

COMMODORE EDMUND B. KENNEDY, U. S. N., VERSUS GOVERNOR NICOLAS GUTIERREZ AN INCIDENT OF 1836.

THE YEAR 1836 was one of great political unrest in California. During the short period of ten months four changes in governors took place. On January 2, 1836, José Castro surrendered the executive power, peacefully but unwillingly, to Lieutenant-Colonel Nicolas Gutierrez. That officer held it until April. Political discontent was just beginning to reach the breaking point when Colonel Mariano Chico arrived from Mexico and relieved Gutierrez. Chico's rule was brief and stormy, and by the end of July he was on his way back to Mexico. The responsibility of office once more fell upon the unwilling shoulders of Gutierrez, who soon found political affairs approaching a crisis with José Castro and Juan B. Alvarado as his chief opponents. It was at the end of October 1836, just as the bewildered governor was about to be overwhelmed by the political disorders, that Commodore Edmund B. Kennedy, aboard his flagship, *The Peacock*,¹ arrived at Monterey with more troubles for the almost frantic California executive.

At that very moment Castro and Alvarado were collecting their forces in the Salinas Valley, in preparation for their attack on Monterey on November 4. A number of adventuresome foreigners, mostly Americans, emboldened by the success of the Texas episode of a few months before, were ready to join hands with the rebels in the hope that, with a little luck, California might be separated from Mexico and turned into another Texas. That fact was well known to the officials as well as to the insurgents, and all were fearful lest it might come to pass.² At the psychological moment Commodore Kennedy arrived and made several harsh demands of the California Government, which tended to convince the authorities that he was in league with the rebels and expected to take California once the revolution had succeeded.³

Bancroft, who is the only historian who has mentioned the incident, states that the *Peacock* had come into the Pacific conveying an embassy to Siam. On the way back Commodore Kennedy stopped at the Hawaiian Islands. While there in September, 1836, he received a memorial from the merchants of Honolulu in which he was urged to visit the coast of California and Mexico. Their grounds were that many serious outrages and unjust acts had been committed by the authorities there, upon American vessels and seamen, and that great losses had been sustained in consequence. They believed that a valuable service would be

1. A vessel of the same name had previously visited California in 1806. Anchoring off San Juan Capistrano on April 4 of that year, Captain Kimball had sent four men ashore for provisions. The corporal of the mission guard, acting under Governor Arrillaga's recent orders directed against smugglers, refused to supply them with provisions, arrested the men and sent them to San Diego. They were later sent to San Blas. (Bancroft, *History of California*, II, 37-39.) This, however, was probably not the *Peacock* of Captain Kennedy; but it is quite possible that his sloop of war was the one later used by the Wilkes exploring expedition from August, 1838, until it was wrecked on a bar of the Columbia River, July 18-19, 1841. (Wilkes, Charles, *Narrative of the U. S. Exploring Expedition*, London, 1852, especially II, 189-94.)

2. Bancroft, *op. cit.*, III, 445-470; gives the necessary evidence.

3. Gov. N. Gutierrez, confidential report to Sec. of War, Cape San Lucas, Nov. 30, 1836, MS, 52-8-7-1, *Archivo General de Guerra y Marina, Mexico*, expresses the idea that Kennedy might take California.

rendered to foreigners if the American squadron should appear in these waters. Of course no great losses were ever sustained by foreigners in California,⁴ but a little matter of exaggeration did not trouble the Honolulu merchants very much when there were profits to be made. Their letter is given in full by Ruschenberger, who was with the Commodore. It reads as follows:⁵

TO EDMUND P. KENNEDY, ESQ.
Commanding U. S. Naval Forces, of the
East India and Asiatic Station.

OAHU, SANDWICH ISLANDS,
September 16th, 1836.

Sir,

The undersigned, citizens of the United States of America, resident at the Sandwich Islands, beg leave respectfully to represent to you:

That we are all, directly or indirectly, interested in the commercial operations conducted from the United States, China, and these Islands, to the coasts of California and Mexico:

That many serious outrages and unjust acts have been committed by the governmental authorities of those countries upon American vessels and seamen, and great losses and damages sustained in consequence.

In the summer of 1833, the brig *Loriot*, Gorham H. Nye, master, Alpheus B. Thompson, supercargo, was unwarrantably seized in the harbor of St. Francisco, and detained several months. The sails of the vessel were unbent, her rudder unhung, and carried on shore, the master and crew were confined on board, and the supercargo committed to prison, whence he was not allowed his liberty for many months, nor until he had procured heavy bonds not to leave the country. He still remains under those bonds, if not in prison.

From intelligence recently received from California, we believe that a vessel, owned by John Coffin Jones, Esq., U. S. Consul, at this place, has been seized, and is, at present, detained, under similar circumstances of injustice, for alleged violations of the laws of the country, while she was under the direction of her previous owners, and in command of her former master. We refer to these as *instances* of grievous embarrassments arbitrarily imposed on our commerce.

We believe that no vessel of the United States government has, for many years, visited Upper California; and we have great confidence that, were a naval force to appear on that coast, and visit Lower California and Mexico, it would render valuable service to our citizens residing in those countries, would afford needed succor and protection to American vessels, at present employed there, and be attended with results peculiarly advantageous to the general interests of our national commerce.

With these statements and views, we have to express the hope that you may find it in your power to visit those coasts with the force under your command, before you shall leave the Pacific.

With due considerations of respect, we remain, sir, your fellow citizens,

PIERCE & BREWER,	LADD & Co.,
JOSEPH MOORE,	SHERMAN PECK,
WILLIAM PATY,	HINCKLEY & SMITH,
A. H. FAYERWEATHER,	A. C. DAVIS,
THOMAS CUMMINS,	JOHN PATY,
HENRY P. STEVENS,	SAMUEL A. CUSHING,
ELIAB GRIMES & Co.,	WM. FRENCH, by J. J. GREENWAY
THOMAS MEEK,	I. R. THOMAS, JR.,
HENRY PATY & Co.,	J. EBBETTS,
J. PEABODY,	STEPHEN D. MACKINTOSH,
ELI SOUTHWORTH,	WILLIAM H. PEARCE,
JOSEPH NAVARRO,	CORNELIUS HOYER,
D. OWEN,	NELSON HALL,
SAMUEL F. SHAW,	CHARLES TITCOMB,

WILLIAM C. LITTLE.

4. Bancroft, *op. cit.*, III 88-150, 340-385; gives evidence that no great outrages were ever committed by the California Government against the foreigners.

5. Ruschenberger, W. S. W., *A Voyage Round the World . . . in 1835, 1836, and 1837*, Philadelphia, 1838, pp. 489-91.

Bancroft remarks upon the situation as follows :

In accordance with this request, the *Peacock* was directed across the Pacific and anchored at Monterey the 24th of October. The visit was not eventful, nor is much known of it in detail, no notice of the arrival even appearing in the archives. The Commodore found Governor Gutierrez and his forces "nightly on guard, expecting an attack from some disaffected rancheros and Indians." He visited the deserted mission at Carmelo; was visited by some trappers, who recounted their inland exploits, expressed proper amazement at all on shipboard, and exhibited their marksmanship; and met the old veteran Captain William Smith. Then after six days, "the Commodore having done all that was necessary in relation to the subject of complaints under existing circumstances," he got under way for Mazatlan on the 30th, just in time to avoid the révolution—of which, and the part to be taken in it by foreigners, the Commander knew nothing, perhaps—but not until he had received from American residents and supercargoes a letter of thanks for "his kind interference," and the "highly salutary" influence of his visit. There is no record of his investigation of abuses, if he made any.⁶

Like a bolt of lightning out of a clear sky came Kennedy's demands upon the California authorities. He did not stop to make any investigation as to the truth of the charges he was to present, although he did inform himself thoroughly as to the plans of the revolution that was about to break out. Then he sent his demands ashore requesting a prompt answer. His letter was as follows :

UNITED STATES FRIGATE OF WAR PEACOCK

Bay of Monterey,
October 27, 1836.

Sir :

Having received word while in the Sandwich Islands that certain difficulties existed between citizens of the United States of America and the authorities of this coast, which proceed, so it is represented from the arbitrary steps taken by General Don José Figueroa, in seizing the American schooner *Loriot*, with its cargo and supercargo Mr. Alpheus B. Thompson at the port of San Francisco in September 1833, I have come to this port as a representative of my Government, with the object of exacting, forthwith, explanations regarding the motives for the seizure of said vessel, and cargo and for the arrest of Mr. Thompson.⁷

In the protest made by Mr. Thompson and which I have at hand, he states that, on September 26th, Don José Sanchez, Captain of the port of San Francisco, boarded the vessel with an armed party and placing a loaded pistol at his chest, informed him that in the name of the Nation and by order of General Figueroa he placed him under arrest and seized the vessel and its cargo . . . That the cargo and the sails were landed and a part of them were stolen and another part very badly abused, and he continues : that notwithstanding his repeated efforts he was unable to obtain his freedom, being unable to give bail for himself.⁸

Now I must demand that without loss of time Mr. Thompson be released from the bonds which he has given; and I believe it to be my duty to send my Government an exact account of all proceedings in this affair, with the object of demanding from the Mexican Government compensation for all the damages and injuries that have originated from the arrest of Mr. Thompson and from the seizure of the vessel and its cargo.

Since my arrival at this port I have also been informed that it has been customary to force the citizens of North America to do guard duty as soldiers or as police guards, and in case they could not do it personally they had to furnish a substitute, and they have been obliged

6. Bancroft, *op. cit.*, IV, 140-141. His quotations are from Ruschenberger. The correspondence that passed between the Commodore and the Governor, which supplies the missing details that Bancroft was unable to obtain, was found among some confidential reports in the archives of the Mexican War Department. It is here presented for the first time.

7. Thompson was arrested because he was a notorious smuggler and had escaped the authorities several times in former years. (Bancroft, *op. cit.*, 365-66.) W. H. Davis, *Seventy-five years in California*, devotes ch. xxxiv, to smuggling activities of Thompson, himself, and other foreigners. The cargo and sails were stored in Vallejo's home at the Presidio until Thompson was released.

8. Thompson was allowed bail. In fact J. C. Jones, U. S. Consul in Hawaii, posted a simple promissory note and Thompson was set free. (Bancroft, *op. cit.*, 366.)

to pay a certain sum to the government soldiers who performed those guard duties for them.⁹ Regarding this act, as likewise with respect to the fine imposed upon Mr. Larkin for harbouring a servant, who later, according to the former, was forced aboard a Mexican man-of-war and taken from the territory; I expect to receive satisfactory explanations, inasmuch as the two things seem to be contrary to the treaty that exists between the United States and Mexico. . . . Furthermore, Mr. Larkin was not even allowed a trial.¹⁰

The brig *Diana* that entered this port last Monday in distress from lack of water, was forced to put to sea immediately or to pay some high anchorage dues.¹¹

As I am soon to have the opportunity in my present voyage, to communicate with my Government, I must request an immediate answer so that I may send it via the Isthmus, in order that our Chargé d'affaires in Mexico and I as commander of the squadron on this coast may receive the necessary instructions.

I have the honor to remain very respectfully your obedient servant.

EDMUND B. KENNEDY,

Commanding the East Indian and Asiatic Squadron of the United States.

To His Excellency, Don Nicolas Gutierrez, Commanding General and Political Governor of Alta California.

All of the above charges, the truth of which Kennedy should have investigated before starting the controversy, were very inaccurate. To say that the governor and other officials must have been surprised at Kennedy's action is putting it mildly. Here was a high naval commander of a friendly power making rather harsh demands, without formalities or even preliminary negotiations on the subject. Then too, Kennedy could not be positive that Thompson had stated his case correctly. In fact, there is evidence that he did not tell the whole truth. William Heath Davis, who was present in San Francisco at the time said:

About 1833 the brig *Loriot*, Captain Nye, arrived from Honolulu with a cargo of merchandise, A. B. Thompson, supercargo. Shortly after, orders were sent from Monterey to have the vessel and cargo seized, upon the presumption that full duties had not been paid. Don José Sanchez was directed to board the ship and arrest Thompson. He accordingly proceeded to do so, accompanied by a squad of soldiers. Reaching the deck of the vessel and approaching to make the arrest, Sanchez drew a pistol and aimed it at Thompson, who instantly struck it from the officer's hand, and at the same moment knocked him down and jumped upon him. The soldiers came to Sanchez' aid and gave him protection. Thompson was taken ashore and imprisoned at the Presidio, where he remained for some considerable time. After his arrest the whole cargo was removed to shore, together with the stores of the vessel, and the sails were unbent and taken away. Finally an order was received from headquarters to release the cargo and other property of the vessel and liberate Thompson, which was carried into effect.¹²

Obviously Mr. Thompson put himself very much in the wrong by resisting arrest and doing violence to the officer. Such an offence would be punished with imprisonment in any country. Under the circumstances, Commodore Kennedy should have investigated the affair before making his demands. Governor Gutierrez wrote an answer in which he explained each point thoroughly. He said:

9. Only twice did foreigners do guard duty at Monterey during those years. The first time in Jan. 1832, when some 50 men organized a volunteer company to help Capt. Zamorano against Gov. Echeandia. (Bancroft, *op. cit.*, 221-22.) The second time was in July 1836, at the time of Gov. Chico's rule. The foreigners again volunteered. Those who did not want to serve paid 50 cents a day for a substitute, that was imposed by their fellow countrymen. (Gov. Chico, confidential report to Mex. War Dept., Monterey, July 12, 1836, MS 52-8-7-1, *Arch. Gen. de Guerra y Marina, Mexico.*)

10. Larkin was caught redhanded, with the man in his house. He was taken to court and fined a small sum. There was no need for a trial. There was also no Mexican warship in California waters at any time. The man was placed aboard the Mexican brig *Leonor*, and sent to San Blas. (T. O. Larkin, *Documents, Hist. Calif.*, MS, I, 1835.)

11. Governor Gutierrez' explanation seems valid enough. There is no record in the archives that the *Diana* was ordered out of Monterey, though records of its visits and trading activities are extant.

12. W. H. Davis, *Seventy-five years in California*, 253.

Monterey, October 28, 1836.

Mr. Commodore :

Informed of Your Excellency's note of the 27th, instant, aboard the sloop of war *Peacock*, anchored in this port; I have called to view all the antecedents to be found in the files of my government and which are pertinent to the points touched upon by Your Excellency, and in connection with them I have heard the reports of the alcaldes of this port, the customs administrator, and the district judge, concerning their respective parts in the matter; and from the examination of the antecedents that have been found, and having heard said reports, I reply to Your Excellency as follows.

According to the law of April 16, 1811, which is in force in the Republic of Mexico, whaling, sealing, and otter hunting in the waters of the coasts of both Californias is allowed only to Mexican citizens or subjects of my Republic, and consequently it is prohibited to all foreigners not naturalized. In 1833, the judge of the town of Los Angeles of this territory, was informed that the American citizen Mr. Alpheus B. Thompson, as supercargo of the brig *Cowboy*, was clandestinely engaged in otter hunting in the very waters of this coast. Having taken notice of the information, according to the laws, and adding to the merits of the case, the previous reports which we had, that Mr. Thompson was engaged in this illicit trade and that public opinion had judged and judges him as inclined to that class of contraband, judicial orders were given to detain the American brig *Loriot* and its cargo which were considered as his property, so as to insure the effectiveness of the suit that had been instituted regarding the financial penalty that might result. Moreover, since the laws upon this penalty impose a corporal penalty on those guilty of smuggling in cases similar to the one of which Mr. Thompson was accused, he was justly proceeded against and placed under arrest, because the fact that he is a foreigner does not authorize him to violate with impunity the laws of the country that gives him hospitality, nor could the Mexican Authorities have tolerated that Mr. Thompson should hold himself superior to the laws and should flout their provisions, as it happened at Santa Barbara in the year 1832, and which is attested to in the brief that was sent to the Supreme Government of Mexico.

Subsequently, on October 16, 1833, on account of the friendly, and not official, representations from the Consul of the Sandwich Islands, Mr. John C. Jones, who happened to be in this port, and in which he pointed out that neither the vessel nor the cargo were the property of Mr. Thompson, the attachment on both was lifted, and a demand was made for an adequate bond which was posted for Mr. Thompson by Mr. J. C. Jones according to our laws.

At this stage the case seems to have remained paralyzed without either gentleman, the one bailed or the surety, having been molested, and I must inform Your Excellency that Mr. Thompson has made no demands whatever since that date in spite of the justice which he claims for his case, so the District Judge of this Territory, to whom the jurisdiction of the case belongs, has certified, at least not since he organized his court some twenty months ago; so it is very strange that Mr. Thompson should suddenly bring to Your Excellency's attention supposed and perhaps malicious accounts in order to obtain through the protection of your authority that which perchance he may not get by justice nor by right, distorting the procedure of the Mexican Authorities and positively comparing them to those of the Barbary Pirates.

And since Mr. Thompson has not made, as I say, any claims whatever nor produced any legal evidence that will prove that he was personally abused, or part of his cargo stolen, I am unable to inform Your Excellency as to the truth of the protest that he made and which Your Excellency has before you the which, as it is in his behalf and without legal character, is likely not to be accurate. And I repeat, that if Mr. Thompson believes that he has justice on his side, he must appeal to the competent tribunals and it will be promptly and impartially administered to him, in accordance with the laws of my Country, and without the necessity of distracting Your Excellency's attention from the other objects of your cruise, and I promise that if Mr. Thompson's claims are just he will be necessarily freed from the bond and indemnified for the damages which he says he has suffered.

In regard to the obligation that Your Excellency tells me is imposed by the alcaldes of this port upon the citizens of North America to do civil guard duty, I must inform you that American citizens, invited by my predecessor in this office, voluntarily lent themselves to this

service, because the troops being occupied away from this town on matters of the public service, this neighborhood was left at the mercy of evildoers, and consequently these citizens had to provide for their own security from which they obtained an immediate and direct benefit; and I must inform Your Excellency that this civic duty ceased at the moment that the troops were returned to this post. Furthermore, in case this same service were continued, I do not consider the complaint is justified for the reason that the treaty of amity and commerce which exists between my Republic and that of North America, being based on reciprocity, and it being a fact that Mexican citizens in said northern republic lend their services in the civil guard after a month of residence there. It would be only right that these should be obliged to do likewise here, which is not done as I have already said, the service that they have given is voluntary, and it is a necessary consequence of this voluntary service that when the American citizens have been unable or unwilling to do guard duty, they have furnished a substitute the same as the Mexican citizens, without there being any discrimination whatever against one or the other.

With respect to the fine imposed on Mr. Larkin, and the insult offered his servant, by the municipal authorities, I am well informed that the fine was imposed by the alcalde because said Larkin concealed a sailor who had deserted from a whaling schooner that was anchored in this bay, and since it is a crime to aid sailors in deserting, the fine, although small, was very just and the deserter was very justly ejected from the territory. By this Your Excellency may see that Mr. Larkin's complaint is unfounded.

If the captain of the brig *Diana* has informed Your Excellency that he has been forced to put to sea immediately, it is false, because neither the maritime customs nor the captaincy of the port ordered him to leave, nor did they have previous notice of it, because said captain neglected to give them the required notice. The duties that are charged merchant ships in this port, are not for anchorage but for tonnage, and no merchant vessel is exempt from them, because the law of November 16, 1827, in articles 4 and 6, provides that they must pay seventeen reals (81¢), a ton,¹³ whatever their object for entering, even if it were to repair or avoid damage or to replenish its stores, and it is beyond the power of the customs office to excuse it from this payment of which said brig *Diana* is debtor by the mere act of having anchored in the port. Moreover, it committed the fault of getting in communication with the anchored frigate *Rasselas* before having received the special visits from the quarantine and customs officers.

With what I have said, I believe I have answered Your Excellency's note.

NICOLAS GUTIERREZ.

His Excellency Commodore Edmund B. Kennedy, commanding the Asiatic Squadron of the United States, aboard the frigate of war *Peacock*.

Very likely Governor Gutierrez thought that his long and detailed answer would satisfy Commodore Kennedy, but that was not the case. That same day, October 28, before the morning was very far advanced, Commodore Kennedy sent a second note of protest to Gutierrez.

UNITED STATES FRIGATE PEACOCK

Bay of Monterey,
October 28, 1836.

Sir:

I regret to find myself in the necessity of having to bother you again with the same subject of my letter of yesterday; moreover, a communication received from the owner of the frigate *Rasselas*, forces me to take this step with the object of preventing a serious disagreement between our respective governments.

I have been told by said note, that the frigate *Rasselas*, Captain J. O. Carter, having arrived at this port with the object of engaging in trade, and that having satisfied or given a bond for the anchorage charges in the port, he has received orders to put to sea tomorrow.

13. A real is 12½ cents Mexican money, seventeen reals would be 2.12½ pesos or about 81 cents American money at normal rate of exchange.

As Your Excellency well knows, the payment of this tonnage charge gives the ship a right to occupy the port for all the time it requires, I for my part have told Captain Carter to stay here as long as he deems convenient in order to finish his business.¹⁴

I also consider, that the payment of tonnage by an American vessel gives it the right to remain in this port, so long as it complies with the laws of the country, and any order to the contrary, shall be regarded by me as a violation of the rights and privileges guaranteed by the treaty.

EDMUND B. KENNEDY.

Commanding the East Indian and Asiatic Squadron.

His Excellency Don Nicolas Gutierrez, Commanding General and Political Governor of Alta California.

It may be that Governor Gutierrez was annoyed by such demands but with the customary Hispanic courtesy, he answered the second note in detail in a letter on the afternoon of October 28.

Monterey, October 28, 1836.

Mr. Commodore:

This morning Your Excellency's new communication as of this date was delivered to me, the officer who brought it being very insistent that I should make a prompt reply. However, since this Government must rely upon a fully authorized interpreter to make the translation of the referred note, the answer was not as prompt as Your Excellency desired.

I must inform Your Excellency, that the claim that Mr. John O. Carter, Captain of the frigate *Rasselas* made to Your Excellency, so as to continue anchored in this port by virtue of having paid or given a bond for the tonnage dues, is absolutely unfounded, and that he is only trying to take advantage of your kindness supposing that you lack knowledge of our laws.

Captain Carter appeared at this port on the 18th of this month, proposing to engage in his trade and pretending to pay the customs charges in merchandise, and not in money as is provided by our laws, for which reason he has not been allowed to sell his goods.¹⁵ To this I add that he also refused to accept the agreement offered to him by the customs officer, to pay half the charges in merchandise and the rest in money. At this time Captain Carter petitioned me on the 19th, asking that he be granted a term of eight days to repair the damages that he had suffered at sea; the which, after making the necessary enquiries, was ordered by me, granting him the same length of time that he requested and which ended today, for which reason the customs officials have ordered him to put to sea, as he no longer has an object to stay in this port.

I send Your Excellency a duly attested copy of the record of the affair, so that you may be convinced of the bad faith with which Captain Carter has acted in refusing to respect the Mexican law of November 16, 1827, so far as article 6, is concerned, which provides that the vessels that enter the port with the object of repairing damages or to get supplies shall pay tonnage charges and shall stay only the time required to make the repairs.

From what I have said, and with the reading of the testimony that I send you, Your Excellency may be convinced that this government gives the proper consideration to the American vessels, and that it proceeds with the utmost goodwill without violating the treaty of amity and commerce, and that in this business we attempt to have the laws of the country observed. By virtue of the prerogative which is delegated to me by the government of my Republic, I am the competent authority to whom the captains of the vessels must appeal in order to obtain the permission and time that they require to repair their damages.

And I doubt not that once Your Excellency comprehends the force of these arguments, you will withdraw the order that you state to have given Captain Carter to remain in this port; and that in turn you will warn him to respect the laws and authorities of the country, and that he is not to appeal to Your Excellency with claims that are peculiar to my jurisdiction as the highest local authority, without in any way violating by this, the privileges and rights guaranteed by the treaty.

14. Commodore Kennedy was presuming on his military force when he gave such an order, since he had neither the legal nor the moral right to do it until he had ascertained the truth of Carter's claims.

15. The usual practice of foreign merchants in Calif. was to pay half the customs dues in goods and the remainder in cash, after they had sold their stock. Davis (*op. cit.*, ch. xxiii) has much to say on that practice.

I have the honor of greeting Your Excellency with all consideration and of remaining your most obedient servant.

NICOLAS GUTIERREZ.

His Excellency Mr. Edmund B. Kennedy, Commanding the Asiatic Squadron of the United States, aboard the Frigate of War *Peacock*.

Once again, no doubt, Governor Gutierrez must have thought that he had answered that persistent Yankee. But not so; for hardly had the answer from Gutierrez been delivered to him, than Kennedy again despatched another demand. This time it concerned the original charges and was dated October 29.

UNITED STATES FRIGATE OF WAR PEACOCK

Bay of Monterey,
October 29, 1836.

Sir:

I must acknowledge receipt of your letters of this date, and I regret not to have as yet a definite decision upon my first communication, in regard to the bond given by Mr. Thompson.

So long a time having elapsed since the crime, of which Mr. Thompson is accused, was committed without this Government having taken the necessary steps to carry this matter before the competent tribunal, I cannot consider it lawful that Mr. Thompson should continue to be detained from now on; and I must request that Mr. Thompson's sureties be returned immediately (or a satisfactory affidavit for this purpose), so that I may be able to decide upon the steps which it may be necessary for him to follow.¹⁶

Since some Americans residing here are complaining about the rendering of military service, which Your Excellency represents as being entirely voluntary, I must beg that they shall not be called again to serve in like capacity, it being incompatible with their rights and privileges in this or any other country.¹⁷

And as there appear some notable differences between the claims of Captain Carter and of the Authorities, (and equally so in the case of the *Diana*), which I cannot now investigate, as I find it necessary to visit Santa Barbara and other ports of this coast, I must also request that the frigate *Rasselas* shall be allowed to remain here for the time that it may be deemed necessary to complete its repairs.

I have the honor of remaining very respectfully your obedient servant.

EDMUND B. KENNEDY.

To His Excellency Don Nicolas Gutierrez, Commanding General and Political Governor of Alta California.

Commodore Kennedy was no doubt taking advantage of his superior strength to coerce the defenceless California authorities into granting demands that he never would have made of a stronger power. Since the demands were based on questionable evidence, there naturally were discrepancies between the testimony of the authorities and that of the complainants, but Kennedy did not stop to investigate them. One is almost inclined to believe that Kennedy was anxious to start a quarrel on any kind of a pretext. Governor Gutierrez, however, put an end to the argument with his last letter on October 29.

16. Following his release from arrest in 1833, Thompson was not molested in any way in his commercial activities. He was free to come and go as he chose. (Bancroft, *op. cit.*, III, IV, chapters on trade.)

17. Such men as Larkin, Spence, Hartnell and others who served in the volunteer company have not one word to say about involuntary service. Bancroft has no record of such coercion and the Mexican archives reveal no reports from California authorities that foreigners were ever asked to render military service. Men like Graham and other trouble-makers who joined the armed forces did so of their own volition and purely for personal gain.

Mr. Commodore :

Monterey, October 29, 1836.

I answer your letter of this date which I just received and I deeply regret that the long explanation that I have made to you upon the Thompson affair has not satisfied you as you wish.

It is true, a long time has elapsed since Mr. Thompson was accused of smuggling, but furthermore, the delay of this affair does not rest with this political and military government. In my Republic, as in that of the North, this class of affair belongs to the judicial power, which power in all free countries such as mine, acts independently of the executive power which I exercise here and it is solely responsible for its actions before the Supreme Court of Justice, without my being able to do anything else but to stimulate it in a general way in the performance of its duty.

Under that supposition, Mr. Thompson is the one who should appeal for the justice which he believes to be his due, before the competent tribunal since he is the interested party. And I must inform Your Excellency that according to my information Mr. Thompson has given no bond whatever in money or in goods, but just a simple deed in which he pledges himself to take the consequences of the judgment, and this is a new reason why I would reaffirm to Your Excellency, that it is not within my jurisdiction to try this case, and that the question reduces itself not to the return of the bail as he has informed Your Excellency, but to canceling it. That is a particular prerogative of the judge, and my intrusion into it, would be to go outside the orbit of my powers and to expose myself to liabilities before the Supreme Government. This in itself prevents me from returning the deed for which you ask me and in its place I promise you that as soon as Mr. Thompson presents himself before me, I shall give him an official note for the judge who has charge of the case, recommending that he administer prompt and impartial justice to him. This is the only step I can take in this affair and one which I shall take with pleasure in honoring the request made by your Excellency.

In regard to what Your Excellency tells me about the military service that Americans have lent here, I say that their rights and privileges will be borne in mind in conformity with the treaty, as it has been done up to date. Nevertheless, they have never been forced to perform the military service, only civil or police service, always voluntary, and under circumstances in which they have recognized the benefits that they received, with the exception of one or two who, perhaps, may have interests in disorder.

If the Frigate *Rasselas* has to finish its repairs, Your Excellency may advise Captain Carter, that he should ask me for the necessary time for them and it shall be granted to him if he can justify his case, and in attention to Your Excellency's mediation.

I have the honor of remaining with all consideration and respect Your Excellency's obedient servant.

NICOLAS GUTIERREZ.

His Excellency Mr. Edmund B. Kennedy, commanding the Asiatic Squadron of the United States, aboard the sloop of war *Peacock*.

In this answer the Governor got the better of the Commodore. It denied the charges, yet it seemed to yield, at the same time it preserved the dignity of the Mexican Government and Governor's authority. This letter seems to have pacified the insistent Commodore, or at least it left him bereft of arguments, so there was nothing else for him to do but to weigh anchor and sail for Santa Barbara, which he did on October 31, 1836. But before he left he received the following letter:¹⁸

Monte-rey, Upper California,
October, 28th, 1836.

Sir,

We the undersigned American Residents, Masters and Supercargoes of American vessels in Monte-rey, desire to return to you their humble and grateful thanks for the lively interest you have been pleased to manifest for our commerce on this coast, and that on the representations of a number of residents and others at the Sandwich Islands, you have been pleased to enter this port for the protection of our interests.

18. Ruschenberger, *op. cit.*, pp. 512-13.

We trust that we sufficiently appreciate the value to us of this visit so highly important to our affairs, and of the increased security we shall feel by your regard to our welfare.

The appearance of a U. S. ship of war on this coast, after so long an interval, and after so long an intercourse between our vessels and this territory, has been highly salutary, and permit us to say, that we heartily and sincerely thank you.

May the remainder of your cruise be pleasant, and your return to the United States all you could desire.

Respectfully yours,

NATHAN SPEAR,

F. D. ATHERTON,

THOS. O. LARKIN,

JOSIAH THOMPSON,

WM. L. HINCKLEY,

WM. M. WARREN,

JOHN MEEK,

THOS. A. NORTON,

A. G. TOMLINSON,

JNO. H. EVERETT,

EDWD. H. FAUCON,

JOS. CARTER,

WILLIAM FRENCH.

To Commodore Edmund B. Kennedy,

Commanding East India Station, U. S. Ship Peacock.

The reasons given by Commodore Kennedy for coming to Monterey were probably correct, although to the Californians the whole thing had a rather suspicious aspect. No doubt it was just a coincidence, but to them it seemed rather odd that he should have come just at that particular time. Only a few months before, affairs in Texas had come to an unfortunate ending, so far as Mexico was concerned, with the surrender of Santa Anna. California, also, had been restless since spring and was now on the eve of a revolution. Just at that moment Commodore Kennedy arrived, and without any preliminaries made certain demands that were clearly meant to embarrass the government. Then too, what was the urgent business that called the Commodore to Santa Barbara, so that he was unable to take time to investigate the truth of the Governor's answers to his charges? It all seemed very mysterious. We can hardly blame the Californians if they suspected that California was soon to become another Texas. In this connection, there are numerous opinions expressed in private correspondence. The excerpt below is a part of a letter written by Don Bernardo Navarrete, who was secretary to Governor Gutierrez, to Don Juan Nepomuseno Lopez Portilla, a friend in Mazatlan. In speaking of the part taken by foreigners in the Alvarado revolt, he said:

Just in those days there arrived at that port the Commodore of the United States, Mr. Edmund B. Kennedy, on a frigate of war which carried 200 men and 22 guns. He acquainted himself fully about the revolution that was being plotted. He announced that he had eight war vessels in these waters to protect the commerce of his country. Owing to this reason the North Americans took a large part in the revolution, and it is thought that this may have some connection with affairs in Texas.¹⁹

Looking at it from this distance we know that nothing came of the Commodore's visit to California. The Commodore, however, aroused further suspicions in Mexico by his actions before he left these waters. From Monterey he sailed for Santa Barbara where he remained several days, until after the revolution had begun. Then he sailed for Mazatlan where he stayed a day or two. While there, although he knew about the California revolution, he failed to mention it to the Mexican authorities and they later remarked upon his silence and wondered why he had not mentioned such important news. It was even suspected that he had played a part in it. Can it be doubted that the Commodore would have liked to have been instrumental in acquiring California for the United States?

GEORGE TAYS.

19. B. Navarrete, to J. N. Lopez Portilla, Cabo de San José Dec. 6, 1836, MS, 52-8-7-1, *Archivo General de Guerra y Marina, Mexico*.