

"ART. 10. The military Asesors, appointed by the Supreme Government, will necessarily be present in the Ordinary Council of War, as is provided in the Law of the 15th of September, 1857, in order to give his opinion to the members of said Council of War. The judgment which they may give to the military commanders, generals-in-chief, or governors, legally founded, must be executed in conformity with the circular of the 6th of October, 1860, since the necessary Asesors are, in fact, responsible for the advice which they may give.

"ART. 11. The Generals-in-chief, Military Commanders, or Governors, on whom is incumbent the exact fulfilment of this law, and their Asesors, will be personally responsible for any omission they should incur by their action in the national service.

PENALTIES.

"ART. 12. The invasion made into the territory of the Republic, which is spoken of in Fraction 1, Art. 1, of this law, and the service of Mexicans among foreign troops of the enemy, which are spoken of in Fraction 2, will be punished with the penalty of death.

"ART. 13. The invitation made to invade the territory, which is spoken of in Fractions 3 and 4 of Art. 1, will be punished with the penalty of death.

"ART. 14. The captains of vessels engaged in piracy or the commerce of slaves, spoken of in Fractions 1 and 2 of Art. 2, will be punished with the penalty of death; the other individuals of the crew will be condemned to hard labor for the term of ten years.

"ART. 15. Those who shall invite or decoy citizens of the Republic for the ends expressed in Fractions 4 and 5 of Art. 2, will suffer the penalty of five years imprisonment: if the deception or invitation should be made in order to invade the territory of the Republic, the penalty will be death.

"ART. 16. Those who shall attempt to take the life of the Supreme Chief of the nation, wounding him in any manner, or only threatening him with arms, will suffer the penalty of death. If the threat is without arms, and it is done in public, the penalty will be eight years imprisonment; if it is done by private acts, the penalty will be seclusion for four years.

"ART. 17. Those who shall attempt to take the life of the Ministers of State, or that of the Foreign Ministers, with a knowledge of their rank, and should wound them, shall suffer the penalty of death; and if they should only threaten with arms, the penalty shall be ten years imprisonment. It being understood always, that said Ministers have not been the first aggressors in fact, because in such cases the crime shall be considered and adjudged according to the common laws on quarrels.

"ART. 18. The attempt against the life of the Representatives of the nation, which is spoken of in Fraction 4 of Art. 2, shall be punished with the penalty of death, provided the Representative be wounded; if he should only be threatened with arms, the penalty shall be from five to eight years imprisonment, according to the discretion of the judge: it being understood always, that the said Representative may not have been the first aggressor, in which case the crime will be considered and adjudged in conformity with the common law on quarrels.

"ART. 19. The crimes which are spoken of in Fractions 1, 2, and 5 of Art. 3, shall be punished with the penalty of death.

"ART. 20. The formal disobedience, which is spoken of in Fraction 6 of Art. 3, shall be punished with the loss of employment and salary, which the guilty party may obtain, and four years hard labor; provided always that by such disobedience no losses should have resulted to

the nation, in which case it will be taken in account to augment the punishment, at the discretion of the judge.

"ART. 21. Those who prepare the public riots and disturbances, spoken of in Fraction 7 of Art. 3, and those who join them, on the terms expressed in said fraction, or other similar ones, shall suffer the penalty of ten years imprisonment, or of death, in case aggravating circumstances should occur, referred to at the end of said fraction, being besides liable to respond with their property for the damages which individually they may have caused.

ART. 22. Those who may have committed the crimes spoken of in fraction 8 of Art. 3d will suffer the penalty of six years imprisonment.

ART. 23. Those who escape from imprisonment, to which they may have been reduced by legitimate authority, shall suffer double the term of their penalty; and if a second time repeated, punishment of death shall be inflicted; which shall in like manner be applied to foreigners who, once expelled from the national territory, should return without permission of the Supreme Government. Military men absenting themselves from the barracks, place of employment, or residence, which may have been designated for them, shall suffer the loss of their employment and four years imprisonment.

"ART. 24. Those who assume the public powers, spoken of in Fraction 10 of Art. 3d, shall suffer the penalty of death.

"ART. 25. The crime of conspiracy, spoken of in fraction 11 of Art. 3d, shall be punished with the penalty of death.

"ART. 26. Those who, in the perpetration of the crimes spoken of in Fraction 12 of Art. 3d, by aiding in giving news to the enemies of the nation or Government, by furnishing resources to the seditious or to the foreign enemy, whether of arms, provisions, money,

baggage, or by impeding their possession by the authorities; or by serving the enemies as spies, mail-carriers, guides, or as agents of any class whatever, the object of which should be to favor the undertaking of said persons, or of the invaders, shall suffer the death penalty. Those who shall spread false or alarming news, or shall weaken public enthusiasm, by surmising facts contrary to the honor of the Republic, or commenting in a disfavorable manner on the interests of the country, shall suffer the penalty of eight years imprisonment.

"ART. 27. Those who commit the crimes specified in fractions 1, 2 and 3 of Art. 4th, shall suffer the penalty of death.

ART. 28. The criminals who shall be caught *in flagrante delicto* in any action of the war, or who shall have committed those crimes specified in the foregoing article, shall be identified, and they shall be immediately executed.

GENERAL DISPOSITIONS.

"ART. 29. The receivers of stolen property in uninhabited places shall suffer the penalty of death; those offending in like manner in populated places shall be punished by six years hard labor.

"ART. 30. The individuals who have in their possession *munition* arms, and shall not have delivered them according to the disposition contained in the decree of the 25th of last month, if they do not give them up within eight days after the publication of the present law shall, in case of their being Mexicans, be treated as traitors, and as such shall receive the punishment of death; but if they are foreigners, they shall be imprisoned for ten years.

"ART. 31. The chiefs and officers of the National Guard who may have been called into service by virtue of this law, shall receive their pay from the Federal

treasury during the time of the commission which may have been given them.

"Wherefore, I order that this law be printed, published, and observed.

"National Palace of Mexico, the twenty-fifth day of January, one thousand eight hundred and sixty-two.

"BENITO JUAREZ.

"To Citizen MANUEL DOLLADO,
"Minister of Relations and Government."

TREATY OF MIRAMAR.

"Napoleon, by the grace of God and the national will, Emperor of the French, to all who shall see these presents, *Greeting* :

"A convention, followed by additional secret articles, was concluded on the 10th of April, 1864, between France and Mexico, for the purpose of regulating the condition of the French troops stationed in Mexico.

CONVENTION AND ADDITIONAL SECRET ARTICLES, THE TENOR OF WHICH IS AS FOLLOWS :

"The Governments of H. M. the Emperor of Mexico, and of H. M. the Emperor of the French, animated by an equal desire to assure the establishment of order in Mexico, and consolidate the new Empire, have resolved to regulate, by means of a convention, the condition of the French troops stationed in that country, and for that purpose have appointed as their plenipotentiaries: H. M. the Emperor of the French, M. Charles François Edouard Herbert, Minister Plenipotentiary of the first class, Councillor of State, Director in the Ministry for Foreign Affairs, Grand Officer of His Imperial Order of the Legion of Honor, etc., etc.; H. M. the Emperor of Mexico, M. Joaquin Velazquez de Leon, His Minister of State without the portfolio (*sans porte-feuille*), Grand

Officer of the distinguished Order of Our Lady of Guadalupe, etc. etc.

"Who, after mutually communicating their full and written powers, found in good and due form, have agreed upon the following articles :

"ART. 1. The French troops actually in Mexico shall be reduced as soon as possible to a strength of 25,000 men, including the foreign legion.

"In order that the army may serve as a safeguard to the interests which have caused the Intervention, it will remain in Mexico temporarily, under the conditions stipulated in the following articles :

"ART. 2. The French troops will evacuate Mexico as soon as the Emperor of Mexico shall be able to organize the necessary troops to replace them.

"ART. 3. The foreign legion in the service of France, composed of 8,000 men, shall, however, remain in Mexico for the term of six years after all the French troops are called home, in conformity with Article 2.

"The said legion will pass immediately into the service of the Mexican Government, and will be paid by the same. The Mexican Government reserves to itself the right to shorten the period during which it will employ the foreign legion in Mexico.

"ART. 4. The points of territory which will be occupied by the French troops, as well as the military expeditions of these troops, if they take place, shall be determined by common accord, and directly between H. M. the Emperor of Mexico and the Commander-in-chief of the French army.

"ART. 5. In all points where the garrison is not exclusively composed of Mexican troops, the military command will belong to the French commander.

"In case of combined French and Mexican expeditions, the command shall likewise appertain to the French officer.

"ART. 6. The French commander shall have no right to intervene in any branch of the Mexican Administration.

"ART. 7. During the time the requirements of the French army necessitate every two months a service of transports between France and the port of Vera Cruz, the expenses of such service, fixed at the sum of 400,000 francs for every voyage (going out and returning), shall be reimbursed by the Mexican Government, and paid in Mexico.

"ART. 8. The naval stations which France possesses in the West Indies and in the Pacific Ocean shall frequently send men-of-war carrying the French flag into the ports of Mexico.

"ART. 9. The expenses of the French expedition to Mexico, which the Mexican Government is obligated to reimburse, have been fixed at the sum of two hundred and seventy millions for the whole duration of the expedition until the 1st of July, 1864. Said sum to bear interest at the rate of three per cent. per annum. After the 1st of July, 1864, all expenses of the Mexican army will be defrayed by Mexico.

"ART. 10. The indemnity which the Mexican Government obligates itself to pay to France for expenses, salaries, keeping and maintaining the troops of the army, commencing on the 1st of July, 1864, is fixed at the sum of one thousand francs for every man per annum.

"ART. 11. The Mexican Government will immediately remit to the French Government the sum of sixty-six millions francs in bonds of the loan at their emission value, and of which amount will be applied—fifty-four millions on account of the debt mentioned in Art. 9, and twelve millions on account of indemnities due to the French in virtue of Art. 14 of the present convention.

"ART. 12. For the payment of other war expenses

and for the extinction of the charges mentioned in Art. 7, 10, and 14, the Mexican Government binds itself to pay annually to France the sum of 25 millions in cash.

The payment shall be applied as follows:

1st. Towards liquidating sums due in virtue of Art. 7 and 10.

2d. Paying off amount of interest and capital of the sum, as stipulated in Art. 9.

3d. For indemnities due to French subjects, in virtue of Art. 14 and the following:

"ART. 13. The Mexican Government will deliver in Mexico, on the last day of every month, to the Paymaster-General of the army, the necessary sum to cover the expenses of the French troops who shall have remained in Mexico, in conformity with Art. 10.

"ART. 14. The Mexican Government binds itself to indemnify French subjects for losses which they unjustly may have sustained, and which may have been caused by the expedition.

"ART. 15. A mixed commission, composed of three Frenchmen and three Mexicans, nominated by their respective governments, shall meet at Mexico within three months, for the purpose of examining into and regulating those reclamations.

"ART. 16. A revising commission, composed of two Frenchmen and two Mexicans, appointed in the same manner, and who will reside in Paris, shall proceed with the definite liquidation of the reclamations previously admitted by the commission as designated in the last article, and will pronounce upon those submitted to their decision.

ART. 17. The French Government will place at liberty all Mexican prisoners of war, as soon as H. M. the Emperor of Mexico shall have entered his States.

"ART. 18. The present convention shall be ratified, and the ratifications exchanged as soon as possible.

"Given at the Palace of Miramar, on the 10th of April, 1864.

(Signed)

"VELAZQUEZ,
"HERBERT."

To this treaty have been added the following three secret clauses, which are conceived in the following terms :

ADDITIONAL SECRET ARTICLES.

"H. M. the Emperor of the French and H. M. the Emperor of Mexico, desiring by additional secret clauses to this Convention, to explain in a complete manner their reciprocal intentions, and to clearly stipulate that, notwithstanding the events that might arise in Europe, the assistance of France will be given to the new Empire, have appointed for that purpose as their plenipotentiaries, namely: H. M. the Emperor of the French, M. Charles François Edouard Herbert, etc., etc.; and H. M. the Emperor of Mexico, M. Joaquin Velazquez de Leon, etc., etc.; who, after mutually communicating their full and written powers, found in good and due form, have agreed upon the following articles, viz. :

"ART. 1. H. M. the Emperor of Mexico, approving of the principles and promises as set forth in the proclamation of General Forey, dated June 12, 1863, as well as of the measures adopted by the Regency and by the French General-in-chief in conformity with said proclamation, has resolved to make known to his people his intentions regarding the same.

"ART. 2. On the other hand, H. M. the Emperor of the French declares that the actual effective force of the French army of 38,000 men shall, gradually only, be reduced every year, in such a manner that the French troops who will remain in Mexico, and inclusive of the Foreign Legion, shall be :

"28,000 men in 1865;
25,000 do. 1866;
20,000 do. 1867.

"ART. 3. As soon as the Foreign Legion, in conformity with the terms of Art. 3 of said Convention, passes into the service of Mexico, and is paid by it, as said Legion will continue to serve a cause in which France is interested, the general and the officers serving therein shall retain their nationality of Frenchmen, and their rights to advancement in the French army, according to the law.

"Given at the Palace of Miramar, on the 10th of April, 1864.

(Signed)

"HERBERT,
"VELAZQUEZ."

"After perusal and examination of this Convention, accompanied by additional secret articles, we have approved and do herewith approve it, in all and every one of the dispositions which they contain. We declare the same accepted, ratified, and confirmed, and promise its inviolable observance.

"In virtue of which, we give the present, signed by our own hand, and to which is affixed our Imperial seal.

"Given at the Palace of the Tuileries, on the 11th of April, of the year of grace, 1864.

"NAPOLEON.

"By the Emperor,

"DROUYN DE LHUYS."

"NEW ORLEANS, April 6th, 1867.

"SIR:

"For reasons which are doubtless well understood by you, it has not been in my power to present formerly to His Excellency, President Juarez, my letters of credence as Envoy Extraordinary and Minister Plenipoten-

tiary of the United States to the Republic of Mexico. The instructions of October last, under which I started on my mission, gave me a discretionary power in a certain contingency to establish my official residence temporarily at any place in the United States, or elsewhere near the frontier or coast of Mexico. For causes not necessary herein to be explained, I left Matamoras and came to this city in December last, since which time, under instructions from the Secretary of State, it has been the place of my official abode. The Government of the United States has observed with much satisfaction the withdrawal of the French expeditionary forces in Mexico, and the advance of the armies of the Constitutional Government toward the Capital of the Republic. This satisfaction has been recently disturbed by the reports it has received in regard to the severity practised on the prisoners of war taken by your armies at Zacatecas. Its fears, too, have been thereby excited that in the event of the capture of the Prince Maximilian, and the forces under him, this severity might be repeated. I have this day received by telegraph a dispatch from the Secretary of State, instructing me to express to His Excellency, President Juarez, these apprehensions in the most expeditious manner. Therefore, I communicate them by special bearer of dispatches. The Government of the United States has sincerely sympathized with the Republic of Mexico, and feels a deep interest in its success. But I have to express the belief that a repetition of the reported severities referred to, would shock its sensibilities and check the current of its sympathies. It is believed that such acts to prisoners of war as are reported, cannot elevate the character of the Mexican States in the estimation of civilized people, and may tend to bring into disrepute the cause of Republicanism, and retard its progress everywhere. The Government instructs me to make known to President Jua-

rez, promptly and earnestly, its desire, that in case of the capture of the Prince Maximilian, and his supporters, that they may receive the humane treatment accorded by civilized nations to prisoners of war. I have the honor to be, very respectfully,

“Your Excellency’s most obedient servant,

“LEWIS D. CAMPBELL.

“To his Excellency S. Lerdo D. Tejada,
Minister of Foreign Affairs of the
United Mexican States, San Luis Potosi,
Mexico.

“SAN LUIS POTOSI, MEXICO, April 22d, 1867.

“SIR: I had the honor, yesterday, to receive the communication which you sent me from New Orleans on the 6th inst. You were pleased to inform me in it that, for reasons which are understood, you have not come to present your credentials as Envoy Extraordinary and Minister Plenipotentiary of the United States of America, near the Republic of Mexico, and that you have remained in New Orleans since December last. The Government of the Republic regrets that those reasons should have prevented you from coming to present your credentials in order to commence your official relations, since it would be very satisfactory for the Government to receive you in your character as representative of the United States.

“You were also pleased to inform me that the satisfaction with which the Government of the United States had seen the withdrawal of the French forces from Mexico, and the advance of the armies of the Constitutional Government toward the Capital, has been disturbed by information received concerning the severity with which the prisoners of war taken at San Jacinto were treated. You also mentioned that it was the desire of the Gov-

ernment of the United States that, in case Maximilian and his partisans were captured, they should be treated humanely as prisoners of war.

"The enemies of the Republic, desiring to produce an unfavorable impression concerning the same, have endeavored to falsify the facts and spread inaccurate information as to the care of the prisoners of San Jacinto. The greater part of them, a considerable number, were pardoned, and the punishment which the chief of the Republican forces meted out to some of them was upon the ground that they were not simply prisoners of war, but violators of the law of nations and the laws of the Republic. They had abandoned themselves to all kinds of excesses and crimes in the city of Zacatecas, because they were fighting like filibusters, without country, without flag, and as mercenaries paid to shed the blood of Mexicans, who defend their independence and their institutions.

"No small number of those foreigners taken at San Jacinto were conducted to Zacatecas, where they have been treated with much benevolence; and those taken in Jalisco have been treated in the same manner, whose acts had not so many aggravating circumstances of especial culpability.

"The invariable conduct of the Government of the Republic, and that which the chiefs of its forces have observed generally, has been to respect life, and to treat with the greatest consideration the prisoners taken from the French forces; while on their part, and even by order of their chiefs, the prisoners which they took from the Republican forces were frequently assassinated. Many times, without the obligation of exchange, prisoners taken from the French forces have been generously set at liberty.

"Many of the principal chiefs of the French forces or-

dered entire towns to be burnt down; others were decimated by what were called court-martials; and sometimes, for a simple suspicion, without the appearance of a trial, they killed defenceless and aged persons who were unable to bear arms against them. Notwithstanding this, the Government of the Republic and the commander of its forces, generally, far from exercising the right of reprisals, as they were provoked to do, have always observed the most humane conduct, giving constant examples of the greatest generosity. In this manner the Republican cause of Mexico has excited the sympathies of all civilized nations.

"The French forces having retired, Archduke Maximilian has desired to continue to shed unfruitfully the blood of Mexicans. With the exception of three or four cities governed by force, he has seen the entire Republic rise against him. Notwithstanding this, he has desired to continue the work of desolation and ruin of civil war without an object, being surrounded by men most known by their spoliations and grave assassinations, and the most stigmatized with the misfortunes of the Republic.

"In case these should be captured, persons on whom rest such responsibilities, it does not appear that they should be considered as mere prisoners of war; for those are responsibilities defined by the law of nations and the laws of the Republic. The Government, which has given numerous proofs of its humane principles and of its sentiments of generosity, is also obliged to consider, according to the circumstances of the cases, what the principles of justice demand, and the duties which it has to fulfil for the welfare of the Mexican people.

"The Government of the Republic hopes that with the justification of its acts it will preserve the sympathies of the people and of the Government of the United

States, who have been and are held in the highest estimation by the Government of Mexico.

"I have the honor to be

"Your Excellency's very respectful

"and very obedient servant,

"SEBASTIAN LERDO DE TEJADA.

"To His Excellency LEWIS D. CAMPBELL,
Envoy Extraordinary and Minister
Plenipotentiary of the United States,
New Orleans."

It was contended in behalf of Maximilian that the law decreed by President Juarez on the 25th of January, 1862, is in conflict with the Constitution of the Republic, adopted February 12th, 1857, which is, and has been since that date, in force with the Republican party.

It will require no very deep reflection to determine that the position assumed by the defendant was correct.

On the 7th of June, 1861, the Mexican Congress passed an Act, entitled, "*Relative to the Suspension of Guaranties for the present,*" wherein it was declared that certain specified articles and parts of articles were suspended. In that Act no mention is made of Articles 23, 29, 97, nor 101.

The 10th Article of that law declares that "The suspension of these guaranties shall continue for the term of six months."

The said Article 23d declares that capital punishment for political crime is abolished, and can be extended only to the traitor to the country during a foreign war, the highway robber, the murderer, persons committing crimes under the military law, and to pirates.

The 97th Article says, that "The courts of the Federation have cognizance of all questions arising concerning

the fulfilment and application of the Federal laws. Of those questions in which the Federation may be a party."

Article 101 is as follows: "The tribunals of the Federation shall decide all controversies which arise:

"I. Upon laws or acts of whatever authority which violate individual guaranties.

"Upon laws or acts of the Federal authorities which violate or restrain the sovereignty of the States."

One of the striking features of a Republic, is a division of the powers of government, so that the rights of the people may not be subject to the will of any one individual, or one body of persons. The wisdom of the framers of the Constitution of the United States provided that the division of governmental functions should be into three parts, legislative, judicial, and executive; and that each within its respective sphere should be independent. Mr. Justice Blackstone said, where the right of making and enforcing laws is vested in the same man, there can be no public liberty. It is very apparent that the liberties of the people would be in jeopardy if any one or two divisions of government could enlarge their own constitutional powers, or lessen those of a co-ordinate branch. The people only can make that change, and in the manner prescribed by the Constitution.

The Republic of Mexico followed the example of the United States in the division of its powers of government. In fact, in its organic basis it has expressed that division as clearly as human language is capable of doing. And in speaking of the three powers, it says that "No two of those powers can ever be united in one person or corporation, nor the legislative power be deposited in one individual." It would be difficult to suggest how the executive of a government thus constituted could assume legislative functions with any appearance of honesty.

Under the head, "Of the Executive Power," Section II, Article 85, the powers and obligations of the President are defined as follows:

"1. To promulgate and execute the laws made by the Congress of the Union, ordaining, in the administrative sphere, their exact observance.

"2. To nominate and remove at will the secretaries of departments, to remove the diplomatic agents and the higher employees of the treasury, and to appoint and remove at will the other employees of the Union whose appointments or removals are not determined in any other manner in the Constitution or the laws.

"3. To appoint ministers, diplomatic agents, and consuls, with the approbation of Congress, or, in its recess, of the permanent deputation.

"4. To appoint, with the approbation of Congress, colonels, and other superior officers of the national army and navy, and the superior employees of the treasury.

"5. To appoint the other officers of the national army and navy, according to the laws.

"6. To dispose of the permanent armed force, both on land and on the sea, for the internal security and external defence of the Federation.

"7. To dispose of the National Guard for the same purpose, in the manner prescribed in clause 20 of Article 72.

"8. To declare war in the name of the United States of Mexico, according to the law of the Congress of the Union previously enacted.

"9. To grant letters of marque, subject to the rules ordained by Congress.

"10. To direct diplomatic negotiations, and to celebrate treaties with foreign powers, submitting them to the ratification of the Federal Congress.

"11. To receive Ministers and other Envoys from foreign powers.

"12. To call extraordinary sessions of Congress, when the permanent deputation shall consent thereto.

"13. To give to the judicial power all necessary assistance for the dispatch of their functions.

"14. To create all ports of entry, to establish marine and frontier custom-houses, and to designate their locality.

"15. To grant, according to the laws, pardons to criminals sentenced for crimes within the jurisdiction of the Federal tribunals.

Art. 86. To expedite the business of the administrative branch of the Federation, there shall be a sufficient number of secretaries named by a law of Congress, which law shall designate the business incumbent upon each secretary.

"Art. 87. In order to be a secretary of a department, it is required to be a Mexican citizen by birth, to be in the exercise of his rights, and to be twenty-five years of age.

"Art. 88. All the regulations, decrees, and orders of the President shall be issued under the signature of the secretary of the department to which the business appertains: without this requisite they will not be obeyed.

"Art. 89. The secretaries of departments, as soon as the first session is commenced, shall render an account to Congress of the state of their respective branches.

Article 51 declares that "The exercise of the supreme legislative power is deposited in an assembly, which shall be styled the 'Congress of the Union.'"

Under Art. 72, there are 32 sections, which contain the specific powers of Congress. The last section, number 33, says that Congress has the power "To make all laws that may be necessary and proper to carry out the aforesaid powers, and all others conceded by this Constitution to the authorities of the Union."

Neither branch of government is vested by the Con-