

despatches to the city of Mexico, ordering the said annulment to be published forthwith. Therefore, upon principles of natural justice and the usage of nations, the said decree of January 25th, 1862, if ever legal, should not have been enforced after the annulment of the said decree of Maximilian of October 3d, 1865.

"21st. And the said Maximilian hereby declares, as a fact, that in no single instance did he ever issue an order to take the life of any particular prisoner or prisoners; but that, on the contrary, whenever he was informed that prisoners of war were in the possession of his forces, he immediately issued orders *not* to take the life of any of them.

"22d. And further, as one of the charges preferred against him, Maximilian, is, that of contumacy in objecting to the jurisdiction of the court ordered to try him, he avers that that is a question of *law*; and that in every court in civilized nations it is the legal right of a defendant to make such objections as he may be by counsel advised.

"FREDERIC HALL, Of Counsel."

The foregoing points of defense were prepared on the 4th of June, and translated into Spanish. The counsel from the city of Mexico having arrived on the 5th, those points were presented to them for consideration. They observed to His Majesty, to the Diplomatic Corps, and to myself, that they fully concurred in the foregoing opinion.

On the 6th, Messrs. Ortega and Vasquez filed a petition in the nature of a plea to the jurisdiction, wherein they set forth that, according to the 128th Art. of the Constitution, in case of the observance of that Constitution being interrupted by a rebellion, and that the people thereafter should recover their liberty, the re-establishment of that instrument should immediately take

place; that, in accordance with its provisions and the laws under it, the persons who rebelled against it should be tried; that the defendant, Ferdinand Maximilian, is on trial as the head of the rebellious government formed contrary to the Constitution of 1857, and therefore the 128th should govern.

That the same Constitution, in treating of the judicial power of the Federation, provides in Art. 97, that the Federal tribunals are clothed with the power, among others, to try those cases in which the Federation is a party; that the Federation is a party in all cases in which it has an interest; that it has in no case more interest than where the rights of the nation have been violated.

That it is quite clear, according to said Art. 97, and Arts. 100, 104, and 105, that the Federal tribunals have jurisdiction of the cause of Maximilian. That the Federal tribunals are the District, Circuit, and Supreme Court, as well as Congress, in certain cases; that only in such courts ought the defendant to be tried, and not in any Council of War, either ordinary or extraordinary. That, according to Art. 13 of the Constitution, no person can be tried by private laws, nor by special tribunals; that the laws of January 25th, 1862, is a private law, and the Council of War a special tribunal. That Art. 23d prohibits the punishment of death for political crimes, except against traitors in a foreign war; that the defendant, Maximilian, is a foreigner, and cannot be a traitor; that it is clear that said law of January 25th, 1862, is contrary to the said Articles 13 and 23 of the Constitution of 1857. That Art. 29 of that instrument authorizes the suspension of certain guarantees, but that it is equally clear that it does not extend to cases which secure the life of man; that no extraordinary faculties could enable the President to enact laws contrary to the Constitution; and that the Constitution

can only be changed by a two-third vote of the members of Congress, and the approval thereof by a majority of the Legislatures of the States.

The petition, or plea, closes with a prayer that the Council of War be declared incompetent to try the defendant Maximilian, asking that he may be tried by the Federal tribunals; and that if the general in command does not wish to take the responsibility of deciding the question, that he consult the Supreme Government upon that point.

Such were the principal points of law raised against the jurisdiction of the court on the 6th of June; and the same being presented to the commanding general, and by him considered, were overruled, and the party ordered to trial.

The Emperor and his counsel were desirous of postponing the trial as long as possible; but were compelled to go to trial on 13th of June.

On that day, at six o'clock in the morning, fifty mounted men of the *Cazadores de Galeana* (Sharp Shooters of Galeana), and fifty infantry of the battalion called the *Supreme Powers*, formed in front of the door of the Convent of Capuchinas.

At eight o'clock, the Court, dressed in full uniform, assembled in the Iturbide Theatre,—a building which will contain about fifteen hundred persons. On that occasion the house was filled.

The Court and two of the prisoners occupied the stage. At nine o'clock Generals Miramon and Mejia entered a carriage and were conducted to the place of the court, escorted by the force above mentioned.

The Emperor was a little unwell, and did not appear in court. Had it been necessary he could have gone; but he had too much discretion to make a show of himself to a curiosity-seeking crowd. He remarked that if

they intended to convict him, they would do it whether he was present or absent.

The President of the Council of War opened the court immediately after the arrival of the two aforesaid defendants, and the Fiscal commenced to read the cause. So far as the Emperor's case was concerned, no witnesses were introduced by either party. The Fiscal read some records of the shooting of General Ateaga and Colonel Salasa, who were executed by order of General Mendez, at Morelia, in the State of Michoacan, in October, 1865. It appears that they tried him for every execution that could be thought of which was made under the Empire. It certainly will be considered by the world as an anomaly in judicial proceedings. Some printed decrees and other documents, purporting to be signed by the Emperor, were introduced, without any proof that they were genuine. This evidence was supported, the Fiscal contended, by the law that permits the evidence of *public notoriety* to be adduced in proof of the acts of the defendant. Not a witness was sworn in the case to testify upon any point.

As the three cases were tried together, the reading of the charges, documentary evidence, and written arguments occupied two days. On the second day neither of the defendants were in court.

After the Fiscal had presented his views of the law, the opinion of Messrs. Ortega and Vasquez, dated June 12th, 1867, with their signatures attached thereto, was read. My name will not be found in the record of the cause: being a foreigner, the law would not permit me to make an appearance in court, nor to file any paper in the cause as counsel. But it will be observed that my views of the law, laid down in the document written on the fourth of June by me, are adopted in the petition, or plea, to the jurisdiction of the court, written by Messrs. Ortega and Vasquez, on the sixth of June. The same

principles are advanced by them in their written argument of the 13th. I will state that it was my intention to have written a more lengthy opinion, had I been allowed to remain in Queretaro until the termination of the trial, and to have sustained my points by references to the authorities found in the work of Justice Story on the Constitution of the United States, and the decisions of the Supreme Court of our country—provided I should have been able to obtain them from the United States Consul's office in the city of Mexico. What I wrote were points briefly stated, as is quite apparent, upon which, thereafter, I desired to extend my argument. As the Emperor especially desired my humble opinion to be sent abroad, that the legal points, if of any value in his favor, should be known, although he might be convicted by that court; and inasmuch as I was a foreigner in Mexico, and not allowed to make an appearance in the cause, I deem it due to myself to make this statement as to my position.

It would be far more in unison with my feelings to insert herein the written argument of Messrs. Ortega and Vasquez; but its length is the reason rendered for its non-appearance. The following is given as embracing, in brief, the points of their discussion:

They presented their objections to the proceedings upon the grounds of the unconstitutionality of the law of January 25th, 1862, as contained in their plea to the jurisdiction of the court on the sixth of June; that there was no proof, either oral or documentary, that supported the charges; that under the legislation of no country is a defendant prohibited from presenting any objection to the court or proceedings which he may think valid in law; that if he does present them, it is no crime, although the decision thereon be against him; that the court is not an inquisition; that, according to

the legislation of Mexico, hearsay testimony is of no value; that such testimony is contrary to the doctrine laid down in law 28th, title 16, of the 3d Partidas; that, according to the law of Mexico, two witnesses of good character who saw the alleged act committed are required for full proof (*prueba plena*); that proof of public notoriety is not allowed when witnesses can be obtained who witnessed the commission of the alleged crime. Here counsel cited the authority of Eseriche, under the title "*Fama*," showing that the testimony called that of "*public notoriety*," in criminal cases, is of no value; and that Eseriche says, "Notoriety, although it may be proved, is not generally full proof, because many times it is false and deceiving; as the common laws says, "*Dictum unicus facile sequitur multitudo*." They also quoted the following from Ferraris: "*Fama regulariter loquendo de per se non facit plenam probationem facit tamen semiplenam probatum in causas civilibus, secus autem in criminalibus, ubi requiruntur probationes indubitata et luce meridiana clariores*." Which law clearly illustrates that the civil law does not consider public notoriety sufficient in a civil case, and much less in a criminal one. The same doctrine is supported by Febrero, in Lib. 3d, title 2d, chap. 12, num. 108, wherein he says that "public notoriety, in criminal causes, is no proof, because that ought to be clear as light, conclusive, undoubted, and not to be determined by suspicions."

The counsel further contended that, by the said law of January 25, 1862, in Art. 6, that public notoriety was sufficient to institute an inquiry, as provided by the General Ordinance of the Army and Law of September 15, 1857; but that said laws do not hold that such testimony is sufficient to convict a party; and that, according to Eseriche, under title "*Callar*" (to be silent), that no one was obliged to accuse himself, and that silence is not proof that the alleged charges are true;

and that the 55th Article of the Ordinance says, that "to sustain the sentence of death, every judge ought to recollect that there must be conclusive proof of the crime, unless the defendant has confessed the crime."

That the crime must be proved as alleged, and that the criminal intent must also be shown to have existed, in order to constitute a crime.

That the decree of the Emperor, of October 3, 1865, would favorably compare with the said law of January 25, 1862.

The counsel then referred to the noble example of the United States in behalf of Jefferson Davis; that he had been conquered in 1865, and not subjected to an incompetent tribunal for trial; that when the popular crowd of Paris severed the head of Louis XVI., the impartial opinion of the world did not approve the act; that the English of the present day do not sustain the execution of Charles I.; and that Charles X. of France, in 1830, had his life respected.

Such is a summary of the points taken by the counsel in their written argument for the defence. After which, they orally commented upon the case, Mr. Ortega closing the discussion.

On the 14th day of June, the arguments being closed in the three cases, the public session was adjourned, and a private one opened, for the consideration of the case; and at the end of their deliberation, at eleven o'clock at night, a unanimous decision of guilty, with the punishment of death, was pronounced against each of the defendants.

On that night the papers in the cause were passed over to the Asesor for his examination, who, on investigation thereof, rendered an opinion that the same were valid; whereupon the commanding general, Escobedo, signified his approval, making the same final.

In order to have a complete understanding of the

Emperor's cause, it will be necessary to examine the law of January 25th, 1862; the decree of the Emperor dated October 3d, 1865; certain parts of the Mexican Constitution which are applicable to the cause; the treaty of Miramar; and the correspondence between the United States and Mexico relative to the preservation of the life of Maximilian.

The placing of the foregoing correspondence as one of the documents in the case, may produce a smile from the members of the bar; but although it was not produced on the trial as evidence in support of the issue on either side, it was so impressed upon the minds of a large number of Mexicans, that it was scarcely possible to keep it out of the scales of justice. That it had great weight in the discussions outside of the court is certain. Whether the court was entirely free from its influence remains doubtful.

It created so much excitement and discussion throughout Mexico, in connection with the fate of Maximilian, that it was considered proper and convenient to include it herein, so that the reader might not be compelled to look elsewhere to obtain a correct idea of its tenor.

Neither was the treaty of Miramar adduced as evidence; but it might have been an important feature, as showing, in respect to the direct acts of French officers, a want of criminal intention or injustice on the part of the Emperor in connection therewith, when they shielded themselves under that treaty in committing acts wholly at variance with his wishes.

The laws, treaty, and correspondence referred to, are the following:

PROCLAMATION OF H. M. THE EMPEROR.

"MEXICANS!—The cause which D. Benito Juarez defended with so much valor and constancy, has already succumbed under the force, not only of the national

will, but also of the very law which that officer invoked in support of his pretensions. To-day, even the faction into which the said cause degenerated, is abandoned, by the departure of its chief from the native soil.

"The National Government for a long time was lenient, and exercised great clemency, in order to give the chance to misled and misinformed men to rally to the majority of the nation, and to place themselves anew in the path of duty. It has fulfilled its object; the honorable men have assembled under its banner, and have accepted the just and liberal principles which regulate its politics. The disorder is only maintained by some leaders carried away by unpatriotic passions, and assisted by demoralized persons who cannot reach to the level of political principles, and by an unprincipled soldiery, the last and sad remnants of the civil wars.

"Hereafter the contest will only be between the honorable men of the nation and the gangs of criminals and robbers. Clemency will cease now, for it would only profit the mob, who burn villages, rob and murder peaceful citizens, poor old men, and defenceless women.

"The Government, resting on its power, from this day will be inflexible in its punishments, since the laws of civilization, the rights of humanity, and the exigencies of morality demand it.

"MAXIMILIAN.

"MEXICO, October 2d, 1865."

"MAXIMILIAN, Emperor of Mexico. Having heard our Council of Ministers and our Council of State, *We Decree*:

"ART. 1. All persons belonging to armed bands or corps not legally authorized, whether they proclaim or not any political principles, and whatever be the number of those who compose the said bands, their organization, character, and denomination, shall be tried mili-

tarily by the courts-martial, and if found guilty even of the only fact of belonging to the band, they shall be condemned to capital punishment within twenty-four hours following the sentence.

"ART. 2. Those who, belonging to the bands mentioned in the previous article, shall be captured with arms in their hands, shall be tried by the officer of the force which has captured them; and he shall, within a delay never extending over twenty-hours after the said capture, make a verbal inquest of the offence, hearing the defence of the prisoner. Of this inquest he shall draw an act, closing with the sentence, which must be to capital punishment, if the accused is found guilty, even if only of the fact of belonging to the band. The officer shall have the sentence executed within the twenty-four hours aforesaid, seeing that the criminal receive spiritual assistance. The sentence having been executed, the officers shall forward the act of inquest to the Minister of War.

"ART. 3. From the penalty established in the preceding Articles, shall only be exempted those who, having done nothing more than being with the band, will prove that they were made to join it by force, or did not belong to it, but were found accidentally in it.

"ART. 4. If, from the inquest mentioned in Article 2d, facts are elicited which induce the officer holding it to believe that the prisoner was made to join the band by force, without having committed any other crime, or that he was found accidentally in it, without belonging to it, the said officer shall abstain from passing sentence, and he shall send the accused, with the respective act of inquest, to the proper court-martial, in order that the trial be proceeded with by the latter, in conformity with Article 1st.

"ART. 5. Shall be tried and sentenced conformably with Article 1st of this law:

"1. All those who will voluntarily assist the *guerrilleros* with money or any other means whatever.

"2. Those who will give them advice, information, or counsels.

"3. Those who voluntarily, and knowing that they are *guerrilleros*, will put within their reach or sell them arms, horses, ammunition, subsistence, or any articles of war whatever.

"ART. 6. Shall be also tried conformably with the said Article 1st:

"1. Those who will hold with the *guerrilleros* such relations as infer connivance with them.

"2. Those who voluntarily and knowingly will conceal them in their houses or estates.

"3. Those who, by words or writing, will spread false or alarming reports, by which public order may be disturbed, or will make against it any kind of demonstration whatever.

"4. All owners or administrators of rural estates who will not give prompt notice to the nearest authority of the passage of some band through the same estates.

"Those included in paragraphs 1st and 2d of this Article, shall be punished by imprisonment from six months to two years, or by hard labor from one to three years, according to the gravity of the case.

"Those who, being included in paragraph 2d, were the ascendants, descendants, spouses, or brothers of the party concealed by them, shall not suffer the penalty aforesaid; but they shall remain subject to the vigilance of the authorities during the time the court-martial will fix.

"Those included in paragraph 3d of this Article, shall be punished by a fine of from \$25 to \$1,000, or by imprisonment from one month to one year, according to the gravity of the offence.

"Those included in paragraph 4th of this Article, shall be punished by a fine of from \$200 to \$2,000,

"ART. 7. The local authorities of the villages who shall not give notice to their immediate superiors of the passage through their villages of armed men, shall be ministerially punished by the said superiors, by a fine of from \$200 to \$2,000, or by seclusion from three months to two years.

"ART. 8. Whatever resident of a village who, having information of the proximity or passage of armed men by the village, shall not give notice of it to the authorities, shall suffer a fine of from \$5 to \$500.

"ART. 9. All residents of a village threatened by any gang, who are between the ages of eighteen and fifty-five years and have no physical disability, are obliged to present themselves for the common defence, as soon as called, and for failing to do so, they shall be punished by a fine of from \$5 to \$200, or by imprisonment of fifteen days to four months. If the authorities think more proper to punish the village for not having defended itself, they may impose upon it a fine of from \$200 to \$2,000, and the said fine shall be paid by all those together, who, being in the category prescribed by this Article, did not present themselves for common defence.

"ART. 10. All owners or administrators of rural estates, who, being able to defend themselves, will not prevent the entrance in the said estates of *guerrilleros* or other malefactors; or, after these have entered, will not give immediate information of it to the nearest military authority; or will receive on the estates the tired or wounded horses of the gangs, without notifying the said authority of the fact, shall be punished for it by a fine of \$100, according to the importance of the case; and if it is of great gravity, they shall be put in prison and sent to the court-martial, to be tried by the latter conformably with the law. The fine shall be paid to the principal Administration of Rents, to which the estate

belongs. The provision of the first part of this Article is applicable to the populations.

"ART. 11. Whatever authorities, whether political, military, or municipal, shall abstain from proceeding, in conformity with the provisions of this law, against parties suspected or known to have committed the offences provided for in said law, shall be ministerially punished by a fine of from \$50 to \$1,000; and, if it appears that the fault was of such nature as to import complicity with the criminals, the said authorities shall be submitted, by order of the Government, to the court-martial, to be tried by the latter, and punished according to the gravity of the offence.

"ART. 12. Thieves shall be tried and sentenced in conformity with Article 1st of this law, whatever may be the nature and circumstances of the theft.

"ART. 13. The sentences of death, pronounced for offences provided for by this law, shall be executed within the delays prescribed in it; and it is prohibited that any demands for pardon be gone through.

"If the sentence is not of death, and the criminal is a foreigner, even after its execution, the Government may use toward him the faculty it has to expel from the territory of the nation all obnoxious strangers.

"ART. 14. Amnesty is granted to all those who may have belonged and may still belong to armed bands, if they present themselves to the authorities before the fifteenth of November next; provided they have not committed any other offences subsequently to the date of the present law. The authorities will receive the arms of those who will present themselves to accept the amnesty.

"ART. 15. The Government reserves the faculty to declare when the provisions of this law will cease.

"Each one of our Ministers is charged with the execution of this law in the part which concerns him,

and will give the necessary orders for its strict observance.

"Given at the Palace of Mexico, on the 3d of October, 1865.

"MAXIMILIAN.

"The Minister of Foreign Affairs, charged with the Ministry of State.

"JOSÉ E. RAMÍREZ."

LAW OF JUAREZ.

"MINISTER OF GOVERNMENT:

"The Citizen President of the Republic has been pleased to transmit me the decree which follows:

"BENITO JUAREZ, Constitutional President of the United States of Mexico, to its Inhabitants—*Know ye*:

"That in use of the ample faculties with which I find myself invested, I have decreed the following law to punish crimes against the nation, against order, public peace, and individual guaranties:

ART. I. Among the crimes against the independence and security of the nation are comprised:

"1st. The armed invasion of the territory of the Republic by foreigners and Mexicans, or by the former alone, not preceded by a declaration of war on the part of the power to which they belong.

"2d. The voluntary service of Mexicans in the foreign troops of the enemy, whatever be the character in which they accompany them.

"3d. The invitation, made by Mexicans or by foreign residents in the Republic, to subjects of other powers to invade the national territory, or to change the form of government which has been given to the Republic, whatever may be the pretext under which it is done.

"4th. Any kind of complicity to excite or prepare the invasion, or to favor its realization and end.

"5th. In case of an invasion being made, to contribute in any manner by which, in the places occupied by the invader, may be organized any shadow of a government, voting, forming meetings, making laws, accepting employment or commissions, be it from the invader himself or from other persons delegated by him.

"ART. 2. Among the crimes against the laws of nations, the punishment of which belongs to the nation to impose, are comprehended :

"1st. Piracy, and the traffic of slaves in the waters of the Republic.

"2d. The same crimes, although they may not be committed in the same waters, if the criminals are Mexicans, or if, in case of their being foreigners, they should be legitimately consigned to the authorities of the country.

"3d. The attempt to take the lives of foreign Ministers.

"4th. To induce citizens of the Republic, without the knowledge and license of the Republican Government, to serve another power, or to invade its territory.

"5th. To entice or invite citizens of the Republic to unite with foreigners who intend to invade, or who may have invaded the territory.

"ART. 3. Among the crimes against public peace and order, are comprised :

"1st. Rebellion against the political institutions, whether proclaiming their abolition or reform.

"2d. Rebellion against the legitimately established authorities.

"3d. To attempt to take the life of the supreme chief of the nation, or that of the Ministers of State.

"4th. To attempt to take the life of any of the Representatives of the nation, in the place of their sessions.

"5th. A seditious rising up, denying any proper de-

cree of the authority, or asking that any particular law may be issued, omitted, revoked, or altered.

"6th. The formal disobedience of any authority, civil or military, to the orders of the supreme magistrate of the nation, transmitted through the channels which the laws of the ordinance of the army may designate.

"7th. Public riots and disturbances, caused intentionally, with premeditation or without it, when they have for their object disobedience or insults to the authorities, perpetrated by tumultuous meetings, with the intent to use force against any persons or the property of any citizen; contumelious shouting; introducing one's self violently into any public or private edifice; tearing down decrees from the places in which they are fixed for the information of the people; fixing in the same places subversive proclamations or pasquinades, which may in any manner incite the disobedience of any law or governmental order, which may have been ordered to be observed. In any of the cases referred to, to force the prisons, to carry arms and distribute them, to harangue the multitude, to ring the bells, and all those actions manifestly directed to augment the tumult, will be aggravating circumstances.

"8th. To fix in any public place, to distribute and to communicate openly and clandestinely a copy of any true or false order which is directed to impede the fulfilment of any supreme order. To order such publications made, and to co-operate with those that may be made, recalling their contents in places where people are assembled, or to clothe them in offensive and disrespectful expressions against the authorities.

"9th. Breaking out of prison, or place of exile or confinement, in which may have been placed by legitimate authority any citizen of the Republic, or the violation of the banishment imposed on those who are not citizens; as well as military men, who absent themselves

from their quarters, station, or residence, which may have been designated by competent authority.

"10th. To assume the supreme power of the nation; that of the States or Territories; that of the districts, partidos, and municipalities, acting by their own authority, or by commission from that authority which may not be legitimate.

"11th. Conspiracy, which is the act of a few or many persons uniting together, with the object of opposing obedience to the laws or the fulfilment of the orders of the recognized authorities.

"12th. Complicity in any of the aforesaid crimes, by concurring in their perpetration in an indirect mode, by aiding in giving information to the enemies of the nation or Government, especially if those who reveal said information are public employees; by administering resources to the seditious persons or foreign enemy, whether of arms, provisions, money, baggage, or impeding those which the Government may have; by serving the same enemies as spies, post-carriers, or agents of any kind, the object of which may be to favor their undertaking or those of the invaders, or that the disturbers of the public tranquillity may realize their plans by spreading alarming and false news, or which may weaken public enthusiasm by surmising facts contrary to the honor of the Republic, or comments on them in a manner disfavorable to the interests of the country.

"ART. 4. Among the crimes against individual guaranties are comprised:

"1st. Plagiarism of the citizens or inhabitants of the Republic, in order to require them to pay a ransom. The sale, which may be made of them, or the forced letting of their services or work.

"2d. Violence exercised against persons with the object of disposing of their goods and rights, which legitimately constitute their property.

"3d. The attack, by armed hand, on said persons in the cities or uninhabited places, although the capture of said persons or their goods may not result through such attack.

"ART. 5. Every citizen of the Republic has the right to accuse, before the authority established by law to judge the crimes by it expressed, any individual who may have committed any of said crimes.

"ART. 6. The respective military authority is the only one competent to try the crimes specified in this law; for that effect, as soon as said authority has knowledge that any of said crimes have been committed, whether by public notoriety, by complaint or accusation, or by any other manner, it will proceed to make the proper examination according to the General Ordinance of the Army, and the Law of the 15th of September, 1857; and the cause, when stated, will be adjudicated before the Ordinary Council of War, whatever may be the category, employment, or commission of the person prosecuted. In places where there are no military commanders, or generals-in-chief, the governors of the States will act in their stead.

"ART. 7. The procedure will be prepared ready for the defence by the Fiscal within sixty hours; and in the space of twenty-four thereafter the defence will be completed: then the Council of War will immediately assemble.

"ART. 8. Whenever a sentence of the Ordinary Council of War shall have been confirmed by the respective military commander, general-in-chief, or governor, as the case may be, it will be executed immediately without further recourse, and as is provided for in time of war or in a state of siege.

"ART. 9. In crimes against the nation, order, the public peace, and individual guaranties, which have been specified in this law, an appeal for pardon is not admissible.