money *must* be sent. I hope that I have urged this point sufficiently, so that you may see fit to send me something to hold the mines. I should be sorry to see them lost on this account. Please telegraph me if you intend sending money. I fear that before I can get a reply to this that something may have occurred. Of course Col. de Lagnel informed you the conditions and terms on which I took charge of affairs here, which was the same that he was getting, and if I had known at the time what difficulty I was going to have in procuring means to keep the concern in motion I would have refused on any terms. I am much in need of money, as I wish to use it here. I will in a month or so draw on you through Wells, Fargo & Co., San Francisco, for $1,500. Please inform me by earliest opportunity that you well meet the draft. My health is very bad, and I fear is much injured since being here. Another summer I could not stand—hope you will soon send some one to relieve me. Cullins and all the others have been or are now sick. The weather has been almost melting. Please have mailed the enclosed letters. I hope that before this reaches you that some steps will have been taken to procure means to operate with. Trusting that you are in good health, I remain respectfully, Charles H. Exall, Act. Supt. L. A. S. M. Co."

"New York, Oct. 10th, 1867. Mr. Chas. H. Exall, Tayoltita, Mexico. Dear sir:

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	Since ours of 30 Sept., we have yours of 5th August, from Mazatlan, and note contents. We are deeply pained to find that you are not well, and that and are still without favorable results in the enterprise from which we all had such high hopes of success. I am very sorry to say that it is not possible to aid you from here, and that you must rely entirely upon the resources of the mines & mill to keep you going and to relieve you of debts heretofore contracted. It is not possible for us to direct any particular course for you, but only to urge you to try and work along as well as you can, cutting down expenses, and avoid embarrassing yourself with debts. The Bank of Cal. has again sent Col. de Lagnel's draft for collection, but it was not possible to pay same, and it will have to return to Mexico, and we do hope you will be able to make some satisfactory arrangement to pay it. I enclose letter from your friend. Very truly, yours, D. J. Garth, Treas'r." [Endorsed: "David J. Garth, 10th Oct., 1867."]
	"Mazatlan, Nov. 17, 1867. D. J. Garth, Esq., treasurer La Abra S. M. Co., New York. Dear Sir: Yours of the 30th Sept. is just in hand, and, contrary to my expectation, contains nothing of an encouraging nature. I expected, after having previously written so positively in reference to the critical state of affairs with me, that you would have sent me by this mail some means to relieve me from my embarrassing position. I have in former letters laid before you the difficulties under which I was laboring, and begged that you would send me means, and was relying much on the present mail, expecting that some notice would have been taken of my urgent demands for assistance to protect the property belonging to the company. To add to my further embarrassment, Mr. Cullins, whose time expired on the 16th inst.—since my leaving Tayoltita, (I left there on the 10th for this point)—intends to commence suit in the courts here for his year's salary. I am endeavoring to get him to delay proceedings until the arrival of next steamer, (don't know as yet if I will succeed in getting him to delay,) when I hope you will have seen the necessity of acting decidedly and sending means to prosecute the works and pay off the debts of the company, or abandoning the enterprise at once. Nothing can be done without a further expenditure of money. I am now doing little or nothing in the mines, and will, when I return, discharge the few men who are now at work in them. This

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I am compelled to do, as I have no money, and my stock is almost entirely exhausted, and I fear if money isn't very soon sent some of the mines will become open to denouncement. In my last letter I mentioned the amount required for immediate demands, $3,000, which must be sent out. By next steamer Mr. Elder, Sloan, and Cullins, if paid off, will sail for San Francisco. If not paid off, suit will be commenced, and as I have no means to defend the case, fear it will go against me. When these parties leave the hacienda will be left almost entirely alone, there being only myself, Mr. Granger, whom I am also owing, and I away much of the time. What you intend doing must be done promptly. Please send me Mr. Cullins' contract with you. The political state of the country just now is rather discouraging. I hope by the time this reaches you will have rec'd statement sent. Everything at mines is as it was when I last wrote, only more gloomy in appearance on ac't of not being able to employ the people and put things in operation. Please do something immediately, and inform me as speedily as possible. Yours, most respectf'y, Charles H. Exall, Act'g Sup't La Abra S. M. Co. Please forward enclosed letters."

"Mazatlan, Mo., Dec. 18, 1867. D. J. Garth, Esq. Dear Sir: I arrived here a few days since. Received by steamer yours of Oct. 10, informing me of your inability to send me the means to operate with and meet my obligations. I have in previous letters expressed the condition of affairs with me and begged that you would do something. Thus far I have been able to protect your interest here, but affairs have gotten to such a point that I am unable to do so longer without money. Mr. Cullins, who I informed you in a previous letter would leave, insisted upon doing so by this steamer. He demands a settlement, otherwise he will immediately commence suit, and had made preparations to do so. To keep the matter from the courts, I was compelled to borrow money to pay him off. The balance due him and the amount I had to borrow was $1,492. He has troubled me a great deal—has been exceedingly unreasonable. On yesterday the ag't of the B'k of Cal. informed me that he had rec'd the draft by the last steamer (which arrived a few days ago) and would immediately commence legal proceedings, and sent the draft on to the courts here. I am utterly unable to oppose them. First, I have no means, and, again, I am not your agent here, never having received a power

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	of att'y from you, which will be necessary, for I cannot act in these courts without it. The Bank of Cal.——, and will do something to recover the amount of the draft, and before the amount is doubled by the expenses—for God's sake—telegraph to and pay them. Matters of this nature once getting into the courts it takes large sums to oppose them. The first steps taken by the courts will be to send some one to the hacienda to see to and secure everything there. This will, of course, stop everything and make it impossible for me to protect your interests. For your own sake in the matter, pay them before things go further. My position is extremely embarrassing, and I know not what to do, and will have to be guided entirely by circumstances. I will, of course, do everything in my power, and may have to act in a very cautious manner, and will probably act in a manner which may occasion censure. Now, all I ask of you is to judge my actions justly and consider my circumstances, and believe I am doing the best for your interests. I am doing nothing at the mines and have only one person left with me. Please attend to this matter promptly. I am writing very hurriedly, as there is a war steamer just leaving for San Francisco, which will arrive there some days prior to the regular mail. I leave for the mines in a few hours. Attend to this at once and telegraph me. I remain your ob'd't serv't, Charles H. Exall." "San Dimas, Durango, Mex., Dec. 25, 1867. This day received of Sr. D. Miguel Laveaga a draft of five thousand dolls. ($5,000), drawn by J. A. de Lagnel on D. J. Garth, Esq're, New York. Not being in any manner connected with or responsible for said draft of $5,000, I refuse to recognize it. Respectfully, Charles H. Exall, Adm'r La Abra S. M. Co." "Mazatlan, Jan'y 24, 1868. D. J. Garth, Esq're, Treasurer La Abra S. M. Co. Dear Sir: I came down to meet steamer from San Francisco, in hopes of receiving letters from you, but received none, and now being entirely out of funds and stock and being sued by the ag'ts from B'k of California for the payment, have to let things take their own course, as I am unable to protect your interests here. In previous letters I have given you full and detailed accounts of affairs here, and such frequent repetitions I find useless and will simply state that I am doing nothing whatever at the mines and cannot until I receive money to operate with. I haven't means to protect now and they are liable to be denounced at any moment. I am owing

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	considerable and no means of paying. What is your intention? Is it to let your interests here go to the dogs? You have either to do this or send money out to protect them. If by next steamer I receive no assistance from you, I intend leaving for the East. I will go via San Francisco. Will from there telegraph you what further steps I shall take. I have been doing everything in my power to keep the Bank of Cal. from getting possession. Thus far have succeeded, but can prevent them no longer and fear they will eventually have things their own way. Mr. Cullins (who is not the man he was represented to be) left by last steamer. I have only one man with me now; am compelled to keep some one. Please telegraph me in San Francisco, care of Weil & Co., immediately on receipt of this. You can judge by what has been done in N. Y. and sent to me whether or not I may have left. Please let me know your intentions. Respectfully, Charles H. Exall. Please forward inclosed inclosed letters." "Tayoltita, Feb'y 21, 1868. Mr. James Granger. Sir: As circumstances are of such a nature as to compel me to leave for San Francisco and probably for New York, to inquire into the intentions of this company, I place in your hands the care and charge of the affairs of the La Abra S. M. Co., together with its property. You are invested hereby with all power confided to me, of course acting in all your transactions with an eye to the interest of the company. This will to you, should occasion require it, be ample evidence of the right possessed by you to act in their behalf. Very respectfully, Chas. H. Exall, Adm'r La Abra S. M. Co." Frederick Sundell testifies that he was intimately acquainted with Supts. de Lagnel and Exall; that neither were scientific or practical miners; that de Lagnel was a soldier, educated, he believed, at West Point, and had been an officer in the United States army up to the war of the rebellion, and subsequently in the Confederate army; de Lagnel knew a little of assaying. Deponent has heard Exall say that he never had entered a mine before coming to Mexico; that he had been employed in the dry goods house of Claflin, Mellen & Co., of New York. Deponent knew from Americans who worked for the Co. that before the company erected its reduction works it destroyed the old works, leaving only the refining vase and the patio. The mill commenced to work in February, 1867, before de Lagnel left. The machinery was brought to the mines at the same time as that of the Durango

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	Mining Co. by contractors. Deponent saw a few mules belonging to La Abra Company, but never heard of its owning a train. For explanation of the following letter see Heads V and XXVI. "Lone Pine, Cal., Dec'r 6, '77. Mr. Robert B. Lines, Atty. Dear Sir, yours of Nov. 23 came to hand yesterday, and in answer I have to say that I built most of the mill. I was the assayer. I worked all the ores worked by the La Abra Co. I think it doubtful if Mr. Exall worked any ores at all. I can testify truthfully as to what the ores assayed. No such assays as you say Mr E. testified to, Will be difficult to impeach my evidence. I have a Letter of Recommendation from Mr. Chas. E. Exall as to my Efficiency. Mr. E. was there when I left, but he was only in charge of the Hacienda. My Evidence would evidently defeat the La Abra Co. Yours truly A. B. Elder." "4. Lone Pine, Cal., Jan. 4, 1878. Robert B. Lines, atty., 604 F st., Washington, D. C. Dear Sir: Yours of Decr 23 '77 come to hand on the 2d inst., and contents noted. I do not believe that Exall was ever imprisoned while in Mexico. they the Le Abra Co. were not driven from the country nor from the Co's mines. 'Tis my impression that Exall left for the reason the Co. would not send money to pay his wages. another reason, there was nothing doing there and not mutch property to look after the ores that I condemned by assays were not worth a *cent* and I venture they are undisturbed to this day. the mill was very ordinary and $60,000 is *way over*. the serving of notices to pay forced loans were common. I owned and worked a fine mine 12 miles from Tayoltita. they often levied their loans we never paid them & were seldom mistreated never by the officials. the La Abra Co. evidently left Mexico because they were inexperienced men in mining and Don Juan Castillo got the best of them in the sale of the property at $50,000. they run reckless, spent money wild packed 300 cargos of or pr day to the Hacienda, said or was supposed to go 40 marks $320 pr tun. When I started the mill —the stamp—in an hour I was assaying I found everything terribly overatad there was about 250 tuns from the El Cristo mine that would barely pay expenses for working out of nearly 500 tuns from other mines that instead $320 pr tun give assay of $12.50. This was from the La Luz and La Abra mine. The El Cristo ores I worked assayed $11.50. I worked ten tuns and assayed when Col. de Lagnel became disgusted and sailled for New York. I worked all the El Cristo got my

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	wages out of the proceeds and left for the reason their was nothing more to be done. the mines were long ere this considered a failure. As to what de Lagnel would testify to would be in this shape—question what did the ores of the La Abra Co. assay. A. well I heard Mr. Elder my mill man say they went so & so. he is very candid and truthful but he cannot assay. I was the only man on the Hacienda whoo could assay and it was I whoo sunk the ship of the La Abra Co. Exall new nothing of assaying. it occurs to me I give him some Idea & some few working & lessons. When Gen. Thos J. Bartholow was supt. I think he must have been aware of the quality of the ores. if yon can find out C. H. Exall P. O. address I wish you would be kind enough to write me. hoping &c. yours Dear Sir. A. B. Elder." (For testimony of Wm. R. Gorham, as to the alleged deposition of A. A. Green, filed by the claimant, for the testimony of J. F. and Trinidad Gamboa, as to the deposition of the former in favor of the company, for evidence of the character of John P. Cryder, a witness for the company, for the testimony of J. M. Loaiza, as to his pretended deposition filed by claimant, for the letter of C. B. Dahlgren, charging Alonzo W. Adams with the forgery of his deposition, for further evidence of the character of Adams, and for depotion of Frederick Sundell, as to the good character of J. N. Manjarrez, Bartolo Rodriguez, and Fatricio Camacho, witnesses for the defense, see head I.)

VII.—INVITATIONS TO FOREIGNERS TO INVEST CAPITAL IN MEXICO.

IN CHIEF.

Wm. H. Smith, p. 35, claimant's book: While trying to sell de Valle's mines, in New York, in 1863, to capitalists, "I promised them protection, however, of the Liberal army and Republican citizens of Mexico, which promises I based upon the Liberal proclamations put forth by the agents of the Liberal Government of Mexico, and which were published in California, New York, and other parts of the U. S., by order of said Mexican agents, General Gaspar, Sanchez, Ochoa, Col. Alfred A. Green, and others."

John Cole, p. 56, claimant's book: "All the American companies with which he is acquainted in the said district of San Dimas, excepting only one, have been driven off and compelled to abandon their mines and mining property by the connivance

March 17, 1866, Supt. Bartholow writes to the tax collector at San Ygnacio that if certain taxes are insisted upon he will abandon the work "and leave the country until a time shall come when Americans (citizens of the United States) can find their security and protection from the Republic of Mexico which they are entitled to receive, and which the *minister plenipotentiary of the Republic of Mexico at Washington* (the capital of the United States) assured my Co. before we embarked in this enterprise we should have." This the only allusion to promise, of Federal protection in the correspondence of the Co. Mark its prodigious effect upon the tax-collector. April 10, 1866, Bartholow writes Garth that the result of the above communication was the reduction of the taxes of the Co. from three or four thousand to thirty dollars.

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of Mexican authorities and for the want of that protection which was promised them by the proclamations of the Mexican agents in California and other States of the American Union, and by the decrees of President Juarez himself; that under those decrees millions of dollars were invested in that part of Mexico; that he knows the protection offered Americans and other foreigners in 1865 and '66, and guarantees and pledges of protection made by Mexican authorities to Americans especially have been violated by said authorities, and that a decree from Pres't Juarez withdrawing the protection that induced said Americans to invest their capital there left them to the mercy of selfish Mexican citizens and authorities, as he has stated."

DEFENSIVE.

The defence denied that any such proclamations had been issued by the federal authorities of Mexico, as alleged by claimant.

REBUTTING.

Juan C. de Valle, p. 87, claimant's book: "Does not know what promises Pres't Juarez may have made to foreigners in the proclamations" in which he invites the investment of foreign capital. P. 88: Was induced to sell his mines for lack of protection.*

Jesus Chavarria, p. 96, claimant's book: "State whether you have read the proclamations of Benito Juarez, the Pres't of the Mexican Republic, duly and lawfully published during the years, from 1855 to 1866, in which proclamations he invited foreign capitalists to come to Mexico to develope the mineral and agricultural resources of the country, and offering, in the same proclamations, on the part of the authorities, all due protection to life and property, exempting certain articles pertaining to these branches of industry from Federal and State taxes." How have these promises been fulfilled by civil and military authorities towards La Abra and other American mining and agricultural companies in Durango and Sinaloa? "Ans. That he knows that the ideas of progress and for the development of all the branches of the public wealth, which were entertained and always expressed by the Republican Government in conformity with its treaty *of the 4th of July*,

* With what reason could Garth and Bartholow, Americans, expect to receive protection denied to de Valle, a Spaniard, despite the alleged proclamation?

VII.—INVITATIONS TO FOREIGNERS TO INVEST CAPITAL IN MEXICO.

Evidence before the Commission.	*New evidence offered by Mexico.*

1868, have, unfortunately, not been respected and carried out by the subordinate authorities, especially in the small towns, who failed to understand the high and salutary views of the Federal Government, which is the explanation of the unjustifiable abuses to which the Abra Co. have been subjected."*

Marcos Mora, p. 99, Claimant's book: Prefect Ygnacio Quiros, deponent's predecessor, and Arcadio Laveaga, who acted as prefect after deponent left, were neither of them "satisfied with the laws given by Pres't Juarez, inviting foreigners to come to the country."

Charles H. Exall, p. 204, Claimant's book: In reply to a personal application for protection, made by deponent in July, 1867, Gov. Zarate, of Durango, told him that the sentiment of the people "was opposed to the proclamations of President Juarez inviting foreigners there, and he thought it impossible to enforce their pledges of protection, exemption from taxation, and other obnoxious provisions."

T. J. Bartholow, p. 217, Claimant's book: "He, Smith, referred to the good prospect of protection by Mexican authorities there, who would, he thought, certainly obey the recent proclamations of the Mexican Government inviting foreign capital and labor there to develope the resources of that country, mineral and agricultural." P. 218: "One of the strong inducements to undertake this mining enterprise was the inviting and attractive proclamation of Pres't Juarez of the Mexican Republic, adopted by the State authorities of Durango and Sinaloa, offering, as they did, ample protection to foreigners and their capital, and exemption from taxes, port dues," &c.

Charles F. Galan. (Born in Spain; age, 43; lawyer; resides, San Francisco; has lived up to June, '72, in Mexico, as cadet, officer, lawyer, interpreter, editor, governor and chief justice of Lower California; judge, member and speaker of Assembly in that Territory; counsel for claimants against Mexico and U. S. Testifies, Jan'y 3, 1874, *in re* James Tobin *vs.* Mexico, before Ramon de Zaldo, not. pub., San Francisco, who certifies credibility.) P. 256, claimant's book: Deponent knows of a number of proclamations "issued during the last 15 years by the head of the Supreme Government, Pres't Juarez, and they were published by me at La Paz

*How the failure of local authorities to respect the provisions of the treaty of July 4th, 1868, should operate to expel La Abra Co. from Mexico in March, 1868, it would puzzle a better lawyer than Chavarria to explain.

VII.—INVITATIONS TO FOREIGNERS TO INVEST CAPITAL IN MEXICO.

Evidence before the Commission.

and at Mazatlan, I have no doubt, at the time, or soon after they were issued. The last of said proclamations was issued, I think, early in 1865, in which the protection of the Supreme Government and all the authorities were pledged to such foreigners in defence of their lawful rights, both of persons and property, with certain exemptions of taxes, port dues, and other immunities named therein, to be given to such foreigners as should accept said invitation and pledges, all of which were published to the world at the time by the journals of Mexico and the United States. These proclamations and thier promises to foreigners were endorsed and published by the authorities of Sinaloa and other Mexican states, which undoubtedly induced American capitalists—the claimants referred to among the number—to make said investments there and to risk their money and lives in said enterprises, which were, in the main, broken up and destroyed for the want of the protection so promised, which the authorities were, I believe, unwilling to grant." *

*It is enough to say of these pretended proclamations, that they were not produced in evidence, although if they had ever been published nothing would have been easier than to show copies of them.

New Evidence offered by Mexico.

VIII.—STATE OF THE COUNTRY AT THE TIME OF LA ABRA CO.'S INVESTMENT.

IN CHIEF.

Chas. H. Exall, pp. 19 and 20 claimant's book: The Imperialist troops and citizens and Liberal troops threatened and interfered with the Co. and captured its trains and property "during the progress of the war there." P. 22: "The political condition of Mexico was at that time very bad. It was in a state of war. A civil war was at that time going on in Mexico to some extent, and in addition to that Mexico was then invaded by French troops, who were endeavoring to support an Imperial gov't under Maximilian."*

Wm. H. Smith, pp. 34 and 35 claimant's book: Deponent tried to sell La Abra property in New York in Nov. or Dec. 1883.

*What would be said of a company of Englishmen who, in 1864, should have bought of the gentlemen from West Virginia interested in this claim a coal mine which the latter were unable to work because of the hostilities prevailing there, and attempted to carry on operations, using the men and animals of the country, between the armies of Sheridan and Early?

February 6, 1866, Bartholow writes Garth, "but after the Liberals took possession of the country and confiscated large numbers of mules, it was with the greatest difficulty that I could get any one to agree to pack at all; and had I not succeeded in getting military protection our mill would now be lying at Mazatlan."

March 7, 1866, Bartholow writes Garth, "every American I talked with and a number of Mexicans, including Messrs. Echegureu, Quintana & Co. advised me to store the machinery in Mazatlan until the country was in a more pacific state, but this did not suit me, and by harder work than I ever before performed, seconded and assisted by the gentlemen in our employ, we have surmounted all obstacles and we can assure the Co. that if the revolution does not now stop our operations, and I do not believe it will, their mill will be completed and crushing ore in June."

March 13, 1866, Bartholow writes Garth: "All my machinery, except about 10 cargas which will be here to-morrow or next day,

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"But failed to realize money to work said mines, and I also failed to sell the same at New York, which failure I attribute to the then disturbed condition of affairs in the Republic of Mexico. A war was then progressing there between the French, or Imperialists, as they were called, and the Liberals or legitimate forces under Pres't Juarez."

Wm. G. S. Clark, p. 64 claimant's book: In spring or summer of 1866 Mazatlan being in French possession no one was allowed to enter.

DEFENSIVE.

The defense did not deny that Mexico was engaged at this time in protecting herself from a foreign invasion. Nor was it thought necessary to combat the extraordinary proposition of the claimant that this unhappy state of affairs authorized it to establish an extensive mining enterprise between the two hostile camps, to trade from one to the other under the guise of and demanding protection as a neutral, and to charge one of the belligerents with the loss of its property, which it confessedly did not abandon until after the close of hostilities.

REBUTTING.

Juan C. de Valle, p. 88 claimant's book: Question 15th. "State whether it is true that you were induced to sell the said mines at this low price principally because you thought that your life and property were not safe in the district of San Dimas, because the local authorities did not give you and other foreigners due protection, on account of the depredations committed by the military authorities of the Republic, who with armed forces passed through Tayoltita and San Dimas during the war against the Maximilian Empire? Ans. That in fact he was induced to sell the mines in question for the reason stated in the question."

New Evidence offered by Mexico.

has been received as well as all the goods I purchased in Mazatlan. Considering that these effects weighed over 80 tons, and all packed through a country in a state of war, in less than three months, is quite good evidence of industry and energy."

April 10, 1866, Bartholow writes Garth concerning the robbery of Scott: "I also at the same time opened a correspondence with Gen'l Corona, through the Prefect, Col. Jesus Vega, at San Ignacio, who, by the way, is, I think, one of the most perfect gentlemen I have met in the country, and I am of the opinion that but for the turn in military affairs which occurred a few days since we would in some way or other have been reimbursed for the loss. But now I have no hopes whatever, and we may as well charge up $1,178 up to profit and loss. This military change to which I have made allusion is this, for several months Gen'l Corona, with a very considerable Liberal force, has occupied all the country around Mazatlan, frequently skirmishing with the French troops almost in the streets of that city, but avoided risking a general engagement until about 18 or 20 days ago, when the French sent out a force, as report says, of 1,000 men These Corona attacked and defeated with severe loss, capturing, it is said, some 5 pieces of artillery and a quantity of small arms. This success, of course, elated the Liberals and their friends very much. Many of them thought they would soon be in possession of Mazatlan, but the chances of war are very uncertain, for a few days afterward Lozada, an Indian, at the head of quite a considerable force of Mexicans and Indians in the Imperial service, came up from the south. Gen'l Corona attacked him and was repulsed, and in retreating met a large force which had been sent out from Mazatlan, the result was the total rout and almost entire dispersion of the Liberal army. Dr. Hardy and Mr. Griffith was in San Ignacio when the advanced guard of the retreating army entered, or rather passed through that place on their way to Cosala. They say the scene beggars description. The officials were at the time having a jollification over Corona's victory, which the entry of several general officers with the information of their great disaster changed immediately into a panic. The entire population of the place commenced to pack up what effects they could transport, and to leave as fast as possible. The entire population has probably left for fear of being killed by Lozada's Indians, and as the Liberals destroyed La Norio a few months since and confiscated a large amount of

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Evidence before the Commission.	*New Evidence offered by Mexico.*
	the property of its citizens, a good portion of which was carried to San Ignacio and consumed, it is thought the latter place will share the same fate under this state of affairs. Much as Col. Vega and Gen'l Corona might desire to make good our loss they are not now in a condition to do so. I learn that the Imperialists design to garrison several of the towns between here and Mazatlan, and restore their civil officers. Should they do so the road will be made more secure." October 8, 1866, De Lagnel writes Garth, stating that the servant sent with letters had been killed by the bite of a rattlesnake. "Had the boy gone down he could not have entered Mazatlan. The military operations going forward preventing all communication with the city." Nov. 17, 1866, De Lagnel writes Garth: "I was last down in August, being compelled to come and make an ineffectual attempt in October, but the military and political situation has been such for several months that great difficulty has been experienced. Unable to reach Mazatlan, I returned to the hacienda and waited until this opportunity to come down." . . . .

IX.—HOSTILE FEELINGS TOWARD AMERICANS IN DURANGO AND SINALOA.

IN CHIEF.

Memorial, p. 6, claimant's book: "An intense prejudice was constantly manifested by the authorities, both civil and military, and by the Mexican populace, against all Americans, and especially against those engaged in mining, including said Co. This prejudice was intensified by the belief that the Gov't of the U. S. intended to annex Durango, Sinaloa, and other States to their territory." "The authorities at San Dimas openly avowed their purpose to drive out all American mining companies and get their property."*

* Of the claimant's evidence under this and the following head it is to be observed that it does not tally with the probabilities as to annexation which might be supposed to commence with border States; nor with the admitted facts that neither the authorities nor people of Mexico ever possessed themselves of the company's abandoned mines, but that Granger, an English employee of the company, did denounce them; nor with the decisions of the Umpire dismissing the claims of the Carmen, (No. 720,) the Guadalupe, (No. 821,) and all the other mining companies who pretended that they were driven away from that part of the country; nor with the fact that the Durango Co. is still at work.

February 6, 1866, Bartholow writes Garth: "Don Juan Castillo has gone to Spain to return in September. He left in consequence of the presence of the Liberal troops in this vicinity, as he is very obnoxious to many men of that party."

September 7, 1866, de Lagnel writes Garth: "As to your remark in reference to borrowing a few thousand upon the strength of good credit in Mazatlan, let me assure you that nothing can be done in that quarter. But little confidence is felt in American mining companies, and the present condition of affairs enhances the doubt entertained. Your company is about the last actually at work, the others having suspended for cause, and waiting for something to turn up. I have asked, and know nothing can be had."

November 17, 1866, de Lagnel writes to Garth from Mazatlan: "Had nothing occurred to interrupt the work, I feel sure that at this time the mill would be in operation and the proofs at last being developed. Unfortunately, I was unable in Sep. or October to communicate with this place; and, the ready money giving out at the hacienda, the workmen (not

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Evidence before the Commission.

A. A. Green, pp. 26 and 27, claimant's book: Heard Mexican authorities, among them the acting prefect and judge of the first instance, say in April, 1868, that "they intended to drive out all American mining companies, as they had done with the Candelero Co., and get their mines and property." The feeling of civil and military authorities and citizens against foreigners in general and Americans in particular "was very bitter, and ended in open hostility and violence." "On several occasions in January, February, and March, 1868, in San Dimas district, I have heard Mexican citizens and authorities say that they meant to drive out and kill off all the Americans, and get their mines and property." "Several other American companies besides La Abra were driven off in a similar way." Deponent was himself driven off in December, 1868.

Wm. H. Smith, p. 33, claimant's book: Since the war closed, or at least since the latter part of 1867 or early part of 1868, "I could not remain there with safety to person or property." P. 36: "I was not exactly driven from my said mine, for the reason, as I was satisfied, that said Mexicans had very little to gain by my dispossession." "But I left as aforesaid because of said hostile feelings and jealousies toward Americans, as I felt that my life was insecure there."

James Granger, pp. 44 and 45, claimant's book: "The universal sentiment of all the Mexican people and authorities there was that all the mines of the country should be worked and owned only by the natives of the country." "Another American Co. in this neighborhood, at Candelero Creek, were attacked by an armed mob of Mexicans, two of their officers killed and others wounded, and the Co. forced to abandon their property and mines."

John Cole, p. 56, claimant's book: "All the American companies with which deponent is acquainted in the said district of San Dimas, excepting only one, have been driven off and compelled to abandon their mines and mining property by the connivance of Mexican authorities."

J. F. Gamboa, p. 63, claimant's book: "I know that one of the other American mining companies in that part of the country lost two of their principal employees, who were killed, and the rest were driven away from their work. I also know that of the many foreign mining companies in that district who commenced operations with good prospects only one remains, whose officers, I believe, are not Americans, but Englishmen, and probably

New Evidence offered by Mexico.

miners) refused to continue and left, thus bringing the ditch work to a standstill. I tried in vain in the country to obtain relief, but the doubt and distrust of American companies is so great that I failed utterly, and am here on the same mission. Yesterday I used every effort with the best houses, beginning with E. Q. & Co., but could effect nothing."

January 5th, 1867, de Laguel writes to Garth: "Don Juan Castillo is here, will go in time to Durango, and proposes visiting Tayoltita. . . . . Under the circumstances, there is not the slightest probability of his taking a dollar's worth of stock or advancing a cent unless he sees, with his own eyes, good grounds for the investment. American credit is poor, and American success as miners in this country is doubted, I find."

If a refusal to lend money be considered an evidence of hostility, it is to be feared that both the Mexicans and foreigners were bitterly hostile to American companies. The correspondence of La Abra Co. furnishes no other proof of bad feeling towards them.

Frederick Sundell testifies that his Co. (Durango Mining Co.) carried on operations in the same district as La Abra Co., and experienced no hostility on the part of Mexican authorities. Prefect Olvera was very friendly to Supts. Rice and Martin of the Durango Company, and manifested best disposition towards foreigners. . (For testimony of Wm. R. Gorham as to the alleged deposition of A. A. Green in favor of Co.; for testimony of J. F. and Trinidad Gamboa, as to the alleged deposition of the former; for testimony of J. M. Loaiza as to his alleged deposition; for evidence of the character of John P. Cryder; for letter of Charles B. Dahlgren, charging Alonzo W. Adams with the forgery of his deposition; for further evidence of the character of Adams, and for deposition of Frederick Sundell as to the good character of J. N. Manjarrez, Bartolo Rodriguez, and Patricio Camacho, witnesses for the defense, see Head I.)

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the share holders. From some unexplained cause, the American mining companies who have worked in this part of Mexico have not met with much opposition in *investing* their large capitals and in putting up their machinery, but they have been compelled to leave the country before realizing anything from their undertakings."

James Granger, p. 63 claimant's book: "I know the fact that the feeling there on the part of citizens and authorities is intense and hostile to American citizens mining in that district."

Francis F. Dana (born in Athens, Ohio; age 48; miner; resides in Mazatlan; was Lieut. Col. in Mexican Liberal army in war with French; accompanied A. W. Adams from Mazatlan to San Dimas as interpreter and chief of guard in 1870; testifies, May 27, 1870, before U. S. Com'l Ag't Sisson at Mazatlan, who certifies to credibility.) P. 69 claimant's book: "After being in San Dimas but one week I came to the conclusion that it was not safe for any citizen of the U. S. of America to even attempt mining operations in that district with the slightest hope of security of life or property, nor with any thought of protection."

John P. Cryder, p. 75 claimant's book: In the winter of 1868 heard Judge Soto say that he was in favor of driving away all the Gringo companies. Judge Perez said "that the mines of Mexico belonged to Mexicans, and that his Government had no right to permit the Gringos, as he called Americans, to come here and carry off all the best of their metals."

José M. Loaiza, p. 81, claimant's book: Heard Guadalupe Soto say in the spring or summer of 1868 "that the Mexican Gov't had no right to permit the Gringos to hold the best mines in the country; that the mines in Mexico belonged to Mexicans, and that all the ——— foreigners should be driven out of the country and the mines be given back to the Mexicans."

DEFENSIVE.

Camacho, p. 131, and other witnesses for the defense, down to Ygnacio Manjarrez, p. 135, testified that neither the Abra Co. nor any other had been molested by the populace or military of the State. American citizens are now working the Candeleria and Bolaños mines with no reason to complain of the authorities. They enjoy the same protection as Mexicans. Americans have been held in high esteem by the people of the country as advancing their interests. *James Granger*,

New Evidence offered by Mexico.

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Evidence before the Commission.	*New Evidence offered by Mexico.*
p. 137, stated that Prefect Mora meddled with the Co., and Judge Perez arrested the superintendent. "As far as the other authorities and people of the district are concerned he is not aware of anything they ever did against the American companies." Knows that American citizens were highly esteemed by the people. *Camilo Contreras*, p. 169: Heard of Green's arrest, but does not remember the cause. The mine of San Luis "was taken from him in consequence of its being reported against by the Messrs. Laveaga as being in ruins." *Paz Gurrola*, p. 169: Green was arrested on account of disrespect to Judge Camilo Perez, "who required him to pay an amount that he owed for the care of one of his animals." His mine was reported against by Messrs. Laveaga as being in ruins, and "proceedings in the case having been submitted to a competent authority judgment was pronounced in favor of the informers." *Martin Delgado* and *Gil Ruiz* corroborate Gurrola's statement.	
REBUTTTING.	
Juan C. de Valle, pp. 86 and 87 claimant's book: Lived at San Dimas and Tayoltita from 1846 to 1865. In 1856 the town of San Dimas mutinied against deponent, murdered his brother, left deponent for dead, pillaged his house and the authorities were unable to prevent it. The Mexican Gov't agreed to pay the loss. At this time deponent was working some of the mines subsequently sold to La Abra Co. The want of protection in those sparsely populated places was one of the principal reasons deponent had for selling. "As deponent left San Dimas in 1865, when he sold the mines, he does not know what protection may have been given to" foreigners. Asked whether he had heard it "publicly reported that Marcos Mora, who was *gefe politico* at San Dimas in 1866 or 1867, was strongly prejudiced against La Abra Silver Mining Co. and Guadalupe Silver Mining Co. and endeavored to drive them out of the country, and whether Macario Olvera, who was *gefe politico* in the same district in 1868, was of the same way of thinking? Ans. He answers this question in the affirmative as far as relates to Marcos Mora, as he knows that he was very badly disposed toward the company in question; that he even went so far as to say to the deponent that it was necessary to break these companies up and drive them away from there; that with regard to Macario Olvera he knows nothing." P. 88: Q.	

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Evidence before the Commission.	*New Evidence offered by Mexico.*
"State whether it is true that you were induced to sell the said mines at this low price principally because you thought that your life and property were not safe in the district of San Dimas because the local authorities did not give you and other foreigners due protection on account of the depredations committed by the military authorities of the Republic, who with armed forces passed through Tayoltita and San Dimas during the war against the Maximilian empire? Ans. That in fact he was induced to sell the mines in question for the reason stated in the question." *Marcos Mora*, p. 99, claimant's book: Knows that Ygnacio Quiros, deponent's predecessor as prefect, and Arcadio Laveaga, who acted as prefect after deponent left, "were unfriendly to the Company La Abra, and towards the other Americans residing in the department; that neither of them were satisfied with the laws given by Pres't Juarez inviting foreigners to come to the country, and although those persons might have obeyed them, it was against their own wishes; that they not only showed their unwillingness to do so, but in various ways tried to molest them and force them to leave the place." P. 100: "Deponent cannot affirm that the local authorities at San Dimas expressed themselves against the other American companies who resided outside of that district, nor that they sought for the expulsion of any other except the Abra company, and they gave as their reason for this that the Americans who went to that district wanted to take their mines and lands." P. 104: Has heard from report of the killing of employees of the Carmen Co. at Candelero, and its expulsion by the local authorities, among whom was one Salazar *Chas. B. Dahlgren*, p. 115, claimant's book: Should like to own La Abra mines "if it were possible to work them and to secure proper protection from the local authorities, which I think improbable, if not impossible, in Tayoltita." P. 117: "Q. 13. How many foreign companies were there doing business in mining in San Dimas district in 1866 and 1867, and how many are now left in the district of San Dimas? Ans. There were a large number of American mining companies in that district in the years named, but only the Durango Co. now remains. Q. 14. How is it that your Co. can remain there without disturbances? Ans. We have had disturbances and difficulties, but we have found it necessary to submit to all exactions, whether lawful or unlaw-	

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Evidence before the Commission.	*New Evidence offered by Mexico.*

ful, which makes it to the interest of the authorities to keep us there. We have found out how to manage and interest them; otherwise I suppose my Co. would be compelled to leave like the others without a doubt."*

Pedro Echeguren, p. 125, claimant's book: "In that time, as well as in the present period, I think it may be said that very little or no protection was so extended or offered to foreigners, either personally or to their interests. In the destructive state of things in which generally in this country such inhabitants, with few exceptions, happened to be personally molested, either by the rebel parties or by the legal authorities, both of them helped themselves freely to the property of Americans and other private parties." P. 126: "Private interests bear the expense of the Federation army." "The different sums of money we have disbursed to said military authorities upon such loans or 'prestamos' from 1865 to 1871 exceeds $150,000, and during the past year $90,000; making an aggregate of upwards of $240,000. This includes all prestamos, or forced loans, from my house during the seven years last past, as shown by the books of my house; of which amount the rebels or pronunciados have taken from us $31,000, which the legal constituted authorities refuse to recognize by their usual promises to pay."†

Ralph Martin, p. 208. From Sept., 1868, to Oct., 1870, lived at the hacienda of the Candelaria Co., near San Dimas; p. 214 claimant's book: "The murder and wounding of a number of American officers of the Carmen Mining Co., a few miles distant from San Dimas, and the breaking up of its mining enterprise also, in consequence, the driving away of its American employees, and other similar disturbances of Americans in that mining region, named in the question, were matters of common talk there after I went to San Dimas, and some of those disturbances, molestations, and murders were publicly well known and commented on freely by Mexicans there, and I believe them to be true." There was no protection to foreigners, "excepting only in cases where the profits of the mining enterprise were shared by said authorities."

T. J. Bartholow, p. 223, claimant's book: The prefect, Laveaga, "was a bitter enemy

*Suppose this statement to have been true, is it likely that it would have been made by any reasonable man who expected to continue his operations?

† See note under Head XI.

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Evidence before the Commission.	*New Evidence offered by Mexico.*
to all Americans, and opposed to their working the mines of Mexico." *Alonzo W. Adams*, p. 245, claimant's book: The Candelaria and Bolaños mines, mentioned in defensive evidence, "are the mines owned and worked by the Durango Mining Co., of which Co. the Supt. was Charles B. Dahlgren, whose depositions, made Sept. 18, 1872, is on file as a part of the claimant's evidence in this cause, and which deposition gives the reason why said foreigners were not permitted to work the mines referred to." *Carlos F. Galan*, p. 254, claimant's book: Deponent knew from hearsay, and as editor of a newspaper, from conversation with the sufferers, and with officers committing the outrages, that foreigners were subjected to prestamos, seizure of supplies, and other exactions during the war and up to 1872, when deponent left the country. Among these were Echeguren, Hermanos & Co., who paid prestamos to nearly a quarter of a million of dollars; also Echenique, Peña & Co., Careaga & Co., Storznel, Bartning & Co., Melchers & Co., John Naleke, Kelly & Co., Trinidad and San José Silver Mining Co., John Middleton, Chas. Bouttier, George Briggs, Mr. Elliott, Alfred Howell, the Carmen Mining Co., Daniel Green, John Cole, La Abra Silver Mining Co., and James Tobin. (For Avalo's, Dahlgren's Exall's, Martin's, Bartholow's, and Adams' opinions of witnesses for defense, see Heads I and XXVI.)	

X.—THREATS AND SPECIAL HOSTILITY TO LA ABRA COMPANY.

IN CHIEF.

Memorial, p. 6, claimant's book: The Mexican authorities and citizens believed that the U. S. intended to annex Durango, Sinaloa and other States, "and it was generally reported and believed that La Abra Co. was assisting in this purpose. The property of the Co. and the persons and the lives of its employees were threatened by the authorities and the people." The sup't was imprisoned, protection refused, acts of violence committed and encourged by the authorities, employees alarmed, mule trains and provisions seized, ores carried away, and an employee killed by the Liberal forces. "Your memorialist charges that one motive of this persecution was to compel the Co. to leave and thus permit the Mexicans to obtain possession of their valuable property."

Chas. H. Exall, pp. 18 *et seq.*, claimant's

The correspondence of the Co. fails utterly to show that any threats were made, or any special hostility was exhibited by the Mexican authorities or people towards the Co. The letters which have appeared under Head II., touching the frequent extensions of title to the Co.'s mines, will, when taken in connection with those printed under Heads XI and XII, show clearly that the feeling of the Mexican authorities, if their official actionbe taken as an evidence, was exceeding friendly towards the Co.

Exall in his letter to Garth of October 6, 1867, says "there is difficulties about authorities, boundaries, or anything else concerning the mines and hacienda provided there is money on hand, and money *must* be sent." And in writing to Granger from New York, May 8, 1868, he says "My kind regards to Slone 'Manuelitta'—I think that's the way to spell the

X.—THREATS AND SPECIAL HOSTILITY TO LA ABRA COMPANY.

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book: The company suffered intolerable annoyance, molestation, interference and hostile feeling on the part of the citizens and authorities, civil and military, local and national. The Co. was accused "of meanly coming there for the purpose of purloining the silver and gold of Mexico with which to enrich the United States, and finally of stealing the States of Durango and Sinaloa from Mexico by annexation of the same to the United States, and this feeling and prejudice soon took an active hostile form and our lives were threatened by both the citizens and troops of the legitimate government of Mexico under Pres't Juarez, its present chief magistrate." "The Imperialist soldiers and citizens sympathizing with their cause also threatened and interfered with us for the reason, as they stated, that we were in sympathy with the legitimate Government of Mexico under Pres't Juarez. Said interference occurred at various times during the whole progress of the work while I was sup't." pp. 22 and 23: "The said Co. was at all times loyal and faithful to the interests of the legitimate Government under Pres't Juarez." "We were all anxious for the overthrow of Maximilian, the expulsion of the French troops and the re-establishment of peace under Pres't Juarez and the Republic." "The report circulated to the disparagement to the Co., that the Co. or any member of it or person acting for the same intended to advocate or aid the annexation of Durango or Sinaloa, had no foundation in fact." P. 20: "Q. No. 9. Why was nothing further done by you and by said Co.? Ans. Because I did not dare to return and resume operations there. I was and am satisfied, that I could not do so with safety to the life of myself or my workmen, or with safety to the property of said Co., such was the hostile feelings or prejudice against said Co. as citizens of the U. S."

A. A. Green, p. 25, claimant's book: "In January, 1868, at San Dimas, I heard some Mexican citizens in the presence of the Juez of that place declare that they would kill or drive away all the men of that Co., and the threat was applauded by the Juez." P. 26: "The same remarks, or similar remarks as those applied to the Candelero Co., and by the same authorities at San Dimas, were made as to the driving out of La Abra Silver Mining Co. This in April, 1868." "The report was industriously circulated that the object of the Americans, and especially La Abra Co., was to annex Durango, Sinaloa and other border States to the United States." The report was false.

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name; Guadalupe's family generally, Cecilia, and Tayoltitians generally. How are you and Cecilia now?"

In Loaiza's deposition herewith transmitted, he states specifically that there was no hostility to the Co. on the part of Mexican authorities, but that it received full protection and safeguards from the military.

Frederick Sundell testifies that his Co. (The Durango Mining Co.) carried on operations in the same district with La Abra Co.; that he never heard of any hostility to the latter on the part of Mexican authorities. Had there been such hostility deponent must have heard of it; that Supt. Exall and Prefect Olvera appeared to be great friends. Deponent has heard that Exall offered many courtesies to Olvera, such as breakfasts, serenades, etc.

(For testimony of Wm. R. Gorham as to the alleged deposition of A. A. Green, filed by claimant, for evidence of the character of John P. Cryder, for testimony of J. M. Loaiza as to his alleged deposition, for letter of C. B. Dahlgren charging Alonzo W. Adams with forgery of his deposition in behalf of claimant, and for deposition of Frederick Sundell as to the good character of J. N. Manjarrez, Bartolo Rodriguez, and Patricio Camacho, witnesses for the defense. See Head I.)

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Wm. H. Smith, p. 33, claimant's book: Is satisfied that La Abra Co. could not have remained after the close of the war with safety. *George C. Bissell*, (born Wallingford, New Haven Co., Conn.; age 40; miner; temporary residence San Dimas district, Durango; has lived there two years; permanent residence San Francisco. Testifies March 11, 1870, before U. S. Com'r Whitney, San Francisco, who certifies to credibility.) P. 39, claimant's book: It was common report that La Abra Co. favored the annexation of Durango and Sinaloa, and to this deponent attributes in part the hatred and prejudice which he knows existed on the part of the Mexican authorities; believes such report to have been unfounded. P. 39-40: Judge Soto had a law suit against the Co. about the title of a hacienda, which the company won. This caused bitter feeling on the part of Soto and his son-in-law, the Prefect Olvera, who influenced both *national* and local authories to get rid of the Co. "at all hazards."* *James Granger*, p. 44, claimant's book: "It was the daily, almost hourly, annoyances and interruptions. Every pretext that could, by any means, be made the basis of a suit or exaction was availed of. The rich mines and large expenditures of La Abra excited the cupidity of the authorities, and they determined to get rid of this Co., and drive them from the country." Pp. 44 and 47: Has heard this determination expressed by Judges Perez and Soto and Prefect Mora, although (p. 47) Judge Soto expressed kindly personal feelings for General Bartholow. *Matias Avalos*, (Born near Tepic, State of Jalisco; age 35; mail carrier; from August, 1865, to March 20, 1868, was packer for La Abra Co., at Tayoltita. Testifies May 23, 1870, before U. S. com'l ag't Sisson at Mazatlan, who certifies to credibility, Carlos F. Galan, translator,) p. 50, claimant's book: Judge Perez and Judge Serrano, his successor, "both said they would get rid of La Abra Co., and have their mines and property for the Mexicans who were out of employment. They said these mines are too good for Gringos. They can't keep them, or take away their ores." *John Cole*, p. 57, claimant's book; Exall	

* How strange it is that Judge Soto should have had such influence with the administrative officers, both local and national, (we now hear for the first time, and with great surprise, of the hostility of the latter,) as to induce them to persecute this inoffensive Co., and yet that he should have been unable to secure from his brethren of the judiciary a favorable decision of his law suit.

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did not dare defend his ores from robbery, "as his life was threatened if he had attempted it; that deponent has heard those threats made by the official prefect of San Dimas, Macario Olvera." Pp. 57 and 58: In Oct. or Nov., 1868, Prefect Alvera told deponent that La Abra Co. was "compelled to leave there in the spring of 1868, and that if they come back he, the said prefect, would have driven them off again." Deponent heard, and it was common report, that Judge Camilo Perez boasted that he had contributed to driving the Co. off. Their conduct in March and April, 1868, proved conclusively that the authorities never intended to permit the Co. to realize. They were jealous of the splendid prospects of the Co. When deponent, at one time, consulted Olvera "by request, as to the safety and protection of said Co. should they attempt to repossess themselves of their mines, as they thought of trying to do," Olvera said, "Let them dare to return and I will fix them so that they won't get away quite so safely as before." "Those unkind words made an impression upon his mind never to be forgotten, and deponent advised one of the members of La Abra Silver Mining Co. of the same soon thereafter."†	
John P. Cryder, p. 75, claimant's book: Has talked with Judge Soto, and heard him and Perez express hostility to Co. The latter said "he would run that Abra Silver Mining Co. out of Mexico." "The people, he said, would take care that the ores of La Abra mines don't go away in the hands of these Gringos, and he, the judge, Nicanor Perez, would see that the people of Mexico shall have the benefits of these Locos' (fools') investments." Deponent communicated these remarks "to some of the American employés there. This was in February, 1868. I afterwards told Mr. Exall of the threats of the Juez." Also heard Prefect Olvera, in "February or March, 1868, say that La Abra Silver Mining Co. could not stay in that district; that it would be impossible for them to do so. He did not say positively what course he would pursue; but he said that the authorities were determined to get rid of that Co., and they could not stay there and work those mines. He said it would be better for that Co. to give up their mines and leave the country "before any	

† Mr. Cole does not say at whose request he plead with Olvera for permission for the Co. to return, or to whom he reported Olvera's unkind refusal. It could not have been at the instance of Exall, who was satisfied, from sad experience, that the Co. could never again work the mines with safety.

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accident should happen," for which, he said, "the prefect would not be responsible." The prefect has great power. A man must possess great nerve to oppose him. These declarations were approved by several Mexican bystanders. "My suspicions were at once aroused that Sup't Exall might be in great danger, and that other 'accidents' might happen, and I told Mr. Exall the first time I saw him after this conversation I have related with said prefect. It was rumored, and, indeed, reported by nearly all Mexicans at Tayoltita and San Dimas," for weeks before abandonment, that La Abra Co. and its officers were in favor of annexing Durango and other western States to the American Union. "There was no truth in the report circulated so industriously by Mexicans that the Co. or any of its American employés were in favor of annexation." "I was satisfied that said Co. could not stay there and work their mines with safety to life or property."

José M. Loaiza, p. 79, claimant's book: "I know that it was frequently stated by the Mexicans, and the authorities of San Dimas and the neighborhood, in 1866 and 1867, while I was working for the Co., that they would drive the Co. away, "and obtain the benefit of their expenditures. I frequently censured my countrymen when I heard these threats, and they often answered me that they would kill me or drive me away with the Americans if I took their part or talked about the matter. I heard Marcos Mora, who was at that time Gefe Politico of the district of San Dimas, say that he would drive the La Abra Silver Mining Co. away from the San Dimas mines. This conversation took place at Tayoltita, near the reducing works and I believe it was at the end of 1866, or the beginning of 1867." Heard Soto's stepdaughter say she had heard Mora make these threats; also her stepfather. That Soto would have aided in driving the Co. away during Bartholow's superintendency, but for his strong friendship for Bartholow. That after Bartholow left, Soto "strongly favored the plans of the Gefe Politico of the district, to drive the Co. away, take possession of the property, or place Mexicans over it. This lady yesterday, here in Mazatlan, again repeated to me just what I have stated." P. 80: "The prefect, Olvera, was killed a few weeks ago at San Dimas. "He was a great friend of Judge Soto, and I have heard him tell Olvera, the prefect, that they would never allow La Abra Silver Mining Co. to renew their mining operations in the district. This occurred, it

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appears to me, during the rainy season, or summer of 1868, on the road near San Dimas, where I met him on horseback." "In the spring or summer of 1868 (or 1869) I heard Soto say he was glad the Co. was out of the country."

Chas. Bouttier, p. 82 claimant's book: Has heard Mexicans boast of helping to drive Co. away. Heard Olvera say, either in Dec., 1867, or Jan'y or Feb'y, 1868, that it would be impossible for the Co. to stay. "It was the report at Mazatlan that said Co. was to be driven out of the mines which caused me to visit Tayoltita with a view to the purchase of them before any other party should get hold of them, either by purchase or denouncement, and when I made the acquaintance of Mr. Exall, the Supt., that winter, I very soon satisfied myself that they would be driven away sooner or later, and I then went to see the prefect, to see what would be done, and he told me that the authorities there did not like La Abra Co. nor its officers, and that the Co. had better leave there soon or it would be driven away." *

DEFENSIVE.

For the evidence of Camacho Manjarrez, Granger, &c., for the defense, on this point, see preceding head. *Leandro Molina*, p. 144 claimant's book: The company had the fullest protection; "when the war with the French was going on no Mexican had a safe passport to go and come, while these Americans did have such pass both to Mazatlan and Durango." *Nuñez* and *Romero* said there was no hostility to or interference with the Co. *James Granger*, p. 147: "Does not know that the civil and military authorities or the inhabitants of the town had any ill feeling against the Americans because they believed the latter to be working the mines, thinking the United States Government would take possession of the States of Durango and Sinaloa," nor that acts of violence were committed against the employees of the company or their interests. *N. A. Sloan*, p. 148: Does not know of any ill feeling or threats by authorities towards the company.

Ygnacio Manjarrez, p. 149: The Americans "enjoyed all necessary security in a

* Bouttier must certainly be classed as one of the most reckless perjurers among the claimant's witnesses. He says that he had resided in the United States "for twenty years last past," and in Mexico for "sixteen years last past." On p. 84 he says that he was driven, in 1865, from his mine in Sinaloa, (for which act of violence, however, he neglected to claim damages from the Commission,) and yet we find him in 1868, hastening to buy La Abra Co.'s mines because he heard that the Co. was to be driven away.

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higher degree than the Mexicans themselves." There was no hostility to them.

Paz Gurrola, p. 169: "It is not true that a tax had been made upon any interests of the La Abra Co., neither by the authorities or by private parties."

(For statement of *Bartolo Rodriguez*, p. 163, as to the deposition made by him at San Dimas in 1870, at the request of Adams on behalf of the company; and for statement of *Martias Avalos*, p. 165, denying his pretended deposition made in Mazatlan in 1870 at Adams' request, see Head XXVI.)

REBUTTING.

Juan C. De Valie, p. 87 claimant's book: Deponent left San Dimas in 1865. Asked if he had heard it publicly reported that Marcos Mora, who was gefe politico at San Dimas in 1866 or 1867, and Macario Olvera, who was gefe politico in the same district in 1868, were hostile to the Co? Ans. He answers this question in the affirmative, as far as relates to Marcos Mora, as he knew that he was very badly disposed. That he even went so far as to say to deponent that it was necessary to break these companies up and drive them away from there; that with regard to Macario Olvera he knows nothing."

Jesus Chavarria, pp. 91, 93, claimant's book: Visited the mines with Marcos Mora on private business in July or August, 1867. Mora expressed hostility to the Co. as annexationists. He also stated that he intended to denounce the mines after driving the Co. away, and offered deponent a share, "which deponent refused and reproved" the prefect Olvera, whom he met on the road, revealed the same plan and his interest in it "in combination with the gefe politico, whom he was going to replace." Mora was arrested and tried for crime in Sept., 1867. Deponent defended him, p. 94. Prefect Olvera was killed in 1870 in a riot among the miners of San Dimas "on account of their antipathy against that gefe politico, because he was not a resident of that department," p. 95. Neither Mora nor Olvera were of good reputation in 1867, '68, and '69. *

* Chavarria gives Mora a bad character, and Mora, while denying what Chavarria says about him, insists that Chavarria is a highly respectable and truthful man. But if Chavarria's estimate of Mora is correct, then Mora's eulogium of Chavarria is of little value; and as Mora is the only witness to Chavarria's good character Chavarria may be anything but a truthful man, in which case his statement as to Mora's bad character may be untrue, and Mora may be a very reputable person, and consequently his praise of Chavarria may be entitled to great weight. Thus by log-

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Marcos Mora, p. 99 claimant's book: Knows that Ygnacio Quiros, deponent's predecessor as prefect, and Arcadio Laveaga, who acted as prefect after deponent left "were unfriendly to the Co La. Abra, and in various ways tried to molest them and force them to leave the place," p. 100. Deponent cannot affirm that the local authorities of San Dimas expressed themselves against the other American companies who resided outside of that district, nor that they sought for the expulsion of any other except the Abra Co., and they gave as their reason for this that the Americans who went to that district wanted to take their mines and lands. Asked if he "knew or heard it truthfully asserted that any of the employees of the Abra Co. had worked for or tried to work for the annexation of the states of Durango or Sinaloa, or any other state of Mexico to the United States." "Ans. That he never heard anything said on the subject referred to in this question." Judges Nicanor Perez and Guadalupe Soto were hostile to La Abra. Knows Lawyer Jesus Chavarria. "He enjoys a high reputation in his profession, and is considered as a truthful and respectable person." P. 102: When Chavarria informed deponent that he and Joseph Rice had been employed in October, 1867, to complain to the Governor of Durango "of the damages and persecution which the Co. were experiencing at San Dimas, and asking him for protection; that at the time the Governor sent for deponent and questioned him with regard to the conduct of the Co., that the deponent informed him that it consisted of Americans and, like all other foreigners, was working for the ruin of Mexico." P. 104. Deponent did not dislike, hate, and despise La Abra Co. Olvera never told deponent that the expulsion of the Co. was due to his exertions as gefe politico."

Matias Avalos, p. 109: Reiterates the truth of his deposition on behalf of claimant made in 1870, and denies the authenticity of his deposition of July, 1872, on behalf of defense.

Chas. B. Dahlgren, p. 116, claimant's book: Has heard of hostility of prefects Mora and Olvera to La Abra Co. P. 117: Considers Matias Avalos a strictly honest, truthful, trustworthy, conscientious and reliable man.

Pedro Echeguren, p. 126, claimant's book:

ical processes do we establish the good character and reputation of both of these witnesses. The only shade of doubt resting on Mora is raised by his admission that he told the Governor of Durango that the Abra Co. was working for the ruin of Mexico when, as he says in the same breath, "he never heard anything said on the subject."

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Would not have considered it prudent or safe for La Abra Co. to return to their mines or to make any further investment there after abandonment in 1868. *Thos. J. Bartholow*, p. 223, claimant's book: The hostility of authorities caused deponent to appeal to the Governor of Durango and to the prefect Laveage, but without success. P. 224: The company never disobeyed the laws or interfered in the political affairs of the country. (For Avalos', Dahlgren's, Exall's, Martin's, Bartholow's and Adams' opinions of witnesses for defense, see Heads I and XXVI.)	

XI.—PRESTAMOS OR FORCED LOANS AND DETENTION OF SUPPLIES.

IN CHIEF.

Memorial, p. 6, claimant's book: "The authorities repeatedly seized mule trains of the Co. loaded with provisions, and appropriated the same to their use."

James Granger, p. 42 claimant's book: "In the latter part of 1865 and in 1866, when they were getting up their machinery and supplies from Mazatlan it was a matter of public notoriety that they were hindered and delayed by the military authorities of Mexico, and they were subjected by said authorities to forced loans or "prestamos" and illegal exactions upon said machinery and supplies. One of the captains, or quartermasters of one of the trains, whose name was Scott, commonly called Scotty, was robbed by the military of the Liberal army on the road from Mazatlan, and while near Camacho; said Scott was in charge of $3,000 of the Co.'s money, and said military took from him and converted the same to their own use $1,178,* and I know that the same has never been returned to said company." P. 43: "A letter was received by Col. de Lagnel, Sup't of said Co., from Col. Valdespino, of the Republican army of Mexico, dated July 27, 1866, and signed Jesus Valdespino, which came into my possession as clerk of the Co., and which letter has never since its receipt passed out of my possession.† This letter letter does not appear to have been equal to his

"Hacienda, La Abra Silver Mining Co., Tayoltita, March 17, 1866. Senor El Administrador de Rentas, San Ignacio. Dear Sir: The bearer of this, Mr. William Scott, goes to San Ignacio, under my instructions, to pay the taxes on the goods I have purchased to supply my mines and laborers, which goods have been received here, on which I am informed, through several sources, that you, or some one else holding office under the Republic of Mexico, have determined to force from me, as a tax upon these goods, a tariff of sixty-five per centum. I cannot believe that any officer of this *Republic* can be induced to perpetrate such an outrage upon a *citizen of the United States*, the only *government* on the globe which *recognizes* this *Republic*, and is giving it moral and substantial aid in her present conflict with *Maximilian* and his *European allies*. If such a tax as this is imposed upon me, I desire *Gen'l Corona* to send here an officer empowered with written authority to take of my effects sufficient to pay it for. I shall, if anything like this sum is demanded of me, put my goods and property under the protection of the flag of the *United States*, and from under it I intend they shall be taken. At the same time I shall offer no other resistance to any legal officer of the Mexican Republic than to enter my solemn protest against it, and appeal to my Government at Washington; and, besides, if this large tax is collected from me, I will be thereby compelled to close up all my business here, abandon my property, and return to the United States, for this course will save more money for my partners and myself than to continue operations here any longer under such enormous taxes. No business can stand

*It cannot be denied that these robbers were liberal, whether they belonged to the army of that name or not. Ordinary brigands would have taken at least half of Mr. Scott's $3,000.

† How singularly fortunate it was that Granger should have preserved this letter when, as he says under Head VI, the hacienda had been "sacked of books, receipts, invoices and other papers." But Granger's knowledge of the contents of the

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demands $1,200 from said Co. for the support of his forces under his command. It is needless to say the demand was complied with." (The following is the letter, p. 53:) "San Dimas July 27, 1866. To Col. J. A. de Lagnel. Dear Sir: Both Mr. Laeuz and the gefe of the partido will inform you of the commission with which I am charged by superior orders, and the powers vested in me to procure the necessary means for the maintenance of the forces under my command; but informed as I fully am of the injury which my continuance in the district would cause to its residents, and particularly those having large business and property, in the maintenance of my force, I have resolved to leave immediately, as I think that it will be for the interest of your business, and upon the sole condition that the residents of the district furnish me with $1,200 for my departure. I am confident that I take this step as the least burdensome, because, if I remain here, I must obtain means wherever they may be found, but, as I have before stated, my purpose is to the individual guarantees which the laws accord to the people. I hope that you will attentively weigh my reasons, and, convinced of their soundness, you will contribute your share toward completing the contribution levied by the gefetura of the partido on your place. I avail myself of the opportunity of offering myself as your friend and obedient servant, Jesus Valdespino."

Matias Avalo, p. 50 claimant's book: "I heard Scottie say that the military had taken the company's money."

Wm. G. S. Clark, pp. 64 and 65 claimant's book: While engaged in forwarding machinery and supplies in spring and summer of 1866 deponent witnessed prestamos levied on Co. by different commanding officers of the district of San Ygnacio. At one time Col. Donato Guerra, of the Republican army, levied a tax of $600 on a large amount of provisions in deponent's hands when de Lagnel was supt., which

anxiety to preserve it, since he states that it demanded $1,200 from the Co., whereas the letter itself seems only to inform the Co. that a loan for that amount had been levied "on the residents of the district," and to express a hope that the Co. will contribute its share. Granger should have been more exact in describing one of the five documents alleged to be original which the Co. has produced in evidence. Why it should be "needless to say that the demand was complied with," is not clear, unless as a matter of fact the demand was not complied with. A captious critic might even suggest that so polite a man as Col. Valdespino would willingly have given a receipt for the money if it had been paid, and that Granger might as easily have preserved the receipt as the demand.

New Evidence offered by Mexico.

such, neither in Mexico nor any other country in the world. My partners and myself have purchased a hacienda and mines here, for which we paid cash $50,000. Are now building machinery which will cost besides $65,000. This large amount of machinery will be completed and operating in four months if I am not compelled to stop work on it by these large taxes and restrictions; but, as before stated, if anything like such a tax as sixty-five per centum is imposed upon my merchandise, I had better at once abandon my work, pay off and discharge miners, mechanics, and laborers, and of these I have in my employ thirty Americans and one hundred and fifty Mexicans (these latter Mexicans are wholly dependent on me for their daily food), and leave the country until a time shall come when Americans (citizens of the United States) can find that security and protection from the Republic of Mexico which they are entitled to receive, and which the *minister plenipotentiary of the Republic of Mexico at Washington* (the capital of the United States) assured my company before we embarked in this enterprise we should have. Now, I am willing and anxious to pay any just and legal internal tax that the laws of the Republic require; but as I have already paid at Mazatlan the *impost duties* upon my goods to the Imperial authorities who occupy that port, there is no legal right or justice in the officers of the Republic occupying the interior in demanding of me the payment again. It is the misfortune of the Republic that it does not occupy the port of Mazatlan, and certainly is not my fault. If Mr. Scott can make an equitable and just settlement with you for the payment of a fair and legal tax, he is fully empowered by me to do so. If, on the contrary, he cannot, then he is instructed by me to take a copy of this letter, which I have given him for this purpose, to Gen'l Corrona, and make the payment direct to him. Your obdt. servant, Th. J. Bartholow, Superintendent.

"Hacienda, La Abra Silver Mining Co., Tayoltita, March 17, 1866. Senor El General Corona, commanding forces of Republic of Mexico in Sinaloa. Dear Sir: I enclose you herein a letter, a duplicate of which I have forwarded to Senor El Administrador de Rentas at San Ignacio. By reading this letter you will understand the matter in controversy between this officer and myself, and there is therefore no necessity of my repeating my arguments in that letter to you. Now, General, whilst I have not had the pleasure of making your personal acquaintance yet,

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deponent had to pay.* This was one of many prestamos. Cannot state amounts of others not paid by deponent. On this occasion Guerra detained the supplies four days, and "in consequence of this delay a barrel or carga of oil for the mill and machinery of said La Abra Co. was so injured by the shrinking of the casks, (*sic*,) that the said oil had all run out of the casks when delivered by said military commander, and that in consequence thereof said Co. was deprived of the necessary oil for their said machinery for many weeks thereafter."† Mazatlan being in French possession, no one was allowed to enter for some months. The supt. tried to get in to replace the oil, but was refused permission. Heard the sup't "complain at the time that even that circumstance, trifling as it might appear to those not acquainted with the uses and value of such oil for machinery, had caused a complete paralysis in the work of putting up said machinery at their mining hacienda." George Scott, or Scotty, was robbed of "about $1,200 out of about $3,000 in gold coin, Mexican ounces (187½ ounces)," belonging to Co., between Mazatlan and Camacho early in 1866 by the military. Deponent, at Scotty's request, went with him to Gen. Guerra to ask a return of the money or a receipt for it, but it was refused. Guerra said he did not know the whereabouts of the money, but his army needed all the supplies it could get, no matter from whom. They should be paid for at the close of the war.

DEFENSIVE.

(*James Granger*, p. 137, testifies for the defense that "in 1865, according to a letter which he saw from the military commander, Jesus Valdespino, this person asked $1,200 from the Abra Co., but that he does not know whether the Co. paid it or not." *Leandro Molina*, p. 144: "When the war with the French was going on no Mexican had a safe passport to go and come, while these Americans did have such pass, both to Mazatlan and Durango."

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I have for nearly a year during my residence in this country become well acquainted with you from reputation, and entertain for you a high regard for the character you have amongst a large majority of your countrymen who have been living under your rule, and I know that you cannot from sense of justice permit the operations of my company which are on a large scale to be brought to ruin and compelled to cease from the imposition of such enormous taxes as the officers at San Ignacio threaten to impose upon me. During the late revolution in my country I held for two years under the Government of the United States the same rank and command which you hold under your Republic, and as a brother soldier of a *neighboring and friendly Republic*, I appeal to you for justice and I f el my appeal will not be in vain. Mr. Scott, the bearer, will give you such details regarding the matter as you may require. Truly your friend and obt. servant, Th. J. Bartholow."

April 10, 1866, Bartholow writes Garth: "To give you a better idea than I could do by detailing the transaction in this letter, of one of the many difficulties I have to meet and overcome, I enclose you a letter that I wrote to the collector of taxes at San Ignacio, which explains itself. The result was, instead of paying taxes to the amount of three or four thousand dollars, as was demanded, we only paid about $30, and there was no necessity of troubling Gen'l Corona with the matter. . . . . .

In consequence of the unsettled state of the country and the presence of bands of robbers on and near the roads leading from here to the Port, I have had a great deal of trouble to get money from time to time transported to pay my hands and other expenses, and in conquence I was, of course, unwilling to risk any very large sum at one time. Yet when we were getting timber and doing other work which required a great many Mexican laborers we frequently needed $1,000 per week, and, of course, all that the proceeds of the sales of goods did not supply had to be brought from Mazatlan, but I so managed it that we never had more than from $1,500 to $2,000 at risk at one time, and all come through safe, except in one case—this occurred some two weeks ago—when I sent Mr. Scott to San Ignacio to settle our taxes with the authorities. I gave him a check on Messrs. Echeguren, Quintana & Co. for $1,000 to bring up. Besides this he had some money outside of this sum which was left. After paying the taxes in San Ignacio, he got the money as di-

*Curiously enough Bartholow remembers that this occurred while he was supt.

†The unfortunate shrinkage of "casks" containing a "barrel" of oil is indeed a serious charge against the Government of Mexico. It is evident that the casks shrank from four days' contact with the Mexican soldiery, and that if they had been allowed to continue their journey to Tayoltita they would have refrained from shrinking for a much longer time. Such a matter can by no means be regarded as trifling, even by those unacquainted with the uses of oil in putting up machinery in 1866 which (see Exall, Head VI) did not commence to work until 1868.

XI.—PRESTAMOS OR FORCED LOANS AND DETENTION OF SUPPLIES.

Evidence before the Commission.

Arcadio Laveaga, p. 158, reports to the judge of the first instance in San Dimas that having searched the archives of the political bureau he has found a letter from Col. Valdespino, which is given in full, directing, in pursuance of powers conferred upon him by superior orders, a levy of $1,200 on "those persons in best circumstances of this district and of the villages and estates appertaining to the same," and regretting the urgent necessity which led to this step. The letter is dated July 27, 1866, and addressed "to the political chief of this district, present." Prefect Laveaga states that D. Ygnacio Quiros, who was prefect at that time, does not remember what amount was paid by the Americans at Tayoltita, "but that it could not have exceeded $200 at the utmost, and this was given in the shape of goods." Quiros also says "that when Santiago Papasquiero came to this point he was Gov. of the State, and D. Genaro Leyoa, as secretary, wrote to this district approving of what had been done in behalf of Valdespino." Victoriano Sandoval, p. 164, remembers that Valdespino "requested means for the maintenance of his forces, and there was given to him about $200, which were raised by voluntary contributions among the workmen and residents." *Marton Delgado*, p. 170: Valdespino requested some assistance for his troops, and "it was willingly given him by every resident of means as in the case of deponent, who contributed a small amount." (As to the pretended deposition of Avalos for the Co., see his testimony for the defense, Head XXVI.)

REBUTTING.

Matias Avalos, p. 109. (See Head XXVI.)

Chas. B. Dahlgren, p. 117, claimant's book. (Referring to a deposition given by Matias Avalos in rebuttal. See Head XXVI.) Regards Matias Avalos as a strictly honest, truthful, trustworthy, conscientious, and reliable man. "I have frequently intrusted him with large amounts of silver coin, which he has always brought safely to the Co. from Mazatlan, and also with bullion from San Dimas to the mint at Durango and Chihuahua, and he never, as many others have done, reported a loss, which he might have done without detection or suspicion; but his reports were always candid and truthful."*

New Evidence offered by Mexico.

rected and started out of Mazatlan to overtake a train which was bringing up some supplies for us and Mr. Rice, and when about twenty miles out from the Port, near the town of Camacho, six or eight armed men sprang into the road, and with their guns levelled upon him, forced him to dismount and robbed him of $1,178 in money, his pantaloons and boots. The latter, however, being No. 12 were too large for any of the villains and were returned. He immediately informed the nearest commander of the Liberal forces of the fact, who sent to him for the purpose of identifying the robbers; he complied, but he could not find them for the reason that the officer could not find even half his men. I also at the same time opened a correspondence with Gen'l Corona, through the Prefect, Col. Jesus Vega, at San Ignacio, who by the way is, I think, one of the most perfect gentlemen I have ever met in the country, and I am of the opinion that but for the turn in military affairs which occurred a few days since, we would in some way or other have been reimbursed for the loss, but now I have no hopes whatever, and we may as well charge up $1,178 to profit and loss."

July 27, 1866, De Lagnel writes to J. G. Rice, superintendent Durango Mining Co., "I thank you for the hints and information you give me respecting the forced loan, it strikes me as rather strange that one-half of the tax should lie between you and myself. I am powerless to comply with the money part not having the wherewith."

July 28, 1866, De Lagnel writes to the Prefect of San Dimas, acknowledging the receipt of his letter of the day before relative to the contribution levied on the neighborhood in aid of the troops of Col. Valdespino. In reply he forwards a portion of the goods which had been asked for, and states that having no money he is unable to send even a little. He begs the Prefect to consider that his Company has brought thousands of dollars into the country, almost all of which has been spent in that district, and that a considerable sum has been paid in the way of duties in the local treasury, dan that for all of this expense "we have not received up to the present time, as is notorious and public, even a single dollar." He sends two pieces of blue cotton and two pieces of bleached cotton of the value of $75.65, and asks a receipt for the same to cover himself with the Company. In conclusion he states that it appears to him strange that one half of the contribution of $1,200 should be levied on two American Co.'s when there are others in the

* Mr. Dalgren's commendation of Avalos might, in ungenerous minds, raise a suspicion against Scottie, for whose character nobody vouches, were it not that Scottie brought home $1,822 of the amount with which he was entrusted.

XI.—PRESTAMOS OR FORCED LOANS AND DETENTION OF SUPPLIES.

Evidence before the Commission.

Pedro Echeguren, p. 125, claimant's book: Recollects to have heard from Bartholow, when he was Sup't, that Co.'s supplies and machinery were detained until large amounts of money were paid several times. Deponent did not witness these acts, but they "were publicly spoken of here, and believed to be true."

P. 126: "The different sums of money we have disbursed to said military authorities upon such loans or 'prestamos,' from 1865 to 1871, exceeds one hundred and fifty thousand dollars ($150,000), and during the past year ninety thousand dollars ($90,000), making an aggregate of upwards of two hundred and forty thousand dollars ($240,000); this includes all 'prestamos,' or forced loans from my house during the seven years last past, as shown by the books of my house, of which amount the rebels, or 'pronunciados,' have taken from us thirty-one thousand dollars ($31,000), which the legally constituted authorities refuse to recognize by their usual promises to pay."*

Chas. H. Exall, p. 199: "To the best of my recollection† the whole amount, $1,200, was required of and paid by said De Lagnel. There was a small loan or prestamo previously required by Valdespino, of, I think, $500, and that was paid by contribution and with much trouble, the Co. paying the largest part of it, and I recollect that some show of trying to collect from Mexicans a part of said $1,200 loan was pretended to be made and failed, and Valdespino then fell back upon the Co., as being most able to pay, and completed the payment. The Mexican witnesses must refer to the small loan, if they contributed anything to Valdespino, which I never heard of before. Those laborers were too poor to contribute, and I don't believe the story," (told by witnesses for defence). "The French or Imperialists took from some of our trains sundry small stores, amounting to about $500."‡

New Evidence offered by Mexico.

neighborhood possessed of considerable property.

On the same date de Lagnel writes Col. Valdespino acknowledging the receipt of his letter of the day before. Agreeing with Col. Valdespino as to the undesirability of the troops remaining in that locality, he has forwarded such of the articles asked for as were in his possession, but he is unable to contribute any money. He calls the Col.'s attention to the fact that the reduction works are not completed, and are therefore unproductive, although the expenses upon them have already been great. He supposes, having contributed what he was able to give, he may continue his works without fear of the interruption which would be caused by the appearance of an armed troop.

July 31, 1866, de Lagnel writes Rice: "As to the forced voluntary (?) loan, it was an impossibility to meet the demand, and so I stated in my note to the prefect. You cannot have failed to notice that the exact half of the whole levy was laid upon you and myself—a fact I brought to the attention of the parties interested . . . . Yours truly, J. A. de Lagnel."

February 25 and March 5, 1867, de Lagnel writes to the prefect at San Dimas, and to the receiver of taxes at Tayoltita, with regard to the payment of certain duties.

Frederick Sundell testifies that the machinery and supplies of his Co. (the Durango Mining Co.) were brought to the mines at the same time as those of the La Abra Co.; that the former never suffered from sequestration, and that he never heard of any loss by the latter.

For explanation of the following letter see Heads V and XXVI:

Lone Pine, Cal., Jan. 4, 1878. Robert B. Lines, atty., 604 F st., Washington, D.C. Dear Sir: . . . . The serving of notices to pay forced loans were common. I owned and worked a fine mine 12 miles from Tayoltita. they often levied their loans we never paid them & were seldom mistreated never by the officials . . . . hoping &c. yours Dear Sir A. B. Elder.

(For letter of C. B. Dahlgren, charging Alonzo W. Adams with the forgery of his deposition in behalf of claimant, and for deposition of Frederick Sundell as to the good character of J. N. Manjarrez, Bartolo Rodriguez, and Patricio Camacho, witnesses for the defense, see Head I.)

* Mr. Avila, on p. 47 of his argument on the motion for a rehearing, cites Echeguren's testimony in the claim of Benj. H. Wyman, as follows: "That he knows and it was notorious that all the authorities respected the persons and properties of foreigners, *and particularly of the Americans*, and he, being a foreigner, had never suffered in his property and interests other annoyances than those that are an inevitable consequence of political disturbances and hazards of war, and no injuries whatsoever from international acts." This note is referred to on p. 67 and should properly have been put under Head IX.

† Exall does not pretend to have been in Tayoltita before Sept., 1866, (and as shown in the new evidence he did not reach there until October.) Consequently his evidence as to what occurred in July is not very valuable.

‡ It is not clear why Mexico should be charged with robberies committed by her enemies.

XI.—PRESTAMOS OR FORCED LOANS AND DETENSION OF SUPPLIES.

Evidence before the Commission.

Ralph Martin, p. 214, claimant's book: The collection of prestamos was matter of common talk among Mexicans after deponent went to San Dimas, in 1868.

T. J. Bartholow, p. 223, claimant's book: Was compelled by troops under command of Gen. Corona, "to pay a number of prestamos, or forced loans, levied upon said Abra Company's stamp-mill, machinery, and supplies, from $300 to $600 each, one of which, for $600,* was paid for me by Wm. G. S. Clark, of Camacho, Sinaloa, an English gentleman, who was owner of a large estate at Camacho, and who assisted me, as my contractor, in transporting said machinery and supplies from Mazatlan, Sinaloa, to the Co.'s mines in Durango. One of the employees of the Co., who had been sent to Mazatlan on business, was robbed by said military authorities near Camacho, in Sinaloa, while on his return from Mazatlin to the company's works of $1,178 of the moneys of the Co., which amount never was repaid to the Co., nor was the Co ever indemnified for the same in any way. I recollect the exact amount taken, because I entered the same on the books of the Co., charging the same to the 'robbery account,' where other prestamos and robberies were entered. The name of this employee, who was so robbed of the Co.'s money, was George Scott, commonly called Scotty." "The amount of cash prestamos so levied and enforced during my said superintendence amounted to a little more than $3,000."

(For Avalos', Dahlgren's, Exall's, Martin's, Bartholow's, and Adams' opinions of witnesses for defense, see Heads I and XXVI.)

* Clark says that this occurred while de Lagnel was sup't.

New Evidence offered by Mexico.

XII.—CAPTURE OF TRAINS AND MURDER OF EMPLOYEES.

IN CHIEF.

Memorial, p. 6, claimant's book: "The authorities repeatedly seize mule trains of the Co.* loaded with provisions, and appropriated the same to their use." Things finally got to such a pass that one of the personnel of the Co. in charge of its trains,† was openly killed by the Lib-

* Here, again, arises the question asked in the note on p. 310, why the Co. should be obliged to contract with Gamboa, Loaiza, Cole and Clark for transportation if it owned so many mules?

† Clarke says below that Grove was not with a train.

The letters of the Co., some of which are quoted under Head VI, and particularly that of May 5th, 1866, in which Bartholow turns over the Co.'s property to de Lagnel, show that the Co. had only a very few mules and could not therefore have lost any trains. With regard to the murder of Grove, the following letters give full information:

Bartholow to Garth, March 7, 1866: "In my last letter I informed you that one of my employees, Wm. Grove, Esq., formerly of Saline county, Mo., was missing, and I feared had been waylaid and murdered.

XII.—CAPTURE OF TRAINS AND MURDER OF EMPLOYEES.

Evidence before the Commission.

eral forces and the train seized; and that was made matter of boast by the Mexican officials."

Charles H. Exall, p. 19, claimant's book: "One of the employees working for said Co. was actually killed while coming up from Mazatlan with a train of mules for said Co." P. 19, 20: "The military authorities of the Liberal Government of Mexico, or those acting in that capacity, seized upon our mule trains," and "appropriated them to their own use" "as a military necessity." P. 20: "Large numbers of our mules and thousands of dollars of our stores were captured in this way by the said military during the progress of the war there." "The military under Maximilian frequently captured our mules and stores in the same way, and shamefully abused our men," because of Liberal sympathies of the Co.* Most of these captures occurred "at various times during the latter part of 1866 and the early part of 1867," and principally by Liberal authorities.

A. A. Green, p. 24, claimant's book: Deponent heard of the capture of trains by the Liberal troops, and also of the killing of an employee near Toro, Sinaloa, by the same.

George C. Bissell, p. 38, claimant's book: Knows of capture of trains and killing of employee from reliable authority.

James Granger, p. 45, claimant's book: "Before I entered the service of the Co. as asst. supt. and clerk I heard of a large train of mules, laden with supplies for the Co., having been captured by the military authorities of the Republic, and the disappearance and supposed murder of one of the quartermasters or captains in charge of the train." P. 42: "Another, by the name of Grove, was foully murdered, I think," in latter part of 1865 or 1866. "This took place at a point called Candelero Creek, between San Ygnacio and San Dimas.

Matias Avalos, p. 50: Has heard of capture and pressing of mule trains, and of murder of two quartermasters.

John Cole, pp. 55, 56, claimant's book: The Liberal troops, "to the knowledge of the deponent, seized upon three of the mule trains of said Co." in 1866 and 1867, and converted them, with their supplies, to their own use; and upon one occasion one of the officers—an American, in charge of one of the said mule trains—was killed by the said troops for attempting to defend the property in his charge. Has heard Mexican soldiers boast of this murder.

New Evidence offered by Mexico.

Since then my worst fears have been realized; for, after a search of two weeks, his body was found buried in the sand on the bank of the Piastla river, some ten miles above the mouth of the Candelero creek, near where he had been murdered. At the time of the discovery of the body it was in such an advanced state of decomposition that it was impossible to ascertain the manner in which he had been killed. His mule, pistol and clothing have not yet been found. The mule is, however, likely to turn up, as it had our hacienda brand, 'U. S.,' on the left shoulder. These facts were promptly laid before the commander of the Liberal troops at San Ignacio, Señor D. Jesus Vega, who took great interest in the matter and promised to use all the means in his power to discover the murderers and bring them to justice, and he had arrested and placed in confinement two men charged with the crime and his soldiers are in pursuit of the third. These we are assured will be tried by court-martial, and, if found guilty, will be summarily executed. Mr. Grove, I think, lost his life by imprudence in talking.

He had resided in Mexico for six or seven years, spoke the language quite fluently, and ought to have understood the character of the people. I had nominally purchased a train of pack mules in Mr. Grove's name, and sent him to San Ignacio to obtain a permit for them to pack for me and a guarantee that they would not be taken by the army. He succeeded in getting these documents, and was on his way home to take possession of the mules and start them to packing; he passed the night previous to his death at the house of one, Meliton, at Techamate, the place where you will recollect we stopped for dinner on our first trip up, where we had quite a quantity of watermelons. This man Meliton has a bad reputation, was some years ago convicted of murder and robbery and sentenced to be executed, but got clear by bribery. Grove told this man of his purchase of the pack train, and that he was to pay $4,000 for it, and was on his way to take possession of it and start it to work, thus leaving the impression that he had this sum of money with him. Now whilst I do not think that Meliton committed the murder, I have no doubt of his having planned it and arranged for it to be done, and the imprudence of Mr. G. in telling this man the circumstances above mentioned, in my opinion, was the cause which led to his murder, which was

* Is Mexico responsible for these seizures?

XII.—CAPTURE OF TRAINS AND MURDER OF EMPLOYEES.

Evidence before the Commission.

An officer who stopped at deponent's ranche in 1867 "with a troop of Mexican soldiers, referring to the aforesaid murder, told deponent that it would learn the gringos (foreigners) a lesson; then when they (the troops) wanted anything in future they would probably not be denied, as they had been by the quartermaster of La Abra." Also, "that the capture of said mule train was ordered by his superior or commanding officer of the said Liberal army of Mexico; and he also added, with seeming regret, that he was very sorry the said officer or quartermaster of the mule train was killed; but that they must have provisions and supplies for their army at whatever cost," and politely gave his word and the usual pledges of Mexican authorities, that all damages for property taken from Americans for the use of their army should be paid for by his Govt." P. 55: The Co. never had less than 30 mules to a train; generally, 40, all of the best quality. P. 59: Knows, "of his personal knowledge," of three trains, about 120 mules, all of best quality, being captured by Liberals in 1866 and '67, who boasted that the Co. made good providers for their army. Believes that other trains were captured, not less than6 or 7 times during '66, '67, and '68. Believes that two of these were captured by the Imperialists. Does not know their value, but it was "common report amongst Mexicans that the Co. had lost, during the three years, from $75,000 to $100,000 of mules and supplies."

J. F. Gamboa, p. 61, claimant's book: Heard at the time of some mule trains being captured by the Republican army. Heard that a muleteer was lost, and supposed to be killed. Also heard of the murder of Grove at Arroyo de Candelero.

Wm. G. S. Clark, p. 65 claimant's book: Has heard from reliable authority that a number of trains were captured with supplies. Knows of the murder of one quartermaster, because he had never been found or heard from. Knows that Grove, another quartermaster, "who was at the time traveling alone, and not in charge of this train of mules," was murdered at Candelero creek, where his body was found riddled with bullets. "Grove was supposed to have a large amount of said company's money in his possession, and that the scouts belonging to said army followed him from San Ygnacio."

José M. Loaiza, p. 78 claimant's book: Many of the company's trains were captured by troops under Corona. Knows of one train being taken in 1865 or 1866, when Bartholow was sup't, and the muleteer

New Evidence offered by Mexico.

effected between Techamate and Teuchuguilita, about midway between the two places."

April 10, 1866, Bartholow writes Garth: "I wrote you fully in my last letter detailing the circumstances of the murder of William Grove, and the finding of his body. Since then the Liberal authorities have taken the matter in hand, and arrested one of the murderers at this place. The villain was actually in our employ, doubtless for the purpose of ascertaining when an opportunity should offer to waylay and murder another of our men, if the prospect for plunder was sufficient to warrant the risk. When the officers arrested, I had him conveyed to the blacksmith shop and securely ironed. The next day he was conveyed to San Ignacio and thence to Cosala, where he was tried. We failed to convict him for the murder of Grove, but was convicted for the murder of a woman whom he killed previously, and sentenced to be shot. Before the execution of the sentence he confessed the murder of Grove, and revealed the names of his two confederates. These two would have been arrested before this, but for the expulsion of the Liberals from the country. Now we have to wait for the Imperialists to put their officers in power before we can act any further in the matter."

(For testimony of Wm. R. Gorham as to alleged deposition of A. A. Green in behalf of Company, for testimony of J. F. and Trinidad Gamboa as to the alleged deposition of the former, for testimony of J. M. Loaiza as to his alleged deposition, for letter of C. B. Dahlgren charging Alonzo W. Adams with the forgery of his deposition, and for deposition of Frederick Sundell as to the good character of J. N. Manjarrez, Bartolo Rodriguez, and Patricio Camacho witnesses for the defense. See Head I.)

XII.—CAPTURE OF TRAINS AND MURDER OF EMPLOYEES.

Evidence before the Commission.	*New Evidence offered by Mexico.*

was never heard of. Grove shortly afterwards was found murdered near Candelero creek.

Chas. Boutlier, p. 82 claimant's book: Has heard from good authority of the capture of trains and the murder of two employees. "I know that those captures, or robberies, as I should call them, were notorious at that time, and that the murder of Mr. Grove and another officer in the employ of La Abra Silver Mining Co., while attempting to defend the supplies under his charge"* were freely talked of, and justified on the ground of military necessity.

DEFENSIVE.

Aguirre and *Molina*, p. 144 claimant's book, stated that the company had to hire mules in making journeys. *Nuñez*, p. 145: "Co. did not buy any mules during the time they carried on their mining operations, but paid the hire of those they had in use." *Romero* corroborates above. *Granger*, p. 147, stated that the Co. had about fifteen mules. *Sloan*, p. 148: Only saw ten to twelve mules. *Ygnacio Manjarrez*, p. 149: "Never saw but twenty odd mules." *Refugio Fonseca*, p. 160: The Co. had "eight pack mules and three saddle mules." Four were sold to Nuñez, one to Calisto Larreto. Three which had been stolen from them were subsequently paid for by order of Camilo Perez, who was in authority, and the saddle mules were taken away by the people of the establishment when they left. *Aquilino Calderon*, p. 168: The company "had some animals, which were disposed of by the people of the company, without a solitary one being taken by the authorities." *James Granger*, p. 147: Has heard it said that some mules were captured during the war, but that was before deponent came to Tayoltita. *N. A. Sloan*, p. 149: "He is aware that they killed one of the employees, but that it happened in the State Sinaloa, and that he does not know who it was." *Ygnacio Manjarrez*, pp. 149, 150: The Americans enjoyed more security than the Mexicans. Their trains were never captured "during the whole time this company was working." What they say about the killing of one of the supts., and the embargo of all that he had under his charge, is also false. (For statement of Avalos, as to his pretended deposition on behalf of the Co., see Head XXVI.)

REBUTTING.

Chas. H. Exall p. 199, claimant's book: The French and Imperialists only occu-

*See testimony of Clarke above.

XII.—CAPTURE OF TRAINS AND MURDER OF EMPLOYEES.

Evidence before the Commission.	*New Evidence offered by Mexico.*

pied the road a short distance from Mazatlan. "A number of our mule trains were captured and returned to the Co. by the French when they found out we were not Mexicans, although they accused us of Mexican sympathies. About seven or eight of our saddle mules, of the value of about $1,000, were kept by the French soldiers and never returned to the Co. $1,500 would cover all the losses sustained by the Co. by the acts of the French or Imperialists. They sometimes insulted and annoyed us because we sympathized with Republicanism there, but our worst enemies were the Republican authorities themselves. No mules stolen from the Co. "were ever returned or paid for, neither by Perez nor any other person." None were sold to Nuñez, Loretto, or any other person by authority of the Co. "All the mules of the Co. except those which had been captured by the military on the road and stolen from the hacienda, and except the saddle mules upon which some American employees* and myself escaped to Mezatlan and the one ridden by my servant, were abandoned at the hacienda with all the other property of the Co." P. 200: About 125 mules were captured on the road under deponent and de Lagnel and twenty stolen from the hacienda. Had understood from Bartholow that a number of trains were captured under his superintendency. P. 205: Deponent made personal application to Gen. Ramon Corona, who referred him to the military governor of San Ygnacio, who "was, I think, named Parra"—does not easily remember Mexican names—for the restoration of a train of mules 40 in number, captured about Oct. or Nov., 1866. Parra's answer was insulting. He said Americans were not wanted there; they might be paid at the close of the war, but he could not be annoyed by their daily applications for protection. If they could not protect themselves they had better go back to the United States. The mules were not restored.† P. 206: "I cannot now recollect the exact number of mules so captured by the military authorities of the Mexican Republic, but I can approximate the number, which I believe would be first and last, including those captured from Gen. Bartholow while he was sup't, not less than 220, besides those abandoned at the works near Tayoltita." Grove "was

* Who were these American employees? They are not among the claimant's witnesses, nor are their names given.

† How completely this coincides with Bartholow's description given below of a circumstance which occurred while he was supt.

XII.—CAPTURE OF TRAINS AND MURDER OF EMPLOYEES.

Evidence before the Commission.	*New Evidence offered by Mexico.*
murdered by said military in the district of San Ygnacio, State of Sinaloa, while on the road to the company's mines, and a train of mules loaded with supplies for the Co. were taken from Grove as conductor in charge of said train. I am, of course, familiar with the history of that murder by report of the Co.'s officers. The Mexicans also admitted it and some army officers condemned it." *Ralph Martin*, p. 213 claimant's book: Deponent did not go to that country until after the troubles of La Abra Co., "but I can say that the said killing of Mr. Grove" was matter of common talk there after I went to San Dimas. *T. J. Bartholow*, p. 222 claimant's book: "Two entire mule trains, loaded with provisions and supplies belonging to said Co., were captured by the military authorities of the Mexican Republic." Deponent appealed to Gen. Ramon Corona, who referred him to the com'dg officer at San Ygnacio, "whose name, I think, was Gen. Guerra or Gen. Parra." Related the circumstances of the captures, also of the murder of the quartermaster, "who was acting as captain of the said mule trains," but obtained no redress. P. 224: "The value of the mule trains and supplies so taken from the Co. by the said military while I was supt. was not less than $25,000." P. 225: Grove was murdered in San Ygnacio district in Jan'y or Feb'y, 1866, when in charge of a train which was captured.* Deponent recovered his body, badly mutilated by gunshot wounds. The train was one of three aggregating about 150 mules. (For Avalos', Dahlgren's, Exall's, Martin's, Bartholow's and Adams' opinion as to witnesses for defense, see Heads I and XXVI.)	

*See Clarke's testimony above.

XIII.—ASSAULT UPON HACIENDA.

IN CHIEF.	
Memorial, p. 6, claimant's book: "Acts of violence were committed against the property and employees of the Co., which were encouraged by the authorities." *James Granger*, p. 45, claimant's book: "I also know that an armed mob of some 40 or 50 men charged on the hacienda of La Abra Co. at Tayoltita with the express intention of killing all the American employees of the company, which mob it was	There does not appear in the correspondence of the Co. the slightest allusion to any assault by anybody upon the hacienda. Frederick Sundell testifies that he never heard of an assault upon the hacienda of La Abra Co., and that such assault could not have taken place without his knowledge. (For letter of C. B. Dahlgren charging Adams with the forgery of his deposition filed by claimant, and for deposition of

XIII.—ASSAULT UPON HACIENDA..

Evidence before the Commission.	*New Evidence offered by Mexico.*
believed by all the Americans there at the time had been incited at the instigation and by the connivance of the authorities, which I understood was afterwards ascertained by the Co. to be the fact." *Matias Avalos*, p. 49, claimant's book: "I was present at the hacienda one night, I think in the latter part of 1866, when an armed mob of Mexicans charged upon the hacienda of the Co.. and the Americans there were badly frightened and retreated back of the hacienda and armed themselves for defense. I was inside with them. The Mexicans, as I afterwards found out, thought the Americans too well prepared to meet them, and did not follow up the charge at the time." DEFENSIVE. *James Granger*, p. 147, claimant's book: Testifies for the defense that he "does not know that acts of violence were committed against the employees of the company or against their interests" Many other witnesses concurred in this general denial. (For statement of Avalos as to his pretended deposition on behalf of the company, see Head XXVI.) REBUTTING. *Marcos Mora*, p. 102, claimant's book: Q. 28. "Whether it is true that during the time of the deponent's administration in that district a meeting was excited by the two local judges; that the mutineers proceeded against the reducing works of San Nicolas, armed with pistols and machetes and drove the sup't and other American employees from the place which, according to law, belonged to them? Ans. That he is ignorant of the matter referred to in this question." *Chas. H. Exall*, p. 198, claimant's book: "The local authorities and other politicians urged the workmen to hostile demonstrations and at one time they charged the hacienda and broke in the doors." "Only a few nights before I escaped an attack was made upon the hacienda of the Co. by some men headed by Prefect Olvera himself, as I was informed the next day by one of the friendly Mexican workmen, a muleteer. I was in some measure prepared for the attack, and after they discovered my position and strength they retired for that night." P. 201: Bartolo Rodriguez, (a witness for defense,) who had been discharged by deponent for dishonesty, "was one of those who made the night attack on the hacienda, with other armed men, and amongst that num-	Frederick Sundell as to the good character of J. N. Manjarrez, Bartolo Rodriguez and Patricio Camacho, witnesses for the defense, see Head I.)

XIII.—ASSAULT UPON HACIENDA.

Evidence before the Commission.	*New Evidence offered by Mexico.*
ber of violent characters I recognize the names of no less than four of these Mexican witnesses reported here by Cipriano Quiroz, viz.: Bartolo Rodriguez, Guadalupe Soto, Nepomucino Manjarrez and Victoriano Sandoval." P. 203: "I know some of said witnesses accelerated my departure by breaking in the doors of the hacienda and by the intention of violence, if not of murder. In this connection I will name C. Manjarrez, Bartolo Rodriguez and the old man Camacho."* *T. J. Bartholow*, p. 224, claimants book: Nepomucino Manjarrez, said to be a brother to Ygnacio Manjarrez, was employed by deponent as muleteer and packer. He was intemperate and turbulent, and at one time "headed a mob to seize the hacienda and drive me and my American employees out of the country. They gathered around the hacienda with machetes in hand, but did not make the attack as contemplated." Manjarrez confessed to deponent next day, but said he was led into it by others. Deponent discharged him "and he left." (For Avalos', Dahlgren's, Exall's, Martin's, Bartholow's and Adams' opinions of witnesses for defense, see Heads I and XXVI.)	

*Again we note an extraordinary coincidence between the testimony of Exall and Bartholow. History repeats itself. Bartholow discharged Manjarrez for assaulting the hacienda and he left; but he returned two years afterward and led the charge on Exall.

XIV.—CARRYING OFF ORES.

IN CHIEF.

Memorial, p. 6, claimant's book: "Large quantities of ore, taken out of the mines, were taken from the Co., the employes of the Co. being deterred by threats from resisting such spoliation."*

Chas. H. Exall, p. 20, claimant's book: "Large quantities of silver ore were stolen from our mines after we had taken it out, and such were the threats against us that

December 5, 1867, Exall writes Don Juan Castillo de Valle respecting the denouncement of the hacienda Guadalupe by Judge Soto: "You know the great injury the putting up of tahonas by the above-named party would do my company, as of course, all the metal from this Co.'s mines, and all the surrounding mines, would be stolen and taken to him."

The above is the only allusion to even the possibility of the theft of ores which is to be found in the correspondence of La Abra Co.

J. M. Loaiza states in his deposition, herewith transmitted, that the "ores" piled by up the Co. were worthless "tepetate," and were not carried off by the Mexicans.

Frederick Sundell testifies that he never heard of any robbery of ores of La Abra Co.

(For testimony of J. F. and Trinidad

*If the Co. was entitled to an award for the ores which remained at the time of abandonment, it should certainly have received something for those which were carried off before that time. It is no answer to this proposition to say that neither the amount nor the value of such ore was specified by the witnesses, for it was surely as easy to estimate both as it was to reconcile the conflicting statements of claimant's witnesses as to the amount and value of the ore actually abandoned. (See Head XXIII.)

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we did not dare to go out and defend it, as we would have been in great danger of losing our lives by so doing. The ores so taken were the very richest, and those containing the largest amount of silver."

Geo. C. Bissell, p. 39, claimant's book: "I have heard, and know by the statements of all parties in and about San Dimas district, that the richest ores belonging to said Co., which they had taken out in large quantities at the time they were compelled to abandon the same, had been carried off and sold by Mexicans, and the profits of the same shared by Mexican authorities, by whom those acts were covertly instigated."

James Granger, p. 46, claimant's book: "Even while Sup't Exall was still there, trying to carry on the works of the Co., this tearing down of the ores of the Co., where it was piled up within the enclosures of the hacienda, and the culling out of the richest pieces, and stealing and packing away the same by Mexicans in sacks, was going on almost every night, and sometimes in open daylight, and that, too, with impunity and defiance; and Sup't Exall did not dare even to go out or attempt a defence of the same, as it probably would have cost him his life to do so; for it seemed to be well understood by Mexican workmen in Tayoltita that those acts were 'winked at,' if not actually instigated by the authorities, both of the district and 'Cuartel' or Pueblo."

John Cole, p. 57, claimant's book: "While said Exall was still there, trying to work said mines, in Feb'y and March, 1868, Mexicans were packing off said ores by night and day, but he did not dare to go out and defend them, as his life was threatened if he had attempted it; that deponent has heard these threats made by the official prefect, Macario Olvera." "Deponent has frequently *seen* them packing off said ores from the works of said company, in sacks upon mule backs, in March, April, and May, 1868, and they must have taken off largely more than $250,000 worth of the said ores, independent of and above the cost of reducing the same to bullion."

J. F. Gamboa, p. 62, claimant's book: "It was currently said there that the richest ores belonging to the Co., and the best which they had collected at the mill, were openly and with impunity stolen by the Mexicans, and that certain authorities of the district protected these persons in carrying off the ores, and that Sup't Exall did not dare to leave the reducing works to prevent them."

New Evidence offered by Mexico.

Gamboa, as to the alleged deposition of the former, filed by the claimant; for letter of C. B. Dahlgren charging Alonzo W. Adams with the forgery of his deposition, and for deposition of Frederick Sundell as to the good character of J. N. Manjarrez, Bartolo Rodriguez, and Patricio Camacho, witnesses for the defense, see Head I.)

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Evidence before the Commission.	*New Evidence offered by Mexico.*
DEFENSIVE.	
Upon this point *Bernardino Aguirre* and other miners testified, pp. 144 to 185 claimant's book, that the Co. had never been robbed of its ores for the reason that they were worthless, and that they are still there. *James Granger*, p. 148: "In answer to the question as to whether he knows that the Mexicans threatened the Americans who watched over the company's ore because they would not let them steal it he said that he knows nothing." P. 162: Did not know that Soto "had take away or disposed of any species of ores or metals; what he knows is that this person reduced ores which were brought him by some of the workmen, which they extracted from the mines by permission, and for which they paid him." Soto had a law suit with the Co. about the Guadalupe hacienda, which the Co. gained. After this the sup't allowed Soto to build two mills on said estate, in which Soto reduced the ores above mentioned. *Guadalupe Soto*, p. 162: Has never taken metal or ores from the Co. By permission of Supt. Exall deponent erected a stone mill on the Guadalupe estate, and reduced ores belonging to the workmen. (For agreement to this effect between Exall and Soto, p. 166, see Head III.) *Juan C. de Valle*, p. 177: Knows from reports no robbery of ores took place, but it was so pretended by the Americans to cover up their operations. *Ygnacio Manjarrez*, p. 180: "It is not true that the miners stole the ore, since the same is so poor that up to this time the heap left by those of the Co. still remains without there being any one to take not even a single piece of it, notwithstanding it is left alone with no one to look out for it." *Miguel Laveaga*, p. 182: "It is false that, as has been said, the operatives stole the ore, and much less true that the authorities tolerated such robbery."	
REBUTTING.	
Jesus Chavarria, p. 92: Knows "that the Co.'s ores were frequently stolen, and that it was not legally protected by the gefetura, where the sup't usually made fruitless complaints of the thefts." Mora told deponent, on their visit to the mines, "that he had a special interest in the expulsion and despoliation of the Co., in which case he intended to denounce the mines at Tayoltita, and he offered deponent a share in them, which deponent refused, and reproved his conduct in permitting the operatives to steal the ores, which they did with impunity, to the	

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Evidence before the Commission.	*New Evidence offered by Mexico.*
great responsibility of the authorities of that department, who, either by their connivance or indolence, compromised the honor and good name of the Republic." P. 93: The result of the mutiny of the laborers, instigated by Prefect Mora when deponent was at the mines, was "the continuance and increase of the robbery of the ores, which was openly carried on in daylight and in presence of the sup't." P. 95: Marcos Mora was poor when he became prefect, but "shortly before he was committed to prison for the crime before referred to, that he opened a store, and, shortly after, a pawnbroker's shop." Mora admitted in conversation with deponent in July or August, 1867, "that he had made money during the time he was acting as *gefe político*, by dividing the profits on the ores stolen from the Abra Silver Mining Co., and which were reduced by the native miners at the small reducing works belonging to the Mexicans in the vicinity of Tayoltita. Mora invited "witness to participate in that unlawful undertaking." Neither Mora nor Olvera were of good reputation in 1867, '68, and '69.	
Marcos Mora, p. 100 claimant's book: Knows lawyer Jesus Chavarria. "He enjoys a high reputation in his profession, and is considered as a truthful and respectable person." P. 102: Knew nothing of any theft of ores during deponent's administration, but heard it stated that during Olvera's time "the Mexican operatives, who were absolutely without work to maintain themselves, stole some of the Co.'s ores, and that neither Quiros nor Olvera would listen to any complaints made by the sup't."	
Chas. H. Exall, p. 194 claimant's book: The Mexicans "came openly, armed, and with impunity carried off all the best ores of the Co., and threatened personal violence if I attempted to stop them or to protect the Co.'s interests." P. 195: Has seen men whom he knew to be in Soto's employ "taking ores from the patios of the Co.'s hacienda to Judge Soto's house, who defied my authority, and whom I did not dare to stop, as they were armed, and I afterwards saw piles of very rich ores" from El Cristo mine which had been stolen. The Co. never authorized any ores to be taken there by its workmen.	
(For Alvalos', Dahlgren's, Exall's, Martin's, Bartholow's, and Adams' opinions of witnesses for defense see Heads I and XXVI.)	

XV.—INTERFERENCE BY LOCAL AUTHORITIES IN WORKING MINES.

Evidence before the Commission.	*New Evidence offered by Mexico.*

IN CHIEF.

Memorial, p. 6, claimant's book: "Acts of violence were committed against the property and employees of the Co., which were encouraged by the authorities. The employees of the Co. became so alarmed that it was impossible to keep them at work."

Chas. H. Exall, p. 19, claimant's book: "The civil authorities of the legitimate Gov't under Pres't Juarez also harassed and annoyed us, and interfered with the continuing of the mining operations of said Co."

George C. Bissell, p. 39, claimant's book: "I know the fact that the said prefect of San Dimas, Macario Olvera, was married to and lived with the daughter of one Guadalupe Soto, who had a lawsuit with said La Abra Silver Mining Co. about the title of one of the haciendas belonging to said La Abra Co.'s mining property at Tayoltita, and that said Co. gained their suit, and that said Guadalupe Soto was known as a bitter enemy to said Co., and I am satisfied that said prefect at San Dimas shared the feelings of hatred and prejudice by said Guadalupe Soto and family, of which said prefect became a member by marriage, and with whom, it is said, he had for a long time been upon the most intimate terms. I am also satisfied that other Mexican authorities, both local and national, were influenced by said prefect, and that it had been determined by said Mexican authorities, at all hazards, to get rid of said Co. in some way, and not to permit them ever again to work their said mines."

James Granger, p. 43, claimant's book: In June or July, 1867, Prefect Marcos Mora told Exall, in the presence of deponent, a large number of workmen of the Co., and other Mexicans, at the residence of Judge Soto, where he had summoned Exall, that he must "work the mines of the Co. as he directed them to be worked, and to work all their mines, or he would take the mines of the Co. from them and give them to the people to work on their own account;" otherwise the prefect "would not be responsible for any consequences that might result therefrom. He at the same time forbid any of the workmen there from working for said Co. This created tremendous enthusiasm and excitement with the workmen." Deponent felt that the result "might be the destruction of the Co.'s interest, if not the expulsion of their American employees." Aquilino Calderon had gone up to work, but was brought back by armed men before said prefect,

July 6, 1866, De Lagnel writes Garth: "The payments made formerly to workmen and others in cash are now made in cash and goods; one part of the former and two of the latter."

August 16, 1866, De Lagnel writes Garth: "When I arrived in Tayoltita the payments were made mostly in cash. After the first month I reduced it to one-half, and the next to one-third cash, and rest in goods."

Oct. 8, 1866, De Lagnel writes Col. C. E. Norton: "It is of the first importance that I should be enabled to go either to Mazatlan or Durango as my money here is exhausted, and the people consequently dissatisfied and the work necessarily retarded."

Nov. 17, 1866, De Lagnel writes Garth: "Had nothing occurred to interrupt the work, I feel sure that at this time the mill would be in operation and the proofs at last being developed. Unfortunately I was unable in Sep. or October to communicate with this place, and the ready money giving out at the hacienda, the workmen (not miners) refused to continue and left, thus bringing the ditch work to a stand-still. I tried in vain in the country to obtain relief, but the doubt and distrust of American companies is so great that I failed utterly, and am here on the same mission. Yesterday I used every effort with the best houses, beginning with E. Q. & Co., but could effect nothing. Laveaga I did not approach, because of his Jewish nature and the fact that he would exact guarantees I could not give, and mortgages of the property which I would be unwilling to execute.

"Don Juan Castillo has not yet arrived, tho' expected by every vessel. Had he been here I should have endeavored to effect some arrangement with him; but the fates were adverse, and I could do nothing."

January 5, 1867, De Lagnel writes Garth: "As to the amount received from cash sales of merchandise, it is very small, the number of people about Tayoltita being less than formerly. As those employed by me receive two-thirds of their earnings in goods, they have no great need to purchase more. Then there are other points within striking distance which are endeavoring to attract the little trade there is, and so between a diversity of causes the receipts of cash are very small indeed."

January 13, 1867, C. E. Norton writes to De Lagnel: "Also, in case you have not yet left San Ygnacio, to inform you that there is not sufficient money on hand to meet the next memorias, and there are

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and warned not to work under pain of imprisonment. Deponent understands other men were similarly threatened. P. 44: Judge Nicanor Perez (a few weeks after imprisoning Exall) summoned Exall to court, and in the presence of deponent, and a large number of the Co.'s employees, lectured him on the management of the Co.'s business, threatening that if it was not conducted to please the authorities the Co. "should be deprived of their property, and forced to flee the country." Pp. 45 and 46: The following papers were handed to witness, see pp. 52 and 53:* 'Exhibit V. 2d Court Conciliador, Tayoltita. To the superintendent of the Abra Reducing Works: By the communication of yesterday, dated the 3d, received from the Gefe Politico of San Dimas, I notify you that if you do not intend to work the Abra mines as they were formerly worked, upon the system of thirds, that you immediately vacate the mines, to allow the operatives to work them on their own account, without further loss of time. Liberty and reform. Tayoltita, July 4th, 1867. Guadalupe Soto. Exhibit W. 2d Court Conciliador, Tayoltita. To the superintendent of the Abra Reducing Works: The court notices, with the greatest dis-

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bills for lime and coal due, as you are aware, and the holders only await your return to call for their amounts."

July 10, 1867, Garth writes to Exall (original letter herewith transmitted): "Be careful about leaks and expenses. Cut off all that is possible, and watch very closely every department with that view. Don't run into debt or get into difficulty with the authorities, if there are any such things existing; but at the same time be firm in maintaining your rights, and don't submit to imposition except by force, and then make a legal and formal protest as a citizen of the United States and as an American company duly organized and prosecuting a legitimate business under the protection of the law, and our rights will be protected by our Government."

July 11, 1867, Exall writes to the Prefect: "Dear Sir: Your letter of the 10th inst. was received last evening, and from its contents I thought that no answer was expected, and I had no intention to reply to it. This morning I was advised that the answer was expected by you. In respect to the compromise of which you spoke, it was made while I was in Mazatlan, to last until I should return, and then I was to arrange with you as best I could. And if you had known the circumstances and causes which led to the paralyzation of the works, it would have been apparent to you that it was not possible to do otherwise. I have offered to the operatives all the mines, to be worked on shares by the carga, and some are already at work, and desiring that with this there may be the most friendly understanding about this affair, I am your most affectionate servant, Chas. H. Exall, Supt. La Abra S. M. Co."

July 13, 1867, Exall writes Garth: "When I received your letter by Sr. M. I was working the Abra, Cristo, Luz, Arrayan—a small force in each. Seeing the decided manner in which all further aid for the present was refused, and the injunction to cut down all expenses, necessitated my stopping off the whole force from the mines. As I had only a short time previous reduced the cash payment from one-third to ——, (which occasioned a stop for 8 or 10 days, which I was glad of, as it was so much clear gain and a little spat with the officials, which was gotten through without much trouble,) I thought it best not to stop off immediately, but prepare the miners for the change. I let them work on one week longer, and during that week informed them of my intention. They said nothing offensive, but of course were disappointed, as it would be a bad time for

*It is to be remarked of these letters, which (except the letter of Col. Valdespino, given under Head XI) are the only documents in this case pretending to be authentic. 1st. That while Soto, a witness for the defense, admits having written communications to the sup't regarding his non-payment of the workmen; Mora, a witness for the claimant, denies that he issued any such orders as are imputed to him. 2d. That the dates of the letters of Soto are palpably wrong. Mora's first letter to Soto is dated June 3d. Soto transmits it to the sup't as "the communication of yesterday." Yet the date of Soto's letter appears as "July 4th." The next day Soto writes again, saying "twenty-four hours have elapsed," &c. The date of this, as will be seen by inspecting the alleged original, was June 5th, but it appears here as "July 24th." The last letter in point of time is that from Mora to Exall of July 10th. Read in their proper order the letters, if they prove anything, fully establish the state of facts set forth by the witnesses for the defense, and are their own justification. The object of this falsification of dates is evident. It was to make it appear that the correspondence closed with the threat of Soto on the 24th of July, instead of closing on the 10th of July, with the mild reproach of Mora, that Exall "placed no value on his word," and the request that if the Co. cannot continue its work, he should allow the people to glean (pepenar) ores from the mines on their own account. 3d. Admitting these letters to be authentic and to be properly dated, it is not pretended that they caused any interruption of the work of the Co. On the contrary it went on according to Exall, and six months afterwards completed its reduction works and extracted $17,000 from 20 tons of ore. What can be more absurd than to produce this correspondence of June and July, 1867, as part of the *res gestæ* of an abandonment in March, 1868.

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pleasure, that twenty-four hours have elapsed since it addressed you a communication, to which you made no reply. You are ordered to arrange your work with the operatives within two hours; and if you come to no arrangement you will vacate the mines, so that they may lose no more time. Liberty and reform. Tayoltita, July 24, 1867. Guadalupe Soto.

Exhibit X. Gefetura Politico of San Dimas. To the representatives of the mines, Tayoltita: The Gefetura being informed that you have stopped the mines in that mineral, informs you that this is not the engagement that you have entered into with me, and that it hence believes you place no value upon your word. Nevertheless, if you don't choose to continue your work, give the people permission to collect ores in the mines, as I will not hold myself responsible for the consequences in a town where the people are without work. Independence and reform. San Dimas, July 10, 1867. M. Mora. Exhibit Y. Gefetura Politico, of the Partido of San Dimas. To Judge Guadalupe Soto, sole conciliador at Tayoltita. From your communication this Gefetura has learned, with great displeasure, the abuses committed by these Americans, who at first agreed to pay their operatives in money, then to pay them half and half, and thirdly to pay them one third. Notify them through your court and by my order to at least comply with the last contract; that is to pay them one-third in money, otherwise that they vacate the mines and allow the operatives to work them as they can, since neither the mining ordinances permit them to pay in goods only, nor will the Government consent to such abuses, and it is already tired out with the thousand complaints upon this subject. You will show this communication to the American in charge in that mineral. Independence and reform. M. Mora, San Dimas, June 3d, 1867." Deponent testifies as to the note from the prefect to the judge, that it is a correct copy, made by Diego Flores, an employee of La Abra Co., by permission of Judge Soto, who exhibited the original to deponent and Exall. The notes from Soto to the Sup't are originals. Also, that from Mora to the Sup't. "I remember the order very well, as I received it as the clerk of the Co., and after showing it to Mr. Exall, I filed it away with some other papers of the kind, and subsequently turned it over, together with two or three others from Judge Guadalupe Soto to the attorney of said La Abra Co."* P. 46. The prefect

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them to be without work—in the rainy season. Since stopping off we have been trying to make arrangements with the men to work by shares and by the carga. I have succeeded in getting four miners to work by the carga. They are working in the Arrayan and getting out some good metal. I hope to be able to keep them there. By doing so it will secure the mines in every way. Four miners is all that they had there before. Mr. Cullins thinks that in a short time he will be able to get more men to work in the other mines. We can do better with them when they are a little hungry. Working in this way is much better, and attended with the least expense. They are provisioned for a week, and charged with what they get. What metal they get out is assayed. If it assays an amount worth working, we pay them in goods (a little money now and then) about one-half its assay value. They, of course, will get out nothing but good metal, if it can be found. You see in this way we get the metal out free of cost, buy it at one-half its value, pay in goods, and make a handsome profit on them. As long as the men will work in this way (which they will not do unless they get good metal) it will be our best way of working the mines. We must not expect them to get out any amount, but what is gotten out in this way will pay for packing down from the mountains. I am privileged by the mining laws of the country to stop working in mines four months in the twelve. As these mines have been steadily worked over a year, I can safely take advantage of this privilege. . . . . Respectfully, Charles H. Exall."

August 5, 1867, Exall writes Garth: "I am now working 20 men by carga, pay them not over $1.00 per week in cash. I *must* give them some little money. These are working in the Arroyan and on the dump of the Rosario. The Cristo is now idle, also La Luz and Abra. I can get no metal from them which will pay. The Cristo and La Luz, which have been worked for over a year, I am privileged to stop for four months. The Abra I must work; will put in some men and see what can be found."

October 6, 1867, Exall writes Garth: "By this steamer I am in receipt of yours of 10th and 20th of July and 10th of August. I was much disappointed that my urgent demands for money was not favorably answered. . . . . There is no difficulties about authorities, boundaries, or anything else concerning the mines and hacienda, provided there is money on hand, and money *must* be sent. I hope that I have urged this point sufficiently so that

* Where are these other papers? There is not the scratch of a pen from any official dated later

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at the time the Co. was driven away was very intimate with Judge Soto and his family. P. 47. The prefect "is the chief power in his district, civil, and military."* He has almost absolute power, no man dares to oppose him. Judge Soto had a lawsuit with the Co. at San Dimas "about January, 1868, or a couple of months before they were compelled to leave," concerning the title to the lower hacienda. "The Co. could get no decision in San Dimas, but the papers were sent up to Durango and, as I understand, decided in favor of the Co. But it was a matter of little consequence to the Co., as they were soon after driven away and compelled to leave there altogether." P. 48: "The said Juez or Gefe de Cuartel, Guadalupe Soto, and his family" now occupy the lower hacienda and the principal buildings of the Co.

Matias Avalos, p. 49, claimant's book. "I think in the month of July, 1867, when I was engaged in bringing down from the mines to the hacienda the ores belonging to La Abra Co. I met all the 'barreteros' and men employed in and about the mines going down to the hacienda," "and they all said an order had been sent up to the mines by Marcos Mora, Gefe Politico of that district, to stop work and ordering them all to Tayoltita" In the evening deponent heard Mora tell these men at the house of Judge Soto that he would not let any of them work if the Co. did not employ all, and work all their mines "as he had directed them." And he said at the same time that he was going to take the mines away from the Co. and give them to all of the people to work them as they please." Deponent did hot sleep that night, expecting serious trouble for the Co. "I do not know how the Co. settled the matter, or how it was that La Abra Co. staid in the district as long as they did after that affair, for I knew the authorities were anxious to get rid of them." P. 50: Guadalupe Soto and family occupy the Co.'s hacienda and property.

José M. Loaiza, p. 80, claimant's book: Recognizes handwriting and signature of Mora in document dated July 10, and of Soto in documents dated July 4 and 24.

DEFENSIVE.

Camacho, Manjarrez and others, pp. 130 to 135, state that "it was on account of

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you may see fit to send me something to hold the mines. I should be sorry to see them lost on this account. Please telegraph me if you intend sending money."

Decr. 5th, 1867, Exall writes Prefect Macario Olvera: "I was in San Dimas on yesterday, and hoped to have the pleasure of seeing you, but was disappointed, as you had not returned, and learned that you were not expected until 23d inst. Thought best to write to you in regard to the denouncement of the Hacienda Guadalupe by Sor. D. Guadalupe Soto, although I should have much preferred to have talked over the matter with you. . . . . Trusting that you will take proper and speedy steps to arrest this matter, I remain your ob't servant, Charles H. Exall, Sup't La Abra S. M. Co."

May 8, 1868, Exall writes Granger, (original letter herewith transmitted:) "My kind regards to Slone 'Manuelitta"—I think that's the way to spell the name; Guadalupe's family generally, Cecilia and the Tayoltitians generally. How are you and Cecilia now? Hoping that this may find you well and getting enough to eat, I remain as ever your friend, Charles H. Exall. The contents of this keep to yourself."

Frederick Sundell testifies that the prefect was on intimate terms with Supt. Exall, who tendered him many courtesies, and that he never heard of any hostile action on his part towards La Abra Co.

(For testimony of J. M. Loaiza as to his alleged deposition, filed by claimant, for letter of C. B. Dahlgren, charging Alonzo W. Adams with the forgery of his deposition, and for deposition of Frederick Sundell as to the good character of J. M. Manjarrez, Bartolo Rodriguez, and Patricio Camacho, witnesses for the defence, see Head I.)

than July 10, (or 24,) 1867. How does it happen that even these four letters were preserved from the Mexicans, who "sacked" the hacienda of receipts, invoices, etc.? (See Granger, Head VI, p. 81.) Why, also, did not Exall forward to the Co., or at least carry off in his flight, these threatening epistles?

* See Mora's testimony in rebuttal.

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their bad management in the working of the mines, and not being able to get the operatives to work for goods, that they abandoned their mining operations."

(For agreement between Soto and Exall, p. 166, see Head III.)

Santos, Manjarrez and others, pp. 143 to 149: The Co. was never molested by the authorities, much less by the people of the town.

James Granger, p. 137: Prefect Mora meddled with the company. "As far as the other authorities and people of the district are concerned, he is not aware of anything they ever did against the American companies."

Guadalupe Soto, p. 161. When he was judge in Tayoltita deponent addressed communications "to the administrator of the Abra establishment, because there had been a rising of the people to compel him. P. 162: The communications which he issued were in consequence of the fact that beside the disturbance on the part of the people, he had received orders to that effect from the political chief, Marcos Mora, all in consequence of the failure of the supt. to contract with the operatives for working the mines." "He is a married man, a tailor* of this neighborhood, and a native of Tayoltita."

Victoriano Sandoval, p. 164: Does not know, even from report, that the authorities called a meeting of the workmen, exhorted them not to work for the Co., and promised to give them the mines. "What he knows very well is, that he, the deponent, being a miner in the mines of said Co., the supt. ordered him to procure people to do the work, promising to pay them all cash for their work, which they did, day and night; that in a short time they declined to perform this obligation, promising to pay them 10 shillings per day [reales] in current money, from 6 in the morning till 6 in the evening. This they refused again to do, and offered to pay them one-half in money and one-half in goods; and shortly after they repeated their refusal to carry out their promises. Then they were summoned to appear before the authorities, and it was agreed that they should pay a third part in money. At the expiration of a few days even this they failed to comply with, which gave rise to new complaints before the authority, and said authority demanded that they should comply with their obligations, but without resorting

*Imagine this judicial potentate, seated (cross-legged) on the tribunal of justice, launching his edicts against the weak and helpless (though wealthy) Abra Company.

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to any violent measures or attacks upon property."

Aquillino Calderon, p. 168: Knew of no hostility or interference on the part of the authorities. "What he knew was, that those of the Co. having failed to carry out their contract to pay as they had pledged their word to do at various times, the workmen exacted what was their due, refusing to work until what had been agreed upon was paid to them; and in consequence of this unanimity they deemed wrong that the deponent should have gone out to work at the mine, and they ordered him away from the mine of Del Cristo, where he held the position of crusher."

(For evidence of Calderon and Rodriguez as to the statements asked of them by Adams on behalf of the Co., but not used before the Commission; and for testimony of Avalos as to his pretended deposition on behalf of the Co. in May, 1870, in Mazatlan, see Head XXVI.)

REBUTTING.

Jesus Chavarria, p. 91 claimant's book: Knew Marcos Mora; visited Co.'s mines with him in July or August, 1867. Mora was prefect from March to Sept., '67; was arrested and tried for crime in Durango about Sept., 1867. Deponent defended him. Olvera succeeded Mora as prefect. On the occasion of their visit to the mines deponent became satisfied of Mora's hostility, &c. (See Heads X and XIV.) On the second night of their stay at Tayoltita the head miners, by order of Mora, mutinied against the Co. and supt., and refused to work longer in the mines, "which resulted in the continuance and increase of the robbery of their ores." Since the abandonment deponent has conversed with Olvera in Durango and with Mora "on his frequent visits to him when he was in prison, and was told that the Co. had finally been compelled to abandon their mines at Tayoltita, through the loss of their property, owing to the concerted hostility against it in March of 1868." P. 94: Prefect Olvera was killed in 1870 in a riot among the miners of San Dimas "on account of their antipathy against that gefe politico because he was not a resident of that department." P. 95: Neither Mora nor Olvera were of good repute in 1867, '68, and '69.

Marcos Mora, pp. 98, 99 claimant's book: Was prefect of San Dimas from March to Sept., 1867. Had no military powers and his pay was $1,000 *per annum*. Knew the mines and employees of La Abra Co. Never knew the latter to disobey the laws

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or the authorities. Macario Olvera, who succeeded deponent at the beginning of Sept., resided at Canatlan when appointed. Arcadio Laveaga acted as prefect from the time deponent left until Olvera took charge. Deponent succeeded Ygnacio Quiros. Quiros is now (1872) judge of first instance and Laveaga prefect at San Dimas. P. 100: Knows lawyer Jesus Chavarria; "he enjoys a high reputation in his profession, and is considered as a truthful and respectable person." In July, '67, deponent and Chavarria went to Tayoltita from San Dimas (about five leagues,) and examined La Abra mines on the second day of their stay, Chavarria doing so at deponent's request. P. 102: It is not true that deponent, as gefe politico, either directly or through Judge Soto ordered the Co. "to give work to all the unemployed Mexicans in the district, or else turn the mines over to the operatives to work them on their own account." Deponent did not say "that he would not hold himself responsible for the consequences which might ensue." Asked "whether in July or August of 1867," while acting as gefe politico, "deponent gave any orders to the head miner of the Co. in charge of the operatives in the presence of lawyer Chavarria and others," and "whether he dismissed any employees or operatives from the Co.'s service." "Ans. That he does not recollect having given any orders in the presence of Mr. Chavarria, and that it is not true that he then dismissed any of the company's employees or operatives from their service." Asked to answer more positively, "he does not recollect" having made any dismissal. P. 103: Deponent and Chavarria visited the mines "from curiosity and amusement; that he did not communicate his views to Mr. Chavarria for he had none on the subject." Did not say to the Co., through Mr. Exall, and to the operatives that if the Co. did not employ all unemployed Mexicans he would imprison Exall and all other Americans, break up the Co., and give the mines to the Mexicans. Was not visited by the operatives on the second night of their stay at Tayoltita, and did not order them to stop work and say he would give them the mines in a few days. Did not tell the operatives that the Co. and the American employees desired annexation "of the frontier States to the United States," and they did not applaud and promise to drive them out of the country. Asked "whether it is true that when the operatives applauded him that he told Mr. Chavarria that he would drive the Co. out of the country before he got done with	

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it, or something of the same import? Ans· That it is also false." P. 104: Did not influence or try to influence the appointment of Macario Olvera as his successor. Was gefe politico under the provisional government of Gov. Zarate and Presidency of Juarez. Never informed Chavarria that he had had several interviews with Olvera "before and after he was appointed gefe politico, proposing to him to denounce the Co.'s mines in case they should abandon them, and offering Chavarria a part in them if he would assist him as a lawyer in the difficulties which he had in his matters in Durango." Deponent resigned as gefe politico—was not removed. Was appointed March 1st, 1867, by Gov. Zarate, and his resignation accepted in July, 1867. P. 106: Copies of Mora's commission, dated in March, and the acceptance of his resignation, dated in July.	
-*Charles H. Exall*, p. 195, claimant's book: It is not true (as stated by witnesses for defense) that the letters of Mora and Soto were written because of any disturbance among the people or want of contract with the workmen, as they all worked under express verbal or written contracts. P. 196: Soto wished the Guadalupe estate, which was half a mile from the hacienda San Nicolas and on which was an old and useless hacienda. "With the view of trying to conciliate him, and through him also Macario Olvera, who, it was said, was Judge Soto's son-in-law, and who was at that time prefect and chief authority of San Dimas district, I executed to said Soto said agreement of February 7, 1868, whereby I gave him permission to use the old Guadalupe hacienda for six months, rent free, said Soto intending, as he said, to erect on the premises a stone mill and to use the same for reducing his own ores, he claiming to own some mines in that neighborhood but two or three miles distant. I gave him no other permission than that specified in said agreement. The instrument made, or said to have been made, by James Granger, attempting to extend or renew said lease," was without authority. "Granger had no control over La Abra establishment." P. 197: The allegation that the Co. failed to comply with its contracts with the workmen was a mere pretense to drive it out. The erection of the works brought a large number of workmen to Tayoltita, who were employed by de Lagnel and deponent. The completion of some of the works threw all but the practical miners out of employment. The discharged men became intimate with the local authorities, who encouraged them in hostility to	

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the Co. "by telling them, falsely, that the Co. came there to annex Durango and Sinaloa to the U. S., and they ordered all the men whom I did employ to quit work, which nearly all of them did do, frequently for weeks at a time, paralyzing the works and the business of the Co." Those who did work had to conceal it from the authorities. Aquilino Calderon was compelled by force of arms to quit the Co.'s service. "Said Mora and Soto issued the written communications or orders to me, which are referred to in said defensive testimony, requiring me to employ all the men and work the mines as Soto and Mora directed, or to abandon them to the people to be worked by themselves as they pleased; but those written orders were mild compared with verbal orders given me from time to time, and finally the last order or warning by the Prefect Olvera, notifying me to abandon the works and leave the country, which forced the abandonment of the Co.'s works and mines. It was but a foregone conclusion with said authorities, as from their words and actions I felt, weeks before that time, that the abandonment was inevitable." "Their verbal orders to me were much more pointed, emphatic and hostile than anything they wrote me." Never had any trouble with the workmen on account of any contract, and but for the authorities "I think I could have gotten along with the people and remained at said works. Said workmen were paid the current wages of the country and were always fully paid according to contract." P. 201: The mill, &c., was just completed when the Co. had to leave, after deponent had extracted about $17,000 from 20 tons of ore. Dr. Elder had assisted him in previous tests. P. 202: "When those works were completed and we were ready to realize, the facts were widely circulated by Mexicans, and I was soon thereafter notified by said Prefect Olvera that the Co. would no longer be tolerated there." P. 203: "San Dimas, where most of these witnesses (for the defense) reside, is distant from said hacienda about fifteen miles, and communication is by a narrow and dangerous mule path, almost impassable, and over a mountain from 7,000 to 8,000 feet high, and no one would pass over it from San Dimas to said hacienda merely from curiosity to see the hacienda or without some special business or object."*	

* Exall apparently labors under the delusion that Mora, the only man who spoke of going to see the hacienda from curiosity, was a witness for the defense.

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T. J. Bartholow, p. 223, claimant's book: "During my superintendence of said Co.'s works our employees were frequently interfered with by the local authorities of said district, and on two or three occasions they actually went into the mines and discharged the men engaged in labor, upon the pretext that we did not employ all the men in the district who were out of labor, and that we did not work the mines to suit them. I had many such difficulties to encounter with the local authorities, which seriously interfered with the operations of the Co."

(For Avalos', Dahlgren's, Exall's, Martin's, Bartholow's and Adams' opinions of witnesses for the defense, see Heads I and XXVI.)

New Evidence offered by Mexico.

XVI.—IMPRISONMENT OF SUPERINTENDENT.

CLAIMANT'S.

Memorial, p. 6, claimant's book: "The company's sup't was arrested, without having given any cause of offense, and fined and imprisoned without trial, and without having been informed of any offense."

Chas. H. Exall, p. 18, claimant's book: "I was arrested by the order of the local magistrate or judge of Tayoltita, whose official title, as I understood, was Juez, and thrust into prison and sentenced by him to a fine of $50 and imprisonment for two months. I had no trial, nor even an examination, except by him personally, and do not know for what I was arrested and imprisoned." Had committed no offense. "I was released through the personal influence of a Mr. Granger, who had to promise payment of the said fine, no good reason ever having been given me for my arrest or release."*

James Granger, p. 43, claimant's book. In December, 1867, or January, 1868, Exall was imprisoned by Nicanor Perez because he politely reproved said judge for entering a private room in the company's store against the rules of the Co. Exall was abused by the judge, sentenced to imprisonment for two months, confined in the hacienda till the next morning, and then locked up in a filthy prison. De-

The following letter is all which the correspondence of La Abra Co. contains with reference to the alleged imprisonment of Supt. Exall: "C. Jefe Politico San Dimas, Durango. Dear Sir: This morning about 11 o'clock Sr. D. Nicanor Perez came into the store belonging to the hacienda, looked around, saluted us and then walked into the storeroom adjoining the store. At the time I was behind the counter, and seeing him in there where *no one* was ever allowed without permission, I, in as polite Spanish as I was master of, requested him to come out, and after he came out I shut the storeroom door. He then asked me if I thought he was a rogue and wanted to steal. I told him as well as I could, certainly not, and that the reason of my asking him out was that no one was ever allowed in there without permission. He then stated that he was there on official business and wanted to see Matias [our] who was at the time working in the store room. I immediately called Matias out, and he and the then went outside of the store. A few minutes afterwards he returned and talked in a very excited manner, feeling himself much insulted. I told him nothing was meant by what I had said, and he left and returned to About 12½ o'ck, just as our dinner bell had rung, a Mozo brought an order from the judge, which I enclose. After we had eaten Mr. Slone went up to see the judge. He had collected in his house a number of men, and in the house preparations had been made as if resistance was expected and force might be required. After getting into his

*"A Mr. Granger," who had this mysterious influence over the authorities, was Mr. Exall's clerk. But it ought not to have been necessary for him to "promise payment" of the fine imposed on the sup't of this wealthy company. Mr. Exall might have taken a few pounds of the ore to court and paid his fine himself.

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ponent visited him next day, and found him busily engaged in killing fleas. "By personal influences I brought to bear, and by securing the payment of the fine imposed upon him, I managed to get Mr. Exall released. All the above I witnessed myself."

John P. Cryder, p. 73, claimant's book: Witnessed Exall's arrest and its cause. Went with Granger to procure his release. "We found Mr. Exall, a gentleman of refinement, engaged in the work of defending himself from the attacks of millions of fleas." It was said that the house where Exall was confined "had been but recently occupied by persons of loathsome diseases, and that the judge knew this fact." "This seemed to create so much sympathy and feeling at Tayoltita in favor of Mr. Exall, even with those natives and unemployed workmen who were in favor of driving said Co. away from the country, that Mr. Granger managed, with some influences unknown to me, and by securing the payment of the fine, to get Mr. Exall released from this vile prison house, and I do not know what became of the case after that."

DEFENSIVE.

Nuñez, Romero, and *Ygnacio Manjarrez*, testifying for the defense, say that they never heard of the imprisonment of Exall. *James Granger*, p. 137, said, "when D. Nicanor Perez was judge in Tayoltita, he arrested, without having any reason, the Supt., Mr. Exall." P. 147: Judge Perez imprisoned Exall for telling him he did not wish people to enter the warehouse of the Co. without his permission, the judge having entered them before. "He imprisoned him in a small house at a place called the Reventon, situated in the same district of Tayoltita." P. 161: Exall "was imprisoned for two or three days because he reproved Judge Nicanor Perez for having removed from one room to another in the establishment of the Co." N. A. Sloan, p. 148: "The judge went into the hacienda to speak to one of the peons who was at work there, and the Supt. thereupon put him out." *Arcadio Laveaga*, p. 172: In reply to a note from Judge Quiros, Prefect Laveaga states that there exists in the prefecture no data or knowledge of the imprisonment of Exall.

REBUTTING.

Marcos Mora, p. 100, claimant's book: Judge Nicanor Perez told deponent "at the time" (in 1867) that he had impris-

New Evidence offered by Mexico.

room I requested Mr. Slone to ask him, as I was unable to ask him myself, what was the business he wanted to see me on. He replied he had been grossly insulted and pushed out of the store when he was on official business. This I of course denied in a most emphatic manner, having only acted as before stated. I then told him that in requesting him to come out of the store-room I had no intention of insulting him or hurting his feelings, but was simply enforcing the rules of the hacienda in not permitting any one to go in the store-room without permission. This he would not listen to, and persisted in saying I intended to insult him. I of course did not, and from my ignorance of the language *could* not, argue the point. After some time spent in talking to this effect I asked if he had gotten through with me, as I desired to return to the hacienda. He replied, yes, he had finished. Mr. Slone and I then left and bid him good-by. As we reached the corridor he said he never wanted to see me in his house except on official business. To this I replied, very well, sir, and turned to leave. He called me back, saying not to go, if I did he would send a force after me, and they would shoot, and insisted on my return into the house. I did so without any remark. He then said I was his prisoner. I then requested him to know what was to be done. He said he would keep me in jail until he could receive instructions from San Dimas. I remained passive, and he then gave full license to his tongue, abusing me in the most violent language. Then and several times I repeated my statement of the occurrence in the store. To this he paid no attention, and treated me with utter contempt, and persisted in his intention of putting me in jail until he could hear from Sn. Dimas, and would lis en to nothing that I might say. After being his prisoner for an hour, not being allowed to speak to any one and being guarded, I asked him if he intended putting me in jail please to do so, as I had a headache and wished to lie down. He then gave me permission to go to the haciendа, *but* to consider myself still his prisoner, and at his house whenever ordered.

My dear sir, I have before given you as minute state of events, exactly as they occurred, as 'tis possible to write, and from which you will see that if I have given any cause Dn. Nicanor to imagine himself insulted, it was done ignorantly, as nothing was further from my thoughts than insulting him, or hurting his feelings in any manner, and I submit it to your

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oned Supt. Exall and fined him in revenge for a personal insult.* Does not know whether Exall had broken any law.

Chas. H. Exall, p. 199, claimant's book: "I had done no unlawful act, and none was charged against me. I told Judge Perez, politely, that if he had some business with me that I would see him in the office, and his pretended offense was all previously arranged, as I was subsequently informed, to give him a pretext for locking me up and paralyzing the efforts of the Co. I gave him no reason or cause for arresting me."

Ralph Martin, p. 214: "The imprisonment of Mr. Exall, the Co.'s last Supt. there, " was matter of common talk among Mexicans after deponent went to San Dimas in 1868.

(For Avalos', Dahlgren's, Exall's, Martin's, Bartholow's, and Adams' opinions of witnesses for the defense, see Heads I and XXVI.)

* At this time, according to Chavarria, Mora was himself in prison in Durango.

New Evidence offered by Mexico.

judgment whether I deserved the treatment which I have been subjected to, abused and insulted, without any provocation, and have no redress left me. But for being a prisoner I would come and see you in reference to the matter, but unfortunately necessity compels me to write. Dn. Nicanor intends writing to San Dimas, and will of course give you his version of the affair. Please act on this immediately, as I don't care to be any longer under restraint than possible. Yours, most respectfully, Charles H. Exall, Adm. La Abra Co. Tayoltita, Jan'y 7, 1868."

(For evidence of the character of John P. Cryder, for letter of C. B. Dahlgren, charging Alonzo W. Adams with the forgery of his deposition filed by claimant, and for the deposition of Frederick Sundell, as to the good character of J. N. Manjarrez, Bartolo Rodriguez and Paricio Camacho, witness for the defense, see Head I.)

XVII.—DENIAL OF PROTECTION AND REDRESS BY AUTHORITIES.

CLAIMANT'S.

Memorial, p. 6, claimant's books: "When the superintendent applied to the authorities, both civil and military, in Durango and Sinaloa for protection his request was harshly refused." P. 7: "That the claim was not presented prior to Feb. 1, 1869, to the Department of State of either Government.

Charles H. Exall, p. 19, claimant's book: "I had frequently applied to the proper military and civil authorities of Mexico, both in Sinaloa and Durango, for redress and protection against the violence stated, but was rudely denied by both in every case, and could get neither." P. 20: Q. No. 8: "After that abandonment, what further was done by said Co. or by you, as their agent, in said mines? Ans. Nothing by me and nothing further by the Co., so far as I know."

Wm. G. S. Clark, p. 65, claimant's book: When "Scotty" was robbed by the soldiers of $1,178 out of the $3,000 he was carrying for the Co., deponent, at Scotty's request, went with him to Gen. Guerra to ask for a return of the money or a receipt for it, but was refused. Guerra said he did not know where the money was, but his army needed all the supplies it could

Much of the evidence on this point will be found under preceding heads from X to XVI inclusive.

Febr'y 6, 1866, Bartholow writes to Garth: "After the Liberals took possession of the country and confiscated large numbers of mules, it was with the greatest difficulty I could get any one to agree to pack at all; and had I not succeeded in getting military protection our mill would now be lying at Mazatlan. . . . . Yours truly, Th. J. Bartholow."

Feb'y, 5 1866, Bartholow writes Don Angel Castillo de Valle: "I beg to inform you that I have sent a special messenger to the Liberal commander and prefect in San Ignacio asking permission for your friends to return to their late homes in Leneria, and to prosecute their business as formerly, and stating that I had employed them to pack for me. My messenger has not yet returned, but I am looking for his return hourly, and I entertain no doubt of my request being granted."

February 21st, 1866, Bartholow again writes Don Angel Castillo: "Confirming my respects of the 5th inst., I beg now to advise you that our mutual friends the Messrs. Ossena have received permission from Gen'l Corona to go to Lenera and take possession of their property there,

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get, no matter from whom. They should be paid for at the close of the war.

DEFENSIVE.

The witnesses for the defence upon this point, with the exception of Granger, stated that they had no knowledge of any complaint on the part of the Co. to the authorities of lack of protection. James Granger, pp. 147 and 161, stated that Exall had complained to the Gov. and civil authorities of Durango, but does not know what answer he might have received.

REBUTTING.

Jesus Chavarria, p. 92, claimant's book: Knows "that the company's ores were frequently stolen and that it was not legally protected by the Gefetura where the sup't usually made fruitless complaints of the thefts." P. 94: Asked if the "protection of the national* and State authorities was duly and legally invoked on behalf of the Abra Silver Mining Co., at the end of 1867, against the unlawful attempts made against it and the robbery of its property by Mexicans, at the instigation of the gefe politico of the district and the local authorities at Tayoltita?" Ans. in the affirmative: "Deponent, employed by Mr. Rice, of California, as Exall's lawyer, repeatedly solicited from the State government protection for the Abra Co., "but all to no purpose." The only answer given was that the government of the State, at whose head was Francisco Ortez de Zarate, in 1867, would not meddle in private matters." Deponent knows that the executive of the State had the requisite military and civil power to protect the Co. "Is unable to explain the reasons why this protection was withheld." The conduct of the Co. was good.

Marcos Mora, p. 102: Has heard that ores were carried off during Olvera's administration, "and that neither Quiros nor Olvera would listen to any complaints" made by the sup't. In Oct. 1867, Chavarria informed deponent that he and Joseph Rice had been employed by the Co. to complain to the Governor of Durango 'of the damages and persecutions which the Co. were experiencing at San Dimas, and asking him for protection; that at the time the Governor sent for deponent and questioned him with regard to the conduct

*To what national authority did the company ever apply for redress, and when? There is no testimony at all on this subject. It is curious that there should be no documentary evidence of an application having been made even to the local and State authorities. (See argument of Mr. Avila, pp. 45 and 46.)

New Evidence offered by Mexico.

and I am also informed that their corn, which had been confiscated, has been returned to them, their mules are now packing for me, which circumstance aids me materially in getting all my machinery and effects delivered in good time"—

March 7, 1866, Bartholow writes Garth: "When the animals were obtained I was under the necessity of sending to Gen'l Corona for his protection and a guarantee that the men and animals in my employ should not be taken by his forces. All this I obtained, but not without difficulty, and with all these difficulties I have in less than three months succeeded in getting all our machinery and a fair stock of goods delivered at the hacienda." After describing the murder of Wm. Grove, Bartholow goes on to say: "These facts were promptly laid before the commander of the Liberal troops at San Ignacio, Señor D. Jesus Vega, who took great interest in the matter and promised to use all the means in his power to discover the murderers and bring them to justice, and he had arrested and placed in confinement two men charged with the crime and his soldiers are in pursuit of the third. These we are assured will be tried by court-martial, and, if found guilty, will be summarily executed. Mr. Grove, I think, lost his life by imprudence in talking."

April 10, 1866, Bartholow writes to Garth: "I enclose you a letter that I wrote to the collector of taxes at San Ignacio, which explains itself. The result was, instead of paying taxes to the amount of three or four thousand dollars, as was demanded, we only paid about $30, and there was no necessity of troubling Gen'l Corona with this matter." In the same letter, after describing the robbery of Scott, he says: "He immediately informed the nearest commander of the Liberal forces of the fact who sent for him for the purpose of identifying the robbers; he complied, but could not find them, for the reason that the officer could not find even half his men; I also, at the same time, opened a correspondence with Gen'l Corona, through the prefect Col. Jesus Vega, at San Ignacio, who, by the way, is, I think, one of the most perfect gentlemen I have met in the country, and I am of the opinion that but for the turn in military affairs, which occurred a few days since, we would in some way or other have been reimbursed for the loss, but now I have no hopes whatever, and we may as well charge up $1,178 to profit and loss. . . . . I wrote you fully in my last letter, detailing the circumstances of the murder of William

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of the Co., that the deponent informed him that it consisted of Americans, and, like all other foreigners, was working for the ruin of Mexico. He refused it the protection which he prayed for."

Pedro J. Barraza, (Mexican, age 38, first criminal judge [acting in civil matters] of the city of Durango, at request of A. W. Adams, gives a "certified deposition" upon interrogatories submitted by Adams.) Knew Joseph Rice, in San Francisco, in 1863, '64, and '65. Rice came to deponent's office, in Durango, and asked him to refer him to the best lawyer "to aid him in arranging some matters connected with the mines of San Dimas; that the undersigned introduced him to lawyer Jesus Chavarria, but without knowing what was the business for which he required the services of a lawyer in this city."

Charles H. Exall, p. 204, claimant's book: In July, 1867, deponent applied in person to Governor Zarate for a letter to the prefect and judge of San Dimas district, "requesting them to let me proceed with the works of La Abra Co. unmolested, and to protect the Co. from depredations committed defiantly and openly, by daylight and at night, by Mexicans," encouraged by authorities in carrying off ores and capturing mule trains. "The Governor replied that he would not give the letter of request, and that he thought it best for the Co. to give up the enterprise and leave the country, under the circumstances, as the people, he said, was opposed to the proclamations of Pres't Juarez, inviting foreigners there, and he thought it impossible to enforce their pledges of protection, exemption from taxation, and other obnoxious provisions. He said, in substance, that he would not attempt to protect foreigners in holding the property of the country against the sentiments and interests of the people; but I cannot, at this period, pretend to give his exact language. The same answer, deponent understood, was given to Joseph Rice and Jesus Chavarria, whom deponent employed to make the same appeal. About Oct. or Nov., 1866, deponent applied in person to Gen. Ramon Corona, the chief in command on the Pacific slope, and to the military Governor of San Ygnacio, to whom Corona referred him, and who "was, I think, named Parra," for protection and the restoration of a mule train loaded with supplies, which had been captured a few days before, but was rudely denied "even a letter to the local authorities to protect us." The Governor referred to the reports of the desire of the Co. to have Durango and Sinaloa annexed to the U. S., which deponent said were untrue. He finally consented to let

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Grove and the finding of his body. Since then the Liberal authorities have taken the matter in hand, and arrested one of the murderers at this place. The villain was actually in our employ, doubtless for the purpose of ascertaining when an opportunity should offer to waylay and murder another of our men, if the prospect for plunder was sufficient to warrant the risk. When the officers arrived, I had him conveyed to the blacksmith shop and securely ironed. The next day he was conveyed to San Ignacio, and thence to Cosalo, where he was tried. We failed to convict him for the murder of Grove, but was convicted for the murder of a woman whom he killed previously, and sentenced to be shot. Before the execution of the sentence he confessed the murder of Grove and revealed the names of his two confederates. These two would have been arrested before this but for the expulsion of the Liberals from the country. Now we have to wait for the Imperialists to put their officers in power before we can act any further in the matter."

Nov. 28, 1867, Exall writes the prefect, making formal opposition to the denouncement of the Guadalupe hacienda by Judge Guadalupe Soto, on the ground that said hacienda is the property of La Abra Co., and further, that there is an occupied building on the premises, and therefore they are not subject to denouncement except after four months' notice.

Dec'r 5, 1867, Exall again writes Prefect Olvera on the same subject. "Sor. D. Anto Arriza, gefe municipal, was here on yesterday. He is an old resident of this section of the State and neighborhood, knowing intimately the former owners here, and also knowing everything in reference to the sale of the property, the two haciendas and mines. He gives it as his opinion that the hacienda is not denounceable, and that Soto should be ordered to stop work until the affair is settled. . . . . And in this business I demand equal and exact justice, without fear or favor, and leave the matter in your hands with the request that you will protect me in all my legal reghts and privileges."

Dec'r 5, 1867, Exall writes Don Juan Castillo de Valle: "I take the opportunity of our mutual friend, J. G. Rice, Esq., going to Durango, to write you again, in case my letter of 26th November should not have reached you . . . . . As soon as I returned and heard of what had been done during my absence, I entered a formal opposition, and put it in the hands of the gefe in San Dimas (or head of legal affairs.) I understand he has since

XVII.—DENIAL OF PROTECTION AND REDRESS BY AUTHORITIES.

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his soldiers hunt for the mules, some forty in number, but they were never returned, and others were captured.

T. J. Bartholow, p. 222, claimant's book: "I applied to Gen. Ramon Corona, the chief in command of said forces on the Pacific coast, to restore to the Co. the property so captured by his subordinate officers." He referred deponent to the commanding officer at San Ignacio, "whose name, I think, was Gen. Guerra or Gen. Parra." Deponent related the circumstance of the capture and of the murder of the quartermaster in charge of the train; but the officer declined to order restoration of the property. "He also refused to instruct the authorities at San Dimas and Tayoltita, as I requested him to do, to protect the Abra Co." P. 223: The interference of the local authorities "caused me to appeal to the Governor of Durango for protection against the unwarranted acts, who refused to interfere, or to afford any protection to the Co. I also appealed to the prefect of the district, whose name, I think, was Laveaga, with the same result."

(For Avalos', Dahlgren's, Exall's, Martin's, Bartholow's, and Adams' opinions of witnesses for the defense, see Heads I and XXVI.)

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forwarded it to the Governor for his decision thereon . . . . . I write, begging that you will give me all necessary information on this subject, and if you can, in any possible way, do anything with the authorities to induce them to render a decision in favor of my company, and prevent possession being given to Guadalupe Soto, you will be doing my Co. a great service and receive the thanks of your ob'd't servant, CHARLES H. EXALL, Administrador of La Abra S. M. Co."

The release of the Hacienda and its subsequent occupation by Judge Soto by amicable arrangement with Exall, are set forth and admitted in the testimony quoted under heads III and elsewhere.

(For letter of C. B. Dahlgren, charging Alonzo W. Adams with the forgery of his deposition, filed by claimant; and for deposition of Frederick Sundell, as to the good character of J. N. Manjarrez, Bartolo Rodriguez, and Patricio Camacho, witnesses for the defense, see Head I.)

XVIII.—DENIAL OF REDRESS BY COURTS.

IN CHIEF.

George C. Bissell, p. 40, claimant's book: "Judge Soto had a lawsuit against the Co. about the title of a hacienda, which the company won.

James Granger, p. 47. Q. No. 15: "Did said Guadalupe Soto have a lawsuit with La Abra Silver Mining Co. about the title of property in that district? Ans. Yes. It was about the lower hacienda, as it was called, which was a part of La Abra property, the same having been denounced by said Soto as abandoned, while the Co. was still at Tayoltita carrying on their mining operations through Supt. Exall. This, I think, was about January, 1868, or a couple of months before they were compelled to leave. The case was tried at San Dimas, and although it was a case not requiring much knowledge of the law to determine, still the Co. could get no decision in San Dimas, but the papers were sent up to Durango, the capital, and, as I understood, decided in favor of the company." The agreement subsequently entered into between Soto and Exall for the occupation of this property by the former is fully set forth under Head III.

Dec'r 5, 1867, Exall writes Prefect Olvera: "On last Saturday, D. Guadalupe put men to work on the hacienda grounds, this I was confident he had no right to do until decision was given in his favor on his denouncement and he was legally put in possession, accordingly I laid my complaint before the judge here, (D. Nicanor Perez,) who decided that Soto must suspend work, but afterwards I learned that he told Soto to go and work, which he did, and has since continued working. This should and ought not to be. The judge says that he has heard nothing from you in reference to the matter, and nothing in reference to my opposition."

For the further history of this dispute see the evidence before the Commission. Head III.

XIX.—APPLICATION TO UNITED STATES CONSULAR AGENTS FOR PROTECTION.

Evidence before the Commission.	*New Evidence offered by Mexico.*
(There is no pretense that the Co. ever invoked the protection of the United States during the two years and more that it suffered this persecution of the Mexican authorities, although it was in constant communication with Mazatlan, where the United States were represented by a consul. The intervention of this officer in the preparation of proofs is a most remarkable feature of this claim. It is not to be believed that if he had been applied to he would not have exerted all his influence to protect the company from spoliation.)	The correspondence of the Co. does not show that it ever invoked the assistance of the consular or diplomatic authorities of the United States. The following extracts demonstrate that the Co. was fully aware of its rights, and would not have hesitated to call for such assistance had there been the slightest occasion. In writing to the collector of taxes on the 17th of March, 1866, Sup't Bartholow says: "I shall if anything like this sum is demanded of me, put my goods and property under the protection of the flag of the United States, and from under it I intend that they shall be taken." The result of this letter was, as stated by Bartholow in his letter to Garth, of the 10th of April, that "instead of paying taxes to the amount of three or four thousand dollars, as was demanded, we only paid about $30, and there was no necessity of troubling General Corona with the matter." July 10th, 1867, Garth writes Exall, (original letter herewith transmitted:) "Don't run into debt or get into difficulty with the authorities, if there are any such things existing; but, at the same time, be firm in maintaining your rights, and don't submit to imposition except by force, and then make a legal and formal protest, as a citizen of the United States, and as an American company duly organized and prosecuting a legitimate business under the protection of the law, and our rights will be protected by our Government." Replying to the above, on the 6th of October, Exall says, "There is no difficulties about authorities, boundaries, or anything else concerning the mines and hacienda provided there is money on hand, and money *must* be sent."

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IN CHIEF.	
Memorial, p. 6, claimant's book: "That, as a result of this large expenditure, they were getting out of said mines a large amount of the richest ore, and were in the act of realizing the extraordinary profit of a million dollars per annum when they were compelled to abandon their said mines, and all their machinery and other property, and over a thousand tons of ore, obtained by the Co. from their said mines, by reason of the unfriendly and illegal acts of the Mexican officials." "That said enforced abandonment of said mines utterly ruined said Co." P. 7: "That said mines and the improvements and machinery	The circumstances which gradually led to the visit of Exall to New York in March, 1868, which visit the claimant has chosen to set forth as the enforced abandonment of the mines, have already been alluded to under preceding heads. The correspondence of the Supt. with the treasurer of the Co. immediately prior to the pretended abandonment is here reproduced from the press copy book of the company, and his letters to Granger, whom he left in charge after his departure from the mines, are also here given, accompanied by the originals: "Mazatlan, Nov. 17, 1867. D. J. Garth, Esq., Treasurer La Abra S. M. Co., New York. Dear Sir: Yours of the 30th Sept. is just in hand, and, contrary to my ex-

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Evidence before the Commission.

therein have become wholly lost to said Co."

Chas. H. Exall, p 19, claimant's book: "By reason of these facts it was very difficult to keep men there at work, and the prosecution of the work was greatly hindered and delayed, and it finally became utterly impossible to continue the mining operations of the Co., and I was compelled, with my men, to give up the same entirely, and to abandon the mines and all the mining implements and property of the Co., to save our lives."

George C. Collins, p. 30 claimant's book: "Said Co. abandoned their mines, works, silver ores extracted, and property in March, 1868, the same being at that time under the charge, control, and supervision of Charles H. Exall, for said Co." "As to the circumstances causing and attending said abandonment, the situation and condition of said mines and property of said Co. at that time," &c., "deponent has no knowledge, except what is derived from statements of others, and the depositions of others made in this matter, which deponent believes to be true."

Wm. H. Smith, p. 35, claimant's book; Was not at Tayoltita or his own mine, Tecolota, at the time of abandonment of La Abra mines, but knows from his own knowledge of corroborative circumstances and from common report, "as well amongst Mexican citizens as American," that "the Sup't, Exall, and other officers of the said La Abra Silver Mining Co. were driven from and compelled to abandon the said mines and property of said Co." by the Mexican authorities or by their connivance, "some time in the early spring of 1868. I think about the last of March or early part of April."

George C. Bissell, p. 38, claimant's book: "Said La Abra Co. were broken up there by the bad acts of Mexican authorities some time in the spring of 1868, in March or the early part of April of that year; but deponent was not there at the time, and knows the cause of their being broken up by the statements of said Mexican authorities at San Dimas, and by Mexican and American citizens, and also by common report soon thereafter. Deponent has been informed by the most reliable authority, by men whose words or statement are not to be denied or controverted, that said Co. were interfered with, annoyed, and finally broken up by the San Dimas and other authorities of Mexico, and by the troops of the Republic under Pres't Juarez." "Deponent was so informed by Macario Olvera, in the fall of 1868, or early in the winter of 1869." P. 39:

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pectation, contains nothing of an encouraging nature. I expected, after having previously written so positively in reference to the critical state of affairs with me, that you would have sent me by this mail some means to relieve me from my embarrassing position. I have in former letters laid before you the difficulties under which I was laboring, and begged that you would send me means, and was relying much on the present mail, expecting that some notice would have been taken of my urgent demands for assistance to protect the property belonging to the company. To add to my further embarrassment, Mr. Cullins, whose time expired on the 16th inst.—since my leaving Tayoltita, (I left there on the 10th for this point)—intends to commence suit in the courts here for his year's salary. I am endeavoring to get him to delay proceedings until the arrival of the next steamer, (don't know as yet if I will succeed in getting him to delay,) when I hope you will have seen the necessity of acting decidedly and sending means to prosecute the works and pay off the debts of the company, or abandoning the enterprise at once. Nothing can be done without a further expenditure of money. I am now doing little or nothing in the mines, and will, when I return, discharge the few men who are at work in them. This I am compelled to do, as I have no money and my stock is almost entirely exhausted, and I fear if money isn't very soon sent some of the mines will become open to denouncement. In my last letter I mentioned the amount required for immediate demands, $3,000, which must be sent out. By next steamer Mr. Elder, Sloan, and Cullins, if paid off, will sail for San Francisco. If not paid off, suit will be commenced, and as I have no means to defend the case, fear it will go against me. When these parties leave, the hacienda will be left almost entirely alone, there being only myself, Mr. Granger, whom I am also owing, and I away much of the time. What you intend doing must be done promptly. Please send me Mr. Cullins' contract with you. The political state of the country just now is rather discouraging. I hope by the time this reaches you will have rec'd statement sent. Everything at mines is as it was when I last wrote, only more gloomy in appearance on ac't of not being able to employ the people and put things in operation. Please do something immediately and inform me as speedily as possible. Yours most respectf'y, Charles H. Exall, Act'g Sup't La Abra S. M. Co. Please forward enclosed letters."

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"Mr. John Cole, of Camacho, a man of large wealth and of good character, and Charles H. Exall, the last sup't of said La Abra Silver Mining Co., are two of deponent's informants as to the particulars stated, also some Mexicans there, and any statements made by either John Cole or Charles H. Exall are reliable, and any man who enjoys their acquaintance would believe anything they or either of them might state as a fact." I "have heard from said Exall his statement as to his expulsion from said Co.'s mines, and I believe his statement to be true."

James Granger, p. 42, claimant's book: "The said Abra Silver Mining Co. abandoned their mines, hacienda, stamp mill, and reduction works in March, 1868, I do not recollect the exact day; and they were forced to abandon said mines and works from the interference and hindrances, annoyances, and obstructions they met with, both in the getting up of the machinery and supplies on the road by the military of the Republic, and from the various local authorities, which was such as must have convinced them that they would never be able to carry on their mining operations with any chance of success." "They abandoned all their mines, provisions, supplies, machinery, buildings, and all other property."

John Cole, p. 55, claimant's book: Is personally cognizant of the fact that Supt. Exall was driven away from the mines, "together with his American employees,* and was compelled to abandon the same by the influence and connivance of the authorities of the district of San Dimas, and by the conduct of the troops of the Liberal Government of Mexico, acting under President Juarez, who molested the Co. in 1866 and early in 1867." P. 57: It was common report, and deponent knows the fact, that the Co. was hindered and annoyed, and had to leave. Judge Camilo Perez, in Oct. or Nov., 1868, boasted of having contributed to drive the Co. away. Prefect Olvera "told deponent that the said Co. were compelled to leave there in the spring of 1868, and that if they came back he, the said prefect, would have them driven off again."

J. F. Gamboa, p. 62, claimant's book: "I also had a contract for transporting ores from the mines to the reducing works." In Feb'y, 1868, Exall told deponent that he could not carry out the contract, as he would be compelled to abandon the works to save his life. Americans and Mexicans

*Attention is again called to the fact that not one of these "American employees" appears as a witness for the Co.

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"Mazatlan, Jan'y 24, 1868. D. J. Garth, Esq're, Treasurer La Abra S. M. Co. Dear Sir: I came down to meet steamer from San Francisco in hopes of receiving letters from you, but received none, and now being entirely out of funds and stock and being sued by the ag'ts from B'k of California for the payment, have to let things take their own course, as I am unable to protect your interests here. In previous letters I have given you full and detailed accounts of affairs here, and such frequent repetitions I find useless, and will simply state that I am doing nothing whatever at the mines and cannot until I receive money to operate with. I haven't means to protect now and they are liable to be denounced at any moment. Some months since I wrote you for titles. The Government demanded them. They have not been received. By December steamer I sent you a telegram from San Francisco. No reply. The parties I sent the dispatch to in S. F'co sent it on to New York. I am owing considerable and no means of paying. What is your intention? Is it to let your interests here go to the dogs? You have either to do this or send money out to protect them. If by next steamer I receive no assistance from you, I intend leaving for the East. I will go via San Francisco. Will from there telegraph you what further steps I shall take. I have been doing everything in my power to keep the Bank of Cal. from getting possession. Thus far have succeeded, but can prevent them no longer and fear they will eventually have things their own way. Mr. Cullins (who is not the man he was represented to be) left by last steamer. I have only one man with me now; am compelled to keep some one. Please telegraph me in San Francisco, care of Weil & Co., immediately on receipt of this. You can judge by what has been done in N. Y., and sent to me whether or not I may have left. Please let me know your intentions. Respectfully, Charles H. Exall. Please forward inclosed letters."

"Tayoltita, Feb'y 21, 1868. Mr. James Granger. Sir: As circumstances are of such a nature as to compel me to leave for San Francisco, and probably for New York, to inquire into the intentions of this company, I place in your hands the care and charge of the affairs of the La Abra S. M. Co., together with its property. You are invested hereby with all power confided to me, of course acting in all your transactions with an eye to the interest of the company. This will to you, should occasion require it, be ample evi-

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agreed that the abandonment was due to interference of authorities and depredations of people.

John P. Cryder, p. 73, claimant's book: "When I left Tayoltita, about the last of March, 1868, said Abra Silver Mining Co. no longer had existence in the said district of San Dimas. They were broken up by the interference and molestations of the Mexican authorities in that district, and the capture of their mule trains, provisions, and supplies by the military authorities of the Republic while the said trains were coming up with said supplies from Mazatlan."

DEFENSIVE.

Camacho, on this point, testified for the defense, p. 130: "It was on account of their bad management in the working of the mines, and not being able to get operatives to work for goods, that they abandoned their mining operations."

Aguirre, Calderon, Fonseca, Manjarrez, and Rodriguez, pp. 133 to 141, state that they abandoned the mines of their own accord, and were not driven away by the authorities.

Fonseca, p. 141, states that Exall "was obliged to sell some things to obtain the means to go to Mazatlan."

Serrano, p. 141: "The Americans abandoned their mines for the reason that they would not pay, and not from any prejudicial interference on the part of the authorities in regard to their property."

Galvan, p. 143: "The real reason was because they had no means with which to continue their workings."

James Granger, p. 147: "Is not aware that the Co. abandoned their works on account of the illegal acts of the Mexican authorities." P. 148: The investment "did not yield a profit of a cuartilla; [about three cents] that, on the contrary, it was a losing operation."

Ygnacio Manjarrez, p. 149: "As the enterprise failed, the machinery was abandoned, and still remains so." "The Americans abandoned their works because they could not make them produce silver, and not because the Mexicans run them off."

James Granger, p. 162: "At first I was a dependent or clerk; afterwards, when the Supt., Carlos Exall, left, I remained in charge as his representative."

Guadalupe Soto, p. 166, produces agreement between deponent and Supt. Exall, dated San Dimas, Feby. 7, 1868, allowing Soto the use of the works on the Guadalupe estate for six months, Soto pledging

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dence of the right possessed by you to act in their behalf. Very respectfully, Chas. H. Exall, Adm'r La Abra S. M. Co."

"New York, May 8th, 1868. Dear Granger: Yours from Tayoltita of March 25 reached me day before yesterday. Was much pleased to hear from you and to know that you were getting along in some shape. I wrote to you from San Francisco just previous to sailing from this point, giving you a statement of my doings while there; so no need of repetition. As I stated in my letter to you, I came by the Opposition route across the Isthmus—Walker's old ground—and while crossing it I can safely say I had the damn'est, roughest time imaginable. It was awful low water in the small streams or rivers; heavy rains while on the journey; in water pushing flats, &c., &c. It was an indescribable mean and rough trip. We were four days getting across; got pretty good sea steamer on this side; 27 days from San Francisco to N. Y. Of course, on the first day of my arrival here, I saw nothing of the company. The day after I went down and saw Garth. Had a long talk concerning affairs, and, contrary to our expectations, gave me no satisfaction; didn't seem to intend to do anything more. I have seen him several times, but have got nothing from him of an encouraging nature. He seems disgusted with the enterprise, and, so far as regards himself, intends to do nothing more, or have nothing more to do with it. Well, I then went to see one of the stockholders and directors who talked a little better. It seems there is a party here who has been after Garth and this stockholder mentioned to sell the mines to a wealthy party who are now successfully mining in California. This party have been after these gentlemen repeatedly, endeavoring to get them to sell the mines, &c., they bearing all expense and giving the present company so much stock. This party are not now in New York. One of them has gone to hunt up De Lagnel to get all possible information concerning Tayoltita, &c. In addition, the party will pay up all debts against the company. From what this director tells me, they seem in earnest. They are not aware of my arrival; have been written to, informing them of the fact, and I will probably be brought in contact with them before long. Now, as you and I are the principal creditors—I haven't been able to get a cent from them, "the company"—and the thing being in my hands, if this party intends buying, we can and will make a good thing out of it. Those of the company I have seen have

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himself not to injure the same, and to turn them over with all the improvements "to Mr. Exall or his successors," without charge for improvements. Agreement may be extended or a new one entered into. Signed Guadalupe Soto, Charles H. Exall. Also extension of the foregoing from Aug. 7, 1868, to Mar. 7, 1869. Signed and sealed Guadalupe Soto. James Granger.

Miguel Laveaga, p. 181: "They afterwards left, leaving the said business in charge of the American or Englishman D. Santiago Granger, who gave D. Guadalupe Soto permission to beneficiate said ore or tepetate thus piled up, upon what terms he was not aware, the result of which was that said Soto abandoned the pulp he had ground from said rock."

REBUTTING.

Jesus Chavarria, p. 93, claimant's book: Since abandonment has conversed with Prefect Olvera, and also with Mora, "on his frequent visits to him when he was in prison," and was told that the Co. had been compelled to abandon mines "owing to the concerted hostility against it in March of 1868."

Antonio de la Peña, p. 123, claimant's book: Deponent loaned Exall $250 to pay his passage to the United States, which "remains unpaid."

Chas. H. Exall, p. 195, claimant's book: Does not believe Granger has stated under oath that he was left in charge by deponent. If he assumed control he did so without authority. "The fact is, I left there so hurriedly and secretly with my American friends to save my life, as I believed and still believe, that I had no time even if I had possessed the right and wished to make such arrangements; * besides, I was satisfied that the Co.'s interests there could never be preserved under any possible management, as the district authorities had determined to expel that Co. from the mines, because only the day before I escaped I was warned by the Prefect Macario Olvera in person that it would be better for me to abandon said works and leave the country before any personal harm came to me, as he could not protect the Co., he said, against public sentiment, as the native residents of that district were determined not to remain without work any longer, but to take the mines and work them on their own account. I felt from this and other demonstrations and warnings that my

*This is in direct conflict with Exall's statement below that the abandonment of the mines was for weeks "a foregone conclusion."

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turned the affairs to me; so, in case anything can be done with this party, don't be afraid of your interests—all accounts at the mines are under my control—as yours will be looked to in conjunction with mine. All now depends in what can be done with this party, and more information concerning it I am unable to give until seeing them. I have informed the company that they shall do nothing until you and I were paid, which seemed satisfactory.

This will be mailed by steamer of 11th inst. If you do not hear from me by steamer of 21st, it will be on account of affairs not having been concluded. You may certainly expect a letter by mail of 1st June; hope, previous to that time, that I may have made satisfactory arrangements, &c. Just at this crisis it will be necessary to keep all secure at the mines. In my conversation with these gentlemen I will represent things in a secure state; if possible, get prorogas on mines where times are expiring; keep them secure if possible in some way; don't be uneasy or spend a thought in Cullins or B'k of Cal.; find out in a quiet way when and where you may dispose of the remaining property, but do not sell until you hear again from me. I hope to be able to make something for ourselves out of this thing—at present we are in the dark, but I will soon know something definite and will immediately write you. In case this party should purchase I will accompany them to the mines. You can extend Ariza's "Guarisimey" privilege "if he wants it" another 3, 4 or 6 mos.; don't extend Guadalupe's more than a month at a time; do the best you can under the circumstances, using your own judgment, being guided to an extent by what I have written. . . . . I wish I could send you some means to get along with, knowing you must be having quite a rough time, but am unable. I expected to be paid up here, its not having been done plays the devil with my arrangements. Since my arrival here the weather has been exceedingly unpleasant, raining nearly all the time. N. Y. is exceedingly dull, business much depressed, the political state of affairs of course has everything to do with it. Johnson is not yet impeached, and heavy odds are bet in Washington against the impeachment. Many changes have taken place since I was here last. Old friends I left bookkeepers, clerks, &c., many are now doing business on their own accounts, but have a hard time of it on account of the state of affairs here. To-morrow I intend to take a run down to Old Va. to see my folks. My mother and a sister are in exceedingly ill health; expect to be gone

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American employees and myself were in immediate danger, and I left there hurriedly, as I have said, for the warning of said prefect foreshadowed another attack on the hacienda, and probably that night." P. 196: "I executed to said Soto said agreement of Feb'y 7, 1876." P. 198: "But those written orders were mild compared with the verbal orders given me by said officials from time to time; and finally the last order or warning by the Prefect Olvera notifying me to abandon the works and leave the country, which forced the abandonment of the Co.'s works and mines.* It was but a foregone conclusion with said authorities, as from their words and actions I felt weeks before that time that the abandonment was inevitable." P. 200: "All the mules of the Co. except those which had been captured by the military on the road and stolen from the hacienda, and except the saddle mules, on which some American employees and myself escaped to Mazatlan, and the one ridden by my servant, were abandoned at the hacienda with all the other property of the Co." Pp. 201, 202: After the mill and machinery had been completed and $17,000 had been extracted from 20 tons of ore as a test of the machinery and the ores, "and we were ready to realize, the facts were widely circulated by Mexicans, and I was soon thereafter notified by said Prefect Olvera that the Co. would be no longer tolerated there, and that he could not protect the Co. if I attempted to remain, or if the work should continue, and he advised me to go quickly to avoid personal violence, which I did do, believing that he knew the plans and the determination of the people and the authorities to drive us out in some way; and the manner of doing it being strongly hinted at in his official warning, I left and abandoned everything the next day or night." P. 203: "They might have told, if they would, the reason of my sudden departure and abandonment of the Co.'s interests and property there, as I know some of said witnesses accelerated my departure by breaking in the doors of the hacienda, and by the intention of violence if not murder." (For Avalos', Dahlgren's, Exall's, Martin's, Bartholow's, and Adam's opinions of witnesses for the defense, see Heads I and XXVI.)

* It is remarkable that the Co. having received written notice, as it claims, to vacate the mines in July, 1867, should have gone on working them until March, 1868, and then should found its claim upon parole evidence of verbal orders.

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from here only a few days. I have now written all that bears on the important subject with us. Would write more definite, but as you see I am now unable to do so. I will write immediately on receipt of news. Let me hear from you *every* opportunity and direct via Acapulco, as they get here sooner than by 'Frisco. I will send this that way. My kind regards to Slone "Manuelitta"—I think that's the way to spell the name; Guadalupe's family generally, Cecilia and the Tayoltitians generally. How are you and Cecilia now? Hoping that this may find you well and getting enough to eat, I remain as ever your friend, Charles H. Exall. The contents of this keep to yourself.

New York, June 15, 1868. Dear Granger: In my letter written in May, I informed you of the possibility of my being able to do something with the Abra affairs through other parties. (The old company manifest the utmost indifference regarding or in reference to everything belonging to or connected with their affairs in Mexico, and have virtually given everything into my hands.) I also informed you I would communicate with you by mail of the 1st of June, giving you something definite. This I was unable to do, which will show to you by reasons which I will give. After my arrival here, I was informed that some parties had been here consulting with one of the stockholders in reference to purchasing their affairs in Tayoltita. This party, on my arrival, was in Philadelphia; so I was unable to see them. After remaining here some eight or ten days awaiting them, I went to Virginia and remained there some days, when I was informed of the arrival in N. Y. of the parties above mentioned. I hurried on immediately; it was then too late to write by 1st of June mail. Since being here, I have seen these people daily, and have given them every information which would tend to make them think favorably of the property—given statements, accounts, inventories, indebtedness, &c., &c., besides speaking as favorably of the property as possible. The prime mover in the affair is a man who knows a good deal concerning the property, and who expects, (if he succeeds in organizing a Co.,) to get a position at the mines. This man has friends who live here and in Philadelphia; he is trying to induce them to enter into the enterprise and form a Co., and from what I gather from him, he has to an extent succeeded, but has not yet come to final terms.) The proposition of this Co. that is to be formed is, to pay off you and I to start with and give a certain

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	interest to the old Co. (The old *Company refuse to pay us our dues, and we are totally unable to recover anything from them.*) I have given these parties a condensed summary of accounts of La Abra S. M. Co. I enclose a copy. You will see it *does not* accord with the books, but I give it this way, as requested by the party who is endeavoring to start the Co. An inventory of stock, as nearly as I could recollect, endeavoring not to go over the amount which I supposed on hand. I enclosed a copy—liabilities, also inventory of tools and material, as given by De Lagnel in Apl., 1867. The one I gave them is a copy of the one De Lagnel brought home with him, and of which you have copy at hacienda. It is exactly like his, with these exceptions: one silver-mounted saddle, $35; 3 Cal. saddles, $30; and in place of 10 mules @ $600, I put 4 @ 60=$240. With exceptions, it is exactly like the list De Lagnel brought on. My object in leaving these items out was on account of some not being there, and others for our own uses, which I will hereafter mention. I do not send a copy of this last list, as there is or was one at the hacienda. It is necessary, as near as possible, that in event of this party taking hold of the works, that these things should be there as represented, and show for themselves in event of parties being sent out to investigate. The mine which they think most of, and will work, and on which the Co. is formed, "if it is formed," is the La Abra. So you see the great necessity of keeping that mine, as well as the rest, protected. Use your best judgment in affairs, then, keeping things in such shape as will advance the interest of affairs. Make the inducement as great as possible to induce parties to take hold; and in case any one should be sent out, or you written to, let your statements correspond with mine as regards stock. If possible, let them go beyond mine. The indebtedness of the Co. to us, I have represented to these parties, as being, to Jas. Granger, $2,850; to C. H. Exall, $5,113.32; Bank of Cal., $5,000. The statement regarding your account and mine, as represented, is over and above any and everything which we have gotten from the Co. To be a greater inducement to these parties to purchase, and let them see I had confidence in the mines, at their request I have agreed to take in stock to the amount of $2,000, and have taken upon myself to act for you to the extent in stock of $850. This, I hope, will meet with your approval. Should anything occur, let your statements accord with

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	mine. These parties leave for Philadelphia in a day or two, and will be able to report definitely in a week or two, when I will write you immediately, giving you all points in detail. I should not like these parties to come in contact with Green, Martin, or any one who would prejudice them, &c. If we can succeed, as I have stated here, we will be doing well as things are situated. Send me, as soon as possible, power to act for you. I can imagine your feelings away out in that damned, gloomy place, and truly sympathize with you, and doing all in my power to get you away as soon as possible. Affairs here are very dull, little business doing. My health has been very much shaken since coming; suppose it results in change of climate. The weather has been, since my arrival, so damp, rainy, and disagreeable. Please do, so far as in your power, as I have suggested. The books don't let any one see, for reason which will occur to you. My kind regards to Mr. Sloan. De Lagnel is at Fort Hamilton. I have not seen him; understand he will study divinity; don't know with what truth the report. Be assured you shall hear from me at the earliest moment. Kind regards to all. With best wishes and kindest feelings to yourself, I remain your friend, Charles H. Exall. Address in care of Ginter and Colquitt, 15 New St., N. Y. Richmond, July 18, 1868. Dear Granger: In my last to you it informed you of the probability of a company being started, and on the formation of said company depended on our salaries. Since writing my last I have seen the parties frequently, and have had long conversations with them in reference to raising this company and the payment of its indebtedness. The indebtedness to you and me they seemed willing to liquidate and take their chances with the rest. In my previous letter I instructed you in reference to the figures representing your and my amt., keep it as it is but make no entry. This party have gone to work and I believe will succeed in raising a company in a month or two. I have not been with them for the last week. My time has been spent partly in N. York and partly in Va. Was in N. Y. during Dem. Conventions; an immense concourse of people assembled there to take part and see what was going on. The weather during the time was oppressively hot—almost unendurable. I arrived here on the 14th, and as I have nothing to do will remain here awhile. In New York and in fact all the States it is excessively dull—a complete stagnation of business. There is one other thing I

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did some weeks ago as I thought I had best make as sure as possible about getting my pay. It was this: I entered suit against the company, not with the expectation of recovery just yet, but something to fall back on in case this company was not formed: recently there has been a better show for raising the company than ever before. So I just let the suit remain over in a manner in which it can be revived at any moment. I want you to send me your statement and your power of attorney to act for you in case I found it necessary to continue the suit; if I succeed in recovering for self could probably recover for you. The amount to be sued for is the just amount due me at $3,500 up to time of my demand on them in person for a payment and for my traveling expenses, &c. I will inform you in time to make proper entries, sending a list of expenses, &c. If I have to deal with a new company I want to get out of them all I can, if with the old one I must deal with them strictly. I will in time write you as things develop. By all means keep the mines secure, particularly the Abra—don't allow anyone to touch the books or don't give any statements—these affairs are now in our hands, and without satisfaction we must not do ourselves injustice. Before leaving New York the other day, I went down to Fort Hamilton to see De Lagnel; he seemed much pleased to meet with me. I spent some hours with him very pleasantly; his wife is a fine woman. De L. is and has been doing nothing since leaving Mexico. He is pretty hard up, I reckon. In fact there are many men in a like condition, your humble servant included, though not starving. A day or two before leaving New York I heard Bartolow had arrived there—did not see him. What do you think of the nomination of Seymour & Blair? People seem to think that the carrying the Democratic ticket is the only hope of saving the country from the devil. I have great hopes that this party may succeed. I expect to return to New York again in a short time to watch how things get along, and will inform you accordingly. Remember me kindly to Mr. Slone and all friends, and you, dear old fellow, look upon me as ever your true friend, Charles H. Exall. Direct us as given in former letter."

The following letter shows how far Exall's visit to New York in March was treated as an "abandonment" in August, 1868, at the mines:

(Translation.)

"Tayoltita, 13 August, 1868. Sr. D. Remigio Rocha. Dear Sir: I have received the communication calling upon this com-

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pany to pay $52.50 each month for taxes imposed by the Legislature of the State, and presume it to be correct, but as I am only acting in the absence of the sup't, and as there is no money nor effects to pay this tax, I beg you to wait until the month of November, at which time said sup't is to come, and then the sums due by this company on account of this tax will be paid. Your most humble servant, Santiago Granger."

Frederick Sundell testifies that Exall spoke publicly of his voyage to New York to consult with the Co.; that Exall, being in the hacienda of the Durango Mining Co., Supt. Rice of that Co. expressed his regret that he was unable to accompany Exall to New York; that he does not know of any other Americans who accompanied Exall to Mazatlan when he left for New York; that Exall's relations with the prefect, Olvera, were intimate, and deponent never heard of any desire on the part of the prefect to drive the Co. away. That on the 1st of October, 1873, deponent was cited before the judge of the first instance in San Dimas at the request of James Granger, for the purpose of making a translation into Spanish of the letter given by Exall to Granger before the departure of the former for New York, confiding to the latter the charge of the Co.'s property, the purpose of this translation being to serve as a credential to Granger. This document is a literal translation of the letter which appears above, the original and the press-copy of which, in English, as also the translation into Spanish, are herewith transmitted.

(For explanation of the following letter see Heads V and XXVI:)

Lone Pine, Cal., Jan. 4, 1878. Robert B. Lines, atty., 604 F st., Washington, D. C. Dear Sir: . . . . . they the La Abra Co. were not driven from the country nor from the Co.'s mines. tis my impression that Exall left for the reason the Co. would not send money to pay his wages. another reason, there was nothing doing there and not mutch property to look after the ores that I condemned by assays were not worth a *cent* and I venture they are undisturbed to this day. . . . . the La Abra Co. evidently left Mexico because they were inexperienced men in mining and Don Juan Castillo got the best of them in the sale of the property at $50,000. . . . . I worked all the El Cristo got my wages out of the proceeds and left for the reason their was nothing more to be done. the mines were long ere this considered a failure. hoping &c. yours dear sir

A. B. ELDER.

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	(For testimony of J. F. and Trinidad Gamboa as to the alleged deposition of the former, for evidence of the character of John P. Cryder, for letter of C. B. Dahlgren charging Alonzo W. Adams with the forgery of his deposition filed by claimant, and for the deposition of Frederick Sundell as to the good character of J. N. Manjarrez, Bartolo Rodriguez, and Patricio Camacho, witnesses for the defense, see Head I.)

XI.—STATE OF COUNTRY AT TIME OF ABANDONMENT.

Chas. H. Exall, p. 20, claimant's book: "And finding it little or no better at the close of the hostilities, indeed it was even worse in the mines, for there they seemed to turn their whole attention to what they called a purpose on our part to annex Durango to the United States, and it was in vain that we protested that we had no such intention."

Wm. H. Smith, p. 33, claimant's book: "Ever since the said war closed, or at least since the latter part of 1867 or early part of 1868, I could not remain there with safety to person or property, nor could La Abra Co., on account of illegal demands and annoyances by authorities."

Nov. 17, 1866, de Lagnel writes Garth: "The political condition changed quickly and quietly a few days since, the French Imperial forces retiring from this place and going down to San Blas. Their final departure seems nigh, and the ——— are very much elated, of course. As yet, no authorities are installed. We are dragging along in the dark and hoping, but not knowing that any advantage will be derived from the change of rule." Dec. 5, 1866, de Lagnel writes Don. J. M. Gurrola, municipal alcalde of Gavilanes, asking prorogues for certain mines, and saying, "The late political changes have left me in ignorance to whom to direct my application, and I therefore trouble you, as on several previous occasions." Feb'y 5, 1867, de Lagnel writes Garth: "The country hereabouts is quiet, though perfectly stagnant and exhausted by the past year's work."

There is no further mention of political disturbances in the correspondence of the Co., except, perhaps, in the letter of Garth, dated July 10th, 1867, directing Exall not to get into trouble with the authorities, and in Exall's reply of Oct. 10th, saying, "there is no difficulties about authorities."

XXII.—PROTEST BY SUPERINTENDENT AFTER ABANDONMENT.

Memorial, p. 7, claimant's book: "That the claim was not presented prior to Feb'y 1st, 1869, to the Department of State of either Government or to the minister of the United States at Mexico."

Chas. H. Exall, p. 20 claimant's book: "Q. No. 8. After that abandonment what further was done by said Co., or by you as their sup't in said mines? Nothing by me and nothing further by the Co. so far as I know. Q. No. 9. Why was nothing

For the best of reasons the correspondence of the company contains no allusion to any protest made by the agent of the Co. against an enforced abandonment of the mines, which never took place.

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further done by you and by said Co.? Ans. Because I did not dare to return and resume mining operations there." "And I returned to the State of New York, and advised said Co. that it was useless to attempt any further working of said mines, and gave them the facts above stated as to the hostile feelings and acts against the Co. as my reasons for that advice, and I understand that said Co. was so advised by others who were citizens of Mexico." *John Cole*, p. 58 claimant's book: Prefect Olvera, "when deponent at one time consulted him by request as to the safety and protection of said Co., should they attempt to repossess themselves of their mines, as they thought of trying to do, declared to him deponent that if said Co. ever attempted to return there or to recommence work upon their said mines in that district he would have them sent away faster than they were driven off before, or words to that effect in the Spanish language, and he made the following remarks: 'Let them dare to return and I will fix them so they won't get away quite so safely as before;' and again he said: 'They can't work that machinery in this district, and their safest plan is to stay entirely away from Mexico,' or words to that effect. He thinks those are the very words spoken in Spanish by him, as properly interpreted by deponent in the English language; that those unkind words made an impression upon his mind never to be forgotten, and deponent advised one of the members of La Abra Silver Mining Co. of the same soon thereafter."*	

*Mr. Cryder says (p. 75, claimant's book) that a prefect in a district "is the chief authority, civil, military and political;" that "a man must possess great nerve" to oppose him. It is gratifying to learn from Chavarria (p. 94) that the tyrant Olvera was killed in the summer of 1870 in "a riot among the miners on account of their antipathy against that *gefe politico*, because he was not a resident of that department." Loaiza's affidavit of the 14th of May, 1875, also conveyed this information to the Co. a few weeks after their claim was instituted. If Mr. Adams had had the true interests of the Co. at heart would he not have sought to recover its mines (none of which were denounced until 1871)? This would not have interfered with the prosecution of the claim. On the contrary, if the effort had been successful, the working of the mines would have furnished ample means (a million a year) for that purpose, and obviated the necessity of assessments on the stockholders.

XXIII.—AMOUNT AND VALUE OF ORES EXTRACTED AND ABANDONED.

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IN CHIEF.	
Memorial, p. 6, claimant's book. "That at the time of the abandonment of said mines the Co. were obliged to abandon one thousand tons of silver ore already extracted, worth $500,000, which it was impossible for them to bring away from the mines.	February 6, 1866, Bartholow writes Garth: "I intend to have on the patio, if industry and management can effect it, by the time our mill is ready to start, one thousand tons of ore, and with this start I have no doubt of our ability to keep the mill running. We are weekly improving La Luz mine, getting the metal laid bare gradually, so that we can increase the number of laborers in it almost weekly. We are getting out weekly fifteen tons of clean metal. Last week we increased the quantity to eighteen tons." . . . . .
Chas. H. Exall, p. 21, claimant's book. "Richest silver mines I ever saw."* "The silver ore, as tested by myself and a Mr. Elder, a practical assayer, contained and yielded from $200 to $1,500 per ton of pure silver, together with about ten per cent. of gold." P. 22: "I should say the Co. could have taken out (up to the present time) silver ores in addition to those we had out at the time of said abandonment, and reduced them to silver to the amount of at least one and one half million dollars over and above the cost of mining and reducing the ores. At the time of said abandonment we had dug out, and at the Co.'s mill, I should say between 650 and 750 tons of silver ore, and we had dug out at the various mines but not yet taken to the mill I should say 250 tons more. Those ores would have yielded the Co. above the cost of reducing them to silver, in my opinion, one million of dollars."	February 21, 1866, Bartholow writes W. C. Ralston, cashier Bank of California: "My miners in one of our mines a few days ago struck a small vein, about six inches wide, (an off-shoot,) which is exceedingly rich, and the vein is widening daily. The ore will assay $500 per ton. I have now on hand 325 tons ore." On the same day he writes Echeguren, Quintana & Co.: "We took out of La Luz week before last 37 tons, and last week we commenced work in El Cristo. This mine produces a large quantity of ore, but it is not worth over $50 per ton; but as it is easily gotten out, and is docile, it will pay well to beneficiate it on American machinery."
A. A. Green, p. 27, claimant's book. At the time of the abandonment the Co. "had dug out and ready for reduction a very large amount of silver ores, in my best judgment more than 1,000 tons. This would have yielded the Co. over and above the cost of its reduction several hundred thousand dollars worth of pure silver; from my knowledge of the ores of that mine I should say at least $500,000."	March 7, 1866, Bartholow writes Garth: "From La Luz we have taken out 400 tons, and the quantity mined weekly has been increased to an average of 30 tons, and at the same time we have succeeded in reducing the cost delivered on patio to $15 per ton. In this mine we have found a small vein, an off-shoot from the main vein, which is now about six inches wide, which is producing with two hands (no more can be worked in it) from three to four hundred pounds per week of ore of surprising richness, if the opinion of the Mexicans, including Don Ignacio Manjarrez, is worth anything. These say it will yield one dollar to the pound. I think this an overestimate, but I would not be surprised if it should assay $1,000 to the ton. I have put up about two pounds of it which I will send with this letter by Wells, Fargo & Co. Express. On its receipt I would be glad if you would have it assayed and report the result." Is taking out from Cristo mine from ten to fifteen tons a week. "I promised to have 1,000 tons on the patio by the time the mill is completed. I am determined to do it, and, at the same time, to have the mines in such a condition that there can be no possibility that the mill, when once started, will ever have to stop for the want of ore. So far from this being the case, I am fully convinced that if our mines are worked with proper system and judgment,
George C. Collins, p. 30, claimant's book. The Co. had made no dividends and received no returns, but relied upon the ores extracted for getting back its investment.† "As to . . . . . the quantity of silver ore which the Co. had then extracted at the mines . . . . . deponent has no knowledge, except what is derived from statements of others."	
Wm. H. Smith, p. 32, claimant's book. Had seen and tested the ores, and knew them to be rich and "abundant."	
James Granger, p. 41, claimant's book. The richest ores had not yet been reached for lack of expenditure in tunneling La Abra and Rosario. P. 42: "The La Abra and Rosario mines have turned out ores	

* This statement is not improbable, since from Sundell's testimony (see Head VI, p. 109) it appeared that Exall had never seen any other mines.

† Again the question must be asked why some of the ores were not reduced in the old works which the Co.'s witnesses swear were left standing?

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Evidence before the Commission.	*New Evidence offered by Mexico.*
that beneficiated ten to fifteen marks to the carga, and selected pieces much more to my knowledge, *as I have tested them myself.*" P. 46: The Co. abandoned in 1868, "I think, about 7,000 cargas, or what Americans would call a little over 1,000 tons." *John Cole*, page. 57, claimant's book. Knows the fact that the Co. "had taken out and left upon the ground in April, 1868, large quantities of rich silver ores, as he believes, from 1,000 to 1,500 tons." Thinks about 1,200 tons which would have yielded said Co., in his opinion, not less than from $100 to $1,000 per ton of pure silver, and the richest of said ores would have averaged more than $2,000 per ton after its reduction." "Deponent has frequently seen them (Mexicans) packing off said ore from the works of said Co. in sacks, upon mules' backs, in March, April, and May of 1868, and they must have taken off largely more than $250,000 worth of the said ores, independent of and above the cost of reducing the same to bullion." *J. F. Gamboa*, p. 62, claimant's book. The Co. when compelled to abandon the mines "had everything ready to work the mines and silver ores on a large scale; that they had extracted and transported to the reducing works belonging to them a large quantity of rich ore, which, judging from the size of the heap which I saw go into the mill, and which was cleaned and ready for reducing, was not less than from six to eight thousand cargas of ores. It appeared to me very rich in silver and ore which might produce from three to eight marks per carga or even more." *Charles Bouttier*, p. 83, claimant's book: In the spring of 1868 deponent tested the ores with a view of purchasing the mines in behalf of a Co. to be formed with deponent as Supt. Found La Abra "almost an inexhaustible mine of rich ores, which, however, will require a large capital to work it profitably, as it should, in my judgment, be tunnelled, at a heavy expense, of course." The ores from La Abra yielded more than $600 a ton, and the others $475. "I saw, too, that it would require a large outlay of money to properly develope those hidden treasures, for it is believed by all the skilled miners, of whom I consider myself one, that La Abra mine alone is worth to a Co. able to tunnel it not less than a million dollars. I believe that the property of that Co. was, in the winter of 1868, worth largely more than two millions of dollars, including the large piles of rich ores they had taken out, which I saw there piled up back of the hacienda of said Co.	the company will, in the next twelve months, be compelled to erect another mill, with twice the capacity of the present one, to enable it to work the ores which by that time will be produced, and when La Abra tunnel shall have been cut to its intersection with La Abra vein at least 100 stamps, with the requisite number of pans, &c., will be required. As you are aware, I have always been sanguine with regard to the success of this enterprise, and the great value of the property possessed by the company, and if at any time there has been any cause whatever to doubt its success, with work upon it has dissipated that doubt; revolution and war or criminal bad management alone can cause a failure. I am fully convinced that within a short period after our works are completed and running it will be demonstrated that this company owns one of the best mining properties on the continent of America, if not in the world; but this, like all other valuable property will require close and constant attention, as well as systematic judgment and integrity, to realize the profits that ought to be obtained from it, as all may be frittered away by dishonesty or bad management, and instead of the property paying a large profit if it should be managed like some other mining properties in this country it may result in loss; but this can, in my opinion, only occur from the causes mentioned above. The thousand tons of ore which I will have mined when the mill is ready to start will, in my opinion, fully reimburse the company for the entire expenses of the mill and all other improvements which I have been compelled to make." March 7, 1866, Bartholow writes to Echeguren, Quintana & Co.: "I have now on hand fully four hundred tons of ore (400 tons) and am mining over thirty tons per week. The ore of La Luz continues to improve in quantity and quality. I now believe that by the time the mill is completed I will have enough to pay for the entire cost of the mill and improvements." April 6th, 1866, Bartholow writes Echeguren, Quintana & Co.: "Our pile of ore is now increased to full, if not over five hundred tons." April 10, 1866, Bartholow writes Garth: "Our ore pile is regularly and steadily increasing. The stock on hand is between 550 and 575 tons, and hereafter 'El Cristo' will steadily increase its yield, as we have 'struck' ore in the new tunnel; consequently the quantity taken out of the tunnel will be in excess and in addition to what comes from the shaft in the upper works. This tunnel, which has not cost over $500, is one of the best investments

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DEFENSIVE.

For the defense, *Comacho*, p. 130, stated that the "Americans mined a large quantity of useless ore, which still exists in patio of the hacienda." *Rodriguez*, p. 132: "They took out a large amount of ore, which still remains, for the reason that it is of no account." *Aguirre, Calderon*, and *Fonseca* corroborate the above. *Ygnacio Manjarrez*, p. 135: "A large quantity of invaluable tepetate remains in the patio of the hacienda." *Rodrgiuez*, p. 139: Not all the rock and metal the Americans ever mined would "produce the exaggerated sum of a million dollars annually, much less the heap of worthless rock alluded to as being in the hacienda." P. 140: "They left a small lot of tepetate in the patio of the Luz mine, and a quantity of common rock in that of the Cristo mine." *Fonseca*, p. 141: "Does not know how much ore there may be ready for beneficiation in the said mines and haciendas, but believes there is some; that the said rock will not produce any silver because it is pure tepetate, and therefore contains none; that only from the ore mined by the American, Carlos Mudo, [Exall,] was any silver ever extracted, because it was the best that the mines could produce." *Serrano*, p. 141: The ores left were pure tepetate. *Galvan*, same as above. *Santos*, p. 143: "The ore of said mines, assorted, has been rich, but that they never produced but very little in quantity." Does not know amount abandoned, but it is tepetate, and cannot be called ore. *Aguirre*, p. 143: "The ore was left in the hacienda because it was too poor to pay for beneficiating it." P. 144: What the Co. left is tepetate. *Nuñez* and *Romero* corroborate above. *James Granger*, p. 147: The ore abandoned is "good for nothing." *N. A. Sloan*, p. 149: "Knows the Co. to have ore on hand." "Would judge the amount to be about 500 cargas." "It is in the patio of the hacienda, and will pay about $5 per ton; that there is no ore in the mines belonging to this company." *Ygnacio Manjarrez*, p. 149: "The ores they took out they beneficiated the best of it, and the remainder is still in the patio of the hacienda." P. 150: Nobody will take the ores "even at gift, they being of the kind called 'michi' which will not pay to beneficiate." *Gurrola*, p. 170: The "rocks denominated ores from their mines by the Co." "were not even worth the cost of crushing." *Ygnacio Manjarrez*, p. 180: "They took out a large pile of rock, a little more than 3,000 cargas, distinguishing the same by dividing it into first, second, and third qualities, but which

New Evidence offered by Mexico.

the company has made, for all the ore detached in it can be taken out in wheelbarrows, thus dispensing with the packing in leather bags, which is slow and expensive. When the shaft from above shall be intersected with this tunnel, which will lay bare and exposed 75 feet perpendicular of the vein, almost any requisite amount of ore can be obtained from this mine. This intersection, Mr. Cullins thinks, can be accomplished in eight months; and the beauty of it is, the company is reimbursed all the time in ore for the outlay. . . . . Up to April 1st our ore from La Luz and El Cristo mines—say at that time five hundred tons, four hundred of which was on the patio—had cost nine thousand dollars. This included the amount paid Castillo for working La Luz from June until we took possession, and the expense of making the new tunnel in El Cristo, or an average of $18 per ton. We have reduced the average to $15, delivered on the patio, and I think a further reduction may be calculated upon."

May 31, 1866. The financial statement prepared by De Lagnel from the books of the Co. showed the following assets:

May 31.		
Ore from La Luz during May..	31⅛	tons.
Ore from El Cristo " " ..	40½	tons.
Remaining at La Luz	80	tons.
Remaining at El Cristo.....	50	tons.

(Or, a total of 202 tons mined.)

August 16th, 1866, De Lagnel writes Garth: "The ore on hand has been overstated, unintentionally; a fact which I found out on making examination of the books. I have had the large pile of 2d-class ore, about which much doubt has arisen, cleaned, and the amount of clean from the rocks, as declared by the expert Limpiador, is very small. The ore cleaned from it. however, is very good. The other pile of 1st-class metal is not only better in quality, but in as far as has yet been made manifest, but little waste matter. Besides these, there is a third pile of almost equal amount to either of the others from El Cristo."

Oct. 8, 1866, De Lagnel writes Garth: "The La Luz mine proving unremunerative and the small yield of ore being wholly rebellious, I transferred the force to the Cristo, in which the metal has increased in quantity and quality. It shows gold largely, and promises well. The mine being not so well opened as the other, being newer, requires attention now, as it is, or appears to be, the mine that will be looked to, to supply the mill, in great part.

XXIII.—AMOUNT AND VALUE OF ORES EXTRACTED AND ABANDONED.

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was good for nothing, as it was nothing but pure tepetate, with here and there a lump of good ore." They made an assay which yielded three or four ounces of silver to the carga." "Upon this showing they put Mexican operatives to work at sorting out the ore in a large pile, which they distinguished as first class ore; that they thus got together about 60 cargas, which they beneficiated, and which would not pay, as it was publicly said, not even the expense of the labor of the operatives employed in assorting it." *Miguel Laveaga* corroborates above. *Agasito Arnold*, p. 183: The "tepetate which they excavated still remains there to this day, and will remain, because it is useless." *Nepomuceno Manjarrez*, p. 184: The first Supt., from ignorance or other cause, did not separate the ore from the tepetate. Both were crushed and sent to the reducing works to an amount exceeding 3,000 loads. When Col. de Lagnel came there to take charge "he directed Bartolo Rodriguez to separate the silver ore from the rest." The result was 60 loads, which produced very little silver. The rocks thrown aside remain there to this day, and are useless. *Bartolo Rodriquez*, p. 185: All kinds of rock were sent to the receiving houses. Out of this "deponent, by direction of the Col. Supt., selected something like 60 loads, and part of this was smelted and no silver could be found in it."

REBUTTING.

Jesus Chavarria, pp. 91 and 93, claimant's book: Is not an expert in mining, but from statements of well-informed persons, thinks the value of ores he saw at the mines in July or August, 1867, to be $200,000.

Marcos Mora, p. 101, claimant's book: In July, 1867, the Co. "had at the San Nicholas reducing works very nearly 6,000 cargas of ore." The value of these, together with the improvements made by the Co., deponent says, "could not have been less than $500,000.

Chas. B. Dahlgren, pp. 115, 116, claimant's book: The Co. left great piles of them, [ores,] which they had taken out and packed down from their said mines, and the average of them were said to be very rich of silver metal, with a small percentage of gold." "It was said that the Co. abandoned about 1,000 tons of those metals." "I cannot state the value of those that I saw, but, I think, from a cursory examination of them, that even the poorest and rejected pieces would pay well to beneficiate." "I should value the ore taken out of said mines, and aban-

New Evidence offered by Mexico.

I doubt whether your expectations will be ever realized respecting the looked-for yield of metal from the mines, though sufficient may be had to repay well, I trust."

Nov. 17, 1866, De Lagnel writes Garth: "In all my letters I have written with a view to avoid exciting false hopes and ideas, and think it but right so to do, although I know that a more flattering tone would, perhaps, be more acceptable to many persons. I have done so because of several reasons. First, because it was my desire to avoid giving rise to expectations which might not be realized; and, again, because I did not feel sufficiently familiar with the subject to indulge too freely in comment. As to the circumstances mentioned in your letter, that certain parties had stated that the specimen ore had been 'salted' for my especial benefit and deception, I can only refer you to the mention made of it in one of my letters, I forget which; but that it was done *purposely* is more than I am prepared to say. If I understand the term, as used by miners, the facts are not as stated. It is, however, true that, though I requested to have the second-class ore of the Luz mine crushed for assay, specimens were taken from the first-class pile and prepared for my use, but I cannot say that it was designedly done. As already stated, the ore has been and is being repicked, and though a large quantity is pronounced without value, I do not accept it as gospel truth, but will satisfy myself of the fact by trial. The mill itself may be pronounced completed, the last touches being given when I left. That there are faults in the planning is evident, but the work had advanced too far to correct it when I took charge."

January 5, 1867, De Lagnel writes Garth: "The stock of ore is large, and I believe good, though that remains to be seen. Of the success I have strong hopes, and the few rough notes on the back of your letter, made by Col. Gilham, respecting the composition and class of ores, gives additional ground for hope. The prospect from the mines is not so good as formerly, though they vary so constantly that I have ceased to permit myself to be readily elated or depressed by their condition. Enclosed I send the monthly papers."

May 6, 1867, Exall writes Garth: "I have a light force in the Cristo; no improvement in the metal. A light force in the La Luz; the metal about the same. The La Abra, which we started on a month or two since, and which should have been worked long ago, is daily improving, and I am in hopes will yet give some returns. Mr. Cullins seems quite sanguine in refer-

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doned by that Co., in 1868, at half a million dollars, judging from what I have seen there myself and have heard stated by reliable miners in that district, and also by common report or public opinion, which is seldom in error among practical miners in such cases. The refuse ores, which have been culled over and rejected, and which still remain upon the ground, are worth but little. They might beneficiate as high as $100,000, but I think not to exceed that amount."*

New Evidence offered by Mexico.

ence to it. Col. de Lagnel will give you an account of the mill and its work, which did not exceed our expectations. . . . . Hoping that my next may be of a more cheering nature, I remain yours, with respect, C. H. Exall."

(For letters of Garth to Exall of May 30, June 10, and July 10, see Head VI.)

July 13, 1867, Exall writes Garth: "When I received your letter by Sr. M., I was working the Abra, Cristo, Luz, Arrayan—a small force in each. Seeing the decided manner in which all further aid for the present was refused, and the injunction to cut down all expenses, necessitated my stopping off the whole force from the mines. As I had only a short time previous reduced the cash payment from one-third to ——, (which occasioned a stop for 8 or 10 days, which I was glad of, as it was so much clear gain and a little spat with the officials, which was gotten through without much trouble,) I thought it best not to stop off immediately, but prepare the miners for the change. I let them work on one week longer, and during that week informed them of my intentions. They said nothing offensive, but of course were disappointed, as it would be a bad time for them to be without work—in the rainy season. Since stopping off, we have been trying to make arrangements with the men to work by shares and by the carga. I have succeeded in getting four miners to work by the carga. They are working in the Arrayan, and getting out some good metal. I hope to be able to keep them there. By doing so, it will secure the mines in every way. Four miners is all that they had there before. Mr. Cullins thinks that in a short time he will be able to get more men to work in the other mines. We can do better with them when they are a little hungry. Working in this way is much better and attended with the least expense. They are provisioned for a week, and charged with what they get. What metal they get out is assayed. If it assays an amount worth working, we pay them in goods, (a little money now and then,) about one-half its assay value. They, of course, will get out nothing but good metal, if it can be found. You see, in this way, we get the metal out free of cost, buy it at one-half its value, pay in goods, and make a handsome profit on them. As long as the men will work in this way, (which they will not do unless they get good metal,) it will be our best way of working the mines. We must not expect them to get out any amount, but what is gotten out in this way will pay for packing down from the mountains. I am privileged by the mining laws of the

* The pitiful sum of $100,000, which Mr. Dahlgren declares to have been the value *of the refuse ores*, is all that the Umpire awarded on this portion of the claim. Leaving out of view the fact that both the American Commissioner and the Umpire, (in the first part of his decision,) had expressly excluded the claim for prospective profits, which were to be derived, if at all, from the reduction of the Co.'s ores, and had allowed the amount stated by the President of the Co. to have been expended in the purchase and working of the mines (including the cost of extracting these ores) with interest upon that amount as "a much surer compensation than prospective gains," it is not clear upon what principle the Umpire held Mexico liable for the value of the ores which Mr. Dahlgren said were still at the mines in 1872, and not for the ores carried off by Mexicans, which Mr. Dahlgren valued at $400,000, and Mr. Cole at "largely more than $250,000," "independent of and above the cost of reducing the same to bullion." The text of the Umpire's decision on this point is as follows.

"The Umpire is of opinion that the claimants should be reimbursed the amount of their expenditures, and also the value of the ores extracted which they were forced to abandon, with interest upon both these sums. He cannot consent to make any award on account of prospective gains, nor on account of the so-called value of the mines. Mining is, proverbially, the most uncertain of undertakings. Mines of the very best reputation and character suddenly come to an end, either from the exhaustion of the veins, or from flooding, or from some of the innumerable difficulties which cross the miner's path. A certain interest upon the money invested is a much surer compensation than prospective gains; the latter are, in fact, the interest upon the sums invested, they may be greater or less, or none at all, and there may even be great losses of capital. To award both interest and prospective gains would be to award the same thing twice over. The so-called value of the mines must depend upon the prospective gains. It may be great, small, or nothing, and may be but a mere snare to lead one on to utter ruin. * * * The Umpire is satisfied, from the respectable evidence produced, that a large quantity of valuable ore had been extracted from the mines and deposited at the company's mill, and that it was there when the superintendent was compelled, by the conduct of the local authorities, to abandon the mines and cease working them. But the Umpire is of opinion that there is not sufficient proof, nor indeed such proof as might have been produced, that the number of tons stated by the various witnesses were actually at the mill or at the mines at the time of the abandonment. In so well regulated a business as the Umpire believes that it really was, he cannot doubt that books would have been kept in which the daily extraction of ores would have been regularly noted down, and that periodical reports would have been made to the

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Chas. H. Exall, p. 200, claimant's book: "If any such pile of tepatate was there when said letter of Torres purports to have been written, it has been made there since abandonment, and must have been so made for some unjust or unworthy purpose." P. 201: "That was early in 1868. I beneficiated in all some twenty tons, the most of it as a trial to our new machinery, which worked admirably, and the proceeds, about $17,000, was put into the general fund of the Co., and it was lost together with all the other expenditures there." P. 202: The ores were broken and carefully assorted by experienced miners at the mines, then packed in sacks on the backs of mules to the hacienda, and then again assorted. They were not all of one quality, of course. There might have been some tepetate, "but, as a whole, they were a body of very rich ores, yielding not less than an average of $675 per ton, and much of it larger amounts." The Mexican witnesses "must have seen only the refuse, and pos-

company at New York. Neither books nor reports have been produced, nor has any reason been given for their non-production. The idea formed even by persons intelligent in the matter, of the quantity of a mass of ore, must, necessarily, be vague and uncertain, and that of its average value still more so. Still the Umpire is strongly of opinion that the claimants are entitled to an award upon this portion of the claim. He will put it at $100,000. It is possible that it is much less than the real value of the ores; but, in the absence of sufficient documentary proof, and considering the fact that the expenses of reduction are great and sometimes even much greater than is anticipated, he does not think that he would be justified in making a higher award."

It did not seem to occur to the Umpire, notwithstanding his apparent knowledge of the uncertainty of mining undertakings, that his award, which was at the rate of $100 per ton, might have been much more than the value of the ores. Yet that is much higher than the average yield of the best known silver mines in the United States to say nothing of those in Mexico, described by Humboldt, (see Head I.) The following data are taken from the official report of R. W. Raymond on Mines and Mining West of the Rocky Mountains for 1873, (p. 120:)

"*Yield of the Comstock Mines.*

	Tons.	*Value.*	*Average per ton.*
Belcher	83,194	$4,794,669	$65 00
Crown Point	110,762	4,598,849	31 79
Chollar Potosi	44,350	752,012	15 07
Empire	11,248	177,377	15 10
Hale & Norcross	38,064	617,325	17 64
Savage	53,083	811,867	14 03
Sierra Nevada	18,380	122,577	7 39
Woodville	650	10,504	16 16
Kentuck	11,183	141,847	8 90
Challenge	380	1,125	4 88 "

The average yield of the Hale and Norcross mine, as stated on page 130, was, in 1867, $47.32 per ton; in 1868, $34.13; in 1869, $23.89; in 1870, $27.13; in 1871, $25.13; in 1872, $17.38; in 1873, $16.28.

New Evidence offered by Mexico.

country to stop working in mines four months in the twelve. As these mines have been steadily worked over a year, I can safely take advantage of this privilege. * * * Respectfully, Charles H. Exall."

Aug. 5, 1867, Exall writes Garth: "The mill is now running on the same ore as I last worked. This run will finish it, and what ore to work on then I know not. There is, of course, some little good or in the great heaps on the Patio, but it will have to be closely assorted, and the greater portion requires roasting, which is a slow operation and costly. I will at any rate do my best. I am now working 20 men by carga, pay them not over $1.00 per week in cash. I *must* give them some little money. These are working in the Arrayan and on the dump of the Rosario. The Cristo is now idle, also La Luz and Abra. I can get no metal from them which will pay. The Cristo and La Luz, which have been worked for over a year, I am privileged to stop for four months. The Abra I must work; will put in some men and see what can be found. No further prorogues will be given, and although I have no fear of any one denouncing the mines, I must not leave unprotected. The ore which is now being gotten out will average per assays about $75 per ton, but it comes in small quantities. The returns I brought from mint I brought down to E. P. & Co. to settle money borrowed from them to buy goods; their bills will be due next month, and most of the returns from present run will have to be paid them. I hope to be able to settle up all the indebtedness of the company, both here and at the mines. E. P. & Co. are the only ones I am owing here. Col. de L.'s draft was presented to me here on yesterday. I told them I could do nothing. My draft, which I spoke of in my last, was returned. Please inform me what can or will be done. I can't see very far ahead in money matters. Can count on nothing positive from the ores now on hand. I leave to-morrow for the mines. All have been frequently quite sick. I manage to keep up better than the rest. Hoping that this and my last together will give you the information you require, I remain, respectfully, Charles H. Exall, Acting Sup't La Abra S. M. Co.

Acct. of run by mill from 27th May to 13th July, inclusive:

Amount of rock crushed. 89 tons, 1,676 lbs.
Producing 131 marcos 5 ounces refined silver, yielding at mint.... $1,672 29
Less mint expenses... 147 47
$1,525 82

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Evidence before the Commission.

sibly those which were rejected and thrown away and piled up beside the patios by my assorters. The good paying ores so selected and piled up in the patios were there at the abandonment, in 1868," excepting the very richest of them which had been stolen while deponent was there, and those samples he had beneficiated. A large quantity of cleaned ores were also at the mines, as stated in previous deposition.

Thos. J. Bartholow, p. 219, claimant's book: While deponent was sup't he mined about 200 tons of ore, which was carefully assorted for beneficiation, "and their value in pure silver was from three to fifteen marks per carga, or an average of eight or nine marks per carga. This I know to be true, from experimental assays of average lots so assorted and tested by me."

(For Avalos', Dahlgren's, Exall's, Martin's, Bartholow's and Adam's opinions of witnesses for the defense, see Heads I and XXVI.)

New Evidence offered by Mexico.

Cost of chemicals used.	$665 81	
Labor	380 54	
Wood, 75 varas, 62 cents	59 38	
		$1,105 73
		$420 09

. . . . . The ore mentioned in statement above is from Cristo mine, which is of the lot Col. de L. mill worked a little of. The assays which were made from samples taken from battery sluice, and which were made daily, vary in value; the greatest number gave $13.50 per ton (silver), some others went $20, and again $22.50, but none over. The ore at the bottom of the pile seemed a little better than that on top. . . . . The ore I am at present working on does not yield sufficient to justify my going to the expense of saving the tailings. . . . . The yield from the 89 tons in statement is small and the time great, when we compare result, expense, &c., but take in consideration that ore of ten times the value of this would require no greater expenditure, no greater cost to work, &c.* I am at present working some ore; will send a like statement at the end of the run, or when the ore is exhausted. Charles H. Exall. Mazatlan, Mexico, August 5, 1867."

Oct. 6, 1867, Exall writes Garth: "I am working the mines with as few hands as possible. What little good metal is taken out amounts to almost nothing. . . . . I have exhausted all the ore that I had on hand that was worth working. That which I worked was very poor and the yield small. The La Luz on the patio won't pay to throw it in the river. I have had numerous assays made from all parts of each pile; the returns won't pay. Amparos are not now granted, and mines are to be held only by working. I am compelled to keep men in mines which yield nothing merely to hold them. This I can do no longer, as I have nothing to give the men for their labor and must now take the chances and leave the mines unprotected. . . . . By last steamer I sent you full statement of business of hacienda, the runnings, returns and expenses of the mill, acc't of ores, &c. I neglected to add forty tons of tieres which were run through and should have been in statement sent, but was overlooked. I

*This must have been the consideration which induced the stockholders to pay in nearly $80,000 on their shares between January, 1868, and September, 1870, the date of Mr. Cullins' testimony. (See Head V, p. 74.)

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Evidence before the Commissiou.	*New Evidence offered by Mexico.*
	am sorry not to be able to send you statement of the months since." J. M. Loaiza, in his deposition herewith transmitted, states that the "ore" piled up by the Co. was worthless "tepetate." Frederick Sundell testifies that the results of the reduction of the ores of La Abra Co. were small; that Elder, the quicksilver man, told deponent that the average yield was about $9 per ton; that deponent saw a large pile of metal from the mines—he thinks from 300 to 500 tons. For explanation of the following letters see heads V and XXVI. Lone Pine, Cal., Jan. 4, 1878. Robert B. Lines, Atty., 604 F st., Washington, D. C. Dear Sir: . . . . . The ores that I condemned by assays were not worth a *cent*, and I venture they are undisturbed to this day. . . . . They run reckless, spent money wild, packed 300 cargos of or pr day to the Hacienda, said or was supposed to go 40 marks $320 pr tun. When I started the mill—the stamp—in an hour I was assaying I found everything terribly overated there was about 250 tons from the El Cristo mine that would barely pay expenses for working out of nearly 500 tuns from other mines that instead $320 pr tun give assay of $12.50. This was from the La Luz & La Abra mine. The El Cristo ores I worked assayed $11.50. I worked ten tuns and assayed when Col. De Lagnel became disgusted & sailed for New York. I worked all the El Cristo got my wages out of the proceeds and left for the reason their was nothing more to be done. the mines were long ere this considered a failure. As to what De Lagnel would testify to would be in this shape —question. what did the ores of the La Abra Co. assay. A. well I heard Mr. Elder my mill man say they went so & so. He is very candid and truthful, but he cannot assay. I was the ondly man on the Hacienda who could assay and it was I whoo sunk the ship of the La Abra Co. Exall new nothing of assaying. it occurs to me I give him some Idea & some few working & lessons. When General Thos. J. Bartholow was supt. I think he must have been aware of the quality of the ores. if you can find out C. H. Exall P. O. address I wish you would be kind enough to write me. hoping, &c. yours Dear Sir, A. B. Elder. No. 5. Lone Pine, Cal., Jan. 29, 78. Robert B. Lines, Atty. Dear Sir, Yours of the 17th inst. is at hand and contents noted. Exall's Letter of Recommendation is dated Tayoltita Dec'r 1st, 1867, it certifies as to my ability &c that I had been employed as a benificiator & assayer &c. I have a.

XXIII.—AMOUNT AND VALUE OF ORES EXTRACTED AND ABANDONED.

Evidence before the Commission.	*New Evidence offered by Mexico.*
	memorandum of assays made in August, Sept. & Oct., 1867, they are of ores from all the mines the Co. worked. . . . . Yours Truly A. B. Elder. (For testimony of Wm. R. Gorham as to the alleged deposition of of A. A. Green, in behalf of claimant, for testimony of J. F. and Trinidad Gamboa, as to the alleged deposition of the former, the letter of C. B. Dahlgren, charging Alonzo W. Adams with the forgery of his deposition, and for the deposition of Frederick Sundell as to the good character of J. M. Manjarrez, Bartolo Rodriguez, and Patricio Camacho, witnesses for the defence, see head I.)

XXIV.—SEIZURE OF MINES, REMOVAL OF ORES, &c., LEFT BY SUP'T.

IN CHIEF.

Memorial, pp. 6, 7, claimant's book: The Co. abandoned 1,000 tons of ore, worth $500,000, "which, upon the abandonment of said mines by the Co., were carried off by the Mexicans, and they were lost to the Co."

Alonzo W. Adams, p. 16, claimant's book: Receives from the Governor of Durango a certified copy of papers relating to the denouncement of Rosario mine by James Granger, on the 8th of April, 1871, and of the formal possession given to said Granger and Francisco Torres, his partner, by the mining board, Aug. 11, 1871.

A. A. Green, p. 26, claimant's book: "After the expulsion of said La Abra Co., which I have mentioned, in March, 1868, Mexicans were engaged in carrying off its ores."

George C. Bissell, p. 39, claimant's book: "I have heard and know by the statements of all parties in and about San Dimas district, that the richest ores belonging to said Co., which they had taken out in large quantities at the time they were compelled to abandon the same, had been carried off and sold by Mexicans, and the profits of the same shared by the Mexican authorities, by whom those acts were covertly instigated."

James Granger, p. 46, claimant's book: The Co. left about 7,000 cargas, or a little over 1,000 tons, "all the richest and best of which has long since been picked out and carried away, *i. e.*, stolen by Mexicans."

P. 48: Guadalupe Soto and family now occupy the hacienda of the Co.

John Cole, p. 57, claimant's book: "Nearly all the richest and most valuable

Touching the attempted denouncement by Judge Guadalupe Soto of the hacienda Guadalupe, which, as was shown by the evidence before the Commission, was not sustained by the Mexican authorities, and concerning which an amicable agreement was entered into between Judge Soto and the supt., the following correspondence appears in the press-copy book of the Co., Translation: "C. Gefe Politico del Partido. Herewith I make formal opposition to the denouncement made by C. Guadalupe Soto on the 28th of Oct., 1867, of the site of the old hacienda called Guadalupe, in the mineral of Tayoltita, said grounds being the property of the American Co., which I represent, and which acquired them by purchase from S'or D. Angel Castillo de Valle, their last owner, and being now occupied by said Co. in the necessary operation of its reduction works. The grounds in question form part of those purchased for the exclusive use of the Co. referred to, which, desiring to use them for other purposes, has utilized by means of expensive machinery the water of the river in a manner much more efficacious than hitherto, with abundant facilities to beneficiate all the metals which may be mined in the mineral of Tayoltita. It would, therefore, be a great injustice to the Co. to take from it this portion of its property. Moreover, there is an occupied house on the same ground, and for this reason it is not subject to denouncement without four months' notice to repair, sell, or rent the same, should the reasons which I have given be not sufficient for the complete protection of the Co. I therefore beg that you will consider this my opposition and annul the denouncement referred to, deciding the question as promptly as

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of the same were taken off by Mexicans" after abandonment. "Deponent has frequently *seen* them packing off said ores from the works of said Co. in sacks upon mules' backs, in March, April and May, 1868, and they must have taken off largely more than $250,000 worth of the said ores, independent of and above the cost of reducing the same to bullion."

Jesus Chavarria, p. 95, claimant's book: "Q. 20. State whether the gefe politico, Macario Olvera, Marcos Mora's successor, made any admissions or boasts, in witness' presence or hearing, to the effect that he had made money out of the gringos by the sale of the ores belonging to the Abra Silver Mining Co., or from the sale of their tools, or pieces of their machinery, or any of the other implements belonging to the said Co. State, also, what he heard said, by any credible persons, concerning the sale and destruction of the Co.'s property at Tayoltita?" "Ans. That the matter referred to in the question is true; that he was informed by credible parties at San Dimas that said Olvera was engaged in the speculations, as stated in the question."

DEFENSIVE.

Most of the testimony for the defense as to the alleged stealing of ores abandoned by Exall will be found under the preceding head. The statements of the witnesses as to the permission given by Exall and Granger to Soto to take out and reduce the ores have also been heretofore given. With regard to the removal of other property of the Co. since Exall's departure, Camacho testified, p, 130: That the machinery, in January, 1871, was still there, and "of no account except to the said Co. whenever they may again commence to work." P. 131: "That D. Santiago sold, as before explained, tools and other things belonging to the hacienda." *Bartolo Rodriguez*, p. 132: "He is certain that the supt., D. Santiago Granger, sold all that he could of what there was in the hacienda. Aguirre, Calderon, Fonseca, and Ygnacio Manjarrez corroborate above. *Fonseca*, p. 160, testifies as to the sale of some of the mules. *Granger*, p. 137: "The machinery brought by the Co. remains in the hacienda. That as to the ores, it is true they still remain, and in his judgment, are good for nothing." "That in regard to what he has sold, it is true that he did sell some things with the object of furnishing himself with means." *Rodriguez*, p. 140: "Mr. Granger and Mr. Klin, who were left in charge of the works, have sold a large lot of tools and other things, such as

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possible . . . . Charles H. Exall, admor. La Abra S. M. Co. San Dimas, Nov. 28, 1867."

"S'or D. Macario Olvera, Gefe Politico, del Partido de San Dimas—Dear Sir: I was in San Dimas on yesterday, and hoped to have the pleasure of seeing you, but was disappointed, as you had not returned, and learned that you were not expected until 23 inst.; thought best to write you in regard to the denouncement of the hacienda Guadalupe by S'or D. Guadalupe Soto, altho' I should have much preferred to have talked over the matter with you. On last Saturday D. Guadalupe put men to work on the hacienda grounds. This I was confident he had no right to do until decision was given in his favor on his denouncement and he was legally put in possession. Accordingly I laid my complaint before the judge here [D. Nicanor Perez] who decided that Soto must suspend work, but afterwards I learned that he told Soto to go and work, which he did, and has since continued working. This should and ought not to be. The judge says that he has heard nothing from you in reference to the matter, and nothing in reference to my opposition. Sr. D. Anto. Ariza, gefe municipal, here on yesterday. He is an old resident of this section of the State and neighborhood, knowing intimately the former owner here, and also knowing everything in reference to the sale of the property, the two haciendas and mines. He gives it as his *opinion* that the hacienda is not denouncable, and that Soto should be ordered to stop work until the affair is settled. Soto contends that he works by authority of an order received from you. This I was very much surprised to hear, as by the mining laws four months from the date of denouncement is given the owner in which he may re-establish, rent, or sell, and, knowing your knowledge of the laws, cannot think you could have issued such an order. Although I have no personal interest in the matter, being placed here by the company in charge of the mines and haciendas, I cannot allow any of them to be taken without using every lawful means in my power to retain possession of them. And in this business I demand equal and exact justice, without fear or favor, and leave the matter in your hands with the request that you will protect me in all my legal rights and privileges. Trusting that you will take proper and speedy steps to arrest this matter, I remain, your obt. svt., Charles H. Exall, Admr. La Abra S. M. Co. Tayoltita, Decr. 5, 1867."

"S'or D'n Juan Castillo de Valle. Dear

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quicksilver, salt, &c., and some groceries or goods, all of which was sold very cheap, saying they were obliged to do so to obtain the means to live, as they had not been paid their wages; that at the last the said Granger ordered the iron window-grating, counter, and shelves to be taken out of the store at the hacienda at Tayoltita and removed, together with other things, to San Dimas; and that a part of those articles, as is publicly known, he deposited in a house he had bought." *Andres Serrano*, p. 141: "They erected some houses to live in, which, on account of having been abandoned, have fallen in and become dilapidated, as is also the case with the machinery left by them." "Santiago Granger sold all the groceries and tools he could, and at very low prices, and at the last pulled the buildings at the hacienda to pieces by taking away the doors and iron window-gratings, which he used in fixing up a house which he owned in San Dimas. That in consequence of these acts the mineral of Tayoltita has been completely abandoned." *Santos*, p. 143, said: "It is not true that the authorities took possession of the machinery, goods, &c., of the company; but that, on the contrary, he knows that they themselves sold some of the things, such as clothes, or cloths, tools, and groceries." *Aguirre*, p. 144: "The machinery is still in the same place where they erected it; that they themselves disposed of a quantity of their effects, such as quicksilver and tools; that Granger sold them and carried away the doors and window-gratings." The tepetate, which is what the Co. left, "may still be seen where they deposited it." Molina, Nuñez, and Romero corroborate above. *James Granger*, p. 150, letter to the judge of 1st instance at San Dimas: "I, Santiago Granger, a native of England and a resident of this place, present myself before you and say that I have disposed of the articles hereinafter specified, property of the Abra Mining Company in the district, of Tayoltita, in order that you may be pleased to appoint assessors to place a valuation upon them, so that any time when the company shall call on me I may be able to deduct the amount of their value from what said company owe me. They are as follows: 1 counter for store, 1 range of shelves, 3 large doors, 5 arrobas of iron. (Signed) SANTIAGO GRANGER. San Dimas, June 4, 1871. *Paz Gurrola*, p. 170: "Being subsequently in want of means, they disposed of the furniture, even to the accoutrements of the animals which deponent had bought."

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Sir: I take the opportunity of our mutual friend, J. G. Rice, Esq., going to Durango to write you again in case my letter of 26th Nov'r should not have reached you. In mine of 26th ult'o, I wrote stating that Guadalupe Soto had denounced the hacienda de beneficio de Guadalupe on the false grounds of abandonment. At the time of the denouncement, I had gone to Mazatlan on business. As soon as I returned and heard of what had been done during my absence I entered a formal opposition, and put it in the hands of the Gefe in San Dimas, (our head of legal affairs.) I understand he has since forwarded it to the Governor for his decision thereon. In regard to the grounds of denunciation which he took, that of abandonment it is false. It is true we have not used the hacienda for *all* the operations of beneficiating metal, but use it in connection with our beneficiating works of the Hacienda San Nicolas. Over the hacienda, or rather a portion of it, there is a roof in good repair, and in this part of the building there has always, (and is now,) been some one of the employees living. From appearances I think the authorities are in favor of D'n Guadalupe, (or have in some way committed themselves,) and, if possible, will give him possession, which, if done, will be doing my Company great injustice and going contrary to the laws of country. The reason of the statement given above in reference to committal is he, Soto, seems so confident of success, and in addition has a force at work daily. You know the great injury the putting up of tahónas by the abovenamed party would do my Company, as, of course, all the metal from this company's mines and all the surrounding mines would be stolen and taken to him, and in fact there are many other ways in which my Company would suffer if he succeeds in getting possession. Not having the titles, and not knowing whether the Hacienda Guadalupe was included in the purtenencias of the San Hacienda San Nicolas when you sold the property to my Company, or whether they were sold separately as two haciendas, I write begging that you will give me all necessary information on this subject, and if you can in any possible way do anything with the authorities to induce them to render a decision in favor of my Company and prevent possession being given to Guadalupe Soto, you will be doing my company *great* service and receive the thanks of yout ob't serv't, Charles H. Exall, Adm'r La Abra S. M. Co., Tayoltita, December 5, 1867." The evidence under Heads

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REBUTTING.

C. B. Dahlgren, pp. 112, 113, 114 claimant's book: "The condition of those mines was good when the La Abra Co. abandoned them; but since that time some of them have fallen in and filled up with *débris*, and it would require large expenditures of money to reopen them and to put them in as good condition as they were when the Abra Mining Co. abandoned them." "The stamp-mill and machinery have been torn to pieces and parts of them sold and leased out for use in other places and by other parties than their owners." "The local authorities of San Dimas claim that the Mexican Government owns that property, and they have sold and leased out some parts of it. I know that a Mexican citizen, whose name is Francisco Torres, and who is now, and has been for the past year and more the occupant of said haciendas and the mining property and machinery of said Co., claims ownership of the same; and that he works the mines of claimant successfully, by *patio* process, part of them under denouncement made of Rosario mine, under the name of one Granger, an Englishman; and although the denouncement is said to legally cover only one of the principal mines of said Co., El Rosario, which is probably the richest and most valuable of them all, he nevertheless works some of the other mines of said Co. in *bonanza*, and claims to own them all, as he told me when I was there but a few months ago." Parts of stamp-mill and machinery have been taken away and used by other miners and mining companies in distant places. A Mr. Hapgood, of Buena Vista, bought at a nominal value from unauthorized persons, and is using a jack-screw, a pair of scales and many other things. Juan Cuevas, of Huahuapan, told deponent in Dec., 1871, that he had the company's retort, without which the stamp-mill is useless, other valuable pieces of machinery and a large number of tools taken from the company's hacienda. "He had bought it of some one at a mere nominal price and considered himself very fortunate." Deponent knows of a number of thousand dollars worth of machinery and tools so in use by different people in vicinity. Deponent's Co. have bought part of the machinery, deponent made inquiries and heard that the Mexican Government claimed the ownership on account of the "acts of the local authorities in compelling claimant to abandon its mining enterprise" and the pendency of this claim. Last spring or summer (1872) deponent found out the mis-

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III and X shows the result of this dispute to have been a decision in favor of the Co. and an amicable arrangement with Soto.

On the 8th of May, 1868, Exall writes Granger from New York. "Just at this crisis it will be necessary to keep all secure at the mines. In my conversation with these gentlemen I will represent things in a secure state; if possible, get prorogas on mines where times are expiring; keep them secure if possible in some way; don't be uneasy or spend a thought on Cullins or B'k of Cal. Find out in a quiet way when and where you may dispose of the remaining property, but do not sell until you hear again from me. I hope to be able to make something for ourselves out of this thing—at present we are in the dark, but I will soon know something definite and will immediately write you. In case this party should purchase I will accompany them to the mines. You can extend Ariza's 'Guarisimey' privilege 'if he wants it' another 3, 4, or 6 mo's.; don't extend Guadalupe's more than a month at a time; do the best you can under the circumstances, using your own judgment, being guided to an extent by what I have written."

June 15, 1868, Exall writes Granger, (original letter herewith transmitted) "I have given these parties a condensed summary of accounts of La Abra S. M. Co. I enclose a copy. You will see it *does not* accord with the books; but I give it this way, as requested by the party who is endeavoring to start the Co. An inventory of stock, as nearly as I could recollect, endeavoring not to go over the amount which I supposed on hand—I enclosed a copy—liabilities, also inventory of tools and material, as given by De Lagnel in Apl., 1867. The one I gave them is a copy of the one De Lagnel brought home with him, and of which *you have* copy at hacienda. It is exactly like his with these exceptions: One silver-mounted saddle, $35; 3 Cal. saddles, $30, and in place of 10 mules @ $600, I put 4 @ $60 = $240. With exceptions, it is exactly like the list De Lagnel brought on. My object in leaving these items out was on act. of some not being there, and others for our own uses, which I will hereafter mention. I do not send a copy of this last list, as there is or was one at the hacienda. It is necessary, as near as possible, that in event of this party taking hold of the works, that these things should be there as represented, and show for themselves in event of parties being sent out to investigate. The mine which they think most of, and will

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take made in purchasing "from the wrong parties." Judge Quiros wrote deponent a note asking him to call and settle the matter. The Judge said the purchase was all right if deponent would settle with him as the representative of the Mexican Government, which alone had control of the property. That he had received instructions from the Supreme Government under which he could dispose of it by lease or sale. "Finally our interview ended by the sale or lease of said property for use by my Co.—the Durango Silver Mining Co.—and he, Judge Quiros made out to me and he signed a written authority for me to take down and use for the benefit of my said Co. all the machinery left there, including the stamp-mill of claimant, at Tayoltita, and to put it in use at San Dimas, making me responsible to him or to the Mexican Government for the appraised value of the same or for its return to Mexican authorities, by paying the use of it, to be appraised also." Also to keep what had already been purchased on the same terms. The Judge explained that "in case said Abra Co. should get a judgment against Mexico, as it seemed likely they would before said Joint Commission at Washington, that said mines, hacienda, machinery and stamp-mill then becomes the property of Mexico." It was his business to look out for the interests of Mexico. Deponent has part of the machinery in use, and intends to remove the balance and use it under above agreement, with the privilege of purchasing or paying Mexico for its use "when said suit shall be decided by the Commission at Washington." Deponent sent Judge Quiros a present of $20 and a week's rations for himself and employees for executing said bill of sale. Asked to produce this paper deponent says he cannot produce it, as he left it with the other papers of Durango Mining Co. in the mountains about 200 miles from Mazatlan. It would require a month to produce it, if it could be done at all, as the rebels have taken Mazatlan, and the entire road to San Dimas. Deponent was 15 days in coming down. Had no idea of testifying until notified by the consul to appear and be examined. Came here with his sick wife and family to send them to New York and to buy supplies for Durango Mining Co. Pp. 115, 116: "I also observed there unmistakable evidences of that which had been a common report for a long time, that those piles of ore had been torn down and the richest of their metals culled out and carried away, leaving upon those extensive patios the poorest of them, which were scattered over a

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work, and on which the Co. is formed, if it is formed,' is the La Abra. So you, see the great necessity of keeping that mine, as well as the rest, protected. Use your best judgment in affairs, then, keeping things in such shape as will advance the interest of affairs. Make the inducement as great as possible to induce parties to take hold; and in case any one should be sent out, or you written to, let your statements correspond with mine as regards stock. If possible, let them go beyond mine. . . . . Please do, as far as in your power, as I have suggested. The books don't let any one see, for reasons which will occur to you."

Herewith are transmitted the affidavits of Judge Cipriano Quiros, Dionisio Gutierrez, Martin Delgado, and Paz Gurrola. Judge Quiros testifies that he received nothing from Charles B. Dahlgren for the sale of any portion of the machinery of La Abra Co.; that he never authorized Dahlgren to dispose of anything belonging to that Co., and that he never received any authority from the State or General Government to dispose of said property. Gutierrez testifies that it is well known that the agents of the Co. have themselves disposed of the property, a portion of which was taken to the house occupied by James Granger and a portion taken by Juan Cuevas of Huahuapan, and a portion by Charles Dahlgren without the authority of the judge; that a portion still remains, but is useless; that the ores left by the agents of the Co. remain intact, and consist of "tepetate," containing very little silver. Martin Delgado corroborates substantially the above, as does also Paz Gurrolla, who states that he was employed to take a portion of the property to the works of the Durango Mining Co., of which Dahlgren was superintendent. Herewith is also transmitted the original of a letter dated May 23, 1872, and addressed by Dahlgren to the judge of the first instance at San Dimas, requesting permission to take to his works certain of the property of La Abra Co. which had been abandoned, and offering to pay for the same, together with the reply of the judge refusing his authority on account of the claim which had been brought by the Co. against the Mexican Government, and stating that Dahlgren must act upon his own responsibility.

Frederick Sundell testifies that he saw a large pile of metal at the mines; he thinks from 300 to 500 tons; he supposes that it is without value, since it still remains in the same place undisturbed. This he knows because he is interested in

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Evidence before the Commission.	*New Evidence offered by Mexico.*
large surface, covering, I should say, at least a quarter of an acre of ground." "Those that were left gave evidences of having been torn down, culled out and rejected." I believe four-fifths of the ores of value have been stolen from the company's patios and sold in other places. This, too, I only know from common report, which I believe to be true, from all the circumstances made known to me by Mexican miners at Tayoltita." P. 116: Does "not believe it possible ever to get that machinery together again, as the parts stolen and sold are so scattered over several mining districts in the State, and much of it partially worn out, or refitted to other machinery, so that it would, in in my opinion, be better and cheaper to repurchase a new stamp-mill and machinery and bring it there from the United States than to go to uncertain expense of hunting up and replacing that which was taken away from them at Tayoltita." P. 118: Asked if his authority to remove machinery was "given verbally or only in writing," and whether it was given to him as U. S. consul to protect claimant's property. Deponent answers: It was a purely business transaction between deponent, not as consul, but as sup't of Durango Co. and Judge Quiros, representing the Government of Mexico. It was given verbally as well as in writing. Deponent believes the Judge must have had authority from the Supreme Government or he would not have taken such a step. P. 118: Heard "Granger say that if he had not complied with the demand of the judge of first instance at San Dimas in testifying against La Abra Co., the claimant, that he knew he would have been compelled to give up his mining interests in that district and leave the country." *Geo. C. Collins*, p. 188, claimant's book: Is informed and believes that James Granger has denounced Rosario mine with Francisco Torres, and that others mines and haciendas have, since August, 1872, been denounced, and are being worked by Mexicans successfully; also that the Mexican authorities have sold and leased out the stamp-mill and mining tools, "and the same are partially or wholly worn out by use at the works of Mexican miners." Nobody has accounted to the Co. for any of its property since abandonment. *Chas. H. Exall*, pp. 194, 195, and 196, claimant's book: Does not believe that Granger stated, under oath, that deponent left him in charge of Co.'s property. Acknowledges executing agreement of Feb'y 7, 1868, allowing Judge Soto to occupy Co.'s hacienda, which he did to con-	mines near La Abra, which he left fifteen days ago, (July 1877.) Deponent never visited La Abra Co.'s mines, but thinks they must be of little value, because he knows that since their abandonment by the Co. the mines Rosario and Arallan have been denounced and taken possession of by other persons, but after being worked a little while they were abandoned. Others of the Co.'s mines were also denounced, but not taken possession of. To-day all the mines of the Co. are subject to denouncement except the mine Abra, which has recently been denounced by Constantino Ex, and the Rosario by George Lares and his associates. (For testimony of Wm. R. Gorham as to alleged deposition of A. A. Green, for letter of C. B. Dahlgren charging Alonzo W. Adams with the forgery of his deposition, for further evidence as to the character of Adams, and for the deposition of Frederick Sundell as to the good character of J. N. Manjarrez, Bartolo Rodriguez, and Patricio Camacho, witnesses for the defense, see Head I.)

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Evidence before the Commission.	*New Evidence offered by Mexico.*
ciliate Soto and his son-in-law, Prefect Olvera. If Granger has extended said lease it has been without authority. Nor had he authority to dispose of any of the Co.'s property. *Alonzo W. Adams*, p. 235, claimant's book: "Reached said Hacienda San Nicolas about the last of April, 1870, (said hacienda then being occupied by said Judge Guadalupe Soto, with his family, and he then working the mines of the Abra Co." P. 245: The old hacienda of De Valle was standing in 1870, also in 1872, but in 1872 a part of the roof of said building "had been removed, as I ascertained at San Dimas in 1872, to enable Francisco Torres, a Mexican, and James Granger, an Englishman, (who, I ascertained, was at that time a son-in-law of said Judge Soto,) to denounce the same under the Mexican laws, and for which purpose, and to the end that they might get legal possession, said Soto, who was in possession when I was there in 1870, had moved out with his family to San Vicente, temporarily, and sold out his interest in said property to said Torres, which was confirmed by the fact that on visiting claimant's said abandoned property at Tayoltita in May, 1872, I found said Torres with his family living in said Hacienda San Nicolas, in full possession of said property, and working the mines of the same." In 1870, but about 1,200 cargas, out of the 6,000 or 7,000 cargas of ore abandoned in 1868, remained at the patios, and these were torn down and scattered, showing that the best pieces had been taken and the refuse ores left, and in 1872 about half of these refuse ores had disappeared, together with the mining tools, the retort, some of the wheels and iron work of the stamp-mill and machinery, rendering useless what was left. (For Avalos', Dahlgren's, Exall's, Martin's, Bartholow's, and Adams' opinions of witnesses for the defense, see heads I and XXVI.)	

XXV.—ESTIMATES OF DAMAGES.

IN CHIEF.	
Letter of Rob't Rose and Frederick Stanton, counsel for La Abra Co., to Sec'y of State, March 18, 1870, claiming $1,930,000 on behalf of the Co. *Memorial*, pp. 6 and 7, claimant's book: The Co. "sustained damages to the amount of $3,030,000, as will appear by the following consideration." The "buildings, of	It is impossible to gather from the correspondence of the Co. any evidence that it ever suffered the slightest damage from the acts of Mexican authorities. (For the testimony of Wm. R. Gorham as to the alleged deposition of A. A. Green filed by claimant and for the letter of C. B. Dahlgren, charging Alonzo W. Adams with the forgery of his deposition, see Head I.)

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great cost, and other permanent structures," which existed at the time the Co. bought the mines, but which, "owing to the abandoned condition of said mines," were then of no value, became, in consequence of the Co.'s large expenditures, together with the mines, "of great value, to wit, of the value of $1,000,000." The 1,000 tons of ore abandoned were worth $500,000. "The Co. estimate their clear annual profits, which they could have obtained from said mines, at $1,000,000 per annum; that in addition to the expenditures in said mines as aforesaid, said Co. have expended $30,000 in conducting their business otherwise than in the expenditures at said mines." *Chas. H. Exall*, p. 21, claimant's book: The Co. could have taken out and reduced, if not interfered with, up to the present time ores which, added to those taken out at time of abandonment, would have yielded $1,500,000 above cost of reducing. P. 22: "Answer. I should think the damage would be the amount of money the Co. had expended, with interest, including a fair allowance to its officers, and the value of the ores which the Co. had out at the time of the said abandonment, and what they would have ordinarily realized from the mines from that time to this, above their expenses. Considering such their damages, in my opinion the total damages sustained by the Co. is not less than $3,000,000." *A. A. Green*, pp. 27, 28, claimant's book: Ores abandoned were worth $500,000 at least. The Co. could have made a profit of $1,500,000 "between the first day of April, 1868, and the first day of December, 1869." *George C. Collins*, p. 30, claimant's book: The Co. has made no dividend, and looked to the ores to reimburse its investment. Deponent knows nothing except from statements of others as to the quantity or value of the ores which had been or might be extracted. Estimates property, exclusive of ores on hand, at $1,000,000, and total damages at not less than $3,000,000. *Wm. H. Smith*, p. 33, claimant's book: Believes the Co. could have made $1,000,000 per annum. P. 36: Has been asked by Co.'s attorney to estimate damages, but cannot properly do so, as he does not know the amount of expenditures, "but their damages must have been heavy, and ought, in my opinion, to be sustained for the full amount of their expenditures and losses, direct and consequential." *John Cole*, p. 59, claimant's book: "If consequential damages are taken into	

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consideration and account, and in estimating the damages of all they might have realized, if they had been permitted by said authorities to have completed their extensive works, and to have continued said mining operations to the present day, at $2,000,000 at least."

Charles Boutlier, p. 83, claimant's book: "saw, too, that it would require a large outlay of money to properly develop those hidden treasures, for it is believed by all the skilled miners, of whom I consider myself one, that La Abra mine alone is worth to any Co. able to tunnel it not less than a million of dollars. I believe the property of that Co. was, in the winter of 1868, worth largely more than two millions of dollars, including the large piles of rich ore they had taken out, which I saw there, piled up back of the hacienda of said Co."

Jesus Chavarria, p. 91, claimant's book: Is not an expert. P. 93: From statements of well-informed persons made to him at the mines, deponent thinks it no exaggeration to estimate: "The buildings and improvements was $150,000, the value of the ores $200,000, and the company's expenditures $100,000. From all that he saw he was convinced of the immense amount of money which had been expended, and that its value, including themines, was four or five millions." Was shown "the constructions which had been made by Juan Zambrano, the first owner of the mines at great cost."

DEFENSIVE.

(It is unnecessary to recite the opinions of the witnesses for the defense as to the damages which this company should recover from the Mexican Government.)

REBUTTING.

Chas. B. Dahlgren, p. 116, claimant's book: "I should value those mines at not less than one million dollars in 1868, and the company's improvements at half a million more; and if they could have been held and worked by their magnificent machinery and stamp-mill without interruption or prestamos, and with anything like an assurance or hope of protection, I would now value them at three or four times that amount. If the parts of the stamp-mill could be found and put together again upon their grounds at Tayoltita, and all the machinery there in as good order as when the same was abandoned by the Co., I should value the whole at four or five millions of dollars; not less than $4,000,000." P. 118: Heard "Granger

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say that if he had not complied with the demand of the judge of the first instance of San Dimas in testifying against La Abra Co., the claimant, that he knew he would have been compelled to give up his mining interests in that district and leave the country." *Thos. J. Bartholow*, p. 226, claimant's book: "The said mines and property of La Abra Silver Mining Co. were worth, in my judgment, $3,000,000, provided the Co. had been protected by the Mexican authorities in carrying on said works as commenced. From my examination of the said mines, which was thorough and critical; my observations in reopening them and preparing them for work; the richness and abundance of the ores thus developed; the capacity and reliability of the stamp-mill and machinery erected; the richness of the ores of said mines as shown by the experimental tests made by me, the Co. would have readily realized, in net profit annually, a fair interest upon $3,000,000; and, in my best judgment, the Co. has sustained damages to the amount of at least $3,000,000, on account of the forced abandonment of their said mines and property." *The argument* of Fred. P. Stanton, W. W. Boyce, Thos. H. Nelson, and H. S. Foote before the Mixed Commission places the damages at $3,962,000. (For Avalos', Dahlgren's, Exalls's, Martin's Bartholow's, and Adams' opinions of witnesses for defense, see Heads I and XXVI.)	

XXVI.—TIME AND METHODS OF PROSECUTING CLAIM.

IN CHIEF.

Memorial, p. 7, claimant's book: "That the claim was not presented prior to February 1, 1869, to the Department of State of either government or to the Minister of the United States of Mexico."

Alonzo W. Adams p. 15, claimant's book, writes the Governor of Durango for certified copies of title deeds to mines.* Also, for certified copies of denouncement of mines since abandonment by Company. Papers furnished by order of the Governor.

James Granger, pp. 52–53, claimant's book, furnished letters from Soto, Mora, and Valdespino, (See Heads XI and XV,) which had never been out of his possession, to Adams as attorney for Company. Pp. 67–68, was one of the assistant superintendents of the Co. Under Head III will be found the names of certain American employees of La Abra Co., none of whom were produced by the Co. as witnesses in its behalf. N. A. Sloan testified for Mexico.

In the press copy-book of the Company appears a letter dated March 19, 1867, showing that Victoriano Sandoval, one of the witnesses produced by Mexico, was charged with certain duties by the superintendent of the Co. There also appears a letter from Sup't de Lagnel to F. Sundell in charge Durango Silver Mines, whose affidavit touching the affairs of the Co., the value of its ores, and the visit of Sup't Exall to New York in March, 1868, is herewith transmitted. The letter of Exall to Granger, dated New York May 8, 1868, (original herewith transmitted,) contains the following showing the relations between him and Judge Soto and

* See note on p. 57.

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intendents and for two years clerk of Company. Had all memorials of Co. showing names of miners and other workmen employed each week. About May 2, 1870, went with Adams before the judge of the 1st instance at San Dimas and Anastacio Milan to act as interpreter in taking depositions in behalf of the Co. The judge declined to take depositions in the presence of deponent or Adams and ordered them out of the court. Deponent, at Adams' request, asked the judge to take the depositions of the two witnesses then present and make the certificate of the court in accordance with the rules of the commission and in obedience to the treaty, Adams presenting a copy of the rules and of the treaty to the judge. The judge replied that he would do neither; that he had nothing to do with the treaty or rules and would not obey them. "Deponent then retired from the court-room, leaving Col. Frank Dana as interpreter. One of the witnesses spoken of above, Aquilino Calderon, who had, to my knowledge, worked for La Abra Co. at Tayoltita, more than two years, his name borne on most of the memorias during that time, when he was summoned before said judge, seemed so affected, he having heard the judge order him, said Adams, and myself out of the court-room; that he actually swore in effect that he had never worked for the Co. at Tayoltita; that he had only worked at Ventenas and Buena Vista during the five years last past. I then became perfectly well satisfied that no depositions could be taken in that district in support of the claims of American citizens. I know the fact that the feeling there on the part of the citizens and authorities is intense and hostile to American citizens mining in that district, and especially so to the taking of testimony to support the claims of Americans who have been deprived of their mines and property by acts of Mexican citizens and authorities."

Francis F. Dana, pp. 69, 70, and 71, claimant's book: Acted as interpreter in preparing Adams' application to Judge Milan to take depositions of Calderon and Henriques. Judge Milan pretended sickness and refused to see deponent for two or three days, but finding Adams determined to stay and take the testimony, he "*became suddenly well* and said he 'would attend to the matter, but it was perfectly useless for said Adams to try to get the testimony of Mexican witnesses against their country for they would give no testimony that would do him or his case any good or reflect upon Mexican authorities.'" The next day the case was called.

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the witness for Mexico, Maria Cecilia Jimenez, whose character was attacked by the claimant's witnesses. "My kind regards to Slone, 'Manuelitta'—I think that's the way to spell the name: Guadalupe's family generally, Cecilia and the Tayoltitians generally. How are you and Cecilia now? Hoping that this may find you well and getting enough to eat, I remain as ever your friend, Charles H. Exall. The contents of this keep to yourself."

Touching the whereabouts of Superintendent de Lagnel after the pretended abandonment of the mines by Exall, the following extract is giving from Exall's letter to Granger, dated June 15, 1868, (original herewith transmitted.) "My kind regards to Mr. Sloan. De Lagnel is at Fort Hamilton. I have not seen him; understand he will study divinity; don't know with what truth the report. Be assured you shall hear from me at the earliest moment. Kind regards to all. With best wishes and kindest feelings to yourself, I remain your friend, Charles H. Exall." Address in care of Ginter & Colquitt, 15 New st., N. Y. Also the following extract from Granger's letter to Exall dated July 18, 1868, (original herewith transmitted): "By all means, keep the mines secure, particularly the Abra; don't allow any one to touch the books, or don't give any statements. These affairs are now in our hands, and without satisfaction, we must not do ourselves injustice. Before leaving New York the other day I went down to Fort Hamilton to see de Lagnel; he seemed much pleased to meet with me. I spent some hours with him very pleasantly; his wife is a fine woman. De L. is and has been doing nothing since leaving Mexico. He is pretty hard up, I reckon. In fact, there are many men in a like condition, your humble servant, included, though not starving. A day or two before leaving New York I heard Bartolow had arrived there; did not see him."

It was recently, and quite accidently, that Mexico learned that Col. de Lagnel was an American, and that he had been an officer of the United States, and subsequently of the Confederate, army. The residence of his relatives was discovered and his own whereabouts ascertained. His deposition is given in full under Head I. In it he states that he had been purser on a line of steamers running to Florida, and afterwards on the China line. Collins and Exall say that they had heard he went to Florida and to China, but that they could hear nothing further of him, which may be true, but is improbable. If, however,

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The witnesses had evidently been talked to and were much frightened. Deponent went with Adams to the court-house. The witnesses came in shaking with fear. "When Calderon was called up to testify, either from fright or from design, he actually denied that he had worked for La Abra Silver Mining Co. within the past five years, but said he had worked during that time only at Ventanas and Buena Vista, although Mr. Granger, one of the principal clerks of said Co., was sitting before him and claimed that the name of this man Calderon was on their rolls for two years and more, and that he knew him perfectly well as one of their employees. At this point Gen. Adams requested me "to ask Judge Milan to repeat the question which the witness could not have understood." The judge declined. Adams thereupon asked the judge to abandon the examination and refused to take the depositions. The judge said he would not abandon it, but would take the depositions whether Adams wanted them or not. Adams then asked the judge if he would take the depositions and certify to them in accordance with the rules of the Commission, handing him a copy. The judge "refused to take them and said *he would not.*" Adams then offered him a copy of the treaty and asked him if he would obey it. The judge replied that he knew all about the treaty and the rules too, and had a copy of both. He did not respect the treaty and had nothing to do with the Commission, and would not obey either. "And at this moment said Judge Milan ordered deponent and also said Adams out of his court-room" —— "but finally he said that he would allow said Adams to be there, as he did not understand the Spanish language." From the above deponent is satisfied that no depositions could be taken in that district in favor of the Company.*

DEFENSIVE.

Of the witnesses for the defense, Ygnacio Manjarrez., p. 136, claimant's book, testified that it was reported that "D. Santiago Granger was offered $5,000 by two Americans with which to buy witnesses to say that the Tayoltita enterprise had been abandoned on account of a strike or riot (motin), and that no one could be found who would testify to such statement." *Maria Cecilia Jimenez*, pp. 138–156, stated that Adams and Dana recently

* Mexico, on a retrial of this case, will call Gen. C. H. Grosvenor, of Athens, Ohio, to show the character of this witness.

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the forgers of this claim had desired to secure his evidence, they could have learned his whereabouts by taking the steamer—not to Florida nor to China—but to Alexandria, Virginia.

Under Head I will be found the testimony of Wm. R. Gorham touching the manner in which the deposition of A. A. Green, filed by the claimant, was prepared; also, the testimony of J. F. and Trinidad Gamboa, showing how the deposition of the former, in behalf the Co., was procured by Alonzo W. Adams; also the testimony of J. M. Loaiza, showing the means adopted by Adams to secure his deposition and the falsity of the same; also the letter from C. B. Dahlgren, charging Alonzo W. Adams with the forgery of his deposition, filed by claimant; also extracts from the records of the War Department, showing the frauds attempted by Adams, the chief conspirator and agent of La Abra Co., in securing evidence to support this claim; also certified copy of the indictment of said Adams for frauds committed in California; also a letter from General T. B. Van Buren, his counsel at that time, now U. S. Consul General in Japan, touching his escape from California, and his subsequent career; also extracts from the decision of Judge Beasley, of New Jersey, in the divorce case of Cathrine V. B. Adams *vs.* Alonzo W. Adams, reported in 2d Green, Equity Reports, in which the judge reviews the evidence and characterizes Adams as an imposter and adventurer; also the deposition of Frederick Sundell as to the good reputation of J. N. Manjarrez, Bartolo Rodriguez, and Patricio Camacho, witnesses for the defense.

Herewith are transmitted the originals of certain letters addressed by A. B. Elder, the assayer for La Abra Co., to the Mexican Minister and Mr. Robt. B. Lines. Mr. Elder desired to find a market for the knowledge which he possessed of the affairs of La Abra Co. He was informed that if he had any documents, clearly authentic, bearing upon the case, there might be room for a negotiation, but that affidavits were not regarded as purchaseable. Mr. Elder claimed to have such papers, and was asked to produce them and name his price. This, as his letters show, he failed to do, and the correspondence with him was dropped. He appears, however, to have found a market for the letters addressed to him in reply by Mr. Lines. This is shown by the correspondence between Hon. Benjamin Wilson, of West Virginia, and T. J. Bartholow, of St. Louis, the original of which is also transmitted. The signature of Bartholow also serves to

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came to Tayoltita. Adams called some miners and took down their statements, offering to pay them for their loss of time. This was done without witnesses and without authority. Deponent being in hacienda of the Candelario Co., witnessed altercation between Adams and Granger and an American named Rafael Martin. These gentlemen did not approve Adams' course, and believed that the depositions were false, and that Adams took advantage of the witnesses' ignorance of reading and writing. Martin drove Adams out of the hacienda, saying he did not wish to compromise his Co. or Mexico. Does not remember the names of these miners. *Cipriano Quiroz*, judge of the first instance of San Dimas, certifies, p. 156, that, having made inquiries for the parties, whose testimony is desired by the attorney for Mexico, it is recorded that Rafael Martin is in San Francisco, Gamboa and Loaiza in San Ygnacio district, Sinaloa; Soto and Granger in the mining regions of San Vicente, in the same district. The whereabouts of Mora and Avalos are not known. Orders will be sent to San Ygnacio and San Vicente. Gutierrez is absent. P. 160:. Reports that there is no mode of conveyance to San Ygnacio by which to forward the orders for Gamboa and Loaiza. *James Granger*, p. 160: Adams and Dana were in Tayoltita in April or May, 1870. Adams brought some workmen from Tayoltita to San Dimas to the house of Judge Milan; "but he does not know whether he took their depositions. That deponent, being in the court-room in company with Mr. Dana and Gen'l Adams, Milan told deponent and Dana to withdraw from there, which they did, Adams remaining in the court-room. In a short time the latter came to the place where he was, saying to him, in a state of great vexation, that he was going away because it was impossible to take the depositions; that he does not remember anything about the workmen who came from Tayoltita; that the altercation which took place between Gen'l Adams and Rafael Martin was not on account of the depositions, but about the altitude of a mound or hill which stood opposite." P. 161: Deponent saw Gamboa, Loaiza, and Avalos in Mazatlan in 1870, but did not know what was their business there. *Bartolo Rodriguez*, 163: Was one of those brought by Adams from Tayoltita, in 1870, to testify. "Had been requested by said Adams and James Granger, in Tayoltita, who told him that they wanted some depositions in which they were interested in behalf of the company; that they offered to pay him twenty shillings (reals) a day

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identify his signature in the press copybook of La Abra Co.

Nov'r 12th, 1877. Lone Pine, Inyo Co., Cal. Kind sir: I see that the La Abra M. Co. of Tayolita have been awarded damage against the Mexican Government. I built their mill and worked their ores; was there after they left; I know all about their misfortunes and they have misrepresented the affair very mutch. I think I can be of valuable service to you. I landed in Mazatlan May 9th, 1861, left ther Dec'r 24th, 1867, hoping, &c., yours, truly, A. B. Elder.

Lone Pine, Cal., Dec'r 26, 1877. Robert B. Lines, Atty. Dear sir: If you think it worth my visiting your city and that you and I can make anything out of the La Abra Co. Affair—all of which is falce write me. there is one thing certain—the La Abra Co's claim is a grand steal and I can show it to be such. I did not fair *first class* at the hand of the Mexicans while in Mexico & faired mutch worse than the La Abra Co. nor do I intend to give either party the benefit of my evidence unless there is something in it. hoping to hear from you, I am yours, dear sir, A. B. Elder.

Lone Pine, Cal., March 4, 1878. Mr. Robert B. Lines. Dear Sir, Yours of Feb. 17, 1878, come to hand on the 1st inst and in answer I will say that I will not at present dispose of the memoranda and letter you speak of. if the Mexican government cannot afford to pay it's witnesses for time and traveling expenses it will not get my evidence with all due Respect my Dear Sir I am yours Truly A. B. Elder.

Lone Pine, Cal., April 8, 1878. Robert B. Lines, Atty., 604 F St., Washingtou, D. C. Dear Sir: In a Letter from St. Louis of date March 24, 1878, they are trying to Pursuade me that the ores of the Co. were verry rich from $1000 to $1800 and as high as $6400 silver & $600 gold. through some party to me unknown I am offered a good show to go to China to look after a silver mining Co.'s affairs. how is the investigation getting along. I will be here for three months yet after that time from appearances I will leave here. hoping for your success I Remain Yours A. B. Elder.

House of Representatives, Washington, D. C. June 6, 1868. Gen'l Bartholow, My Dear Sir: Mr. Lines desires to see the letter that is said to have been written by him to Mexico. I returned it to you. I find that I have only the N. Y. original papers. You have the others, of which you gave me copies attached to your affidavit. Mr. L. desires to see whether it is his letter. Let him see it. Yours, truly, b. Wilson.

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for every day he should be engaged in this business, besides the travelling expenses from Tayoltita." "That he made a deposition at the request of the aforesaid American before Judge Anastacio Milan, and what he stated was that on being asked by said magistrate whether the ores deposited in the mine de la Luz were rich, he replied that they were of no account. Subsequently he was questioned as follows: If he knew why the company of Tayoltita had left? He answered because they did not find any silver. Whether the authorities gave guaranties or assistance to the company when requested? He answered that there had never been necessity for asking any. Whether there had been any disturbance or robbery at Tayoltita? He replied that until then he had not heard it. What amount of ores he thought were stored at Tayoltita? He answered that he did not know. This is what he remembered at present; but there were many more questions put to him. That deponent's deposition was taken down, and signed by him before the magistrate aforesaid." "That he received in payment something like ten dollars ($10) in various sums, some from the hand of Adams, others from Granger; and he remembers that they did not pay him the whole amount due to him, probably because they did not like the truth contained in his deposition."

Matias Avalos, p. 165: Asked at what point he made the extra-judicial depositions for the company which Judge Milan had refused to take. Answered that he had made what he considered an extra-judicial statement in 1870, in the National Hotel, Mazatlan, in the presence of Adams and one William M. Camacho; was asked about the arrest of the superintendent and stated how it occurred; was asked if the people of Tayoltita had made any demonstration against the company and answered no; if any mules had been stolen, and answered four had been stolen—one came back again, and the other three were paid for by those who it was said had stolen them. This he well knew, because he was in charge of the mules. Was asked if the company had been prevented by the people from working; answered yes, for three days, but that the work was then resumed. Was asked if an American who had been sent to Mazatlan to fetch money had been robbed; answered that he had heard persons connected with the company say so. James Granger had agreed to pay him twelve ($12) on the General's account for the above statement, he but did not receive it for more than two years.

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"Col. Ben. Wilson. Dear Sir: You must be mistaken in your having returned to me the letter Mr. Lines wrote to Mr. Elder. I have not got it and it must be among the papers given you by Mr. Ely. Truly yours, T. J. Bartholow."

Either Mr. Elder has exhausted La Abra treasury, or else the persons conducting the affairs of that Co. have swindled him, as they did their other witnesses, by failing to carry out their contract and send him to China. For during the preparation of this case he has again made his appearance, and with great impartiality proposed to testify for Mexico if she "will be liberal."

His letter is as follows:

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"*Dec.* 8th 1878.

GRANT'S VILLE NYE CO. NEVADA.

ROBERT B. LINES, *Atty, Washington, D. C.:*

DEAR SIR: how is La Abra award getting along. I see in dispatches from your city that the money is beaing kept back. do not forget that I can be of service to the Mexican side if they will be liberal. Please let me know how you are getting along. hopeing for your success I

Remain yours Dear Sir

A. B. ELDER."

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Adams gave it to him last May in this mining district. P. 166: After writing this statement down at the National Hotel "the General and William, who lived and lives at Camacho, went to another house, where they began writing, and from what he saw correcting his deposition, and from there they took him to the house of the consul; simply asked if he had sworn to the deposition he had made, and he answered yes." When deponent went to Mazatlan he was in the service of Doña Cecilia Jimenez; had some difficulty with her, and his arrival coming to the knowledge of Adams the latter detained him, in which he was assisted by James Granger, they promising to pay him for the detention; did not know Gamboa. Loaiza was in communication with the General; knows that he made a deposition, but does not know whether he was paid anything. Aquilino Calderon, p. 167: "Two years ago, more or less, there came to Tayoltita an American called General, and deponent being at the mine La Luz, James Granger sent for him, and having appeared before Granger and the General, he was asked, first, if it was true that the people had risen against the Americans of the Co. He replied that he did not know, because he had not been at the ball on that night. James Granger contradicted him, saying he was certain of it, because the people went about armed with cutlasses; and deponent saying to him that he did not know it, then the General asked Granger what deponent was saying, and the latter said, as he understood him, that he was certain of what he was asking, and continued writing the deposition; secondly, they asked if it was true that Marcos Mora had gone to Tayoltita to suspend the operation of the mines, and he answered that he did not know. James Granger contradicted him, affirming that he had gone there for that purpose; that he had been at the Port of the Reventon. This being concluded and written down, Granger said to deponent not to mind anything; that he would have to come to this place to make the same deposition; that they should pay him twelve shillings (reales) a day for every day he was engaged in this business; that on the following day the General, Granger, Doña Cecilia Jimenez, Guadalupe Soto, and deponent came from Tayoltita." "Being in this place he presented himself at court by order of Judge Anastacio Milan, and the latter having asked him if it was true that the people of Tayoltita had risen against the Americans, he said in reply that there had been no disturbance; that	

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what had taken place was a demand or request that they should comply with the obligations of their contract to pay them for their labor as it had been agreed upon; that other questions were put to him, but that he does not remember them, but that he remembers that most or all of them were answered in the negative. He recollects being questioned by Judge Milan if he knew whether all or any of the mines of the company of Tayoltita were being worked without permission of said company. He answered that he knew some of the workmen were so engaged, but by permission of those in charge like Mr. Granger, who had granted leave to many of them; that the General, in view of the statements of deponent, asked the aforesaid judge that he might be allowed to question deponent himself, and this not being permitted the General was very much annoyed."

Bartolo Rodriguez was the only one he remembers who made a deposition at the same time. Thinks attending witnesses were Camilo Contreras and Gil Ruiz.

Gil Ruiz, p. 168: Does not remember being an attending witness at Calderon's deposition in 1870; "but that he remembers that he noticed great annoyance on the part of said American because the depositions did not turn out as he desired; this was a supposition on his part, because he could not understand the language that he spoke."

Guadalupe Soto, p. 171: Went from Tayoltita with Calderon and Rodriguez at the request of Adams, to testify. "The aforesaid parties were promised two ($2) dollars per day, and deponent was promised an animal to ride upon and a reward; that, being in this place, Adams foreseeing that the deposition of deponent would not be favorable, did not wish him to testify; and being displeased, he took away the animal from him and did not pay him one cent of the gratuity promised." Judge Milan did not refuse to take the depositions of Bartolo Rodriguez and Aquilino Calderon, seeing that they were examined."

Dionisio Gutierrez, p. 172: Rodriguez and Calderon made depositions before Judge Milan. Judge Milan and deponent went to Tayoltita at request of Adams to take testimony. Deponent saw Adams taking down declarations from some of the laborers, in pencil on loose pieces of paper, without authority of the judge; the latter and deponent returned from Tayoltita. A few days afterwards Adams came to deponent's house, requesting him "to write down something for him in

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order that Judge Milan might credit what he had written down in pencil at Tayoltita; that Judge Milan, in view of these solicitations, summoned those deponents or individuals alluded to by Adams, and these being examined, the result was altogether different from what Adams had pretended, which caused so much annoyance to the latter that he left this mining district."

REBUTTING.

Juan C. de Valle, pp. 85 to 89, claimant's book, testifies before Judge Pedro J. Barraza, in the city of Durango, June 26, 1872, at the request of A. W. Adams, who presents a general power-of-attorney signed by George C. Collins, as president of La Abra Company, containing special clauses, to go to Mexico and obtain proofs, and also to obtain title deeds and other documents from the bureaus of Sinaloa and Durango. Power is executed before Henry Snell, notary public, New York, Mar. 11, 1872, and certified to by the Mexican Consul General in New York. Judge Barraza and Jesus Cincunegui, and Felipe Villareal, notaries public, certify to credibility of de Valle. The notaries public certify to the signature of the judge. Gov. Carillo and Chief Clerk Palao certify to signatures of the judge and notaries. U. S. Commercial agent at Mazatlan certifies to the siguatures of the governor and chief clerk.

Jesus Chavarria, pp. 90–97, testifies before Judge Barraza in Durango, July 12, 1872, by order of the Judge, given at the request of A. W. Adams. Judge Barraza certifies to credibility, also at request of Adams. Notaries Zatarain, Villareal and Cincunegui certify to signatures of Chavarria and Barraza. Gov. Carillo and Secretary Palao certify to signatures of notaries. U. S. commercial agent at Mazatlan certifies to signatures of Gov. and Secretary.

Marcos Mora, pp. 98–106, testifies before Judge Barraza at Durango, July 19, 1872, by order of the Judge, issued at the request of A. W. Adams. The Judge certifies that Mora failing to answer to subpœnas was compelled to attend by the police.* Signatures certified to as above.

P. J. Barraza, p. 107, testifies at the request of A. W. Adams. Signatures certified to as above.

Matias Avalos, (testifies before U. S.

* Either Mora was a willing witness or Barraza an uncommonly obliging judge, for neither Mexican laws nor the treaty of 1868 afford any authority for such a proceeding.

Evidence before the Commission.	*New Evidence offered by Mexico.*
Com'l Agt. Sisson at Mazatlan, Sept. 10, 1872; C. B. Dahlgren and H. Diaz Peña subscribing witnesses; Sisson certifies credibility.) Deponent's evidence in favor of the Co., given at Mazatlan, before Consul Sisson in May, 1870, was given without reward or promise of reward or persuasion, and was true. Deponent was sent for last summer by Judge Quiros at San Dimas, who threatened to fine him one hundred ($100) dollars and otherwise punish him if he did not sign a deposition which the Judge had prepared in favor of Mexico. Deponent found a "multitude of the natives of the country armed and some of them threatened him with violence," on account of his testimony in favor of the company. Part of the deposition was not true, but deponent did not sign it, because he could not write his name well enough to do so. The Judge began to read the paper, but there was so much noise in the court that he could not continue, and got up and went out. "I then took the said paper and saw that my name was signed to it and had my mark on it. I carried it to the door outside the court, and requested a Mexican to read it to me." He commenced, but carried it back before finishing it, fearing that the Judge might miss it. Supposes the deposition went forward as his, but does not so consider it. Is told that the Judge proceeded in this way with many other witnesses. Heard people laughing because the witnesses against the company were called merchants and miners, whereas they were only loafers. "But as I live amongst them, and some of these men would not hesitate to use their *matchetes* on me, I do not wish to say anything further upon the subject touching the names of the witnesses who were styled merchants, miners, &c.; as I have stated I shall soon have trouble enough for having said what I have in this case, which is nothing more than the truth. Quiros will no doubt send for me again and I may perhaps find myself compelled to sign some paper contradicting what I have here stated, and which will be sent as my testimony, and which is not true; and if I do not I may be forced to leave my home and friends and seek a home elsewhere unless the consul can protect me. The judge, gefe politico and also many other persons there who are opposed to the Abra Company have a very strong party, and I hope the consul will not oblige me to say anything more upon the subject of names. I have already said more than I ought to have said, and, anyhow, what I have said is all that I know	

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about the matter." Deponent came to Mazatlan to attend the sick family of the superintendent of the Durango Mining Co., and had no idea that his deposition would be asked.

C. B. Dahlgren, p. 117, claimant's book: Regards Matias Avalos as a strictly honest, truthful, trustworthy, conscientious, and reliable man. Has frequently entrusted him with large amounts of coin and bullion. He never reported a loss, as others did, and as he might have done without detection or suspicion. Deponent has heard of witnesses being threatened by Judges Milan and Quiros, unless they testified in favor of Mexico. Avalos told him of his own case, and deponent believes his statement. Has heard of similar cases, but has no personal knowledge concerning them. Heard "Granger say that if he had not complied with the demand of the judge of first instance of San Dimas in testifying against La Abra Co., the claimant, that he knew he would have been compelled to give up his mining interests in that district, and leave the country."

Nicholas Alley, (Born Fayetteville, Alabama; age 25; has resided in Mexico for five years; has been a miner, and is now superintendent of Mazatlan Cotton Factory, testifies Sep. 25, 1872, before U. S. Commercial Agt. Sisson, at Mazatlan, who certifies to credibility.) P. 120, claimant's book: Deponent was with Adams in July, 1872, in Durango, when Adams was engaged in procuring the title papers of the company from the files of the State Department, and in taking depositions. Deponent there met a man named Rapp, "a Southern man," who had a difficulty with Adams. Rapp "denounced all Union men as scoundrels." Also denounced La Abra Co., "calling them bad names," and taking the part of Mexico. Rapp asked deponent to join him in defeating the claim of said Co. "The district attorney or his assistant, he said, had engaged his (Doctor Rapp's) services, and was to pay him a contingent fee of $5,000, on condition of defeat of said claim." Rapp was also to have a liberal amount of money to procure witnesses. He proposed to deponent to divide the contingent fee, and also a large part of the witness money with him. He said Mexico would advance $20 a head for witnesses. They could be had for $5.00, and they would divide the $15.00. Rapp said "he had taken an oath to ruin Adams, the attorney for the Co., and to defeat the said claim, and that he would do it if it should cost him his life." He wanted deponent to lead off by swearing that Adams had

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offered to bribe him to testify in favor of the Co. Deponent replied that Adams had never made such an offer, but had conducted himself in a gentlemanly and honorable manner. "I declined to join him in his infamous scheme." Rapp then invited him to take some wine, and say nothing about it. But deponent informed Adams "the same day, in the presence and hearing of Col. Clarence Key, who accompanied said Adams to Durango, as interpreter and translator. Charles Schultz and several others, who were members of the escort or personal guard travelling with said attorney, Mr. Adams. The authorities of the State offered no facilities, but tried to prevent said attorney from procuring title papers or depositions, while there trying to do so in June and July last."*

Isaac Sisson, (U. S. consul at Mazatlan, certifies, Dec'r 14, 1872, under the seal of the consul,) p. 127, claimant's book: On Dec'r 13, 1872, about 6 p. m., was standing in the store of Lewels and Co., in Mazatlan, when Adams came in with two or three depositions in favor of La Abra Co., taken before me. I took the deposition of Antonio de la Peña, and read aloud one or two of the answers of Peña. The clerk in the store asked Adams if he was going to send it off by the steamer next day. I replied yes, when a "elderly Mexican" seized it and tore it to pieces, and "started to leave the house with the pieces in his hand, but the said attorney, Mr. Adams, ran after said Mexican and took from him by force the torn pieces of said deposition, when said Mexican fled and ran away from said store before it was possible for said attorney or myself to get his name, and the clerks in the said store of Lewels and Co. were asked by said Adams if they knew the Mexican who had snatched and torn up the said deposition in my presence and from under my hand, but they all denied that they knew him, and I have not yet been able to ascertain his name. As this malicious looking Mexican had the appearance of a man of intelligence, it was evident to my mind that he, having attentively listened to the title page of said deposition in favor of the 'La Abra Silver Mining Co. contra la Republica de Mexico,' wickedly determined that there should be one deposition less to go forward against his country, and, by this unworthy act of

* How can this be said in the face of the facilities shown by the record to have been given Adams by the executive authorities in Durango and Mazatlan, and the extraordinary complaisance of Judge Barraza, who lugged in Mora by force to testify for the Co.?

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Evidence before the Commission.	*New Evidence offered by Mexico.*

snatching and tearing up this deposition, that he would contribute to the defeat of said claim. *

George C. Collins, p. 189, claimant's book: "Question 12. Where is said superintendent, Julian A. de Lagnel, and what reason, if any, exists for not having his deposition taken in this cause? Answer. The company has made diligent inquiry to find him for the purpose of obtaining his deposition as evidence in this cause, but they were unable to learn where he resided or could be found, and do not know whether he is now living or not. The company was informed and believes that before the filing of the memorial in this cause he went to the State of Florida, and afterwards to South America, and then to China, but could get no definite information as to his whereabouts; for these reasons his evidence could not be, and has not been, obtained on behalf of the claimant in this cause."

Chas. H. Exall, p. 191, claimant's book: Testifies substantially as Collins' deposition above quoted. P. 206: Knew Maria Cecilia Jiminez, step-daughter of Judge Soto. She is an abandoned woman. Deponent would not believe her on oath.

Ralph Martin, p. 209 claimant's book: In April, 1870, while deponent was living at the hacienda of the Candelaria Co., near San Dimas, Adams came to him with letters of introduction from friends in New York. He had an escort, at the head of which was Col. Dana. Deponent knows Maria Cecilia Jiminez. Her reputation is bad; would not believe her on oath. Her deposition is a manufactured falsehood. There was no altercation between deponent and Adams. All their conversation was in English, which she did not understand. P. 212: Deponent and Adams parted in a friendly manner. Adams complained to deponent that he had brought witnesses from Tayoltita to San Dimas, but they had been frightened away by the authorities, "and that all of his witnesses excepting two had mysteriously disappeared, and that they gave no testimony; that Judge Milan turned the interpreter, Dana, and Granger, one of claimant's witnesses, out of the court room, and that Gen. Adams was compelled thereby to abandon said examination and all hope of taking depo-

* It is a sufficient commentary on this story to say that Mr. Peña's deposition, dated Dec. 2, 1872, at ten o'clock in the morning, appears upon the files of this case. (P. 122, claimant's book:) Either the deposition was, therefore, forged by Mr. Sisson, or he perjured himself in testifying that it was destroyed Dec. 13th, 1872. Mr. Sisson's record, known to his government, will support either theory.

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sitions in that district." Granger and Avalos told deponent, on their return from Mazatlan, in May, 1870, that they had given their depositions in support of this claim before Isaac Sisson, Esq., consul at Mazatlan. "Adams conducted himself and his said business there honorably and with propriety." P. 214: Knows Avalos well; employed him as a servant. "He was an honest, reliable man, of good character for truth." Asked if Avalos was intelligent enough to know the meaning of the term "extra judicial." Answers. "No; I should think not."

Thomas J. Bartholow, p. 227, claimant's book: Assessments have been made from time to time since the celebration of the treaty of July 4, 1868, up to the present month, "for moneys with which to prosecute this claim for damages against the Mexican Government."

Alonzo W. Adams, p. 234, claimant's book: Deponent went in 1870 and 1872 to Mexico to collect evidence for the company. In 1870 took Francis F. Dana with him from Mazatlan, as capt. of guard and interpreter. Did not offer Granger $5,000 to buy witnesses. Knows very little of Maria Cecilia Jimenez. She was at Tayoltita when deponent went there and at the hacienda of the Candelaria Co., near San Dimas. Her statements as to deponent's conduct are false. Does not remember Dionisio Gutierrez. His statements are also false. Reached Hacienda San Nicolas in April, 1870. Found it occupied by Guadalupe Soto, who was working the Co.'s mines. Deponent sent for a number of the workmen, among them Rodriguez and Calderon, and questioned them. Those who had formerly worked for the company voluntarily stated what they knew about the depredations of the military and interference of the civil authorities. Deponent made memoranda in pencil of their answers, as Dana translated them, to see whether what they knew was of sufficient importance to justify him in asking them to go to San Dimas. They were not contradicted, prompted, or interfered with by Granger, Dana, deponent, or any one else. Did not offer, directly or indirectly, to Soto a mule, money, or anything else for his testimony. Judge Soto required deponent to pay the daily wages of his workmen, if they went to San Dimas, about $1.50 a day. Deponent consented, thinking it reasonable and proper. Soto was bold and defiant, admitted his interference with Co., and justified it, and admitted other facts, which led deponent to ask him to go to San Dimas to testify. The Judge consented, but when he got there had a

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private conference with Judge Milan, in the rear part of Milan's store, as the result of which he told deponent that Judge Milan did not wish him to testify, and he thought it would be impolitic to do so, "and expressly requested me not to call him as a witness then, as he said he was going to Mazatlan in the course of two weeks, when he could make a deposition with less ill effect to himself, and promised to do so if I would not insist upon his testifying at San Dimas." For this reason deponent did not then and there insist upon taking the deposition of Judge Soto at San Dimas in May, 1870." Deponent waited at Mazatlan for Soto, but he did not come. But for this Dana would also have testified to Soto's conduct. Saw Soto in '72 at San Vincente, where he temporarily resided, but he then declined to testify. Deponent believes his intention in 1870 was, under cover of willingness to testify to avoid doing so, and to prevent his workmen from testifying. All the workmen except Rodriguez and Calderon disappeared after a conference with Judge Milan in his private room. On deponent's return, in '72, he tried to find them, but could not, "and it would have been a useless search if I had found them, for Mexicans were then afraid to testify before a Mexican court." Rodriguez and Calderon were the only two who were not frightened away before the court opened. "When Calderon attempted to testify there was a crowd of people outside, about the doors and windows of said court room, hooting and yelling, and the court room itself was full of the local authorities and people," looking menacingly at the witnesses and deponent. Deponent reaffirms and makes part of this deposition all the facts contained in the depositions of Granger and Dana, of May 23 and 27, 1870. Deponent had no alternative but to abandon proceedings and all hope of taking depositions in that district. If Calderon finished his deposition, and Rodriguez testified, it was after deponent left the court room. Their depositions, filed by the defense, are directly opposite to what they voluntarily stated to deponent at Tayoltita. Deponent went to the hacienda of Ralph Martin, and thence to Mazatlan, and did not return to San Dimas until 1872. The depositions of Avalos, Gamboa, Loaiza, or Granger were not taken extra-judicially, but before the United States consul at Mazatlan, under his authority from the State Department. Granger and Avalos resided at San Dimas. Granger being satisfied that it would be	

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dangerous for him to testify there, told deponent he would be in Mazatlan in a few days on business, and would give his deposition before the United States consul there. Deponent did not know that Avalos had worked for Co. until after his return to Mazatlan, and Avalos being temporarily there his deposition was taken lawfully and openly before the United States consul and written out by ex-Gov. Carlos F. Galan, at Avalos' request. Avalos' deposition for defense is untrue, and has been repudiated by Avalos himself, in his deposition of Sept. 19, '72, made at the request of the consul without interference by deponent, the interpreter, Peña, being chosen by Avalos. Deponent never heard of such a person as William N. Camacho. Every deposition on behalf of claimants, taken in Mexico, was taken honorably and lawfully and wholly by the consul or magistrate certifying to the same. Every Mexican official in Sinaloa and Durango, "with the honorable exception of Pedro J. Barraza, judge of the supreme tribunal at the capital of Durango, who discharged his duty honorably and promptly," to whom deponent applied for certificates, title papers, and to take depositions, either refused or delayed deponent, who was thereby prevented from getting the testimony of Co.'s former employees and others material to the claim. In May, '72, deponent asked the prefect and judge at San Dimas to certify their own unofficial signatures as witnesses to certain title papers, and the signatures of other officials, which they declined to do without orders from Durango. The title papers were certified in Durango after a delay of a number of weeks, during which time bills were made out for over $200 by a Mexican agent for searches and procuring the signatures of the Gov. and other officials. In May, '72, Granger told deponent that he had been compelled by Judge Quiros to sign two depositions on the part of the defense; that owing to the manner of putting up depositions, sheets might have been interpolated, but that if these depositions contained anything inconsistent with his deposition before Consul Sisson in May, 1870, they were falsely reported by Judge Quiros. He was willing to testify to that effect, but could not leave his business to go to Mazatlan; could not testify before Quiros, and Consul Dahlgren had not yet received his *exequatur*. In Sept., '72, Dahlgren complained to deponent of the supreme Govt. at Mexico in withholding his exequatur so long, which he thought had been done to prevent taking testimony before him in	

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support of claims against Mexico. It is not true that in July, '72, there was no mode of conveyance between San Dimas and San Yguacio, which prevented taking the testimony of Milan, Gamboa, and Loaiza by the defense. The towns were but 60 miles apart, and mails went once a week. One of deponent's interpreters bore a verbal message from Milan, who was at San Ygnacio for his health, to his family at San Dimas. Quiros must have known his whereabouts, and it was easy to get the testimony of Loaiza and Gamboa. "Loaiza was a conscientious and truthful man, whose statements could not be influenced or controlled by any official threats of punishment." It is also false that Quiros and the dist. att'y at Durango did not know the whereabouts of Marcos Mora. He was a well-known man. Deponent saw him frequently in July, '72, in company with the dist. att'y at Durango, and he testified for claimant when compelled by Judge Barraza, in the latter part of that month. Gamboa and Loaiza resided at San Ygnacio, Sinaloa. Deponent never saw them at San Dimas or elsewhere in Durango. In April, '70, deponent asked the judge of the first instance at San Ygnacio to take their depositions, but he refused, saying he had to leave town. On deponent's return, they consented to accompany him to Mazatlan, which they did in May, '70, and gave their depositions before the United States consul.

Carlos F. Galan, p. 249, claimant's book: "About 1870 or 1871, there being some excitement about claims presented to the Joint Commission, I inquired and ascertained a great deal concerning most if not all the claims presented by people who had lived or were living in Sinaloa and Durango." Was consulted in many cases as a lawyer. All but one, that of Geo. Briggs *vs.* Mexico, being against the U. S. Translated and wrote down the depositions of Trinidad and J. F. Gamboa and José Maria Loaiza in the case of James Tobin *vs.* Mexico. Gov. Domingo Rubi, of Sinaloa, the Secy. of State, District Atty. and Judge of the First Instance in Mazatlan, was prejudiced against the taking of testimony in cases against Mexico. The judge destroyed some depositions taken in the case of Briggs. The dist. attorney got hold of this in the office of the judge, made notes from them and held them until the time for filing them had expired. When deponent got them the Gov. refused to certify the judge's signature. The Secy. of State, after reading the depositions, wrote,

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instead of a certificate, a sort of impeachment of the witnesses. Being remonstrated with, he said he would like to have such men led out and shot for testifying in support of these Gringos. The next morning after their depositions before the U. S. consul in the Tobin case, the Gamboa brothers told deponent that Gov. Rubi had talked with them and threatened to make them serve in the army and pay all damages awarded these claimants if they did not retract what they had said or go before the judge at San Ygnacio and testify on the other side. Gamboa said they wanted their depositions returned as they did not wish to go before the Mexican judge and testify to anything but the truth. Some time afterwards, from conversation with Gov. Rubi on the subject of claims, deponent became satisfied that Gamboa's statement was true. The Gov. declared his intention to defeat these claims, by fair means or foul. He was ignorant of international law—said the demands of the claimants generally were extravagant, (in which deponent agreed as regarded consequential damages.) He would have the witnesses re-examined and make them tell a different story. "Severe military service and discipline would make them change their ideas somewhat as to what good loyal Mexicans should do in such cases." The Gamboas and Loaiza had lived in California and spoke a little English. They had full confidence in deponent as translator, and testified before the American consul at their own suggestion. Loaiza had a claim of $300,000 against the U. S., in which deponent is counsel, but to show his fairness he was willing to testify to the facts in the cases of Tobin and others. He was unwilling, however, to go before a Mexican judge. The depositions were not returned as requested. The attorney for Tobin (Adams, see p. 253) offered to return them if there was anything in them untrue, or to have them modified before sending to Washington. The witnesses declined, saying they were truthful.

In 1871 Trinidad Gamboa told deponent that he and his brother had been compelled to sign adverse depositions before the judge at San Ygnacio in the cases of Tobin, Daniel Green and others. When the depositions in Tobin's and other cases were taken before the consul in 1870, the witnesses insisted on finishing them that night. The consul was impatient and annoyed. "Whether they were all written down that day or whether we devoted two days or more to the work I do not now

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remember, but I recollect distinctly that they were completed late at night, or before daylight in the morning, and that the consul was in very bad humor about it; and also that these witnesses were fairly educated, intelligent, cautious men, and scrupulously careful in reading over and correcting their depositions in many places." "The proceedings were lawfully and honorably conducted by the consul, the attorney and myself." The attorney Adams did not interfere or prompt the witnesses. After Adams offered to return the depositions if they were untrue, one of the Gamboas remarked that he had given them barely enough money to pay their expenses from Cabazan to Mazatlan and back, and if they had the trouble they anticipated with Gov. Rubi they ought to be indemnified. This was at once resented by Adams, who replied "that he had paid their ordinary expenses to and from Mazatlan and the lawful fees of witnesses, and that if money was what they meant by indemnity that he would not give them another dollar, as such a proceeding would look like bribery; that he declined to be placed in a false position in the matter, which were, I think, the exact words used by him," and renewed the offer to return the depositions or modify them if they were incorrect. This they declined, saying the depositions were truthful, and "parted with said att'y in a friendly manner, though they were apparently despondent and fearful of serious trouble with the authorities for testifying in support of these claims against Mexico." P. 255: Does not believe depositions in claims against Mexico could have been taken with any fairness before authorities of San Ygnacio or elsewhere in that military jurisdiction.	

No. 41.

Receipt for papers in La Abra case.

DEPARTMENT OF STATE,
Washington, January 11, 1879.

Received this day of Señor Don Manuel M. de Zamacona, minister of the United States of Mexico, a tin box containing papers agreeing in number and description with the list* presented by the same and signed by Don C. Romero, and verified by Alvey A. Adee, said papers being said to relate to the claim of the La Abra Mining Company against Mexico.

SEVELLON A. BROWN.

No. 42.

Mr. Evarts to Mr. Zamacona.

DEPARTMENT OF STATE,
Washington, January 21, 1879.

SIR: I have the honor to acknowledge the receipt of your note of the 11th instant, touching the general question of the desired reopening of the Weil and La Abra cases, and transmitting documentary evidence alleged to show the fraudulence of the latter claim as presented to and adjudicated by the late claims commission under the treaty of 1868.

Accept, &c.,

WM. M. EVARTS.

No. 43.

Mr. Evarts to Mr. Zamacona.

DEPARTMENT OF STATE,
Washington, January 24, 1879.

SIR: In consequence of the recent verbal request addressed to Mr. Seward by the secretary of your legation, Mr. Romero, I have the honor to inform you that the amount of the annual installment due on the 31st instant from the Government of Mexico to that of the United States on account of awards made by the Joint Commission under the convention of July 4, 1868, has been computed, in accordance with the understanding had on the 31st of January of last year with respect to such payments, and is found to be as follows:

United States currency (now equal with gold)	$23,662 05
United States gold	31,400 18
Mexican gold dollars at 98.3939	241,003 82
	296,066 05

This amount, in consequence of the present equalization of gold and United States notes, may be satisfied in one payment in either of those mediums.

Accept, &c.,

W. M. EVARTS.

* This list is attached to note of January 11, 1879, from Mexican Minister.

No. 44.

Mr. Zamacona to Mr. Evarts.

LEGATION OF MEXICO IN THE UNITED STATES,
Washington, January 27, 1879.

Mr. SECRETARY: I have the honor to transmit to your Department two documents, which are to be considered as supplementary evidence presented by Mexico in the matter relative to the claim of the Abra Mining Company.

I avail, &c.,

M. DE ZAMACONA.

Annual report of La Abra Silver Mining Company.

The amount of the capital of said company is $300,000; the amount actually paid in on said capital is $235,000; and the existing debts of said company amount to $154,531.06.

Dated New York, January 17, 1879.

JAS. G. BALDWIN, *President.*
JAS. G. BALDWIN,
S. S ELY,
A. H. GIBBS,
A. M. GARTH,
Majority of Trustees.

CITY AND COUNTY OF NEW YORK, *ss:*

James G. Baldwin, being duly sworn, says that he is the president of La Abra Silver Mining Company above named, and that the foregoing report and all and singular the matters therein contained are correct and true to the best of his knowledge, information, and belief.

J. G. BALDWIN.

Subscribed and sworn to before me January 17, 1879.

[L. S.]

JAS. W. HALL,
Public Attorney, 69 Wall Street.

(Indorsed:) Filed January 17, 1879.

STATE OF NEW YORK,
City and County of New York, ss:

I, Henry A. Gumbleton, clerk of the said city and county, and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original annual report of La Abra Silver Mining Company, on file in my office, and that the same is a correct transcript therefrom and of the whole of such original.

In witness whereof I have hereunto subscribed my name and affixed my official seal this 23d day of January, 1879.

[SEAL.]

HENRY A. GUMBLETON, *Clerk.*

Supreme court, city and county of New York. General term.

BANK OF CALIFORNIA
against
GEORGE C. COLLINS AND OTHERS.

This action was commenced on the 16th day of October, 1869. James L. Crittenden, esq., was the attorney for the plaintiff. On the 2d of April, 1872, Thomas L. Snead, esq., was duly substituted as attorney for the plaintiff in the place and stead of the said James L. Crittenden.

The issues in said action came on for trial before the Hon. A. R. Lawrence, one of the justices of this court, at a circuit court on the 18th day of May, 1874, James Clark' esq., appearing as counsel for plaintiffs, and W. Britton, esq., for defendants. A jury was called and sworn. It was admitted and suggested that W. N. Worthington, one of the defendants, had died since the commencement of this action. Plaintiff, by its counsel, opened the case. The plaintiff then, to maintain the issues on its part, intro-

duced in evidence, for the purpose of proving its incorporation, the act of the legislature of the State of California, approved 14th day of April, 1853.

Annexed hereto as Exhibit A, and an exemplified copy of the certificate of incorporation of said Bank of California hereto annexed as Exhibit B. Plaintiff thereupon proceeded to introduce evidence as to the alleged debt by the La Abra Silver Mining Company to the plaintiff, when defendants' counsel moved the court to dismiss the complaint on the ground that a banking corporation could not be created under said act of the legislature of the State of California of 1853, and that said act and said certificate of incorporation did not create the plaintiff a corporation for carrying on the business of banking or at all, which motion was granted by the court.

Plaintiff's counsel excepting thereto and the complaint herein was dismissed on the ground aforesaid, and plaintiff's exception directed to be heard in the first instance at the general term, judgment in the mean time suspended.

It appears that no judgment was entered in the suit, and that plaintiff paid the costs ($51.50).

The case was taken to general term on technical points in July, 1876.

No argument was had thereon and no further action taken in case up to date—Collins being dead.

Supreme court, city and county of New York.

THE BANK OF CALIFORNIA, PLAINTIFF,
against
GEORGE C. COLLINS, DAVID J. GARTH, ALFRED H. GIBBS, W. N. Worthington, John H. Garth, and others, whose names are unknown to plaintiff, trustee of La Abra Mining Company, defendants.

To the above-named defendants:

You are hereby summoned and required to answer the complaint on this action which will be filed in the office of the clerk of the city and county of New York, at the new county court-house, and to serve a copy of your answer to the said complaint on the subscriber at his office, No. 115 Broadway, New York City, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will take judgment against you for the sum of five thousand dollars in the United States gold coin, and one dollar and twenty cents currency, with interest from the thirteenth day of May, one thousand eight hundred and eighty-seven, besides the costs and disbursements of this action,

Dated New York, 16th October, 1869.

JAMES C. CRITTENDEN,
Plaintiff's Attorney No. 115, *Broadway, N. Y. City.*

In the supreme court of the State of New York. In and for the first judicial district

BANK OF CALIFORNIA
against
GEORGE C. COLLINS, DAVID J. GARTH, ALFRED H. GIBBES, John H. Garth, W. N. Worthington, and others whose names are unknown to plaintiff, trustees of La Abra Silver Mining Company.

The plaintiff above named, by their attorney, James L. Crittenden, esq., respectfully complains, alleges, and shows to this honorable court:

First. That the plaintiff herein is a corporation created by and under the laws of the State of California for the purpose of engaging in and carrying on the business of banking in the State of California and elsewhere.

Secondly. That at the time or times hereinafter mentioned the defendants were trustees of the La Abra Silver Mining Company, and that the said defendants are still trustees of said company, as the plaintiff is informed and believes.

Thirdly. That at the times hereinafter mentioned said La Abra Silver Mining Company was a corporation organized under and in pursuance of an act of the legislature of the State of New York, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February 17, 1848, and the acts amending the same; that the number of trustees of said company at the time hereinafter mentioned was seven.

Fourthly. That on or about the 10th day of April, 1867, after the time for filing the annual report hereinafter first mentioned, and before it was filed, and before the time

for filing the other annual report hereinafter mentioned, the said La Abra Silver Mining Company became indebted to the plaintiff in the sum of five thousand dollars, United States gold coin, and one dollar and twenty cents, United States currency, for money lent by the plaintiff to the said company, and for money paid, laid out, and expended by the plaintiff to and for the use of said company, at their request; and, although the same became due and payable on or about the 13th day of May, 1867, at the city of New York, and demand of the payment was duly made, no part thereof has been paid.

Fifthly. That the said La Abra Silver Mining Company did not within twenty (20) days from the first day of January, 1867, make a report stating the amount of its capital, and of the proportion of the same actually paid in, and the amount of the existing debts of the said company at the period last aforesaid, or at any period subsequent thereto; that said company did not cause any such report to be signed by its president and a majority of its trustees, nor to be verified by the oath of its president nor by the oath of its secretary, nor to be filed in the office of the court of the city and county of New York, nor to be published in any newspaper printed and published in the city and county aforesaid; and the said defendants, and also said company, wholly neglected and refused, during said period, and until after the 1st day of June, 1867, to cause any such report to be made, signed, verified, filed, printed, and published, in conformity with the provisions of the 12th section of the aforesaid act of the legislature of the State of New York.

Sixthly. That the said company did not within twenty (20) days from the 1st day of January, 1868, make a report stating the amount of its capital, and of the proportion of the same actually paid in, and the amount of the existing debts of said company at the period last aforesaid, or at any period subsequent thereto, as required by law in such case made and provided; that said company did not cause any such report to be signed by the president and a majority of its trustees, nor to be verified by the oath of its secretary, nor to be filed in the office of the clerk of the city and county of New York, nor to be published in any newspaper printed and published in the city and county aforesaid, as required by law; and said defendants and also said company wholly neglected and refused, during said period, and have ever since neglected and refused, to cause any such report to be made, signed, verified, filed printed, and published in conformity with the provisions of the 12th section of the aforesaid act of the legislature of the State of New York.

Seventhly. That the said company did not within twenty (20) days from the 1st of January, 1869, make a report stating the amount of its capital and of the proportion of the same actually paid in, and the amount of the existing debts of said company at the period last aforesaid, or at any period subsequent thereto, as required by law in such case made and provided; that said company did not cause any such report to be signed by its president and a majority of its trustees, nor to be verified by the oath of its president nor by the oath of its secretary, nor to be filed in the office of the clerk of the city and county of New York, nor to be published in any newspaper printed and published in the city and county aforesaid as required by law; and said defendants and also said company wholly neglected and refused, during said period, and have ever since neglected and refused, to cause any such report to be made, signed, verified, filed, printed, and published, in conformity with the provisions of the 12th section of the aforesaid act of the legislature of the State of New York.

Eighthly. That the said defendants, by means of the premises, became and are liable to pay to the plaintiff the said sum of five thousand dollars, United States gold coin, and one dollar and twenty cents, United States currency, together with the lawful interest on said amounts from the aforesaid 13th day of May, 1867.

Wherefore, the plaintiff prays judgment against the defendants for the sum of five thousand dollars, United States gold coin, with lawful interest thereon in United States gold coin from the said 13th day of May, 1867, and for the sum of one dollar and twenty cents, United States currency, with lawful interest thereon from the said 13th day of May, 1867, together with the costs of this action.

JAMES L. CRITTENDEN,
Attorney for Plaintiff, No. 115 Broadway, New York City.

Supreme court, county of New York.

BANK OF CALIFORNIA
against
GEORGE C. COLLINS, DAVID J. GARTH, ALFRED H. GIBBES, W. N. WORTHINGTON, and others.

The joint and several answer of the defendants, George C. Collins, David J. Garth Alfred H. Gibbes, and W. N. Worthington, to the plaintiff's complaint in this action:

First. Said defendants allege, and each for himself separately alleges, that at the

commencement of this action the plaintiff was not a corporation, and that there was not then, nor is there now, any such corporation as the Bank of California, named as plaintiff therein.

Second. Said defendants deny, and each for himself herein separately denies, each and every allegation made and contained in said complaint.

Dated December 1st, 1869.

BRITTON & ELY,
Attorneys for said Defendants.

No. 45.

Mr. Evarts to Mr. Zamacona.

DEPARTMENT OF STATE,
Washington, February 1, 1879.

SIR: I have the honor to acknowledge reception of your note of the 27th ultimo, transmitting, as "supplementary evidence presented by Mexico in the matter relative to the claim of the Abra Mining Company," two documents, one of which is authenticated under the seal of the city of New York, the other being unauthenticated.

Accept, &c.,

WM. M. EVARTS.

No. 46.

Mr. Evarts to Mr. Zamacona.

DEPARTMENT OF STATE,
Washington, February 3, 1879.

SIR: I have the honor to transmit herewith the original and duplicate receipt for the payment, by check, made by you on the 31st ultimo, in discharge of the third installment of the indemnity due that day from Mexico to the United States under the convention of July 4, 1868, between the United States and Mexico.

Accept, &c.,

WM. M. EVARTS.

DEPARTMENT OF STATE,
Washington, January 31, 1879.

Received of Don Manuel Ma. de Zamacona, envoy extraordinary and minister plenipotentiary of the Government of Mexico, a check drawn by himself upon the National City Bank of New York to the order of the undersigned, for two hundred and ninety-six thousand and sixty-six dollars and five cents ($296,066.05), being in discharge of the third installment of the indemnity this day due from that Republic to the United States under the convention between the two Governments of the 4th of July, 1868, according to an adjustment made on the 31st of January, 1878, of the relative value of the three currencies composing the indemnity.

WM. M. EVARTS.

No. 47.

ARGUMENTS OF JOHN A. J. CRESWELL AND ROBERT B. LINES, COUNSEL FOR MEXICO,

BEFORE THE SECRETARY OF STATE,

IN THE MATTER OF THE REHEARING OF THE FRAUDULENT CLAIM OF LA ABRA SILVER MINING COMPANY VS. MEXICO, PROVIDED FOR BY ACT OF CONGRESS OF JUNE 18, 1878.

SATURDAY, *May* 10, 1879.

Mr. LINES said: Mr. Secretary: The Secretary of State having notified the minister of Mexico of the passage by Congress of an act authorizing the President of the United States to make investigation of the claims of Benjamin Weil and La Abra Silver Mining Company, upon which awards were made against Mexico by the late mixed commission of the two countries, with a view to a rehearing of the same, and invited the Government of Mexico to lay before him the proofs of the fraud and perjury in said claims; and the minister of Mexico having placed those proofs on file with the Secretary, we, as counsel for the Mexican Government, beg leave herewith to submit our views upon the questions of fact and law presented in the claim of La Abra Mining Company, and the newly-discovered evidence offered by Mexico in relation to that claim.

It is not proposed to repeat here the arguments urged upon the umpire of the late commission to induce him to review his decision in this case; although we believe that, had it been the verdict of a jury, a court of common law would have set it aside and granted a new trial, because the evidence was insufficient, even if it had been uncontradicted; because the evidence was vague and uncertain, and better proof might have been obtained, as the decision of the umpire expressly states, and because the finding was against law. (5 Wendell, 48; 40 Maine, 28; 9 Leigh., 30; 32 Tex., 36; 19 Geo., 145; 23 Tex., 77; 21 Conn., 245.)

Nor will we criticise the ground on which the umpire declined to rehear the claim, to wit: That having once rendered a decision it was final, even as against himself, and that he had no authority to review it, notwithstanding that eminent counsel advised him to the contrary. (See letter of Mr. Evarts to Sir Edward Thornton, in the rejected claim of Rosario y Carmen Mining Company, House Rep., No. 700, 45th Cong., 2d session.)

Still less is it proposed by us to discuss the power of the Executive of the United States to withhold the payment of moneys awarded by a commission constituted under the terms of a treaty with a foreign government, whenever he may be convinced that the decisions of such commission have been wrongfully and unjustly obtained. That power is understood to have been asserted in the Gardner case, and in the case of Venezuela (Treaties and Conventions, p. 1081), but it is not here in question. The umpire having expressed his own inability, under the terms of the convention, to grant a rehearing in any case once decided, nevertheless added a suggestion that, in his opinion, neither Government "would insist upon the payment of claims shown to be founded upon perjury." The late Secretary of State declined, however, to consider the representations of Mexico, holding himself precluded from such action by the finality clause of the treaty, but referred the

question to Congress. It was then that Congress stepped in and relieved the situation by enacting the following law, which the Executive approved:

SEC. 5. And whereas the Government of Mexico has called the attention of the Government of the United States to the claims hereinafter named with a view to a *rehearing*, therefore be it enacted that the President of the United States be, and he is hereby, requested to investigate any charges of fraud presented by the Mexican Government as to the cases hereinafter named, and if he shall be of the opinion that *the honor of the United States, the principles of public law, or considerations of justice and equity* require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be opened and the cases *retried* it shall be lawful for him to withhold payment of said awards, or either of them, until such case or cases shall be *retried* and decided in such manner as the Governments of the United States and Mexico may agree, or until Congress shall otherwise direct. And in case of such retrial and decision any moneys paid or to be paid by the Republic of Mexico in respect of said awards respectively shall be held to abide the event, and shall be disposed of accordingly; and the said present awards shall be *set aside, modified, or affirmed* as may be determined on such retrial: *Provided*, That nothing herein shall be construed as an expression of any opinion of Congress in respect to the character of said claims or either of them.

By this act any provision of the treaty of 1868 as to the finality of the decisions of the commission, so far as these two claims are concerned, was completely swept away and abrogated. It is a well-settled doctrine, broadly laid down by the Supreme Court of the United States, that "a treaty may supersede a prior act of Congress, and an act of Congress may supersede a prior treaty" (11 Wallace, 621), and in the case in which this decision was rendered the treaty was only partially abrogated, and that by implication. An act of Congress may relieve the Executive from the obligations imposed upon him by a treaty in contravention of the wishes of the other contracting power, and *a fortiori* if the other power consent to such mode of release. Whatever steps, therefore, are taken by the President in this matter, if not guided by that discretion which we believe belongs to him as the head of a just and honorable Government, are to be guided by the act of 1878 above quoted, and to be taken under its direction, without restriction by the treaty, the rules of municipal law, or any other authority whatever.

In other words, we contend that the umpire, having inadvertently decided this claim against both the law and the evidence, having differed from the distinguished Secretary in holding that he was absolutely without authority to rehear a claim for any cause, and his commission having expired, Congress, at the request of the Secretary of State, and in the exercise of its recognized discretion, has legislated upon the subject in accordance with the suggestion of the umpire himself; and by that legislation, and before the execution of judgment in the proceeding, has placed the President in a position where *he* may grant the "rehearing" which is the object and intention of the act, for matters, either of fact or law, which would have been ground for such "rehearing" before a tribunal invested with the ordinary power to "rehear;" and further, that in addition to the well-known principles which govern the granting of new trials in municipal courts (not to mention those rules which the Government has always observed in the re-examination of fraudulent claims against itself where only its own pecuniary interests are involved), Congress has suggested for his guidance those higher and broader rules which ought to govern, and do govern, the United States in their intercourse with foreign powers, to wit, "the honor of the United States, the principles of public law," and "considerations of justice and equity."

We maintain that the newly discovered evidence presented by Mexico, which we will hereafter consider, amounts to *conclusive proof* that

this claim is *absolutely without foundation*, as much so as if its subject-matter, like the mine of Gardner, and the cotton of Wiel, had never existed.

We absolutely deny, and Mexico has always denied, and never admitted what is artfully insisted upon, that the question is one of the amount of damages which Mexico ought to pay.

It cannot be said, as said by counsel on the other side, without mistaking the record, that the foundation facts of this claim are not controverted and disproved by the new evidence. It is true that this company had a mine in Mexico, and that Gardner did not, and that Weil had no cotton. It is also true that Gardner had the grace to kill himself; that Weil is dead, and that the forgers of this claim is yet walk the streets. It is not true, as stated by counsel (pp. 2, 3, brief of Mr. Shellabarger) that Mexico admits that this company was "subjected to *some* hostile attacks, tending to render the work unprofitable," or that "hurtful hostilities by Mexicans were encountered." We show, conclusively, that there were no hostilities to the company, but the contrary, and that its operations were never interrupted, hindered, or delayed one hour by any acts of Mexican authorities or citizens, or by any other cause than the lack of money to prosecute them.

For the present, however, we respectfully contend that if it is shown, *either by a review of the action of the Commission or by the production of newly-discovered evidence*, that there is a *reasonable suspicion of fraud* on the part of the claimants, or that the Commission or Umpire *erred either in estimate of the evidence, or in application of the "public law,"* there should be a rehearing of the cases to satisfy the intention of the act of Congress. And it is immaterial whether the suspicion of fraud or error attaches to the whole or only a part of such claim, for the act provides that the "awards shall be set aside, *modified*, or affirmed as may be determined on such retrial."

If it shall appear *prima facie* that the claimant was engaged in violating the laws of Mexico; if it appear that it was damaged, but by persons for whose acts Mexico was not responsible; if it appear that the claimant did not exhaust its remedies in Mexico; if it appear that an award was granted for an investment in stock of another company, whose claim was rejected by the Umpire; or if it appear that the award of the Umpire exceeded the submission so that the excess allowed by him over the award of the Commissioners depended upon his single vote; in any of such cases, the "principles of public law" were violated by the decision and a rehearing should be had.

If it shall appear that the claim was exaggerated by fraud and perjury and, *a fortiori*, if it shall appear that the claimant sustained no injuries whatever, there should be a rehearing; for "the honor of the United States," and "equity and justice" require that the United States should not accept, and that Mexico should not pay, a single dollar upon an unjust demand.

I. A.—THE AWARD SHOULD BE WHOLLY SET ASIDE AS BASED ON MISTAKE AND FRAUDULENT PERVERSION OF FACT.

The allegations of claimant are: 1, That it abandoned its mines on the 20th of March, 1868; and, 2d, that it was forced to abandon them by acts of the Mexican authorities. Both allegations are absolutely false.

1.—*La Abra Mining Company did not abandon its mines on the 20th of March, 1868, as sworn by Exall and others.*

If the abandonment was the action of its officers in New York, they abandoned the mines as early as April, 1867, after which they refused to send any money to the superintendent. If the abandonment was the act of the superintendent at the mines it did not take place until after August, 1868.

The original letters of the treasurer of the company, written upon his letter-heads and fully identified under oath by Col. J. A. de Lagnel, the second superintendent of the company, have been placed on file with the secretary. (New evidence, case of Mexico, pp. 95, *et seq.*) I propose now to read a few extracts from those letters:

OFFICE OF GARTH, FISHER & HARDY, BANKERS,
18 *New street, New York, May*, 20, 1867.

DEAR SIR: I wrote as usual by last steamer, which left here on 11th instant. You will see that Colonel de Lagnel was expected by the steamer then about due, but he failed to come, and we are yet without any advices from the mines later than 5th February last, dated at Mazatlan. At that date we were advised that everything, after long delay, was about complete, and that we might soon look for good results from the enterprise, but that the supplies being exhausted, it was found absolutely necessary to draw on us for $7,500. This draft arrived on 2d April last and was paid by one of the directors of the company, as it was considered that it was *surely the last* that would be needed, and we expected to return the money by an early remittance of bullion from Mexico. You can judge of our surprise and chagrin, when the last steamer arrived, instead of bringing Colonel de L. with some fruits of our works, a draft for $5,000, gold, was presented for payment by Lees & Waller, drawn by de Lagnel, favor Bank California, and dated 10th April last, and of which we had not received any notice or advice whatever and have not yet received any. As I had so often and fully advised the superintendent of the condition of affairs here and requested him not to draw further, I was much surprised that he did so, and that without giving any notice or reason for so doing. As it was found impossible to raise the means to pay this draft, it was protested and returned unpaid, and you must make some provision for its payment when it gets back. I do trust that before that date you will have plenty of means to do so. I would now again repeat that I have made every effort possible to raise money here and have failed, and I have advanced all I can possibly do, and the other directors have done the same; the stockholders will do nothing, and it is probable the company will have to be sold out and reorganized.

* * * * * * *

With best regards. I remain, very truly yours,

D. J. GARTH, *Treasurer*.

Mr. CHARLES H. EXALL,
Tayoltita, Mexico.

(Indorsed:) D. J. Garth, May 20, '67, to C. H. E.

OFFICE OF GARTH, FISHER & HARDY, BANKERS,
18 *New street, New York, May* 30, 1867.

DEAR SIR: We wrote you on 20th instant, informing you that we had nothing from you or Colonel de Lagnel, but that a draft drawn by Colonel de L. from Mazatlan, 10th April last, had been presented, and there being no funds on hand and no means here of meeting it, that it was protested and returned not paid; it is hoped by the time it gets back you will be prepared to meet it. Since my last letter, Colonel de Lagnel has arrived, and made known to us something of the state of things with you. I must confess that we are amazed at the results; it seems to be incredible that every one should have been so deceived in regard to the value of the ore, and I can but still hope that the true process of extracting the silver has not been pursued, and that before this time better results have been attained. Mr. de Lagnel expected that Mr. Sundel, of Saint Dimas, would come to your aid soon after he left, and as this gentleman was said to be a practical chemist and metallurgist, he hoped some means would be discovered to get at the silver; if, however, the ores are indeed worthless, I don't see that any process of working will be of any avail, and have the worst fears that our enterprise will, after all, be fruitless of good. * * * All expenses must be cut down to the lowest point, and you and Mr. Cullins must try and bring this enterprise into paying condition if the thing is possible—at any rate, no further aid can be ren

dered from here, and what you need must come from the resources you now have. Neither must you run into debt; cut down expenses to amount you can realize from the mines. I cannot yet say what can be done in the future; no meeting of the stockholders has been held, and nothing done to pay off the debts here, now pressing on the company. For the present, all I can say is that the whole matter is with you; take care of the interests and property of the company; don't get it involved in debt, and advise us fully of what you are doing. Everything here excessively depressed and dull.

With best regards to Mr. Cullins and yourself, I am, very truly yours,

D. J. GARTH.

Mr. CHARLES H. EXALL,
Tayoltita, Mexico.

(Indorsed:) David J. Garth, to C. H. Exall. May 30, '67.

OFFICE OF GARTH, FISHER & HARDY, BANKERS,
18 *New street, New York, June* 10, 1867.

DEAR SIR: I had this pleasure on 30th ultimo, sending the letter by a gentleman going direct to Mazatlan. We have not heard from you since Colonel de Lagnel left Mexico, but hope that you are well and getting along as well as could be expected. The account that Colonel de L. gave us of the quality of the ores on hand was most unexpected and a fearful blow to our hopes. We trust, however, that a fuller examination will show better results. We have in previous letters to you and to de Lagnel so fully informed you of the condition of affairs here that it is hardly necessary to say anything further on that subject. There is no money in the treasury, and we have no means of raising any, and a few of us have already advanced all that we can do, and you have been advised that the draft last drawn by de L. on 10th April, was returned protested, and I hope you will be able to take it up, when it gets back, promptly. Everything now depends upon you and to your judgment, energy, prudence, and good management of the resources in your hands, and we hope you will be able to command success.

Very respectfully and truly yours,

D. J. GARTH, *Treasurer.*

Mr. CHARLES H. EXALL,
Tayoltita, Mexico.

(Indorsed:) D. J. Garth to C. H. E., June 10, '67.

OFFICE OF GARTH, FISHER & HARDY, BANKERS,
18 *New street, New York, July* 10, 1867.

DEAR SIR: I had this pleasure on May 30, and June 10 last, after the return of Colonel de Lagnel and we had learned something of the condition of affairs in Mexico. In these, as well as in preceding letters, you were fully advised of the condition of the company here; that there had been no funds in the treasury for a long time; that appeals had been made in vain for aid to the stockholders, and that the parties here who had made heavy advances to the company were anxious for its return, and refused to make any further payments; and that the draft for $5,000, drawn on me as treasurer by Colonel de Lagnel, on April 10 last, had been protested and returned to California, and, we suppose, to parties in Mazatlan who had advanced the money on it, and who would have to look to you for payment of same; and we expressed the hope that, by that time, you would have taken out sufficient money to meet it and all other expenses, and hoped soon to have a remittance of bullion from you to aid in payment of the large indebtedness here. * * * We hope the next advices from you will be favorable, and to learn that you will send us plenty of money to pay off the debts here. With best regards to Messrs. Cullins and Sloan, as well as yourself,

I remain yours, truly,

D. J. GARTH,
Treasurer.

Mr. CHARLES H. EXALL,
Tayoltita, Mexico. Care Echenique, Pena & Co., Mazatlan.

(Indorsed:) David J. Garth, July 10, '67, to C. H. E.

OFFICE OF GARTH, FISHER & HARDY, BANKERS,
18 *New Street, New York, July* 20, 1867.

DEAR SIR: The steamer is just starting and I have only time to say that your letter of the 11th, by private hand, has been received, advising us that you had drawn on me for $3,000, gold. In former letters you will have learned the condition of things here, and that there is no money to pay same, and that former draft of De

Lagnel has been returned unpaid, and that you were urged to try and get along with what resources you had. These letters, no doubt, reached you in time to prevent your drawing, as no draft has been presented, and we hope by this time there is no necessity for doing so. I have no time to-day to write more, but hope you are getting on well; will write you fully as requested. I inclose several letters from your friend.

Yours, truly,

D. J. GARTH,
Treasurer.

Mr. CHARLES H. EXALL,
Tayoltita, Mexico.

(Indorsed:) David J. Garth, July 20, 1867.

NEW YORK, *October* 10, 1867.

DEAR SIR: Since ours of the 30th September, we have yours of 5th August, from Mazatlan, and note contents. We are deeply pained to find that you are not well, and that we are still without favorable results in the enterprise from which we all had such high hopes of success. I am very sorry to say that it is not possible to aid you from here, and that you must rely entirely upon the resources of the mines and mill to keep you going and to relieve you of debts heretofore contracted. It is not possible for us to direct any particular course for you, but only to urge you to try and work along as well as you can, cutting down expenses and avoid embarrassing yourself with debts. The Bank of California has again sent Colonel De Lagnel's draft for collection, but it was not possible to pay same, and it will have to return to Mexico, and we do hope you will be able to make some satisfactory arrangement to pay it. I inclose letter from your friend.

Very truly yours,

DAVID J. GARTH,
Treasurer.

CHARLES H. EXALL,
Tayoltita, Mexico.

(Indorsed:) David J. Garth, October 10, 1867.

I will not lengthen this statement unnecessarily by quoting the letters of Exall to Garth, in which he constantly begs that money may be sent him. They are on file with the Secretary, in print, and in the original press-copy book of the company, which is also identified by Colonel De Lagnel.

De Lagnel's draft was sent back to the mines, and the following entry concerning it was made and press copy taken (new evidence, case of Mexico, p. 107):

SAN DIMAS, DURANGO, MEXICO,
December 25, 1867.

This day received of Sr. D. Miguel Laveaga a draft of five thousand dollars ($5,000), drawn by J. A. De Lagnel on D. J. Garth, esquire, New York. Not being in any manner connected with or responsible for said draft of $5,000, I refuse to recognize it.

Respectfully,

CHARLES H. EXALL,
Administrator La Abra Silver Mining Company.

Suit on this draft was brought in New York by the Bank of California. (See record filed with the Secretary.)

On the 24th of January, 1868, Exall, tired of waiting longer, wrote Garth as follows (page 149, case of Mexico):

What is your intention? Is it to let your interest here go to the dogs? You have either to do this or send money out to protect them. If by the next steamer I receive no assistance from you, I intend leaving for the East. I will go via San Francisco; will from there telegraph you what further steps I shall take. I have been doing everything in my power to keep the Bank of California from getting possession. Thus far have succeeded, but can prevent them no longer, and fear they will eventually have things their own way.

Frederick Sundell, assayer of the Durango Mining Company, swears (see his deposition, new evidence, p. 154, case of Mexico) that Exall

spoke publicly of his intended voyage to New York "to consult with the company."

February 21, 1868, Exall wrote to James Granger, his clerk and assistant (see original and press copy, new evidence, case of Mexico, p. 149), the following letter:

TAYOLTITA, *February* 21, 1868.

SIR: As circumstances are of such a nature as to compel me to leave for San Francisco, and probably for New York, *to inquire into the intentions of this company*, I place in your hands the care and charge of the affairs of the La Abra Silver Mining Company, together with its property. You are invested hereby with all power confided to me, of course acting in all your transactions with an eye to the interest of the company. This will to you, should occasion require it, be ample evidence of the right possessed by you to act in their behalf.

Very respectfully,

CHAS. H. EXALL,
Administrator La Abra Silver Mining Company.

MR. JAMES GRANGER.

On the 15th of March Exall wrote Granger from Mazatlan (original letter filed by Mexico). If he was in Mazatlan on the 15th, he could not have "abandoned" the mines at Tayoltita on the 20th, unless he made a trip back to them (and a very hurried one) for that especial purpose. As it took five days to go to Mazatlan, he must have left the mines as early as the 10th. On the 7th of April he wrote Granger from San Francisco. (See original letter filed by Mexico.) On the 8th of May he had reached New York and wrote Granger (new evidence, p. 150, case of Mexico), detailing the events of his trip and his interviews with Treasurer Garth, who, he says, "seems disgusted with the enterprise, and, so far as regards himself, intends to do nothing more, or have nothing more to do with it." But one of the stockholders "talked a little better," and proposed to get a "wealthy party" to take the mines off the hands of the company, pay its debts, and give it "so much stock."

"Now, as you and I are the principal creditors—I haven't been able to get a cent from them, 'the company'—*and the thing being in my hands*, if this party intend buying, we can and will make a good thing of it." "If possible, get *prorogas* on mines where times are expiring." (From whom? Certainly not from the authorities who, as he swears, had forcibly expelled him on the 20th of March.) "You can extend Ariza's Guarisamey privilege, if he wants it, another three, four, or six months; don't extend Guadalupe's more than a month at a time." Guadalupe was the Judge Guadalupe Soto whose horrid threats uttered in June, 1867, had forced Exall, according to his testimony in this case, to flee the country March 20, 1868, notwithstanding that in January, 1868, according to the company's witnesses, Bissell and Granger (evidence before Commission, p. 147, case of Mexico), the company had won a lawsuit against the judge. The "privilege" was an agreement for the occupation of the hacienda, the subject of the lawsuit, produced in the defensive (evidence before the Commission, p. 150, case of Mexico) and acknowledged by Exall, in his testimony in rebuttal (p. 151). Contrary to Exall's orders in this letter of May 8, 1868, Granger extended the "privilege" for seven months from August 7, 1868, to March 7, 1869 (p. 150). Concluding this letter of May 8, 1868, Exall sends his kind regards to "Guadalupe's family generally."

June 15, 1868, Exall again writes Granger from New York (new evidence, p. 151, case of Mexico), saying he cannot collect his pay from La Abra Company, but hopes to organize the new company; incloses a copy of statement which he has given the projectors of the new company. "You will see that it does not accord with the books, but I give

it this way as requested by the party who is endeavoring to start the company." "The books don't let any one see, for reasons which will occur to you." July 18 Exall again writes, from Richmond (new evidence, p. 153, case of Mexico), "By all means keep the mines secure—particularly the Abra; don't allow any one to touch the books, nor don't give any statements—*these affairs are now in our hands*, and without satisfaction we must not do ourselves injustice."

On the 13th of August, 1868, Granger, still in charge of the mines, writes as follows to the collector of taxes at Tayoltita (p. 154, case of Mexico):

[Translation.]

TAYOLTITA, 13 *August*, 1868.

DEAR SIR: I have received the communication calling upon this company to pay $52.50 each month for taxes imposed by the legislature of the State, and presume it to be correct, but as I am only acting in the absence of the superintendent, and as there is no money nor effects to pay this tax, I beg you to wait until the month of November, *at which time said superintendent is to come*, and then the sums due by this company on account of this tax will be paid.

Your most humble servant,

SANTIAGO GRANGER.

Sr. D. REMIGIO ROCHA.

How can it be said, in the face of these letters showing his control over the mines and his intention of returning to them down to August, 1868, that Exall abandoned the mines in March, 1868, as sworn by Collins, the president, and the witnesses, Smith, Bissell, Granger, Cryder, Chavarria, and Exall himself (evidence before the Commission, pp. 148–151, case of Mexico). But this is not all. The causes which led to the pretended abandonment, *i. e.*, overt acts of the Mexican authorities, are alleged to have occurred, some of them as far back as the spring of 1866, and none of them later than January, 1868, and yet from the reports of the Abra Company, filed according to law in the office of the county clerk in New York (new evidence, p. 74, case of Mexico), it appears that after January 20, 1868, the paid-up stock of the company increased from $157,000 to $235,000, and its debts from $72,000 to $154,531.06. Either this increase took place within two months, in the face of the two years of persecution to which this company pretended it had been subjected—Collins, in his affidavit of September 28, 1870 (p. 74, case of Mexico), gives the paid-up stock at that time as $235,000—or else the stockholders kept paying up on their stock, and the company kept on borrowing money after the alleged forcible expulsion of March 20th, had, according to their memorial (p. 148), "utterly ruined said company."

If, as a matter of fact, the mines were not abandoned at the time alleged, the whole case of the claimant falls to the ground; but suppose them to have been so abandoned, what were the causes which led to the abandonment? Were the claimants driven out by the Mexican authorities? Let us examine the record as it stood before the Commission and the new evidence now presented.

2.—*There was no hostility to the company on the part of the authorities.*

We cannot admit the evidence of verbal threats by the authorities (of which the correspondence of Exall makes no mention) since Exall swears that the one on which he acted (evidence before Commission p. 151, case of Mexico) was uttered by Prefect Olvera in person "only the day before he escaped," and he fixes this day (see claimants' book of evidence, p. 203) as the 20th of March, when as above shown he had

been at least five days in Mazatlan. It will be more profitable to inquire what overt acts of hostility are charged against the authorities, and on what evidence the charges are based.

The last of these alleged acts in point of time (for we cannot accept, for the reasons above stated, Exall's statement that an assault was made on the hacienda "a few days" before he left) is the imprisonment of Exall for a few days in December, 1867, or January, 1868, by Judge Perez, for alleged disrespect to that functionary; and a touching account of his confinement in a filthy prison, formerly occupied by diseased persons, where he had to defend himself against "millions of fleas," from which he was only released by the "personal influence" of his clerk, Granger, who "promised to pay his fine of $50," is given in the evidence before the Commission (pp. 142 to 144, case of Mexico), by himself, Granger, and Mr. John P. Cryder, who knew what a prison ought to be, having served a term of five years in the California penitentiary for forgery. (New evidence, p. 64, case of Mexico.) Even if this story were true, it was not an act of hostility to the company, nor did it affect their interests, since Exall swears (evidence before Commission, p. 85, case of Mexico) that he went right on with his work and reduced the ores of the company, extracting $17,000 from 20 tons. Unfortunately the story, with all its pathetic details, is untrue. In the press-copy book of the company (new evidence, p. 142, case of Mexico) appears a letter from Exall to the prefect, dated January 7, 1868, complaining that Judge Perez had ordered him to his house and lectured him severely for disrespectful conduct, and had gone so far as to say that "he never wanted to see him in his house except on official business." "I asked him," says this trembling prisoner, "if he intended putting me in jail, please to do so as I had a headache, and wished to lie down. He then gave me permission to go to the hacienda, but to consider myself still his prisoner and [report?] at his house whenever ordered," and then the affair ended. This was the duress which compelled Exall to abandon his mines; and yet, if it had lasted, he never could have left the mines at all, since he was confined in his own hacienda.

Another alleged cause of the abandonment, March 20, 1868, is that in June and July, 1867, the authorities interfered with the working of the mines. (See pp. 136–137, case of Mexico, evidence before the Commission and notes.) It appears that on the 3d of June, Marcos Mora, then prefect, wrote to Judge Guadalupe Soto, alleging that there were numerous complaints of La Abra Company, and directing him to notify the superintendent of the company, who had first agreed to pay his workmen half in money, and then one-third in money, and had broken both agreements, that he must carry out the latter at least, *as the mining ordinances did not permit the payment of goods alone;* and that if he could not do this he must "vacate the mines and allow the operatives to work them as they can." June 4, the judge notified the superintendent as instructed. June 5, the judge again wrote the superintendent, expressing his displeasure at the non-compliance with his order within twenty-four hours and directing the superintendent to arrange with his men in two hours or vacate the mines. Exall was then in Mazatlan, but some arrangement seems to have been come to. July 10, Mora appears to have written Exall direct, as follows:

GEFETURA POLITICO OF SAN DIMAS.

To the representatives of the mines Tayoltita:

The Gefetura being informed that you have stopped the mines in that mineral, informs you that this is not the engagement that you have entered into with me, and that

it hence believes that you place no value upon your word. Nevertheless, if you don t choose to continue your work, *give the people permission to collect ores* in the mines, as I will not hold myself responsible for the consequences in a town where the people are without work. Independence and reform.

San Dimas, July 10, 1867.

M. MORA.

These four letters, with one other, which will be hereafter noticed, constitute every scrap of documentary evidence filed by the claimant in his case of two hundred and fifty printed pages. They are attested by Granger. Mora, who resigned in the same month of July, 1867, and was afterwards tried for crime and imprisoned, and who, in 1872, turned up as a witness for the Abra Company, did not admit their authenticity; but, notwithstanding that fact, and perhaps all the more readily on account of it, we are disposed to accept them as authentic, although, as shown by Commissioner Zamacona in his decision, their meaning has been perverted in the translation. As remarked in the note on page 136, however, the dates of Soto's letters have been wrongly given by the claimant, in whose book of evidence they appear printed as July 4 and July 24, respectively, instead of June 4 and 5, the object of this confusion of dates being to make it appear that the correspondence closed with a savage threat from Soto instead of with the mild letter of Mora of July 10.

Giving these letters their fullest signification and effect, they are no evidence of hostility to the company, but only of a desire to protect the rights of the workmen. But let us examine the press-copy book of the company and see the outcome of this affair, as well as learn more of its origin and how seriously it was regarded by Exall (new evidence, pp. 136, 137, case of Mexico):

[Translation.]

TAYOLTITA, *July* 11, 1867.

DEAR SIR: Your letter of the 10th instant was received last evening, and from its contents I thought that no answer was expected, and I had no intention to reply to it. This morning I was advised that the answer was expected by you. In respect to the compromise of which you spoke, it was made while I was in Mazatlan, to last until I should return, and then I was to arrange with you as best I could. And if you had known the circumstances and causes which led to the paralyzation of the works it would have been apparent to you that it was not possible to do otherwise. *I have offered to the operatives all the mines*, to be worked on shares by the carga, and some are already at work; and desiring that with this there may be the most friendly understanding about this affair,

I am your most humble servant,

CHARLES H. EXALL,
Superintendent La Abra Silver Mining Company.

To the Gefe Politico of San Dimas.

HACIENDA LA ABRA, *July* 13, 1867.

DEAR SIR: * * * I am sorry that Colonel de L'.s draft could not be paid, as its being protested, I fear, will injure the interests of the company, both in Mazatlan and San Francisco. All your previous letters to me were to follow out the instructions given to Colonel de L. I took charge of affairs at a time when the expenditure of money was absolutely necessary to purchase supplies for the rainy season. Colonel de L. left me with only moderate means to buy these various supplies, payment of sundry bills, which were coming due, and pay of the workmen who had accounts outstanding of three, four, and six months' standing. (As I had the money in Mazatlan, deposited with E. P. & Co., and getting nothing for it, I settled up all time bills, getting a discount.) After these various amounts were considered, I saw that it was impossible to meet all obligations and have a sufficient surplus to keep me in operation during the rainy season, as it was absolutely necessary to have at the hacienda, from ——— to $1,500. Under these circumstances, I drew on you through Bank of California, for $3,000. E. P. & Co., who have always bought Colonel de L'.s drafts on you, did not want money on San Francisco. I found it impossible to sell it to other houses, so sent it to Mr. Ralston, cashier Bank of California, with request to send me negotiable paper for it. This paper I could, of course, easily dispose of any-

where. On the strength of this draft, I bought my goods, my bill at E. P. & Co.'s amounting to $577.38—four months. The other bills, amounting to $728.34, I bought for cash, which E. P. & Co. settled. In addition to this, I borrowed $500 cash, to take with me to the hacienda. Before leaving Mazatlan, I made other purchases, making the whole amount which E. P. & Co. settled for (including the $500 borrowed), $1,252.94 cash. This cash was lent and paid for me on my promise of payment by return steamer, which is the one now coming. I informed you by an early opportunity of my intention to draw. I had not then heard from you in reference to Colonel de L'.s draft; did not know it had been protested, which, if I had known, I certainly would not have drawn. My draft will, of course, be returned by coming steamer. I wrote you fully. when I was down last, informing you of my doings. When I received your letter by Señor M., I was working the Abra, Cristo, Luz, Arrayan—a small force in each.

Seeing the decided manner in which all further aid for the present was refused, and the injunction to cut down all expenses, necessitated my stopping off the whole force from the mines. As I had only a short time previous reduced the cash payment from one-third to ——— (which occasioned a stop for eight or ten days, *which I was glad of, as it was so much clear gain,* and *a little spat with the officials, which was gotten through without much trouble*), I thought it best not to stop off immediately, but prepare the miners for the change. I let them work on one week longer, and during that week informed them of my intentions. They said nothing offensive, but of course were disappointed, as it would be a bad time for them to be without work—in the rainy season. Since stopping off, we have been trying to make arrangements with the men to work by shares and by the carga. I have succeeded in getting four miners to work by the carga. They are working in the Arrayan, and getting out some good metal. I hope to be able to keep them there. By doing so, it will secure the mines in every way. Four miners is all that they had there before. Mr. Cullins thinks that in a short time he will be able to get more men to work in the other mines. *We can do better with them when they are a little hungry.* Working in this way is much better and attended with the least expense. They are provisioned for a week, and charged with what they get. What metal they get out is assayed. If it assays an amount worth working, we pay them in goods (a little money now and then), about one-half its assay value. They, of course, will get out nothing but good metal, if it can be found. You see, in this way, we get the metal out free of cost, buy it at one-half its value, pay in goods, and make a handsome profit on them. As long as the men will work in this way (which they will not do unless they get good metal), it will be our best way of working the mines. We must not expect them to get out any amount, but what is gotten out in this way will pay for packing down from the mountains. I am privileged by the mining laws of the country to stop working in mines four months in the twelve. As these mines have been steadily worked over a year, I can safely take advantage of this privilege.

* * * * * * *

Respectfully,

CHARLES H. EXALL.

D. J. GARTH, Esq.,
Treasurer La Abra Silver Mining Company, 18 *New street, N. Y.*

October 6, 1867, Exal lwrites Garth (new evidence, p. 137, case of Mexico):

There is no difficulties about authorities, boundaries, or anything else concerning the mines and hacienda, provided there is money on hand, and money must be sent.

Much space has been given to this charge of interference by the authorities, because it is one of the two counts in the indictment against Mexico which pretend to be supported by documentary proofs. The motive of this interference was alleged to be the design of Mora and Soto to possess themselves of the valuable property of the claimant; but the evidence before the Commissioners itself showed that no officer of Mexico ever took possession of the mines of the company, even after it was certain that Exall would not return to claim them. But Granger, the agent of the company, whom Exall left in charge, did denounce them, April 8, 1871, as admitted in the claimant's case before the Commission (p. 163, case of Mexico).

It is alleged that the Mexicans, encouraged by the authorities, openly carried off the valuable ores of the company. To this it is only neces-

sary to oppose the statement of Exall in his report to Garth, dated October 6, 1867 (new evidence, p. 104, case of Mexico):

> I have exhausted all the ore that I had on hand that was worth working. That which I worked was very poor, and the yield small. The La Luz on the patio *won't pay to throw it in the river.*

Whatever else they may be, Mexican miners are not fools enough to steal such ore as that. Frederick Sundell, assayer of the Durango Mining Company, testified, in 1877, that the ore was still there at the Abra mines (new evidence, p. 166, case of Mexico).

It is charged (evidence before Commission, p. 131, case of Mexico) that in 1866 assaults were made by armed men upon the hacienda of the company. The reports of the superintendent to the Treasurer for the year 1866 are very full and frequent, and not once is there mention of any such assaults. Sundell, the assayer of the Durango Mining Company, whose works were only a few miles distant from those of Abra Company, swears that he never heard of them. Exall swears that there was an assault heard by the prefect "a few nights before he escaped"; but Exall had already left the mines, as shown by his letter from Mazatlan, ten days before the 20th of March, 1868, the date given by him as that of his expulsion.

It is charged (evidence before Commission, p. 127, case of Mexico) that large numbers of the company's mules were taken by the military authorities, principally while Bartholow and De Lagnel were in superintendence. The letters of the superintendent, quoted in the new evidence from pages 80 to 107, case of Mexico, in relation to the *hiring* of mules, &c., and particularly that of Bartholow to De Lagnel of May 5, 1866, turning over the property of the company to the latter, in which he says "the company own twelve mules" (p. 86), as well as the deposition of Frederick Sundell (p. 108), show that the company never had any mule trains to be captured. In his letter of February 6, 1866, Bartholow says (p. 82):

> When I left here for San Francisco in September *mules could be contracted for* to pack at from $8 to $10 per *carga*; but after the Liberals took possession of the country and confiscated large numbers of mules it was with the greatest difficulty that I could get any one *to agree to pack* at all, and had I not succeeded in *getting military protection* our mill would be now lying at Mazatlan.

William Grove, an employé of the company, was alleged in the memorial (evidence before Commission, p. 127, case of Mexico), and by several of the witnesses, to have been murdered by the "Liberal forces" while in charge of a train, and his train seized. Another witness, William G. S. Clarke (p. 129), says Grove was not with a train. The new evidence, consisting of reports of Superintendent Bartholow to Treasurer Garth, dated March 7, and April 10, 1866 (pp. 127 and 128), shows that Groves was murdered by another employé of the company, whom General Vega, commander of the "Liberal forces," pursued with great zeal, captured, tried and executed.

Two forced loans and one robbery were specifically charged upon the military authorities, the first loan for $600 being paid by William G. S. Clarke for the company during the superintendency of De Lagnel, as Clarke swears with ridiculous circumstantiality (evidence before Commission, p. 124, case of Mexico), but during Bartholow's superintendency, according to Bartholow (p. 127). There is no mention of any such loan in the letters of either De Lagnel or Bartholow. That no one was less likely than Bartholow to submit to imposition may be inferred from his blustering letters to the collector of taxes and to General Co-

rona (new evidence, pp. 123, 124, case of Mexico), which, according to his letter to Garth, of April 10, 1866 (p. 125), so frightened the collector that "instead of paying taxes to the amount of $2,000 or $4,000, as was demanded, we only paid about $30, and there was no necessity of troubling General Corona with the matter."

The second forced loan is alleged to have been levied in July, 1866, upon De Lagnel. In support of this charge a letter from Colonel Valdespino, the last of the five alleged original documents filed by the company in its whole case, is produced. This letter (evidence before Commission, p. 124, case of Mexico), expresses the hope that De Lagnel will "contribute his share" towards the $1,200 levied upon "the residents of the district," and is signed "your friend and obedient servant, Jesus Valdespino." Granger calls this a demand upon the company for $1,200, and says: "It is needless to say the demand was complied with" (p. 124). The witnesses for the defense having controverted this, Exall comes to the rescue, and forgetting that his testimony (evidence before Commission, p. 69, case of Mexico) showed that he did not reach the mines until September, 1866 (he did not actually reach there until October, see letter of De Lagnel, 17th of November p. 71), swears in rebuttal (evidence before Commission, p. 126) that "to the best of his recollection the whole amount, $1,200, was required of and paid by De Lagnel." The new evidence comprises four letters of De Lagnel on this subject (pp. 125 and 126); one of these letters is addressed to Colonel Valdespino, another to the prefect, and two to Mr. J. G. Rice, superintendent Durango Mining Company. In the last one to Rice, he says (p. 126).

> As to the forced voluntary (?) loan it was an impossibility to meet the demand, and so I stated in my note to the prefect. You cannot have failed to notice that the exact half of the whole levy was laid *upon you and myself*, a fact I brought to the attention of the parties interested.

The company suffered no interruption and no annoyance from this loan which it did not pay.

The robbery charged against "the military authorities" was perpetrated upon George Scott, an employè of the company, who, according to Granger and Clarke (evidence before Commission, pp. 123, 125, case of Mexico), was relieved of $1,178 out of $3,000 of the company's money with which he was intrusted, and Bartholow says (p. 127) that he charged this sum "with others" not specified up to the "robbery account." In his letter of April 10, 1866 (new evidence, p. 125), Bartholow advises Garth of this robbery, stating that it was the only loss suffered by the company, although "bands of robbers" infested the roads; that it was committed by "six or eight armed men"; that Scott complained to the nearest military commander, "who sent to him for the purpose of identifying the robbers; he complied, but he could not find them"; that Bartholow opened correspondence with General Corona through the prefect, Colonel Jesus Vega, at San Ignacio, "who by the way, is, I think, one of the most perfect gentlemen I have ever met in the country, and I am of the opinion that, but for the turn in military affairs which occurred a few days since, we would, in some way or other, have been reimbursed for the loss; but now I have no hopes whatever, and we may as well charge up $1,178 to *profit and loss*."

We have thus reviewed all the specific allegations made in the complaint of La Abra Company. The rest, and by far the greater part, of its case, consists of vague allegations of special hostility towards the company on the part of Mexican authorities, which are abundantly disproved by the evidences contained in its correspondence of special con-

sideration shown it in the extension of its titles by the civil authorities and the protection afforded it by the military; or in charges of general hostility to Americans in the States of Durango and Sinaloa, to rebut which it is only necessary to state that American companies, such as the Durango Company of New York, are still peacefully working their mines in that section of the country (deposition of Sundell, new evidence, p. 113, case of Mexico), and that out of forty-odd claims of this character, many of which were alleged to have arisen in Durango and Sinaloa, this is the only one which was not rejected.

And here I must be permitted to allude to a document offered in another claim and purporting to be signed by the British consul and other foreign residents of Mazatlan, representing that great hostility to foreigners existed in Sinaloa and Durango. I make this allusion because the document appears to have come to the notice of the distinguished Secretary while he was practicing his profession in 1876, and to have impressed him so strongly that he made it the basis of a letter to the umpire urging a reconsideration of his decision rejecting the claim of the Rosario y Carmen Mining Company. In that document (House of Representatives, No. 700, second session, Forty-fifth Congress) I find the following:

> The Liberal forces under Corona occupied the approaches to this port, while Lozada, with his Indians, invaded the State from Jalisco, and in November of that year, 1864, the French took possession of the town itself.
>
> This state of affairs *lasted for three years*, paralyzing all the industries of the country, and rendered resumption impossible, not only of this company, but of many others, among which we will cite *the La Abra*, situated near the one in question, was abandoned from precisely the same influences.

Why, Mr. Secretary, it was in 1865, during those three years of confusion and disorder, that *La Abra Company established itself* in Durango and received all the protection which we have shown, from its own reports, it did receive. It staid there until 1868, when the war was over, Maximilian had been shot and peace had been restored. How could the re-establishment of La Abra Company in 1868 have been prevented by the disorder that reigned from 1864 to 1867? Manifestly there is something wrong about this paper, but as the original has been lost we cannot tell what it is.

We have shown, Mr. Secretary, that most of the allegations of La Abra Company's claim are utterly destitute of foundation, except in the perjury of the witnesses; that such of them as have any basis of fact at all are deliberate and willful misrepresentations; and that there was no hostility whatever to the company.

3.—*Review of the witnesses.*

Who are the witnesses by whom the claim of this company is supported? Let us turn to the index at the end of the book of evidence published by the claimant and look through the list:

Alonzo W. Adams very properly stands at their head. Examine his record of thirty years of crime (new evidence, p. 59 *et seq.*, case of Mexico). Dismissed from the army at the close of the Mexican war, "station unknown," charged with fraud in the official records of the Quartermaster's Department; convicted of fraud by the official records of the Commissary Department, and still a defaulter to the Government; indicted for false pretenses in California, escaping from justice, and swindling his lawyer; characterized from the bench as an adventurer, an impostor, and a scoundrel, in the reports of the New Jersey courts;

a bigamist, as shown by the records of the courts of California, Pennsylvania, and New Jersey; three times court-martialed for misconduct during the late war, and unaccountably saved from disgrace; utterly without principle, and yet combining in an unheard-of degree the luck of a fool with all the other attributes of a knave, Alonzo W. Adams was the fit instrument selected by this company of speculators to retrieve their fortunes by forging a claim which should make the treasury of Mexico pay to their rascality the profits which her mines had refused to yield to their ill-directed though honest industry. He did his work, not well, but as well as circumstances and his abilities permitted. He now stands charged by the witnesses Dahlgren, Gamboa, Loaiza, and Gorham with the forgery of testimony, and the letters of Bartholow prove him guilty of perjury (new evidence, pp. 81–84; and evidence before Commission, p. 87, case of Mexico). How many more of the clumsy affidavits filed by the claimant are forged by Adams it is impossible as yet to say. Many of them, however, bear the peculiar impress of his genius, and in showing up their falsity we expressly reserve to their putative authors the right to fall back upon the leading villain of the party and to charge him with their manufacture.

The story of Nicholas Alley (evidence before Commission, p. 181, case of Mexico), the next witness in alphabetical order, is contradicted by the record itself (evidence before Commission, pp. 57 and 175).

Matias Avalos testifies on both sides and contradicts himself twice, and the letters in the press copy book completely refute his testimony in favor of the company (new evidence, p. 138, &c.).

Pedro J. Barraza was a judge in Durango, who certified that he had to bring in Marcos Mora by the aid of the police and make him testify in behalf of the company. Neither the laws of Mexico nor the treaty gave him any such power. But if this certificate proves anything it proves that the authorities were far from being hostile to the claimant.

Thomas J. Bartholow, the first superintendent of the company, perjures himself throughout his testimony, as his own letters in the press copy book show.

George C. Bissell speaks of the threats and interference of the local authorities and the carrying off of ores by Mexicans and falsifies throughout.

Charles Bouttier, a native of Havre, France, domiciled "for sixteen years last past" in Mexico and "for twenty years last past" in the United States, asks us to believe (p. 120) that he had been driven from a mine in Mexico in 1865, and that, with this experience, "it was the report at Mazatlan that said company was to be driven out of the mines which caused me to visit Tayoltita with a view to the purchase of them." His statements (p. 127) as to the value of the ores of the company are shown to be utterly false.

Jesus Chavarria swears falsely about the value of the mines, the carrying off of ores, and the interference of the local authorities.

William G. S. Clarke swears falsely about the loan to Gèneral Guerra and the robbery of Scott (pp. 124 and 125, case of Mexico), and about the capture of trains (p. 129).

John Cole is guilty of stupendous perjury in his testimony as to the value of the ores and their being carried off by Mexicans in sacks on mules' backs to the value, in three months, of "largely more than $250,000," independent of the cost of reduction. Cole also falsifies about the capture of trains and many other minor matters.

George C. Collins, president of the company, perjures himself when he swears as to the expenditures of the company at and upon the mines.

(Evidence before Commission, p. 81, case of Mexico, and new evidence, pp. 92 and 93.) He did not produce, and did not dare to produce, the books of the company to substantiate his statements.

John P. Cryder, the ex-convict, swears falsely as to the value of the mines, the expenditures on them, the hostility of the authorities, the imprisonment of Exall, and the abandonment of the mines.

Charles B. Dahlgren writes (new evidence, p. 62, case of Mexico) that his testimony in favor of the claimant has been forged by Adams. Whether this be so or not, the material parts of his testimony touching the value of the mines, the value of the ores, and the seizure of the property of the company by Mexican officials after abandonment, are disproved by the new evidence, the latter allegation by his own original letter. (New evidence, p. 166, case of Mexico.)

Francis F. Dana swears that Adams was obstructed by the Mexican authorities when he went to Mexico to get evidence in favor of the claim. Dana's story is inherently improbable, and is contradicted by the fact that Adams got a mass of testimony, and received every facility from the governors of Durango and Sinaloa, in securing documentary evidence, and from the judge who certifies that he used the police to drag in witnesses for the company. Mr. Dana can be easily impeached on a retrial by calling his neighbors from Athens, Ohio.

Antonio de la Peña, Spanish subject, who loaned Exall $250 to go to New York, which he swears "remains unpaid," swears falsely when he says "their business was destroyed," in March, 1868.

Juan C. de Valle, Spaniard, deceived the company as to the value of the mines he sold it, and then, to make up for it, tried to help it out with its claim by testifying that the mines were very valuable, but subsequently testified for the defense that they only yielded him enough to make them salable.

Pedro Echeguren, Spaniard, swears that such was the hostility of the authorities to foreigners that he had been compelled to pay $240,000 as forced loans in seven years, thus directly contradicting his testimony for the defense in the claim of Benjamin H. Wyman. (Evidence before Commission, note, p. 126, case of Mexico.)

Sumner Stow Ely, the lawyer of La Abra Company "since its inception," who swears he has no interest in the claim, notwithstanding the large amount reported by Collins, as due "for legal expenses," perjures himself when he swears that "the expulsion of the company from its mines and property, in March, 1868, utterly ruined the business of the company, rendering its stock entirely valueless." Mr. Ely had, in July, 1867, recovered judgment against the company by default for $57,000, as the attorney of John H. Garth, a stockholder (record of judgment filed by Mexico), and he well knew the condition of the company and its mines.

Charles H. Exall is dead. The best that can be said of him is that he was a weak creature, led by Adams and driven by his necessities to lend himself to this base work. Every line of his two affidavits reeks with perjury.

Juan Francisco Gamboa testifies (new evidence, p. 63, case of Mexico) that Adams procured his signature to his deposition when he was intoxicated and did not know what he was signing, and that its substance, as since shown to him, is false.

James Granger, the clerk of the company, and now the owner of its mines, appears for the claimant three times, and for the defense four times. He contradicts himself completely, and his evidence is unworthy of credit.

Alfred A. Green, according to the deposition of William R. Gorham (new evidence, p. 64, case of Mexico), did not sign the affidavit purporting to be his, filed by the claimant.

José Maria Loaiza in his deposition (new evidence, p. 63, case of Mexico) tells substantially the same story as Gamboa.

Ralph Martin perjures himself when he says that the alleged acts of hostility to the company, which have been disproved, were matters of common report in Mexico.

Marcos Mora, the prefect whose hostility to the company, in July, 1867, when he resigned, and was prosecuted criminally by his Government, is alleged as a cause of the abandonment in March, 1868, admits himself to be a liar by saying in his testimony in behalf of claimant that he told the governor of Durango that the company was working for the ruin of Mexico, when he never had heard anything to justify such a statement.

William H. Smith, the agent of De Valle for the sale of the mines, perjured himself when he testified to their value, and also when he swore that it was matter of common report that the company was driven away by the connivance of the authorities.

These are the witnesses who were produced by the claimants or whose testimony was forged by Adams and others; not one of them escapes contradiction in a material part of his testimony. Where were the witnesses who ought to have been produced? Where were the "American employés" who escaped with Exall? They were not even named. Where were the men who worked at the mines—J. V. Hardy, Alfred Bryant, A. B. Elder, Dan. Sullivan, Jas. Cullins, J. W. Green, J. Keeghan, Richard Honith, Chas. E. Norton, Francisco Dominguez, J. J. Skinker, N. A. Sloan, R. Emerson, William Carr, and J. Carson? (See new evidence, case of Mexico, p. 71.)

Sloan testified for Mexico. Elder writes to the counsel for Mexico (new evidence, pp. 172, 173, case of Mexico) that he hears the company has got an award and is willing to show that the claim is a fraud if Mexico "will be liberal;" but will not give "either party the benefit of his evidence unless there is something in it." Failing to secure an offer from Mexico, he sells the letters of the counsel to the other "party," and a story is made up about them and told on the floor of the House of Representatives that Mexico is trying to bribe witnesses.

Where was De Lagnel, the second superintendent of the company? "He went to Florida and then to China," say Collins and Exall. So he did; but he came back periodically from Florida to New York as a purser of a steamer, and now makes regular trips from San Francisco to China, as purser of the City of Tokio. After careful study of the evidence of the claimant the counsel for Mexico could find no clew to De Lagnel's antecedents, and supposed him to be a vagrant Frenchman. It was not until the deposition of Frederick Sundell reached Washington that it was discovered that he had been an officer in the United States regular army. His address was then secured by Mexico from his family in Alexandria, Virginia, and his deposition identifying the press-copy book of the company is with the new evidence filed by Mexico.

Where were the trustees and the stockholders of the company: Hearn, the first president, the three Garths, Nuckolls, Birch, Morris, Bennett, and the rest? Were they not good witnesses? Where was the secretary, the man who ought to have kept the books and received the reports? Where was David J. Garth, the treasurer? Above all, where were the books of the company showing its receipts and expenditures,

and the reports of the superintendent showing the value of the ores? Let the decision of the umpire answer; "Neither books or reports are produced, and no reason is given for their non-production." They were fraudulently concealed by the agents of the company, but part of them have been discovered within two years by Mexico, fully identified, and are now presented as new evidence in this case.

But enough upon this branch of the case. Let us make an effort to admit the facts alleged by the claimant and apply to them the "principles of public law," for the violation of which in the decision it would be the duty of the President, under the act of Congress, to provide for a rehearing of the case without the production of any new evidence whatever.

I. B.—THE AWARD OUGHT TO BE WHOLLY SET ASIDE AS BAD IN LAW.

1. *The acts are charged upon persons for whose conduct Mexico was not responsible.*

In this claim the acts complained of were alleged to have been committed either by armed soldiers, by military commanders, by citizens, or civil and judicial officers of a State. No allegation is made that the soldiers in any case were under command of an officer. It is only charged that redress was denied by the officers to whom the violence was reported (and this is disproved by the new evidence).

Mexico could not be held responsible for the robbery of Scott or the murder of Grove, if these outrages had been committed as alleged. The decisions of the Umpire in the claims of the Siempre Viva Mining Co., No. 98, Juan Manuel Silva, No. 92, W. C. Tripler, No. 144, Christian Gatter, No. 343, and Charles C. Haussler, No. 580, all against Mexico, and in the claim of José Maria Anaya *vs.* The United States (see pp. 39, 40, and 41 of the brief of Mr. Avila) clearly exonerate both Governments from responsibility for the acts of bands of soldiery not committed by authority or in the presence of an officer. For example, in the case of Christian Gatter *vs.* Mexico the Umpire says:

> With regard to the robbery of goods from claimant's store, there is no proof that it was done by the order, under the control, or in presence of any military or other authority. Indeed, the robbery was evidently committed by lawless and plundering soldiers, and, however deplorable it may be, it unfortunately happens occasionally in all armies, whilst the Governments to which they belong cannot be held responsible for such unauthorized violence.

In José Maria Anaya *vs.* The United States the following language is used:

> No mention is made of any officer, nor is it shown that an officer was present, or that the plunderers were under the control or command of an officer.

In the matter of the forced loan alleged to have been paid by Clark, it is clear that this tax, if levied at all, would have represented only the duties which the republican Government of Mexico was entitled to levy upon the goods brought from the French lines at Mazatlan. It is also clear that the goods were liable to confiscation as contraband under the laws of war forbidding trade between belligerents, and had they been seized and sold by General Guerra, Mexico could not have been held responsible.

The other forced loan is that levied by Colonel Valdespino during De Lagnel's superintendency, (and never paid.) Concerning this, it need only be said that both the letter of Colonel Valdespino to De Lagnel,

(new evidence, pp. 120 and 121, case of Mexico), which is a private and friendly letter, and marked in the original "correspondencia particular," and his letter to the perfect (evidence of the defense, p. 158, claimant's book), show that Valdespino was anxious that it should not be regarded as a forced loan. He merely asked a contribution from the whole population of the district to enable his troops to leave the country. But had it been a forced loan it would have involved no liability on the part of the Mexican Government. In his decision in the case of McManus Bros. *vs.* Mexico, No. 348, the umpire says:

> The umpire, after examination of the the treaties between the two countries, can find no mention of forced loans and no stipulation which accords or implies the exemption of United States citizens from their payment.

So much for the acts of the military complained of by claimant. If Mexico could not be held for even the insignificant losses which it is alleged they caused the claimant, how in the name of sense and justice could she be held for the forcible expulsion of the company in March, 1868, when the war was over, and military had given away to civil authority, even on *proof* of acts committed not later than July, 1866.

To charge Mexico with responsibility for the acts of her citizens in hostility to the company (the Commission of which is vaguely alleged, not proved, and is unqualifiedly denied), it would be necessary to show that appeals had been made in the forms of law to the courts and that there had been a denial of justice. There is no allegation in the claimant's case that such steps were ever taken. In the evidence before the Commission (case of Mexico, p. 147), it is shown by claimant's witnesses that when the company appealed to the courts against the attempted formal denouncement of a part of its property, its title was sustained, and this only two months before its pretended expulsion, to wit, in January, 1868.

Touching the wrongs charged upon the civil authorities, Mora and Soto, attested by the four letters of June and July, 1867, overlooking the evident forgery of the dates of the letters of Soto; admitting that they were regarded as serious threats instead of "a little spat with the officials, which was gotten through without much trouble," as reported by Superintendent Exall to Treasurer Garth, and that they could have operated to expel the company eight months later—the superintendent meanwhile continuing work and extracting and reducing ores; waiving for the present the necessity, in order to charge Mexico, of an unsuccessful appeal, even against these mighty officials, to the superior courts which six months later gave the company a verdict in a civil suit against this very judge; let us see how far these official acts were the acts of Mexico, and how far she could be held in damages for their commission. In 7 Opinions, 229, Attorney-General Cushing discusses this question at length in the case of a claim of a citizen of Peru against the United States, from the *syllabus* of which the following extracts are made:

> In its internal organization each Government has public officers, administrative, judicial, or ministerial, which officers are the agents of the community for the conduct of its public or common affairs and of many private affairs, and are individually responsible to their country, and in many cases to individuals, for acts of political or official misbehavior. But the Government itself is not responsible to private individuals for injuries sustained by reason of the acts of such officers in the private business with which they may be officially concerned, though as public agents yet for individual benefit only; it is responsible only for such injury to individuals as may occur by acts of such officers performed in the proper behoof and business of the Government. * *
>
> Thus Governments hold themselves responsible to individuals for injuries done to the latter by public officers in the collection of revenues, or other administrative acts

of Government relation, but not for errors of opinion, or corruption even of administrative, judicial, or ministerial officers, when such officers are administering their public authority in the interest of individuals as distinguished from the Government.

In the body of the opinion, Mr. Cushing says:

In the transaction of public affairs there are two classes of officers, one employed in the collection of the revenue and the care of public property who represent the proprietary interest of the Government; and another class who are the agents of society itself, and are appointed by the Government only in its relation or capacity of *parens patriæ*. For the acts of the former, the Government holds itself responsible in many cases, because their acts are performed for the immediate interest of the Government. But for the acts of the latter *no Government holds itself pecuniarily responsible.*

We ask pardon for making a further citation from that opinion, which seems to us of peculiar application here:

It seems to me that considerations of expediency concur with all sound ideas of public law to indicate the propriety of a return to more reserve in all this matter as between the Spanish American republics and the United States. That is, to abstain from applying to them any rule of public law which we do not admit to have applied to us. To do only as we would be done by, and to consult their well-being and cultivate their friendships by adhering to the impartial observation, whether in claim or in rejection of claim of the established rules of the international jurisprudence of christendom.

Following the line of this opinion it will be remembered that a subsequent attorney-general decided that moneys collected from Brazil on a claim of underwriters of the brig "Caroline," for damages on account of barratry and fraudulent condemnation and sale of that vessel, should be returned to that country. It was found that more money had been collected than had been forwarded to the State Department for the claimant. Congress, at the instance of Mr. E. R. Hoar, late Attorney-General, but then a member of the House Foreign Affairs Committee, appropriated that sum also, and the Secretary of the State paid it over to Brazil; and another Attorney-General, who sits here now as counsel for La Abra Company, directed proceedings to be taken against the Minister of the United States for the fraudulent withholding of the sum so collected.

Apply the principles of that opinion to this case. The officers complained of were in no sense even agents of the Mexican Government. One was an administrative and the other a judicial officer of the State of Durango, and they were acting, as their letters show, in the enforcement of the laws as between the Abra Company and its workmen.

2. *The claimants did not exhaust their remedies in Mexico.*

The Mexican laws afford foreigners the same redress against the acts of Mexicans whether officials or private parties, that Mexicans themselves enjoy; and Article III of the treaty of 1831, between the United States and Mexico, declares that the citizens of either country engaged in navigation or commerce in the other shall be "subject always to the laws, usages and statutes of the two countries respectively." On this point the umpire, in dismissing the claim of Wilkinson Montgomery, No. 105, said:

There seems, likewise, to have been great negligence in not applying to the superior authorities, as, for instance, to the minister of finance demanding an investigation.

In dismissing Jaroslowsky's claim, No. 896, he said:

If the claimant thought that the seizure was illegal, it was for him to present his claim to the Mexican Government, as he certainly might have done, in accordance with the law of November 19, 1867.

In the Abra case there is no pretence of any application for redress to any authority other than the Governor of Durango, and this, as it turns out, was in regard to the attempted denouncement by Soto (new evidence, case of Mexico, pp. 144 to 146,) of a part of the property, which, as before stated, was admitted by claimants' witnesses, Bissell and Granger (p. 147) to have been overthrown by the court. Why did the company not apply to this just tribunal for relief from the persecutions of Mora and Soto? Why should this claimant, of all others, be now excused from the necessity of such an appeal?

In deciding the case of Wm. J. Blumhardt *vs.* Mexico, No. 135, the umpire said:

> The umpire is of the opinion that the Mexican Government cannot be held responsible for the losses occasioned by the illegal acts of an inferior judicial authority, when the complainant has taken no steps *by judicial means* to have punishment inflicted upon the offender, and to obtain damages from him. The umpire does not believe that the Government of the United States, or of any *nation in the world would admit* such a responsibility under the circumstances which appear from the evidence produced on the part of the claimant, showing that Judge Alverez was the person to blame, and that it was against him that proceedings should have been taken.

In the case of Jennings, Laughland & Co., No. 374, where it is also pretended that there was a judicial order to the claimant to vacate their mines, he said:

> The umpire does not feel himself called upon to decide whether the above-mentioned sentence was just or not. If the claimants considered that it was not so, *they failed in their duty* in not appealing to a higher court against the conduct of an inferior judge, *with a view to his punishment and to the recovery of the damages;* but they appear to have taken no steps whatever, either themselves or through their agent, to avail themselves of the resources open to them. The umpire does not conceive *that any Government can thus be made responsible for the misconduct of an inferior judicial officer* when no attempt whatever has been made to obtain justice from a higher court.

In the case of Alfred A. Green, No. 776, the umpire said:

> If the judge illegally imprisoned the claimant, *it was certainly in his power to appeal to a higher court*, and to sue Judge Perez for false imprisonment. It is shown that he was at Durango shortly after his imprisonment, *and that he had a lawyer there.* Nothing could have been more easy for him than to *seek his remedy through the courts.* But it does not appear that he took any steps in that direction.

La Abra Company "had a lawyer," Jesus Chavarria, the most distinguished in the State, according to the witnesses. What was he doing, that no proceedings were taken in the courts against the persecutors of the company?

In the case of Kennedy and King, No. 340, when it was alleged that the judge did not inspire confidence in the claimants, because he owed his appointment to the authorities of whose acts the claimants complained, the umpire said:

> The reason given by Mr. Chase, for not acquiescing in the proposal of General Garze *cannot be maintained by one Government against another.*

If these decisions are good law, is not the decision in the Abra case utterly bad?

The company alleges (evidence before Commission, pp. 109 *et seq.*, case of Mexico), as the reason which induced it to invest its capital, certain proclamations, not of the governor of Durango, but of the President of the Republic, promising protection to such investments, and it makes no difference that these proclamations were not produced in evidence, and in fact were never issued. The claimants ought not to have been allowed to assert their existence without at the same time showing that they were taken advantage of, and an unsuccessful appeal made to their author for the protection promised. The claimants neither took advan-

tage of the Mexican laws nor of the pretended proclamations to secure redress. But what shall we say of them when it appears, as it does from the record, that they never thought of laying their great wrongs before the diplomatic or consular officers of their own Government, who were close at hand; that that Government never heard of their claim until the establishment of the Commission, two years after it was alleged to have accrued; and that then their sense of wrong became so acute and grew so strongly upon them, that, having first limited their demand to the modest sum of $1,930,000, they increased it to $3,030,000, and again to $3,962,000.

II. A.—THE AWARD, IF NOT SET ASIDE, WOULD, ON REHEARING, BE MODIFIED AS BASED PARTIALLY ON MISTAKE AND PERVERSION OF FACT.

Thus far we have attemped to show, and, as we believe, have conclusively shown, that the claim of La Abra Company was *wholly* fraudulent in fact and groundless in law, and that if a new hearing were granted the decision of the umpire would be reversed, and Mexico released from the payment of a single cent as damages to the claimant. But it is not necessary, in order to secure a rehearing of the claim, to go so far as this. The act of Congress provides that the awards may be "modified" as well as "set aside," or "confirmed." Admitting, with another great effort and for the sake of argument, the liability of the Mexican Government to the claimant, has the award of the umpire been excessive, and on what grounds, either of fact or law, would it be "modified" on a retrial?

1. Collins swears, and his simple affidavit is the only evidence which seems to have been thought necessary on that point, that the company expended on its mines $235,000 derived from sales of stock, and $64,291.06 borrowed, and these sums increased by $42,500, which he swears were due for law expenses, rent, &c. (presumably in New York). and $17,000 which Exall swears he extracted early in 1868, from 20 tons of ore, and turned into the fund at the mines, are the basis of a portion of the umpire's award. We will not inquire why the company did not pay its lawyers or its rents (the New York directory fails to show that it had any office there), if, as sworn by Ely, it had abundant means, and if, as shown by its sworn reports for January 20, 1868, and January 20, 1877 (p. 74, case of Mexico), its stockholders paid up $78,000 on their stock, within a few months before, if not actually after the alleged abandonment of the mines; nor will we intimate a suspicion that a part of this $42,500 is due to the forgers of this claim. We will, however, produce the books of the company (pp. 92 to 95, case of Mexico), showing that down to April 10, 1867, the company had expended only $141,472 at the mines instead of $299,291.06, as Collins swears; that Superintendent De Lagnel's draft of that date was protested by Treasurer Garth (p. 96), and that notwithstanding the frequent appeals of the superintendent, no more money was sent him from New York (pp. 97 to 107); and that Exall was very far from realizing $17,000, or any other sum, from the ore at the mines, since in his letter of October 6, 1867 (p. 103), he says, "It wont't pay to throw it in the river;" and in his letters of November 17, and December 18, 1867, and January 24, 1868, he says he is doing "nothing whatever" at the mines. Here is ample proof that this part of the award ought to be reduced over one half.

2. Let us examine the other item of the award, the tail, so to speak, $100,000, and interest for the ore alleged to have been abandoned at the

mines. How much of this ore was taken from the mines, and what was it worth? Bartholow wrote Garth, April 10, 1866 (new evidence, page 157, case Mexico), that he had gotten out between 550 and 575 tons, but De Lagnel, on the 31st May, 1866 (p. 158), reported that it appeared from the books that only 202 tons had been mined. He was charitable enough to say that the amount had been "overstated unintentionally." How much De Lagnel mined, and how much Exall, in the two following years, does not appear, though it was probably much less than 800 tons; but suppose 1,000 tons in all to have been mined, which is Exall's highest estimate in his deposition for the claimant (p. 156, case of Mexico), was it worth $100 a ton? That is a large yield, and not a small one as the umpire seemed to think. It is five times the average yield of ten of the mines of the Comstock lode (see extract from Raymond's mining report, note, p. 160, case of Mexico).

What did the ores of the Abra Company actually yield? On the 5th of August, 1867 (p. 160) Exall, reports that he has crushed from May 27 to July 13, 89 tons, 1,676 pounds of ore, which yielded, above expenses, $420.09, a little less than $5 per ton, and a loss of over $10 per ton on the expense of mining. (See report of Bartholow, new evidence, p. 85.) In the same letter Exall says:

> The mill is now running on the same ore as I last worked. This run will finish it, and what ore to work on then I know not. There is, of course, some little good ore in the great heaps on the patio, but it will have to be closely assorted and the greater portion requires roasting, which is a slow operation and costly.

October 6, he again writes Garth (p. 161):

> I have exhausted all the ore that I hand on had that was worth working. That which I worked was very poor and the yield small. The La Luz on the Patio won't pay to throw it in the river. I have had numerous assays made from all parts of each pile; the returns won't pay.

His letters of November 17 and December 18, 1867, and January 24, 1868, heretofore quoted, show that nothing more was done at the mines. It would seem, truly, that $100,000 and interest at 6 per cent. for eight years was an exorbitant sum to pay for ores of this character, which, by the way, have never been taken possession of by Mexico, but are still at the mines and can be had by the claimants, or anybody else for the picking up.

II. B.—THE AWARD SHOULD BE MODIFIED AS BAD IN LAW.

1. A part of the company's expenditure was stated to have been for 550 feet of the Nuestra Señora de Guadalupe mine, the rest being owned and worked by the Nuestra Señora de Guadalupe Company, whose claim against Mexico No. 821 was dismissed. How La Abra Company could have had a good claim for being driven from 550 feet of this mine and the Guadalupe Company should have failed to recover for its expulsion from the rest, it is not necessary to inquire. The letters of Bartholow in the new evidence (pp. 65 to 67) show that the Abra Company was a mere *stockholder* in the Guadalupe Company *for* 550 *shares*, and as such its investment in that company should have followed the fate of the Guadalupe Company's claim. How much this investment was we do not know, but a new trial would probably show how much further the body of the award should be "modified" and reduced on *this* account.

2. But this is not all. We have shown that the ores were utterly valueless and not a proper subject for an award. We propose now to show that no award should have been made for them by the umpire for the equally serious reason that the question of an allowance for the

ores was not referred to him, and that an arbitrator cannot decide matters not submitted to him. The umpire, in the case of Bernard Turpin, No. 90, held, what has been the rule of all international Commissions, that he was only called upon to give his opinion on points where there was a disagreement between the Commissioners. Where the Commissioners agreed in a decision, as they did in 1488 of the 2015 cases submitted to them, the claim never reached the umpire. Where they disagreed the cases were sent to the umpire for his decision upon the disputed points, and in only one claim, that of La Abra Mining Company, now under consideration, did his award go beyond the highest sum allowed by the Commissioners. In that case, the Mexican Commissioner rejected the claim *in toto*. The American Commissioner awarded the amount of the company's investment with interest,* and the case went to the umpire. The latter, without calling for the books of the company, accepted the simple affidavits of its president and superintendent, and fixed the amount of the investment as follows:

Received from subscriptions and sales of stock	$235,000 00
Lent and advanced	64,291 06
Due for rent, expenses, salaries, law expenses	42,500 00
Derived from reduced ores and expended at the mines	17,000 00
Total	358,791 06

To this was added interest from March 20, 1868, the date of the pretended expulsion, to July 31, 1876, the date of the final award. The umpire thus completely covered the points at issue between the Commissioners, to wit: Whether the company should receive nothing or should be reimbursed its expenditures with interest. He allowed the claimant to recover with interest every dollar of expense which it pretended to have incurred, whether in the erection of its buildings, the extraction of ores, payment of its officers, or in any other direction whatever. He then took into consideration this mass of unreduced ores alleged to have been extracted and abandoned at the mines, the cost of whose extraction was included in the sum above mentioned, and for which the American Commissioner had allowed absolutely nothing. Averaging their amount and value from evidence conflicting and even less reliable than the simple affidavit of the president of the company,

* The following is the decision of Mr. Wadsworth, the Commissioner for the United States:

The company, in my opinion, is entitled to indemnity for the seizures of its money, supplies, mule trains, and other property, by the Mexican armed forces (under command of their officers undoubtedly) for the use of such troops, and for the destruction of the mining property and interests of the company by the various Mexican authorities, civil and military.

The amount of money seized and taken by force, according to the proof, as I read it, was altogether $2,978. The value of the several mule trains and supplies seized and appropriated for the public use, I make, say, $75,000. The property and interests destroyed, in addition, by the arbitrary, lawless and malicious acts of the authorities, amounted to a large sum, difficult to estimate, but equal, in my judgment, to the total investment made by the company, less the aggregate of the money, teams and supplies taken as above stated.

Upon these sums the claimant should have interest in lieu of prospective profits.

The profits of mining in Mexico during civil war (that is at all times nearly), and under the extraordinary circumstances surrounding claimant, are more than doubtful.

But I do not consider prospective profits even a part of the measure of damages in such cases. They are at best speculative, while interest is a definite and moderate allowance that may, with great propriety, take their place.

It is, however, idle for me to go into this important case with any particularity, since it must go to the umpire, to be disposed of by him according to his views alone.

he awarded $100,000 for these ores, and added interest on that.* That this part of the award immediately follows a long argument by the umpire against the injustice of compelling Mexico to pay to the company anything on account of "prospective profits" (which were to be derived, if at all, from the reduction of these very ores and others yet to be extracted), may serve to render the decision more curious, but does not add to its validity. It is utterly and completely invalid, according to the "principles of public law," inasmuch as it depends solely upon the single vote of the umpire.

This claim is the product of one of the foulest conspiracies that ever darkened the records of a judicial tribunal. Its authors are beyond the reach of punishment—the statute of limitations protects their perjured instruments—and for the conspirators themselves there is no law. The United States punish their citizens who abuse the protection of their flag to wage war or to commit other offenses, but not those who seek, under shelter of their treaties, as did hundreds of claimants against Mexico, to make their international courts the instruments of fraud upon a foreign country. If the notoriety which this claim has acquired shall have the effect of remedying the omission of the law in this regard (and it is said that the Judiciary Committee of the Senate are now considering that subject) it will not have been in vain.

Adams, Bartholow, and the bolder rogues are not in the penitentiary, but here on the streets of Washington ready to put their hands into the Treasury of the United States and carry off the three instalments paid by Mexico to the credit of this award. The more respectable of the gang, the stockholders, who would not testify nor take an active part in the claim, are sitting quietly at home awaiting their shares of the $683,000 which Mexico has been condemned to pay from her depleted treasury to this company. Shall they receive the money? Do the great principles of international arbitration demand that they shall be paid the reward of their crimes? Do not those great principles rather demand, if they are to endure and not fall into contempt, that treaties and international commissions shall not be made the vehicle of fraud, and that a Government, in the words of the umpire, shall not "insist upon the payment of claims shown to be founded upon perjury?"

* The text of the umpire's decision on this point is as follows:

"The umpire is satisfied from the respectable evidence produced, that a large quantity of valuable ore had been extracted from the mines and deposited at the company's mill, and that it was there when the superintendent was compelled, by the conduct of the local authorities, to abandon the mines and cease working them. But the umpire is of opinion that there is not sufficient proof, nor indeed such proof as might have been produced, that the number of tons stated by the various witnesses were actually at the mill or at the mines at the time of the abandonment. *In so well regulated a business, as the umpire believes that it really was, he cannot doubt that books would have been kept in which the daily extraction of ores would have been regularly noted down, and that periodical reports would have been made to the company at New York. Neither books nor reports have been produced nor has any reason been given for their non-production.* The idea formed, even by persons intelligent in the matter, of the quantity of a mass of ore must necessarily be vague and uncertain, and that of its average value still more so. Still the umpire is strongly of opinion that the claimants are entitled to an award upon this portion of the claim. He will put it at $100,000. It is possible that it is much less than the real value of the ores; but in the absence of sufficient documentary proof, and considering the fact that the expenses of reduction are great, and sometimes even much greater than is anticipated, he does not think that he would be justified in making a higher reward."

No. 48.

Remarks by Hon. Samuel S. Shellabarger, in reply to the remarks of Mr. Lines in the matter of a petition for a rehearing in the case of the La Albra Silver Mining Company.

DEPARTMENT OF STATE,
Washington, D. C., May 10, 1879.

Now, Mr. Secretary, the first suggestion that I desire to make and one which in its nature belongs at the very threshold of any testimony that may conduct on our side in this: That our position has been from the start, is to-day, and has been repeatedly stated in various forms, either orally or in the printed brief that is in my hand, that this case is not open for the receipt of any testimony, that what gentlemen have presented and read here to-day is in no sense admissible, and it cannot be considered under the rules of the public law and the constitutional law of this country for any purpose, and we protest that it is not competent to be either considered or commented upon except in so far as it may be considered and commented upon as now being offered to the Secretary of State for the purpose of his receiving it. As the Secretary of State is aware at an early time after this act of Congress passed and the subject was committed to his consideration thereunder, we said to the Secretary of State that we put in that protest, and that upon the question of the legal possibility of any such testimony being considered at all, we desired, at the proper time and to the pleasure and convenience of the Secretary of State, to be heard upon that question. This is the first moment, the first time that that opportunity has been and it is now kindly and properly and in due time furnished to us by the Secretary of State.

The remarks that I shall make to you to-day will be addressed to those legal points that involve and establish the proposition that I have stated, that the case is not in a legal condition where it is competent or proper to receive either new testimony that has been commented upon by the gentleman that has just sat down nor that other body of testimony on which he commented and upon which the arbitrator who has decided the case passed in rendering that decision. A suggestion or two would be natural and proper in regard to the general aspects of this tender of testimony. I mean as a tender, and the circumstances that are connected with its getting up—its present production. Now, if this proposed testimony and application is to be deemed and taken as a trial of the question of alleged fraud under the act of Congress—if that is the attitude and aspect in which it is to be looked at as a trial of the great underlying question of fact whether there was fraud or no fraud in the claim itself, then how palpable is it that for a party to be permitted to go out in secret to gather up testimony without the opportunity of the party assailed either to cross-examine, to know of the existence of the fact that the testimony is being gathered or presented, to know who the witnesses are, or where their testimony is being taken, the whole thing utterly unknown to the party assailed and charged with the fraud, and that testimony presented to the Department of State to which the assailed party has no access except at the pleasure of the Secretary of State, and very properly so, and then to have that testimony, thus secretly taken without cross-examination, brought in here and presented to counsel to-day for the first time, not a word or syllable ever seen by the party assailed until this moment, and to make use of that for the purpose of the establishment of the fraud itself without any oppor-

tunity for him either to meet it or to read it, much less to comment upon it, would be a travesty upon trials which this country has not exhibited, either in the history of the State Department or in any other Court in this country.

Now suppose, on the other hand, it is to be deemed as not testimony taken, but as *ex parte* affidavits gathered together by the party upon his own volition, and according to his own pleasure, and tendered to the Secretary of State for the purpose, not of showing a fraud, but for the purpose of exciting the suspicion of a fraud and to induce the Secretary of State to grant what is here called a new trial. It is to that branch of the inquiry—the competency of this testimony—in that view of the case, that I propose to address the few remarks, or the remarks whether few or many that I may make.

There is another preliminary statement I desire to make right here, and that is that in so far as counsel that sit at your table, and who are associated with me, may deem it wise to discuss questions that are discussed in the paper that has just been read to you, I will leave that wholly to them, and they are familiar with the former history of this case; they cannot be familiar with the new testimony because they, like I, have never seen it before.

Mr. LYONS. Pardon me, judge, do you mean that this evidence, and none of it, has never been opened to the knowledge of the counsel on the other side; that it has not been published?

Mr. SHELLABARGER. Not a particle of that that has been called testimony in your paper, so far as I know, has ever been read by either one of us or seen, nor has there been any opportunity to see it.

Mr. LYONS. Of course, I cannot controvert that, but it has been published and very widely distributed.

Judge BARTLEY. Where?

Mr. LYONS. In this city.

Mr. SHELLABARGER. Published in the newspapers?

Mr. LYONS. Part in newspapers and part in pamphlet.

Mr. SHELLABARGER. We have filed applications with the Secretary of State to see any paper or evidence or anything else which, under his pleasure and according to the rule's of the Department, we might see. We have never been furnished with anything of this kind.

Now, one more suggestion. In what I have now to say, I shall travel over ground that is utterly familiar, necessarily so, to the Secretary of State, and I shall for that reason endeavor as far as I can to make my statements rather in the nature of propositions submitted than any attempt at an elaborate discussion. Now, first, let me consider the question of the competency of this testimony that is new, or a review of the testimony that is not new in the present position of the case, and taking that inquiry up now as if there were no award in this case, and as if we were simply discussing the question as to what additional powers are conferred by this act of Congress that has been read, upon the President of the United States, or the Secretary of State, or the treaty-making power, my proposition is this: That this is a subject-matter which, by the Constitution of the United States, comes within the treaty-making power of the Government, and is one about and over which Congress has no jurisdiction in the way of either extending or limiting. or affecting or in any wise embarrassing those powers and high discretions which by the Constitution are bestowed upon the President of the United States and the Senate. In other words, this treaty is a treaty not in any of its provisions at all, not one of them entering upon any of that domain which by the Constitution may be occupied by the

Congress of the United States, and is therefore not a treaty which can be repealed or the powers of the President over which cannot be qualified by any enabling or other act of Congress. The treaty, from first to last, from its beginning to its end, is one providing for the settlement of international claims. It provides for the submission of those claims to a specified tribunal. It provides for the method of their hearing; it provides for the method of their selection and qualification; it provides what confirmation they shall take, how it shall be endorsed; it provides for their keeping and record; it provides for the times of their commencement and the duration of their sittings; it provides the method of payment, the method of adjusting balances, but it makes no provision in regard to any subject-matter that requires any interposition of Congress or any appropriation by Congress or any other thing from Congress. It is a case of an international treaty, pure and simple, and hence, so far as that fact is material, it belongs to the class about which I now propose to say that Congress has no power in regard to the matter as to what shall or what shall not be done by the treaty-making power touching it.

Now, upon the branch of the case, let me say this: That the Supreme Court of the United States has held and whether it was the original idea that prevailed at the adoption of the Constitution or not, it is now to be accepted as the law of the country on that subject—has held that the Congress may repeal a treaty—as held in what is called the Tobacco case in 11th Wallace, which was cited a moment ago, and so held, I believe in a number of other cases. But, whilst that is conceded it is equally, I maintain, settled that in the case of a treaty like this, where the subject-matter of the treaty does not come at all within the same domain, or subject-matter by which the Constitution has endowed Congress with power to legislate, there Congress has no power in regard to that treaty. Upon that subject I wish to leave in my minutes a reference to the case of Taylor against Morton in the 2d of Curtis' Circuit Court Reports, 454. I also refer to the case of Ropes against Clinton in the 8th of Blatchford, 304; also to the case of Clinton Bridge in the 1st of Walworth, 155; also to the cases cited in Abbot's Federal Digest, page 470; also the cases cited (some of the them are the same) in the 2d of Brightley's Digest, 118, section 141.

Congress can terminate the adhesion of this country to a treaty that is a subsisting continuing executory contract, &c., * * * not as of a treaty that had been repealed, but of a treaty that was subsisting.

Mr. CRESWELL. I think the word used in 11th Wallace is "supersede"—"Congress may supersede a treaty."

Mr. SHELLABARGER. I find it here, Mr. Secretary, conveniently stated [referring to the book in his hand]—the formula or enunciation that I insisted upon as applied to this case. Now, without regard to the ultimate results that you have just been speaking of, as to the consequences upon the subject of the abrogation by Congress of the treaty that does come within some of the powers of Congress to legislate upon, I desire simply to state, and to carefully state, the proposition of law that I maintain in regard to this treaty. It is this: That where a treaty in all its subject-matter and entirety is one without the domain where Congress is endowed by the Constitution with power to legislate, where it does not touch subject-matters which come within the control or jurisdiction of Congress, as was true in the Hemp case, and as was true in the Cherokee Tobacco case, and has been true in every other case where the doctrine has been laid down that when you come to deal with a true

dealing with a subject-matter like that, then Congress is absolutely without power to take away from the treaty-making power any part of its functions as completely as Congress is without power to take away from the President any part of his veto power. That is my proposition, and I find it conveniently stated in the syllabus, and enunciated also in the body of the opinion in Taylor against Morton, in 2d Curtis; and also in the Clinton case, if I am not wrong in my memory; and also in the Bridge case; and also in the case I hold in my hand:

If the subject-matter of the act is within the Constitutional power of Congress—

That is the point—

the Congress must enforce the enactment as the latest expression of the legislative will, and leave the question of international obligations arising out of the infraction of the treaty to be settled by the executive department—

Just as I understand you [the Secretary] to have been suggesting.

I now restate my first proposition of law. It is that since this treaty is one of purely international obligation and concern, and not one in any of its elements municipal in its character, nor coming within the range of the powers of Congress as bestowed by the Constitution, it is not within the competency of Congress to either pare down or to exalt or to embarrass those powers and discretions which the Constitution of the United States has bestowed upon the Executive touching such subject-matter as that; and that it is no more competent for Congress to enact that you shall set aside or disregard or change or stop the execution of this treaty (that execution is not dependent upon the will of Congress in its nature) than it is for Congress to enact that you shall not execute any other of the executive functions that are bestowed by the Constitution upon the Executive alone. The case we deal with this afternoon is the old case coming up everlastingly, where it is necessary to remind ourselves of the distinction of the powers of the Government, their divorcement and their independence, where, as a fact and as a proposition of law, that independence does exist.

Now, then, I take the next step in these statements. It is this: That we are not dealing with a case—Congress in passing the law that has been the subject of comment was not dealing with a case where the treaty rested as to its provisions and its execution—rested *in fieri* in any sense that is applicable to this controversy. We are, on the other hand, dealing with a case where the process of execution of the treaty had passed to the stage and condition of judgment, and where the rights of the parties under the treaty and under the judgment had become so fixed as that they are beyond the assailment not only of the Congress of the United States, but of every other branch and part of the Government. Now, my first proposition under that head is this: That a judgment by an international commission like this is a judgment of a court of competent, exclusive, and final jurisdiction, and that jurisdiction once exercised, and its results attained in a judgment, that judgment stands in the public law as well as under the municipal law, on the same foundations precisely as every other judgment of every other court of last resort, and that such judgment can only be assailed by those methods recognized by the law of the land as applicable to other like judgments of like tribunals of last and exclusive jurisdiction. Now for the proposition that a judgment of an international tribunal is a judgment in the highest legal signification of that word, and confers and vests property right in the subject-matter of the judgment, precisely as the judgment of the court does that thing; in support of that proposition, if authorities are necessary, they are ample and conclusive.

They have been collected in the recent cases that are referred to in our brief by the Secretaries that have preceded you in your eminent position. Mr. Secretary Fish, and also Mr. Secretary Seward, cite the authorities and apply the law. I may be pardoned, however, right here, for giving a reference to one or two cases. There are quite a number of them, but it is sufficient for the purposes of this argument to refer to the case of Comagee *vs.* Vasse, in 1st Peters, and also to the case of Judson *vs.* Corcoran, 17th Howard, 1712. Suffer me to state that last case, not in the way of giving any new law, but simply of illustrating and enforcing the point, my point being this: That one of these judgments bestows vested property right, and that when the judgment is recovered, or the award, that that judgment has the same legal effi-efficacy in the way of being a vested property right ast he judgment of the Supreme Court of the United States has.

Now, in this case of Jordan *vs.* Corcoran, the question arose under a under a commission precisely like this. It was one where claims were to be submitted to an international tribunal, and a treaty happened to be between Mexico and the United States, just as this. In that case there were two parties, Mr. W. W. Corcoran, of our city here, and Mr. Judson, that were each claiming to own—Mr. Corcoran all, and Mr. Judson a portion of the award.

Mr. LYONS. Was that the Gardiner award?

Mr. SHELLABARGER. No; and the Judson title was the elder in point of time as to $6,000 of the award and interest. Mr. Corcoran's legal title, therefore, would fail if the title of Judson were good. The title, however, of Mr. Corcoran to the whole claim had passed under the review of the arbitrators, and they held that Mr. Corcoran by virtue of the award was invested with the legal title in the technical sense of that word—good legal title as distinguishable from equitable title—decided that the judgment in that case did bestow upon Mr. Corcoran a legal title. Then they proceeded to the investigation of the question how the equities stood as between Mr. Corcoran and Mr. Judson; for they said that in these international awards this judgment does not conclude the equities as between different claimants to the fund. In discussing the question who had the better equity, the court say that since Judson rested on his rights, and gave no notice to the State Department, he was guilty of laches, although his equity originally, on account of priority and time, would have been the better had Corcoran had notice, and he taken the proper steps to take care of his equity; yet he had not done so, and that his equity had become no more than equal to Corcoran's, and now, say the Supreme Court, since the effect of this arbitration is to bestow a legal title on Corcoran, and since the equities are equal, the rule shall prevail that applies in equity, to wit, that where equities are equal the law shall prevail.

Mr. CRESWELL. What arbitration was that?

Mr. SHELLABARGER. That was under an arbitration under a treaty between the United States and Mexico—a treaty made in 1839.

Mr. CRESWELL. That was an international trial?

Mr. SHELLABARGER. It was an international trial. It was a case where the Supreme Court say it is a settled law—two things; one is that a question submitted to arbitrators as to the subject-matter of the submission is absolute and final. That was decided, as it was decided in the Comagee case; another thing, that the legal title was bestowed as the effect of that judgment, conferring such recognized legal rights as are bestowed by any other court.

Mr. CRESWELL. What book is that?

Mr. SHELLABARGER. 17 Howard. Now, all that I have been saying that for is to put these arbitrators upon the ordinary basis and foundations upon which rests the judgment of any other court. That step being made secure, then we proceed, as it seems to me, with safety to every other future step in this argument. If it be true, then, that this judgment, as we call it, is a judgment, and that it bestows legal title, as was bestowed in this case of Judson and Corcoran, if the Congress of this country recognize that as settled law, and the Supreme Court say it is law, and all the traditions of your great Department have ever said that it was so—Mr. Fish, your predecessor, and Mr. Seward both say the same thing, as I have just been quoting a case from 17 Howard that it is the judgment of the court, conclusive and final, against which nothing can be said except that which may be said against every other judgment.

Now, my next step is to say that this being a judgment that neither Congress by this act of June 18, 1878, not only on account of the reasons which I stated at first, to wit, that it would be an invasion of the treaty-making power, but also because this claim has passed into judgment and is beyond the assailment of Congress; not only cannot the Congress, I repeat, but neither can the treaty-making power in any degree abrogate or set aside this judgment, except according to the principles applicable to other judgments. Now, then, what are the principles applicable to other judgments? How may they be overthrown after they have been duly rendered? I am fortunate to-day in not being required to multiply words in regard to that question, because we have here a recent decision of the Supreme Court of the United States upon that subject, which has not yet been reported, but a copy of which we have furnished you, and which is known now to the profession as the Throckmorton case. If you will indulge me, for the purpose of getting into the report of my remarks so much of this opinion as may be valuable and applicable, since it is not reported in any book, I will state the character of the case, and then will give so much of the opinion as gives its substance and effect. It was a case under the laws regulative of the Mexican titles in the State of California. It was a case where the deed or grant had been forged under which the claimant or plaintiff set up title. After the Mexican authority having power to make the grant had gone out of office, about the time the trial was to come off, or at any rate at such stage in the case as that he had found that the urgency of the case required new evidence of title, the party had gone to the man that had such authority to grant at the former date and at the date he professed to have got his title, and he got a new deed made. He had it dated back, and he brought it into court, and he proved his title by that kind of a forged instrument, and the strongest possible case was presented to the Supreme Court of the United States as to whether a fraud of that sort might be introduced for the purpose of overthrowing the judgment. I ought to have said that the case proceeded through all the stages provided for by the law of 1853, and reached the court of last resort, that is, the last one they took it to—the circuit court—and was adjudged in favor of the claimant. The title was confirmed. It was not appealed to the Supreme Court of the United States, and there it stood.

Now, leaving out this reading of some of the introductory statements of the judgment——

The SECRETARY (interposing). Who delivered this opinion?

Mr. SHELLABARGER. It is delivered by Judge Miller. I read as follows:

There are no maxims of the law more firmly established, or of more value in the administration of justice, than the two which are designed to prevent repeated liti-

gation between the same parties in regard to the same subject of controversy, namely, "*interest reipublicæ, ut sit finis litium*," and "*nemo bis vexuri pro una et eadam causa.*"

If the court has been mistaken in the law, there is a remedy by writ of error. If the jury has been mistaken in the facts, there is the same remedy by motion for a new trial. If there has been evidence discovered since the trial, a motion for a new trial will give appropriate relief. But all these are parts of the same proceeding, relief is given in the same suit, and the party is not vexed by another suit for the same matter. So in a suit in chancery, on proper showing a rehearing is granted. If the injury complained of is an erroneous decision, an appeal to a higher court gives opportunity to correct the error. And if new evidence is discovered after the decree has become final, a bill of review on that ground may be filed within the rules prescribed by law on that subject. Here, again, these proceedings are all part of the same suit, and the rule framed for the repose of society is not violated.

Now, right there let me remark, off the paper, the end of this trial was in the court having the final jurisdiction. The motion for a new trial that is spoken of here, the presentation of newly discovered evidence, and all that, applying now the analogies to one of these international tribunals, had their application to that court, and not to Congress, nor to the Executive of the United States, nor to the treaty-making power, and that opportunity for a new trial was not only had, but it was availed of and overruled, presenting in substance, and with equal ability to that exhibited this afternoon, the very identical questions—not by the same new evidence I confess probably, but the very identical questions, and all of them, which have been urged here upon the Department of State this afternoon.

But there is an admitted exception to this general rule in cases where, by reason of something done by the successful party to a suit, there was in fact no adversary trial or decision of the issue in the case. Where the unsuccessful party has been prevented from exhibiting fully his case by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise, or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff, or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat, or where the attorney regularly employed corruptly sells out his client's interest to the other side—these and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and a fair hearing.

Then citing a large number of authorities.

In all these cases, and many others which have been examined, relief has been granted on the ground that, by some fraud practiced directly upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of his case to the court.

On the other hand, the doctrine is equally well settled that the court will not set aside a judgment because it was founded on a fraudulent instrument, or perjured evidence, or for any matter which was actually presented and considered in the judgment assailed. Mr. Wells, in his very useful work on Res Adjudicata, says, sec. 499: "Fraud vitiates everything, and a judgment equally with a contract; that is, a judgment obtained directly by fraud, and not merely a judgment founded on a fraudulent instrument; for in general the court will not go again into the merits of an action for the purpose of detecting and annulling the fraud." * * * "Likewise, there are few exceptions to the rule that equity will not go behind the judgment to interpose in the cause itself, but only when there was some hindrance besides the negligence of the defendant in presenting the defense in the legal action. There is an old case in South Carolina to the effect that fraud in obtaining a bill of sale would justify equitable interference as to the judgment obtained thereon. But I judge it stands almost or quite alone, and has no weight as a precedent."

That is the end of the quotation from Mr. Wells. The case he refers to is Cranford *vs.* Cranford in the 4th of De Saussure's Equity Reports, 176.

The principle and the distinction here taken was laid down as long ago as the year 1702 by the lord keeper in the high court of chancery, in the case of Tovey *vs.* Young. (Precedents in Chancery, 193.)

This was a bill in chancery brought by an unsuccessful party to a suit at law, for a

new trial, which was at that time a very common mode of obtaining a new trial. One of the grounds of the bill was that complainant had discovered since the trial was had that the principal witness against him was a partner in interest with the other side. The lord keeper said: "New matter may in some cases be ground for relief; but it must not be what was tried before; nor, when it consists in swearing only, will I ever grant a new trial, unless it appears by deeds, or writing, or that a witness, on whose testimony the verdict was given, was convicted of perjury, or the jury attainted."

That is the end of the extract. The court continues:

The case seems to have been well considered, for the decree was a confirmation of one made by the master of the rolls.

The case of Smith *vs.* Lowry, 1 Johnson Chy., 321, was also a bill for a new trial on the ground that the witness on whose testimony the amount of damages was fixed was suborned by the plaintiff, and that complainant had learned since the trial that a fictitious sale of salt had been made for the purpose of enabling this witness to testify to the market price.

That was a case where they sought to bring in newly-discovered evidence, just as in this case, evidence which showed the subornation of the witnesses, and a conspiracy also by which a simulated sale had been made for the purpose of enabling a story to be got up that that simulated sale furnished market prices.

Chancellor Kent said that complainant must have known, or he was bound to know, that the price of salt at the place of delivery would be a matter of inquiry at the trial, and he dismissed the bill for want of equity, citing the case of Tovy *vs.* Young with approval; and he cites a number of cases to show that chancery will not interfere though new evidence has been discovered since the trial, which, if the party could have introduced it, would have changed the result.

In Bateman *vs.* Willoe, 1 Schoales & Lefroy, Lord Redesdale said: "I do not know that equity ever does interfere to grant a trial of a matter which has already been discussed in a court of law, a matter capable of being discussed there, and over which the court of law had full jurisdiction." The rule must apply with equal force to a bill to set aside a decree in equity after it has become final, where the object is to retry a matter which was in issue in the first case and was matter of actual contest.

The same doctrine is asserted in Dixon *vs.* Graham, 16 Iowa R., 310; Cottle *vs.* Cole, 20 Iowa R., 484; Borland *vs.* Thornton, 12 California R., 440; Riddle *vs.* Barker, 13 California R., 295; Railroad Co. *vs.* Neal, 1 Wood. R., 353.

But perhaps the best discussion of the whole subject is to be found in 2 Gray, 361, by Chief Justice Shaw, in the case of Greene *vs.* Greene. That was a bill filed by a woman against her husband for a divorce. The husband had five years before obtained a decree of divorce against the wife, and in her bill she now alleges that the former decree was obtained by fraud and collusion and false testimony, and she prays that this may be inquired into and that decree set aside. The court was of opinion that this allegation meant—

That is the collusion of the husband—

that the husband colluded or combined with other persons than complainant to obtain false testimony or otherwise to aid him in fraudulently obtaining the decree. The chief justice says that the court thinks the point settled against the complainant by authority, not specifically in regard to divorce, but generally as to the conclusiveness of judgments and decrees between the same parties.

He then examines the authorities, English and American, and adds: "The maxim that fraud vitiates every proceeding must be taken, like other general maxims, to apply to cases where proof of fraud is admissible. But where the same matter has been actually tried, or so in issue that it might have been tried, it is not again admissible;—

And to that I invite attention, because that is the rule—

the party is estopped to set up such fraud, because the judgment is the highest evidence and cannot be contradicted." It is otherwise, he says, with a stranger to the judgment. This is said in a case where the bill was brought for the purpose of impeaching the decree directly and not where it was offered in evidence collaterally. We think these decisions establish the doctrine on which we decide the present case, namely, that the acts for which a court of equity will on account of fraud set aside or annul a judgment or decree, between the same parties, rendered by a court of competent jurisdiction, have relation to frauds, extrinsic or collateral, to the matter tried by the first court, and not to a fraud in the matter on which the decree was rendered.

That the mischief of retrying every case in which the judgment or decree rendered on false testimony, given by perjured witnesses, or on contracts or documents whose genuineness or validity was in issue, and which are afterwards ascertained to be forged or fraudulent, would be greater, by reason of the endless nature of the strife, than any compensation arising from doing justice in individual cases.

The case before us comes within this principle. The genuineness and validity of the concession from Micheltorena produced by complainant was the single question pending before the Board of Commissioners and the district court for four years. It was the thing and the only thing that was controverted, and it was essential to the decree. To overrule the demurrer to this bill would be to retry twenty years after the decision of these tribunals the very matter which they tried, on the ground of fraud in the document on which the decree was made. If we can do this now, some other court may be called on twenty years hence to retry the same matter on another allegation of fraudulent combination in this suit to defeat the ends of justice, and so the number of suits would be without limit and the litigation endless, about the single question of the validity of this document.

There were three cases just alike; one of them was tried; this one became a ruling case, and decided the others, and they were dismissed; I do not remember the name of the other two. The proposition then that we make upon this case is this: That here the new testimony that is tendered to you now, and asked to be considered, as well as that which was commented upon to-day, and which was before the Commission, all relate confessedly and undisguisedly to the very questions that were in issue before the tribunal, which had been competent for him to decide, and which he did decide, and which the parties were obliged either during the trial, before the decisiont, or, at the utmost, in their motion for a trial, to present to the court, and have adjudged, and there is not one syllable, as there cannot be one breath or hint in the case, anywhere of any fraud of a character that comes under the head that the court here calls extrinsic or collateral, and which tends to assail the integrity of the trial itself as a legal process. All those enumerated cases are cases directed against, and tending to affect, the fairness and integrity of the trial. That kind of fraud strikes down the judgment. Every other that entered into or that might have entered into that issue in the case was not of a kind that can be resorted to for the overthrow of an award.

Now, then, if that proposition is established, as it must be, since it is the judgment of that court to which we all bow in all matters coming within the purview of the court (I mean bow in Federal questions), and if that other proposition of mine is also equally safe, to wit, that there is no accusation here that Sir Edward Thornton was bribed or corrupt, or that the testimony upon which he based his award was such, or, rather, the lack of testimony was such, as itself to raise a presumption of fraud, and if there is no accusation that any of these parties imposed upon that tribunal in any way, and upon this exclusive party in any other way than by fraud, then this judgment is, as I have said, one incapable of assailment under any act of Congress, or under any act of the President, or under the act of any other body, save and except that thing that we know as due process of law. The judgment of an international tribunal of this kind, as Mr. Seward well denominates the highest court known to Christendom, sanctioned and sanctified by the increasing growth and benignity of the international law of the world—that judgment rests upon these foundations, is placed, and it has results in the way of an investure of property rights—is placed under the Constitution which guarantees that the property shall not be taken except by due process of law. Why, Mr. Secretary, the Congress undertook once to do a thing very analogous to that which the gentleman claims the Congress has done in this act; I mean in the Drake amendment. They had opened the doors of the Court of Claims to all contracts, and to all citi-

zens having contracts, expressed or implied; and the Supreme Court adjudged that the amnesty had made all men capable of entering in at that door and of recovering judgment; and the Congress undertook to enact that a certain class of people should not go in at that door, and that their judgments should be worthless, or that they should not have them; and in that case the Supreme Court, just as you must in this, say that it must be "Hands off!" with Congress in regard to the prerogatives and the rights of an independent department of the Government. In that case it was the judiciary. In this case it is the treaty making power and the executive. It must be "Hands off! You cannot cross that sacred threshold." So I say that Congress has no power, first, to interfere with your powers as a portion of the treaty-making power, along with the Senate of the United States; and, second, and much more, and forever, Congress shall not be permitted, after the treaty-making power has exercised its power, and the judgment has been rendered, and the property has been vested—it must not be possible for Congress to come in and order that treaty to be set aside, or that judgment to be affected.

And now one step further. Let me call your attention for a moment to the language of the terms of this treaty. I read now from the second article of the treaty of the 4th of July, 1868, under which this convention was held, a sentence or two in the way of impressing upon our memories the single course that the high contracting parties took in seeing to it that the thing that we are having to-day should never happen, and that the judgment of this tribunal should indeed and in truth be final. It says:

> The President of the United States of America and the President of the Mexican Republic hereby solemnly and sincerely engage to consider the decision of the Commissioners conjointly, or of the umpire, as the case may be, absolutely final and conclusive upon each claim decided upon by them or him, respectively, and to give full effect to such decision, without any objection, evasion, or delay.

And, then, in another part of the treaty there is a substantial repetition of that provision in terms where the parties, with evident solicitude and with special care and concern, bowed to that very idea, again repeating that this shall be indeed, when attained, "the end of controversy."

Now, I want to direct right here attention to another singular feature of this case. I call attention now to the treaty of 1876, 19 Statutes at Large, pages 642–644. I read this for two purposes, which I will explain. The first that I read is a preamble, which I read for the purpose simply of bringing to the attention of the Secretary of State the amount of extension and time, the amount of opportunity, given Mexico for the purpose of presenting, before the judgment of the umpire in this case, what she now seeks to present after five years of wasted opportunity, if there is anything in the pretense made to-day at your table by this *ex parte* talk and showing. Now, notice what they have had in the way of opportunity:

> Whereas, pursuant to the convention between the United States and the Mexican Republic, of the 19th day of April, 1871, the functions of the Joint Commission under the convention between the same parties of the 4th of July, 1868, were extended for a term not exceeding one year from the day on which they were to terminate according to the convention last named.

That is one extension.

> And whereas, pursuant to the first article of the convention between the same parties of the 27th day of November, 1872, the Joint Commission above referred to was revived and again extended for a term not exceeding two years from the day on which the functions of the said Commission would terminate pursuant to the said convention of the 19th day of April, 1871.

That is the second extension.

And whereas, pursuant to the convention between the same parties of the 20th day of November, 1874, the said Commission was again extended for one year from the time when it would have expired pursuant to the convention of the 27th of November, 1872, that is to say until the 31st day of January, 1876, and it was provided that if at the expiration of that time the umpire under the convention should not have decided all the cases which may then have been referred to him, he should be allowed a further period of not more than six months for that purpose.

And whereas, it is found to be impracticable for the umpire appointed pursuant to the convention adverted to to decide all the cases referred to him within the said period of six months prescribed by the convention of the 20th of November, 1874, and the parties being still animated by a desire that all that business should be closed as originally contemplated, the President of the United States has for this purpose conferred full powers on Hamilton Fish, Secretary of State, and the President of the Mexican Republic has conferred like powers on Don Ignacio Marical, envoy extraordinary and minister plenipotentiary of that republic to the United States, and the said plenipotentiaries, having exchanged their full powers, which were found to be in due form, have agreed upon the following articles:

The SECRETARY. Yes, I understand it.

Mr. SHELLABARGER. They did something more. I have read this for the purpose of showing the degree and the number of extensions. Now, what I want to again and next call attention to is the provision in regard to past awards. That is found in Article II:

It is further agreed that so soon after the 20th day of November, 1876, as may be practicable the total amount awarded in all cases already decided——

Now this is in 1876, and our case had been decided a year before—in 1875. Now, then, here, after these six years of opportunity, and after this display of present actual knowledge of the alleged fraud, which you will find in that yellow-backed book which my friend has in his hand—the argument which the counsel for the Mexican Government made before Sir Edward Thornton, long before that treaty, setting up this howl about this fraud long after this fraud—they come forward and by another and similar convention agree that—

the total amount awarded in all cases already decided, whether by the Commissioners or by the umpire, and which may be decided before the said 20th day of November, in favor of citizens of the one party, shall be deducted from the total amount awarded to the citizens of the other party, and the balance, to the amount of $300,000, shall be paid at the city of Mexico, or at the city of Washington, in gold or its equivalent, on or before the 31st day of January, 1877, to the Government in favor of whose citizens the greater amount may have been awarded, without interest or any other deduction than that specified in Article VI of the said convention of July, 1868. The residue of the said balance shall be paid in annual installments on the 31st day of January in each year, to an amount not exceeding $300,000, in gold or its equivalent, in any one year, until the whole shall have been paid.

So that here two things have come to pass; first, these long years of waiting—nay, three things; second, the complete knowledge of the pretended fraud in the party long before the making of that treaty, and before the expiration of the Commission; third, the presentation of that claim of fraud before the Commission, and, next, the defeat of the party in his appeal in the way of a motion for a second trial. Now, we have the spectacle presented of the Government still coming forward, after having, in the most solemn manner possible, exhausted the vocabulary of words for the purpose of saying that this treaty should be final, and that there should be no obstructions or objections to its execution—after all these things, it has come in here and claimed that a court of equity, a court of conscience, should be induced on such a showing to set aside any judgment in any case.

Now, next, much reliance is placed upon the language of this act of Congress of June 18, 1878, fifth section, under which it is claimed you

have power to open up this award. I have already shown, as it seems to me, that Congress has no power over the subject-matter. But, now, let me further, for the sake of the point and for the moment, suppose that Congress has power of some sort in regard to this thing to give you some sort of additional help in the way of opening this treaty or setting aside this award. Let me see how we will then stand. The language of the section is this:

Whereas the Government of Mexico has called the attention of the Government of the United States to the claim, &c.

Now, then, first, he is to investigate the charges of fraud. My first point on that is this: That that investigation must be held to be one that it would be competent to make in a case having the same subject-matter in view, to wit, a trial of the validity of a judgment of a court of competent jurisdiction. In other words, you are not commissioned to investigate fraud in a way that it would be utterly unlawful to conduct that investigation in any case applied to such a subject-matter. It brings me, therefore, to this. It is the same point exactly as is presented in the Throckmorton case, and that investigation must be conducted upon known legal principles. It is an investigation into a judgment; that is the point and the whole of it. Congress is directing them to investigate a judgment. Now, Congress did not mean to direct, and could not mean to direct, that that judgment should be assailed in any other way or by any other instrumentalities, or by the resorting to any other evidence than such as would be competent on known legal principles to overthrow a judgment. That is the whole of that point.

Now, I think with one or two additional suggestions, I will relieve the Secretary of further annoyance of these remarks; one is this: That not only did Mexico, in 1876, agree to pay this award after she pretended to have discovered this fraud, but she agreed to take, and did take, the money for paying it. In other words, Mexico deliberately, and years after she professed to have found that she was swindled by the Sir Edward Thornton award, comes into a convention, or a settlement rather, through her agent, and assesses in her favor—in assessing the costs of this arbitration—assesses in her favor such an amount as she made up by adding in these awards as awards to be paid, and took the money and kept it. Such is another of the attitudes in which this claim presents itself to-day.

Mr. LYONS. Will you allow me to make one statement there?

Mr. SHELLABARGER. You will have an opportunity to reply.

Mr. LYONS. I merely wanted to correct you in the statement.

Mr. SHELLABARGER. If I am mistaken in the matter of fact, I would be glad to be corrected.

Mr. LYONS. The discovery of this evidence did not take place until long after the treaties to which you allude.

Mr. SHELLABARGER. I did not say that the discovery of all this evidence took place. What I say, and what I repeat, is that Mexico pretended to have discovered that by these frauds—not that she could prove them, but she presented the same charges of fraud, and the same excessive assessment, the same perjuries and the same forgeries, and you will find them, for I have read them to-day—you will find them elaborately presented and urged, and the changes rung on them in a document covering perhaps fifty pages, before Sir Edward Thornton, repeating the same lingo that we have had here to-day—fraud upon fraud, perjury upon perjury—just the same thing revamped.

Mr. LYONS. I will admit that it was a fraud all the time——

Mr. SHELLABARGER (interrupting). And you knew the principals, or you pretended to know them—I do not say that you knew of this new evidence; about that I do not profess to speak except to protest, as I did at the start, that that testimony is not by law, and never can be, the subject-matter of consideration. Now, I leave off with this statement, and it is really in effect where I began, and I choose to do it in the words of the Supreme Court of the United States. Speaking of the conclusive effect of one of these international awards, that court, in the case of Commagee *vs.* Vasse, 1st Peters, 212, says:

> The object of the treaty was to invest the Commissioners with full powers, &c. * * * is a final assessment of the damages or injury.

Again in an elaborately considered case, Meade *vs.* the United States, 2d Court of Claims, 276, the court recognized the same principles as applicable to an international award as that cited from the Supreme Court. The language of that decision is this:

> * * * it is nothing to say that it was erroneous; it is not for us, nor for any other court.

And I add not for the Executive, nor for Congress to overturn, or disregard that decision. No appeal was given, no power of revision lodged anywhere in any person or tribunal, and their decision was therefore necessarily conclusive of the whole matter.

The residue of this argument I leave to my associates.

The SECRETARY. I want to call your attention to the real attitude of this inquiry. You have laid down the doctrines of the law which belongs to *res adjudicata* between parties, and you announce the proposition that this result called an award coming out of the action of the Commission by which there is a declaration that Mexico is indebted, I suppose, to the La Abra Company in so many dollars and cents, is a judgment. If it be a judgment confessedly it is a judgment from which there is no appeal; there is no tribunal either to reverse or correct it, nor is the tribunal itself in existence to reconsider or correct it. It is then final in an absolute sense. Now that brings us to a more precise consideration and about which I do not wish to intimate any view whatever. I suppose the connection here may involve some determination about the nature of the intervention by a government in behalf of its citizens in presenting their claims to a special tribunal. In whose favor is this judgment that you speak of as proceeding from the action of this tribunal? Against whom is it and whose is it, and what relation has the Government, in favor of whose citizens under its patronage the award has been made—what relation has it towards that award? And you will observe that it is presented here by Mexico in this shape and in this shape only. The validity of the award against Mexico as a determination which it expects to conform to and satisfy is not questioned. The proposition is rather in the nature of an appeal from the party against whom judgment has been made to the party in whose favor the determination has been made; that for *post hac* consideration, it is neither honest nor just to exact performance of the obligation. Now, you can very easily understand that if it be true that an award is in a proper sense, and in an absolute sense, a judgment in favor of the private American citizen against the Republic of Mexico, and Mexico under its obligations to the Government of the United States feels itself held to pay that money to the cocontracting party of the treaty—that is, the United States—and appeals to it that it should determine while he money is in its hands and paid to it as the cocontracting party whether it shall be returned or not, that it might be competent for the

United States at its own cost to say, "This is a transaction of which we will at any stage of the matter wash our hands, and if under our patronage and upon our treaty as a nation you have come into that position that towards us you must pay, and we into that position that we must regard private right as predominant over any discretion of ours—that is to say, that the party who under our auspices had obtained the judgment is entitled to it—entitled to our execution of it and entitled to our payment of it to him, that we might say the transaction is of that nature that we return to Mexico, out of the coffers of the United States, the money that has been paid by her. Now, that is the attitude of Mexico; that is the proposition. It is to the justice and equity of the United States." Now, Congress undoubtedly has not undertaken to deal with the money of the United States in this inquiry. What it is proposed to the Executive, is to say whether it would deal with this Mexican money that has been put into our hands, to satisfy awards by their payment or by reconsideration. Now, if this be a judgment in the sense that it is the private property of this trading corporation, and the money in the hands of the United States is as matter of strict property right theirs, then the United States has no proprietary equity that can withhold it at all; and if, then, the appeal is simply to the honor of nations, why it is an appeal that must be met at the expense of the nation that yields to that appeal. But if the peculiar position of enforcing our citizens' claims against another nation against whom they are utterly without legal right in the sense of securing execution of a legal right, the Government puts itself in the attitude of an assumed patronage and responsibility for the character of the claims that it presents, and that it collects and holds to the private citizen only the obligation to present their claims, reap the fruit of the presentation, and hand over the results while the situation of integrity and honor in the claim and in the Government that presents it are maintainable, and no longer; then the United States in this case, or any other case, if it should find it to be claimed that it has been made responsible for that which was unworthy and that it should never have lifted a finger in favor of, may be able to adjust the matter at the expense of the party that ought to suffer, and not at the expense of the United States.

Now, Mexico says you have a judgment against us by which we are clearly bound, honestly bound, honorably bound, as between Government and Government, and here is the money. Now, we appeal to you, not for a retrial of our right, but for an examination on your part, as the cocontracting party to whom we make payment, that for *post hac* considerations, it is an unworthy thing that the money should be retained. Now, that is the situation in which this Government has been placed, because I have never understood Mexico, in any part of the correspondence, to say that there was the least defense, as between itself and the United States, against its paying this money.

Mr. CRESWELL. Never.

The SECRETARY. It says then to the United States, look at this transaction that you have intervened in, that you have acquired an absolute right against us to the satisfaction of, and which we now proceed to satisfy, and then say of yourself whether you will continue to exact it. If you do, we have no complaint, for we trust you with your own honor. Now, if the United States were receiving that money into its own treasury, as its own, upon a claim that had been fraudulently exaggerated or fraudulently supported—of course, without the knowledge of the high officials of the Government, without touching the conscience of the Government as being a party to it—why, plainly if the Government

saw that a judgment had been got which it ought not to have and keep, it would have the means at once to say, "why, certainly, we restore this money, and we will proceed to punish the man that involved us in this disgrace."

Now if it be true that a private claimant's relations to a foreign Government, when reduced to an award under the auspices of its own Government, and its own Government continuing in its position of collecting the judgment and distributing it is a clear private right that its own Government cannot intermeddle with; why, then, as I have said, the Government must deal with its own honor and its conscience, at its own expense, and not at that of its citizens. But that is the attitude of Mexico as I understand it.

Mr. CRESWELL. That is precisely so, sir.

The SECRETARY. There is no claim in the diplomatic correspondence that Mexico had as against the United States the least right to withhold the money. I do not wish to intimate any opinion whatever by my mode of putting it.

Mr. SHELLABARGER. There are one or two suggestions that I desire to make in regard to that, because it is a clear and distinct and strong presentation of the case, and in a view which I had not discussed it. I did not know, nor did I suppose, that it was contraverted that these awards to the various claimants were awards to them, and that it was not in any legal sense, nor in any equitable sense, a recovery of a judgment or an award by the United States. All that has been suggested now by the Secretary of State at last goes back when reduced to its last analysis, to this: Is it true or not true that this recovery, or these various recoveries, are recoveries of money wherein the United States has a proprietary interest, so as that it, at its own sovereign pleasure, may yield up an advantage that could not be claimed against it after judgment by Mexico? Now, the reply to that is to be found in the unmistakable plain terms of the treaty in the first place, which provides "That all claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the Government of the Mexican Republic arising from injuries to their persons or property by authorities of the Mexican Republic; and all claims on the part of corporations, companies, or private individuals, citizens of the Mexican Republic, upon the Government of the United States, "arising from injuries to their persons or property, &c."; so that in the very first start it is distinctly provided not only that men or individuals, but with that kind of particularity of enumeration and statement which shows that the contracting parties meant to sever, to segregate, to divide up the claims of the various parties and thus individualize them; and it also meant to make the language so comprehensive as that it should include every possible class, enumerating corporations, companies, or private individuals.

That is the first suggestion. Next we will find throughout this the provisions for the separate trial of the cases by themselves as cases, as integers—units. It is provided, for example, that if about any case the arbitrators do not agree they shall go to the umpire, and various provisions that I need not stop now to repeat, showing that the claims were not to be considered in a mass; that each man's claim was to be dealt with by itself and disposed of by itself as an individual claim.

The SECRETARY. The general expenses are deducted, but——

Mr. SHELLABARGER (interposing). I was about to add, and I am told by the governor (Mr. Stanton) that I am right, that these parties were at the expense of paying their own expenses, feeing their own lawyers,

and of conducting their individual cases throughout. Now, it would be an amazing state of treaty and of law that would say that under that kind of provision the United States has any proprietary interest in this thing at all. The Government has intervened, has interposed its power in behalf of its citizens, who were powerless as against another Government, for the purpose of enabling them to have a court where they might have their cases tried; has put upon them the expense of that trial, the responsibility of the employment of counsel and the payment of cost, &c.; has given them the benefit of the recovery. That is the first suggestion I make in reply; the next is this: That in the cases adjudged, as you will find, as you doubtless recollect, without finding, in the case I cited a moment ago, that this question asked me by the Secretary of State is expressly decided by practice and by necessity. There Mr. Corcoran was sued as the man upon whom the award had bestowed the title. Judson sued him because he was claiming under the efficacy or effect of a decree or judgment of the arbitrators to have the legal title to that recovery. The United States was not sued at all. That was a case where the property had to pass, just as this, through the hands of the United States. It was got exactly as in this case. The United States had interposed its good offices for the purpose of helping its citizens to get the money, and the Supreme Court of the United States said that the title was settled as matter of law.

The SECRETARY. I think as matter of fact that you are mistaken about that. I think that in that case it was after the conclusion of the business of the convention of 1839, and after our war with Mexico, in which we assumed the payment of whatever was left unsettled and we had a commission to take up the claim of our own citizens against Mexico.

Mr. SHELLABARGER. I know; but it comes back to the same thing. The recovery was against the individual, and the United States settled with the citizens——

The SECRETARY (interposing). I understand, but it was not against the citizen. But aside from that the point of inquiry in the 17th of Howard is like that that comes up before me every day. Now, in these very awards, a man comes along and says, I am entitled to the award: The award is in favor of A. B., and A. B. has assigned to me, or that I have this or that equity in it. I am occupied with questions of this kind, and they carry them to court. Confessedly it has no proprietary interest in it in that case or in this. That is not the question——

Mr. STANTON (interposing.) Now, Mr. Secretary, we had a question of this kind up the other day in the Supreme Court of the United States, in the case of Phelps against McDonald. McDonald had recovered a reward under the joint British and American Commission for property destroyed during the war, and after the destruction of that property McDonald had gone into bankruptcy in 1868, and Phelps was his assignee. He referred to the case of Commagie *vs.* Vasse and other cases of similar kind, and insisted that the right in that award was of such a personal character that it passed to the assignee, and the Supreme Court of the United States so decided, and so they decided in the case of Commagie *vs.* Vasse.

The SECRETARY. There is no doubt about that.

Mr. STANTON. Now, I hold that this money so completely belongs to the party to whom it has been awarded, that it is so completely his under the decision of the Supreme Court of the United States, that he can hold the United States responsible for it by a suit in the court of claims and go to the Supreme Court of the United States and present

to them the simple question "Whose money is this?" although awarded under this treaty between the two Governments.

Mr. CRESWELL. That will be a very different question from the one decided in the case of Comagie against Vasse.

Mr. STANTON. In all these cases the courts have decided that even prior to the existence of the treaty, when the vessels have been decided confiscated and condemned, that when the property was clean gone and there was scarcely a scintilla of right still existing, that that right passed to the assignee.

The SECRETARY. I am familiar with all that. Now, the only clause that bears upon this question that I have suggested to you, is this:

ARTICLE 2. The Commissioners shall then jointly proceed to the investigation and decision of the claims which shall be presented to their notice, in such order and in such manner as they may conjointly think proper, and upon such evidence or information only as shall be furnished by or on behalf of their respective Governments.

Mr. STANTON. That is all true; but, Mr. Secretary, look at this book.

The SECRETARY (interposing). Now, the proposition would come to this: Supposing upon this payment, for any reason, the United States—from friendship or from sympathy or disposition to treat Mexico in a most considerate and generous manner—should say, "Well, we will not take the La Abra case; take some other case. John Stiles has an award against you for $300,000. You say it is fraud, but here is the money which we hand to you, but we say you ought not to exact it from us." But if the United States, in looking into this case of John Stiles—no matter what motive led to looking into it—becomes satisfied that the whole claim was a pure fraud and invention like the Gardner case, that it was an absolute fraud, and that there was no fact and no pretense of fact about it, but that it was a pure fraud made up and carried through and made a claim against Mexico; now, if under this act of Congress the President, looking into this claim of John Stiles, should find that it was an absolute fraud, that there was nothing real about it except that John Stiles was a real man and had an award, and had carried it through, is the United States in reference to that situation obliged to say to Mexico, this is a pure fraud that we have been the means of presenting to you under this treaty, and exact payment from you under that treaty, but it belongs to John Stiles and we must pay him the money? Now, is that the situation which the Government of the United States is in towards the claim prosecuted through a tribunal and by agencies of which the national authority is made the means? That is what I suppose it comes to. That is, I do not mean that this case comes to that, but that is the final test of the thing.

Judge BARTLEY. Allow me to make the suggestion that when this matter was before Congress some fifteen or twenty petitioners or memorialists who had been before this Commission had their claims there against the Government of Mexico, which claims were decided against them, sent in their memorials to Congress asking that a provision be engrafted upon the bill authorizing them to have their cases heard over again, charging that the judgment in favor of Mexico was obtained upon fraud and perjury (the same ground that Mexico makes here) and ask that they be investigated. Now, if Mexico succeeded in obtaining judgments in its favor against claimants who are ready to prove by testimony, as conclusive as it is possible to be adjudged, to be judgments in favor of Mexico against them upon testimony produced by fraud and by perjury, why should they not have the same opportunity; and if Mexico asks that, as a matter of honor on the part of the United

States, why should not the United States ask as a matter of honor that the rights of American citizens who had claims there which were defeated by fraudulent means and by perjury on the part of the Mexican authorities also be investigated?

The SECRETARY. Perhaps it might do so; that question is not before the President.

Mr. SHELLABARGER. Then I would suggest that there is no end to this thing.

The SECRETARY. But it is not in the nature of right in every case.

Mr. WILLIAMS. I would suggest that in this appeal some consideration is to be attached to the force of the judgment, as in that Throckmorton case. Now, there was an admitted case of forgery, where the whole title was a pure fabrication, and the United States brought suit to vindicate its rights in the court upon the alleged ground that the title was a fraud.

The SECRETARY (interposing). Yes; but that was a proprietary right.

Mr. WILLIAMS. That is true; but a certain legal force is attached to the judgment that has been rendered by which further examination is to be precluded. Now, when Mexico makes an appeal to the United States upon legal grounds, or an appeal to the honor of the United States to reinvestigate a judgment, why that must necessarily be the case. It is impossible to ascertain that this judgment is not in conformity to law and in conformity to the facts of the case without a reexamination of the facts and the law; and the question then arises whether or not it is not a proper and suitable answer to make to Mexico that this judgment having been rendered after both parties had had a fair consideration and fair hearing, that this appeal cannot be entertained without establishing the doctrine that where judgments are rendered by international commissions, as in this case, that when either party complains, the executive of the Government to whom the complaint is made may proceed to review the proceedings of that commission upon *ex parte* showing, for that is what is asked in this case, and upon *ex parte* showing, and determine whether the judgments are correct or not.

The SECRETARY. That would be an argument addressed to whether the Government should wish to make a reinvestigation. I want to direct your attention to the question whether a proper view is that this Government has not any right in the matter; that is to say, whether it would have to say to Mexico, "John Stiles here got a judgment against you for three hundred thousand dollars in the court that we arranged for, and presented a claim before by this Government as a claim of our citizen," &c. Now, as in the Gardner case, there was not the least claim or pretense of a claim on the part of John Stiles. He got a judgment against you of three hundred thousand dollars, and you appealed to us whether we will keep that money that you are bound to pay, because it has gone through a process of judgment. There is no appeal from it; there is no tribunal in existence to reconsider it, and you admit that and pay the money, but say now we look upon you really as in conscience and honor bound to deal with this money as a transaction that you should reconsider. Is, then, the United States to answer: "We are sorry to say that you are quite right in saying that not one dollar ever ought to have been awarded, if the truth had been got at; but it belongs to John Stiles, although the money is still in our hands; you paid it and we have nothing to do with it, and we don't feel bound, or we do feel bound—I don't care which view you take of it—and we will

give you the money out of our own Treasury." I want to know (to Mr. Shellabarger) if the Government here now should decide in this case that it would pay this La Abra money back to Mexico could the La Abra Company recover the money in the Court of Claims against the United States as money taken away from it and applied to the use of the United States.

Mr. SHELLABARGER. I am not going to continue my discussion, but I will answer the suggestion.

The SECRETARY. This you will observe is much more important. However important it is to these parties, and however important and serious this amount is to Mexico, this general question about international commissions is a more important one, and it never has been, as I understand it, determined in any way.

Mr. WILLIAMS. Never; and this will be the biggest question that will ever be before the present Secretary of State.

Mr. STANTON. In the first case, Gardner was paid out of the funds which the United States had stipulated to be paid to Mexico—a certain amount in compensation for their cession of California. Gardner got his award by means of absolute fraud, from documents forged by the assistance of the authorities in Mexico. The whole mine was a myth; there was nothing of it. There was no proof, I believe, on the opposite side, and there was a very serious question whether the Commissioners themselves were not involved; at least there was some suspicion of that kind. Now, in the case of that Commission, Gardner had received the money; had deposited it in bank in New York, and had gone abroad. The fraud was discovered and the Government attached the fund in New York. It proceeded legally to undo that, in as far as it could. Gardner committed suicide, destroyed his life, and that ended the matter. I don't believe there was any litigation on the subject at all. Whether the Government had the right or not, it had the power, and nobody would question the exercise of that power, in a case of that kind, and we would not question it if ours were a case of that kind.

Now what are you instructed to do by this law? You are directed to examine these charges of fraud; not for the purpose of paying this money back to Mexico; there is no such authority in the law, and if you did that you would do it without any authority whatever. The authority is to examine the charge of wrong—to examine whether the principles of justice and equity require you to institute a rehearing of the case. There is nothing in the law that authorizes you to repay that money to Mexico; there is no such contingency contemplated in the law at all; it is simply for the purpose of a rehearing. The question that Judge Shellabarger suggested to you, and the question which I put to you, is whether that is an instruction or requirement on the part of the President or yourself to investigate any other kind of frauds than those which any court of justice or court of law in the United States would apply to similar cases. Are you authorized to go beyond that? Now if that is fraud affecting and invalidating a judgment—one that by general principles of law and equity would invalidate it—then, unquestionably, you would have a right under that law so far as it can give you any right, if it can give you any right at all, to take the proceedings prescribed by the law; but we insist that you could not possibly go beyond that. But I intend at the next meeting—for it is evident that we cannot get through at the present time—to show that in this case there is not anything like such a case as you have supposed.

The SECRETARY. I am only talking about general propositions of law. Supposing that Gardner's case, instead of having taken the shape

that it did, the claim against our Government had been a claim presented under the convention of 1839 with Mexico, and had resulted in an award against Mexico, then it would have presented the case that this does.

Mr. STANTON. But still it would have presented a question whether Mexico would not be under the necessity of going before some tribunal for the purpose of invalidating that award.

The SECRETARY. The question that this case now presents here is as to facts of different kinds.

Adjourned to Saturday next at 12 o'clock.

No. 49.

Arguments of Messrs. Stanton, Bartley, and Williams in the matter of the La Abra Silver Mining Company's award, before the Secretary of State, on Saturday, May 17th, 1879, at Washington, D. C.

WASHINGTON, D. C., DEPARTMENT OF STATE,
Saturday, May 17, 1879.

Mr. STANTON. You can hardly, Mr. Secretary, understand the bearing of any testimony now presented by the opposite party, and the effect which it ought to have, if it could be received at all, or if it can have any effect, without knowing something of the nature of the testimony which was before the Commission, and I propose briefly to state the facts which are proved by the record. The amount of money expended on the mine and the purchase of the mine was shown by the exhibition of the documents in this paper. The first 17 pages (referring to book in hand) of the proof relate to the amount of money expended in the purchase of the mine, and its development by the erection of machinery and the expenditures necessary to put that machinery in operation and to raise the amount of ores that were actually taken from the mine. The amount of this expenditure is proved distinctly and unequivocally by the deposition of Mr. George C. Collins, an eminent merchant of the city of New York, whom possibly you may have known, Mr. Secretary, and whose character, I believe, is admitted to be above all suspicion. He states the amount of expenditures actually made in the purchase and carrying on of this enterprise, and the umpire in making his award adopted the figures as proved by Mr. Collins.

Now, you will find that his testimony is corroborated also by a number of witnesses. I will call your attention particularly to the testimony of Antonio de la Peña, at page 122, and it is merely to inform you and to show that this is not a myth and not an invention—not a fraud made out of whole cloth. Now this witness states that his occupation is that of a merchant and wholesale grocery and provision store at Mazatlan. Speaking of the Abra Company, he says:

> From the year 1865 up to March, 1868, when their business was destroyed, we did a large amount of business with them. We supplied this company with provisions and other articles for their mining operations at Tayoltita, and a considerable amount of money for the payment of the company's mechanics and other employés. We have disbursed in money and provisions for the company a total of a little more than $67,000.

Then I call your attention to the testimony of Don Pedro Echeguren, of the house of Echeguren, Hermanos y Ca, of Mazatlan. He testifies here—it is not necessary for me to read it all—

> That they expended with the company $108,600 in gold and silver coin, paid over my counter for said company's mines and works at Tayoltita, Durango, for all of

which we were duly reimbursed by the company on the presentation of our certificates and drafts at San Francisco and New York. After August, 1866, this company transacted its business and received a part of its supplies and money through other houses. I believe the house of Echenique, Peña y Ca was one of them, and I do not know how many others. Much of the company's supplies, machinery, and even money, was received from the steamer or vessel direct, and their mule teams packed at the wharf for their mines without being consigned to any house here. This was going on while we were doing business for the company, but I cannot say what proportion or amount of such supplies were so received.

The same facts are proved, in effect, by Alfred Green, John Cole, De Valle—the gentleman from whom the mines were purchased for $58,000 in cash—Cryder, and even Marcos Mora. He was the local judge who testified at page 101. He does not know anything about the actual expenditure upon the mine, but he is asked the question:

What improvements had the company made at the mines and reducing works, and what was the fair value of these improvements, or their cost?

His reply is:

The value of these, including the extraction of ores and their transportation to the reducing works, could not have been less than $500,000.

Various other parties here testify to their opinion of the amount of the expenditures that must have been made from seeing the works; from seeing the operations of the company. At page 116 is the testimony of Charles B. Dahlgren, the United States consul, and son of Admiral Dahlgren, deceased. At pages 21, 46, and 78 these facts are distinctly proved; but it is also proved by the Mexican Government itself, in the defensive testimony, at page 148, in the testimony of Mr. Granger, taken by the Mexican authorities. In answer to the question as to whether he knows that the Mexicans threatened the Americans who watched over the company's ore because they would not let them steal it, he said that—

He knows nothing; that in answer to the question whether or not the mines and buildings were likely to have cost $1,000,000, he says that they probably cost $303,000, counting all the labor spent on them, as they themselves say in their memorial.

Then on the same page is the testimony of N. A. Sloan, taken in San Dimas on the 9th of October, 1871, before the judge of first instance, Cipriano Quiroz de la V. He says:

It is true that they brought with them mechanics and set up machinery, but that he only saw from ten to twelve mules, and that the machinery was good, but not of the best class; that in response to the question as to whether this company spent in the purchase and working of that property the sum of $303,000, and whether from the result of this expenditure they were taking out $1,000,000 annually profit, he answered that at the time he was a clerk for the company he saw, according to the statement of the superintendent, that they had expended $303,000, and had taken out a little less than $6,000 in silver.

So that the fact of the expenditures upon these mines, as this record shows, was not disputed at all—cannot be disputed.

Now, the one point upon which that case rested was the value of a large amount of ores lifted from the mines and transported to the Pateo. The testimony on the part of the claimant is, that there was a thousand or fifteen hundred tons of ore, the greater part of which had been transported from the mouth of the mine about 3 miles to the machinery where it was beneficiated. This is proved by Exall at page 122, and again at 203 by Alfred Green; at page 27, by James Granger; at page 41, by John Cole; at page 57, by José Maria Loaiza; at page 79, by Marcos Mora (that is the Mexican judge who was hostile to the company); at 101, by Charles B. Dahlgren; at 115 and 116, I suppose

it is hardly necessary for me to refer to that testimony. I will say to the Secretary that these facts are not disputed at all. They are admitted throughout the whole of the defensive testimony, but they deny the value of this ore. They say that it was, in the Mexican language, tepetate—worthless rock, good for nothing, and in one part of this case they attempt to show that a large quantity of worthless rock was taken out of the mines and covered over with good ore in order to make a pretense for the Commissioners who were to come out and purchase the mines—to deceive them.

Now, while some of the witnesses say that this was the fact (two of them especially, Francisco Acosta and Jesus Torres), the proof was abundant that there never were any such Commissioners sent out for the purpose of examining it at all. The mines were purchased and paid for long before these ores were extracted, and that is a mere invention. But that the ores were extracted in large quantities, there is no dispute in all the testimony—not any dispute as to the quantity of the ore, I believe—but the single dispute was as to the value of it, and the witnesses are all examined upon that point.

Now, the next point is, having shown the large expenditure in purchasing and opening these mines and in the lifting of the ore and preparing for its reduction—the next point, I say, is to show the oppressive conduct of the Mexican authorities by which the company was deprived of its property and driven out of the country. I shall have to read some portion of this testimony. I refer in the first place to Exall's statement, at pages 19 and 20:

> The feeling and prejudice of the authorities, both civil and military, and by both the national and local authorities at Tayoltita and in the States of Durango and Sinaloa were very inimical to us. It was currently reported by the Mexican authorities and citizens, and we were accused of meanly going there for the purpose of purloining the silver and gold of Mexico with which to enrich the United States, and finally of stealing the States of Durango and Sinaloa from Mexico by annexation of the same to the United States; and this feeling and prejudice soon took an active, hostile form, and our lives were threatened by both the citizens and the troops of the legitimate Government of Mexico, under President Juarez, its present chief magistrate; those threats were frequetly made and we were in constant fear of our lives, and in pursuance of these threats one of the employés working for said company was actually killed while coming up from Mazatlan with a train of mules for said company, and we were finally driven off, compelled to abandon our mining operations by said authorities. The civil officers of the legitimate Government of Mexico, under President Juarez, also harrassed and annoyed us, and interfered with the continuing of the mining operations of said company. I was arrested by the order of the local magistrate or judge of Tayoltita, whose official title, as I understood, was "juez," and thrust into prison and sentenced by him to pay a fine of $50 and imprisonment for two months. I had no trial nor even an examination except by him personally, and do not know for what I was arrested or imprisoned, but I here state positively that I had not committed any act, crime, or offense against the laws or people of Mexico, or any citizen or soldier of the same, nor against any of the authorities, local or national. I was released through the personal influence of a Mr. Granger, who had to promise payment of the said sum, no good reason ever having been given me for my arrest or release. I had frequently applied to the proper military and civil authorities of Mexico, both in Sinaloa and Durango, for redress and protection against the violations stated, but it was rudely denied by both in every case and I could get neither; and these acts and the acts of violation were encouraged and connived at by said parties, if not actually instigated by them, which last I believe to be the fact also. By reason of these facts it was very difficult to keep men there at work, and the prosecution of the work was greatly hindered and delayed, and it finally became utterly impossible to continue the mining of the company; and I was compelled with my men to give up the same entirely and to abandon the mines and all the mining implements and property of the company to save our lives. I cannot state dates and names with any degree of certainty. Mexican names are hard for me to remember.

At pages 197 and 198 Mr. Exall goes more particularly and circumstantially into the matter. It was alleged that the difficulty was that

he had failed to pay the laborers and to comply with the contracts. He says:

There was no such failure to comply with our contracts with the laborers. That is a hatched-up story, a mere excuse for driving us away, which has no foundation in truth. After the company commenced the work of building the mill-house and outbuildings, and of putting up the new additions to the hacienda and reduction works, large numbers of Mexicans came there, many of them mechanics from the towns below and from various quarters, seeking work from the country, and large numbers of mechanics and miners were employed by De Lagnel and myself on said works, &c.

I will not go further into that. He shows the particulars of his imprisonment and the utter impossibility of carrying on the work on account of these persecutions.

Now, Alfred A. Green, at pages 25 and 26, says:

That company was hindered and delayed in the progress of its work; he was driven off and compelled to abandon its mines, ores, and property by the acts of the authorities of Mexico. In January, 1868, at San Dimas, I heard some Mexican citizens, in the presence of the "juez" of that place, declare that they would kill or drive away all the men of that company, and the threat was applauded by the juez. One of the men of that company was killed by some Mexican soldiers of the republic of Mexico, near El Toro, State of Sinaloa, while on his way to the company's mines, from Mazatlan, with a mule-train of supplies for the company, and the mules and supplies were taken by the soldiers. * * * There was no cause on the part of that company or its employés, that I knew or could hear of, for those acts against the company. Mr. Exall, the superintendent, was a very peaceable, quiet, and law-abiding man. * * * Immediately after said expulsion Mr. Exall left the country, as his life was not safe there, and the mines and property of the country were abandoned by the company, and up to the time when I was forced to leave San Dimas, in September, 1868, said La Abra Company had not resumed work.

The same statements were made in effect by George C. Bissel at page 39. It is hardly necessary to read the repetition of the same facts:

My name is George C. Bissel; I am forty years of age; I was born in Wallingford, New Haven County, State of Connecticut, in the United States of America; I am a miner by occupation; I am a citizen of the United States of America; my temporary residence is in the district of San Dimas, in the State of Durango, in the Republic of Mexico.

He is still there so far as I know.

Mr. Granger, at pages 42 and 46, is very minute and explicit in the description of these circumstances.

Mr. LINES. Which side is he testifying on this time, governor?

Mr. STANTON. He is testifying for the claimants.

Mr. LINES. His previous testimony, then, is when he is testifying for the defense?

Mr. STANTON. Yes; he testified for the defense afterward—for the Mexican Government.

In the month of December, 1867, or January, 1868, the superintendent, Charles H. Exall, was arrested and imprisoned by the juez consiliador of Tayoltita, Nicanor Perez, on a mere pretext, without any reasonable cause whatever. The particulars are as follows: Mr. Exall was occupied in a private room, and in private conversation, and while so engaged, said juez, or judge, Perez, entered the store at the hacienda, and without speaking or asking permission, he passed into a private store-room adjoining, and Mr. Exall observing this, stepped to the door of said store-room, and in a polite manner addressed said Perez, saying that no one was allowed to enter said store-rooms without license, and if he had any business, to please communicate the same to him. Said Perez came out of said store-room in a great rage, and asked Exall if he thought he (Perez) was a thief, or wanted to steal anything. Mr. Exall denied any such idea, and stated that in requesting him to leave the private store-room he was merely carrying out the general rules of the company.

Said Perez would listen to no explanation, and when he went out remarked that he, Exall, should hear from him. About half an hour after an order came to the hacienda for Exall to attend forthwith before the said juez, or judge, Perez, which order Mr. Exall obeyed, and upon entering said court-room said Judge Perez commenced

a tirade of the most infamous personal abuse of said Exall, without allowing explanation or justification, and sentenced Exall to pay a fine of, I think, about $50 and imprisonment for two months. Exall was confined in the hacienda until the next morning, when he was sent for by said juez, who did lock up said Exall in an old empty house with the declared intention of sending him to San Dimas to complete his sentence. Said judge remarked, at the same time, that he could not permit Exall to ride even his own mule to San Dimas; that he should treat him the same as he did any common prisoner.

When I went to visit said Exall in his prison the next morning, I found him busily engaged in killing fleas that were troubling him. It was a filthy place. By personal influence I brought to bear, and by securing the payment of the fine imposed upon him, I managed to get Exall released. All the above I witnessed myself. A few weeks after this occurrence, on a Saturday, the superintendent, Exall, received from said judge, Perez, an order directing him to attend at his juezgado (court-room), and the same evening at 7 o'clock Mr. Exall, in obedience to said order, went to the court-room, where he found assembled a large number of the employés of La Abra Company's mines and others, and in their presence the said judge proceeded to lecture said Exall upon the manner in which the business of said company should be carried on, and he threatened that if the superintendent or company did not work in a mode and manner to please the authorities, they should be deprived of their property and forced to flee the country. All of which was said in my hearing, and although I have only stated a few circumstances that came under my direct observation showing the animus of the authorities and people of this district, these are not by any means to be taken as all that took place, nor even as the most vexatious. It was the daily and almost hourly annoyances and interruptions. Every pretext that could by any means be made the basis of a suit or execution was availed of.

The rich mines and the large expenditures of the Abra Company seemed to have excited the cupidity of the authorities, and they determined to get rid of this company and to drive them out of the country. I have heard this determination expressed by the gefe politico of the district, officiating as such at the time, and also by different judges in the districts of San Dimas.

Now, this Mr. Granger is the son-in-law of Judge Soto, permanently resident in that country. He was there when he gave this deposition, and he is there still, I believe, in San Dimas. This deposition was given at Mazatlan, but he resides in the country, a permanent resident, having married there, and he was examined by the Mexican Government officials twice. There were two other depositions given for the defense. Matias Avalos, at pages 49 and 50, who is a Mexican, certifies to the same facts, and also John Cole, at pages 57 and 58. He says:

That his name is John Cole; that he is forty years of age; that he was born in the county of Northumberland, in the State of Virginia, but that he was raised in Wayne County, North Carolina, where he resided from childhood until he came to Mexico to reside; that he is now and always has been a citizen of the United States of America; that he has resided in Mexico and California since the year 1849; that he now resides on a plantation or ranch at Camacho, in the district of Mazatlan, in the State of Sinaloa, in the Republic of Mexico.

Now he testifies to the facts.

Mr. LINES. Is he a claimant before this Commission?

Mr. STANTON. Oh, yes; John Cole was a claimant. He says:

Deponent further says that such company was very unpopular with said Mexican authorities and citizens, for the reason, as was generally believed there, by Americans, that said company had commenced their mining operations on so grand a scale, and with prospects of realizing a splendid fortune so quickly, that Mexican authorities and citizens grew desperately jealous and envious of them, and their conduct in March and April, 1868, proved conclusively to deponent that said authorities never intended to permit said Abra Silver Mining Company to realize any profits from their heavy outlays and expenditures upon their said mines; for the support of this conclusion deponent says that he heard the statement of the said prefect, Macaria Olvera, of said district of San Dimas, who told deponent—he thinks it was in the month of October or November, 1868, or about that time—that said Abra Silver Mining Company had been compelled to quit their said mining operations on account of the hindrances and annoyances occasioned by the interference of said military authorities in capturing their supplies and mules on the road between Mazatlan and San Dimas as aforesaid; and also, because said prefect told deponent it was the fixed determination of himself and other Mexican authorities there never to permit said Abra Company to

carry out of the country a dollar's worth of said silver and gold; and the same official told deponent that the feeling there in San Dimas, by Mexican citizens and authorities, against said company was so bitter that he knew that they could never return and recommence operations there with safety to life or property; that they should be driven away if they attempted it.

Now, the prefect, or what is called the gefe politico, the political chief, is an officer in Mexico something like a marshal here, but with extraordinary and despotic powers, at least they assume such powers. They assume to control anything and everything within their respective districts. The same facts are proved by Gamboa, a Mexican, by Cryder, Loiza, Bouttier, De Valle, and Chavarria. I will refer for a moment to Chavarria's testimony at pages 92 and 93. He says that he is a lawyer and a resident of that place. He is an eminent lawyer, as is proved elsewhere in the course of this testimony.

In answer to the question what conversation he had with Olvera concerning the prefect, Marcos Mora, the gefe politico, as to expelling the Abra Silver Mining Company from their mines and works at Tayoltita, he says:

That he met Macrio Olvera on the road from San Dimas to Gavilanes; that they conversed together upon subjects referred to in the question, and Olvera acknowledged to him the plans and intentions existing at Tayoltita on the part of the authorities and the operatives to injure and expel the Abra Company from their mines by intrigues or such direct and indirect means as it would be impossible for them to resist, and that Olvera revealed to deponent that he was interested in that hostility and in combination with the gefe politico, whom he was going to replace, to carry out the sinister projects referred to."

In answer to the question whether Marcos Mora, the gefe politico, was visited on the second night of their stay at Tayoltita in July or August of 1867, at the house where they were stopping, by any of the employés of the Abra Company or any of the head Mexican workmen who had been in the employ of the company, and to state all that then and there took place between the said employés and the gefe, Mora, as to their continuing in the company's service, he says:

That the greatest disorder prevailed on that occasion; that the head miners by order of Marcos Mora mutinied against the Abra company and the superintendent; they refused to work any longer in the mines, which resulted in the continuance and increase of the robbery of the ores which was openly carried on in daylight in the presence of the superintendent.

In answer to the question whether at Durango or other places he had had any conversation with the said gefe politico, Marcos Mora, or his successor, Macario Olvera, since the month of March, 1868, touching the reasons why the Abra Silver Mining Company abandoned their mines and property, &c., he says—

That subsequent to the time referred to in the question, he conversed with Macario Olvera in Durango, and also with Marcos Mora on his frequent visits to him when he was in prison, and was told that the company had finally been compelled to abandon their mines at Tayoltita through the loss of their property owing to the concerted hostility against it in March of 1868.

These facts are also amply admitted by Mora himself in on page 102:

Lawyer Chavarria informed him that the Abra mining company, at the time referred to in the question, employed him and Mr. Rice, the former as lawyer and the latter as attorney in fact of the company, to make a complaint to the governor general, Francisco Oatez de Sarate, of the damages and persecution which the company were experiencing at San Dimas, and asking him for protection; that at the time the governor sent for deponent, and questioned him in regard to the conduct of the company; that deponent informed him that it consisted of Americans, and like all other foreigners, was working for the ruin of Mexico; he refused it the protection which it prayed for.

Mr. LINES. Pardon me, you say that he admitted it. On which side was he testifying?

Mr. STANTON. This is the testimony for the claimant.

Mr. WILLIAMS. He was brought in by the Mexican police. He refused to come and the police brought him in to testify. He showed his hostility all the way through.

Mr. LINES. It was not very hostile on the part of the police.

Mr. STANTON. On page 45 Mr. Granger proves the authenticity of the celebrated orders which figure in this case.

SECOND COURT-CONCILIADOR, TAYOLTITA.

To the superintendent of the Abra reducing works:

By the communication of yesterday, dated the third, received from the Gefe Politico of San Dimas, I notify you that if you do not intend to work the Abra mines as they were formerly worked, upon the system of "thirds," that you immediately vacate the mines to allow the operatives to work them on their own account without further loss of time.

Liberty and reform.

GUADALUPE SOTO.

TAYOLTITA, *July* 4, 1867.

SECOND COURT-CONCILIADOR, TAYOLTITA.

To the superintendent of the Abra reducing works:

The court notices with the greatest displeasure that twenty-four hours have elapsed since it addressed you a communication to which you have made no reply. You are ordered to arrange your work with the operatives within two hours; if you come to no arrangement you will vacate the mines so that they may lose no more time.

Liberty and reform.

GUADALUPE SOTO.

TAYOLTITA, *July* 24, 1867.

Mr. LINES. What is the date of the other letter?

Mr. STANTON. The first was dated July 4; this is dated July 24. The original papers themselves are in the record. This is but a printed copy. If there is any mistake in the dates it does not seem to me to be of any importance. By reference to the original documents themselves that can be corrected. Then comes one from Marcos Mora, the gefe politico. He is the political chief or prefect.

GEFETURA POLITICO OF SAN DIMAS.

To the representatives of the mines, Tayoltita:

The Gefetura, being informed that you have stopped the mines in that mineral, informs you that this is not the engagement you have entered into with me, and that it hence believes that you place no value upon your word. Nevertheless, if you do not choose to continue your work, give the people permission to collect ores in the mines, as I will not hold myself responsible for the consequences in a town where the people are without work.

Independence and reform.

M. MORA.

SAN DIMAS, *July* 10, 1867.

And then another:

GEFETURA POLITICO OF THE PARTIDO OF SAN DIMAS.

To Judge Guadalupe Soto, sole conciliador at Tayoltita:

From your communication this Gefetura has learned with great displeasure the abuses committed by these Americans who had first agreed to pay their operatives in money and then to pay them half and half, and thirdly to pay them one-third.

Notify them through your court and by my order to at least comply with the last contract; that is, to pay them one-third in money, otherwise that they vacate the mines and allow the operatives to work them as they can, since neither the mining ordinances permit them to pay in goods only, nor will the Government consent to such abuses, and it is already tired out with the thousand complaints upon this subject.

You will show this communication to the American in charge in that mineral.

Independence and reform.

M. MORA.

SAN DIMAS, *June* 3, 1867.

Now, at page 161, this officer, Guadalupe Soto, the judge who gave these orders, testifying for his own Government, admits the validity of these documents of his. They are presented in the testimony on the part of the defense at page 155—these same documents, or those signed by Guadalupe Soto, and one from M. Mora.

In answer to the question—

When you were judge in Tayoltita, in 1867, did you direct and issue communications dated respectively the 5th and 4th of July, copies of which have been shown to you, and which appear on page 6 of these proceeding?—

he replied—

That he is certain of having issued such communications to the administrator of the Abra establishment, and that he did so because there had been a rising of the people to compel him to.

There is Mexico herself proving that this judge issued these orders arbitrarily and oppressively, because there was a rising of the people which compelled him to do so.

Then, Mr. Secretary, the fourth and last point upon which this case rests was that the protection which had been promised by the Government in public proclamations and otherwise, was demanded of the authorities and refused by them. This is proved by Exall at pages 19, 204, 205, and 206; by Devalle at page 188; by Chavarria, who is the Mexican lawyer, at pages 94 and 96; by Mora, at page 102; and by Bartholow, at page 223. I shall not take up any further time in reading those depositions. My only object is to show the Secretary upon what this case was founded, and upon what sort of testimony the umpire founded his decision. Now every one of these points were contested and testimony to upset the facts was produced by Mexico. She introduced some eight or ten or more witnesses. We introduced on our side some twenty-five, and Mexico introduced some twenty-three. Every point was contested except as to the amount of money expended in the mines, and as to the amount of ore that had been lifted from the mines and prepared for beneficiation. Then there is some testimony in regard to the manner of taking the testimony. I see in the paper which the opposite side have produced, testimony which they have presented in this case, but which we insist cannot be considered at all properly. They attempt to establish the fact that some of this testimony was improperly taken or irregularly, and, perhaps, corruptly taken. Now, I refer on this point to the testimony of Governor Galan at pages 252 and 253.

I was born in Spain; I am forty-three years of age; I reside at the southeast corner of Stockton and Francisco streets, in this city (San Francisco), with my family, consisting of my wife and eight children; I am an attorney and counsellor at law, and my office is room No. 12, Montgomery Block, San Francisco. * * * I have been chief justice of the Territory of Lower California and a member of its congress or assembly, its governor, or political chief, judge of the first instance and other offices from 1863 to 1868.

He then goes on to state of the testimony of these witnesses, Gamboa and Loaiza—two of the Gamboas, I believe. He says:

At the time that they made the depositions in favor of this claimant and others before the American consul at Mazatlan, I went, at the request of these three witnesses, before the said United States consul, and I wrote down the testimony of all three of them in this case of James Tobin and of Daniel Green, and also the testimony of Juan Francisco Gamboa and José Maria Loaiza in the case of La Abra Silver Mining Company *vs.* Mexico, I think, about the same time, and the depositions of these witnesses were corrected by the consul in a number of places and copied by me and read over by the witnesses and approved before signing by them; and we did not finish them until late at night, long after midnight on the last day they were there; and I well recollect, in this connection, the impatience and annoyance exhibited by the consul, Mr. Isaac Sisson, on that occasion because these witnesses refused to return there the next day to complete their depositions, but they insisted on going on, &c.

It seems that these witnesses were called for Mexico after they had been examined on the part of the claimants, and denied what they had said in their depositions for the claimants; and this is the occasion for taking this testimony of Governor Galan. He says:

The attorney for claimants, Mr. Adams, was present only a part of the time during the writing down of said depositions before the United States consul. But said attorney did not interfere with any of said witnesses nor with the proceedings or the taking of their depositions in any way. The fact is the said witnesses made their statements before Consul Sisson in these cases with such candor and detail of circumstances as to carry conviction to my mind that they were speaking the truth, and I still believe they told the truth in those depositions; and when they came to my office the day after they had testified in support of this claim and the two other claims mentioned, Trinidad Gamboa told me of his unhappy interview with Governor Rubi, and the governor's threats of confiscation and other punishments if he and his brother did not testify on the side of Mexico ignoring their depositions on behalf of claimants, and requested me to send for Mr. Adams, the claimants' attorney. I sent for the said attorney as requested and he came to my office, and there he met both Trinidad and Juan Francisco Gamboa in my presence, when Mr. Adams told said witnesses in my hearing that if there was one untrue statement or word contained in those depositions he did not wish to keep them and would not permit them to be filed in Washington, on any account. One of the brothers Gamboa, I do not remember whether it was Juan Francisco or Trinidad, remarked at that point that the attorney for claimants had given them barely enough to pay their ordinary expenses from Cabazan to Mazatlan and back home, and if they should have the trouble with Governor Rubi which they then anticipated, he, Gamboa, thought it no more than fair and right that said attorney for claimants should see that they were indemnified in some way for their loss of time and for any trouble that might come to them. This was at once regarded and resented by Mr. Adams as an effort on the part of witnesses to place him, the attorney, in a false position, and he frankly told them so, declaring at the same time that he had paid their ordinary expenses to and from Mazatlan and the lawful fees of witnesses, and that if money was what they meant by indemnity he would not give them another dollar.

Now, I allude to this for the purpose of showing that this question of the validity of these depositions was brought directly before the Commission and the umpire. All this testimony was considered, and any further testimony of the same sort and to the same effect would certainly be out of all relation to the case in its present condition.

Now, we say in the brief to which I have referred:

We do not presume to enter upon any discussion of the facts further than to show that there was a case within the jurisdiction of the court, with testimony sufficient to support the award so that the Commissioners and umpire cannot be charged with any fraud or wrong, even though they may have erred in judgment. We deny the authority of Congress to cause that question to be reviewed or in any manner opened or disturbed, and if this proposition should be questioned, we respectfully ask an opportunity to present authorities and to be heard on that question before any measures shall be taken towards the opening and revision of the award in this case.

Now, that is the ground which we took then and upon which we stand now; that this award is fair and impartial upon the facts as they were presented to the Commission; that all the facts might have been

presented; that Mexico had perfectly fair opportunity from 1868, when this treaty was formed, down to 1876, when the last proceedings took place. I say that Mexico had every opportunity that a contestant could possibly have, and did actually contest every point which she now brings forward testimony to contest over again. I shall not repeat any of the authorities which were cited by Judge Shellabarger last Saturday. It would be unnecessary to do so. I shall not refer even to the additional authorities he has cited in his proof. But I will call your attention, Mr. Secretary, to one authority which seems to me to be perfectly pertinent and applicable to this case, and that is, the proceedings of the late Electoral Commission; of course, I do not refer to that for any political purpose, with a view of impressing any political opinion, but for the purpose of showing that the acts and certificates of officers of tribunals acting either judicially, *quasi* judicially, or even ministerially, in such cases are not to be affected or inquired into, even upon a charge of the grossest possible frauds. I refer to a principle stated by yourself upon the argument before that Commission, not with a view of anything like an *argumentum ad hominem*, for that would be out of place, but for the purpose of showing that you then recognized, and the Commission itself probably recognized, the very principle upon we which insist now. Speaking of the charge of fraud, at page 393 you say:

> I apprehend that nothing is sounder and safer than this, that we are to redress, these mischiefs by law and the Constitution, although fraud may *make* us recoil from its touch, and although violence may make us shudder at this degradation of the American name. I have heard that fraud vitiates everything, and it is spoken of here as if it did it of its own force; that every *factum* in which an ingredient of fraud entered, thereby became *infectum*, and so the *bane* always bred its antidote. Fraud would not be so dangerous an element if that were so. I have heard that the liberties of the people are to *be* paramount in every particular juncture, and that laws, and constitutions, and courts and the permanence of the system of justice, and the truth that will endure are all to be thrown aside upon the mere intrusion of this afflictive element of fraud, and this course alone will secure their liberties to the United States and their people. We have a maxim of the law, and of social ethics and philosophy, that goes behind all this: *Misera est servitus ubi jus vagum ant incertum.* There is no condition of a people so abject as where the law does not rest upon firm foundation, and its lines are not certainly drawn.

Equivalent to what is quoted in the Throckmorton case *interest reipublici*, and these lines are certainly drawn as a principle which was unquestionably sound. That that is applicable to this case there can be as little question as that it was applicable there. Now I turn over to page 422, to the decision of the Commission itself:

> And the Commission has by a majority of votes decided, and it does hereby decide, that it is not competent, under the Constitution and the law as it existed at the date of the passage of said act, to go into evidence *aliunde* the papers opened by the President of the Senate of the two Houses to prove that other persons than those regularly certified to by the governor of the State of Louisiana, on and according to the determination and declaration of their appointment by the returning officers for elections in the said State prior to the time required for the performance of their duties had been appointed electors or by counter-proof to show that they had not, or that the determination of said returning officers was not in accordance with the truth and the fact, the Commission by a majority of votes being of opinion that it is not within the jurisdiction of the two Houses of Congress assembled to count the votes for President and Vice-President to enter upon a trial of such questions.

Now, that is a denial of the constitutional authority of Congress to enter upon those questions. There is equally a constitutional obstacle to the trial of this question here. Will you, Mr. Secretary, eminent as you are in the legal profession, admit for a moment, that the Congress of the United States has any right whatever to review a judgment of a court, or the award of a joint international tribunal like this? Con-

gress has power to pass laws upon such subjects as the Constitution places within its jurisdiction, within its constitutional power. Although it may conflict with a treaty, being passed subsequently, the subsequent law of Congress prevails. But nowhere has Congress any authority over these joint tribunals or over their awards; nor has it any power to direct you, nor have you any authority, in your position of Secretary of State of this Government, to review the proceedings of that tribunal, or to interfere with its awards to any extent. The analogy between these cases seems to me to be perfect. If there was want of constitutional power to go behind the returns, and if the highest and most sacred interests of this Government and this people depended upon that question—if the whole Administration rests upon it—it is not of higher authority, of more importance, than in its application to a case of a more solemn character, when the award of an international tribunal is in question. There would certainly be more plausibility in maintaining that the Congress of the United States had a right to inquire into the validity of the proceedings of a returning board, or of an officer who acts upon the returns and gives a certificate of election—much more plausible to maintain that Congress had authority to go behind those acts, than to maintain that Congress has any authority to go behind an award of this kind and to interfere with it at all. The two cases are precisely analogous, and to-day the executive Government of this country rests upon the validity of that principle, and I hardly think that that Government ought to be willing to overthrow it in an analogous case when the rights of individuals are concerned. I think, Mr. Secretary, then it would be more consistent with our position to say that you cannot, under any circumstances, go behind this award. It was fairly made; not upon a fictitious case, not upon a case like that of Gardner, but it was one of which the court had jurisdiction and which it has decided fairly upon the testimony which was before it, even if that testimony was forged or perjured, and we think it better to stand upon that ground than to file any testimony or present any other consideration whatever.

Mr. BARTLEY. Mr. Secretary, I propose to submit remarks only upon a few points and not to repeat what has been said by counsel on our side before me. The fifth section of the act of June 18, 1878, recited the fact that the Government of Mexico had called the attention of our Government to this award with another one, and had preferred charges of fraud against this award. [At this point the Secretary left the room for a few moments. After his return:] The act of Congress to which I was just referring when the interruption took place requires, on this complaint of fraud preferred by the Mexican Government as to this case, that the President of the United States should investigate and inquire whether the honor of the United States, the principles of public law, or considerations of justice and equity, require that this case should be opened and retried; and that brings up the whole subject of inquiry in this discussion so far as public law is applicable to this case in reference to an opening of the case and a retrial. The counsel who opened this case on our side has reviewed the authorities and presented the law so fully and so clearly that any discussion from me upon that point would be wholly superfluous. It appears from the authorities which were referred to by Mr. Shellabarger, and which are extended somewhat in his written brief, which I believe has been submitted to you, but which you have probably not had time as yet to read, besides showing that such an award or judgment is final and conclusive, and not subject to be opened and reviewed, they also establish the point clearly and conclusively that the

claimant here has a vested right of property in the award. The claim itself against Mexico was a matter of private property before it was investigated before this Commission, and the award is placed in a better and more clear form—the claim is—than it existed in before the investigation before the Commission. It is as clearly a vested right of property as can exist in any chose in action. The very object of the Commission was to settle private claims on the part of citizens of Mexico and on the part of citizens of the United States. The treaty in the preamble of it recites:

> That, whereas the convention between the United States of America and the Republic of Mexico providing for the adjustment of the claims of citizens of either country against the other, was concluded and signed, &c.

The whole purpose and object of this treaty was to settle private claims, the claims of private citizens. The treaty provided for organizing a tribunal for that purpose.

The Commission was a court—an international court to settle private claims. It was not a court to settle claims in favor of the United States. The Government of the United States did not prefer a claim against Mexico. The Government of the United States, in the performance of its duty to American citizens, co-operated in providing a tribunal for the adjustment and settlement of the claims of its citizens. The claim was prosecuted by the claimant at his own expense. It is true, in filing the petition, he did it through the authorities of the United States; but the memorial of the claimant was filed in his own name, prosecuted himself by his own counsel, employed by himself at his own expense, and a very large expense incurred in the prosecution of the case. As is suggested by counsel, the taking of the testimony—the procuring of it—which was a great labor, had to be all performed by the claimant himself. He had to send some two or three thousand miles, at great expense and trouble, in procuring it, and, when printed, it was filed in the Commission by being transmitted through the State Department to the Commission, and filed there in the name of the company. The award that is rendered is in terms a personal award in favor of a corporation. Corporations and private persons, in the terms of this treaty, are allowed to file claims. "All claims on the part of corporations, companies, or private individuals, citizens of the United States." And so citizens and companies in Mexico were authorized to file their claims. They were transmitted as private claims. The recovery was not the property of the United States, but the property of the claimants. On this subject, take the treaty itself from its preamble through, and it provides for nothing but the settlement of private claims, the claims of private parties, and when adjusted by the award there was a vested right. This point, I think, cannot be controverted. This authority upon this subject was necessary. I refer to the case of Gibbs against New Grenada, very recently brought to the attention of the Government, and upon which Judge Hoar, as the Attorney-General of the United States, after an elaborate investigation, rendered an opinion, which is to be found in the 13th volume of the Attorney-General's Opinions. I designed to bring in that volume with me, but I find, on examination, that Mr. Shellabarger, in his printed brief, which I have read within the last few hours, has brought this to your attention, and commented upon it fully, and takes from it an extract which establishes the principle to which I allude, and that is this: That, under an award rendered by an international commission in favor of a party, the party has a vested right, a vested interest, which the Government cannot disturb and will not disturb.

In this case of Gibbs there was a Commission, an international Commission, which rendered an award in favor of Gibbs, which was held, I believe, in New Granada or in Colombia. The counsel for the Government of New Granada protested against the award at the time it was rendered, but it was rendered and made final. Subsequently, under a new treaty, a second Commission was held between the United States and New Granada for the settlement of claims, and, among other claims, this claim was brought in and placed upon the docket for a review before the Commission. The claimant declined to submit his case, abiding by the award rendered by the first Commission, claiming that that was a finality. The new Commission dismissed his case for not being prosecuted, and the question came up whether that award rendered by the first Commission was conclusive, and whether the claimant had a vested right of property in the award, and a very able opinion of Judge Hoar, as Attorney-General, is rendered here which is perfectly conclusive upon that subject. I do not think it necessary to discuss that question further. There cannot be any doubt about it.

Mr. LINES. Allow me to ask you one question. Was the award paid?

Mr. WILSON. I can answer that question. It was.

Mr. CRESWELL. We are informed by the officers of the Treasury Department that it was not.

Mr. WILSON. My understanding is that it has been paid.

Mr. LINES. Did the United States ever get the money from New Granada in satisfaction of that award?

Mr. WILSON. I do not know as to that.

Mr. BARTLEY. When a judgment is rendered by a competent tribunal in favor of the claim of a party, there is an established vested right which our Government recognizes.

The SECRETARY. How did this Gibbs case get before the Commission at all?

Mr. BARTLEY. It was brought before them by the order of the authorities in New Granada.

Mr. SHELLABARGER. It was by the order of the Attorney-General of the United States, Mr. Speed.

Mr. BARTLEY. Charges were made against the injustice of that award, but the award was maintained as giving a vested right to the property which the Government itself could not interfere with. One of the fundamental principles of government itself is to protect the right of private property. Life, liberty, and property are the fundamental objects of the Government itself. A vested right of private property when settled by a final judgment or decree is a matter which we claim is held sacred, and which our Government will maintain. The authorities which have been referred to in regard to the conclusiveness of this judgment or award would, perhaps, require nothing further to enforce them, but I refer to the terms of this treaty as going beyond the terms of ordinary treaties and making this a finality. Besides the fact that the treaty provides that the judgment of the Commission shall be regarded as absolutely final and conclusive upon each claim, the treaty goes further than that and contains provisions which are not in all treaties, and I call your attention particularly to the terms of this treaty:

> The President of the United States of America and the President of the Mexican Republic hereby solemnly and sincerely engage to consider the decision of the Commissioners conjointly, or of the umpire, as the case may be, as absolutely final and conclusive upon each claim decided upon by them or him respectively, and to give full effect to such decision without any objection, evasion, or delay whatever.

The President of each Government solemnly pledged himself to regard the decisions of this Commission not only as absolutely conclusive,

but there is a pledge that no objection, evasion, or delay whatever shall be allowed by either party. The United States has preserved its faith on that subject. I inquire whether the President of the Mexican Republic has preserved the faith of the Mexican Government on that point. I say they have not. It is only a few months ago, you know—it is a matter of public notoriety here—that the Mexican Government was represented by General Slaughter and others, as lobbyists, preferring charges against this claim, asking Congress to interfere and prevent its payment—preferring charges of fraud. I inquire, and I submit to the learned counsel on the other side how he will answer that. Will he deny that General Slaughter had a contract for a large contingent fee to be paid out of this money, if it could be saved to the Mexican Government? There were other counsel there, preferring charges against this claim, that were not acting under authority and contract with the Mexican Government.

Mr. CRESWELL. I simply ask you whether you propose to discuss the question of contingent fees in this case.

Mr. BARTLEY. I do not care whether that is discussed or not, sir. I say that it is material for me to inquire whether the Government of Mexico has raised objections and interfered with the payment of this decree in violation of the terms of the treaty. The gentleman will not, perhaps, claim that General Slaughter was not to be paid a certain fee. That General Slaughter was there, and representing the Mexican Government, and insisting upon Congress providing against the payment of this award, cannot be controverted. How many more he had associated with him I do not know. But there were others, and he did it, as he said himself publicly, under a contract with the Mexican Government; it was a matter of public history—public notoriety. I inquire, then, whether the Mexican Government has made objections, evasions—attempted to evade or delay the payment of this award. The objection was made; charges of fraud were preferred by the Mexican Government against the payment of this claim. That was an objection, an objection made publicly. Is that in conformity with the terms of this award, that the Government of Mexico should send here its agents, and undertake, through its agents and officers, to prevent the payment of the award? Charges of fraud are made after the award had become final and conclusive, and after, by the terms of the decree, they were not allowed to make objection. Why, this treaty goes further than this, Mr. Secretary. This treaty contained another provision which grieved a client of mine who had a claim of some $200,000 for coal seized at Vera Cruz by the authorities of Mexico. That belonged to General Stevens, who died suddenly afterwards, and his family, living in retirement and obscurity in Louisiana, knew nothing about the claim until the time had expired within which to file it under this treaty. But what is the effect of the treaty upon that claim? This man was a citizen of the United States. He had a claim, but, by means of his death, his family, not understanding the proceedings of this Commission, were prevented from preferring their claim until it became too late. The treaty provides in Article 5:

> The high contracting parties agree to consider the result of the proceedings of this Commission as a full, perfect, and final settlement of every claim upon either Government arising out of any transaction of a date prior to the exchange of the ratification of the present convention, and further engage that every such claim, whether or not the same may have been presented to the notice of or made, preferred, or laid before said Commission, shall, from and after the conclusion of the proceedings of the said Commission, be considered and treated as finally settled, barred, and thenceforth inadmissible.

The claims that did not come before that Commission from accident, from circumstances rendering it impossible for them to come within the

time, were by the terms of this treaty declared absolutely barred forever. Mexico had taken General Stevens's coal from him, worth $200,000, and paid him not a cent for it—taken it by force. And yet, because it was not brought in in time, it is, by the terms of this treaty, barred forever, and the treaty provides, by the solemn agreement of these parties, that the Commission is to be a full, perfect, and final settlement of their claims upon either Government, whether it was brought before the Commission or not.

The Government of Mexico, in its artful management, has had the advantage of the United States in the whole thing from the beginning to the end in this Commission. They employed one of the most able and experienced lawyers of this country to defend them—General Cushing—familiar with all of our laws and usages and practices, and it appears, sir, here that of the claims that were preferred by citizens, amounting to $470,126,000, only $4,125,000 were allowed. Out of 873 claims only 144 were allowed. Some of the most grievous wrongs that were done to the citizens of the United States were done by the tortious repudiation of contracts, whereby the Mexican authorities obtained large amounts of property from citizens of the United States. General Cushing, I believe, assisted in drawing, if he did not draw, the treaty itself in terms, and that, too, I believe, after he was employed as counsel for the Mexican Government.

The SECRETARY. That inquiry does not seem pertinent to this case. The treaty was made.

Mr. BARTLEY. I do not wish to be understood as making any charges against General Cushing. He is dead. I drop that question. But the question is now whether ground is presented here to open up this award, under the law as settled in this country. Touching things of that kind, all the ground submitted here—the whole ground cited here by counsel in the opening arguments on the other side—consists in impeaching testimony contradicting our witnesses; impeaching our witnesses and cumulative evidence. There is no evidence offered, if I am correct in my understanding of it, but that which is simply impeaching or contradicting our witnesses or cumulative on the points on which they give evidence before the Commission.

Now, even before our tribunals, when a motion is made for a new trial, and the case is opened, the court is in existence, and the case is pending, what do our courts say on the subject of testimony for a new trial? I read from Hurd on New Trials, page 376. The remarks of judges are often very strong against the policy of interfering with verdicts upon this ground. Thus it is said:

> Motions of this kind are to be received with great caution, because there are few cases in which something new may not be hunted up, and because it tends very much to the introduction of perjury to admit new evidence after the party who has lost the verdict has had an opportunity of discovering the points both of his adversary's strength and of his own weakness. So, in any case, it is eminently better that a single person should suffer mischief than that every man should have it in his power, by keeping back a part of his evidence and swearing that it had been mislaid, to destroy verdicts and induce new trials at their pleasure.

There are other portions of this work still further strengthening this idea. In regard to our ordinary courts of justice, with reference to newly discovered evidence, it says this; page 380:

> Newly discovered evidence, merely cumulative, is not ground for a new trial. It must appear affirmatively that the evidence is not cumulative. It is said that, if the rule were otherwise, not one verdict in ten would stand. Some corroborating evidence may always be found or made, and the trial by jury would become the most precarious of all trials.

Now, this is in regard to a court still existing, and a case still pending. Much stronger does the reasoning given there apply to a case of this kind. Here the court is out of existence, and here, by the terms of the treaty upon which the court was organized, this was to be considered conclusive by both parties, and they solemnly so bound themselves. The other side were bound not to ask for delay; bound not to evade; bound not to object by the terms of the treaty, and solemnly pledged themselves to it. Yet, what did they do? After they procured this fifth section in this act of Congress for the distribution of these awards, they asked six months, I understand—if I am not correct I would be glad to be corrected—six months of delay. For what? To enable them to send to Mexico and hunt up testimony.

Mr. LINES. Allow me to correct you. It is not so. They were not allowed six months to send to Mexico and hunt up testimony.

Mr. BARTLEY. If that is incorrect, I stand corrected. But they asked *time* to do this. They were allowed time to do it when the treaty bound them not to ask for delay, and they sent agents to Mexico who did it. Was it not done by the Mexican Government—the learned counsel on the other side intending no disrespect to them? Will they deny that they are here now on the part of the Mexican Government and employed by the Mexican Government? For what? To object to the payment of this award.

Mr. LINES. Not at all sir.

Mr. BARTLEY. Then I do not understand you. I understand that they stand here and ask in terms that this award be opened and a new trial be granted. If I am incorrect about that the gentleman will correct me. But I inquire if that is not objecting to the payment of this decree? Now it is very fine for the Mexican minister to appear and say to the Government of the United States through its authorities: "Oh, I do not pretend but what this award is binding; I acknowledge this award is final and binding on us; I do not object to that, but I simply call your attention to the fact that here is a fraud. Please delay and ascertain whether the honor of the United States will allow the payment of it." Is that objecting? Is that evading? Is that performing the terms of the treaty which the Government of Mexico was solemnly pledged not to object, not to evade, not to delay? And yet here the whole of those things are in fact; the whole of that provision of the treaty is violated by these proceeding on the part of the Mexican Government. Now, I think that, if that is to be sustained, we ought to be at liberty; if the Mexican Government is to be freed from the terms of this treaty, why should not the citizens of the United States be freed from its terms? I think that my client, the administrator of General Stevens's estate, ought to be allowed to come in and assert his claim against the Mexican Government. If that is binding upon the Mexican Government, so all these other claims, never heard and never before the Commission, are to be considered finally closed and concluded by this treaty which the Government of Mexico is now undertaking to avoid as to this particular award. I place myself upon the grounds of the terms of the treaty, and I say they cannot, indirectly, if not directly, ask that this matter should be delayed, evaded, or make any objection to it. And already they have violated the terms of the treaty by doing it, and coming in and saying, "Here I acknowledge we are bound by the treaty; I acknowledge we are bound by this award; but there is fraud in it."

There may be fraud in a great many of these awards. Some fifteen or twenty citizens of the United States, whose claims were defeated

before this Commission, sent in their memorial before Congress to be heard, claiming that the award against them was rendered upon testimony that was perjured and procured by fraud. They were discarded; they were not heard; but the Government of Mexico comes in, in violation of the terms of this treaty, and prefers charges of fraud—according to the preamble in this fifth section of the law, prefers charges against this award, which is an objection, of course, and which is in violation of the terms of the treaty. Why, if we would undertake to engage—take six months, and I believe they have had nine or ten months—if we were to take six months and send into Mexico, backed by money and property, we could procure testimony there to an unlimited extent on the subject of this matter of investigation before the Commission. Here all they show is a conflict of testimony, cumulative evidence, and attempting to contradict witnesses, and to impeach witnesses, and upon that ground they ask an opening up of the decree and a rehearing. Why, I understand the law to be well settled, that, after a final judgment, no ground can be alleged for reviewing the judgment, unless it charges corruption in the court—fraud in the court and in the recent cases decided by the Supreme Court of the United States (the Throgmorton case) of bribery of counsel on the other side, or where the court has absolutely exceeded its powers and made decisions *coram non judice*—made a decision entirely outside of the authority granted to it. Only in this case can review be had according to the law of this country. But they do not go into that. They do not charge that there was fraud on the part of the court. They do not charge that the counsel of Mexico was corrupted and bribed. They do not charge that this Commission exceeded the limits of its powers and rendered a decree upon points which were not within the scope of its authority——

Mr. LINES (interposing). Yes; we do charge that, judge.

Mr. BARTLEY (continuing)—but right within the grounds that were adjudicated, upon which they took their evidence, and which they submitted to the court, they ask to submit further testimony—impeaching testimony, cumulative testimony. Why, how long did they have? Were they forced to a speedy trial? This case commenced in 1869, I believe. A commission was organized in the year 1869, and not until 1876—between six and seven years—they had to prepare themselves and to prepare their testimony to be submitted to the court on this subject, all the time that could have been conceded to them, I believe. Six times our Government consented to prolonging the Commission, and they had, in all, between six and seven years in which to procure their evidence, and now, when a final award is rendered, what do we hear? The gentleman comes in and says it is all rendered upon perjury; it is all a matter of fraud upon the witnesses.

The SECRETARY. When are the claims professed to be put in in this case?

Mr. BARTLEY. Within a reasonable time after the filing of the Commission.

Mr. LINES. I can answer that question from their book. Their last depositions are dated in 1874.

The SECRETARY. That is the rebutting testimony.

Mr. BARTLEY. The first depositions were filed in 1871 or 1872.

Mr. STANTON. In 1870.

Mr. BARTLEY. There was a long time in which all these papers were submitted to them. When they drove off this company the judge there took possession of the hacienda, moved into it, and the books and papers of this company were in this hacienda, and there is where they found

them, and they have had possession of the books and papers ever since, unless they got them through bribery; but they have had them in their possession ever since. They took possession of the hacienda, the judge moved into it, and took possession of all these books and papers, and they have had them ever since, and yet, why have they not produced them before?

Mr. LINES. That is not in the record.

Mr. BARTLEY. The record shows that they took possession of the hacienda. I refer to the depositions of Mr. Granger and Mr. Adams; and the judge was living in it, and there the papers were left. They got possession of those papers, and they had possession of the papers, and they had five or six or four or five years in which to have used this evidence, if they had cared to use any kind of diligence. They had all the advantages over us. All the testimony was in Mexico. We had difficulty in sending agents there. They could scarcely go there with safety to their lives. The judge refused to take testimony there, and they had to take their witnesses 100 miles——

Mr. LINES (interposing). May I correct you as to the record?

Mr. BARTLEY. Yes, sir.

Mr. LINES. The record shows that the mines were denounced by Granger some years after they had been alleged to have been deserted by the company. The hacienda was occupied by Soto under an agreement produced in evidence, acknowledged in Exall's testimony, dated some time before the abandonment. Granger himself swore in his testimony that the hacienda had been sacked of books and papers. The umpire, however, said that——

Mr. WILLIAMS (interposing). You do not admit that the Mexicans sacked this hacienda?

Mr. LINES. Certainly not, because Granger was in possession of the hacienda.

Mr. BARTLEY. I do not propose to go into the particulars of the testimony now. It is a very large volume and I do not propose to take time to do that. I refer to the deposition of the witness, Granger——

The SECRETARY (interposing). The principal thing is that there was plenty of time to try this case on either side.

Mr. BARTLEY. Yes; upon either side. My learned friend upon the other side is a little hasty in the use of language here, and I recite this statement of the argumentative part of his statement of the case. He refers to the testimony; he gives a synopsis of it, and concludes in the statement of the testimony in this language:

> Finally, that some of the testimony offered * * * was forged by Adams, and that so much of it as was not forged by himself or others * * * is rank and unblushing perjury.

Now, I inquire of these gentlemen why were not the laws of the country enforced against these men? This is a grave charge against men. He says that men are moving at large here in Washington against whom he makes this charge. Who are they?

Mr. LINES. Do you wish to be answered?

Mr. BARTLEY. You will have time to answer; you have a reply. Who are these men? I would not suppose that our friends upon the other side would make charges of that kind without naming the persons. I ask them to name the men. I ask them to put their finger upon a fact against General Adams that they can prove to sustain these charges. I pronounce this charge unfounded and false, and I demand them to show where there is any ground for such a charge. General Adams is a re-

sponsible man. He is moving upon the streets of Washington where he has a right to be. If he has violated any law, if he has violated any criminal law I demand that they shall enforce it. Why, Mr. Secretary, our Government will not connive at fraud or criminality. If these gentlemen, instead of seeking this money, instead of sending hired lobbyists to lobby before Congress in this claim, had asked Congress to repeal the statute of limitations upon the ground that they had not knowledge of the crime until it was too late, Congress would have unanimously repealed the limitation upon criminal prosecutions. But General Barthelow was examined in Missouri. There is no limitation, as I understand, upon criminal prosecutions under the laws of Missouri. They could have prosecuted him there. The testimony of several of the other witnesses was taken in Missouri. Where is there any ground for these charges? Now, these charges are not trifling matters. They are not matters to be brought up and charged here in a grave manner to influence the decision of the tribunal on the subject of this award. For these charges we hold the Mexican Government responsible. It is done by the Mexican Government through their agent and counsel here.

Now, I say that this charge here is groundless. I dare them to commence a criminal prosecution. They have referred to the Gardner case. Why, Mr. Secretary, the Gardner case furnishes no analogy to this case n the world. That was not an award under an international commission, when the treaty made it a finality, at all. The Gardner award was made by Commissioners appointed by the the United States alone. It was a Commission appointed to settle a claim which the United States had assumed. And there there is no decision that makes it a precedent in this case at all. [A book handed to the speaker.] I refer to the proof. The proof shows that the judges or Soto moved in, and took possession of the property of this company, and the books and papers were there, or had been there, and he undoubtedly took possession of them. He took them when the Mexican authorities had possession of these papers when this case was first brought.

But now they made these charges of fraud before the statute of limitations expired. They made them before the Commission, and why did they not commence their prosecutions? The only way to prevent improper testimony before these international commissions is to enforce the criminal laws of the land. The United States, in the case of Gardner, indicted him for perjury, and he was found guilty by the jury, but there was no judgment passed upon him because he committed suicide. But there was no adjudication in that case at all. That furnishes no precedent in this case, and I may here refer also to the other cases which have been referred to by counsel who opened this case—the case of the Florida treaty—the award made by the Commissioners under the Florida treaty. It was simply a question of interest raised there. The United States does not pay interest. The Commissioners had made a mistake in allowing interest. It does not furnish any authority at all. So in the case of the citizens who had claims against France, which were released, it is said, by the United States for political concessions. That furnished no analogy to this case at all. If the United States acted inconsiderately and improperly in not paying these citizens who had claims against France, it has no bearing upon this case. Also to the distribution of the Geneva award. That matter is not settled yet.

In conclusion, allow me to say this: If, upon this mere cumulative evidence, this mere attempt to contradict our witnesses, and impeach our witnesses, the award of an international commission is to be set aside, rendered under a treaty which not only declares it final and con-

clusive, but which declares, in terms, that each Government solemnly pledges itself to maintain, and neither to object to, nor to evade, nor to delay the payment of; if that is to be delayed and set aside, if the terms of this treaty are to be disregarded, if this matter is to be delayed upon cumulative evidence, evidence that would not be countenanced for one hour in an ordinary court of justice for a new trial; if this is to take place here, why, permit me to say that international commissions, or arbitrations, to settle affairs between countries are a farce, and the quicker they are discarded the better. It at once strikes down the authority and the propriety and the wisdom of international arbitration. If the terms of a treaty are to be disregarded; if the solemn pledges of the two Governments are to be disregarded, and claims before the Commission to be barred by the finality of those decisions, and yet one of the governments permitted to come in, indirectly, and artfully, and evasively send their lobbyists to Congress and interfere with the award, this thing of arbitration is a farce, and the quicker it is discarded the better.

If the peace of the two countries; if public confidence in the citizens of both republics—which is worth more than ten thousand times as much money as is involved in this award—if that is to be regarded, why, this attempt to delay and to evade and to object to the terms of this award ought to be at once discarded.

Mr. WILLIAMS. Suppose, Mr. Secretary, you should decline to pay to the Abra Company its ratable proportion of the money now in your hands, deposited there by Mexico for the purpose of satisfying awards under the treaty of July 4, 1868, and the company should bring a suit for that money in the Court of Claims against the United States. To support its right of recovery it would refer to this treaty, and the terms of it by which the award was made final and conclusive upon all parties concerned; it would refer to the proceeding before the Commission, showing that the company filed its petition and Mexico its answer; that the company filed its deposition in support of the claim, and Mexico filed her deposition in opposition to the claim, and the company its rebutting testimony; that then the whole case was fairly argued before the Commission; that they divided, and the case was sent, in pursuance to the terms of the treaty, to the umpire, and he, upon a careful consideration of the pleadings, proofs, and arguments, decided and adjudged that Mexico should pay on account of the claim of the La Abra Mining Company the sum of $458,191.06, with interest. Further, the company would show that three or four installments have been paid by Mexico for the purpose of satisfying these awards; that this money has been apportioned among the different awards and a considerable portion of it paid; and, if I am not mistaken, the books of the Department will show that to the Abra Mining Company its proportion is awarded, and that the amount of money is still held in the hands of the Secretary, awaiting further action. *Prima facie*, these facts would show a clear right of recovery in the company, because it must be admitted that the President of the United States cannot arditrarily discriminate between these awards, and withhold the money in the case of the La Abra Mining Company and pay it in other cases. He is bound to treat them all alike under this treaty. To this suit the United States would probably answer that on the 18th of June, 1878, Congress passed an act by which the President was requested to investigate charges of fraud made against this award by Mexico, and if, in his opinion, upon that investigation, Mexico was entitled to a new trial that he should withhold the payment; that he had investigated the charges; that he was of the

opinion that Mexico ought to have a new trial, and therefore the money was not paid.

Now, to that answer the company would probably demur, and the question is, would that be a good and sufficient answer in law to this claim in that court.

I submit with the utmost confidence, and I believe you will readily see, that such an answer as that would not defeat the recovery in the courts upon this award, and I will state briefly the reasons for that conclusion. Does this award, made under this Mixed Commission, possess the attributes and qualities, and does it create the rights and obligations of a judicial judgment? Nobody will deny that the proceedings before the Commission were in the form of a judicial procedure and upon authorities. I think it is not difficult to show that this award, everywhere and under all circumstance, is to be treated as a judicial judgment. Mr. Freeman, in his work on Judgments, section 531, lays down the law as follows:

> As a general rule, whenever any person or persons have authority to hear and determine any question, their determination is in fact a judgment, having all the incidents and properties attached to a similar judgment pronounced in any regularly created court of limited jurisdiction acting within the bounds of authority.

To support the same doctrine, reference may be made to the case of Commegy *vs.* Vasse, where the Supreme Court say, referring to commissions of this kind:

> If they pronounce the claim valid or invalid, if they ascertain the amount, their award in the premises is not re-examinable. The parties must abide by it as the decree of a competent tribunal of exclusive jurisdiction. A rejected claim cannot be brought again under review in any judicial tribunal. An amount once fixed is a final ascertainment of the damages or injury. This is the obvious purport of the language of the treaty.

And then again, in the case of Judson *vs.* Corcoran:

> Though an award of a commission, under the act of March 3, 1849 (9th Statutes at Large, 393), passed to carry into effect the convention between the United States and Mexico, does not finally settle the equitable rights of third persons to the money awarded, yet it (that is, the award) makes a legal title to the person recognized by the award as the owner of the claim, and if he also has equal equity his legal title cannot be disturbed.

Now, sir, I affirm that if a proceeding, judicial in form, determines the rights of the parties to that proceeding, and fixes in one a legal title to the subject-matter of controversy, it is necessarily a judicial proceeding. Assuming that to be the case, then, I proceed to inquire, has Congress, under the Constitution of the United States, the right to confer upon the President the power to re-examine this judgment and determine whether or not Mexico shall have a new trial? Our Government is divided into the executive, legislative, and judicial departments, and it is familiar law that one department cannot exercise the functions of another department. Congress can no more confer upon the President of the United States the power to re-examine the judgment of a court for the purpose of ascertaining whether one party or another is entitled to a new trial than it can confer upon the Supreme Court the right to veto a bill after it has passed both houses of Congress. To illustrate: Suppose that A should bring a suit in the Court of Claims for the proceeds of certain cotton in the Treasury of the United States, which the United States has frequently decided is there as a trust fund and belongs to the owners of the cotton taken, just as this money belongs to the man in whose favor it was awarded; and suppose that he should recover a judgment for $100,000, and the Supreme Court should affirm that judgment,

and somebody should appear before Congress, as has been the case ever since these cotton cases arose, and assert that it was a fiction and a fraud, and Congress should pass an act empowering the President to inquire whether that judgment was correct and right and whether the United States should have a new trial. Is there any lawyer who, having read the Constitution of the United States, would hold that to be a good act of Congress?

Now, I proceed, out of a great number of authorities, to submit three or four for two purposes:

First, to show that Congress in attempting to confer upon the President of the United States the right to re-examine this judgment has undertaken to confer upon him the exercise of a judicial function. Will any two lawyers disagree upon that point, that to re-examine a case after a judgment has been rendered, either as to errors of law or of fact committed before the judgment was rendered, or upon an application for new trial upon the ground of newly discovered evidence, that to do that is not a judicial function? I refer in the first place, and shall be brief upon this point, to the case of Atkinson *vs.* Dunlap, 50th Maine, page 111. I will read the head lines:

A judgment of a court becomes final when, by the then existing laws, the time for a review and for reversal for error has expired; it then becomes a vested right by force of the Constitution and the existing laws.

And a statute designed to retroact on such a case by reviving the right of review is unconstitutional and void.

Also, in 2d Allen's Massachusetts Reports. I will read an extract from the opinion of the court:

It is the exclusive province of courts of justice to apply established principles to cases within their jurisdiction, and to enforce their decisions by rendering judgments and executing them by suitable process. The legislature have no power to interfere with this jurisdiction in such manner as to change the decision of cases pending before courts, or to impair or set aside their judgments, or take cases out of the settled course of judicial proceeding. It is on this principle that it has been held that the legislature have no power to grant a new trial or direct a rehearing of a cause which has been once judicially settled. The right to a review, or to try anew facts which have been determined by a verdict or decree, depends on fixed and well-settled principles, which it is the duty of the court to apply in the exercise of a sound judgment and discretion. (Denny *vs.* Mattoon.)

I will refer also to the 21st Wisconsin Reports, page 494, to the case of Davis and another *vs.* The President of the Village of Menasha and others. The court says:

Under the existing laws the controversy was closed and the rights of the parties definitely fixed and determined. In view of these facts, it is very clear to our minds that the rights of the parties under that judgment had become vested, and could not be divested and destroyed by an act of the legislature.

And the heading to the chapter is this:

Ch. 115, Laws of 1866, so far as it requires a court to grant a new trial in any case in which a final judgment had been rendered, and the period previously limited by law for moving to set aside the judgment or taking an appeal or writ of error had expired before the passage of the act, *held* to be invalid, as interfering with vested rights, and also as an attempt by the legislature to exercise judicial powers.

I will refer also to 6th Robertson, to a decision of the superior court of New York, page 501, where the identical question is involved:

A statute, the intention and design of which, manifestly, is to deprive the plaintiff, in a judgment recovered upon contract, which is in existence and in full force when such statute is passed, of his remedy upon such judgment and his rights thereunder forever, unless the legislature shall, in its discretion, at some future time, by a new law, provide for its payment, is unconstitutional.

I will not take time to read the decisions, but they affirmed the doctrine, and numerous authorities are referred to to sustain the position which they take, that under our constitutional form of Government it is not competent for a legislative body where a judgment has been rendered by a judicial tribunal and has become a finality, and the rights of the parties thereby forever fixed—that it is not competent for a legislative body to interfere with that judgment and provide for a new trial, either by an act of legislation or by an act of a tribunal—judicial or other tribunal.

Now, sir, let it be noticed that Congress has not declared that this money shall not be paid; Congress has not declared that this money shall be returned to Mexico; Congress has not undertaken to abrogate the terms of this treaty, but Congress has undertaken to confer upon the President the power to re-examine the grounds upon which this judgment was rendered, and the newly-discovered evidence offered, and if, in his opinion, a new trial ought to be granted, then the money is withheld, and the right of the company to the money is made to depend upon the judicial discretion of the President in this case. Now, there is no escape from that conclusion, and if he can decide whether Mexico shall have a new trial or not, and so defeat the payment of this money, then he can exercise judicial power under this Government. Suppose the honorable Secretary should be of this opinion, what follows? All of the other sections of the act are undoubtedly valid, and they direct this money to be paid in ratable proportion upon all the awards, excepting the restriction in the fifth section, and if that be an invalid restriction, then the Abra award stands upon the same footing with the other awards in the case.

Now, sir, I submit that these authorities establish another proposition—and they only support the authorities produced by my associate—that when this judgment was rendered and became a finality, there was a vested right in the Abra Company to the money that was paid into your hands without reservation by Mexico for the purpose of satisfying this with the other awards. You have already announced your opinion that the United States have no proprietary right in this money. Does it belong to Mexico? Now, if this money does not belong to Mexico and does not belong to the United States, to whom does it belong if not to the Abra Company? Somewhere there must be an ownership for this money; somebody must have the title to this money, and it seems to me that if the United States do not own it and if Mexico does not own it, that necessarily the right and title to this money must be in the Abra Company. And this right to it is vested by the action of this judicial tribunal, the very object of which was to determine and fix the rights of the claimants before that tribunal. Suppose (it has been suggested) that this claim was a pure fiction and had no foundation in fact, and was supported by perjury alone; would it then be the duty of the Secretary to pay this money? To that suggestion, Mr. Secretary, I have two or three answers to make. First. Judges, lawyers, and logicians all agree that it is vicious and unsound logic to argue that a long-established, universally recognized, and salutary rule of law ought to be overthrown because an extreme case under it is possible or may occur. To adopt that style of argument, it might be said that the President of the United States should not be Commander-in-Chief of the Army and the Navy because it is possible for him to seize the country, overthrow its institutions, and make himself a military despot. And so it might be argued that Congress should not have the power to declare war because it is possible that they might throw

the nation into sanguinary conflict without any cause. And every rule of law might be overthrown by that argument; and this argument here, in fact that this time-honored rule, which throws around judgments that have become final by lapse of time or otherwise the sanctity of the law—that that time-honored rule shall be overthrown because it is possible that under that rule a judgment may be founded in forgery or perjury. I need not say, sir, to a lawyer of your great experience, that there is hardly an exciting case involving great interests tried in the United States where there is not more or less of false swearing, and I venture to say that there are a hundred judgments rendered in the United States every year where allegations of fraud as strong as these made here by Mexico can be made against those judgments. But the law declares, as the Supreme Court decided in the Throckmorton case, that it is better that injustice should be worked to an individual occasionally or at long intervals than that the salutary rule of law should be overthrown by which the judgments of judicial tribunals are clothed with inviolability. And if there is one reason why a judgment of a domestic tribunal should be protected under that rule, there are a thousand reasons why an award of an international tribunal under a treaty made by sovereign nations for the sake of peace and amity should be preserved and protected and regarded as inviolable after it is rendered. I do not see how the doctrine can be maintained that any examination can be made for the purpose of ascertaining whether a judgment is rendered upon a claim that is purely a fiction or not without opening the door to the re-examination of every award, because it is impossible for an executive officer to know by intuition upon what grounds a judgment of this kind is rendered. And it would be utterly unsafe for you to take outside, *ex parte* statements, manufactured for the occasion, and upon these overturn the deliberate judgment of the tribunal; and so, necessarily, if that doctrine be recognized, any defeated party, upon an allegation of fraud in a judgment, may render it necessary for a Government to re-examine the ground of that judgment when the very object in making the treaty and referring these questions in dispute to an International Commission is to avoid the necessity of their examination by the respective nations. But, sir, my final and conclusive answer to that suggestion is that there is no such case here. Whether or not it would be competent for the President when it appeared that the claim was a pure fiction to go behind the judgment and determine whether or not it should be paid, is, so far as this case is concerned, an abstract question. It is not necessary for the Secretary to make any such decision upon the case now before him. Now, sir, what have we here in the shape of allegations of fraud in this judgment? Mexico has caused a long paper to be read here in which the testimony for the claim before the Commission is criticised and condemned and denounced, and the testimony upon behalf of Mexico is commended and approved. And then the paper proceeds to show that the umpire committed certain errors of law; that he was mistaken as to his right to investigate the value of these ores, and other errors of law so exercised. And the paper assumes that you sit here as a court for the correction of errors, to determine whether or not, in your judgment, there is any error of law or fact for which it ought to be modified or reversed. Can anything be more preposterous than such a proceeding? To this also is added what is alleged to be new testimony. I will pass that for the present.

All of this case stands necessarily upon one fact—because I cannot suppose that this honorable Secretary will undertake to interfere with this award because he may differ, if he should so differ, from the umpire

as to the value of these ores or the value of the mines. That is a question upon which men may differ honestly, and upon which there was a great variety of testimony in this case. Manifestly there was much testimony on our side to show that these ores were valuable; and I wish to add this suggestion right here to the testimony to which reference has been made. Now, sir, the company employed experienced miners (and there is no question about that), and I ask you if it is probable that these miners would take out of the mines a thousand tons of ore and transport it to the reducing works of the company, and pile it up there for use, when it was nothing but worthless rock? Now, these Mexican witnesses pretend that upon a mere inspection of this ore piled up at the mill that it was nothing but burnt rock; and they testified to that without any hesitation, putting these miners, who were employed by the company there for the purpose of performing their work, in the position of taking out worthless ore, as though they were not just as competent when they looked upon the ore to determine whether it was good or bad, as these Mexicans—but they were so stupid that they took a thousand tons of this ore and transported it three miles to their works for the purpose of reducing it and extracting the mineral.

Mr. LINES. Will you permit a correction?

Mr. WILLIAMS. Yes, sir.

Mr. LINES. I believe the allegation in the record is that about 200 tons were at the hacienda and the rest were at the mines.

Mr. WILLIAMS. No, sir; I do not understand it so. But we will not dispute about that. There is a diversity of opinion as to the quantity. Some say a thousand, some say fifteen hundred, and some say seven hundred and fifty tons, but the great bulk of this ore was taken and brought to the reducing works of the company. That appears most conclusively in the evidence. Now, sir, if the fact be that Mexican officials and the Mexicans were hostile to this company and persecuted it, and drove it out of the country, then the bottom fact upon this application falls to the ground. My learned friend will not controvert that proposition.

Now, sir, I propose to show briefly by a few current parts of history that this position is untenable and unsound, and untrue in point of fact. I assume, in the first place, that the treaty presupposes that Mexico had been committing outrages upon American citizens, and, sir, upon that subject, I beg to refer to what Mr. Seward said at the time of this treaty or prior to the making of this treaty. He says:

> I find the archives here full of complaints against the Mexican Government for violations of contracts and spoliations, and cruelties practiced against American citizens. These complaints have been lodged in this Department from time to time during the long reign of civil war in which the factions of Mexico have kept that country involved, with a view of having them made the basis of demands for indemnity and satisfaction whenever Government should regain in that country sufficient solidity to assume a character of responsibility.

Now I will ask the distinguished gentleman, if it was true that Mexico was committing outrages upon citizens of the United States, is there not reason to suppose that Mexico would commit an outrage upon this company as soon as any other company or any other corporation? But, sir, soon after the death of Maximilian there appeared in the New York Herald an article which I read as part of my argument. I do not suppose I can read it as a part of the evidence. I read what purports to be signed by Escobedo:

> The execution of the traitors which I had the satisfaction of directing is good food for digestion. It will satisfy the Europeans, and Yankees, too, that to trifle with

Mexicans is death by the law. Had we complied with the request of the filibustero and his associate traitors, it would have been taken for cowardice, and the next thing would have been a request to give up our lands, our mines, and our women. After this we shall be allowed to worship our own God, till our own soil, work our own mines, and not have our women defiled by Yankee libertines.

I am now in favor of making clean work of the detested *gringos*. This country belongs to God and us, and just so long as one foreigner remains on our soil, our liberty is in jeopardy. By every means in our power we should make the country Mexican, and as all the property in the hands of foreigners was made by our misfortunes, we should take it now that we have the power and hunt them from the country. My motto now is, "Death to all extrangeros."

There is no danger of Yankees interfering with us so long as the Southern States (estados del sur) are kept out of the Union; besides, the black men would side with us, and may at any time pronounce against the whites. Before we get through with the foreigners the Yankees will think we are in earnest, and the time will come when their notables will be begging for their own heads instead of begging for the Austrian.

In our struggles for liberty we have lost nearly all. Our lands, and our mines, and our liberty, and our women, and our honors we still have; but the foreigners have all the available wealth of the republic; but they will see in less than three years that Mexicans will have what they want in Mexico. You will understand from this my position, and should I by any chance whatever become a candidate, you will understand my unalterable platform. Whenever the time comes you can make this letter public in such manner as you think proper. I know that you and I think alike on these matters, and I know that our countrymen will applaud our patriotic determination.

God and Liberty.

ESCOBEDO.

Now, sir, acts in accordance with the particulars of that proclamation made this treaty a necessity, and I beg to submit some additional evidence upon that subject. I read, sir, from a statement addressed to Sir Edward Thornton, by a great number of distinguished merchants and citizens of Mazatlan, most of them foreign residents there. This is what they say:

MAZATLAN, *June* 18, 1876.

To Sir EDWARD THORNTON,
Umpire of Mixed Commission, &c.,
Washington, U. S.:

The undersigned, foreign residents at this port, having seen a copy of your decision in the case of the Rosario and Carmen Mining Company's claim, most respectfully address this petition, requesting you to grant a rehearing of their case.

We do so for the following reasons: That as the attack made upon the hacienda by a magistrate was, as you have stated, illegal and unnecessary, and as such deeds so frequently happen in this country, without the perpetrators being punished, or the sufferers indemnified; hence we were gratified when the United States took the initiative by creating the Mixed Commission, and thus rendering protection, not only to their citizens, but indirectly to all foreign interests in the country.

That as the case herein referred to was one of great importance, and one which created terror and insecurity among all foreigners in that part of the country, and as neither the courts nor Government took measures to make reparation or punish the aggressors, consequently the effects were most fatal, not only to this company, but to the other mining enterprises in that vicinity.

As to the abandonment of the mines, it is evident that when every employé of the hacienda, even to the cook, were carried off fifty miles from their home and kept as criminals for three months, their property left at the mercy of the rabble, little would remain that was movable or available.

No one regarded the affair of the woman as other than a pretense to cover the real object, which was plunder; to obtain possession of the ores extracted, the mines and their valuable appurtenances, and to drive the Americans from that vicinity.

In conclusion, we would state that the re-establishment of the company was rendered impossible from the fact that immediately after the incidents herein referred to the entire State became involved in revolution; the roads infested with banditti and with troops of various parties; communication entirely interrupted, and all means of transportation seized.

The Liberal forces under Corona occupied the approaches to this port, while Lozado with the Indians invaded the State from Jalisco, and in November of that year, 1864, the French took possession of the town itself.

This state of affairs lasted for three years, paralyzing all the industries of the country, and rendered resumption impossible, not only of this company but of many others among which we will cite the "La Abra," situated near the one in question, was abandoned from precisely the same influences.

I will not undertake to read the names now, sir. There is a statement signed by I think twenty of the leading merchants and business men of Mazatlan, in which they affirm the hostility of Mexico to Americans and American miners, and it was a notorious fact in that country, talked about everywhere and among all classes of people, that the Abra Company had been compelled to abandon their mines. I wish to add to this a letter from the British consul, who may be supposed to be a disinterested person. He says:

MAZATLAN, *June* 10, 1876.

J. GUTTE, Esq.,
President of Rosario and Carmen Mining Company.

SIR: I willingly reply to your letter of May 19, and will briefly state my views from what I know of the points on which you desire information.

In the year 1864 I was acting as British vice-consul, and continued in charge of the consulate until after the French troops retired from this country. I was then and am now engaged in commercial and mining enterprises, and having resided here many years am well informed of what takes place in this part of Mexico.

In reference to the outrage perpetrated at Candelero, it aroused a feeling of terror among all parties who had similar enterprises, and particularly among all foreigners, for it was notorious that the attack was made by Judge Salazar in the night, that it was a premeditated affair, and resulted in the killing and wounding of some of the employés of the company, and that all the inmates of the hacienda were taken off prisoners to distant towns, thus leaving the property at the mercy of the excited people who obeyed the judge's orders. All this combined to ruin a promising business, and had the effect of destroying other enterprises in the vicinity by creating a feeling of insecurity among the few foreigners residing near there, many of whom were anxious to get away, and soon all mining concerns in that neighborhood had to suspend operations, for no one was held responsible for the acts either of the authorities or the people. The higher courts were unwilling to punish their judges, and thus they became petty dictators; foreigners had no redress, and if they complained were treated as aggressors, as in the case of your employés.

There were great hopes entertained that by the Commission created between the United States and this country injuries such as your company experienced would have been redressed, and the Mexican Government obliged in future to afford guarantees for the protection of foreigners in their property and persons who accepted the invitations of the nation to aid in developing the resources of the country.

The outrage at Candelero was the most barefaced that had been perpetrated in this State, and it was universally known to have been long premeditated; the excuse afforded by the woman gave pretext to carry out their true object of gaining possession of the property, ores extracted, &c., and to drive the Americans from that neighborhood.

Immediately after these events the country was involved in revolution, the French occupying this post, the Indian chief Lozado marching from Tepic with over two thousand men into the southern part of Sinaloa, while the rest of the State was occupied by the liberals. All communication with the interior was interrupted, horses and mules seized by both parties, and operatives forced into the army; hence it is my opinion that neither your company nor any other could have re-established themselves under such circumstances, nor could it be expected that a valuable and unprotected property could remain intact in the interior of Mexico, and with such surroundings.

For nearly three years after the events at Candelero there was but one mining company able to continue operations. They did so because a Mexican general (Corona) was a shareholder, many others being abandoned, among them I would mention the La Abra Company, because it was situated near your mines, and they were forced by precisely the same influences to leave their property.

I would further state that since the occurrences other outrages have been committed in the Candelero neighborhood, the people being encouraged to acts of violence from the fact that even the judge in this particular instance escaped punishment.

Robberies and murders are still committed in the mining districts with impunity, and I could cite two cases in which property belonging to the firm of which I am a partner was stolen, and in one instance a servant murdered afterwards by the robber for having given a declaration against him. Said thief and assassin has not been punished by the authorities.

I am, sir, yours, very truly,

C. WOOLRICH,
British Consul.

Mr. LINES. Is the letter signed officially?

Mr. WILLIAMS. No, it is not signed officially. The words "British consul" are written below in lead pencil.

Now the point to which I direct this testimony is this: That there was in Mexico, at the time this company was engaged there, a feeling of hostility towards Americans and toward American miners, and that, I suppose, was done not only as to these mines, but as to other mines, with the countenance and the support of the officials to dispossess the Americans and drive them out of the country. Now, this testimony has not been produced under our influence. Nobody can charge us with having introduced these witnesses to testify to these facts. Nobody will assail the authors of these communications as guilty of fraud or perjury or anything of the kind. But they are statements which they have been compelled to make; that Mexico was committing great wrongs upon these mining enterprises in that country for which no proper redress had been given under this treaty.

Now, sir, I might proceed, but I will not take time, and refer to this evidence. There is much of it from Mexicans which supports this declaration and that statement by Mora. Now, if you, Mr. Secretary, will take the trouble to read the deposition of Mora you will find that he was a bitter enemy of the United States. He was brought before the judge there by the police upon the order of the judge, he not being willing to obey subpœnas, and he testifies that he with Chevarria went to the principal officer of that district and besought protection for this country; that he, an officer, represented to the head of the department that the Americans were there to ruin the country, and that this chief officer refused to give them any protection. Now, what inducement has that man upon the face of the earth to tell a falsehood for the American side of the question? Can any possible motive be ascribed to him, a bitter, avowed enemy, to come forward and swear to the falsehood and swear to the fact which, if true, sustains this case; and no more evidence will be necessary to prove that we were persecuted and not given the protection to which we were entitled under the terms of the treaty that we made, and under the laws of that country.

Now, sir, in addition to the review before the Commission and the errors of law alleged to have been committed, the learned gentleman offers here what purports to be newly-discovered evidence, consisting chiefly of letters said to be written by the employés and one of the officers of the company. I do not know where, when, or by whom those letters were made, nor can you know with any certainty, or with such certainty as to enable you to act upon them as evidence, until the person by whom they are identified has been cross-examined, and until the party against whom they are produced has had an opportunity to explain or contradict them, if necessary. I do not know whether these letters are genuine or forgeries. Some of them may be what they are represented to be, and some of them on their face seem to me to bear the impress that they were provided for this occasion. Now, sir, the fact is that these papers and all the property of the Abra Company fell into the hands of the Mexicans when this property was abandoned in Mexico, and there has been ample opportunity, if the motive was sufficient, since that time to manufacture a considerable portion of this testimony. Granger has shown himself, by the evidence in this case, to be an unscrupulous liar and scoundrel, having testified fully in favor of the claim and then contradicted himself as a witness for Mexico. And into his hands all these books and papers have fallen. I understand that he is an educated, wily, sharp, shrewd Scotchman, and if there has been suffi-

cient inducement offered to him, he having these books in his hands, it may be that many of these letters are forgeries, and not what they purport to be upon their face. I notice one circumstance which has attracted my attention, and that is this: That all the letters of Exall, with the exception of two, purport to have been written at Mazatlan, and it has excited an inquiry in my mind how letters written at Mazatlan, some four or five hundred miles from these mills, and transmitted to New York, should be copied into the letter-press copy-books at the mines. I throw out these suggestions as to these letters. We have never seen them; we know nothing about them; but it is possible, under all the circumstances, that this evidence which is produced here has been adroitly manufactured. It may be that some of the letters are genuine and others interpolated so as to make it a case; and I suggest that it would be extremely unsafe for the Secretary of State, upon an *ex parte* showing of that kind, prepared under these circumstances, to set aside the deliberate judgment of a judicial tribunal or interfere with it in any manner whatever.

Now, sir, the question before you is not as to what these letters contain, but the question is, What is the fact? That is the question. Now, these letters may be contradicted just like any other testimony. Nobody knows under what motives they were written. Look around us; notice what we see every day in the newspapers—cashiers of banks making false accounts, officers of insurance companies and savings banks entering into conspiracies, making false reports for the purpose of cheating and deceiving the stockholders of the companies; and it is possible for men who are employed, and for an officer, to enter into a conspiracy for the purpose of cheating or defrauding the company, and therefore it seems to determine what the value of these letters ought to be. But their contents, whatever they are, and by whomsoever written, are not verified. They are as liable to contradiction as anything else that could be stated, and so the question arises, if you proceed to the consideration of that subject, What is the fact? Take the evidence that was before the Commission; take what has been submitted here; take all these letters altogether, and can you say that there is no pretext whatever that this company was persecuted and injured in Mexico—compelled to abandon its property? Suppose you should be of the opinion that the evidence preponderated against that proposition, still you would not consider it your duty on that ground to disturb the judgment; but it must appear to you conclusively, as I understand, that not only they were not persecuted, but the whole claim, so far as that point is concerned, is a perfect fiction and a perfect fraud, and that in point of fact they were treated in a friendly manner by the Mexican officials and the Mexican people, and were afforded the protection of the laws. Now, sir, I do not believe that any judge or jury, taking this testimony altogether, including this new evidence which is proposed, could find that to be the fact. Now, they ask you here, just as they did the umpire, as he says in his report—they ask you to assume that all the witnesses in support of this claim have committed perjury; must be assumed to be perjured scoundrels, and that the statements of all Mexicans, as Sir Edward Thornton says, must be taken with implicit faith in their truth. Now, sir, that is what they ask you to assume here. Gentlemen have testified in this case whose standing and reputation are above reproach, and they have no right to ask you or anybody else to assume that because they can afford some evidence contradictory to what these gentlemen have said, that they have been guilty of deliberate and corrupt perjury.

Now, sir, as to that point, it seems to me that there is hardly room for controversy. I do assert in the face of this evidence that those letters are either forgeries or their statements are false in fact. What motives the writers had to make them false I do not know, but it is impossible in the nature of things that those statements should be true; it is impossible in the nature of things on this testimony that there should have been no persecution of this company by the Mexicans or the Mexican officials when they admit it themselves—when the testimony comes out of their own mouths; and it is impossible that these mines should have been as worthless as they are represented to be in these letters.

Now, sir, it is represented that these mines, as soon as they were taken by this company, turned out to be of no value; but the Mexican witnesses here prove that those mines in possession of their former owners were good and paying mines. I will refer upon that subject to the testimony of Calderon, Fonseca, and Manjarrez, pages 134 and 135, where all those witnesses testify that these mines, up to the time they were sold to this company, were good and paying mines. Mr. Manjarrez says:

> That he has been acquainted with the mineral district of Tayoltita for fifteen years; that in the year 1854 he and his partner, D. Juan Castillo de Valle, became the owners of the first-mentioned of the mines that have been named over to him, and that during all the time that said mines were worked by them they produced good profits up to the year 1865; that they sold the mines and haciendas to an American company called the "Abra."

That statement is corroborated by other witnesses called on the side of Mexico. Now, I ask, in the name of common sense, how it can be asserted that these mines were good mines when worked by the rude methods of the Mexicans, and that just as soon as the "Abra" company put in good machinery there they ceased to be good for anything. How did that transformation occur? As to the value of these ores Mexican witnesses give different opinions. Some say they were worth nothing, and some say they were worth a little money. So that there was a diversity of opinion on that subject. It was considered by the umpire; all the probabilities were taken into consideration; the evidence was compared and weighed, and the award made. It is said the value of the ores was a matter of pure fiction, without any foundation whatever, and if that be true it does not make any difference whatever as to whether or not you may be of the opinion that the award was too large or much too small or as to whether or not under all the circumstances the award should have been given. If we made before the umpire a case which entitled us to a consideration, and if the case was fairly heard, and if any new evidence which is proposed is merely cumulative and will not change the decision if admitted, then of course this application must be overruled.

I might take further time, and refer to this attack which I saw yesterday, in which there were remarks published and a large amount of slang and filth used as to our witnesses, and especially as to the agent of the United States who obtained this testimony. Now, General Adams obtained the testimony, I think, in about a dozen of the cases. No complaint has been made in any other case; and it is a little curious that just as quick as the awards were made in all these large cases, as you will see in the report of the umpire, Mexico assailed all of them, and undertook to importune the umpire for a new trial in every one of the large cases because they were all fraudulent. They have been compelled to drop out the others, and they have confined their attack to this. I do not suppose that the Secretary of State can be influenced by

these importunities. There may be something to some of them, but General Adams says he can explain these charges satisfactorily, especially one to which his attention has been called as to Mr. Van Buren, in which it is said that General Adams received his seat in the senate of the State of California upon the ground of having secured a fraudulent election.

Now, sir, I have looked upon the journal of the State of California for 1851, and find that General Adams was granted a seat in that body, and Mr. Van Buren voted for him. I have not examined these other matters, and I have not considered it necessary. I have had no time; but it seems to me strange that a nation appealing to the honor of another should undertake to found its application, not upon a dignified, statesmanlike appeal, but upon a paper filled with slang and filth and denunciation of everybody and every American who has been interested in, or has seen proper to have any thing to do with this claim.

Now, sir, the question of honor is a question about which most men differ. When this application, in substance, was made to your distinguished predecessor, than whom there is no man in the United States more sensitive of honor and right, he refused to entertain the application for one moment, and hastened, lest Mexico might infer his willingness to entertain a proposition of this kind, to inform that Government that in his opinion this award was final and conclusive, and the honor of the two countries required its complete and perfect execution. Sir, there never has been in the history of international commissions an award made more grossly unfounded or unjust than the Halifax award, and the able paper written by yourself is sufficient upon that point; and yet Great Britain does not feel bound in honor to abstain from the collection of every dollar of that award. We recovered an award of fifteen millions by the Geneva award. A considerable portion of it remains in the Treasury. Congress is troubled to find the persons to whom it belongs, but nobody contends that that money ought to be returned.

Mr. CRESWELL. Yes, they do. I do.

Mr. WILLIAMS. Well, your individual opinion does not appear to have much influence in this country; that is all I can say about it. I only speak of these things to show that it is almost impossible to set up any standard of honor; that one man's opinion as to what honor requires, may differ from another man's, and that the opinion of one nation may differ from that of another nation, and that to undertake to set up a standard of that kind by which treaties shall be disregarded, by which awards shall be overthrown, will introduce a condition of uncertainty and doubt which, to use the language of my associate, will make these international proceedings a mere farce, and I deny that Mexico, in view of her history, in view of the history of this International Commission and these awards, is in any condition to appeal to the honor of this country. Our Government entered into this treaty, and our citizens were induced to go to Mexico at great expense of time, labor and money, and at the peril of life and limb, to procure the testimony in a hostile country, among unfriendly magistrates, and after spending thousands and thousands of dollars which was necessary to obtain this testimony, and bringing it here and putting it before this Commission and having a long and expensive litigation over the subject and finally obtaining award, I say that the honor of this nation, by the terms of that treaty, is pledged to the citizen that obtained the award, that it shall be paid, and it would be wrong for the President of the United States to repudiate these obligations of honor under that treaty—the obligation to the citizen—and allow himself to be carried away with sympathy or

any other consideration that relates to the claim or condition of Mexico. And if there is any question of honor involved, I submit that honor—the national honor, and if Mexico had a proper appreciation, it seems to me, of what that means—honor would require Mexico to execute this treaty. She agreed that these awards should be final and conclusive, that they should be paid without any objection; we have been already delayed, and honor requires a faithful and exact performance of that treaty; and I say that you cannot, nor can I, nor can the citizens of this country, be blinded with this attempted distinction in words; that while they come here pretending a willingness to perform this treaty, they are in point of fact moving heaven and earth to defeat its performance—practically to defeat the payment of this claim to this company, and that is defeating the operation and the effects of the treaty; and I say that it would be a salutary precedent for the President of the United States, in view of the vast importance of these international commissions, in view of the fact that it is of the last consequence to the peace of the civilized world, that that sanctity should be preserved and maintained—it would be right and just for the President of the United States to say that the honor of both nations requires that this treaty should be executed according to its letter and its spirit, and that is the payment of these awards.

Mr. WILSON (submitting paper). Mr. Secretary, before General Creswell begins his concluding argument, I am requested by Mr. Shellabarger to present his answers to the questions that were propounded to him at the conclusion of his oral argument, and which he did not then have an opportunity to submit.

Mr. CRESWELL then read his closing argument.

No. 50.

CONCLUDING ARGUMENT OF COUNSEL FOR MEXICO IN REPLY TO MESSRS. SHELLABARGER, STANTON, BARTLEY, AND WILLIAMS.

SATURDAY, *May* 17, 1879.

Mr. CRESWELL said: Mr. Secretary, in all things growing out of the treaty of 1868, and the proceedings of the Joint Commission organized thereunder, Mexico has lived up to the very letter of her obligations. She has discharged every duty and made every payment that the most rigorous construction could exact of her. No reproach can be justly cast upon her. Her honor is unsullied in every particular. Even now she avows herself as ready to discharge, to the utmost farthing, every award rendered against her, no matter how unjust some of them may be, if the United States shall demand of her a strict compliance of her plighted faith. She has practiced no subterfuge; she has resorted to no equivocation; she has employed no doubtful expedient; but invoking those high principles of comity and brotherhood which should always characterize the intercourse between nations, and especially between republics, she has appealed to the United States for a rehearing of two cases, amounting together to more than $1,100,000 upon an exhibit of new evidence, which conclusively establishes the most palpable and egregious fraud and perjury. So strong has been her initial showing that the legislative branch, notwithstanding its natural leaning toward the claimants, has requested the President to hear the complaints and examine the proofs of Mexico; and if, in his judgment, the

"honor of the United States, the principles of public law, or considerations of justice and equity," require such a course, to open the cases of Weil and La Abra, and to provide for a rehearing upon their merits by new negotiations. We are met upon the threshold by a plea in the nature of a plea to the jurisdiction of the President, whether his power to investigate the charges of fraud presented by Mexico be derived from the Constitution or from the act of Congress of 1878.

In our brief, read at the last hearing, we expressly avoided arguing this question. Our position as counsel of a foreign Government was a delicate one; and furthermore, we supposed that the question had been already definitely settled by competent authority in this very case; and that all we had to do was to present such considerations, based on the matters of fact and law involved in the claim itself and in the new evidence, as would show ground for a rehearing. It may not now be out of place to allude to the reasons for the position taken by us.

On the 6th of November, 1877, the Secretary of State wrote to the chairman of the Foreign Affairs Committee of the House of Representatives, inclosing a draft of a bill for the distribution of the moneys received and to be received from Mexico in satisfaction of the awards of the Mixed Commission, and saying, in language similar to that used by his predecessor, Mr. Fish:

I have the honor to invite the attention of your honorable committee to *the necessity of immediate legislation* to enable the prompt payment of the awards *in favor of our citizens* under the convention of July 4, 1868, between the United States and Mexico.

The bill thus presented was considered by the committee, and, after a long and patient hearing of the same arguments which have been advanced here by the counsel for La Abra Mining Company, the committee prepared an amendment to the bill, which was submitted to the Secretary of State, and, being verbally amended by him, received his approval, as follows:

SEC. 5. That nothing contained in this act shall be construed as precluding the President of the United States and the Secretary of State, upon application by the Mexican Government, from the consideration of any particular claim or claims wherein awards against Mexico have been made, nor from the investigation of any alleged frauds or perjury materially affecting said particular awards; and pending any such inquiry, and during any negotiations between the United States and Mexico, if any, respecting said particular claims, it shall be at the discretion of the President to determine as to the suspension or payment of the amounts which otherwise would be payable upon said claims so made the subject of inquiry or negotiation.

The bill thus amended was reported to the House on the 12th of December, 1877, accompanied by a report, in which the committee say:

The Executive is, with the concurrence of the Senate, fully empowered to open negotiations with Mexico, by further treaty, if the two powers can concur therein, to accomplish the relief asked for; and if, in the opinion of the President, such frauds have been practiced as to entitle Mexico to relief, this committee would be gratified to know that proper steps would be taken to that end.

On the 22d of January, 1878, the Mexican minister made certain representations to the State Department touching the fraudulent character of these claims. The Secretary, on the 24th of January, replied as follows:

In reply, I have to state that, upon being first advised of certain grounds of complaint on the part of the Mexican Government in relation to the awards in particular claims, the Department submitted the question to the consideration of Congress. A bill is now pending before that body providing for the distribution of the fund, but reserving to the President the right of inquiring into the particular awards to which your note refers. When the question shall have been determined by Congress, if that feature is retained in any act that may be passed providing for the distribution of the fund, due weight and consideration will be given to the points and suggestions now presented by you.

On the 9th of May, 1878, a bill which had been previously reported from the Senate Judiciary Committee was called up in the Senate by Mr. Davis, of Illinois, who said:

We thought that the honor of this country, as well as common justice and equity, required that where a sovereign Government, with whom we made this convention, had represented that these two claims were fraudulent, actually having no foundation in fact, we ought to give to the treaty-making power, the President of the United States, the opportunity to examine for himself and ascertain whether that is so or not.

The bill passed the Senate in secret session, and went to the House, where it was called up on the 4th day of June, 1878. In the debate which took place, the Hon. Benjamin Wilson, a member of the Foreign Affairs Committee, said:

If Mexico is entitled to relief, the President has ample power to grant that relief; but, more than that, I have a copy of a letter from the State Department to the diplomatic representative of Mexico. I shall not take time to read it, but in it the Secretary of State says that if this matter goes back to the Executive Department he will take particular care to examine the questions presented.

The Senate bill was the next day amended and passed the House. The Senate disagreeing to the amendment of the House, a conference committee was appointed, which reported the bill as it finally passed, and it was approved by the President on the 18th of June, 1878.

On the 20th of June, 1878, the Mexican minister addressed a second note to the Secretary of State, referring to his previous note on the 22d January.

On the 1st of July the Secretary replied, as follows:

This Department replied to you under date the 24th January, that a bill was pending before Congress providing for the distribution of the money received and to be received from Mexico pursuant to that convention, and reserving to the President the right of inquiry into the claims adverted to; and that, if the provision should be retained in the bill when it became a law, due weight would be given to the points and suggestions of your Government on the subject. As the act as it passed Congress embraces the provision referred to, I have to request an explicit statement as to what Mexico has to say and *expects to prove* in regard to each of the cases in question.

Such a statement was transmitted to the Secretary by the minister, in a note dated July 25, 1878.

On the 17th of August, 1878, the Secretary acknowledged the receipt of the above note, and said:

The attention of the Department at present must be necessarily confined to the consideration of *such proofs* as Mexico is prepared to submit to its examination, and as may show, or tend to show, that these awards, or either of them, should not be held conclusive *between the two Governments*, as is provided by the terms of the convention under which they were made. * * * I must, therefore, desire that your Government should, in the first instance, and as completely as possible, lay before me *the evidence* in these cases to which you refer in your note as "obtained since the umpire of the Commission to which they were submitted decided the two cases in question," and which, as you also state, will prove the fraudulent character of the two claims aforesaid by means of original books, documents, and letters of the claimants, as likewise by the depositions of credible witnesses. You will, I cannot doubt at the same time, see the importance of exhibiting, on the part of Mexico, both the reasons why *the proofs* now to be brought forward were not adduced at the trials before the Commission, and the grounds of assurance that, upon any renewed examination of the cases, *these proofs* would be accessible in a form to satisfy judicial requirements as to certainty and verity.

To this note the Mexican minister, on the 25th of September, responded that some delay would be necessary in order to put the proofs in shape for convenient examination by the Department. He added:

The undersigned, who has always bowed with respect to the convention of July 4, 1868, and to the decisions of the Commission created by that convention, believes

himself excused from touching upon the finality of those decisions, since all that is important, in the present stage of the correspondence, is that the Department considers itself authorized, as stated in its notes, by the act of Congress, not only to suspend payment to the claimants referred to, but also to agree with my Government, sufficient grounds being shown, upon a new investigation, which eventually may release Mexico from responsibility in the two cases. This spirit, which does so much honor to the Government of the United States, and which accords with that manifested by the umpire after the announcement of his decision in the claims of Weil and La Abra, relieves the undersigned from the necessity of alluding to the effect, from a legal point of view, of the finality of the two decisions cited.

The evidence in the case of Weil was filed with the Department December 12, 1878, and in this case January 12, 1879, and on the 8th of May last counsel received notice to appear and submit argument.

Inasmuch as the Secretary had requested legislation by Congress, and had advised Mexico of that fact and of the pendency of such legislation; as the President had not vetoed the bill either as an assault upon the treaty or as in violation of private rights; and as Mexico had been invited to submit, and had submitted, her proofs, with the required explanations and guarantees, we did not feel called upon to discuss either the authority of Congress and the Executive over the subject, or the propriety and validity of their action.

We expressly refrained from discussing the power of the President to do what is now proposed to be done, with or without the authority of Congress; but as in his correspondence with Mexico the Secretary had preferred to derive jurisdiction from the action of that body, we attempted to show the nature and scope of that jurisdiction, as well as the competency and character of the proofs offered by Mexico.

We did not expect to meet here the proposition to consider as null and void all that had been done in this matter by two Departments of the Government—much less to hear that proposition supported by an argument on the doctrine of *res adjudicata*. But if it be thought necessary to confront here the jurisdictional objections which were raised before the committees of the House and Senate, argued there—to use the language of counsel—with quite as much ability as they have been here, and overthrown by the action of both Houses and of the Executive, we shall endeavor to do so.

I.

It is first objected to the power of Congress that in order for its action to affect provisions of a treaty, the subject-matter of that treaty must be within the legislative authority, and that the subject-matter of this treaty is not.

You doubtless remember, Mr. Secretary, that this treaty, unlike many others, contains no provision for the payment of money to individuals. That subject is left entirely to the respective Governments, and the distribution of the money applicable to the claims of citizens of the United States was submitted by you to Congress for its action. But the doctrine would not be different if the treaty had provided for the distribution of the moneys. The Florida treaty and the treaty of Guadalupe Hidalgo both provided that the United States should "make satisfaction" to the claimants. Claimants under the Florida treaty pretended that Congress had provided a different method for the settlement of their claims from that stipulated in the treaty.

Touching one of these cases, Attorney-General Crittenden said (5 Opinions of Attorneys-General, 334):

The acts of Congress are not in conflict with the treaty with Spain; but, if they are, the treaty must yield to them.

In another case, that of Redin Blunt, Attorney-General Cushing said (6 Opinions, 533):

> It is for Congress to provide the remedy. * * * If the jurisdiction thus created be unlawful and improper, it does not follow that the Secretary of the Treasury or the Attorney-General is, by construction, to break down all the safeguards with which Congress endeavored to surround the subject, and thus leave it without any. * * * In a word, the party must either accept that supervision of the Secretary, without which the money to pay his claim cannot be drawn from the Treasury, or else he must go to Congress for his relief.

Another case, that of Ferreira, reached the Supreme Court on what purported to be an appeal from the district court of Florida. In dismissing that case for want of jurisdiction, the court say (13 Howard, p. 48) that the constitution of the board under the acts of Congress was not in violation of the treaty, "but if it were admitted to be otherwise, it is a question between Spain and that Department of the Government which is charged with our foreign relations and with which the judicial branch has no concern."

Under the treaty of Guadalupe Hidalgo a number of awards were made over which the Senate subsequently assumed jurisdiction, and instituted an investigation with a view to legislative action. Among these was the case of Gardner, the prototype of the claim now under consideration.

Within the past few years Congress passed an act declaring the awards under the treaty with Venezuela to be valid and subsisting against that Government, and less than a year ago it repealed that act.

The fourth section of the act of 1878, which counsel on the other side esteem so lightly, provides "that in the payment of money, in virtue of this act, to any corporation, company, or private individual, the Secretary of State shall first deduct and retain, or make reservation of, such sums of money, if any, as may be due to the United States from any corporation, company, or private individual in whose favor awards shall have been made under the said convention."

If, as counsel contend, Congress had no authority to pass the fifth section of this act, will they explain where Congress got its authority to pass the fourth?

If the payment of moneys to individual claimants is a legitimate legislative act, not controlled by the treaty and within the power of the legislative department, then all that Congress has done which contemplates a departure from the treaty is to suggest to the treaty-making power that that power itself should enter into negotiations with Mexico for the rehearing of these claims. This has been styled an "assault upon the treaty-making power," a "crossing of the sacred threshold" which divides two distinct departments of the Government. And yet nothing is more common than for Congress to express its desire that a treaty should be made, or that a treaty should be abrogated. It is a matter of almost daily occurrence that resolutions are introduced for that purpose.

It is not long since Congress declared its opinion to be that no more treaties should be made with Indian tribes, and no more have since been made. No longer ago than day before yesterday a resolution was introduced looking towards a commercial treaty with France. This is no more an "assault on the treaty-making power" than a treaty provision, such as that in the Burlingame treaty that the high contracting parties shall "pass laws" is an "assault" upon the legislative power.

II.

The leading proposition enunciated by the learned counsel for La Abra Company is, that the award by the umpire, under the treaty of 1868, vests such a right of property in that company that neither Congress nor the President is competent to reopen the case and direct a rehearing.

The cases of Comegys *vs.* Vasse (1 Peters, 193), Judson *vs.* Corcoran (17 Howard, 612), Meade *vs.* United States (2 C. C., 224), and Debode *vs.* Regina (6 Dowling's Pr. R., 787; 8 Ad. & Ellis, 2 Q. B., 208; 13 Ad. & Ellis, 13 Q. B., 364; 3 Clark H. L. Cases, 469), have been cited in support of that position.

Counsel lose sight of a distinction which must be always borne in mind when international claims are under consideration. Controversies in regard to them between citizens, whether as assignors or assignees, or their privies or alienees, are judicial questions, and properly determinable by the courts; while all questions between Governments are political, and can only be adjudicated and adjusted by the political department of the Government. All that the above-named cases decide is that questions between citizens are cognizable by the courts. They do not limit or in any manner affect the rights and powers of Governments, which are as supreme in their *jus disponendi* after the award of the umpire as before. Whether the claim be a bare chose in action or be liquidated by an award is of no moment.

That the courts have the power of distribution *as between citizens* is laid down, not only in the cases cited, but also in the various opinions of the Attorneys-General as far back as the time of Mr. Breckenridge. But let us see how the claim of "vested right" has been treated by the political department of the Government whenever it has been set up as against the Government, in matters between nations.

The case of the Caroline was one where money had been collected from Brazil on a claim of citizens of the United States, not, it is true, through the agency of a mixed commission, but the right to which was none the less insisted on as a "vested right," and yet Mr. Fish, taking the advice of his law officer and of the Attorney-General, returned it to Brazil because unjustly collected. (Senate Ex. Doc. No. 52, first session Forty-third Congress.)

In the case of drafts drawn by Mexico in favor of United States citizens against the moneys to be paid her under the Mesilla treaty, when Mexico asked payment to be stopped, it was said by Attorney-General Cushing (7 Ops., 600):

> But the present question is between governments, not individuals, in so far as regards the drawer and drawee, for which reason considerations of municipal law have but secondary weight in its determination.

In this opinion reference is made to the case of the United States *vs.* Bank of the United States (5 Howard, 382), where drafts drawn by this Government on that of France against moneys due us under the treaty of 1831 had been returned unpaid, and the damages provided by State law in such cases had been retained by the bank from the dividends due to the Government on its shares. There it was laid down that "a bill of exchange in form, drawn by one government on another, is not and cannot be governed by the law merchant, and, therefore, is not subject to protest and consequential damages." The treaty bound France to pay the money to persons "authorized to receive it." "This authority was to come from our Government to the French Government;

was to pass through the Department of State here and through the Department of Foreign Affairs there, and thus only could it reach the minister of finance."

In the recent case of the Venezuela claims, Secretary Fish, of his own motion, suspended all the rights of claimants under the "judgments" of the Venezuela Commission. (Treaties and Conventions, p 1081.)

The case most confidently referred to by the other side upon this question of vested rights is that of Judson *vs.* Corcoran, in 17 Howard, in which it is said the court held that an award of the Commission created under the treaty of Guadalupe Hidalgo was a judgment, conferring property rights like any other judgment. But they fail to mention the case of Gardner, the leading case, and happily, until late years, the only case of a fraudulent claim carried to judgment through a commission created by treaty with a foreign Government. The award to Gardner was under the same treaty, and held by precisely the same title as that of Corcoran. How did the Government treat his so styled "vested right"? Congress investigated his claim, and the Executive with the aid of the courts, stopped the payment of the money, and used the fund set apart by the treaty for the payments of claimants to prosecute him to conviction for the perjury he had committed.

The distinction between private and international questions in this connection is well drawn by Attorney-General Legare, 4 Opinions, p. 177, as follows:

> It is not unusual to hear the judgment of Commissioners in such cases (*i. e.*, in cases of claims under treaties) spoken of as concluding all parties whatever. This is true as between the nations parties to the treaty. The question whether such a particular claim of a citizen of one country against the Government of another is or is not valid as against that Government is undoubtedly submitted to the special jurisdiction created by the treaty. * * * As soon, however, as the claim is admitted as a debt and paid by one country to the other in trust for its subjects. it ceases to be a political question and becomes a judicial one. The execution of this trust is as much within the competency of the ordinary tribunals as that of any other. * * * Not only are those courts more competent in every respect to settle such disputes, but I see no power under our Constitution that can oust them of their jurisdiction in such matters, or vest it in commissioners appointed for the occasion, instead of judges holding during good behavior. * * * Therefore in all questions between assignor and assignee, or their privies and alienees, the jurisdiction of such commissioners under the treaties is (at any rate in the absence of an express provision *eo nomine* in the treaty; and, I incline to think, notwithstanding such provision) altogether incompetent. They are *coram non judice.* * * *
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> "By what authority did the present Commissioners open that judgment? Because it was given in mistake; because there was irregularity in the proceedings, say they. That, if shown in proper time, would be a very good ground for reversing it in a competent court of appeals, but there is none such provided here; or is a good ground addressed to the discretion of the same court for a new trial; or, finally, may *in re minime dubia justify an interference of the Government party to the treaty to enforce the doing of justice under it; and in this last case it becomes a political question again, as it was at first.* * * * For if the decision be wrong in *re minime dubia*, and to the injury of a foreigner, his Government would be justified in reprisals and war on that ground. * * * Regarding it as a political question, whether the Government ought to disturb the judgment of the first board on the ground of *irregularity or error*, it is properly within the province ef the Executive Department, and *has, as it appears, been repeatedly passed on by it.* The proper remedy, if there be any wrong, will be in an appeal to Congress."

But let us see how these high principles have been practically applied both by our Government and by the distinguished predecessor of Sir Edward Thornton in a case directly in point.

At the termination of the first Commission with New Grenada, the Commissioner of that country filed a protest against the decisions of the umpire in five cases which he claimed had not been submitted to him on the merits, but only on demurrer. This claim was denied by

the American Commissioner, and the secretary of the Commission agreed with him that the cases had been sent to the umpire for his decision on all points.

Mr. Upham, the umpire, however, filed a declaration not entirely unlike that filed by Sir Edward Thornton in the cases of Weil and La Abra. He said:

> On the subsequent protests, as the Commission had expired, it did not seem to me the cases could be opened again *except on extension of the Commission*, when perhaps for cause shown it might be done. The design certainly was to give a full hearing as far as might be.

The Commission was extended, and Mr. Seward wrote to the new Commission, stating that the final decision of these cases having been questioned, *he had suspended their payment*, and asked the opinion of Attorney-General Speed, who decided that that question must be determined by the new Commission. (10 Op., 402.)

The cases were docketed by the Commissioners. The attorney for four of the claimants, now a judge of the supreme court of this district, protested that the claims were properly decided by the first Commission. Mr. Carlisle, for New Grenada, replied that the treaty directed the Commission to decide all claims laid before it, and that these claims were laid before it by the Secretary of State.

The Commissioners disagreeing as to whether the claims had been decided by the first Commission, that question went to the new umpire, Sir Frederick Bruce, who determined it in the negative, and said that the Secretary of State must have entertained doubts on that point, "for he has taken the unusual steps of suspending payment of these claims, and of consulting the Attorney-General on the manner in which they are to be dealt with. That learned officer has replied in the following terms: 'The Government did properly withhold payment pending the negotiations for a new convention, and under that convention the Government cannot properly pay the five suspended claims till the new Commissioners shall say whether they were or were not decided by their predecessors.'"

Sir Frederick goes on to say that the idea of a new convention originated with the umpire, and quotes his declaration above given. He adds, "It cannot be presumed that the umpire, whose decision ought to have been final and conclusive on the points submitted to him, would have spontaneously, and without necessity, suggested a possible mode of revision; had he not been shaken by M. Hurtado's protest, or had he been convinced that neither on the merits nor on the point of form was there ground for appeal. *In civil courts an appeal lies to a superior tribunal; in international courts, which recognize no superior judge, fresh negotiations are opened, and a fresh Commission appointed, to which the disputed cases are referred. The Government of the United States has, in a spirit of enlightened justice, taken this course, in support of which, if necessary, it could allege the suggestion of the umpire himself.*"

The cases being thus reopened, Mr. Carlisle renewed the demurrer filed at the first hearing. Mr. Cox, for the claimants, contended that the decision of the first umpire was at least final in overruling the demurrer, and quoted the protest of Mr. Hurtado. This question going to the umpire, he decided that the case must be heare *de novo* on all points. Mr. Cox submitted the case, reserving protest against the jurisdiction of the Commission, especially on the questions presented in the demurrer. Mr. Carlisle stated that he understood this to be a reservation of recourse against the United States and not against New Granada.

The claims went to the umpire on all points, were rejected by him, and stand rejected to this day.

The learned counsel have alluded to the claim of Gibbes, one of the five against the awards in which protest was made by Sr. Hurtado and which was submitted to the second Commission without the claimant's consent, and have read part of the opinion of Attorney-General Hoar (13 opinions, 19) to prove that the United States have no power, even by a new treaty, to consent to the revision of an award in favor of one of their citizens.

But they totally misapprehend, as we think, the scope and point of Attorney-General Hoar's opinion. The treaty of 1864 with Colombia provided for "the examination and adjustment" by a second Commission "of such claims as were presented to but not settled" by the first Commission, and the seventh section of the act of Congress of February 20 contains the exceptional provision that all claims of citizens of the United States against New Granada "being established by the award of the Board of Commissioners, shall be delivered to the Government of the United States and made payable thereto, and the United States shall thereupon assume and pay" such awards. Mr. Hoar declared that Gibbs' claim had been properly submitted to and decided by the first Commission, and was not, therefore, under the terms of the treaty of 1864, cognizable by the second Commission; and that as a valid award in his behalf had been made by the first Commission, his claim had been assumed by the United States, and should be paid upon the production of the certificate of the Board of Commissioners at the Treasury. The question of the authority of the United States to reopen an award and submit it to a new Commission was not raised by the facts and was not decided. All this will appear by the latter part of Mr. Hoar's opinion, which I will read: "Our Government," says, Mr. Hoar, "is entitled so to treat it (the claim of Gibbs) under the terms of the treaty; and to ask on behalf of the claimant payment of the amount of the award for the United States of Colombia. But the question whether the claimant is entitled to receive payment of the award at the Treasury of the United States depends upon the provisions of the seventh section of the act of February 20, 1861 (12 Stat., 145), to carry into effect conventions between the United States and the Republics of New Granada and Costa Rica." Counsel say, contrary to the information which we have from the Treasury, that the claim has been paid by the United States. The Secretary will know, what is more important to this case, whether the money in satisfaction of the award has ever been exacted from Colombia.

But what title did La Abra Company acquire by this award?

It was named as plaintiff, it is true, although the award was not in terms to it (many others were made in terms to the United States), but the award was an award *sec.* It was dry and barren, and could bear no fruit until the United States came to the company's aid.

The company cannot sue in the Court of Claims, because that court has no jurisdiction of claims arising under treaties. (Sec. 9, of act March 3, 1863; sec. 1066, Rev. Stats.)

Nor would mandamus lie. (De Bode *vs.* Regina, 6 Dowling's Practice Cases, p. 76; Kendall *vs.* United States, 12 Peters, 524; Decatur *vs.* Paulding, 14 Peters, 497; Gaines *vs.* Thompson, 7 Wal., 353; The Secretary *vs.* McGarrahan, 9 Wal., 298; Litchfield *vs.* Register and Receiver, Ib., 575.)

But the true position of the Government is conclusively established by late English decisions in the case of Rustomjee *vs.* The Queen.

In that case a British subject sued, by petition of right, for moneys due him on a claim against a subject of the Emperor of China which had been collected by the British Government, together with moneys due other claimants, in pursuance of a treaty between Great Britain and China.

January 31, 1876, Sir Alexander Cockburn, chief justice, said (L. R., Queen's Bench Div., vol. 1, 487):

> That the result of the treaty was merely to place the fund at the disposition of Her Majesty, at her discretion to cause such distribution of it to be made as justice might require. The Queen was neither an agent nor trustee in regard to money received by treaty. The distribution must be left to her discretion. It was clearly inconsistent with all the prerogatives of the crown to suppose that Her Majesty could be coerced by the petition of right into doing justice.

In the court of appeals the decision was affirmed December 21, 1876. Lord Coleridge, C. J., said (L. R., Q. B. Div., vol. 2, p. 69):

> We assent, upon full consideration, to the reasoning of the judges in the court below. The making of peace and the making of war, as they are the undoubted, so are they, perhaps, the highest acts of the prerogative of the Crown. The terms on which peace is made are in the absolute discretion of the Sovereign. If Captain Elliott did (to use the words of the petition) promise that the Queen would compel the Chinese Government to pay these claims when terms of peace were arranged—if Sir Henry Pottinger did promise that these claims should be insisted on and should be paid—they both exceeded their authority, and promised what they had no power to perform or to pledge the Queen to perform. The Queen might, or not, as she thought fit, have made peace at all. She might or not, as she thought fit, have insisted on this money being paid her. She acted throughout the making of the treaty, and in relation to each and every of its stipulations in her sovereign character, and by her own inherent authority; and as in making the treaty, so in performing the treaty, she is beyond the control of municipal law, and her acts are not to be examined in her own courts. It is a treaty between herself as sovereign and the Emperor of China as sovereign; and though she might complain of the infraction, if infractions there were, her subjects cannot. We do not say that under no circumstances can the Crown be a trustee; we do not even say that under no circumstances can the Crown be an agent; but it seems clear to us that in all that relates to the making and performance of a treaty with another sovereign the Crown is not, and cannot be, either a trustee or an agent for any subject whatever.
>
> We do not, indeed, doubt that on the payment of the money by the Emperor of China there was a duty on the part of the English sovereign to administer the money so received according to the stipulations of the treaty. But it was a duty to do justice to her subjects according to the advice of her responsible ministers; not the duty of an agent to a principal, or of a trustee to a *cestui que trust*. If there has been a failure to perform that duty, which we only suggest for the sake of argument, it is one which Parliament can and will correct, not one with which the courts of law can deal. * * * For these reasons we are of opinion that this appeal must be dismissed, and the judgment of the court below affirmed with costs.

To conclude the argument on this point—if this award is a "judgment," conferring a "vested right," can that right be enforced by legal process? Where is the machinery for its execution?

Suppose Mexico, instead of raising, at great sacrifice, the money to satisfy these awards, to have defaulted in her payments. Suppose that instead of acknowledging completely, as she does, the validity of the Weil and La Abra awards as against her, she had fallen back on the doctrine of Vattel, that an award, "evidently unjust and unreasonable," deserves no attention, and had refused to pay them. What would the claimants have done? What could they have done, but to put themselves where they were at first, are now, and have been all the time, under the protection and patronage of the political power of this Government, and insist that that power should be used in their behalf, to execute the "judgments" of this Commission against Mexico?

They are utterly without remedy, against the United States, except such as Congress may concede, and Congress has already requested the President to inquire and determine a rehearing if, in his judgment, right to do so.

III.

The President is not bound by the strict rules of the courts. In negotiating with foreign powers he represents the sovereignty of the nation, and may do whatever justice requires. (1 Phil. Int. Law, vol. 1, p. 22.)

But it is insisted by counsel that if the President take jurisdiction of this matter under his general authority or under the act of Congress, he shall proceed, not according to his general political discretion, nor according to the guides suggested to him in the act, to wit, "the honor of the United States, the principles of public law, or considerations of justice and equity," but according to the strict rules of municipal law. This is not a motion for a new trial, say counsel, because not a part of the same proceeding, although they admit that the proceeding has not yet passed to the stage of execution, and that they have not got their money. They say that this is in the nature of an original bill of review and must fail, because no extrinsic or collateral fraud is alleged, and because (which is not exactly correct) no issue is presented which had not been passed upon by the Commission.

The recent case of Throckmorton is relied on in support of this proposition. But it is manifest, upon a careful perusal of the opinion of the learned judge, that his doctrine must be confined to strictly judicial proceedings. He says:

> If the *court* has been mistaken in the law, there is a *remedy by writ of error*. If the jury has been mistaken in the facts, there is the same remedy *by motion for a new trial*. If there has been *evidence discovered since the trial, a motion for a new trial* will give appropriate relief.

Was this Commission a *court*, coming within the definition of this decision? Assuredly not. It lacked the most essential qualities of a court. It was destitute of the ordinary means for arriving at the truth, the posession of which gives such weight to the findings of a court of law. Not only could it not enforce its own judgments, but it could not punish for contempt, and could not compel the attendance of witnesses or the production of books and papers, the non-production of which, by this very claimant, drew from the umpire an expression of surprise. Its expenses were not paid by the litigants, as has been stated, but by the *successful litigants;* and if the expenses had exceeded 5 *per cent.* of the *awards*, the excess would, under the sixth article of the treaty, have been met by the two Governments.

We have seen what Mr. Seward and Sir Frederick Bruce thought of the defective character of these international Commissions, and we have also seen the praiseworthy and statesmanlike efforts of Mr. Fish, which I trust will be continued by his successor, to secure more regularity and permanency in the adjudication of international claims. Let us now briefly examine some peculiarities of this Commission, and the steps taken in this particular claim.

The learned counsel the other day said that opportunities had been thrown away; that Mexico should have made a better defense; and that relief for error should have been secured before the Commission adjourned and the umpire became *functus officio*. How much is this argument to be regarded? Look at the treaty. There never was a tribunal organized for the trial of cases with less efficient machinery.

Mexico could not obtain the testimony of an unwilling witness.

She could not compel the production of original papers.

She could not examine the parties.

She could not assert her right to examine any witness in the presence of the Commissioners.

The Commission could not punish for perjury or contempt.

Thus disabled and hampered, what did Mexico?

This was but one, be it remembered, out of 1,017 claims, aggregating nearly $500,000,000, against which she had to defend herself. She secured and submitted the testimony of the witnesses of the vicinage, the employés of the company itself, showing that the mines were worthless, and that they were abandoned for that reason and not for any hostility on her part. It was stated in the claimant's evidence that only two months before the alleged abandonment, and after all the specific acts of hostility charged, the superintendent reduced ores and extracted a large amount of silver therefrom and spent it in continuing the work at the mines. It was also stated in the claimant's evidence that, at the same time (January, 1868), the company had such influence in the courts of Mexico as to recover judgment against the very judge whom it charged with persecuting it in the summer of 1867. Mexico filed an agreement dated in February, 1868, between the superintendent of the company and that very judge, allowing the latter to occupy for six months the property which was the subject of that law-suit; and the superintendent, testifying for the company, admitted the execution of that agreement. She also filed the extension of that agreement, executed by Granger, an officer of the company, and dated in August, 1868. She also filed a letter showing that Granger had disposed of some of the property of the company in June, 1871, and Granger admitted that he had done so. The claimant itself filed a copy of a denouncement by Granger of the mines in August, 1871.

Were not these evidences sufficient to disprove the charge that the company, having in vain sought redress, was forced to abandon, in time of peace, a valuable property which it had purchased and worked amid the disorders of war, on account of the persecutions of the judge and others who desired to secure possession of the property?

How did the claimant rebut this evidence? By bringing from New York its books showing its receipts and expenditures, and the value of the ores, or the reports of its superintendent showing the hostility of the Mexicans and the cause of his abandoning the mines? Oh, no! but by more affidavits, more perjury, until such a mass was piled up that the American Commissioner, in very weariness, said in his decision, "It is, however, idle for me to go into this important case with any particularity since it must go to the umpire to be disposed of by him, according to his views alone."

Mexico could not ask the Commissioners for a rehearing, for they came to no decision. She could only do as she did, present her negative case strongly to the umpire and wait.

Sir Edward Thornton made his first decision as umpire on the 6th day of March, 1874. Between that time and November 20, 1876, the expiration of his term, he decided 466 claims, an average of nearly one decision every two days.

How much examination did he give to this most voluminous case? Unfortunately his decision shows that he overlooked at least some of the testimony. For he says that books must have been kept at the mines, showing the quantity and value of the ore raised, but that they had not been produced, and no reason had been given for their non-production; whereas Granger had sworn that the hacienda had been "sacked" of those books.

December 27, 1875, he gave his award in this claim. On the 29th of January, 1876, only a month afterwards, *and months before the time of the Commissioners expired*, the Mexican agent presented his motion for a re-

hearing in the cases of Weil, La Abra, and some others. Could Mexico have shown greater vigilance and activity?

October 20, 1876, *months after the expiration of the term of the Commissioners, and when his own term was drawing to a close*, Sir Edward Thornton gave his decision on these motions as follows:

It cannot be doubted *that he had no right whatever* to examine or take into consideration *other evidence* than that which had already been before the Commissioners, had been examined by them, and transmitted to the umpire. If he had done so, such a course would have been contrary to the dictates of the convention, and would have been eminently unjust, until the opposite side should have had an opportunity of rebutting such posthumous evidence. *If, then, it were in the power of the umpire to rehear* any of the cases which have now been returned to him, he could only re-examine the same documents and evidence, and no more, upon which he has formed his opinions. As he has already examined all these documents and evidence with all the care of which he is capable, it is not likely that a re-examination of them would tend to alter his opinion.

* * * * * * *

But the umpire believes that the provisions of the convention *debar him from rehearing cases* on which he has already decided. By it the decisions are pronounced to be final and without appeal, and the two Governments agree to consider them as absolutely final and conclusive, and to give full effect to them without any objection, evasion, or delay whatsoever. He believes that in view of these stipulations *neither* Government has a right to expect that any of the claims shall be reheard.

* * * * * * *

In the above-mentioned case, No. 489, the Mexican agent would wish the umpire to believe that all witnesses for the claimant have perjured themselves, whilst all those for the defense are to be implicitly believed. Unless there had been proof of perjury the umpire would not have been justified in refusing evidence to the witnesses on the one side or the other, and could only weigh the evidence on each side, and decide to the best of his judgment in whose favor it inclined. *If perjury can still be proved by further evidence, the umpire apprehends that there are courts of justice in both countries by which perjurers can be tried and convicted, and he doubts whether the Government of either would insist upon the payment of claims shown to be founded upon perjury.* In the case No. 447, "Benjamin Weil *vs.* Mexico," the agent of Mexico has produced circumstantial evidence which, if not refuted by the claimant, would certainly contribute to the suspicion that perjury has been committed, and that the whole claim is a fraud. For the reason already given, *it is not in the power of the umpire* to take that evidence into consideration, *but if perjury shall be proved hereafter no one would rejoice more than the umpire himself that his decision should be reversed and that justice should be done.*

Then came Mr. Mariscal's note to Mr. Fish, inclosing Sr. Avila's attempted protest of November 21, 1876, wherein he reserved the right to show fraud.

How utterly inapplicable is the rule of the Throckmorton case to such a case as this! The umpire had no power to grant a new trial, but hoped that one might be had. Are you, Mr. Secretary, empowered as you are, to grant one, not to consider everything which might have been ground for a new trial before the umpire if he had had the power?

We have already cited authorities to show that such a new trial would have been granted by a court of law on a review of the record, because the evidence was insufficient even had it been uncontradicted; because it was vague and uncertain, and better evidence might have been produced, as the umpire expressly stated, and because the judgment was contrary to law.

The new evidence offered by us possesses all the requisites of new evidence in a court of law. It is not merely cumulative, it does not tend merely to impeach witnesses, but goes to the merits, and it could not have been produced at the former trial, for the very good reason that it was in the hands of the opposite party, who falsely swore (a fact which the umpire overlooked) that the hacienda had been sacked of its books and papers.

To prevent misrepresentation of the record on this point, let us see the evidence of Granger, of May 14, 1870. In direct contradiction to that statement he swore in another place (case of Mexico, p. 137), "I

remember the order very well, as I received it as the clerk of the company, and after showing it to Mr. Exall, *I filed it away with some other papers of the kind*" (what and where are they), "*and subsequently turned it over* together with two or three others from Judge Guadalupe Soto *to the attorney of said La Abra Company.*" How did Granger preserve these papers from the sack of the hacienda?

We have shown by Exall's letter of February 21, 1868 (case of Mexico, p. 149), that Granger was left in charge of the mines by Exall, and by Granger's letter to the collector of taxes dated August 13, 1868, that he remained there in charge as late as August. The agreement between Exall and Judge Soto, dated February 7, 1868, as to the occupation of *the lower hacienda* by the latter, and its extension for six months, by Granger, were put in evidence by Mexico on the trial (case of Mexico, p. 71). Exall admitted (case of Mexico, p. 141) having signed this agreement, and said it related to an old and useless hacienda half a mile from the main buildings. It is true, that in his affidavit of May 14, 1870, Granger, in answer to a question, appears to have said (p. 48, claimant's book of evidence) that Judge Soto, "with his family," occupied both this hacienda and the main buildings half a mile off. But this statement, if he ever made it, is by no means to be believed.

On the 8th of April, 1871, as shown by the denouncement filed by the company (p. 163, case of Mexico), while this infamous claim was being prosecuted in Washington, Granger himself denounced the mines of the company, and possession was given him on the 11th of August. In his evidence for the defense (case of Mexico, p. 164—claimant's book of evidence, pp. 137, 150), Granger admitted that *on the 4th of June*, 1871, he wrote the letter produced in evidence, stating that he had disposed of certain specified articles of the company's property, the value of which *when the company should call upon him* he would deduct from what the company owed him. Granger, the trusted agent of the company, and only Granger, ever had charge of the company's property. No officer of Mexico ever had, and our new evidence (pp. 165, 166, case of Mexico) shows that when, *on the 23d of May*, 1872, Charles B. Dahlgren asked authority of the judge to carry off certain of the company's property, the judge expressly declined to assume any such control. Mexico, therefore, never had the custody of these books until she procured them in 1877, and could not have produced them at the trial.

The evidence, then, comes within the rule clearly expressed by the court in the case of Warren *vs.* Hope (6 Greenl., 479), when it says that a new trial will be granted "where the newly-discovered evidence relates to confessions or declarations of the other party respecting a material fact, and inconsistent with the evidence adduced by such party at the trial; or where such newly-discovered evidence was placed beyond the knowledge or control of the petitioner by means of the other party, with a view to prejudice the petitioner's case."

If these parties concealed their books and reports, and introduced secondary evidence, and this secondary evidence was outweighed, as it certainly was at the trial, by acknowledged documents; if they still concealed their best evidence, and by a mass of affidavits betrayed an overburdened judge into an unjust judgment; will it now be gravely contended that Mexico was guilty of *laches* in not securing these very books and reports and herself producing them at the trial?

IV.

We will not stop here to notice the proposition that the award, based, as it was upon a purely fictitious claim in which there was no shadow

of a property right, derives additional strength from the supplemental treaty which Mexico entered into since the award, for the adjustment of accounts with the United States, in which adjustment she was credited with the proportion of expenses due her on account of this claim. This is a matter so easily arranged that it is amazing that counsel should attempt to hang an argument on it.

V.

Permit me to briefly restate our case.

The Mexican Government represents that this claim had its origin in fraud, and has been nursed and sustained by fraud during its whole life.

The company claims that it was driven out of Mexico in March, 1868, and that Exall, its last superintendent, being in fear of his life, fled from Tayoltita to Mazatlan, where he borrowed money to take him to New York, and dared not return to resume operations.

It is significant that no redress was sought in the judicial tribunals of Mexico, which were open to it, nor of the federal Executive; and that no aid was asked of the American consular or diplomatic representatives in Mexico, nor of the State Department at Washington.

But, after two years, on March 18, 1870, the claims convention with Mexico having been mean time concluded, the company filed with the Secretary of State a letter asking for the allowance of the modest sum, by way of indemnity, of $1,930,000.

Three months thereafter a memorial was presented to the Commission asking for $3,000,030.

And when the company had brooded over its wrongs long enough to prepare an argument, its demands rose to $3,962,000.

Verily, a most striking illustration of the rule of arithmetical progression, in which every step represents the magnificent sum of a million of dollars!

The efforts at mining having failed, the entire force of the corporation was organized to dig their fortunes out of the treasury of Mexico, and they set themselves to work with every conceivable appliance.

So strong were their statements, that they induced Sir Edward Thornton to believe that hostilities, on the part of the local authorities, were carried to such an extent, that the claimants were finally compelled to abandon their mines, and works, and to leave the republic; and he then awards to the claimant:

For expenditures	$358,791 06
For abandoned ore	100,000 00
For interest	224,250 26
Making the enormous total of	683,041 32

This finding is based upon three propositions, which he accepts as fully established by the proof:

1st. That in violation of its promises to afford protection, the Government of Mexico was chargeable with repeated and persistent acts of hostility against claimant.

2d. That in consequence of this hostility the claimants were compelled to abandon their enterprise.

3d. That in consequence of the abandonment thus brought about the claimant sustained the amount of damages mentioned in the award.

All of these propositions are completely refuted by the newly-discov-

ered testimony, which the Mexican Government has succeeded in obtaining since the final award, and which it now presents for the consideration of the President.

We now hand you, Mr. Secretary, a printed pamphlet, of which we ask your most careful perusal. It contains in chronological order, copies of the most important of the letters and reports of this company, of which you have the originals, from the commencement of its operations in January, 1866, down to August, 1868, five months after its alleged expulsion. They show that the company, deceived by the former owners of the mines and by its first superintendent, began with high hopes of success, and received all the aid which the Mexican authorities could render. That these hopes gradually drooped until, when a little more than a year had passed without favorable results, the stockholders declined to sink any more money in the enterprise. That the last superintendent continued to struggle for nearly a year longer, running into debt, begging for money, and finding no ore that would pay the cost of mining. That he then, voluntarily and without a hand being lifted against him in Mexico, went to New York to try and collect his pay from the company; and that this and all other aid being refused him, he still kept control, giving directions to his representative at the mines, and hoping to form a new company from which he might recover his losses.

This is the story of the mine. The story of the claim has not yet been told or written; but when it is completed, as it surely will be, it will form one of the darkest tales of fraud and conspiracy that history records.

All that Mexico asks is a rehearing, which will defeat no just claim, but only give her an opportunity to show the stupendous and disgraceful frauds which have been attempted upon a friendly republic under the protection and influence of the Government of the United States.

Better that the claimant should be subjected to the delay necessary for a thorough re-examination of this case, even if its demands were just, than that our Government should rigidly exact the full penalty of its bond, and should extort from a sister republic a claim which now seems to be so utterly defiled with fraud.

In conclusion, I submit the following propositions as embodying our views:

1st. That the Government of the United States, itself a sovereign power, in its dealings with other sovereign powers, is wholly free from the restraints of all technicalities and judicial limitations, and should be controlled and inspired only by the dictates of justice and right.

2d. That the award in La Abra case was obtained by deliberate and concerted fraud and perjury, and that the President has ample power to open said award, and to provide for a rehearing of the case, if satisfied that there is sufficient ground to justify him in the exercise of his discretion.

3d. That the new evidence presented establishes the fraud and perjury so conclusively and irresistibly, as to fully meet the hypothetical case of the umpire who made the award, when he said, "if perjury can still be proved by further evidence, the umpire apprehends that there are courts of justice in both countries by which perjurers can be tried and convicted; and he doubts whether the Government of either would insist upon the payment of claims shown to be founded upon perjury;" and "if perjury shall be proved hereafter, no one would rejoice more than the umpire himself that his decision should be reversed, and that justice should be done."

No. 51.

CONCLUDING ARGUMENT OF SAMUEL SHELLABARGER, OF COUNSEL FOR LA ABRA COMPANY,

BEFORE THE SECRETARY OF STATE,

In the matter of the award of the Mixed Commission, under the treaty between the United States and Mexico of 4th July, A. D. 1868, in the case of La Abra Silver Mining Company.

I now beg to be allowed to reply to the inquiries put to me by the Secretary at the conclusion of my argument on our first hearing before the Secretary of State, and to which I had no opportunity of making reply at that meeting. I prefer to reduce the reply to writing, and to leave it on file with the Secretary, so as to give better opportunity for the consideration of the authorities on which I rely.

The substance and effect of the inquiries propounded by the Secretary, as I apprehended them, were these:

Is it so that an award, by a mixed commission, made under a convention like that of 4th July, 1868, under which this award was made, is a judgment of a court, vesting property rights in the private claimant in whose favor it is made, in such sense as that the claimant becomes the owner, as against the United States, of such recovery under the award, and in the sense in which judgments in favor of suitors in the municipal courts of the country become the property of a plaintiff in such courts?

The Secretary presented the question in another form, substantially thus:

Suppose this Government, whilst the money recovered by such an award remains in its hands, should find out that the subject-matter of the recovery had absolutely no existence (as, for example, where the recovery was for the loss of a mine, and whilst the money is still in the possession of the United States the defeated litigant satisfies the United States that there was no such mine), has the party in whose favor the award was made such an intesest in the recovery, and is the United States so entirely deprived of power of disposition over it as that the Government cannot return the money to the party against whom the recovery was had without thereby appropriating a citizen's property wrongfully?

This, I think, is the substance of the questions propounded by the Secretary.

It is plain that they cover the great body of the legal principles involved in this controversy, and that no reply to the questions is possible without bringing into view the body of law giving character to private rights arising under international treaties and international awards.

That the extreme case supposed by the Secretary hypothetically—where the entire subject-matter of the recovery was a myth, a sheer invention of fraud, in support of which the possibility of honest testimony on the direct merits is, in the very nature of the hypothetical case, excluded—is a case of a family or class distinguished by the law from the class to which the case at bar belongs—belongs by the confession and showing of Mexico, taken in its extremest contention against this award. That extremest contention of Mexico does *not* claim that there was no mine; that La Abra did not buy and own it; did not invest values in its working; did not extract ores of *some* sort that were abandoned; was not subjected to *some* hostile attacks, tending to render the work

unprofitable, or that there was not, on *some* account, an abandonment. Every one of these radical facts stand confessed, even to-day, and the points of contradiction between the adverse parties are not the *existence*, but the *value* of the mine; not the *purchase* of the mine, but how *much it cost;* not the fact as to the supply of machinery and other expenditures, but what the *extent* thereof was; not the fact as to extracted ores being abandoned, but the *value* of these; not whether hurtful hostilities, by Mexicans, were encountered, but what the *extent* and *source* and *results* of these were; not the abandonment of the mine, but whether Mexico caused it.

Now, in view of this state of the issues and the evidence, stamped incontestably on the face of this record, we assert, without fear of successful contradiction, that the present demand of Mexico is but an attempt to destroy an international judgment, on the assertion and pretense that she has now *cumulative* evidence to overcome the honest, competent, and truthful evidence which defeated her on *every one* of the issues which she now seeks to have retried.

It is therefore absolutely self-evident that the supposed case, where the demand for a new trial is based on the allegation that there was no mine, no purchase, no machinery, no work, no abandonment, no loss, and, therefore, no *honest* evidence, is, *in law*, a totally different case from ours, where the utmost contention against us can allege no more than that the *cumulative* evidence now tendered, bearing upon the identical issues tried before Sir Edward Thornton, is strong enough to overthrow the evidence honestly given before the umpire, showing those values of ores, machinery, &c., upon which the award was made.

The legal principle, which puts the supposed case into a totally distinct family from ours, is this: That in the one case there was, as to the real merits, no possibility of any honest but mistaken testimony; whilst in the other there is honest evidence upon the successful side, and the motion for a new trial is simply a demand to be allowed to overcome that evidence by countervailing and cumulative proof. It is the same legal principle that refuses the vacation of judgments upon cumulative evidence, or where there was *some* evidence, though contradicted, which supported the judgment, which distinguishes our case from the case supposed by the Secretary.

You will find the authorities upon the proposition that judgments are never set aside, even in motions for a new trial, and much *less* on a bill in equity, either upon *cumulative* evidence or where there was *some* evidence on both sides which was contradictory, unless it be shown that the judgment or verdict was given by mistake or *willful* abuse of power, in section 564 of 1 Brightley's Digest of Federal Decisions, p. 679.

If, therefore, this appeal for a new trial were made (as it is not) at a time and in a tribunal where the power to grant a new trial existed, then our case would be distinguished, by the plainest principles of law, from the extreme case put, where the subject-matter of the suit did not exist, and there was *no* evidence (save confessedly perjured) in support of the merits. The case put is one where there *could* be *no* evidence going to the merits, save such as was willfully corrupt and perjured (which is not entitled to be weighed), and therefore no evidence entitled in law to be *weighed* by the court; whilst in our case *every* issue was tried which is *now* presented, upon evidence entitled to be weighed then and entitled to be weighed *now;* and the question now presented to this tribunal is which of two opposing classes of competent and honest testimony, contradictory of each other, shall be believed.

We are not now discussing the question whether the now tendered evidence is such as, *in an ordinary court*, would secure a new trial, but are simply showing the legal principles which broadly distinguish the case put from the case at bar.

Having now pointed out the legal principle which distinguishes the case put from the one at bar, we assert that it is wholly unnecessary for our case that we should assert that, in a case where the subject-matter of the award never existed, the Government would be bound to pay over the fruits of her fraud to the author of the fraud.

We now state our second proposition. It is this: *Where a citizen of the United States asserts his private claim against a foreign Government, and is authorized by such treaty as that of July 4, 1868, to submit his claim to adjudication by commissioners in his own name and right, and he does so and recovers a judgment in a trial so conducted as that the judgment could not be assailed had it been recovered by a similar trial in a municipal court of his country, then such international judgment in his favor is the judgment of a court having, as a judgment, all the attributes of a judgment of a court of exclusive and final jurisdiction, and cannot be set aside or its proceeds appropriated, by the United States, otherwise than other property of the citizen may be appropriated.*

Under this head it will be material to notice the nature of a private claim as held, before reduction to judgment by award, by one of our citizens against a foreign Government. Is such a claim the private and personal property of that citizen which the United States has no more ownership in or dominion over, except by claimant's consent, than it has over other property of such citizen?

That such private and personal claim is the citizen's private property, not subject, except by the citizen's consent, to the control or release of the United States, is absolutely settled law.

On this exact point the Court of Claims says, in Meade *vs.* The United States (1 Ct. of Cls., 275), where, speaking of a claim just like ours: "Was the release of Meade's claim against Spain such an appropriation of private property to public use as comes within the rule of law and the provisions of the Constitution? The court think it was. A man's choses in action, the debts due him, are as much property and as sacred in the eye of the law as are his house and lands, his horses and his cattle; and when taken for the public good, or released or canceled to secure an object of public importance, are to be paid for in the same manner. In such cases the right of the citizen and the obligation of the sovereign are perfect." And this opinion is cited with approval by your predecessor, Mr. Seward, in his letter of 3d March, 1869, to the Venezuelan minister, Mr. Castro.

In speaking of this subject, your predecessor, Mr. Adams, on the 13th of February, 1821, to the President of the United States, in the Meade case (2 Ct. of Cls., 278), where, in considering the relations of our Government to a claim, arising on contract, against a foreign Government, he says: "The claimant, by contract, cannot resort to the interposition of his own Government to obtain from the other the satisfaction of his claims to the same extent as the claimant for wrong. The Government of the claimant by contract can interpose in his behalf only its good offices, and cannot, as the memorial states, press to the extent of reprisals for the satisfaction of the claim. It has no right to interpose at all without the solicitation of the claimant himself, who, having staked his interest upon his own confidence in the Government with which he contracts, may properly abide by the result of that confidence, without calling upon his country to make itself a party to the demand. But if

he does appeal to his own Government for the adventitious aid to which other contractors with the same party and on the same security cannot resort, he thereby voluntarily makes his claim a subject of negotiation and of those compromises in which all natural adjustments of individual claims must and do always consist." The point of this citation is that the Government power to take charge of our claim arise out of our assent; that by this assent the relation of agent or trustee for collection of the claim is established; that the adjustment or compromise results in establishing a private right through the "*good offices*" of the Government, and not by virtue of any ownership acquired by the Government.

Mr. Clay, on 12th March, 1821, a month after the above opinion of Mr. Adams was delivered, expressed in the same case, the same opinion, in these words (2 Ct. of Cls., 228):

> In regard to contracts or commercial operations between citizens of our country and a foreign power which withholds from them justice, there is no absolute right of interposition on the part of that country, since the citizens have voluntarily put their trust in the foreign power. The country may interpose at the instance of the citizen, *but the extent* of that interposition must depend upon the request of its citizens. The country then becomes a sort of agent of a high and dignified character to ask justice for its injured citizens. It must not abuse this agency which is submitted to the laws of all delegated powers. * * * Now, if a country is not bound to go to war to support the rights of its citizens, if it is not even compelled to interpose its good offices in cases where those citizens have, with their eyes open, confided in a foreign state, by contracting or voluntarily dealing with it, *neither has it a right, especially in the latter case, to extinguish the right of its citizens arising out of such contract or voluntary dealing.* The treaty extinction of them is probably binding on them; but if it is, it appears to me that the rule of equity furnished by our Constitution, and which provides that *private property* shall not be taken for public purposes without just compensation, applies and entitles the injured citizen to consider his own country a substitute for the foreign power.

The point of this citation for the present case is, that in extending its good offices in enforcement of such claims, whether arising out of contract or tort, the Government acts "as a sort of agent of a high and dignified character," and that the thing collected is private property, which, if taken by the Government from the citizen for public use, must be paid for.

The case of Gibbs (13 Opins. of Attorneys-General, 19) was a case in no legal aspect distinguishable from the question I am now upon. It arose on an award made by an umpire under a treaty dated 19th September, 1857 (12 Stats., 985), identical with the treaty of 4th July, 1868, in every particular here involved. Gibbs presented his claim for award, and before the expiration of the time fixed by treaty for awards, he recovered an award for $6,952.60. Two days after the termination of the time within which by the treaty the Commission could sit, the Commissioner of New Granada *filed a protest* against, amongst others, this Gibbs award, and denied all liability of his Government therefor, and presented his statements and arguments against the claim, and to these the American Commissioner replied; and after that the umpire caused to be entered on the records of the Commission his statement in regard to the protest; and a certificate to Gibbs for the amount of his award, signed by the American Commissioner alone, was issued and filed in the Treasury Department of the United States, and thereupon payment of the award was, at request of the Secretary of State, *suspended*, and continued so from the date of the award, 9th March, 1862, up to the date of Mr. Hoar's letter, 10th April, 1869.

On 10th February, 1864, the United States *made a new treaty* with the United States of Colombia, as the representative of New Granada, by

which such claims as were presented to, *but not settled by*, the first Commission, were to be adjusted; and the Attorney-General, Mr. Speed, ordered the Gibbs case to be submitted to the new Commission, and they were entered on the journal of the new Commission with the order that the question whether the Commission could take cognizance of, amongst others, the Gibbs case, should be *first considered*. The Commission, after debate, decided that they *had* jurisdiction of the cases so referred, in which some of the claimants appeared; but Gibbs in no way submitted *his* case to the new Commission, nor appeared before it. Mr. Carlisle, on behalf of the United States of Colombia, submitted Mr. Gibbs' case, but without Gibbs' authority. The Commission treated Gibbs' case *as open for trial* on the merits, and, not being prosecuted, they dismissed it *on the merits;* this on 18th May, 1866.

Mr. Gibbs' position and claim under these facts were that the *first* award in his favor was conclusive and final; and that *without his assent* it was impossible for the United States, *through the Executive or otherwise*, to destroy his award, or open it or send it to a new Commission. In other words, it was the precise position La Abra takes to-day; and the question submitted to Mr. Hoar was the exact one I consider, to wit, whether such award vests a private and personal estate in the claimant such as the Executive cannot submit to a new trial or otherwise destroy?

After stating, on page 23, that Mr. Gibbs had done no act to waive his rights under the first award, nor to submit his case to the new Commission, the Attorney-General proceeds as follows (pp. 23 and 24):

> I cannot assent to the view that this Government could affect his rights as against New Granada under the convention by submitting his case to the second Board, or that the Board was able to divest those rights by any action upon the claim, *under the submission of our Government*, against his will and without his consent. The treaty provided that all claims on the part of citizens of the United States upon the Government of New Granada which should be presented prior to the 1st of September, 1859, either to the State Department here or to our minister at Bogota, should be referred to a Board of Commissioners; that the proceedings of this Board should be final and conclusive with respect to all claims before it, and its awards a full discharge to New Granada of all claims of citizens of the United States against that republic which may have accrued prior to the signature of the convention, and that the aggregate amount of the sums to be paid by virtue of their awards should be paid by the Government of New Granada to the Government of the United States. *Such payment to our Government was of course intended to be in trust for the parties whose claims should be ratified by the Board.*

The Attorney-General then proceeds to state the claim of Mr. Gibbs: That the first award in his favor was "*a full, final, and conclusive adjudication of the claim upon the point of validity and amount*"; and that New Granada was bound to pay it "*to our Government for his benefit*"; and that he had never waived his rights, which he "has thus acquired by the proceedings of the Commission; and that his case now stands as it did 9th of March, 1862, when the life of the Commission terminated."

And this claim of Mr. Gibbs the Attorney-General sustains fully and exactly as the claim is above stated.

And if it should be claimed that there is some difference between a claim due our citizen for breach of contract by a foreign Government, and one arising out of a tort, it must be noted that this Gibbs case was one arising out of damages by a riot at Panama.

Now, we submit that this holding—so exactly in accord with all the authorities, English and American; so precisely in harmony with the analogies found in the practice in municipal courts, as ruled in the Throckmorton case, already cited; so perfectly supported by those principles of universal law which make judgments property incapable of destruction by due process of law—is one which completely *rules* the

present case, and it *must* be overthrown before our judgment can be destroyed by an order of the Executive.

Even *before* our private claim was reduced to judgment against Mexico it was a "perfect" right under international law. This distinction between "perfect" and "imperfect" rights is, under international law, a clearly-defined and well-established one; and that such claims by citizens of one country against foreign Governments for wrongful destruction of private rights is incontestably of the class of *perfect* obligations, see Vattel, Introduction, lv, sections 16 and 17.

If the claim, as such, is a "perfect" property right before it is reduced to judgment through the mere good offices of the Government, then does this property lose that character, because reduced to a judgment recovered in the name and at the expense of the claimant? The answer to this question is not only furnished by manifest reason and justice, but given in all the authorities which we here present. The answer is, self-evidently, that it is not made in any sense the property of the United States by its reduction to a judgment under the treaty.

An award made under one of our treaties is one made under the supreme law of the land. The Commission created by a treaty is a Commission created by the supreme law of the land, and when said treaty or supreme law expressly ordains that the Commission shall have jurisdiction to hear, try, and finally adjudicate a given case, upon what conceivable principle can it be asserted that that Commission, so created and endowed with exclusive plenary and final jurisdiction to try and adjudge the named case, is not a court, nor able, finally, to so adjudge? On principle, such a proposition is simply preposterous. And now, in this connection and on this exact idea as to an award by a Commission created by a supreme law of the land being technically a judgment of a real court, we again turn to the authorities.

New England Mississippi Land Company (1 Ct. Cls., 135) was a case where a Commission created by an act of Congress (certainly no more a supreme law of the land than is a treaty) was authorized to try and finally decide certain property rights. It did try and decide. And the question here arose, what was the nature and force of the judgment of that Commission? and the court held the Commission to be a court, its judgment to be a technically binding and final judgment, which could not be assailed, or opened, or contradicted more than any other judgment could be.

The syllabus of the report states exactly what the case decides, and is as follows:

> Money retained under an award of a tribunal specially clothed with jurisdiction of the subject-matter, and from whose decision there is no appeal, as appears from the statement of facts in the opinion of the court, was the condition in this case, *is, in legal effect, money paid under a judgment. The present proceeding is in the nature of an action of assumpsit to recover it back, and such an action is not maintainable, because a judgment cannot be set aside in this way.*

Amongst the precedents relied on by Mexico as an authority for the United States undertaking to trample down our rights under this award, is the conduct adopted by this country towards what are known as the "French spoliation claims."

How the greatest, best, and most erudite intellects ever produced in this or any other country regard the *present condition of these claims as still existing and incapable of destruction except by blank repudiation*, I now remind you by the following from Mr. Sumner:

Mr. Sumner, in his report to the Senate on the "French spoliation claims," made, as chairman of the Committee on Foreign Relations, April 4, 1864 (Rep. Com. No. 41), after having shown that our Govern-

ment in the treaty with France had released the individual claims of our citizens against France, and in return had been released from its national obligation to France, at pages 23 and 24, says:

> The natural consequence of this set-off and mutual release was the assumption by our Government of the original obligation of France to American citizens, and its complete substitution for France as the responsible debtor. * * * On this point there can be no doubt. * * * It is according to common sense that any individual interest appropriated to a national purpose must create a debt on the part of the nation, which, of course, is still further enhanced if, through this appropriation, the nation has been relieved from outstanding engagements. * * * It is according to reason that any person intrusted with the guardianship of particular interests becomes personally responsible for his conduct with regard to them, especially *if he undertakes to barter them* against other interests for which he is personally responsible. Thus, an attorney who sacrifices the claim of his client to obtain the release of his own personal obligations becomes personally liable; and so also the trustee who appropriates the trust fund for any personal interest becomes personally liable. All this is too plain for argument, but it is as applicable to a nation as to an individual. In the case now before your committee, our Government was attorney to prosecute the individual claims of citizens, and also trustee for their benefit to watch and protect their interests, so that it was bound to all the responsibilities of *attorney and trustee*, absolutely incapacitated from any act of personal advantage, and compelled to regard all that it obtained, whatever form of value it might assume, whether money or release, as a *trust fund for the original claimants.*

And he quotes the opinions of many eminent men, and among others of Mr. Pickering, former Secretary of State, that "The Government bartered the just claims of our merchants to obtain the relinquishment of the French claim for the restoration of the old treaties," and "the merchants have an equitable claim for indemnity from the United States"; and of Chief Justice Marshall, that he "was, from his own knowledge, satisfied that there was the strongest obligation on the Government to compensate the sufferers by the French spoliations"; and of Mr. Madison, that "The claims from which France was released were admitted by France, and the release was for a valuable consideration in a correspondent release of the United States from certain claims on them"; and Mr. Sumner adds the comment, "Equitably, that valuable consideration must belong to the claimants."

But I now turn to the authority of the Supreme Court of the United States.

Judson *v.* Corcoran (17 How., 612), already cited, is conclusive upon the main point of this inquiry. This main point is: Do our Constitution and the international law regard the awards of such international commissions as the one which pronounced our judgment, as the judgments of *real* court, capable of the bestowal of a technical legal title to the property adjudged?

In that case it was held that the award did have the legal effect of conferring the *legal title* of the entire claim upon Mr. Corcoran. It is impossible to better state the exact effect of this decision than in the words of the syllabus, which are these:

> Though an award of a commission, under the act of March 3, 1849 (9 Stats. at Large, 393), passed to carry into effect the convention between the United States and Mexico, does not finally settle the *equitable* rights of *third* persons to the money awarded, yet *it* [that is, the award] *makes a legal title to the person recognized by the award as the owner of the claim; and if he also has equal equity, his legal title cannot be disturbed.*

Here the Supreme Court held (and this was necessary to the decision reached) that the award did bestow such a "legal title" upon Mr. Corcoran as bound the courts of the country. To say, in view of such solemn judgment, that what binds the Supreme Court and compels *it* to treat the award as a judgment of a court bestowing legal title, and still does *not* bind the Executive of the United States, is a proposition which

no court, Department, or office of this Government has ever yet found occasion to lay down.

But really the most elaborate discussion of the identical principles covered by the inquiry propounded by the Secretary, as to who *owns* and can alone *control* the money covered by an award, and as to whether the award is a *judgment* of a court and bestows title, which is in existence, is found in Comegys *v.* Vasse (1 Pet., 193).

There, the court decides every point put by the Secretary. The court decides such international tribunal to be a court, and one able to render "a conclusive and final" judgment settling private property rights. On this point the language of the court (page 121) is as follows:

> The object of the treaty was to invest the Commissioners with full power and authority to receive and decide upon the *amount* and *validity* of the asserted claims upon Spain for damages and injuries. Their decision, within the scope of this authority, *is conclusive and final.*
>
> If they pronounce the claim valid or invalid, if they ascertain the amount, their award in the premises *is not re-examinable.* The parties *must* abide by it *as the decree of a competent tribunal of exclusive jurisdiction. A rejected claim cannot be brought again under review in any judicial tribunal.* An amount once fixed is a final ascertainment of the damages or injury. This is the obvious purport of the language of the treaty.

Again, on the point as to whether the claims of citizens dealt with under such treaties, and relinquished upon the conditions and considerations stated in the treaty, are regarded as *property*, as valuable *money* considerations, as distinguished from "donations," or moral or political considerations, this decision is equally emphatic in making the claims of citizens, so disposed of, *property* in its exact legal sense.

When the court elaborately considers the question, and decides that a claim, by certain merchants, against Spain, for wrongful seizure of property by Spain (and which claim was afterwards reduced to judgment by award of Commissioners under our treaty with Spain), passed from these merchants to the underwriter, Vasse, under the general doctrines of the common law relating to abandonments to underwriters, as laid down by Lord Hardwick in Randal *vs.* Cochran (1 Ves., 98), and passed as property, of the merchants, first to Vasse, then to Vasse's assignees in bankruptcy, under the bankrupt law of 1800, it most clearly decides that such claim is, to all and every possible intent and purpose, both of law and equity, the sole, private property of the despoiled citizen. And it thereby moreover decides that the fact that the "good offices" of the United States recovered the money through a treaty, no more turns this private property into Government money, nor puts it in the Government's power of disposal, than does the aid which the Government furnishes for the recovery, in its courts, of ordinary judgments, turn the suitor's money over to the ownership of the Government which supplied the court for its recovery.

But the court by no means leaves this point, as to such a claim for indemnity being *private property* of the citizen, although impossible of collection, except through the instrumentality of the Government, to be inferred from the general effect of its decisions. The exact point is taken up and carefully considered. It was raised in the case by the contention that Vasse's claim, as the mere *spes recuperandi* of an underwriter and wholly incapable of enforcement, because against a Government which could not be sued, was incapable of passing by assignment to his assignee in bankruptcy, and that, when awarded under a treaty with Spain, the award was to be deemed a mere donation or gratuity by Spain to the United States or its citizens. And this contention is elaborately considered and rejected, the court saying expressly that the public law

and treaties regard such a claim, so incapable of collection save through the aid of the United States, as "an existing *right* to compensation *in the aggrieved parties*" (and not in his Government), and not "in the nature of a donation or gratuity."

In addition to the force of this irresistible body of authority now noticed, all tending to show that a claim of one of our citizens for wrongs inflicted by a foreign State is private property before reduced to judgment, and does not lose that character when reduced to judgment either in municipal or in international courts, it is scarcely necessary to add that the entire body of the municipal laws of all Christian states, including our own, which relates to such claims by the citizens of one State against other States, is based upon the fact that such claims are purely the property of the injured citizen, and in no sense that of his Government. Our Government (Revised Statutes, sec. 1068) has opened its courts to the suits of all aliens whose Governments accord like privileges to our citizens, and the records of our courts show that the citizens of Great Britain (11 Wall., 178), Prussia (5 Ct. Cls., 571), Italy (9 Ct. Cls., 254), Spain (6 Ct. Cls., 269), Switzerland (5 Ct. Cls., 687), France (6 Ct. Cls., 204–221), and Belgium (7 Ct. Cls., 517), may all sue this Government for injuries done to them by our Government, and that our citizens may sue such foreign Governments for injuries to our citizens. All this may be resorted to without any *other* leave or interposition by such respective Governments than such as is accorded by the general laws so opening the courts.

Now, the obvious force, as applied to the present point, of this great act and feature of the modern international law, is this: That these personal claims of our citizens, growing out of wrongs done by foreign Governments, are so essentially private and personal property of such citizen as that they may be sued as such in the courts of all Christian States without any interposition of such States—may be collected as such private property; and the Government can no more control the judgment and its results than can they any other property or judgments. Would it not be a most amazing thing to hold, that when these same private claims are collected through "the good offices" of one of these same Governments, by means of a treaty and award thereunder, but collected, as in our case, not in the name of the United States, but of the citizen, then these "good offices" have *transformed* such *private* claim into a debt due the United States, which it may, without liability, tread down, destroy, or give back to the defeated Government according to its own sovereign whim?

Such a position is not only supremely absurd, but is at war with the entire practice of this and every other civilized country, and with the best principles of modern civilization and of justice.

Such unmitigated wrong has never yet stained the diplomatic records of this country, and it is profoundly believed that the results of this trial will not furnish the first example in our history of such a wrong.

Another suggestion is here proper touching the extreme case of a fraud "made out of whole cloth," which was suggested to me by the Secretary. It is this: How is the Secretary in this or any like case, to find out that it belongs to that class—a fraud out of whole cloth? Here is an award reached after the lapse of many years of opportunity to Mexico to show this fraud. She availed herself of the generosity of our Government in the way of extending some six times that opportunity to prove the fraud, so that the opportunity continued from the date of the organization of the Commission, within six months after the date of the treaty (15 Stats., 680), up to 20th of November, 1876. (19 Stats.,

643.) This opportunity to prove the fraud was one to be exercised in her own country, where the scene of all the events in which the fraud was to be found was enacted in the very midst of her own people. The facts proving or disproving the fraud were of that open, notorious, tangible, palpable, physical kind, which in the very nature of the case rendered them the most easy of proof or disproof; such as the existence of a mine, its purchase, its working, extraction of its ores, their character, the kind and extent of machinery, the employment of this machinery, the abandonment of these, the occurrence of notorious attacks on the company's employés, and the like. These opportunities to make proof were not only not neglected by Mexico, but were, on the other hand, availed of to the fullest extent, piling tons of evidence upon the Commission; but this evidence was enforced and extorted in ways which would disgrace any enlightened or civilized court or country, to the end that this alleged fraud might indeed be proved. Then, to prevent the American citizen from securing any evidence to establish its claim, Mexico resorted to mobs, violence, threats, intimidation and outrage, such as is, perhaps, not shown in the records of any other international trial which are found in your one hundred years of national archives. For the truth of this I commend you to the following specimens, giving character to all the acts of Mexico towards our citizens in this whole business. It indicates to you what kind of an opportunity for a fair trial we are invited to by this demand of Mexico, that we shall be robbed of the results of the trial in which she made efforts, of which the following are samples, to see that such first trial should be the product of her barbarous violence, outrage, and wrongs.

The Mexican judge at San Dimas, Anastacio Milan, when the claimant's attorney appeared before him in his court with witnesses on behalf of claimant, intimidated the witnesses, declared that they should give no evidence that would aid the case, and that he would not proceed in the presence of the claimant's attorney or his interpreter; refused to obey the treaty or to take or certify the depositions in the manner required by the rules of the Commission, and peremptorily ordered both the claimant's attorney and his interpreter out of the court-room, but revoked the order as to the attorney upon learning that the attorney could not understand Spanish, in which language the proceedings of his court were conducted. (Testimony of Granger, printed case, p. 68; testimony of Dana, printed case, pp. 69, 70; testimony of Adams, printed case, p. 238; testimony of Martin, printed case, p. 212.)

Claimant was thus effectually prevented from obtaining any evidence from the locality of the mines (the point where it was mainly to be found), unless the witnesses were taken several hundred miles over the mountains to Mazatlan before the nearest United States consul, which would be attended with a heavy expense, even if witnesses could be induced to go (a few of them did go); and claimant was by such means excluded practically from most of its evidence.

So Mexico strove to make the first trial a fraud. Then, after these years of search for the now-alleged fraud, she presents her charge of fraud, first to the Commissioners, then to the umpire, and is allowed to urge and discuss the charge to her heart's content, and is patiently heard by the ambassador of one of the greatest of the modern nations. That ambassador's exalted intelligence, unsuspected purity and impartiality, and calm and enlightened consideration of the case are neither questioned nor capable of being assailed, even by Mexico. The umpire adjudges to the claimant a part of the claim after these years of investigation. Then Mexico makes a motion for a new trial and inundates the

umpire with a deluge of the *same* accusations of fraud which is now turned upon the State Department. The motion for a new trial is overruled and the award pronounced to be absolutely final and binding. Then, on the 29th of April, 1876, Mexico, long after she had lost her case, made a new treaty (19 Stats., 643, 644, article 2), in which she solemnly repeated her promise to pay this award by having it put in with others and deducted from the total amount awarded in favor of Mexicans, and the balance in money. And afterwards, on the 14th December, 1876, Mexico made a settlement with the United States, in which she set down our award as one to be by her paid, and she in that settlement demanded and took, and now keeps, the money which she, in such settlement, was entitled to only on condition that the award was to be fully paid.

So, by the labors of more than ten years, has this award been attained, and so has it been twice, since its attainment, most solemnly ratified and sanctioned by Mexico.

And now, to overthrow it, what are her steps and the methods thereof?

Observe most carefully that the act of 18th June, 1878, most carefully refrains from commanding you to do anything as to withholding our money, and simply *undertakes* to make it "lawful" to withhold it in a certain contingency. Next observe it requests "*investigation*" before such withholding can be lawful. In view of this act (granting that it can bind or control the treaty-making power, which we wholly deny), what rules must control this investigation? The act gives the answer if it can bind. It is, in short, the rules of the international and constitutional and equity law. By those rules, when and how may an award or judgment be assailed? The Throckmorton case, already cited, completely settles that. I repeat its words, which I pray may not be forgotten, and most especially those words which show that equity and justice, as these are attained under the forms of law, do not admit of the overthrow of solemn judgments even for fraud, except it be such frauds as were not put issue by the trial being assailed. The court says:

"Where the same matter has been actually tried, *or so in issue that it might have been tried*, it is not again admissible; the party is estopped to set up the fraud, because the judgment is the highest evidence *and cannot* be contradicted." * * "We think that the acts for which a court of equity will, on account of fraud, set aside or annul a judgment or decree between the same parties, rendered by a court of competent jurisdiction, have relation to frauds extrinsic or collateral to the matter tried by the first court, and not a fraud in the matter on which the decree was rendered."

And to what now follows we also beg the most careful attention, as an answer to all that is said about the mischief and hardship of giving to the successful party what Mexico is so fond of here calling "the fruits of his fraud": "That the mischief of retrying every case in which the judgment or decree rendered on false testimony, or given by perjured witnesses, or on contracts or documents whose genuineness or validity was in issue, and which are afterwards ascertained to be forged or fraudulent, would be greater, by reason of the endless nature of the strife, than any compensation arising from doing justice in individual cases."

The irresistible force of this from the Supreme Court upon this point, as applied to international awards, is powerfully enforced by your predecessors, Mr. Seward and Mr. Fish, in their letters, with extracts from which we conclude this paper.

In view of these legal principles, now look at the miserable travesty upon all law and right which is presented by the presentation made by Mexico as a ground for setting aside this international judgment.

Not only is no testimony, in the legal sense of that word, offered, but

what has been done was done in secret, *ex parte*—kept, so far as her adversary is concerned, in secret, and not a line, word, or syllable thereof ever seen or heard by her adversary until it is read to the Secretary on the trial of the case, in which trial the party assailed has never had opportunity to produce a syllable of countervailing evidence?

And on this state of facts Mexico expects the United States to brand her own citizens as perjurers, forgers, and thieves, and to rob them of their estates.

To say of this exhibition by Mexico, made in a conspicuous international trial and in the face of all the world, what the Attorney-General of the United States, in the presence of the Supreme Court, said of the case of Mississippi *v.* The President (4 Wall., 491), that it is "scandalous," is a most charitable name for a position taken before you having no similitude in the annals of international trials.

In concluding this paper, I beg leave here to introduce an extract from the letter of one of your greatest predecessors, Mr. Seward, bearing date the 3d of March, 1869, addressed to the minister of the Government of Venezuela. In it you will find succinctly stated the principles of law we here assert, and the policies and traditions of this Government in regard to the binding force of international awards most powerfully vindicated.

He says:

> The reasons which forbid either Government from interposing its influence to affect the deliberations of such a commission are equally, if not more, imperative in denying the right of both to bring under review awards definitely made and promulgated. The Supreme Court of the United States, when examining the effect of a finding by the commissioners under the treaty just referred to, declares:
>
> "The object of the treaty was to invest the commissioners with full power and authority to receive, examine, and decide upon the amount and validity of the asserted claims upon Spain for damages and injuries. Their decision within the scope of this authority is conclusive and final. If they pronounce the claim valid or invalid, if they ascertain the amount, their award in the premises is not re-examinable; the parties must abide by it as the decree of a competent court of exclusive jurisdiction. A rejected claim cannot be brought again under review in any judicial tribunal. An amount once fixed is a final ascertainment of the damages or injury."
>
> At a later and quite recent date the Court of Claims, discussing the effect of a decision made by the same Commission above mentioned, and after quoting the authority above cited, with others, remark:
>
> "These precedents are so full and pointed that in our judgment they authoritatively rule the case. However erroneous the decision, upon whatever mistakes of fact or law it was based, whatever hardship or injustice it inflicts, give us no right and confer no power to re-open and re-examine the question. In our opinion, it is like any other matter that has been finally judicially decided by a competent court. It closes the controversy, and however injured or dissatisfied any party may be, there can be no redress in any other tribunal."
>
> These citations are made for the purpose of rendering it evident to the Government of Venezuela that the position of the United States in respect to the conclusive obligation of such awards as it now seeks to bring in question, is one long since assumed and steadily maintained by their Executive and judicial Departments without claiming that as against your Government they are entitled to any greater force than belongs to the reasoning upon which they are founded.
>
> International tribunals for the adjudication of private claims are created by Governments in no expectation that they are to escape that possible admixture of error which is inseparable from all human institutions. They are resorted to because the Governments concerned have either actually experienced, or have been forced to anticipate, the impracticability of their coming to an agreement upon the merits of such claims, and upon the methods of investigating them. However imperfect the expedient may prove, it is adopted in view of the dread alternative in comparison with which a partial failure to accomplish exact justice falls into insignificance. *First among the great powers to introduce this beneficent mode of achieving the peaceful termination of international controversies, it is not for the United States to do or suffer aught that can impair its efficacy.* The deliberations and judgment of a Commission would be fruitless, if they only *started* questions for *renewed* discussion. They must be final, or they must be nothing. We are compelled, therefore, *to decline any examination of* the cor-

rectness of the decisions upon the merits of the several *cases decided by the Caracas Commission*, whether arrived at by the concurrence of the commissioners, or by the award of the umpire, himself a citizen of Venezuela, to whom the convention, in case of their disagreement, committed the final adjudication of the case. We must, for the same reasons, decline to *examine* the expediency of the rules of procedure by which the Commission thought proper to govern its investigations, and the assignment of evidence of awards to the persons interested therein. All such persons may claim, with show of reason which it is difficult to refute, that they *have a vested* interest in the awards, indefeasible by the action of either or both the Governments which surrendered to a common arbiter, without reserve, thier entire jurisdiction in the premises.

In all that I have now said, I have said nothing about the truth of his cry of fraud by Mexico, for the plain reason that there is and can be *no* evidence in the case, according to the view which it is the purpose of this paper to enforce, upon which that cry can rest.

But before closing, and in order to exclude the conclusion which my silence might raise, I desire to close by saying, that in spite of the brutal efforts of Mexico to prevent our proof of the complete justice of our claim, to some samples of which I have above alluded, this claim was established by a preponderance of testimony which the umpire rightly held to be irresistable, and is incapable of being overthrown by honest evidence.

But as to this I leave wholly to associate counsel any discussion which may be deemed useful in the case.

S. SHELLABARGER,
Of Counsel for Claimant.

No. 52.

Mr. Seward to Mr. Zamacona.

DEPARTMENT OF STATE,
Washington, August 20, 1879.

SIR: I have the honor to communicate to you, herewith, in accordance with the directions I have received to that end from the President, the inclosed statement of the conclusions arrived at in the matter of the Benjamin Weil and La Abra Silver Mining Company awards against Mexico, under the convention of July 4, 1868, with that country, upon the investigation made by the President in pursuance of section 5 of the act of Congress of June 18, 1878, providing for the distribution of the awards under that convention.

A copy of the statement has been furnished to the counsel in the respective cases.

Accept, &c.,

F. W. SEWARD,
Acting Secretary.

[Inclosure.]

Statement embodying the President's conclusions in regard to the "Weil" and "La Abra" cases.

The Secretary of State has reported to the President the conclusions to which he has come in the matter of the Benjamin Weil and La Abra Silver Mining Company awards under the claims convention with Mexico, and the President has approved these conclusions.

By section 5 of the act of June 18, 1878, providing for the distribution of the awards

under that convention, the President was requested "to investigate any charges of fraud presented by the Mexican Government," and "if he shall be of opinion that the honor of the United States, the principles of public law, or considerations of justice and equity require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be reopened and the cases retired, it shall be lawful for him to withhold payment of said awards or either of them until such cases shall be retired and decided in such manner as the Government of the United States and Mexico may agree, or until Congress shall otherwise direct."

The conclusions thus approved by the President are stated by the Secretary as follows:

First. I am of opinion that as between the United States and Mexico the latter Government has no right to complain of the conduct of these claims before the tribunal of commissioners and umpire provided by the convention or of the judgment given thereupon, as far as the integrity of the tribunal is concerned, the regularity of the proceedings, the full opportunity in time and after notice to meet the case of the respective claimants, and the free and deliberate choice exercised by Mexico as to the methods, the manner, and the means of the defense against the same.

I conclude, therefore, that neither the principles of public law nor considerations of justice or equity require or permit, as between the United States and Mexico, that the awards in these cases should be opened and the cases retried before a new international tribunal or under any new convention or negotiation respecting the same between the United States and Mexico.

Second. I am, however, of opinion that the matters brought to the attention of this Government on the part of Mexico do bring into grave doubt the substantial integrity of the claim of Benjamin Weil, and the sincerity of the evidence as to the measure of damages insisted upon and accorded in the case of La Abra Silver Mining Company, and that the honor of the United States does require that these two cases should be further investigated by the United States to ascertain whether this Government has been made the means of enforcing against a friendly power claims of our citizens based upon or exaggerated by fraud.

If such further investigation should remove the doubts which have been fairly raised upon the representation of Mexico, the honor of the United States will have been completely maintained. If, on the other hand, the claimants shall fail in removing these doubts, or they should be replaced by certain condemnation, the honor of the United States will be vindicated by such measures as may then be dictated.

Third. The Executive Government is not furnished with the means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses. The authority for such an investigation must proceed from Congress. I would advise, therefore, that the proofs and conclusions you shall come to thereon, if adverse to the immediate payment on these awards of the installments received from Mexico, be laid before Congress for the exercise of their plenary authority on the matter.

Fourth. It may be that, as the main imputation in the case of the La Abra Mining Company is of fraudulent exaggeration of the claim in its measure of damages, it may consist with a proper reservation of further investigation in this case to make the distribution of the installments in hand.

I have this subordinate consideration still under examination, and should you entertain this distinction will submit my further conclusions on this point.

No. 53.

Counsel of La Abra Company to the President.

In the matter of the award in favor of La Abra Silver Mining Company *vs.* Mexico, under the treaty of July 4, 1868.

To the President of the United States:

The undersigned, attorneys for the claimant in the above case, while recognizing the duty of the Executive to give the most respectful consideration to every act of Congress, do not intend, by anything herein contained, to admit the right of the Government of the United States, either of its own authority, or by agreement with Mexico, to set aside, annul, open, or in any manner question the awards fairly made by the

Joint Commission and umpire, under the treaty of July 4, 1868, in cases within the proper jurisdiction of that tribunal. The agreement of the two Governments was, that those awards should be "absolutely final and conclusive," and the good faith of the high contracting parties was solemnly pledged that they should be promptly and faithfully executed, "without any objection, evasion, or delay." If only the rights of the two Governments themselves had been involved in the action of the Joint Commission, they might well agree to set aside or open the awards; but inasmuch as that high international tribunal was established by the United States and Mexico for the purpose of determining the rights of private individuals, citizens of the respective Governments, there is no more rightful power in either Government to disturb the awards, than there would be to interfere with judgments of the Supreme Court of the United States, rendered in cases properly within its jurisdiction.

We respectfully submit, then, that under the act passed at the last session of Congress, the President may look into the record of this case only so far as to satisfy himself that it was within the jurisdiction of the Commission as defined by the treaty, and that the parties to the litigation had a fair trial; that is to say, had a sufficient opportunity to present their proofs and establish their respective rights before the Commission, and to obtain its honest and impartial decision on the facts.

Fortunately, in the progress of this case before the Commission, for the purpose of full and easy investigation, the Abra Silver Mining Company at its own expense caused all the testimony on both sides to be accurately and plainly printed and paged in the form of a book; and we believe this printed document has been examined and compared with the original documents in the State Department, and has been approved as an accurate copy of the record. We now propose very briefly to show, by reference to this printed book, the general character of the testimony on which the umpire based his action, and to demonstrate thereby the fairness of the award, and the extreme injustice of any interference with the decision of a case which both parties contested for several years to the fullest extent, with all the resources at their command.

1st. The company purchased its mining property in Tayoltita, state of Durango, and in the mineral district of San Dimas, in the year 1865, paying for the whole about $80,000 in gold. (Abstract of title, printed record, pp. 11 to 17; deposition of Collins, pp. 29, 30; deposition of Bartholow, pp. 217, 218; deposition of De Valle, pp. 71, 72, 86.)

2d. The company expended in the best new machinery and in improving the mines, including the original cost, the sum of $341,791.06. This is proved by George C. Collins, of New York, the president of the company, in his deposition, p. 30. Numerous other witnesses establish the fact of large expenditures, the purchase of expensive machinery, which was shipped to Mazatlan, and transported thence to the mines on the backs of mules, pp. 21, 28, 46, 55, 73, 78, 116, 122, 124, 125. But, in truth, there is no conflict of testimony on these points. The witnesses for Mexico do not deny the expenditures; they only question their wisdom, and the value of the machinery and improvements.

3d. In prosecuting its mining enterprise, the company had lifted from the mines some 1,000 or 1,200 tons of ore, and had hauled it from the mouth of the mine to the mill, a distance of some 3 miles. The machinery was scarcely more than ready for operation and had not actually been fully tried. There is no dispute as to the fact of this ore having been mined and transported as above stated. But the Mexican witnesses allege that

the ore was barren, while the witnesses for the company prove that it was very valuable. The latter estimate its value at $500,000, while the former say it was worthless. The company's testimony on this point is found at pp. 22, 27, 46, 57, 79, 101, 116, 203.

4th. The company allege and prove that by the continued interruption and oppressive conduct of the Mexican authorities, military and civil, their enterprise was broken up, they were driven from the mines, and the whole of their property and investments were lost. Many seizures and forced loans by the army of the Republican Government are fully proved, but as the umpire did not allow for these, it is unnecessary to refer to them more particularly. It was chiefly the arbitrary and oppressive conduct of the local civil authorities, and their encouragement of the popular violence against the company and its property, which finally compelled the abandonment of the whole enterprise in March, 1868. The proof on this point is full and explicit. Besides the *prestamos*, and the seizure and appropriations of the company's supplies and supply-trains already mentioned, the local judge and the gefe politico assumed the right to interfere in the operations of the company, and to control its labors, ordering men to be employed or not to work, threatening to expel the company, encouraging armed attacks at night on the company's hacienda, winking at the popular violence and the open stealing of the ores, refusing all protection or redress, and arresting the company's superintendent without warrant or cause, imprisoning him in a pest-house without evidence or trial, and liberating him only after several days' imprisonment on the intercession of a third party and the payment of $50.

These facts are proved by witnesses and by written orders of the judge and the gefe politico, the authenticity of which is not questioned. These documents are found at pp. 52, 53, in the claimant's testimony, and are produced in the Mexican testimony, at pp. 154, 155. Marcus Mora, called for the claimant, reluctantly admits the facts in his deposition, pp. 98 to 105. He was gefe politico. The local judge was Guadalupe Soto. He was examined by Mexico, and in his deposition, at p. 161, with great simplicity, in reply to the question whether he issued the orders purporting to be signed by him, says "he is certain of having issued such communications to the administrator of the Abra establishment, and that he did so because there had been a rising of the people to compel him to."

This is a virtual acknowledgment of the whole case by the Government of Mexico, who herself introduces this proof. Taken in connection with the claimant's testimony, pp. 20, 26, 39, 43 to 46, 49, 50, 57, 62, 75, 79, 82, 83, 87, 92, 93, 102, 115, 197, 198, 223, it leaves nothing more to be proved.

5th. All redress for these wrongs and protection against the like acts were refused, although the company frequently applied for both, appealing to the local authorities at Tayoltita and San Dimas, and to the highest civil and military authorities in the States of Durango and Sinaloa, pp. 19, 87, 88, 92, 94, 96, 102, 204, 205, 214, 223.

On these facts the umpire held the Government of Mexico liable and awarded the claimant the full amount expended on the mines, $341,796, and $100,000 for the ores which had been taken from the mines. The claimant examined in all twenty-six witnesses, and Mexico thirty-four. The petition was filed in June, 1870, and most of the claimant's testimony was presented to the Commission at that time. The Mexican Government commenced taking its defensive testimony in January, 1871, and from that time to the beginning of 1875 both parties had the fullest opportunity to complete their respective cases by any evidence they

could produce. The umpire's award was made on the 27th December, 1875, and he overruled the application for a rehearing on the 20th November, 1876. During this long period of six years of litigation no additional proof of any kind was offered either to the Commission or to the umpire.

How great an advantage Mexico had over the claimant, in the matter of taking testimony, will be appreciated on reading the depositions of Colonel Dana, pp. 69 to 71; General Adams, pp. 233 to 246; and Governor Galan, p. 247, *et seq.* The Mexican authorities interposed every possible difficulty against the taking of any testimony on the part of the claimant.

On the question of jurisdiction perhaps we ought to have stated in the outset that the company is a corporation under the laws of the State of New York, and therefore a citizen of that State; but it is further proved that every individual member of the company was and is a citizen of the United States, pp. 29, 31, 229, 230.

The examination of the record as to the leading points herein suggested will plainly show that Mexico has had a fair trial, with every possible opportunity, during six years of litigation, for the fullest preparation of her defense. She examined more witnesses than the claimant. Yet as to the main facts—the purchase and improvement of the mines, the expenditure of large sums of money, and the mining of immense quantities of ore—there was no conflict of testimony whatever. On the questions of value and of the virtual expulsion of the company, the testimony was somewhat contradictory, but there was ample evidence to support the award, and it was the peculiar province of Commissioners and umpire to decide on the preponderance of evidence. There is no charge or insinuation, so far as we know, that these officers did not act fairly and honestly.

We do not presume to enter on any discussion of the facts further than to show that there was a case, within the jurisdiction of the court, with testimony sufficient to support the award, so that the Commissioners and umpire cannot be charged with any fraud or wrong, even though they may have erred in judgment. We deny the authority of Congress to cause that judgment to be reviewed, or in any manner opened or disturbed. And if this proposition should be questioned we respectfully ask an opportunity to present authorities and to be heard on that question before any measures shall be taken towards the opening and revision of the award in this case.

We wish to carefully guard ourselves against being misapprehended as to the objects and offices of this paper. It is not filed for the purposes of insisting that the case was properly or improperly decided by the umpire, nor for the purpose of arguing the merits of this claim, but is presented for the single purpose of indicating, by the recital we have made of the leading facts of this claim and of its history, that these recited facts have now put the claim completely outside of the jurisdiction and power of either the executive or of the legislature, or of the treaty-making power, to either enter upon a retrial of the case or to set aside the rights vested in virtue of said award.

While the bill for the distribution of the money on the awards was pending before Congress at the late session, numerous petitions of the claimants against the Mexican Government for claims which had been defeated before the Commission were sent in, asking for the opening of the awards against them upon the ground of fraud and perjury on the part of the Mexican authorities in defeating their claims. If the United States can, after the awards became final and the rights of parties at-

tached, open up the awards for further testimony, then it should be done and can be done as to these claimants against Mexico.

With this preliminary statement as to the objects and basis of this appeal, we now recapitulate the propositions of law and fact to which we beg attention:

1st. The late act of Congress does not profess or attempt to give any powers to the President which he does not hold independently of said act, nor does the act express any opinion as to what should be done; but, on the contrary, the act carefully negatives both of these ideas, and leaves the President with precisely the same powers over this award which he would have had did this act not exist.

2d. This award is the result of a submission made by a treaty which in its 2d article stipulates for the finality of this award, it providing that "the decisions of the Commission and umpire shall be *absolutely final and conclusive*, and that the said Governments would give full effect to such decisions *without any objection, evasion, or delay* whatever"; and, in its 5th article, it repeats "that the high contracting parties agree to consider the results of the proceeding of the Commission as a full, perfect, and final settlement of every claim upon either Government."

3d. It neither is nor can be pretended that the claim on which the award is based was a mere invention or fiction; the creation out of nothing of a fraud, and the most that is pretended in assailment of the award is that, by false evidence, things which in fact existed, as the foundation of the claim, such as ores, machinery, &c., were appraised at values too high, and thereby the award was made excessive. In other words, the things now brought forward as grounds on which to base the demand for a new trial and the destruction of the award are the very things put in issue, tried and disposed of by the submission, trial, and decision by the umpire.

4th. Under that submission and in that trial, Mexico, during a period of many years, had opportunity to bring and did bring forward, before said umpire, all the proofs she desired to produce bearing upon the identical propositions of fact as to the validity and value of our items of claim, and as to the truth of our proofs in the case, and upon these proofs and issues Mexico was fully heard, and had a full trial under said competent jurisdiction, and was defeated.

5th. Not only had Mexico the above full trial in the same issues and charges of fraud as she now seeks to have a retrial of, but she, in substance and legal effect, made, was heard, and defeated upon a motion for a rehearing, based upon the same grounds of fraud, &c., as those upon which she now bases her demand to open up this award.

6th. This accusation of unfairness and fraud against the claimant is made by a Government whose citizens and public officials confess (as we above show) to have resorted to fraud, riot, and most brutal violence in the effort to prevent and by which in part they did prevent the claimant from getting the full evidence of this claim.

7th. The amount and character of the proofs actually submitted by each party to said umpire, bearing upon the same identical questions of fraud now set up, are such that it is impossible to own, with show of truth, that there was not at least *such amount* of evidence in support of each item found in favor of claimant (and in this application alleged to be fraudulent) as would so far justify the umpire's finding, as to remove them from all liability to be assailed as corrupt or baseless.

8th. There is no pretense, and can be none, that the action of the umpire, in making the award, was not upright or was tainted by any suspicion of partiality, fraud, or wrong-doing.

9th. Since this award was made, to wit, on the 29th April, 1876, Mexico and the United States, by a treaty that day made, and, by the President, proclaimed on 29th of June, 1876, solemnly *ratified* said award, by agreeing that the total amount awarded in *all* cases already decided (of which ours was one) "should be paid in gold or its equivalent," &c.

10th. After this ratification of our award, by said new treaty, to wit, on 14th December, 1876, our Secretary of State and the Mexican Government, through its representative, Mr. Mariscal, made a settlement of the expenses of said arbitration, &c., in which Mexico *claimed the money and got it*, which she was entitled to in virtue, and *only* in virtue, of our said award being valid, and one to be paid (See House Mis. Doc. No. 39, 2d Sess. 44th Cong.), *and thus a second time has Mexico ratified said award* since it was made.

11th. As based upon the propositions of fact just stated, we now submit to the President the proposition of law which we insist must govern the action of the Executive in this case:

Property or money recovered by, and awarded to, a citizen of the United States, under and in pursuance of an international treaty, becomes and is, in virtue of such award, in contemplation of law, *vested property right*, and as such is protected against impairment by act of any Department of the Government, or in any other way than by "due process of law." In other words, property recovered by virtue of a treaty award, made final by the treaty, is *property*, held by the same tenure as property held by final judgment of a court of last resort. As a result of these propositions, there being no corruption in the court rendering the award, and a full trial being had upon the merits of the case, and also upon the application of Mexico, in the nature of a motion for a new trial, the decision of the umpire is final and conclusive as a judgment, vesting in us said inviolable rights of property; and the impairment of that judgment is beyond the jurisdiction of the Executive of the United States, and this whether said judgment, so honestly rendered, was erroneous or not.

In support of this proposition, we refer you to the language of the Supreme Court of the United States in Comegys *vs.* Vasse (1 Pet., 212), where the court says:

> The object of the treaty was to invest the Commissioners with full power and authority to receive, examine, and decide upon the amount and validity of the asserted claims upon Spain for damages and injuries. Their decision, within the scope of this authority, *is conclusive and final.* If they pronounce the claim valid or invalid, if they ascertain the amount their award in the premises is *not re-examinable.* The parties must abide by it, as the DECREE OF A COMPETENT TRIBUNAL OF EXCLUSIVE JURISDICTION. A rejected claim cannot be brought again under review in any judicial tribunal; an amount once fixed is a final ascertainment of the damages or injury.

In an elaborately considered case (Meade *vs.* U. S., 2 Court Claims R., 276), the court recognizes the same principle as applicable to an international award as that cited from the Supreme Court. The language of the court is—

> Their decision was made, and it is nothing to the purpose to say that it was erroneous. It is not for us, nor for any other court, to overturn or disregard that decision. No appeal was given, no power of revision lodged anywhere, in any person or tribunal; and their decision was therefore necessarily conclusive of the whole matter. (See, also, De Bode *v.* Regina, 2 House of Lords Rep., 449, cited in the above case.)

The doctrine here cited from the Supreme Court of the United States as to the judicial and inviolable character of international awards, is so obviously sound in principle and reason, is so indispensable to the peace and dignity of nations, and so established in the traditions and practice of our own and all other Christian states, as to render it one of the most

important and settled elements of the international law, as it is part of our constitutional law.

For most elaborate and able statements and vindication of this identical doctrine, namely, that an international award, honestly made, is a JUDGMENT, vesting property rights, unassailable except by "due process of law," see letter of Mr. Seward to Muños y Castro, dated 3d March, 1869; also letter of Mr. Fish to Mr. Russel, of 23d of July, 1875, and the authorities they cited.

In stating, as we here do, that Mexico *now* asks a new trial upon grounds and charges identical, in substance, with those on which she had ample opportunity to procure evidence before the umpire, and as to which she did produce evidence and had a full trial, we do so upon our knowledge of what her grounds were in urging the passage of the said act of Congress. With the grounds there urged for this new trial we are thoroughly familiar, and if any has been or will be filed before the State Department, we assume that they are the same as those she pressed upon Congress for the grant of a new trial.

FRED. P. STANTON & T. W. BARTLEY, AND
SHELLABARGER & WILSON,
Of Counsel for La Abra Silver Mining Company.

No. 54.

ARGUMENT BY T. W. BARTLEY, OF COUNSEL FOR THE COMPANY.

THE LA ABRA SILVER MINING COMPANY VS. THE REPUBLIC OF MEXICO.

WASHINGTON, D. C., *August* 28, 1879.

SIR: As it appears that you have one phase of the La Abra Mining Company case still under consideration, and you did not hear the oral arguments made before the honorable Secretary of State, I beg leave to submit a few points in argument which I deem material.

What is the true status and present issue of the case? The *final award* of the International Commission, made on many years of preparation, trial, and deliberation, is now before you on special reference made by Congress. It is well settled by the highest judicial authority that such an award stands upon the same ground with a final judgment of a court of competent jurisdiction, and can only be impeached or set aside for fraud or misconduct in the court or commissioners. If it could be assailed or set aside on mere *cumulative* evidence on the points which were at issue before the tribunal on the trial, then no such award could ever be *final* and *conclusive*. For on every successive trial the failing party could, doubtless, if allowed six months or a year to hunt up a showing on *ex parte* affidavits, produce a doubt as to the correctness of the judgment.

It is claimed that affidavits showing newly-discovered evidence of fraud and perjury have been filed in this case. But the counsel for the claimants have never seen any such papers, and have never been notified of their having been filed, and have never had an opportunity of inspecting them, or of explaining them, or replying to them, if they be in the case. After the case had been referred to the Secretary of State, Messrs. Shellabarger, Williams & Stanton, of counsel for the

company, called on the Secretary and presented to him an argument on our side, and requested to know what further action would be required on our part. The Secretary informed these gentlemen that if he should want to hear from them any further in the case he would notify them. There were newspaper rumors to the effect that the Mexican minister was about to file, or had filed, affidavits to make a showing for a rehearing. And the agents of the company and some of the counsel called repeatedly at the State Department and inquired, and requested to see the papers, if any had been filed in this case on behalf of Mexico, but were not allowed to see any such papers, if they had been filed.

Thus matters stood until the counsel for the company finally received a notice from the Secretary, that on the next succeeding day, at 12 o'clock m., he would hear from them if they wished to be heard in the case. The hearing was had before the Secretary, and the case elaborately argued by counsel on both sides. Mr. Lines, of counsel for Mexico, produced a printed book in the course of his argument, purporting to give, among other things, copies of affidavits, and of letters from what was alleged to be the letter-book of the company, &c. But no such affidavits or pretended letter-book was submitted on the hearing, or offered for our inspection. Under these circumstances the counsel for the company at once concluded that the Secretary placed no importance upon the affidavits, letters, &c., and did not deem them material. The counsel for the company had an abiding confidence that the honorable Secretary would deem it a matter of right and justice that these affidavits, &c., should be furnished, or submitted to the inspection of the counsel for the company, and an opportunity given them for explanation and a showing in reply, if the documents were deemed competent and material. This will account for the fact that no showing has been made controverting and replying to these pretended affidavits, &c., on the part of Mexico. And in the view which the company's counsel take of the case, these affidavits, papers, &c., are wholly immaterial, because incompetent under the law of the land.

But take this showing on the part of Mexico for all that it is worth, and it amounts to nothing more than mere *cumulative* evidence, relating to the points in issue, and actually involved in the case when on trial. And as to the pretended letter-book, suffice it to say, that all the books and letters of the La Abra Company fell into the hands of the Mexicans when the superintendent, Exall, fled from the mines for safety to his life, and they had full possession of the same during the six years' pendency of the case, and now, after the death of Exall, who alone could certainly attest the genuineness of the contents of the book, a pretended one of these books is produced!

Even if the case stood on a motion for a new trial before final judgment in a court of justice, the matter presented would be insufficient. Hilliard on New Trials, on p. 376, says:

> Motions of this kind are to be received with great caution, because there are few cases tried in which something new may not be hunted up; and because it tends very much to the introduction of perjury, to admit new evidence after the party who has lost the verdict has had an opportunity of discovering the points both of his adversary's strength and his own weakness.

So, in another case:

> It is infinitely better that a single party should suffer mischief than that every man should have it in his power by keeping back a part of his evidence and then swearing that it was mislaid, to destroy verdicts and introduce new trials at their pleasure. * * *

Again, on pp. 377–78, it is said:

> This rule is one of great practical importance, and binding upon the courts. It is necessary to secure to litigant parties the termination of their legal controversies Every facility is to be granted to the parties to present their case fully at the hearing. This is their day in court; this the time to exhibit all their proofs. If they lie by through over confidence in their own strength, or in a mistaken belief in the weakness of their adversary, and the result is against them, they must abide the consequences.

But the question now is not that of *granting a new trial* before final judgment, but that of impeaching and setting aside a judgment after it had become *final and conclusive*. And here allow me to ask the attention of your excellency at once to the real questions involved.

THE CONSTRUCTION OF THE STATUTE.

First, touching the interpretation to be given to the act of Congress of June 18, 1878, allow me to say, that while this act authorizes and requires *the distribution of the money* paid, and to be paid by Mexico upon the awards, the request of the President to investigate, &c., in the 5th section, has sole reference to *a rehearing* or *opening* of the award for a *retrial* by a conventional arrangement between the two Governments. While *the proviso*, in the conclusion of the section, expressly declares that *nothing* therein shall be construed as an expression of *any opinion* of Congress *as to the character of the claim*, *the preamble* in the section gives *the sole* and *only reason* for this special reference to the awards mentioned, consisting in the fact recited that "the Government of Mexico has called the attention of the Government of the United States to the claims hereinafter named, *with a view to a rehearing*, therefore," &c. *The object* of this action of the Mexican Government was *a rehearing*, and the investigation requested was solely with a view to *the opening* of the case for *retrial*. The end to be attained by this special provision was the opinion of the President whether honor, public law, or justice and equity *required* that this award should *be opened* and *retried*. And it was *only* and *solely on the condition or in the event* that the President should be of the opinion, or come to the conclusion, that *this requirement existed for a retrial*, that it was made *lawful* for him to withhold payment "until the case should be retried and decided," &c. For greater certainty and to avoid the possibility of mistake on this point permit me here to recite the section in the exact words of the law, which is as follows:

> SEC. 5. And whereas the Government of Mexico has called the attention of the Government of the United States to the claims hereinafter named, with a view to a *rehearing*, therefore, be it enacted that the President of the United States be, and he is hereby, requested to investigate any charges of fraud presented by the Mexican Government as to the cases hereinafter named, and if he shall be of *the opinion* that the honor of the United States, the principles of public law or considerations of justice and equity require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be *opened and the cases retried*, it shall be lawful for him to withhold payment of said awards, or either of them, until such case or cases shall be retried and decided in such manner as the Governments of the United States and Mexico may agree, or until Congress shall otherwise direct. And in case of such retrial and decision, any moneys paid or to be paid by the republic of Mexico in respect of said awards respectively, shall be held to abide the event, and shall be disposed of accordingly; and the said present awards shall be set aside, modified, or affirmed as may be determined on such retrial: *Provided*, That nothing herein shall be construed as an expression of any opinion of Congress in respect to the character of said claims, or either of them.

It is the positive provision of this law, that if the President shall be of the opinion "that the honor of the United States, the principles

of public law, or considerations of justice and equity *require* that the awards" in question, "or either of them, *should be opened and retried*," then "*it shall be lawful for him to withhold payment*,"&c., "until such case or cases shall be retried and decided," &c., in such manner as the two Governments may agree, or "Congress shall otherwise direct." It is clear that the two Governments could not agree upon any *manner* for a retrial, nor could "*Congress otherwise direct*," until the President had *first decided* that the *requirement mentioned existed for a retrial.* The decision of the President that *an opening* of the award and *a retrial was required*, is made a *condition precedent* to either action of the two Governments providing for the retrial, or the action of Congress otherwise directing. Without this decision of the President, that a *retrial was required*, Congress could and would take no action whatsoever pursuant to the provisions of this law. And without such a decision of the President for a retrial, it is most certain and clear that the President is not authorized to *withhold payment*, under the terms of this law making and requiring distribution of the money, &c.

The decision of the President as furnished to the counsel for the claimants on this point is as follows:

> The conclusions thus approved by the President are stated by the Secretary as follows:
>
> First, I am of opinion that as between the United States and Mexico the latter Government has no right to complain of the conduct of these claims before the tribunal of Commissioners and umpire provided by the convention, of the judgment given thereupon, as far as the integrity of the tribunal is concerned, the regularity of the proceedings, the full opportunity in time, and after notice to meet the case of the respective claimants, and the free and deliberate choice exercised by Mexico as to the methods, the measure, and the means of defense against the same.
>
> I conclude, therefore, that neither the principles of public law nor considerations of justice or equity require or permit as between the United States and Mexico, that the awards in these cases should be opened, and the cases retried before a new international tribunal or under any new convention or negotiation respecting the same between the United States and Mexico.

It further appears, however, in the opinion of the Secretary, that the showing of Mexico has produced doubts as to the weight of the evidence to sustain these cases, and that the honor of the United States does require further investigation by the United States in regard thereto; but that there being no means or tribunal provided for such investigation, the President is advised to lay the matter before Congress," &c.

What is the true interpretation of the language of the statute, that "if he (the President) shall be of the opinion that the honor of the United States, the principles of public law, or considerations of justice and equity require that the awards" in question "*be opened and the cases retried*," &c.?

It is a rule of interpretation that the law-making power must be presumed to act with reference to the established law, and the existing institutions or tribunals of the land, and their acts are to be construed with reference thereto. It is manifest that the investigation requested of the President was not that of hearing and examining testimony touching the points in issue before the Commission, and upon which the Commission had heard evidence and decided. The law most clearly did not intend to make the President a mere court of review to adjudicate upon the weight of the evidence touching the points before the Commission, and passed upon and adjudicated by it. And that would have been wholly impracticable; for the original evidence, which he would have to examine fully, would fill an octavo volume of five or six hundred pages, and on the application testimony would have to be extensively taken in many different parts of Mexico and the United States.

It has been settled by the highest judicial authority, that the award of an international commission stands upon *the same ground* as to finality and conclusiveness with the judgment of a court of last resort. The decisions of the Supreme Court of the United States on this point are uniform and conclusive. The cases are cited in Mr. Shellabarger's brief now before your excellency. If there be anything well settled in this country, it is that final judgment of a tribunal of competent jurisdiction cannot be impeached showing that there was perjury and fraud in the testimony adduced on the trial, and that the court erred as to the weight of the evidence. But a judgment may be impeached by showing fraud or misconduct in the court, or the judges who rendered the decision. The most recent case touching this point decided in the Supreme Court of the United States is the Throckmorton case, cited in Mr. Shellabarger's brief, and decided at the last term of the court. In that case the court used the following language:

> Where the same matter has been actually tried, *or so in issue that it might have been tried*, it is not again admissible; the party is estopped to set up the fraud, because the judgment is the highest evidence *and cannot* be contradicted. * * * We think that the acts for a court of equity will, on account of fraud, set aside or annul a judgment or decree between the same parties, rendered by a court of competent jurisdiction, have relation to frauds extrinsic or collatteral to the matter tried by the first court, and not a fraud in the matter on which the decree was rendered.

It must have been in reference to this doctrine of the law, and in contemplation of it, that Congress acted in requesting of your excellency the investigation in question. Charges of fraud in the action of the Commissioner or the umpire, or in the action of the parties or their counsel in the conduct of the cases before the Commission, all of which occurred here in Washington, might be inquired into by the President. But to require the President to investigate the issues in the cases upon which the Commission and Umpire passed would be unreasonable and absurd. Every statute must be construed according to its *reasonable intent* as well as in contemplation of the old settled landmarks of the law. It was in reference to the *finality* of the decisions of tribunals constituted to decide that the Electoral Commission of 1877 refused to look behind the decisions of the returning boards. And it was upon the same ground of the *finality* of the adjudication of competent tribunals that the good people of this country accepted the decision of the Electoral Commission itself, of March, 1877, *as a finality* and *conclusive* of all matters of controversy involved in the issue before it.

In applying this doctrine to the judgments of international commissions, Secretary Seward, in his letter to the Minister of Venezuela, of March, 1869, said:

> International tribunals for the adjudication of private claims are created by Governments in no expectation that they are to escape that possible admixture of error which is inseparable from all human institutions. They are resorted to because the Governments concerned have either actually experienced, or have been forced to anticipate, the impracticability of their coming to an agreement upon the merits of such claims, and upon the methods of investigating them. However imperfect the expedient may prove, it is adopted in view of the dread alternative in comparison with which a partial failure to accomplish exact justice falls into insignificance. *First among the great powers to introduce this beneficent mode of achieving the peaceful termination of international controversies, it is not for the United States to suffer aught that can impair its efficacy.* The deliberations and judgment of a commission would be fruitless if they only *started* questions for *renewed* discussion. They must be final, or they must be nothing. We are compelled, therefore, *to decline any examination of* the correctness of the decisions upon the merits of the several *cases decided by the Caracas Commission*, whether arrived at by the concurrence of the commissioners or by the award of the umpire, himself a citizen of Venezuela, to whom the convention, in case of their disagreement, committed the final adjudication of the case. We must, for the same rea-

sons, decline to *examine* the expediency of the rules of procedure by which the Commission thought proper to govern its investigations, and the assignment of evidence of its awards to the persons interested therein. All such persons may claim, with show of reason which it is difficult to refute, that they *have a vested* interest in awards, indefeasible by the action of either or both the Governments which surrendered to a common arbiter, without reserve, the entire jurisdiction in the premises.

This part of my argument may seem to be wholly superfluous, for it only amplifies upon a conclusion already reached and promulgated. But this exposition is made with a view to the inquiry, *how* consistently with this conclusiveness of the award the United States can *sua sponta, with no suit or proceeding pending*, review the proceedings and adjudication of the Commission with a view of determining whether the Commission had erred in allowing the amount awarded, and whether the same should be reduced, and if so, by what authority, and in what proceeding known to the civilized world the claimant can be deprived of the full benefit of a judgment, which is a finality, and as such must be deemed absolute verity. The claimant is the beneficiary of the award. The suit before the Commission was brought by the claimant and the prosecuted by it and at its own expense. And the judgment creates a vested right of property in the claimant, which under the Constitution and laws of the United States cannot be divested by Congress, or any other Department of the Government. And to this effect are the specific stipulations of the treaty recited below, to the observance of which the faith of both Governments was mutually and solemnly pledged.

Second. The wrongs and depredations of Mexico upon citizens of the United States have been a matter of grievous complaint for a great many years. Secretary Seward, writing to Mr. Corwin, the American minister to Mexico, on the 6th of April, 1862, said:

> I find the archives here full of complaints against the Mexican Government for violations of contracts and spoliations and cruelties practiced against American citizens. These complaints have been lodged in this Department from time to time during the long reign of civil war in which the factions of Mexico have kept that country involved, with a view to having them made the basis of demands for indemnity and satisfaction, whenever government should regain in that country sufficient solidity to assume a character of responsibility.

Whether our Government has shown sufficient vigor and determination in protecting our citizens from our depredating neighbors in times past, does not become a subject of inquiry here; but certain it is, the subtlety and chicanery of Mexican diplomacy has very far overreached the efficiency of our Government in its efforts to vindicate the rights of American citizens. And almost every claim preferred against Mexico before the late Commission was denounced in unmeasured terms by the Mexican legation as fraudulent. All that is asked now is that Mexico be held to the terms of the treaty of July, 1868, which contains the two following specific and explicit provisions, to wit:

> 1st. The President of the United States and the President of the Mexican Republic hereby *solemnly and sincerely engage* to consider the decision of the Commissioners conjointly or of the umpire, as the case may be, *as absolutely final and conclusive upon each claim decided upon by them or him, respectively, and to give full effect to such decisions*, WITHOUT ANY OBJECTION, EVASION, OR DELAY WHATSOEVER.
>
> * * * * * * *
>
> 2d. The high contracting parties *agree to consider the result* of the proceedings of this Commission *as a full, perfect, and final settlement of every claim* upon either Government, arising out of any transaction of *a date prior to the exchange of the ratifications of the present convention;* and *further engage that every such claim*, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said Commission, *shall*, from and after the conclusion of the proceedings of the said Commission, *be considered and treated as finally settled, barred, and thenceforth inadmissible.*

And here permit me to put the inquiry to your excellency, what higher test *of the honor of the United States can be required* than the faithful and

strict observance of treaties, which in the express terms of the Constitution are declared to be *the supreme law of the land?* Can there be any fanciful idea of the honor of the Government which rises above the Constitution and the laws, and which, therefore, transcends the powers with which the Government is invested? One of the highest duties of the constituted authorities of the United States is to protect the rights of its own citizens. And when these rights have been settled by the final judgment of a judicial tribunal against a foreign nation, on the authority of the *supreme law of the land*, and under solemn treaty stipulations, which that nation bound itself to observe, "without any objection, evasion, or delay whatsoever," upon what sublimated notion of honor can the Government disregard those rights and allow them to be repudiated, or trample them down itself? The settled doctrine of the law is, that the final judgment of a court of competent jurisdiction must be taken to be *absolute verity* and *conclusive of all* matters involved in the adjudication.

In view of this, upon what principle can the United States conclude that the claim, as allowed, was fraudulently exaggerated? The claim was presented to the Commission and submitted on the proofs and arguments of counsel on both sides, with twenty-eight depositions for the claimant and thirty-four depositions for Mexico, besides considerable documentary testimony on both sides. The company predicated its claim upon the value of its property and ores extracted and on the ground, of which it was despoiled, and also the amount of its expenditures, estimated, in all, at $3,030,000. The umpire, on full consideration of all the evidence on both sides, allowing the company only for those parts of the claim adjudged to be just and right, awarded only the amount of $683,041.32. On a motion for a rehearing, the umpire, on the most deliberate consideration, adhered to his decision, and the award became final, with all the conclusiveness of a judgment, besides the treaty stipulations, on which it is founded, pledging the faith of each Government to regard it "as absolutely final and conclusive upon the claim, and to give full effect to it, without any objection, evasion, or delay whatsoever."

For six long years this case was litigated before the Commission, with all advantages on the part of Mexico in procuring evidence and preparing the case. And now, without the slightest pretense for surprise, or misconduct in court, or fraud on the part of the Commissioners or umpire, upon what principle or reason can the United States gainsay the absolute verity of this adjudication? The question whether the claim as allowed was fraudulently exaggerated is *absolutely closed and concluded* by the award. There must be some end to litigations. If the case could be tried a second or even a third time, the failing party, if indulged for six months or a year, could doubtless go out and hunt up *ex parte* affidavits tending to show that too much or too little had been allowed. After the final adjudication there can be no ground for the assumption that the claim was fraudulently exaggerated. *That is one of the very things which has been absolutely concluded by the adjudication.* To say now that the claim was fraudulently exaggerated is a denial, allow me to say with all due deference, of the absolute verity of the judgment, and a repudiation of the pledged faith of the Government to regard the decision "as absolutely final and conclusive upon the claim," * * * "and to give full effect to it without objection, evasion, or delay."

To open up this case now on *ex parte* showing, to litigate the question whether the claim as allowed had been fraudulently exaggerated by the claimant, would make this mode of settling claims by international arbi-

tration a mere farce, nay worse, a flagrant imposition upon the aggrieved party who sought redress against the wrongs of a foreign nation. When the faith of the United States and that of Mexico were mutually pledged to regard "the decision as *absolutely* final and conclusive upon the claim," * * * "and to give full effect to it without any objection, evasion, or delay whatsoever," what sensible idea of the honor of the United States would justify a breach of this plighted faith of the nation in behalf of aggrieved citizens? The assumption that it had exaggerated the claim *is concluded* by the award, if that be conclusive of anything else.

Mexico, permit it to be said with all due deference, has manifestly but *clandestinely* violated the terms of this treaty. When it was asserted in Congress that Mexico had made complaints and charges of fraud against this award, the counsel for the company immediately demanded the specifications of the complaints and charges before Congress, but were told that they were in the State Department; and on immediate application to the State Department, they were told that no such complaints or charges had been filed there by Mexico. This seemed strange. But it was soon discovered that Mexico was acting *covertly* through hired and irresponsible emissaries and lobbyists. Ex-Confederate General James E. Slaughter, undeniably on a contract with Mexico, appeared before Congress, and in a printed pamphlet, *not even verified on oath*, preferred the complaints and charges referred to in the act of Congress above recited. After the matter reached the State Department, delay was obtained for nearly a year, and emissaries were sent out to hunt up *ex parte* affidavits, &c., on behalf of Mexico; and able counsel were employed to represent Mexico in this matter, and resist the payment of the award. These and many other things have been done by Mexico, having relation to this matter, which required a large expenditure of money. Can Mexico thus clandestinely seek to evade "the effect of this decision," which she was pledged to give full effect to without objection, evasion, or delay, and yet claim that she has observed the terms of the treaty? *Qui facit per alium facit per se.* And it may be added that he who acts in the dark may be seen in his works. Does the honor of the United States require indulgence to be given to these clandestine proceedings of Mexico in violation of a treaty?

Permit me to say, in regard to the *unsigned* book submitted by Mr. Lines, that it certainly shows on its face that it is unfair and unjust in its statements, both of the law and the facts—unintentionally, of course, I will concede. Numerous cases are cited in it as precedents, most of which are noticed in Mr. Shellabarger's brief, and not one of which is analogous to this, or even touches the principle of the finality of awards, which is involved in this case. And to show the unfairness of this document, take the following as an instance. On page xi of the "Introduction" is the following:

> The Government of Mexico was not unfamiliar with the doctrine of Vattel, p. 277, that an award "evidently unjust and unreasonable * * * should deserve no attention," nor did it forget that this doctrine had been successfully maintained by the United States, &c.

This garbles the language of Vattel, perverts his meaning, and falsifies the proceedings of the United States. What Vattel does say on that page is this: "When once the contending parties have entered into articles of arbitration, they are bound to abide by the sentence of the arbitrators; they have engaged to do this; and the faith of treaties should be religiously observed." This is our position. But the next sentence is the one garbled and perverted, which is to the effect that if the arbitrators should *forfeit the character with which they were invested*,

and should, for instance, by way of reparation, condemn a sovereign state to *become subject* to the state she had offended, the sentence would be unjust and unreasonable and deserve no attention, because of the misconduct of the arbitrators. So we say that an award may be impeached on the ground of fraud or misconduct of the arbitrators.

Third. If it were possible to give greater force and conclusiveness to this award, it is to be found in the second above-recited extract from the treaty. It may be questionable policy in the Government to surrender or abridge its rights and obligations to protect its own citizens against the depredations of foreign nations. But Mexico claims the benefit of it here, and it will doubtless be conceded to her. And upon the plighted faith of the two nations "the result of the proceedings of this Commission were made a full, perfect, and final settlement of *every claim* arising out of any transaction of a date prior to the ratifications" of this treaty, and every such claim, whether the same was preferred before the Commission or not, was thereby and from thenceforth barred forever. Such was the finality and conclusiveness given to the proceedings of this Commission, that they barred forever claims of citizens not before it, and those presented and excluded for want of jurisdiction, as well as those upon which it adjudicated. And Mexico claims and has the benefit of this. The claims of minors, and lunatics and persons beyond seas, who had no knowledge of the convention, were thus barred. And more than this, claims arising upon breaches of contract, and actually ruled out for want of jurisdiction, are barred. Before this Commission, Mexico appears to have had things pretty much her own way. The greater part of the claims of American citizens against Mexico arose from breaches of contract. The treaty, which was drawn by Mr. Cushing, who became *counsel for Mexico*, provided for the adjudication of "*all claims*" of persons "*arising from injuries to their persons or property*," by the authorities of either Government, &c. But on motion of Mr. Cushing, on behalf of Mexico, all the numerous cases, founded on breaches of contract, were ruled out as not within the jurisdiction of the Commission. Since the earliest days of the common law, contracts have been held to be, and treated in all respects *as, property;* so that even a tyro in the law would perceive that a breach of a contract was an injury to a person in his property. If there be any ground whatsoever to charge misconduct on this Commission, it will be found in this most manifest blunder in the ruling in favor of Mexico, whereby that Government was at once relieved from the major part of the wrongs charged against it. And, by the peculiar terms of the treaty, these claims of American citizens became *settled and barred forever*, without even a hearing. And now, while Mexico has thus secured immunity and impunity against the greater part of her injuries to American citizens by means of the finality of the proceedings of this Commission, she is still, years after the termination of the Commission, besieging Congress and the State Department in order to litigate, delay, and evade final awards deliberately rendered on the most elaborate preparation on both sides. If Mexico is to be thus indulged, and allowed to evade the most specific treaty stipulations as to the conclusiveness and finality of international awards, American citizens must be without protection and the means of redress through their own Government. I cannot for one moment believe that your Excellency will hesitate to check, if not rebuke, such attempts on the part of Mexico to evade the specific stipulations of a treaty, while claiming and enjoying all the benefits of them herself.

Fourth. In reference to the suggestion of the honorable Secretary of State, to refer this case to Congress to ascertain and determine whether

there has been any fraudulent exaggeration of the company's claim as allowed, which would justify the withholding payment of a part of the award, permit me to say, with all due deference, that Congress, in my humble judgment, can have no power over the award whatsoever. The treaty-making power is as distinct a tribunal, and as independent of Congress in its appropriate sphere, as the Supreme Court of the United States. Congress cannot make or assist to make a treaty, nor can it modify or change an award of an international commission made under a treaty. The power of executing a treaty, or an award under a treaty, is exclusively vested in the Executive. And permit me most respectfully to suggest that Congress can to no extent whatever exercise either the judicial or the executive functions, and it is equally without authority over the matters of the treaty-making power. Congress cannot grant a new trial or rehearing of a case in court, or before an international commission.

In United States *vs.* Klein, 13 Wall. R., 129, the Supreme Court declared an act of Congress unconstitutional and void which assumed to dictate and direct the action of the Court of Claims and Supreme Court, in relation to pardon and amnesty. And Congress cannot confer jurisdiction on either an existing tribunal or a newly-created one, to review or modify a judgment or international award, which had previously to the passage of the act become final and conclusive under the provisions of a treaty. And an act of Congress to withhold from a person money, to which he had become entitled under an award which had become final and conclusive by the terms of the treaty, would be most clearly unconstitutional. And I most respectfully suggest that Congress cannot interfere by retroactive legislation with the functions and duties of the treaty making power, in executing, fulfilling, or giving effect to treaty stipulations.

At different periods in our Government questions have arisen as to the extent of the authority of Congress to interfere with matters pertaining to the treaty-making power, but the supremacy of the latter, within the sphere of its authority, has been heretofore consistently maintained. [Story on the Constitution, sec. 1841.] And I have abiding confidence that it will not be surrendered by your Excellency. If the treaty-making power should surrender to Congress the control over or the right to interfere with the due execution of treaty stipulations, the public faith would be liable to be tampered with, and the country involved in difficulties with foreign countries, and it would furnish a rich field for lobby members, and some foreign nations would keep a standing lobby under constant employment. And the result would be demoralization and corruption and violations of the public faith, to the discredit and degradation of the nation.

With entire confidence that your Excellency, and the honorable Secretary of State, will maintain the supremacy and integrity of the treaty-making power, as well as the honor of the United States, by requiring of Mexico the performance of specific treaty stipulations, I submit the above.

With great respect, &c.,

T. W. BARTLEY,
Of Counsel for the La Abra Silver Mining Co.

President HAYES.

No. 55.

Alice Weil, &c., to the President.

WASHINGTON, D. C., *August* 22, 1879.

SIR: The undersigned have received from the Hon. F. W. Seward, Acting Secretary of State, a letter dated August 20, 1879, inclosing a statement embodying the President's conclusions in regard to the Weil and La Abra cases. They have carefully examined this statement and are pleased to learn therefrom that the President has arrived at the conclusion that—

> Neither the honor of the United States, the principles of public law, nor considerations of justice and equity require or permit, as between the United States and Mexico, that the awards in these cases should be reopened and the cases retried before a new international tribunal, or any convention or negotiation respecting the same between the United States and Mexico.

We are advised and believe that the conclusions contained in the second and third paragraphs of said statement are violative of the provisions of the treaty between the United States and Mexico of July 4, 1868, not authorized by the act of Congress of June 18, 1878, and in derogation of our rights under the award in favor of Benjamin Weil.

While we continue to deny the constitutionality of the supposed act of June 18, 1878, we insist that the President, acting under it, is strictly bound and limited by its provisions. These, we repeat, did not authorize the President to withhold payment unless he should be of the opinion that the honor of the United States, the principles of public law, or considerations of justice and equity required that the awards in question, or either of them, should be reopened and the cases retried. Having decided that the awards could not be opened, or the cases retried, the President, by that decision, exhausted any supposed authority conferred on him by Congress, and was remitted to the discharge of the duty imposed by the second article of the treaty with Mexico.

We thereupon insist that it is not lawful for the President or any other person to withhold payment of the installments of said award which have been paid. We demand payment of the said installments at once, and we notify the President, Secretary of State, and all other persons concerned that if the money hereby demanded be not paid, or if it be converted to any use other than payment to the legal representatives of said Weil, we shall take such measures either to compel payment or to hold the convertor or convertors individually responsible for such conversion as the law may allow and we think proper to adopt.

Three of the undersigned are assignees in part of said award.

ALICE WEIL,
Administratrix of Benjamin Weil, deceased, and Tutrix of George Weil,
By L. B. CAIN,
Agent and Attorney of said Alice.
L. B. CAIN, *Assignee.*
JH. O. DE CASTRO,
Assignee.
JOHN J. KEY, *Assignee,*
By S. W. JOHNSTON,
His Attorney.
JOHN J. WARDEN,
Attorney for Weil, Cain, J. De Castro.

No. 56.

In the matter of the award made in case No. 447, under the treaty of July 4, 1868, between the United States and Mexico.

The legal representatives of said Weil now move the President to so correct his action and proceedings and the record in this matter as to find that neither the honor of the United States, the principles of public law, nor considerations of equity and justice require or permit the reopening of the said award and the retrial of said case, and thereupon to order instant payment of the money now on hand under said award.

JOHNSTON & WARDEN,
Attorneys for said Representatives.

In the matter of the Weil case.

POINTS ON MOTION FOR CORRECTION.

I. The motion here presented is perfectly consistent with the demand that has been made for payment, notwithstanding the conclusions of the Secretary, approved by the President.

II. The demand is not intended to be either waived or modified.

III. The motion waives nothing which has been said to indicate the unconstitutionality of the supposed law of June 18, 1878.

IV. That act of supposed legislation limits the intended discretion as to the withholding of payment to this case alone, if the Presi ent shall be of opinion that the honor of the United States, the principles of public law, or considerations of justice and equity require that the award should be reopened and the case retried.

V. In this respect, the finding approved by the President is that, so far from requiring, principles of public law and considerations of justice and equity do not permit the reopening of the case; and it is not found that honor requires what they do not allow.

VI. There being no such affirmative finding as that contemplated by the supposed law, and the finding as to equity, as well as with regard to law being against the disturbing the award, it stands, and full performance is required by the intent of the supposed statute and by public law.

VII. No failure to perform it can be authorized by anybody's notions as to honor. Honor has no force against the law.

VIII. Without the supposed act of Congress there certainly would have been no attempt to withhold payment. Virtually, the withholding of payment is forbidden by the supposed law, in view of the findings I have pointed out.

IX. The logical and legal sequitur from the finding as to the sacredness of the award, is payment, not delay and reference without defined design.

X. What does the learned Secretary advise the President to recommend to Congress? These appear to me weak words.

"If such further investigation should remove the dou' ts which have been fairly raised upon the representations of Mexico, the honor of the United States will have been maintained. If, on the other hand, the claimants shall fail in removing these doubts, or they should be replaced by certain condemnation, the honor of the United States will be vindicated by such measures as may be dictated."

Have we not a rather "lame and impotent conclusion" here? What measures are hinted at? Are *any* really considered constitutionally possible?

XI. What right has Congress to authorize the practical nullification of an award, the reopening and retrial of which, unrequired by honor, is forbidden by the principles of public law, as well as by considerations of justice and equity?

XII. The purposed reference to Congress would be at once an absurdity and an oppression.

XIII. The Secretary held this case too long to see it as it is.

XIV. In view of the unspeakably injurious delay that has entered into the history

of this heart-wearing case, the proposition to send it again to Congress on a cruise of mere adventure and haphazard cannot be too earnestly opposed or too decidedly condemned.

XV. Withholding payment in the circumstances is not unlawful merely; it amounts to usurpation, marked by very gross oppression as to persons interested in the right result. As one of these, connected in no manner with the fraud alleged but still unproven, I feel bound to meet the proposed re-reference to Congress with an earnest and indignant protest, be the consequences what they may, in public or in private.

R. B. WARDEN.
Of Counsel.

No. 57.

Alice Weil, &c., to Mr. Evarts.

WASHINGTON, *August* 27, 1879.

SIR: The first section of the act of Congress approved June 18, 1878, provides—

That the Secretary of State be, and he is hereby, *authorized* and *required* to receive any and all moneys which may be paid by the Mexican Republic under and in pursuance of the conventions between the United States and the Mexican Republic for the adjustment of claims, concluded July fourth, eighteen hundred and sixty-eight, and April twenty ninth, eighteen hundred and seventy-six; and whenever and as often as any installments shall have been paid by the Mexican Republic on account of said awards, to distribute the moneys so received in ratable proportions among the corporations, companies, or private individuals, respectively, in whose favor awards have been made by said Commissioners, or by the umpires, or to their legal representatives or assigns, *except as in this act otherwise limited or provided*, &c.

The limitation referred to in the last-quoted clause of the first section is defined in the fifth section of said act in these words:

And whereas the Government of Mexico has called the attention of the Government of the United States to the claims hereinafter named with a view to a *rehearing*, therefore, be it enacted that the President be, and he is hereby, requested to investigate any charges of fraud presented by the Mexican Government as to the cases hereinafter named, *and if he shall be of the opinion* that the honor of the United States, the principles of public law, or considerations of justice and equity, require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, *should be opened and the cases retried*, it shall be lawful for him to withhold payment of said awards, or either of them, &c.

It will be observed that the sole ground on which payment can be withheld in the cases named, or either of them, is that the President "shall be of the opinion" that said awards, or either of them, "*should be opened and the cases retried.*"

On the 20th day of this month the Hon. F. W. Seward, Acting Secretary of State, transmitted to us through counsel "a statement embodying the President's conclusions in regard to the Weil and La Abra cases," and from this statement it is clear that the President is of the opinion that the awards in question *cannot* be opened and the cases retried."

This conclusion of the President nullifies the supposed authority conferred on him to withhold payment, under the limitations contained in the fifth section, hereinbefore cited, and devolves on the Secretary of State the duty of distributing the moneys "paid by the Mexican Republic on account of said awards," as required by the first section of said act.

We therefore insist that you proceed to make the distribution re-

quired by law, and demand payment of the sums due us under and by virtue of the award in favor of Benjamin Weil, deceased.

We are, very respectfully, your obedient servants,

ALICE WEIL,
Administratrix of Benjamin Weil, deceased.
L. B. CAIN, *Assignee.*
J. O. DE CASTRO, *Assignee.*
By JOHNSTON & WARDEN,
Their Attorneys.
JOHN J. KEY, *Assignee.*

No. 58.

Mr. Zamacona to Mr. Evarts.

LEGATION OF MEXICO,
Orange, August 25, 1879.

Mr. SECRETARY: With the note of your Department of the 20th instant I received a copy of the conclusions reached by the President after examining, according to the act of Congress of June 18, 1878, the claim of Benjamin Weil and that of the Abra Mining Company.

I appreciate, and the Mexican Government will also duly appreciate, the sentiment of noble dignity in obedience to which the President declares that the honor of the United States requires an investigation of the two claims aforesaid, in order to ascertain whether they have been a means of converting this Republic into an instrument of fraud against a friendly power.

It is unnecessary to say that I have received no instructions from my Government with regard to the new phase which the upright opinion of the President gives to these claims, and the Department of State will consequently not think it strange that I have nothing to say in relation to the form of investigation that has seemed preferable to the President, or that I still refrain from reproducing the opinion which has always been entertained by the Mexican Government, viz, that the situation in which the two claims in question now are might affect, not only the untarnished honor of the United States, of which the Department of State is so worthy and zealous a custodian, but also highly important questions of equity and of international justice.

There is, however, Mr. Secretary, in the conclusions which the Department of State has been pleased to communicate to me, one point which requires rectification on the part of this legation, and whose urgent character induces me to express, without further delay, what I consider as the feeling, the desire, and the hope of the Mexican Government.

In the fourth of the aforesaid conclusions it is announced as possible, in case this opinion shall be adopted by the Department of State, that the installments hitherto held may be paid to the Abra Mining Company, for the reasons that the principal objections on our part in this matter refer to the fraudulent exaggeration of the damages.

The Department of State will permit me to remark that, in the opinion of my Government, the principal one of its observations, and the most important of its proofs in relation to the Abra Mining Company, are those which attack the fundamental pretext of the claim, which

consists in attributing the abandonment of the mine to the hostility of the Mexican authorities.

Moreover, whether the opinion of this legation shall previail, viz, that the external aspect of the case indicates a fraud which vitiates the entire claim, or the suspicions shall remain limited to an exaggeration of fraudulent character, the parties who have been thus guilty of fraud would have no just cause of complaint if all payments should be suspended until the facts shall have been more thoroughly sifted.

Since these facts have seemed to Congress to warrant a re-examination, and since the President honestly declares that our representations and documents give rise to grave suspicions of fraud, and that it is due to the honor of the United States to investigate the truth, there is ground for the belief that a new investigation will certainly take place. It would, therefore, be proper that the officers appointed to make such investigation should take up the entire question, that the case should come before them in a clear and unincumbered form, and that the present state of the case as regards its pecuniary aspect should be maintained. Such seems to have been the intention of the act passed by Congress, in which, immediately after an allusion to the possibility of a new investigation being deemed necessary, the President is authorized in such an event to suspend all payments.

The Department of State will be pleased to regard the foregoing remarks as an indication of the confidence entertained by this legation in the uprightness of the Government to which it addresses them. For the evidences of that uprightness, which have just been received by the country that I represent, be pleased, Mr. Secretary, to convey to the President, and to accept for yourself, the assurances of my highest consideration.

M. DE ZAMACONA.

No. 59.

SUPPLEMENTAL BRIEF OF COUNSEL FOR MEXICO.

BEFORE THE SECRETARY OF STATE.

In the matter of the investigation of the fraudulent claim of La Abra Silver Mining Company *vs.* Mexico.

JOHN A. J. CRESWELL, ROB'T B. LINES, *Counsel for Mexico.*

To the Secretary of State:

SIR: In acknowledging the receipt of the Department's letter of the 20th ultimo, transmitting the conclusions of the Secretary upon the appeal of Mexico, in the matter of the Weil and La Abra awards, the undersigned feel it their duty to protest against the distribution of any portion of the installments already paid to the credit of La Abra claim upon the assumption that the charges of fraud preferred by Mexico in that case go only to the measure of damages insisted upon and allowed, and not to the integrity of the claim itself. The Secretary having announced that he reserves this point, and is examining the case further with reference to it, the undersigned beg leave respectfully to call his attention to the following facts and suggestions.

Admitting that the Abra Mining Company possessed a mine in Du-

rango, which it abandoned on the 20th of March, 1868, or at some other time, it was necessary for that company, in order to charge Mexico, to show first that this abandonment was caused solely by the hostility of the Mexican people and authorities; second, that the tribunals of Mexico afforded no redress against such hostility, thus justifying an appeal, some two years later, to the interference of the United States Government; and third, that the property of which it was thus dispossessed was of some value. These propositions are all integral, interdependent, and inseparable. The stronger the evidence as to the value of the mine, the more strictly should the claimant have been held to the proof of the hostility of the authorities and the lack of redress against such hostility. For what could have been more improbable than that a wealthy company should abandon, in time of peace, an enterprise undertaken amid the hazards of war, from which it was deriving and expected to derive enormous returns, because of threats or slight overt acts of hostility, and without making appeal for protection or redress to those tribunals of Mexico which were admittedly open to it (claimant's evidence before Commission, p. 147, case of Mexico), or to those officers of the United States who were near at hand, and whose offices could have been invoked in its behalf. And yet such was the pretension of La Abra Company.

Only upon satisfactory proof of all these allegations could the award of a single cent, as damages, be justified. Upon their disproof, or upon the sincerity of the evidence on which they are based being brought "into grave doubt," we respectfully contend that such measures as may be thought necessary to vindicate the honor of the United States in this matter should be applied to the whole of the award, and not to a part only.

From the decision of Commissioner Zamacona to the present time, Mexico has always contended that the main proposition of the claimant had utterly failed of proof before the Commission. And since the discovery of the new evidence she has contended that those propositions are completely disproved by the admissions of the claimant itself. The proofs of the worthlessness of the mine, which the conclusions of the Secretary appear to accept as making a *prima facie* case authorizing an investigation of the claim by the United States, are themselves sufficient to discredit the allegations of hostility, since they destroy the pretended motive for such hostility on the part of the Mexicans, to wit: the desire of securing the mines for themselves, and establish a strong motive on the part of the claimant for the voluntary abandonment of property productive only of loss to the company. The evidence of hostility emanating from the same source as that of the productiveness of the mines, is tainted to the same degree by the proofs above alluded to. *Falsus in uno falsus in omnibus* is a maxim applying in its fullest extent to this case, and even if the proofs related only to the value of the mines, we cannot, with great respect for the suggestions embodied in the fourth "conclusion" of the Secretary, see how the claim could, with safety or propriety, be separated into two portions—one pure and the other corrupt. But the proofs are not confined to the character of the ores and the consequent value of the mines. In our opinion they demonstrate completely not only that the company was not driven away from its mines by the hostility of the Mexicans, but also that such hostility did not, as a matter of fact, exist. Permit us briefly to call your attention to their bearing in detail upon charges of the claimant.

I.

The general sentiment of the authorities and people was friendly to the claimant.

1. Its right to the mines, which, under the provisions of the Mexican law, had several times lapsed from *non user*, was as often extended by the authorities. (See letters of Superintendents Bartholow, de Lagnel, and Exall, "new evidence," pp. 67, 68, and 69, case of Mexico.) May 5, 1866, Bartholow says: "All that we are now working are under 'prorogue' until July, when you should make application through D'n Angel Castillo de Valle, Durango, for an extension of the prorogue." May 8, 1868, two months after the alleged forcible expulsion of the company in March, Superintendent Exall writes from New York to Granger, whom he had left in charge at the mines—"if possible get *prorogas* (extensions on mines where times are expiring."

2. Its officers received ample protection from the military authorities when the country was under martial law. Bartholow writes to Treasurer Garth, February 6, 1866 ("new evidence," p. 82, case of Mexico): "It was with the greatest difficulty that I could get any one to agree to pack at all; and had I not succeeded in getting military protection our mill would now be lying at Mazatlan." Not only was this so, but when the property of *Mexicans*, hired by the company to pack its supplies from Mazatlan, was confiscated by the military authorities, Superintendent Bartholow secured its release. (Letter to Don Angel Castillo de Valle "new evidence," p. 144, case of Mexico.) When one of the employés, Wm. Grove, was murdered (by another of the employés), the offender was caught, promptly tried by court-martial, and shot. (Letters of Bartholow to Garth, March 7 and April 10, 1866, "new evidence," pp. 127 and 128, case of Mexico.) When one of the employés, George Scott, was robbed of $1,178, by bandits, the nearest commander of the liberal forces, and the military prefect, Colonel Vega, made every effort to find the robber; "and I am of the opinion," said Bartholow, "that but for the turn in military affairs, which occurred a few days since, we would, in some way or other, have been reimbursed for the loss." (Letter of April 10, 1866, "new evidence," p. 125, case of Mexico.)

3. The taxes levied on the company were remitted at the request of the superintendent (same letter as above). The press copy-book of the company shows a similar request from the company's agent, Granger, in charge of the mines in August, 1868, six months after the alleged forcible expulsion, asking the tax collector to wait until November, when the superintendent was to return, "*and then the sums due by this company on account of this tax will be paid.*" (Letter of August 13, 1868, "new evidence," p. 154, case of Mexico.)

4. The courts protected the company, giving judgment in its favor, *and against the very judge whom it accuses of persecuting it,* in a suit involving the title to part of its property, in January, 1868, only two months before the alleged forcible expulsion. (Evidence filed by claimant before the Commission, p. 147, case of Mexico.)

5. The personal relations between the authorities and the company's agents were friendly. October 6, 1867, Exall writes Treasurer Garth ("new evidence," p. 104, case of Mexico): "There is no difficulties about authorities, boundaries, or anything else concerning the mines and hacienda, provided there is money on hand, and money *must* be sent." February 7, 1868, one month before the alleged forcible expulsion, Superintendent Exall executed an agreement *with the same judge above*

alluded to, allowing him to occupy this same piece of property for six months, with the privilege of extension, the property to be turned over thereafter to Mr. Exall, or his successor, with all improvements, and without charge for the latter. (Original agreement filed by Mexico, "evidence before Commission, p. 71; execution admitted by Exall in his affidavit of June 11, 1874, p. 72, case of Mexico.) This agreement was extended by Granger August 7, 1868, five months after the alleged forcible expulsion of the company. (Original filed by Mexico, "evidence before Commission," p. 71, case of Mexico.) Frederick Sundell, assayer of the Durango Mining Company of New York, swears ("new evidence," pp. 117, 118, case of Mexico) that his company carried on operations in the same district with La Abra Company; that he never heard of any hostility to the latter on the part of the Mexican authorities; had there been such hostility deponent must have heard of it. Superintendent Exall and Prefect Olvera appeared to be great friends. The former offered the latter many courtesies, such as breakfasts, serenades, &c.

6. The people, consisting chiefly of the employés of the company, were quiet and peaceable, even submitting to oppression from the company. July 13, 1867, the company in New York having refused to send him money to pay the miners, Exall writes Garth ("new evidence," p. 100, case of Mexico):

> I thought it best not to stop off immediately, but prepare the miners for the change. I let them work on one week longer, and during that week informed them of my intentions. They said nothing offensive, but of course were disappointed, as it would be a bad time for them to be without work—in the rainy season. Since stopping off we have been trying to make arrangements with the men to work by the carga (load). I have succeeded in getting four miners to work by shares and by the carga. * * * *We can do better with them when they are a little hungry.*

II.

There were no specific acts of hostility to the company tending to drive it from Mexico, or even to make its work unprofitable.

1. The forced loan of $1,200 levied by Colonel Valdespino upon the inhabitants of Tayoltita generally was not an act of hostility to the company. In his decision in the case of McManus Brothers *vs.* Mexico, No. 348, Sir Edward Thornton says: "The umpire, after examination of the treaties between the two countries, can find no mention of forced loans and no stipulation which accords or implies the exemption of United States citizens from their payment." Moreover, the company did not pay its proportion (one-quarter) of this loan, pleading as an excuse the lack of funds; and no inconvenience resulted to it from the non-payment. (Letters of Superintendent de Lagnel, "new evidence," pp. 125 and 126, case of Mexico.) The letters in the press copy-book of the company make no mention of any other attempted forced loan, though from the vigorous protest of the superintendent ("new evidence," pp. 123 to 125, case of Mexico) against the payment of excessive taxes (which had the effect, as before stated, to reduce them 99 per cent.), it is certain that such a transaction would have been recorded. Nor do these letters, covering a period of two years and eight months, and exhibiting the entire operations of the company, allude to any detention of supplies by the Mexican authorities.

2. The robbery of Scott of $1,178, heretofore alluded to, was committed by bandits, whom the military sought to punish. ("New evidence," p. 125, case of Mexico.)

3. No mule trains of the company were ever seized by the authorities. The letters of Superintendent Bartholow, of February 6, 1866, to Garth,

of February 21, 1866, to Echeguren, Quintana & Co., and February 28, 1866, to J. G. Rice, superintendent Durango Mining Company ("new evidence," pp. 82 and 83, case of Mexico), as well as the accounts of the company, not printed in the case of Mexico, show that the company hired its transportation to and from Mazatlan, and Bartholow's letter of February 21, 1866, to Don Angel Castillo de Valle ("new evidence," p. 144, case of Mexico) shows that he secured from the military authorities exemption from confiscation for the property of his Mexican packers. His letter of May 5, 1866, turning over the property to his successor, de Lagnel ("new evidence," pp. 85 and 86, case of Mexico), shows that for its work at the mines the company owned twelve mules. Some of these mules, according to the evidence filed by Mexico before the Commission (p. 129, case of Mexico), were sold by "the people of the company," and others ridden away when they left. In his letter from New York, Granger, of June 15, 1868, three months after the alleged forcible expulsion ("new evidence," p. 152, case of Mexico), Exall states that he is getting up an inventory of the property for parties whom he hopes to induce to purchase the mines, and that in place of the ten mules which appeared on the inventory brought home by de Lagnel, he has "put four mules at $60=$240."

4. William Grove was murdered, as before stated, by another employé of the company, and so far were the authorities from instigating or conniving at his murder that they tried, sentenced, and shot the offender. ("New evidence," pp. 127 and 128, case of Mexico.)

5. The people never assaulted the hacienda of the company. There is no mention of such a thing in its correspondence. Frederick Sundell, assayer of the neighboring American mining company, still at work there, swears that he never heard of it, and it could not have happened without his knowledge.

6. The next complaint of the company is that the Mexicans carried off its ores. There is no mention of this in the company's letters. If the new evidence presented by Mexico has been sufficient to raise a doubt in the mind of the Secretary as to whether those ores were not utterly worthless, the persons charged with stealing such worthless rock may well claim the benefit of that doubt.

7. The matter of the letters of Prefect Mora and Judge Soto, to Superintendent Exall, of June and July, 1867 (eight months before the alleged forcible expulsion), has been fully discussed in our argument before the Secretary (pp. 16–21). Those four letters, with the one of Valdespino, comprise every scrap of documentary evidence filed by the claimant. They make much the strongest part of its case. Their authenticity is not admitted by Mexico, and was denied by Mora, a witness for the company. ("Evidence before Commission," p. 140, case of Mexico.) They are incorrectly translated, and the dates of the two letters of Soto, even if they are authentic, are evidently changed from June 4 to July 4, and from June 5 to July 24. It is admitted that some correspondence passed with reference to the broken promises of the company to pay its workmen. That correspondence ended as early as July 10. The next day, July 11, 1867, Exall writes the Prefect Mora a letter, closing as follows:

> And if you had known the circumstances and causes which led to the paralyzation of the works, it would have been apparent to you that I could not do otherwise. I have offered to the operatives all the mines to be worked on shares by the carga, and some are already at work; and desiring that with this there may be the most friendly understanding about this affair,
>
> I am, your most affectionate servant,
>
> CHARLES H. EXALL,
> *Superintendent La Abra Silver Mining Company.*

Two days afterwards, July 13, 1867, he writes Garth:

When I received your letter by Sr. M. I was working the Abra, Cristo Luz, Arroyan—a small force in each. Seeing the decided manner in which all further aid for the present was refused, and the injunction to cut down all expenses, necessitated my stopping off the whole force from the mines. As I had only a short time previous reduced the cash payment from one-third to ——— (which occasioned a stop for eight or ten days, which I was glad of, as it was so much clear gain, and *a little spat with the officials which was gotten through without much trouble*), I thought it best not to stop off immediately, but prepare the miners for the change. I have succeeded in getting four miners to work by the carga. * * * We can do better with them when they are a little hungry. ("New evidence," pp. 136, 137, case of Mexico.)

It was the refusal of the company to send money, and not the "spat with the officials," which interrupted the work. From the 10th to the 13th July the work went on without difficulty. The three days were "consumed in cleaning up" the run of ores which had commenced May 27 ("New evidence," p. 103, case of Mexico). Did the memory of this correspondence which, at the time, he called "a little spat gotten through without much trouble," which did not interrupt the work, and which he had so far forgotten on the 6th of October as to write Garth (p. 104, case of Mexico) that there were "no difficulties about authorities, boundaries, or anything else," provided money was sent—did the recollection of this correspondence influence Exall, eight months afterwards, to flee for his life from the mountains of Durango? Or did he, as the proofs filed by Mexico show, after exhausting himself in vain demands upon the company for money, and notifying it by his letter of January 24, 1868, that if by the next steamer he received no assistance he intended "leaving for the East," deliberately arrange for the preservation of the property, leave an agent in charge, go to New York "to inquire into the intentions of the company," and failing to get satisfaction from it, or to organize a new company, finally abandon the mines after July, 1868, four months after he swears he was driven away by the Mexicans? ("New evidence," pp. 148–154, case of Mexico.)

8. One more overt act of hositility was charged against the authorities, to wit: That in January, 1868, they arrested Superintendent Exall without cause, fined him and cast him into a filthy prison, from which he was only released by the influence of his clerk, "who promised to pay his fine" (pp. 142–144, case of Mexico). Truly an ignominious position for the agent of this wealthy corporation. What does the press copy-book say of this transaction? In a long and by no means humble protest addressed to Prefect Olvera, dated January 7, 1868, Exall complains that Judge Nicanor Perez came to the company's hacienda on official business with one of the employés, and went to a private room. Exall ordered him out "respectfully." The judge got angry; went home; sent for Exall to come to his house; lectured him severely for disrespect; and told him he never wanted to see him at his house except on business. As Exall turned to go, the judge called him back, and kept him an hour, abusing him in "the most violent language." Exall asked the judge if he was going to imprison him, "please to do so, as I had a headache and wished to lie down. He then gave me permission to go to the hacienda, but to consider myself still his prisoner, and [report?] at his house whenever ordered." This was doubtless an undignified proceeding on the part of the judge, and a disagreeable experience for Exall; but did it justify his desertion, two months afterwards, of a property on which thousands of dollars had been expended, and from which (according to the claimants) millions were about to be realized?

9. What more was charged by the company upon the authorities?

Nothing but vague threats. By whose testimony was the charge supported ("Evidence before Commission," pp. 117–123, case of Mexico)? By the same witnesses who swore that the forced loans were paid; that Scott was robbed and the company's trains were captured by the military; that Grove was killed by the soldiers; that the people charged on the hacienda; that the authorities repeatedly stopped the work at the mines, and that Exall was sent to jail. Upon their testimony is built up the whole charge of hostile interference by the Mexican authorities and people, the truth of which would be admitted by the payment to the company of a portion of the award. They are the same witnesses, the sincerity of whose evidence in the matter of the value of the mines and the expenditures upon them is, in the opinion of the Secretary, brought into grave doubt by the proofs offered by Mexico.

III.

Not only was not the company, in the person of Superintendent Exall, forcibly expelled on the 20th of March, 1868, as alleged, but it did not even abandon the mines at that time. After protesting the draft of its superintendent, of April 10, 1867, ("New evidence" pp. 95 and 96, case of Mexico), the company sent him no more money from New York and voluntarily abandoned him and the mines to their fate (see original letters of Treasurer Garth of May 20, May 30, June 10, July 10, July 20, October 10, and correspondence of the company generally). The superintendent, on the 24th January, 1868, wrote the treasurer as follows: "If by next steamer I receive no assistance from you, I intend leaving for the East. I will go via San Francisco. Will from there telegraph you what further steps I shall take." He appointed an agent February 21, 1868 (p. 107, case of Mexico), and went to New York via Mazatlan, from which place he wrote a letter of instructions dated March 15, 1868 (see original, not printed). His subsequent letters from San Francisco (see original, not printed) and from New York and Richmond (pp. 149–154, case of Mexico), show that down to July 18, 1868, he kept control of the mines. The letter of the agent to the collector of taxes at Tayoltita, dated August 13, 1868 (p. 154, case of Mexico), shows that he was in full possession of the mines at that date, and the evidence before the Commission (pp. 163–164, case of Mexico) showed that this agent himself, James Granger, and no officer or agent of Mexico, sold the property of the company, as late as 1871, charging the proceeds to the account of his unpaid salary, and in the same year took legal possession of the mines by "denouncement," and held them while the claim was pending in Washington.

IV.

Had all the charges made by the claimant against the local authorities been proved before the Commission, and did they stand to this day undisputed, still the award could not have been justified by the principles of public law. It was for the claimant to seek redress in the tribunals of Mexico, which, in January, 1868, according to the company's own witnesses ("Evidence before the Commission," p. 147, case of Mexico), had given a judgment in their favor, and to invoke the protection of the diplomatic and consular officers of the United States, (see decisions of umpire, cited in argument before the Secretary, pp. 37–40). This course the claimant never even pretended to have taken (p. 155, case of Mexico).

V.

If, after having given the foregoing suggestions the careful attention we bespeak for them, the Secretary shall be of opinion that they do not bring into grave doubt the charge of the forcible expulsion of the company from its mines, (which, in our opinion, is the main proposition involved in the claim, and affected by the newly-discovered evidence), but that investigation should be confined to the expenditures upon the mines, or whatever else may be included as going to make up the measure of damages, the undersigned beg leave respectfully to point out the danger of assuming any sum as the proper damages, or as being less than the proper damages which Mexico ought to pay to the claimant. The amount now in the hands of the United States to the credit of this award is about $150,000. It is by no means certain that the entire investment of the company, with interest added, would reach that sum. The evidence filed by the claimant before the Commission, as to the mines purchased and the amounts paid for them, was imperfect and conflicting, (pp. 64–69, case of Mexico). Mines appear in the title papers and suddenly drop out again; and the amounts stated by different witnesses are far from agreeing. One paper pretends to transfer 550 feet of the Nuestra Señora de Guadalupe mine, the consideration not being named. The press copy-book ("New evidence," pp. 65, 66, and 67, case of Mexico) shows us that La Abra Company was merely a stockholder in the Nuestra Señora de Guadalupe Mining Company for 550 shares. The claim of that company against Mexico, No. 821, was rejected by the umpire, and La Abra Company had no right to recover on its stock, whatever it may have paid for it. Again, Bartholow swore that La Abra Company paid $22,000 gold for $\frac{22}{24}$ of La Abra Mine, and this sum goes to make up the award of the umpire. The company's report for for 1866 shows that it issued $22,000 stock for that mine (p. 64, case of Mexico). If it were decided that Mexico should reimburse to the stockholders of the company their investment, with interest, the contributors of the Abra mine should first be required to show that that mine was of some appreciable value. The reports of the company themselves are far from reliable, either as to the payments on stock, the amounts paid for the mines, or the subsequent expenditures. Large sums, going to make up the award, evidently represent expenses incurred in the prosecution of the claim itself. There is not one syllable of trustworthy evidence in the whole case of the company; and no one can tell, without that thorough investigation which the Secretary advises, but declares his Department powerless to undertake, exactly or even approximately, what amount of money these speculators sunk in their foolish enterprise, and which they have sought to recover many times over by this dishonest and utterly fraudulent claim.

In conclusion, permit us to repeat the *résumé* of this case, given on page 76 of our printed argument of May 17:

> The company, deceived by the former owners of the mines and by its first superintendent, began with high hopes of success, and received all the aid which the Mexican authorities could render. These hopes gradually drooped until, when a little more than a year had passed without favorable results, the stockholders declined to sink any more money in the enterprise. The last superintendent continued to struggle for nearly a year longer, running into debt, begging for money and finding no ore that would pay the cost of mining. He then, voluntarily and without a hand being lifted against him in Mexico, went to New York to try and collect his pay from the company. This and all other aid being refused him, he still kept control, giving directions to his representative at the mines, and hoping to form a new company from which to recover his losses.

The claim was an afterthought. Neither Mexico nor the United States ever heard of it until two years after it is alleged to have accrued. The Claims Commission having been established, it was then taken up by infamous men, and prosecuted by infamous methods. Whatever losses the company may have suffered in the purchase of its mines, and their improvement, or in the prosecution of this claim, not one cent can be justly charged against the Republic of Mexico, and it is our firm belief that any tribunal which, in the vindication of the honor of the United States, shall be charged with the investigation of this claim, must inevitably come to this conclusion.

Very respectfully,

JOHN A. J. CRESWELL,
ROB'T B. LINES,
Counsel for Mexico.

WASHINGTON, D. C., *September* 1, 1879.

No. 60.

Confidential.] AUGUST 13, 1879.

To the PRESIDENT:

I have brought to a close my examinations of the proofs, documents, and arguments laid before me on the part of the Mexican Government, both in the case of Benjamin Weil and of the La Abra Silver Mining Company, and have heard oral argument, also, from counsel representing that Government. In reply to the application of the Mexican Government in respect of both of their cases, I have heard counsel in behalf of the parties interested in the awards respectively.

The conclusions I have come to as to the proper course to be pursued by the President under the diplomatic presentation of their cases made by the Republic of Mexico, and the request made to the President by Congress, under the fifth section of the act of June 18, 1878, providing for the distribution of the awards under the convention with Mexico, are as follows:

First. I am of opinion that as between the United States and Mexico the latter Government has no right to complain of the conduct of these claims before the tribunal of Commissioners and umpire provided by the convention, or of the judgments given thereupon, so far as the integrity of the tribunal is concerned, the regularity of the proceedings, the full opportunity in time and after notice to meet the case of the respective claimants, and the free and deliberate choice exercised by Mexico as to the methods, the measures, and means of the defense against the same.

I conclude, therefore, that neither the principles of public law nor considerations of justice or equity require or permit as between the United States and Mexico that the awards in these cases should be opened and the cases retried before a new international tribunal, or under any new convention or negotiation respecting the same between the United States and Mexico.

Second. I am, however, of opinion that the matters brought to the attention of this Government on the part of Mexico do bring into grave doubt the substantial integrity of the claim of Benjamin Weil, and the sincerity of the evidence as to the measure of damages insisted upon and accorded in the case of the La Abra Silver Mining Company, and that the honor of the United States does require that these two cases

should be further investigated by the United States to ascertain whether this Government has been made the means of enforcing against a friendly power claims of our citizens based upon or exaggerated by fraud.

If such further investigation should remove the doubts which have been fairly raised upon the representations of Mexico, the honor of the United States will have been completely maintained. If, on the other hand, the claimants shall fail in removing these doubts, or they should be replaced by certain condemnation, the honor of the United States will be vindicated by such measures as may then be dictated.

Third. The executive government is not furnished with the means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses.

The authority for such an investigation must proceed from Congress. I would advise, therefore, that the proofs and conclusions you shall come to thereon, if adverse to the immediate payment on these awards of the installments received from Mexico, be laid before Congress for the exercise of their plenary authority in the matter.

Fourth. It may be that, as the main imputation in the case of the La Abra Silver Mining Company is of fraudulent exaggeration of the claim in its measure of damages, it may consist with a proper reservation of further investigation in this case to make the distribution of the installments in hand.

I have this subordinate consideration still under examination, and should you entertain this distinction will submit my further conclusions on this point.

All which is respectfully submitted.

WM. M. EVARTS.

AUGUST 8, 1879.

The foregoing conclusions of the Secretary of State are approved.

R. B. HAYES.

AUGUST 13, 1879.

No. 61.

Mr. Hunter to Mr. Zamacona.

DEPARTMENT OF STATE,
Washington, September 6, 1879.

SIR: I have the honor to communicate to you herewith, in accordance with the directions of the President, a statement of the conclusions reached in the matter of the La Abra Silver Mining Company award, under the convention of July 4, 1868, with Mexico, upon the point reserved for further consideration in the paper sent to you on the 20th ultimo. A copy of the statement has been furnished to the counsel for both parties in the case.

I profit by this occasion, sir, to again assure you of my very high consideration.

W. HUNTER,
Acting Secretary

SEPTEMBER 5, 1879.

To the PRESIDENT:

SIR: The parties interested in the case of the La Abra Mining Company, having desired from you a further consideration of the point reserved in my former statement to you of my views in that case, and the matter having been referred to me to that end, I respectfully submit my conclusions on that point.

1. Upon a renewed examination of the matter, as laid before me by the Mexican Government, I am confirmed in the opinion that the proper limits of the further consideration which the honor of the Government should prompt it to give to this award should confine the investigation to the question of a fraudulent exaggeration of the claim by the parties before the Commission, to which, under the provision of the convention, it was presented by this Government.

2. Upon a careful estimate as to any probable or just reduction of the claim from further investigation, should Congress institute it, and under a sense of the obligation of the executive government to avoid any present deprivation of right which does not seem necessary to ultimate results, I am of opinion that its distributive share of the installments thus far received from Mexico may properly be paid to the claimants, reserving the question as to later installments.

If this conclusion should receive your approval, the payment can be made upon the verification at the Department of State of the rightful parties to receive it.

WM. M. EVARTS.

SEPTEMBER 3, 1879.

Approved:

R. B. HAYES.

SEPTEMBER 5, 1879.

No. 62.

MOTION OF COUNSEL FOR MEXICO FOR RECONSIDERATION OF THE DECISION AUTHORIZING A PARTIAL PAYMENT OF THE AWARD TO SAID COMPANY.

In the matter of the fraudulent claim of La Abra Silver Mining Company *vs.* Mexico.

Hon. WILLIAM M. EVARTS,
Secretary of State:

SIR: The undersigned, counsel for Mexico, have the honor to acknowledge the receipt of the Department's letter of the 6th instant, transmitting the conclusions of the Secretary, dated at Windsor, Vt., on the 3d, and approved by the President on the 5th instant, authorizing the distribution of the installments already paid by Mexico to the credit of the award in favor of La Abra Mining Company, on the ground that the charges preferred by Mexico and the proofs submitted in support thereof tend only to establish a "fraudulent exaggeration" of the claim of that company; and that upon a "careful estimate as to any probable or just reduction of the claim from further investigation" (which it had been determined by the decision of the Secretary, dated August 20, to recommend to Congress), it is not supposed that the alleged right of the claimant to the amount now in hand (nearly $150,000) would be affected by the result of such investigation.

The undersigned had filed in the Department a brief, dated the 1st of September, in which they reasserted, in the strongest terms at their command, the position consistently held by Mexico in this matter, to wit: That the claim of La Abra Mining Company was *wholly* fraudulent and without foundation. In this brief they gave citations from the proofs now in the hands of the Department, in support of that position, and protested against the distribution of the money on the assumption that the investigation which had been decided on should or could be

limited to a question of fraudulent exaggeration of damages. Believing that the Secretary could not have had this brief before him at the date of his decision, Mr. Lines, in the absence of his associate, called at the State Department on Monday, the 8th instant, where he learned that such was the fact; and, also, that a note of the Mexican minister, dated the 25th August, and containing a similar protest, had not only not been laid before the Secretary, but had not been translated or even indexed.

Mr. Lines felt it his duty to call the attention of the Acting Secretary to these facts, and to suggest the propriety of forwarding to the Secretary the note of the minister before distributing the money. In reply, he was told by Mr. Hunter that no neglect could be imputed to the Mexican Government or its counsel in the matter; and that if it should be found, upon the investigation recommended by the Department, that the Secretary had erred in his estimate, and that the amount distributed was not justly due to the claimant, the mistake would doubtless be rectified, and the sum refunded to Mexico by the United States Government. In this view of the subject nothing more serious might result to the Government of Mexico from the distribution of the moneys than a natural chagrin at seeing forgery and perjury even partially successful. Perhaps, also, the State Department will require bonds from the claimant to protect itself from loss.

But we respectfully submit that to pay a portion of even a merely exaggerated claim and to remit the claimant to litigation for the balance is a proceeding without precedent or analogy in the practice of the courts, not contemplated or authorized by the act of Congress, which provided that the award might be "modified," but only after a judicial hearing, and not upon the "estimate" of the Executive, who, according to the statement of the Secretary, "is not furnished with the means of instituting and pursuing methods of investigation," and not calculated to promote the ends of justice, since it furnishes to the fraudulent exaggerators the means of pursuing the practices which enabled them to impose "fraudulent exaggeration" upon the late Commission. Moreover, in the attempt to separate the case into several branches, and to limit the investigation to one of those branches, practical difficulties will arise, to which, since the conduct of the investigation may, to some extent, devolve upon us, we may be permitted to call attention.

According to the several decisions of the Secretary, the proofs are to "be laid before Congress for the exercise of their plenary authority in the matter," and to be accompanied by a recommendation (to which Congress will doubtless seek to give effect) that their investigation be confined "to the question of fraudulent exaggeration of the claim." If it were possible to segregate from the proofs those which relate merely to the measure of damages, and to transmit these only to Congress, it would still be difficult to confine the range of the investigation to that branch of the subject. Those proofs would show conclusively that the "ores" of La Abra Company were utterly valueless, and that the company lost $10 on every ton they mined and reduced. It would seem, to the ordinary mind, an almost irresistible presumption, from this fact alone, that the Mexicans would not exert themselves to drive off Americans who found amusement and gave them employment in digging worthless rock; and that a much more wealthy company than La Abra would soon grow tired of such an unprofitable pastime, and voluntarily abandon it.

But it is not possible to make such a separation of the proofs. The principal instrument of evidence in the case of Mexico is the press copy-book of La Abra Company, containing the official reports and other cor-

respondence of its superintendents for over two years and a half, covering the entire time of its occupancy of, and extending long after its pretended expulsion from the mines in Mexico. This book is identified as a whole by one of the company's superintendents, and the letters which it contains treat not only of the value of the property, but of the entire business of the company and its varied, intimate, and, as we contend, friendly relations with the Mexican authorities and people. The same book, and frequently the same letter, will tend to prove both that the "ores" of the mines were worthless, and that the mines were abandoned deliberately for that reason, without compulsion from the Mexicans.

For instance, on the 6th of October, 1867, Superintendent Exall wrote Treasurer Garth: "I have exhausted all the ore that I had on hand that was worth working. That which I worked was very poor and the yield small. The *La Luz* on the patio won't pay to throw it into the river. I have had numerous assays made from all parts of each pile. The returns won't pay." These statements of the superintendent, under the recommendation of the Secretary, it would be proper to take into consideration as affecting the measure of damages. But in the same letter, a few lines further down, Exall says, "There is no difficulties about authorities, boundaries, or anything else concerning the mines and haciendas, provided there is money in hand, and money *must* be sent;" and this statement, under the recommendation of the Secretary, would be excluded from the investigation, because it goes to the root of the claim and, if true, proves that the claimant should never have recovered a cent of damages from Mexico.

The letters of Treasurer Garth, also (written on his letter heads, and identified by Superintendent de Lagnel), must suffer similar mutilation to fit the limits of the proposed investigation. On the 10th July, 1867, he wrote Exall repeating his refusal to send him money from the exhausted treasury of the company, lamenting the worthlessness of the "ores" as disclosed to him by de Lagnel, and saying, "If it cost more than it comes to, the sooner we find it out, the better." Thus far it would be proper for a tribunal investigating the question of exaggeration of damages to read and consider this letter, as it brings into grave doubt the justice of the award of $100,000 and interest made by the umpire for the so-called "ores." But such a tribunal would not be at liberty to finish the sentence as it was written by Garth—"and the sooner we stop, the better for all parties concerned"—since this reveals the intention and the motive of the subsequent voluntary abandonment of the mines, and tends to release Mexico from all responsibility in damages.

The frequent letters of Garth, stating that he had protested the superintendent's draft, and would send him no more money, would be admissible as going to a reduction of the amount awarded for expenditures. But the letters and reports of Superintendents Barlow, de Lagnel and Exall, acknowledging the extension of title, the military protection, and other friendly acts of the authorities, which are scattered so freely through the press copy-book; the deliberate notification from Exall to the treasurer in January, 1868, that if he did not receive money by the next steamer he would leave for the East; his letter to Granger in February formally transferring to him the care of the mines; his subsequent letters to Granger from the United States down to July, 1868, instructing him to get extensions of titles and to take care of the property, selling only so much as was necessary to support him, while he (Exall) would try to secure their arrears of wages by the formation

of a new company to take the mines off the hands of the old one; the letter of Granger of August 13, 1868, excusing himself from paying taxes on the mines from which the company now claim to have been driven in March, because he has no money, and Superintendent Exall will return in November—all these must be ruled out, as tending to show that the claim was not only "fraudulently exaggerated," but fraudulently and wickedly originated.

We will not enlarge further upon the anomalies which, in our opinion, will be presented by the partial investigation proposed by the Secretary. In view, however, of the matters set forth herein and in the papers which were not before him at the date of his last report, we have the honor to ask a reconsideration of the honorable Secretary's decision.

Very respectfully, your obedient servants,

JNO. A. J. CRESWELL.
ROBERT B. LINES.

WASHINGTON, D. C., *September* 9, 1879.

No. 63.

In the matter of the questions in relation to awards made under the treaty of July 4, 1868, between the United States and Mexico.

The undersigned, appearing for the legal representatives of Benjamin Weil, deceased, present a statement, which they have prepared with care, and which they feel quite sure is just to all concerned. One of the awards which Mexico alleges to be fraudulent was made in favor of said Weil. We say that it is not now liable to such exception; and the statement just referred to is connected with an argument, intended to convince all fair investigation of the subject, that there is no power to disturb the said award.

It is unnecessary to go further; but we have thought fit to argue also, that, even if the case attempted to be made by Mexico, in an appeal to Congress, which is wholly powerless to entertain the matter, had been made to a tribunal having ample jurisdiction of such matters, it would have been dismissed. We also point out that there is no tribunal having jurisdiction of a case like that here under notice.

On the 4th of July, 1868, a treaty was concluded between the United States and Mexico, whereby the high contracting parties made the following agreement:

> All claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the Government of the Mexican Republic, arising from injuries to their persons or property by authorities of the Mexican Republic, and all claims on the part of corporations, companies, or private individuals, citizens of the Mexican Republic, upon the Government of the United States, arising from injuries to their persons or property by authorities of the United States, which may have been presented to either Government for its interposition with the other since the signature of the treaty of Guadalupe Hidalgo, between the United States and the Mexican Republic, of the 2d of February, 1848, and which yet remain unsettled, as well as any other such claims which may be presented within the time hereinafter specified, shall be referred to two commissioners.

Provision was then made for the appointment of the Commissioners, for their meeting at Washington, for their taking a proper oath, for the recording of their oath, and for their naming some third person to act as umpire in any case or cases on which they themselves might differ in opinion. If they should not be able to agree on the name of such

third person, each of them was to name a person, and in each and every case in which the Comissioners might differ in opinion as to the decision which they ought to give, it was to be determined by lot which of the two persons so named should be umpire in that particular case. The umpire was to be under oath. Provision was made for the death, absence, incapacity, omission, or declension of the umpire to act. (Article I.)

The Commissioners were by the next article empowered to proceed in such order and such manner as they might conjointly think proper, but "*upon such evidence or information only*" as should be "*furnished by or on behalf of their respective Governments.*" The treaty said, in terms:

> They shall be bound to receive and peruse all written documents or statements which may be presented to them by or on behalf of their respective Governments in support of or in answer to any claim, and to hear, if required, one person on each side on behalf of each Government on each and every separate claim. (Article II.)

There ought, we think, to be no question that the Commissioners, in the exercise of the peculiar jurisdiction thus created, could have taken action, effectual to secure the furnishing of evidence on any point concerning which a farther search of facts might seem to be essential to the ends of justice. Liberal construction of this treaty, in this respect, is indubitably called for by its very aims and ends.

In the preamble is this language:

> It is desirable to maintain and increase the friendly feeling between the United States and the Mexican Republic, and so to strengthen the system and principles of republican Government on the American continent.

In order to accomplish an object so desirable, the treaty here in question would quite naturally seek to provide liberally for the ascertainment of the facts on which decisions were to be pronounced by the Commissioners.

There is a very solemn provision for the absolute finality of those decisions. In the second clause of the second article we find the words:

> The President of the United States of America and the President of the Mexican Republic hereby solemnly and sincerely engage to consider the decision of the Commissioners conjointly, or of the umpire, as the case may be, as absolutely final and conclusive upon each claim decided upon by them or him respectively, and to give full effect to such decisions *without any objection, evasion, or delay whatsoever.*

To the very end that this finality should be the more easily observable, it was important that the Commissioners should lack no power to secure, through the proper channels, all the information they might need, in order to do substantial justice to all concerned.

The pertinence and the importance of this passing intimation will appear as we go forward.

One of the provisions of the second article is thus expressed:

> It shall be competent for each Government to name one person to attend the Commissioners as agent on its behalf, to present and support claims on its behalf, and to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision thereof.

Another provision of the second article is of this tenor:

> Should they fail to agree in opinion upon any individual claim, they shall call to their assistance the umpire whom they have agreed to name, or who may be determined by lot, as the case may be; and such umpire, *after having examined the evidence adduced for and against the claim*, and after having heard, if required, one person on each side as aforesaid, and consulted with the commissioners, shall decide thereupon *finally and without appeal.*

That all matters of *law*, as well as all matters of *fact*, and that all matters of *mixed law and fact*, were thus submitted, first to the com-

missioners, and then, if need should be, to the umpire, ought not to be deemed debatable.

The case of Benjamin Weil, No. 447 on the American docket, was put before the Commission by the filing of the original memorial and printed copies required by the rules on the 27th of April, 1870. It appears from that memorial that he was born in France; that he was then forty-six years of age; that he had resided in Louisiana since June 12, 1850; and that he was, at the time of the alleged wrong, a citizen of the United States, and so continued to be at the time of filing his memorial. He is now dead, and for some time before his death he was insane, as formally appears.

The last testimony on his behalf was filed on the 27th of June, 1872.

On the 2d of April, 1875, Commissioner Wadsworth delivered the following opinion:

In the face of so many witnesses of respectability I am unwilling to decide that the facts detailed by them are not true.

I must decide on the proofs and documents filed in the case, and nothing else.

These remain without contradiction by the Government, and, *to remove all misapprehension, I state that I am willing to give every opportunity in my power as a Commissioner to the Government to make a full and ample investigation of the claim, and respond to it, and very much wish that this might be done.*

But, *as this is declined,* I must act on the proofs before me. It is now my decision that the United States must have an award for the value of the property, at the time and place of its seizure, with interest.

A long opinion is delivered by Commissioner Zamacona. In the course of it he thus admits and endeavors to account for the declension so referred to by his colleague:

The claimant has further alleged, laying much stress upon the evidence submitted by him, and giving great weight to the want of defensive testimony on the part of Mexico. In this there is a statement which is far from being true. Mexico has forwarded her evidence, although with the delay consequent upon obtaining proof in a matter of this nature. The said evidence was submitted to the Commission, and under the rule which has been put in practice for some time past, and which is now in force, the agent of Mexico met with difficulties; but in the brief which he submitted at the time of offering the evidence he gives it to be understood that there is much evidence, both documentary and of testimony, contradictory of the occurrence on which the claim is founded.

The United States commissioner, without disregarding the more than suspicious aspect of the case, proposed to the undersigned, at the moment of the session at which the case was about to be disposed of, to admit the evidence offered in behalf of Mexico, and at the same time allow the claimant an opportunity to rebut it by new evidence.

The undersigned had several reasons for not considering the proposal desirable. In addition to that, in the present condition of the labors of the Commission, the method of deciding the cases in their numerical order having been adopted, and the declaration made that all cases should be closed, and it being desirable that in proceeding no cases should be left behind undecided. There is in the present case the still more serious consideration that there is sufficient evidence upon which to judge of the claim, and that by opening the door to new testimony it would only serve to show the claimant wherein the edifice which he had erected upon his imagination was weak, and by enlightening him as to how to crown his witnesses by new efforts, which, although they would not change the aspect of the case, might lead to confuse it. Unfortunately it is not the practice of the Commission, nor perhaps would it be possible for us, to send for the witnesses to subject them to a rigorous examination.

If this could be so, then the admitting of further testimony would not present so many objections, but to advise the claimant by informing him of the impression created on the mind of the Commission, by the papers presented by him, authorize him to obtain further evidence, and even give him time to manufacture documents, all of which is, unfortunately, easy at the places in question (see the testimony of Colonel Haynes, submitted by the United States in case No. 733 of P. I. de la Gaza), and this when the labors of the Commission are about expiring, without a possibility of any further investigation, would be a proceeding in which all the advantages would be on the claimant's side, and would furnish greater probabilities of making intrigue and fraud successful, than truth and justice.

As a preparation for the proper commentary on this language, it is proper to remind investigators of this matter that the Mexican Government is here before us, not so much as a "high contracting party" to an international convention, as in the simple character of a decidedly litigious litigant.

The case of Ohio *v.* Buttles* will be well remembered by at least one member of the Senate Committee on the Judiciary. In that extremely interesting case, Mr. Justice Ranney, speaking of the plaintiff, says:

> When she appears as a suitor in her courts to enforce her rights of property, she comes shorn of her attributes of sovereignty, and as a body politic, capable of contracting, suing, and holding property, is subject to those rules of justice and right, which, in her sovereign character, she has prescribed for the government of her people.

Let us think that it is as a litigant, not as a state, that Mexico, in her irregular appeal to some unnamed tribunal, makes a plea of poverty. That plea is often eloquent in a petition for indulgence; it is never a good answer to a fair demand of justice.

As a litigant, the party now attempting to evade the payment of the award made in favor of Benjamin Weil has manifested craft where craft was very much to be deplored.

What could have been more generous and just than the offer made by Commissioner Wadsworth? What could have been less to be expected than that such an offer should be met as the offer here in question actually was?

We do not, for an instant, treat the high award, of which the question is at present, as if it had been an award of the common kind. We cannot for an instant consent to liken it to an ordinary judgment in a court of law. The high contracting parties, we have shown, took special pains to stamp upon the awards to be made under the treaty they concluded, a special character of finality. There was to be no objection, no evasion, no delay whatever. But it may be well to look at some of the well-settled rules of equity, respecting judgments and awards. This we shall do hereafter. Now, we simply indicate our purpose in that respect, and thereupon remark, that if Mexico, *considered as a litigant*, declined the offer made by Commissioner Wadsworth, as above set forth, she clearly has no equity, at this time, to go back of the decision of the umpire.

That Commissioner Wadsworth and Commissioner Zamacoma differed in opinion, has been shown. The umpire was Sir Edward Thornton, the English minister, with the consent of the puissant Government he has so ably and so creditably represented at our seat of Government.

This gentleman has been quite closely criticised by Sr. Avila, the extremely zealous agent of Mexico, the litigant. It may be questioned whether Mexico, the state, could justify the criticism here alluded to.

Sir Edward Thornton was well warranted in saying:

> In his motions to rehear, the agent of Mexico has stated many facts which may be capable of proof, but which have not been proved by the papers submitted to the umpire. He has also shown immense ability in disputing the observations made by the umpire in support of his decisions, and in examining and discussing the merits of the claims with the greatest minuteness and detail; and the umpire is painfully impressed with the feeling, that he might, with fairness, have been allowed the advantage of the searching examination of the agent of Mexico when these claims were first submitted to him, rather than after he had decided upon them. There was, at that time, better cause for doing so than there is now; for one of the two commissioners had already decided in favor of these claims before they came to the umpire. The

* 3 Ohio State, 309.

latter is but *one of three judges*, and he would have been glad to have been favored and assisted by the minute criticism which the Mexican agent has now bestowed upon some of these claims.

That this rebuke is not uncalled for, must be evident to all who have perused the pamphlets, now relied upon by Mexico, the litigant, in seeking, rather wildly we conceive, to set aside, while professing not to seek to disturb, awards, which Mexico, the state, so solemnly agreed to treat as absolutely final.

The umpire further said:

It cannot be doubted that he had no right whatever to examine or take into consideration other evidence than that which had already been before the commissioners, had been examined by them and transmitted to the umpire. If he had done so, such a course would have been contrary to the dictates of the convention, and would have been eminently unjust until the opposite side should have had an opportunity of rebutting such posthumous evidence.

In this connection it is proper to remark that on the 23d of December, 1869—that is, before the case of Weil went before the Commission—the commissioners, being of opinion that they had no power to regulate the taking of evidence or the production of the same before them, either in support of or in answer to any claim, but that the whole matter had been reserved by the treaty to the discretion of the high contracting parties, ordered, that the rules theretofore promulgated by them, regulating the taking of depositions and authentication of documents, be rescinded; and that the secretaries of the Commission communicate this act to the Secretary of State of the United States and the minister of Mexico, resident at Washington, and further cause the same to be published in a convenient number of the newspapers of both countries.

We have already called attention to the powers of the Commission as to seeking information where it was desirable. We have no doubt that application to the Government of the United States for leave to take the testimony, proper to rebut the testimony which Mexico was so desirous to put in, without giving any opportunity to Weil to rebut it, if he could, would have enabled the Commission to supply itself with all the necessary information. We have no doubt whatever that Weil might have been ordered by our Government, on the application of Mexico, to produce his letters and his books. But Mexico, as litigant, desired no such proceeding. What she *did* wish, as to evidence, we have already seen. Could anything be farther than that wish from a desire of justice?

It appears that on the 22d of November, 1876, Mr. Mariscal, then Mexican minister at Washington, addressed to Mr. Fish, then United States Secretary of State, a note, annexing, "for the information of the United States," a copy of a note, dated November 21, 1876, addressed to Mr. Mariscal by the already mentioned extremely zealous agent of Mexico, Sr. Avila. Mr. Mariscal added, that "the manifestations contained" in that note were "in accord with the instructions" he had "received from the Government of Mexico." The note itself relates that in the meeting held the day before by the agents and secretaries of the Commission, for the purpose of publishing the umpire's last resolutions, Sr. Avila presented certain written statements, with a view to their insertion in the record of that day's proceedings; but that they were not admitted into the record because both the agent and the secretary of the United States did not think it proper. The first of them is in these words:

1st. The Mexican Government, in fulfillment of article 5th of the convention of July 4th, 1868, considers the result of the proceedings of this Commission as a full,

perfect, and final settlement of all claims referred to in said convention, *reserving, nevertheless, the right to show, at some future time, and before the proper authority of the United States, that the claims of Benjamin Weil, No. 447, and "La Abra Silver Mining Co.," No. 489,* both on the American docket, *are fraudulent and based on affidavits of perjured witnesses; this with a view of appealing to the sentiments of justice and equity of the United States Government, in order that the awards made in favor of claimants should be set aside.*

The answer of Mr. Fish to the note of Mr. Mariscal includes these words:

By article second of the convention the two Governments bind themselves to consider the decisions of the commissioners and of the umpire as absolutely final and conclusive, and to give full effect to such decisions, without any objection, evasion, or delay whatsoever; and by the 5th article the high contracting parties agree to consider the result of the proceedings of the Commission as a full, perfect, and final settlement of every claim upon either Government arising from transactions prior to the exchange of ratifications thereof.

It may be quite proper that Mr. Avila should advise you of his views as to any particular awards, or as to any points connected with the closing labors of the Commission, and you may have felt it to be your duty to bring to the notice of this Government those views so communicated to you.

I must decline, however, to entertain the consideration of any question which may contemplate any violation of, or departure from, the provisions of the convention as to the final and binding nature of the awards, or to pass upon, or, by silence, to be considered as acquiescing in, any attempt to determine the effect of any particular award.

With your appreciation of the objects in contemplation in this method of settlement of differences between two Governments, and with your intimate acquaintance with the particular provisions of this convention with reference to the binding character of the awards made by the commissioners or by the umpire, you will readily appreciate my extreme unwillingness to consider that, at the moment when the proceedings relating to the Commission have been brought to a close, and the obligation upon each Government to consider the result in each case as absolutely final and conclusive becomes perfect, the Government of Mexico has taken, or proposes to take, any steps which would impair this obligation.

This by no means harsh but quite significant rebuke was not received without reply. It bears the date December 4, 1876. On the 8th of the same month the Mexican minister replied, saying, among other things:

It is not my intention, nor the intention of Sr. Avila, to open any question whatever, nor to put in doubt the final and conclusive character of the above-mentioned awards. * * * I beg leave to call your attention to the fact that Sr. Avila only expresses * * * the possibility that the Mexican Government may, at some future time, have recourse to some proper authority of the United States to prove that the two claims he mentions were based on perjury, with a view that the sentiments of equity of the Government of the United States, once convinced that frauds have actually been committed, will thus prevent the definite triumph of these frauds.

The minister of Mexico subjoined:

It seems clear that if such an appeal should be made it will not be resorted to as a means of discarding the obligation which binds Mexico, and that, should it prove unsuccessful, the Mexican Government will recognize its obligations as before.

Although there was, at the time these words were written, a Congress in session, which did not expire till the 4th of the next March, the Mexican Government made no appeal whatever to that body. It was not till the first of May, 1877, that the Mexican Government otherwise acted on the explanations made by Mr. Mariscal than by paying the first installment under the treaty. Down to the day last named the project of attempting to get rid of the two awards now alleged to be fraudulent appeared to be, and we have no doubt actually was, abandoned. Then, however, it appears there was action on the part of the Mexican Government which looked toward a new endeavor to show cause why the award to Weil and the award to the La Abra Mining Company should not be paid to the claimants, respectively. And on the 7th of September, 1877, the Mexican minister, resident at Washington, was instructed

to have distributed the pamphlets, printed by Mexico, by way of appealing "to the sentiments of justice and equity of the United States Government," &c.

The facts just mentioned are shown in the pamphlet relating to the Weil award.*

It is quite clear to us that the abandonment just pointed out is among the things which, in any view of the attempt now made by Mexico, must be regarded as entirely fatal to that attempt. If Mexico can now appeal to Congress, she could have appealed to Congress when she found Mr. Fish resolved not to entertain her application for review. If she was to make any such application at all, surely she ought to have made it at once, and in the most direct manner. If officious persons drew attention to the subject, she is not to have the benefit of their speculative officiousness while she herself remained silent. Her delay, in any view, is inexcusable.

But now we wish to draw attention to some other aspects of this extremely curious affair.

By reference to the letter of Mr. Fish addressed to the Hon. Thomas Swann, chairman of the Committee on Foreign Affairs, under date of January 19, 1877, and on examination of the account and protocol inclosed with said letter, it will be seen that Mr. Fish and Mr. Mariscal had taken the proper action to carry into effect article 6 of the treaty as to the expenses of the Commission, including the determination and payment of the umpire's compensation. From the account referred to it appears that there was due Mexico the sum of $57,499 for expenses advanced. Afterwards, on the 31st day of January, 1877, the Government of Mexico, in accordance with article 4 of the convention, paid to the Secretary of State, for account of citizens of the United States in favor of whom awards were made by the Commission, $300,000, being the first payment required by the effect of the proceedings under the said treaty. Thereupon the Secretary of State, for the purpose of adjusting the expense account between the two Governments, *appropriated and actually applied the sum of* $57,499, *taken from said first payment, to reimburse and pay Mexico the balance due that Government for expenses advanced*, as shown by said account; and there remained in the hands of the Secretary the sum of $242,501.

It is unnecessary to put stress upon the proposition that this money had been paid to and received by the Secretary of State for the sole use and benefit of the persons in favor of whom awards had been made. In no sense was it the property of the United States, beyond the special property that a custodian possesses in the object of his custody. If legislation may be called for as to the awards in favor of citizens of Mexico, and to reimburse American claimants for the excess of their money, appropriated and applied by the Secretary of State, as has been shown, it is submitted that the Congress can neither suspend, modify, nor set aside the provisions of the treaty, or the action of the Commission under it; nor can Congress interfere with, or relieve the President from the obligation and duty imposed by its terms.

This ground was carefully and clearly taken in a paper, signed by Sanders W. Johnston (one of the undersigned), as attorney for Marcus L. King and others, and also signed by the undersigned, as attorneys for the interest here represented, as well as by attorneys of parties other than those just referred to, on the 18th of June, 1877. This paper is addressed to the President. It was delivered to the Secretary of State. A copy of it is exhibited herewith, marked A.

*Page 164 and page prefixed to title-page.

On the 6th of July, 1877, Mr. Johnston addressed to Secretary Evarts the letter, of which a copy, marked B, is hereto annexed.

The Secretary of State has addressed to Hon. Thomas Swann, chairman of the House Committee on Foreign Affairs, a letter dated November 6, 1877, in which he invites attention to what he deems "the necessity of immediate legislation to enable the prompt payment of the awards in favor of our citizens, under the Convention of July 4, 1868, between the United States and Mexico." After a statement, which we need not set forth, the Secretary says:

> The distribution of this sum, at least ($245,500.99-100), has been urgently pressed on this Department, without waiting for the appropriation by Congress of the sum assumed by the Government of the United States, according to the terms of the Convention, to wit, the sum of awards in favor of Mexican citizens against the Government of the United States. This sum, in pursuance of the convention, is withheld by Mexico from the aggregate awards in favor of our citizens. No doubt the prompt distribution of money awarded to our citizens, and paid over to the Government of the United States for that purpose, is an obligatory duty which this Government should be most anxious to discharge. All delay is at the cost of the claimants, as the Government does not charge itself with interest on the money in its hands. In the present case I am informed that many of the claimants are needy, and that there is danger that their necessities may expose them to much greater loss than that of interest.
>
> I have, however, hesitated to make this distribution of the money on hand, which would be according to the practice of the Government, because of some legislation being necessary to make good to the fund the amount with which the Government of the United States is chargeable, and because it is desirable that the form and manner of the reservation from the installment in hand of the expenses of the Government should now be settled. Besides, my predecessor had submitted a bill to carry out these purposes to the last Congress, which passed the House unanimously, and received the approval of the Committee on Foreign Relations and of the Judiciary in the Senate. The final passage of the bill in the Senate was arrested, in the last days of the session, by a suggestion that evidence might be presented that two of the awards were based upon fraudulent testimony, and that some delay should be allowed for that reason.
>
> Since that time the Mexican Government has simply presented, in a pamphlet form, the motions made for a rehearing before the umpire (Sir Edward Thornton) in the cases of Benjamin Weil and of La Abra Mining Company, adding thereto the correspondence between the Mexican minister, Don Ignacio Mariscal, and my predecessor, Mr. Fish, in reference to these two cases. These motions were denied by the umpire, and these awards, standing upon the same footing of finality under the Convention with all the others, are awaiting distribution.
>
> In a communication accompanying these pamphlets, Señor Cuellar, the Mexican *chargé d'affaires ad interim*, states that the object of this appeal of his Government is "not to prevent the payment of the awards made by the umpire in the now extinct Mixed Claims Commission, but only in the interest of rectitude and justice, to render manifest the fraud committed by the parties interested."
>
> I beg leave to inclose a copy of the bill of the last session, and to ask that it may be promptly considered, that this Department may be relieved from the importunities of the claimants, an installment on whose awards is now in the hands of the Government of the United States.

It seems, therefore, that, after reaching the conclusion advocated in the documents hereto annexed, and actually ordering the distribution they applied for, the Secretary of State, for the reasons indicated in his just-quoted letter, reconsidered his decision to distribute, and determined to refer the matter to the Congress. We submit, that the decision which he reconsidered was correct; and we insist that Congress has no power to decide the question, so irregularly raised, as to the force of the award which we maintain must be upheld.

Just here, it is advisable to turn back to the attempt of Mexico to except without excepting—to reserve a right and yet to say that nothing was to be reserved.

The purpose expressly indicated by the very critical and very zealous advocate of Mexico was to reserve "the right to show, at some future

time, and before the proper authority of the United States," that certain claims, *merged in awards*, were "fraudulent and based on affidavits of perjured witnesses." Now, where was such authority to be discerned? It certainly could not be *legislative*. It could not be properly *executive*. If it exists, it must be capable of exercising *jurisdiction; i. e.*, it must be *judicial*.

We maintain that no such power can be pointed out. There is, and ought to be, no power of that character.

It seems to us almost too plain for argument that Congress has no power over these awards. With great respect for all who hold that legislation is required to give authority for paying them, we take the ground that no such legislation is required. We go a little farther. We consider that it is quite questionable whether any legislation whatever on that subject must not be at the expense of the principles governing the separation of the legislative department of the Government from the executive department of the Government.

The Congress cannot make a treaty, nor can it unmake a treaty. Nor can it *perform* a contract of that kind, in general. In general, performance of a treaty must belong to the Executive. We think that, in the present instance, the Executive is to perform the treaty.

On the 7th of September, 1839, Hon. Felix Grundy, the Attorney-General of the United States, gave an official opinion to the Secretary of War, to the effect that the judiciary cannot arrest the execution of a treaty by stopping, in the hands of agents of the Executive, the money designed to be paid in effect of the treaty.* He remarks:

> The first point relates to the duty of the Government in making payments to the Indians of mixed blood, under the following provisions in the treaty of the 1st of November, 1837, with the Winnebago nation of Indians, to wit: "2d. To pay, under the direction of the President, to the relations and friends of said Indians, having not less than one-quarter of Winnebago blood, one hundred thousand dollars."
>
> This is a treaty stipulation; at least it is so to be considered and acted upon according to the practice of the Government; and the payment is to be made under the direction of the President of the United States. The parties to the treaty have agreed that the President, and no other individual (unless acting under his authority), nor any other branch of this Government, shall make the payment, or interfere in the making of it. The payment is to be the act of the President, performed necessarily by agents of his own selection. Should the judiciary attempt, by injunction or otherwise, to prevent the agents of the executive from making the payment according to the directions of the President, it would, in my opinion, be a gross usurpation on the part of the judiciary, and such an act as ought not to be supposed likely to occur. It appears that the proceedings under the first commission created under this part of the treaty have been set aside, and another commission or agency raised for the purpose of carrying this provision of the treaty into effect. This the President had the power to do, if, in his judgment, the justice of the case required it; nor can the decision of the President in that particular be revised or reversed by the judiciary. Besides, to admit that the judiciary can arrest the execution of a treaty, by stopping the money designed for such purpose in the hands of the agents of the executive, who are employed merely to hand it over to the persons entitled, would be, in effect, to subject the Government of the United States to the suit or action of any claimant who might believe himself entitled to any portion of the money. A principle which would lead to consequences so illegal, and so destructive to the regular and harmonious operations of the Government, cannot be admitted.
>
> As to the second point—"whether, if such a writ [injunction] should be issued, the agents of the Government should withhold payment under it until the final decree of the court was made; or proceed with the payment, according to the awards of the Commission?"
>
> *I am clearly of opinion that, should such writ of injunction be granted, the agents should proceed to make the payments, notwithstanding such writ.* The treaty makes it the duty of the President to make the payment; in this there can be no doubt. The treaty can only be fulfilled by making it; and, in my judgment, no court has the power to interpose the order to prevent it.

* 3 Opinions of the Attorney-General, 471.

It is proper to remark that nearly fifteen years afterwards Hon. Caleb Cushing, then Attorney-General, gave an official opinion, in the course of which he said:

There is a distinction, undoubtedly, between a treaty with a foreign power and a treaty with Indians who are subjects of the United States. Examples may be cited of acts of Congress which operate so as to modify or amend treaties with Indians. As their sovereign and their guardian, we have occasionally assumed to do this, acting in their interest and our own, and not in such cases violating engagements with them, but seeking to give a more beneficial effect to such engagements.

But in the same opinion stand the sentences:

In waiving, as unnecessary and superfluous in the present case, any discussion as to the relative authority of these treaties and an act of Congress, let me not be understood as acceding to the doctrine that all stipulations of treaties are subject to be repealed or modified at any time by act of Congress. Without going into the question here, it suffices to remark that every treaty is an express compact, in the most solemn form in which the United States can make a compact. Not to observe a treaty is to violate a deliberate and express engagement. To violate such engagements of a treaty with any foreign power affords, of course, good cause of war.

In the case of Wilson *v.* Wall* Mr. Justice Grier, referring to an act of Congress, containing part of a treaty with Indians, observes:

Now, while it is freely conceded that this construction given to the treaty should form a rule for the subsequent conduct of the Department, it cannot affect titles before given by the Government, nor does it pretend to do so. Congress has no constitutional power to settle the rights under treaties except in cases purely political. The construction of them is the peculiar province of the judiciary, when a case shall arise between individuals.

The same learned judge in Reichart *v.* Felps† expresses himself as follows:

Congress is bound to regard the public treaties, and it had no power to organize a board of revision to nullify titles confirmed many years before by the authorized agents of the Government.

Investigation of the subject here examined must not overlook that Congress has no *jurisdiction* either at law or in equity. The Senate, trying an impeachment, is a court; but Congress never is a court. It never has essentially judicial power. It is singularly unfit to be invested with "the power to hear and determine a cause."

If there is aught to be decided here, it is a cause in equity, the plaintiff being Mexico and the defendants being the legal representatives of Benjamin Weil, deceased. Here is a case for exercising the great power known as *jurisdiction*, or here is no case at all.

If Congress, singularly unfit as it is to exercise judicial power, could be rendered competent to act as a court of equity, would it not hasten to dismiss the plaintiff's bill?

We have already, more than once, declined to liken the case of the award here in question to the case of an ordinary award, or to the case of an ordinary judgment at law.

But suppose, for the sake of the argument, that it had been an award made a submission of a court of record, in accordance with statutory law. "The only grounds of setting aside an award" of that description "are, where the arbitrators have misbehaved themselves, or the award had been corruptly and unduly obtained. In seeking to set aside an award on these grounds" in England "the application is confined to the court where the submission has been made a rule of court,‡ and such corruption or undue practice must be complained of before the last day

*6 Wallace, 89. †6 Wallace, 160. ‡Gwinnett *v.* Bannister, 14 Ves., 530.

of the next term after such arbitration is made, and published to the parties."*

In Gwinnett *v.* Bannister,† Lord Eldon held that there was no jurisdiction in equity, by injunction, to stay the process of a court of law upon an award made a rule of court under the statute.

Where there is relief allowed in equity there must be clearest evidence that there could not have been immediate correction of the wrong. In other words, if the party alleging that he has been wronged by an award could have prevented the wrong by putting before the arbitrators the proper testimony, he is clearly not relievable in equity.

And how is it with a judgment in a court of law? The rule, in this respect, is quite familiar to most lawyers, but it may be well to suggest that in Crim *v.* Handley,‡ Mr. Justice Clifford says that "courts of equity will not enjoin judgments at law unless the complainant has an equitable defense to the cause of action of which he could not avail himself at law, because it did not amount to a legal defense; or where he had a good defense at law of which he was prevented from availing himself by fraud and accident, unmixed with negligence of himself or his agents."

Having cited Hendrickson *v.* Hinckley,§ the learned judge proceeds to say:

> Where a party has failed to make a proper defense through negligence, a court of equity will not enjoin the judgment; but where it appears that such a defense has been prevented by fraud or accident, without fault of the losing party, a court of equity may grant relief if the proofs are satisfactory.

And then he cites Hungerford *v.* Sigerson,‖ a well-known case.

While Weil was still in life his adversary had, but would not use, an opportunity of proving, if she could, that his demand was fraudulent, that he was perjured, and that he undertook to prove his claim by perjured witnesses. It is not to be thought that she is *now* to be permitted, anywhere, to impeach the award in his behalf.

It is unnecessary to show, and yet we think we have shown, that the behavior of his adversary has been marked with craft and with injustice.

From the 27th of April, 1870, when Weil's memorial and part of his testimony were filed, to the 2d of April, 1875, when the Commissioners agreed to disagree, as has been shown, there was a lapse of time—almost five years—during which, if what he said was false, his adversary could have easily found proof direct that it was utterly unworthy of belief. If proof was difficult to him, it was not difficult to her. If he had a train that was seized, but it was not so large as was represented, Mexico could easily have shown that fact by some of her commissioned officers and soldiers. If there never was a seizure, such as he alleged, his adversary could have easily proven that.

The argument about physical and moral impossibilities is not to be placed on the footing of newly-discovered evidence. It is but argument at last, and it was before the Commissioners as well as before the umpire.

It should not escape notice that it is only after the known insanity of Weil, and after his death, that efforts to set aside the award in his behalf have been renewed.

Mexico's whole case is bald. No balder case has ever ventured to appeal to equity.

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* Smith's Chancery Practice, vol. 2, p. 429.
† Supra.
‡ 94 U. S. Rep. (4 Otto), 653.
§ 17 How., 443.
‖ 20 How., 161.

But it is quite enough for us to say that the award whose payment we insist upon is absolutely and inviolably final, if award was ever of that character. There is no power to review it.

Weil, like his associates in claim, was forced to take his demand before the Commissioners, or have it wholly barred. He went before them, and so made himself a party to their action. It appears to us that if any power undertakes to wrest from his legal representatives the interest he took in the award when it was perfected that power undertakes a thing which cannot have the sanction of the law. We cannot think that Congress will attempt such violation of the treaty here in question. Such a precedent would be in all respects deplorable. It would be specially deplorable in view of the relations between Mexico and this country.

JOHNSTON & WARDEN,
For the Legal Representatives of Weil.

EXHIBIT A.

1326 F STREET, WASHINGTON, *June* 18, 1877.

SIR: The late Commission under the Convention between the United States and Mexico of July 4, 1868, made awards against Mexico in favor of citizens of this country to the amount of four million one hundred and twenty-five thousand six hundred and twenty-two dollars and twenty cents ($4,125,622.20).

Awards were also made by the Commission against the United States in favor of citizens of Mexico to the amount of one hundred and fifty thousand four hundred and ninety-eight dollars and forty-one cents ($150,498.41).

By reference to the letter of Hon. Hamilton Fish, Secretary of State, addressed to the Hon. Thomas Swann, chairman of the Committee of Foreign Affairs, &c., under date of Jan. 19, 1877, and on examination of the account and protocol inclosed with said letter, it will be seen that Mr. Fish and Mr. Mariscal, the Mexican minister, had taken the necessary and proper action to carry into effect article 6 of the treaty as to the expenses of the Commission, including the determination and payment of the compensation of the umpire. It appears by the account referred to that there was due Mexico the sum of $57,499.00 for expenses advanced. Afterwards, on the 31st day of Jan., 1877, the Government of Mexico, in accordance with Art. 4 of the treaty, made the first payment of two hundred thousand dollars to the Secretary of State for account of citizens of the United States in whose favor awards were made by said Commission, and the Secretary of State, for the purpose of adjusting the expense account between the two Governments, appropriated and applied from said payment the sum of $57,499.00 to reimburse and pay Mexico the balance due that Government for expenses advanced, as shown by said account. From this statement it will be seen that of the $300,000 paid by Mexico there now remains in the hands of the Secretary of State the sum of $242,501.00.

This money is in no sense the property of the United States. It was paid to and received by the Secretary of State for the sole use and benefit of the persons in favor of whom awards were made as aforesaid. While legislation may be required as to the awards in favor of citizens of Mexico, and to reimburse American claimants for the excess of their money appropriated and applied by the Secretary of State, it is submitted that the Congress can neither suspend, modify, nor set aside the provisions of the treaty or the action of the Commission under it; nor can Congress interfere with or relieve the President from the obligation and duty imposed by its terms.

To the end, therefore, that you may direct the distribution and payment of this money to the persons entitled to it, as shown by the awards of said Commission, our clients, who are citizens of the United States and the owners of the entire amount awarded against Mexico, have requested us to call your attention to the following extract from article 2 of the treaty, which is in these words: "The President of the United States of America and the President of the Mexican Republic hereby solemnly and sincerely engage to consider the decisions of the Commissioners, conjointly, or of the umpire, as the case may be, as absolutely final and conclusive upon each claim decided upon by them or him, respectively, and to give full effect to such decisions without any objection, evasion, or delay whatsoever."

Surely this language is more direct and imperative than that of article 6, under which the late Secretary of State fixed and paid the compensation of the umpire and

settled the account for expenses, &c. Now that the decisions contemplated have been made and a complete record of them placed among the files of the Department of State, and after the money has been paid to the Secretary of State, as before mentioned, we respectfully insist that the only way the President can "give full effect to such decisions without any objection, evasion, or delay whatsoever" is to direct the distribution and payment of the money.

In this connection, it is proper to call the attention of the President to the fact that the treaty with Mexico is almost a literal transcript of the Convention between the United States and Great Britain, concluded Feb'y 8th, 1853. Under the latter, awards were made in favor of citizens of the United States, and upon the payment of the gross amount by the British Government, the money was promptly distributed and paid by the then Secretary of State, Gov. Marcy.

In conclusion, we respectfully submit that the distribution and payment of the money now in the hands of the Secretary of State, are purely ministerial acts, which should be promptly performed. This course is fully authorized by the terms of the treaty, and is in strict conformity to the only precedent directly in point, namely, the action had under the Convention of 1853 with Great Britain.

Very respectfully,

S. W. JOHNSTON,
NATHANIEL WILSON,
JOHNSTON & WARDEN,

Attorneys for Marcus L. King, P. H. Cootey, Bishops of California, Jno. Belden, J. J. Wenckler, Joseph W. Hale, S. A. Belden & Co., George Penn Johnston, and others.

To the PRESIDENT.

EXHIBIT B.

No. 1326 F STREET, WASHINGTON, D. C., *July* 6, 1877.

SIR: As you referred, in our interview on Tuesday, to the action taken by Mr. Fish in the matter of the awards against Mexico, I beg to remind you that this action was had twelve days before the money was paid, and that no application for its distribution and payment was ever made to President Grant or Secretary Fish. The kind effort of the late Secretary of State to increase the sum for distribution is fully appreciated, but he did not at any time or in any manner assume to decide or settle the question now presented to the President for decision.

After the receipt of the money President Grant and Secretary Fish simply failed to act on the subject of its distribution and payment, and it is not conceived that the mere failure of a trustee to perform a duty, the performance of which had not been specifically demanded of him by those interested, will justify or excuse his successor in a refusal to perform when specially and properly requested. But whatever may be considered the extent or scope of the action of your predecessor, if such action was clearly in derogation of the undoubted rights of others, it ought not to be allowed to bind you or conclude them. My clients earnestly deprecate any action by the President which may directly or by implication recognize the rightful authority of Congress to direct or in any manner control the disposition of money received from Mexico. They are advised and believe that it was paid and received for the exclusive use and benefit of those in whose favor awards were made, and, by the solemn obligations of the treaty, it is the plain and imperative duty of the President to direct its distribution and payment.

The late Commission was in session and almost continuous labor for about seven years; and in the examination and disposition of nearly two thousand claims I have good reasons for believing that many cases were dismissed in which awards should have been made, and it may be that awards were made in cases which should have been dismissed; but by the explicit terms of the treaty these decisions are "*absolutely final and conclusive*," and the President of the United States is under a most solemn engagement "to give full effect to them without any objection, evasion, or delay whatever." Unless, therefore, the President can properly disregard these provisions of the treaty, his duty in the premises would seem too manifest for further discussion. By reference to the account and protocol, signed by Secretary Fish and Mr. Mariscal, it will be seen that those gentlemen adjusted the expense account and agreed to the sums (including the accrued interest on the several awards) found to be due citizens of the United States and of Mexico. It is not contended that this accounting and agreement add to the validity and binding force of the work of the Commission, but it has at least the merit of a formal recognition by the regularly authorized representatives of both Governments, of the final and satisfactory completion of its labors.

The President can and should direct the distribution and payment of this money to

those entitled. No other disposition of it can be rightfully made. Its longer retention would work great injustice to those entitled to it. I therefore protest against its investment in Government bonds or otherwise.

Very respectfully,

S. W. JOHNSTON,
Attorney for Marcus L. King, P. H. Cootey, J. W. Hale, and others.

Hon. WM. M. EVARTS,
Secretary of State.

No. 64.

In the matter of the awards under the treaty of July 4, 1868, between the United States and Mexico.

I.

On the 27th day of April, 1870, Benjamin Weil filed his memorial before the American and Mexican Joint Commission, together with forty printed copies of the same, twenty of which were in English and twenty in the Spanish language, the latter intended for the information and use of the Mexican Commissioner and agent. In his memorial, Weil stated specifically the description, quantity, and value of the property taken from him; the time when it was taken; the place where it was taken, and that it was taken by the forces of the republic of Mexico.

II.

The evidence on which he relied to establish his claim was filed the last of April and on the 3d day of August, 1870. On the 8th of October, 1870, counsel for claimant filed their brief; the case was placed on the notice docket of the Commission, and the agent and counsel of Mexico notified that it was prepared and ready for hearing on the part of the claimant.

III.

Afterwards, on the 27th of June, 1872, the claimant, by leave of the Commission, filed two additional depositions.

IV.

The case was not disposed of by the Commission until the 2d day of April, 1875, and hence it will be seen that Mexico had nearly five years after she was notified of the precise character of the claim and the evidence relied on by the claimant to sustain it, in which to procure and present her defensive testimony. There is and can be no pretense of surprise or of want of time and opportunity to meet and answer this claim, because, as before shown, the memorial and the principal part of the evidence were filed five years, and the two last depositions nearly three years before the Commissioners passed upon the case.

V.

Mexico knowing the proofs adduced to sustain the claim, took evidence to defeat it. This evidence was in the hands of the agent of Mexico for a long time before the case was finally acted on, but he did not and could not be induced to file it.

VI.

On the 2d of April, 1875, Commissioner Wadsworth delivered the following opinion:

"In the face of so many witnesses of respectability I am unwilling to decide that the facts detailed by them are not true.

"I must decide on the proofs and documents filed in the case, and nothing else.

"These remain without contradiction by the Government, and, *to remove all misapprehensions, I state that I am willing to give every opportunity in my power as a Commissioner, to the Government, to make a full and ample investigation of this claim, and respond to it, and very much wish that this might be done.*

"But, *as this is declined*, I must act on the proofs before me. It is now my decision that the United States must have an award for the value of the property, at the time and place of its seizure, with interest."

This opinion shows that even at that late date the Government of Mexico was offered "every opportunity" to respond to the claim, and that the offer was declined.

VII.

The Mexican Commissioner attempted to justify the action of the agent of Mexico in withholding the defensive evidence sent him by his Government, for the curious reason that if it was filed in the case the claimant would have an "*opportunity to rebut it by new evidence;*" and he seems to take great comfort in the fact that the agent of Mexico had in his brief given the Commission to understand that he had "*much evidence, both documentary and of testimony, contradictory of the occurrence on which the claim is founded,*" all of which both Commissioner and agent declined to place among the records in the case, lest it might be met and refuted by the claimant.

Mr. Zamacona, in his opinion, gave an additional reason for not filing the evidence referred to, in these words: "There is in the present case the still more serious consideration that *there is sufficient evidence upon which to judge of the claim.*"

In support of these statements, we cite the following extracts from the opinion of Commissioner Zamacona:

The claimant has further alleged, laying much stress upon the evidence submitted by him, and giving great weight to the want of defensive testimony on the part of Mexico. In this there is a statement which is far from being true. Mexico has forwarded her evidence, although with the delay consequent upon obtaining proof in a matter of this nature. The said evidence was submitted to the Commission, and under the rule which has been put in practice for some time past, and which is now in force, the agent of Mexico met with difficulties; but in the brief which he submitted at the time of offering the evidence, he gives it to be understood that there is much evidence, both documentary and of testimony, contradictory of the occurrence on which the claim is founded.

The United States Commissioner, without disregarding the more than suspicious aspect of the case, proposed to the undersigned, at the moment of the session at which the case was about to be disposed of, to admit the evidence offered in behalf of Mexico, and at the same time allow the claimant an opportunity to rebut it by new evidence.

The undersigned had several reasons for not considering the proposal desirable. In addition to that, in the present condition of the labors of the Commission, the method of deciding cases in their numerical order having been adopted, and the declaration made that all cases should be closed, and it being desirable that in proceeding no cases should be left behind undecided. There is in the present case a still more serious consideration that there is sufficient evidence upon which to judge of the claim, and that by opening the door to new testimony it would only serve to show the claim-

ant wherein the edifice which he had erected upon his imagination was weak, and by enlightening him as to how to crown his witnesses by new efforts, which, although they would not change the aspect of the case, might lead to confuse it.

The crowning reason for the course pursued by the Mexican agent will be shown in the next paragraph of this paper.

VIII.

As the Commissioners failed to agree, the case was sent to the umpire, Sir Edward Thornton, for decision, and the sagacious agent of Mexico having refused to file and submit his evidence before the Commission, sought to introduce and use it before the umpire, hoping thereby to prevent the claimant from rebutting, contradicting, or explaining it. Unfortunately for the success of this scheme, the umpire could only examine and consider such evidence "for and against the claim" as had been presented and submitted to the Commissioners.

After a patient and careful consideration of the case on the evidence, and the arguments furnished by the agents of the United States and Mexico, Sir Edward Thornton, on the 1st of October, 1875, made an award in favor of the claimant.

IX.

The awards of the Commissioners, or of the umpire, were made by the terms of the treaty absolutely *final and conclusive, without appeal* to any other body or authority whatsoever. In proof of this, attention is called to the following clauses of the II Article of the treaty:

The President of the United States of America, and the President of the Mexican Republic, hereby solemnly and sincerely engage to consider the decision of the Commissioners conjointly, or of the umpire, as the case may be, as absolutely final and conclusive upon each claim decided upon by them or him respectively, and to give full effect to such decisions *without any objection, evasion, or delay whatsoever.*

Should they fail to agree in opinion upon any individual claim, they shall call to their assistance the umpire whom they have agreed to name, or who may be determined by lot, as the case may be; and such umpire, *after having examined the evidence adduced for and against the claim,* and after having heard, if required, one person on each side as aforesaid, and consulted with the Commissioners, shall decide thereupon *finally and without appeal.*

By the presentation and submission of his claim to the Commission, Weil became a party to the treaty, and had a decision been rendered against him, he would have been incontestably concluded by it, and his claim forever barred; but the decision having been made in his favor, Mexico is in like manner concluded, and the award must stand. The legal representatives of Weil cannot, therefore, be deprived of their rights under the award, nor can the Government of Mexico be excused or relieved from the obligation imposed by it without alleging and proving that the Commissioners, or the umpire, acted corruptly, or with flagrant partiality in making the award. We affirm that these are the only grounds upon which an international award can be impeached or set aside.

During the present session of Congress its attention has been called, by a number of American citizens, to the fraudulent acts and practices of the Mexican authorities in connection with the proceedings of the late Commission. In one case, a petition was presented to the House of Representatives by Alexander H. Dixon, attorney-in-fact of the Rosalia and Carmen Mining Company, alleging that—

The Mexican authorities viciously and dishonestly purloined and suppressed the material evidence taken and submitted by them in aid of their said claim, by means

of which fraudulent suppression of evidence by the Mexican authorities, and the introduction by them of evidence of perjured witnesses, the same was decided adversely to them.

Wherefore they ask that they shall have a rehearing and reinvestigation of their said claim, and that their rights, of which they have been defrauded, shall be secured to them.

This petition was referred to the Committee on Foreign Affairs, who report "that, in their opinion, this House has no jurisdiction of the matter referred to them by the petitioners." (House Report, No. 700.)

X.

On the 29th day of April, 1876, more than six months after this award had been made and entered on the record of the proceedings of the Commission in due form, and whilst the umpire was busily engaged in the examination of the cases not then disposed of, Mr. Mariscal, envoy extraordinary and minister plenipotentiary of Mexico, and Mr. Fish, Secretary of State of the United States, both with full knowledge of what had been done, and each with full powers for that purpose, conferred by his Government, concluded a treaty between the United States of America and the Mexican Republic, by which it was solemnly agreed that "the total amount awarded, *in all cases already decided*, should (shall) be paid in gold or its equivalent," in annual installments, not exceeding three hundred thousand dollars in any one year; the first payment to be made on the 31st day of January, 1877.

This stipulation is contained in Article II of said treaty, and is in these words:

It is further agreed that so soon after the twentieth day of November, one thousand eight hundred and seventy-six, as may be practicable, the total amount awarded in all cases already decided, whether by the Commissioners or by the umpire, and which may be decided before the said twentieth day of November, in favor of citizens of the one party, shall be deducted from the total amount awarded to the citizens of the other party, and the balance, to the amount of three hundred thousand dollars, shall be paid at the city or Mexico, or at the city of Washington, in gold or its equivalent, on or before the thirty-first day of January, one thousand eight hundred and seventy-seven, to the Government in favor of whose citizens the greater amount may have been awarded, without interest or any other deduction than that specified in Article VI of the said convention of July, 1868. The residue of the said balance shall be paid in annual installments on the thirty-first day of January in each year, to an amount not exceeding three hundred thousand dollars, in gold or its equivalent, in any one year, until the whole shall have been paid.

This treaty was ratified by both Governments, and proclaimed and published by the President of the United States, on the 29th day of June, 1876.

XI.

Later, in answer to a note of Mr. Mariscal, then minister from Mexico, Secretary Fish said, on the 4th of December, 1876:

By article second of the convention the two Governments bind themselves to consider the decisions of the Commissioners and of the umpire as absolutely final and conclusive, and to give full effect to such decisions, without any objection, evasion, or delay whatsoever; and by the 5th article the high contracting parties agree to consider the result of the proceedings of the Commission as a full, perfect, and final settlement of every claim upon either Government arising from transactions prior to the exchange of ratifications thereof.

It may be quite proper that Mr. Avila should advise you of his views as to any particular awards, or as to any points connected with the closing labors of the Commission, and you may have felt it to be your duty to bring to the notice of this Government those views so communicated to you.

I must decline, however, to entertain the consideration of any question which may contemplate any violation of, or departure from, the provisions of the convention as

to the final and binding nature of the awards, or to pass upon, or, by silence, to be considered as acquiesing in, any attempt to determine the effect of any particular award.

With your appreciation of the objects in contemplation in this method of settlement of differences between two Governments, and with your intimate acquaintance with the particular provisions of this convention with reference to the binding character of the awards made by the Commissioners or by the umpire, you will readily appreciate my extreme unwillingness to consider that, at the moment when the proceedings relating to the Commission have been brought to a close, and the obligation upon each Government to consider the result in each case as absolutely final and conclusive becomes perfect, the Government of Mexico has taken, or proposes to take, any steps which would impair this obligation.

On the 8th of the same month the Mexican minister replied, saying, among other things:

It is not my intention, nor the intention of Sr. Avila, to open any question whatever, nor to put in doubt the final and conclusive character of the above-mentioned awards.

XII.

But the deliberate and solemn approval and confirmation of what had been already done "by the Commissioners or the umpire," by the terms of the last-named treaty, and the affirmative decision of Mr. Fish and the disclaimer of Mr. Mariscal, were supplemented and completed by the action had by and between Mr. Mariscal and Mr. Fish, acting for and in behalf of their respective Governments, under Article VI of the original treaty of July 4, 1868, in the adjustment and settlement of the expenses of the Commission.

The labors of the Commission terminated on the 20th of November, 1876, and on the 14th December following Mr. Fish and Mr. Mariscal made and signed the settlement referred to. It is entitled a "Statement of account of United States and Mexican Claims Commission," and will be found in House Mis. Doc. No. 39, second session, Forty-fourth Congress.

In this account Mr. Marsical charged the United States the agreed percentage on all the awards made in favor of its citizens, and for the two awards now objected to, namely, those of Weil and La Abra Silver Mining Company, he charged and was allowed to include in the expense account of the Commission over forty-six thousand dollars, and by this recognition and confirmation of what had been done in these two cases, Mr. Mariscal was enabled to retain and pocket for his Government thousands of dollars, the right to which was based solely on the validity and binding character of the two awards in question.

XIII.

Finally it is submitted:

1st. That the award in favor of Weil was by the terms of the treaty of July 4, 1868, absolutely final and conclusive, and cannot be set aside without alleging and proving that the Commission or umpire making it acted corruptly or with flagrant partiality.

2d. That this award and "*all cases already decided*," were solemnly approved and confirmed by the treaty before referred to, concluded on the 29th of April, 1876.

3d. That this award was again recognized and confirmed by the settlement of the expense account, on the 14th day of December, 1876.

4th. The defendant, Mexico, refused, during the lifetime of Benjamin Weil, to place her defensive evidence on file, for it could then have been fully met and refuted; but now that Weil is dead, that Government and

its representatives are attempting to blacken his name, rob his widow and children, break the faith of two treaties, and a final settlement under them.

If this case has not been fully and fairly settled, there is and can be no such thing as a final determination, settlement, and payment of a claim against the Government of Mexico.

These questions were carefully presented and argued in our brief before the House Committee on Foreign Affairs, and to it, and the able and exhaustive report of the committee, attention is respectfully solicited.

JOHNSTON & WARDEN,
For the Legal Representatives of Benjamin Weil, deceased.

No. 65.

SUPPLEMENTAL BRIEF.

In the matter of the questions in relation to awards made under the treaty of July 4, 1868, between the United States and Mexico.

The proposition that Congress has no power to disturb the said awards, is argued in the brief to which the present is a supplement. That brief, however, does not say expressly that, in approaching Congress, Mexico would violate the law of nations. *Would*, we say, because we do not admit that she has actually taken that course.

The law of nations, as applied to the intercourse between Mexico and the United States, forbade Mexico to seek redress otherwise than by application to the President of the United States. Assuredly, it utterly forbade resort to the legislative department of the Government.

The President is the "immediate author and the finisher of treaties." So says Mr. Justice Story in his Commentaries on the Constitution,* following the Federalist.†

The Venezuelan case is not in opposition to this view. On the contrary, rightly understood, it is authority for what we argue on this subject.

Venezuela did not appeal to Congress. Rather, she urged the President to overrule Congress.

Congress passed, and the President, February 25, 1873, approved, an act declaring the finality of the awards in that case. That act was not merely unnecessary; it was violative of the Constitution, because it attempted to control the treaty-making power. But, however this may be, it was from this act that Venezuela appealed, in vain, to the Executive.

Seth Driggs, a citizen of the United States, brought the matter before Congress.‡ The House of Representatives, by resolution, called on the President for information as to the measures that had been taken to enforce the act just referred to. In response, the diplomatic correspondence on the subject was sent to the House. From that correspondence we learn that the Executive, throughout, adhered to the principle of finality.

The precedent is clearly in our favor.

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* Edition of 1833, vol. 3, p. 360, § 1507; Cooley's ed., vol. 2, p. 328, § 1513.
† No. 64. See also Lawrence's Wheaton, p. 386, note 122.
‡ See page 1 of the Report.

In the Venezuelan case the commissioners and the umpire were charged with corruption. No such charge is made in the present case.

The only remedy where international commissioners make a corrupt award is a new treaty or a war.

Reliance has been placed* on the doctrine of Vattel.† That doctrine, rightly understood, is perfectly in harmony with the proposition advanced in the foregoing paragraph. It amounts to this, that where the international arbitrators are guilty of corruption or flagrant partiality, their award is not entitled to respect. It does not extend to the question how relief is to be sought.

Wherever Congress constitutionally legislates in relation to the execution of a treaty, what it does is purely ancillary.‡

True, it has been held that, though a treaty is a law of the land, under the Constitution of the United States, Congress may repeal it, so far as it is a municipal law, provided its subject-matter is within the legislative power of Congress.§ But, whatever may be the proper application of the holdings here alluded to, quite obviously they have no application to the case we are considering. There is in the treaty here to be construed not a single feature of municipal legislation. The whole of it sounds in contract, providing for adjudication, and for its finality.

We feel, then, wholly safe in insisting that it is only for corruption or flagrant partiality in the commissioners or the umpire‖ that the award of international arbitrators can be set aside, and that this can be effected only by a new treaty or by the last resort of nations.

Where a peaceful remedy is sought, the application must be to the Executive of the nation which is to be asked to consent to the setting aside of the award. The treaty-making power may be set in motion by such application, and, in a proper case, that power may effect the needed remedy; but never can the legislature give relief by ordering suspension or the like.

It is not to be thought that Mexico approaches Congress. Nothing of that sort is indicated by the pamphlets which we have commented on in our original brief. The application actually made ought not to be attributed to Mexico.

JOHNSTON & WARDEN,
For the Legal Representatives of Weil.

No. 66.

M. de Zamacona to Mr. Evarts.

LEGATION OF MEXICO IN THE UNITED STATES,
Washington, September 13, 1879.

Mr. SECRETARY: I have had the honor to receive the note in which your Department has been pleased to inclose to me its opinion, approved by the President, to the effect that the installments hitherto retained on account of strong suspicions of fraud in the claim preferred against Mexico are now to be paid to the Abra Mining Company.

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* See page XV of the Venezuelan Report.

† On the Law of Nations, 277.

‡ Lawrence's Wheaton, p. 457.

§ The Cherokee Tobacco, 11 Wallace, 616, 621; Foster & Elam *v.* Neilson, 2 Peters, 314; Taylor *v.* Morton, 2 Curtis, 454; The Clinton Bridge, 1 Wadsworth, 155.

‖ See Vattel, supra.

The observations which I presented to your Department under date of August 25, when the payment of said money was announced as possible only, may give an idea of the great regret of this legation at the fact that that possibility has become an Executive decision.

The undersigned deems it his imperative duty to repeat that the evidence furnished by Mexico covers the whole ground of the claim in question, and deprives it of all appearance of sincerity. But even in addition to the proofs already produced, there are others which will render the essentially fraudulent character of this claim evident beyond all dispute, if, as has been indicated, a new investigation is held by officers empowered to compel the attendance of witnesses and the production of papers. The case presenting such a prospect, there is reason to think it probable that the Government of the United States, whose upright sentiments have been so loftily expressed in this matter, may hereafter have reason to regret, as has already happened in some similar cases, the payment of money to parties interested in a claim of more than doubtful character.

If the interest of Mexico in this case were limited to the amount of money in question, this legation would not persist as it does in the observations with which it is sorry to trouble the Department of State. In a pecuniary point of view, Mexico could feel at rest, in the certainty that if it shall be shown by the re-examination that the claim is radically fraudulent, the Government of the United States will not countenance it, even though the fraud has been partially successful, in that the claimants have received a portion of the amount claimed. The duty of avoiding this result, however, is the mainspring of action on the part of the Mexican Government. A moral interest is at stake which is superior to all other interests, nay, even an incalculable material and future interest, because nothing will better protect nations that are exposed to the wiles of speculators in fraudulent claims than the utter failure of such claims.

The lawyers, whose advice has been given to this legation, and to whom the opinion of the Department of State has been communicated, are going to lay before it a supplementary statement in relation to the incident which forms the subject of this note. I therefore deem it unnecessary to say anything more, and simply express the hope that before putting into execution the decision which has been communicated to me, the Department will be pleased to consider the consequences.

I am, &c.,

M. DE ZAMACONA.

No. 67.

Mr. Evarts to Mr. Zamacona.

DEPARTMENT OF STATE,
Washington, February 1, 1880.

SIR: It affords me much pleasure to transmit to you herewith the formal receipt for the payment of the fourth installment of the indemnity due to the United States under the convention of 1868, a check for which payment you handed me yesterday. I am alike honored and gratified at the opportunity thus afforded me to express the President's appreciа-

tion of the promptness and exactitude with which the Government of a friendly sister republic thus meets its international obligations.

Accept, sir, the renewed assurance of my most distinguished consideration.

WM. M. EVARTS.

DEPARTMENT OF STATE,
Washington, January 31, 1880.

Received of Don Manuel M. de Zamacona, envoy extraordinary and minister plenipotentiary of the Government of Mexico, a check drawn by himself upon the National City Bank of New York, to the order of the undersigned, for $296,066.05, being in discharge of the fourth installment of the indemnity this day due from that republic to the United States, under the convention between the two Governments of the 4th of July, 1868, according to an adjustment made on the 31st of January, 1878, of the relative value of the three currencies corresponding to the indemnity.

WM. M. EVARTS,
Secretary of State.

No. 68.

DEPARTMENT OF STATE,
Washington, April 13, 1880.

To the PRESIDENT:

The Secretary of State, to whom was referred the following resolution of the Senate of the 27th of February, 1880—

Resolved, That the President be requested, if in his opinion not inconsistent with the public service, to inform the Senate what action, if any, has been taken by him under authority of section 5 of the act approved June 18, 1878, entitled "An act to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the 4th day of July, 1868," and of the grounds of such action, and what further action, if any, the honor of the United States may, in his opinion, require to be taken in the premises—

has the honor to report.

The act passed by Congress "to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the 4th day of July, 1868," contained the following section:

SEC. 5. And whereas the Government of Mexico has called the attention of the Government of the United States to the claims hereinafter named with a view to a rehearing; therefore, be it enacted that the President of the United States be, and he is hereby requested to investigate any charges of fraud presented by the Mexican Government as to the cases hereinafter named, and if he shall be of the opinion that the honor of the United States, the principles of public law, or considerations of justice and equity require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be opened and the cases retried, it shall be lawful for him to withhold payment of said awards, or either of them, until such case or cases shall be retried and decided in such manner as the Governments of the United States and Mexico may agree, or until Congress shall otherwise direct; and, in case of such retrial and decision, any moneys paid or to be paid by the Republic of Mexico in respect of said awards, respectively, shall be held to abide the event, and shall be disposed of accordingly; and the said present awards shall be set aside, modified, or affirmed, as may be determined on such retrial: *Provided*, That nothing herein shall be construed as an expression of any opinion of Congress in respect to the character of said claims, or either of them.

It having been referred by you to the Department of State to institute the investigation required by this action, I gave the subject the most careful examination. I reviewed the proceedings of the Commission, including the testimony originally submitted, the arguments made by the counsel both for the Republic of Mexico and the United States, the opinions of the members of the Commission, and the final decision of the umpire. I considered the representations of the Mexican Government, as set forth in its diplomatic communications to this Department, and subjected to patient scrutiny the supplemental evidence by which those representations had been supported. In addition to this, I heard counsel both for the Mexican Government and the parties interested in these awards.

The most impressive complaint of the Mexican Government in the La Abra case bore upon the award of damages as fraudulently exaggerated.

In the Weil case, the Government of Mexico asserts that no such case had ever had any real existence; that there never was any such property as is alleged to have been seized; that the parties claimant never owned, directly or as agents, any such property; that the seizure of the property is in all its details a pure fiction, and that the evidence by which the whole claim is established is spurious and corrupt.

Upon these complaints, and the examination given to them as above set forth, on the 8th of August last I reported to you my conclusions as to the proper disposition of the matter by the executive government as follows:

First. I am of opinion that, as between the United States and Mexico, the latter Government has no right to complain of the conduct of these claims before the tribunal of Commissioners and umpire provided by the convention, or of the judgments given thereupon, so far as the integrity of the tribunal is concerned, the regularity of the proceedings, the full opportunity, in time and after notice, to meet the case of the respective claimants, and the free and deliberate choice exercised by Mexico as to the methods, the measure, and the means of the defense against the same.

I conclude, therefore, that neither the principles of public law nor considerations of justice or equity require or permit, as between the United States and Mexico, that the awards in these cases should be opened and the cases retried before a new international tribunal, or under any new convention or negotiation respecting the same between the United States and Mexico.

Second. I am, however, of opinion that the matters brought to the attention of this Government on the part of Mexico do bring into grave doubt the substantial integrity of the claim of Benjamin Weil, and the sincerity of the evidence as to the measure of damages insisted upon and accorded in the case of the La Abra Silver Mining Company, and that the honor of the United States does require that these two cases should be further investigated by the United States to ascertain whether this Government has been made the means of enforcing against a friendly power claims of our citizens based upon or exaggerated by fraud.

If such further investigation should remove the doubts which have been fairly raised upon the representations of Mexico, the honor of the United States will have been completely maintained. If, on the other hand, the claimants shall fail in removing these doubts, or they should be replaced by certain condemnation, the honor of the United States will be vindicated by such measures as may then be dictated.

Third. The executive government is not furnished with the means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses. The authority for such an investigation must proceed from Congress. I would advise, therefore, that the proofs and the conclusions you shall come to thereon, if adverse to the immediate payment on these awards of the installments received from Mexico, be laid before Congress for the exercise of their plenary authority in the matter.

Fourth. It may be that, as the main imputation in the case of the La Abra Silver Mining Company is of fraudulent exaggeration of the claim in its measure of damages, it may consist with a proper reservation of further investigation in this case to make the distribution of the installments in hand.

I have this subordinate consideration still under examination, and should you entertain this distinction, will submit my further conclusions on this point.

These conclusions having been approved by you, and the point reserved for further consideration in the La Abra case having again been referred to me, on the 3d of September last I reported to you my conclusions upon the same, as follows:

The parties interested in the case of the La Abra Mining Company having desired from you a further consideration of the point reserved in my former statement to you of my views in that case, and the matter having been referred to me to that end, I respectfully submit my conclusion on that point.

1. Upon a renewed examination of the matter as laid before me by the Mexican Government, I am confirmed in the opinion that the proper limits of the further consideration which the honor of the Government should promt it to give to this award should confine the investigation to the question of a fraudulent exaggeration of the claim by the parties before the Commission to which, under the provision of the convention, it was presented by this Government.

2. Upon a careful estimate as to any probable or just reduction of the claim from further investigation, should Congress institute it, and under a sense of the obligation of the Executive Government to avoid any present deprivation of right which does not seem necessary to ultimate results, I am of opinion that its distributive share of the installments thus far received from Mexico may properly be paid to the claimant, reserving the question as to later installments.

If this conclusion should receive your approval, the payment can be made upon the verification at the Department of State of the rightful parties to receive it.

This latter conclusion having also received your approval, and the results stated in both these reports having been communicated both to the Mexican Government and the claimants, the payment was made upon the La Abra award of the distributive share of the installments then in hand, and payment was withheld of the distributive share of such installments upon the Weil award.

The parties interested in these awards have from time to time preferred requests for a renewed consideration by the Executive of the questions arising for his determination under the act of Congress of June 18, 1878, and have particularly insisted that, in deciding against opening these awards diplomatically and re-examining them by a new International Commission, the whole discretion vested in the Executive as a part of the treaty-making power and under the special provision of the act of Congress was exhausted, and that the payments should be no longer suspended in respect to these cases, or either of them. A solicitous attention to the rights of the claimants and the duty of the Executive in the premises has confirmed me in the opinion that Congress should determine whether "the honor of the United States" requires any further investigation in these cases, or either of them, and provide the efficient means of such further investigation, if thought necessary.

In the conclusions to which I came, and which I had the honor to submit to your examination, I was principally governed by the following considerations:

1. In the complaints of the Mexican Government there is not the slightest impeachment, express or implied, of the character or composition of the Commission, of its methods of procedure, or of the entire regularity and integrity of its actual proceedings. It was composed of able and eminent men, enjoying the full confidence of the Governments by whom they were respectively appointed, and the umpire selected, Sir Edward Thornton, was pre-eminently fitted for his laborious and responsible duties by his long diplomatic experience, his recognized ability, his high character, and his special knowledge of the two countries whose citizens and Governments were interested in the arbitration.

2. Before this Commission the Government of Mexico had full opportunity and ample time to present its defense, both in evidence and argu-

ment, against any claim that was submitted. In the La Abra case a large amount of testimony was taken on both sides, the comparison and valuation of which was within the power of the Commission, and the opinion of the umpire shows that it was carefully considered.

In the Weil case, it is true that the Mexican Government submitted no testimony, and that the case was decided upon the evidence offered by the claimants. But the Mexican Commissioner explicitly declined the offer of further time to produce such testimony, although he professed that his Government had such in possession, saying upon the trial:

> There is in the present case the still more serious consideration that there is sufficient evidence upon which to judge of the claim, and that by opening the door to new testimony it would only serve to show the claimant wherein the edifice which he had erected upon his imagination was weak, and by enlightening him how to crown his intrigue by new efforts, which, although they would not change the aspect of the case, might lead him to confirm it.

3. The treaty under the provisions of which the Commission was appointed was explicit in recognition of the finality of its action. By Article II of that convention, the two Governments bound themselves to consider the decisions of the Commissioners and of the umpire as absolutely final and conclusive, and to give full effect to such decisions without any objection, evasion, or delay whatsoever; and, by the fifth article, the high contracting parties agree to consider the result of the proceedings of the Commission as a full, perfect, and final settlement of every claim upon either Government arising from the transactions prior to the exchange of ratifications thereof.

4. Aside from this special provision of the finality of the decision of the Commission, in the very act of its creation, it would seem impossible to review and retry any individual case without opening the door to other reclamations of the same sort. In addition to these cases, with the result of which the Mexican Government is dissatisfied, there are many others which failed of preparation in time, which were rejected on principles not always acquiesced in by those interested, and some in which the claimants deemed the awards very insufficient. The adherence of the Government of the United States to the strict letter of its convention that the decision of the Commissioners should be absolutely final in every case, and a complete bar to any claim arising from transactions prior to its ratification, has hitherto prevented any effort on the part of this Government to renew such discussion in favor of its citizens. But if it be once admitted that for any reason short of an impeachment of the integrity of the Commission its proceedings can be reopend for review and its decisions for reversal, there will not be wanting numerous urgent appeals to the justice and sympathy of the Government to extend this measure of relief to many who think that their claims have been erroneously estimated or rejected.

Lastly. The principle of the settlement of international differences by arbitral Commissions is of such deep and wide-reaching interest to civilization, and the value of such arbitration depends so essentially upon the certainty and finality of its decision, that no Government should lightly weaken its influence or diminish its consideration by making its action the subject of renewed discussion. It is only in extreme cases, where the Commission is itself charged with corruption or where it has clearly exceeded its powers in deciding matters not submitted to its judgment, that prompt and cheerful acquiescence should not be rendered to its action. No such charge is here suggested. It may be true that in this or that instance more adequate justice might have been rendered.

The methods and processes of such tribunals, which in time it may be confidently hoped will be improved and perfected, are not yet so complete as to eliminate much opportunity of error. But the results of such an arbitration, covering, as this did, large, complicated, and numerous transactions, deciding not upon oral testimony winnowed by cross-examination, but upon the contradiction of vague affidavits, cannot be fairly judged by the apparent errors of this or that individual case. There is, probably, no just ground for saying that the aggregate of the awards against Mexico more than equaled the just claims of our citizens, and much complaint has been made that such aggregate falls quite short of them. But the awards made by this Commission were something more than the settlement of mere private claims—it was the adjustment of long-standing national differences. And if in the result more or less was added to or taken from particular awards, still if on the whole a fair and just balance has been struck, if considering all that has been given and all that has been refused the examination has been careful and the judgment impartial, it is the interest and the duty of both Governments to maintain it.

While these considerations led to the conclusion that these cases ought not to be made the subject of a new international commission, I was yet of opinion that "the honor of the United States" was concerned to inquire whether in these cases, submitted by this Government to the commission, its confidence had been seriously abused, and the Government of Mexico, acting in good faith in accepting a friendly arbitration, had been subjected to heavy pecuniary imposition by fraud and perjury in the maintenance of these claims, or either of them, before the commission. In furtherance, however, of this opinion, it seemed to me apparent that the Executive discretion under the act of Congress could extend no further than to withhold further payments on the awards until Congress should, by its plenary authority, decide whether such an investigation should be made, and should provide an adequate procedure for its conduct, and prescribe the consequences which should follow from its results.

Unless Congress should now make this disposition of the matter, and furnish thereby definite instructions to the Department to reserve further payments upon these awards till the conclusion of such investigation, and to take such further order with the same thereafter as Congress might direct, it would appear to be the duty of the Executive to accept these awards as no longer open to reconsideration, and proceed in the payment of the same *pro rata* with all other awards under the convention.

WM. M. EVARTS.

No. 69.

Mr. Navarro to Mr. Evarts.

[Translation.]

LEGATION OF MEXICO IN UNITED STATES,
New York, July 30, 1880.

Mr. SECRETARY: I have the honor to inform you that the lawyers employed by my Government at Washington have thought proper to take certain measures before the court of the District of Columbia

against the promoters of the fraudulent claim of Benjamin Weil and that of the Abra Mining Company.

It seems unnecessary for me to repeat that my Government has not, in taking this step through its lawyers, the most remote intention of avoiding the payment which it is obliged to make according to the treaty of July 4, 1868, which will continue to be made with the same punctuality as hitherto.

As Mr. Mariscal said in his note of December 8, 1876, it only proposes to have recourse to one of the competent authorities of this country, in order to prove to it that both claims are based upon perjury, and when this shall have been proved, to appeal to the sentiments of justice and equity of the Government of the United States, to the end that fraud may not triumph.

The Department of State, in its report to the President, bearing date of August 8, 1879, expressed the opinion that the evidence presented to it gave rise to serious doubts with regard to the character of those claims, "which," it said, "should be subjected to methods of investigation requiring the presentation of evidence and the examination of witnesses, which cannot be done by the Executive in the exercise of his legal powers." Consequently, the counsel of Mexico, in instituting legal proceedings, only act in conformity with the opinion expressed by the Department of State, subsequently leaving it to its well-known love of justice to relieve my Government from the payment of unjust and fraudulent claims.

In view of the foregoing, I beg you, Mr. Secretary, to have the kindness to return, temporarily, to Don Cayetano Romero, an officer of this legation, the documentary evidence relative to the cases aforesaid which is now in your Department.

I reiterate, &c.,

JUAN N. NAVARRO.

No. 70.

Mr. Evarts to Mr. Navarro.

DEPARTMENT OF STATE,
Washington, August 4, 1880.

SIR: I have had the honor to receive your note of the 30th ultimo, which was handed to me personally by Mr. Romero, secretary of the Mexican legation in this country, on the 2d instant.

In this note you state that the lawyers employed by your Government in this capital have instituted certain measures before the District court against the parties interested in the alleged fraudulent claims of Benjamin Weil and the Abra Mining Company against Mexico, and that your Government, in taking this step, entertains no intention of avoiding the payments stipulated under the convention of 1868, but that it merely proposes to have recourse to one of the competent authorities of this country to the end of proving that both these claims are based upon perjury, and thereupon to appeal to the sentiments of justice and equity of this Government, against the consummation of the awards in those cases.

Mr. Romero, in presenting to me this note, was accompanied by two gentlemen of the legal profession in this city, well known to me, who

were introduced by him as the lawyers employed by the Mexican Government.

The immediate request made in behalf of the Mexican Government by Mr. Romero, through these counsel, upon conference with the President, it was thought not improper to grant, and I so announced subsequently to them. This request was that the payment on the awards in favor of La Abra Mining Company and of Benjamin Weil might be withheld until the Mexican Government might be able to reduce to legal completeness the documents of the proposed judicial recourse which your note announced your Government was proposing to take.

In conceding this much to the application made in the name of the Mexican Government that is to say, that I would not change the possession of the funds now in the hands of this Government for the payment of these claims until the nature and express form of the suit in which Mexico proposed to become a plaintiff in our courts of justice, which are accessible to all, were laid before me, I wish to guard against the least impression, even for the moment, on the part of your Government that this Government regards such a step as in accordance either with the diplomatic relations on this subject between the Governments, as hitherto distinctly defined in correspondence, or as at all compatible with the obligations of the convention of July 4, 1868.

On the contrary, I am unable to regard the measure now announced on the part of your Government as anything short of a distinct departure from the attitude taken by your Government; that it neither had any rights as against the United States to interpose any obstacle to the payment of these awards by this Government, according to the terms of the convention which made the awards final, nor any disposition to interpose any such obstacle as a matter of obligation to Mexico, political or legal.

In strict adhesion to this view, the only aspect in which Mexico has presented the subject to this Government has been as one for its own determination on motives of its own estimate of the situation. It is in this aspect alone that the subject has been entertained at all by this Government, and in this aspect that it has been disposed of by the political authorities of this Government, and its conclusion, adverse to opening the matter as towards Mexico, many months since definitely announced to your Government. Whatever has since proceeded in any branch of this Government, in reference to these claims, has been in the same sense, and wholly as a matter of domestic consideration of the free action of this Government.

I find myself equally unable to regard an assertion of right on the part of Mexico to judicial action in any court or tribunal whatever, in review, in any form, or to any extent or effect, of these awards, or of a right to judicial obstruction to the execution of these awards in favor of the claimants, as otherwise than in distinct contradiction of the whole purpose of the convention as well as of the explicit provision of the fifth article thereof, which absolutely bars any agitation of right affecting the subjects embraced within the terms of the convention.

The distinction between an application to the benevolent discretion of the Government of the United States to remit conceded rights of itself and its citizens, and an assertion of hostile contestation in a judicial tribunal in obstruction or disparagement of such rights, is so marked as to need only to be pointed out to be recognized. I cannot but think if the political authorities of Mexico have specifically instructed their diplomatic representative here to take the step which your note announces, that this distinction had not attracted from your Govern-

ment due attention. If, however, as would seem not improbable, this step is taken under an impression that it falls within the general line of action in the matter of these awards, which has been permitted by the Mexican Government to its ministers here, it relieves the matter somewhat of the seriousness which would attach to a specific instruction from the Government of Mexico to take this judicial recourse. In either case, it seemed to me desirable that you should at once be advised of the view which this Government takes of the proposed suit, both under the convention and under the diplomatic correspondence had on the subject of these claims.

I avail, &c.,

WM. M. EVARTS.

No. 71.

Mr. Navarro to Mr. Evarts.

NEW YORK, *August* 12, 1880.

SIR: I have the honor to acknowledge the receipt of your note of the 4th instant, in reply to my note to you of the 30th ultimo, in regard to the awards made against Mexico on the claims of Benjamin Weil and La Abra Silver Mining Company, by the Commission organized under the treaty of July 4, 1868, between Mexico and the United States.

In my note of the 30th ultimo I advised the Department of State that it had been thought proper to commence suits in the judicial courts of the United States in the name of Mexico against the fabricators of these claims.

In your note of the 4th instant you intimate that such proceedings would be a violation of the treaty, and a departure from the attitude heretofore taken by my Government, that it had no right, "as against the United States, to interpose any obstacle to the payment of these awards by this Government according to the terms of the convention which made the awards final, nor any disposition to interpose any such obstacle as a matter of obligation to Mexico, political or legal."

Upon a careful review of the correspondence between this legation and the Department of State, it does not appear to this legation that the proposed action is in any sense a departure from the attitude heretofore held by my Government on this question. In that correspondence my Government has repeatedly disclaimed any intention to raise and maintain a controversy with the United States as to the binding effect upon Mexico of the awards referred to, and it now again disclaims such intention.

Your note alludes to the obligation of the treaty in relation to the payment of money to individuals as an execution and carrying into effect of the awards of the commission. A solicitous examination of the treaty fails to disclose any reference to the payment of money to individual claimants. In this respect it differs materially from the treaty of 1848, the fifteenth article of which (while providing equally with the convention of 1868 that the awards of the Commission to be constituted under it should be final and conclusive) expressly stipulated that the United States should make satisfaction of the same to the individual claimants.

But although an obligation to make payment to individuals may be implied from the terms of the convention of 1868, it is one which, in these cases, rests upon the United States, and not upon my Government

whose whole duty is discharged by the payment to the United States of the amounts of the various awards, which are thereupon executed and carried into effect as awards against Mexico.

Permit me to suggest that your note may be founded upon a misapprehension of the nature of the meditated proceedings. The Mexican Government has no intention of making the United States or any of its departments or officers a party thereto, nor of seeking compulsory process against them, nor of asking any relief as against the United States, but will hereafter, as it has done heretofore, acknowledge its obligation to pay over to the United States the amount of said awards, unless the United States, being informed by the proceedings of its judiciary courts that such claims are fictitious and fraudulent, and that the awards thereon were obtained by fraud and perjury, shall see fit to exonerate Mexico from subsequent payments in that behalf. To a proper understanding of this subject it is necessary to consider the nature of awards rendered by tribunals created by treaty between two nations for the adjustment of claims against one for injuries committed by it upon the citizens or subjects of the other nation.

By the law of nations, when the citizens of one country are injured by a foreign state, which refuses compensation, the Government of the injured citizens may resort to reprisals for their indemnification, or, if the injuries committed be numerous enough and grave enough to justify it, may make war upon the offending nation, and refuse peace until such indemnity be made as it may consider to be just.

In case reprisals are resorted to as the remedy, the avails of the captured property is a fund for the benefit of the injured citizens, and in case of resort to war, where indemnity for such injuries is demanded and obtained, no one will doubt that the nation, if successful, is morally bound to pay over such indemnity to the injured citizens. Especially is this true where the contesting nations are republics, like Mexico and the United States, the Governments of which are established by their people, respectively, to secure the ends of justice as among themselves and protection against foreign nations. In other words, such injuries constitute a wrong both to the citizen injured and to his Government, it being an affront to a nation to injure its citizens. In this instance citizens of Mexico made complaint to their Government of injuries committed upon them by the Government of the United States, justifying the interposition of their Government on their behalf; and citizens of the United States made to their Government complaints against Mexico of like nature, justifying like interposition.

Under these circumstances the two Governments, not being disposed to resort to the harsh remedies permitted by the law of nations, in substance agreed by this treaty to proceed to a peaceable ascertainment of the extent of injuries suffered by the citizens of each at the hands of the other, and agreed that upon payment by each to the other of the amounts of such injuries respectively, each Government would acquit and discharge the other from all national complaints on account of such injuries, the awards to be made in favor of one nation against the other, and the money to be paid by one nation to the other on the awards, which were to be for the exact amounts judicially ascertained as the damages suffered by the citizens of each at the hands of the other.

By this arrangement each nation obtained from the other all it could have honorably demanded by waging war, as the demand in case of war could not justly extend beyond a redress of the grievance for which war was declared (that is, indemnity to its citizens) and cost of the war. The two Governments agreed to offset their wounded pride and offended

dignity, but each was to receive from the other the exact damages sustained by its citizens, thus ending the controversy as between the nations. A citizen of the United States who might have presented his claim to the commissioners, but did not, or whose claim was presented and rejected, might still prefer his claim to Mexico, and that Government, if satisfied of its justice, might pay it, but his Government would not further uphold or aid him in the prosecution of his claim.

From these considerations it is manifest that when Mexico shall have paid to the United States the full amount of all the awards rendered by the Commission, and the United States shall have received it, then Mexico will fully have performed all its obligations arising from the treaty. This my Government has done so far as the treaty at present requires, and proposes to continue such payment to the United States until the whole amount of all said awards shall be paid according to the requirements of the treaty. But suppose that after my Government shall have paid over the entire amount of the awards to the Government of the United States it should go into the courts of the United States with a suit against a citizen of the United States, charging that his award was obtained by fraud, and that as between my Government and him, he was not, in equity and good conscience, entitled to the money, and the court should so declare, and give judgment accordingly, would this be cause of complaint on the part of the Government of the United States, and how would the offense be stated? It could not be said that the treaty had been violated, because it would have been fully kept and performed. The complaint would have to rest entirely upon the fact that the suit had been commenced in the courts of the United States to recover the money paid to the Government of the United States on the award, and that the courts had sustained the suit, and the defendant had paid the money back in satisfaction of the decree.

The answer of Mexico to such a complaint would be, "Your laws permitted it, your courts awarded it," and surely no Government was ever so divided against itself that the executive branch could make diplomatic complaint of what the judicial branch decided a party had the right to do.

It is well settled that one Government may appear as suitor in the courts of another to prosecute any right or claim against individuals. The United States has been a suitor in the courts of Great Britain, and the courts of your country have not heretofore denied such right to Mexico; but in one case, at least, that reported in 5 Duer's Reports, p. 634, the right was expressly declared.

Your suggestion that the Government of the United States might have cause to complain of such proceedings as a violation of the treaty refers to the provisions of its second and fifth articles, which are as follows:

ARTICLE 2. * * * The President of the United States of America and the President of the Mexican Republic hereby solemnly and sincerely engage to consider the decision of the commissioners conjointly, or of the umpire, as the case may be, as absolutely final and conclusive upon each claim decided upon by them or him, respectively, and to give full effect to such decisions, without any objection, evasion, or delay whatsoever. * * *

ARTICLE 5. The high contracting parties agree to consider the result of the proceedings of this Commission as a full, perfect, and final settlement of every claim upon either Government arising out of any transaction of a date prior to the exchange of the ratifications of the present convention, and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said Commission shall, from and after the conclusion of the proceedings of the said Commission, be considered and treated as finally settled, barred, and thenceforth inadmissible.

To this I beg to say that I think there are several answers.

1. The treaty is binding upon the contracting parties—that is, the Governments of the two nations—and upon them only. Any citizen of Mexico, notwithstanding the treaty, might have elected not to present his claim to the commissioners and might have presented it to the Government of the United States, taking his chance for its voluntary payment by that Government.

The Government released all right to make a demand as a nation on behalf of its citizens, but the citizens themselves made no release, nor are they, as individuals, bound by a treaty to which, as individuals, they were not parties, and to which they never assented. It was the nation as such which made the treaty, and it is the nation as such which is bound by it. Suppose the treaty had provided for all cases of contracts as well as torts, and a citizen of Mexico had had a contract upon which, under your general laws, he could sue the United States, will it be contended that in such case this treaty would have taken away his right to sue in the Court of Claims of the United States if he had elected to do so, rather than to go before the Commission under the treaty? And if an individual as such is not estopped by the treaty, of course the nation as such is not estopped as between it and an individual.

2. If the meditated proceedings would be a violation of the treaty, then the treaty could be pleaded as a bar to such proceedings, and the suits would be dismissed. Then the only result would be that my Government, on the erroneous advice of local counsel, had brought suits in which it could not succeed. The only consequence visited upon such a proceeding by the laws of the United States is, that the defeated party must pay the costs. It would be strange, indeed, that an invidious distinction should be made against a friendly foreign nation while a suitor in your courts, and she should be subjected to severer consequences than would in such case be visited upon an alien individual. So I submit that should your construction of the treaty be held by your courts to be the correct one, and should such suits, if commenced, be dismissed for that reason, yet the whole matter would be one between two suitors, in which your Government would have no interest, and as to which it could make no complaint.

In this connection, permit me to refer to a case which arose under the treaty of Guadalupe Hidalgo, which provided for a commission to ascertain the claims of citizens of the United States against my Government, and contained an agreement by the United States with my Government to satisfy the awards which might be rendered by the Commission to be organized under the treaty, to an amount not exceeding three and one quarter million dollars.

This treaty provided that the awards should be final and conclusive. Under this treaty an award was rendered on the claim of one Gardner, and the United States paid the amount on the award. But after such award and payment your Government discovered new evidence, showing that the claim was fictitious, and that the award was obtained by fraud and perjury; thereupon your Government took proceedings to have said award declared void, and to recover the money paid. These proceedings were taken in your judicial courts, and were successful. Your Government solicited and was accorded the good offices of my Government to secure the necessary evidence to show that the award had been obtained by fraud; yet upon the construction now given by you to the treaty under consideration, the proceedings of your Government to recover the money it had paid on this fraudulent award, were just cause for complaint on the part of my Government against the United States. My Government, however, did not consider itself interested in having

the United States pay a false claim and a fraudulent award; and I trust that, on further consideration, you will not object if my Government now pursues precisely the course taken by your Government under similar circumstances.

3. But, in my opinion, the most conclusive reason why the Government of the United States could not complain is the fact that you have substantially recommended such proceedings. In your note to this legation of August 20, 1879, you communicated your report to the President, stating the conclusions at which you had arrived in relation to the duty of the President under the act of the Congress of the United States of June 18, 1878, and the fact that your views were approved by the President. The act of Congress provided, among other things, as follows:

SEC. 5. And whereas the Government of Mexico has called the attention of the Government of the United States to the claims hereinafter named, with a view to rehearing; therefore be it enacted that the President of the United States be, and he is hereby requested to investigate any charges of fraud presented by the Mexican Government as to the cases hereinafter named, and if he shall be of the opinion that the honor of the United States, the principles of public law, or considerations of justice and equity require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be reopened and the cases retried, it shall be lawful for him to withhold payment of said awards, or either of them, until such case or cases shall be retried and decided in such manner as the Governments of United States and Mexico may agree, or until Congress shall otherwise direct; and in case of such retrial and decision any moneys paid or to be paid by the Republic of Mexico in respect of said awards respectively, shall be held to abide the event and shall be disposed of accordingly; and the said present awards shall be set aside, modified, or affirmed as may be determined on such retrial; provided, that nothing herein shall be construed as an expression of any opinion of Congress in respect to the character of said claims or either of them.

In your report to the President communicated by you to this legation, after stating your conclusion that no further international action was called for, you say, among other things:

Second. I am, however, of opinion that the matters brought to the attention of the Government on the part of Mexico do bring into grave doubt the substantial integrity of the claim of Benjamin Weil and the sincerity of the evidence as to the measure of damages insisted upon and accorded in the case of the La Abra Silver Mining Company, and that the honor of the United States does require these two cases should be further investigated by the United States to ascertain whether this Government has been made the means of enforcing against a friendly power claims of our citizens based upon or exaggerated by fraud.

If such further investigation should remove the doubts which have been fairly raised on the representations of Mexico, the honor of the United States will have been completely maintained. If, on the other hand, the claimant shall fail in removing these doubts, or they should be replaced by certain condemnation, the honor of the United States will be vindicated by such measures as may then be dictated.

Third. The executive government is not furnished with the means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses. The authority for such an investigation must proceed from Congress. I would advise, therefore, that the proofs and conclusions you shall come to thereon, if adverse to the immediate payment on these awards of the installments received from Mexico, be laid before Congress for the exercise of their plenary authority in the matter.

This legation therefore concluded that in your opinion the honor of the United States required a judicial investigation of these claims. The Committee on Foreign Affairs of the House of Representatives of the United States gave the same construction to your opinion. In their report to the House, speaking of your opinion, approved by the President, they say, among other things:

The President having recommended a method of investigation and practical opening of the awards upon which it is not necessary that the United States and Mexico should agree, payment of the money to the claimants is necessarily suspended until Congress shall otherwise direct.

It is true that your report recommended special legislation authorizing judicial action. But your opinion that the honor of the United States required such action is clear and unqualified. From this it follows that if the *existing* laws of the United States authorize such action it is proper for my Government to invoke it. This legation is advised by counselors of the Supreme Court of the United States that the existing laws are ample for such investigation, and that the proceedings meditated are the proper method to secure that end.

Whether this opinion be correct or not can only be authoritatively settled by bringing suits which will obtain the final decision of your judicial courts upon this subject. The honor of the United States and the interest of my Government requiring judicial investigation, it seems to me that no objection can be made to these proceedings, because if they are sustained by the courts the end desired by both nations will be accomplished; if not, no harm will be done; it will be, at least, an honest and legal attempt to accomplish what both Governments desire—yours more than mine, because the honor of the United States, in your opinion, is at stake, while the interest of my Government in the matter is only pecuniary. Without presuming to enter upon a discussion with the Secretary of State of a question belonging entirely to the jurisprudence of his own country, it may be proper to say, in explanation of the reasons which have inclined the present representatives of Mexico in this country to believe that such proceedings as those meditated might be taken and would be sustained, that they have consulted counselors of the Supreme Court of the United States, and have been advised that the right of my Government to take such proceedings is well grounded in the jurisprudence of the United States, and rests upon the following propositions, which they consider as well established by the decisions of your judicial courts, viz:

1st. That after my Government shall have paid and the United States received the full amount or any part of the awards in question, and the treaty obligations of my Government shall thus fully have been performed to the United States as a nation in that behalf, the funds in the hands of the officials of the United States will be within the control of the judicial courts of your country; and that such courts will have jurisdiction to determine to whom the money equitably belongs. That any party who can show that, in equity and good conscience, the person in whose favor an award was made has not, and such a party has, a right to the money, may recover the same.

That to this extent the decision of the Supreme Court of the United States in the case of Phelps *vs.* McDonald, reported in the ninety-ninth volume of the reports of the Supreme Court of the United States, is full authority. This case related to money which had been awarded by the commission organized under the treaty between the United States and Great Britain of May 8, 1871. The money had been awarded to Great Britain against the United States upon the claim of McDonald, a British subject, and paid by the United States to the British minister at Washington, as the agent of Great Britain, in satisfaction of the award. Phelps, as assignee in bankruptcy of McDonald, claimed the money. The court below had appointed a receiver to whom the money had been paid by the British Government through its agent, and the receiver was holding it. It was objected that the suit was, in effect, a suit against the British Government, and that the court below had no jurisdiction of the case. But the Supreme Court overruled this objection, and held that the court had jurisdiction to decide between the parties which had the better right to the money. Two judges dissented

from the opinion, for the reason that the award was made in favor of Great Britain, but conceded that, had the money been paid on an award in favor of the United States against Great Britain, it would be competent for the court to entertain such suit.

2d. The cases in question will differ from the Phelps and McDonald case in this, that Mexico, in attempting to recover this money, will be the party against whom the award was rendered; but this can make no difference. The real question in all such cases is who has the better right in equity and good conscience to the fund in question. Suppose a suit pending in court and a decree rendered commanding the defendant to pay into court a certain amount of money adjudged to be due to the plaintiff, but that after the decree and payment the defendant discovers new evidence not possible to be previously obtained, which, upon established principles of equity, would annul the decree, it would be no objection to a suit brought for that purpose that the plaintiff in a second suit was the party against whom the former adjudication was had, and who had paid the money in satisfaction of the decree; so, in these cases, Mexico will stand in court asserting that the defendants in whose favor the awards were made have no equitable right to the money, because the claims were fictitious and the awards were obtained by fraud. The fact that Mexico has paid the money in satisfaction of her treaty obligation to the United States as a nation will not estop Mexico from asserting and showing, as against the claimants, the character of the claims, and that the awards were obtained by fraud, and will not prevent an adjudication that Mexico has an equitable right to the money superior to that of the fraudulent claimants.

3d. The provisions of the treaty in regard to the finality of the awards will not bar Mexico in such suits. Such provisions were proper in the treaty, because the awards were intended to be final between the nations as nations, and there was no law binding upon both nations declaring the effect of such awards; nevertheless, these provisions merely declare the law of every civilized nation in regard to the effect of judgments rendered by its judicial courts; and even should it be held by the court that the provisions of the treaty in this behalf applied to Mexico in such suits against the claimants, yet it is every day's practice to set aside, for frauds, judgments and decrees which, by the general principles of law, are binding and conclusive until so annulled. Fraud vitiates everything, even the most solemn adjudications of the highest courts of judicature. Judgment on an award obtained by fraud confers no right upon the party in whose favor it is rendered. The testimony discovered by Mexico since the rendition of the award is of the character which courts require to annul a former decree; and when these awards shall have been declared to be void for fraud and perjury, Mexico will be the only party having any equitable right to the money.

I have deemed it advisable to send you this note at once to correct what may be a misapprehension on your part in regard to the motive which dictated my note of the 30th ultimo. Still it is proper to inform you that, out of extreme caution, I shall forward to my Government a copy of this note, and your own to which it is in reply, together with copies of the bills prepared by counsel for the commencement of suits, and await the definite instructions of my Government before exhibiting the bills in court. This will cause some additional delay, but inasmuch as your note of the 4th instant concedes the propriety of delaying the payment of these moneys to the claimants until my Government may be able to reduce to legal completeness the documents necessary to the commencement of said suits, I have no doubt you will also be pleased

to delay such payment during the further time necessary to enable my Government to consider the views expressed in your note.

For your convenience I inclose herewith an English translation of this note.

In conclusion, permit me to say that I am convinced that the honorable Secretary will agree with me that the general interests of civilization require that every facility should be afforded for the exercise of all legal and legitimate means to secure substantial justice in such arbitrations as that provided for in the treaty under consideration.

JUAN N. NAVARRO.

A copy.

JOSÉ T. DE CUELLAR, *Srio.*

No. 72.

Mr. Navarro to Mr. Evarts.

[Translation.]

LEGATION OF MEXICO IN THE UNITED STATES,
New York, October 7, 1880. (Received October 11.)

Mr. SECRETARY: In December, 1878, a packet containing 233 documents, all numbered, was deposited in the Department under your charge, where it still is. Said documents relate to the claim of Benjamin Weil against Mexico, and were received by Mr. Sevellon A. Brown. There is also deposited in the Department of State a tin box containing documents, a list and description of which accompanies them. This box was deposited by the second secretary of this legation, and was also received by Mr. Sevellon A. Brown.

As this legation needs to examine the aforesaid documents, I would respectfully request you, Mr. Secretary of State, to be pleased to order that they be returned, in which case an employé of this legation will go to receive them in person at whatever time you may see fit to appoint.

I avail, &c.

JUAN N. NAVARRO.

No. 73.

Mr. Evarts to Mr. Navarro.

DEPARTMENT OF STATE,
Washington, October 18, 1880.

SIR: I have the honor to acknowledge the receipt of your note of the 7th instant, in which you request the return to the Mexican legation of the papers in the case of Benjamin Weil against Mexico, which were deposited with the chief clerk of this Department on the 12th December, 1878, by Mr. de Cuellar, your predecessor in office.

I will take pleasure in having these documents delivered at any time to any person whom you may designate to receive them, upon the production of his authority from you to do so, and the presentation of the inclosed form of receipt, properly signed by yourself.

Be pleased to accept, &c.,

WM. M. EVARTS.

(Inclosure:) Form of receipt.

FORM OF RECEIPT.

Received from Sevellon A. Brown, chief clerk of the Department of State of the United States, 233 papers, numbered from 1 to 233, inclusive; one paper numbered 158½; one manuscript account-book, all said to refer to the claim of Benjamin Weil against the Republic of Mexico—the document numbered 203 being imperfect.

These documents were originally formally deposited with the said Sevellon A. Brown, on the 12th December, 1878, by José T. de Cuellar, at the time secretary of the Mexican legation at the city of Washington, and are now returned to said legation at my request.

OCTOBER.

No. 74.

Mr. Navarro to Mr. Evarts.

[Translation.]

LEGATION OF MEXICO IN THE UNITED STATES,
New York, October 20, 1880. (Received October 23.)

Mr. SECRETARY: I have had the honor to receive the note of your Department of the 18th instant, in reply to mine of the 7th, in which you were pleased to express your willingness that an attaché of this legation should receive the documents deposited in the Department of State which relate to the claim of Benjamin Weil. My aforesaid note of the 7th instant has reference to the delivery not only of the papers relative to the claim of Benjamin Weil, which were deposited by the first secretary of this legation and received by the chief clerk of your Department in December, 1878, but likewise to a tin box containing documents having reference to the Abra claim, a descriptive list of which accompanies them. This box was deposited by the second secretary of this legation on the 11th day of January, 1879.

As no mention is made in the note of the Department of State to which I refer of the papers relating to the Abra claim, I beg you, Mr. Secretary of State, to be pleased to inform me, in your reply to this note, whether you have any objection to the delivery of the Abra documents to the attaché of this legation who is to receive those belonging to the claim of Benjamin Weil. The said attaché will give a receipt signed by me, and expressed in the same manner as is that which the Department of State was pleased to send me.

I reiterate, &c.

JUAN N. NAVARRO.

No. 75.

Mr. Evarts to Mr. Navarro.

DEPARTMENT OF STATE,
Washington, October 28, 1880.

SIR: I have the honor to acknowledge the receipt of your note of the 20th instant, in which, referring to your note of the 7th instant, you state that it is not only your desire to obtain the original papers in the case of Benjamin Weil, left in the keeping of this Department in December, 1878, but also to receive those filed in the Department by Mr. Romero in January, 1879, in the case of La Abra Silver Mining Company.

In reply, I have to inform you that it will be equally pleasing to me to have delivered to you, under similar conditions to those mentioned in my note of the 18th instant, the papers filed here by M. de Zamacona in January, 1879, in the case of La Abra Company; and to this end I inclose herewith a blank form of like tenor to that transmitted to you on the 18th instant, respecting the Weil papers, upon the receipt of which, duly signed by yourself, the papers in question will be surrendered to any person whom you may designate to accept them.

The list referred to in the form of receipt will be attached to the same upon its return hither.

I avail, &c.

WM. M. EVARTS.

(Inclosure:) Form of receipt.

FORM OF RECEIPT.

Received from Sevellon A. Brown, chief clerk of the Department of State of the United States, a tin box containing papers agreeing in description with the list herewith attached, with the exception of the press copy-book and its contents and the printed volume, which, not being contained in the said tin box, are yet delivered separately at this time; all of which refer to the claim of La Abra Silver Mining Company against the Republic of Mexico.

These documents were originally deposited with the said Sevellon A. Brown, on the 11th January, 1879, by Señor Don Manuel M. de Zamacona, minister of the United States of Mexico at the city of Washington, and are now returned to the Mexican legation at my request.

OCTOBER.

No. 76.

Mr. Navarro to Mr. Brown.

RECEIPT FOR PAPERS REFERRING TO CLAIM OF LA ABRA SILVER MINING COMPANY.

Received from Sevellon A. Brown, chief clerk of the Department of State, a tin box containing papers agreeing in description with the list herewith attached, with the exception of the press copy-book and its contents and the printed volume, which, not being contained in the said tin box, are yet delivered separately at this time; all of which refer to the claim of the La Abra Mining Company against the Republic of Mexico.

These documents were originally deposited with the said Sevellon A. Brown, on the 11th of January, 1879, by Señor Don Manuel M. de Zamacona, minister of the United States of Mexico at the city of Washington, and are now returned to the Mexican legation at my request.

JUAN N. NAVARRO.

NOVEMBER 6, 1880.

[*Papers, &c., referred to in the foregoing receipt.*]

1. Printed case.

2. Press copy-book, pp. 1 to 189; pp. 77 and 154 gone.

Between pp. 80 and 81 are pasted copies of 4 letters dated Mazatlan, June 16, 1866, signed de Laquel, and addressed to E. H. Parker, W. C. Ralston, Brodie & Co., and Weaver, Wooster & Co., San Francisco.

Between pp. 98 and 99 are pasted copies of letters dated Mazatlan, signed de Laquel, as follows: August 17, 1866, to Garth, New York; August 16, 1866, to Pfeiffer, San Francisco; August 16, to Weil & Co., San Francisco; August 16, to Stoud, San Francisco; August 16, to Colonel Taylor, San Francisco; August 16, to W. C. Ralston.

Between pp. 124 and 125 are pasted copies of letters dated Mazatlan, and signed de

Laquel, as follows: November 17, 1866, to A. Stoud, San Francisco; November 18, to Weil & Co., San Francisco; November 18, to Mills, San Francisco; November 18, to Ralston, San Francisco.

Between pp. 125 and 126 is pasted copy of letter dated Mazatlan, November 17, 1866, to Garth, signed de Laquel (8 pp.).

Between pp. 136 and 137 are pasted copies of letters dated Mazatlan, signed de Laquel, as follows: January 5, 1867, to Nolte; January 5, 1867, to Ralston (two letters); and one letter to Garth.

Between pp. 144 and 145 are pasted copies of letters dated Mazatlan, signed de Laquel, February 5, 1867, to Ralston; February 5, 1867, to Garth (2 pp.).

Between pp. 152 and 153 is pasted copy of letter dated Mazatlan, April 10, 1867, signed de Laquel, to Ralston, San Francisco.

Between pp. 156 and 157 are pasted copies of letters dated Mazatlan, signed Exall, as follows: May 17, 1867, to Garth (2 pp.); June 13, to Ralston; June 11, to Garth.

Between pp. 171 and 172 is pasted copy of letter dated Mazatlan, signed Exall, August 5, 1867, to Garth (4 pp.).

Between pp. 172 and 173 is pasted copy of letter dated Mazatlan, signed Exall, October 6, 1867, to Garth (3 pp.).

Between pp. 176 and 177 is pasted copy of letter dated Mazatlan, November 17, 1867, signed Exall, to Garth (4 pp.).

Between pp. 187 and 188 is pasted copy of letter dated Mazatlan, January 24, 1868, signed Exall, to Garth (2 pp.).

3. Attached to press copy book, affidavit of J. A. de Laquel.
4. Attached to press copy book, letter Garth to Exall, May 10, 1867.
5. Attached to press copy book, letter Garth to Exall, May 20, 1867.
6. Attached to press copy book, letter Garth to Exall, May 30, 1867.
7. Attached to press copy book, letter Garth to Exall, June 10, 1867.
8. Attached to press copy book, letter Garth to Exall, July 10, 1867.
9. Attached to press copy book, letter Garth to Exall, July 20, 1867.
10. Attached to press copy book, letter Garth to Exall, August 10, 1867.
11. Attached to press copy book, letter Garth to Exall, October 10, 1867.
12. Certified transcript of press copy book.
13. Exall to Granger, Tayoltita, February 21, 1868.
14. Exall to Granger, Mazatlan, March 15, 1868.
15. Exall to Granger, San Francisco, April 1, 1868.
16. Exall to Granger, New York, May 8, 1868.
17. Exall to Granger, New York, June 15, 1868.
18. Exall to Granger, Richmond, July 18, 1868.
18¼. Deposition of Fred'k Sundell.
19. Secretary of War to R. B. Lines, November 8, 1877 (2 inclosures).
20. Secretary of War to R. B. Lines, December 21, 1877 (2 inclosures).
21. Certified copy of indictment of A. W. Adams.
22. T. B. Van Buren to R. B. Lines, November 14, 1877.
23. Decree of court, fourth judicial district of California.
24. C. B. Dahlgreen to R. B. Lines, November 12, 1877.
25. Depositions of J. F. and Trinidad Gamboa.
26. Depositions of J. M. Loaiza.
27. Affidavit of Wm. R. Gorham.
28. Certified copy of commitment of J. P. Cryder.
29. Certified copy of certificate of incorporation of La Abra Company.
30. Certified copy of report of La Abra Company, January 16, 1866.
31. Certified copy of report of La Abra Company, November 20, 1867.
32. Certified copy of report of La Abra Company, January 20, 1868.
33. Certified copy of report of La Abra Company, January 20, 1877.
34. Certified copy of report of La Abra Company, January 18, 1878.
35. Certified copy of judgment roll in suit of J. H. Garth *vs.* La Abra Silver Mining Company, July 3, 1867.
36. A. B. Elder to Sr. Mata, November 12, 1877.
37. A. B. Elder to R. B. Lines, December 6, 1877.
38. A. B. Elder to R. B. Lines, December 26, 1877.
39. A. B. Elder to R. B. Lines, January 4, 1878.
40. A. B. Elder to R. B. Lines, January 29, 1878.
41. A. B. Elder to R. B. Lines, March 4, 1878.
42. A. B. Elder to R. B. Lines, April 8, 1878.
43. A. B. Elder to R. B. Lines, December 8, 1878.
44. B. Wilson to T. J. Bartholow and reply, June 6, 1878.
45. Depositions of Cipriano Quiros, Dionisio Gutierrez, Paz Gurrola, and Martin Delgado, together with certified copy of letter of C. B. Dahlgreen to Quiros, May 23, 1872.

The original list from which this is taken is to be found with note from Mexican egation of January 11, 1879.

No. 77.

Mr. Navarro to Mr. Brown.

RECEIPT OF PAPERS NUMBERED FROM 1 TO 233, REFERRING TO CLAIM OF BENJAMIN WEIL.

Received from Sevellon A. Brown, chief clerk of the Department of State of the United States, 233 papers, numbered from 1 to 233, inclusive, one paper numbered 158½, one manuscript account-book, all said to refer to the claim of Benjamin Weil against the Republic of Mexico—the document numbered 203 being imperfect.

These documents were originally formally deposited with the said Sevellon A. Brown on the 12th December, 1878, by José T. de Cuellar, at the time the secretary of the Mexican legation at the city of Washington, and are now returned to said legation at my request.

JUAN N. NAVARRO.

NOVEMBER 6, 1880.

List of papers transmitted to the Secretary of State in proof of the fraudulent character of the claim of Benjamin Weil against the Government of Mexico.

1. Certified copy of articles of copartnership of Levy, Bloch & Co.
2. Certified copy of agreement for the dissolution of the firm of Levy, Bloch & Co.
3. Affidavit of Marx Levy.
4. Affidavit of Firnberg.
5. Affidavit of S. E. Loeb.
6. Affidavit of E. W. Halsey.
7. Affidavit of Louis Scherck.
8. Affidavit of J. C. Ransom.
9. Affidavit of J. C. Evins.
10. Affidavit of B. C. Brent.
11. Affidavit of R. F. Britton.
12. Affidavit of John F. Hope.
13. Affidavit of W. R. Boggs.
14. Letter of J. C. Wise.
15. Affidavit of Jacque Levy.
16. Affidavit of S. G. Aldrich.
17. Affidavit of J. W. Patton.
18. Affidavit of Jas. E. Slaughter.
19. Affidavit of Miguel de la Peña.
20. Certified copy of agreement between the parties interested in the claim of Benjamin Weil.
21. Weil to Bloch. Two post-office stamps.
22. Weil to Bloch.
23. Weil to Bloch.
24. Weil to Bloch.
25. Weil to J. Levy.
26. W. G. Thompson to Levy, Bloch & Co. Receipt for cotton.
27. W. G. Thompson to Levy, Bloch & Co. Receipt for cotton.
28. Weil and J. Levy to Bloch.
29. W. G. Thompson to J. Levy & Co. Receipt for freight charges.
30. Weil to Loeb.
31. Weil to Loeb.
32. Weil to Loeb.
33. Weil to Loeb.
34. General Boggs to General Magruder. (Copy certified by notary, September 28, 1863.)
35. Governor Moore to Weil and Levy.
36. Weil to Loeb and M. Levy.
37. Weil to Loeb and M. Levy.
38. Certificate of C. Russell, quartermaster, of impressment of cotton.
39. Weil to Loeb.
40. M. Levy to Loeb. Power of attorney.
41. Weil to Loeb.
42. Weil to Bloch.
43. Weil to Loeb.
44. Weil to Loeb.
45. Loeb to Weil.
46. Weil to J. Levy.
47. Weil to Loeb.
48. Loeb to Weil.
49. Weil to Loeb.
50. Weil to Loeb.
51. Alex. Valderas. Receipts for cotton and freight charges.
52. Weil and M. Halff to Loeb.
53. Weil to Loeb.
54. Weil to Loeb.
55. Weil to Loeb.
56. Weil to Loeb.
57. Weil to Loeb.
58. Barrett to Loeb.
59. Lieutenant-Colonel Hutchins. Permit to Loeb to ship cotton.
60. J. Rosenfield & Son to Loeb.
61. Bloch to Loeb.
62. T. C. Twichell, agent cotton bureau. Permit to Loeb to ship cotton.
63. Weil to Loeb. Jacque Levy.
64. J. C. Baldwin & Co. to Loeb. Bill for handling cotton.

65. Bloch to Loeb or W. Levy, also Bloch to Lieut. A. T. Mure, acting assistant quartermaster.
66. M. Levy to Loeb.
67. Scherck to Loeb.
68. Baldwin & Co. to Loeb.
69. Alex. Valderas to Loeb. Receipt for freight charges.
70. Weil to Loeb. Jacques Levy.
71. E. Menieres to Loeb. Receipt for export duties.
72. Baldwin & Co. to Loeb.
73. Loeb to Weil and M. Levy.
74. List of hospital shares to be bought for State of Louisiana.
75. Weil to Loeb. Jacques Levy.
76. Bloch to Loeb.
77. G. Jenny to Loeb. E. W. H.
78. Weil to Loeb. E. W. Halsey.
79. Jenny to Loeb.
80. Jenny to Loeb. E. W. H.
81. Weil to Loeb. Jacque Levy.
82. Weil to Loeb.
83. Weil, Bloch & Levy to Loeb. E. W. Halsey.
84. Bloch to Loeb.
85. Weil and J. Levy to Bloch.
86. Weil and J. Levy to Bloch. Jacque Levy.
87. Weil and J. Levy to Bloch.
88. M. Levy to Weil.
89. G. Jenny to Loeb. E. W. H.
90. J. Levy to Weil.
91. J. Levy to Weil.
92. Weil to Loeb. Jacque Levy.
93. Weil to Bloch.
94. Regulations of cotton bureau.
95. B. Weil and J. Levy to M. Borme. E. W. Halsey.
96. J. Levy to Loeb.
97. J. Levy to Loeb.
98. Weil to Loeb. E. W. Halsey.
99. Weil to Jenny.
100. Governor Allen to Loeb.
101. Governor Allen to Loeb.
102. Governor Allen to Loeb.
103. B. Weil to General E. Kirby Smith. E. W. Halsey.
104. Governor Allen to Loeb.
105. Weil to Loeb. E. W. Halsey.
106. Weil to Jenny. E. W. Halsey.
107. Weil to Firnberg and J. Levy. E. W. Halsey.
108. Governor Allen to Loeb.
109. Weil to Jenny.
110. J. Levy to Firnberg.
111. Levy to Firnberg. Jacque Levy.
112. Barrett to Loeb.
113. M. Levy to Loeb. Jacque Levy.
114. Governor Allen to Loeb.
115. Governor Allen to Loeb.
116. J. Levy to Bloch, F. & Co.
117. Jenny to Loeb.
118. Marx Levy to Loeb. Jacque Levy.
119. Clapp to Loeb.
120. Governor Allen to Loeb.
121. Governor Allen to Loeb.
122. Governor Allen to Loeb.
123. Barrett to Loeb.
124. Statement of Weil with Halsey's affidavit.
125. Clapp to Loeb.
126. Weil to Loeb. E. W. Halsey.
127. Weil & Jenny to Loeb.
128. Clapp to Loeb.
129. J. Levy to Bloch.
130. Weil & Jenny to Govèrnor H. A. Allen.
131. Isaac Levy to Loeb. Jacque Levy.
132. Clapp to Loeb.
133. Schooners Lehman and Delfina in account with B. Weil, Levy, Bloch & Co.
134. J. Levy to Bloch, Firnberg & Co.
135. J. Levy to Weil and Loeb.
136. G. Jenny to Loeb. E. W. H.
137. Daniel Goss to Loeb.
138. M. Levy and James Weil to B. Weil & Loeb. Jacque Levy.
139. I. Levy to Weil and Loeb.
140. E. W. Halsey, private secretary, to Loeb, with affidavit of Halsey attached.
141. G. Jenny to Levy, Bloch & Co. Receipt for $12. E. W. H.
142. Weil to Loeb. E. W. Halsey.
143. Weil to Loeb. E. W. Halsey.
144. Barrett to Loeb.
145. Weil to Loeb. E. W. Halsey.
146. Barrett to Loeb.
147. Weil to Loeb. E. W. Halsey.
148. Major Leeds to Major Willie with affidavit of Halsey.
149. Barrett to Loeb.
150. Weil to Loeb. E. W. Halsey.
151. Baldwin & Co. to Loeb.
152. G. Jenny to Loeb. E. W. H.
153. Weil to Loeb. E. W. Halsey.
154. J. C. Baldwin & Co. to Loeb.
155. Barrett to Loeb.
156. Baldwin & Co. to Loeb.
157. Account schooner Delfina.
158. Bill against schooner Delfina.
158½. Governor Allen to Loeb.
159. B. Weil to Loeb. E. W. Halsey.
160. G. D. Hite to Loeb. B. C. Brent.
161. B. Weil to Loeb. E. W. Halsey.
162. Barrett to Loeb.
163. J. C. Baldwin & Co. to Loeb.
164. Maj. A. H. Willie to Loeb. Permit for cotton.
165. G. Jenny and Bloch to Loeb. E. W. H.
166. J. C. Baldwin & Co. to Loeb.
167. Major Willie to Loeb. Permit for cotton.
168. Baldwin & Co. to Loeb.
169. Geo. D. Hite to Loeb. B. C. Brent.
170. J. Levy to Loeb.
171. J. C. Baldwin & Co. to Loeb.
172. Baldwin to Loeb.
173. Jenny to Loeb.
174. G. Jenny to Loeb. E. W. H.
175. Jenny to Loeb.
176. Isaac Levy to Loeb.
177. Jenny to Loeb.
178. Vance & Co. to Loeb.
179. Jenny to Loeb.

180. Baldwin & Co. to Loeb.
181. Hite to Loeb. B. C. Brent.
182. Bloch to Loeb.
183. Weil to Loeb. E. W. Halsey.
184. Baldwin & Co. to Loeb.
185. Oswald & Co. to Loeb.
186. Jenny to Loeb.
187. Bloch to Loeb.
188. Jenny to Bloch.
189. Hite to Loeb. B. C. Brent.
190. Weil to Loeb. E. W. Halsey
191. Jenny to Loeb.
192. Baldwin & Co. to Loeb.
193. G. Jenny to J. Bloch. Receipt for $760.
194. Bloch to Loeb.
195. Bloch to Loeb.
196. Barrett to Loeb.
197. Weil & Jenny in account with J. C. Baldwin & Co.
198. Weil to Loeb. E. W. Halsey.
199. I. Levy to Loeb. Jaque Levy.
200. Weil to Loeb. E. W. Halsey.
201. I. Levy to Loeb.
202. A. Urbahn to Hite.
203. Weil to Loeb. E. W. Halsey.
204. Governor Allen to Jenny. Certificate by H. Beard, captain and provost-marshal at Galveston.
205. Hite to Jenny. B. C. Brent; postmark and stamp.
206. I. Levy to Loeb. Jacque Levy.
207. Weil & Jenny to Loeb. E. W. Halsey.
208. Governor Allen to Clapp. Certified by Beard.
209. Weil to Loeb. E. W. Halsey.
210. Weil to Loeb. E. W. Halsey.
211. Account current of Loeb with Weil & Jenny.
212. I. Levy to Loeb. Jacque Levy.
213. Loeb to Weil & Jenny. Postmark and stamps.
214. I. Levy to Weil.
215. B. Weil to Loeb. E. W. Halsey.
216. I. Levy, Bloch and Firnberg to Loeb. Jacque Levy.
217. B. Weil to Loeb. E. W. Halsey.
218. Jenny to Loeb. E. W. Halsey.
219. Isaac Levy to Bloch.
220. Weil to Loeb. E. W. Halsey.
221. Jenny to Loeb.
222. Jenny to Loeb. E. W. H.
223. B. Weil to Loeb. E. W. Halsey.
224. Jenny to Loeb. E. W. H.
225. G. Jenny to Loeb. E. W. H.
226. J. Rosenfield & Son to Loeb. Postmark.
227. G. Jenny to Theo. Mohr. E. W. H.
228. Weil to Loeb. E. W. Halsey.
229. Weil to Loeb. E. W. Halsey.
230. G. Jenny to Loeb. E. W. H.
231. Bloch to Loeb.
232. G. and C. F. Jenny to Loeb. E. W. H.
233. G. Jenny to Loeb. E. W. H.
234. Cash book of Weil & Jenny.

No. 78.

Receipt for the fifth installment.

DEPARTMENT OF STATE,
Washington, January 27, 1881.

Received of Señor Don Juan N. Navarro, chargé d'affaires *ad interim* of the Government of Mexico, a check drawn by himself upon the National City Bank of New York to the order of the undersigned, for two hundred and ninety-six thousand and sixty-six dollars and five cents ($296,066.05), being in discharge of the fifth installment of the indemnity due on the 31st instant from that Republic to the United States, under the convention between the two Governments of the 4th of July, 1868, according to an adjustment made on the 31st of January, 1878, of the relative value of the three currencies composing the indemnity.

WM. M. EVARTS,
Secretary of State.

No. 79.

Mr. Navarro to Mr. Evarts.

[Translation.]

LEGATION OF MEXICO IN THE UNITED STATES,
New York, February 2, 1881. (Received February 4.)

Mr. SECRETARY: I have received instructions from my Government to state to the Department under your charge, that while it is firmly resolved scrupulously to abide by the stipulations of the convention of July 4, 1868, as regards the payment of the installments annually due to the United States Government, declaring that nothing subsequently done by it is to be understood as having been done with a design of avoiding the fulfillment of that duty, it nevertheless again appeals, through me, to this Government's sense of justice and equity, asking it to be pleased to suspend the payment of dividends to those interested in the claim of Benjamin Weil and that of the Abra Mining Company, which are now undergoing examination, and which are considered fraudulent.

I take the liberty to beg the Department of State to be pleased to reply to this note, if possible, before the 7th instant, not only that I may be enabled to translate its reply in due season to my Government, but also in view of the official notice published this day by the newspapers to the effect that payments under the fifth installment will commence on Monday next.

I avail, &c.,

JUAN N. NAVARRO.

No. 80.

Mr. Evarts to Mr. Navarro.

DEPARTMENT OF STATE,
Washington, February 5, 1881.

SIR: I have had the honor to receive your note, dated at the city of New York, on the 2d inst., but not received here at the Department until yesterday's mail, the 4th inst., wherein, in accordance with your instructions, you state that while your Government is firmly resolved scrupulously to abide by the stipulations of the convention of July 4, 1868, as regards the payment of the installments annually due thereunder to the Government of the United States, and declares that nothing subsequently done by it is to be understood as having been done with a design of avoiding the fulfillment of that duty, it nevertheless again appeals, through you, to this Government's sense of justice and equity, for suspension of the payment of dividends in the Weil and La Abra awards, in respect to which fraud is alleged by your Government. And you further ask that a reply be sent to you by the 7th instant, for purposes which you indicate.

I regret that your transaction of the business confided to you, from a point other than the national capital, which is the seat of your legation, and through the necessarily uncertain channel of the public mail, should, in this instance, have given rise to an apparent delay in responding to your request.

In reply, I have to state that the decision of the President in the Weil and La Abra cases, as heretofore communicated to your legation, must be regarded as the final determination of the executive Government that the awards under the Commission organized pursuant to the terms of the convention of July 4, 1868, cannot be reconsidered, diplomatically, between the two Governments; and that, consequently, the administration of the payments to the parties interested in the awards belongs exclusively to the Government of the United States in its obligations to its own citizens. This administration is regarded by the President as requiring the distribution of the awards in these cases upon the same regulations as in all other cases, in the absence of any direction by Congress to the contrary.

Accept, &c.,

WM. M. EVARTS.

V.—*PROCEEDINGS ON THE WEIL AND LA ABRA CLAIMS UNDER PRESIDENT GARFIELD'S ADMINISTRATION.*

No. 81.

Mr. Zamacona to Mr. Blaine.

WASHINGTON, *May* 12, 1881. (Received May 12.)

Mr. SECRETARY: In the correspondence which has been exchanged between this legation and the Department of State, in the matter of the claims of Benjamin Weil and La Abra Mining Company, this legation has endeavored to impress upon the Government of the United States the fact that among the objects which it seeks in relation to those claims is one of a purely moral character, to wit, that of preventing them from encouraging, by their impunity, the commission of fraud and perjury, and thereby bringing into discredit the institution of international arbitrations. Actuated by this and other motives, my Government has from time to time transmitted to that of the United States the evidence which has accumulated of the fraud in the claims referred to.

It is with this view that the undersigned has now the honor to inform the Department of State that there is in the office of the Third Auditor of the Treasury Department, among the documents in "settlement No. 2388, of 1873," an affidavit of John M. Martin, in support of a claim on which a favorable decision was rendered by the Southern Claims Commission. In this affidavit the witness expresses himself as follows:

> My residence was on the plantation of G. W. Compton from the 1st of April, 1861, to the 20th of April, 1864, where I was personally engaged in farming, until about the 16th of March, 1864, when I offered my services to Admiral Porter. He employed me as a pilot, and I was thus engaged until about the 28th of April, 1864. I then went to New Orleans, remained there about one month, then went to Belmont County, Ohio, where I remained until the 13th of April, 1865.

This affidavit directly contradicts that which the same Martin gave under oath in the Weil case, to the effect that he was an eye-witness of the seizure of Weil's cotton in Mexico on the 20th of September, 1864.

This legation has also information showing that O. F. Wild, a secret agent of the Treasury Department in New Orleans, has, in the course of the last three years, made frequent reports to that Department to the effect that John M. Martin confessed to him that the reclamation of Weil was fraudulent, and his own testimony false, as well as that of the witnesses brought forward by the claimant; and that a criminal conspiracy had been formed to secure proofs in support of the claim, in pursuance of which the witnesses were to receive certain sums named by Martin, as the reward of their perjury.

The reports of Wild further show, as this legation is informed, that Martin, George D. Hite (another of Weil's witnesses), and Ernest F. Herwig, formerly, it is believed, an officer of the customs, were engaged in exacting money from the owners of the claim by forging in New Orleans letters, which were mailed from Washington by an accomplice, purporting to offer them, on behalf of the minister of my Government, money to reveal the fraud of Weil and the character of his proofs. It also appears that Martin proposed to Wild that the latter should negotiate with the minister of Mexico to expose the fraud, but that Wild, instead of accepting this proposition, communicated it to his superiors in Washington.

The Department of State will perceive that the documents above described would not only strengthen the conviction that the claim of Weil was vitiated by fraud, but would also reveal the criminal character of the methods which have been employed by the claimant and his associates. Should the information which this legation has received from very respectable sources prove correct, it will be seen that the accomplices of Weil have not hesitated to commit forgery. The Department of State has the means of ascertaining the truth in the matter.

I do not know what steps my Government may take when it has before it documents indicating that the signature of its representative in the United States has been forged, but as it may be desirous for various reasons, of possessing proof of that fact, I take the liberty of asking that certified copies of the documents indicated may be furnished to this legation if, as I hope, they exist in the Treasury Department.

The undersigned does not doubt that the Department of State will grant this request, remembering, as he does, what was done by the Government of Mexico in a similar case upon the request of the Government of the United States, and the assurances of reciprocity which the Government of Mexico received on that occasion.

After a large sum of money had been paid to Dr. George A. Gardner upon the award of the Commission constituted by the treaty of Guadalupe, whose decisions, according to that treaty, were to be final and conclusive, it was discovered that Gardner had availed himself of fraud and falsehood to secure indemnity for imaginary injuries. The Government of the United States then applied to the courts to procure the punishment of the offender and the recovery of the money; and, in order to complete its proof, it applied also to Mexico, sending to that country a special commission for the purpose. The proceedings in relation to this affair are to be found in "Senate Reports, vol. 2, part 2, of the first session of the Thirty-third Congress." It will be seen that the Mexican Government not only facilitated all the investigations intended to expose the fraud of Gardner, but that it also furnished the documents which it was asked to furnish for that purpose. In asking for some of these papers, the representative of the United States, on the 7th December, 1852, addressed to the minister of foreign relations (page 158) a note expressing his thanks, and concluding with these words:

> Should the Government of Mexico, at any future time, stand in need of similar acts of comity on the part of the Government of the undersigned, he trusts he need hardly assure his excellency that they will be most cheerfully and promptly rendered.

The spirit of friendship and justice which animates the present Government of the United States in its relations with Mexico renders it unnecessary for me to dwell upon this old promise.

I have the honor, Mr. Secretary, to renew to you, on this occasion, the assurances of my most distinguished consideration.

M. DE ZAMACONA.

VI.—*PROCEEDINGS ON THE WEIL AND LA ABRA CLAIMS UNDER PRESIDENT ARTHUR'S ADMINISTRATION.*

No. 82.

Mr. Blaine to Mr. Zamacona.

DEPARTMENT OF STATE,
Washington, December 9, 1881.

SIR: I regret to find that I have overlooked until quite recently your note of the 12th of May last, in reference to the case of Benjamin Weil. The events of the past summer and autumn may, however, explain, if not excuse, this continued oversight.

In that note you refer to and ask for copies of certain papers ascertained by you to be of record in the Treasury Department among the settlements of the awards of the Southern Claims Commission, and among the files of the Secret Service Division, these papers being:

First. An affidavit of John M. Martin in favor of a claim before the Southern Claims Commission, in which the affiant details his movements and residence from April 1, 1861, until April 13, 1865.

Secondly. Certain reports made to the Treasury Department during the last three years by Mr. A. F. Wild, a secret agent, to the effect that John M. Martin confessed to him the fraudulency of the Weil claim, and had proposed to him (Weil) to negotiate with the minister of Mexico to expose the fraud.

In response to your request, I now have pleasure in sending to you herewith copies of the papers you describe. And in transmitting them, permit me to say that this Government can have no less moral interest than that of Mexico in probing any allegation of fraud whereby the good faith of both in a common transaction may have been imposed upon.

I beg, &c.,

JAMES G. BLAINE.

[Inclosure in No. 44.]

UNITED STATES OF AMERICA:

TREASURY DEPARTMENT,
November 30, 1881.

Pursuant to Section 882 of the Revised Statutes, I hereby certify that the annexed are true extract copies from the original papers on file in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed on the day and year first above written.

[SEAL.]

CHAS. J. FOLGER,
Secretary of the Treasury.

JOHN MILLER MARTIN
vs.
UNITED STATES. } No. —.

Before Claims Coms.

Be it remembered that on the 28th day of December, 1871 A. D., and the adjourned day, before me, William Grant, U. S. com. for the dist. of Louisiana, and special com., personally appeared the claimant and his witness, Dan'l W. Shaw, who, being duly sworn according to law to tell the truth, the whole truth, and nothing but the truth relative to this claim, did depose as follows, each being examined out of the presence of the other; present, Dr. R. H. Porter for claimant:

1.

Deposition of Dan'l W. Shaw, a witness called and sworn for the claimant.

I, Dan'l W. Shaw, do hereby testify that the claimant is, and always has been, a loyal citizen.

I was living within a few miles of claimant when the property described in his petition was taken; one thousand barrels of corn, worth $2.50 per bar.; a large flock of sheep, worth $2.50 per head; also, a large lot of hogs, worth $5.00 a head. I do not know the exact number of either sheep or hogs that was taken, but think there was at least as many as is charged for in claimant's petition. These were all taken by the United States soldiers and carried to Alexandria, where the U. S. Army was encamped, and, I presume, used by said Army.

D. W. SHAW.

Sworn to before me Dec. 28, 1871.

WM. GRANT,
Sp'l Cr.

2.

Deposition of D. W. Shaw, a witness called and sworn for claimant.

To the interrogatories he answers as follows:

To the fir-t he saith: I was.

To the 2: I saw them all taken.

To the 4: They were taken by U. S. soldiers in March, 1864, from the plantation of G. W. Compton, where the claimant was then residing.

To the 5: Capt. Martin and myself are the only ones whose names I remember.

To the 6: There was a lieut. present who, I think, ordered the taking, but I do not know his name or rank; he belonged to Gen'l Banks' command.

To the 7: The soldiers took the corn off in wagons, and drove the sheep and hogs.

To the 9: It was taken off in the direction of Alexandria; I did not follow it, but was told it went there.

To the 10: I suppose all the property taken was used by the U. S. Army.

To the 11: Not that I know of.

To the 12: I do not know of any voucher or receipt having been asked for, nor was any given that I know of.

To the 13: None of the property was taken secretly; it was all taken in the afternoon.

To the 14: Gen. Banks' army was encamped in and around Alexandria, the nearest camp being about two miles and an half from the place where the property was taken from. It had been encamped there about 15 or 20 days. They remained there in all about 6 or 8 weeks. There had been no battle or skirmish before the taking of the property. I knew none of the officers of the Army.

To the 15th: The corn had been harvested, was well ripened, and was in the crib, and hogs were in very good condition. The sheep were worth about two and an half dollars per head, and the hogs worth five dollars a head. I have not talked to the claimant about their value until to-day. The corn was worth at least two and an half dollars per barrel. It, the property, was all taken by the U. S. Army about March, 1864.

To the 16th: It was all taken in my presence, and I suppose there was at least one thousand barrels of corn, about fifty hogs, and about one hundred sheep. I have handled corn myself, and am a good judge of quantity.

To the 19: I suppose it was taken for the use of the Army.

To the 20 and the 21: He answers, he does not know.

To the 22: I think so:

To the 23: I think it was taken by order issuing from some officer properly empowered.

D. W. SHAW.

Sworn before me Dec. 8th, 1871.

WM. GRANT,
Special Com.

Adjourned to Saturday, the 30th of December, 1871.

Deposition of John Miller Martin, claimant, called and sworn for himself.

I, the claimant, am forty-seven years old, and reside in New Orleans, La. In March, 1864, I was residing on G. W. Compton's plantation, which is situated in Bayou Rapids, about five miles from Alexandria. During a short absence from home in the latter

part of said month, and about a week subsequent to the taking by the United States authorities of my eleven mules and nine horses, some of the soldiers who were encamped in the neighborhood entered the said place and took from it about one thousand barrels of corn, one hundred head of sheep, and between fifty or sixty head of hogs. I never received either receipt or money for the property thus taken.

JOHN M. MARTIN.

Sworn to Dec. 30, 1871.

WM. GRANT,
Special Com.

Deposition of John Miller Martin, claimant, called and sworn for himself.

The interrogatories propounded him he answered as follows:

To the first he says: My residence was on the plantation of G. W. Compton from the 1st of April, 1861, to the 28th of April, 1864, where I was personally engaged farming until about the 16th of March, 1864, when I offered my services to Admiral Porter; he employed me as a pilot, and I was thus engaged until about the 28th of April, 1864. I then went to New Orleans, remained there about one month, then went to Belmont County, Ohio, where I remained until the 13th of April, 1865, when I returned to New Orleans. On or about the 25th of April, 1864, my entire place was burned.

A.

WASHINGTON, D. C., *March* 15, 1866.

In constructing the defense of Alexandria, La., while held by the army, for the purpose of building a dam, buildings within rifle-shot of the line of intrenchments which might under any circumstances serve as a cover for the enemy were leveled by general orders. This was indispensable to the safety of the army and the fleet. Whether the property of Captain Martin was within this line, or whether his buildings were destroyed under this order, or were within range of the fleet lying above the Rapids, I cannot say; this can easily be ascertained by measurement or by evidence.

Captain Martin is a loyal citizen, a man of integrity and character, and deserves well of the Government on account of service as well as character.

N. P. BANKS, *M. G. V.*

(Indorsed:) Exhibit A. Wm. Grant, special com.

3. By order of Gen. N. P. Banks, from military necessity, as will be more fully seen by reference to a copy of a certificate given to me by Gen. Banks, which I also offer as proof of my loyalty. Said copy is hereto annexed, and marked A.

To the interrogatories from the 3d to the 14th, inclusive, he answers: No.

To the 15th: On the 28th of April, 1864, I left Alexandria and came to New Orleans on the steamboat Meteor, a transport of Admiral Porter's fleet, and I did not return to my plantation, or, rather, the plantation upon which I resided, until after the surrender. During said absence I was not engaged in business of any kind.

To the 16th: From 1861 to the date of the fall of the City of New Orleans I was employed as a pilot on the steamboat Homer, said boat being engaged in civil trade between New Orleans and Shreveport, La.

To the 17th and 18th he answers: No.

To the 19th: None, except that the Confederates tried to force me into their service.

To the 20th he says: No.

To the 21st: Nothing, except my services, which I offered to Admiral Porter upon his arrival at Alexandria, in May, 1863, and in March, 1864. I also gave Capt. W. R. Hoel, commander of the United States gunboat Benton, information in regard to the whereabouts of the so-called Confederate fleet.

To the 22d: Nothing except what I have stated in my previous answers. As soon as the U. S. authorities arrived in my region of the country I offered them my services, which was all that I could do.

To the 23d: I had three brothers in the Union army, but no relations in the Confederate army. In 1865—the spring thereof—I took one of my brothers, who was sick in the hospital at the time, to Ohio with my family, where he remained until he recovered. That was all the assistance I ever rendered any of them.

To the interrogatories from the 24th to the 31st, inclusive, he answers: No.

To the 32: I took the iron-clad oath at New Orleans about June, 1864, in order to procure permission to go to Ohio. I have not held any office under the United States Government since the war.

To the 33: My sympathies, feelings, language, and influence have always been with the Union cause. I did not vote at all, either at the beginning of hostilities or during the war. I adhered to the Union cause even after the adoption of the ordinance of secession by my State.

To the 34: I do solemnly swear that from the beginning of hostilities against the United States to the end thereof my sympathies were constantly with the cause of the United States; that I never, with my own free will and accord, did anything, or offered or sought, or attempted do anything by word or deed to injure said cause or retard its success, and that I was at all times ready and willing, when called upon, to aid and assist the cause of the Union, or its supporters, so far as my means and power and the circumstances of the case permitted.

JOHN M. MARTIN.

Sworn to before me, December 30, 1871.

WM. GRANT.
Special Com.

7.

To the second series of interrogatories the claimant answers as follows:
To the first he saith: I was not. I was with Porter's fleet.
To the 2: No.
To the 6: Not being present, I do not know.
To the 8th: My wife and daughter, who were both present upon the occasion of the taking, told me that the soldiers drove the sheep and hogs off, and hauled the corn off in wagons.
To the 9: I have heard that all the property taken was carried to Alexandria.
To the 10: I have heard and believe that the property taken was used by the army which was encamped in and around Alexandria.
To the 11 and 12: No complaint was made, nor was any receipt or voucher asked for.
To the 13: None of the property was taken secretly. I was told that it was all taken about mid-day.
To the 14: General Banks's entire army was encamped in and around Alexandria, the nearest camp being about two miles and a half from the plantation from which the property was taken. It had been encamped there about 5 or 8 days, and remained until about the 1st of April, 1864. There had been no battle nor skirmish near there before the property was taken. I did not know any of the officers of the Army
To the 15th: The corn was in good condition, well ripened, dry, and unhusked, but stored in a crib. It could not have been purchased at the time when taken for less than two dollars and a half per barrel. The sheep and hogs were all in good condition, and worth at least—hogs five dollars, sheep two and a half dollars per head. Indeed none of the articles specified could have been purchased anywhere in the neighborhood for the price I have charged in my petition.
To the 16th: I judge of quantity taken from what my wife and daughter told me, and from the fact that I knew what I had left on the place just before I started up Red River with Porter's fleet.
To the 19th: I do believe that the property specified was taken for the actual use of the Army, and not for the mere gratification of individual officers or soldiers.
To the 20th: I believe the Army at that time required fresh food.
To the 21st: I believe the want for the articles taken was so urgent as to justify the soldiers in such taking.
To the 22: I think so.
To the 23: I do believe that the property specified was taken by order of some officer who was properly empowered to issue such order.
I hereunto annex as proof of my loyalty document marked B.

JOHN M. MARTIN.

Sworn to before me, December 30, 1871.

WM. GRANT,
Sp'l. C'r.

I hereby certify that the foregoing fifteen pages of depositions were taken in my presence and reduced to writing by my clerk, and carefully read over to the claimant and witness and by them signed at the time, place, and in the manner stated in the caption sheet hereof.
Given under my hand and official seal, at New Orleans, La., this 30th day of December, 1871.

WILLIAM GRANT,
U. S. Com. and Special Com.

UNITED STATES OF AMERICA:

TREASURY DEPARTMENT, *December* 3, 1881.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed is a true copy of an original paper on file in this Department.

In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

CHAS. J. FOLGER,
Secretary of the Treasury.

Extracts from reports of Ofr. Azariah F. Wild, New Orleans, La., in matter of Benjamin Weil.

SEPT. 17, 1877.

Being detained here waiting the return of the U. S. attorney, I improved the opportunity to commence writing my report in the case of Benj. Weil *vs.* Mexico for 500 bales of cotton which Weil claims was taken from him by the Mexican authorities in the year 1864, while en route to Matamoras, Mexico, and for which an award has been allowed of about $500,000, and as I am informed not yet paid, but has been brought to the notice of Congress, and is now pending before a committee of the Senate. My connections with this case were those of a clerk, and commenced about the month of May, 1876, and so continued until about the time Judge M. A. Dooley left Louisiana to reside, and I became employed by the U. S. Treasury Department, when I refused to have anything further to do with the case, although have been pressed to do so by both sides, on one side to continue in the case and take it up where Judge Dooley left it, and by the other side to give my affidavit of what I knew about the case, to be used before a Congressional committee, both of which I refused.

1st. I could not work in any case except for the Government.

2nd. I did not feel at liberty to make an affidavit of what information I gained by being a confidential clerk of Judge Dooley's, a sworn attorney.

My reasons thus expressed to General Slaughter caused him to say that, unless he could have my affidavit, he would have me brought to Washington to testify.

I now will state the case, and the way in which I became engaged in it, and will forward copies of some twenty letters now under my control at an early day.

John M. Martin, an old steamboat captain, residing in New Orleans, met me at the corner of Canal and St. Charles streets in the month of May, 1876, and asked me to introduce him to Col. Brooks (now chief of S. S. division); I replied, I could not unless he had business. He (Martin) said he had business; that he had the cotton rolls of Ex-Confederate Agent McKee, of the trans-Mississippi department, which would be of value to the Government, and that he (Martin) wanted to see Col. Brooks and try and sell them to the Government through him (Brooks), and if agreeable to him would have a time set when we could meet, and examine the rolls, &c.

I saw Col. Brooks; an appointment was made to be held at his (Brooks') room, No. 146 Carondelet street. I notified Capt. Martin, and we met at place designated, and the rolls were examined by Col. Brooks. Soon after Col. Brooks left for Washington, and Martin says left him to understand he would submit the matter to the Treasury Department and let him (Martin) know if the Department wanted them. Col. Brooks had been gone but a few days when Capt. Martin made daily calls at the office of Judge Dooley, in whose office I occupied a desk, and asked if anything had been heard from Col. Brooks.

After waiting several weeks he persuaded Judge Dooley to dictate a letter to the Attorney-General, and I wrote it, to which Mr. Taft replied that the Government had the rolls of which his letter spoke, &c. Capt. Martin, after hearing his rolls were not wanted, said:

"I have a *big case*, in which there is some money in. Will you take it, judge?"

Judge Dooley replied that he would not take a case until he knew what it was. Captain Martin then replied that he would tell some time, but would tell Wild first, and Wild might explain the case to him (Dooley). When Capt. Martin started out he called me and asked me to put on my hat. We went to Hugo Ralwitz's saloon, on Common street, when he made me pledge myself to keep the matter private, and he would show me the whole case, and that he would give Judge Dooley and myself a chance to make "a file," as he called it. He commenced by asking if I had ever heard of the Benjamin Weil cotton claim, for a large lot of cotton captured by the Mexicans in the year 1864, and that the claim was brought before the Mixed Commission, and that they had made an award amounting to over $500,000. I said no, I had never heard a word of it. Martin said: "I tell you the truth; the claim is all a fraud, and Weil never lost a single pound of cotton, and I can furnish the evidence to defeat the claim, and this is what I want you and Judge Dooley to do, *i. e.*, that is, I want you to talk to the judge and see if he will take hold of the case, and if he will, I will bring in some letters that have been written by John T. Michel, of this city,

when I come, and the answers to them written by the Mexican minister, Ignacio Mariscal."

I consulted with Judge Dooley, and he said, "If the case is as he (Martin) has represented it to you, to be a fraud, and it can be shown as such, and the Mexican Government will pay, I will take hold of it." I told Martin what Judge Dooley said, and in one or two days Martin came in and brought along two letters written, or purporting to have been written, by John T. Michel, of New Orleans, to the Mexican minister (Ignacio Mariscal) at Washington, with two letters from the Mexican minister to John T. Michel of New Orleans, La., in answer to those written by him (Michel).

The judge then took from Capt. Martin the four letters, and called upon Mr. Avendano, the Mexican consul at New Orleans, and showed them to him, who, after reading them, said he knew the claim to be a fraud, and had so reported it to his Government, which was all that he could do in the case; but would give Judge Dooley a letter recommending him to his minister, Mr. Mariscal, if he desired, to which Judge Dooley consented, and left. One or two days after, Mr. Avendano sent a note to Judge Dooley that he had written and mailed a letter recommending him, and that he could then correspond direct with his minister at Washington.

On this information Judge Dooley commenced his correspondence in this case by first writing to the minister, who, in response, among other things, said a confidential agent would soon call on him, in New Orleans, who would show him (Dooley) copies of his (Dooley's) letters, which would be evidence that he was in good standing with his Government, and was to be trusted, &c.

In a few days, General Slaughter, of Mobile, Ala., called and presented not only Judge Dooley's letters, but copies of the evidence in the case. It seems that General Slaughter had made an agreement for a large percentage of the claim to get such evidence as would reverse the decision already made by Sir Edward Thornton, and that said Slaughter wanted Judge Dooley to give up all the information he had, or might obtain, to him (Slaughter) without consideration, to which Judge Dooley would not consent after consultation with Capt. Martin.

It now became clear that Capt. John M. Martin and George D. Hite, of New Orleans, were the principal witnesses in the case on which the award is based, and when I came down on Martin with the direct question, "Did you not testify in the Weil case in suport of the claim?" he replied, "I did." I then said you have placed yourself in a very bad light in the case; that Judge Dooley had got mad; that he did not fully explain the case at the start. He then said he would give me the whole case just as it was from the beginning to the end, and started out by saying that he knew Benjamin Weil; that Weil wanted him to testify in the case, and also get one or two other witnesses if he could; that he also knew George D. Hite well, and that he and Hite made a verbal agreement with Benjamin Weil to testify in the case and what to swear to, and that if the claim went through, as it must, they were each to have the sum of $10,000 out of the award; that they all trusted to each other's word in the matter and never had a written agreement; that about the time the claim was allowed, Benjamin Weil was taken crazy and sent to an insane asylum in France. This frightened Martin and Hite, and they turned tail to the claimant and commenced to feel of the other side by writing the letters heretofore spoken of as those of John T. Michel.

George D. Hite has not been to see me, and I have refused to call on him since the case has turned out as it has, but Martin tells me that he and Hite are one in the transaction, and neither he or Hite could move without the consent of the other. Since I have refused to act in the case for Martin and Hite, I am reliably informed that Martin has got up or caused to be written two letters and their answers, purporting to be from him to the Mexican minister at Washington, and his reply to them, offering a large percentage of the claim in case of defeat for such evidence as will bring it about. These letters are gotten up in New Orleans, sent to a friend of Martin's at Washington, and then remailed at New Orleans with the Mexican minister's name forged to those which purport to be in answer to Martin, and he (Martin) is to take these to one Kain (a Jew), who is now the principal owner in the claim, and say to him, "Come down, or I will expose the claim."

I asked Martin which story the Commission were to believe, the one he had already sworn to, or the one which he wanted to swear to for a consideration. He replied, "Neither George D. Hite nor myself were anywhere near the place we swore to in that testimony at the time we swore we were, and in case the parties will come down handsomely will produce documents to show it."

SEPT. 26TH, 1877.

Please find inclosed herewith copies of correspondence in the case of Benjamin Weil *vs.* Mexico, which I mentioned in my report of Sept. 17th, 1877.

1. Letter from John T. Michel to Ignacius Mariscal, Mexican minister, dated New Orleans, Jan. 26th, '76.
2. Letter from Mex. minister to John T. Michel, dated at Washington, Feb. 3, 1876.
3. Letter from John T. Michel to Mexican minister, dated New Orleans, Feb. 9, 1876.

4. Letter from Mex. minister to John T. Michel, dated Washington, February 21 1876.
5. Letter from L. W. Avonduno, Mex. consul at N. O., dated June 3, 1876, to M. A. Dooley.
6. Letter from M. A. Dooley to Sgn. Mariscal, dated N. O., June 4, 1876.
7. Letter from Sgn. Mariscal to M. A. Dooley, dated New York, June 8, 1876.
8. Letter from M. A. Dooley to Sgn. Mariscal, dated N. O., June 13, 1876.
9. Letter from M. A. Dooley to Sgn. Mariscal, dated New Orleans, June 19, 1876.
10. Letter from Sgn. Mariscal to M. A. Dooley, dated New York, June 22, 1876.
11. Letter from M. A. Dooley to Sgn. Mariscal, dated New Orleans, June 26, 1876.
12. Letter from M. A. Dooley to Sgn. Mariscal, dated New Orleans, June 28th, 1876.
13. Letter from M. A. Dooley to Zamacona, dated New Orleans, Aug. 5th, 1876.
14. Letter from M. A. Dooley to E. Aveta, dated New Orleans, Aug, 24, 1876.
15. Letter from M. A. Dooley to E. Aveta, dated New Orleans, Sept. 4, 1876.
16. Letter from Jas. E. Slaughter to M. A. Dooley, dated Mobile, Aug. 11, 1877.
17. Copy of affidavit made by John M. Martin, alias Michel, in support of Benjamin Weil's claim against Mexico, dated N. O., July 26th, 1870.

I would respectfully state that these copies are all in my handwriting, and were prepared under the direction of Judge M. A. Dooley, late of New Orleans (now San Saba County, Texas), to forward to the President of Mexico, but owing to the disturbed condition of the Mexican Government they were not sent, and when Judge Dooley left Louisiana he left them here. Those written by Judge Dooley, or purporting to have come from him to the Mexican officials, are in their possession, but those received here by Judge Dooley from them are still here in Louisiana, and can be got, if they are wanted, by little trouble.

OCTOBER 19TH, 1877.

I met Capt. John M. Martin to-day, and learn from him he is quite uneasy in the matter of the claim of Benjamin Weil *vs.* Mexico. He has written more letters and having them copied by some party here in New Orleans, and then sends them to the third party in Washington, where they are mailed back here to Martin. These letters purport to come from the Mexican minister at Washington, D. C. Ernest F. Herwig, ex-senator, then takes these letters to Kain, a rich Jew, who owns most of the claim, and who is president of the Germania Bank of New Orleans, and, to the best of my belief, receives money for Martin, as they pretend, to keep Martin and George D. Hite from exposing the fraud and perjury which they have committed. There is no point in the case but what I can make here. I know not just what more is wanted, but would respectfully request that should anything more be wanted to complete evidence to show the case a complete fraud, that I be instructed on what points, and it will be forwarded at once.

Martin has offered to make an affidavit setting forth that he and George D. Hite committed perjury, and were not in Texas at the time they alleged in their testimony in the case, for a consideration contingent on defeating the claim. I would respectfully state that Lambert B. Cain (or sometimes spelled Kain) and Decrastro, the attorney, are now away from New Orleans, and are said to be in Washington City.

I would state that since returning to headquarters from Arkansas, I have found the original letter written by Judge Dooley to the Mexican minister, Mariscal, in pencil, and from which I wrote the first original letter, which I will forward should it be wanted.

FEBRUARY 23RD, 1878.

I will respectfully state that Capt. John M. Martin, whom I reported as being connected with the claim of Benjamin Weil *vs.* Mexico, met me to-day and expressed a wish to see General Slaughter and see if he could not make some money by going before the proper officer and swear to the contrary to what he swore to in support of the claim. He states whatever he does George D. Hite will also do in the matter.

APRIL 25TH, 1878.

I met Capt. John M. Martin, whom I have mentioned in a previous report as being one of the parties who gave evidence in the claim of Benjamin Weil *vs.* Mexico, and helped to pass the claim through. He (Martin) states that Weil issued to parties who assisted him in the claim certificates of indebtedness on condition that if the claim was allowed that he would pay them. He (Martin) further stated to me that at the time of giving said deposition or soon after Weil gave him $50 and promised him five thousand more in case he was successful in the prosecution of said claim.

He further states that one L. B. Cain, of New Orleans, La., has bought up all, or nearly all, the certificates of indebtedness issued by Weil, and now is the monied man who is working the claim and who owns nearly all of it.

MAY 18TH, 1878.

From 8 o'clock a. m. to 10 a. m. I was engaged at Levy's stable, on Baronne street, making some inquiries into the case of Benjamin Weil *vs.* Mexico. Mr. Levy was a

partner for twenty years with Benj. Weil, and says he (Weil) had no money or cotton at the time for which he is claiming from the Mexican Government. He further states that the claim is a fraud got up by Weil and a few others to swindle the Government of Mexico. He informs me also while the claim is brought in the name of Weil he believes there are a large number whose names do not appear that would receive a pro rata had the claim been allowed. Mr. Levy gave me a copy of writing, which I enclose herein; the original is now in the hands of Jules Aroni, attorney at law, who has an office at 140 Gravier street, New Orleans.' I am informed by Mr. Levy that this is a sample of a large amount now out and issued by Benjamin Weil to those who assisted him in getting up the claim and those who are partners to the transaction.

I am informed that a man named E. Lardner had in his possession fifteen thousand dollars of this paper, but as Mr. Lardner resides in Mississippi, and is engaged in running a schooner, it is quite inconvenient for me to see him.

JUNE 22ND, 1878.

Captain John M. Martin met me on the street to-day and opened conversation about the claim of Benjamin Weil *vs.* Mexico. While I know Capt. Martin to be a perjured scoundrel, and a very dangerous man, I will give for what it is worth what he said to me in this conversation. He (Martin) said, "I have been to see Geo. D. Hite about this Weil claim, and we have made up our minds to come out and show up the whole claim to be a fraud and put-up job and the testimony given by each of us to have been false (in support of the claim), on the condition that you will negotiate with the Mexican Government or agent on the following terms: For George D. Hite, $15,000; for John M. Martin, $5,000.

Martin said it was proposed to pay me for my trouble as follows:

Hite to pay me	$3,000
Martin to pay me	$1,000
Total	$4,000

They are very anxious I should make the negotiations, and I have put them off, saying I would see what can be done.

SEPTEMBER 4TH, 1878.

Captain John M. Martin, who swore in the cotton case of Benjamin Weil *vs.* Mexico, again approached me and offered to place his deposition in my possession. Also that he would procure a similar one from Geo. D. Hite, another witness in the case, setting forth that the testimony given by them was false, provided I would take the matter in hand and get a certain sum of money from the Mexican Government, and would pay me one-third of the amount so received. I left Capt. Martin with the impression that I would consider the matter and give him an early answer. The Mexican Government can get the evidence in this city to show this case up provided they exert themselves. I do not understand it to be my duty to specially work on this case further than to report what comes under my notice while working other cases in which the U. S. Government is interested. Capt. Martin is now so poor and destitute that now is a good time to work him.

No. 83.

Mr. Zamacona to Mr. Frelinghuysen.

LEGATION OF MEXICO IN THE UNITED STATES,
Washington, December 22, 1881.

Mr. SECRETARY: I have had the honor to receive, together with the note of your Department of the 9th instant, a copy of the papers on file in the Treasury Department which show the conspiracy that has existed in the case of Benjamin Weil against Mexico, the object of said conspiracy having been to force that republic, through the perjury of several unprincipled witnesses, to pay the amount of a claim based upon imaginary facts, and the Government of the United States having been the innocent instrument of that fraudulent attempt.

The declaration contained in the note of your Department, to the

effect that the United States Government is as much interested as is Mexico in eliciting the facts in regard to the frauds complained of by this legation, whereby the good faith of both Governments may have been abused in a common transaction, cannot fail to be satisfactory to that which is represented by the undersigned, and it will be still more so when the Department of State shall see fit to give the undersigned some indication with regard to the steps that may be taken by both Governments conjointly, or by that of Mexico alone, with a view to subserving the ends of morality and justice in this matter. The undersigned understands that the note to which he is now replying would have contained such an indication had it not been written at a time when the late Secretary of State was about to retire, and when a press of very urgent business rendered it impossible for him to give this subject the attentive consideration which its importance demanded.

This legation has for more than four years been in possession of evidence which, in its opinion, is conclusive with regard to the fraud which vitiates the claim of Weil and that of the Abra Mining Company. When the Congress of the United States, in 1878, authorized the President to investigate these frauds and to suspend all payments to their presumptive originators, the aforesaid evidence was, by request, deposited in the Department of State, and in August of the year following this legation was informed that, in the judgment of the Secretary of State, the honor of the United States required a judicial investigation of the matter. That honorable gentleman saw fit, at the same time, to express an opinion adverse to the reopening of the two claims as a diplomatic question and to their re-examination by an international commission. He also maintained that the executive branch of the Government had no power to hold the desired investigation; he added, however, that Congress could empower it to do so, and advised that his opinion* should be submitted to that body, to the end that it might exercise the plenary power with which it is invested in cases of this nature.

The Government of Mexico presumed that there was ground to expect suspension of payment to the owners of the claims to which exception had been taken, not only in view of the general and normal powers of the Department of State and of the careful declarations made by its worthy head, but also by reason of the act of Congress authorizing the Executive to order such suspension in case the two aforesaid claims should present *prima facie* evidence of fraud.

The opinion of the Secretary of State, approved by the President, was transmitted to Congress, with the announcement that a failure on the part of the legislative branch of the Government to take action in the matter would make it necessary for the Department to pay to the suspected claimants the amount of the installments which had been withheld from them. A vote was taken on the subject in the House of Representatives, and a bill was returned to the proper committee directing an investigation to be made by the Court of Claims. The opinion expressed by the Senate on the same bill was unfavorable, the committee maintaining that the Executive had power sufficient to enable him to act in the matter. The different attitudes taken on this question by the two houses of Congress induced the gentlemen em-

* The words of the Secretary of State were (see inclosure to letter of August 20, 1879): I would advise, therefore, that the proofs and conclusions you shall come to thereon, if adverse to the immediate payment on these awards of the installments received from Mexico, be laid before Congress for the exercise of their plenary authority on the matter.—TRANSLATOR.

ployed as counsel by this legation, one of whom was the late Senator Carpenter, to suggest that the matter be brought before the courts of the United States, their opinion being based upon section 2 of article 3 of the Constitution. The counsel employed by Mexico, in recommending that this step should be taken with the only branch of the Government that had thus far not been concerned in the matter, based their action also upon the opinion of Chief Justice Jay, in the case of Christholm *vs.* Georgia, wherein that officer maintained the competency of the courts in cases like the one now in question in view of the responsibility of the United States to foreign Governments for the conduct of their citizens. They likewise cited the famous case of Dr. Gardner, in which, after the United States had paid a sum awarded by the commission organized in pursuance of the treaty of Guadalupe, the claimant was prosecuted in order to secure the annulment of the award and to recover the amount which had been fraudulently obtained. They also called attention to the fact that on account of the aid lent by Mexico in the investigation of that case the United States Government had declared its readiness to accord reciprocity whenever it should be needed by the neighboring republic. This legation had even prepared its appeals to the courts, but that step, whereby Mexico completed the round of all the branches of the Government of this country whose duty it is to uphold equity and justice, was objected to by the Secretary of State (Mr. Evarts), and the Government which the undersigned represents found three paths before it, each of which was equally obstructed, while the parties interested in the fraudulent claims succeeded in securing payment of the funds which were on deposit.

During the protracted course of this business, the purpose of the Mexican Government to avoid any tedious question with regard to the legal scope of international arbitration has been well defined, as has its desire to act, in consonance with that of the United States, in the manner best calculated to promote the ends of equity and justice. Mexico has hitherto hoped for everything from that sentiment of honor and rectitude which, as indicated by the opinion of Mr. Evarts, could not fail to be awakened on the part of this Government when the true character of the two claims in question began to be apparent. This hope has been still further stimulated by the fact that the suspicion that said claims involve a grave fraud has been more or less directly expressed by both houses of the American Congress. Those branches of the Government, however, stopped when they reached the proceedings necessary for an investigation, each considering that it had no power to initiate such proceedings. This legation cannot for one moment suppose the political mechanism of a country, to which many others turn their eyes as to a model, to lack the means of frustrating a great fraud originated to the detriment of a friendly nation which is sparing no pains to fulfill its obligations towards the United States; nor can it believe that the only course remaining open to Mexico is to pay a heavy tribute to deceit and perjury, or that the Government of this republic is prepared to serve as an instrument for the enforcement of so painful a sacrifice.

The noble spirit of justice in which the late head of the Department under your charge placed in the hands of the undersigned the official evidence of the perjury committed by the witnesses of Benjamin Weil, the emphatic declaration with which his note of the 9th instant closes, and the significant manner in which, in various verbal conferences, he gave expression to his indignation at the frauds which had evidently been practiced in connection with the claims in question, lead the un-

dersigned to presume that the Government of the United States feels disposed to adopt some expedient in order to prevent the success of a conspiracy whose criminal character is but too apparent.

The Government of Mexico would be very glad to receive some practical manifestation of the interest which Mr. Blaine was pleased to express in his last note to this legation, so that, when the Mexican minister visits the Department of State on the 31st of next month as usual, with the amount of the annual installment pursuant to the convention of 1868 in one hand, and the proof of the fraud committed by certain claimants to whom a large portion of that amount is to be paid in the other, he may not be obliged to consider that act as a definitive tribute to falsehood and perjury, and it may be possible for him to turn his eyes in some direction in the hope of a remedy.

I avail, &c.,

M. DE ZAMACONA.

No. 84.

Mr. Zamacona to Mr. Frelinghuysen.

LEGATION OF MEXICO IN THE UNITED STATES,
Washington, January 19, 1882. (Received January 19.)

Mr. SECRETARY: Not only the important note which Mr. Blaine was pleased to address to me on the 9th ultimo, to which I referred in my subsequent one of the 22d of the same month, but the straightforward declarations which I had the pleasure to hear from the lips of your excellency during a recent conference, have convinced me that the Government of the United States, to which that of Mexico has presented its complaint on account of the fraudulent character of the claims of the heirs of Benjamin Weil and the Abra Mining Company, is fully sensible of the moral importance of having the evidence of fraud examined, so that the good faith of both Governments may not be abused in a mutual transaction. All branches of this Government, and all its officers who have had anything to do with the matter, seem to be actuated by the same spirit. Congress has shown this with a spontaneity which does it honor.

The Department of which you are the worthy head has likewise not hesitated to declare that the dignity of the Republic was interested in having an investigation made of the charges of fraud presented by the Mexican Government on the ground of very weighty evidence. Unfortunately both the legislative branch of the Government and the Executive have considered themselves as having no power to expose a fraud of whose existence both were aware, as every one has been, including the officer who decided these two claims favorably when the evidence discovered was laid before him. After the case had been decided, he refused, it is true, to reconsider, as he was requested to do, on the ground that he did not think he had any power to do so, but he expressed an earnest desire that the truth should be brought to light, and that fraud should not prevail over justice. Thus it is that since the labors of the Mixed Commission were concluded the public power of two nations has been exhibiting its powerlessness to frustrate a fraudulent conspiracy, the marks and traces of which scarcely leave any room for doubt. So evidently fraudulent are the claims now under consideration that, as soon as the truth began to be known, it cost the Mexican Government very

little trouble to procure conclusive evidence upon which its complaint is based. The Department of State itself found some in the Treasury Department, of which, with praiseworthy uprightness, it was pleased to send me a copy on the 9th of December. The fraud in this case may be compared to a putrid sore from which pus oozes at the slightest pressure.

It would be lamentable if the conspiracy were to triumph under such circumstances simply because doubts are indefinitely prolonged with regard to the most efficient and legitimate means of investigating the truth. What has occurred in the matter thus far shows the propriety of adopting the most direct of those means, and the one which ought, perhaps, to have been adopted as soon as the complaint on account of fraud was presented. Such a means would be the submission of the charge of fraud to the examination of a commission similar to that which made the award in favor of Weil and of the Abra Company, since no such examination was made by the umpire of the Mixed Commission, who was of the opinion that his powers were too limited.

In view of these considerations, and of the disposition which you were pleased to manifest on the occasion of our last conference, I take the liberty to submit a draft of a convention to you, the object of which is the appointment of a revisory commission, with power to do what the various officers who have had this matter in hand have not thought themselves authorized to do.

The accompanying draft is based, to a certain extent, upon the convention of 1868, which created the Mexico-American Commission. This draft, however, will be found to differ from that instrument on those points which arise from the special object of the revision. Certain other alterations suggested by experience will likewise be observed. One of these is the assignment of the umpire to a place in the collective labors of the Commission, and another is the investment of the Commission with a somewhat more judicial character, so that it may not be at the mercy of *ex parte* evidence, and may be able to avail itself of such means of investigation as are used by ordinary courts.

In the course of a very few days Mexico, with the punctuality with which she has thus far made her payments, will pay the sixth installment of the amount awarded by the Mixed Commission. One's natural sense of justice revolts at the thought that that fund, which is the fruit of the sacrifices made by a poor nation for the purpose of fulfilling its obligations to the United States, should go on filling the purses of persons whose only title to participate in the distribution is the shrewdness with which they saw the weak points in the system of examination adopted by a Commission of arbitration.

The success of this audacious attempt would affect interests, the least important of which perhaps would be the pecuniary one of Mexico in the present case. My Government has constantly shown that it took this high view of the matter, and it is not out of place for me to repeat here what I had the honor to say to you in a recent conference. The amount of these two claims is not a small one, and is certainly of importance to a country like Mexico; yet there is another interest, of a higher order, which must affect both Governments equally, and which should render their action harmonious and co-operative. Among the elements which have disturbed the relations between Mexico and the United States, speculation in fraudulent claims has played a very prominent part. To discourage such speculation is to contribute greatly to future harmony between the two countries, while to stimulate it indirectly by success would be fomenting a fruitful source of discord in the relations between the two countries.

Harmony in the relations between the two countries is not the only thing now in question. All nations are interested in the punishment of frauds such as those of which my Government now complains, because their success brings discredit upon an institution of which the present age is justly proud, and from which contemporaneous nations hope for abundant fruits of civilization and of peace. The history of international arbitrations is a most eloquent one. Since the time when the first effort was made to settle private claims by arbitration, greed and fraud have thought that they had discovered a new field of operation, and they have in various instances succeeded in bringing disgrace upon commissions of arbitration. That branch of jurisprudence which has to do with such commissions must take a step in the way of reform, especially as regards methods of examination, until that much-to-be-desired reform has been adopted. However, the action of all Governments should be as harmonious as it should be energetic when fraud has succeeded in obtaining a foothold in international arbitration.

I consequently have the honor, Mr. Secretary, to submit the accompanying draft of a convention, together with an English translation of the same, to your consideration, and you would oblige me exceedingly if, after having examined it, you would be pleased to let me know your opinion as speedily as your important occupation will permit. I should thus be enabled to inform my Government (on taking to the Department of State, as I expect to do at the proper time, which will be in a few days, the annual installment by whose payment Mexico fulfills its duty according to the convention of 1868) that there is some reason to hope that that sacrifice to international good faith will one day no longer be required, and that the matter is in a fair way to settlement in such a manner as justice demands.

I have, &c.,

M. DE ZAMACONA.

[Inclosure.]

Project of a convention between the United States of Mexico and the United States of America providing for the retrial of the claims of Benjamin Weil and La Abra Silver Mining Company against Mexico.

Whereas a convention was concluded on the 4th day of July, 1868, between the United States of Mexico and the United States of America, by which convention claims of citizens of either country upon the Government of the other were referred for adjustment to a Commission to be Composed of two commissioners and an umpire; and whereas claims were presented to said Commission by the United States of America on behalf of Benjamin Weil and La Abra Silver Mining Company, which claims were numbered 447 and 489 respectively on the American docket of said Commission; and whereas, after reference to the umpire of the disagreeing decisions of the commissioners upon said claims, awards were rendered thereon in favor of the United States; and whereas, before the adjournment of said Commission, the agent of Mexico entered motions for the retrial of said claims, on the ground that the witnesses upon whose evidence they had been allowed were perjured, and that the claims were wholly fraudulent; and whereas said motions were denied by the umpire, for the reason that he considered himself debarred by the provisions of the convention from reviewing any case which he had once decided; and whereas, shortly after the adjournment of said Commission, the Government of Mexico laid before the Government of the United States evidence discovered since the awards were rendered, upon an examintion of which evidence it appears that the honor of the United States requires a reinvestigation of said claims: The President of the United States of Mexico and the President of the United States of America have resolved to conclude a convention for the retrial of said claims and have named as their plenipotentiaries to confer and agree thereupon as follows: The President of the United States of Mexico, Manuel Maria de Zamacona envoy extraordinary and minister plenipotentiary of the United States at Washington,

and the President of the United States of America, Frederick T. Frelinghuysen, Secretary of State of the United States of America, who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following articles:

ARTICLE I.

The said claims of Benjamin Weil and La Abra Silver Mining Company, numbered 447 and 489 on the American docket of the Commission organized under the convention between the United States of America, concluded July fourth, 1868, shall be referred for retrial, as hereinafter provided, to three Commissioners, one of whom shall be named by the President of the United States of Mexico and one by the President of the United States of America, and the third by the Mexican minister at Washington and the Secretary of State of the United States, jointly, or in case they fail to agree, by the diplomatic representative of ——— at Washington.

The Commissioners so named shall meet at Washington within three months after the exchange of the ratifications of this convention, and shall, before proceeding to business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide to the best of their judgment and according to public law, justice, equity, and the provisions of this convention, without fear, favor, or affection, the claims above specified; and such declaration shall be entered upon the record of their proceedings.

In case of the death, prolonged absence, or incapacity of any Commissioner, or in the event of his omitting or ceasing to act, another Commissioner shall be forthwith appointed in his place or stead by such person or authority as may have appointed the Commissioner so ceasing to act.

The Commissioners shall conclude their labors within twelve months from the date of their first meeting.

ARTICLE II.

As soon as possible after their first meeting the Commissioners shall proceed to a retrial of the claims hereinbefore specified. To this end they shall be furnished with a record of the proceedings in said claims, and of said Commission, with all documents relating thereto in the files of said Commission organized under the convention of July fourth, 1868. They shall have power to call upon any department of either Government for any papers which they may deem material to the issues involved in said claims.

The Government of Mexico and the claimants, or their legal representatives, shall be permitted to appear by counsel and to take new testimony, under such rules as may be prescribed by said Commissioners; and such rules shall provide that proper notice of the taking of testimony be given to the opposing party and full opportunity afforded for cross-examination of witnesses. The Commissioners shall have power to take testimony upon oath, affirmation, or protestation, to be administered by any one of them, to call upon the courts of either country (in such manner as such courts may now by law be called upon by any department of either Government in which claims against such Government may be pending) to issue subpœnas for the taking of testimony or the production of books, papers, and documents for use before said Commissioners, and to do any other act which they may deem necessary to a fair, just, and impartial decision of the said claims.

The concurring opinion of any two Commissioners shall be adequate for every decision necessary to the execution of their duties.

ARTICLE III.

After the taking of proofs and the arguments shall have been completed according to the rules which may be established by the Commissioners, they shall, within the time limited in the last clause of the first article of this convention, render decisions in writing, stating the facts found by them in each claim, and the sums, if any, which ought in justice and equity to have been allowed to said claimants on account of the matters alleged in their respective claims. Said decisions shall be final and conclusive upon both Governments, and the awards of the Commission organized under the convention of July fourth, 1868, upon said claims shall be affirmed, modified, or set aside accordingly.

ARTICLE IV.

This convention, when duly proclaimed, shall be considered as due notice to all persons interested in said claims to appear before said Commissioners, and the failure of any such person to enter appearance shall not prevent the rendering of any decision final or interlocutory by said Commissioners.

ARTICLE V.

The Commissioners shall keep an accurate record of their proceedings, with dates, and to this end they may appoint and employ a secretary versed in the languages of both countries, and other persons necessary to assist them in the transaction of their business.

The compensation of the Commissioners shall not exceed $——— per annum each. The compensation of the secretary, or other officer or employé, shall be fixed by the Commissioners. Each Government shall pay its own Commissioner. The other expenses of the Commission, including the compensation of the third Commissioner, shall be defrayed by the two Governments in equal moieties; but the expenses of taking testimony and preparation of the cases for trial shall not be considered a part of the expenses of the Commission. In view of the fact that the retrial herein provided for is had upon the motion of the agent and representative of Mexico, it is agreed that the Government of Mexico shall provide and pay over to the Government of the United States, whenever they are required, all sums necessary to defray the expenses incurred by the latter Government as provided for in this article.

ARTICLE VI.

The present convention shall be ratified by the President of the United States of Mexico and by the President of the United States of America, by and with the advice and consent of the Senates of the respective countries, and the ratifications shall be exchanged at Washington at as early a day as may be possible thereafter.

In testimony whereof the respective plenipotentiaries have signed the present convention, in the Spanish and English languages, in duplicate, and hereunto affixed their respective seals.

Done at the city of Washington this —— day of January, in the year of our Lord one thousand eight hundred and eighty-two.

No. 85.

Statement of payments made in claim of Benjamin Weil against the Government of Mexico.

First and second installments of this award paid as follows:

Amount for distribution	$67,208 60
Lambert B. Cain, August 16, 1880	43,888 16
John J. Key, August 16, 1880	14,629 38
Sylvanus C. Boynton, August 16, 1880	8,691 06

Third installment of this award paid as follows:

Amount for distribution	$34,893 68
Lambert B. Cain, August 18, 1880	22,786 19
John J. Key, August 16, 1880	7,595 39
Sylvanus C. Boynton, August 16, 1880	4,512 10

Fourth installment of this award paid as follows:

Amount for distribution	$34,893 68
Lambert B. Cain, August 16, 1880	22,786 19
John J. Key, August 16, 1880	7,595 39
Sylvanus C. Boynton, August 16, 1880	4,512 10

Fifth installment of this award paid as follows:

Amount for distribution	$34,893 68
Lambert B. Cain, March 8, 1881	13,545 13
John J. Key, March 8, 1881	7,595 39
Sylvanus C. Boynton, March 8, 1881	4,512 10
William W. Boyce, March 8, 1881	1,519 08
Robert B. Warden, March 8, 1881	1,329 19
Sanders W. Johnston, March 8, 1881	1,329 19
Jacob O. De Castro, March 8, 1881	2,531 80
Henry E. Davis, March 8, 1881	2,531 80

RECAPITULATION.

Gross amount received from Mexico		$171,889 64
Gross amount distributed as follows:		
Lambert B. Cain	$103,005 67	
John J. Key	37,415 55	
Sylvanus C. Boynton	22,227 36	
William W. Boyce	1,519 08	
Robert B. Warden	1,329 19	
Sanders W. Johnston	1,329 19	
Jacob O. De Castro	2,531 80	
Henry E. Davis	2,531 80	
		171,889 64

No. 86.

Statement of payments made in claim of La Abra Silver Mining Company against the Government of Mexico.

First and second installments of this award paid as follows:

Amount for distribution	$94,106 75
Sumner Stow Ely, September 17, 1879	94,106 75

Third installment of this award paid as follows:

Amount for distribution	$48,858 77
Sumner Stow Ely, September 17, 1879	38,858 77
Henry C. Hepburn, December 6, 1879	2,909 94
Sumner Stow Ely, January 20, 1880	2,690 06
Charles T. Parry and Joseph Hopkinson, February 14, 1881	1,257 20
Sumner Stow Ely, February 14, 1881	3,142 80

Fourth installment of this award paid as follows:

Amount for distribution	$48,858 77
Sumner Stow Ely, August 16, 1880	32,706 64
George H. Williams, August 16, 1880	1,152 13
Frederick P. Stanton, January 26, 1881	3,333 34
Miller & Lewis, for T. W. Bartley, January 26, 1881	3,333 33
W. W. Boyce, January 26, 1881	3,333 33
Shellabarger & Wilson, January 26, 1881	5,000 00

Fifth installment of this award paid as follows:

Amount for distribution	$48,858 77
Sumner Stow Ely, March 5, 1881	34,545 85
Thomas W. Bartley, March 5, 1881	666 66
Frederick P. Stanton, March 5, 1881	666 66
W. W. Boyce, March 5, 1881	936 94

Shellabarger & Wilson, March 5, 1881	$2,633 00
Charles T. Parry and Joseph Hopkinson, March 5, 1881	314 28
George H. Williams, March 5, 1881	1,152 13
Cyrus C. Camp, March 5, 1881	909 10
Sumner Stow Ely, November 25, 1881	2,034 15
Thomas W. Bartley, November 25, 1881	2,500 00
Frederick P. Stanton, November 25, 1881	2,500 00

RECAPITULATION.

Gross amount received from Mexico		$240,683 06
Gross amount distributed as follows:		
Sumner Stow Ely	$208,085 02	
Henry C. Hepburn	2,909 94	
Charles T. Parry and Joseph Hopkinson	1,571 48	
George H. Williams	2,304 26	
Frederick P. Stanton	6,500 00	
Thomas W. Bartley	6,499 99	
W. W. Boyce	4,270 27	
Shellabarger & Wilson	7,633 00	
Cyrus C. Camp	909 10	
		240,683 06

No. 87.

Receipt for the sixth installment.

DEPARTMENT OF STATE,
Washington, January 31, 1882.

Received of Don Manuel Ma. de Zamacona, envoy extraordinary and minister plenipotentiary of the Government of Mexico, a cheque drawn by himself upon the National City Bank of New York, to the order of the undersigned, for two hundred and ninety-six thousand and sixty-six dollars and five cents ($296,066\frac{05}{100}$) being in discharge of the sixth installment of the indemnity this day due from that Republic to the United States under the covention between the two Governments of the 4th of July, 1868, according to an adjustment made on the 31st of January, 1878, of the relative value of the three currencies composing the indemnity.

FRED'K T. FRELINGHUYSEN.

No. 88.

MEMORANDUM FOR THE SECRETARY OF STATE.

In the matter of the Weil and Abra claims.

JOHN W. FOSTER. JNO. A. J. CRESWELL. ROBERT B. LINES.

I.

The fifth section of the act approved June 18, 1878, entitled "An act to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the 4th of July, 1868," is as follows:

SEC. 5. And whereas the Government of Mexico has called the attention of the Government of the United States to the claims hereinafter named with a view to a rehearing: Therefore, be it enacted that the President of the United States be, and he

is hereby, requested to investigate any charges of fraud presented by the Mexican Government as to the cases hereinafter named, and if he shall be of the opinion that the honor of the United States, the principles of public law, or considerations of justice and equity require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be opened and the cases retried, it shall be lawful for him to withhold payment of said awards, or either of them, until such case or cases shall be retried and decided in such manner as the Governments of the United States and Mexico may agree, or until Congress shall otherwise direct; and, in case of such retrial and decision, any moneys paid or to be paid by the republic of Mexico in respect of said awards, respectively, shall be held to abide the event, and shall be disposed of accordingly; and the said present awards shall be set aside, modified, or affirmed, as may be determined on such retrial: *Provided*, That nothing herein shall be construed as an expression of any opinion of Congress in respect to the character of said claims, or either of them.

The discretion conferred upon the Executive by this section was threefold:

First. To "*investigate* any charges of fraud" in the claims.

Second. To *decide*, after such investigation, whether "the honor of the United States, the principles of public law, *or* considerations of justice and equity require that the awards" * * "should be opened and the cases retried."

Third. In the event of an affirmative decision, "to withhold payment of said awards, or either of them, until such case or cases shall be retried and decided in such manner as the Governments of the United States and Mexico may agree, *or until Congress shall otherwise direct.*"

Upon the commencement of such retrial it was provided that "any moneys paid or to be paid by the republic of Mexico in respect of said awards, respectively, *shall* be held to abide the event." This provision is mandatory and not discretionary.

II.

As to the scope of the discretion to investigate, it is evidently a continuing power to examine "*any* charges of fraud," whenever preferred.

In exploring the recesses of the conspiracy by which these fraudulent claims were imposed on the late Mixed Commission, it is not to be supposed that Mexico should at once discover all the frauds or be able to secure all the proofs. If on her first showing the proofs had been held insufficient by the President, and he had decided that the honor of the United States, &c., did not require a retrial, that would not prevent his successor from examining new proofs, making a new decision, and retaining subsequent installments. Even without special words in the act, the President would have authority to do this on new evidence, according to the decision in U. S. *v.* Bank of Metropolis, cited by the learned counsel for La Abra company.

As a matter of fact, in the Weil case, the only one where it is pretended that the President did decide the proofs insufficient, new charges of fraud have been presented and new proofs discovered in the records of the Treasury Department since the payment of the last installment. These proofs are no less than the confession of one of Weil's most material witnesses, a pretended eye-witness of the capture of his cotton, to an officer of the Treasury Department, that he and his fellow-witnesses had committed perjury. Also an affidavit of one of the witnesses filed in support of his own claim against the United States showing him to have been fifteen hundred miles away from the alleged scene at the alleged time of the alleged seizure of Weil's alleged cotton.

These proofs were transmitted to the Mexican legation by Mr. Blaine in his note of December 9, 1881, and were not previously accessible to Mexico.

III.

But suppose the discretion to investigate not to extend to "*any* charges of fraud," which is the language of the act, but to be confined to the charges and proofs presented to President Hayes, did he, after investigating them, decide the questions submitted to him by the act of Congress? If he did not, then those questions remained open until they were settled by the convention just signed. If he did, then when, and in what way?

He decided in the affirmative, according to Secretary Evarts, the House Committee on Foreign Affairs, and the President himself.

He did not decide at all, according to Secretary Evarts, the Senate Judiciary Committee, and Mr. Shellabarger.

He decided in the negative, according to Mr. Shellabarger and some of the claimants.

IV.

On the 8th of August, 1879, payment of the awards had already been suspended for two years and a half, part of the time without any authority from Congress, and part of the time (after the passage of the act) with only an implied authority. On that date President Hayes made a declaration with regard to the two claims specified in the act. Either that declaration was a decision in accordance with the provisions of the act, or it was not. If it was, and was in the affirmative, then the discretion conferred by the act to suspend payment of the awards attached from that date, not to be divested until the cases should be retried and decided, or "until Congress should otherwise direct." If it was a decision in the negative, then there was no discretion to suspend the payment, and it was the President's duty, so far as his authority under the act of Congress was concerned, to pay over the money to the claimants. In either case, according to the learned counsel for La Abra, and the authority which they cite from 15 Peters' Reports, his decision was not re-examinable unless "material testimony should be afterwards discovered and produced."

V.

A critical examination and comparison of the act and the declaration of the President shows that the three considerations suggested in the act for the guidance of the Executive—viz, "the honor of the United States, the principles of public law, *or* considerations of justice and equity"—are placed in the disjunctive, so that if any one of them appeared to require a retrial of the claims, and the others did not appear to require such retrial, it was still competent for the Executive to exercise his discretion of suspending payment and submitting the claims to retrial. The President decided that the two considerations last named did not require or permit a retrial of a particular kind, but that the first-named considerations *did* require an investigation of the claims.

In this careful separation of the honor of the United States from its association with the principles of public law and considerations of equity and justice, the motive most clearly discernible would seem to be a scrupulous desire to follow the formula laid down in the act of Congress, and to proceed in accordance with its provisions. The same may be said as to the negative part of the declaration, which is as follows:

> I conclude, therefore, that neither the principles of public law nor considerations of justice or equity require or permit, *as between the United States and Mexico*, that the awards in these cases should be opened and the cases retried *before a new international tribunal, or under any new convention or negotiation respecting the same between the United States and Mexico.*

Congress had not specified any mode of retrial, and yet the Secretary thought it necessary to exclude one method with great particularity. By the application of a familiar rule, it would appear that under this decision even the principles of public law and considerations of justice and equity, equally with the honor of the United States, required some other method of investigation and retrial than the one thus excluded.

VII.

But it is asserted that only an investigation by a new international commission would or could be an opening of the awards and a retrial of the claims according to public law and within the meaning of the act of Congress; and that therefore the decision of August, 1879, against such retrial was a final negative decision of the points submitted to the President by the act of 1878. Let us see.

The only indication in the act of a method of retrial is found in the words "in such manner as the Governments of the United States and Mexico may agree."

They might agree by treaty, and, but for the objections of Mr. Evarts, would have agreed to a retrial by a new international commission of one or more persons named in the treaty, or to be thereafter named in accordance with its provisions.

They might agree to a retrial before the ordinary courts of the United States. This agreement might be by treaty, as in the case of the late convention between France and Nicaragua, whereby a claim of a French citizen against the Nicaraguan Government was submitted to the Cour de Cassation of France. (De Clercq, Recueil des Traités de la France, vol. 12, p. 489.)

Or it might be by tacit consent, as in the case of Gardiner, where the United States procured, in its own courts, the reversal of an award of the Commission constituted under the treaty of Guadalupe Hidalgo, which stipulated that the awards should be final and conclusive. In that case Mexico not only consented, but assisted the United States under a promise of reciprocity from Minister Conkling. (See note to Mr. Yoñez of December 7, 1852, published in Sen. Rep. 182, 1st Sess. 33d Cong., p. 158.)

But when Mexico proposed this method of retrial in these cases, Mr. Evarts, notwithstanding that promise, objected.

And lastly, the two Governments might agree, either by treaty or by consent, to a retrial before a tribunal to be designated by Congress.

Such a tribunal, whether a court, as proposed in the bill reported by Mr. Cox from the Foreign Affairs Committee, or a mere committee of either House, would have all the powers and machinery necessary to investigate the facts as they appeared at the trial and in the new proofs. It could summon and examine witnesses and punish for contempt. Its arm would extend to any part of the United States, and it might send its commission to Mexico, as the Senate Committee did in investigating the Gardiner case, with a certainty of the same favorable reception as that commission met, and for which the United States felt called upon to return its thanks.

Congress might, in the words of Mr. Evarts's report of April 13, 1880, "prescribe the consequences which should follow from the results" of an investigation by such a tribunal, or those consequences might subsequently be enacted into law after the rehearing. In either case the final action of Congress would have the same effect to release Mexico from the whole or any part of the claims, or to affirm their validity, as

the findings of a mixed commission, organized by treaty. If the be act were afterwards declared to be unconstitutional, so would a treaty in all probability.

"An act of Congress may supersede a prior treaty" (11 Wall., 621).

If this view be correct, then there would be no substantial difference between this method of retrial and a retrial provided for by treaty. The claimants, at least, could not complain because Mexico was not to be represented on the tribunal.

VIII.

Mexico, through her diplomatic representatives, did agree to such a retrial, and stood ready to submit her case to such a tribunal when designated by Congress. The failure or delay of Congress to provide the tribunal, which may be ascribed to the delay of the President in advising it of his decisions, to his failure to transmit the proofs of fraud, or to the difference of opinion between the Houses, could not nullify the decision of the President, or divert him of his right to withhold the money, which attached by virtue of the act as soon as he had rendered his decision in August, 1879.

IX.

It does not seem open to doubt that Secretary Evarts, when he made his long considered and carefully worded declaration of August, 1879, and President Hayes, when he approved the same, intended it to be and understood that it was a full affirmative decision of the question submitted to the Executive by the act of Congress, whether the honor of the United States required a retrial of the cases. Their subsequent action, at least for eight months, confirms this opinion.

The authority to suspend payment of the awards, as before shown, was wholly contingent on such an affirmative decision. In the Weil case President Hayes withheld the payments from August, 1879, and overruled the arguments of the claimants that his opinion did not operate to vest the discretion conferred by the act. (See the report of the Secretary of State of April 13, 1880.)

In the Abra case he paid three installments in September, 1879, under a decision as to the character of the proofs, against which Mexico, diplomatically and through counsel, strongly protested, but reserved the fourth installment to await the proposed retrial, from January, 1880, again overruling the arguments of the claimants.

X.

Down to April, 1880, neither Mr. Evarts nor the President seemed to doubt that they had really decided the questions submitted to them, and that their discretionary control over the money had consequently attached and was in full vigor. On the 15th of that month, however, the latter transmitted to Congress, in response to a Senate resolution of February 27, Mr. Evarts's reports of August and September, 1879, embodied in a new report bearing date April 13, 1880. In this new report Mr. Evarts said:

> A solicitous attention to the rights of the claimants and the duty of the Executive in the premises has *confirmed* me in the opinion *that Congress should determine* [what he himself had determined in 1879] whether the honor of the United States requires any further investigation in these cases.

Following this is a forcible argument against the retrial by an international commission, which he had decided the year before not to grant, but not even an analysis of the proofs of fraud which he had the year before decided to send to Congress. The mistake as to the scope of the charges and proofs in La Abra case is, however, repeated, and a new mistake of fact is introduced, from which it would appear that Mexico had at that trial, but for some mysterious reason declined to present, the evidence on which she afterwards asked for a rehearing in the Weil case. The report then concludes:

> It seemed to me apparent that *the Executive discretion under the act of Congress could extend no further than to withhold further payments on the awards until Congress should, by its plenary authority, decide whether such an investigation should be made*, and should provide an adequate procedure for its conduct, and prescribe the consequences which should follow from its results.
>
> Unless Congress should *now* make this disposition of the matter, and furnish thereby definite instructions to the department to reserve further payments upon these awards till the conclusion of such investigation, and to take such further order with the same thereafter as Congress might direct, it would appear to be the duty of the Executive to accept these awards as no longer open to reconsideration, and proceed in the payment of the same *pro rata* with all other awards under the convention.

XI.

This report almost defies analysis. If Mr. Evarts, in 1879, had only rendered the opinion in which he says, in 1880, that a "solicitous attention to the rights of the claimants," &c., had confirmed him, to wit, that *Congress* should decide what the honor of the United States required, then clearly he would have had no authority to withhold the money, bacause he had not decided the questions on the decision of which his discretion to suspend payment wholly depended. But in the same breath he alludes to that discretion as vested and yet existing, and proposes still to withhold payments under it until Congress shall decide a question which Congress had submitted to him. Mr. Evarts had had the proofs before him for seven months—from January, 1879, to August, 1879—and had had the benefit of numerous briefs and of five days' oral argument. But he requires Congress to decide the same question without proofs and "*now*"; *i. e.*, before the end of the existing session, then near its close.

XII.

This document went to the Senate Committee on Foreign Relations and was never heard from. A bill, however, was introduced in the Senate directing the Court of Claims to make the investigation recommended by the Secretary, and prescribing the consequences to follow its results. On the 9th of June, 1880, a similar bill was favorably reported from the Foreign Affairs Committee of the House, who said:

> The President having recommended a method of investigation and practical opening of the awards upon which it is not necessary that the United States and Mexico should agree, payment of the awards is necessarily suspended until Congress shall *otherwise* direct.

This report appears to be based upon Mr. Evarts's views of August, 1879.

XIII.

On the 10th of June, however, the Senate Judiciary Committee, by a majority of a bare quorum (Messrs. Edmunds, Conkling, Carpenter, and one other being absent, Mr. Davis opposing), reported adversely the

bill above alluded to, and it was indefinitely postponed without debate. This report very curiously reverses the position taken by the Senate in 1878, under the lead of the committee, with regard to the control of Congress over the discretion of the Executive, and as to rejected claims. (See history of act of 1878, in letter of Mr. Chalmers filed with Mr. Foster's memorandum of January 6.) But the point here is, that it took the ground that the Executive had not decided the questions submitted to him by the act of 1878. It follows, therefore, that in the opinion of this committee the discretion to suspend payment, as conferred by the act, had never vested, but remained contingent on a future decision.

But it is impossible to reconcile this theory with either the prior or subsequent action of the Executive.

XIV.

The house bill having been recommitted to give the claimants a hearing, which was prolonged until adjournment, the session closed June 16, with nothing on the calendar of either House, but with the House bill pending in committee.

After the adjournment of Congress the payments were withheld for two months longer, and on the 4th of August the President promised Mexico (who then proposed to take the same steps in the courts that the United States had taken in the case of Gardiner) that he would withhold the moneys until her proceedings should be "reduced to legal completeness." (See note of August 4 from Mr Evarts to Señor Navarro.)

This was a distinct reassertion of his discretionary control over the distribution of the moneys. It is true that the suits in equity were never commenced, because the money was paid out on the 14th of August, without notice to Mexico, and before the papers which were needed to append to the bills had been furnished as promised by Mr. Evarts; and also, perhaps, because of the respect due to the diplomatic objections communicated to Mr. Navarro in the note above referred to. But the diplomatic promise to retain the money has never been revoked, and, so far as Mexico knew officially, that was the last construction by President Hayes of his authority under the act of 1878.

XV.

It is understood that the order of Mr. Hayes on which payment was made on the 14th of August relates merely to the Weil claim, and that it is, in effect, a declaration that Mexico had not made out such a case that the honor of the United States, &c., required that the claim should be retired. Whether this declaration is accompanied by any evidence which served to convince the President that he had decided wrongly in 1879, is not known. The declaration, however, may be treated from two points of view:

First. As an attempted reversal of a prior lawful decision on a question submitted by Congress to the President. Then, according to the doctrine in United States *vs.* Bank of Metropolis, it would not be legal unless based on new evidence; and if so based, it would again be subject to reversal on the later evidence furnished within the past few months by Mr. Blaine.

Second. The decision may be treated as the original and only true settlement of the questions submitted to the President; and then,

again, according to the same authority, so highly indorsed by Messrs. Shellabarger, Williams, and Ely, it would be subject to reversal on the same evidence.

XVI.

The Abra claimants, not relying on a special letter from President Hayes, insist that the opinion of August 8, 1879, was a decision in their favor, and that the report of April 13, 1880, was a confirmation of that opinion and decision. In support of this view, on page 10 of their brief, they direct the attention of the Secretary "especially to the concluding part of the report" of Mr. McDonald from the Judiciary Committee. But unfortunately the only explicit declaration of that report on the point is not in its concluding part, but near the beginning, and is in the following words:

> It appears from the message of the President of the United States of April 15, 1880, transmitting a report of the Secretary of State, to whom the matter embraced in the section above quoted was referred, *that no definite conclusions had been arrived at by the executive department upon the questions involved in said section.*

Therefore, in the opinion of the committee, those questions remained open for future settlement.

XVII.

It would be charitable to suppose that this paragraph had escaped the eye of Mr. Shellabarger and his associates, but unhappily it is impossible. Among the more recent misfortunes of La Abra Company (for which it is to be hoped Mexico will not be held responsible), it appears that the claimant has had frequent difficulties with all of its lawyers, excepting perhaps Messrs. Shellabarger & Wilson.

On the 2d of July, 1880, eleven weeks after the last decision relied on, a suit was entered on the equity side of the supreme court of the District of Columbia by Thomas W. Bartley and Frederick P. Stanton, counsel for the company before the Commission, against La Abra Silver Mining Company and others, involving the right to some $14,000 of the Abra award. In this suit Mr. Shellabarger appeared for one of the defendants, who had, on the 17th of November (seven months after the decision in April), filed a plea to the jurisdiction. The case was argued before the general term in January, 1881, nine months after the alleged final confirmatory decision. Mr. Shellabarger then insisted, with great force and eloquence, that the discretion conferred upon the Executive by sections 4 and 5 of the act of 1878 was such as to oust the jurisdiction of the court. In his brief he said that the custody of the Government "was more than that of a mere stakeholder; and under sections 4 and 5 of the said act of 18th June, 1878 (20 Stats., 145), the Government had *important investigations to make, or which it had power to continue*, and duties to discharge regarding the disposition of said moneys, and which no process of the court could interfere with or affect. Neither by injunction, decree, nor other action can the courts interfere with any executive action involving discretion by the Executive. This is held in a multitude of cases, as in 11 How., 272; 17 How., 284; *Ib.*, 225; 4 Wall., 522; 5 Wall., 563; 7 Wall., 347; 9 Wall., 298–312; and see the cases reviewed in the recent unreported cases of McBride *vs.* Schurz."

Allowing Mr. Shellabarger all possible latitude, it is difficult to see how he can now contend that either the decision of August, 1879, or that of April, 1880, was a final settlement of the question submitted to the President by the act of 1878.

XVIII.

But there was still another and later construction of the decisions, this time by President Hayes himself. In the session of Congress ending March 4, 1881, Senators Eaton and Morgan denounced the claims as fraudulent on the floor of the Senate, and sought to pass a joint resolution regarding the matter, but it fell with the close of the session. While it was pending, however, the President suspended payment of the fifth installment on both claims from January 31 to March 4. How could this be done lawfully, either upon the theory that the points submitted in the act had not been decided, or that the decision had been against a retrial? It could only be done under the act on the theory that the decision of August, 1879, was a valid one in favor of a retrial, and had not been reversed. If the suspension in 1881 was not made under authority of the act, then it must have been made under some general authority, the nature of which will be hereafter considered.

XIX.

Lest any point, however minute, should be overlooked, it is proposed to consider the effect of the mere payment of the moneys to the claimants, unaccompanied by any decision as to the requirements of the honor of the United States. Obviously, payment of itself would not amount to a decision. Before a decision should be rendered there was no express authority to suspend payment, and after it was rendered the authority was a *mere discretion until a retrial was actually entered upon*, when the act provided that the awards "*shall be held to abide the event.*"

On this point Hon. J. R. Chalmers, who, as a member of the conference committee, drew the fifth section, says: "When once suspended we provided distinctly that it should remain suspended 'until such case shall be retried in such manner as the Governments of the United States and Mexico may agree, or until Congress shall otherwise direct.'" (See his letter above referred to.)

Such was doubtless the *intention* of the committee, but it was not fully sustained by the words of the act, which are "it shall be lawful," &c. If the language had been "shall suspend," then all *payments* would have been unlawful after an affirmative decision had been rendered in accordance with the provisions of the act. The discretion of the President *to pay*, no matter what his decision might be as to the requirements of the honor of the United States, &c., must perhaps be admitted, unless the statute, as a remedial one, be liberally construed. But the *discretion to suspend* is not affected by the mere fact of payment.

XX.

To resume, if the questions submitted to the President were not decided by Mr. Hayes, as was held by Mr. Evarts in his report of April 13, 1880, by Mr. McDonald in his report of June 10, 1880, and by Mr. Shellabarger in his brief in January, 1881, then they remained open until settled by the convention just signed. If, on the contrary, they were decided, the decision was rendered in August, 1879, as was held by Mr. Evarts and Mr. Hayes from August, 1879, to April 13, 1880; by Mr. Evarts in his report of the last-named date; by the House committee in its report of June 9, 1880; and by Mr. Hayes in his action for two months after Congress adjourned in 1880, in his promise to Mexico of August 4, 1880, and in his suspension of payment in 1881.

It was a decision in the affirmative, and was not reversible except on new evidence, according to the authority cited by the Abra counsel. If it were reversed on new evidence in the Weil case, the reversal could and should have been reversed on the later evidence furnished by Mr. Blaine.

The only pretension that there was a final decision against a retrial, either in 1879 or in 1880, is that of the claimants themselves, and they are not consistent.

XXI.

It is hoped that enough has been said to vindicate the authority of President Arthur, under the act of 1878, either to decide for himself whether the honor of the United States, &c., required a retrial of the claims, or to accept Mr. Hayes's decision of August, 1879, as valid and final in the affirmative, if that should appear to be the better opinion. In the latter case, however, a question might arise whether the President had acted properly in designating, as a method for the retrial required by "the honor of the United States," a method which his predecessor had said that the "principles of public law and considerations of equity and justice" did not require or permit. On this point it may be remarked that the only substantive decision required by the act of Congress was whether a retrial ought to be had at all. The manner of retrial was left to subsequent agreement between the United States and Mexico. If they had not before agreed to any method, then, of course, it was competent for them to do so in the present convention. Nothing is more common than for governments first to disagree and then to agree. If, as has been suggested, they did agree to a retrial before a tribunal to be designated by Congress, then, on the failure of Congress to act, they might cancel their agreement and make a new one without, as it is conceived, violating the rule laid down in the case of United States *vs.* Bank of Metropolis with regard to Executive functions.

XXII.

So far this statement has been confined strictly to the discussion of the discretion of the Executive, as derived from the act of June 18. 1878. But the Executive discretion, in a matter involving the honor of the United States in its international relations, cannot be compressed within the narrow limits of an act of Congress.

No statute was necessary to provide the remedy in the Gardiner case, and Mr. Alfred Conkling could not have imagined that the fulfillment of his promise would be embarrassed thirty years after by technical constructions of domestic law. Nor could Sir Edward Thornton have anticipated such a difficulty when he said, with regard to these cases, that he thought neither Government would accept payment of a claim shown to be founded upon perjury. Statutes of limitations do not run against the Treasury—why should they against the honor of the United States?

Mr. Fish, without authority from Congress, suspended payment of the Venezuelan awards to await the production of proofs and fraud by Venezuela. Mr. Evarts and Mr. Blaine continued the suspension. No act of Congress has yet been passed authorizing the suspension, but the awards have not yet been paid over to the claimants.

XXIII.

In the case of the Mexican awards, Mr. Evarts suspended the payment of the first installment from March 4, 1877, and of the first and second installments from February 1, 1878, until the passage of the act of June 18, 1878, without the slightest authority from Congress. When it was proposed to confer that authority in the Weil and La Abra cases, both Mr. Evarts and Congress were solicitous that there should be no appearance of control by Congress over the Executive discretion in the distribution of the awards. In his letter dated November 6, 1877, to the chairman of the House Committee on Foreign Affairs (House Report 27, part 2, Forty-fifth Congress, second session, Appendix, p. 9) Mr. Evarts said:

> I have, however, hesitated to make this distribution of the money in hand, *which would be according to the practice of the Government*, because of some legislation being necessary *to make good to the fund the amount with which the Government of the United States is chargeable*, and because it is desirable *that the form and manner of the reservation from the installment in hand of the expenses of the Government should now be settled.*

In a subsequent unpublished letter he transmitted to the same Committee, after conference with a subcommittee, a form of amendment drawn by himself to cover the question of fraud presented by Mexico, which amendment was adopted by the committee, and is as follows (House bill 2117, second session Forty-fifth Congress):

> SEC. 5. That nothing contained in this act *shall be construed as precluding* the President of the United States and the Secretary of State, upon application by the Mexican Government, from the consideration of any particular claim or claims wherein awards against Mexico have been made, nor from the investigation of any alleged frauds or perjury materially affecting said particular awards; *and pending such inquiry, and during any negotiation between the United States and Mexico*, if any, respecting said particular awards, *it shall be at the descretion* of the President to determine as to the suspension or payment of the amount which would otherwise be payable upon said claim so made the subject of inquiry or negotiation.

This provision differs materially from the fifth section of the act as adopted. If it had been enacted into law, legislative authority would have expired when the Secretary decided not to reopen the awards by diplomatic negotiation. But it cannot be doubted that he would have found his general powers sufficient to enable him to retain the installments to meet his views of the requirements of the honor of the United States. To suppose otherwise would be to accuse Mr. Evarts of setting up a man of straw only to knock him over.

In reporting the bill with this amendment, the House committee said:

> It is the opinion of the committee that the question presented, in so far as it relates to the payment of money under the awards received from Mexico, is entirely within the jurisdiction and discretion of the treaty-making power under the Constitution.

XXIV.

The act of Congress did not pretend to, and could not, nor could the action of his predecessor, either confer or limit the authority which President Arthur, by virtue of his office and as a part of the treaty-making power, possesses to initiate a treaty respecting the future undischarged obligations of Mexico. The authority of the President in such a matter is unlimited. If in any case it should be exercised unconstitutionally in violation of vested private rights, and if the Senate should consent to such unconstitutional act, the remedy would be in an appeal to the courts, such as is understood to be provided for in the present

convention. No legislation, whether mandatory, permissive, or prohibitory, could affect the President's discretion in making a treaty.

But when an act of Congress, passed after due deliberation, upon the report of two committees, one composed of as learned lawyers as any on the bench, suggests to the Executive the propriety of making a treaty, and when that law committee again refers the matter to him with a second recommendation, the President, being disposed to carry out the object in view, and having concluded a treaty for that purpose, may well be excused if he declines to say in advance of a decision of the court that his action is illegal or unconstitutional.

XXV.

The first authority cited to induce him to make such a declaration is the opinion of Attorney-General Hoar in the Gibbs case (13 Op., 19). That opinion is of great respectability, but of no binding force as a decision. It is itself directly contrary to the opinion of his predecessor, Mr. Speed (10 Op., 402), in which he had said:

> The Government did properly withhold payment pending the negotiations for a new convention, and under that convention the Government cannot properly pay the five suspended claims until the new Commission shall say whether or not they were decided by their predecessors.

Sir Frederick Bruce, umpire of the second Commission under the second convention with Colombia, had said:

> In civil courts an appeal lies to a superior tribunal; in international courts, which recognize no superior judge, *fresh negotiations are opened, and a fresh Commission appointed*, to which the disputed cases are referred. The Government of the United States has in a spirit of enlightened justice taken this course, *in support of which, if necessary, it could allege the suggestion of the umpire himself.*

(So in this case can the Government allege not only the suggestion of the umpire, Sir Edward Thornton, but also the suggestion of its own Congress.)

Mr. Hoar, however, advised the Secretary that he should insist on the payment of the first award by Colombia. "But the question," he went on to say, "whether the claimant is entitled to receive payment of the award at the Treasury of the United States *depends upon the provisions of the seventh section of the act of February* 20, 1861 (12 Stats., 145), *to carry into effect conventions between the United States and the republics of New Grenada and Costa Rica.*"

So that the claimant, in Mr. Hoar's opinion, had such a vested right in his award that his Government must collect it for him, but not such a vested right that his Government need pay it over to him without legislation by Congress. It is submitted that this opinion ought not to outweigh the prior opinions of Attorney-General Speed and of Sir Frederick Bruce, and the later opinions, twice repeated, of so eminent a body as the Judiciary Committee of the Senate, in a case where fraud is alleged, and not, as in the Gibbs case, where the question is a purely technical one as to whether a claim had been fully submitted to an umpire on the facts or only on demurrer.

XXVI.

The judicial decisions cited by the counsel for La Abra Company in support of their view that the action of the President is unconstitutional, have none of them any bearing on the case. Those in Judson *v.* Corcoran and Comegys *v.* Vasse merely settled the equitable rights of different claimants to moneys awarded under the provisions of a treaty.

Meade's case was that of a claim which had been rejected by the Commissioners under the treaty with Spain, because not proved in the manner prescribed—*i. e.*, not by original proof of the facts, but only by the record of a Spanish judgment. Meade's heirs procured a resolution of Congress referring his case to the Court of Claims, and the court held that the resolution did not give it any further power than the Commissioners had had and exercised. The court did not decide, and probably counsel would not contend, that the two Governments, by supplemental treaty, could not have agreed to a new Commission, and direct it to accept the evidence which the first Commission had held to be insufficient; or even that Congress could not have directed the court to accept that evidence.

Whatever may have been said in these opinions as to the finality of awards under a treaty as between Governments was *obiter dictum*, for the question was not before the court.

Reichart *v.* Phelps, in 6 Wallace, was a case where the United States, by act of its own Congress, attempted to set aside the decision against itself of an officer whom it had empowered, in accordance with the terms of the act of Congress accepting the cession of the Northwest Territory, to confirm land titles. The court held that this could not be done.

The question was between two titles from the United States, and the Supreme Court acquired jurisdiction because a State court had decided against the validity of one of them. The confirmation by Governor St. Clair was equivalent to a grant, and there was no allegation that it had been obtained by fraud. If there had been the court would have followed the decision in the Sampeyreac case (7 Peters, 222). There a confirmation of a Spanish grant in the Louisiana cession had been made by the district court, in accordance with the terms of the treaty of 1803 and the act of Congress of May 26, 1824. Fraud being alleged, Congress, on May 8, 1830, passed an act authorizing a bill of review to be filed, and the court being satisfied of the forgery, perjury, and fraud, reversed the original decree. "Held, that these proceedings were legal and were authorized by the act of 1830," and this although the fraudulent title had passed to innocent holders.

This decision was not reversed by that in the Throckmorton case, where there was no act of Congress, and where the court expressed some suspicion as to the action of the district attorney. But none of these cases touch the present question, which is, whether two Governments, with or without action by the legislature of either, may agree to investigate accusations of fraud in an award made under a treaty between them, and say that if those charges are proved one of them will not hold the other to the obligation of the treaty.

XXVII.

The decisions most applicable to a case of this kind are those of the English courts in Rustomjee *v.* The Queen (L. R., Q. B. Div., vol. 1, 487, and vol. 2, p. 69), and the unreported cases of United States *v.* Gardiner, Corcoran and Riggs, in the supreme court of the District of Columbia, and United States *v.* Gardiner and the N. Y. Life Insurance and Trust Company, in the circuit court in New York.

In the former case it was held by Sir Alexander Cockburn, and on appeal by Lord Coleridge, that the petition of right would not lie to compel the distribution of moneys received under a treaty.

"In all that relates to the making and performance of a treaty with another sovereign," said Lord Coleridge, "the crown is not and cannot be either an agent or a trustee for any subject whatever."

The opinion of the circuit court in the Gardiner case is only manifested by its decree that the award—made final and conclusive by the treaty with Mexico—"was obtained by fraud and forgery as in the said bill is charged; that no money was at any time due to the said George A. Gardiner for the matters stated in the claim presented by him to the said Board of Commissioners, *and that said award be, and the same is hereby, in all things reversed and annulled.*"

That case did not go to the Supreme Court of the United States. But if these cases shall ever reach that high court, no one can doubt what its decision will be. The Government of the United States is not so weak and helpless a thing that it can be compelled, by its own dishonest citizens, to demand from a friendly republic payment of a fraudulent claim. If it were, foreign Governments would no longer enter into treaties with it, referring private claims to arbitration.

That the claimants do not honestly believe that they have vested rights as against Mexico and their own Government is evident from the fact that they have never yet sought to enforce them. For three years and a half the money on these claims was locked up in the hands of the Secretary of State, but no application was ever made for a mandamus to compel its payment. Mr. Shellabarger has been in court for the claimants, but only to insist that there was no ground for mandamus. And yet he here says that "he will endeavor, in every proper way, to hold the United States responsible as trustee for the moneys aforesaid recovered by said award."

XXIX.

The Abra Company complains that it never had an opportunity to examine the proofs of fraud. But the principal letters were printed and laid on the desk of every member of Congress in the shape in which they are now handed to the Secretary, more than a year prior to the hearing before Mr. Evarts. And after that hearing, five months before the decision, and ever since, claimants knew the whole case. Exall was alive; Bartholow was alive; Garth was and is alive, but no one of them has ever denied, under oath, the authenticity of those letters. They do not dare to, for the handwriting, compared with that of their affidavits before the Commission, would prove it, even if it was not sworn to by De Lagnel, claimant's own superintendent, whose identity and whereabouts were carefully concealed at the trial.

The only thing which they now file as rebutting evidence is in the shape of extracts from alleged letters from the British consul and other foreign residents at Mazatlan, dated in June, 1876. In alluding to these letters, Mr. Evarts, as counsel for the Rosario y Carmen Mining Company, advised Sir Edward Thornton (House Reps., 700, 2d sess., 45th Cong., p. 8) that "*by some misfortune the package of papers which included these originals has, I am told, since been lost.*" That package was brought from Mexico, if at all, by the same person who collected the proofs for La Abra Company, a person whose criminal record is fully exposed in the "case of Mexico," whom Consul Charles B. Dahlgren accused, in a letter filed with that case, of forging his pretended deposition in favor of La Abra Company, and of whom Consul-General Van Buren, who has known him for thirty years, says in a letter also filed with the case, "I believe him capable of any villainy which does not require courage." If these facts were not sufficient to raise suspicion of the honesty of those letters in their reference to the Abra claim, an examination of the letters themselves would do so.

Just preceding the paragraph quoted by counsel is the following: "The liberal forces under Corona occupied the approaches to this port, while Lozado, with his Indians, invaded the State from Jalisco, and in November *of that year*, 1864, the French took possession of the town itself." Then follows the paragraph quoted: "This state of affairs lasted *for three years*, paralyzing all the industries of the country, and rendered *resumption* impossible, not only of this company, but of many others, among which we will cite the La Abra, situated near the one in question, *was abandoned from precisely the same influences.*"

But, as shown by the evidence before the Commission, it was not until the end of 1865, in the midst of all this invasion and trouble (for which Mexico was not responsible), that La Abra Company *established itself* in Mexico, and it was not until 1868, after the French had been driven out, Maximilian shot, and peace restored, that the superintendent abandoned its mines because they did not pay.

XXX.

It is remarkable, to say the least, that counsel for the claimant should attempt to show, by the old evidence, that the new evidence, composed of their press-copy book and other records, was in the hands of Mexico during the trial. But the old evidence does not show any such thing.

On page 44 of the Abra Company's book of evidence, James Granger, its clerk, testifying for the company, identifies certain letters, and says: "I remember the order very well, as I received it as clerk of the company, and after showing it to the superintendent, Mr. Exall, I filed it away with some other papers of the kind, and *subsequently turned it over, together with two or three others from Judge Guadalupe Soto, to the attorney of said La Abra Co.*" (*i. e.*, the agent collecting its proofs years after the abandonment). On page 137 of the same book Granger admitted that he had sold some of the property of the company after the superintendent left, and on page 150 is the bill of sale, dated in 1871, three years after the alleged forced abandonment. An agreement was produced (p. 166) by which Exall, as superintendent, granted on February 7, 1868, and Granger, as his representative, extended, *on August* 7, 1868, (six months after the alleged forced abandonment) *permission* to Judge Soto, the foremost of the company's alleged persecutors, to occupy an old and useless building on the property. And on page 16, *in the evidence for the company*, appears the fact, duly certified at the request of its attorney, that *Granger*, in 1871, legally denounced (because of abandonment) and entered into possession of the rich mines from which the covetous Mexicans had driven his company in 1868. So that, according to the claimant's own evidence before the Commission, to say nothing of defendant's evidence, the papers, the buildings, the fixtures, and the mines of the company were all in the hands of its officers while the claim was on trial. That such evidence should have been overlooked by the umpire is not the least extraordinary feature of the case.

But even if the papers had been in the possession of Mexico, they only purport to be press copies of reports sent to New York, or letters received from there, of which copies were left in New York. Mexico did not seize the office of the company in New York, and if these letters are spurious the genuine correspondence can be produced. Why was it not brought forward in support of the claim? Let the decision of the umpire answer. "Neither books nor reports have been produced, and *no reason has been given for their non-production.*" If that sentence had been in the charge of a judge, what would be thought of a jury that

should bring in a verdict for the plaintiff of $683,000? Or of a judge who would not set such verdict aside, not as excessive, but as unsupported by evidence?

XXXI.

The scope of the new charges and evidence is persistently misstated by counsel for the Abra Co., who, unfortunately, can now allege the opinion of Secretary Evarts, doubtless founded on that of some subordinate, to support their misstatement. But with equal persistency it has always been, and is now, insisted that the charges went to the root of the claim, and that the evidence supports them. The company received great kindness and favor from the military officers of Mexico, and however sharply the civil officers may have rebuked the superintendent for failing to pay his workmen, (as they had a right to do), that did not stop the work an hour, nor did anything prevent the company's remaining till this day except the worthlessness of the mines and the inability or disinclination of the company to sink any more money in them.

On the 13th of July, 1867, Superintendent Exall wrote to the treasurer that he had reduced the pay of the workmen, which occasioned a "little spat with the officials, which was gotten through without much trouble," and that he "could do better with the workmen when they were a little hungry." October 6, 1867, he writes that the ore "won't pay, to throw it in the river," but that "there is no difficulty about authorities, boundaries, or anything else."

Having previously, in letters of May 20, May 30, and June, 10, advised Exall that he could expect no more money from New York, Treasurer Garth on July 10, 1867, wrote him: "If it costs more than it comes to, the sooner we find it out the better, and the *sooner we stop* the better for all parties concerned." After many letters asking for money to pay debts and showing that the mines yielded nothing, Exall, on the 24th of January, 1868, wrote: "If by next steamer I receive no assistance from you I intend leaving for the East." February 21, 1868, he formally instals Granger as his representative. He leaves by the March steamer from Mazatlan, and keeps on writing to Granger from Mazatlan, San Francisco, New York, and Richmond, down to July, 1868, directing him what to do with the property of the company, saying that the old company refuse to pay even his salary, but have given him permission to organize a new one if he can and to sell the mines to it. He tells Granger that he hopes to complete this swindling negotiation, when he will return as superintendent. Granger, on the 13th of August, advises the Mexican collector that he has no money to *pay taxes*, but that Exall will return in November.

The claim filed in 1870 is that Exall was driven away by the Mexican authorities March 20, 1868, from mines of extraordinary richness, and dared not return for fear of his life. Does the new evidence show that the claim is merely exaggerated? Or does it not rather show that the claim is wholly fraudulent?

XXXII.

The evidence in both the Abra and the Weil cases is of the kind on which courts always grant a new trial, viz, "where the newly-discovered evidence relates to confessions or declarations of the other party respecting a material fact and inconsistent with the evidence adduced by such party at the trial; or when such newly-discovered evidence

was placed beyond the knowledge or control of the petitioner by means of the other party, with a view to prejudice the petitioner's case." (Warren *v.* Hope, 6 Greenl., 479.)

It is ridiculous to suppose that Mexico had or could have, at the trial, the evidence since procured from the claimant's partners and agents. The evidence which she did have in the Weil case was utterly useless, and she therefore declined to introduce it. The claimant, by his vague presentation of the case, had given no indication by which she could discover evidence, and all she could do was to find some people who had never heard of Weil or the capture of his cotton, but who ought to have heard of such a seizure if it had occurred. A list of this evidence is on file with the papers that were before the Commission, and it cannot be misrepresented. A perusal of the half-dozen affidavits filed by the claimant in that case will show such inconsistencies and absurdities as to completely justify Mexico in resting her case on them. The award was in that case, as in the Abra claim, entirely against evidence.

XXXIV.

Counsel cite the Throckmorton case, in 8 Otto, to show that Mexico should not have relief, because the fraud she charges is not "extrinsic or collateral." The rigid rule laid down in that case applies to bills of review in the ordinary courts. It is put by the Supreme Court on the following grounds:

> If the *court* has been mistaken in the law there is a remedy by writ of error. If the jury has been mistaken in the facts there is the same remedy by motion for a new trial. If there has been evidence discovered since the trial, a motion for a new trial will give appropriate relief.

Here there was no "court" with power to summon and cross-examine witnesses and to punish for perjury or contempt. The Commission having once adopted rules for the taking of evidence, reconsidered and rescinded them on the ground that it had no power under the convention to regulate that part of the procedure, and was thus divested of those attributes which give weight to the findings of ordinary tribunals.

The Commission (not a court) mistook the law; but there was no remedy by writ of error. The Commission (not a jury) mistook the facts; but there was no remedy by motion for a new trial. New evidence was discovered, but there was still no remedy by motion for a new trial. That motion was made promptly in both these cases, but the umpire said that by the provisions of the convention he was debarred from rehearing cases which he had once decided. The convention just signed is the granting of a "new trial" by the two Governments, superior to the Commission, from which it derived its jurisdiction. Why should it not be carried into effect?

If international Commissions are to succeed, their proceedings must be assimilated as nearly as possible to those of regular courts of justice. Nothing could be more fatal to their success than for a Government to permit them to become the vehicle of fraud—to make them a trap for its unwary neighbors, and to insist on the finality of their decisions, in the face of every rule which governs the course of justice as between individuals.

Had Mexican citizens *imposed on the United States* a burden half so heavy in proportion to resources as Americans imposed on Mexico, and had fraud afterwards been discovered, would Mexico have been permit-

ted to claim the money? No administration could have lived a day which would have proposed to pay it.

Or, to put another case, suppose these claims, or others of like amounts, had been recovered by the United States for their own use under the convention of 1868, after hearing before the same Commission and by the decision of the same umpire, and afterwards that like conclusive proof of fraud and perjury with respect to them had been adduced, how long would our Government stand exacting its pound of flesh according to the strict letter of its bond? Not one hour after the American people had been brought to realize the ignominy of their position. They would insist upon the instant that justice should be done, no matter what technicalities might be interposed, and they would not permit the officers of the nation to be defiled by the plunder which power might thus wring from a sister republic. They would accept for their guide and seek to enforce in practice the language which their great master of jurisprudence has employed (see Kent's Coms., v. 1, p. 2) to define the fundamental principles of international law:

> There is a natural and a positive law of nations. By the former every state, in its relations with other states, is bound to conduct itself with justice, good faith, and benevolence; and this application of the law of nature has been called by Vattel the necessary laws of nations, because nations are bound by the law of nature to observe it; and it is termed by others the internal law of nations, because it is obligatory upon them in point of conscience. We ought not, therefore, to separate the science of public law from that of ethics, nor encourage the dangerous suggestion that governments are not so strictly bound by the obligations of truth, justice, and humanity, in relation to other powers, as they are in the management of their own local concerns.

Placing the foundation of the law of nature in the will of God, discoverable by right reason and aided by divine revelation, and responding to the dictates of Christain duty, the people of the United States would require that Mexico should be absolved and acquitted from all further liability on account of claims so iniquitous and monstrous, and, pursuing with the sword of outraged justice, they would not rest until they had brought to condign punishment the band of perjurers who had dragged the nation to the very verge of dishonor; all this they would do, even though the fraud and perjury had been used for the benefit of the national Treasury.

But in the Weil and La Abra cases it is asked that the American people shall be dishonored, justice overthrown, good faith violated, and our cordial relations with a neighboring and friendly republic forever endangered, in order that the fraudulent and perjured claimants and their horde of allies and abettors shall be enriched. In fact, arguments, long, loud, and persistent, are made to prove that the nation is impotent to do justice and save its honor, for no other reason than that the thieves and perjurers have acquired vested rights by the instrumentalities of their own crimes and falsehoods; and that the United States are now so bound by technicalities that their Government must continue, in spite of its sovereign power and duty, to act as a receiver of the moneys extorted under its own convention by fraud, conspiracy, and perjury, and then proceed to dispense those same moneys among the conspirators and perjurers themselves, long after their flagrant crimes have been made patent to the whole world. If these arguments are to avail, what will become of "the honor of the United States," which Congress was so anxious to vindicate? Verily it will become a hissing and a byword among the nations.

The convention which has been signed by the plenipotentiaries of the two Governments has been guarded by every provision that learn-

ing and ingenuity could devise to save and protect the legal rights of all concerned. It needs but one thing more to give it validity on the part of the United States, and that is the approval of the Senate. The Senate has twice asked that the treaty be made. The law does not forbid it, for every question of law has been scrupulously reserved. No wrong can possibly come of it. Justice demands it; the Golden Rule enjoins it; and the judgment of the people will approve it. Thus fortified, it may be safely submitted to the Senate for ratification, and afterwards, if doubts remain, to the courts for construction.

JOHN W. FOSTER.
JNO. A. J. CRESWELL.
ROBERT B. LINES.

No. 89.

Mr. Romero to Mr. Frelinghuysen.

LEGATION OF MEXICO,
Washington, May 1, 1882.

Mr. SECRETARY: In fulfillment of my promise made to you in our interview last Thursday, April 27, and in compliance with the desires expressed by you relative to this matter, I have the honor herewith to send you a synopsis of the evidence recently obtained by the Government of Mexico of the fraudulent character of the claims of Weil and La Abra, which claims this legation has for some time past been endeavoring to have re-examined.

The original evidence is in the possession of this legation, and, since it is very voluminous, it has seemed preferable to me (in order that the United States Government may be able to read it easily and without delay) to send you the accompanying synopsis, which I send in the English language, in order to save the State Department the trouble of having it translated.

I reiterate, &c.,

M. ROMERO.

SYNOPSIS OF NEWLY-DISCOVERED TESTIMONY IN THE WEIL AND LA ABRA CLAIMS.

Under the Claims Convention of July 4, 1868, between the United States and Mexico, 837 claims, aggregating $470,126,613.40, and 144 claims whose amounts were not stated, were brought by the Government of the former country in behalf its citizens against the Government of the latter, for adjudication by the Mixed Commission organized in accordance with the provisions of that convention. Money awards were made by the Commissioner in 43 cases, and by the umpire in 143. The remaining 812 claims were dismissed. The total award was $4,125,622.20, less than 1 per cent. of the amount claimed. In that large class of claims called into being by the convention of 1868, were found those of Benjamin Weil, No. 447, and La Abra Silver Mining Company, No. 489, on the American docket, whose retrial is provided for by the treaty now under consideration. The necessity for this treaty, and a retrial of these cases, arises mainly from the fact that the umpire (Sir Edward Thornton) ruled, upon motions for new trials, that he was debarred by the provisions of the convention of 1868 from rehearing claims that he had once decided, at the same time suggesting that neither Government would insist upon the payment of claims shown to be founded upon perjury.

THE WEIL CLAIM.

The claim of Benjamin Weil, as presented to the Commission, was as follows:

On the 8th of March, 1870, the Government of the United States, and, through it, the Mixed Commission, first received notice, in the form of a letter from the claimant's attorney, that in September, 1864, Benjamin Weil, alleged to be a naturalized citizen of Louisiana, had been despoiled by Mexican authorities of the large amount of 1,914 bales of cotton, in compensation for which he asked an award from the Commission of $334,950, with interest.

Accompanying this notice of his claim was the sworn statement of the claimant, Weil (dated September 10, 1869, and certified to under oath by George D. Hite to be correct), to the effect that this cotton, "belonging solely to himself," was taken "from him in the republic of Mexico," "under his special control," "between Laredo and Piedras Negras," "on or about the 20th of September, 1864," "by the representative forces of the Republic of Mexico"; "that he was at the time of the seizure" "stopping at Matamoros"; "that he often, but in vain, solicited the return of his property, and that he had never laid his claim before either Government, asking payment thereof."

The memorial filed April 30, 1870, is similar to the notice of March 8th, above referred to, and it is supported by the *ex parte* affidavits of George D. Hite, John M. Martin, John J. Justice, and S. B. Shackelford, the witnesses, to prove the existence and loss of the cotton.

Against the claim thus presented, the representative of Mexico made the best defense before the Commission from the facts at their command. They regarded the claim as similar to that of the hundreds of millions' worth of other claims, against which they were obliged to defend their Government, and which were decided to be without merit.

They pointed out the discrepancies in the statements of Hite and Shackelford, two of the most important witnesses to prove the existence and the loss of the cotton, the former declaring under oath that he helped ship the cotton from Allaton, 700 miles from the Rio Grande, in May, 1864; and the latter that he saw it start from Alleyton, which is 260 miles from the Rio Grande, in September, 1864. Other material discrepancies were shown which seemed to exhibit the perjury of the witnesses.

It appeared remarkable that the memorial did not allege that the cotton was exported by the permission of the Confederate authorities, which, as was well known, was rigidly required at that time, or that it was imported into Mexico by the permission of and on payment of duties to the Mexican authorities, in default of which it would have been liable to seizure under the law; and that a claim should be presented on behalf of an American citizen growing out of the alleged interference by Mexico with contraband trade between that citizen and the enemies of the United States. Still more surprising was it that nobody from whom Weil had purchased cotton or hired teams, none of the numerous wagon-masters, teamsters, or other persons naturally connected with a train carrying 1,900 bales of cotton testified in his behalf; that no account was given of the disposition of the cotton, which, according to Martin, was left on the highway; and that none of the employés attached to the train, who, according to Hite, went to Matamoros after the capture, appeared as witnesses in support either of this claim or of the protests and demands which the claimant was alleged to have made in person and "through his agents and attorneys," none of which, and no documentary proofs of which, were shown to the Commission. And most extraordinary of all was the fact disclosed by the dockets of the Commission that no claim was ever made by anybody for the 190 wagons captured, and the 1,560 "mules, horses, and teams" turned loose, as alleged by the liberal brigands who captured them. Mexico called upon to prove a negative, without the slightest indication from the claimant which could lead her to the discovery of evidence, the most that she could do was to secure some affidavits from persons who had never heard of Weil or the capture of cotton, but who, from their position on the frontier at that time, would have been likely to know of it if it had taken place. This evidence was not received until 1874. The time limited by the rules of the Commission for the presentation of evidence had expired, and it could only be admitted by special agreement. In the following year, when the labors of the Commission were drawing to a close, the American Commissioner proposed to admit this evidence, provided the claimant should be given leave to file further proofs. This proposition the Commissioner for Mexico declined, on the ground that it would only be an invitation to the claimant to bolster up his case by further perjury, which could not be rebutted within the time allowed to the Commission. The American Commissioner expressed an unwillingness to reject the claim, and it was referred to the umpire, who, on the 1st of October, 1875, made an award to the claimant of $285,000, with interest from September 20, 1864; in all, $487,810.68.

After the award, and while a motion which Mexico had made for a rehearing was pending, the Mexican minister in Washington, Sr. Mariscal, accidentally met General Slaughter, a Confederate officer, who had known Weil on the Rio Grande, and was familiar with his transactions in 1864. Informed of the existence of this claim, he

promptly declared, from his own knowledge, to be a fraud, and through his exertions, and with the utmost possible dispatch, the Government of Mexico brought to light the most important and positive documentary evidence, showing the fraud and perjury that had been perpetrated. Immediately on its receipt, to wit, on or about the 19th day of September, 1876, this evidence was laid before the umpire with a supplementary argument on the motion for rehearing. On the 20th of October the umpire decided that he could not take the evidence into consideration, as it had not been before the Commissioners. He added, however: "In the case No. 447 (Benj. Weil *vs.* Mexico), the agent of Mexico has produced circumstantial evidence which, if not refuted by the claimant, would certainly contribute to the suspicion that perjury has been committed, *and that the whole claim is a fraud.* For the reason already given it is not in the power of the umpire to take that evidence into consideration, but if perjury shall be proved hereafter, no one would rejoice more than the umpire himself that his decision should be reversed and that justice should be done."

THE NEWLY DISCOVERED TESTIMONY.

With the foregoing review of proceedings had in the case, it is now proposed to examine, as briefly as the importance of the subject will allow, the newly discovered evidence upon which Mexico relies to support her application for a retrial of said claim. This consists of some fifteen affidavits, including those of the partners in business of Weil from 1863 to 1866, of other persons who knew intimately the business and whereabouts of Weil and the principal witnesses of his claim, and of Confederate and Union officers and citizens cognizant of affairs at the time when, and in the locality where, the claim had its alleged origin and consummation; and some two hundred letters and telegrams between Weil and his partners or other persons; and other original documents. This evidence, duly authenticated and identified, was submitted to the Secretary of State on the 12th of December, 1878, and remained on file in the Department of State up to the 7th of November, 1880. A full statement of the same will be found in the printed volume, now in possession of the Department, entitled, "*Case of Mexico, upon the newly discovered evidence of fraud and perjury in the claims of Benjamin Weil and La Abra Silver Mining Company.*"

To the foregoing mass of evidence is to be added the documents of which the late Secretary of State, Mr. Blaine, furnished copies to the Mexican legation, accompanying his note of December 9 last.

These proofs, an extended analysis of which will be found in the above-cited volume, "Case of Mexico," established conclusively the following facts:

1st. That Weil, the claimant, was from 1863 to 1866 engaged in a general partnership with a number of persons; that during the year 1864, the time when the cotton was alleged to have been bought, shipped, and seized by Mexico, he was wholly and exclusively engaged in said partnership business; and that he could not and did not engage in any such operations as those described in his memorial presented to the Commission, and which were made the basis of his claim and award.

2d. That for a number of years prior to and at the date of the alleged purchase and collection of cotton, Weil was possessed of very limited means, and had neither the money or credit, on his own account, to purchase the quantity of cotton claimed to have been owned by him and seized by the Mexican forces.

3d. That so far as it is possible to establish a negative, it is shown that no such train of cotton, as alleged in claimant's memorial, ever crossed the Rio Grande from Texas into Mexico or was seized by the Mexican forces.

4th. That on all points material to establish his claim, Weil and all his witnesses are impeached, their perjury established, and their utter unreliability fully proved.

5th. That the claim from its inception to the present time has been marked by fraud, conspiracy, disloyalty, and bad faith, and is entitled to no consideration at the hands of the Government of the United States.

I.

The first of these points to examine is *Weil's business, occupation, and whereabouts in* 1864.

In his memorial filed before the Commission he declares under oath that his claim "arose on or about the 20th of September, 1864, in the territory of the United States of Mexico, between Piedras Negras and Laredo, &c., by reason of loss and damage suffered by claimant by the forcible and unlawful seizure of nineteen hundred and fourteen bales of cotton, * * * of the value of three hundred and thirty-four thousand nine hundred and fifty dollars, which said cotton was, as aforesaid, unlawfully seized and taken possession of by the forces of the Liberal or Republican Government of Mexico, the president or chief of which was Don Ben Benito Juares, which said cotton was on trains and being transported through said territory to the city of

Matamoros, Mexico, *and the said cotton*, this claimant declares, *was his individual property, and he was the sole owner thereof at the time of said seizure.*"

On the contrary, however, the documentary evidence submitted by Mexico to the Department of State shows that from March, 1863, to October, 1865, Weil was a member of a business firm, by the term of whose partnership agreement "all transactions made by any member of said firm * * * shall be for the benefit of said firm."

We copy an extract from said agreement. (See case of Mexico, p. 6.)

Certified copy of articles of copartnership of Levy, Bloch & Co., entered into before Joel H. Sandoz, notary public, Opelousas, La., March 11, 1863, *and signed by J. Bloch, for Bloch, Firnberg & Co., and Isaac Levy, for Isaac Levy, &c.*

"The partnership is to commence on the first day of March instant, and is to end six months after the war. *All transactions made by any member of said firm and at whatever time and place during the time of copartnership are and shall be for the benefit of said firm.*" (See also certified copy of the agreement for the dissolution of the above partnership, dated New Orleans October 11, 1865.)

The falsity of the claimant's memorial above quoted may be seen from the affidavits of Weil's partners in business, and from them may also be learned something of of Weil's whereabouts and occupation during the year 1864. (See case of Mexico, pp. 7–11.)

We extract as follows:

S. Firnberg testifies before Notary Theodule Buisson, New Orleans, August 4, 1876; was a member of the firm of Bloch, Firnberg & Co., of Opelousas, which consolidated in March, 1863, with Isaac Levy & Co.; Benjamin Weil was a member of the firm. *None of the firm had any property outside of the partnership.* Benjamin Weil was a party to the contract with Governor Moore, of Louisiana, ratified by Governor Allen, his successor, to import for the State ammunition, cotton cards, clothing, arms, &c., receiving cotton in exchange. *Weil had no individual resources to carry out this contract.* In 1864 Weil formed a partnership with Gustave Jenny, of Matamoros, for the firm of Levy, Bloch & Co., his name only being used. "*Since the time of our partnership I have never heard of any claim against the Government of Mexico by our firm; and I know of my personal knowledge that the claim of Benjamin Weil against the Government of Mexico was fraudulent.* At the time he made that claim, as being a claim of his own, he willfully stated what he knew to be untrue. I was then a partner and interested in all transactions, gains or losses, up to the dissolution of the partnership, which took place on the 19th day of December, 1865, and *I know that claim to be a fraudulent one.* I had access to the books and papers, and have never seen or heard of any such claim existing. The first I ever heard of it was through the public press, and that was in the latter part of last year. *I then denounced it as a swindle, and I now pronounce it to be so.*"

Marx Levy, of 281 Baronne, New Orleans, testifies July 30, 1877, before Robert J. Ker, notary public, New Orleans: Has known Benjamin Weil from boyhood in Alsace, Europe, and subsequently, since 1852, in Louisiana. In that year Weil was a pedlar; some time during the year Weil was employed as bookkeeper for the firm of Isaac Levy & Co., composed of deponent, Isaac and Jacob Levy. In 1854 Weil was admitted to partnership in said firm. In 1863 said firm formed a partnership with Bloch, Firnberg & Co., composed of Joseph Bloch and Solomon Firnberg and Samuel E. Loeb. Weil and deponent were together in Matamoros for some time. During a six weeks' absence of deponent at Havana, Weil remained at Matamoros, doing nothing, *supporting himself from the partnership means. Deponent has often given him money to pay his current expenses. Weil had no means outside of the partnership.* On his return from Havana deponent met Weil at Houston, Tex., and was informed by him that he had made arrangements with C. F. Jenny, from Switzerland, to import Jenny's stock of goods at Matamoros for the State of Louisiana. The governor of Louisiana turned over to Weil and Jenny small lots of cotton; owing to difficulties with the Texas cotton bureau only a few hundred bales came through. The goods were delivered at Navasota, Tex., to the authorized agent of the State of Louisiana. "*I know this claim of Benjamin Weil against the Republic of Mexico is a base fabrication, and a fraud from its beginning to the end.*"

On pages 7, 8, and 9, "Case of Mexico," is found an affidavit of Samuel E. Loeb, one of Weil's partners, too long to quote here, but to which attention is directed, in which he enters into a detailed statement of all the cotton transactions of the combined firms, showing that during the entire year 1864 they never had or controlled the number of bales which Weil alleges was seized by Mexico; that at Alleyton (where it is claimed Weil collected 1,900 bales of cotton) the firm never had more than 150 or 200 bales, and these were never under Weil's control; that every bale held by the firm was satisfactorily accounted for; and that not a single bale was ever seized by the Mexican forces. He further adds, at the dissolution of the partnership there were not among the assets any large claims unsettled or uncollected.

Then follows the affidavit of Louis Scherck, a member of the firm (Case of Mexico, p. 11), containing a narrative of the partnership operations in 1864, from which is extracted the following: "In the end of 1863, Ben. Weil was in Matamoros doing nothing; he then informed Gustave Jenny that he had a contract with the governor of the State of Louisiana, and that if Jenny was willing to furnish the stock of goods he had on hand they would take it to the State of Louisiana, Ben. Weil not investing any money to my knowledge. They took the stock and delivered it, with my assistance, by request of C. F. Jenny, to Emory Clapp, the State agent of Louisiana, at Navasota, Texas; they received some cotton in part payment for those goods. This transpired during the summer of 1864. I afterwards returned to Matamoros; I was there in the latter part of the year. I have never heard of any cotton having been taken by the Cartina forces belonging to Benjamin Weil. If such a thing had happened I would certainly have heard of it at the time. * * * Weil had no means of his own; the means came through C. F. Jenny. I, as an interested partner of C. F. Jenny, had occasion to know this, and the transaction bearing upon the subject, having access to the papers and books."

It appears from the foregoing, and other of the documents submitted to the State Department, that the business of Weil and his partners in 1864 was in executing a contract to supply the Confederate governor of the State of Louisiana with military supplies, mainly imported through the Mexican port of Matamoros, receiving cotton in payment. The affidavit of E. W. Halsey (Case of Mexico, p. 10) explains in considerable detail these contraband operations. The following extracts are given:

"Before me, Theodule Buisson, a notary public for the parish of Orleans and the city of New Orleans, therein residing, personally came and appeared Mr. E. W. Halsey, who, being duly sworn, deposed and says: I was private secretary to Gov. T. O. Moore during his term of office, beginning in January, 1860, and also to Gov. Henry Watkins Allen during his administration, which closed with the surrender of the Confederate forces, in May, 1865. I was cognizant of the transactions between Governor Moore and Benjamin Weil, then representing the firm of Weil & Levy. Governor Moore made Weil and Levy, his partner, agents for the State for importing supplies, then much needed. I had thorough knowledge of these transactions at the time, and prepared much of the correspondence and many of the contracts and orders relating thereto. From frequent conversations with Weil and Jenny, I was led to believe that the capital for these transactions was furnished, wholly or chiefly, by Mr. Gustave Jenny, or Jenny & Co., of Matamoros. All these transactions during the year 1863 and the year 1864 were at the time familiarly known to me. I have no knowledge of transactions in cotton for export during the above designated period by Weil, Levy, and Jenny, or either of them, except in cotton furnished, as above stated, by Governor Allen, representing the State of Louisiana. * * * Although intimate with Mr. Weil during these transactions *he never spoke to me of losing cotton by seizure on the Rio Grande*, or of exporting other cotton than that received from or through Governor Allen. Had he incurred any considerable loss by such seizure the facts would in all probability have come to the knowledge of Governor Allen and myself, as his private secretary, had it occurred before June, 1865."

These affidavits showing the business relations and operations of Weil would seem to establish the fraudulent character of his claim against Mexico, but fortunately he has in his own handwriting and over his own signature furnished indubitable proof of this. Among the papers filed with the State Department (Case of Mexico, 14–35), there are some two hundred original letters and telegrams between Weil and his partners, showing all the transactions of the firm and the whereabouts of its members. Seventy of these letters are from Weil himself, and all are duly authenticated.

Briefly stated, his case against Mexico was that in the year 1864 (the date being variously fixed by his perjured witnesses as May and September), he bought and collected at Allaton, 700 miles, or Alleyton, 260 miles from the Rio Grande, over 1,900 bales of cotton, and started the same in one immense train to Matamoros, Mexico; that on the 20th of September, 1864, this cotton was taken from him by Mexican troops, and that at the time of the seizure he was in Matamoros. But his own letters and those of his partners clearly show that at the date stated he was at other places, and engaged in business of altogether a different character, which wholly occupied his time, to wit, the transportation of military supplies to the Confederate governor of Louisiana, and the earnest endeavor to obtain the promised cotton in payment, which came slowly and in small quantities. On the 3d of February, 1864, Weil writes from Matamoros to Loeb, detailing their business operations under the Louisiana contract, and states that he will leave in two days for Houston, Tex. April 11 he writes a letter to Loeb from Houston, in which, in connection with the business, he states that he had started for Alexandria, La., "when the Yankees came," and he turned back. He expected to leave the next day for San Antonio. From there he goes again to Matamoros, from which place he writes a letter to Loeb, dated May 18, 1864. Two weeks later he writes to Loeb from Navasota, Tex., May 30. In this letter he announces his intention to leave for Shreveport, La., the next Wednesday. On the 17th

of June he writes from Shreveport: "Here we are, all of us—Jos. Isaac (partners), and me—consulting," &c.

On the 14th of July, at Alexandria, he writes to Bloch, and on the 21st of July, from the same place, he addresses him again.

August 29th he writes from Opelousas, La., to Loeb, to which place he had come from Alexandria.

On the 5th of September, from Alexandria, he writes to Borme that he will leave that day for Shreveport.

In a letter to Loeb dated Shreveport, September 10, he announces his arrival there that morning; and other letters written by him at that place bear dates, respectively, the 12th, 15th, 20th, and 26th of September, and the 18th, 24th, 25th, and 27th of October; and letters from his partner, Levy, show that he (Weil) was in Shreveport continuously up to the 12th of November, 1864.

This mass of letters shows that the business and occupation of Weil was the execution, in association with his partners, of the contract with the Confederate governor of Louisiana, and that he was not, and could not have been, engaged in any other operations, much less one of such extensive and unusual character as that set forth in his memorial before the Commission; that he was not at Alleyton engaged in the collection and shipment of 1,900 bales of cotton at the date stated by himself and witnesses, or at any other time in that year; that he left the State of Texas and went to Louisiana early in June, and remained there continuously till after the 1st of November, and that consequently he was not at Matamoros at the time of the alleged seizure of the cotton by the Mexican authorities, but at Shreveport, La., 600 miles away.

II.

Having so completely established these facts, it would hardly seem necessary to proceed further in the examination of the proofs presented by Mexico. But through abundant caution, it is well to pass to the second point: *that Weil was possessed of very limited means, and had neither the money nor credit to purchase cotton alleged to have been taken from him by Mexico.*

Weil's letters (Case of Mexico, pp. 14–35), running through the years 1863 and 1864, to his partners and friends, throw much light upon this point. They are too voluminous to be quoted, and a general reference only can be made to their purport. They show that he was constantly hard pushed for funds; that he repeatedly wrote to his partners for assistance; that he time and again asserted that he was barely paying current expenses; that he and his partners were suffering frequent losses; that they were crippled in their business for want of capital, and that it was with the greatest difficulty that the governor of Louisiana, with whom in the year 1864 their operations were confined, could even approximately meet his engagements.

See also the sworn declarations of his partner already given, some of which are as follows:

Finberg swears that "Weil had no individual resources to carry out this contract" (the one with the governor of Louisiana); Levy says, "Weil remained at Matamoros, doing nothing, supporting himself from the partnership means. Deponent has often given him money to pay his current expenses. Weil had no means outside of the partnership." Sherck, the member of the firm of Jenny & Co., through whom Weil effected the arrangement which enabled him and his associates to carry out the contract with the governor of Louisiana, swears, "Weil had no means of his own; the means came through C. F. Jenny."

To this testimony of his partners may be added that of Halsey, the private secretary of the governor, who "had thorough knowledge of these transactions." He says, "From frequent conversations with Weil and Jenny I was led to believe that the capital for these transactions was furnished, wholly or chiefly, by Mr. Gustave Jenny, or Jenny & Co., of Matamoros."

In the face of these sworn declarations, of Weil's own letters, and of the foregoing recital of his business operations, the allegation that he was the sole owner of a single train of 1,900 bales of cotton, of the value of $334,000, carries its own refutation with it.

III.

So far as it is possible to establish a negative, the evidence submitted to the Department shows that *no such train of cotton, as alleged in the claimant's memorial, ever crossed the Rio Grande or was seized by the Mexican forces.*

It is shown by the testimony of a number of witnesses that during the year 1864, both the Confederate authorities in Texas and the Mexican authorities were very rigorous in watching the movements of cotton, that none was permitted to pass without paying duties both upon export from Texas and on import into Mexico, and that, so far as the Confederate authorities were concerned, an accurate account was kept and

published. The affidavit of Capt. L. G. Aldrich, on page 32, "case of Mexico:" He was assistant adjutant-general in the Confederate army from 1862 to 1865, and stationed in the western district of Texas, the locality through which Weil's alleged train of cotton passed. The following statement is taken from Captain Aldrich's affidavit: "By law all cotton found west of Goliad and San Antonio, Tex., was subject to seizure and confiscation unless covered by a permit from the cotton bureau; and that semi-weekly I received from agents of said bureau regular abstracts showing what cotton had regularly and legally passed such points, which abstracts were posted publicly in my office for general information, and certified copies forwarded by me to the commander of troops in our district—at all points in our district—it being one of their special duties to watch out for and examine papers of all trains loaded with cotton passing through the district; * * * that no capture of train of cotton was reported to me as having occurred in September or October, 1864; that I consider it next to an impossibility for a train of 150 wagons and 1,900 bales of cotton to have passed through our district without being discovered, or to have been seized by Mexican authorities without some intelligence of it reaching our headquarters; that I never heard at that time, or subsequently until now, of Benjamin Weil having lost any property."

Mr. John C. Evins, in his affidavit of August 14, 1876, says: "In the year 1858 I was appointed deputy collector of United States customs for the port of Laredo (Weil's train it is alleged crossed near Laredo), on the Rio Grande, which position I held until Texas seceded from the Union. I then remained at Laredo as my home or headquarters until the year 1869, and was there during the entire war. I was engaged in the freighting business and acted as agent in passing cotton over the Rio Grande, and made frequent trips with wagons from the interior to the Rio Grande. * * * I never heard of Benjamin Weil or of any seizure of cotton by the Mexican authorities in 1864, neither during the war or since. In my opinion it would have been impossible for the Mexicans to have taken violent possession of 1,900 bales of cotton anywhere on the Rio Grande without my hearing of it. * * * I do not believe that any one train of 1,900 bales of cotton belonging to one individual ever traveled across Texas into Mexico; and I will add that the seizure of such a large quantity of cotton would have certainly have been heard of by me if made at any point on the Rio Grande, much less in the neighborhood of Laredo."

Capt. J. C. Ransom, Confederate agent for the purchase of cotton in Texas from May, 1864, to May, 1865, says, "I never heard that any cotton had been seized by the Mexican áutho ities. I had a very large and extended acquaintance, and constant intercourse and business connections with contractors and persons engaged in transporting cotton from the interior of Texas to the Rio Grande River, and I do not believe that it would have been possible for nineteen hundred bales of cotton to have been seized by the Mexican authorities without my hearing of it. Such seizure would have caused terror in the minds of all persons owning cotton or those engaged in transporting the same. In my judgment there never was, during the war between the States, any one train of wagons that transported nineteen hundred bales of cotton. The time necessary to collect so large an amount of cotton, the capital that would be required to pay for so large a quantity, and the amount necessary to pay for advance freight, and the scarcity of water and grass along the routes for such a large number of animals, would preclude all reasonable possibility.

There are a number of other affidavits and documents tending to prove the same facts, and also showing that General Cortina (whose forces it is claimed seized the cotton) was at that date shut up in Matamoros, besieged by the Imperialists, and that his forces had not been in the vicinity of Laredo for some time before the alleged seizure, (case of Mexico, pp. 34–43).

IV.

On all points material to establish his claim, *Weil and all his witnesses are impeached, their perjury established, and their utter unreliability fully proven by the newly-discovered evidence submitted to the department.*

The facts already given sufficiently establish the perjury of Weil in his application, to which he attached his oath before filing it with the Commission. His principal witness is George D. Hite. He swears that he was employed by Weil to purchase and collect the cotton at "Allaton"; that he hired the wagons, made up the train, and assisted in starting it from that point; that it consisted of 190 wagons, carrying 1,900 bales of cotton, all of which "belonged to and was paid for by Weil," as "he was by far the largest and wealthiest operator in cotton in the country"; that he was present and witnessed the crossing of the Rio Grande by the train; that he then left it and went directly to Matamoros, where he was informed by men belonging to the train and by officers and men of Cortina's forces that the latter had seized the cotton in the mouth of September, 1864.

This witness reveals his own perjury by various geographical errors and by other

manifest misstatements; but it is sufficient to say that by the affidavits and original letters of General Boggs, Colonel Wise, Brent, Britton, Hope, and others, and to books and entries up to the partnership business of Weil and associates, it is proven that Hite was in Shreveport, La., hundreds of miles away from the localities where and when he swears he saw the cotton collected, shipped, and crossing the Rio Grande, and heard of its seizure; that he was not in the employ of Weil and his partners till some time after the date fixed for the shipment and seizure of the cotton; in other words, that his two affidavits, upon which Weil's case mainly rests, are base fabrications, "made out of whole cloth," without the shadow of a foundation.

The next witness in importance is John M. Martin, who claims to have been an eye-witness to the seizure of the cotton by the Mexican forces on the 20th of September, 1864, and in his affidavit he enters with particularity into the details of that event. It is conclusively shown that he was never during the year 1864 nearer to the locality of the alleged seizure than Shreveport, La.; that he went to New Orleans in May, and from there to Belmont County, Ohio, in June, where he remained till some time in 1865, being at the time of the alleged seizure (which under oath he describes as an eye-witness with such minute detail) near 2,000 miles away. These facts may be seen by an examination of the documents of the Treasury Department sent by Mr. Blaine to the Mexican minister with his note of December 9 last. It will be further seen by these documents that both Hite and Martin were suborned by Weil to establish his fictitious and fraudulent claim, and what was the price paid and to be paid for their perjury.

It would seem useless to pursue this branch of the subject further. In various parts of the testimony (see case of Mexico) Weil and his witnesses are impeached and their veracity assailed, in addition to the instances already given.

V.

The last point to be noticed is *that the claim from its inception to the present time has been marked by fraud, conspiracy, disloyalty, and bad faith*, and is entitled to no consideration on the part of the Government of the United States.

Without going too much into detail, a few circumstances may be cited connected with the history of the claim.

1. Conceding the fact to be true, as alleged in the claimants' application, memorial, and evidence, and considering the evidence submitted by Mexico, he was engaged in an unlawful traffic (1st) against the Government of the United States; (2d) against the Government of Mexico in evading its custom laws, and (3d) against the Confederate authorities.

2. After the civil war Weil went to Europe and arranged with Jenny's creditors for the balance due from the Confederate governor of Louisiana for goods furnished, and he prosecuted on a percentage a claim for the same against the reconstructed State of Louisiana, on which was allowed over $100,000. (See affidavit of Halsey, Case of Mexico, p. 53; also statement of Anderson in "Sherman report," Louisiana Returning Board, Senate Ex. Doc., pp. 67 and 78.)

3. The claim was prosecuted before the Commission by a *quasi* joint stock association, among whose shareholders were some of the claimant's witnesses, revealing an argument by no means creditable to the parties engaged, the character of which may in part be understood by reference to the documents. (Case of Mexico, 449.)

4. Weil's principal witnesses, Hite and Martin, since the award became public have been in New Orleans, seeking on the one hand to negotiate with the Mexican representatives a sale of their confessions of the fraud, and on the other to levy blackmail on Weil's administrator by forging the signature of the Mexican minister in Washington; and it would seem from the investigation of the Treasury Department's special agent that they have been receiving "hush money." (See documents with Mr. Blaine's note, December 9, 1881.)

5. It appears from the papers on file in the State Department that the widow of Weil (the claimant having become insane and died before any of the installments on the award were distributed) has not received a single cent of money, although over $175,000 has already been paid out on the award by the State Department. A suit has been brought in New Orleans by the widow for a discovery and settlement. As a result, some startling revelations have already been made as to the object for which the money has been used. It is not too much to say that when the history of the claim is fully known, it will reveal one of the most outrageous and corrupting frauds ever perpetrated upon any government.

La Abra Claim.

The second of the claims, a retrial of which is provided for in the pending treaty, is that of La Abra Silver Mining Company. It was chartered under the general law of

New York in 1865, and represented, in its memorial before the Commission organized under the treaty of 1868, that it had been induced, by representations of their great richness, to purchase, in 1865, certain silver mines in Tayoltita, State of Durango, Mexico; that it made heavy and judicious expenditures, through skilled and experienced officers upon said property, extracted large quantities of ore of surprising richness; that it was subjected to threats, robberies, seizure of mule trains, forced loans, onerous taxes, armed assaults upon its buildings, imprisonment of its officers, murder of its employés, and other persecutions by the Mexican people, civil and military authorities; that on account of these persecutions it was compelled to abandon its mines in March, 1868; that C. H. Exall, the superintendent, being in fear of his life, fled from Tayoltita to Mazatlan and thence to New York, and dared not return; and that thereafter the Mexican people carried off the ores remaining, and Mexican officials assumed to dispose of the property of the company. On the 18th of March, 1870, it filed its first statement, claiming an indemnity for $1,930,000; three months thereafter it was increased to $3,000,030, and the damage was finally claimed to have been $3,962,000.

The agent of Mexico earnestly resisted the claim before the Commission, which divided, and being sent to the umpire, an award was rendered for $683,000.23.

Since the decision of the umpire, the Mexican Government has secured the press copy book of the company's office at Tayoltita, covering the correspondence of its officers from January, 1866, to August, 1868, original letters of its treasurer and superintendent before and after the alleged abandonment, and other documents, all of which, duly authenticated, were transmitted to the Department of State with the newly-discovered evidence in the Weil case. These documents show that at the time of the purchase the company was deceived as to the value of the mines; that its expenditures were ignorantly directed and much exaggerated by the company, and that it presented to the Commission fictitious and fraudulent statements as to its capital, property, and expenditures; that there was no hostility on the part of the Mexican people or authorities; that no onerous taxes were enforced and no loans not of a general character levied upon the company, and that these were refused payment with impunity, under the plea of lack of means; that no mule-trains were ever taken from the company, and that it never owned any; that its employé was murdered by another of its employés, who was promptly tried, convicted, and executed by the authorities; that no assault was made upon its buildings; that no redress was denied to officers of the company, because no wrongs were inflicted; that it never was compelled by any act of the Mexican authorities to abandon the mines; that the superintendent, Exall, did not flee for fear of his life, but that he left of his own accord and went to New York to induce the company to provide money to meet its accumulating indebtedness; that he left his assistant and successor in peaceable possession, where he remained for months after the date fixed in the memorial as the time when the company was driven from the mines; that all the troubles of the company grew out of its financial embarrassments; that the ores were worthless or of less value than the cost of reduction, much of them being so poor that according to the superintendent's report it would "not pay to throw them into the river;" that for this reason, if for no other, they were never carried off by the Mexicans, but are still at the mines; and, finally, that some of the testimony offered by the company to establish its claim before the Commission was forged by its agent and attorney, Adams, and that so much of it, not forged by him or others, as goes to sustain any allegation of the company on which the slightest claim against Mexico could be founded, is rank and unblushing perjury.

It will not be possible in this synopsis to review the newly-discovered testimony in detail, but enough will be cited to show from the claimant's own original records and correspondence that the company itself furnishes the strongest evidence to overthrow its own claim and to prove that it is founded on perjury, misrepresentation and fraud. These consist mainly of the company's original press copy book kept at the mines, and the letters of the treasurer of the company written upon his printed letterheads, all of which are fully identified under oath by Col. J. A. de Lagnel, one of the company's superintendents, who had no connection in the claim.

The gist of the whole case is whether the Mexican authorities by their hostile, violent, and illegal acts obstructed the company's operations to such an extent as to render the property useless and finally compel it to abandon its mines. Mexico has from the commencement of claimant's case to the present time, in all its stages, contended that there was absolutely no responsibility on her part, because there never was any violent and illegal interference of her authorities; that the question is not one of the measure of damages sustained by the company, but that it goes to the very foundation and merits of the claim itself, which, so far as the Mexican Government is concerned, is completely and wholly based upon fraud and perjury.

The strongest part of the claimant's case is found in four letters of Prefect Mora and Judge Soto to Superintendent Exall, which (with one of Valdespino) comprise every scrap of documentary evidence filed by the claimant to sustain its material

allegation. These letters bear date of June and July, 1867, eight months before the alleged forcible expulsion and abandonment in March, 1868. Their authenticity is not admitted by Mexico, and was denied by one of the alleged authors, Mora (Case of Mexico, p. 140), and the dates have evidently been changed. But the company's press copy book confirms, what the letters indicate, that the interposition of the authorities, whatever it may have been, was occasioned by no hostility to the company, but simply on account of its broken promises to pay its workmen. Some correspondence between the prefect and judge and the superintendent of the company, it is admitted, did pass, the character of which is plainly indicated by the following letter from the superintendent (see copy book, Case of Mexico, p. 99):

[Translation.]

"TAYOLTITA, *July* 11, 1867

"*The Gefe Politico of San Dimas:*

"DEAR SIR: Your letter of the 10th instant was received last evening, and from its contents I thought that no answer was expected, and I had no intention to reply to. This morning I was advised that the answer was expected by you. In respect to the compromise of which you spoke, it was made while I was in Mazatlan, to last until I should return, and then I was to arrange with you as best I could; and if you had known the circumstances and causes which led to the paralyzation of the works, it would have been apparent to you that it was not possible to do otherwise. I have offered to the operatives all the mines, to be worked on shares by the carga, as some are already at work; and desiring that with this there may be the most friendly understanding about this affair,

"I am your most humble servant,

"CHARLES H. EXALL,
"*Superintendent La Abra Silver Mining Company.*"

Two days afterwards the superintendent, Exall, wrote a long letter to Garth, the treasurer and manager of the New York office of the company, which clearly shows that the suspension of work at the mines and the trouble with the workmen did not grow out of the interference of the authorities, as the claimant alleges, but wholly on account of the financial straits of the enterprise. The letter is full of complaints of the company in New York for its failure to send money, and of its protests of his drafts; of recitals of the various and accumulating indebtedness in running the mines; of the expedients and shifts resorted to to raise small sums of money; of failure to pay the workmen, &c. The following extract will indicate its tenor:

"HACIENDA LA ABRA, *July* 13, 1867.

"D. J. GARTH, Esq.,
"*Treasurer La Abra Silver Mining Company, 18 New street, N. Y.:*

"DEAR SIR: When I received your letter Sr. M. I was working the Abra, Cristo, Luz, Arrayan—a small force in each. Seeing the decided manner in which all further aid for the present was refused, and the injunction to cut down all expenses, necessitated my stopping off the whole force from the mines. As I had only a short time previous reduced the cash payment from one-third to —— (which occasioned a stop for 8 or 10 days, which I was glad of, as it was so much clear gain, and *a little spat with the officials, which was gotten through without much trouble*), I thought it best not to stop off immediately, but prepare the miners for the change. I have succeeded in getting four miners to work by shares and by the carga. * * * Mr. Cullins thinks that in a short time he will be able to get more men to work in the other mines. *We can do better with them when they are a little hungry.*"

And yet this action of the authorities, in seeking to obtain some settlement of overdue wages of the starving miners from this bankrupt concern, constitutes the strongest point made by this conspiracy of perjurers in a case upon which they succeeded in obtaining an award of $683,000. It is the strongest point made, because it had a semblance of official interference, whereas the other material allegations are proven to be the merest fictions, sustained by false swearing. And this is reported by the superintendent to the home office as "a little spat with the officials, which was gotten through without much trouble."

But the gravest allegation of the claimant is that its superintendent, Exall, being in fear of his life, had to flee from Tayoltita and from the country, and dared not return, and that the company, on account of this event and the accumulated and persistent persecutions of the authorities, was compelled to abandon its mines. The date of these events is fixed on the 20th of March, 1868.

A more shameless and unfounded falsehood never was submitted to a court of justice, and, happily, the claimant furnishes the proof of its own villainy. All through the correspondence, as shown by the press copy-book and letters from the home office, appear the begging appeals for money to meet the growing indebtedness of the mines

and the refusals of the treasurer to furnish further funds. The superintendent in effect says, if money is not sent I must abandon the mines; and the treasurer replies, the company cannot supply any more, and if the mines do not pay you had better abandon them.

A few extracts first from the treasurer's letters (printed at length in case of Mexico, pp. 95 seq.), beginning nearly a year before the alleged abandonment, and extending through the year at frequent intervals:

OFFICE OF GARTH, FISHER & HARDY, BANKERS,
18 *New Street, New York, May* 20, 1867.

Mr. CHAS. H. EXALL,
Tayoltita, Mexico.

DEAR SIR: I wrote, as usual, by last steamer, which left here on 11th instant. We are yet without any advices from the mines later than 5th February last, dated at Mazatlan. At that date we were advised that everything, after long delay, was about complete, and that we might soon look for good results from the enterprise, but that the supplies being exhausted, it was found absolutely necessary to draw on us for $7,500. This draft arrived on 2d April last, and was paid by one of the directors of the company, as it was considered that it was *surely the last* that would be needed, and we expected to return the money by an early remittance of bullion from Mexico. You can judge of our surprise and chagrin when the last steamer arrived, instead of bringing Colonel de L., with some fruits of our works, a draft for $5,000 gold was presented for payment. As it was found impossible to raise the means to pay this draft, it was protested and returned unpaid, and you must make some provision for its payment when it gets back. I would now again repeat that I have made every effort possible to raise money here and have failed, and I have advanced all I can possibly do, and the other directors have done the same. The stockholders will do nothing, and it is probable the company will have to be sold out and reorganized. * * * With best regards, I remain,

Very truly yours,

D. J. GARTH,
Treasurer.

May 30th, 1868, Garth again writes Exall:

"Since my last letter Colonel de Lagnel (the former superintendent) has arrived and made known to us something of the state of things with you. I must confess that we are amazed at the results; it seems to me incredible that every one should have been so deceived in regard to the value of the ore, and I can but still hope that the true process of extracting the silver has not been pursued, and that before this time better results have been attained. * * * If, however, the ores are indeed worthless, I don't see that any process of working will be of any avail, and have the worst fears that our enterprise will, after all, be fruitless of good."

June 10, he writes:

"The account that Colonel de L. gave us of the quality of the ores on hand was most unexpected and a fearful blow to our hopes. We trust, however, that a fuller examination will show better results. We have in previous letters to you and to de Lagnel so fully informed you of the condition of affairs here that it is hardly necessary to say anything further on that subject. There is no money in the treasury, and we have no means of raising any. Everything now depends upon you."

Frequent letters follow, such as the one dated—

"NEW YORK, *October* 10, 1867.

"Mr. CHAS. H. EXALL,
"*Tayoltita, Mexico.*

"DEAR SIR: Since ours of September 30, we have yours of August 5, from Mazatlan, and note contents. We are deeply pained to find that you are not well, and that you are still without favorable results in the enterprise from which we all had such high hopes of success. I am very sorry to say that it is not possible to aid you from here, and that you must rely entirely upon the resources of the mines and mill to keep you going and to relieve you of debts heretofore contracted. It is not possible for us to direct any particular course for you, but only to urge you to try and work along as well as you can, cutting down expenses, and avoid embarrassing yourself with debts."

Not a word in all this correspondence showing that the embarrassments of the company were due to the persecutions and hostility of the Mexican authorities, but simply to the failure of the mines to yield their expected returns and the inability of the home company to raise further money to put into the unfortunate investment.

But the letters of the superintendent at the mines are still more decisive on this

point. I have already quoted from his letter dated July 13, 1867. From Mazatlan, the seaport nearest to the mines, he writes:

"MAZATLAN, *August* 5, 1867.

"D. J. GARTH, Esq.,
"*Treasurer of La Abra Silver Mining Company*, 18 *New Street, New York.*

"DEAR SIR: I am in receipt of yours of 10th and 20th of May and 10th of June.
* * * * * * *

"Colonel de L.'s draft was presented to me here on yesterday. I told them I could do nothing. My draft, which I spoke of in my last, was returned. Please inform me what can or will be done. I can't see very far ahead in money matters. Can count on nothing positive from the ores now on hand."

Again he writes:

"MAZATLAN, MO., *October* 6, 1867.

"D. J. GARTH, Esq.,
"*Treasurer La Abra Silver Mining Company*, 18 *New Street, New York.*

"By this steamer I am in receipt of yours of 10th and 20th of July and 10th of August. I was much disappointed that my urgent demands for money was not favorably answered. I now have to urge you to send me means. I have heretofore been keeping above water by using the stock which I fortunately had on hand; that is now entirely exhausted. I have neither money, stock, nor credit. Now, youmust either prepare to lose your property here or send me money to hold it (and that speedily), and pay off debts of the concern. I have exhausted all the ore I had on hand that was worth working. That which I worked was very poor, and the yield small. The La Luz on the patio won't pay to throw it in the river. I have had numerous assays made from all parts of each pile; the returns won't pay. Amparos are not now granted, and mines are to be held only by working. I am compelled to keep men in mines which yield nothing merely to hold them; this I can do no longer, as I have nothing to give the men for their labor, and must now take the chances and leave the mines unprotected. * * * There is no difficulty about authorities, boundaries, or anything else concerning the mines and hacienda provided there is money on hand, and money *must* be sent. I hope that I have urged this point sufficiently, so that you may see fit to send me something to hold the mines. I should be sorry to see them lost on this account. Please telegraph me if you intend sending money.

Other letters might be read, but these are certainly sufficiently explicit as to the cause and character of the embarrassments to the working of the mines.

But let us examine more particularly the allegation that on the 20th of March, 1868, Exall, the superintendent, on account of the threats and violence of the Mexican authorities, had to flee from Tayoltita to save his life, and that the company was compelled to abandon the mines, which were seized by the authorities and plundered by the people.

After repeated letters to the company in New York, notifying it that unless money was sent out to pay off its debts, the property would have to be abandoned to its creditors, Exall, in apparent desperation, writes as follows:

MAZATLAN, *January* 24, 1868.

D. J. GARTH, Esq.,
Treasurer La Abra Silver Mining Company:

"DEAR SIR: I came down to meet steamer from San Francisco, in hopes of receiving letters from you, but received none, and now, being entirely out of funds and stock, and being sued by the agents from Bank of California for the payment, have to let things take their own course, as I am unable to protect your interests here. In previous letters I have given you full and detailed accounts of affairs here, and such frequent repetitions I find useless, and will simply state that I am doing nothing whatever at the mines, and cannot until I receive money to operate with. I haven't means to protect now, and they are liable to be denounced at any moment. I am owing considerable, and no means of paying. What is your intention? Is it to let your interests here go to the dogs? You have either to do this or send money out to protect them. *If by next steamer I receive no assistance from you, I intend leaving for the East.* I will go via San Francisco. Will from there telegraph you what further steps I shall take.

Finally, after waiting one more month, and receiving no relief from New York, Exall carries out the determination of which he had given the company full notice. It will be seen from the following letter, taken from the press-copy book (case of Mexico, p. 14), that he placed the mines, its property and affairs in the hands of his clerk and assistant, James Granger, and left for New York:

TAYOLTITA, *February* 21, 1868.

Mr. JAMES GRANGER:

SIR: As circumstances are of such a nature as to compel me to leave for San Francisco, and probably for New York, *to inquire into the intentions of this company*, I place

in your hands the care and charge of the affairs of the La Abra Silver Mining Company, together with its property. You are invested hereby with all power confided to me, of course acting in all your transactions with an eye to the interest of the company. This will to you, should occasion require it, be ample evidence of the right possessed by you to act in their behalf.

Very respectfully,

CHAS. H. EXALL,
Administrator La Abra Silver Mining Company.

On the 15th of March, Exall wrote Granger from Mazatlan, and again on the 5th of April from San Francisco, so that he could not have been at the mines on the 20th of March, the date sworn to by him and others of the conspirators as the time of the alleged expulsion and abandonment. It is a point not material except as affecting the credibility of their *ex-parte* affidavits.

On the 8th of May, 1868, from New York, Exall wrote Granger, giving details of his interview with Garth, the treasurer of the company, who, he says, "seems disgusted with the whole affair," and "intends to have nothing more to do with it." But one of the stockholders "talked a little better," and proposed to get a wealthy party to take the mines off the hands of the company, pay its debts, &c. "Now, as you and I are the principal creditors, I haven't been able to get a cent from them, the company, and the thing being in my hands, if this party intends buying we can and will make a good thing out of it." He then proceeds to give directions as to how property in Tayoltita was to be managed, &c. June 15th he again writes, and again July 18, from Richmond, continuing his instructions, he adds: "By all means keep the mines secure, particularly the Abra. Don't allow any one to touch the books, nor don't give any statements. These affairs are now in our hands, and without satisfaction we must not do ourselves injustice."

On the 13th of August, Granger, still in charge of the mines, writes as follows to the collector of taxes at Tayoltita (case of Mexico, p. 154):

[Translation.]

TAYOLTITA, *August* 13, 1868.

Sr. D. REMIGIO ROCHA:

DEAR SIR: I have received the communication calling upon this company to pay $52.50 each month for taxes imposed by the legislature of the State, and presume it to be correct, but as I am only acting in the absence of the superintendent, and as there is no money or effects to pay this tax, I beg you to wait until the month of November, at which time said superintendent is to come, and then the sum due by this company on account of this tax will be paid.

Your most humble servant,

SANTIAGO GRANGER.

How can it be said, in the face of these letters, that Exall abandoned these mines in March, 1868? Their authenticity is undoubted, and, in addition, the facts stated therein are fully corroborated by the testimony of credible witnesses, witnesses such as Frederick Sundell, the assayer, at the time, of the nearest adjoining American mining company, who swears that he never heard of any assault, hacienda, nor of any hostility on the part of the authorities, and that if any had occured he would certainly have been informed of it; that Exall some time before his departure for New York talked publicly about it; that the ores were poor; and in various other points confirms the facts revealed in the company's correspondence and press-copy book.

If, therefore, as a matter of fact the mines were not abandoned as alleged in the memorial, the whole claim falls to the ground. But it is desirable to notice a few other aspects of this remarkable case, as shown by the new evidence submitted by Mexico.

The following facts are mainly established by the company's own records, and when not there shown, are proven by creditable witnesses.

1. *The authorities and people were friendly to the company.*

(1.) The right to the mines, which under the provisions of Mexican law had several times lapsed by *non user*, was as often extended by the authorities. (See letters of company, case of Mexico, pp. 67, 68, 69.) (2.) Its officers received ample protection from the authorities when the country was under martial law. (Letters of company, case of of Mexico, pp. 82, 125, 127, 128, 144.) (3.) Taxes levied on the company were remitted at the request of the superintendent. (Letters, &c., pp. 125, 154.) (4.) The personal relations between the authorities and the agents were generally friendly. (Letters, &c., 104, 117.) (5.) The people, consisting chiefly of the employés of the company, were quiet and peaceable, even submitting to oppression from the company. (Letters, &c., p. 100.)

II. *The specific acts of hostility alleged by the company as tending to drive it from the*

country were not of such a nature as to justify such an allegation. Those not already noticed are as follows: (1.) Forced loans and robberies. Two of the former and one of the latter are alleged. Of the first loan of $600 the press-copy book, which contains full reports of expenditures, makes no mention. The second, of $1,200, the superintendent reports to the company was never paid. (Letters, &c., p. 125.) The robbery of $1,178 the superintendent reports was committed by bandits in the public highway; was the only one the company ever suffered, and the authorities sought to discover and punish the culprit. (Letters, &c., 125.) (2.) Seizure of the company's mule trains. The letters of the company and other evidence show that it hired its transportation, and only kept a few mules at the mines, and hence had no mule trains to be seized. (Letters, &c., 82, 85, 152.) (3.) The arrest of Superintendent Exall. From his own statement it appears that this arrest was for an alleged contempt of court, that it was merely nominal, in the company's own grounds, and that he went on with his duties. (Letters, &c., 142.)

III. The manner in which this claim was gotten up and presented to the Commission shows that it was an afterthought, a deliberate conspiracy to rob the Mexican treasury, using the Government of the United States as the medium through which to carry out its villainy. If any such violence and outrage as is alleged in the claimant's memorial had been committed, it is reasonable to suppose that protests would have been entered before the nearest American consul and forwarded to the American minister in Mexico; or, at least, when Exall, the fleeing superintendent, reached New York and told his story of wrongs and outrages, a complaint would have been forwarded to the Department of State at Washington. But nothing of the kind occurred. Not until two years after the alleged expulsion do we hear anything of this claim. After the Mixed Commission had been organized it occurred to these unfortunate mining speculators to retrieve their lost fortunes by forging a claim against the Mexican Government. In the execution of their conspiracy they sought for a proper agent to supplement their own perjured testimony by such evidence as might be necessary to impose upon the Commission, and their choice fell upon one Alonzo W. Adams, who was constituted the agent and attorney of the moribund Abra Mining Company, and he was sent to Mexico to collect *ex-parte* affidavits. In the new evidence submitted by Mexico will be found the history of his checkered career. (Case of Mexico, p. 59 *et seq.*) Dismissed from the Army at the close of the Mexican war, station unknown, charged with fraud in the Quartermaster's and a defaulter in the Commissary Department, indicted for false pretenses in California, escaping from justice and swindling his lawyer, characterized from the bench as an adventurer, impostor, and scoundrel in the New Jersey courts; a bigamist, as shown by the courts of California, Pennsylvania, and New Jersey, three times court-martialed for misconduct during the late war, in his mission to Mexico he proved a fit representative of this band of speculators and perjurers. He is charged by Captain Dahlgren with perverting or forging his (Dahlgren's) testimony; with subornation of perjury in the affidavits of Gamboa, Loaiza, and others; of forgery in the case of Green and others; and Consul-General Van Buren certifies that he "is capable of villainy which does not require courage."

Upon the submission of the testimony, of which the foregoing is a synopsis, to the Department, the Hon. W. M. Evarts, at the time Secretary of State, while he recommended to Congress a different method than that provided by the present treaty, upon examining this evidence decided "*that the honor of the United States does require that these two cases should be further investigated by the United States to ascertain whether this Government has been made the means of enforcing against a friendly power claims of our citizens based upon or exaggerated by fraud.*"

It would seem superfluous to add anything more to show the base means by which the good faith of the United States and the treasury of Mexico have been imposed upon. Recalling what has been stated as to these two cases, it seems idle to discuss technical questions of law, behind which the claimants seek to intrench themselves, when two neighboring and friendly nations are devising a method of undoing a great wrong. If there is any foundation for the contention of the claimants that they have been vested with legal rights, by virtue of the awards obtained through their own dishonest and corrupt acts, which cannot be disturbed by a new Commission, the treaty has provided a remedy through a resort to the courts, where their rights may be judicially determined. But it can hardly be that the Constitution and laws of the United States compel its Government to act as the agent and instrument of a band of contrabandists, conspirators, and perjurers in extorting from a neighboring and sister republic over one million of dollars, when it is made apparent that these claims have no foundation than fraud and perjury. If the purposed treaty should fail to be carried into effect, it will prove to be one of the severest blows yet inflicted upon that wise measure of international arbitration, because it would seem to indicate that no remedy could be afforded when the good faith of the tribunal has been imposed upon, and that Governments must be made the unwilling executors of injustice and villainy.

No. 90.

Mr. Frelinghuysen to Mr. Romero.

DEPARTMENT OF STATE,
Washington, May 22, 1882.

SIR: I have the honor to acknowledge the receipt of your note of the 1st instant, accompanied by a synopsis of newly-discovered testimony furnished by your Government, tending to establish the character of the awards of Benjamin Weil and La Abra Silver Mining Company against Mexico.

Accept, &c.,

FRED'K T. FRELINGHUYSEN.

No. 91.

Mr. Romero to Mr. Frelinghuysen.

WASHINGTON, *June* 29, 1882.

SIR: Referring to our conference of this morning regarding the proposed convention for a retrial of Benjamin Weil and La Abra Mining Company claims, I have to state that the object of the Mexican Government insisting upon the phraseology contained in the first clause of Article IV is to avoid any direct or implied sanction of fraud.

From the beginning of the negotiations seeking for a reopening of the awards in the claims, Mexico has constantly asserted that the motive was not so much to avoid the payment of the money involved, as to expose the fraud, perjury, and conspiracy practiced upon the Commission under the treaty of July 4, 1868, and to establish the principle that a friendly Government should not be made the instrument of exacting the enforcement of fraudulent awards of dishonest claimants before an international tribunal of arbitration.

Although while, in my opinion, the Government of the United States should in strict justice be answerable for the distribution to the claimants of the installments in these awards, after the Secretary of State of the United States declared in his report to the President, dated on the 13th of April, 1880, "that the honor of the United States does require that these two cases should be further investigated by the United States to ascertain whether this Government has been made the means of enforcing against a friendly power claims of our citizens based upon or exaggerated by fraud," yet we have thought proper to recognize in deference to the Government of the United States the finality of the payments and distributions already made, so far as said Government is concerned.

I have no objection in stating to you that should our proposed treaty be carried into execution and the awards adjudged to be fraudulent, I would not hesitate to advise the Mexican Government not to institute any suits against the claimants to recover the money already paid, among other reasons because I doubt very much whether any money could be recovered. I will consider it a sufficient satisfaction if their perjury is exposed and a precedent established, whereby similar practices may be prevented in future.

As the exposure of the frauds was the main object had in view in the

proposed proceedings in equity against the claimants, of which notice was given to the Department of State in the notes of this legation of July 20 and August 13, 1880, if such object can be attained by the treaty, Mexico could, in my opinion, very properly forego such proceedings.

Accept, &c.,

M. ROMERO.

No. 92.

Receipt for the seventh installment.

DEPARTMENT OF STATE,
Washington, January 24, 1883.

Received of Don M. Romero, envoy extraordinary and minister plenipotentiary of the Government of Mexico, a check drawn by Juan M. Navarro upon the National City Bank of New York, made payable to the order of the undersigned, for two hundred and ninety-six thousand and sixty-six dollars and five cents ($296,066.05), being in discharge of the seventh installment of the indemnity due January 31, 1883, from that republic to the United States under the convention between the two Governments of the 4th of July, 1868, according to an adjustment made on the 31st of January, 1878, of the relative value of the three currencies composing the indemnity.

JOHN DAVIS,
Acting Secretary of State of the United States.

No. 93.

Mr. Romero to Mr. Frelinghuysen.

[Translation.]

LEGATION OF MEXICO IN THE UNITED STATES,
Washington, December 5, 1883.

Mr. SECRETARY: I have the honor to send you, for such purposes as your Department may think proper, another copy, in English, of the analysis of the claim of Benjamin Weil and of that of the Abra Mining Company, together with documentary evidence showing the fraudulent character of those claims. These documents were first sent to your Department with the note of this legation of January 11, 1879.

I likewise transmit to you herewith a copy, in English, of a memorandum relative to this same matter, signed by Messrs. John W. Foster, John A. J. Creswell, and Robert B. Lines, American lawyers, which clearly shows what good ground Mexico has to ask for a re-examination of these claims.

I send you finally a copy, in English, of a memorandum of the present condition of this case since the signing by Mexico and the United States of the treaty of July 13, 1882, for the re-examination of the said claims.

Although in virtue of this treaty this case is now concluded so far as the executive branches of both Governments are concerned, I have

thought that the accompanying documents may be of some service to your Department, and this consideration has induced me to send them to you.

I avail, &c.,

M. ROMERO.

Annex No. 1 will be found after documents Nos. 37 and 40. Annex No. 2 is document No. 88.

No. 3, annexed to Mr. Romero's letter to Mr. Frelinghuysen of December 5, 1883.

MEMORANDUM ON THE TREATY BETWEEN THE UNITED STATES AND MEXICO FOR THE RETRIAL OF THE WEIL AND LA ABRA CLAIMS.

The pending treaty, entered into by the Secretary of State and the Mexican minister, and transmitted by the President to the Senate for its approval, provides for a retrial of the claims known as the Weil and La Abra cases, which were submitted to the International Commission organized under the claims convention of 1868 between the United States and Mexico. The Weil claim is for the value of 1,914 bales of cotton alleged to have been seized by Mexican troops in 1864; and La Abra claim for the value of a silver mine, of which it was charged the owners were forcibly dispossessed by the Mexican authorities in 1868.

Under the claims convention of 1868, 873 claims, aggregating $470,126,613.40, and 144 claims, whose amounts were not stated, were filed against Mexico. Of the 1,017 claims only 186 were allowed, and they for the total sum of $4,125,622.20, or less than *one per cent.* of the amount claimed.

The Commissioners having adopted a rule that proofs in each case should be according to the laws of the country in which they were taken, the counsel for the United States sought to amend this rule so that evidence might be taken before diplomatic or consular officers of each country resident in the other. Mr. Cushing, counsel for Mexico, strenuously opposed this amendment "on account of the great number and immense magnitude in amount, and, in signal instances, the apparent fraudulent character of claims" against Mexico. On further consideration the Commissioners concluded that they had no authority to regulate the taking of proofs, and rescinded all rules on that subject. (Journal of Commission, pp. 19-25, 32, 44, and 51.) The Commission was thus stripped of the most ordinary and essential attributes of a court, and Mexico was obliged to meet claims based on *ex parte* affidavits, taken without notice or opportunity for cross-examination, and in such manner that false swearing in many cases could not be lawfully punished as perjury, and without the power to compel the attendance of witnesses. With these disadvantages Mexico disputed the claims as best she could, with the result above stated. It can hardly be accounted as negligence on her part if, in the vast aggregate of claims, the fraudulent character of the two cases in question should have failed to be made clear to the Commission, when the alleged facts upon which they were based were said to have occurred in remote regions and in times of foreign war and internal disorder. The Commissioners divided in opinion in both the Weil and La Abra cases, and they were sent to the umpire for final decision. In the Weil case an award was rendered by him, October, 1875, for $487,810.68; and, December, 1875, in La Abra case for $683,041.32.

After the adjournment of the Commission, but before the umpire had completed his labors, Mexico discovered that these two claims were based wholly upon fraud and perjury. The newly-discovered evidence (as far as then collected), was submitted to the umpire in support of a motion for rehearing, which motion had been filed in January, 1876, before the Commission adjourned; but the umpire decided that he had no power, under the convention of 1868, to revise his own awards nor to examine evidence not before the Commissioners. In making this declaration he said, however, that if perjury was hereafter proved "no one would rejoice more than the umpire himself that his decision should be reversed and that justice should be done;" and that he doubted "whether the Government of either (country) would insist upon the payment of claims shown to be founded upon perjury."

The defective character of the Commission as a judicial tribunal being thus established by its inability to protect against perjury or to grant a new trial in cases of manifest fraud, in view of the terms of the convention of 1868, Mexico could only appeal to the sense of justice and equity of the Government of the United States for such relief as the latter might think proper to afford. She never for a moment hesitated to recognize the binding force of the awards, as between the two Governments, and has promptly paid the annual installments in full as they fell due. Under these circumstances the Congress of the United States passed the act of June 18, 1878, the fifth section of which is made the basis of the present treaty. That section authorized the Executive, after examination of the allegation of fraud, in its discretion to reopen

and retry the Weil and La Abra cases, and meanwhile to suspend the payment of the awards.

Thereupon Mexico submitted to the Department of State the newly-discovered evidence upon which she relies to establish the fraudulent character of the two claims. It is to be noted that this evidence is additional to that filed by Mexico, or within her possession, or within her knowledge, on the trial before the Commission. From the very character of this testimony, by far the greater part of it could not have been procured, except by the co-operation of the parties or agents of the claimants. In the Weil case it shows, by the claimant's original letters and the affidavits of his partners in business, and other documents, that he never owned or had in his possession the cotton claimed: that said cotton never had an existence in whole or in part, and consequently it could not have been and was not seized by Mexican forces. In the Abra case it shows, from the company's own press copy book, original letters, and other documents, that the company voluntarily abandoned the mine, because it was worthless, and that the Mexican authorities never exercised any force or compulsion. (See synopsis of this evidence accompanying the treaty.)

The Secretary of State examined the evidence submitted by Mexico, and reached his conclusions thereon in August and September, 1879, which were reported to Congress by the President in his message of April 15, 1880, and which were as follows: *First*, that a retrial by means of a new convention between the United States and Mexico ought not to be had; *second*, that the evidence does "bring into grave doubt the substantial integrity" of the Weil claim, and the "measure of damages" in La Abra claim, and "that the honor of the United States does require that these two cases should be further investigated by the United States"; and, *third*, that the Executive "is not furnished with the means of instituting and pursuing the investigation" contemplated, and that as "the authority for such an investigation must proceed from Congress," the subject "is laid before Congress for the exercise of their plenary authority in the matter." In La Abra case the Secretary of State said: "The main imputation * * * is of fraudulent exaggeration of the claim in its measure of damages;" but on this point he misapprehended the position of Mexico, for she has always maintained that the claim was wholly fraudulent in its origin, and denies all responsibility for damages.

The matter having been referred by the President to Congress, in the two houses divergent views were expressed upon the subject. The House Committee on Foreign Affairs reported (No. 1702, June 9, 1880, p. 2) that "the committee believe that the investigation required by the honor of the United States can be most justly and exhaustively conducted by a judicial tribunal," and recommended that jurisdiction to that end be conferred on the Court of Claims. The Senate Judiciary Committee reported (No. 712, June 10, 1880, p. 2) that from the message of the President "it appears * * * that no definite conclusions had been arrived at by the Executive Department upon the questions involved in said (5th) section"; and further, that the reference of the subject to Congress "would involve an investigation by Congress of facts of an international character which, in the opinion of the committee, properly belongs to the Executive Department, and which it was the intention of the fifth section of the act of June 18, 1880, to leave with the Department" (No. 712, p. 6). The Judiciary Committee thereupon reported back adversely the bill to refer the cases to the Court of Claims, but recommended no specific method of relief.

Congress having adjourned without action upon the Secretary's recommendation, and the claimants having renewed their efforts to obtain from the Executive a distribution of the suspended awards, Mexico, upon the advice of counsel, took steps to institute proceedings in the Federal court of the District of Columbia, by bills in equity against the claimants in the two cases in question, to investigate the fraudulent character of the claims, and to prevent the claimants from reaping the fruits of their perjury. She felt warranted in taking this step by the precedent in the Gardner case, where, after a "final and conclusive" award by a commission organized by virtue of the treaty of 1848, between the United States and Mexico; the United States had instituted a suit in equity, obtained a judgment declaring the original award null and void, recovered back into the Treasury near $250,000, and procured the indictment and conviction of Gardner in the criminal court. In that case Mexico, at the special request of the United States, rendered important aid in procuring the results stated, and the American minister, in acknowledging to the Mexican Government this service, said: "Should the Government of Mexico at any future time stand in need of similar acts of comity, * * * they will be most cheerfully and promptly rendered." (Mr. Conkling's note, December 7, 1852, Sen. Rep. 182, first session Thirty-third Congress, p. 158.) After bills in equity had been prepared, but before filing, the Mexican legation, upon informing the Department of State of the contemplated proceeding, was notified by the Secretary of State that he regarded an appeal by Mexico to the United States courts as in distinct contravention of the convention of 1868. In view of the opinion of the Secretary, Mexico did not institute the suits, and abandoned that method of relief. (See Sr. Navarro's note, July 30, 1880; Mr. Evarts's, August 4; and Sr. Navarro, August 3.)

Meanwhile the State Department had distributed to the Weil and La Abra claimants the suspended installments under the awards. In La Abra case this had been done upon the mistaken presumption that Mexico's objection related to the measure of damages, and that the installments already in hand might safely be paid, leaving future installments to abide the investigation recommended by the President. The distribution to the Weil claimants was not made until August 16, 1880, some time after Congress adjourned, and not until a special letter had been obtained from the President directing the distribution. Secretary Frelinghuysen's report shows that there has been paid to the claimants in the Weil case $171,889.64, and in La Abra case $240,683.06.

The subject was discussed at the next session of the Senate, and the opinion expressed by members of the Committees on Foreign Relations and the Judiciary that the proper remedy to be afforded Mexico was through a treaty to be negotiated by the Executive, and that such was the intention of Congress in adopting the 5th section of the act of June 18, 1878, but no definite action was had. (Congressional Record, February 6, 1881, pp. 32–36.)

After the adjournment of Congress, it having come to the knowledge of the Mexican legation that evidence existed in the Treasury Department of the United States confirmatory of the proofs already submitted to the State Department, establishing the perjury and conspiracy to defraud Mexico and impose upon the good faith of the United States, the minister addressed the Secretary of State a note asking for copies of this evidence, and recalling to his attention the fraudulent character of the claims (Sr. Zamacona to Mr. Blaine, May 12, 1881). The partial suspension of business occasioned by the assault upon the late President postponed its consideration till the 9th December last, when Secretary Blaine transmitted to the Mexican minister copies of the documents from the Treasury Department, and took occasion to assure him that "this Government can have no less moral interest than that of Mexico in proving any allegation of fraud, whereby the good faith of both in a common transaction may have been imposed upon." (Mr. Blaine to Sr. Zamacona, December 9, 1881.)

The failure of the Forty-sixth Congress to take action upon the President's recommendation (coupled with the declarations contained in the report of the Judiciary Committee and the opinion of Senators in debate, that the relief to be afforded should be through a treaty), the bringing to light of the additional proofs from the Treasury Department, and the negotiations which followed, have resulted in the framing and signing of the treaty which is now before the Senate providing for a retrial of the Weil and La Abra claims.

The treaty protects all just interests which may have been created by reason of the awards rendered in these two cases by the former Commission. The Government of the United States is exempted from all liability on account of the installments already distributed to the claimants. Jurisdiction is conferred upon the arbitrator to protect the vested rights of innocent third parties if any such exist. The proofs presented before the former Commission are perpetuated and to be received by the new arbitrator, so that no injury to claimants can result by lapse of time. Power is conferred upon the arbitrator to establish rules for taking testimony, which must include notice to the opposing party with right of cross-examination.

It is to be noted that among all the cases presented to the Commission for 1868, there are none of similar character and status to the two cases in question. They are the only ones in which motions for new trials, made before the Commission, have been supported by the presentation of newly-discovered evidence showing manifest fraud and perjury. No charge has been made that any award in a claim of a Mexican citizen against the United States was procured by fraud and perjury; nor has either Government advised the other that claims of its citizens were rejected through fraud or impropriety on the part of the defense. In no other instance has Congress authorized the Executive to reopen the awards of the Commission, but, on the contrary, the action of Congress in the passage of the act of June 18, 1878, which specially names these two cases, and upon which act the present treaty is based, shows that it was the intention of that body, and more particularly the Senate, to limit the revision to the Weil and La Abra cases. When the bill was pending in the House, on motion of Mr. Butler, of Massachusetts, an amendment to the 5th section was added authorizing the Executive to "provide for a rehearing * * * of claims rejected by the Commission" (Congressional Record, vol. 7, Part IV, pp. 4155–6). The bill went to a conference committee, where the Senate conferees insisted upon striking out the Butler amendment, and it was accordingly done.

The system of international commissions for the settlement of claims bids fair to become well established, notwithstanding defects in the constitution of such commissions as compared with ordinary courts of justice; and the favorable action of the Senate on this treaty will be regarded as an important precedent in affording relief where the good faith of Governments has been imposed upon by fraud or corruption, and will greatly tend to commend this peaceful method of adjusting international differences.

No. 94.

Mr. Frelinghuysen to Mr. Romero.

DEPARTMENT OF STATE,
Washington, December 7, 1883.

SIR: I have the honor to acknowledge the receipt of your note of the 6th instant, accompanied by certain printed documents relative to the claims of Benjamin Weil and La Abra Silver Mining Company against the Government of Mexico. I have had pleasure in placing these papers on file, as desired.

I am, &c.,

FRED'K T. FRELINGHUYSEN.

No. 95.

Mr. Frelinghuysen to Mr. Romero.

DEPARTMENT OF STATE,
Washington, January 11, 1884.

SIR: I have the honor to acknowledge the receipt of your note of the 10th instant, accompanied by a draft drawn by yourself to my order for the sum of $296,066.05, due from the Mexican Government to the United States January 31, 1884, on account of the eighth installment of the awards of the Claims Commission, organized under the convention of July 4, 1868, between the two Governments.

Inclosing herewith original and duplicate copies of receipts for that amount, I avail, &c.

FRED'K T. FRELINGHUYSEN.

DEPARTMENT OF STATE,
Washington, January 10, 1884.

Received of Senor Don Matias Romero, envoy extraordinary and minister plenipotentiary of the Government of Mexico, a draft drawn by himself upon Messrs. A. Iselin & Co., 48 Wall street, New York, to the order of the undersigned, for two hundred and ninety-six thousand and sixty-six dollars and five cents ($296,066.05), being in discharge of the eighth installment of the indemnity due January 31, 1884, from that republic to the United States, under the convention between the two Governments of the 4th of July, 1868, according to an adjustment made on the 31st of January, 1878, of the relative value of the three currencies composing the indemnity.

FRED'K T. FRELINGHUYSEN.

No. 96.

BRIEF ON BEHALF OF COMPANY, BY SHELLABARGER & WILSON, SUMNER STOW ELY,

Before the Senate of the United States in executive session.

In the matter of the award in favor of La Abra Silver Mining Company, under the convention of July 4, A. D. 1868.

To the honorable the Senators of the United States:

With regard to the claim made by La Abra Silver Mining Company against Mexico, and the award made thereon in favor of said company

against Mexico by Sir Edward Thornton, the umpire of the United States and Mexican Joint Claims Commission, under the treaty between the United States and Mexico of July 4, 1868, and the effort now made to overthrow that award by means of a new treaty, we respectfully submit the following upon the facts. The references are to the pages of the printed book of the testimony given by both sides in the case, as prepared by the official translator of the Commission, which book was accepted by both parties as correct and filed, when the case was before the Commission, in the Department of State, where it now is. The testimony made a book of 258 closely printed pages of large size, and after such a lapse of time, the books printed have become scattered and lost, and it is impossible now to place one in the hands of each Senator, which we regret, and specific references to the testimony are therefore made as to only one branch of the case (though they will be found sufficient for every branch of it); but, where matters of fact are stated and no reference to the printed case is made, we, as lawyers, who have too much regard for our own reputations to misstate the facts to the court, assert that such is the evidence, and that it will be so found in the printed case.

FIRST.

BRIEF HISTORY OF THE CASE AND STATEMENT OF FACTS.

I.

La Abra Silver Mining Company was incorporated in November, 1865, under the laws of the State of New York, and had its business office in the city of New York. Its stockholders, mainly merchants and bankers, were men in good standing in social and financial circles, and a majority of them then resided in said city.

In the summer of 1865 the agent of the then owners of the mines in question, desiring to obtain additional capital to work them, or to sell them to men of more capital, reserving an interest, brought them to the notice of some of these gentlemen, and also the proclamations of the Mexican Government inviting foreigners to engage in enterprises in Mexico, and promising them full protection. Before investing in the mines or forming a company to work them, these gentlemen sent two of their number to Mexico to examine them. They went and made a thorough examination, and being satisfied of their desirability, and pursuant to authority given them by their associates, bought the mines for the company. They paid for these mines $50,000, and for the improvements $7,000, all in gold, and the company also purchased twenty-two twenty-fourth parts of a contiguous mine, and paid $22,000 more.

These facts were proved by the seller, his agent, the purchasers' agents, and others, and the title deeds. They were not disputed. They are indisputable.

II.

Immediate possession of the mines was taken for the company, and the company remained in possession of them until the 20th of March, 1868, erecting a mill and machinery, constructing dams, sluices, houses, opening mines, mining ores, carrying them to the mill, &c., employing sometimes as many as 150 men. The mill and machinery were purchased at San Francisco, shipped to Mazatlan, and thence transported on mules' backs, a distance of 160 miles, over the mountains to the mines. None of these facts were disputed. They were substantially shown by both sides.

III.

In the purchase of this property, making the improvements, and carrying on the business, the company expended a very large amount of money. Geo. C. Collins, a wholesale tea merchant in the city of New York, the company's president, testified that $235,000 were obtained by the company by subscriptions to its stock and $64,291.06 by loans made to the company, and that these sums, together amounting to $299,291.06, were thus expended (p. 30). Confirmatory of this amount, a Spanish banker, Pena, and a Spanish merchant, Echeguren, at Mazatlan, both of whose houses, at different times, disbursed moneys for the company, testified to the payment of moneys for the company for freight, supplies, &c., together amounting to $175,600, in gold, and further, that much of the company's supplies and machinery were received by the company from the vessel direct, packed on mules' backs at the wharf for the mines, and not consigned to them or any house in Mazatlan (pp. 122, 124, 125). Five gentlemen, acquainted with the cost of machinery, transportation, labor, &c., in that country, and with the company's mines and improvements, in their opinions, put the total expenditure in sums of which the lowest is $300,000 (Cole, p. 55; Cryder, p. 73; Loaiza, p. 78; Dahlgren, p. 116; also, see pp. 28, 46), and the only two witnesses examined by Mexico on that point estimate the amount at $303,000, which is all the company claimed it to be (Granger, p. 147; Sloan, p. 148). There was no conflict whatever as to the *amount* of the expenditure.

IV.

The company was forced to abandon its mines and property on the 20th of March, 1868, and was driven from the country by the oppressive conduct of the Mexican authorities, and their refusal to give the company redress or protection. On this point, the claimant proved by many witnesses specific acts; for instance, such as stealing of the company's ores; exaction of prestamos; seizure and appropriation of the company's supplies and supply trains; interference with laborers and mining operations; ordering men to be employed or not to work, discharging men, &c.; threats to expel the company; armed attacks at night on the company's hacienda; arrest without warrant or cause of the company's superintendent, imprisoning him, without evidence or a trial, in a pest-house, and after keeping him there for several days liberating him only on the intercession of a third party and the payment of $50, &c., and numerous applications for redress and protection to the local judges, the military authorities of the district, and to the governor of the State, all in vain (Granger, pp. 43–46, 52, 53; Cole, pp. 55–59; Bartholow, pp. 222–225; Green, p. 26; Bouttier, pp. 82, 83; Loaiza, pp. 78, 79; Cryder, pp. 73, 75; Avalos, pp. 49, 50; De Valle, pp. 87, 88; Dahlgren, p. 115; Exall, pp. 19, 20, 194–205; Martin, p. 214; Echeguerin, p. 125; Clark, pp. 64–66; Gamboa, p. 62; Bissell, p. 39).

The claimant's proof was positive, full, and explicit, and was supported by original written documents, directing some of these acts, signed respectively either by the prefect, the local judge, or a military officer (pp. 52, 53). Among the witnesses of the company to such acts were Jesus Chavarria, an eminent Mexican lawyer of the city of Durango (p. 92 *et seq.*), and Marcus Mora, the prefect under whom some of the aggressions were committed, and who refused to testify, and only did so by compulsion of an attachment (p. 100 *et seq.*). The testimony of

Mexico was mainly of a negative character; as, that the witness never heard of the act or transaction, and consisted of answers yes or no to categorical questions.

V.

At the time of the abandonment a large quantity of ores, estimated at 1,000 to 1,200 tons, had been mined and packed on mules' backs down to the patio of the hacienda for reduction.

This is proved by the witnesses on both sides, and is not in dispute; but their value was a question which rested largely in opinion, and, as is usual where the quality of an object is to be estimated, one on which men differed widely, and in which they might so differ honestly. Mexican witnesses were produced by Mexico, who called them all "tepetate" (barren rock), and worthless, while witnesses were produced on the part of the company who estimated their value as high as $500,000 (Dahlgren, p. 116; Cole, p. 57; Green, p. 27; Granger, p. 46; Mora, p. 101; Exall, pp. 22, 203,; Loaiza, p. 79). History shows how immensely rich those mines were formerly (Ward's History of Mexico, pp. 559–573); nine witnesses testify to their richness and great value when bought by the company (pp. 33, 41, 42, 55, 73, 115, 226, 227); witnesses of Mexico testify that the very men of whom the company bought the mines made "good profits" in working them, which they could not have done if the ores were not valuable (Manjarrez, p. 135; Fonsica, pp. 134, 135; Calderon, p. 134); the company worked the same mines, and for a time through the agency of the same men from whom the company bought, and always employed skilled Mexican ore-assorters; and that under these circumstances such a large quantity of rock should be mined, assorted, raised from the mine, and packed down to the patio of the hacienda, which was absolutely worthless, is simply incredible. The witnesses on the part of the company to the value of the ores were competent to speak to these questions, and besides, were at the hacienda frequently while the ore piles were being made, and would have a knowledge of its contents. The umpire allowed $100,000 for the ores, the lowest value proved by the company.

VI.

After the abandonment, Soto, the Mexican local judge who was so instrumental in causing the abandonment, and who stated that he meant to get the company out in order to get the property himself, moved into the company's hacienda and took possession of their mines and property, and worked their mines, and presently they were denounced by his son-in-law, for himself and a Mexican partner, and they have been worked by the latter, according to the old Mexican method of beneficiating ores, and in which the company's improved American machinery was useless; and Mexico, through her officials, claimed and has sold, or leased with privilege of purchase at an appraised value, the greater part of that machinery.

VII.

The company under the treaty of July 4, 1868, between the United States and Mexico, made a claim against Mexico before the Joint Commission, for said expenditures and interest, said value of the ores and interest, and for the value of the mines themselves, and the proofs submitted on the trial of that claim show facts of which the above is a brief summary on the material points. The claimant's case was supported

by the testimony of twenty-six witnessess, the most important of whom were men of known intelligence and good character. The defense was supported by thirty-four, but not generally of equal character with those of the claimant's. Most of them were mining laborers, of little intelligence, and their testimony consisted largely of answers—yes or no—to leading questions. The Commissioners disagreed, and the case went to the umpire for decision, and he disallowed the claim for the mines as too uncertain and remote, and awarded to the claimant its expenditures, and $100,000 for the ores mined, and interest on the amount of expenditures from March 20, 1868, the date decided by the umpire to be the time of the expulsion of the company, and on the amount for the ores from March 20, 1869, one year being decided by him as the proper time to be allowed to reduce them in, which sums and interest make the total of the award to the claimant. The case received the fullest consideration by the Commissioners and the umpire.

VIII.

This claim arose March 20, 1868; the treaty was made July 4, 1868, and forever barred all claims not prosecuted under it; the Commissioners were not appointed until long afterward, and did not organize and make their rules until late in 1869, when claimant immediately commenced taking its proofs. The memorial of the company was filed with the Commission in June, 1870, and most of the claimant's testimony was presented then and during that year. Mexico commenced taking defensive testimony in January, 1871, and from that time to the beginning of 1875, both parties had the fullest opportunity to complete their respective cases by any evidence they could produce. The award was made by the umpire December 27, 1875, and he denied the motion of Mexico for a rehearing November 20, 1876. The claimant's proofs were minute and circumstantial, the case arose on the soil of Mexico, she had control of the machinery of the courts, and a willing population for witnesses, and the claimant was a hated and despised American company, and if the facts proved by the claimants were untrue, Mexico could have easily disproved them, and have done so while the case was pending. Yet, during this period of six years of litigation, no additional proof of any kind was offered by Mexico, either to the Commissioners or the umpire.

IX.

From the foregoing brief *résumé* of the evidence of the case, it is seen that on the trial before the Commission Mexico did not contest the purchase of the mines, the erection of the works, or the extraction of the ores. Those things were too evident to be denied or contested. She did not contest the amount paid for the mines—that likewise was beyond a contest. That the amount expended by the company in the erection of its works and prosecution of its business was very large, was equally self-evident, and she only called two witnesses on that point, each of whom, as already stated, made the amount, in his opinion, $303,000, which is all the company claimed it to be. But she sought to show that the ores extracted were valueless, and that her treatment of the company was not such as to justify an abandonment of the property, and that it must have resulted from other causes. On these two points the mass of evidence was taken on both sides; but facts being "stubborn things," Mexico was overwhelmingly beaten on the weight of evidence on those points, and the umpire decided them adversely to Mexico.

X.

It was the peculiar province of the umpire to weigh the evidence, and his decision on the above-mentioned questions of fact is conclusive; and we have referred to them merely to show that the case was within the jurisdiction of the Commission; how full and fair the trial was; that the company's claim was not mythical, but an existing, tangible, substantial claim; that the award was reached after the fullest investigation had been had by both sides, and has evidence to sustain it; and that the subject-matter of the claim and of the allowance existed incontrovertibly, and the allegation in which Mexico delights, that this is another Gardiner case, has no foundation for it whatever. That award is final. It is not only expressly made so by the treaty itself, but according to the well-settled principle of law governing the decisions of international tribunals and of arbitrators, it can be questioned only for corruption in the umpire, or such flagrant partiality as is tantamount to it, of which there is no charge or pretense whatever here; and it cannot now be set aside except by disregarding that salutary principle heretofore universally acknowledged to control in such cases (Vattel's Law of Nations, by Chitty, side pp. 278, 279; Morse on Arbitration and Award, p. 245; 41 Georgia R., p. 10, Anderson *v.* Taylor; 14 John. R., N. Y., 105, Jackson *v.* Ambler; 7 Cow. R., N. Y., 185, Mitchell *v.* Bush).

SECOND.

AS TO THE CHARGES OF FALSE AND FRAUDULENT TESTIMONY NOW MADE BY MEXICO.

But Mexico now claims that she has discovered among some books and papers—alleged to be those of the company—some letters, principally those written by Charles H. Exall, and claims that they would impeach the testimony given by him in the case, and would go to show that the abandonment of the mines by him was voluntary and not forced, and resulted from a want of funds and the poverty of the ores, and, therefore, that an award ought not to have been made in favor of the company, and that it should now be set aside.

This assumes three things, viz: That the case of the company is not made out and cannot stand without the testimony given by Mr. Exall; that said alleged letters are true, unexplainable, and unanswerable, and will overcome and destroy all the other evidence, as well as Mr. Exall's, given in favor of the company; and that for any false testimony the award can be set aside; all of which are false assumptions, as will hereafter appear.

I.

THE CASE OF THE COMPANY WAS PROVEN AND COMPLETE, AND THE AWARD JUSTIFIED AND SUSTAINABLE, WITHOUT AND EXCLUSIVE OF THE TESTIMONY OF MR. EXALL.

And we now proceed to show it by specific references to the names of the witnesses and the pages in the printed book. The testimony was cumulative, and we refer not to all, but only to a part of it, and to only a few of the witnesses. And we make some quotations from the evidence on the points most disputed.

1. The company was a mining corporation formed under the laws of

New York; one of its objects being mining in Mexico, and was a citizen of New York, and all its stockholders were citizens of the United States. (Collins, pp. 29, 31, certificate of incorporation, p. 9.)

2. The company purchased mines and paid for same $50,000 and $22,000, and constructed mill and other improvements, and expended for the whole $299,291.06. This proof is positive. (Collins, p. 30; Bartholow, pp. 217, 218; De Valle, pp. 71, 72, 86; Smith, pp. 34, 35.)

Confirmatory: Two bankers at Mazatlan disbursed for the company $176,000 in gold. (Pena, p. 122; Echeguren, pp. 124, 125.)

And five witnesses estimate the expenditures at $300,000 and upwards. (Cole, p. 55; Cryder, p. 73; Loaiza, p. 78; Dahlgren, p. 116. See also pp. 28, 46.)

Even the two witnesses called by Mexico on that point put the amount at $303,000. (Granger, p. 147; Sloan, p. 148.)

3. The company got out a large quantity of ores, and proved by many witnesses that the quantity was not less than 1,000 tons, and the value not less than $500,000. (Dahlgren, p. 116; Cole, p. 57; Green, p. 27; Granger, p. 46; Mora, p. 101; Loaiza, p. 79.)

Granger, at page 46, in answer to the question, What quantity of silver ores had been taken and was abandoned by the company in March, 1868? says:

> I think about 7,000 cargas, or what Americans would call a little over 1,000 tons.

Green, at page 27, says:

> When said La Abra Company was compelled to abandon its mines and property, as I have stated, it had dug out and ready for reduction a very large quantity of silver ores—in my best judgment, more than 1,000 tons. This would have yielded the company, over and above the cost of its reduction, several hundred thousand dollars' worth of pure silver. From my knowledge of the ores of that mine I should say at least a half a million of dollars.

Judge Loaiza, a Mexican, at page 79, says:

> I knew that when the company abandoned their mines and mining property in the spring of 1868, they had extracted a great quantity of silver ore—I believe from 1,000 to 1,500 tons.

Cole, at page 57, says:

> That he knows the fact that said La Abra Company had taken out and left upon the ground large quantities of rich silver ores, as he believes from 1,000 to 1,500 tons. * * * Deponent believes the said company, at the time they abandoned the same, had out about 1,200 tons of said silver ores which would have yielded said company, in his opinion, not less than from $100 to $1,000 per ton of pure silver, and the richest of said ores would have averaged more than $2,000 per ton.

And history shows how rich the mines formerly were. (Smith, p. 32; Ward's History of Mexico, pp. 559, 573.)

And the evidence of *Mexico* shows that they were profitable to the parties, Castillo de Valle and Manjarrez, who sold the mines to the company. (Manjarrez, p. 135; Fonseca, pp. 134, 135; Calderon, p. 134.)

Manjarrez, at page 135, speaking of these mines and the working of them by the former owners (himself and Costille de Valle), says, "that during all the time that said mines were worked by them they produced good profits." Fonsica, at page 135, after testifying that Manjarrez and Costille de Valle were the former owners of these mines and sold them to this company, says, "that said mines produced good profits to their former owners." Calderon, at page 134, says, "that when Messrs. Castillo and Manjarrez were working the mines, he was aware that they produced good profits." All the above-named were Mexican witnesses for the defense.

And the evidence of the company shows how rich they were when owned by the company. (Dahlgren, p. 115; Bartholow, pp. 226, 227; Cole, p. 55; Cryder, p. 73; Granger, pp. 41, 42; *Bouttier*, p. 83.)

Charles Bouttier, after testifying that he was by profession a miner, and was also a practical chemist, and that he had frequently been called upon to test the quality and supply of the silver mines in Durango and Sinaloa, and that he had tested thoroughly the ores of the mines of the company, with a view to a purchase of the mines if possible, and giving the names of those tested, to wit, "La Abra, La Lauz, Rosario, Tapia, Cristo, and Lauz," says, at page 83:

> The result of my examination of these was, that I found "La Abra" almost an inexhaustible mine of rich ores. * * * The ores I took from that mine were very rich of silver, and I am satisfied, if tunneled, the ores would yield an average of at least of $600 per ton, and perhaps more. * * * I also tested the other mines named, and the ores of the others tested beneficiated me at the rate or average of about $475 per ton. I consider all of these mines exceedingly rich and abundant in supply. * * * I believe the property of that company (speaking of La Abra Company) was in the winter of 1868 worth largely more than $2,000,000, including the large piles of rich ores they had taken out, which I saw there piled up back of the hacienda of said company.

Granger, after giving the names of the eleven mines belonging to the company, says, at page 41:

> These mines are all well known, and spoken of as exceedingly valuable mines, and their ores are rich in silver and abundant in supply.

And at page 42, in speaking of the mines La Abra and Rosario, says:

> These two mines have turned out ores that beneficiated 10 to 15 marks to the carga, and selected pieces much more to my knowledge, as I have tested them myself, and I believe, if properly tunneled, would yield enormous profits to their owners. The supply of all these mines of La Abra Company I believe almost inexhaustible. It is the most valuable property I know of in that district.

Cole, at page 55, speaking of the mines of the company, says:

> That of said property, five mines owned and opened by La Abra Silver Min Company, and known respectively as La Lauz, Cristo, La Abra, Rosario, and Tapia, are of the richest in the State.

4. In March, 1868, the company was driven out and compelled to abandon its mines, improvements, and ores by the acts of the Mexican authorities, direct and indirect, of which the following are some:

They exacted prestamos of the company and seized their trains of mules and supplies. (Bartholow, pp. 222 to 224; Echeguren, p. 125; Clark, pp. 64, 65; Cole, pp. 56, 58, 59; Granger, pp. 43, 45; Loaiza, p. 78; Chavarria, pp. 95, 96.)

Bartholow, the first superintendent, at page 222, says:

> Two entire mule trains, loaded with provisions and supplies belonging to said company were captured by the military authorities of the Mexican Republic, and the mules and supplies appropriated to the use of said army, and I never was able to recover any of said mules or supplies, nor did said Abra Company ever receive any indemnity for the same.

On page 223, he says:

> I was also compelled by the military authority * * * to pay a number of "prestamos," or forced loans, levied upon said Abra Company's stamp mill, * * * from $300 to $600 each.

On page 224, he says:

> The amount of cash "prestamos," so levied and enforced during my said superintendence, amounted to a little more than $3,000, but the value of the mule trains and supplies so taken from the company * * * was not less than $25,000.

Echeguerin, a banker at Mazatlan, at page 125, says:

I recollect to have heard from * * * Bartholow, the troubles and difficulties he encountered, soon after they occurred, and that he had to pay large amounts of money, prestamos, &c.

Loaiza, at page 78, says:

Many of the mule trains belonging to said company (the Abra) were captured by the Republican army.

Cole, at page 56, says:

Troops of the Liberal Government of Mexico, * * * to the knowledge of deponent, seized upon three of the mule trains of said company during the year 1866 and early part of 1867, and converted the same, together with all the supplies packed on them, to their own use or the use of the Government.

They stole the company's ores. (Cole, p. 57; Mora, p. 102; Granger, p. 46.)

Granger, at page 46, says:

Even while Superintendent Exall was still there, * * * this tearing down of the ores of the company, where it was piled up within the inclosures of the hacienda, and the culling out of the richest pieces, and the stealing and packing away the same by Mexicans in sacks, was going on almost every night, and sometimes in open daylight, and that, too, with impunity and defiance.

They interfered with the working of the mines, ordered men to be employed or else vacate the mines, discharged employés, &c. (Bartholow, p. 223; Chavarria, 93; Avalos, p. 49; Granger, pp. 43, 45, 46; and Exhibits V, W, X, pp. 52, 53, being the orders issued by Judge Soto to the superintendent of La Abra Company, produced by the company and proved by Granger.)

Same documents produced by Mexico, pp. 154, 155, and proved by Gaudalupe Soto, the local judge, who testifies at page 161 that he was certain of having issued those orders, and did so, "*because there had been a rising of the people to compel him to.*"

Thus Mexico herself brings forward her own officer—Judge Soto—to prove that he issued those remarkable orders—issued them officially—by one of which he notifies the superintendent of the mines "to come to terms with the operatives about the work within two hours, and, if no agreement is made by them, that you *vacate* the mines, in order that they may lose no more time"; and, by the other, "that you *forthwith vacate* the mines and allow the operatives to work them for their own account, and that they may lose no more time." And the judge acknowledges that he was compelled by a popular rising to issue these arbitrary and unlawful edicts. In making this proof Mexico "gives away" her whole case.

Bartholow, superintendent, at page 223, says:

Our employés were frequently interfered with by the local authorities of said district, and on two or three occasions they actually went into the mines and discharged the men engaged in labor, upon the pretext that we did not employ all the men in the district who were out of labor, and that we did not work the mines to suit them.

Chavarria, in answer to question 11, on page 93, says:

That all the matters referred to in the question are true; that the greatest disorder prevailed upon that occasion; that the head miners, by order of Marcos Mora (the *gefe politico*), mutinied against the Abra Company; they refused to work any longer in the mines.

Granger, at page 43, says:

In June or July, 1867, the *gefe politico* of San Dimas, Marcus Mora, came out to Tayoltita, and he summoned the superintendent of said company, Charles H. Exall,

to come before him. * * * He told Superintendent Exall that he must "work the mines of the company as *he* directed them to be worked," and "to work all their mines," or he "would take the mines of the company from them, and give them to the people to work on their own account."

They arrested the superintendent without complaint or cause and fined him, and imprisoned him in a pest-house without evidence or a trial. (Mora, p. 100; Cryder, p. 73; Granger, pp. 43, 44.)

They made armed attacks on the company's hacienda. (Avalos, p. 49; Granger, p. 45.)

They repeatedly threatened to drive the company out of Mexico and finally succeeded in doing so. (De Valle, p. 87; Cryder, p. 75; Loaiza, p. 79; Avalos, p. 50; Bouttier, pp. 82, 83; Chavarria, pp. 92, 93; Mora, pp. 99, 100; Cole, pp. 55, 56, 57; Smith, p. 35; Granger, p. 44.)

Castillo de Valle, at page 87, in answer to question 11 as to the disposition of Marcos Mora, the prefect at San Dimas, in which the company's mines were located, as to the Abra Company and another company, says:

He answers this question in the affirmative, so far as relates to Marcus Mora, as he knows that he was very badly disposed towards the company in question; that he even went so far as to say to the deponent that it was necessary to break these companies up and drive them away from there.

Cryder, at page 75, says:

I heard Macario Olvera, the prefect or gefe politico of the district of San Dimas at that time (February or March, 1868), say that La Abra Silver Mining Company could not stay in that district; that it would be impossible for them to do so; he said, "The authorities were determined to get rid of that company, and they could not stay there and work those mines, and it would be better for that company to give up their mines and leave the country before any *accident* should happen, for which the prefect would not be responsible. I asked him what he meant by 'accident,' and he made an evasive reply."

Loaiza, a Mexican, at p. 79, says:

I know that it was frequently stated by the Mexicans and the authorities of San Dimas in 1866 and 1867, that they would drive the company away, that they would drive them from their mines and obtain the benefit of their expenditure. I heard Marcos Mora, at that time gefe politico of the district, say that he would drive the Abra Silver Mining Company away from their San Dimas mines. This was at the end of 1866 or the beginning of 1867. I know it is a fact that there was a firm determination existing upon the part of all, or nearly all, of the authorities of the district of San Dimas to get rid of said company.

Avalos, at p. 50, says:

I have heard Nicanor Perez, juez conciliador, say that he would drive the company [the Abra Silver Mining Company] out of Tayoltita and out of the country; and also Andrew Serrano, who held the same office after Perez went out. They both said they would get rid of La Abra Company, and have their mines and property for the Mexicans who were out of employment. They said these mines are too good for Gringos; they can't keep them or take away their ores.

Bouttier, at pp. 82, 83, says:

I have frequently heard Mexicans boast of having taken a hand in driving away La Abra Silver Mining Company from the mining district of San Dimas. * * * I heard the prefect, Macario Olvera, say that it would be impossible for La Abra Silver Mining Company to stay there. This was in the winter of 1868, I think, in or about the month of February. It might have been as early as the last of December, 1867, or January, 1868. It was the report at Mazatlan that said company was to be driven out of the mines, which caused me to visit Tayoltita with a view to the purchase of them. * * * I very soon satisfied myself that they would be driven away sooner or later. I then went to the prefect to see what would be done, and he told me the authorities there did not like La Abra Company nor its officers, and that the company better leave there soon or they would be driven away. * * * After my second interview with said prefect * * * I became well satisfied, from the intimations given me by said prefect of "the storm that was gathering around that company," as he called it, that the company would soon be dispossessed by force, and would have nothing to sell.

Chavarria, a distinguished lawyer of the city of Durango, says, on page 92:

That in July or August, 1867, he was in San Dimas on private business, and also at Tayoltita (where the company's hacienda, San Nicolas, and reduction works were located); that he went to the mines * * * and conversed with the gefe politico; * * * that he became satisfied that both that officer and the mining people were strongly bent upon annoying and driving the Abra Company away, and with which they were continually provoking quarrels; * * * that they thought it best to drive it away from that mineral anyhow; that for this purpose the authorities instigated the laboring people, on the pretext of their wants, not to work for the company; that he further knew that the company's ores were frequently stolen, and that it was not legally protected by the gefetura, where the superintendent usually made fruitless complaints of the thefts; that that officer (the gefe) also gave him, the deponent, to understand that he had a special interest in the expulsion and despoliation of the company, in which case he intended to denounce the mines at Tayoltita, and he offered deponent a share in them, which deponent refused, and reproved his conduct in permitting the operatives to steal the ores, which they did with impunity, to the great responsibility of the authorities of that department, who, either by their connivance or indolence, compromised the honor and good name of the republic; that he met Macario Olvera on the road; * * * that they conversed together, * * * and Olvera acknowledged to him the plans and intentions existing at Tayoltita on the part of the authorities and the operatives to injure and expel the Abra Company from their mines by intrigues, or such direct and indirect means as it would be impossible for them to resist; * * * that he (Olvera) was interested in that hostility and in combination with the gefe politico whom he (Olvera) was going to replace.

And on page 93 he says:

That subsequent to the time referred to in the question (March, 1868), he conversed with Macario Olvera, in Durango, and also with Marcos Mora, on his frequent visits to him when he was in prison [said Chavarria being Mora's lawyer], and was told that the company had finally been compelled to abandon their mines at Tayoltita, through the loss of their property, owing to the concerted hostility against it, in March, 1868.

And on page 94, he says, in answer to question 10:

That, as Exall's lawyer, he repeatedly solicited from the State government protection for the Abra Company, to suppress the robberies and outrages which the company were experiencing at Tayoltita; but all to no purpose. * * * The executive of the State never even so much as requested the authorities at San Dimas to comply with their duties.

And, in answer to question 16, says:

That the matter contained in the question is true, and which he knows, because it was publicly well known that the Abra Company abandoned their mines at Tayoltita in March of 1868; that he also knows that the executive of the State had the civil and military power requisite to have prevented and protected that company from being violently expelled; this deponent is unable to explain the reasons why this protection was withheld.

An application having been made to the first judge of the court, Pedro J. Barraza, in accordance with Mexican law, for his certificate as to character, &c., of the witness, to be attached to the deposition, that judge certifies as follows:

That lawyer Jesus Chavarria is a resident of this city (Durango), one of its first lawyers, and by his dignity and well-known integrity his deposition is, beyond all doubt, entitled to full faith and credit (p. 97).

Marcos Mora, prefect of the district in which were the company's mines, and who, having refused to obey the subpœna to appear and testify for the company, was brought into court by the police on an attachment, as appears by the certificate of the judge on page 106, says, at page 99:

That they (the prefects of the San Dimas district, Olvera and Laveaza) were unfriendly to the company, La Abra, * * * and in various ways tried to molest them and force them to leave the place.

And on page 100:

> That the general and common feeling in that town was adverse to the Americans, * * * and that he cannot say they sought for the expulsion of any other except the Abra Company.

They refused any redress or protection. (Chavarria, p. 94; Bartholow, p. 223; Mora, p. 102; Martin, p. 214; Galan, p. 256.)

Chavarria, page 94: Same quotation as above. Martin, at page 214, says:

> There was in reality no protection given to foreigners in that country.

Carlos F. Galan, formerly chief justice and governor of a Mexican State, as his deposition shows, says, at page 256:

> These proclamations of the Mexican Government, and their promises to foreigners, induced investments * * * and enterprises, which were in the main broken up and destroyed for the want of the protection so promised, which the authorities were, I believe, unwilling to grant.

Soon after the expulsion of the company, Soto, the Mexican local judge, moved into the company's hacienda and took possession and worked the mines, until Granger (his son-in-law) and Torrez (Granger's Mexican partner) could denounce the principal mine, Rosario, which they did, and went into possession and worked them all by the "patio" process. (Martin, p. 215; Avalos, p. 50; Adams, pp. 235, 245; Denouncement, pp. 16, 17.)

Martin, at page 215, says:

> Guadalupe Soto was local judge, and it is notorious that he resided at the hacienda of the Abra Company after that company was broken up there.

Soto said that was his object in expelling the company. (Chavarria, p. 92.)

And Mexico took possession and sold or leased the stamp-mill and other machinery not wanted in the "patio" process. (Dahlgren, pp. 112, 113, 114.)

4. Said company could not have returned and resumed possession of its mines and property and the prosecution of its business. It never would have been permitted, and the attempt would have been a waste of capital and hazard of life. (Green, pp. 26, 27; Smith, pp. 33–36; Bissell, p. 39; Granger, pp. 45–47; Cole, pp. 56–58; Gamboa, p. 62; Dana, p. 69; Chavarria, p. 96; Echeguren, p. 126.)

Bissell, a miner who resided in the San Dimas district two years, and had a mine near those of this company, says at p. 39:

> I am perfectly satisfied that neither said company nor any officer acting for them could have ever returned and recommenced said mining operations with safety to life or capital, since said company were expelled or forced by the acts aforesaid to abandon the same in the spring of 1868, nor would it be safe now [1870] for said company to attempt to repossess themselves of their said mines and property.

Chavarria states, at p. 96, that Olvera, the prefect, said "he would make it impossible for them (said company) to work, and would injure the members of the company if they returned."

5. Thus all the elements which make up the claim of the company against Mexico—the purchase of the property, the expenditures, the amount and value of the ores extracted, the acts of the Mexican authorities, causing the abandonment and amounting virtually to an expulsion of the company, and the abandonment itself—are fully proven by the other witnesses and exclusive of the testimony given by Mr. Exall; and the case was complete without his testimony. The umpire awarded the company the amount of its expenditures and $100,000 for the ores, and

the interest on those amounts. There was no conflict of evidence as to the amount of the expenditures; there cannot be a reasonable doubt as to the richness of those mines, and consequently of the great value of the ores extracted by the company; and there was no *disproof* of any of the *specific* acts done against the company by the Mexican authorities, which acts would have justified an abandonment of the property by the company, had they not amounted, as they did, to an expulsion; and the award is amply justified and sustained by the testimony which is above specifically referred to, and which is exclusive of that given by Mr. Exall.

Having been expelled, an effort to return and resume operations was unnecessary; but the evidence also shows that it would have been impossible.

II.

THE ALLEGED LETTERS OF MR. EXALL ARE NOT TRUE AND WOULD NOT AFFECT THE RESULT.

We have made repeated requests to be permitted to see the letter-book said to contain copies of his letters, which it is supposed impeach his testimony; but, for some reason (manifest in the book itself, and destroying it as evidence, we believe), our requests have been refused, and the book studiously kept from our inspection, and the genuineness of the alleged letters is denied by the company.

But, assume them to have been written by him, and not since to have been so mutilated or tampered with as to make them inadmissible as evidence. They are not the letters of an *officer* of the company so as to be tantamount to declarations of the company, for a superintendent is not an *officer* in such sense as that, but are the letters of one in its employ; and it is easy to see that they might have been written for an ulterior purpose and be colored accordingly, without his stating, as he does in his affidavit filed with your Committee on Foreign Relations, that such was the case; and when so written, even if a superintendent be deemed an officer, they obviously could not be considered as declarations of the company; at best, they are but *unsworn* statements; they are at variance with and contradicted by the *sworn* evidence of twenty-five other witnesses for the company (some of whom and of whose evidence have been above specifically referred to), and it is impossible to believe that they have all sworn falsely; and the letters are directly in conflict with his own *sworn* evidence in the case; and in his said affidavit he himself states that if there be anything in any of his letters which conflicts with his testimony given in the case, his letters to that extent are untrue. Had the letters, therefore, been given in evidence on the former trial, instead of overcoming, they themselves must have been completely overthrown by the other evidence of the numerous witnesses for the company, and would not have changed the result. (See also *post* IV.)

III.

THE AWARD CANNOT BE SET ASIDE BY THE SENATE IN CONSEQUENCE OF THE ALLEGED FALSE TESTIMONY.

This involves the consideration of the questions, what is the real nature of the proceeding as to said award before the Senate, and what the nature of an award rendered by an international tribunal under a

treaty in favor of a citizen of the United States against a foreign Government.

1. *As to the nature of the proceeding before the Senate.*

This is an effort by Mexico to obtain a new trial on the ground of newly-discovered evidence, and though she seeks to effect it by means of a treaty, yet the rules which govern courts in applications for new trials ought to control in determining whether it should be granted by such an instrumentality or not (assuming the power exists).

a. This evidence, alleged to be newly discovered, was within the power and might have been discovered by Mexico by the exercise of ordinary diligence, and produced in evidence before the Commission during the *six years* the case was pending before the tribunal. The evidence in the case shows that a copy of all the direct testimony of the claimant had been obtained from the files of the Commission, and was in the hands of Mexico when she took her testimony, because the questions put to her witnesses by her attorneys refer to that testimony and to Mr. Exall by name. The evidence in the case also shows that Mr. Exall, on his departure from Mexico, left everything—books, papers, and all—belonging to the company at the company's hacienda, San Nicolas; that the Mexican judge, Soto, thereupon moved into, took possession of, and occupied that hacienda; and that said judge appeared and testified as a witness for Mexico against said company at three different times, yet that he, its own officer, was not even inquired of by Mexico as to any such books, papers, or records kept at the hacienda. Such negligence, such want of diligence, such gross laches in discovering this alleged evidence, would defeat the application of any private suitor for a new trial on the ground of newly-discovered evidence in any court in Christendom. No good reason can be assigned why Mexico as a suitor should be exempt from the same rule.

b. This new evidence relates wholly to the points which were contested on the trial, viz, the quantity, the quality, and the value of the ores, the acts of Mexican authorities and the abandonment, and with reference to which the greater part of the testimony was given on both sides. There were twenty-five witnesses for the company, besides important documentary evidence which is incontestible, Mexico herself having also shown it; and this new evidence, therefore, *cannot* show that the company had *no case whatever* (the ground now taken by Mexico as a reason for setting aside the award and a new trial); but on the contrary, the character of this new evidence inevitably is *cumulative*, and that only, and it would go to the weight of evidence merely, and the question would still be, to which side does the weight of evidence incline—the decision would still depend upon the weight of evidence. A new trial is not granted by a court to a private litigant in such case, and Mexico having had her "day in court," and having been beaten on the weight of evidence, should not now be permitted to attempt merely to strengthen her case, but should be compelled to abide the result just as a private litigant would be obliged to do; just as this company would have been obliged to do had it been beaten; and just as numerous American claimants against Mexico (and among them the Rosario and Carmen Mining Company, whose case is hereinafter partially set forth at p. 37) whose claims were presented under this same treaty, but were defeated by Mexico by the fraud and perjury on her part, as their sworn statements and petitions filed in the State Department and presented to Congress attest, have been compelled to do *by the United States*. For some of these petitions, and evidence of such complaints to the State

Department, see reports of Mr. Wilson, House of Representatives, No. 115, Forty-fifth Congress, third session, and No. 700, Forty-fifth Congress, second session; and letter of Mr. Evarts to the President, embodied in message of the President to the Senate April 15, 1880, Ex. Doc. No 150, Forty-sixth Congress, second session, p. 4, paragraph 4.

c. Mexico made a like application to the only proper tribunal, the umpire, the court which rendered the judgment, in its life-time, and the application was denied, and that ought to be conclusive.

d. This application is against precedent and law, in that it is made *after* judgment which has become final, and which is expressly made final and conclusive by a supreme law of the land (for such is a treaty) under which it was rendered; in that it does not seek a retrial before the same tribunal, or an established tribunal, but asks to have one specially created for the purpose; and in that it is not addressed to *the* court which rendered the judgment, nor to *any* court, but to a legislative branch of the Government.

That the granting of new trials is a *judicial* and not a legislative power, nor one belonging to the Senate, we refer to Cooley's Constitutional Limitations, 492, where the author says:

> Special courts cannot be created for trial of the rights and obligations of particular parties, and those cases in which legislative acts *granting new trials* or other special relief in judicial proceedings, while they have been regarded as usurpations of the judicial authority, have also been considered obnoxious to the objection that they undertook to suspend a general law in special cases. (And see, also, cases in the notes.)

e. Stripped of its specious disguises, however, this is in *reality* an attempt to impeach and set aside an award of an international tribunal for a cause other than the *only* ones recognized by the law of nations as adequate and allowable for that purpose, viz, corruption or flagrant partiality of the tribunal itself (Vattel, 277; letter of Frelinghuysen, Secretary of State, quoted *post*, p. 29), which is not charged or pretended here, and the cry of fraud, that great bugbear, is made, in the expectation that under cover of the dust raised by it, and the aversion of seeming to be the upholders of a fraud, the desired result can be accomplished.

2. *As to the nature of an award made by an international tribunal under a treaty in favor of a citizen against a foreign Government.*

a. That such an award is a final "*judgment*" of a "*court*," and also as to the "*finality*" of such a judgment, we refer to the case of Comegys *et al. vs.* Vasse, 1 Pet., 212. The language of the court on the point is—

> This decision [the award of the Commissioners in favor of a citizen against Spain under a treaty], within the scope of their authority, is *conclusive and final*. If they pronounce the claim valid or invalid, if they ascertain the *amount*, their award in the premises is NOT RE-EXAMINABLE. The parties *must* abide by it as the DECREE OF A COMPETENT TRIBUNAL OF EXCLUSIVE JURISDICTION; and a rejected claim could not again be brought under review in *any* judicial tribunal; and the AMOUNT ONCE FIXED IS A FINAL ASCERTAINMENT OF THE DAMAGES OR INJURY.

b. That such an award is in the nature of a judgment of a "*court*" of last resort, as to its creating vested private property rights, or vesting a *legal title* in the recovery, the case of Judson *vs.* Corcoran (16 Howard R., 612) furnishes a direct affirmative answer. What was decided is expressed in these words:

> Though an award of the Commissioners, under the act carrying into effect the conventions between the United States and Mexico, did not finally settle the equitable rights of *third persons*, yet it gave a LEGAL TITLE to the person recognized as owner of the claim; and if he had an equal equity his LEGAL TITLE could not be disturbed.

c. That the claim secured to a citizen against a foreign government, through such an award under a treaty, is strictly *private property*, and as such is not subject to be taken by the United States except by "due process of law," and that such recovery is not a mere "*donation*" by the United States, with which it can deal as it pleases, we again refer to Comegys *et al. vs.* Vasse (*supra*).

The words of the court on this point, on p. 217, are these:

> The right to compensation in the eye of the treaty was *just as perfect*, though the remedy was merely by petition, as the *right to compensation for an illegal conversion of property in a municipal court of justice* (1 Vez., 98).
> * * * It considers the right of indemnity as traveling with the right of property. * * * It (the treaty) recognized an existing *right of compensation* in the aggrieved parties. *It did not in the most remote degree turn upon the notion of a* DONATION OR GRATUITY. It was demanded by our Government as a matter of *right*, and as such it was granted by Spain.

d. That Congress cannot take away property recovered by such an award, we refer, first, to the language of the Supreme Court, in Reichart *vs.* Felps (6 Wall., 160, 165, 166), where, under a treaty, certain lands had been awarded to the citizen, and Congress undertook to create a new commission (precisely as here proposed), and to grant "a new trial." The Supreme Court unanimously declared the act unconstitutional, and the "new trial" *void*, one having been bad and resulting in the defeat of the former award. The words of the court are "*Congress is bound to regard public treaties, and it had no power to organize a board of revision to nullify titles confirmed many years before by the authorized agents of the Government.*"

And second: On this same point, as to the want of power in Congress, and also in the treaty-making power, to nullify these awards, we cite the case of Gibbs, 13 Opinions of Attorneys-General, page 19, which we hereinafter, at page 49, more fully notice, because of its *exact* application to the present case.

From these cases it will be seen that it is absolutely fixed in law, if anything *can* be fixed, that this award has all the attributes of a judgment by the Supreme Court of the United States as to "vesting private property," as to "finality," and as to being incapable of being "taken for public use" by the Government, except as other property can be taken, on full compensation.

This being so, it brings us to the point, for what causes, if any, can the judgment of a court of "last resort," such as this award is, be overthrown? Can such a judgment, even in the courts—much less in Congress—be overthrown on account of false testimony, and especially when —as in this case—the time for moving a "new trial" has gone by, and the only court which ever could grant it, has refused such new trial, and has expired?

There must be an end to litigation somewhere, and if there be anything well settled in this country, it is, that the final judgment of a tribunal of competent jurisdiction cannot be impeached by showing that there was *perjury* and *fraud* in the testimony adduced on the trial. To allow it, would be to contradict the judgment, which is the highest evidence, and destroy its conclusiveness and verity and make litigation never-ending.

The latest exposition of this principle, and an elaborate answer to the above question, will be found in the case of The United States *vs.* Throckmorton, decided in 1878 by the Supreme Court of the United States (98 U. S. R., 8 Otto, 61). That was a suit to annul a judgment which confirmed a land grant in California made by a Mexican governor, on the

ground that the instrument or grant on which the judgment was predicated was a *forgery* and the evidence given to sustain it *perjury*. The court refused to set aside the judgment upon those grounds, and held as follows:

Where the same matter has been actually tried, *or so in issue that it might have been tried*, it is not again admissible; the party is estopped to set up the fraud, because the judgment is the highest evidence *and cannot* be contradicted. * * * We think that the acts for which a court of equity will, on account of fraud, set aside or annul a judgment or decree between the same parties, rendered by a court of competent jurisdiction, have relation to frauds *extrinsic* or *collateral* to the matter tried by the first court, and not a fraud in the matter on which the decree was rendered.

The cases where such relief has been granted are those in which by fraud or deception practiced on the unsuccessful party he has been prevented from exhibiting his case, by reason of which there has never been a real contest before the court of the subject-matter of the suit.

We beg that the authorities cited by Justice Miller in his able opinion may be consulted.

And in this connection we refer to the letter of the Hon. Frederick T. Frelinghuysen, Secretary of State, to the President in relation to the Venezuela awards, and communicated by the latter in a message to Congress May 25, 1882. (House of Reps. Ex. Doc. No. 208, Forty-seventh Congress, first session.) These awards were made by an international tribunal under a treaty between the United States and Venezuela. Seven of the awards were objected to by Venezuela on various grounds, and also on the ground of corruption of the tribunal that made the awards. And with reference to those awards and grounds of objection the Secretary says:

An examination of the charges formulated by Venezuela against the remaining seven awards shows that they are objected to for various reasons; as, for instance, that the party agreed that his claim was not to be the subject of an international reclamation; that the contracts were not made by the lawful Government of Venezuela; that there was NO JUST FOUNDATION FOR THE CLAIM; THAT THE CLAIMS WERE GROSSLY EXAGGERATED; that the claimant had not exhausted all his remedies in the local courts, &c. *As all such defenses were open to Venezuela in the Commission;* THE TIME FOR ADVANCING THEM HAS NOW PASSED. But the allegation that the Commissioner or the umpire was induced to make these awards by corrupt combination with the claimants or their agents is quite a different matter. The honor of the United States calls for an investigation of *this charge*, and the claimants have no rights in the finality of an award which stands in the way of such an inquiry.

An award for a claim that has no "just foundation" or is "grossly exaggerated" must necessarily be based on false testimony, and in that respect be classed as fraudulent.

In the case of this company, the matters as to which Mexico now alleges there was false testimony, viz, the quantity, quality, and value of the ores, the acts of the Mexican authorities and the abandonment, were not (to use the words of the above-mentioned decision in the Throckmorton case) "extrinsic or collateral to the matter tried by the court," but were the very things in issue and as to which the mass of evidence was given, were the very things that were tried before and decided by the umpire; and it is not pretended that as to those or any other matters involved in the suit, Mexico was (to continue in the words of said decision), "by fraud or deception practiced on" her by the company, or any one, "prevented from exhibiting her case, by reason of which there has never been a real contest before the court of the subject-matter of the suit;" on the contrary, she had, undeniably, the fullest opportunity, and without hindrance from any source, to give, and did give, all the testimony she desired to, and it was submitted to, and duly considered by, the court, and there was a full, fair, and deliberate trial;

but the pretense, and the only pretense, is that since said trial and the final award therein, Mexico has discovered evidence which she alleges will show that testimony given for the company as to the matters so in issue, tried and decided as aforesaid, was false. This pretense, and this supposed effect of the alleged new evidence, the company flatly denies; but if they were admitted to be true, this case then would be entirely within and covered by the principle enunciated and the decision in said Throckmorton case; and if any of the testimony as to those matters was actually false, the award cannot be disturbed in consequence, unless full compensation be paid, except by overriding the above-mentioned well-settled principle of law and equity, and except by virtually admitting and declaring to the world that what is good enough law and justice for citizens of the United States as between themselves is not good enough for Mexico as between a citizen of the United States and Mexico.

We have yet to learn that the principles of law and equity held in Mexico are so much more wise and benignant, and the administration of them by her courts is conducted with such greater fairness and purity than in the United States, as to entitle her to ask, and the United States to grant the request, that in a contest between a citizen of the United States and Mexico the principles of law and equity which govern our courts in their administration of justice should be departed from and trampled upon.

And we respectfully submit that the Senate cannot enter upon the trial of the question whether the award was sustained by the evidence, or "exaggerated" by false testimony, or set it aside on the plea that it embodies the fruits of false testimony, without itself becoming a violator of the best and most settled principles of law.

IV.

THE TESTIMONY OF MR. EXALL IS TRUE.

While it is not necessary to sustain the award, as has been already shown, yet it is submitted that it is true.

Shortly before his death Mr. Exall made an affidavit, which has been filed with your Foreign Relations Committee, and which, while not admitting the genuineness of the letters Mexico claims to have, is explanatory of letters written by him, and asserts that if there was anything in any of his letters contrary to his sworn testimony given before the Commission, the latter was true and the letters untrue, and he *expressly reaffirmed his testimony.* His testimony is corroborated by twenty-four witnesses in this case, and by documentary evidence, and by twenty-one witnesses in the Rosario and Carmen Mining Company case, hereinafter fully referred to at p. 37; and unless it be true, then there are forty-five witnesses who are either mistaken or have testified falsely, and that is inherently improbable, not to say impossible. Chavarria, the lawyer at Durango, testifies that, "as Exall's lawyer, he *repeatedly* solicited from the State government protection for the Abra Company to suppress the robberies and outrages which the company were experiencing" (p. 94). Obviously, a lawyer would not have been retained and application made to the governor unless such outrages actually were committed; and the orders issued by Judge Soto, and proved by him (as well as by witnesses for claimant), requiring the company "forthwith to vacate" the mines, &c. (p. 155), and which Soto testified he issued "because there had been a rising of the people to compel him

to" (p. 161), are addressed to the superintendent of the company, who was then Mr. Exall; and although Mr. Exall did not then leave, but succeeded in temporarily satisfying the clamor, and this occurred some little time before the abandonment, yet these things show incontestably the hostile feeling and action of the people and authorities towards the company at that time, and there is no reason to believe or any evidence to show any change for the better in that respect; but, on the contrary, the other witnesses testify to a continuance of that hostile feeling and action; and these things make it as certain as such a matter can be, that Exall's testimony is true, and that his letters, the only thing which militates against it, are, as he himself says in his affidavit, to that extent untrue, and therefore that his testimony, and not his letters, must stand. Stress is laid upon the letter alleged to have been written by Exall to Granger dated *February* 21st, 1868. But that letter, if ever written, was certainly never delivered, and, not being destroyed, fell into Granger's hands after the abandonment; for all the witnesses agree that the abandonment did not take place until March, 1868—about March 20, 1868—one month subsequent to that letter. Exall says he left Tayoltita March 20, 1868 (p. 18); Loaiza says in the spring of 1868 (p. 79); Green says in March, 1868 (p. 26); Granger says the same (p. 42); Smith says about the last of March or early part of April, 1868 (p. 35); and Cole says in March or the early part of April, 1868 (p. 57); and if he intended, February 21st, to leave and turn over the property to Granger, that does not show but that a month later, when he in fact left, he was forced to quit, and did not turn over the property to any one, as he has testified was the case, and as he is corroborated by others; and the umpire decided that the time of the abandonment was March 20, 1868, as will be seen by reference to his decision and award, and he allowed interest from that date. Moreover, as already shown, Soto, the Mexican judge, upon the departure of Mr. Exall, moved in and took possession of the company's hacienda, San Nicolas, and worked the company's mines for himself; and afterward the Mexican perfect leased a part and sold a part of the company's machinery, and Granger, son-in-law of said Mexican judge, denounced the principal mine, Rosario, and worked the mines for himself and his partner, Torrez, a Mexican. All these things are inconsistent with the idea, in the letter of February 21st, that Mr. Exall had merely gone temporarily to New York and left Granger in charge for the company, but are in harmony with the fact, as stated by him and the witnesses above mentioned, and found by the umpire, that he was expelled a month later (March 20th) and left not to return. These acts of the Mexican officers show unmistakably how they construed their own action towards the company, and the result upon Mr. Exall, and completely nullify any inference that can be drawn from the letter of February 21st adversely to his testimony.

V.

AS TO THE ALLEGED NEWLY-DISCOVERED INDEBTEDNESS OF THE COMPANY.

Having never been permitted to see the allegations against the company upon which the treaty is based, we may be mistaken, but we understand that Mexico claims to have discovered since the award was made that the company was in debt, and therefore the enterprise was voluntarily given up.

There is nothing *new* in the evidence that the company was in debt.

While, as was proved by the company, the stockholders individually were wealthy and had abundant means, it has never been pretended but that the company was at one time short of funds. On the contrary, the company *itself proved affirmatively* by the deposition of George C. Collins, its president (his deposition being one of the first to be taken and filed in the case), that the company, in addition to the money which it raised by its stock, had borrowed and expended $64,291.06 more, and also owed for office rent, &c. (p. 30); and that this testimony was not overlooked by the umpire is evident from the fact that he expressly includes the amount of this indebtedness in making up the sum of the award. (See the award.) Mr. Collins himself loaned $21,145.17 of this money (p. 31), and the other trustees the balance, showing clearly the faith the officers of the company had with regard to the mines. All the money was expended in opening mines, mining ores, building dams, making sluices, and improvements, before the company's reduction works were complete and it could beneficiate its ores. No indebtedness of the company has been or can be found (for none exists) that the company did not itself prove affirmatively in the case, though the form of that indebtedness may have been changed.

It is within the experience of every one who has had aught to do with mining operations that they do not reach remunerative results as rapidly as, and require the expenditure of more money than, the projectors of the enterprise at first supposed they would, and dissatisfaction follows and finds expression, and sometimes delays in operations ensue. The Abra Company was no exception to this universal experience. The officers of the company thought the superintendent did not go fast enough; that he did not rely sufficiently on himself and utilize results which he might obtain, and was too prone to draw on the home office; and they grumbled and wrote him accordingly, and such letters as they thought would make him more self-reliant, and there was some delay; but that the company gave up the enterprise for that reason, or ever intended to give it up until after Exall had returned to New York and reported his own expulsion and forced abandonment of the company's mines and property, is untrue, and there is no evidence that can show such was the case.

VI.

OPINION OF THE UMPIRE AS TO THE WITNESSES AND EVIDENCE.

It was the duty of the umpire to critically examine and carefully weigh and consider the evidence on each side, and to decide according to it. That he discharged this onerous duty with painstaking, intelligently and conscientiously, his learning, probity, and high character are ample evidence. His opinion, formed as it was and for the purposes it was, as to the comparative intelligence and truthfulness of the witnesses on each side and the weight to be given to their testimony, is more reliable than that which any one can form from a cursory examination of the evidence or the statement of any party, and ought to be conclusive; and to show what it was in those respects, we quote the following extract from his decision and award in this case:

> There is no doubt that the Mexican Government was very desirous of attracting foreigners to the republic, and of inducing them to bring their capital into it and raising up industrial establishments of all kinds. With this view it issued proclamations encouraging the immigration of foreigners and promising them certain advantages and full protection. It cannot be denied that the claimants were justified in placing confidence in these promises. They complain, however, that the local authorities of the district in which their mines and works connected with them were

situated did not fulfill their engagements entered into by their Government, but, on the contrary, behaved toward them in an unfriendly and hostile manner. The ground of their claim is that these hostilities were carried to such an extent that they were finally compelled to abandon their mines and works and to leave the republic.

The evidence on the part of the claimants is, in the umpire's opinion, of great weight; the witnesses are for the most part highly respectable and men of intelligence, and their testimony bears the impress of truth. Notwithstanding what is stated to the contrary by the witnesses produced by the defense, the umpire is constrained to believe that the local authorities at Tayoltita and San Dimas, far from affording to the claimants that protection and assistance which had been promised them by the Mexican Government, and to which they were entitled by treaty, not only showed themselves a spirit of bitter hostility to the company, but encouraged their countrymen who were employed by the claimants in similar behavior, and even frightened them into refusing to work for their American employers. The conduct of these authorities was such, and the incessant annoyance of and interference with the claimants were so vexatious and unjustifiable that the umpire is not surprised that they considered it useless to attempt to carry on their operations, and for this reason, as well as from the well-grounded fear that their lives were in danger, they resolved to abandon the enterprise. These facts are not, in the umpire's opinion, *at all refuted, or even weakened,* by the evidence submitted by the defense; on the contrary, he believes that the local authorities were determined to drive the claimants out of the country.

It appears that the superintendent of the mines took such steps as he could to obtain protection from these authorities, and, finding his efforts in vain, he appealed, through a lawyer of high character, to the highest authorities in the State, who declined to interfere in the matter. To suppose that when so determined a spirit of hostility on the part of the local authorities, one of whom was the gefe politico, who wielded great power, and so much indifference by the State government were displayed toward the claimants, it would have been of any avail to appeal to the courts of justice, would be puerile. In short, the umpire does not see what else, in presence of such opposition to their efforts, the claimants could do but abandon the enterprise.

VII.

CORROBORATIVE EVIDENCE SINCE THE AWARD.

Since the rendition of said award the strongest corroboration of the truth of the evidence given by all of the witnesses for the company, as to the expulsion of the company by Mexico and the abandonment by the company of its mines and property, has come unsolicited by La Abra Company, in evidence given in the case of the Rosario and Carmen Mining Company. That company had a mine at Candalero, near by the mines of La Abra Company, and was expelled from its property by a night attack made upon it, headed by a Mexican judge. The claim of that company having been disallowed by Sir Edward Thornton, the umpire, for reasons given by him, a motion was made for a rehearing before him based upon a petition and a letter. The petition was signed by 21 persons and firms, whom the United States consul, Edward G. Kelton, certifies to be "*the principal foreign merchants and mine owners* of this State of Sinaloa," and, after detailing the expulsion and subsequent disorders of the country, says:

> This state of affairs lasted for three years, paralyzing all the industries of the country, and rendered resumption impossible, not only of this company, but of many others, among which we will cite the *La Abra*, situated near the one in question, *was abandoned from precisely the same influences.*

And the letter was written by the British consul at Mazatlan, which, after detailing the affair of the Rosario and Carmen Co. more fully, says:

> For nearly three years after the events at Candalero, there was but one mining company able to continue operations. They did so because a Mexican general (Corona) was a shareholder, many others being abandoned, among them I would mention the *La Abra Company*, because it was situated near your mines, and they were FORCED *by precisely the same influences to leave their property.*

The Rosario and Carmen Mining Company subsequently presented a petition for relief to the House of Representatives, alleging fraud and perjury in the evidence given by Mexico, and the defeat of its claim thereby; and in the report made thereon, April 24, 1878, the petition and letter above referred to will be found. (Report No. 700, Forty-fifth Congress, second session, pp. 6, 7.)

FOURTH.

OF THE INJUSTICE AND HARDSHIP TO CLAIMANT OF A NEW TRIAL.

It is stated by those who advocate the destruction of said award that there is no harm or injustice in said destruction, because the United States proposes to give the claimant a new trial, in which, if its claim is just, the claimant will have opportunity to show it such.

This apology for overthrowing the award, it must not be forgotten, is made in regard to an award of which Mr. Evarts, as Secretary of State, after reviewing the testimony and listening to argument on both sides in obedience to the fifth section of the act of Congress of July, 1878, in his letter of the 13th of April, 1880, to the President, spoke as follows:

> Mexico has no right to complain of the conduct of the claims before the tribunal of Commissioners and umpire provided by the convention, or of the judgments given thereupon, so far as the integrity of the tribunal is concerned; the regularity of the proceedings; the full opportunity in time and after notice to meet the case of the respective claimants, and the free and deliberate choice exercised by Mexico as to the methods, the measure, and the means of the defense against the same.

This statement of Mr. Evarts regarding the fullness and fairness of the trial is not only undeniably true, but the truth thereof has, so far as we know, not been denied even by Mexico.

To apologize for an unlawful overthrow of a solemn international judgment reached by such a trial as Mr. Evarts here describes, by saying that there is no injustice in its overthrow, because the claimant can have a new trial, is the very irony of mockery. It is mockery as applied to the lawless destruction of any final judgment of a court. It is supremely so in this case, for reasons that perhaps never applied with the same force to any international judgment in the history of the Government.

Among the reasons why this is so are the following: The hostility evinced by the Mexican officials against the United States when the testimony for the claimants was being taken in this case was extreme and supremely disgraceful. It included attempts by the Mexican judge, before whom claimant appeared with its witnesses to take testimony, to intimidate the witnesses, a declaration by him that claimant should take no testimony in his court that would aid the claimant, and that he would take no testimony for claimant when its attorney was present. It also included the threatening of witnesses to prevent them giving testimony for claimant, and manifestations of mob and other violence such as endangered the life of witnesses, attorneys, and all others evincing friendliness to the claimant. For specimen proofs of all this, we refer amongst others to the following testimony in the printed case, viz, of Granger, p. 68; Dana, pp. 69, 70; Adams, p. 238; Martin, p. 212; Galan, pp. 249, 250, 255.

And the only way claimant could obtain the testimony of Mexican witnesses of that district was to take them over the mountains 160 miles to Mazatlan and get them before a United States consul, where they

could testify without fear, and where the formalities requisite to make the depositions evidence could be obtained.

It is not too much to say, in view of what this evidence in the trial discloses, that no witness resident of Mexico who should hereafter testify the truth in favor of this American claimant would be permitted to live in that country. And after the hue and cry that had been raised about this case, no man who values his life would dare go there to obtain the testimony which exists there for claimant. Even before, when there was no special excitement on the subject, it was as much as a man's life was worth to go there and get it, and it was necessary to seek it protected by an armed guard hired at the seaport, Mazatlan.

But again, suppose there were no difficulties of the kind just stated, growing out of violence to the procurement of testimony; still, the failure of memory, the death of witnesses, the disappearance of witnesses, the ormous expense of procuring testimony at places so inaccessible as these mines, and the like, make it perfectly obvious to every one having the slightest experience regarding trials in human courts, that the new trial promied by the proposed treaty is, as to the claimant, a hollow mockery. The transactions to be proved, be it remembered, occurred in a foreign and a nearly inaccessible and semi-barbarous country, and occurred *fifteen* years ago, and of the witnesses for the claimant of the utmost importance on a new trial the following are known to be dead, viz: Francis F. Dana, for twenty years a resident of Mexico, and a lieutenant-colonel in the Mexican army in the war of the French invasion; John P. Cryder, a lawyer and miner residing in Mexico; Geo. C. Bissel, superintendent of mines adjoining La Abra mines; José M. Loaiza, resident of San Ygnacio, Mexico; Thomas J. Bartholow, the first superintendent of the company; George C. Collins, the president of the company; Charles H. Exall, the last superintendent of the company, and the alleged author of the alleged letters relied on by Mexico. And there are other witnesses of whose death we have heard, but of which we are not certain. And there are others who would be necessary witnesses on a new trial who are dead. Much of the testimony of most of these witnesses, and especially that of the superintendents, cannot now be supplied. The claimant has no means of knowing who the subordinates were, and no means at this late day of ascertaining who, if any, were cognizant of the same facts; and it is notorious that the population of the mining locality is a constantly changing one. To open the award and require a new trial after such a lapse of time and under all these circumstances, would be something more than to entail a great expense on the claimant; would be something more than a hardship; it would be a downright denial of justice. No court of law or equity would do it.

Though not required to do so by the rules of the Commission, said company printed its testimony, and, lest it should seem to be unfair, printed that of its adversary also, Mexico having refused itself to print it, or pay any part of the expense for so doing. The testimony of Mexico, being in Spanish, had first to be translated, and the total expense of official translations, certification, and printing was upwards of $1,400, at least two-thirds of which was caused by the translation and printing of the Mexican testimony. Men who make a fraudulent claim, supported by false testimony, do not take so much pains and incur such expense to print it, and thus publish and make easy the knowledge and proof of the offense; but they do as Mexico endeavored to do in this case with regard to her testimony—leave it in illegible manuscript, stored away in dark pigeon-holes, and exclude the light wholly from it.

The members of said company are not of the class of men who em-

bark in such business. They are mainly merchants and bankers now residing in the cities of New York, Newark, Baltimore, Wheeling, Louisville, Chicago, St. Louis, and San Francisco, and other parts of the country, and are men of wealth, high character, social position, and influence, and, as the Hon. Benjamin Wilson, in his speech in the House on this subject in 1879, speaking from personal knowledge, said of them, "they are the peers of any gentleman of this House or in the land." Their only offense has been their ignorance of the duplicity and perfidy of the Mexican character, and their consequent folly of putting faith in the proclamations of the Mexican Government inviting them there and promising them protection, and in expending three hundred thousand dollars in an enterprise on Mexican soil, relying thereon. And of this amount they were then robbed and spoliated by the red hands of official bandits and driven from the country. And, under the circumstances, they have a right to ask that the powers of the Senate and the laws of the land shall, at least, not be strained against them, notwithstanding the howl of fraud set up by Mexico for the purpose and in the hope of evading her just and most solemn obligation, and echoed by the pack of hungry speculators who are to profit out of such a result.

FIFTH.

AS TO ASSIGNEES AND THEIR RIGHTS.

Relying upon the provisions of the treaty under which this award was made, third parties have in good faith acquired and paid large sums for interests therein, and hold valid assignments for the same, and some of them rely upon the investments so made for their support. They are entitled to the protection of the express stipulations in the treaty that the awards thereunder should be absolutely final and conclusive, and be given full effect without any objection, evasion, or delay whatsoever, and that *both* Governments would so regard and treat them; and to fail to do so, is to make those stipulations a delusion and a snare.

Motions for a rehearing were made by Mexico before the umpire in eleven cases, all of which he denied in one decision, and he gave as the principal reason for his decision the following, viz:

The decisions of the umpire, without his wishes being consulted, have generally been made public both here and in Mexico. It is known that by the convention they are final and without appeal. It is not impossible, and indeed it is very probable, that some of the claimants in whose favor awards have been made may have been able to obtain, on the credit of these final decisions, advances of money, or other values, or may have sold and entirely assigned away, to other persons not previously interested in the claims, the whole amount of the awards. The umpire is aware that by the law of the United States (Revised Statutes, sec. 3477) transfers and assignments of claims against the United States are null and void unless made after the issuing of a warrant for the payment thereof. But he does not believe that this law comprises claims against Mexico, although they may finally be paid through the Treasury of the United States; and there is no doubt that what is supposed, on the faith of the convention, to be a final decision of a claim, would give the claimant a credit of which he would be able and likely to avail himself. It is, therefore, highly probable that the alteration or reversal of a decision might seriously prejudice the interest of other parties besides the claimant, parties who were in no way concerned in the origin of the claim.

But the umpire believes that the provisions of the convention debar him from rehearing cases on which he has already decided. By it the decisions are pronounced to be final and without appeal, and the two Governments agree to consider them as absolutely final and conclusive, and to give full effect to them without any objection, evasion, or delay whatsoever. He believes that in view of these stipulations *neither* Government has a *right* to expect that any of the claims shall be reheard.

This opinion of the distinguished umpire would be entitled to great respect in any event; but it derives unusual force from the fact that he evidently possessed the views of the persons in power at the time of the negotiation of, and who negotiated, the treaty, as to the *actual* finality and conclusiveness of the awards under it, under any and all circumstances.

General Grant, under whose administration the proceedings of the Commission were brought to a close, *then* held that those stipulations were not empty phrases, but actually meant what they purported to, and were obligatory and must be made effectual, as is evidenced by the letter of his Secretary of State, Mr. Fish, under date of December 4, 1876, in response to the Mexican minister as to a possible future attempt by Mexico to set aside or limit by construction the effect of awards. Mr. Fish says:

> By article second of the convention the two Governments bind themselves to consider the decisions of the Commissioners and of the umpire as absolutely final and conclusive, and to give full effect to such decisions, *without any objection, evasion, or delay whatsoever*, and by the fifth article the high contracting parties agree to consider the result of the proceedings of the Commission as a full, perfect, and final settlement of every claim upon either Government arising from transactions prior to the exchange of ratifications thereof. * * *
>
> I must decline, however, to entertain the consideration of any question which may contemplate any violation of, or departure from, the provisions of the convention as to the final and binding nature of the awards, or to pass upon, or by silence to be considered as acquiescing in, any attempt to determine the effect of any particular award.
>
> With your appreciation of the objects in contemplation in this method of settlement of differences between two Governments, and with your intimate acquaintance with the particular provisions of this convention, as with reference to the binding character of the awards made by the Commissioners or by the umpire, you will readily appreciate my extreme unwillingness to consider that at the moment when the proceedings relating to the Commission have been brought to a close, and the *obligation upon each Government to consider the result in each case as absolutely final and conclusive* BECOMES PERFECT, the Government of Mexico has taken or purposes to take any steps which would impair this obligation.

SIXTH.

OF THE PREVIOUS ACTION OF CONGRESS AND THE PRESIDENT.

An act of Congress providing for the distribution *pro rata* among the awardees of the moneys payable by Mexico under said treaty of July 4, 1868, was approved June 18, 1878, and contained the following provision:

> SEC. 5. And whereas the Government of Mexico has called the attention of the Government of the United States to the claims hereinafter named with a view to a rehearing; therefore, *Be it enacted*, That the President of the United States be, and he is hereby, requested to investigate any charges of fraud presented by the Mexican Government as to the cases hereinafter named: and if he shall be of the opinion that the honor of the United States, the principles of public law, or considerations of justice and equity require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be opened and the cases retried, it shall be lawful for him to withhold payment of said awards, or either of them, until such case or cases shall be retried and decided in such manner as the Governments of the United States and Mexico may agree, or until Congress shall otherwise direct; and in case of such retrial and decision any moneys paid or to be paid by the republic of Mexico in respect of said awards, respectively, shall be held to abide the event, and shall be disposed of accordingly; and the said present awards shall be set aside, modified, or affirmed, as may be determined on such retrial: *Provided*, That nothing herein shall be construed as an expression of any opinion of Congress in respect to the character of said claims or either of them.

The claimant denied and denies the right and power of Congress to pass the provisions of said act for the retrial of this case in any contingency whatever; but under said act the President, through the Hon. William M. Evarts, then the Secretary of State, made the investigation

supposed to be authorized by said act, and his decision thereon is contained in two letters written to him by said Secretary of State under date of August 8 and September 3, 1879, respectively, which were approved by the President, and they are embodied in the report made by said Secretary to said President under date of April 13, 1880, which report was communicated to the Senate by the President in a message April 15, 1880. (Senate Ex. Doc. No. 150, Forty-sixth Congress, second session. Same documents, report of Mr. McDonald from the Judiciary Com., Rep. No. 712, Forty-sixth Congress, second session.)

That examination was thorough, and included the alleged Exall letters. In said report said Secretary says:

I gave the subject the most careful examination. I reviewed the proceedings of the Commission, including the testimony originally submitted, the arguments made by the counsel both for the republic of Mexico and the United States, the opinions of the members of the Commission, and the final decision of the umpire. I considered the representations of the Mexican Government as set forth in its diplomatic communications to this Department, and subjected to patient scrutiny *the supplemental evidence* by which those representations had been supported. In addition to this I heard counsel both for the Mexican Government and the parties interested in these awards; [and he decides that Mexico] has no right to complain of the conduct of these claims before the tribunal of Commissioners and umpire provided by the convention, or of the judgments given thereupon, so far as the integrity of the tribunal is concerned, the regularity of the proceedings, the full opportunity, in time and after notice, to meet the case of the respective claimants, and the free and deliberate choice exercised by Mexico as to the methods, the measure, and the means of the defense against the same; [and] that *neither the principles of public law, nor considerations of justice or equity, require or permit, as between the United States and Mexico, that the awards in these cases should be opened and the cases retried before a new international tribunal, or under any new convention or negotiation respecting the same between the United States and Mexico.*

So that the only question attempted to be submitted by said act, viz, whether there ought to be a new international trial or not, was decided adversely to Mexico, and as completely as can be. But the Secretary went further, and suggested that the United States might owe it to themselves to ascertain, through the agency of a domestic tribunal to be established by Congress, whether or not there may have been a "fraudulent exaggeration" of the claim of said company, while, at the same time, he deemed it his duty to pay, and did pay, to the claimant its proper proportion of the three installments previously paid by Mexico, and withheld by said Secretary under said act of Congress. And the Secretary concludes said decision with these words:

Unless Congress should *now* make this disposition of the matter [viz, provide by statute the machinery for a domestic investigation] and furnish thereby definite instructions to the Department to reserve further payments upon these awards till the conclusion of such investigation, and to take such further order with the same thereafter as Congress might direct, it would appear to be the duty of the Executive to accept these awards as no longer open to reconsideration, and proceed in the payment of the same *pro rata* with all other awards under the convention.

The above-mentioned message of the President was referred to the Committee on Foreign Relations of the Senate. The same subject was before the Judiciary Committee of the Senate of the same Congress by a reference to it of Senate bill No. 1682, which directed an investigation to be made by the Court of Claims of the claim of said company.

That committee, through Senator McDonald, by the above-mentioned report, No. 712, and made June 10, 1880, unanimously reported adversely upon said bill No. 1682, and recommended its indefinite postponement, which was done by the Senate, and the action of that committee approved; and that committee, on the last page of said report, condemns the plan of a domestic investigation in these words:

The bill under consideration proposes to withdraw these two claims from the dominion of international jurisdiction and place them before a tribunal organized and ex-

isting solely by virtue of the laws of this country, and in this way it would seem designed to avoid the opening up of other questions of complaint that are known to exist on behalf of citizens of the United States, whose claims, for various causes, fail to receive favorable consideration by said Commission under the treaty creating the Commission.

And Congress adjourned without taking any further action in the matter.

Congress thus not only did not make, but in one branch of it expressly condemned said suggestion of Mr. Evarts for a domestic trial, and thereupon the President held said award as no longer open to reconsideration, and the Secretary of State proceeded to pay the same its share of the annual installment paid by Mexico then in hand, as the President and Secretary had decided in their above-quoted decision they would do; and subsequently, in the following year, also paid to said company its share of the annual installment paid by Mexico in that year, and thus expressly reaffirming said decision.

As against the proposed action of the Senate in making this new treaty, what has been done under said section 5 of the act of 18th of June, 1878, does not, of course, constitute technical *res judicata;* but such decision by the President, that "the principles of public law and considerations of justice and equity" not only do not require but forbid that there should be a new *international* trial ordered by treaty, is one by a tribunal created by a law of *Congress—Senate* as well as House—a tribunal made one of *last resort*, and whose decision was to constitute a *new "finality."*

For the Senate, through this treaty, to turn upon its own creature and to trample down this second "final decision" which *it* has just procured to be made, seems to us an act which the Senate would be reluctant to do, especially when it is one directed to strike down most important rights of its *own* citizens.

SEVENTH.

THE GIBBS CASE.

In Gibbs's case, decided April 10th, 1860, by Attorney-General Hoar, where, upon a cry of "fraud" by New Granada, the United States, through a new treaty, submitted the award of Gibbs, obtained under a former treaty, to a new trial, before a new Commission, at which Gibbs refused to appear, and the claim was rejected, the Attorney-General held what is expressed in these words in the syllabus (13 Opins., 19), to wit:

Held, That by the submission of the claim to this Commission in the manner stated, the claimant WAS NOT DIVESTED OF HIS RIGHTS *against New Granada, under the award of the umpire aforesaid.*

The award NOT *having been vacated, opened, or set aside during the lifetime of the former Commission or Board, and the claimant having done nothing since to waive his rights thereunder, it should be treated by our Government as a valid and conclusive ascertainment of his claim against New Granada.*

Under this undoubtedly sound opinion this Gibbs award was subsequently paid by the United States in full.

And we, with the utmost respect, but in order to avoid any waiver of the rights of our client, which might arise out of our silence at this time, beg to be permitted to say to the Senate that La Abra Company will insist upon the payment by the United States of the balance of said award in its favor against Mexico now remaining unpaid, should our Government assume to discharge Mexico from the binding force of said final award.

EIGHTH.

In concluding this brief, we wish to say that when we had recited the facts sufficiently to show that there was a case within the jurisdiction of the Commission as defined by the treaty, and that the parties to the litigation had a fair trial—that is to say, had a sufficient opportunity to present their proofs and establish their respective rights before the Commission, and to obtain its honest and impartial decision on the facts presented—and that there was testimony sufficient in support of the award so that the umpire could not be charged with flagrant partiality, even though he might have erred in judgment, the recital might have ended, because, as we respectfully insist, those recited facts put the case completely outside of the jurisdiction and power of the treaty-making power, either to enter upon an examination—a retrial, as it were—of the case on the merits, or to set aside said award. In extending the statement of facts, we do not wish to be understood as arguing the merits of the case, but so extended them in answer to the charge of fraud now made, and that only out of deference to the well-known repugnance of Senators to look favorably upon the rights of a party whose case is subjected to such a charge; and we do not admit, but we most respectfully deny the authority of the Senate, as a part of the treaty-making power or otherwise, to review the claim of said company upon the merits for any purpose, or to annul or disturb said award by any means or in any manner.

SHELLABARGER & WILSON,
SUMNER STOW ELY,
Attorneys for La Abra Silver Mining Company.

JANUARY 22, 1883.

VII.—*ACTION OF THE SUPREME COURT OF THE UNITED STATES ON THE WEIL AND LA ABRA CASES.*

No. 97.

Brief for defendant in error.—By R. B. Warden.

In the Supreme Court of the United States.

FRELINGHUYSEN, SECRETARY OF STATE, plaintiff in error,
v.
UNITED STATES, ON RELATION OF JOHN J. Key, defendant in error.

In the Supreme Court of the United States, October term, 1883.

FRELINGHUYSEN, SECRETARY OF STATE, &c.,
vs.
KEY, RELATOR, &c. } 891.

In error to the supreme court of the District of Columbia.

BRIEF FOR DEFENDANT IN ERROR.

A.

PRELIMINARY STATEMENT.

As there is on file already a brief stating the case on behalf of the defendant in error, and as there is also a statement of the case in the

brief of Mr. Solicitor-General, there seems to be no need of a full statement here. Apart from the argumentative part of the statement in the brief last mentioned, I take no exception to the preliminary showing furnished by that brief. As to the matter which it puts into an appendix, while I deem parts of it capable of misleading, and the whole of it incapable of giving a full view of the history which I would like to have before the court, and which the court itself, I am quite sure, would wish to see thoroughly as possible, I am more than willing that judicial notice shall here be extended to the matter so appended, and to all other matter which judicial notice can be deemed to reach.

B.

ARGUMENT IN BRIEF.

I. Consulting brevity as much as possible, in view of the great depth and height and breadth of questions which this record raises, I avail myself of reference to words of mine, addressed to the Secretary of State, in a brief by Judge Johnston and myself, on learning, *not officially*, that there appeared to be probability of negotiation—in point of fact, unknown to us, there had already *been* negotiation—of a treaty, such as that the seeking of ratification for which the Secretary sets up in his remarkable answer to Mr. Key's petition for mandamus. In that brief are these expressions, which I certainly drew up with good intention:

> We have learned that disturbance of the decision made by President Hayes, under the fifth section of the act entitled "An act to provide for the distribution of the awards made under the convention between the United States of America and the republic of Mexico, concluded on the fourth day of July, eighteen hundred and sixty-eight," has been contemplated. We insist that no disturbance of that decision ought to be made in any way. We submit that it is final and conclusive, right in itself, and within the application of the rule respecting *res judicata;* and that the rights vested under it are property which no power is at liberty to touch.
>
> The fifth section of that act recites that the Government of Mexico has called the attention of the Government of the United States to the claim of Benjamin Weil and the claim of the La Abra Mining Company, with a view to rehearing. It requests the President to investigate any charges of fraud presented by the Mexican Government as to those cases; and thereupon it provides that, if the President shall be of the opinion that *the honor of the United States, the principles of public law* or *considerations of justice and equity*, require that the awards in those cases, or either of them, should be opened and the case retried, *it shall be lawful* for him to withhold payment until such case or cases shall be retried and decided *in such manner as the Governments of the United States and Mexico may agree, or until Congress shall otherwise direct.*
>
> The President acted in accordance with that request of the Congress. He exhausted all the power and performed the whole duty contemplated by the act. He decided that neither the honor of the United States, the principles of public law, nor considerations of justice and equity, either *required* or *permitted* the opening of the awards in question and the retrial of the cases, or either of them.
>
> This was after more than one hearing, and after the completest advisement; and we say it is a perfect bar to any sort of disturbance of the awards, and is, moreover, wholly right in itself.
>
> Five installments of the payment to be made under the awards have been actually paid under that decision, and another is now waiting to be paid.
>
> Among the rights vested under the proceedings just referred to are the rights of assignees, in no way affected by the allegations of fraud. These assignees had, and have, a perfect right to regard the whole matter as having been legally and forever put at rest by the Presidential decision here set forth and pleaded as a bar.
>
> It is to be observed that some of the assignees became such *after* the decision of the President, quieting the whole attempt of Mexico to go behind the award.
>
> When the history of the whole matter is reviewed with care, there cannot be the slightest doubt that the decision of the President that the suspended installments of payment ought to be delivered to the persons interested, and the whole attempt to interfere with the awards pronounced against, was a decision absolutely right. We are not called upon to make this out; but we think proper, nevertheless, to take that easy task upon ourselves.

I also said in the same argument:

But Congress saw fit to pass the already cited act, to call on the President to examine whether either the honor of the United States, the principles of public law, or considerations of justice and equity, required that the assailed awards should be opened and the cases retried.

In accepting the trust so reposed in him, President Hayes, an able, experienced, and solid lawyer, took upon himself the decision of matters of law and matters of fact alike. He referred to the distinguished and accomplished lawyer who was then Secretary of State, the hearing of oral and other argument for and against what was so coolly asked by Mexico.

The hearing was a full one; the consideration of the Secretary long protracted.

Some of the considerations of law which were presented on the side of the awards were, in substance, these:

1. The case of the *United States* v. *Throckmorton** is conclusively against what is demanded on the part of Mexico. In that case Mr. Justice Miller says:

"There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments. There is also no question that many rights originally founded in fraud become—by lapse of time, by the difficulty of proving the fraud, and by the protection which the law throws around rights once established by formal judicial proceedings in tribunals established by law according to the methods of the law—no longer open to inquiry in the usual and ordinary methods. Of this class are judgments and decrees of a court deciding between parties before the court and subject to its jurisdiction, in a trial which has presented the claims of the parties, and where they have received the attention of the court. * * * But there is an admitted exception to this general rule in cases where, by reason of something done by the successful party to a suit, there was in fact no adversary trial or decision of the issue in the case. Where the unsuccessful party has been prevented from exhibiting fully his case by fraud or deception practiced on him by his opponent, as by keeping him away from court; a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the plaintiff; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where the attorney regularly employed corruptly sells out his client's interest to the other side—these and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and a fair hearing."

Mr. Justice Miller, after citing cases, adds: "In all these cases, and in others which have been examined, relief has been granted, on the ground that, by some fraud practiced directly upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of his case to the court. On the other hand, the doctrine is equally well settled that the court will not set aside a judgment because it was founded on a fraudulent instrument or perjured evidence, or for any matter which was actually presented and considered in the judgment assailed."

"The rule so settled is completely applicable to awards, without excepting international awards.

"2. Indeed, there are many, constantly augmenting reasons, growing out of international relations, as to war and peace, for holding international awards completely indisturbable.

"3. These reasons rise above, but they include the private interests affected by the arbitrations of the nations.

"4. The proprietary interest of private persons in international awards is of great concern to international welfare as well as to individual affairs.

"5. The actual existence of the alleged proprietary interest of individuals, and its inviolability, are shown in Comegys *v.* Vasset, Mead's case†, and the opinion of the Attorney-General in Gibbs' case‡, as well as in Judson *v.* Corcoran§, and in Gracie *v.* N. Y. Ins. Co.¶

"6. On all accounts public policy, in all its aspects, home and foreign, is opposed to disturbance, under any pretext, of an international award.

"7. The pretexts here are shown by the whole history of the proceedings of Mexico to be frivolous and worse than frivolous. She had the amplest 'day in court,' and would not take it; and is now attempting, in effect, to have advantage of her own gross negligence, and of a craft which ought to be condemned with great severity.

"8. What Mexico is praying for is not only not *required*, it is not even *allowed*, by 'the honor of the United States,' by 'the principles of public law,' or by 'considerations of justice and equity.'

"9. The legal 'honor' does not act on the principle that the end justifies the means.

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*98 United States (8 Otto), 61.

†1 Pet., 193; ‡2 C. C., 224-227; § 13 Opin., 23, 24; ‖ 17 How., 612; ¶ 8 Johns., 245.

That honor does not hold that it is well to do evil in order that good may come. That honor hates all the varieties of lawlessness, but especially the lawlessness that pretends to be administrative of the law, yet violates its vital principles and rules.

"10. If we establish that what Mexico is praying for is illegal and inequitable, honor cannot grant what law and equity refuse.

"11. No chancellor, if there were chancery jurisdiction of such matters as those here involved, could abstain from severe condemnation of the spirit manifested by the proposition of Mexico to exclude rebutting evidence. *A fortiori* is that spirit here condemnable, wher· it reveals the character of the several attempts which Mexico has made, not only to defeat, but to make odious Weil's claim.

"12. Secretary Fish was fully right in holding that the honor and the duty of this country utterly forbade the *entertainment* of any attempt, whether regular or irregular, direct or indirect, on the part of Mexico, to try to bring about retrial of the award in favor of Weil and that in the La Abra case.

"13. The action of Mr. Fish, in that behalf, ought to be regarded as *res judicata.*

"14. In view of the pecuniary transaction which immediately followed that decision of Mr. Fish, a principle almost identical with that which is applied to allegations of *accord and satisfaction* may well be appealed to here.

"15. But the great principle which we are most disposed as well as most interested to insist on, is the principle applicable to the solemn pledges interchanged between Mexico and the United States for the absolute finality of the awards in question.

"Reference was also made to the printed arguments, presented by the undersigned to the House Committee for Foreign Affairs; and to these arguments (of which copies will be herewith offered) we refer, as connected with the present argument.

"In view of all that is thus variously offered to the notice of the present Secretary, we respectfully and earnestly insist, that President Hayes might well have closed the whole affair before him, without sending it, in any shape, back to Congress.

"Congress, however, chose to give him no new power; and, *exhausting the power that he actually had*, he decided that, for the reasons indicated by Secretary Evarts, no new treaty ought to be made, that no retrial ought to be had, and that the four suspended installments ought to be paid; and *this was actually done by his direction.*

"Secretary Blaine paid the fifth installment, in accordance with the decision made by President Hayes.

"Now, could there be a case of *res judicata* more complete than that we here present?

"We speak as well of the question as to the making of a new treaty as of any other question. Both the President and the Secretary of State, years ago, and after much consideration and a long delay, decided that there ought to be no treaty for the purpose of opening up the awards in question."

I respectfully submit that these positions were well taken, and that they ought to have had the effect of preventing the Secretary from advising the President to seek ratification of the treaty that attempts to nullify the suspended awards.

II. But Mr. Solicitor-General now comes and says, or seems to say, that it is not *shown* that President Hayes *did* decide as, in my just quoted language, I aver that he did. The learned counsel of the Government makes an ingenious effort to make out that the contingency contemplated in the act of 1878 was such that no part of the act provided for distribution, in the case of such proceedings as were actually carried on and out, under the supposed authority of the act, by President Hayes. We are told "that the provision for distribution contained in the first section does not apply to Weil, except either in case the President, after an *investigation*, as authorized in the fifth section, has decided that the award shall not be *reopened and retried*, or in case, after a decision that there should be a retrial, an affirmation of the award has followed." Thereupon, Mr. Solicitor proceeds to say that, "inasmuch as, in the event, there has been no retrial, the petitioner must make out by the record that the President, after investigation, has decided that the original award in favor of Weil should not be reopened and retried."

Here is ingenuity; but is there more?

What *solid* question can there be that, after suggesting to Congress to take such action as it might see fit to take, under the rather cloudy

intimations of Mr. Evarts to the President, as far as the *honor* of the country was concerned, and as to undefined possibilities of some sort of Presidential action, in respect to the suspended awards, the President, *having already decided that there ought to be no disturbance of the awards, by treaty or otherwise*, determined, after Congress had failed to take *any* action on the subject, that the distribution must no longer be delayed? If I am right in this respect, did *not* the President, after investigation, decide "that the original award in favor of Weil should not be reopened and retried?"

As far as *distribution* is concerned, the objection to the act of 1878 is its unconstitutional provision for the holding up of distribution till the happening of the improper contingencies contemplated in that provision. But it is not now necessary to set forth the reasoning which I have more than once advanced to show that it was not for Congress to empower either the President or any other person to carry on the investigation contemplated by the fifth section of the act and meantime to withhold payment of the suspended awards. The President approved that section, as well as the sections in association with it, and he finally arrived at the decisions I have spoken of. Shall we be ingeniously argued out of the substantial benefit of those decisions?

III. Mr. Solicitor, however, coming to the close of his decidedly ingenious brief, advances these expressions:

> Upon the whole matter it is submitted that the Secretary cannot be coerced by a writ of mandamus—
>
> 1. Because the petitioner has no title to the money that can be recognized by a court.
>
> 2. At all events because under the circumstances the duty of the Secretary, in passing upon the right, is executive and not ministerial.
>
> 3. As a distinct objection, that *in respect of comity alone*, courts will not interfere with the *statu quo* upon which pending legislation, having a specific reference to that status, is intended to operate.

I most respectfully contend that neither of the grounds so taken by Mr. Solicitor has any strength at all against the claim of the relator for relief.

IV. That "the petitioner has no title to the money that can be recognized by a court," appears to me, I must allow myself to say, not disrespectfully or inappreciatively, far more ingenious, far more fanciful, than solid; and I submit that nothing in the power of argumentation could suffice to make the proposition stand on lasting legs.

Endeavoring to justify it, however, Mr. Solicitor advances this contention:

> Inasmuch as the convention of 1868 imposed no duty upon the Secretary of State in respect to the awards which it authorized, and, indeed, was a transaction to which only the United States and Mexico were parties, it seems that no reliance can be placed on that as *directly* warranting this proceeding. Some other action by the United States was requisite before the results of the convention could create, as between them and private persons, such rights as might be enforced in courts.
>
> * * * * * * *
>
> The act of 1878 is necessary to the relief prayed, and * * * the rights of the petitioner before a court are such only as are thereby given, and consequently must be asserted subject to whatever conditions that statute imposes. But for that the rights of the petitioner to recover from the United States any part of the aggregate sum which they may have received from Mexico upon this account would be only a political right.

I have heard with lively and admiring interest an able and quite learned argument that discriminated between a *justiciable* right and a *non justiciable* right. One learns from legal lexicons that there was "in old English law" the term *justiceable*, denoting "amenable, summon-

able"; and the word *justiciable* (which is to be found in dictionaries) may be a completely unexceptionable new issue of the ever-active word-mint of our always augmenting idiom. I take the meaning of this new coinage to be applicable (to use language already quoted from the brief of Mr. Solicitor) to "such rights as may be enforced in courts." It means the *jural interests*, if I may use that phrase, which can be so asserted as to draw out an exercise of the great power known as jurisdiction, which this court has defined to be "the power to hear and determine a cause." For I am more than ready to *admit*—I feel myself throughout my little part in this discussion, *actively concerned to contend*—that, not in the judicial courts alone, but in the Senate in some cases, involving the exercise of the treaty-ratifying power, and, indeed, wherever there may be a question as to power over claims of jural interests, one must discriminate with care between the *legally cognizable claims of right* and the *non-legally* cognizable jural claims.

Of this, however, I shall have occasion to say more anon.

The able and distinguished gentleman to whose brief I am responding points to no judicial utterance to warrant his position touching the want of judicially cognizable title in the relator and his assignor. I grant, however, that the learned gentleman's *own* authority is high, and I respect it as I ought. But I cannot convince myself that there is more than shadowy matter in the proposition he advances touching title.

On the other hand, no thoughtful and instructed person will deny that we are here in presence of a question which, like other questions in this case, exalts the case itself to a high place among occasions for judicial declaration of juridic principles. While I conceive that the tribunal I address can have no *difficulty* in determining the evidence of law which its deliverance in this respect ought to afford, I deem the *opportunity* afforded to put forth that evidence an opportunity of high concern to bench and bar alike.

According to my own conception, the high treaty-making power of our Government was not exerted in the instance under view *to confiscate*, but *to sustain* and *to secure*. It was, I think, exerted to sustain and to secure the jural interests of individuals, whether American or Mexican, who claimed indemnity for wrongs, or who asserted credits which the ordinary course of juridical proceedings could not bring into adjudication and enforcement. Whether it is competent or not competent for a Government, in exercising its treaty-making power, so to act on jural interests of private persons as to convert into its *own* those articles of property, there may be no occasion now to thoroughly discuss. But is it not entirely certain that, *on principle*, no Government can so appropriate the jural interests of individuals without becoming *ipso facto* debtor to those individuals because and to the full extent of the appropriation?

Let me beg the court to mark that I do not concede the competency of this nation's treaty-making power to appropriate, as just, for the mere sake of argument, supposed. According to my *own* conception, what is known in jurisprudence as the law of nature* so applies to the ideal persons we call States as to completely interdict to them all *such* appropriation of the property of natural persons. But is it not quite enough to say at present that in the purposes of our treaty-making power, as well as in the purposes of the Mexican treaty-making power, in concluding the convention under notice here, was nothing in the least like an

* Recognized in Fletcher *v.* Peck, 6 Cranch, 87, as well as in The Antelope, 10 Wheaton, 66, and in Calder *v.* Bull, 3 Dallas, 386.

appropriation of the jural interests, which the convention ordered to be treated in the way of arbitration and award?

On looking, I think the court's judicial notice may, into the course of precedure, and above all into the form of adjudication, under the authority of that convention, no research can fail to find that those adjudications were designed not to *appropriate* to either of the treaty-making Governments, but *to find out, and to assign to private persons claiming jural interests what was their due.*

Would it not be at once a grievous and a foolish "sticking in the bark" of this high business, to hold that the adjudications of which the "Weil award" was one, gave jural interests *to the United States and Mexico, respectively*, and left to persons whom those jural interests had formerly belonged to, nothing but the right to petition the appropriating Governments, respectively, for such relief as Congress might see fit to give?

I cannot apprehend that this tribunal will so "stick in the bark," and thus deliver a most heavy blow at some of the most valuable aspects of adjudication in the form of international awards. The cause of such adjudication daily more and more requires, not hindrance, not crippling, but the very best advancement it can have.

V. I now come to the proposition of Mr. Solicitor, that "the Secretary cannot be coerced by a writ of mandamus," "at all events, because, under the circumstances, the duty of the Secretary, in passing upon the right, is executive, and not ministerial."

I grant that "the circumstances" thus referred to are exceptional. I am quite ready to acknowledge that they are, indeed, amazingly and even quite astoundingly abnormal. Willingly would I, if possible, invoking this august tribunal to apply its utmost power of judicial notice, have that notice comprehend the whole of the ineffably repugnant history of the contrivances diplomacy has not disclaimed to use to nullify a most important jural interest, established by an international award. I shall not "travel out of the record," in the least; I know, and I shall faithfully perform my duty as to that, as well as in regard to all other points of advocatal obligation in this unspeakably important case; but I invoke the court to use the utmost stretch of its authority to take judicial notice of the "circumstances" which have entered into the long and curious history of the just-mentioned diplomatic works and ways.

As pointed out in my preliminary statement, there is appended to Mr. Solicitor's brief an appendix, not a word of which, although it does by by no means even intimate the whole of the contrivance of the Mexican-American diplomacy to nullify the jural interests for the inviolability and perpetuity of which I here contend, would I, if I had power, take from the consideration of the court. But, as already intimated, if I could I would exhibit to the court a perfectly minute account of *all* the matters, but *a few* of which are shown in that appendix.

I submit that if the court *can* take judicial notice, it ought not to fail to take that notice of this passage in that history, as shown by the record of the arbitrating action in the case of Weil:

On the 2d of April, 1875, Commissioner Wadsworth delivered the following opinion:

In the face of so many witnesses of respectability I am unwilling to decide that the facts detailed by them are not true.

I must decide on the proofs and documents filed in the case, and nothing else.

These remain without contradiction by the Government, and, *to remove all misapprehension, I state that I am willing to give every opportunity in my power as a commissioner to the Government to make a full and ample investigation of the claim, and respond to it, and very much wish that this might be done.*

But, *as this is declined*, I must act on the proofs before me. It is my now decision that the United States must have an award for the value of the property, at the time and place of its seizure, with interest.

A long opinion is delivered by Commissioner Zamacoma. In the course of it he thus admits and endeavors to account for the declension so referred to by his colleague:

The claimant has further alleged, laying much stress upon the evidence submitted by him, and giving great weight to the want of defensive testimony on the part of Mexico. In this there is a statement which is far from being true. Mexico has forwarded her evidence, although with the delay consequent upon obtaining proof in a matter of this nature. The said evidence was submitted to the Commission, and under the rule which has been put in practice for some time past, and which is now in force, the agent of Mexico met with difficulties; but in the brief which he submitted at the time of offering the evidence he gives it to be understood that there is much evidence, both documentary and of testimony, contradictory of the occurrence on on which the claim is founded.

The United States Commissioner, without disregarding the more than suspicious aspect of the case, proposed to the undersigned, at the moment of the session at which the case was about to be disposed of, to admit the evidence offered in behalf of Mexico, and at the same time allow the claimant an opportunity to rebut it by new evidence.

The undersigned had several reasons for not considering the proposal desirable. In addition to that, in the present condition of the labors of the Commission, the method of deciding the cases in their numerical order having been adopted, and the declaration made that all cases should be closed, and it being desirable that in proceeding no cases should be left behind undecided, there is in the present case the still more serious consideration that there is sufficient evidence upon which to judge of the claim, and that by opening the door to new testimony it would only serve to show the claimant wherein the edifice which he had erected upon his imagination was weak, and by enlightening him as to how to crown his witnesses by new efforts, which, although they would not change the aspect of the case, might lead to confuse it. Unfortunately it is not the practice of the Commission, nor perhaps would it be possible for us to send for the witnesses to subject them to a rigorous examination.

If this could be so, then the admitting of further testimony would not present so many objections, but to advise the claimant, by informing him of the impression created on the mind of the Commission, by the papers presented by him, authorize him to obtain further evidence, and even give him time to manufacture documents, all of which is, unfortunately, easy at the places in question (see the testimony of Colonel Haynes, submitted by the United States in case No. 733 of P. I. de la Gaza), and this when the labors of the Commission are about expiring, without a possibility of any further investigation, would be a proceeding in which all the advantages would be on the claimant's side, and would furnish greater probabilities of making intrigue and fraud successful than truth and justice.

How after that exposure of ideas, and that failure to make use of "day in court," even diplomacy could bring about what surely *has* been brought about, against the jural interests of Weil, perhaps no history, however full, could fully show.

Suppose the court should deem itself not capable of noticing, judicially, the matter that I have just spoken of; I have at least the right to argue that it is but reasonable to suppose that there may be, in the arbitratal record, just such beauties as the beauties which, if the foregoing showing may be noticed, it discloses.

If the court can take judicial notice such as I so much desire,* the following statement, made by my colleague, Judge Johnston, for the brief addressed, as has been shown, to the Secretary of State, must certainly be deemed of lively interest and not a little practical concern:

On the 27th day of April, 1870, Benjamin Weil filed his memorial before the American and Mexican Joint Commission, together with forty printed copies of the same, twenty of which were in English and twenty in the Spanish language, the latter intended for the information and use of the Mexican Commissioner and agent. In his memorial, Weil stated specifically the description, quantity, and value of the property taken from him: the time when it was taken, the place where it was taken, and that it was taken by the forces of the republic of Mexico.

* See, on that subject, generally, the opinion of Mr. Justice Swayne, in the case of *Brown* v. *Piper*, 91 U. S. (4 Otto, 42).

The evidence on which he relied to establish his claim was filed the last of April and on the 3d day of August, 1870. On the 8th of October, 1870, counsel for claimant filed their brief; the case was placed on the notice docket of the Commission, and the agent and counsel of Mexico notified that it was prepared and ready for hearing on the part of the claimant.

Afterwards, on the 27th of June, 1872, the claimant, by leave of the Commission, filed two additional depositions.

The case was not disposed of by the Commission until the 2d day of April, 1875, and hence it will be seen that Mexico had nearly five years after she was notified of the precise character of the claim and the evidence relied on by the claimant to sustain it, in which to procure and present here defensive testimony. There is and can be no pretense of surprise or of want of time and opportunity to meet and answer this claim, because, as before shown, the memorial and the principal part of the evidence were filed five years, and the two last depositions nearly three years, before the Commissioners passed upon the case.

Mexico, knowing the proofs adduced to sustain the claim, took evidence to defeat it. This evidence was in the hands of the agent of Mexico for a long time before the case was finally acted on, but he did not and could not be induced to file it.

* * * * * * *

The crowning reason for the course pursed by the Mexican agent will be shown in the next paragraph of this paper.

As the Commissioners failed to agree, the case was sent to the umpire, Sir Edward Thornton, for decision, and the sagacious agent of Mexico, having refused to file and submit his evidence before the Commission, sought to introduce and use it before the umpire, hoping thereby to prevent the claimant from rebutting, contradicting, or explaining it. Unfortunately for the success of this scheme, the umpire could only examine and consider such evidence, "for and against the claim," as had been presented and submitted to the Commissioners.

After a patient and careful consideration of the case on the evidence, and the arguments furnished by the agents of the United States and Mexico, Sir Edward Thornton, on the 1st of October, 1875, made an award in favor of the claimant.

The awards of the Commissioners or of the umpire were made by the terms of the treaty absolutely *final and conclusive, without appeal* to any other body or authority whatsoever. In proof of this attention is called to the following clauses of Article II of the treaty:

"The President of the United States of America, and the President of the Mexican Republic, hereby solemnly and sincerely engage to consider the decision of the Commissioners conjointly, or the umpire, as the case may be, absolutely final and conclusive upon each claim decided upon by them or him respectively, and to give full effect to such decisions *without any objection, evasion, or delay whatsoever.*

"Should they fail to agree in opinion upon any individual claim, they shall call to their assistance the umpire whom they have agreed to name, or who may be determined by lot, as the case may be; and such umpire, *after having examined the evidence adduced for and against the claim,* and after having heard, if required, one person on each side as aforesaid, and consulted with the Commissioners, shall decide thereupon *finally and without appeal.*"

By the presentation and submission of his claim to the Commission, Weil became a party to the treaty; and had a decision been rendered against him, he would have been incontestibly concluded by it, and his claim forever barred; but the decision having been made in his favor, Mexico is in like manner concluded, and the award must stand. The legal representatives of Weil cannot, therefore, be deprived of their rights under the award, nor can the Government of Mexico be excused or relieved from the obligation imposed by it, without alleging and proving that the Commissioners, or the umpire, acted corruptly, or with flagrant partiality in making the award. We affirm that these are the only grounds upon which an international award can be impeached or set aside.

* * * * * * *

On the 29th day of April, 1876, more than six months after this award had been made and entered on the record of the proceedings of the Commission in due form, and whilst the umpire was busily engaged in the examination of the cases not then disposed of, Mr. Mariscal, envoy extraordinary and minister plenipotentiary of Mexico, and Mr. Fish, Secretary of State of the United States, both with full knowledge of what had been done, and each with full powers for that purpose, conferred by his Government, concluded a treaty between the United States of America and the Mexican Republic, by which it was solemnly agreed that "the total amount awarded *in all cases already decided* should (shall) be paid in gold or its equivalent," in annual installments, not exceeding three hundred thousand dollars in any one year; the first payment to be made on the 31st day of January, 1877.

This stipulation is contained in Article II of said treaty, and is in these words:

"It is further agreed that so soon after the twentieth day of November, one thousand eight hundred and seventy-six, as may be practicable, the total amount awarded in all cases already decided, whether by the Commissioners or by the umpire, and which may be decided before the said twentieth day of November, in favor of citizens of the one party, shall be deducted from the total amount awarded to the citizens of the other party, and the balance, to the amount of three hundred thousand dollars, shall be paid at the city of Mexico, or at the city of Washington, in gold or its equivalent, on or before the thirty-first day of January, one thousand eight hundred and seventy-seven, to the Government in favor of whose citizens the greater amount may have been awarded, without interest or any other deduction than that specified in Article VI of the said convention of July, 1868. The residue of the said balance shall be paid in annual installments on the thirty-first day of January in each year, to an amount not exceeding three hundred thousand dollars, in gold or its equivalent, in any one year, until the whole shall have been paid."

This treaty was ratified by both Governments and proclaimed and published by the President of the United States on the 29th day of June, 1876.

Later, in answer to a note of Mr. Mariscal, then minister from Mexico, Secretary Fish said, on the 4th of December, 1876:

"By article second of the convention the two Governments bind themselves to consider the decisions of the Commissioners and of the umpire as absolutely final and conclusive, and to give full effect to such decisions without any objection, evasion, or delay whatsoever; and by the 5th article the high contracting parties agree to consider the result of the proceedings of the Commission as a full, perfect, and final settlement of every claim upon either Government arising from transactions prior to the exchange of ratifications thereof.

"It may be quite proper that Mr. Avila should advise you of his views as to any particular awards, or as to any points connected with the closing labors of the Commission, and you may have felt it to be your duty to bring to the notice of this Government those views so communicated to you.

"I must decline, however, to entertain the consideration of any question which may contemplate any violation of or departure from the provisions of the convention as to the final and binding nature of the awards, or to pass upon or, by silence, to be considered as acquiescing in any attempt to determine the effect of any particular award.

"With your appreciation of the objects in contemplation in this method of settlement of differences between two Governments, and with your intimate acquaintance with the particular provisions of this convention with reference to the binding character of the awards made by the Commissioners or by the umpire, you will readily appreciate my extreme unwillingness to consider that, at the moment when the proceedings relating to the Commission have been brought to a close, and the obligation upon each Government to consider the result in each case as absolutely final and conclusive becomes perfect, the Government of Mexico has taken or proposes to take any steps which would impair this obligation."

On the 8th of the same month the Mexican minister replied, saying, among other things:

"It is not my intention nor the intention of Señor Avila to open any question whatever, nor to put in doubt the final and conclusive character of the above-mentioned awards."

But the deliberate and solemn approval and confirmation of what had been already done "by the Commissioners or the umpire," by the terms of the last-named treaty, and the affirmative decision of Mr. Fish and the disclaimer of Mr. Mariscal, were supplemented and completed by the action had by and between Mr. Mariscal and Mr. Fish, acting for and in behalf of their respective Governments, under Article VI of the original treaty of July 4, 1868, in the adjustment and settlement of the expenses of the Commission.

The labors of the Commission terminated on the 20th of November, 1876, and on the 14th December following Mr. Fish and Mr. Mariscal made and signed the settlement referred to; it is entitled a "statement of account of United States and Mexican Claims Commission," and will be found in House Mis. Doc. No. 39, second session Forty-fourth Congress.

In this account Mariscal charged the United States the agreed percentage on *all* the awards made in favor of its citizens, and for the two awards now objected to, namely, those of Weil and La Abra Silver Mining Company, he charged and was allowed to include in the expense account of the Commission over $46,000, and by this recognition and confirmation of what had been done in these two cases Mr. Mariscal was enabled to retain and pocket for his Government thousands of dollars, the right to which was based solely on the validity and binding character of the two awards in question.

It is submitted:

1st. That the award in favor of Weil was, by the terms of the treaty of July 4, 1868,

absolutely final and conclusive, and could not have been set aside without alleging and proving that the Commission or umpire making it acted corruptly or with flagrant partiality.

2d. That this award and "*all cases already decided*" were solemnly approved and confirmed by the treaty, before referred to, concluded on the 29th of April, 1876.

3d. That this award was again recognized and confirmed by the settlement of the expense account, on the 14th day of December, 1876.

4th. The defendant, Mexico, refused during the lifetime of Benjamin Weil to place her defensive evidence on file, for it could then have been fully met and refuted; but now that Weil is dead, that Government and its representatives are attempting to blacken his name, rob his widow and children, break the faith of two treaties, and a final settlement under them.

If this case has not been fully and fairly settled, there is and can be no such thing as a final determination, settlement, and payment of a claim against the Government of Mexico.

These questions were carefully presented and argued in our brief before the House Committee on Foreign Affairs, and to it and the able and exhaustive report of the committee attention is respectfully solicited.

If the just quoted statement and my own statement drawing the attention of the court to matters that appear of record shall appear to the court beyond the proper compass of judicial notice, still no harm is done. If the statements referred to can receive no notice from the court, however, like remark is applicable to all that is presented in the appendix to Mr. Solicitor's brief, except the copy of the act of 1878. The statements just presented are offered *bona fide;* they are advanced to direct judicial notice, if it can be reached by them; and I respectfully submit to the court, without more remark, their fortune or their fate.

But now let us resort to the rather curious information and suggestions offered in the answer of the Secretary of State to the petition for mandamus in the court below.

I first invite attention to page 11 of the printed record as contained in the transcript. Here one finds the words:

Your respondent, while respectfully insisting that the claimants referred to in the said act have no right that the judiciary can enforce so as to contravene the political and constitutional action of the executive departments, further submits that in any event the claimants acquired a right no more vested than that of one in whose favor a judgment of a competent court has been rendered, and that the right of the claimant, in the one case as well as in the other, [may] be questioned by competent authority, and if found to have been obtained by fraudulent practice upon the court or upon the Commission, can be declared void; and submits that the measure inaugurated by the President, and now pending before the Senate, is the proper mode of adjudicating the question whether the claim of the said Benjamin Weil was allowed through fraudulent practices.

Farther on the answer says:

That on the 8th August, 1879, the Secretary of State decided that there was grave doubt of the substantial integrity of the claim of Benjamin Weil, and that the honor of the United States required a further investigation of the claim.

The answer also uses these expressions:

Mr. Evarts, in a revision of his opinion on the September of the last year aforesaid, said that the treaty under the provisions of which the Commission which made the award in the Weil case was a finality, and says:

"The principle of the settlement of international differences by arbitral commissions is of such deep and wide-reaching interest to civilization, and the value of such arbitration depends so essentially upon the certainty and finality of its decision, that no Government should lightly weaken its influence or diminish its consideration by making its action the subject of renewed discussion."

Your respondent, on the contrary, however, respectfully insists that no award is valid and final if obtained by fraudulent means, and that to hold it valid would destroy the value of international arbitration.

And your respondent also insists that the proper mode of obtaining a retrial is by invoking the treaty-making power of the two republics.

In the same remarkable document is said:

> And this respondent further respectfully shows to your honors that evidence of the fraud underlying the Weil award has been discovered, and is of much importance on this question.
>
> In May, 1881, President Hayes's decision having been made in September, 1879, it became known that additional and important evidence in relation to the claim existed in the Treasury Department, tending to establish the conspiracy to defraud Mexico and impose upon the good faith of the United States. Copies of those documents were furnished by the Secretary of the Treasury on the 3d of December, 1881. In sending them, the Secretary stated that a portion of the documents had been sent to the Department of State in November and December, 1877. An examination shows that a part, and only a part, of the documents had been received as stated, but had not been brought to the attention of Mr. Evarts.
>
> This newly-discovered evidence appears to have been unknown to President Hayes and Mr. Evarts, the Secretary of State, when the decision of 1879 was made.

Now, *does* Mr. Solicitor, or *would* Mr. Solicitor, pretend that there has ever been in any quarter even *allegation*—even so much as a *faint intimation*—that, in the sense of the exposition made in the *Throckmorton case*,* there was a practicing of fraud in the *obtaining* of the Weil award? However, if one turns, now, to the language of the answer, where it speaks of alleged "evidence of the fraud *underlying* the Weil award," one cannot doubt that what the Secretary, after all, intends to allege, or half allege, is the very sort of fraud that the Throckmorton case decides to be entirely insufficient to disturb adjudications generally.

Advocatal privilege must not be strained in what I feel obliged to further say about the paper under view. I must not yield to the temptation to indulge in a free criticism of that at once juridical and diplomatic document. It must not here be handled roughly, in the least. In criticising it, I must quite carefully observe the rules of advocatal decency and delicacy, and I must remember all the time the high respect which the august tribunal I am here addressing always pays, and ever ought to pay, to other branches of the Government. But, on the other hand, I must, it seems to me, regard myself as free to say, that the diplomatico-juridic document before us is, to say the very least, a highly curious contribution to American diplomacy. I seem to myself to be respecting all that ought to be respected, in subjoining to the criticism just submitted, that *diplomacy in general* appears to me a quite stupendous curiosity in several respects, especially when one considers it in view of theories respecting "the survival of the fittest." How diplomacy, with its peculiar ethics and its very feeble notion of the jural order of these times, remains an extant thing at all, some curious researcher might well try to somehow ascertain. At present we can notice only such distinctions of diplomacy as are quite naturally present to one's thoughts on carefully perusing the aforesaid diplomatic document.

Diplomacy appears to need the lesson taught as follows in the course of an extremely interesting expression of juridical ideas:

In the case of *Le Louis*,† Sir William Scott observed: "To procure an eminent good by means which are unlawful, is as little consonant to private morality as to public justice." One may also say that such a course is as little consonant to true views of public justice as to private morality. Diplomacy, however, seems to hold, as a religious body was once generally, but, I have no doubt, unjustly, charged with holding, that good ends may justify bad means.

I have no reason to believe, and certainly I do not in the least believe, that either new evidence or any other sort of evidence, has *proven* the alleged fraud of Weil; nor do I even apprehend that *proof* of it would

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* *Supra.*

† Dodson, 257.

be adducible were there retrial of his case, although he is not living to defend himself, and was, before his death, an interdicted, isolated lunatic. But I would be uncandid and discourteous alike were I to intimate a doubt that when the Secretary of State answered, as has been shown, both he and the President, *imperfectly informed as they must have been*, believed that there was proof that Weil had committed fraud *in the adduction of testimony known by him to be untrue.* But why should any person so believing answer so as to present the case as it *is* presented in the document of which I have been speaking; and, moreover, why should any person so believing work with Mexico to defeat the settled rules respecting high adjudications?

May it please the court, a treaty such as that now seeking Senatorial ratification, as the Secretary's answer shows, would work infinitely more evil in the sphere of international adjudications than would be effected in the sphere of *intra*national adjudications by reversal of the salutary ruling in the Throckmorton case.

Diplomacy has no necessity for and no right to a rule other than that which is laid down in that exceedingly important case respecting the non-diplomatical adjudications. What, in this respect, is *juridically* right, is also *diplomatically* right, whatever the diplomatist may fancy on the subject; and it is high time he should be instructed on this point.

To me it seems incredible that learned Senators, distinguished in the world of polity and jurisprudence both, can, after fit consideration, fail to vote against the ratification of the singularly noxious treaty here set up as if by way of bar. It seems to me their action must be such as to effect rejection of the treaty. But even if the treaty *should* be ratified, what then? Could its effect on jural interests as fully vested as are those I here contend for and insist upon be suffered to read *backward?* Could it be even *supposed* by any one to reach the *installments now past due?*

My own, at least not rash, opinion is, that neither *forwardly* nor *backwardly* could such a treaty have effect on jural interests now vested, and I doubt not that this court will so decide.

VI. It is respectful to Secretary Frelinghuysen and the President to say, as with the amplest reason I *do* say, that it is not to be believed, and I am sure that neither of them ever will be found asserting that *at the time when the now pending treaty was concluded*, either of them had *actual* knowledge of the proceedings of President Hayes and Secretary Evarts, under the act of 1878. No word in this record even hints that, in agreeing to this treaty, either President Arthur or Mr. Secretary Frelinghuysen had been informed by any person of what had been consummated under that act. It would be disrespectful to both of them to suppose that, with actual knowledge on their part of the hearings, considerations, and determinations under that act, the determinations were summarily overruled, without so much as notice to and hearing of the persons having vested interests under these determinations, and not charged in any way, at any time, with having taken part in any alleged fraud. For my part, while I cannot affect to think that the negotiation and conclusion of the new treaty are excusable in any view whatever, I have not the slightest doubt—I *could* not, in the circumstances, justify myself in doubting—that it was in perfect ignorance of the proceedings carried on by Secretary Evarts and President Hayes, under the act of 1878, that the now pending treaty was negotiated and concluded. What has been *communicated* to me on the subject, I have not, under the rules of law, the liberty to say; and all I ask of the *court* is, that the judges shall very carefully examine the whole record with reference to what I

have just said, and see if kind respect toward the Secretary and President does not forbid one to believe that it was with actual knowledge of the occurrences under the act of 1878 that they, so deplorably, negotiated and concluded the treaty I so earnestly assail.

VII. At least while time shall not include eternity, and while infinity of duration shall not seem, even to a diplomat, a proper attribute of litigation, even in its diplomatico-juridic form, there would appear to be quite solid reason for not suffering Mr. Secretary Frelinghuysen to overrule Mr. Secretary Evarts, touching the true policy respecting the finality of international awards. "How long, O Lord! how long" shall litigation last, when it takes place between sovereignties representing individuals, and when the leading objects of the treaty under which the litigation has commencement contemplate, as well as naturally and imperatively order, summary instead of "long drawn out" arrival at an end? I most respectfully submit that Mr. Secretary Frelinghuysen very gravely erred when he declared in his answer that he took issue with his predecessor, Mr. Secretary Evarts, on the subject of finality in international awards. Diplomacy has neither right nor interest to any other rule than that laid down as to international adjudications, by the already more than once cited opinion of Mr. Justice Miller in the Throckmorton case. Mr. Secretary Frelinghuysen, however, is mistaken in announcing that he differs from Mr. Secretary Evarts touching the proper indisturbableness of international awards. As we have seen, the language used by Mr. Secretary Frelinghuysen,* after quoting Mr. Secretary Evarts, runs as follows:

> Your respondent, on the contrary, however, respectfully insists that no award is valid and final if obtained by fraudulent means, and that to hold it valid would destroy the value of international arbitration.

Let me be allowed to say again, with all due emphasis, that *nowhere in the history of the Weil award does it appear, in the sense of the rules laid down in the Throckmorton case, that any person ever even* ALLEGED *that there was fraud in the "obtaining" of the award.*

The court, I feel quite certain, is as desirous as Mr. Secretary Frelinghuysen is, and I myself, although I speak in advocatal fashion only, solemnly and sincerely say that I am no less desirous than the Secretary or the court can be to hold up to the highest reach of dignity and worth adjudications in the shape of international awards. But this cannot be done by disregarding in respect to them the warning given in the words of Mr. Justice Miller in the *Throckmorton case:*

> There are no maxims of the law more firmly established, or of more value in the administration of justice, than the two which are designed to prevent repeated litigation between the same parties in regard to the same subject of controversy, namely, *interest rei publicæ, ut sit finis litium*, and *nemo debet bis vexari pro una et eadem causa.*

VIII. But Mr. Solicitor maintains that here is a question of *comity* and of like things. Assuredly this argument demands not of our highest court of justice any disregard of what belongs either to the President or to the Senate. The relator would have reason to be very much displeased with me indeed, if, representing him, I should here say one word against the giving, willingly as well as fully, to the Senate and the President alike of what is due to them according to the Constitution and the laws. I would not less misrepresent *myself* if I should say a word in any form, with any object, lacking in respect for either President or Senate, forming the grand treaty-making power of the land. But, on the other hand, I would do wrong to the relator and myself alike, and to the calls of the occasion that draws out this unpretending but completely conscientious argument, were I to say a word according less

* See pages 13 of printed record.

than due respect to the majestic jurisdiction of this court, or failing to insist on the full exercise by it of just the power contemplated in the prayer of the petition for mandamus in the court below.

As to the alleged "pendency of legislation" I shall not much agitate myself. A pending thing that has no right to pend ought not to worry either advocate or judge, on the score of comity, in the circumstances of a case like this. In Heaven's name, when shall the reign of pending things, with no trace or even show of right on which to hang, come to an end, respecting the completely and long-ago established jural interests I here maintain?

Although not much of the extravagantly lauded utterances of Chief Justice Marshall in the famous case of *Marbury* v. *Madison* was *jurisdictionally* said; although some parts of the *dicta* in that case were animated by improper feeling toward the Chief Magistrate; the case is well resorted to by searchers of sound evidence of law as to the questions now distinguished as *political*, and contradistinguished from the questions which are deemed *juridical*. To what is said by Chief Justice Marshall, tending to establish fit respect for the discretionary action of the President, assuredly this argument suggests no exception.

Nor do I except, in any measure, to the doctrine of *Stanton* v. *Georgia*,* to that of *Mississippi* v. *Johnson*,† or to that advanced by Chief Justice Chase in *Texas* v. *White*,‡ as far as they appreciate the Presidential power and discretion.

I expect ere long, indeed, to be before this court to advocate the overruling of some cases which, I cannot doubt, have failed to make as much as the Constitution orders all of us to make of the great power and discretion given, not unwisely, to the President.

But, notwithstanding the completeness of the recognition I am here attempting to express of Presidential authority, in all its forms, I must decidedly deny that the ingenious argument of Mr. Solicitor establishes that, on account of what belongs to the executive department of the Government, this court has not the jurisdiction which the petition for mandamus in the court below assumed that court to have.

At this point I rely particularly on the case of *Kendall* v. *The United States*,§ and on the whole effect of the *obiter dicta* of Chief Justice Marshall in *Marbury* v. *Madison*. But I do not consider that more than simple submission of this part of the case to the court, especially in view of the suggestions made in the brief of my colleague, Mr. Goode,‖ can be within the compass of my advocatal obligations in this case.

And now I hasten to conclude this argument, imperfect as it surely is, and far from satisfactory as it must ever be to the arguer. I beg leave to declare that not the *difficulty*, but the imposing magnitude, the numerousness, and the almost universal interest, of the questions, which the singular resistance to the clearly just demand of the relator, has presented in the record or in argument, have, added to the sense I have of the grand opportunity afforded to the court itself by the occasion, led me to exert myself so much, to do my advocatal duty thoroughly. That it is *not* done with a vigor stalwarter, and that its whole effect must fall so far below my wishes, I can but regret. No person can do better than his best. I beg the court to give me credit for at least an energetic and a conscientious effort to discharge my advocatal duty.

R. B. WARDEN,
Of Counsel for Relator.

WASHINGTON, D. C., *November* 6, 1883.

* 6 Wallace, 71. † 4 Wallace, 500. ‡ 7 Wallace, 700.
§ 12 Peters, 254. ‖ Page 19.

No. 98.

Brief for the Secretary.

In the Supreme Court of the United States, October term, 1883.

THE UNITED STATES EX REL. LA ABRA, &c., Company, *v.* FRELINGHUYSEN, SECRETARY, &c. } No. 995.

In general this case stands upon the same footing with that of Frelinghuysen, Secretary, &c., *v.* Key, and therefore the brief for the Secretary in that case is relied upon also in this.

For the rest it is submitted in answer to the brief filed by the learned counsel for the plaintiff in error:

1. That the plaintiff in error could not maintain a contention in a court of justice upon the convention of 1868 and the subsequent decision of the Commissioners *unaided by legislation carrying these into effect.*

2. That the conditions imposed upon this claim by the act of 1878 as prerequisites to payment have not been performed.

1. The plaintiff in error could not maintain a contention in a court of justice upon the convention of 1868 and the subsequent decision of the Commissioners, *unaided by legislation carrying these into effect.*

The convention of 1868, proceeding upon the well-known principle that *as between two foreign nations* each has not only *dominion* but also *property* in all things within its territorial limits (Wheaton, Elem., sec. 163), provided for a settlement and satisfaction of all debts due by either Government to citizens of the other by payment thereof *to the Government of the creditor citizen.* So little were the rights of the citizen regarded as distinct from those of his Government that it was specially provided that the Government found to have the larger aggregate of claims should, upon the whole, recover only the balance after deducting what might be found due *by it* from what might be found due *to it.*

No provision exists in the convention for distribution by the creditor Government amongst its own citizens of any recovery made upon their behalf. The words which engage *the President* to give full effect to the decision of the Commissioners (art. 11, quoted in brief for the Government in *Weil's* case, p. 5), which are claimed by the learned counsel for the La Abra Company as having that effect, were obviously employed for a different purpose; for—

(*a*) The phrase "*the President*" in that connection means only *the United States.*

(*b*) But, if otherwise, all that was stipulated for was "to give full effect to such decision," *i. e.*, to a decision in favor of either United States or Mexico; in other words, that the President of the United States would give full effect to any decision in favor of Mexico, and, *vice versa*, the President of Mexico to such as were in favor of the United States.

(*c*) The suggestion that the United States became *trustees* as to any money recovered by them, considering the large sense of that word in this connection, does not affect the question as to their liability, or that of any of their officers, *before courts of justice* under the words of the convention alone. *For the duty thus spoken of as a* TRUST *in behalf of their*

own citizens is precisely of the same nature as that which required them originally to bring Mexico to terms upon account of those debts; i. e., it is presumptively a political trust, so that whether it has become a trust or other duty cognizable in courts must depend upon suitable specific language duly applied thereto. In other words, besides the general *moral* obligation by the Government to the citizen, it must appear that the latter has been clothed with a definite right of enforcement of that obligation by suit, either expressly or by an implication, from certain duties thereabouts imposed by law upon some officer or other person.

No such right of enforcement is given here except by the act of 1878.

In this connection I again call attention to the circumstance that under the convention a part of the money recovered by the United States was to be used as an offset to the amount recovered by Mexico. It is obvious that the duty owed by the United States to their citizens in respect of the amount so used as a set-off was as perfect as with regard to that actually received from Mexico in cash. Obviously, however, there was no remedy, on account of the money set-off, until after an appropriation by Congress. This dealing with the fund by the convention marks it as "moneys of the United States," which any officer of the United States upon receiving them from Mexico under the convention, without further legislation, was required to pay into the Treasury (Rev. Stat., sec. 3621), from which, of course, they could be drawn only after an appropriation.

Nor do the cases cited in this connection upon the other side, whether in the *Weil* or the *La Abra* case (*Mr. Goode*, p. 17; and *Messrs. Stanton* and *Shellabarger* and *Wilson*, p. 4), assert any other doctrine, inasmuch as upon attending to the facts involved in these cases it will be seen that they all agree in one particular, *i. e.*, that at the time when the court expressed its views upon the *conclusiveness* and *finality* of the action by the Commissioners *the political branch of the Government had become functus officio thereabouts, by doing all in its power to give effect to such action.* It follows that the language of the court did not concern the powers of the political department over questions in cases still (like the present) depending before it, but only the powers *of the judiciary* over questions already passed upon by the political department in cases from which the latter had regularly been discharged, but which *afterwards* had to a certain extent come within the jurisdiction of the judiciary. "A claim rejected [before a commission] cannot be brought again under review in any *judicial* tribunal," are Justice Story's words in Comegys *v.* Vasse (1 Peters, p. 531, middle), and this language applies closely to the features of that case.

The cases relied upon as above by the learned gentlemen are as follows:

(*a*) Comegys *v.* Vasse (1 Pet., 193) was a case in which, by the treaty of 1819, the United States had agreed to pay to their own citizens certain debts originally due to them by Spain, and accordingly had actually paid his share thereof to one of the parties entitled. Afterwards a third person, upon claim of better right to such money, brought this suit against that party. The point suggested was whether any such question could be raised after the decision of the Commission.

It appears by referring to the eleventh article of the treaty of 1819 that the payment of these debts was to be made *under the direction of Congress.* And so, in the event they actually had been before the bringing of this suit, by the act of 1824, ch. 140 (4 Stat., 33).

The language in Comegys *v.* Vasse as to *conclusiveness* and *finality* is therefore to be referred to *a case in which a convention had been executed*

by action of Congress creating a commission (act of 1821, ch. 39, 3 Stat., 639), *the decisions of such commission having subsequently been ratified by another statute, and also by actual payment.*

(*b*) Clark *v.* Clark (17 How., 315). This was a case betwixt an assignee in bankruptcy and the bankrupt in respect to a sum of money awarded and *actually* paid by Mexico, under an international commission betwixt that Government and the United States. The point was whether a claim against a foreign Government (afterwards acknowledged and paid) be, as between a bankrupt and his assignee, *property*, even prior to any award thereupon under a convention. The decision that it *is* seems to have no connection with the question in the present case, which concerns the powers of a convention unexecuted by the political department.

(*c*) Judson *v.* Corcoran (17 How., 612). This case resembles the above in presenting a question betwixt rival assignees of a sum that had been awarded and paid under a convention of Mexico, both assignments having been made before the award, and the decision turning upon comparative *diligence* in giving notice. Here also no question was presented as to the effect of an unexecuted convention.

(*d*) Reichart *v.* Felps (6 Wall., 160). In 1788 Congress had provided that the governor of the Northwest Territory might determine certain questions as to land titles and issue patents accordingly. He having done so, in 1812 Congress enacted that certain commissioners should revise such action. Thereupon it was held that the patents had created *property*, and that this could not be vacated by subsequent legislation. In this case, therefore, as well as in the above, the action of the political department was complete, and the thing in question turned over to the operation of ordinary law.

(*e*) Erwin *v.* The United States (97 U. S., 392). Here it was held that a claim to the proceeds of captured and abandoned property, supposing it to be valid, is such a right as will pass to an assignee in bankruptcy even before judgment affirming the claim.

This case is, in principle, like those above of Comegys and Clark, a right to sue the United States having also been given by statute.

(*i*) Phelps *v.* McDonald (99 U. S., 298). This, like Clark's case, was a contest betwixt an assignee in bankruptcy and the bankrupt over money awarded and paid to Great Britain under an international commission betwixt that Government and the United States. Here, also, under the finding of the court *that the money had been voluntarily paid by the agent of Great Britain to a receiver in the suit*, the case was that of a convention fully executed by the political department of that Government of which the party whose rights were in contention was a citizen.

(*l*) *Meade's case* (2 C. Cls. R., 224) was one in which the claimant's intestate, a citizen of the United States, had been a creditor of Spain. By the treaty of 1819 the United States released Spain therefrom and assumed its payment, its amount to be ascertained and awarded by a Commission. The intestate failed successfully to prosecute his claim before the Commission, and afterwards this suit was brought. It was held that the suit was barred by the failure before the Commission.

The parties to the Commission created under the treaty of 1819 were not, respectively, Spain and the United States, but the latter and certain of their own citizens. In regard to Meade, therefore, the treaty had been fully executed by the United States by a rejection of his claim, and, therefore, what has been said above as to the language of the court

in Comegys' case (as regards *conclusiveness* and *finality*) may be repeated here.

(*m*) *Gibbes' case* (13 Opinions of the Attorney-General, 19). In this case the convention of 1857 with New Granada had provided for an international commission to satisfy claims of citizens of United States against that Government, and that the Commissioners should issue to the claimants, respectively, certificates of the sums so due, the aggregate thereof to be paid to the United States by certain installments. Thereupon the act of 1861 (ch. 45) provided that all acknowledgment of such indebtedness by New Granada should be delivered to United States; whereupon, "upon certificate of the Board of Commissioners," the United States would assume the debt and pay the claimants apparently *at once*, looking to New Granada for reimbursement under the terms of the convention.

Thereupon Gibbes obtained an award against New Granada, but failed to obtain a formal *certificate* therefor. *New Granada* having been succeeded by *The United States of Colombia*, and a new convention with the United States having been entered into, a question arose about again submitting to the new Commission the claims of Gibbes and several others in like condition. Attorney-General Speed advised that they should be so submitted, and so, having been against the protest of Gibbes, they were dismissed.

These facts having been laid before Atterney-General Hoar, he was of opinion that Gibbes could not be prejudiced by the action of the second Commission, and in that connection he used these words:

> I cannot assent to the view that this Government could affect his rights as against New Granada under the convention by submitting his case to the second board.

The *subject-matter* of this general language (to which, therefore, it is, by a well known maxim, to be *restrained*) is certain action by the officials of the United States advised by the Attorney-General. The actual question was, how far such action could affect Gibbes' rights under the convention. Evidently, therefore, it was only the power of these persons that the Attorney General had reference to when limiting those of this *Government*.

Under the first convention and corresponding action under the statute of 1861, Gibbes' claim had been established; and certainly no action by mere executive officers of the Government could, against the will of the claimant, remit that claim to any more precarious condition.

The circumstances of Gibbes' case, therefore, do not at all show what would have been Mr. Hoar's opinion upon the effect of, say, a repeal of the act of 1861, or a modification thereof by Congress upon reasons seeming good to it (which of course would be treated as *good* by all other Departments of the Government), to the effect that Gibbes' claim should be re-examined before being paid at the Treasury.

Upon the whole matter, therefore, it is submitted that there is neither principle nor authority for the suggestion that decisions of the Commission under the Mexican convention of 1868 are judgments in the sense that they cannot at any time before fully executed be reconsidered at the pleasure of the sovereign parties thereto; or that, in case at some mesne stage of execution the practical questions connected therewith have become *domestic*, the sovereign within whose jurisdiction they arise may not so long as these remain political questions satisfy his sense of justice to any extent by investigating them anew, to the end, if it appear proper, of restoring the matter to the *statu quo ante conventionem*.

Consequently, the act of 1878 is absolutely essential to the claim of the relator to bring this or any suit, and his remedy must be taken strictly as there defined.

2. *The conditions imposed upon this claim by the act of* 1878 *as prerequisites to payment have not been performed.*

In support of this proposition reliance is placed in general upon the brief for the Government in Weil's case.

In this place I will only restate somewhat more fully the position taken before as regards a new trial *under the direction of Congress* of the cases of *Weil* and the *La Abra Company.*

Upon this point section 5, reciting that Mexico has called the attention of the United States to those claims with a view to a rehearing, enacts—

That the President be requested to investigate any charges of fraud presented by Mexico as to those cases; and

If he shall be of the opinion that the honor of the United States, the principles of public law, or considerations of justice and equity require that the awards in those cases or either of them should be opened and the cases retried, it shall be lawful for him to withhold payment of said awards or either of them,

Until such case or cases should be retried and decided in such manner as the Governments of the United States and Mexico may agree,

Or, until Congress should otherwise direct.

And in case of such retrial and decision any moneys paid or to be paid by the republic of Mexico in respect of said awards, respectively, shall be held to abide the event, &c.

These provisions speak first of retrial in *general*, and then of a *special* retrial, *i. e., in such manner as the United States and Mexico may agree.* If the President shall be of opinion that for any one of several reasons enumerated there ought to be a retrial (*i. e., in general*), then certain consequences are to, or may, follow *until* an *international* retrial, or *until*, &c. The retrial which the President might recommend was not limited to that class of retrials spoken of under the former "trial."

When the political branch of the Government has practical control of a question any method by which, directly or indirectly, it ascertains the private rights concerned therein is a *trial* thereof; and supposing a first ascertainment thereof to be unsatisfactory, then, so long as its *control* continues, any method, *no matter how different formally from the first*, by it which makes a second such ascertainment is a *retrial.* Concurrence *in point of form* between the two methods of trial is a matter of no concern. So also if at one stage of the business the question is subject to joint sovereign jurisdiction only (say, as here, to that of the United States *and* Mexico) and is tried accordingly, and at a subsequent stage devolves upon one of these alone, another trial of the question, although under the latter sovereign alone, if this be merely in order to ascertain whether the other sovereign should not be released partially or altogether, is also a competent retrial. A convention between two Governments is analogous to a deed by *indenture.* It binds *directly* only *the parties* thereto, and directly can be taken advantage of only by them. So also each can release the other from its obligations. All general words therein are to be referred to these fundamental propositions, the governing maxim being *unumquodque ligameneodem ligamine*, &c. If before full execution thereof by their political department the United States could release Mexico from the convention, certainly they might beforehand institute any trial or investigation whatever for the purpose of informing themselves of their duty thereabouts

I submit, therefore, that the fifth section of the act of 1878 contemplates the chances of another trial than one that is international; the more so, indeed, that it seems strange that Congress, which for one alternative looked to a remitting of certain domestic questions (those betwixt the United States and Weil and the La Abra) to an *international* tribunal, did not at the same time have in view the propriety of settling these questions before a tribunal *of the same nature therewith*, viz, *domestic*. All the presumptions of reason seem to be against such an exclusion; so that it devolves upon those who say that Congress did not contemplate a *retrial* under its own auspices to show the plain language of *exclusion*, or otherwise fail in their contention.

The brief terms in which Congress refers to its own contemplated action, by specifying merely the consequences thereof (in giving "direction" as to any previous *suspension* of payment ordered by the President), whereas it speaks in detail and at more than one point of the proposed international retrial and its effects, is in accordance with the maxim that a legislature cannot impose checks or other "form" upon the action of future legislatures; whereas when it turns a matter over to the operation of some other agency nothing is more common.

Again, the section provides, first, for a preliminary investigation by the Executive, to be followed by appropriate Executive action (whether optional or imperative), which action, by virtue of the clause beginning with the former "*until*," was to await international action upon the merits of the cases, or, by virtue of the second "until," "direction otherwise" by Congress. It seems that the Congressional action referred to in the second clause was intended to be action *upon the merits also*. This construction makes the two clauses parallel in purpose, as they are in point of general connection with the form of the sentence of which they are a part; and implies, as seems reasonable, that as the provisional action of the President was to be based upon inquiry *by himself*, so the final action by Congress in giving these directions or in declining to interfere at all, was to be based upon a trial of the questions involved *by itself*, directly or indirectly. It was not contemplated that Congress would take this *direction* of the matter without duly informing itself, *i. e.*, in effect by a retrial.

S. F. PHILLIPS,
Solicitor-General.

No. 99.

Brief for the Secretary of State.

In the Supreme Court of the United States, October term, 1883.

FRELINGHUYSEN, SECRETARY OF STATE, &C., *v.* KEY, RELATOR, &C. } No. 891.

This is an application for a mandamus, by Mr. Key as assignee of one Weil, to recover money now in the hands of the Secretary under the act of 1878, ch. 262 (June 18), passed in execution of an award made by virtue of the convention of July 4, 1868, betwixt the United States and Mexico.

The defense, in general, is that the act of 1878 made a special pro-

vision for the particular item of award now in question, by which it became the duty of the President to make further investigations into its *bona fides*, and that in consequence of such investigations payment of the money now in hand has by his order been suspended.

The issues are as to the competency, and also as to the result, of such investigations, the relator claiming that there was no power to institute them; but that if there were, still in fact they were ended favorably to his demand.

More particularly:

The relator sets out that he is the assignee of one Weil, a citizen of the United States, who in 1868, and before, had a claim against Mexico for injuries to property; that afterwards (July 4, 1868) a convention betwixt the United States and Mexico provided for a Commission to consist of two Commissioners and an umpire, whose duty it should be to hear and determine such claims; that accordingly Weil's was presented, and was litigated for about six years, when the umpire awarded to him $487,810.68; and that, by the act of 1878, ch. 262 ("An act to provide for the distribution of the awards," &c.), the Secretary of State was required to receive and distribute all moneys paid by Mexico under such award. The relator also states that the act of 1878 provided further that the President should investigate any charges of fraud presented by Mexico against Weil's claim, and that if he should be of opinion that the honor of the United States, the principles of public law, or considerations of justice and equity require the award to Weil to be reopened, and the case retried, it should be lawful for him to withhold payment thereof until the case should he retried in such manner as the United States and Mexico shall agree, or until Congress should otherwise direct; that he does not admit the power of Congress to make such provision; but, however that may be, it has been fully executed by President Hayes, who through Secretary Evarts, in 1879, decided that neither the principles of public law nor considerations of justice or equity require or permit, as between the United States and Mexico, that the award should be opened; although he suggested further that some domestic tribunal, to be established by Congress, ought to inquire whether Weil's claim were not fraudulent; but added that if after this suggestion were communicated to Congress it should not now dispose thereof, it would be the duty of the President to accept of the awards as no longer open to reconsideration, and to proceed with their payment; that this conclusion was reported to Congress by the President upon the 15th of April, 1880, and that subsequently, Congress having adjourned without taking action, two different installments upon Weil's claim (being the 4th and 5th), that had in the years 1880 and 1881 been paid to the Secretary of State, were by the latter paid over to the relator.

The relator thereupon states that a sixth installment of this award has recently been received by Secretary Frelinghuysen, and that after due demand he has refused to pay the same, &c.

[Senate Ex. Doc. No. 150, second session Forty-sixth Congress, which contains the report to Congress by President Hayes, is made a part of the above petition. It is printed in an appendix hereto.]

To the above petition a demurrer was filed, the which having been argued and overruled, an answer was made by Secretary Frelinghuysen substantially as follows:

That the President, believing that the award on behalf of Weil was obtained by fraud and perjury, has suspended its payment until a new *treaty* with Mexico (which provi les for its rehearing, and has already

been negotiated) shall have been passed upon by the Senate; and that what has been done by the respondent is in conformity with such order; that the right to negotiate treaties is in nature *executive*, and so is uncontrollable by courts of justice; that President Hayes decided that the Weil claim required a reinvestigation as regards its integrity, and that however it may be that subsequently installments of that claim have been paid to the relator, yet under the circumstances of the case the question of the propriety of a still further payment arises with every succeeding installment, so that the President possesses the same power under the act of 1878 that is thereby bestowed upon his predecessor. The answer also avers that important evidence of fraud in the Weil case, never laid before President Hayes or Secretary Evarts, has been subsequently discovered.

In a *replication* the relator denies that the decision of President Hayes was such as is alleged in the answer, and excepts to the sufficiency of all else stated therein.

Article I of the convention of July 4, 1868, authorized all claims of citizens of the United States against Mexico, and *vice versa*, which arose after February 2, 1848, to be referred to two Commissioners, with the usual provision for an umpire.

Article II specified the mode of proceeding, adding:

> The President of the United States of America and the President of the Mexican Republic hereby solemnly and seriously engage to consider the decision of the Commissioners conjointly, or of the umpire, as the case may be, as absolutely final and conclusive upon each claim decided upon by them or him respectively, and to give full effect to such decision without any objection, evasion, or delay whatsoever.

Article III provided that claims should be presented within a certain time, and that the Commissioners should decide upon them within a certain other time.

Article IV, that the aggregate of awards in favor of the citizens of the one country should be deducted from that of those in favor of citizens of the other, and the balance paid to the country having the larger amount of claims, in annual sums of $300,000.

Article V, that the result of the proceedings before the Commissioners should be in full of all demands against either Government prior to the ratification of the convention.

Article VI, that records of the proceedings should be kept, and all expenses should be paid, at specified rates, out of the awards, by ratable deduction, not exceeding 5 per cent., and any balance by the Governments (15 Stat., 679).

The time for decision fixed by the above convention was extended by another convention (April 29, 1876). (19 Stat., 642.)

The act of 1878, ch. 262 (20 Stat., 144), will be found in the appendix.

After argument in the court below, a peremptory writ of mandamus was ordered to issue for the sum of $7,505.37 (folio 53), and thereupon this writ of error was sued out.

That judgment is now assigned for error.

The question raised by this petition for a mandamus against an executive officer turned, as in many other such cases, upon the character of the duty owed by such officer to the petitioner in respect of the thing in controversy.

In order to succeed, the petitioner must show such duty to be *ministerial*.

Inasmuch as the convention of 1868 imposed no duty upon the Secretary of State in respect to the awards which it authorized, and indeed was a transaction to which only the United States and Mexico were par-

ties, it seems that no reliance can be placed upon that as *directly* warranting this proceeding.

Some other action by the United States was requisite before the results of the convention could create as between them and private persons such rights as might be enforced in courts.

It seems therefore unnecessary to discuss further the claims which the petition asserts as arising directly under the convention.

It is submitted without further argument that the act of 1878 is necessary to the relief prayed, and that the rights of the petitioner before a court are such only as are thereby given, and consequently must be asserted subject to whatever conditions that statute imposes. But for that the rights of the petitioner to recover from the United States any part of the aggregate sum which they may have received from Mexico upon his account would be only a political right.

Upon perusal the act of 1878 is seen to make special provision for the award, to wit:

After directing (section 1) the Secretary of State to receive from Mexico the whole money awarded, and from time to time as installments come in to distribute the same ("except as in this act otherwise limited or provided") ratably amongst those in whose favor the awards were made, the act makes (sections 2, 3, and 4) certain provisions not material to be stated here; and then (section 5), after reciting that Mexico had called the attention of the United States to the awards in the cases of Weil and the La Abra Company, requested the President to investigate any charges of fraud in these cases, adding that "if he shall be of the opinion that the honor of the United States, the principles of public law, or considerations of justice and equity require that such awards should be opened and the cases retried, it shall be lawful for him to withhold payment of said awards, or either of them, until such case or cases shall be retried and decided in such manner as the Governments of the United States and Mexico may agree, or until Congress shall otherwise direct," in case of such retrial the moneys paid by Mexico to abide the event.

Upon the whole statute, therefore, the provision for *distribution* contained in the first section does not apply to Weil, except either in case the President, after an *investigation*, as authorized in the fifth section, has decided that the award shall not be *reopened and retried*, or in case after a decision that there should be a retrial, an affirmation of the award has followed.

Inasmuch as in the event there has been no retrial, the petitioner must make out by the record that the President, after investigation, has decided that the original award in favor of Weil should not be reopened and retried.

Upon this matter the Senate document referred to in the petition is important. It shows that upon the 27th of February, 1880, Congress had not been informed what, if any, action the President had taken under the act of 1878 (June 18), and that in consequence thereof the Senate adopted a resolution making inquiry thereabouts, to which President Hayes replied upon the 15th of April, 1880, transmitting a report by Secretary Evarts to himself made two days before (see Appendix). In this the Secretary states that Mexico had asserted that there never had been any such property as Weil alleged to have been seized, and that the evidence of the whole claim was spurious and corrupt. The Secretary then refers to a previous report upon the matter by himself to the President, made upon the 8th of August, 1879, in which he had concluded in substance:

1. That as against the United States, Mexico has no right to complain

of the conduct of the claims before the Commissioners; and, therefore, that neither the principles of public law nor considerations of justice or equity required or permitted, as between the two Governments, that the awards should be opened;

2. However, that matters brought to his attention by Mexico do bring into grave doubt the substantial integrity of Weil's claim, and that the honor of the United States does require that it should be further investigated by the United States, and that if upon such investigation such doubt should remain, that honor will be "vindicated by such measures as may then be dictated";

3. That as the Executive has no means of making such investigation, Congress must supply them, and, therefore, should be informed of this conclusion.

The Secretary thereupon, after stating that the President had approved of these views, continues: That the parties interested in the awards had from time to time insisted that inasmuch as the President had concluded, as above, that no new *international* trial should be had of the awards in question, the power conferred upon him by the act of 1878 had been exhausted, and payments should no longer be suspended; but that he still adhered to his former conclusion. He then reiterates those views, assigning reasons therefor, and concluding that "unless Congress should now make this disposition of the matter, and furnish thereby definite instructions to the Department to reserve further payments upon these awards till the conclusion of such investigation, and to take such further order with the same thereafter as Congress might direct, it would appear to be the duty of the Executive to accept these awards as no longer open to reconsideration, and proceed in the payment of the same pro rata with all other awards under the convention."

From this report it is plain that after a deliberation lasting from June, 1878, to August, 1879, the President had concluded that grave doubts as to the integrity in point of substance of the Weil claim did require that it should be further investigated by a tribunal to be established by Congress. This conclusion, after further deliberation until April, 1880, was affirmed, and communicated to Congress. It appears upon its face to have been directly responsive to the duty required by the act of 1878, one alternative in which was to request an opinion from the President whether the *honor of the United States* required that the Weil award should be *retried in such manner as Congress might direct.*

With the expression of this opinion President Hayes became, as it appears, *functus officio* as to Weil's claim, so far as the act of 1878 was concerned.

The further opinion of the Secretary, that unless Congress should *now* make the suggested disposition of the case, it would become the duty of the President to accept the awards as no longer open to reconsideration, and proceed in the payment of the same, was *beyond* the terms of the special commission intrusted to the President by the act of 1878, and could not affect the force of any opinion given *within* those terms. *A report of the opinion requested remitted the business entirely to Congress, which remained thereupon free to exert its constitutional functions in that connection in such ways and with such delays for deliberation as it might choose; and it seems impossible to maintain that it could be deprived of its discretion, either as to result or as to means, by any hint that if it did not act at once, the President would treat the delay as importing a disagreement with his suggestions.*

This suggestion is pertinent to the meaning attributed upon the other side, and perhaps in the subsequent action of President Hayes, to the

word *now* in the last paragraph of Secretary Evarts' report. That meaning may be the true one, although there is some reason for supposing that the word is used in the sense of "now *that this report has been made*," or "now *that the President has performed his especial duty*." After appropriating to himself some twenty-two months in which to make up and communicate his views, the President hardly meant that Congress should *immediately* create a tribunal as requested, and *that* even at the heels of the long session—or otherwise a reasonable conclusion would follow that they did not intend to act at all.

I repeat that after making the pertinent portions of the report of April, 1880, the President became *functus officio*. For, although the act of 1878 provided besides, as to *payments*, that in case he should find (as in the event he did), that "*it shall be lawful* for him to withhold payment of said awards," I submit that it was not intended thereby to give him a *discretion* as to payment, but that, taking the whole subject-matter in view, the expression above italicized made it his duty to withhold such payment. Congress did not intend to sever action in the way of *payment* from the general conclusion as to fraud in the *title* thereto.

In such case what was done subsequently in the way of paying installments does not affect the law of this case.

But even if President Hayes were right in thinking that this clause, "*it shall be lawful*," &c., conferred such a discretion, it was a *continuing discretion*, arising and renewing with every new installment that is paid by Mexico; so that President Arthur has a right now to say that, until Congress shall have decided otherwise, *he* will make no further payments from installments which come into his hands.

But this is not the whole strength of a case in *mandamus*. For *there* the petitioner must show *plainly* that the Secretary has lost all control of the matter. If there be *doubt* whether his acts are not *executive* as distinguished from *ministerial* the application will be denied. If the Secretary has some right to suggest that the legislature has not duly relieved him from official doubts as regards a claim which his predecessor had stigmatized as probably fraudulent, he will not be coerced by mandamus, that being a writ which does not confer or increase, but which merely enforces, some pre-existing authority. If the Secretary have a right to *doubt* before the issue of a mandamus, that right will continue after such issue; or, in other words, in that case the writ is not competent. Competent doubting is a judicial function, and imports *discretion*, which in its turn excludes the application of mandamus.

In this connection it will be observed that President Arthur upon taking office found Weil's award excepted from a general statutory provision for the payment of parties entitled under the convention of 1868, by terms which requested of a former President the determination of certain facts; and further that such determination had also been made adversely to him. He also found that in addition to the performance of the above request his predecessor had gone on to advertise Congress of what he would do outside of the duty which had been imposed upon him by Congress in case it did not at once (say) act upon his suggestion thereabouts, and that Congress having failed so to act he had so done; and perhaps, also, that in the early and troubled days of President Garfield the same thing, in deference to that precedent had occurred again. The question therefore is whether this state of things did not present a matter upon which President Arthur might well doubt, and await action by the legislature, *i. e.*, action by the treaty-

making power, or by Congress. Might he not well ask himself, "Where is the legislation which authorizes this installment to be paid to Weil's representatives?" and, after making search, hesitate to believe that the above notification by President Hayes constituted such warrant?

If in the nature of things the responsive portion of President Hayes's report required actual legislation by Congress supplementary to the act of 1878—as seems clearly to be the case—could a notification like that under consideration be a constitutional substitute therefor? If not, can the precedents of action under such ratification satisfy reasonable scruples upon the part of a succeeding President? Upon the contrary, may it not be his action of the Executive Department to the standard of existing *laws?* Was President Hayes's notification to Congress such a transaction as under the Constitution created a competent rule of duty not only for himself but for his successors?

It appears upon the face of the act of 1878 that Congress was then of opinion that in case the President should find the facts as to Weil's award in the way that he in the event did, an *international* retrial of the case might be competent. However, President Hayes, for reasons irrespective of the character of that claim, thought that such a retrial would be inadvisable, and so reported. In his view a domestic tribunal was to be set up for that purpose.

This suggestion seems to have created some difficulty before Congress. (See Appendix.) In the Senate a bill was introduced in conformity therewith, referring the matter to the Court of Claims, but after a report by the Committee on the Judiciary that such suggestion was ill-founded, no action was had. In the House, the same proposition was favorably reported upon, but this bill also was allowed to drop. No action was taken in either house. Nor has there been since.

In this connection it is submitted that, admitting, at least, for the argument's sake, that the *request* to the President contained in the act of 1878 was one that was to be executed once for all by President Hayes, and could not be reconsidered for the purposes of that act by any of his successors, yet an expression of his opinion as to the unadvisableness of *international* action was no part of the Commission so intrusted to him, but was a matter of mere general Executive communication, which might at any time be reconsidered and changed by himself, or by a successor, so long as Congress had not acted either affirmatively or negatively upon his opinion as to what was required by the *honor* of the United States.

The circumstances which have passed in the mean time have left this matter still open. In consequence thereof, President Arthur, differing from the conclusions of President Hayes, has opened negotiations with Mexico for a treaty. This treaty has also been formulated and communicated to the Senate for its action. It still pends there.

I submit that if, under the peculiar circumstances attending the action of the Executive in this case, as above detailed, a bill were pending to determine the matter, and having passed either branch of Congress, were within the constitutional term of deliberation upon bills before the other for its action, or, having passed both houses was before the President for approval, it would be incompetent to disturb this deliberative condition of things by mandamuses. If this be so it must be equally true as regards a treaty to which the President has agreed, and which within the constitutional period of incubation is awaiting determination by the Senate.

It is unnecessary, under the exceptional circumstances of this case, to consider how far in general courts may interfere with projected legis-

lation that has received so much countenance as is above supposed. It may be granted that rights of action otherwise clearly existing cannot be affected by legislation of any sort merely inchoate. That is not the case here; for this is a case in which a high executive officer finds that a matter of importance which requires administration by him has been complicated by previous Executive action seemingly in conflict with any legislation thereupon. If it were true—as seems extremely doubtful—that even in such case without more, the petitioner would be entitled to a mandamus, can it be that in case other legislation going to show that doubt to have been well founded, has been resorted to, and having passed an important constitutional stage, is pending, still concurrently, the extraordinary writ of mandumus is competent?

As a distinct proposition, which is pertinent in this immediate connection, I submit that, *in respect of comity alone*, in cases where proposed legislation has received such sanction as that (the treaty) has done now under consideration, courts will not interfere with the statu quo of matters directly and specifically aimed at by such legislation.

It may be well to advert here to the particular features of two cases in which this court, administering the well-known distinctions betwixt *executive* and *ministerial* action, has *denied* applications for this writ.

In the Decatur case, 14 Peters, 497, it appeared that upon one and the same day Congress had passed a general act giving pensions to widows of naval officers, and also a special one giving a pension to Mrs. Decatur. Mrs. Decature claimed rights under both acts, this her claim had been rejected by Secretary Dickerson, and again upon a renewal thereof, by Secretary Paulding, his successor. This latter rejection occasioned an application for a mandamus.

The court, after calling attention to the distinction betwixt executive and ministerial duties, said:

> The case before us illustrates these principles, and shows the difference between executive duties and ministerial acts. The claim of Mrs. Decatur having been acted upon by his predecessor in office, the Secretary was obliged to determine whether it was proper to revise that decision. If he had determined to revise it, he must have exercised his judgment upon the construction of the law and the resolution, and have made up his mind whether she was entitled under one only or under both. And if he determined that she was entitled under the resolution as well as the law, he must then have again exercised his judgment in deciding whether the half-pay allowed her was to be calculated by the pay proper, or the pay and emoluments of an officer of the commodore's rank.
>
> And after all this was done, he must have inquired into the condition of the Navy pension fund, and the claims upon it, in order to ascertain whether there was money enough to pay all the demands upon it; and if not money enough, how it was to be apportioned among the parties entitled. A resolution of Congress requiring the exercise of so much judgment and investigation can with no propriety be said to command a mere ministerial act to be done by the Secretary.

In the present case Secretary Frelinghuysen has been called upon to revise action by a predecessor, and to construe the aggregate effect of a complicated Governmental transaction partly legislative and partly executive, and thereupon to say officially what the claimants' rights are, not only under the statutes but under the subsequent report and the still later modifying action of the Executive.

In *Seaman's* case (17 How., 225) a portion of the Patent Report had become a Senate document, and had been ordered to be printed by that body; a part of the same report, returned later, became a House document, and had there been ordered to be printed. The Senate printer thereupon applied for a mandamus ordering the latter parts to be given to him. The court said that the necessity under which, by law, the superintendent was of making inquiries, as to the house in which the

order was first made; the usages of Congress in making communications to them, *documents;* and whether according to such usage the papers in question constituted *one* document or *two*, required a *discretion* which could not be controlled by mandamus.

These cases illustrate the rule in Guthrie's case, 17 How., 284, laid down at the same term in which Seaman's case was decided, viz: "That the only acts to which the power of the courts by mandamus extends are such as are *purely* ministerial, and with regard to which *nothing like judgment or discretion* in the performance of his duties is left to the officer." (See also Gaines's case, 7 Wall., 347.)

In Decatur's case that which required an exercise of discretion was not the meaning of the particular statute which had been adopted as applicable, but the preliminary question whether two statutes or only one constituted the rule of action. So here, if all the trouble in which the Secretary finds himself is whether he shall be governed by the statute of 1878 and the report of the President in response thereto, or whether by the subsequent *action* of the Executive, there is equally room for discretion.

Upon the whole matter it is submitted that the Secretary cannot be coerced by a writ of mandamus:

1. Because the petitioner has no title to the money that can be recognized by a court.

2. At all events, because, under the circumstances, the duty of the Secretary in passing upon the right is executive, and not ministerial.

3. As a distinct objection, *that in respect of comity alone* courts will not interfere with the statu quo upon which pending legislation having a specific reference to that status is intended to operate.

S. F. PHILLIPS,
Solicitor-General.

APPENDIX.

I.

ACT OF 1878, CHAP. 262.—AN ACT to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the 4th day of July, eighteen hundred and sixty-eight.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of State be, and is hereby, authorized and required to receive any and all moneys which may be paid by the Mexican Republic under and in pursuance of the conventions between the United States and the Mexican Republic for the adjustment of claims concluded July fourth, eighteen hundred and sixty-eight, and April twenty-ninth, eighteen hundred and seventy-six, and whenever and as often as any installments shall have been paid by the Mexican Republic on account of said awards to distribute the moneys so received in ratable proportions among the corporations, companies, or private individuals, respectively, in whose favor awards have been made by said Commissioners or by the umpires, or to their legal representatives or assigns, except as in this act otherwise limited or provided, according to the proportion which their respective awards shall bear to the whole amount of such moneys then held by him, and to pay the same, without other charge or deduction than is hereinafter provided, to the parties respectively entitled thereto. And in making such distribution and payment due regard shall be had to the value at the time of such distribution of the respective currencies in which the said awards are made payable; and the proportionate amount of any award of which, by its terms, the United States is entitled to retain a part shall be deducted from the payment to be made on such award, and shall be paid into the Treasury of the United States as a part of the unappropriated money in the Treasury.

SEC. 2. That out of any moneys in the Treasury not otherwise appropriated a sufficient sum is hereby appropriated to enable the Secretary of the Treasury to pay to the Secretary of State of the United States, in gold or its equivalent, the equivalent

of fifty thousand five hundred and twenty-eight dollars and fifty-seven cents in Mexican gold dollars, and ten thousand five hundred and fifty-nine dollars and sixty-seven cents in American gold coin, and eighty-nine thousand four hundred and ten dollars and seventeen cents in United States currency, said sums being the aggregate in said currencies respectively of the awards made under the said convention of July fourth, eighteen-hundred and sixty-eight, in favor of citizens of the Mexican Republic against the United States, and having been deducted from the amount awarded in favor of citizens of the United States, and payable to Mexico, in accordance with article four of the said treaty; and that said sums, when paid to the Secretary of State, as aforesaid, shall be regarded as part of the awards made under the said treaty, to be paid or distributed as herein provided.

SEC. 3. That out of the payments and installments received from Mexico, as aforesaid, on account of said awards, and out of the moneys which shall be received by the Secretary of State under the provisions of this act, the Secretary of State shall, when and as the same shall be received and paid, and before any payment to claimants, deduct therefrom and retain a sum not to exceed five per centum of said moneys awarded to citizens of the United States, until the aggregate of the amounts so deducted and retained shall equal the sum of one hundred and fourteen thousand nine hundred and forty-eight dollars and seventy-four cents, being the amount of the expenses of the Commission, including contingent expenses paid by the United States in accordance with article six of the treaty, as ascertained and determined in pursuance of the provisions of the said treaty; which said sums, when and as the same are deducted and retained, shall be, by the Secretary of State, transmitted to the Secretary of the Treasury, and passed to the account of and be regarded as unappropriated money in the Treasury.

SEC. 4. That in the payment of money, in virtue of this act, to any corporation, company, or private individual, the Secretary of State shall first deduct and retain or make reservation of such sums of money, if any, as may be due to the United States from any corporation, company, or private individual in whose favor awards shall have been made under the said convention.

SEC. 5. And whereas the Government of Mexico has called the attention of the Government of the United States to the claims hereinafter named with a view to a rehearing, therefore be it enacted that the President of the United States be, and he is hereby, requested to investigate any charges of fraud presented by the Mexican Government as to the cases hereinafter named, and if he shall be of the opinion that the honor of the United States, the principles of public law, or considerations of justice and equity require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be opened and the cases retried, it shall be lawful for him to withhold payment of said awards, or either of them, until such case or cases shall be retried and decided in such manner as the Governments of the United States and Mexico may agree, or until Congress shall otherwise direct. And in case of such retrial and decision any moneys paid or to be paid by the Republic of Mexico in respect of said awards, respectively, shall be held to abide the event, and shall be disposed of accordingly; and the said present awards shall be set aside, modified, or affirmed as may be determined on such retrial: *Provided*, That nothing herein shall be construed as an expression of any opinion of Congress in respect to the character of said claims, or either of them. (20 Stat., 144.)

II.

Message from the President of the United States, communicating, in compliance with a resolution of the Senate of the 27th of February last, information concerning certain awards made by the late United States and Mexican Commission.

APRIL 16, 1880.—Referred to the Committee on Foreign Relations and ordered to be printed.

To the Senate of the United States:

In response to the resolution of the Senate of the 27th of February last, concerning the action had by the Executive with respect to the investigation of certain cases in which awards were made by the late United States and Mexican Commission, I transmit herewith a report of the Secretary of State, to whom the matter was referred.

R. B. HAYES.

WASHINGTON, *April* 15, 1880.

DEPARTMENT OF STATE,
Washington, April 13, 1880.

The Secretary of State, to whom was referred the following resolution of the Senate of the 27th of February, 1880—

"*Resolved*, That the President be requested, if in his opinion not inconsistent with the public service, to inform the Senate what action, if any, has been taken by him

under authority of section 5 of the act approved June 18, 1878, entitled 'An act to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the 4th day of July, 1868,' and of the grounds of such action, and what further action, if any, the honor of the United States may, in his opinion, require to be taken in the premises"—

Has the honor to report:

The act passed by Congress "to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the 4th day of July, 1868," contained the following section:

"SEC. 5. And whereas the Government of Mexico has called the attention of the Government of the United States to the claims hereinafter named with a view to a rehearing, therefore be it enacted that the President of the United States be, and is hereby, requested to investigate any charges of fraud presented by the Mexican Government as to the cases hereinafter named, and if he shall be of the opinion that the honor of the United States, the principles of public law, or considerations of justice and equity require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be opened and the cases retried, it shall be lawful for him to withhold payments of said awards, or either of them, until such case or cases shall be retried and decided in such manner as the Governments of the United States and Mexico may agree, or until Congress shall otherwise direct; and in case of such retrial and decision any moneys paid or to be paid by the Republic of Mexico in respect of said awards, respectively, shall be held to abide the event, and shall be disposed of accordingly; and the said present awards shall be set aside, modified, or affirmed, as may be determined on such retrial; *Provided*, That nothing herein shall be construed as an expression of any opinion of Congress in respect to the character of said claims, or either of them."

It having been referred by you to the Department of State to institute the investigation required by this action, I gave the subject the most careful examination. I reviewed the proceedings of the Commission, including the testimony originally submitted, the arguments made by the counsel both for the Republic of Mexico and the United States, the opinions of the members of the Commission, and the final decision of the umpire. I considered the representation of the Mexican Government as set forth in its diplomatic communications to this Department, and subjected to patient scrutiny the supplemental evidence by which those representations had been supported. In addition to this, I heard counsel both for the Mexican Government and the parties interested in these awards.

The most impressive complaint of the Mexican Government in the La Abra case bore upon the award of damages as fraudulently exaggerated.

In the Weil case the Government of Mexico asserts that no such case has ever had any real existence; that there never was any such property as is alleged to have been seized; that the parties claimant never owned, directly or as agents, any such property; that the seizure of the property is in all its details a pure fiction; and that the evidence by which the whole claim is established is spurious and corrupt.

Upon these complaints, and the examination given to them as above set forth, on the 8th of August last I reported to you my conclusions as to the proper disposition of the matter by the executive government, as follows:

"First. I am of opinion that, as between the United States and Mexico, the latter Government has no right to complain of the conduct of these claims before the tribunal of Commissioners and umpire provided by the convention, or of the judgments given thereupon, so far as the integrity of the tribunal is concerned, the regularity of the proceedings, the full opportunity, in time and after notice, to meet the case of the respective claimants, and the free and deliberate choice exercised by Mexico as to the methods, the measure, and the means of the defense against the same.

"I conclude, therefore, that neither the principles of public law nor considerations of justice or equity require or permit, as between the United States and Mexico, that the awards in these cases should be opened and the cases retried before a new international tribunal, or under any new convention or negotiation respecting the same, between the United States and Mexico.

"Second. I am, however, of opinion that the matters brought to the attention of this Government on the part of Mexico do bring into grave doubt the substantial integrity of the claim of Benjamin Weil, and the sincerity of the evidence as to the measure of damages insisted upon and accorded in the case of the La Abra Silver Mining Company, and that the honor of the United States does require that these two cases should be further investigated by the United States to ascertain whether this Government has been made the means of enforcing against a friendly power claims of our citizens based upon or exaggerated by fraud.

"If such further investigation should remove the doubts which have been fairly raised upon the representations of Mexico, the honor of the United States will have been completely maintained. If, on the other hand, the claimants shall fail in remov-

ing these doubts, or they should be replaced by certain condemnation, the honor of the United States will be vindicated by such measures as may then be dictated.

"Third. The executive government is not furnished with the means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses. The authority for such an investigation must proceed from Congress. I would advise, therefore, that the proofs and the conclusions you shall come to thereon, if adverse to the immediate payment on these awards of the installments received from Mexico, be laid before Congress for the exercise of their plenary authority in the matter.

"Fourth. It may be that, as the main imputation in the case of the La Abra Silver Mining Company is of fraudulent exaggeration of the claim in its measure of damages, it may consist with a proper reservation of further investigation in this case to make the distributions of the installments in hand.

"I have this subordinate consideration still under examination, and, should you entertain this distinction, will submit my further conclusions on this point."

These conclusions have been approved by you, and the point reserved for further consideration in the La Abra case having again been referred to me, on the 3d of September last I reported to you my conclusions upon the same, as follows:

"The parties interested in the case of the La Abra Mining Company having desired from you a further consideration of the point reserved in my former statement to you of my views in that case, and the matter having been referred to me to that end, I respectfully submit my conclusion on that point.

"1. Upon a renewed examination of the matter as laid before me by the Mexican Government, I am confirmed in the opinion that the proper limits of the further consideration which the honor of the Government should prompt it to give to this award should confine the investigation to the question of a fraudulent exaggeration of the claim by the parties before the Commission to which, under the provisions of the convention, it was presented by this Government.

"2. Upon a careful estimate as to any probable or just reduction of the claim from further investigation, should Congress institute it, and under a sense of the obligation of the executive government to avoid any present deprivation of right which does not seem necessary to ultimate results, I am of opinion that its distributive share of the installments thus far received from Mexico may properly be paid to the claimant, reserving the question as to later installments.

"If this conclusion should receive your approval, the payment can be made upon the verification at the Department of State of the rightful parties to receive it."

This latter conclusion having also received your approval, and the results stated in both these reports having been communicated both to the Mexican Government and the claimants, the payment was made upon the La Abra award of the distributive share of the installments then in hand, and payment was withheld of the distributive share of such installments upon the Weil award.

The parties interested in these awards have from time to time preferred requests for a renewed consideration by the Executive of the questions arising for his determination under the act of Congress of June 18, 1878, and have particularly insisted that, in deciding against opening these awards diplomatically and re-examining them by a new international commission, the whole discretion vested in the Executive as a part of the treaty-making power and under the special provision of the act of Congress was exhausted, and that the payments should be no longer suspended in respect of these cases, or either of them. A solicitous attention to the rights of the claimants and the duty of the Executive in the premises has confirmed me in the opinion that Congress should determine whether "the honor of the United States" requires any further investigation in these cases, or either of them, and provide the efficient means of such further investigation if thought necessary.

In the conclusions to which I came, and which I had the honor to submit to your examination, I was principally governed by the following considerations:

1. In the complaints of the Mexican Government there is not the slightest impeachment, express or implied, of the character or composition of the Commission, of its methods of procedure, or of the entire regularity and integrity of its actual proceedings. It was composed of able and eminent men, enjoying the full confidence of the Governments by whom they were respectively appointed, and the umpire selected, Sir Edward Thornton, was pre-eminently fitted for his laborious and responsible duties by his long diplomatic experience, his recognized ability, his high character, and his special knowledge of the two countries whose citizens and Governments were interested in the arbitration.

2. Before this Commission the Government of Mexico had full opportunity and ample time to present its defense, both in evidence and argument, against any claim that was submitted. In the La Abra case a large amount of testimony was taken on both sides, the comparison and valuation of which was within the power of the Commission, and the opinion of the umpire shows that it was carefully considered.

In the Weil case it is true that the Mexican Government submitted no testimony,

and that the case was decided upon the evidence offered by the claimants. But the Mexican Commissioner explicitly declined the offer of further time to produce such testimony, although he professed that his Government had such in possession, saying upon the trial:

"There is in the present case the still more serious consideration that there is sufficient evidence upon which to judge of the claim, and that by opening the door to new testimony it would only serve to show the claimant wherein the edifice which he had erected upon his imagination was weak, and by enlightening him how to crown his intrigue by new efforts, which, although they would not change the aspect of the case, might lead him to confirm it."

3. The treaty under the provisions of which the Commission was appointed was explicit in recognition of the finality of its action. By article II of that convention the two Governments bound themselves to consider the decisions of the Commissioners and of the umpire as absolutely final and conclusive, and to give full effect to such decisions without any objection, evasion, or delay whatsoever; and by the fifth article the high contracting parties agree to consider the result of the proceedings of the Commission as a full, perfect, and final settlement of every claim upon either Government arising from the transactions prior to the exchange of ratifications thereof.

4. Aside from this special provision of the finality of the decision of the Commission, in the very act of its creation, it would seem impossible to review and retry any individual case without opening the door to other reclamations of the same sort. In addition to these cases, with the result of which the Mexican Government is dissatisfied, there are many others which failed of preparation in time, which were rejected on principles not always acquiesced in by those interested, and some in which the claimants deemed the awards very insufficient. The adherence of the Government of the United States to the strict letter of its convention, that the decision of the commissioners should be absolutely final in every case and a complete bar to any claim arising from transactions prior to its ratification, has hitherto prevented any effort on the part of this Government to renew such discussion in favor of its citizens. But if it be once admitted that for any reason short of an impeachment of the integrity of the Commission its proceedings can be reopened for review and its decisions for reversal, there will not be wanting numerous urgent appeals to the justice and sympathy of the Government to extend this measure of relief to many who think that their claims have been erroneously estimated or rejected.

Lastly. The principle of the settlement of international difference by arbitral commissions is of such deep and wide-reaching interest to civilization, and the value of such arbitation depends so essentially upon the certainty and finality of its decision, that no government should lightly weaken its influence or diminish its consideration by making its action the subject of renewed discussion. It is only in extreme cases, where the commission is itself charged with corruption, or where it has clearly exceded its powers in deciding matters not submitted to its judgment, that prompt and cheerful acquiesence should not be rendered to its action. No such charge is here suggested. It may be true that in this or that instance more adequate justice might have been rendered. The methods and processes of such tribunals, which in time it may be confidently hoped will be improved and perfected, are not yet so complete as to eliminate much opportunity of error. But the results of such an arbitration, covering, as this did, large, complicated, and numerous transactions, deciding not upon oral testimony winnowed by cross-examination, but upon the contradiction of vague affidavits, cannot be fairly judged by the apparent errors of this or that individual case. There is, probably, no just ground for saying that the aggregate of the awards against Mexico more than equaled the just claims of our citizens, and much complaint has been made that such aggregate falls quite short of them. But the awards made by this Commission were something more than the settlement of mere private claims—it was the adjustment of long standing national differences. And if in the result more or less was added to or taken from particular awards, still, if on the whole a fair and just balance has been struck, if, considering all that has been given, and all that has been refused, the examination has been careful and the judgment impartial, it is the interest and the duty of Governments to maintain it.

While these considerations led to the conclusion that these cases ought not to be made the subject of a new international commission, I was yet of opinion that "the honor of the United States" was concerned to inquire whether in these cases submitted by this Government to the Commission its confidence has been seriously abused, and the Government of Mexico, acting in good faith in accepting a friendly arbitration, had been subjected to heavy pecuniary imposition by fraud and perjury in the maintenance of these claims, or either of them, before the Commission. In furtherance, however, of this opinion it seemed to me apparent that the Executive discretion under the act of Congress, could extend no further than to withhold further payments on the awards until Congress should, by its plenary authority, decide whether such an investigation should be made, and should provide an adequate procedure for its conduct, and prescribe the consequences which should follow from its results.

Unless Congress should now make this disposition of the matter, and furnish thereby definite instructions to the Department to reserve further payments upon these awards till the conclusion of such investigation, and to take such further order with the same thereafter as Congress might direct, it would appear to be the duty of the Executive to accept these awards as no longer open to reconsideration, and proceed in the payment of the same pro rata with all other awards under the convention.

WM. M. EVARTS.

To the PRESIDENT.

III.

IN THE SENATE OF THE UNITED STATES.

JUNE 10, 1880.—Ordered to be printed.

Mr. MCDONALD, from the Committee on the Judiciary, made the following report, to accompany bill S. 1682:

The Committee on the Judiciary, to whom was referred the bill (S. 1682) entitled "An act directing the Court of Claims to investigate the claims of Benjamin Weil and La Abra Silver Mining Company," make the following report:

The fifth section of the act approved June 18, 1878, entitled "An act to provide for the distribution of the awards made under the convention between the United States of America and the republic of Mexico, concluded on the 4th of July, 1868," is as follows: [See Appendix I.]

In adding this section to the act providing for the distribution of the awards it was not the purpose of Congress to pass upon the character of the claims referred to in it, as the proviso attached to said section expressly declares. By authorizing the installments payable to these claimants under the treaty to be withheld in the discretion of the President if, upon the investigation of the charges of fraud presented by the Mexican Government against such claims, "he should be of opinion that the honor of the United States, the principles of public law, or considerations of justice and equity, required that the awards in these cases, or either of them, should be opened and the cases retried," it was intended, so far as legislative authority might be requisite, to release the executive department from the absolute obligations of the award, and to authorize such examination by the executive department into the complaints of the Mexican Government as would enable the President to pass upon the questions raised by them; and if "the honor of the United States, the principles of public law, or considerations of justice and equity" required a retrial of these cases, or either of them, then and in that case to initiate with the Mexican Government such convention or stipulations as would provide for the retrial under such regulations as would secure the ends of justice and vindicate the honor of the United States.

It appears from the message of the President of the United States, of April 15, 1880, transmitting a report of the Secretary of State, to whom the matter embraced in the section above quoted was referred, that no definite conclusions had been arrived at by the executive department upon the questions involved in said section. That report is as follows: [See Appendix II.]

It will be seen from this report, with respect to La Abra mining claim, the principal ground of complaint is exaggeration of damages, and upon that question it does not appear that any fault whatever attaches to the Commission before whom it was examined, nor to the referee by whom it was affirmed. It also appears that the Department of State so far passed upon the question of excessive damages as to determine the claimants to be entitled to the installments already paid in, and that the Executive had directed the amounts to which the claimants were thus entitled to be paid over; and while the remaining installments not yet received may be regarded as subject to retention to meet the question of a reduction of damages, it virtually determines the question submitted to the exacutive department by the said 5th section, so far as that claim is involved.

In regard to the Weil claim, the case presents one of greater difficulty. It appears from the report of the Secretary that this claim is charged by the Mexican Government to be a complete fabrication; that this charge was made before the Commissioners at the time it was undergoing investigation. The representative of Mexico claimed to be in possession of evidence then to establish the charge, but declined to introduce it, preferring to rest the case on the evidence introduced by the claimant, but sought afterwards to introduce such impeaching testimony before Sir Edward Thornton, the referee, who declined to receive it, holding, and correctly, that no new evidence could be introduced on the hearing before him, and that upon the evidence submitted to the Commissioners he could not do otherwise than to affirm the claim.

In the investigation that has taken place in the State Department, under the au-

thority of the fifth section above quoted, no suggestion appears in the report of the Secretary "that the honor of the United States, the principles of public law, or the considerations of justice and equity require that this case should be retried," but, on the contrary, after stating considerations of public policy which would seem to forbid the reopening of the case, the questions of honor, principles of public law, and considerations of justice and equity are referred to Congress to decide. This would involve an investigation by Congress of facts of an international character which, in the opinion of the committee, properly belongs to the executive department, and which it was the intention of the fifth section of the act of June 18, 1878, to leave with the Department.

The bill under consideration proposes to withdraw these two claims from the dominion of international jurisdiction and place them before a tribunal organized and existing solely by virtue of the laws of this country, and in this way it would seem designed to avoid the opening up of other questions of complaint that are known to exist on behalf of citizens of the United States whose claims, for various causes, fail to receive favorable consideration by said Commission under the treaty creating the Commission.

The second article of that treaty bound the two Governments absolutely and conclusively by the final awards of the Commission and umpire in all cases coming within its provisions; and it would seem right that if it is to be set aside as to any of the claims it ought to be by a new convention, in which provision should be made for doing justice to all claimants.

The reasoning of the Secretary of State against the propriety of such a course as this would seem to be unsatisfactory; but, in the aspect these cases are presented to us, we feel constrained to report back said bill adversely, and recommend its indefinite postponement.

IV.

HOUSE OF REPRESENTATIVES.

JUNE 9, 1880.—Referred to the House Calendar and ordered to be printed.

Mr. COX, from the Committee on Foreign Affairs, submitted the following report, to accompany bill H. R. 6452:

The Committee on Foreign Affairs, to whom was referred the bill (H. R. 4899) to amend the act approved June 18, 1878, relative to the awards of the Mexican Commission, having had the same under consideration, beg leave to report, as a substitute therefor, the accompanying bill.

On the 18th of June, 1878, Congress passed an act "to provide for the distribution of the awards made under the convention between the United States of America and the republic of Mexico, concluded on the 4th of July, 1868," the fifth section of which is as follows: [See Appendix, I.]

Under authority of this act the Secretary of State, to whom the matter was referred by the President, invited the Government of Mexico to submit the proofs on which it relied to support the charges of fraud, and, after considering those proofs and the arguments of counsel for Mexico and for the claimants, reported to the President, on the 8th of August, 1879, as follows:

"First. I am of opinion that, as between the United States and Mexico, the latter Government has no right to complain of the conduct of these claims before the tribunal of Commissioner and umpire provided by the convention, or of the judgments given thereupon, so far as the integrity of the tribunal is concerned, the regularity of the proceedings, the full opportunity, in time and after notice, to meet the case of the respective claimants, and the free and deliberate choice exercised by Mexico as to the methods, the measure, and the means of the defense against the same.

"I conclude, therefore, that neither the principles of public law nor considerations of justice or equity require or permit, as between the United States and Mexico, that the awards in these cases should be opened and the cases retried before a new international tribunal, or under any new convention or negotiation respecting the same between the United States and Mexico.

"Second. I am, however, of opinion that the matters brought to the attention of this Government on the part of Mexico do bring into grave doubt the substantial integrity of the claim of Benjamin Weil and the sincerity of the evidence as to the measure of damages insisted upon and accorded in the case of the La Abra Silver Mining Company, and that the honor of the United States does require that these two cases should be further investigated by the United States to ascertain whether this Government has been made the means of enforcing against a friendly power claims of our citizens based upon or exaggerated by fraud.

"If such further investigation should remove the doubts which have been fairly raised upon the representation of Mexico, the honor of the United States will have been completely maintained. If, on the other hand, the claimant shall fail in removing these doubts, or they should be replaced by certain condemnation, the honor of the United States will be vindicated by such measures as may then be dictated.

"Third. The executive government is not furnished with the means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses. The authority for such an investigation must proceed from Congress. I would advise, therefore, that the proofs and the conclusions you shall come to thereon, if adverse to the immediate payment on these awards of the installments received from Mexico, be laid before Congress for the exercise of their plenary authority in the matter.

"Fourth. It may be, that as the main imputation in the case of the La Abra Silver Mining Company is of fraudulent exaggeration of the claim in its measure of damages, it may consist with a proper reservation of further investigation in this case to make the distribution of the installments in hand.

"I have this subordinate consideration still under examination, and, should you entertain this distinction, will submit my further conclusions on this point."

September 3, 1879, the Secretary made a supplemental report, as follows:

[This extract has reference exclusively to the La Abra claim, and therefore is omitted here. It appears in Appendix II, page ——, beginning "The parties interested in the La Abra case," &c.]

These reports having been approved by the President and published in the press of August and September, were communicated to Congress with a message of the 15th of April, 1880, in response to a resolution of the Senate of the 27th of February.

The bill before this committee (H. R. 4899) contemplates the release of Mexico from the payment of these claims, and cannot be acted upon without an inquiry into their merits, which the committee at this late stage of the session has not the time to undertake. The committee believe that the investigation required by the honor of the United States can be most justly and exhaustively conducted by a judicial tribunal, possessed of the plenary powers to "coerce the production of evidence and compel the examination of parties and witnesses, which, in the opinion of the Secretary, are essential to a satisfactory examination of these cases; and the matter having assumed the shape of a question between the United States and the claimants, they report a substitute for the bill referred to them, by which the Court of Claims is directed to make the investigation, proceeding as in the case of a new trial of claims against the United States granted on the ground of newly-discovered evidence.

So far as the committee are informed the proofs filed in the State Department have not yet been laid before Congress as recommended by the Secretary of State in his report of August 8, 1879. The committee do not, therefore, know the grounds on which the Secretary based the estimate which, in his report of September 3, he says he has made, "as to any probable or just reduction of the claim (of La Abra Mining Company) from further investigation," but these grounds will doubtless appear to the Court of Claims, to which the whole case is committed by the bill now reported.

The act of 1878 provided that if the President should "be of the opinion that the honor of the United States, the principles of public law, or considerations of justice and equity require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be opened and the cases retried, it shall be lawful for him to withhold payment of said awards, or either of them, until such case or cases shall be retried and decided in such manner as the Governments of the United States and Mexico may agree, or until Congress shall otherwise direct." The President having recommended a method of investigation and practical opening of the awards upon which it is not necessary that the United States and Mexico should agree, payment of the money to the claimants is necessarily suspended "until Congress shall otherwise direct." The committee have therefore provided in the bill which they now report for the payment to the claimants of such portions of their claims as the court may decide to be justly due, and have limited the time of the trial to one year from the passage of the bill.

No. 100.

Mr. Romero to Mr. Frelinghuysen.

[Translation.]

LEGATION OF MEXICO IN THE UNITED STATES,
Washington, January 25, 1884.

Mr. SECRETARY: The opinion delivered in the Supreme Court of the United States by Mr. Chief Justice Waite, on the 7th instant, in the cases Nos. 891 and 895 of October term, 1883, brought by the Weil and La Abra claimants against the Secretary of State of the United States to compel the payment of the irrespective installments of their claims, have suggested to me several considerations bearing on this important subject which I think proper to submit in this letter to your Department.

I desire at the beginning of this letter to express my great appreciation of the recognition by that court of the high principles of law and equity announced in said opinion, and which fully justifies the respect in which that tribunal is justly held, both in the United States and abroad.

The announcement of the international law on this subject by such authority as the Supreme Court of the United States is of the highest importance, since it clears away some of the difficulties which have hitherto existed in the practical relations of Mexico and the United States, in the matter of private claims.

Permit me to make a historical review of the different occasions which have arisen for the application of those principles in the relations of the two countries.

I.—THE GARDINER CASE.

By Articles XIV and XV of the treaty of Guadalupe Hidalgo, concluded February 2, 1848 (Pub. Treaties, pp. 497, 498), the United States discharged Mexico from all prior claims of American citizens and agreed to "make satisfaction for the same to an amount not exceeding $3,250,000."

Article XV further stipulated that—

> To ascertain the validity and amount of those claims, a Board of Commissioners shall be established by the Government of the United States whose awards shall be final and conclusive.

Before the Commission established under that treaty, one George A. Gardiner brought a claim for the value of mines, &c., in the province of Rio Verde, State of San Luis Potosi, Mexico, from which he alleged that he had been unlawfully driven by officers of the Mexican Government. On this claim the Commissioners made an award of $428,750, which was paid to Gardiner or his assignees on or about the 16th May, 1851 (Senate Report No. 182, first session Thirty-third Congress, vol. 2, part 2, pp. 347 *et seq.*).

Information having been obtained that the claim of Gardiner was fraudulent in July, 1851, Gardiner and his brother John C., were indicted for false swearing, and the bankers of Gardiner (Corcoran & Riggs in Washington, and the New York Life Insurance and Trust Company in New York) were notified by the Treasury Department that the Government claimed the moneys of Gardiner in their hands. Gardiner was subsequently indicted for forgery, and his brother for perjury, on his

trial. The former was finally convicted on the indictment for false swearing at the December term, 1855, of the criminal court of the District of Columbia (same Report, pp. 50 and 346–347). Being sentenced to ten years' imprisonment, Gardiner committed suicide.

April 28, 1852, Mr. Olds, of Ohio, offered in the House of Representatives a resolution, which was objected to, asking the President for the information obtained by the Government in the matter of the Gardiner claim; also why the trial of Gardiner was delayed, and whether any cabinet minister had received any portion of the award (Globe, vol. 20, part 2, p. 1207).

In the Senate Mr. Soulé on the 11th of June, 1852, offered a resolution similar to the first clause of the above (*Ib.*, p. 555).

June 28, 1852, Mr. Olds offered another resolution reciting the allegations of fraud in the claim and of Secretary Corwin's connection with it, and raising a committee of five to investigate (*Ib.*, p. 1628).

After discussion (pp. 2301 and 2312 and vol. 25, appendix, pp. 832 and 1030) the resolution was adopted.

August 24, 1852, the committee was appointed (vol. 24, p. 2312), Andrew Johnson, of Tennessee, chairman.

August 28, 1852, Andrew Johnson asked permission for the committee to sit during recess. An amendment was offered authorizing the committee to send for persons and papers (*Ib.*, p. 2413). An amendment authorizing the committee to inquire into rejected claims was lost, and the resolution of Mr. Johnson with authority added to send for persons and paper was adopted (*Ib.*, p. 2418).

In the mean time a select committee had been raised in the Senate (Senate Report 182, first session Thirty-third Congress, p. 4) with power to send for persons and papers, which was also given authority to sit during recess (Globe, vol. 24, p. 2463).

At the next session Mr. Preston King, from the House Committee, December 1, 1852, made a report (House Report No. 1, second session Thirty-second Congress) accompanying a bill which was the origin of the present law prohibiting members of Congress from practicing in claims against the Government. After discussion by Messrs. King, Stanton, of Ohio, Johnson, of Tennessee, Orr, of South Carolina, A. H. Stephens, and Stanton, of Tennessee (Globe, vol. 26, pp. 23, 242, 259, 273, 288, 291, 301, and appendix, pp. 64, 67, 109, 111, and 217), the bill passed the House January 14, 1853.

It was discussed and amended in the Senate, sent to conference committee, and passed both houses February 23, 1853 (Globe, vol. 26, pp. 313, 365, 391, 392, 445, 630, 649, 695. 715, 787, and 805).

In the next Congress (Thirty-third) a resolution was adopted March 6, 1854, on the motion of ——— ———, a Representative from Louisiana, directing the Judiciary Committee to inquire into the propriety of taking legal proceedings to recover the amounts paid on the award (Globe, vol. 28, p. 549).

March 10, 1854, on motion of Mr. Fred. P. Stanton, of Tennessee, chairman Judiciary Committee, the inquiry was extended to other claims in which fraud was charged (*Ib.*, p. 606).

March 28, 1854, Senator Brodhead, from the Senate select committee, appointed by the preceding Congress, made a report (Senate Report 182, first session Thirty-third Congress) showing the fraud in the Gardiner claim (*Ib.*, p. 765).

August 3, 1854, Mr. Stanton made a report from the House Judiciary Committee (House Report 369, first session Thirty-third Congress) ac-

companying a further bill "to prevent frauds on the Treasury of the United States," and offered the following resolution, which was adopted:

Resolved, That the President be requested to institute proceedings in law or equity against all such agents, attorneys, and confederates as may have assisted in prosecuting the claims of George A. Gardiner and John H. Mears, or either of them, before the Board of Commissioners appointed under the treaty of Guadalupe Hidalgo for the adjudication of claims on Mexico in order to test their liability to refund the amounts paid them as agents, attorneys, confederates, or assignees out of the awards made by the said Commissioners to said Gardiner or Mears (*Ib.*, p. 2138).

Bills had been filed against Gardiner in the United States circuit courts in Washington and New York, and injunctions obtained in July, 1852 (Senate Report 182, first session Thirty-third Congress, p. 347). Decrees were rendered in favor of the United States March 29, 1855, in Washington, and June 14, 1859, in New York (see docket entries).

The record of the suit in Washington seems to have been lost. From the record of the suit in New York it appears that the United States set forth in its bills the provisions of the treaty with regard to the "finality" of the awards and the stipulation of the United States "to make satisfaction" of the same; charged upon evidence discovered since the award and payment that the claim of Gardiner was "wholly false and fraudulent" and prayed—

"That the said award so made by the said Board of Commissioners may be adjudged and declared void, and the said George A. Gardiner may be decreed to restore, refund, and repay" the amount thereof. The decree is to the effect "that said award be and the same is hereby in all things reversed and annulled."

On these decrees some $250,000 were recovered.

It thus appears that the whole power of the United States in its three departments of government—both branches of the legislature, the executive, and the civil and criminal courts—was used to bring Gardiner to justice and to recover the money paid on his fraudulent claim.

No consideration of "vested rights" in the claimant prevented the United States from interfering with the final and conclusive award in his favor, when the protection of the Treasury was in question.

But this was not all. The Government of Mexico, without being asked to release the United States from the stipulations of the treaty, was called upon to assist the latter in the Congressional investigations and in the civil suits and criminal prosecutions.

A Commission was sent to Mexico by the select committee of the Senate and was instructed, among other things, "to take sworn declarations as to the fact from the competent authorities;" "to secure the evidence of Don Santiago Gomez, and to force him, through the Mexican authorities to produce the books;" to bring Gardiner's witnesses "before some alcalde" and "have them examined *de novo*;" to get them to point out to the Commission and the alcalde the location of the mines; to have Gardiner "summoned"; and to "obtain from the authorities what orders you (they) may deem necessary to facilitate your (their) mission" (Senate Report 182, first session Thirty-third Congress, pp. 115, 116).

The United States secretary of legation in Mexico was notified by the State Department of the appointment of the Commission for the purpose of obtaining "evidence to convict Gardiner and recover back the money paid to him," and was informed that—

This Government requests, as a favor on the part of Mexico, that such measures be adopted by it as may be necessary to protect the gentlemen sent on this Commission on their way to and from the said department of Rio Verde, and that instructions be given to the local authorities to afford them every aid and facility in procuring evidence and in performing the duty assigned to them (*Ib.*, p. 153).

On the 8th of November, 1852, "Mr. May and Mr. Partridge," members of the Commission, "accompanied by Mr. Rich," chargé d'affaires of the United States, "waited upon the minister of relations, Mr. Yonez, and were by him introduced to President Arista." The President and minister examined the documents filed by Gardiner in support of his claim, pronounced them informal, and "expressed their unqualified opinion" that the claim was false and fraudulent.

> The President promised [say the Commissioners] to give us the aid and co-operation of his Government, as well as that of the several States which we might visit in order to the fulfillment of our duties. He requested that we would indicate in writing through our charge the precise kind of service that we required (*Ib.*, pp. 117, 118).

On the two following days the Commissioners indicated to the *chargé* (pp. 154, 155) the kind of assistance required by them, which comprised instructions to the civil and military authorities in the State of San Luis Potosi, Queretaro and Michoacan, and the services of a military officer to accompany them on their mission.

All this and much more was freely granted, almost every page of the Commissioners' report bearing evidence to the active good will of, and the assistance rendered by, the authorities of Mexico, State and federal, executive and judicial. The results of the civil and criminal suits above referred to show how valuable and effective was this assistance.

Mexico had no possible pecuniary interest in invalidating the award of Gardiner. On the contrary, she ran the risk of having his claim revived against her in case the award should be unjustly annulled. It is true that the United States would be de debarred by the treaty from seeking to enforce it diplomatically, but in morals and by her own law Mexico would have been bound to pay it and hold the United States responsible for a violation of the treaty.

The course of Mexico could only have been governed by a desire to treat the United States with justice and comity, and of course by a well-founded expectation of like treatment from the latter on similar occasion. Such expectation was justified by the diplomatic promise of the United States chargé d'affaires, who, in writing to the minister of foreign affairs on the 9th of November, 1852, said:

> By complying with the request of Mr. May, the Mexican Government will confer a great obligation upon that of the United States, and which that Government will always be happy to reciprocate (*Ib.*, p. 157).

It was further justified by the promise of the minister of the United States Mr. Alfred Conkling, who, in a note dated December 7, 1852, thanked the minister "for the valuable aid already so courteously rendered by him," regretted "the necessity of again invoking" his assistance, and added:

> Should the Government of Mexico at any future time stand in need of similar acts of comity on the part of the Government of the undersigned, he trusts he need hardly assure his excellency that they will be most cheerfully and promptly rendered (*Ib.*, p. 158).

The expectation that the United States would go as far to protect Mexico from fraudulent or unjust claims of their citizens as they would go or would ask Mexico to go to protect their own Treasury from such claims (even when they had been made the subject of the final and conclusive awards of a treaty Commission) was rather strengthened than otherwise by the action of the United States occurred prior to the decisions in the Weil and La Abra claims, and upon which I do not think it necessery to enlarge here.

I cannot refrain from pointing out the similarity, almost identity, of

the Gardiner claim with the Weil and La Abra claims, of which I will speak in detail hereafter, and the identity of the provision of the two treaties under which such claims were presented, examined, and adjudicated, but there is a very painful contrast between the prompt action taken by the Government of the United States to prove and punish fraud in the Gardiner case and the proceedings of the Executive Government under former administrations in the Weil and La Abra cases.

It is stated by the claimants that there is no similarity between those cases, because in the Gardiner case the Commission was purely American and the United States was the only Government interested, while in the other two, the Commission was a mixed one, and the interested Government is that of Mexico, against whom the fraud, if any, had been perpetrated.

I do not think any real distinction exists between the respective cases. Both were claims brought under the provisions of a treaty, both were examined and awarded by a commission organized in accordance with treaty stipulations, and in both the Government of the United States was defrauded.

If there was before any doubt about this, the opinion of the Supreme Court dispels it completely. That opinion says:

> Each Government, when it entered into the compact under which the awards were made, relied on the honor and good faith of the other for protection as far as possible against frauds and impositions by the individual claimants. It was for this reason that all claims were excluded from the consideration of the Commission except such as should be referred by the several Governments, and no evidence in support of or against a claim was to be submitted except through or by the Governments. The presentation by a citizen of a fraudulent claim or false testimony for reference to the Commission was an imposition on his own Government, and if that Government afterwards discovered that it had in this way been made an instrument of wrong towards a friendly power, it would be not only its right but its duty to repudiate the act and make reparation as far as possible for the consequences of its neglect, if any there had been. International arbitration must always proceed on the principles of national honor and integrity. Claims presented and evidence submitted to such a tribunal must necessarily bear the impress of the entire good faith of the Government from which they come, and it is not to be presumed that any Government will for a moment allow itself knowingly to be made the instrument of wrong in any such proceeding. No technical rules of pleading as applied in municipal courts ought ever to be allowed to stand in the way of the national power to do what is right under all the circumstances. Every citizen who asks the intervention of his own Government against another for the redress of his personal grievances must necessarily subject himself and his claim to these requirements of international comity.

But granting that the objection be well founded, and that only Mexico is interested in these two cases, it seems to me that the Executive of the United States could not fail, with a view to protect their honor, to do what they finally have done; that is, to give the facilities in their power to prove the fraud, and not to reward perjury by being the means, using the language of Secretary Evarts, "of enforcing upon a friendly power claims of our citizens based upon or exaggerated by fraud."

As Mexico has repeatedly represented to the Government of the United States, her object in desiring a retrial of these two cases has not been to save the amount of money they represent, but only to prevent the success of fraud under the sheltering protection of this Government.

I will undertake now to review the two claims of Weil and La Abra as they appear from the record.

II.—Work of the Mixed Commission.

The claims convention of July 4, 1868, between the United States and Mexico, like the treaty of Guadalupe Hidalgo, provides that the decis-

ions of the Commission constituted under it should be "final and conclusive." (Art. II and V.) Unlike that treaty, however, the convention of 1868 contained no provision for the payment of money to individual claimants. The Government against which the balance of awards should be struck was to pay that balance to the other in annual installments of $300,000, and the claimants were to look to their respective Governments for payment of their awards.

Under the claims convention of July 4, 1868, between the United States and Mexico, 873 claims aggregating $470,126,613.40, and 144 claims whose amounts were not stated, were brought by the Government of the former country in behalf of its citizens against the Government of the latter for adjudication by the Mixed Commission organized in accordance with the provisions of that convention.

Of this number 580 cases were decided by the Commissioners, and 418 were decided by the umpire, the remaining 19 claims being either withdrawn or consolidated with others.

Money awards were made by the Commissioners in 43 cases and by the umpire in 143. The remaining 812 claims were dismissed. The total of the awards was $4,125,622.20; less than one per cent. of the amount claimed.

The claims were alleged to have originated within the space of twenty years since the treaty of Guadalupe Hidalgo. They comprised in their subject every species of transaction, and their total amount was sufficient to provide comfortably for every American who had visited or had business in Mexico for a much longer period.

In only 330 of these claims, however, had the aid of the United States been invoked prior to the convention of 1868. The remaining 687 cases, although more or less remote in their alleged origin, made their first appearance after the conclusion of that convention (Senate Ex. Doc. 31, Forty-fourth Congress, second session).

Supposing that they had authority to do so under the treaty, the Commissioners united in prescribing certain rules for the taking of testimony in support of the claims (Journal of Commission, pp. 19–25). Among those rules was one directing the proofs to be filed with the memorials, and to be supported by oath or affirmation, according to the laws of the respective countries.

Mr. Ashton, agent for the United States, proposed to amend this rule so as to allow depositions to be taken in either country before a diplomatic or consular officer of the other (*Ib.*, p. 32).

Mr. Cushing, agent for Mexico, opposed this amendment—"On account of the great number and the immense magnitude in amount, and, in signal instances, the apparent fraudulent character of claims preferred by citizens of the United States against his client, the Mexican Republic." He adds: "Testimony must be taken in conformity with the laws of the country in which it is taken; otherwise, such testimony will be comparatively valueless, or will, at any rate, be destitute of any sanction of law binding on the conscience of the witness, so as to open wide the door to admit falsehood and misrepresentation without check or stint." (*Ib.*, p. 44.) After full consideration of the arguments of counsel, the Commissioners reached the conclusion that "they had no power to regulate the taking of evidence, or the production of the same before them." They, therefore, rescinded all the rules which they had made on that subject. (*Ib.*, p. 5.)

Mr. Wadsworth, the American Commissioner, said:

> I do not think the Commission is a court with all the incidental powers of a court. The Commissioners are rather referees, with the special function of investigating and

deciding the several special claims upon the proofs only referred to them by their respective Governments in such order and in such manner as they may conjointly think proper.

By this decision Mexico was placed in the difficult position of taking the risk of having imposed upon her by false swearing (which would not be perjury) a mass of claims, which even then appeared fraudulent, or of violating the treaty by refusing to go on with the arbitration. She chose the former alternative, and the Commission proceeded, stripped of all the powers and attributes possessed by the most ordinary courts of justice, and the possession of which alone gives weight and authority to their decisions. In that large class of claims called into being by the convention of 1868 were found those of Benjamin Weil, No. 447, and La Abra Silver Mining Company, No. 489, on the American docket.

III.—The Weil Case.

The Weil claim was for the value of 1,914 bales of cotton, alleged to have been seized from the claimant by Mexican troops on the 20th of September, 1864, between Laredo and Piedras Negras, Mexico, while on its way from the interior of Texas to Matamoros. On the face of the claim it was apparent, when historical facts were considered, that it ought not to be maintained:

First, because the claimant was engaged in contraband trade with the States in rebellion, and the seizure of the cotton, admitting that it took place, was a benefit to the United States rather than an injury for which that Government could claim before the Commission. On this precise ground the claim of Cochran *vs.* Mexico, No. 865, was dismissed by the umpire with the remark that the seizure of cotton alleged in that case was "one good act done by Cortina."

Second, as the Imperial army had then invested Matamoros, which it occupied September 26, 1864, the laws of war would have justified the seizure of the cotton by the Republican forces to prevent its falling into the hands of their enemies; and,

Third. The seizure would have been justified under the Mexican law then in force, which required all cotton to pass through a custom-house and pay duty under penalty of confiscation. On this ground Jaroslowski's claim, No. 896, was dismissed by the umpire. Suspicion as to the truth of the facts alleged was raised by the statement on the memorial that the claim, which was filed in 1870, had never before been presented to either Government; and the further statement that the cotton crossed the Rio Grande 160 miles above Brownsville on its way to Matamoros and was subsequently seized, between Laredo, which is over 200 miles above Brownsville, and Piedras Negras, which is still farther up the river.

Of the half dozen witnesses, on whose *ex parte* affidavits the claim rested, one swore that the cotton was collected at and shipped from a place called "Allaton," said to be 700 miles from the river, in May, 1864; and another that it was collected at and shipped from Allaton (which is 260 miles from the Rio Grande) early in September, 1864. No account was given of the disposition of the cotton after its alleged seizure, and no claim was made by Weil or anybody else for the 192 wagons, and 1,376 mules which were said to have transported it and to have been seized with it.

It was not alleged that this cotton paid the Confederate export duty, which was rigidly exacted at that time. Not a receipt, voucher, bill of lading, or other document was put in evidence. No names were given

either of the planters from whom Weil purchased this vast amount of cotton, of the army of teamsters by whom it was conducted, of the officers or soldiers alleged to have seized, it or of any person except Weil and his witnesses. There was never a clumsier attempt at fraud than this claim, as it stood before the Commission. Neither on the law nor on the proofs was there any ground for the claimant to recover—and as Mexico had to defend against 1,000 claims, involving $470,000,000, it would not have been surprising if she had passed the case over without attention. But when it became apparent that the American Commission was seriously considering the claim, the agent for Mexico began to look about for evidence against it.

The claimant's testimony, by excluding all names of third parties, gave no clew for the discovery of witnesses; and the most that Mexico could do was to secure affidavits from persons who said they had never heard of any seizure of cotton, but who, from their position on the frontier at the time, would have been likely to hear of it if it had taken place. This negative evidence was not received until 1874, too late for admission under the rules. In the following year, when the labors of the Commission were drawing to a close, the American Commissioner offered to admit it, provided time should be given to the claimant to file further proofs.

This proposition the Mexican Commissioner declined, and the affidavits were not filed. A synopsis of them, however, was placed with the papers and is now in the State Department. They were not among the new evidence presented to the umpire and afterwards to the United States Government with the application for a rehearing, and were in no wise relied upon to support that application.

The Commissioner, Zamacona, erred in not allowing these proofs to be filed and rebutted; his error was that of a sworn judge of which Mexico herself might have a right to complain. But if it be conceded, as has been urged, that in this particular he acted as the representative of Mexico, the defendant, the foregoing statement of the merits of the case is sufficient to justify his refusal and to absolve Mexico from any charge of *laches*.

Such, however was not the opinion of the American Commissioner, who made an award in favor of the claimant, based apparently more on the lack of defensive proof than on the strength of the plaintiff's case, which award was affirmed by the umpire to the amount of $487,810.68.

A motion for a new trial was entered on the 29th of January, 1876, and referred by the Commissioners to the umpire, who held it under consideration until October 20, 1876, when he denied it on the broad ground that he had no power under the treaty to review his own judgments. His decision was rather a surprise, as the contrary had been supposed by many gentlemen learned in the law, among them Mr. Wm. M. Evarts, afterwards Secretary of State, who made a similar application on behalf of his client, the "Rosario y Carmen Mining Co.," whose claim against Mexico had been rejected by the umpire (House Report 700, Forty-fifth Congress, second session. In the Weil case the umpire also discarded the new evidence, which, he said, "would certainly contribute to the suspicions that perjury had been committed and the whole claim was a fraud." But he added that, "if perjury shall be proved hereafter no one would rejoice more than the umpire himself, that his decision should be reversed and that justice should be done." These new proofs were not obtained until 1876, months after the award of the umpire, and then only by means of an accidental meeting between the counsel for Mexico and General Jas. E. Slaughter, an ex-Confederate officer who

had been stationed in Texas during the war, and the first person whom the counsel had been able to discover with any knowledge of Weil or his transactions at that time. Informed of this claim, he promptly denounced it as fraudulent, and through his exertions the original books and correspondence and other documents of the claimant were brought to light, which clearly proved the fraud.

This evidence (comprising the affidavits of three of Weil's partners, who had no part in, or knowledge of, the prosecution of the claim, and over two hundred letters of the firm, including seventy from Weil himself) showed that Weil was a trader of very limited means, which were bound up in a partnership with a number of persons, none of whom were parties to or witnesses for the claim and several whom denounce it under oath as a fraud. That, as a member of this partnership, Weil had, in 1863, secured a contract with the Confederate governor of Louisiana to import for the State ammunition, cotton cards, clothing, arms, &c., for which the State was to pay in cotton; that, as neither Weil nor his firm had the means to carry out this contract, an arrangement was made with a merchant in Matamoros, named Jenny, who had a credit in Switzerland, under which arrangement some $10,000 worth of goods were furnished for the use of the State; that in 1864, when, according to the evidence presented to the Commission, Weil was engaged in purchasing and transporting the cotton alleged to have been seized by Mexico, he was in reality engaged in taking these goods to Shreveport, the Confederate capital of Louisiana; that on the 20th of September, the day of the alleged capture, the two most important eyewitnesses were, in fact, hundreds of miles away from the Mexican border, and that Weil himself was in Shreveport endeavoring to get cotton in payment for the goods; that he failed in this effort, owing to the interference of the Confederate military authorities, and that after the surrender, by arrangement with the Swiss creditors of Jenny, he prosecuted a claim on their behalf for the value of the cotton due, which was paid by the reconstructed State government of Louisiana to the amount of about $100,000. In fine, that neither Weil nor his associates owned 1,904 bales of cotton at the time alleged, and that no such cotton or any other property of his or theirs was seized by the authorities of Mexico.

Certain supplementary evidence was discovered in the Treasury Department and inclosed to the Mexican minister by Secretary Blaine in a note dated December 9, 1881, showing that one of the main witnesses confessed his perjury to a special agent of the Treasury Department, and sought through him to negotiate with Mexico for the exposure of the fraud.

IV.—La Abra Case.

La Abra Silver Mining Company, chartered November 18, 1865, under the general law of the State of New York (some of whose stockholders swore, as did certain other witnesses, that all were American citizens), brought evidence before the Mixed Commission to show that it had been induced, in the year above named, during the French occupation and war with Mexico, by representations (not specified) made in Humboldt's "Essai Politique," published in 1808, and by allusions made in Ward's book on Mexico, published in 1828, as to the richness of certain silver mines in Tayoltita, State of Durango, Mexico; and, further, by the representations to the same effect of William H. Smith, agent of Juan Castello de Valle, a Spaniard, part owner of some of said mines, of de Valle himself, and of Thomas J. Bartholow and David Y. Garth, who were sent to Mexico as agents of the persons proposing to form

said company (and to whom, as they said, de Valle exhibited his books showing a net profit of $650 silver per ton of ore), to purchase, for $57,000 gold, through said Bartholow and Garth (by draft, as stated by Bartholow, on San Francisco or New York, "we did not remember which," but by certificates of deposit and drafts on San Francisco for $58,500, as stated by the person who pretended to have cashed them), the mines, reduction works, and appurtenances from said de Valle, and for $22,000 gold (how paid or by whom is not stated) twenty-two twenty-fourths of La Abra mine, owned by certain Americans.

That the company, relying upon certain proclamations of the Mexican Federal authorities (not specified or introduced in evidence), in which it alleged investments of American capital were invited and protection promised thereto, made heavy and judicious expenditures, through skilled and experienced officers, upon said property for stamp-mill, machinery, buildings, and other improvements, and extracted large quantities of ore of surprising richness, a reduction of twenty tons (the only one made by the company) yielding $17,000 (after the richest ores had been carried off by Mexicans). That it was subjected to threats, robberies, seizure of its mule trains, forced loans, onerous taxes, armed assaults upon its buildings, imprisonment of its officers, murder of its employés, and other persecutions by the Mexican people and civil and military authorities.

That this hostility, according to some witnesses, had for its object the expulsion of the company, so that its valuable property might fall into the hands of said authorities and people; while according to others it arose from a groundless belief on their part that the company favored American annexation of the interior States of Sinaloa and Durango. It was alleged to have been directed against other American companies as well, some of which, however, survive it and are still operating in that vicinity.

The company pretended that on account of these persecutions it was compelled to abandon its mines, works, and ores, in March, 1868, when the French had been driven out and peace was re-established, and when it was about to realize the fruits of its investment and labors; that C. H. Exall, the superintendent, being in fear of his life, fled from Tayoltita to Mazatlan, and borrowed money to take him to New York, and dared not return to resume operations; and that thereafter the Mexican people carried off the ores remaining, and Mexican officials assumed to dispose of the property of the company.

Without seeking redress in the judicial tribunals of Mexico (in which it had, in January, 1861, according to its own witnesses, gained a civil suit against one of the alleged persecuting officials, involving the title to a portion of its property); without appealing to the Federal executive for that protection alleged to have been guaranteed in his supposed proclamations; without invoking the aid of the American consular or diplomatic representatives in Mexico, or of the State Department at Washington; without even requiring for its own satisfaction a formal statement of the abandonment and its causes from the superintendent, the company would appear to have brooded in silence over its enormous wrongs for two years, when, the Claims Convention with Mexico having been concluded, it filed with the Secretary of State, through two Washington attorneys, a letter, which was subsequently sent to the Commission, asking the sum of $1,930,000 as indemnity. Three months thereafter—a third attorney having assisted in the preparation of the memorial to the Commission—the claim was increased to $3,000,000, and

when, for the purpose of arguing the cause, other counsel became necessary, it rose to the respectable sum of $3,962,000.

One Alonzo W. Adams became the agent of the company for the collection of proofs, and in that capacity proceeded to Mexico and elsewhere, and procured the greater part of evidence which was submitted on its behalf. With the exception of the imperfect evidence of title, no documentary proofs were filed except five pretended threatening letters, the latest of which is dated July, 1867, eight months prior to the alleged enforced abandonment of the mines, and six months before the company gained its civil suit above referred to against one of the officials, after which it was said it extracted $17,000 from twenty tons of ore. The other threatening official who was compelled to resign in the same month of July, 1867, and criminally prosecuted in the same year, appeared in 1872 as a witness for said company, but denied that he had threatened it.

Except the above documents, the evidence consisted entirely of *ex parte* affidavits, in the composition of most of which the guiding hand and the peculiar diction of Adams himself are plainly apparent.

The books of the company were not brought from its headquarters in New York, nor were any extracts given from them to show its receipts from sales of stock or other sources, or its expenditures; nor was the correspondence of the company with its officers in Mexico adduced to prove either the richness of the mines or the hostility of the Mexicans. On this point the umpire in his decision said: "In so well-regulated a business as the umpire believes that it really was, he cannot doubt that books would have been kept in which the daily extraction of ores would have been regularly noted down, and that periodical reports would have been made to the company at New York. Neither books nor reports have been produced, nor has any reason been given for their non-production."

It was contended on behalf of Mexico that the proof of citizenship of the stockholders not having been made as to each separately, was insufficient. Her evidence was to the effect that some of the mines had long been abandoned as worthless, and that such of them as had been worked by de Valle had yielded such moderate returns as to make the price alleged to have been paid for them a most extravagant one; that if Garth and Bartholow did not deceive the company, they were themselves deceived as to their value; that the company's agents were totally incompetent and inexperienced in mining, and their expenditures, though much exaggerated, were yet reckless and ill directed, inasmuch as the new buildings and works were poor and badly located, and the old reduction works were destroyed before the new were commenced, rendering it impossible for the current expenses to be paid from the product of the mines if they had been adequate to that purpose; that the so-called ores were generally worthless rock or "tepetate," and that what little silver was finally extracted was gambled away or made use of by Superintendent Exall; that there were no robberies, persecutions, or enmity to the company on the part of the Mexican people, or civil and military authorities, but that, on the contrary, ample protection was extended to it, and frequently extraordinary safeguards given its officers during the hostilities with the French; that as early as the summer of 1867 the company failed to pay its workmen, but soon compromised and agreed to pay them a smaller amount in cash than formerly and a larger amount in goods; that later, its money and credit being exhausted and the worthlessness of its ores demonstrated, it was unable to carry out even this agreement, and ceased operations alto-

; that the superintendent, Exall, gave the "persecuting" judge

written permission (which was produced in evidence) to occupy the company's hacienda, the subject of the law-suit above referred to, and went to New York, leaving the clerk, Granger, in charge of the mines and works; that Granger, as the representative of the company, extended this permission in August, 1868, five months after the pretended forcible expulsion of the company; that no ores were taken by the people and no attempt by the authorities to possess themselves of the company's property, but that Granger, as admitted in his own testimony, himself sold and recovered a portion thereof for his own benefit; that at length, the time having expired for which under the Mexican law the company could hold its mines without working them, and Exall not having returned, Granger himself, as also appeared from the company's evidence, had denounced and entered into possession of some of them, and was holding them at the time of the trial; and further that some of the testimony in behalf of the claimant was forged, and some obtained by bribery and other unlawful means.

The company's witnesses in rebuttal reiterated, in the main, the statements of its former witnesses, with some discrepancies. They denied that the old reduction works had been destroyed, but did not claim that they had ever been used, during the eighteen months the company's stamp-mill was building, to reduce, in aid of the current expenses, the ores which de Valle's books, according to Bartholow, had shown to yield $650 per ton. They admitted the amicable agreement with the threatening judge for the occupation of their hacienda, but denied that Granger had any authority to extend it, or that he had been left in charge of the mines.

The Mexican Commissioner, deeming the proofs to be not only insufficient, but inconsistent with each other and with the company's long silence and delay in presenting its claim, rejected it *in toto*.

The American Commissioner gave it as his opinion that the company should be paid what it had expended, with interest; but, as the claim was to go to the umpire, he fixed no amount.

The umpire accepted the statement of the president of the company, from which the statements of the other witnesses differed materially as to the expenditures, added the $17,000 alleged to have been realized from the 20 tons of ores reduced, and awarded their sum, with interest, in lieu of the "prospective profits" claimed by the company, which he expressly and with much argument excluded. Having done this, he turned his attention to the ores alleged to have been mined and abandoned, the cost of extracting which had been included in his award covering the expenditures, and from which, if at all, the "prospective profits" of the company were to have been derived. Expressing his surprise, in the language above quoted, that the books and reports of the company had not been produced, and no reason given for their non-production, he estimated the amount and value of these ores from the conflicting statements of witnesses, allowed $100,000 for this portion of the claim, and added interest on that. Altogether the award amounted to $683,041.32.

A motion for a new trial was promptly entered by the Mexican agent on the ground of perjury in the evidence, and also on the ground that the umpire in awarding $100,000 and interest for the ores in addition to the allowance for expenditures and interest made by the American Commissioner had exceeded his powers, and that that part of the award was invalid as depending on the single vote of the umpire. In overruling this motion at the same time as that in the Weil case, the umpire did not admit that he had exceeded his powers by including in his award pay

ment for the abandoned ores. Referring to the charge of perjury, he said: "If perjury can still be proved by further evidence, the umpire apprehends that there are courts of justice in both countries by which perjurers can be tried and convicted, and he doubts whether the Government of either would insist on the payment of claims known to be founded on perjury."

The new evidence on this case was not procured until 1877, when the Mexican Government learned of the whereabouts of certain original papers of the company in the possession of its employés, procured with considerable difficulty and forwarded them to Washington. They consist of the press copy-book, duly authenticated, of the company's office at Tayoltita, covering the correspondence of its officers from January, 1866, to August, 1868; original letters of its treasurer and superintendent before and after the alleged abandonment, and other documents. These papers show that the company was deceived as to the value of the mines, and that Bartholow at least aided in the deception; that its expenditures were ignorantly directed and were much exaggerated in the claim, the books showing them to have been not more than $101,472 up to the spring of 1867, when, after the company had tried to raise means in Mexico and failed, the superintendent's draft for $5,000 was refused by the treasurer. That part of the expenditure which the witness swore was for 550 feet of the Nuestra Señora de Guadalupe mine was in reality paid for 550 shares of the stock of Nuestra Señora de Guadalupe Company, whose claim for damages for the enforced abandonment of its mine was rejected by the umpire; that the company issued stock for the twenty-two twenty-fourths of La Abra mines, instead of paying for it in gold as sworn to by Bartholow, and that the remaining two twenty-fourths belonged to a person who, although an unsuccessful claimant against Mexico, did not charge her with having driven him from that valuable property; that there was no general hostility to Americans or special hostility to this company on the part of the Mexican people or authorities, but that, on the contrary, their relations to its officers were friendly, and that "prorogas" or extensions of title were frequently granted to the company; that no onerous taxes were enforced and no loans not of a general character levied upon the company, and that these were refused payment with impunity under the plea of lack of means; that no mule trains were ever taken from the company, and that it never owned any; that its employé was murdered by another of its employés, who was promptly tried, convicted, and shot by the military authorities; that no assault was made upon its buildings; that the difficulty with the local authorities in June and July, 1867 (styled by the superintendent, in a letter to the treasurer, "a little sport with the officials, which was gotten through without much trouble"), was due to the cause stated by the witness for the defense, to wit, that the superintendent had, as expressed by him in the letter above referred to, "reduced the cash payment from one-third," and that the "sport" occasioned no inconvenience to the company; that the "ores" were worthless, the reduction of 90 tons yielding, according to the superintendent's report of August 5, 1867, less than $5 per ton, which did not pay for the mining, and the rest being so poor that, according to his report of October 6, 1867, it would not "pay to throw it in the river"; that for this reason, if for no other, they were not carried off by Mexicans, and are still at the mines; that as early as July, 1867, the company was in debt at Tayoltita over $3,000, exclusive of the $5,000 draft above mentioned, upon which suit was afterwards brought by the Bank of California; that at the same time judgment by default was entered against the company in

New York for over $50,000 in favor of T. H. Garth (a stockholder in, but not a witness for, the company), on certain notes of the company in a suit in which Ely, who swore he was the company's attorney from its inception, appeared for the plaintiff; that then, all supplies from New York being cut off by the company, the superintendent was obliged, in order to keep up the semblance of operating the mines, to employ four Mexican miners (of whom he says in his report to the treasurer, "We can do better with them when they are a little hungry"), on a promise to pay them in goods, at a heavy profit, one-half the value of the ore they might get out; that the superintendent was not imprisoned, but only told to consider himself in arrest (at his own hacienda) for alleged contemptuous treatment of a judge, and that he straightway complained to the prefect, after which no further restraint seems to have been imposed upon him; that no redress was denied the officers of the company, because no wrongs were inflicted upon them, although they seem to have written some truculent letters to officials in anticipation of difficulty; that the officers of the company were not ignorant of their rights as American citizens, inasmuch as Superintendent Bartholow proposed, if certain taxes were imposed upon him, to hoist the American flag, and to have them taken from under it by the military, the result of which threat was, as he explained it to Treasurer Garth in his letter of April 10, 1866, that instead of paying three or four thousand dollars he only paid thirty; that when Garth instructed Superintendent Exall, in his letter of July 10, 1867, to be firm in maintaining his rights as an American citizen in any difficulties with the authorities, the latter replied, on the 6th of October:

> There are no difficulties about authorities, boundaries, or anything else, concerning the mines and hacienda, provided there is money on hand, and money *must* be sent.

That Exall's trip to New York in March, 1868, which was treated by the Commission as a sudden and enforced abandonment of the mines, was talked of for some time previously, and that it was made by him "to inquire into the intentions of the company," as stated in his letter of February 21, 1868, turning over to Granger the mines and property of the company. That Exall's relations to the company's property at Tayoltita did not cease until long after March, 1868, inasmuch as his letters to Granger up to July of that year direct him to extend the permission given to Judge Soto not to let anybody see the books, &c., and detail a negotiation he was carrying on with some parties in the United States, hoping to inveigle them into the purchase of the mines in order to get the arrears of salary due himself and Granger, which, he says, "the old company refuse to pay us," and moreover, that Exall was expected to return, since Granger, in August, 1868, promised the collector at Tayoltita that the taxes should be paid on the return of the superintendent, in November. That the paid-up stock of the company, according to their report for 1877 (the first made since 1868, when they swear the stock became worthless), had increased since 1868 from $157,000 to $235,000, which latter amount the president of the company in his affidavit of September 28, 1870, swore had been received from sales and subscriptions.

Finally, that some of the testimony offered by the company in its claim was forged by Adams, and that so much of it, not forged by him or others, as went to sustain any allegation of the company on which the slightest claim against Mexico could be founded, is rank and unblushing forgery.

V.—Proceedings during General Grant's Administration.

Acting upon the suggestion of the umpire above mentioned, Mr. Avila, the agent of Mexico before the Commission, proposed at the close of its session to enter on its records the following declaration:

> The Mexican Government, in fulfillment of article 5 of the convention of July 4, 1868, considers the result of the proceedings of this Commission as a full, perfect, and final settlement of all claims referred to in said convention, reserving nevertheless the right to show, at some future time, and before the proper authority of the United States, that the claims of Benjamin Weil, No. 447, and La Abra Silver Mining Company, No. 489, both on the American docket, are fraudulent and based on affidavits of perjured witnesses—this with a view of appealing to the sentiments of justice and equity of the United States Government, in order that the awards made in favor of claimants should be set aside.

But this entry was objected to by the American agent and Secretary, and when the Secretary of State was informed by the Mexican minister of the intended appeal, he made haste to say that he—

> Must decline to entertain the consideration of any question which may contemplate any violation of, or departure from, the provisions of the convention as to the final and binding nature of the awards, or to pass upon, or by silence to be considered as acquiescing in, any attempt to determine the effect of any particular award.

To correct the misapprehension of the Secretary, Mr. Mariscal assured him that it was not the intention of Mexico to put in doubt the final and conclusive character of the two awards, but only—

> At some future time to have recourse to some proper authority of the United States to prove that the two claims were based on perjury, with a view that the sentiments of equity of the Government of the United States, once convinced that frauds have actually been committed, will then prevent the definite triumph of these frauds.

This course was subsequently fully approved by my Government. In the mean time steps had been taken in both houses of Congress toward providing for the distribution of the awards, the first installment of which had been promptly paid on the 31st of January, 1877. A bill for that purpose had passed the House and been reported from the Judiciary Committee of the Senate. But when that committee learned of the charges of fraud, the bill was, at the request of the Chairman, Mr. Edmunds, recommitted and not allowed to pass. (Congressional Record, second session Forty-fourth Congress, vol. 5, Part III, page 2216.)

The main ground of Mr. Secretary Fish's decision in this case was the provision of the convention that the awards of the Commission should be final and conclusive. The very important part that Mr. Fish had just taken in the arbitration with Great Britain made him very likely to consider these cases as of a political nature.

Mr. Fish himself did not perhaps foresee that even in that case it might afterwards be necessary for his Government to appeal to Great Britain for the review of the purely political award made by the Halifax Commission on the ground of fraud in the evidence.

It is important to quote here the opinion of the Supreme Court on this point. It reads as follows:

> As between the United States and Mexico, the awards are final and conclusive until set aside by agreement between the two Governments or otherwise. * * *
>
> As between the United States and the claimants, the honesty of the claims is always open for inquiry for the purposes of fair dealing with the Government against which, through the United States, a claim has been made.

VI.—Proceedings during President Hayes's Administration.

The administration suspended recognition of the Government of General Diaz, then established in Mexico, and the new minister to

Washington, Mr. J. M. Mata, was not received. Informal communication was kept up through Mr. Cuellar, holding over as chargé d'affaires, and in May of that year Mr. Cuellar transmitted to Mr. Evarts a copy of a dispatch received from the secretary of foreign affairs, Mr. Vallarta. In that dispatch Mr. Vallarta approved the course of this legation in the matter, and added:

> However painful it may be to Mexico to give away the considerable amounts of the awards allowed in the cases of Benjamin Weil and the Abra Mining Company when the fraudulent character of these claims is once known, if the appeal to the sentiments of justice and equity of the United States Government announced in the first of the statements in question should for any cause whatever be ineffective, the Mexican Government will conscientiously fulfill the obligations imposed on it by that international compact.

To this communication no answer was received, and no further correspondence took place until the 6th of October, when Mr. Cuellar transmitted to Secretary Evarts a copy of a dispatch from Mr. Vallarta, dated September 7, 1877. In that dispatch Mr. Vallarta renewed his assurance that it was not the intention of Mexico to evade her obligations under the convention of 1868—

> but simply to demonstrate the fraudulent character of the claims, hoping that the United States Government, becoming convinced that the grounds of such claims are surely false, and that its principal evidence consists in affidavits of perjured witnesses, will not find just and equitable that the authors and abettors should receive the award granted them erroneously, and which would constitute a reward of their criminal demeanor, that ought, on the contrary, to deserve a severe punishment.

With this view the Mexican Government had prepared two pamphlets, covering important documents which accompanied the dispatch, and were transmitted with it to the Secretary of State. The pamphlets contained the awards of the umpire and the arguments by the agent of Mexico on the motion for rehearing, which had been submitted by him in the two claims; *also full extracts from the newly discovered evidence, showing the fraud in Weil claim;* also the diplomatic correspondence above given.

Mr. Seward, in a note dated October 23, 1879, merely acknowledged their receipt.

Meantime the claimants had been pressing for the distribution of the first installment, alleging that no authority from Congress for this purpose was necessary. But Congress convened in October, and soon after a resolution was introduced in the Senate instructing the Judiciary Committee to inquire as to the necessity of legislation, and another in the House prohibiting the Treasurer of the United States from paying any moneys on the two claims until further information should be had (House joint resolution 39, of November 7, 1877).

Thereupon Mr. Secretary Evarts submitted the question of the distribution of all the awards to Congress by a letter to the Chairman of the House Committee on Foreign Affairs. In that letter, referring to these two cases, he said:

> My predecessor had submitted a bill to carry out these purposes to the last Congress, which passed the House unanimously, and received the approval of the Committee on Foreign Relations and of the Judiciary in the Senate. The final passage of the bill in the Senate was arrested in the last days of the session by a suggestion that evidence might be presented that two of the awards were based upon fraudulent testimony, and that some delay should be allowed for that reason.
>
> Since that time the Mexican Government has simply presented in a pamphlet form the motions made for a rehearing before the umpire (Sir Edward Thornton) in the cases of Benjamin Weil and of La Abra Mining Company, adding thereto the correspondence between the Mexican minister, Don Ignacio Mariscal, and my predecessor, Mr. Fish, in reference to these two cases. These motions were denied by the umpire, and these awards, standing upon the same footing of finality under the convention with all the others, are awaiting distribution.

In a communication accompanying these pamphlets, Senor Cuellar, the Mexican chargé d'affaires *ad interim*, states that the object of this appeal of his Government is 'not to prevent the payment of the awards made by the umpire in the now extinct Mixed Claims Commission, but only in the interest of rectitude and justice, to render manifest the fraud committed by the parties interested.

I beg leave to inclose a copy of the bill of the last session, and to ask that it may be promptly considered, that this Department may be relieved from the importunities of the claimants, an installment on whose awards is now in the hands of the Government of the United States.

It will be seen that Mr. Evarts apparently did not know that the pamphlets contained, in the Weil case at least, ample proof of the frauds alleged. Whether he was led to the position which he assumed by such a mistake or not, that position was nevertheless unfortunate, for it induced the claimants to believe that the claims against which fraud was charged would be treated just like the others and not separated from them for investigation. In fact a meeting was held of attorneys representing the various claims on which awards had been made, at which, it is said, the attorneys for Weil and La Abra persuaded the others that they could prevent the passage of any bill excepting their claims from payment. It was therefore determined that all the claimants should oppose the passage of the House resolution or any similar measure, and several attorneys representing unquestioned claims appeared before the Committee on Foreign Affairs in company with the attorneys of Weil and the Abra Company and denounced the action proposed in the House resolution.

The counsel of the Mexican legation appeared before the committee, stated the attitude of Mexico in the matter, and suggested that the two claims should be separated from the others in order that any investigation might not delay the payment of honest claims. Mr. Benjamin Wilson, a member of the committee, opposed the investigation or separation of the two claims from the others. He then immediately offered a resolution referring the letter of Secretary Evarts and House resolution No. 39 to a subcommittee.

This resolution was passed and the subcommittee appointed, with Mr. Wilson at its head.

The committee confined its investigation to the question of jurisdiction, and after several conferences with the Secretary of State they declined to go further than to relieve him of any obligation to pay the claims against which fraud was charged, leaving the whole matter to his discretion. To meet this view the following amendment was proposed to the general bill for the distribution of the awards:

SEC. 5. That nothing contained in this act shall be construed as precluding the President of the United States and the Secretary of State, upon application by the Mexican Government, from the consideration of any particular claim or claims wherein awards against Mexico have been made, nor from the investigation of any alleged frauds or perjury materially affecting said particular awards; and pending any such inquiry and during any negotiations between the United States and Mexico, if any, respecting said particular claims, it shall be at the discretion of the President to determine as to the suspension or payment of the amounts which otherwise would be payable upon said claims so made the subject of inquiry or negotiation.

The bill (H. R. 2117) was thus reported to the House December 12, 1877, with House Report 27, and recommitted. On January 23, 1878, the Mexican chargé d'affaires transmitted to the State Department a note restating the attitude of his Government, referring to the proofs of fraud, the declarations of the umpire, and the proceedings in Congress, and adding that—

The investigation, by exposing the frauds, will not only be a service to morality, but will also make clear the faulty methods adopted by International Commissions and conduce to their improvement.

To this Secretary Evarts, on January 24, replied that—

When first advised of any complaint on the part of Mexico, he had submitted the matter to Congress, where a bill was pending authorizing inquiry by the President. If such a clause should be retained in any act which might be passed, due weight will be given to the points and suggestions in the note of the chargé d'affaires.

The House bill No. 2117 was again reported by the committee January 25, 1878, with the fifth section slightly amended.

The language of this section authorized suspension of the awards *only* in the event of diplomatic negotiations being had with Mexico with regard to the claims.

February 23 the chargé d'affaires advised the Secretary of State of the receipt, by the last steamer, of authentic proofs of fraud in the Abra case. The receipt of this note was acknowledged March 7. Subsequent correspondence was had on the 20th and 23d of March, and the 1st and 2d of April, the Mexican Government asking, and the State Department granting, copies of certain affidavits in the Abra claim, upon which, with the new evidence, it was thought indictments might be founded.

The Calendar of the House being crowded, the holders of unquestioned claims became anxious for the fate of their cases. At their instance, therefore, Senator Davis, of Illinois, on the 1st of April, 1878, introduced a bill (S. 1016) precisely similar to that reported from the House, which was referred to the Judiciary Committee.

April 18 this bill was reported from the Committee by Mr. Davis with amendments. The permissive section 5 of the House bill was stricken out and the following substituted:

SEC. 5. That the awards made in the case of Benjamin Weil and in the case of the La Abra Silver Mining Company shall not, nor shall any part thereof be paid except as in this section provided. The President of the United States shall, within six months next after the passage of this act, consider and determine, upon such evidence and information as he shall deem just, whether there is probable cause to believe that the honor of the United States or considerations of justice and equity require that said awards, or either of them, shall be opened or set aside, or a new trial be had in respect of the validity or justice of the respective claims on which they are founded; and if the President shall so determine, the award or awards so determined upon shall not be paid, and shall be suspended to await such action in respect thereto as the two Governments may in due course agree upon. But if the President shall not so determine as aforesaid, within said six months, then the award or awards aforesaid shall be paid in the manner and proportions provided for the other awards in this act mentioned.

About this time counsel for the legation consulted with the district attorney in Washington with regard to indicting Alonzo W. Adams, the principal agent in the Abra claim. Upon a careful examination of the statutes the district attorney concluded that none of the laws in regard to conspiracy, &c., in the matter of fraudulent claims against the United States were applicable. Nor would an indictment for perjury lie, since, even if false swearing in such a proceeding came within the statutes against perjury, the limitation of the statute had expired.

The counsel then went to New York and saw the State's attorney, Mr. Phelps, hoping upon the authority of an old case (State *vs.* Roget) to get an indictment for conspiracy, in which an overt act had been committed within the jurisdiction. Mr. Phelps, after some hesitation and examination of the decisions since the adoption of the code, advised the counsel by letter that an indictment could not be maintained in the case presented.

On the 24th of April Mr. Wilson, of West Virginia, made a further report (H. Reports, No. 700) from the Committee on Foreign Affairs, on a petition of the Rosario y Carmen Mining Company, for a rehearing of their claim, which had been rejected by the Commission, and the appli-

cation for a rehearing of which, when made by Mr. Evarts, as above stated, had been denied by the umpire. Mr. Wilson's report proposed to add to section 5 of the House bill the following:

> And nothing contained in this act shall be construed as precluding the President of the United States and the Secretary of State from considering the application of any American claimants whose claims were rejected by the Commissioners or umpire, or whose claims from any cause failed to be considered by the said Commissioners or umpire.

The effect of this proposition would have been to defeat the investigation asked for by Mexico in the two cases, unless she would consent to reopen the $466,000,000 of rejected American claims, and also to consider all claims which "for any cause" had not been presented to the Commission. There was no proposition to reconsider rejected Mexican claims against the United States, of which some $30,000,000 (known as the Indian raid cases) were thrown out upon the technical construction of the Gadsden treaty, to wit: That while Mexico was bound by the treaty of Guadalupe Hidalgo to protect the United States from raids of Mexican Indians, the United States were absolved forever by the Gadsden treaty from the similar obligation of the treaty of 1848 to protect Mexico from raids of American Indians.

Mr. Wilson's report and amendment were placed upon the Calendar to accompany the bill (House Report 2117).

On the 9th of May Mr. Davis called up in the Senate S. 1016, and explained its provisions. A speech was commenced in opposition to the fifth section, when, on motion of Mr. Edmunds, the doors were closed and the bill considered and passed in secret session.—(Record, vol. 7, Part IV, pages 3307–8.)

On the 21st of May, 1878, Mr. Wilson, in the House, moved to take the Senate bill from the Speaker's table and place it upon the Calendar to be considered in connection with House Report 2117.

Mr. Wilson secured an evening session (June 4) for debate only on the bill on an agreement to have the vote taken the next day without debate.—(*Ibid*, pp. 4102–3.)

At the evening session Mr. Wilson opposed investigation and the Senate bill. Mr. Chalmers replied, going into the facts of the claims, favoring both an investigation and the Senate bill and alluding to the new evidence in both cases.

The next day the bill being called up, Mr. Wilson moved the fifth section of the House bill as an amendment to the Senate bill, and the following amendment was adopted on motion of Mr. Butler, of Massachusetts:

> And it is a condition of this act that the President of the United States may consider petitions of claimants whose claims were rejected by the Commissioners or umpire or whose claims from any cause failed to be presented or considered by the Commissioners or umpire, and provide for a rehearing thereof.

On a rising vote the ayes were 119, noes 28.

A short discussion took place between Messrs. Atkins, Dunnell, Wilson, Eden, Butler, and Calkins. The latter asked if the amendment (of Mr. Wilson, as amended) could be divided. He thought the first part right, but the Butler proposition wrong. The Speaker replying in the negative, Mr. Calkins hoped the amendment would be voted down.

On a rising vote the ayes were 77, noes 55. Mr. Finley called for tellers—ayes 96, noes 55. Messrs. Boyd, Lapham, and Tipton called for the ayes and noes—ayes 117, noes 107; and the bill passed as amended by Messrs. Wilson and Butler.—(*Ib.*, pp. 4155–6.)

The Senate, on motion of Mr. Davis (*Ib.*, p. 4171), non-concurred in

the House amendments. On motion of Mr. Wilson (*Ib.*, p. 4312), the House insisted and asked a conference.

The Senate, on motion of Mr. Davis, agreed to a conference, and appointed Messrs. Davis, Thurman, and Blaine. (*Ib.*, p. 4479.) The Speaker appointed Messrs. Wilson, Chalmers, and Banks as House conferees.

The bill remained some days in conference, when the fifth section was drafted as it finally passed in the act of June 18, 1878:

SEC. 5. And whereas the Government of Mexico has called the attention of the Government of the United States to the claims hereinafter named, with a view to a rehearing; therefore be it enacted that the President of the United States be, and he is hereby, requested to investigate any charges of fraud presented by the Mexican Government as to the cases hereinafter named, and if he shall be of the opinion that the honor of the United States, the principles of public law, or considerations of justice and equity require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be opened and the cases retried, it shall be lawful for him to withhold payment of said awards, or either of them, until such case or cases shall be retried and decided in such manner as the Governments of the United States and Mexico may agree, or until Congress shall otherwise direct; and in case of such retrial and decision, any moneys paid or to be paid by the Republic of Mexico in respect of said awards, respectively, shall be held to abide the event, and shall be disposed of accordingly; and the said present awards shall be set aside, modified, or affirmed, as may be determined on such retrial: *Provided*, That nothing herein shall be construed as an expression of any opinion of Congress in respect to the character of said claims, or either of them.

This amendment and the conference report were promptly agreed to in the Senate.

On the 17th of June Mr. Wilson presented the report in the House and yielded to Mr. Butler. The former opposed the adoption of the conference report because it did not provide for rejected American claims, but his motion was lost.

On the 20th of June Señor Zamacona addressed a note to the State Department referring to the previous correspondence and to the action of Congress. He said that Mexico, in view of her obvious interest in the matter, could not be less anxious than Congress to prevent the triumph of a culpable speculation, carried on under the protection of an international arbitration.

The State Department, under date of January 24, had promised, in the event of the passage of such a bill, to give due weight to the suggestions of Mexico. The passage of this bill, in itself a monument to the integrity and rectitude of Congress, prompted Mexico to insist on her appeal to the equity and justice of the United States, and to hope that investigation might lead to her release from this heavy tribute to perjury and fraud.

On July 1, 1878, Mr. Evarts replied, alluding to his former note of January 24, and adding:

As the act, as it passed Congress, embraced the provision referred to, I have to request an explicit statement as to what Mexico has to say and expects to prove in regard to each of the cases in question.

On July 25 Mr. Zamacona, in reply, stated the character and effect of the newly-discovered evidence, and added that other testimony, which would not be given voluntarily, could be secured at a judicial trial. The note also alluded to the claim of Mexico; that the umpire, in his award for the value of the ores in the Abra case, had exceeded his powers and gone beyond the matter submitted to him.

On August 17 Mr. Evarts said in reply:

The attention of the Department at present must be necessarily confined to the consideration of such proofs as Mexico is prepared to submit to its examination, and

as may show, or tend to show, that these awards, or either of them, should not be held conclusive between the two Governments, as is provided by the terms of the convention under which they were made. * * * I must, therefore, desire that your Government should, in the first instance, and as completely as possible, lay before me the evidence in these cases, to which you refer in your note, as obtained since the umpire of the Commission to which they were submitted decided the two cases in question, and which, as you also state, will prove the fraudulent character of the two claims aforesaid, by means of original books, documents, and letters of the claimants, as likewise by the depositions of credible witnesses. You will, I cannot doubt, at the same time see the importance of exhibiting, on the part of Mexico, both the reasons why the proofs now to be brought forward were not adduced at the trials before the Commission, and the grounds of assurance that, upon any renewed examination of the cases, these proofs would be accessible in a form to satisfy judicial requirements as to certainty and verity.

On September 25 Mr. Zamacona responded that some delay would be necessary in order to put the proofs in shape for convenient examination by the Department. While Mexico considered the awards of the umpire as unwarranted by the proofs before it, she would not criticise them unnecessarily, but only so much as might be necessary to show the bearing of the new proofs. The note concluded:

The undersigned, who has always bowed with respect to the convention of July, 1868, and to the decisions of the Commission created by that convention, believes himself excused from touching upon the finality of these decisions, since all that is important, in the present stage of the correspondence, is that the Department considers itself authorized, as stated in its notes, by the act of Congress, not only to suspend payment to the claimants referred to, but also to agree with my Government, sufficient grounds being shown, upon a new investigation, which eventually may release Mexico from responsibility in the two cases. This spirit, which does so much honor to the Government of the United States, and which accords with that manifested by the umpire after the announcement of his decision in the claims of Weil and La Abra, relieves the undersigned from the necessity of alluding to its effect, from a legal point of view, of the finality of the two decisions cited.

Further correspondence passed, asking and granting permission for the counsel of Mexico to inspect the papers on file in the Department.

On December 11 the proofs in the Weil case were transmitted to the Department, and in January, 1879, those in La Abra case. To these latter were added sundry documents subsequently received.

A printed volume of 182 pages, exhibited in parallel columns, and under the several heads of the two claims, all material parts of the proofs on which the claims had been allowed, and the newly-discovered evidence; also, in full, the half dozen material affidavits on which the award in the Weil claim had been made.

An introduction of fifteen printed pages was prefixed to this volume, containing a history of the two claims as they stood before the Commission (hereinbefore shown); also setting forth the considerations which induced Mexico to believe that the United States would not insist upon the payment of the claims if shown to be fraudulent; and, lastly, giving a brief analysis of the newly-discovered evidence.

On the 8th of May, 1878, counsel for Mexico and for the claimants were notified that the Secretary of State would hear argument in the Abra case on the 10th of that month. At this hearing no attempt was made to rebut the proofs filed by Mexico. The claimant rested its case upon the award and the "vested rights" acquired under it. The hearing was concluded May 17.

Argument was heard in the Weil case a few days later, the claimant taking the same ground as in the Abra case.

On the 8th August, 1879, the Secretary reported to the President his conclusions on the questions submitted to him, as follows:

First. I am of opinion that, as between the United States and Mexico, the latter Government has no right to complain of the conduct of these claims before the tribunal of

Commissioners and umpire provided by the convention or of the judgments given thereupon, so far as the integrity of the tribunal is concerned, the regularity of the proceedings, the full opportunity, in time and after notice, to meet the case of the respective claimants, and the free and deliberate choice exercised by Mexico as to the methods, the measure, and the means of the defense against the same.

I conclude, therefore, that neither the principles of public law nor consideration of justice or equity require or permit as between the United States and Mexico that the awards in these cases should be opened and the cases retried before a new international tribunal, or under any new convention or negotiation respecting the same between the United States and Mexico.

Second. I am, however, of opinion that the matters brought to the attention of this Government on the part of Mexico do bring into grave doubt the substantial integrity of the claim of Benjamin Weil, and the sincerity of the evidence as to the measure of damages insisted upon and accorded in the case of La Abra Silver Mining Company, and that the honor of the United States does require that these two cases should be further investigated by the United States to ascertain whether this Government has been made the means of enforcing against a friendly power claims of our citizens based upon or exaggerated by fraud.

If such further investigation should remove the doubts which have been fairly raised upon the representations of Mexico, the honor of the United States will have been completely maintained. If, on the other hand, shall fail in removing these doubts, or they should be replaced by certain condemnation, the honor of the United States will be vindicated by such measures as may then be dictated.

Third. The executive government is not furnished with the means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses. The authority for such an investigation must proceed from Congress. I would advise, therefore, that the proofs and the conclusions you shall come to thereon, if adverse to the immediate payment on these awards of the installments received from Mexico, be laid before Congress for the exercise of their plenary authority in the matter.

Fourth. It may be that, as the main imputation in the case of the La Abra Silver Mining Company is of fraudulent exaggeration of the claim in its measure of damages, it may consist with a proper reservation of further investigation in this case to make the distribution of the installment in hand.

I have this subordinate consideration still under examination, and should you entertain this distinction, will submit my further conclusions on this point.

This decision, approved by the President, was communicated to the Mexican minister and to counsel on the 20th of August.

August 25 the minister addressed a note to the Secretary, stating that he must repeat the opinion frequently expressed by his Government, that the interests of equity and justice, as well as the honor of the United States, were affected by the questions raised in the two claims. The minister also protested against the statement that the charge in the Abra case was of mere exaggeration of damages; alleged that the charge and the proofs in support of it went to the root of the claim, *i. e.*, that the abandonment of the mines by the company was voluntary and not compelled by Mexico; and further suggested that even if Mr. Evarts's statement was correct, that the question was one merely of damages, "fraudulently exaggerated," the interests of justice would not be served by paying over to the persons suspected of such fraud a large sum of money to aid them in recovering the balance and preventing investigation into their fraudulent practices.

Counsel for Mexico also filed a brief, taking the same ground, citing the correspondence and previous arguments to show the charge, and the proofs to show the facts, and contending that unless it was held that a part was greater than the whole it could not be held that "the main imputation" was of fraudulent exaggeration of damages. No answer was ever made to the points raised in the note of the minister, but on the 6th of September Mr. Evarts communicated to him and to counsel a supplementary decision, as follows:

The parties in the case of the La Abra Silver Mining Company having desired from you a further consideration of the point raised in my former statement to you of my

views in that case, and the matter having been referred to me to that end, I respectfully submit my conclusion on that point.

1. Upon a renewed examination of the matter as laid before me by the Mexican Government, I am confirmed in the opinion that the proper limits of the further consideration which the honor of the Government should prompt it to give to this award should confine the investigation to the question of a fraudulent exaggeration of the claim by the parties before the Commission, to which, under the provision of the convention, it was presented by this Government.

2. Upon a careful estimate as to any probable or just reduction of the claim from further investigation, should Congress institute it, and under a sense of the obligation of the Executive Government to avoid any present deprivation of right which does not seem necessary to ultimate results, I am of opinion that its distributive share of the installments thus far received from Mexico may properly be paid to the claimant, reserving the question as to later installments.

If this conclusion should receive your approval, the payment can be made upon the verification at the Department of State of the rightful parties to receive it.

Mr. Evarts being then at Windsor, Vt., counsel for Mexico called at the Department of State to ascertain whether the brief and the note of Mr. Zamacona had been before the Secretary at the date of his last decision; and ascertained they had not been forwarded to him, and that the note had not been even translated.

September 9 the counsel filed a motion for reconsideration of this second decision of the Secretary.

September 13 Mr. Zamacona addressed a further note to the Secretary, deploring the position taken by him in the second decision.

No notice was taken of the note of the minister, except a verbal promise to make a satisfactory answer, or of the motion of counsel, and the money was paid immediately upon the Secretary's return to Washington.

The two decisions of the Secretary were published at the time they were made. But, notwithstanding that they called for action of Congress, they were not communicated to that body until April 16, 1880, in response to a Senate resolution of February 27 (Sen. Ex. Doc. No. 130, second session Forty-sixth Congress.

This document (in addition to a statement of the decisions published eight months before) contained new matter in which the erroneous statement of the Abra case was repeated, with the phraseology slightly changed, as follows:

> The *most impressive* complaint of the Mexican Government in the La Abra case bore upon the award of damages as fraudulently exaggerated.

In reply to that part of the Senate resolution inquiring the "grounds" of the Secretary's action, the paper proceeds at some length to state the "grounds" on which the Secretary declined to do what he did not do, *i. e.*, reopen the cases diplomatically, and these grounds were stated so strongly as to amount to an argument against any investigation whatever.

Again, in this part of the paper, the declination of the Mexican Commissioner to allow evidence in the Weil case to be filed was so stated as to lead to the inference that the evidence which Mexico had at the trial was part of or of the same tenor as the newly-discovered evidence on which she asked a review of the claim, whereas the files of the Commission showed that the old evidence, although the best she could then secure, was, as above stated, of a purely negative character and unimportant.

While the recommendation for an investigation was repeated, no allusion was made to the character of the proofs, and they were not furnished to Congress as proposed by the Secretary in August, 1879. Not only were the "grounds" of his recommendation for an investigation withheld from Congress, but the question of whether "the honor

of the United States" required such investigation, once decided by the Secretary in the affirmative, was reopened and remitted to Congress without any light to guide its decision.

The paper closed with the intimation, at the heels of a busy session, that unless Congress *shall now* make this disposition of the matter and furnish thereby definite instructions to the Department to reserve further payments upon these awards till the conclusion of such investigation, and to take such further order with the same thereafter as Congress might direct, it would appear to be the duty of the Executive to accept these awards as no longer open to reconsideration, and proceed in the payment *pro rata* with all other awards under the convention.

The message transmitting the above paper was referred to the Committee on Foreign Relations of the Senate.

On the 27th April Senator Morgan introduced a bill (S. 1682) directing the Court of Claims to investigate the part of the two claims, and requesting the President to act upon finding of that court by notifying Mexico that the United States release her from the whole or part of one or both of its claims or insist upon their payment in accordance with the finding.

This bill was referred to the Committee on the Judiciary, and in that committee to a subcommittee, of which Mr. McDonald was chairman.

On the 9th of June, Mr. Cox, from the House Committee on Foreign Affairs, reported a bill similar to the one introduced in the Senate by Mr. Morgan (H. R. 6452), with a report (H. R. 1702) in which the committee alluded to the facts that the proofs had not been furnished to Congress, and said that they did not before know the grounds on which the Secretary based his "estimate as to any probable or just reduction of the claim (La Abra) from further investigation," but that these grounds would doubtless go to the court to which the investigation was committed by the bill.

The report added:

> The President having recommended a method of investigation and practical opening of the awards upon which it is not necessary that the United States and Mexico should urge payment of the money to the claimants is necessarily suspended until Congress shall *otherwise* direct.

This bill and report was subsequently recommitted in order to give the claimants a hearing. The hearing was interrupted by the adjournment of Congress.

June 10, 1880, Mr. McDonald made a report from the Judiciary Committee of the Senate (S. Rep. 712).

This report stated that the object of the act of 1878 was only to relieve the Executive from the absolute obligation to pay over the award and to leave him free to investigate the claims or not as he might choose. In this respect the report completely reversed the former attitude of the committee, as shown in the "mandatory" bill reported in 1878 by Mr. Davis, in lieu of the "permissive" bill of the House committee of the same year (supra).

The report further stated that the object of the act of 1878 was to have rejected claims inquired into. In this respect it contradicted the action of both Houses, which persistently refused in 1878 to enact the Butler amendment on that subject.

The report further adopted the erroneous statement of Secretary Evarts as to the principal ground of complaint in the Abra case and his misleading statement with regard to the refusal of the Mexican Commissioner to file evidence in the Weil case.

But the most important statement of the report was that the Presi-

dent had not come to any definite conclusions on the questions submitted to him by the act of 1878. The report was adverse to the passage of the bill (S. 1682), and it was indefinitely postponed.

Notwithstanding the report of the House committee, it became evident soon after the adjournment of Congress that the money then in the hands of the Secretary, being four installments of the Weil claim and one installment of the Abra claim, in all about $180,000, would be paid to the claimants.

Counsel for Mexico then consulted with Hon. M. H. Carpenter as to the jurisdiction of the courts in the matter. Mr. Carpenter, after careful examination of the question, gave a strong opinion in favor of the jurisdiction, and was retained to draw up bills in equity, similar to those filed by the United States in the Gardiner case, praying for an injunction (against the claimants), the appointment of a receiver to receive from the Government present and future installments, and a decree declaring the awards to have been obtained by fraud and perjury, and to be absolutely void, and ordering the receiver to pay the moneys to Mexico.

On the 2d of August counsel waited upon the Secretary of State, in company with Mr. Romero, second secretary of the Mexican legation, who presented a note from Mr. Navarro, consul-general of Mexico in New York and chargé d'affaires, informing the Secretary of the proposed suits.

Mr. Carpenter informed Mr. Evarts that upon careful examination he was satisfied that the bills could be maintained, and asked the Secretary to suspend the payment and to furnish the names of all the parties shown by the Department records to be interested in the claims, in order that they might be properly joined as defendants, together with copies of certain proofs, &c., which it would be necessary to append to the bills as exhibits.

Mr. Evarts, in reply, gave a detailed history of the matter, and explained the views which he said he and the President held as to the discretion of the Executive. He said that they interpreted the report of the Judiciary Committee and the action of the Senate on the Morgan bill as concluding the question and as notifying the Executive that if it declined to reopen the awards by diplomatic negotiation Congress would not reopen them at all. He made no allusion to the report of the House committee, but said that in view of the new phase that the question had assumed he would consult the President and advise counsel of his decision.

August 4 the counsel for Mexico again called upon the Secretary, and were advised by him that upon consultation with the President it had been agreed that the payment of the money should be suspended to await the completion of the bills and the order of the court upon the prayers for injunction; also to furnish copies of the papers required as exhibits to the bills. With regard to the names of the defendants, Mr. Evarts said it had been decided to consider the question of furnishing them only upon the diplomatic request of Mexico, inasmuch as it was against the rule and practice of the Department to furnish such information except to parties interested in the fund.

On the same day Mr. Evarts addressed a note to the chargés d'affaires, conveying the same information, but adding that while the courts of the United States were open to all, the Secretary could not but regard the proposed action of Mexico as a departure from the line of policy heretofore indicated in the diplomatic correspondence and as in contravention of the articles of the convention with regard to the finality

and conclusiveness of the awards of the Commission. It was possible, he added, that the proposition to bring the suits was not made in pursuance of express instructions from the Mexican Government, but was thought by the chargé d'affaires to be in accordance with the line of action heretofore "permitted" by the Government to its minister in relation to the two claims. In that case, the Secretary continued, the affair would present a much less "serious" aspect.

Upon receiving this note it was decided that the suits should be postponed until the Government at Mexico should have time to consider Mr. Evarts' objections. A note was prepared, in reply to the Secretary, in which the nature of the stipulations of the treaty was discussed, together with the question of jurisdiction of the courts, reference being made to the Gardiner case; to the case of Mexico *vs.* de Arangoir (5 Davis, N. Y. Reports); to the case of Phelps *vs.* McDonald (98 United States Supreme Court Reports), &c.

If the finality clause of the convention precluded Mexico from seeking relief in the courts, the note argued that the courts would so decide, and no harm would be done. But the Secretary, who had himself recommended an investigation of the claims, and that such an investigation should be of a judicial character, ought not to complain if Mexico sought to give practical effect to his recommendation. The recommendation of the Secretary was tantamount to saying that the judicial tribunals were the "proper authorities" to conduct such an investigation. Mexico, in her previous correspondence, had announced that she reserved "her right to show at some future time, and before the proper authority of the United States," that the claims were fraudulent, and the proposed suits were in perfect accordance with that declaration. Whatever the result of the suits might be, it would not impair the obligation under the treaty to pay to the United States the amount of the awards, which obligation she would continue to discharge until released therefrom by the United States Government. The Secretary was reminded that his Government had a greater interest than that of Mexico in pursuing the investigation, since, in his opinion, "the honor of the United States" was concerned, whereas the interest of Mexico, aside from that which she (in common with other nations) must feel in purifying and bettering international arbitrations, was merely pecuniary. While, therefore, the legation regarded Mr. Evarts' objections as unfounded, it was thought proper to present them to the Government of Mexico and to await further instructions before exhibiting the bills in court; and inasmuch as the Secretary had conceded the propriety of suspending payment until the bills were in shape for filing, he would doubtless concede the propriety of further suspending payment until the Mexican Government should have an opportunity of considering his objections and instructing the legation.

The above note, in English and Spanish, was mailed from New York on August 13.

On Wednesday, August 18, counsel was privately informed that the money in the Weil case had been paid. On going to the Department they learned from Mr. Hay, Acting Secretary, that such was the fact.

Mr. Hay said that "the two weeks allowed Mexico to file her bills having expired without action on her part, the Secretary had no further discretion in the matter, and the President having directed the payment it had been made in both claims on Monday, the 16th." Mr. Hay added, that almost immediately *after* the payment the Department had received the note of the Mexican legation on the subject.

This declaration was a surprise to the representative of Mexico, since

neither in conversation nor in the note of the 4th August to the legation had the Secretary specified any time in which Mexico must be ready to bring her suits. The Secretary had also promised to furnish copies of papers necessary to append to the bills, and the papers needed were indicated on the 4th of August. On inquiring, after leaving Mr. Hay on the 18th August, whether the copies were ready, counsel was told that they had not been commenced. The copies were not delivered until Saturday, the 11th of September.

As no answer was ever received to the communication sent by Mr. Navarro on the 12th of August, 1880, that gentleman determined to withdraw the proofs of fraud which had been filed in the State Department, and they were accordingly returned to him in October of the same year and are still in this legation.

Near the close of President Hayes's administration Mr. Eaton, Chairman of the Committee on Foreign Relations, offered in the Senate certain resolutions with regard to the suspension of further payments on the Weil and La Abra claims, and inquiring whether any objection had been made to the institution of suits in the United States courts by the Mexican Government against American citizens. The resolutions were considered, but not adopted, owing doubtless to the accumulation of business on the calendars of the Senate (Congressional Record, third session Forty-sixth Congress, volume II, part 1, pp. 1201, 1241, 1290, 1336).

After paying to the Secretary of State the fifth installment of the awards against Mexico, Mr. Navarro, on the 2d of February, 1881, by instruction of his Government, again appealed to Secretary Evarts for a suspension of payment on the two claims.

Mr. Evarts replied on the 5th of the same month that—

> The awards under the Commission organized pursuant to the terms of the convention of July 4, 1868, cannot be reconsidered diplomatically between the two Governments; consequently this administration of the payments to the parties interested in the awards belongs exclusively to the Government of the United States in its obligations to its own citizens. This administration is regarded by the President as requiring the distribution of the awards in these cases upon the same regulations as in all other cases, in the absence of any direction by Congress to the contrary.

In accordance with this decision, the greater part of the fifth installment of the above award was distributed by Mr. Evarts on the 5th of March, 1881.

A succinct statement of the course pursued by Mr. Evarts during the four years that these cases were before him will show that he did not regard in his actions the principles formerly recognized by his Government, and subsequently announced in the decision of the Supreme Court. At first he paid no attention to the representations of Mexico as to the fraud in the claims; and even after Congress took the matter into consideration he deprecated investigation by advising Congress that the motions for rehearing had been denied by the umpire; and that the two awards stood on the same footing of finality on the others; and neglecting to state that the proofs of fraud in one case had been submitted to him in printed form.

When the act of June 18, 1878, was passed, giving him ample authority, he declined to enter into diplomatic negotiations for rehearing the two cases.

Against the remonstrance of Mexico, and, I am constrained to say, against the plain evidence of the facts submitted to him, he insisted that the charges and proofs in La Abra case related only to fraudulent exaggeration of damages.

Contrary to what ought to have been expected, he paid over to the parties who appeared to him guilty of the fraudulent exaggeration a large portion of their claim, leaving the fate of the remainder to be determined by the results of an investigation which he thought he had not the machinery for conducting.

Having decided on the 13th August, 1879, that the honor of the United States required such an investigation in both cases, he afterwards, in April, 1880, reconsidered this decision, and remitted the question to Congress without forwarding to that body the proofs, or even a statement of the proofs, on which he had based his judgment. And he then proposed, if Congress should not, in the few remaining days of its busy session, reach the conclusion at which it had taken him over a year to arrive, to pay over the money without regard to his authority under the act of June 18, 1878, to withhold it "until Congress should otherwise direct."

Congress having failed to act on his demand for new authority, Mexico sought to have the cases investigated by the courts of the United States, to which it was thought the Constitution had given her access. To this course Mr. Evarts strongly objected, on grounds of which the courts themselves would have been competent judges, but at the same time promised to withhold payment of the claims until the suits should be instituted. Notwithstanding this promise, he paid over the moneys to the claimants, with notice to Mexico, and before providing her with the documents he had agreed to furnish as necessary to the commencement of proceedings.

This is the action to which he referred in his last letter to Mr. Navarro of February 5, 1881, as the final determination of the Executive Government. Comment is unnecessary to show that this action is at variance with the declaration of the Supreme Court that in such a case it is "not only the right but the duty" of a Government to repudiate the fraudulent acts of its citizens and to make reparation therefor.

VIII.—Proceedings during General Garfield's Administration.

The distribution of the fifth installment of the Weil award, and of a part of that in the Abra claim, was left by Mr. Evarts to his successor, Secretary Blaine. The payment of the former was made on the 8th of March, 1881, doubtless without the attention of the Secretary being called to the fraud in the case.

Having learned of the existence in the Treasury Department of additional proofs of fraud in the Weil claim, Mr. Zamacona, on the 12th of May, 1881, addressed a note to Mr. Blaine, asking for copies of the documents. Owing, as it is presumed, to the pressure of business in the Department, and the assassination of the President, this communication did not receive prompt consideration.

VIII.—Proceedings during President Arthur's Administration.

On the 9th of December, 1881, Mr. Blaine replied to Mr. Zamacona's note of May 12, inclosing the required papers, which not only show the perjury of Weil's witnesses, as before stated, but also a criminal conspiracy on their part to forge, for their own purposes, letters purporting to have been written by Mr. Mariscal, while he was Mexican minister at Washington. In transmitting these papers Mr. Blaine took occasion to

say that the Government of the United States could have "no less interest than that of Mexico in proving any allegation of fraud whereby the good faith of both in a common transaction may have been imposed upon."

Encouraged by this declaration, Mr. Zamacona replied on the 22d of the same month reviewing the former history of the matter of the two claims, and showing how the proceedings suggested towards the relief of Mexico in the executive, legislative, and judicial departments of the Government had been rendered unavailing. He expressed his unwillingness to suppose "the political mechanism of a country, to which many others turn their eyes as to a model, to lack the means of frustrating a great fraud originated to the detriment of a friendly nation which is sparing no pains to fulfill its obligations toward the United States," and asked that some indication should be given of the steps proper to be taken by both Governments conjointly, or by that of Mexico alone, to accomplish the result in which both Governments, according to Mr. Blaine, had a common interest.

It was left to you, Mr. Secretary, to give due weight to the representations made by Mexico in these unfortunate cases, and to agree with the representative of that neighboring republic in a convention signed on the 13th of July, 1882, for the purpose of rehearing these two cases. In that manner you have vindicated, so far as the executive department of this Government is concerned, the honor of the United States. How honorable and wise your course has been is already shown by the recent decision of the Supreme Court of the United States to which I have so often alluded, a copy of which I take the liberty of inclosing with this letter.

As there has been some hesitation in the ratification by the Senate of the pending convention, I have thought convenient to conclude this letter with an examination of the different objections, as I understand them, which are urged by the claimants against th eratification of the treaty.

IX.—Objections made against the Ratification of the Treaty.

It is now time to answer the objections made by the claimants for the ratification of the pending convention.

These objections have been the following:

First. That the awards made by the late Mixed Commission vested in the claimants a right which cannot be interfered with by the separate action of the United States or by the joint action of Mexico and the United States.

Second. That if this was not enough, the present Executive of the United States had no right to withhold the proceeds of the awards or to negotiate for a retrial of the claims, inasmuch as his predecessor, President Hayes, had decided against such negotiations when it was suggested by Congress, and had paid over the moneys received on said awards during his administration.

Third. That conceding the power of the Governments to interfere with the awards, and the right of the present Executive to negotiate, notwithstanding the action of his predecessor, a convention ought not to be ratified which does not provide (as it is said the pending convention does not) for the rehearing of the American claims which were rejected by the Commission, or for the settlement of others which were not presented to it.

Fourth. That the awards ought not to be opened in favor of Mexico,

because the frauds alleged in the claims are not collateral or extrinsic, but relate only to the honesty of the evidence on which the claims were decided.

Fifth. That a new trial ought not to be had, because of the alleged *laches* of Mexico in not submitting the new evidence at the former trial.

All of these propositions, except the second, have been overruled by the Senate in its legislative capacity, as has already been shown, and all of them, except the third, have been denounced by the Supreme Court, in the opinion delivered January 7, 1884, in the mandamus cases of the Secretary of State of the United States versus Key, and the La Abra Mining Company versus the Secretary of State, brought up by writs of error to the supreme court of the District of Columbia. There are also other reasons why certain of the objections should be held groundless. Examining them in the order above stated, it appears—

1st. That on the 18th of June, 1878, as has already been stated, an act was passed "to provide for the distribution of awards made under the convention between the United States of America and the republic of Mexico, concluded on the 4th day of July, 1868" (20 Statutes, 144). Section 5 of that act is as follows:

And whereas the Government of Mexico has called the attention of the Government of the United States to the claims hereinafter named, with a view to a rehearing, therefore be it enacted, that the President of the United States be, and he is hereby requested to investigate any charges of fraud presented by the Mexican Government as to the cases hereinafter named, and if he shall be of the opinion that the honor of the United States, the principles of public law, or considerations of justice and equity require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be opened and the case retried, it shall be lawful for him to withhold payment of said awards, or either of them, until such case or cases shall be retried and decided in such manner as the Governments of the United States and Mexico may agree, or until Congress shall otherwise direct; and in case of such retrial and decision, any moneys paid or to be paid by the republic of Mexico in respect of said awards, respectively, shall be held to abide the event and shall be disposed of accordingly; and the said present awards shall be set aside, modified, or affirmed, as may be determined at such retrial; provided, that nothing herein shall be construed as an expression of any opinion of Congress in respect to the character of said claims, or either of them.

In agreeing, after full discussion, to the passage of this section, it must be conceded that the Senate deliberately asserted the right of the United States to withhold the money in these awards and to provide, in conjunction with Mexico, for a retrial of the claims. That opinion the Senate, in its treaty-making capacity, is now asked to reverse by rejecting the convention concluded by the President in response to its request. The arguments in support of this proposition and in opposition to the doctrine asserted in the act of 1878 were fully laid before the Supreme Court in the mandamus cases, and overruled in the following language:

As to the right of the United States to treat with Mexico for a retrial, we entertain no doubt. Each Government, when it entered into the compact under which the awards were made, relied on the honor and good faith of the other for protection, as far as possible, against frauds and impositions by the individual claimants. It was for this reason that all claims were excluded from the consideration of the Commission, except such as should be referred by the several Governments, and no evidence in support of or against a claim was to be admitted, except through or by the Governments. The presentation by a citizen of a fraudulent claim or false testimony for reference to the Commission was an imposition on his own Government, and if that Government afterwards discovered that it had in this way been made an instrument of wrong towards a friendly power, it would be not only its right, but its duty, to repudiate the act and make reparation as far as possible for the consequences of its neglect, if any there had been. International arbitration must always proceed on the highest principles of honor and integrity. Claims presented and evidence submitted to such a tribunal must necessarily bear the impress of the entire good faith of the

Government from which they come, and it is not to be presumed that any Government will for a moment allow itself knowingly to be made the instrument of wrong in any such proceeding. *No technical rules of pleading, as applied in municipal courts, ought ever to be allowed to stand in the way of the national power to do what is right under the circumstances.* Every citizen who asks the intervention of his Government against another for the redress of his personal grievances must necessarily subject himself and his claim to these requirements of international comity. None of the cases cited by counsel are in opposition to this. They all relate to the disposition to be made of the proceeds of international awards after they have passed beyond the reach of the Governments and into the hands of private parties.

* * * * * * *

The United States, when they assumed the responsibility of presenting the claims of their citizens to Mexico for payment, entered into no contract obligations with the claimants to assume their frauds and collect on their account all that, by their imposition of false testimony, might be given in the awards of the Commission. As between the United States and the claimants, the honesty of the claim is always open to inquiry for the purposes of fair dealing with the Government against which, through the United States, a claim has been made.

So in this case the three branches of the Government of the United States, the legislative, executive, and judicial, have declared themselves in a formal and official manner against the objection made by the claimants, and it is not, therefore, necessary to discuss this point any further.

2d. On the point of the second objection raised by the claimants, which was also presented to the Supreme Court in the cases referred to, that court said that the act of 1878 did not "undertake to set any new limits on the powers of the Executive." The fifth section from the beginning to the end is, in form even, only a request from Congress to the Executive. This is far from making the President for the time being a *quasi* judicial tribunal to hear Mexico and the implicated claimants, and determine once for all, as between them, whether the charges which Mexico makes have been judicially established. In our opinion it would have been just as competent for President Hayes to have instituted the same inquiry without this request as with it, and his action with the statute in force is no more binding on his successor than it would have been without it." * * *

It is, in our opinion, clearly within the discretion of the President to withhold all further payments to the relators until the diplomatic negotiations between the two Governments on the subject are fully concluded.

This opinion entirely disposes of the second objection made against the pending treaty.

3d. The third objection made by the claimants, in the order given above, is that it would be unjust to provide for the rehearing of these two claims without at the same time reopening all rejected claims against Mexico, and providing for the settlement of claims which were not presented to the late Commission.

It is not suggested that any awards made to Mexicans on claims against the United States are tainted with fraud and ought to be reopened. If it were, that would doubtless be a proper subject of inquiry with a view to the amendment of the pending convention. But the proposition is that the United States should say to Mexico:

We will grant a new trial of these two claims, against which two of our Presidents have found that you have made a *prima facie* case of fraud, if you will consent to reopen the 812 claims of Americans, aggregating $466,000,000, which were disallowed by the Commission, and which nobody in authority has since re-examined and pronounced to have been wrongfully rejected. In addition to this you are to let in all claims which were not presented to the old Commission, or which have accrued since it expired. But there is to be no reopening of rejected claims of Mexican citizens against the United States, and no hearing of claims of Mexican citizens which were not presented to the old Commission, or which have accrued since it expired.

This proposition is not a new one. As it has already been stated in this letter, during the passage of the act of 1878 it was presented to the House of Representatives by Mr. Butler, of Massachusetts, in the following words:

> And it is a condition of this act that the President of the United States may consider petitions of claimants whose claims were rejected by the Commissioners or umpire, or whose claims, from any cause, failed to be presented or considered by the said Commissioners or umpire, and provide for a rehearing thereof. (Congressional Record, vol. 7, Part IV, pp. 455–6.)

The vote being taken without debate (according to a parliamentary agreement made some days before) this amendment was incorporated in the bill as it passed the House; but it was voted out by the Senate and thus finally disposed of.

If the mere statement of the proposition were not sufficient argument against it, the former action of the Senate upon it would seem to preclude its present consideration. If the claim of any citizen of either country was wrongly rejected by the old Commission, it is to be presumed that the Government against which it was made will give him a hearing without this sort of coercion by the other Government. Mexico has done this in several cases, and has voluntarily settled claims (like that of General Lew Wallace) which were thrown out by the Commission.

This objection is so ungrounded that it is enough to state it to see its injustice, and that its only object has been to defeat before the passage of the bill of 1878, and now the ratification of the pending treaty.

But if the provisions of the pending convention shall appear to be lacking in reciprocity, it is easy to show that they only fulfill a long standing promise of the United States, founded in what would be considered, even in commercial circles, as a valuable consideration.

I deem it unnecessary to repeat here what I have stated at length in the beginning of this letter about the Gardner case, and about what the Mexican Government did then to aid the United States in proving the fraud of that claim, and what manifestations were then made to Mexico by the official representatives of the United States.

4th. To support the fourth objection to the pending convention, it is necessary to regard it as a proceeding in the nature of a bill of review, with which the Senate is to deal according to the rules governing municipal courts, instead of according to those requirements of "the honor of the United States," which the act of 1878 laid down as a guide for the Executive, and those high principles of international comity on which the Supreme Court bases its decisions.

From this point of view it is urged that the frauds alleged in the two claims relate only to the honesty of the evidence, and not to the conduct of the Commissioners or to other matters not in issue at the former trial; and that upon established principles a court of equity would dismiss a bill having only such a foundation. For this rule reliance is mainly placed on the opinion of the Supreme Court in the case of United States *vs.* Throckmorton (98 U. S. R., 61), in which it is said:

> We think that the acts for which a court of equity will, on account of fraud, set aside or annul a judgment or decree between the same parties, rendered by a court of competent jurisdiction, have relation to frauds extrinsic or collateral to the matter tried by the first court, and not a fraud in the matter on which the decree was rendered.

That the Senate did not intend a rule of this kind to be applied to these cases is apparent from the fact that the precise nature of the frauds alleged was known to the Senate through its Judiciary Committee, when it concurred in the passage of the act of 1878.

That such a rule ought not to be applied to the awards of international commissions is announced by the Supreme Court, at its present term, in the words of its opinion in the *mandamus* cases above quoted, in italics.

No technical rules of pleading, as applied in municipal courts, ought ever to be allowed to stand in the way of the national power to do what is right under the circumstances.

But that such a rule is in no sense applicable to these cases will most clearly appear from a further reading of the opinion in the Throckmorton case itself. Giving a reason for the rule, the court there said (p. 65):

If the court has been mistaken in the law, there is a remedy *by writ of error*. If the jury has been mistaken in the facts, there is the same remedy *by motion for a new trial*. If there has been evidence discovered since the trial, a *motion for a new trial* will give appropriate relief.

The Mixed Commission which tried these cases was not a court nor a jury within the meaning of the above rule. It could not compel the examination of witnesses, or the production of papers, or punish for perjury or contempt. It had none of the powers or machinery the possession of which gives such a weight to the findings of regular courts of justice.

There was no remedy by motion for a new trial for the mistakes of fact which it committed. There was no relief by motion for a new trial when the new evidence was discovered. The motions for a new trial were promptly made, as soon as the awards were rendered; but they were denied by the umpire at the close of the Commission, on the ground that the Commission of 1868 debarred him from rehearing cases he had once decided. The only relief he could suggest was in the opinion that—

Neither Government would accept the payment of claims shown to be founded on perjury;

And that—

If perjury should be proved thereafter, no one would be happier than the umpire himself that his decision should be reversed, and that justice should be done. (See umpire's declaration of October 20, 1876.)

If, therefore, the rules of law as applied by municipal courts could be invoked, it is clear that the only rules applicable are those which relate to the granting of new trials, since the application of Mexico, which has resulted in the pending convention, is only a continuation of the motion which the umpire had no power to grant.

From an examination of the cases, as considered heretofore under the proper heads, it will be seen that the new evidence possesses all the requisites for the granting of such a motion. In the Abra case it is not cumulative, according to the rule well expressed in Guyot *vs.* Butts (4 Wend. R., 579), and followed in St. John's Executors *vs.* Alderson (32 Grattan, 140), for it relates to a number of facts dissimilar in kind to those on which proof was taken at the former trial, though they may all tend to establish the same proposition. And even if it were cumulative, it is so strong as to come within the exceptions laid down by Mr. Hilliard when he says that a court "ought not to shut their eyes to injustice on account of the facility of abuse" if the evidence "is conclusive," and "renders clear that which was before a doubtful case." Moreover, it comes within the special rule laid down in Warren *vs.* Hope (6 Greenl., 479), when it is said that a new trial will be granted—

Where the newly-discovered evidence relates to confessions or declarations of the other party respecting a material fact, and inconsistent with the evidence adduced by

such party at the trial, or when such newly-discovered evidence was placed beyond the knowledge or control of the petitioner by means of the other party, with a view to prejudice the petitioner's case.

But mistake of fact by the permission and the discovery of new evidence are not the only grounds on which the motions for new trial in these claims ought to be granted. As will appear from the preceding statement of the cases, there were three distinct grounds of law on which Weil's petition ought to have been dismissed, viz:

1st. That the claimant was confessedly engaged in contraband trade between the Confederate States and Mexico, and that any interference with such trade by the latter was a benefit to the United States rather than an injury for which they could claim damages.

2d. That the cotton train alleged to have been seized was admitted to have been smuggled into Mexico, and was liable to confiscation under the Mexican customs laws; and,

3d. That its alleged destination was a point within the lines of the Imperialist army, and that it was, therefore, subject to seizure under the laws of war.

And in the Abra case it was alleged in the motion for a new trial not only that the evidence was fabricated, but also that the umpire had exceeded his powers in awarding a sum larger, by over $100,000, than that in dispute between the two Commissioners.

This point was not considered, either by the umpire in denying the motion for a new trial, or by Mr. Secretary Evarts in the report which he made to the President on the subject. But, with a singular misapprehension (against which Mexico, as is shown by the diplomatic correspondence, most strongly protested), Mr. Evarts did report that the main charge in this case, as exhibited by the new evidence, related only to fraud in the exaggeration of damages; and he therefore paid out a large portion of the money (about $139,000) before referring the case back to Congress for instructions as to the remainder.

5th. The fifth objection, viz, that of *laches* on the part of Mexico, might well be disposed of by again citing the action of the Senate in passing the act of 1878 in spite of such objection, and the opinion of the Supreme Court in the mandamus cases on the non-applicability of the rules of municipal law to cases of this kind. But, aside from this, the objection is not well founded. There was no *laches* on the part of Mexico at the trial of either of the claims.

In the Abra case she made a vigorous defense, and a careful examination of the evidence will convince a lawyer (which the umpire, unfortunately, was not) that he erred in giving the preponderance of evidence to the claimant.

The Weil case would have been dismissed by any municipal court, both on the law and for the insufficiency and contradictory character of the claimant's proofs. But the accusation is made, and great stress laid on it, that Mexico had at the trial certain proofs which Commissioner Zamacona would not allow to be filed and rebutted by the claimant.

If this was a mistake on Mr. Zamacona's part it was the mistake of a judge, of which Mexico herself would be entitled to complain, and not the *laches* of a defendant. But even if a sworn arbitrator be regarded as representing only the country of which he is a citizen, it is not difficult to show that there was no mistake which should prejudice the application for a new trial.

X.—Conclusion.

I have thought that this long exposition of the history of these two cases was not only proper, but necessary, to clearly exhibit how the interests of Mexico and the United States are affected by the present position of the matter. It has been declared that the honor of the United States was concerned in these two cases which had been prosecuted under its patronage. The pecuniary interest of Mexico in the retrial of these cases has never been the principal motive for the appeal which it has, through so many years, made to the Government of the United States. Beyond the special benefits to be derived by each Government from the rehearing of these particular cases, there is a higher moral advantage to be gained. Speculation in private international claims, which has unfortunately become somewhat prevalent, should be discouraged, and the resort to arbitration in such cases promoted by a declaration that Governments will not allow that speculation to triumph, no matter at what stage of its success it may have to be arrested.

Such a declaration, made on the high authority of the United States, may very properly precede the improvement so much needed in the defective methods hitherto employed in those arbitrations. Without such a declaration it is to be feared that the tendency of nations to refer their differences to arbitration will be hindered, since it is not likely that a government will submit to the risk of having an award against it held final and conclusive when it is founded on such fraud or mistake as would clearly entitle a litigant in an ordinary court to retrial.

I avail myself of this opportunity to renew to you, Mr. Secretary, the assurances of my highest consideration.

M. ROMERO.

Hon. Frederick T. Frelinghuysen.

No. 101.

Frederick T. Frelinghuysen, Secretary of State, plaintiff in error, *vs.* The United States, ex rel. John J. Key.	891.
The United States, ex rel. La Abra Silver Mining Company, plaintiff in error, *vs.* Frederick T. Frelinghuysen, Secretary of State.	995.

In error to the supreme court of the District of Columbia.

Mr. Chief Justice Waite delivered the opinion of the court on the 7th of January, 1884.

The facts on which these cases depend are as follows:

On the 14th of July, 1868, a convention between the United States and the republic of Mexico, providing for the adjustment of the claims of citizens of either country against the other, was concluded, and on the 1st of February, 1869, proclaimed by the President of the United States, by and with the advice and consent of the Senate. By this convention (Art. 1) "all claims on the part of corporations, companies, or

private individuals, citizens of the United States, upon the Government of the Mexican Republic, arising from injuries to their persons or property by authorities of the Mexican Republic, and all claims on the part of corporations, companies, or private individuals, citizens of the Mexican Republic, upon the Government of the United States, arising from injuries to their persons or property by authorities of the United States, which may have been presented to either Government for its interposition with the other since the signature of the treaty of Guadalupe Hidalgo, * * * and which remain unsettled, as well as any other such claims which may be presented within" a specified time, were to "be referred to two Commissioners, one to be appointed by the President of the United States, by and with the advice and consent of the Senate, and one by the President of the Mexican Republic." Provision was then made for the appointment of an umpire. Arts. II, IV, and V are as follows:

ART. II. The Commissioners shall then conjointly proceed to the investigation and decision of the claims which shall be presented to their notice, * * * but upon such evidence or information only as shall be furnished by or on behalf of their respective Governments. They shall be bound to receive and peruse all written documents or statements which may be presented to them by or on behalf of their respective Governments in support of or in answer to any claim, and to hear, if required, one person on each side on behalf of each Government on each and every separate claim. Should they fail to agree in opinion upon any individual claim, they shall call to their assistance the umpire; * * * and such umpire, after having examined the evidence adduced for and against the claim, and after having heard, if required, one person on each side, as aforesaid, and consulted with the Commissioners, shall decide thereupon finally and without appeal. * * * It shall be competent for each Government to name one person to attend the Commissioners as agent on its behalf, to present and support claims on its behalf, and to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision thereof. The President of the United States * * * and the President of the Mexican Republic hereby solemnly and sincerely engage to consider the decision of the Commissioners conjointly, or of the umpire, as the case may be, as absolutely final and conclusive upon each claim decided upon by them or him respectively, and to give full effect to such decision without any objection, evasion, or delay whatsoever. * * *

ART. IV. When decisions shall have been made by the Commissioners and the arbiter in every case which shall have been laid before them, the total amount awarded in all the cases decided in favor of the citizens of the one party shall be deducted from the total amount awarded to the citizens of the other party, and the balance, to the amount of $300,000, shall be paid at the city of Mexico or at the city of Washington, * * * within twelve months from the close of the Commission, to the Government in favor of whose citizens the greater amount may have been awarded, without interest. * * * The residue of the said balance shall be paid in annual installments to an amount not exceeding $300,000 * * * in any one year until the whole shall have been paid.

ART. V. The high contracting parties agree to consider the result of the proceedings of this Commission as a full, perfect, and final settlement of every claim upon either Government arising out of any transaction of a date prior to the exchange of the ratifications of the present convention; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said Commission, shall, from and after the conclusion of the proceedings of the said Commission, be considered and treated as finally settled, barred, and thenceforth inadmissible. (15 Stat., 679.)

Under this convention Commissioners were appointed who entered on the performance of their duties. Benjamin Weil and the La Abra Silver Mining Company, citizens of the United States, presented to their Government certain claims against Mexico. These claims were referred to the Commissioners and finally resulted in an award on the 1st of October, 1875, in favor of Weil and against Mexico for $489,810.68, and on the 27th of December, 1875, in favor of La Abra Silver Mining Company for $683,041.32. On the adjustment of balances under the provis-

ions of Art. IV of the convention, it was found that the awards against Mexico exceeded largely those against the United States, and the Government of Mexico has promptly and in good faith met its annual payments, though it seems from the beginning to have desired a re-examination of the Weil and La Abra claims.

On the 18th of June, 1878, Congress passed an act (c. 262, 20 Stat., 144), secs. 1 and 5 of which are as follows:

SEC. 1. That the Secretary of State be, and he is hereby, authorized and required to receive any and all moneys which may be paid by the Mexican Republic under and in pursuance of the convention between the United States and the Mexican Republic for the adjustment of claims: * * * and, whenever and as often as any installments shall have been paid by the Mexican Republic on account of said awards, to distribute the money so received in ratable proportions among the corporations, companies, or private individuals respectively, in whose favor awards have been made by said Commissioners, or by the umpire, or to their legal representatives or assigns, except as in this act otherwise limited or provided, according to the proportion which their respective awards shall bear to the whole amount of such moneys then held by him, and to pay the same, without other charge or deduction than as hereinafter provided, to the parties respectively entitled thereto. * * *

SEC. 5. "And whereas the Government of Mexico has called the attention of the Government of the United States to the claims hereinafter named with a view to a rehearing, therefore be it enacted that the President of the United [States] be, and he is hereby, requested to investigate any charges of fraud presented by the Mexican Government as to the cases hereinafter named, and if he shall be of the opinion that the honor of the United States, the principles of public law or considerations of justice and equity require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company or either of them should be opened and the cases retried, it shall be lawful for him to withhold payment of said awards or either of them until such case or cases shall be retried and decided in such manner as the Governments of the United States and Mexico shall agree, or until Congress shall otherwise direct. And in case of such retrial and decision, any moneys paid or to be paid by the Republic of Mexico in respect of said awards respectively shall be held to abide the event, and shall be disposed of accordingly; and the said present awards shall be set aside, modified or affirmed, as may be determined on such retrial; provided that nothing herein shall be construed as an expression of any opinion of Congress in respect to the character of said claims, or either of them."

During the year 1879 President Hayes caused an investigation to be made of the charges of fraud presented by the Mexican Government, and the conclusion he reached then is thus stated in the report of Mr. Evarts, the Secretary of State:

I conclude, therefore, that neither the principles of public law nor considerations of justice or equity require or permit, as between the United States and Mexico, that the awards in these cases should be opened and retried before a new international tribunal or under any new convention or negotiation respecting the same between the United States and Mexico

Second. I am, however, of opinion that the matters brought to the attention of this Government on the part of Mexico do bring into grave doubt the substantial integrity of the claim of Benjamin Weil and the sincerity of the evidence as to the measure of damages insisted upon and accorded in the case of the La Abra Silver Mining Company, and that the honor of the United States does require that these two cases should be further investigated by the United States to ascertain whether this Government has been made the means of enforcing against a friendly power claims of our citizens based upon or exaggerated by fraud.

If such further investigation should remove the doubts which have been raised upon the representations of Mexico, the honor of the United States will have been completely maintained. If, on the other hand, the claimant shall fail in removing these doubts, or they should be replaced by certain condemnation, the honor of the United States will be vindicated by such measures as may then be dictated.

Third. The executive Government is not furnished with the means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses. The authority for such an investigation must proceed from Congress. I would advise, therefore, that the proofs and the conclusions you shall come to thereon, if adverse to the immediate payment on these awards of the installments received from Mexico, be laid before Congress for the exercise of its plenary power in the matter.

This action of the President was communicated to Congress under date of April 15, 1880, by his forwarding a copy of the report of the Secretary of State, which concludes as follows:

> Unless Congress should now make this disposition of the matter, and furnish thereby definite instructions to the Department to reserve further payments upon these awards till the conclusion of such investigation, and to take such further order with the same thereafter as Congress might direct, it would appear to be the duty of the Executive to accept these awards as no longer open to reconsideration, and proceed in the payment of the same pro rata with all other awards under the convention.

No definite instructions were given by Congress in respect to the matter during that session, and after the close of the session payments were made on these awards by the direction of the President the same as on the others. Another installment was paid by the Mexican Government and distributed to these claimants with the rest during President Garfield's administration. After President Arthur came into office he examined the cases further, and, "believing that said award was obtained by fraud and perjury," negotiated a treaty with Mexico providing for a rehearing. This treaty is now pending before the Senate for ratification. On the 31st of January, 1882, the sixth installment was paid by Mexico to Mr. Frelinghuysen, the present Secretary of State. A distribution of this installment to these claimants has been withheld by order of the President on account of the pending treaty.

These suits were brought in the supreme court of the District of Columbia to obtain writs of mandamus requiring the Secretary of State to pay to the several relators the amounts distributable to them respectively upon their disputed awards from the installment of 1882 The relator, Key, is the assignee of part of the Weil claim. In his case the Secretary filed an answer setting up the action of President Arthur in respect to this claim and the negotiation of the new treaty. To this the relator demurred. Upon the hearing the court below sustained the demurrer and awarded a peremptory writ as prayed for.

In the case of the La Abra Company a petition substantially like that of the relator Key was demurred to by the Secretary. Upon the hearing this demurrer was sustained and the petition dismissed. In this case, therefore, the action of President Arthur does not appear affirmatively on the face of the record, but it was conceded on the argument that it might properly be considered.

The writ of error in the Key case was brought by the Secretary of State, and in the other by the La Abra Company.

If we understand correctly the positions assumed by the different counsel for the relators, they are—

1. That the awards under the convention vested in the several claimants an absolute right to the amounts awarded them respectively, and that this right was property which neither the United States alone nor the United States and Mexico together could take away; and,

2. That if this were not so the action of President Hayes, under the 5th section of the act of 1878, was conclusive on President Arthur, and deprived him of any right he might otherwise have had to investigate the charges of fraud presented by the Mexican Government, or to withhold from the relators their distributive shares of any moneys thereafter paid to the Secretary of State under the authority of the first section.

1. There is no doubt that the provisions of the convention as to the conclusiveness of the awards are as strong as language can make them. The decision of the commissioners, or the umpire, on each claim, is to be "absolutely final and conclusive" and "without appeal." The Presi-

dent of the United States and the President of the Mexican Republic are "to give full effect to such decisions, without any objection, evasion, or delay whatsoever," and the result of the proceedings of the Commission is to be considered "a full, perfect, and final settlement of every claim upon either Government arising out of transactions prior to the exchange of the ratifications of the * * * convention." But this is to be construed as language used in a compact of two nations "for the adjustment of the claims of the citizens of either * * * against the other," entered into "to increase the friendly feeling between" republics, and "so to strengthen the system and principles of republican Government on the American continent." No nation treats with a citizen of another nation except through his Government. The treaty, when made, represents a compact between the Governments, and each Government holds the other responsible for everything done by their respective citizens under it. The citizens of the United States having claims against Mexico were not parties to this convention. They induced the United States to assume the responsibility of seeking redress for injuries they claimed to have sustained by the conduct of Mexico, and as a means of obtaining such redress the convention was entered into, by which not only claims of citizens of the United States against Mexico were to be adjusted and paid, but those of citizens of Mexico against the United States as well. By the terms of the compact the individual claimants could not themselves submit their claims and proofs to the Commission to be passed upon. Only such claims as were presented to the Governments respectively could be "referred" to the Commission, and the commissioners were not allowed to investigate or decide on any evidence or information except such as was furnished by or on behalf of the Governments. After all the decisions were made, and the business of the Commission concluded, the total amount awarded to the citizens of one country was to be deducted from the amount awarded to the citizens of the other, and the balance only paid in money by the Government in favor of whose citizens the smaller amount was awarded, and this payment was to be made, not to the citizens, but to their Government. Thus, while the claims of the individual citizens were to be considered by the Commission in determining amounts, the whole purpose of the convention was to ascertain how much was due from one Government to the other on account of the demands of their respective citizens.

As between the United States and Mexico, the awards are final and conclusive until set aside by agreement between the two Governments, or otherwise. Mexico cannot, under the terms of the treaty, refuse to make the payments at the times agreed on if required by the United States. This she does not now seek to do. Her payments have all been made promptly as they fell due, as far as these records show. What she asks is the consent of the United States to her release from liability under the convention on account of the particular awards now in dispute, because of the alleged fraudulent character of the proof in support of the claims which the United States were induced by the claimants to furnish for the consideration of the Commission.

As to the right of the United States to treat with Mexico for a re-trial, we entertain no doubt. Each Government, when it entered into the compact under which the awards were made, relied on the honor and good faith of the other for protection as far as possible against frauds and impositions by the individual claimants. It was for this reason that all claims were excluded from the consideration of the Commission except such as should be referred by the several Governments, and no

evidence in support of or against a claim was to be submitted except through or by the Governments. The presentation by a citizen of a fraudulent claim or false testimony for reference to the Commission was an imposition on his own Government, and if that Government afterwards discovered that it had in this way been made an instrument of wrong towards a friendly power, it would be not only its right, but its duty, to repudiate the act and make reparation as far as possible for the consequences of its neglect, if any there had been. International arbitration must always proceed on the principles of national honor and integrity. Claims presented and evidence submitted to such a tribunal must necessarily bear the impress of the entire good faith of the Government from which they come, and it is not to be presumed that any Government will for a moment allow itself knowingly to be made the instrument of wrong in any such proceeding. No technical rules of pleading as applied in municipal courts ought ever to be allowed to stand in the way of the national power to do what is right under all the circumstances. Every citizen who asks the intervention of his own Government against another for the redress of his personal grievances must necessarily subject himself and his claim to these requirements of international comity. None of the cases cited by counsel are in opposition to this. They all relate to the disposition to be made of the proceeds of international awards after they have passed beyond the reach of the Governments and into the hands of private parties. The language of the opinions must be construed in connection with this fact. The opinion of the Attorney-General in Gibbes' Case, 13 Op., 19, related to the authority of the executive officers to submit the claim of Gibbes to the second commission after it had been passed on by the first, without any new treaty between the Governments to that effect, not to the power to make such a treaty.

2. The first section of the act of 1878 authorizes and requires the Secretary of State to receive the moneys paid by Mexico under the convention, and to distribute them among the several claimants, but it manifests no disposition on the part of Congress to encroach on the power of the President and Senate to conclude another treaty with Mexico in respect to any or even all the claims allowed by the Commission, if in their opinion the honor of the United States should demand it. At most, it only provides for receiving and distributing the sums paid without a protest or reservation, such as, in the opinion of the President, is entitled to further consideration. It does not undertake to set any new limits on the powers of the Executive.

The fifth section, as we construe it, is nothing more than an expression by Congress in a formal way of its desire that the President will, before he makes any payment on the Weil or La Abra claims, investigate the charges of fraud presented by Mexico, "and if he shall be of the opinion that the honor of the United States, the principles of public law, or considerations of justice and equity require that the awards, * * * or either of them, should be opened and the cases re-tried," that he will "withhold payment * * * until the case or cases shall be re-tried and decided in such manner as the Governments of the United States and Mexico may agree, or until Congress shall otherwise direct." From the beginning to the end it is, in form even, only a request from Congress to the Executive. This is far from making the President for the time being a *quasi* judicial tribunal to hear Mexico and the implicated claimants and determine once for all as between them, whether the charges which Mexico makes have been judicially established. In our opinion, it would have been just as competent for President Hayes to have instituted the same inquiry without this request as with it, and

his action with the statute in force is no more binding on his successor than it would have been without. But his action as reported by him to Congress is not at all inconsistent with what has since been done by President Arthur. He was of opinion that the disputed "cases should be further investigated by the United States to ascertain whether this Government has been made the means of enforcing against a friendly power, claims of our citizens based upon or exaggerated by fraud," and, by implication at least, he asked Congress to provide him the means of "instituting and furnishing methods of investigation which can coerce the production of evidence or compel the examination of parties or witnesses." He did report officially that he had "grave doubt as to the substantial integrity of the Weil claim," and the "sincerity of the evidence as to the measure of damages insisted upon and accorded in the case of the La Abra * * * Company."

The report of Mr. Evarts cannot be read without leaving the conviction that if the means had been afforded the inquiries which Congress asked for would have been further prosecuted. The concluding paragraph of the report is nothing more than a notification by the President that unless the means are provided, he will consider that the wishes of Congress have been met, and that he will act on such evidence as he has been able to obtain without the help he wants. From the statements in the answer of Secretary Frelinghuysen in the Key case, it appears that further evidence has been found, and that President Arthur, upon this and what was before President Hayes, has become satisfied that the contested decisions should be opened and the cases retried. Consequently, the President, believing that the honor of the United States demands it, has negotiated a new treaty providing for such a re-examination of the claims and submitted it to the Senate for ratification. Under these circumstances it is, in our opinion, clearly within the discretion of the President to withhold all further payments to the relators until the diplomatic negotiations between the two Governments on the subject are finally concluded. That discretion of the Executive Department of the Government cannot be controlled by the judiciary.

The United States, when they assumed the responsibility of presenting the claims of their citizens to Mexico for payment, entered into no contract obligations with the claimants to assume their frauds and to collect on their account all that, by their imposition of false testimony, might be given in the awards of the Commission. As between the United States and the claimants, the honesty of the claims is always open to inquiry for the purposes of fair dealing with the Government against which, through the United States, a claim has been made.

Of course in what we have said we express no opinion on the merits of the controversy between Mexico and the relators. Of that we know nothing. All we decide is, that it was within the discretion of the President to negotiate again with Mexico in respect to the claims, and that as long as the two Governments are treating on the questions involved, he may properly withhold from the relators their distributive shares of the moneys now in the hands of the Secretary of State.

The judgment in the case of La Abra Company is affirmed with costs, and that in the case of Key is reversed with costs, and the cases remanded with instructions to dismiss the petition of Key.

No. 102.

Mr. Frelinghuysen to Mr. Romero.

DEPARTMENT OF STATE,
Washington, February 14, 1884.

SIR: I have the honor to acknowledge the receipt of your note of the 25th ultimo, relative to the disputed claims of Benjamin Weil and La Abra Silver Mining Company against the Government of Mexico.

Accept, &c.,

FRED'K T. FRELINGHUYSEN.