

- 870 Juan N. Ruiz.  
 871 José Lucero.  
 872 Zacarias Zosaya.  
 877 D<sup>a</sup> Josefa Moreno de Terán.  
 878 Manuel Moreno y Montañón.  
 879 Angel Acuña.  
 880 Francisco Arbizu y Ortiz.  
 881 Cayetano Pereida.  
 882 Juan Bustamante y Arbizu.  
 883 Miguel Arbizu.  
 884 Antonio Samaniego.  
 889 D<sup>a</sup> María Inés Gutierrez de Serna.  
 898 José Antonio Diaz.  
 902 Jacobo Ugarte.  
 908 D<sup>a</sup> María Coríbar de Yarto.  
 909 D<sup>a</sup> Francisca Mier de Borrego.  
 910 Lorenzo Yarto.  
 Comision mixta de la República Mexicana y los Estados-  
 Unidos. Washington.—D. C.  
 Concuenda con su original que obra en la foja 154 del  
 libro segundo de actas.  
 Lo certifico.  
 Washington, Octubre 29 de 1874.—(Firmado)—*J.*  
*Carlos Mexía*, secretario.  
 Es copia. México, Febrero 18 de 1875.—*Juan de D.*  
*Arias*, oficial mayor.

## NUMERO 137.

Secretaría de Estado y del despacho de relaciones ex-  
 teriores.—Seccion de América.

*Comision de reclamaciones de ciudadanos mexicanos y  
 de ciudadanos de los Estados-Unidos.—Alegato por  
 la defensa ante el Hon. Arbitro en las noventa y dos  
 siguientes reclamaciones contra México, de individuos  
 que tomaron parte en la expedicion Zerman.*

- Nº 42 Michael B. Evans.  
 43. F. W. Rathbone.  
 80. Watson Hodge.  
 217. Benjamin Ripley.  
 218. Francis McCredy.  
 219. Frederick Rhay.  
 220. Luther Center.  
 221. Peter Pauls.  
 223. Samuel Morey.  
 224. William F. Dunkinson.  
 226. John Sampson.  
 227. Joseph J. Arrington.  
 228. Joseph J. Bogy.  
 229. William Snyder.  
 230. Macus L. King.

231. A. M. Spenser.  
 232. H. F. Wulff.  
 233. George Brown.  
 234. Robert M. Couch.  
 235. Peter Wilson.  
 237. D. H. Whitfield.  
 238. A. J. Turpin.  
 239. John Adams.  
 240. Charles Leaven.  
 241. Samuel Weldon.  
 242. Jabez M. Tipton.  
 243. A. Brown, (a) Alex. Brown Chapman.  
 244. George White.  
 245. G. H. Myers.  
 246. Henry Adler.  
 247. Lewis Searce.  
 248. Samuel B. Pingrey.  
 249. Frederick Satterly.  
 250. Mar'in Hart.  
 251. William Douglas.  
 252. William Chamberlain.  
 254. William M. Jordan.  
 255. Daniel R. Colby.  
 256. Walter Smith.  
 257. John Craig.  
 258. Robert G. Baldwin.  
 259. William Wallace.  
 260. Samuel B. Wilcox.  
 261. William F. Willis.  
 262. James Mc. Carter.  
 263. Henry Lovell.

264. John Dockendorf.  
 265. David T. Zea.  
 267. J. H. Keyer.  
 268. W. Davis.  
 269. A. J. Fletcher.  
 271. Charles Nodine.  
 272. A. S. Young.  
 273. Sandford Croks.  
 274. James J. Nichols.  
 275. Charles Brown.  
 276. Absalon Cryers.  
 277. John Baker.  
 278. J. M. Leonard.  
 279. J. W. Hawkins.  
 280. William Roberts.  
 281. E. S. Wilson.  
 282. Augustus Maunning.  
 283. G. W. Hopkins é hijo.  
 284. William C. Petitjohn.  
 285. James Ballentine.  
 286. Joseph B. Smith.  
 287. L. B. Dresser.  
 288. William Rafferty.  
 289. J. H. Painter.  
 290. M. Barnes.  
 292. R. J. Black.  
 293. R. Blair.  
 294. M. Carter.  
 295. Augustos E. St. John.  
 296. Mark Terrill.  
 297. John Anderson.

298. E. W. Browning. 264. John Hookendorf.  
 299. John W. Weldon. 265. David T. Neal.  
 300. William H. Hughes. 267. J. H. Keyer.  
 301. William Scrivner. 268. W. Davis.  
 302. John Burnap. 269. A. J. Fletcher.  
 303. William Callahan. 271. Charles Nohine.  
 304. John A. Cullen. 272. A. E. Young.  
 306. John B. Jones. 273. Sandford Croka.  
 307. Frank Cleaves. 274. James J. Nichols.  
 308. John H. Auxes. 275. Charles Brown.  
 309. Allison A. Harper. 276. A. J. O'Connell.  
 310. A. H. Whitmer. 277. John Baker.  
 368. Asa E. Wilde. 278. J. M. Leonard.  
 369. William Perry. 279. J. W. Hawkins.  
 388. Louis Dusseberg. 280. William Roberts.  
 281. E. S. Wilson.  
 282. Augustus Manning.  
 283. G. W. Hopkins & H. J. Perkins.  
 284. William C. Pettibone.  
 285. James Ballentine.  
 286. Joseph D. Smith.  
 287. F. H. Irwin.  
 288. William Rafferty.  
 289. J. H. Painter.  
 290. M. E. Brown.  
 291. E. J. Black.  
 292. R. Blair.  
 293. M. Carter.  
 294. Augustus F. De John.  
 295. Mark Terrell.  
 297. John Anderson.

Ha habido pues, que examinar, en todos los demás casos originados de esa expedición. Si los injuriosos fueron ciudadanos de los Estados Unidos y si los que gestaron en nombre de algunos de ellos tienen alguna representación legal en el país, el caso de cada caso el grado de culpabilidad de *Reclamaciones contra México de los que tomaron parte en la expedición Zeman.—Alegato por la defensa ante el H. Arbitro.*

Aunque de pronto pueda parecer extraño que noventa y dos reclamaciones de una clase en que el árbitro ha decidido ya seis casos, sean sometidas en particular á su examen y decisión; por que se reflexione sobre la naturaleza de ellas y se atienda al punto de vista en que el comisionado de los Estados--Unidos insiste en considerarlas, no se podrá menos que reconocer la necesidad indeclinable de que sea el tercero de la comision quien las decida.

En los mencionados casos declaró que la expedición Zeman tuvo un carácter hostil y fué una violacion del derecho internacional; que cuantos en ella tomaron parte fueron mas ó menos culpables, y que las autoridades mexicanas obraron justificadamente reduciéndolos á prision ó sometiénolos á juicio; pero que como se les trató con alguna dureza, y los procedimientos se demoraron innecesaria é ilegalmente, los que reclaman por esta causa, si prueban haber sido ciudadanos americanos cuando fueron así injuriados, tienen derecho á moderadas indemnizaciones.

Ha habido pues, que examinar en todos los demas casos originados de esa expedicion.

1º Si los injuriados fueron ciudadanos de los Estados Unidos y si los que gestionan en nombre de algunos de ellos tienen legítima representacion.

2º Cuál fué en cada caso el grado de culpabilidad de la persona injuriada, cual la duracion de las injurias, y cual debe ser, por consiguiente la indemnizacion adecuada á tales circunstancias.

3º Si son satisfactorias las pruebas de ciertas pérdidas que se alegan.

No desistiendo el comisionado de los Estados Unidos de considerar la expedicion Zerman como legal en sí misma y como amistosa respecto á México; no conformándose con que se se indemnice moderadamente á los injuriados, y no estimando necesaria la prueba directa de ciudadanía en estos casos han surgido tantas divergencias de opinion sobre tales puntos cuantas han sido las reclamaciones examinadas pues aun en las dos únicas que se desecharon, el comisionado de los Estados Unidos consideró á los reclamantes como empleados en el servicio de México, cuando pertenecieron á la expedicion Zerman.

El que suscribe se propone en este alegato clasificar las opiniones discordantes de los comisionados, con relacion á los tres capítulos mencionados agregando otro para tratar de los casos en que, opinando el comisionado de México que no está probada la ciudadanía de los injuriados ó la representacion de los reclamantes, el comisionado de los Estados Unidos se ha ocupado del fondo

de las reclamaciones y opina que se indemnice á los que figuran en ellas.

Cree conveniente el que suscribe poner al principio de este escrito los fallos que toma por norma de sus alegaciones; tratará en seguida de las opiniones discordantes, colocándolas bajo los cuatro capítulos indicados, y por conclusion formulará un resumen de sus alegaciones.

Fallos dictados sobre reclamaciones de esta clase.

En el caso de María J. Denison, núm. 213.

It further appears to the Umpire that Dennison was cognizant of, and a party to, the fitting out of the «Archibald Gracie» an the enlisting of men at San Francisco for hostile purposes in violation of the law of the United States and of international law.

«Before the «Archibald Gracie» arrived at la Paz. Lower California, the Mexican Government had been informed by certain diplomatic agents accredited to it, *os whom the United States Minister was one, that a piratical expedition had left San Francisco under the command of Zerman.* Before arriving at la Paz, a Mexican vessel with which the «Archibald Gracie» had fallen in, had been compelled to deviate from its course and to accompany the expedition. Under these circumstances the Mexican authorities at la Paz were justified in seizing a vessel which had, without any authority, assumed to carry the Mexican flag, to exercise the rights of a Mexican man-of-war in forcing a Mexican vessel to deviate from its course. *Nor can the United States Government call upon Mexico to indemnify Dennison for a vessel which, with his knowledge, was fitted out in violation of the United States law.*

«The Umpire is therefore of opinion that the Mexican Government cannot be held responsible for any pecuniary losses suffered by Dennison in consequence of the seizure of the «Archibald Gracie.»

«But though Dennison brought upon himself these losses by acts which were in contravention of United States and international law, the Umpire considers that the United States have a right to expect that one of their citizens, even when accused of a crimen against the laws of Mexico, should receive proper treatment at the hands of its authorities. In the present instance, he is of opinion that there was unnecessary and illegal delay in beginning and concluding the trial of Dennison, and that after his arrest at la Paz, he was treated with undue severity and even cruelty.

«For the lengthened imprisonment an ill treatment suffered by Dennison, and the unnecessary loss of time to which he was forced to submit, the Umpire considers that the sum of one thousand dollars in gold will be a fair compensation, and he therefore awards that this sum without interest, in gold coin of the United States be paid by the Mexican Government for Maria J. Dennison as administratrix of the aforesaid Samuel L. Dennison.»

En el caso de Thomas Dolan, núm. 79.

«With reference to the case of Thomas J. Dolan vs. Mexico, núm. 79, the claimant avers that he took his passage for Acapulco on board the «Archibald Gracie» as a simple passenger, that he was ignorant of the character of that vessel and of the intention of the persons who prepared the expedition, and that he, himself, had no intention whatever of joining in any hostile proceedings. There is evidence in support of these assertions, though as it is offered by others who were in the same position as Dolan, it is not entitled to the fullest credit.

«But if Dolan was really ignorant of the character of

the vessel, his ignorance proved an absence of prudence on his part for which he could blame no one but himself; for it would have been easy at the time to ascertain by inquiry at San Francisco every thing connected with the expedition. At all events it would be most unjust to make the Mexican Government responsible for the deceit which was practiced upon the claimant, although the latter might, on that account, sue for compensation the owner of the vessel.

«The Umpire is of opinion, as in the other cases, that the Mexican authorities were justified in arresting Dolan; but he also thinks that the claimant is entitled to compensation for the unnecessary and illegal delay and harsh treatment to which he was subjected; and as there is no proof that he had a guilty knowledge of the nature of the expedition of which he, perhaps innocently, formed a part, the Umpire thinks that the compensation in this case should be higher than in some others, where it has been proved that the claimant had such guilty knowledge and actively contributed to the preparation of the expedition.

«He therefore awards that the sum of one thousand dollars in gold coin of the United States without interest be paid by the Mexican Government for the above-mentioned claim.»

En el caso de John Mc. Curdy, núm. 214.

In the case of John Mc. Curdy vs. Mexico, Núm. 214 the Umpire is of opinion that the claimant took an active part in, and was fully aware of the character of, the

Zerman expedition, the preparation of which at San Francisco was in contravention of the law of the United States and of international law. He thinks, therefore, that the United States Government cannot equitably ask of the Mexican Government compensation for the losses, pecuniary or of time, suffered by the claimants; for the enterprise, whilst it was illegal, was evidently of a speculative character, and those losses were due to the claimants having knowingly taken part in it.

In the case however of Mr. Mc Curdy, as in the cases of the others of the prisoners, there was unnecessary and illegal delay in proceeding with his trial, and he was exposed to unduly harsh treatment for which he is entitled to compensation; but considering the culpable conduct of the claimant, the Umpire is of opinion that justice only calls for the lowest possible amount, and he therefore awards that the sum of five hundred dollars in gold coin of the United States, without interest be paid in satisfaction of this claim.

En el caso de Thomas S. Andrews, núm. 216.

In the caso of Thomas Andrews vs. Mexico, N<sup>o</sup> 215, it appears that the claimant was the captain of the whaling vessel Rebecca Adams when she was seized by the Mexican authorities, at La Paz, on the 17th of November 1855. Captain Andrews had previously chartered the vessel to Zerman at San Lucas, and in doing so, and then losing sight of the objects of the voyage and the intentions of the owner of the vessel, the Umpire considers that Captain Andrews committed a great indiscretion. But he also believes that Captain Andrews was thoroughly deceived as to the position of Zerman, and

was convinced that he was really an Admiral in the Mexican service, and that the Archibald Gracie was a Mexican vessel of war, and that he did not suppose that Zerman had any hostile intentions.

But as the Rebeca Adams accompanied the Archibald Gracie, and had on board, besides arms and ammunition some of the men who were transferred from the latter vessel, there was prima facie evidence that she formed part of the expedition, and the Mexican authorities were therefore justified in seizing and detaining her together with the captain and crew.

But these authorities should, in the opinion of the Umpire, have investigated the circumstances of the case without delay, and have released the vessel, captain and crew, and for this purpose the term of three months from the date of the seizure of the vessel would have been sufficient. The seizure of Captain Andrews' private property, the ill-treatment which he and his crew were subsequently forced to suffer, and the unnecessary and illegal delay which occurred in the decision of their case, were entirely unjustifiable.

The Umpire is therefore of the opinion that the claimant is entitled to the value of his property which was seized, to the expenses incurred by him, owing to the unnecessary delays which took place and to compensation for his loss of time and the ill-treatment which he suffered.

The Umpire therefore awards fifteen hundred dollars [1500] in gold coin of the United States for the value of the claimant's private property, and three thousand dollars (\$3000) in the same coin for his expenses, with

interest upon these two items, at the rate of 6 per cent per annum, from the 17th of February, 1856, to the date of the final award, and further, the sum of two thousand dollars (\$2000) in the same coin, without interest, for the ill-treatment suffered and loss of time. The Umpire would have adjudged a higher compensation on this last account but for the want of judgment and indiscretion shown by Captain Andrews in chartering his vessel to Zerman, which action of his was participated in and supported, as it appears, by the whole of the crew of the «Rebeca Adams,» and of which the occurrences of which he and they complain, were the consequence.»

En el caso de Camille Gros, N<sup>o</sup> 311.

With reference to the case of Camille Gros vs. Mexico N<sup>o</sup> 311, the Umpire is of opinion that the expedition prepared under the auspices of Zerman was a violation of the law of the United States and of international law. It is clear that the claimant in this case was perfectly acquainted with the character of that expedition, and even assisted in its equipment.

The authority to negotiate a loan at San Francisco was given to Matheson by General Alvarez when he was not at the head of the Mexican Government, but was merely the leader of a revolution against that Government. The claimant entered of his own free will into the arrangement for supplying arms, munitions of war, and provisions, and received bonds in return guaranteed by the States of Guerrero.

Under these circumstances the Umpire is of opinion that the losses suffered by Camille Gros, and for which he claims compensation were due to his own acts com-

mitted in violation of the law of the United States and of international law, and he thinks that the United States ought not to support such a claim; and would not be justified in doing so.

Considering the character of the claimant's arrival at la Paz, there can be no doubt that the Mexican authorities were justified in ordering his arrest, as much as that of all those who were on board the «Archibald Gracie.» The only point on which he would be entitled to compensation, is the unnecessary and illegal length of the detention to which he was subjected, and the cruel treatment which he suffered at the hands of the Mexican authorities; but considering the illegal acts previously committed by him, the Umpire thinks that such compensation should not be a high one.

«Such is the opinion of the Umpire with regard to the rights of the claimant in this case if he had proved that he was a citizen of the United States at the time at which the acts were committed on account of which he claims compensation. But it appears to the Umpire that he was not a citizen of the United States at that time, he had declared his intention to become so and no more; but had not actually become a citizen of the United States.

«The Umpire is, therefore, of the opinion that Camile Gros is not one of those persons whose claim is entitled to consideration under the provisions of the Convention of July 4th, 1868; between the United States and Mexico, and consequently awards that the claim be dismissed.»\*

\* Se omite la insercion en este alegato del fallo relativo á la reclamacion de Patrick Cootey número 215, porque no tiene aplicacion en los casos de que ahora se trata.

El sentido de las decisiones copiadas se puede resumir en las siguientes declaraciones:

1º La expedicion preparada por Zerman, Dennison y otros en San Francisco de California, tuvo un carácter hostil y fué una violacion del derecho internacional y de las leyes de los Estados-Unidos.

2º Las autoridades mexicanas obraron justificadamente al arrestar á todos los que componian esa expedicion cuando llegó á la Paz, el dia 17 de Noviembre de 1855.

3º Los que tuvieron conocimiento del carácter de la expedicion y tomaron parte activa en ella deben ser indemnizados de sus pérdidas de propiedad ó de tiempo, y sí solamente con una corta cantidad por la innecesaria é ilegal demora en el procedimiento seguido contra ellos y por el mal trato que sufrieron.

4º Los que han alegado que se embarcaron en el «Archibald Gracie» en calidad de pasajeros y sin tener conocimiento del carácter de la expedicion, y lo prueban con el testimonio de otros individuos que se hayan en el mismo caso, no merecen entero crédito ni están exentos de falta, por lo ménos de discrecion y prudencia; pero si no apareció que tomaron parte activa en la misma expedicion ó contribuyeron á prepararla, quedarán suficientemente indemnizados con la cantidad de mil pesos cada uno por la demora de los procedimientos seguidos contra ellos y el mal tratamiento que sufrieron.

5º El capitan y los tripulantes de la Rebecca Adams cometieron una grave indiscrecion fletando este barco á los expedicionarios; pero no son tan culpables como estos, y aunque las autoridades mexicanas procedieron con justificacion en el arresto de los mismos á su llegada á