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HISTORY AND DIGEST

OF THE

INTERNATIONAL ARBITRATIONS TO WHICH THE UNITED STATES HAS BEEN A PARTY,

TOGETHER WITH

APPENDICES CONTAINING THE TREATIES RELATING TO SUCH
ARBITRATIONS, AND HISTORICAL AND LEGAL NOTES ON
OTHER INTERNATIONAL ARBITRATIONS ANCIENT AND
MODERN, AND ON THE DOMESTIC COMMISSIONS
OF THE UNITED STATES FOR THE ADJUST-
MENT OF INTERNATIONAL CLAIMS.

BY

JOHN BASSETT MOORE,

*Hamilton Fish Professor of International Law and Diplomacy, Columbia University,
New York; Associate of the Institute of International Law; sometime Assis-
tant Secretary of State of the United States; author of a work on
Extradition and Interstate Rendition, of American
Notes on the Conflict of Laws, etc.*

IN SIX VOLUMES.

VOLUME IV.

WASHINGTON:

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1898.

WITHDRAWN
PROPERTY OF U. S.

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1987
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government would not be bound by any representations made by the marshal, nor by any unauthorized covenants which the deed might contain; that the statutes authorizing the confiscation of property were public statutes, and were referred to in the deed; that the memorialist was thus put upon inquiry as to the nature of the estate which the marshal was authorized to convey, and that his failure to make such inquiry rendered him responsible for the consequences of any misunderstanding as to the extent of his title.

The claim was disallowed by the unanimous judgment of the commission.

Joseph Brugere v. United States, No. 318, Boutwell's Report, 128, Commission under the convention between the United States and France of January 15, 1880.

6. EMBARGOES OF PROPERTY IN CUBA UNDER THE DECREES OF 1869.

[From the Official Gazette, Havana, February 14, 1869—Translation.]

SUPERIOR POLITICAL GOVERNMENT OF THE EVER FAITHFUL ISLAND OF CUBA.

In use of the extraordinary faculties with which the provisional government of the nation has invested me, I decree the following:

ART. 1. Crimes of *infidencia* shall be tried by ordinary court-martial

ART. 2. Prosecutions already commenced shall follow the legal process prescribed by the laws for the tribunals of justice.

ART. 3. All aggressions, by act or by word, against any of the delegates of the government shall be considered as a crime against the authority, and will subject its author to trial by court-martial.

DOMINGO DULCE.

HAVANA, February 12, 1869.

[From the Official Gazette, Havana, February 14, 1869—Translation.]

SUPERIOR POLITICAL GOVERNMENT OF THE EVER FAITHFUL ISLAND OF CUBA.

OFFICE OF THE SECRETARY.

For the better understanding of the decree published yesterday (the 12th of February), it is made known that under the word *infidencia*, which is made use of in article 1, are understood the following crimes: Treason, or *lesa nacion*, rebellion, insurrection, conspiracy, sedition, harboring of rebels and criminals, intelligence with the enemy, meetings of journeymen or laborers and leagues; expressions, cries, or voices subversive, or seditious; propagation of alarming news; manifestations, allegations, and all that, with a political end, tends to disturb public tranquillity and order, or that in any mode attacks the national integrity.

It is also made known that robbery in uninhabited districts, whatever

may be the number of the robbers, and in populated districts, if the number of the robbers be more than three, shall be tried by court-martial, as also the bearers of prohibited arms. And by order of his excellency the superior political governor, the same is published in the Gazette for the general knowledge.

JOSÉ MARIA DIAZ,
The Secretary.

HAVANA, *February 13, 1869.*

[From the Official Gazette, Havana, April 15, 1869.—Translation.]

SUPERIOR POLITICAL GOVERNMENT OF THE PROVINCE OF CUBA.

[Circular.]

Under date of the 1st instant I said to his excellency the political governor of this capital as follows:

“YOUR EXCELLENCY: Your excellency will immediately proceed, without permitting anything to delay you, to embargo all the effects and other property which Messrs. José Morales Lemus, Nestor Ponce de Leon, Manuel Casanova, José Mestre, José Maria Bassora, José Fernandez Criado, Antonio Fernandez Bramosio, Ramon Aguirre, José Maria Mora, Javier Cisneros, Tomas Mora, Federico Mora, Federico Galvez, Francisco Izquierdo, Pentarco Gonzalez, and Joaquin Delgado possess or have possessed in this island; meanwhile that with reference to the latter it shall not be proved that all the requisites established by the laws for the transfer of property shall have been scrupulously complied with.”

Which I transcribe to your excellency for your knowledge, and to the end that you proceed immediately to the embargo of all the estates and effects which the individuals included in the foregoing list possess in your jurisdiction.

God preserve your excellency many years.

DOMINGO DULCE.

HAVANA, *April 15, 1869.*

[From the Official Gazette, Havana, April 16, 1869.—Translation.]

POLITICAL GOVERNMENT OF HAVANA.

Having been embargoed by order of his excellency the political governor, the properties belonging to Messrs. José Morales Lemus, Nestor de Leon, Manuel Casanova, José Mestre, José Maria Bassora, José Fernandez Criado, Antonio Fernandez Bramosio, José Maria Mora, Ramon Aguirre, Javier Cisneros, Tomas Mora, Federico Galvez, Francisco Izquierdo, Pentarco Gonzalez, Joaquin Delgado, and Federico Mora, all persons possessing sums of money, effects, or values of whatever class belonging to the said individuals will give account of the same² to this political government immediately, being responsible for all concealment or means of eluding the compliance with that disposition, prohibiting to them finally the purchase, sale, payment, transfer, cession, or the making by them of whatever operation that affects or may refer to the ownership of the embargoed property, with the understanding that the infractors are comprehended in the disposition with reference to the offense of *infidencia* contained in the decree of his excellency the superior political governor of

the 13th of February last, and shall be submitted in consequence to trial by court-martial.

DIONISIO LOPEZ ROBERTS.

HAVANA, *April 1, 1869.*

DECREE OF APRIL 17, 1869.

In the exercise of the extraordinary and discretionary powers invested in me by the supreme government of the nation, and with a view to the necessity and urgency of executing with all proper legality, solemnity, and publicity the acts resulting from the embargo of property of all kind appertaining to the sixteen individuals referred to in the communication addressed to the political governor of this district on the 1st instant, and of all who may be in the same case, I come to the resolution to decree the following:

1. A board is hereby established to administer property belonging to the sixteen individuals referred to in my decree of the 1st instant which was ordered to be embargoed on the same date.

2. Said administrative council is composed of the political governor of Havana as president; of three members from the corporation of this capital, three from the class of proprietors and planters, three from the class of merchants; one superior officer from the financial department; a secretary, who shall be the secretary of the political governorship, and of such employees as shall be proposed to me by the president of the aforesaid council.

3. The functions of president, members, and secretary of the council shall receive no compensation.

4. All funds collected in consequence of the embargoes shall be deposited in the general treasury, whence receipts shall be issued for the security of the president of the administrative council, the funds being subject to his order.

5. The president of said board will have authority to decide all matters and points offering doubt in the interpretation of my decree of 1st instant, and those of a judicial or legal nature calling for decisions from the established courts shall only be brought to me for resolution.

6. The appointment and removal of individuals to fill the bureaus of the administrative council shall be determined by said president. The salaries of said functionaries and the cost of articles required shall be defrayed from the funds collected.

7. The lieutenant-governors of this province shall remit to the president of the administrative council all items they may acquire in their respective districts relating to property embargoed or to such as may be hereafter embargoed; they shall deliver said property to the same council, together with the inventories, deeds, and other public documents which they may acquire or consider necessary; and they shall execute such orders referring said matters as they may receive from said president.

8. The president of the aforesaid board shall propose to my authority whatever change in the organization of the same, or in the persons composing it, he may consider expedient to make.

DOMINGO DULCE.

HAVANA, *April 17, 1869.*

In conformity with the requirements of my decree of this date, and exercising the extraordinary powers invested in me by the supreme gov-

ernment of the nation, I have resolved to appoint president of the council to administer property ordered to be embargoed belonging to the sixteen individuals referred to in my order of 1st instant, and of as many more as may be in the same circumstances, Don Dionisio Lopez Roberts, political governor of Havana, and members (of the board) Don Juan Atilano Colomé, Don Mamerto Pulido, and Count Posor-Dulces, from the corporation of this capital; Don José Cabargo, Don Juan Poey, and Don Joaquin Pedroso, as proprietors and planters; Don Fernando Illas, Don Bonifacio Jimenez, and Don Segundo Rigal, merchants; Don Augustus Genon, as chief of the central section of taxes and statistics, and Secretary Don Juan Zaragosa, who is secretary of the political governorship of Havana.

DOMINGO DULCE.

HAVANA, April 17, 1869.

CIRCULAR OF APRIL 20, 1869.

By the Gazette of the 15th instant you will have been informed of two circulars issued by me, the first on the occasion of receiving by mail and circulating of a paper signed José Morales Lemus, president of the Central Republican Junta of Cuba and Porto Rico, and the second ordering the immediate embargo of the estates and other properties that said Morales Lemus and other individuals possess or may have possessed on this island.

You will have likewise become acquainted with my decree of 1st instant, published in the Gazette of the 16th, as a preventive measure to impede sales of property made with illegitimate ends, and lastly, in the Gazette of the 18th, an administrative committee has been appointed to administer the property embargoed by the decree of 1st instant. These resolutions, well considered and justified by the damages caused by the insurgents, appertain to a system which it is indispensable to follow in order to put an end to the insurrection at once. To obtain this object, and exercising the extraordinary and discretionary powers with which I am invested by the supreme government of the nation, I have determined the following:

ARTICLE 1. All persons [as] to whom it may be proved that they have taken part in the insurrection in or out of the island, either armed or aiding the same with arms, ammunitions, money, or provisions, are hereby declared to be comprised in the circular of 15th inst. relative to José Morales Lemus and others.

ART. 2. The persons who within the proper time claimed the benefit of the amnesty and pardon decreed and who in their subsequent conduct have proved their adhesion to the government are excepted from the above resolution.

ART. 3. The persons comprised in article 1st are hereby deprived of the *political and civil rights* which they enjoyed through our laws, the action of this resolution being carried back to the 10th of October, when the insurrection at Yara commenced, or back to the date in which it may be ascertained that they took part in the preparations for the insurrection.

ART. 4. The contracts agreed to by said individuals, from the dates above mentioned, shall be presented to the revival of the government within three days after the publication of this circular.

ART. 5. The governors and lieutenant-governors will immediately remit said contracts, with their report, to the president of the administrative

council, where, in view of the antecedents, the proper resolutions will be decided upon.

ART. 6. Said authorities shall at once proceed by themselves or through their delegates, to institute a government investigation to prove the crime of the parties comprised in this resolution, giving an account to the president of the administrative council of the commencement of said investigation.

ART. 7. As the guilt of the delinquents shall become established, the embargo of their properties, actions, and rights shall be acted upon, and the governors of the other districts where they may also have property shall be informed, so that those shall be also embargoed.

ART. 8. Each governmental investigating process shall refer to one individual alone, and as it shall be brought to conclusion with the deposit of the property embargoed, the council of administration shall be informed in conformity with the Art. 7th of the decree creating said council.

ART. 9. The governors and lieutenant-governors, who, in their jurisdiction should embargo property of individuals, who had been or are, residents in another jurisdiction, will remit to the president of the administrative council the items referred to in the article quoted in the preceding, and will communicate to the governor from whence the embargo proceeds a statement of the property embargoed, which shall be annexed to the government proceeding.

ART. 10. When the opportunity arrives from the state of the procedure to embargo property, an order shall be issued stating the grounds, and shall be carried into effect by the same lieutenant-governor, or the delegate appointed by him, assisted by the notary or secretary (*escribano*), and either two or three witnesses, who shall be near relatives of the delinquent, or, if there be none such, his near neighbors. In the absence of a notary, two witnesses shall be employed, according to law.

ART. 11. In the act of the embargo an exact inventory of the property shall be taken, reporting the same in detail, discriminating furniture, real estate, rights, and shares or actions, circumstances being set forth to establish their identity and avoid all mistakes.

ART. 12. The property embargoed shall be deposited in a resident *lego* (not a lawyer), *llano* (not privileged from rank or class), and *abonado* (enjoying guaranty for the object), selected by the governor or lieutenant-governor, who shall inform the president of the administrative council of said appointment, and give the depositary a certified copy of the embargo, and of his appointment.

ART. 13. It is left to the judgment of the governor, or lieutenant-governor, as the case may be, to deliver all the property to a single depositary, or to distribute it among several; said authorities bearing in mind that the best possible means should be adopted that the property may not be injured in its nature or productiveness; for which motive, if there should be some creditor (*refaccionista*) (one who provides the necessary means to sustain and bring about the profits of an enterprise), they will endeavor to have the same appointed as depositary (receiver), provided said party deserve the full confidence of the authority.

ART. 14. The depositaries shall take charge of the property in accordance with the inventory, giving receipt before the lieutenant-governor or his delegate, witnesses and the attesting notary, and said depositaries

binding themselves with their persons and property to have said property safely guarded as a judicial deposit, subject to the order of the president of the administrative council.

ART. 15. The depositaries shall preserve and administer the property with all care and diligence, being responsible even for slight faults; they shall not be authorized to sell it for no [any] reason or pretext excepting when the governor or lieutenant-governor should order it in consequence of a resolution of the administrative council; they shall neither be authorized to transfer the deposit to another party, unless for a just cause it should be ordered by the first authority of the district, in which cases the newly-appointed depositary shall take charge of the property in accordance with the preceding article, all of which shall be made known to the president of the administrative council.

ART. 16. The depositaries (receivers) shall keep a faithful exact account, with vouchers of all expenses originated, and of the products yielded by the property, which account, together with the net profits, they will present monthly to the governor or lieutenant-governor.

ART. 17. As soon as the depositary (receiver) shall have sent the net result, the first authority shall order their ingress in the treasury department, with the character of a deposit, subject to the order of the president of the administrative council to whom the formal receipts shall be sent, a certified copy of which shall be left in the proceedings.

ART. 18. The accounts, with their vouchers, shall also be sent to the president of the administrative council, that he may do the needful until their approval, and a copy of the decree of approval shall be sent to the lieutenant-governor, to have it annexed to the procedure.

ART. 19. When the property embargoed should be found to be *haciendas* (estates), cattle, or other requiring culture or collection the depositary shall be authorized to select and appoint, on his responsibility, the manager or clerks strictly needed.

ART. 20. No one who is not by law dispensed from exercising municipal duties can exempt himself from serving the functions of depositary. In proportion to the importance and quality of the property embargoed, and also to the labor required of the depositary, the governor or lieutenant-governor shall report to the president of the administrative council respecting the compensation that the former should receive, which should always consist in a percentage on the sums collected and paid by him, with the understanding that it shall not exceed five per cent for each of said objects, the amount of profits returned referred to in article 16 being exempted from said charge.

ART. 21. The governors or lieutenant-governors shall be answerable in conformity to the laws for the improper selection by them made of depositaries and, therefore, for the errors committed by the latter, especially if through their fault the embargoed property should perish.

ART. 22. The property embargoed shall be answerable in the first place for the expenses incurred for its preservation and management, those to be preferred consisting in current and arrear taxes, and next for debts contracted by the owner of the embargoed property previously to the dates referred to in article 3d.

ART. 23. If the creditor should be one of the individuals referred to in this circular, the payment of the accredited claims shall be made into the

hands of the depositary of the property embargoed of said creditor. If the latter should not be of that class, he should be made to prove his claims before the governor and lieutenant-governor, who shall report to the president of the administrative council, who, when the case shall justify it, shall order the payment. The debts contracted after the dates referred to in article 3d will be made subject to the resolution in articles 4 and 5.

ART. 24. When all or a portion of the property sequestered or embargoed shall be found subject to an association of creditors before a court, or to a judicial procedure in a failure, the common attorney representing creditors (*sindico*) may be appointed depositary, but if said *sindicos* or attorneys should have been appointed by the court where the case belongs, then they are of necessity to be appointed depositaries of the embargo under the obligation of fulfilling the enactments of this circular relative to said depositaries.

The attorneys (*sindicos*) enumerated by said association of creditors (*concurso*) will not receive the remuneration to which article 20 refers.

ART. 25. Once the sentence for the order of payments shall have been given in the court where the creditors are represented, as soon as it shall be ready for execution, a copy of it shall be annexed to the government procedure for the needful objects, and the governor or lieutenant governor shall send a copy to the president of the administrative council.

ART. 26. In cases where the property embargoed in consequence of the government procedure should have been embargoed in advance judicially by order of a court, the new embargo shall be made known to the judge who ordered the first. In this case the depositary already named shall be appointed anew, and also receive the deposit, going over the counting and making another inventory of the property, but with no assignation of stipend, unless he should have been entitled to it by the first appointment committed to him.

ART. 27. If the first embargo should have been established at the request of some one of those to whom this circular refers, when the criminality of said individual shall have been proven in the governmental proceeding, the governor or lieutenant governor shall communicate the fact to the respective judge, who, after having the law expenses appraised, shall suspend the course of the proceedings, sending them to the government authority that it may order the payment of said expenses, and whatever else should be required, according to article 23d.

ART. 28. When the first embargo is made at the request of a party not comprised in this circular the respective judges shall dictate the sentence, according to law, in the shortest possible term, sending a copy of it to the governor or lieutenant-governor for the objects that may be required.

ART. 29. If any person not comprised in this circular should claim as his all or a part of the property embargoed the embargo shall not be raised until his right shall have been proved and until the administrative council shall have issued its decision and to said council report shall be made of the case, with the proceedings.

ART. 30. The governor or lieutenant-governor who, in his jurisdiction, should embargo property of individuals who were or are residents of another jurisdiction will initiate the proceedings with the communication

he may receive for the embargo, executing the same immediately, in conformity with the terms of this circular.

Said proceedings once ended, the governor or lieutenant-governor shall comply with what is required in Art. 9th, keeping said proceedings in the government office for subsequent ends.

ART. 31. When the order for the embargo, referred to in Art. 10th, shall be given, parties possessing money, goods, or values of any kind belonging to the individual concerned in the proceedings shall be summoned through the newspapers or public bulletins to report to the government authority, and be made responsible for any concealment or act intended to evade the said resolutions, it being expressly forbidden to buy, sell, pay, transfer, give, or do aught which may affect or which relates to the ownership of the goods embargoed; with the understanding that infractors shall be attainted in what is determined regarding offenses involving treason in the decree of this superior government, dated 13th of February last, and they shall be consequently subjected to a council of war.

God preserve you many years.

DOMINGO DULCE.

HABANA, 20th of April, 1869.

Addressed to all governors or lieutenant-governors.¹

DECREE OF JULY 12, 1873, RAISING THE EMBARGOES.

PREAMBLE.

Animated by the principles of strict legality, which form the unchangeable foundation of democratic teachings, and desirous of realizing in all that pertains to his department the amplest attainable right, the undersigned minister has endeavored, with zealous care since he entered upon his duties, to give paramount attention to the numerous and important questions which, in their relations to the state of insurrection that exists in a portion of the territory of Cuba, may lead to excesses of authority, arbitrary acts more or less grave, or the employment of force against the personality of the inhabitants, all of which are unfortunately too frequent in the history of all internecine struggles.

Upon undertaking to study these questions, in the fulfillment of one of the first duties of his office, the minister of the colonies found, and could do no less than seek to reform, a state of things, in his judgment, completely anomalous, namely, the existence of a great accumulation of property wrested from the hands of the legitimate owners with no other formality than a simple executive order and turned over to an administrative control exercised with great irregularity in the name of the government, to the notable depreciation of the products of those estates, to

¹The translation here given of the decrees of April 17 and April 20 may be found with the brief of the advocate of the United States, as well as with that of the advocate of Spain, on the subject of embargoes. Another translation, in many respects not very accurate, may be found in S. Ex. Doc. 108, 41st Cong., 2d sess., p. 224 et seq. In the latter the 6th article of the decree of April 20 reads: "Said authorities will immediately proceed by themselves or through their delegates to the formation of *gubernative* judicial proceedings (*expedientes gubernativas*)," etc.

the injury of the families dependent thereon for support, and to the detriment of the public wealth, whose diminution is the inevitable result of a want of regularity and order, and the absence or withdrawal of individual interests in the control and management of property.

Such a condition of things, besides being utterly at variance with a political system whose fundamental basis must ever be justice stern, yet considerate, removed from the rancor of party spirit, and foreign to all motives of passion, could lead to no other result than to embitter mutual resentments more and more by the sad spectacle of misery, the more keenly felt as it has been the more suddenly and unexpectedly brought about, and must, moreover, tend to render profitless a great part of the rich soil of the island, and to introduce disturbance and disorder into the system of production, thus interfering with its due development.

The Cuban insurgents, those in correspondence and relations with them, and those who, more or less openly, lend them protection and aid, thus contributing to prolong a cruel, bloody, and destructive war, doubtless merit energetic suppression and exemplary punishment, and the more so to-day when the government of the republic pledges to all citizens of Spain, on either side of the seas, assured and efficacious guarantees of respect for the rights of all, and offers the means of maintaining their opinions and propagating them and causing their ideas to triumph in the only manner in which ideas can triumph in a social structure raised upon the solid foundations of reason, truth, and right.

But even the need of such punishment can confer upon no government the power to deprive those of its citizens who stray from the right path of their individual means of support, and to enforce upon their families the bitter necessity of begging to-day the bread that abounded but yesterday on their tables as the fruit of their labor or their economy.

Apart from the foregoing considerations, there cannot be found in the law of nations (*derecho de gentes*) any precept or principle authorizing this class of seizures which bear upon their face the stamp of confiscation; neither under any sound judicial theory is it admissible to proceed in such a manner; nor yet can the exceptional state of war authorize, under any pretext, the adoption of preventive measures of such transcendent importance and whose results, on the other hand, will inevitably be diametrically opposed to the purpose that inspired them.

In consideration, therefore, of the facts thus set forth, the undersigned minister presents for the approval of the council the following draft of a decree:

“MADRID, *July 12, 1873.*”

The minister of the colonies, Francisco Suer y Capdevilla, decree:

In consideration of the representations set forth by the minister of the colonies, the government of the republic decrees the following:

ARTICLE 1. All embargoes put upon the property of insurgents and disloyal persons (*infielentes*) in Cuba, by executive order in consequence of the decree of April 20, 1869, are declared removed from the date when this present decree, published in the Madrid Gazette, shall reach the capital of the Island of Cuba.

ARTICLE 2. All property disembargoed by virtue of the provisions of the preceding article shall be forthwith delivered up to its owner or legal

representatives without requiring from them any other justification or formality than such as may be necessary to show the right under which they claim its restoration or for their personal identification.

ARTICLE 3. In order that questions growing out of the preceding provisions may be decided with greater accuracy and dispatch, the Captain-General, superior civil governor of the Island of Cuba, shall forthwith proceed to organize, under his own chairmanship, a board composed of the president of the *audiencia* as vice-chairman, the intendente of Cuba, the civil governor of Havana, the attorney-general (fiscal) of the *audiencia*, and the secretary of the superior civil government, who shall act as secretary of the board, having voice and vote therein; and this board shall summarily, and in the shortest possible time, decide upon such applications as may be made by the interested parties without any other appeal than the one that may be taken to the government of the republic through the colonial ministry.

ARTICLE 4. The board of authorities charged, under the foregoing article, with the *disembargo* and restoration of property of insurgents and disloyal persons, may, whenever it shall appear needful to the more thorough decision of these questions, consult the board of public debt (*junta de la deuda del tesoro*), heretofore charged with the administration of property embargoed by executive order, and may ask and obtain from the tribunals of every jurisdiction and from all other dependencies of the state the data and antecedents which may be deemed needful to such decision.

ARTICLE 5. The minister of the colonies shall issue the necessary instructions for the execution of the present decree, or shall definitely approve those which may be prepared to the same end by the board of *disembargoes*.

Madrid, July 12, 1873.

FRANCISCO PI Y MARGALL,
The President of the Government of the Republic.
FRANCISCO SUNER Y CAPDEVILLA,
*The Minister of the Colonies.*¹

The first case in which damages were allowed for the embargo of property under the foregoing decrees was that of Joaquin M. Delgado, No. 31, in which the umpire, Mr. Bartholdi, on February 24, 1875, allowed the claimant \$113,360, with interest from May 5, 1869, the date of the embargo, at the rate of 8 per cent for the seizure of his property by the Spanish authorities "in violation of the treaty stipulations." In this case damages were allowed for the deterioration of the embargoed property, in the absence of proof of specific acts of destruction by the Spanish authorities.

On June 26, 1875, the arbitrators awarded the sum of \$3,000 for the embargo of property in the case of José de Jesus Hernandez y Macias, No. 41.

¹ For. Rel. 1873, vol. 2, p. 1008.

The next case in which damages were allowed for an embargo was that of Joaquin Garcia de Angarica, No. 13, in which the umpire, Mr. Bartholdi, on November 1, 1875, rendered the following decision and award:

“Inasmuch as there is no doubt about the claimant’s American citizenship, and that his new citizenship was notified to the Spanish authorities six months previous to the embargo; that the Spanish Government itself acknowledged that the claimant was innocent of any participation in the insurrection; inasmuch as his property was seized in the month of August 1869 and was not restored to him before the years 1873 and 1874; and inasmuch as the Spanish Government is liable for unjust detention and use of property, as well as for damages which embargoed property always suffers—

“It is my opinion that the claimant has a right to recover damages to the amount of \$748,180, with interest at 6 per cent per annum from this day to the day of payment.”

In the case of Gonzalo Poey, No. 66, the arbitrators, March 17, 1877, awarded \$2,585.60, for an embargo of property.

An award of \$1,500 was made by the arbitrators, October 4, 1879, for the embargo of property, in the case of Fernando Dominguez, No. 32. On November 20, 1879, the umpire, Baron Blanc, awarded \$13,600 for an embargo, in the case of Young, Smith & Co., No. 96.

On January 20, 1881, Mr. McPherson, then the advocate for Spain, submitted to the commission a printed brief in which he reviewed the whole subject of the embargoes and maintained that they were rightful. At this time embargo claims aggregating in amount more than \$9,000,000 were pending before the commission. Mr. McPherson’s argument was as follows:

1. That “the insurrection of 1868 in Cuba, whatever may have been its international status, was *in fact* a bloody war, which laid waste a large part of the island, and for ten years taxed the powers and resources of the Spanish Government;” that “a nation may acknowledge the existence of a war, although it may at the same time refuse to recognize the parties thereto as belligerents;” that “the United States at the inception of their rebellion claimed and exercised the rights of war against the insurgents, while protesting against the right of foreign nations to recognize them as belligerents;” that “the Secretary of State of the United States, the American minister at Madrid,” and “eminent Spanish officials,” all “admitted the

existence (in Cuba) of a civil war of great magnitude, although at the same time Spain protested against the recognition by the United States of the insurgents as belligerents;" and "that, therefore, within its own dominions, Spain had the right to use all measures of repression and self-defense justified by a state of war." (H. Ex. Doc. 160, 41 Cong. 2 sess. pp. 16, 20, 35, 43, 46, 136, 157, 164, 165, 168; Dip. Cor. 1873, pp. 999, 1000; *Rose v. Himely*, 4 Cranch, 241, 272; Prize Cases, 2 Black, 669.)

2. That "amongst the measures which the fact of war rendered necessary was the embargo which was decreed against the property in Cuba of all persons, whether Spaniards or aliens, believed to be giving aid and comfort to the insurrection;" that this measure "was directed against those connected with the insurrection, not only on account of their complicity with it, but for the purpose of suppressing the insurrection itself;" that the question of the guilt or innocence of the accused was tried, not by the board that was charged with the care of embargoed property, but by courts-martial; that "the proceedings of these courts were so conducted as to allow the defendants every opportunity of defense in person or by counsel;" that notice was given by publication to the defendants to appear, and that, where judgments by default were given, they were not in fact, though they were in form, final, but were subject to be opened at any time on the appearance of the defendant. (See Decrees, *supra*; For. Rel. 1871, p. 734.)

3. That "neither the decrees of embargo nor the administration thereof were contrary to international laws;" that they were sustained by the practice of the United States during the civil war, which practice, as the American courts had declared, was not contrary to law or justice; that in every case, it was believed, before the commission, the owner of the property embargoed in Cuba was absent from it and from the island, and was charged by the Spanish authorities with aiding the insurrection, and that all the property embargoed by the Spanish authorities might, therefore, be considered as coming within the definition of abandoned property given by the statutes of the United States, viz: "Property, real or personal, shall be regarded as abandoned when the lawful owner thereof shall be absent therefrom and engaged in arms or otherwise in aiding or encouraging the rebellion" (13 Stats. at L. 375); that under the acts of Congress of 1862, 1863, and

1864, no inquiry preliminary to seizure was made except such as the officer who directed the seizure might think proper to make for his own satisfaction, and that the judicial proceeding then instituted was carried on by the same officer filing in court a libel charging that the owner of the property so seized was a person engaged in aiding the rebellion; that in the United States the claimant, in order to obtain relief, had to "await the suppression of the rebellion, and then, in a suit begun by himself, and by evidence produced at his own expense, prove that he had never given any aid or comfort to the rebellion, or (as a subsequent act required) to any person engaged therein," while in Cuba, "in every individual case, a proceeding was commenced against the owner of the property, and the expense and the burden of proof was cast, not upon the owner, but upon the government, and the proceedings were not postponed till the rebellion was over, but took place at once;" that, while this "involved the necessity of proceeding to judgment in the absence of the property owner," there was "always a provision made in the judgment that it might be reopened if the defendant should appear;" that "in the similar proceeding in the loyal States under the United States statutes, the failure of the defendant to appear was taken as *conclusive proof* of guilt and the judgment against him was final, while, as regards seizures in the South, his failure to claim his property within two years was equally conclusive against him;" that, as to the objection that the proceedings in Cuba were contrary to the treaty of 1795 because they were carried on before courts-martial, the necessity of considering this objection was obviated by the clause in the agreement of February 12, 1871, which provided that the adjudications of all tribunals made in the absence of the parties interested, which was the case in all the claims in question, should be reviewed by the arbitrators who should make such award, in each case, as they should deem just; that it could not, however, be denied that Spain, like every independent state, had the right to organize its judicial system in any manner it might judge best; that the treaty of 1795 provided that American citizens should be tried "by order and authority of law only, and according to the regular course of proceedings usual in such cases;" that if, therefore, cases of *infidencia* were according to law prosecuted before courts-martial, there was no ground of complaint on that score; that while Mr.

Webster, in his report of December 18, 1851, in the case of Thrasher, noticed that there were in Spain, at the date of the treaty of 1795, ecclesiastical tribunals having power over life and death, whose proceedings were always secret, and against the secrecy of which the stipulation in the seventh article of that treaty, in regard to publicity of proceedings, might, he said, well have been directed, he did not intimate that the jurisdiction of such tribunals could be affected by the treaty, but on the contrary declared that the "definition of crimes, the denouncement of penalties for their commission, and the forms of proceedings by which guilt is to be ascertained, are high prerogatives of sovereignty, and one nation can not dictate them to another without being liable to the same dictation herself;" that Mr. Fish, in his report of March 12, 1872, in the case of Howard, who was tried for *infidencia* by a court-martial, said that the "strong point which prevents the intervention of this Government in behalf of Dr. Howard from becoming efficacious is the fact that he has been regularly tried and found guilty by a duly constituted tribunal in the Island of Cuba;" that it was "the preeminent duty of every government," in the exercise of the right of self-defense, "to maintain its own authority within its own dominions, and to that end to exert every power which the necessity of the case invokes," and that for the measures taken for the discharge of this duty nations are not to be too strictly judged; that the general sympathy of native Cubans with the insurrection, the fact that large numbers came to the United States, "whence many of their number engaged in sending out expeditions to carry aid to the insurgents," and the further fact that, while continuing to hold their property in Cuba and to reside there a great portion of their time, they undertook to transfer their allegiance to the United States, were circumstances that warrant suspicion; that, to justify seizures, suspicion of actual guilt was not always necessary, but that "actual danger might justify a seizure under circumstances which, in the absence of danger, would not warrant it, and that for acts of hostility committed by the claimants, while in the United States, against the Government and people of Spain, seizures of their property in Cuba were justifiable and lawful." (1 Kent's Comm. 48; 3 Wallace, 62; *Lock v. United States*; *The George*, 1 Wheat., 408; *Diekelmans' Case*, 92 U. S. 520; *Mitchell v. Harmony*, 13 Howard, 133; Wharton's Conflict of Laws, §§ 856, 871, 876, 879,

906; Vattel, B. 3, ch. 6, § 95; Grotius, B. 3, ch. 1; Collie's Case, 94 U. S. 258.)

4. That "the embargoes were not in violation of the treaty of 1795, not being prohibited by Article VII. or any other article of that treaty;" that the word *embargo* had both in English and in Spanish a common sense as a term of commerce, and meant the prohibition of ships to leave the country; that, while it had other senses in Spanish, that construction of the text should be adopted which would make both versions agree; that, in the same article, the treaty prohibited *detention* of effects, and provided that in case of seizure, *detention*, or arrest for *debts* or *offenses*, the prosecution should proceed according to the usual course; that, collating these provisions, it appeared that vessels and effects were not to be embargoed or detained for any military expedition or other public or private purpose, yet they might be seized and detained for debt or crime, and in order to give effect to both provisions it must be held that a seizure or detention for debt or crime was not a seizure or detention for a public or private purpose; that the provision in Article VII. of the treaty, which forbade embargoes and detentions "for any military expedition or other public or private purpose whatever," was intended to prohibit the exercise of the ancient prerogative, known as the *Jus Angaria*, to exact from ships riding in the ports and roads of a country certain services and duties for the transportation of soldiers, arms, and ammunition, in case of some public necessity or exigency; that it had no reference to the embargo of real estate or personal property unconnected with trade and commerce; that the United States, by the acts of Congress of 1807, 1812, and 1813, laid a general embargo on all foreign "vessels and effects," without making an exception in favor of Spain, thus disclosing the construction then given to the treaty; that the protection and promotion of commerce was the object of all the articles of the treaty from 6 to 22, inclusive; that, even giving to article 7 the construction contended for by the claimants, the necessity of taking measures for self-defense worked an exception in favor of the Spanish Government; that, during the excitement attending the Trent affair, in 1861, the British India Government issued two ordinances prohibiting the exportation of saltpeter from that country to any place except Great Britain, and except in British vessels; that, under these ordinances, four American vessels, partly laden with that article, were

detained at Calcutta till the United States, by acceding to the British demands, had removed the threatened danger; that these ordinances were justified by the law officers of the Crown on the ground of self-defense, and that the claims of the owners of the vessels were rejected by the British claims commission; that, both in the act of Congress of July 17, 1862, and in the Spanish decree of April, 1869, touching the embargoes, it was the declared object of those measures not merely to punish persons connected with the insurrections, but also to insure the speedy suppression thereof. (As to the word *embargo*, see Neuman and Baret's Span. Dict., Jacob's and Bouvier's Law Dictionaries, Sheridan's, Webster's, and Worcester's English Dicts., the Encyclopædia Britannica, 1797, and the New American Encyclopædia, 1859. As to the construction of treaties, *U. S. v. Percheman*, 7 Pet. 57. As to the *Jus Angaria*, Mr. Sagasta to Mr. Sickles, Sept. 12, 1870. For Rel. 1871, p. 711; Azuni, Chap. V.: Beawes, *Lex Mercatoria Rediviva*, London, 1771, p. 242; Lawrence's *Wheaton*, Part IV., ch. 1, note 169.)

5. That "the proceedings of Spain against the property in Cuba of native Cubans in the United States was justified by the general hostility of that class to the Spanish Government, and the impossibility of discriminating between friends and enemies, the well founded, and often realized, apprehension of danger from the machinations of the native Cubans in the United States, the views of the United States with regard to the island of Cuba, and the declared sympathy of the President and cabinet with the object of the insurrection." (H. Ex. Doc. 160, 41 Cong. 2d sess. [same as Senate Ex. Doc. 108 same session], pp. 13, 15, 17, 18, 22, 37, 42, 48, 53, 58, 66, 69, 92, 128, 158, 159, 160, 167, 168, 174, 176, 183, 184, 188, 189; Appleton's Annual Encyclopædia, 1869-1870, pp. 209, 210, 211, 213, 216.)

6. That "the decree of July 12, 1873, was merely a change of policy on the part of the Spanish cabinet, and can not be construed as in any sense an admission of the illegality of the measure which it was designed to discontinue;" that while it was true that the report of Mr. Suner y Capdevilla, minister of the colonies, on which the decree was made, contained admissions of their illegality, he was not in power when the decree was made, and it did not appear that the government in making the decree adopted his views in that regard.

7. That "the United States, being bound by the same obligation as Spain under the treaty of 1795, passed general embargo

acts in 1807, 1812, and 1813, and during the rebellion of 1861-1865 passed a series of acts which, in theory and purpose, were exactly similar to the Spanish decrees of embargo, and the proceedings and practice under which were in every respect similar to those under the Cuban decrees, if, indeed, not more harsh in their results." (See this argument, *supra*, 4; acts of Congress, July 13, 1861; July 17, 1862; March 12, 1863; July 2, 1864; case of Miller, 11 Wallace, 301; British Com. (1871).)

8. That "the true and just measure of indemnity, in case of embargo, to claimants whose quality of American citizen shall be recognized by the commission, is that which governs in cases of seizures *jure belli*, and was adopted by the United States in the rebellion of 1861-1865, *i. e.*, the restoration of the property which came into the hands of the government, or, if it has been sold, the net proceeds realized therefrom." (See acts of Congress last above cited; this argument, *supra*, 3, 4, 7.)

Mr. Durant's Argument. Mr. Durant, the advocate for the United States, replying to Mr. McPherson's brief on the embargo, argued that the agreement of February 12, 1871, by its terms included all wrongs and injuries to persons and property, so that it was unnecessary to inquire whether the word "embargo" in the treaty of 1795 was well applied to a particular class of the wrongs complained of. He contended, however, that the word embargo, which was used in the Spanish as well as in the English text of the treaty, was used in its full Spanish sense. Mr. Fish had so treated it in his protests against the *arbitrary embargoes of property* under Dulce's decrees; and the treaty of 1795 expressly provided that the citizens or subjects of each contracting party, their vessels, or effects, should not be liable to any embargo or detention on the part of the other for any military expedition or other public or private purpose whatever. When Mr. Sagasta sought to limit the effect of the word "embargo," said Mr. Durant, the minister of the United States at Madrid, Mr. Sickles, referring to the language of the treaty, replied that the embargo, if considered as a military measure intended to strengthen one party to the conflict and to weaken the other, would seem to be fairly embraced in the interdictions of the treaty, and if it was considered as a punishment for offenses against the laws, the accused were entitled to a judicial hearing before judgment was pronounced against them. This view,

said Mr. Durant, the Spanish Government did not appear to have controverted, and it was directly acquiesced in by Mr. Martos, Mr. Sagasta's successor. It thus appeared to have been the understanding of both governments that the embargo or sequestration of the property of American citizens in Cuba was a violation of the treaty of 1795, and by the agreement of 1871 Spain undertook to pay pecuniary damages to those citizens of the United States who had thus been injured in their property. The commission itself had so decided in several cases.

As to the existence of a state of war in Cuba, Mr. Durant said that Spain had never admitted it, nor was it ever recognized by the United States or by any European nation. (For. Rel. 1875, vol. 2, pp. 1155, 1158.) In the civil war in the United States, belligerent rights were recognized by European powers from the beginning as pertaining to the Confederate States, and the Government of the United States proclaimed and acknowledged the state of war by its blockade of the coasts of the Confederate States, by exchange of prisoners, by negotiations, and in other ways. "On the other hand, the authorities in Cuba," said Mr. Durant, "although there was no war, and consequently there was peace, proceeded at once in time of war to exercise war powers unknown to civilized nations."

With his brief Mr. Durant submitted an
Argument of Mr. Rodriguez. argument on the subject of embargoes by Mr. J. I. Rodriguez. Mr. Rodriguez declared that

the outbreak of the insurrection in Cuba had found justification and even applause on the part of Spanish statesmen who had an interest in suppressing it; that the devastation of the island by the insurgents was purely a measure of war, like the devastation of the South by the march of Sherman's army; that the Cuban Junta in New York was an organization which of itself did not violate the laws, and that as soon as the President, by his proclamation of October 12, 1870 (16 Stats. at L. 1136), declared that it should cease to exist, it disbanded and promptly obeyed the orders of the head of the nation; that the natives of Cuba, far from being infected with a deadly hatred of Spain, were before the insurrection faithful subjects of that country, and after the insurrection were men who were fighting for their independence.

Apart from these general considerations, Mr. Rodriguez

maintained that the embargoes were illegal under the law of Spain of September 28, 1820, which was enacted in Madrid and communicated to Cuba, and of which article 4 (Zamora's *Biblioteca*, vol. 3, p. 218, word *Extranjero*) read as follows: "Not even by way of reprisals in time of war, nor for any other reason whatever, shall it be lawful to confiscate, sequester, or embargo the said property (the property of foreigners in Spain); but it shall be lawful to do so when the property belongs either to the governments with which the Spanish nation is at war or to their allies or auxiliaries." He also referred to a law of December 4, 1845, which provided (Sanguinetti, *Diccionario de Legislacion*, vol. 3, p. 846) as follows: "The property of foreigners shall never be confiscated, even in case Spain is at war with the nation to which they belong."

Mr. Rodriguez contended that the laying of the embargoes was forced upon General Dulce, and that they were demanded by some from corrupt motives and by others from feelings of enmity. The decree of April 1, 1869, was not published in the *Gaceta* till the 16th of that month, when General Dulce was no longer able to resist the bands of volunteers who besieged his palace and who on the 2d of June compelled him to resign his office into the hands of General Espinar. The embargoes were executive, not judicial. General Espinar went away, and General Cabellero de Rodas, who came to occupy his place as Governor-General of Cuba, issued the order of September 2, 1869, by which Colonel Montaos was directed to act as judge-advocate and institute legal proceedings against the person supposed to be connected with the revolution. By these proceedings it was intended to turn the *executive embargoes*, first, into *judicial embargoes*, and then into *final confiscation*, but they reached a practical result only in cases of fifty-two persons, while the authorities went on laying executive embargoes. When General Valmaseda, the favorite of the volunteers, succeeded General Cabellero de Rodas as Governor-General, he abolished the council of administration of embargoed property; but when King Amadeo ascended the throne of Spain he established the *junta de la deuda* and ordered a general revision of all cases of embargo, directing the cases in which there were proofs against the parties to be sent to the courts, and the release of the property where there were no such proofs. This decree received little attention from the authorities in Cuba, and when the Republic was established

the embargoes were by the decree of July 12, 1873, ordered to be abolished. The minister of Ultramar went to Cuba to enforce this decree, but he was unable to do it, and the embargoes were not abolished till Marshal Martinez Campos arrived with 26,000 regular troops and put the volunteers under control. Mr. Rodriguez contended that under the decrees of April 1869 no opportunity of defense was given to the owners of the embargoed property, since by the embargo itself they were deprived of their civil rights, and could not appear before any tribunal in Cuba either in person or by attorney. The political secretary informed the consul-general of the United States at Havana that persons desiring to prove their innocence might appear before the Spanish consul of the place where they resided; and file with him testimony of trustworthy persons, which would be transmitted to the Captain-General, who would repeal the embargo if the testimony was satisfactory to him. This was an executive, not a judicial, proceeding. Mr. Rodriguez also contended that in order to make the measures adopted by the United States during the civil war a precedent for the measures adopted by the Spanish authorities in Cuba, it would be necessary to show that the United States seized and confiscated under its laws the property of foreign subjects in the United States. Moreover, the proceedings of the tribunals in Cuba during the insurrection were affected by the presence of armed bands of volunteers, who invaded and occupied the court rooms. In conclusion, Mr. Rodriguez made the following recapitulation:

"1. In Spain no other *embargoes* of property than the one decreed by the courts of justice, both in civil and criminal cases, are known. (See Escriche Diccionario, word *embargo*.)

"(2) No embargoes can be placed upon private property by executive decree.

"(3) Out of 135 claimants before this commission, there have been only four claimants against whose property a judicial embargo was placed, and this was on September 9, 1870. * * *

"(4) The embargoes under the decrees of April, 1869, were political measures, intended for political purposes, and the tribunals had nothing to do with them.

"(5) According to the laws of Spain the property of all foreigners, Swedes and Americans and Russians, can not be embargoed, sequestrated, or confiscated for any reason at all, even in times of war, by means of reprisals.

"(6) The Cuban embargoes were repealed as illegal in 1873, and the repeal was never disapproved by the government which succeeded the Republic.

“(7) The embargo and the confiscation of the property of American citizens in Cuba, even by reason of self defense, were forbidden by the laws above recited and by the treaty of 1795 between the United States and Spain.

“(8) Spain has conceded the restoration of the property of the American citizens so seized, embargoed, and confiscated. * * *

“(9) Neither the arbitrators nor the umpire have ever held that the *embargoes* were rightful, and, on the contrary, the heavy awards made in favor of Angarica, Delgado, Poey, Youngs, Smith & Co., and others have shown their indisposition to accept the doctrine now set forth for the first time by the advocate for Spain.”

To the brief of Mr. Durant dated February 18, 1881, and the accompanying brief of Mr. Rodriguez, Mr. McPherson replied in a brief dated August 30, 1881. He adverted to the fact that it is common in the jurisprudence of nations not only to punish acts committed by their citizens abroad, but also to render judgments against persons who are absent, such judgments, like those of the tribunals in Cuba, not being final, but subject to be reopened on the appearance of the parties against whom they were entered. In support of his position that a state of war existed in Cuba, he further referred to For. Rel. 1874, pp. 859, 861, 883, 904, 917; and in support of the position that foreign recognition is not necessary to constitute a state of war, he referred to the fact that, while the earliest recognition of the existence of the civil war in the United States was that of Great Britain on May 13, 1861, the Supreme Court of the United States held in the Prize Cases (2 Black, 670) that the first proclamation of blockade of Confederate ports on April 19, under which English vessels were captured before information of the British proclamation of neutrality had reached the United States, was conclusive evidence of the existence of a state of war, though in the same proclamation belligerent rights were denied to the Confederate Government by the declaration that any persons who, under its authority, molested vessels of the United States should be treated as pirates. Mr. McPherson denied that Mr. Martos had ever expressed acquiescence in the views of Mr. Sickles touching the illegality of the embargoes.

As to the laws of 1820 and 1845, which were quoted by Mr. Rodriguez, Mr. McPherson adverted to the fact that, in the first section of the act of 1820, it was declared that the protec-

tion given to foreigners and their property was conditional on their respecting the constitution and laws of the country, and to the fact that it was declared in the third section that they were to enjoy "exactly the same protection as the persons and property of Spaniards." The fourth section, he said, with significant caution expressly subjected to confiscation the property of those who, in the time of war, became the enemies of Spain or "the allies or *auxiliaries* of such enemies."¹ In regard to the dissolution of the Cuban Junta in New York, Mr. McPherson said that there was established in its place the "Agencia General de la Republica de Cuba," the president of which was Miguel de Aldama, and which contributed to the support of the insurgents by supplying them with money and arms, as well as by soliciting unarmed men to go to Cuba. From this source, it was contended, the insurgents derived their main support.

On May 20, 1881, the umpire, Count Lewen-
Case of Macias. haupt, made the following award:

"The Panchita estate was purchased by Mr. Macias, a naturalized American citizen, August 26, 1867, from Mr. Ruiz, for \$197,000, of which amount \$60,000 were actually paid at various times. The deferred payments were secured by mortgage, and as the claimant failed to pay an installment when it fell due, the mortgagee brought suit to foreclose the mortgage.

¹ *Law of September 28, 1820.*

ART. 1. The Spanish territory is an inviolable asylum for the persons and for the property of foreigners, both when these foreigners reside in Spain and when they live outside of her dominions; provided, however, that they respect the constitution and the laws of the country.

ART. 2. This asylum, as far as the persons are concerned, shall be without prejudice to the treaty stipulations already made with other powers; but as in these stipulations the offenses of a political character can not be spoken of, it is hereby enacted that no foreigners residing in Spain shall be delivered to their respective governments, and that their political offenses shall not be considered comprehended among the crimes mentioned in the above-named treaties.

ART. 3. The persons spoken of in the foregoing treaties, as well as their property, shall enjoy exactly the same protection as the persons and property of Spaniards.

ART. 4. Not even as reprisals in time of war, nor for any other reason whatever, shall it be lawful to confiscate, sequesterate, or embargo the said property; but it shall be lawful to do so when the property belongs either to the governments with which the Spanish nation is at war or to their allies or auxiliaries.

On the 4th of October 1869 a decree was entered for the sale of the property under foreclosure, but before the sale took place the attorney of Mr. Macias filed, June 30, 1870, a petition in bankruptcy, and obtained an order staying the sale directed by the decree of October 4, 1869;—and as the bankrupt's property had to be placed in charge of someone designated by the court, Mr. Bock, brother-in-law and friend of Mr. Macias, and who already had charge of the Panchita estate, was appointed administrator.

“In the meantime Spanish officials had on two different occasions, in consequence of a confusion of name, by mistake interfered with Mr. Macias's property, but there is no satisfactory evidence that these incidents had any connection with Mr. Macias's failure to meet the payment.

“The first act complained of, for which Mr. Macias is entitled to indemnity, took place on the 20th of August 1870. On that day a general embargo was decreed against Mr. Macias to retroact to June 1869, and by this act he was deprived of all his civil rights, and his lands, chattels, and credits became, in fact, for the time and occasion, the property of the government. Mr. Ruiz, the mortgagee, was appointed administrator under the embargo, and placed in possession of the plantation. The proceedings in bankruptcy were stayed, and the plantation was finally sold on the 7th of November 1871 to Mr. Ruiz for \$102,248.

“There is no doubt that the embargo was imposed without justification; that the property has not been returned, although an order of disembargo was issued November 23, 1873, and that the claimant has in vain made efforts to obtain restitution; but it is maintained on behalf of Spain that if the bankruptcy proceeding had succeeded it would not have arrested the execution of the decree already made for the sale of the Panchita, and that had the property been sold under proceedings in bankruptcy instead of foreclosure it would not have brought one dollar more than it did bring.

“On the other side, the advocate for the United States contends that if those proceedings had been continued and the embargo had been removed the products of the estate would have been under the control of the court and might have been applied to the payment of the debts of the estate, and that under the direction of the court there would have been an honest sale of the claimant's property.

"In the opinion of the umpire, the claimant in this case is entitled to an indemnity equal to the amount which might have been realized by a sale under bankruptcy proceedings, with interest on the amount from the date of embargo.

"The claim includes the following items:

"1. In respect of the estate Panchita, the value of the estate, less the purchase money due at the time of the sale, \$263,000, with interest from November 23, 1873, the date of the order of disembargo.

"The Panchita estate was bought in August 1867 for \$197,000. The claimant contends that it had increased in value by completion of a railroad and improvements; that he refused in 1869 an offer of \$300,000; that the yearly product was 1,500 hogsheads of sugar, and that the value ought to be estimated at \$400,000. That the value of the estate was materially increased is admitted by Spain, but it is contended that the building of the railroad must have been foreseen in August 1867; that it is not proved that the yearly product ever was more than 1,028 hogsheads, and that there is every reason to doubt that it was improved to the value of \$400,000. In any case it is not probable that at a forced sale under bankruptcy at the time of the insurrection the plantation would have brought a price corresponding to the actual value, and the umpire is of opinion that an indemnity of \$120,000 is a fair compensation for the claimant's loss in consequence of the embargo of this estate.

"2. The value of the three crops taken from the estate prior to the sale, \$150,000, with interest from November 23, 1873.

"This claim is disallowed in consequence of the award made with regard to the first item.

"3. The value of the personal property on the estate Panchita, not included in the valuation of the estate, \$2,000, with interest from June 1, 1869, the date when the embargo of August 1870 took effect.

"This item is disallowed because the property is not included in the official inventory, the correctness of which there is no reason to doubt.

"4. The value of the villa and lots at Matanzas, \$15,000, with interest from June 1, 1869.

"On account of this claim an amount of \$10,000 is allowed.

"5. The value of the household furniture in Havana, \$3,000, with interest from June 1, 1869.

"This claim is admitted by Spain as far as the principal is concerned.

"6. The value of the debt secured by mortgage on the estate Ariadne, \$5,000, with interest from June 1, 1869.

"Mr. Silveira, the owner of the estate, wrote on the 4th of March 1871 the following letter to the bureau of embargoed property at Matanzas:

"I have just arrived from Spain, and for this reason I was not aware that the property of Mr. José Manuel Macias has been embargoed, and as I have to deliver to the said Mr. Macias in the month of May of the present year the amount of \$5,000 for an installment I owe him for the estate of Ariadne, I will hold the said amount at the disposal of the government, complying with the circular about the matter, with the understanding that out of the said amount I have to deduct \$433, which I paid for said Macias, and by account of said installment, to the city council of Matanzas for revenue taxes owed by the said estate at the time which it belonged to the said Macias, and which payment was made before the decree of embargo."

"As it is reasonable to suppose that the above amount of \$4,567 would have been paid at the time if the embargo had not existed, this amount is allowed, with interest from June 1, 1871.

"7. The value of the claimant's interest in the sugar embargoed on the estate Socorro, \$1,023.33, with interest from May 30, 1870, the date of the embargo.

"The principal is allowed.

"8. Compensation for loss of business and credit, \$100,000.

"This claim is disallowed.

"The umpire understands that it is not contended that the claimant has acquired under the decree of November 23, 1873, other rights than those conceded, which the umpire considers acquired under the agreement of 1871, and that in consequence there is no necessity for the umpire in this case to examine the question whether the commission has jurisdiction to hear and determine a case of violation of rights founded on the said decree.

"The umpire hereby decides that the claimant is a citizen of the United States within the meaning of the agreement of 1871, and that the following amounts be paid on account of this claim:

"One hundred thirty-four thousand twenty-three dollars thirty-three cents, with six per cent interest a year from the

20th of August 1870, the date of the embargo, and four thousand five hundred sixty-seven dollars, with six per cent interest a year from the 1st of June 1871 to this day."

José M. Macias, No. 52, Span. Com. (1871).

The rest of the awards for embargo claims
Thompson's Case. were as follows:

The claimant's estate in Cuba was twice embargoed by the Spanish authorities on the ground that, although she was a native of the United States, she was the wife of Juan D. Duggan, an insurgent convict. She and Duggan had for years held themselves out as man and wife, which fact, if true, would have given Duggan a legal interest in the property; but it was not true, Duggan having a lawful wife in another place. The first seizure of the property was made on April 26, 1869, and the embargo continued till the 5th of June. The second seizure was made on September 26, 1869, and under this embargo the authorities held the property till September 10, 1870, when it was restored to the claimant. When the first seizure was made, she asserted title to the property, but at the same time declared herself to be Duggan's wife. There was no evidence that she notified the authorities that she was not his wife till November 11, 1869, nearly a month after the second seizure; and it was contended on the part of Spain that the property was held by the authorities no longer than was necessary to satisfy themselves as to the actual status of the claimant, and the real ownership of the property.

The claimant asked indemnity on account of both seizures; on account of increased living expenses, and damages to the property, resulting from the embargo; and also on account of the failure of the authorities to restore a *potrero*, or cattle farm, which was part of her estate.

The umpire allowed damages for the net value of the crop of 1869-70 gathered during the second seizure, with interest at 6 per cent from June 30, 1870, the date when the last proceeds were received. He refused to allow damages for increased living expenses prior to the production by the claimant (after the second seizure) of proofs of her real nationality. He allowed the sum of \$1,000 as compensation for the value of the place as a home after that time. He also allowed \$2,000 as compensation for the detention of the *potrero* from Septem-

ber 10, 1870, to May 31, 1873, the date of the filing of the memorial.

The umpire refused to allow damages as a matter of course for injuries "which embargoed property always suffers." There was, said the umpire, no evidence whatever in the case that the injuries for which indemnity was asked "were caused by any specific act of the Spanish authorities." They were only such as were "the result of use, accident, and the like," and no indemnity could be allowed on that account. In making this ruling the umpire refused to be bound by the decision of one of his predecessors, M. Bartholdi, in the cases of J. G. Angarica, No. 13, and J. M. Delgado, No. 31, in which Spain was held to be liable "for unjust detention and use of property, *as well as for damages which embargoed property always suffers.*"

Count Lewenhaupt, umpire, case of *Alfred G. Compton, executor of Ana Thompson*, No. 39, Span. Com. (1871), May 3, 1882.

The claimant asked damages for the seizure of his plantation by Spain under an executive decree issued about October 1, 1869. His property was restored in July 1870. The arbitrator for Spain contended that the treaty of 1795 did not cover embargoes of real property; that the prohibition of the seizures of "effects" could not apply to real estate, and that the prohibition of embargoes referred only to the exercise of the *jus angariæ*; that a prohibition of embargoes was found in similar language in various other treaties of the United States, and was understood to have that signification. It was also contended that Spain had a right to embargo property under the circumstances existing at the time in question; that at that time the Government of Spain had invested the Government of Cuba with extraordinary and discretionary powers; that, owing to the condition of affairs in Cuba, the Governor-General had for many years possessed such powers as were vested in the commanders of besieged places; that such powers were conferred by the royal ordinance of May 1825, and were renewed and made common to all the governors in Cuba by the royal orders of March 21 and May 26, 1834; that similar powers were exercised by the authorities in Cuba in 1795, and that they constituted the regular course of proceedings in that island; that such being the rule for Spaniards as well as for foreigners, it could not be expected that a special

court with special proceedings should have been established for citizens of the United States in 1869.

The arbitrator for the United States answered:

"I understand it to be argued that under the law of Spain the will of the Governor-General of Cuba is the law of that island, and that in any case his authority is justification of the seizure of property. In my view this law is not such a law as was intended by the 7th section of the treaty of 1795. By that treaty Spain agreed in effect to proceed against the property of American citizens for offenses defined by law, for penalties imposed by law, and by a regular course of judicial proceedings. A law which vests in the Governor-General the powers to define offenses, affix penalties, and to proceed summarily or administratively does not seem to me to meet the requirements of the treaty.

"Even if a state of things existed which justified a summary procedure it could not justify the infliction of penalties not authorized by law. The suspension of courts is not a suspension of law."

For the losses caused by the embargo and detention of the claimant's estate the arbitrator for the United States allowed the sum of \$31,000, with interest at 6 per cent from June 1, 1870, and \$5,000 more for certain expenses connected with the embargo, with interest at 6 per cent from December 1, 1870.

The umpire, Count Lewenhaupt, concurred in the opinion of the arbitrator for the United States and adopted his award.

Case of Ramon Rivas y Lamar, No. 73, Span. Com. (1871), February 22, 1883.

"The injury complained of is the seizure of
Case of Madan. claimant's property in August 1869 under an executive decree.

"It is contended by Spain that the authorities in Cuba were justified by the right and duty of self-defense in temporarily sequestrating the revenues of native Cubans residing in the United States until assurance could be obtained that such revenues would not be devoted to the support of the insurrection; that it was the misfortune of the claimant to belong to that class of persons, and that it was his fault that by his participation in a previous insurrection he had rendered himself a proper object of suspicion in the occurrence of a new insurrection.

"The umpire is of opinion that under the agreement of 1871 it is immaterial whether or not the claimant took part in a previous insurrection; that there is no proof that he had

done anything to cause him to be suspected of participation in the insurrection of 1868, and that in consequence the seizure was not justified."

Count Lewenhaupt, umpire, case of *Cristobal Madan*, No. 45, Span. Com. (1871), February 22, 1883.

Case of Mora & Arango. "The claimants, partners of the New York firm of Mora & Arango, are recognized by Spain as naturalized citizens of the United States.

"On the 18th of February 1870 the governor-general of Cuba issued a decree of embargo against the property of Fausto Mora on the ground that, according to information received from the Spanish consul in New York, Mora had contributed money in favor of the Cuban cause. On the 31st of July this embargo was annulled in consequence of a telegram from the Spanish minister in Washington, and on the 21st of August the minister wrote to the governor-general that the information given by the consul was erroneous. In the meantime the lieutenant-governor at Sagua la Grande had extended the embargo to the firm Mora & Arango by a decree of the 13th of April, and this decree was in fact a prohibition for the firm to do business in his district; but this second embargo was, according to the text of the decree, issued in consequence of the first, and it was understood by all parties that when the joint embargo was raised the said prohibition ceased. * * *

"The umpire is of opinion that there is no proof that the claimants were implicated in the insurrection and that the embargoes were not justified. With regard to the first embargo, the umpire is further of opinion that there is no proof that said embargo caused any loss, and that therefore no indemnity is due.

"The following claims are made on account of the second embargo:

"1. Indemnity for certain debts, which the claimants suppose that they would have collected if no embargo had been issued.

"The umpire is of opinion that there is no proof that the collection of those debts was delayed or prevented by the embargo; that a certain amount was recovered after the embargo, and that the greater part was lost because the debtors became insolvent. No allowance is made.

"2. Indemnity for stoppage of business with Cuba during

the embargo and for dissolution of the firm on the 1st of August 1870. * * *

“The umpire is of opinion that it is immaterial whether or not the embargo had the remote effect to cause the dissolution of the firm. * * *

“The firm was in fact, by the decree of the governor at Sagua la Grande, illegally warned off from trading with Cuba, and so far the case is of the same kind as those of vessels warned off from trading with a certain port without sufficient reason.

“It does not seem that any similar case has been decided by the commission; but it is usual in such cases to award indemnity for prospective earnings. The loss is, however, in the present case of a very speculative character, as depending upon most uncertain contingencies; and therefore the only allowance made is the sum of \$3,225, in the nature of interest on the capital of the firm, which is stated in the record to have been \$184,300. * * *

“For these reasons the umpire hereby decides that an amount of \$3,225, with 6 per cent interest from August 1, 1870, to this day, be paid on account of this claim.”

Count Lewenhaupt, umpire, case of *Mora & Arango*, No. 50: Spanish Commission (1871), February 22, 1883.

7. MISCELLANEOUS CASES.

In 1828 the American ship *Franklin* was detained in Upper California by order of the Mexican general commanding at San Diego. There were no judicial proceedings, and, after a long detention, the master, finding that it was the intention of the general to get possession both of the ship and the cargo, ran away with his vessel to the Hawaiian Islands. The ship, when she left Boston for California, was laden with a valuable assorted cargo, which was largely sacrificed by the injurious conduct of the Mexican general. An award was made by the umpire of the sum of \$119,966.39.

Charles Bradbury, William Oliver, and E. Copeland, jr. v. Mexico: Commission under the convention between the United States and Mexico of April 11, 1839.

The claimant, a citizen of the United States, engaged in business at Matamoras, was, upon a certain occasion when he was about to cross the Rio Grande, searched by the customs officer upon suspi-