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## THE CHOUTEAU-DEMUN EXPEDITION TO NEW MEXICO, 1815-17

By GEORGE S. ULIBARRI\*

**I**N 1815 two enterprising Frenchmen from St. Louis, Missouri, fitted out an expedition to trade with the Indians along the headwaters of the Arkansas River within the boundaries of present day Colorado. The trading party was arrested in 1817 by Spanish colonial authorities of New Mexico and taken to Santa Fe where they were tried, imprisoned, and their property confiscated. After their release, the traders returned to St. Louis and began a legal battle which lasted over 30 years and involved presenting their claim for illegal property seizure to three different claims commissions before a final decision was rendered.

The leaders of the expedition were Auguste P. Chouteau and Julius Demun, former French citizens who had but recently joined the great American melting pot. Both were members of well-known families in the Missouri Territory. Auguste P. Chouteau was born in St. Louis and had acquired American citizenship under Article III of the treaty for the purchase of Louisiana. He was a nephew of Auguste Chouteau, one of the founders of St. Louis. Members of the Chouteau family were leaders of the fur trade in the early part of the 19th century, their operations extending from the Missouri Territory to the headwaters of the Platte, the Arkansas, and the Rio Grande.<sup>1</sup> Julius Demun, who was born on the island of Santo Domingo, emigrated to the United States at the time of the "great massacre." He lived in Delaware and Pennsylvania before moving to Ste. Genevieve, Missouri, and from there went to St. Louis in 1810.<sup>2</sup> His brother, Count

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1. Ralph Emerson Twitchell, *The Leading Facts of New Mexican History*, Vol. II, p. 99.

2. Document No. 7, Claim No. 37, U.S. Board of Commissioners, 1849-51, Records of Boundary and Claims Commissions and Arbitrations, National Archives, Record Group 76. Hereafter records in the National Archives are indicated by the symbol NA, followed by the record group (RG) number.

Louis Demun, was a well-known figure in Washington where he served as Secretary of the French Legation.<sup>3</sup>

In 1815 Auguste P. Chouteau and Julius Demun organized a large trading party with extensive stores of merchandise, provisions, munitions, and all other suitable equipment for a trading expedition among the Indians. They obtained a license from Governor William Clark of the Missouri Territory before leaving St. Louis on September 10, 1815. The trip to the headwaters of the Arkansas River was made in the company of a trader named Phillibert who had spent the previous year in the Rocky Mountain country and had returned to Missouri to buy supplies with which to trade with the Indians for horses so he could bring in his supply of furs. Phillibert, who sold his entire outfit to Chouteau and Demun, told them that his companions would be waiting at the Huerfano Creek, but when they arrived at their destination on December 8, 1815, the men were gone. Friendly Indians informed Demun that Phillibert's companions had waited until their supplies were almost gone before deciding to go to New Mexico.

Leaving Chouteau behind, Demun went to New Mexico and found them at Taos, where the men had been well treated. From Taos, Demun decided to go to Santa Fe where he had an interview with Governor Alberto Maynez. Induced by the apparent advantage of extending their operations into Spanish territory, Demun tried but did not secure permission to trap beaver in the streams of northern New Mexico. The Governor, however, promised to recommend to the proper authorities in Chihuahua that such permission be given. At the same time he cautioned Demun to restrict his party's activities to the areas north of the Red River.<sup>4</sup> Demun after his interview with Governor Maynez, returned to Chouteau's camp on the Huerfano Creek, and shortly afterwards, accompanied by Phillibert and another trapper, returned to St. Louis.<sup>5</sup>

3. Thomas H. Benton to Secretary of State Henry Clay, May 4, 1825, Miscellaneous Letters, General Records of the Department of State, NA, RG 59.

4. Document No. 7, Claim No. 37, U.S. Board of Commissioners, 1849-51, NA, RG 76.

5. During his visit to Santa Fe, New Mexico, Demun learned that James Baird, Robert McKnight, Samuel Chambers, and other members of a previous trading party

Demun with several new members added to his party, left St. Louis on July 15, 1816, and met Chouteau, who had brought a shipment of furs, at the mouth of the Kansas river. From there, the two leaders with a party of about 45 trappers and hunters returned to the headwaters of the Arkansas River. Part of the group went to the Sangre de Cristo Mountains while Demun started for Santa Fe. Before arriving at the New Mexican capital, he learned that the new governor, Pedro Maria de Allande, was extremely suspicious of the activities of the fur traders. In fact, Governor Allande ordered Chouteau to get out of Spanish territory, an order with which they complied by proceeding to the headwaters of the Arkansas where they trapped and hunted during the fall and winter.<sup>6</sup> During this time they were in frequent communication with New Mexican authorities. Every precaution was taken to keep the party's operations within the recognized boundaries of the United States, although there were rumors to the contrary. The rumors were investigated but the result proved them to be wholly without foundation.<sup>7</sup>

Demun was planning to take another shipment of furs to St. Louis when his plans were interrupted by the arrival of a Spanish military force under Sergeant Mariano Bernal. Governor Allande had given Sergeant Bernal orders to arrest and conduct the entire party to Santa Fe. All members of the party who were present were arrested on May 24, and on June 1, 1817, were delivered as prisoners to the Governor in Santa Fe, where they were tried by a tribunal made up of the Governor and six other men. Governor Allande felt that the traders had not obeyed his orders to get out of Spanish territory. Demun and his party insisted that they were within the recognized boundaries of the United States, engaged in peaceful activities under a license obtained from Governor Clark of Missouri. The Spanish governor was not convinced by their argument, and the two leaders together with 24 of their companions were confined 48 days in the old jail which

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were being forcibly detained in New Mexico by Spanish authorities. News of their detention, which Demun brought to St. Louis, gladdened the hearts of friends and relatives who had feared that something worse than imprisonment had befallen the unfortunate traders.

6. Twitchell, *op. cit.* p. 100.

7. Document 7, Claim No. 37, U.S. Board of Commissioners, 1849-51, NA, RG 76.

stood in the plaza in front of the old palace. During this time they were dieted in a very coarse and meager manner, their fare consisting mostly of boiled corn and beans without salt.<sup>8</sup> At the end of their period of confinement they were ordered to leave the dominions of Spain and the only property they were allowed to keep was their horses and weapons. The value of the seized property was estimated at \$30,380.74. The traders returned to St. Louis arriving there in September 1817.

Back in St. Louis, Demun lost no time in writing to Governor William Clark of the Missouri Territory to give him a "true and faithful account" of the injury done to him and Chouteau. Demun's letter dated November 25, 1817, was accompanied by other documents submitted as evidence in support of his statements. He even included a corrected copy of Pike's map showing the exact spot, south of the Arkansas River, where his party was taken prisoners.<sup>9</sup> Governor Clark transmitted Demun's letter and accompanying documents to Secretary of State, John Quincy Adams. It was not too long before Demun and Chouteau had the satisfaction of knowing that their demand for adequate reparation for losses sustained during their expedition to New Mexico had been made to the Spanish minister by the government of the United States.

Little else was accomplished until February 22, 1819, when a treaty was concluded between the United States and Spain. This treaty, which among other things ceded Florida to the United States, contained certain provisions in Articles III, IX, and XI, which vitally affected the outcome of the Chouteau-Demun claim. Article III defined the western and northern boundaries of the Louisiana Territory, and recognized the Arkansas River from the point it is intersected by the 100th meridian west longitude to its source as the boundary line between the United States and Spanish possessions

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8. *Ibid.* Document No. 29. Much of this material has been printed under the title of "Message and Correspondence relating to the Imprisonment of citizens of the United States" in *American State Papers, Foreign Relations, IV*, pp. 209-213, edited by Walter Lowrie and Walter S. Franklin. It is also printed in *Old Santa Fe, I*, pp. 370-374.

9. A copy of the map in question appears at the end of the article.

along this sector. This may have weakened the Chouteau-Demun claim since agreement on this boundary meant that the Demun party, which was arrested south of the Arkansas, had been operating in territory which the United States now recognized as belonging to Spain. In Article IX the United States agreed to assume responsibility for claims of American citizens against Spain arising from unlawful seizure of property at sea, in ports and territories of Spain, or in the Spanish colonies. Article XI provided for the establishment of a Board of Commissioners to settle the claims of American citizens against Spain for which the United States government had agreed to be responsible in Article IX. In order to carry out the provisions of the treaty under Articles IX and XI, the American Congress on March 3, 1821, approved an act (3 Statutes 639) authorizing the establishment of a Board of Commissioners consisting of 3 members appointed by the President to decide on the validity and justice of such claims as were presented to it.

Demun and Chouteau presented their claim to this Board where it was filed as Claim No. 587. The claimants were listed as Auguste P. Chouteau, Julius Demun (spelled Demondi), Peter Chouteau, and Bartholomew Berthould. Peter Chouteau was a brother of Auguste. Berthould, formerly a native of Bavaria, had obtained naturalization papers in 1809 at Philadelphia.<sup>10</sup> He was part owner of the St. Louis firm of Berthould and Chouteau.

The memorial presented to the Board of Commissioners stated that in 1815 the four claimants had bought a large quantity of merchandise to trade with the Indians, and that while engaged in this peaceful activity within the boundaries of the United States, a Spanish military force arrested the entire party. The memorial added that the group consisting of Chouteau, Demun, and 20 other Americans were imprisoned for a "considerable time" and that their merchandise and furs were confiscated. The claimants expected to be reimbursed for the value of the seized goods as well as for

10. Document No. 19, Claim No. 37, U.S. Board of Commissioners, 1849-51, NA, RG 76.

wages paid to the men they employed. The total amount of losses was not given.<sup>11</sup>

On January 31, 1822, the memorial for Claim No. 587 was read to the Board of Commissioners and on that same day the claim was rejected.<sup>12</sup> The Commissioners did not state in writing the reasons for their decision, but the claimants maintained that it was rejected because this type of claim was not embraced by the provisions of the treaty of 1819 between the United States and Spain. The decision of the Commissioners to reject it, however, released the Spanish government from any further obligation in connection with the Chouteau-Demun claim.

Fortunately for Chouteau and Demun, Mexico had, in the meantime, won its independence and now had jurisdiction over the territory where the claim originated, a fact which led the resourceful traders to start toying with the idea that if Spain was not liable for the acts that had given rise to their claim, then the Mexican government should inherit the responsibility. After all, according to international law, they argued, a newly established government inherits the privileges as well as the responsibilities and obligations of the one that preceded it. This line of reasoning made the Chouteau-Demun claim, a claim against Mexico not against Spain. It was even argued by the claimants' counsel that Mexico was actually separated from Spain in 1808 when Napoleon's army occupied the Iberian peninsula, and that from that date Mexico had been in substantial exercise of self government.<sup>13</sup>

Chouteau and Demun succeeded in advancing their line of reasoning by enlisting the help of influential Senator Thomas H. Benton, and Congressman John Scott, both of Missouri. At least three letters were written, within a 5-day period, to Secretary of State Henry Clay in connection with

11. Claim No. 587, Disallowed Claims, Vol. 61, United States and Spanish Convention, 1819, Records of Boundary and Claims Commissions and Arbitrations, NA, RG 76. (There is a slight inconsistency in statements about the number of persons who were imprisoned and the number of days they were kept in confinement. The number of persons imprisoned varies from 20 to 24, and the number of days in confinement from 44 to 48. There had been 45 men in the party at one time.)

12. Minutes of the Board of Commissioners, January 31, 1822, United States and Spanish Convention, 1819, NA, RG 76.

13. Document No. 6, Claim No. 37, U.S. Board of Commissioners, 1849-51, NA, RG 76.

this claim.<sup>14</sup> The first one was written by the claimants themselves on May 3, 1825. Among other things, they reminded the Secretary of State that since negotiations leading toward the establishment of diplomatic relations with Mexico were then in progress, this seemed like an appropriate time for presentation of their claim. The second letter, dated May 4, 1825, was from Senator Thomas H. Benton, and its immediate purpose was to inform the Secretary of State of the desirability of continuing to extend aid and encouragement to the claimants. The two claimants are described as being "gentlemen of the first respectability, allied by blood and marriage to the best families of upper Louisiana." The third letter, dated May 8, 1825, was written by Congressman John Scott. He urged that Chouteau and Demun be rewarded as a matter of justice as well as to help win the affection of the French population in that area.

In the years that followed, Chouteau continued to communicate at infrequent dates with the Department of State. On May 10, 1834, he wrote to the Secretary of State, Louis McLane, concerning his claim, stating that his object in again addressing the Department was to solicit its official intervention in behalf of an injured citizen.<sup>15</sup> The Chouteau-Demun claim had by this time been officially presented by the United States to the Mexican government.<sup>16</sup>

During the 1830's, President Jackson recommended the adoption of vigorous measures to convince Mexico of the need to settle the claims of American citizens and finally on April 11, 1839, a convention was signed which provided that claims of United States citizens against Mexico, arising prior to that date, should be referred to a Board of Commissioners composed of two Americans, two Mexicans, and an Umpire from a neutral country. The Board was given 18 months to decide upon the justice of the claims and the amount of compensation, if any, due from the Mexican government. The rules of procedure provided that in case of disagreement be-

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14. Miscellaneous Letters, May 3, 4, 8, 1825, General Records of the Department of State, NA, RG 59.

15. Document No. 23, Claim No. 37, U.S. Board of Commissioners, 1849-51, NA, RG 76.

16. *Ibid.* Document No. 12.

tween the Commissioners, the dispute should be referred to the Umpire for a final decision.

The establishment of this Board gave Chouteau and Demun their second opportunity to present their claim. This time it was filed as Claim No. 94, and the claimants were listed as Auguste P. Chouteau and Julius Demun. On July 21, 1841, their claim was presented to the Commissioners for settlement, but a decision could not be reached because the evidence submitted to establish its validity was considered insufficient, and because there was some disagreement as to the liability of Mexico. When it came again for settlement on February 8, 1842, the Commissioners disagreed along national lines. The two American Commissioners regarded it as a valid claim against Mexico and recommended that the claimants be awarded \$75,495.04, of which \$30,380.74 was compensation for the seized merchandise and \$45,114.30 for accumulated interest.<sup>17</sup> The two Mexican Commissioners who were apparently unaware that this claim had already been presented and rejected as a claim against Spain, strenuously urged that Spain not Mexico should make idemnification for the alleged wrongs, if any had been committed. They pointed out that the acts complained of were committed in 1817 when Spanish authorities had control of New Mexico.<sup>18</sup> It was difficult to convince the Mexican Commissioners that their country should be held responsible for events that occurred before it existed as an independent nation. Since the Commissioners could not agree, the Chouteau-Demun claim was referred on February 22, 1842, just 3 days before the expiration date of the Board of Commissioners, to the Umpire for a final decision. The Umpire was unable to examine and render the final judgment before the expiration date, and so the claim remained undecided. But to the two claimants who had so persistently sought reparation it meant that they would never know how it ended, since both died before a final judgment was rendered.

The final settlement came as an aftermath to the War between Mexico and the United States. The treaty of Guadalupe

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17. *Ibid.* Document No. 7.

18. *Ibid.* Document No. 3.

Hidalgo, which ended the war, provided for the assumption by the United States of all claims of American citizens against Mexico which arose prior to the date of signing the treaty. This included claims which had remained undecided under the Convention of 1839 and made the Chouteau-Demun eligible for presentation. A United States Claims Commission composed of 3 members was established to decide on the validity of the claims presented and to determine the amount of compensation due each claimant. Pierre Chouteau, Jr., who was named administrator<sup>19</sup> of the estates of Chouteau and Demun, presented the claim to this Commission where it was filed as Claim No. 37. Thomas H. Benton, an ardent defender of rights of western pioneers, and one of the most influential politicians in Washington, served as counsel for the claimants.

The rules of procedure adopted by the Commission required that written evidence be submitted to prove that the value of the seized property was really \$30,380.74 as stated in the memorial. Some difficulty was encountered in satisfying this requirement since key documents could not be made available. Pierre Chouteau, Jr., maintained that satisfactory documentary proof had already been placed in the hands of the Executive and Legislative Branches of the Government. According to him, Governor Clark transmitted this documentary proof to the Secretary of State in 1817.<sup>20</sup> The proof which supposedly consisted of a detailed and authenticated account of the actual outlay and capital expended for the expedition was now lost or misplaced. Pierre Chouteau, Jr., declared that no copies of these important records were kept by the claimants and added that "after the lapse of so many years, the memory of witnesses cannot be relied to supply their place." He expressed high hopes that the Executive and the Legislative Branches would find the misplaced documents.<sup>21</sup>

Thorough searches for the missing records were made in

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19. *Ibid.* Document No. 5.

20. This refers to the map and accompanying documents, which Demun sent to Governor Clark. See footnote No. 9.

21. Document No. 1, Claim No. 37, U.S. Board of Commissioners, 1849-51, NA, RG 76.

the Office of the Senate, the House of Representatives, and in the Department of State.<sup>22</sup> The result of these searches was submitted in writing to the Claims Commission. The Secretary of the Senate reported that a search had been conducted in the file of the Senate for "Statements marked A, B, C, and D of expenditures of Chouteau and Demun," but that the papers in question had not been found. The Clerk of the House of Representatives reported that a careful search was made in the files of the Office and the Journals of the House, but that he could find no evidence that any papers had been withdrawn from the House. The Secretary of State, Daniel Webster, reported that a thorough but fruitless search had been made in the Department for the desired documents.

Since the original documents could not be located, the only alternative was to submit affidavits from persons who were familiar with the events that had taken place in 1815. At least three such affidavits were prepared and submitted to the Commission.<sup>23</sup> The first one was a sworn statement by John B. Saisy (Saify), a clerk employed by the St. Louis firm of Berthould and Chouteau, the firm from which Auguste P. Chouteau and Julius Demun had purchased their supplies for the expedition. Saisy declared that from a study of the records and memoranda made many years ago, he found that the account of Chouteau and Demun with the firm of Berthould and Chouteau, for goods and money advanced for the expedition, was \$26,700. The clerk also stated that he knew that Demun arrived in St. Louis from the expedition in a destitute condition. The information in the second affidavit was furnished by Etienne Provost, who declared that he was one of the men employed by Chouteau and Demun to go on the expedition and that of the 42 men who participated only two others were still alive, neither of whom was living in the state of Missouri. He added that the commanders of the expedition, Mr. Chouteau and Mr. Demun lost everything, their goods, horses, furs, lead, and powder, and that he believed that the value of the goods amounted at least to the sum of \$30,000. The third affidavit was prepared by Julius Demun in

<sup>22</sup>*Ibid.* Document Nos. 9, 10, and 24.

<sup>23</sup> *Ibid.* Document No. 13.

1841. He declared that on his arrival from Santa Fe, he was without a shirt, leggings, or shoes, and that these articles of clothing were supplied him by the kindness of an Osage Indian chief before his entry into St. Louis.

These sworn statements were submitted to the Claims Commission as proof of the justice of the Chouteau-Demun claim, and as evidence of the amount of losses sustained by the leaders of the expedition.

After examining and evaluating the evidence the three Commissioners rendered their decision. They found the claim of Pierre Chouteau, Jr., Administrator of the estates of Auguste P. Chouteau and Julius Demun, to be a valid claim and awarded the estate \$81,772.00, of which \$30,380.00 was compensation for the seized merchandise, and \$51,392.00 for accumulated interest.<sup>24</sup> A United States Treasury warrant, No. 4735, for the total amount was issued on May 17, 1851, bringing the Chouteau-Demun claim to its final conclusion.<sup>25</sup>

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24. Awards, Vol. I, pp. 58-59, U.S. Board of Commissioners, 1949-51, NA, RG 76.

25. Treasury Warrants, 1851, Records of the General Accounting Office, NA, RG 217.

[See Map in *Notes and Documents*, Pp. 347.]