

4-1-1929

The Exploitation of Treason

Edward D. Tittmann

Follow this and additional works at: <https://digitalrepository.unm.edu/nmhr>

Recommended Citation

Tittmann, Edward D.. "The Exploitation of Treason." *New Mexico Historical Review* 4, 2 (1929).
<https://digitalrepository.unm.edu/nmhr/vol4/iss2/3>

This Article is brought to you for free and open access by UNM Digital Repository. It has been accepted for inclusion in New Mexico Historical Review by an authorized editor of UNM Digital Repository. For more information, please contact amywinter@unm.edu, lsloane@salud.unm.edu, sarahrk@unm.edu.

THE EXPLOITATION OF TREASON

EDWARD D. TITTMANN

The retreating hoofbeats of the Confederate Cavalry had scarcely stopped echoing down the Valley of the Rio Grande when the pent up emotions of the people they had tried to rally to the Southern Cause burst like a bottle of home brew. The invasion had been so sudden, so poorly resisted and so apparently successful that these people of New Mexico who were accustomed to be led rather than to lead had hardly time to think about it before the tide swept out again. The Colorado troops, followed by the California Column, checked the rebel successes as swiftly as they had been won. To many of the leading men of the territory the flareup was too confusing to be meditated upon. Most of them had, during the invasion, maintained that equilibrium for which merchants and traders are famous the world over. Some, however, especially among the wealthier Mexicans who saw in the abolishment of slavery also a disappearance of the peon system and who had cast all their resources and their influence for the South received a severe and terrifying shock when they realized that the Confederate government would not be able to maintain a footing in New Mexico.

There were among the leading families of the country certain powerful individuals who had trusted the invaders with a large portion of their wealth. These as well as less fortunate residents found it desirable to follow the southern troops down the Rio Grande, into Texas and beyond. And they were the first objects of the vengeance of the so-called Loyalists.

As is often the case in time of public excitement suspicions, jealousies, hatreds and greed joined hands with pure patriotism and revelled in attempts to get even with the sponsors of the lost cause.

That there should be high passions and much resentment among the adherents of the North should not, probably, be surprising. The Southern sympathizers, resident in New Mexico, belonged largely to the ruling classes and their followers: rich merchants, ranchers, mining men, lawyers, doctors and a sprinkling of saloon men and gamblers. Those who came either with or as a part of the army of the South were largely adventurers spurred on by the promise of rich loot. These men were accustomed to the wild life of the frontier, life was cheap in their eyes and they committed many outrages. John Lemon, who was later County Clerk of Doña Ana County, testified in a libel proceeding against the lands of Ammon Barnes, that Barnes had done everything in his power to help overthrow the Union Government. On January 18th, 1862, he testified, Barnes and a party attacked Lemon and some of his friends "and hung Crittenden Marshall" because "we were friends to the United States."

The California Column had reached the Rio Grande on August 7th, 1862. Some ten days later the first indictment for treason was found by a Grand Jury of which Jose Manuel Gallegos was foreman in the United States District Court at Santa Fé. There were only four citizens of eastern stock on the Grand Jury, the rest being Mexicans. This Grand Jury returned 26 treason indictments of which only one was against a man with a Spanish name. Some of those indicted were quite prominent citizens. Spruce M. Baird, Attorney General in 1860 and member of the Territorial Council in 1857 was one of them. One of them was again selected as a member of the Grand Jury in the same court at the August term two years later in 1864. An attempt to indict the former delegate in Congress Miguel A. Otero failed and the Grand Jury made a special return "not a true bill." The District Attorney who signed the indictments was Joab Houghton, a zealously Northern man and who was afterwards severely criticized in connection with the confiscation cases. Probably on that account he secured indict-

ments in many cases where the evidence must have been flimsy. For none of these men were ever tried. There were but a few who were arraigned, Among these was one Patrick McIntire whose bondsmen were Richard M. Stephens and Valentine Shelby, the latter a gambler of note. At the March 1864 term, McIntire did not show up neither did his bondsmen and Judge Kirby Benedict ordered the bond forfeited. It is not, however, on record that the sum was ever collected and the McIntire indictment was dismissed August 6th, 1864. Shelby was later known as Col. Shelby and was a familiar figure among the gambling element at Santa Fé for many years after the war terminated. James McLing, one of the indicted citizens was held in \$3000.00 bond which was furnished by Albert Elsberg, José Ortiz and Francisco Ortiz y Salazar. These sureties did not have to worry long because at the next term of the court in March 1863, the indictment against McLing was dismissed. F. E. Kavanaugh, who was indicted, had been a member of the territorial legislature and was a sutler at Ft. Fauntleroy. His property was confiscated by the U. S. Army and was sold for \$1657.28. The last of these indictments were dismissed at the July term 1867. According to the few remaining papers the witnesses against every one of these men were Merrill Ashurst, one of the leading lawyers of the territory, James L. Johnson, Alexander Valle, Joseph Mercure, Jesus Maria Baca and Mendel Debus. It seems from the sparse records left behind that some of these men had taken part in a demonstration in the plaza of the capital. And, speaking of sparse records it is amusing to quote a special report by the Grand Jury of the May Term, 1866. The Grand Jurors had evidently some difficulty in getting what they needed and they complained to the court in the following manner:

“They have visited the office of the Clerk of the U. S. District Court for this District and find that there is neither desk, case, table, chair or other article of furniture pertaining to said office; that the papers and files are necessarily

kept in boxes and owing to frequent removals, both of offices and clerks, these papers are so mixed up and disarranged that it is the work of days to find any particular paper."

The grand jurors recommended that the court purchase such furniture as the clerk could not afford to furnish them at his own expense because of the small emoluments of the office. And the writer of these lines can affirm that this confusion has never been overcome because he has found Doña Ana Court Records in Bernalillo County and Bernalillo Court papers in Santa Fé.

In the territorial days the court officers from the District Attorney down received fees and not salaries. So the attorney general and the circuit attorneys received \$5.00 for each case in which they represented the government and an additional \$5.00 for every judgment against a defendant, except in felony and capital cases where the fee was \$10.00 and \$20.00 respectively for each conviction. As a result the records disclose that at each term of court, in Santa Fé and Albuquerque at least, a large number of indictments for misdemeanors were returned. At the March term 1863 in Santa Fé 76 indictments for "betting at faro," "keeping faro table," "permitting gaming," and similar charges were returned. One of these indictments was against Merrill Ashurst, United States Attorney and one of the most prominent lawyers of the territory. Mr. Ashurst plead guilty, was mulcted in a fine of \$5.00 and \$15.00 costs, of which the Attorney General Charles P. Clever* got \$5.00, and Ashurst probably went right back and coppered the queen again.

The excitement over the treasonable activities of the Southern sympathizers therefore furnished the prosecuting officers what must have been a pleasant variation from the

*Clever not "Clever" is the correct spelling, though every New Mexico Blue Book calls him Cleaver. He was German by birth and in the Albuquerque court records a letter in that language from a complainant addressed to Clever is still preserved.

usual humdrum of court terms, for it is quite surprising that indictments for major offenses were few and far between, and generally resulted in acquittals, to the detriment of the prosecutor's income.

A large number of treason indictments may have been anticipated by the officers of the court because all the original indictments still in the files appear to be written in the hand-writing of the clerk according to one form with the name of Defendant inserted in a blank space by another hand. They uniformly charge the defendants with having conspired, compassed, imagined and designed to stir up and excite insurrection, rebellion and revolt and to levy war against the government, with Henry H. Sibley, and other false traitors:

At each succeeding term in both the second and third judicial districts additional indictments were returned. At the February term 1863 in Bernalillo County twenty treason indictments were returned. Eleven of them were either quashed or nolle at the same term. Four of the accused were tried. Antonio Maria Garcia was the first one to face a jury of his peers on the fifth day of the term, February 7th, 1863, and the jury promptly brought in a verdict of not guilty. On the next day, Thomas J. Hill was tried and he also was acquitted by the jury of twelve Spanish speaking citizens. The only trial of which any record is left is that of Manuel Barela, who had been indicted at the October, 1862 term, his indictment is typical and is herewith reprinted:

“United States of America,)
 Territory of New Mexico,) S.
 Third Judicial District.)

In the United States District Court for the said District of October A. D. 1862.

The grand jurors for the United States of America duly impannelled and sworn for the body of the said third judicial district in said territory, upon their oaths do present that Manuel Barela, late of Bernalillo County

in said district, being a citizen of the United States aforesaid, and rightfully subject to the authority and laws thereof, not weighing his duty and allegiance to the government of the said United States, but wholly withdrawing the same, and as a false traitor and enemy of said government, conspiring to stir up and excite insurrection, rebellion, and civil war, against the said United States, and to overthrow, destroy, and wholly subvert the government and laws thereof, on the fourth day of March, in the year of our Lord one thousand, eight hundred and sixty-two, and on divers other days and times, as well before as after, at the County of Bernalillo, in said district, did, with one Henry H. Sibley and divers other false traitors, whose names are, to the said jurors, unknown, falsely, maliciously and traitorously, conspire, compass, imagine and intend, to stir up and excite insurrection, rebellion, and to levy war against the government of the said United States, and wholly destroy and subvert the same. And in order fully to perfect, fulfil and bring into effect the said traitorous compassings and imaginings of him, the said Manuel Barela, he, the said Manuel Barela, afterwards that is to say, on the day and year aforesaid, and on divers other days and times as well before as after, at the County and district aforesaid, with force and arms, together, with said Sibley and divers other false traitors, whose names are to said jurors unknown, did conspire, compass, imagine, and intend to stir up, move, and excite insurrection, rebellion and revolt, and to levy civil war against the government of the said United States and wholly to destroy and subvert the same.

And in order to fulfil and perfect, and bring into effect the said treasonable and traitorous compassings and imaginings of him, the said Barela, he, the said Barela, afterwards, that is to say, on the day and year aforesaid, and on divers other days and times, as well before as after, at the county and district aforesaid, with force and arms, and with said Sibley, and a great multitude of other persons whose names are, to said jurors unknown, and to a great number, to wit, to the number of five hundred and upwards, armed and arrayed in a warlike manner, with cannons, guns, howitzers, pistols, dirks, knives, and other weapons, being then and there, maliciously and traitorously gathered together against the government and authority of the said United States, did maliciously and traitorously declare, ordain and levy war against the government of the

said United States. And in order to fulfil, perfect, and complete the said traitorous imaginings, designs and compassings of him, the said Manuel Barela, he the said Manuel Barela on the day and year aforesaid, and on divers other days and times, as well before as after, at the county aforesaid, did traitorously and maliciously adhere to, comfort and abet the said Gleenry H. Sibley and others, they the said Sibley and others being so at war with and enemies to, the said United States as aforesaid, by then and there traitorously furnishing and providing them, the said Sibley and others with food, clothing, lodging, entertainment, advice, counsel, information, arms, ammunition, military and other stores and otherwise aiding and assisting the said Sibley and others, in perfecting and carrying on their said traitorous resistance and rebellion, and waging and levying war against the said United States as aforesaid, contrary to the duty of his allegiance, against the peace and dignity of the said United States, and contrary to the form of the Statute in such case made and provided.

(Signed) Theodore D. Wheaton,
U. S. District Atty.,
New Mexico.

The Jury was impanelled on February 13th. The presiding judge was J. G. Knapp, the United States attorney was Theodore D. Wheaton. Attorneys for the defense was the law firm of Ashurst and Clever. The jurors were Francisco Montolla, foreman, Juliano Griego, José Lucero Juan Apodaca, Juan Antonio Garcia, Jesus Candelaria, Juan Francisco Apodaca, Juan Guitierrez, José Lucero, Santiago Gonzales, Marcos Lobato and Manuel Antonio Jaramillo. The witnesses were Louis Zeckendorf, a German merchant, Salvador Armijo, F. L. Russ, W. C. Crawford, Charles Hunning, Louis Behler and John Hill, a member from Bernalillo Co., of the lower legislative house. At the end of the first day the jury was kept together over night. The District Attorney's requested instructions numbered six of which the court gave four and refused two. Although the U. S. Constitution expressly prohibits a conviction of treason except upon the testimony of two witnesses to the same

overt act the United States Attorney asked the court to tell the jury:

"That there is no necessity of the evidence of two witnesses to the same act, but that the evidence of one witness to one act of levying war and other witness to other acts during the same insurrection or rebellion is sufficient."

This the court refused to give.

The other requested instruction refused by the court was as follows:

"That in treason by levying war against the government all persons who aid and abet the traitors are principals in the first degree and are equally guilty and actually levy war to the same extent as those engaged in actual hostilities."

The Court's instructions on the whole were quite favorable to the Defendant. They were as follows:

"If the jury believes from the evidence that the accused Manuel Barela did at the time and place mentioned in the indictment levy war against the United States of America and that the accused owed allegiance to the said United States then the jury will find the Defendant Barela guilty of treason.

To constitute a levying of war within the meaning of the Statute there must be an assemblage of persons for the purpose of effecting by force a treasonable purpose.

To justify a verdict of guilty under the count in the indictment which charges a levying of war the jury must believe from the evidence that "the same overt act of Treason" whereof the accused stands indicted is proven by the "Testimony of at least two witnesses."

"If the jury believe from the evidence that the accused Manuel Barela, did, at the time and place charged in the Indictment, adhere to the enemies of the United States giving them aid and comfort and that the accused owed allegiance to the United States and that the same overt act of adhering to and giving aid and comfort to the enemies of the United States is proven by the testimony of at least two witnesses, and that the enemies to which the aid and comfort were given was a foreign enemy" then the jury will find the Defendant Barela guilty of Treason.

"To constitute the crime of Treason against the United States by "adhering to their enemies giving them aid and comfort" it must be shown that the "enemy" is a "foreign enemy" for if the "enemy" be merely rebellious citizens and others "owing allegiance" to the United States, in insurrection against the United States, it is not such an enemy as is contemplated in the 3rd section of the 3rd Article of the Constitution of the United States, that being the source from which is derived the authority to punish persons guilty of the crime of treason against the United States.

"The jury will give the accused the benefit of any reasonable doubt.

To these instructions the court added the four requested by the United States District Attorney, which were as follows:

"If the jury believe from the evidence that the Defendant Manuel Barela, being a citizen of the United States, jointly with a party of persons armed with guns, pistols and other weapons assembled together with an intention to levy war against the Government of the United States they must find the Defendant guilty as charged in the indictment. That the acts and declarations of the Defendant are evidence of his intentions.

"That it is no excuse for party charged with treason that was acting under compulsion unless at the time of committing the alleged Treason or Treasons he was in the immediate danger of losing his life, and if he had time or reasonable opportunity to escape or was not under threats of immediate danger as aforesaid he will be guilty of treason.

"That in Treason for levying war against the United States it is no excuse that the party so acting was paid for his services.

"That if the jury find the Defendant guilty they are to bring in their verdict accordingly and the court will assess the punishment.

From the indictment and these instructions it is possible to reconstruct a fair idea of what the charges and the defences were. Evidently there was lacking the testimony of two witnesses that the defendant had assembled with others to levy war with arms. That lack was the reason

why the prosecution sought the instruction which the court refused. Evidently the defense of the accused had been in part that whatever aid he gave the rebels was by secured force, that he sold goods to the rebels and that he had no choice but was forced to sell and that he received pay for the goods sold. But the mere selling of goods or giving aid to the rebels was, under the second instruction of the court, insufficient to prove the second count, namely "giving aid and comfort to the enemy" because the enemy was not a "foreign" enemy. The court ruled correctly on the number of witnesses necessary and thus evidently eliminated the first count "levying war" and as to the construction of the word "enemy" in the second count there is good authority for such interpretation of the meaning of that word. No wonder then that the jury, after being out but a short time brought in their verdict:

"Los del Jurado unánimamente somos de opinion que el acusado no tiene culpa.

Albuquerque 14 de Febrero de 1863.
Franco Montolla, presidente."

It is reasonable to suppose that the prosecution tried what it considered its strongest cases first and that the failure to secure even one conviction out of four cases tried had a dampening effect on the ardor of the prosecutor.

Nevertheless the indictments remaining were by no means dismissed at once. Some of them dragged on until the May Term 1867. Among these were the indictments against Rafael and Manuel Armijo.

These two were among the wealthiest native merchants and ranchers in the territory. Manuel Armijo had been Governor under the Mexican Republic. Rafael Armijo had stores in several villages and was heavily interested in the country around La Mesilla in Doña Ana County. Both men sustained heavy financial losses thru their confidence in the success of the southerners. They were not only indicted but as will appear hereafter, their property was con-

fiscated. They had left the territory with the departing troops of General Sibley and it was not until October 7th, 1866, that Manuel Armijo was arraigned at the bar of the court, and plead not guilty. On May 4th, 1867, Rafael Armijo appeared in Court and gave bond in the sum of \$10,000.00, a very high amount in those days and almost twice what had been required of Blas Lucero, the indictment against whom had been dismissed two years before. The bondsmen were Eugenio Moreno, Cesario Duran, Charles P. Clever and Merrill Ashurst. On May 9th the defendant was served with a copy of the indictment, a copy of the witness list and a list of the petit jurors, as required in capital cases. That was as far as the matter went. On May 11th the case against him was nolle. S. B. Elkins had become United States Attorney, and other things had happened not only to soften public sentiment but to change political aspects.

There were also dismissed at the same term of court indictments against Spruce M. Baird, Alexander M. Jackson the former Secretary of the Territory and later Adjutant General with H. H. Sibley, Samuel Magoffin, the well known rancher at Franklin, and Gen. Sibley himself.

The only indictment that apparently was lost sight of was the one against Hugh N. Beckwith who had been a saloonkeeper near Ft. Stanton, and his indictment recited as one of the overt acts of treason that he had sold liquor to the Apache Indians and incited them to rise against the government.

But criminal prosecutions did not satisfy the northern adherents in seeking vengeance on the rebel sympathizers. On July 17th, 1862, Congress had passed an Act for the confiscation of the property of rebels and their sympathizers, during their natural lives. As soon as copies of this act became available proceedings were started to libel the property of those most noted for their sympathies. The proceedings apparently commenced with a letter dated October 24th, 1862, signed by one R. H. Ewan, Informer,

and addressed to Theodore D. Wheaton, U. S. District Attorney for the Territory of New Mexico. The letter originally was signed by some one whose first name began with an "A", such as Abraham, but the signature was erased, all but the "A", and the other signature was substituted. It was probably instigated by the U. S. Marshall, Abraham Cutler. The letter reported the seizure of certain lands in various localities of the County of Doña Ana, Territory of Arizona (sic). On a lot in Las Cruces stood an eleven room house, on a lot in "Messella" stood a store and the property was described as belonging to "Rafael Armijo, a disloyal citizen of the United States." There was also a great quantity of goods "taken from Rafael Armijo by order of Gen. James H. Carleton and now in the quartermaster's possession in the town of Mesilla." According to an inventory of the confiscated goods signed by Jeremiah Phelan, Lieut. & R. Q. M. 1st Infantry, C. V. On the docket of the court appear in all twenty-two libel cases each with a separate number, but there were many others in the Doña Ana County Court. These were mainly against Texas men.

Among the prominent men whose property was thus libelled, were John R. Baylor, Lt. Col. in the Confederate Army, Samuel Magoffin who was a leader of the confederates in Franklin, Texas, Simeon Hart a wealthy miller and merchant of the same town, Josiah F. Crosby, lawyer and aid to General Sibley, John S. and Henry Gillett, James W. Magoffin, whose property was described in detail and then summarized as the property on which stands Magoffinville, Samuel Maverick, Jesse W. Arnold's "old ten-pin-alley" and seventeen others whose properties lay along the Rio Grande as far as Ft. Quitman. The issues of the Santa Fe Gazette of September 23rd to October 14th 1865 contained a special supplement of ten columns devoted entirely to notices by publication for the final hearing and judgment in these matters. In New Mexico the property of James A. Lucas, former prominent politician of that territory and years after the war a prominent resident of Grant

County, of Roy Bean and his brother Samuel G. the latter once a U. S. Deputy Marshall and Justice of the Peace under the Confederate regime at Mesilla, of Sylvester Mowry, owner of the famous Patagonia Silver Mines in the Santa Cruz mountains, of Hugh Stephenson who held the Brazito tract and some of the mines in the Organ Mountains and of many others, was confiscated.

In every case the court had to have some testimony showing that the owner of the property had been a traitor. Depositions were taken in some of the cases and in others witnesses were brought several hundred miles, at great expense. Yet in most cases the testimony was of the flimsiest kind. So in the case of the property of José Maria Chavez of Valencia County, a neighbor of Miguel A. Otero who had been Delegate in Congress, the chief witness was W. H. Henrie, one of the leading lawyers of the Territory and who afterward was counsel for Abraham Cutler. For a lawyer he gave mighty meagre evidence. "His conduct," says the deposition, "actions, deeds and speech up to the time of his leaving with the so-called Confederate troops, in April 1862, was adverse to the government of the United States and in favor of the Confederate States." Just that and nothing more. No specific allegations of what he said or did, or in what particular manner he conducted himself were vouchsafed.

A man named Fletcher who deposed against Rafael Armijo was a little more explicit. He swore as follows:

"When the Confederate troops retreated from this territory Rafael Armijo came down to Las Cruces in company with General Henry H. Sibley. He told me that he had trusted the Confederate government to upwards of \$400,000.00 and he left the Country with the said Confederate troops and took his family with him. I saw the Confederate troops under command of one General Henry H. Sibley. There were over 2000 armed men. Their avowed object was to fight the troops of the United States to take New Mexico and establish its government under the laws of the

so-called Confederate States of America. — I have not seen Rafael Armijo since he left with the rebel troops.”

The leading spirit in starting these proceedings was Abraham Cutler who had taken the office of U. S. Marshall on August 16th, 1862. It can hardly be doubted that this man saw big fees and substantial returns possible in these proceedings against the rebel sympathizers and that he believed that the shiboleth of patriotism and the old flag would be a sufficient rallying cry to make the enterprise successful, which it probably was from his point of view. His idea of proceeding against the property of departed southern sympathizers was, perhaps, suggested to him by the words of Brig. General James H. Carleton, who had confiscated a considerable number of stores and supplies and had endorsed on the inventory the following observations:

“Although it would be better if these articles could be sold under a Decree of the Court yet, as it may be a long time before such courts will be organized, and go through all the tedious process to arrive at such result — the goods meantime deteriorating in value — it is ordered hereby that the General Commanding the District of Arizona cause public notice to be given for the sale of all the said articles at a public auction for cash. The proceeds of the sale will be placed to the credit of the United States and a schedule of the price received, together with this inventory will be forwarded to the Department Headquarters. The cash received will be taken up on his account by the Chief Quartermaster of the District of Arizona.”

The proceedings were by no means regular. True, they were approved by the court in the person of Joab Houghton whose rulings brought him such severe criticism, but on May 12th, 1864, the court in the person of Judge Kirby Benedict caused an order to be entered that new papers should be allowed to be filed nunc pro tunc and default entered against Rafael Armijo and several others. The papers that were filed under this order attempted to provide the necessary jurisdictional allegations some of which

had been insufficiently set forth in the hurry of the first passion to confiscate the tempting properties.

To get an idea of the extent of the proceedings and of the sums involved which, for those days, were considerable, one may look at the report of C. B. Clark Receiver, of Confiscated Property which was filed September 30th, 1862, for the period beginning April 16th and ending September 30th. It must be understood that these seizures were not of real estate nor made under order of any court but by the military and constitute the proceeds of the inventory commented on by Gen. Carleton.

From Rafael Armijo	goods,	\$19,812.23,
	cash,	38,964.30
F. E. Kavanaugh,	goods,	630.29
	cash,	1,657.29
S. M. Baird,	cash,	260.04
Jose Maria Chaves,	cash,	34.00
Manuel Barela,	cash,	115.00
Julian Tenorio,	cash,	88.00
Blas Lucero,	cash,	96.25

Turned over to Lt. Colonel J. H. Donaldson,
\$33,504.54.

Garnished by claimants,	\$1162.81
Service of assistant,	306.00
Repairs on Armijo house,	75.89
Merchandise transferred to Army.	
Receiver's fees, 10%	\$6165.73

When the court proceedings were started claimants began to appear in the persons of creditors of the various alleged traitors. So for instance, Doña Lucy Lopez filed a claim for capital she put into the Armijo business in 1850 amounting to \$12,000.00 principal and \$9,000.00 interest as well as some notes past due. The principal or capital put into the business, she alleged, consisted of six oxwagons and teams and merchandise, principally groceries.

The residents of Texas whose property the New Mexico Territorial court had attempted to confiscate for the period

of their natural lives retained counsel and appealed the case to the New Mexico Supreme Court on the ground that the jurisdiction of the United States territorial courts of New Mexico could not be extended into Texas. The lower court had sustained the jurisdiction on the ground that the matter came within the provisions of the statute extending jurisdiction of those courts to matters arising in the custom district of El Paso. The New Mexico Supreme Court rendered an opinion reversing the district court and dismissing the libel suits brought against Texas residents. This opinion is not reported in the New Mexico Supreme Court Reports. But it is referred to and approved and confirmed by the judgment of the United States Supreme Court, to which the government attorneys took an appeal, in the cases of *U. S. vs. Simeon Hart*, and two companion cases, to be found in 6 Wall 770-773. The U. S. Supreme Court decision was rendered March 30th, 1868, but long before that time the remaining New Mexico confiscation cases had been dismissed after proceedings that not only aroused public sentiment but which have the appearance of a pre-arranged plan.

Kirby Benedict was succeeded as Chief Justice by J. P. Slough in March, 1866, and on April 23rd of the same year John Pratt succeeded Abraham Cutler as U. S. Marshall. At the next term of court the Grand Jury indicted Cutler for embezzlement.

Almost simultaneously with the indictment a rule was entered "to Abraham Cutler, late Marshall, to make return under oath to this court of his proceedings as Marshall of the Territory of New Mexico upon the warrant of sale and final decree of this Court" in the various confiscation cases and this rule was returnable Saturday the sixth. Cutler had filed a report in January, 1864, and this had been "Approved by Joab Houghton, Ass. Just. Sup. Crt." But the report which Cutler filed October 5th did not receive the same kind consideration of the court. From this report it appeared that the Marshall collected from the estates of the Southern sympathizers the total sum of \$52,065.80.

His expenses in connection with the proceedings were enormous. Attendance of witnesses mainly from Las Cruces, cost \$479.80. Printing the advertisements resulted in a bill of \$841.00, most of which went to the Santa Fe Gazette (which fact may have had something to do with the opposition of the Santa Fe New Mexican.) Fees already allowed by the court amounted to the neat sum of \$30,994.22. In addition Abraham Cutler, Marshall, paid to Abraham Cutler "as Captor and Informant" the pretty sum of \$13,047.07. The Marshall's account disclosed that the sums collected lacked \$571.29 of paying the costs and fees!

On the same October fifth Cutler demurred to the indictments against him but his demurrers were overruled and at the same time the treason case against Rafael and Manuel Armijo was continued.

On the seventh the court ruled that "it appearing to the satisfaction of the court that the return of A. Cutler late Marshall is incomplete and insufficient the said Cutler is given further time" to comply with the rule. The same day Cutler was held under \$10,000 bond to answer the embezzlement charges. Simultaneously all libel and treason cases were continued. On the ninth Cutler was committed to the custody of the Marshall to be "detained in such manner as shall secure the presence of said Abraham Cutler until he shall make a satisfactory report and return of the matter and things of which he is required."

Whether or not Cutler was kept in durance vile does not appear. He had plenty of friends and good counsel and there was really no danger of his leaving the country. Nothing however was done either about the treason, the libel or the Cutler embezzlement cases until May 5th, 1867. Cutler then plead not guilty. On the eleventh he filed his report and was released from the rule. What the report was does not appear. It is not in the files. All the matters pending went over until the October term 1867. At that term Cutler was tried on the first of the indictments. S. B. Elkins prosecuted and Ashhurst and R. H. Tompkins

defended. The trial lasted only a day. It was on October 11th that the native jury brought in its verdict of not guilty. Immediately the other indictment was nolle, immediately all the libel suits were dismissed at the cost of the plaintiff, and leave was granted to Cutler to file his returns in all confiscation cases in which no return of his doings was on file.

And that was the end of the episode.

At the next terms of court the District Attorney reverted to the usual occupation of bringing indictments for gaming, for selling liquor without a license, for practising law without being admitted to the bar, and for other misdemeanors calculated to produce \$5.00 or \$15.00 in revenue without either too much effort on the part of the prosecutor or too much criticism on the part of the prosecuted.

The old records in El Paso County, Texas, and in Doña Ana County, New Mexico, show numerous deeds by Abraham Cutler as U. S. Marshall granting life estates in the so-called Rebel estates. In at least one instance in Doña Ana Co., the record shows that the Marshall bought back, as a private citizen, some of the property sold. This was the property of Samuel G. Bean and Cutler gave \$100.00 for a half interest.