

From: Count of Valenciana  
To: Royal Audience of Judgments  
Date: March 24, 1806

[Page 1]

Most Excellent Sir,

It is irrefutable that the directive that could have been and was set aside for the Count of Valenciana was due to the final sentence pronounced by the Royal Audience in the Executive Lawsuit introduced against him by Colonel Miguel Emparan. This result was precisely under the current clause and it was implied to promote the appropriate exceptions that had been opposed and there were not many who opposed it in the executive sector. In such manner, being intent upon establishing said part, he has attempted the repetition of the previously paid amount by virtue of that judicial decree, before which he could neither contest such an action nor consequently propose it in the first lawsuit. Seeming indispensable, due to the directive and so that the mutual petition will produce the legal effects that may be intended before the dispute is finished, the new Instance may not be viewed as such in this part that has been proposed of late.

Moreover, when it should become desirable to apply this concept due to the other petition, which also expires close to the previous payments and, while it is true that mention was made in the Executive Lawsuit, an extension of jurisdiction could never be produced in the present lawsuit. Even if this were one of the principal and ordinary effects of the accusation, it is also undisputed that the accusation stops being legally acceptable when it emanates from delinquency, imputable to the action of the privileged Jurisdiction, no matter that it be attempted in a civil manner because, on the contrary, as the current articles explain, the Jurisdiction would be extended not only to the person, who introduces the mutual petition, but also to the same cause for which there is no extension, as decided in the Ecclesiastical and Military branches, both of which function in a similar manner in terms of their prerogative relating to their Jurisdiction.

In this supposed matter and directing itself to the actions that are advanced by the Count of Valenciana against Colonel [Backside of Page 1] Emparan in order to request the penalties of the contravention that he attributes to the laws and the Royal Decrees on Diversions that are prohibited, in addition to the lack of access after the Royal Decree dated 9<sup>th</sup> of February of 1793, the specific actions must be viewed as criminal even though they have been executed in a civil manner. Consequently, there can be no room for doubt that your corresponding knowledge of Military Jurisdiction touches solely on this General Petition, in whose virtue if it were of greatest gratification to Your Excellency to declare it in this way, then it will be to appropriate to invite the participation of the greatest resolution of the Royal Audience over the basic propositions that motivate it and, in making the ruling known, the judicial

decrees will be presented to Mr. Emparan so that he will respond to the lawsuit in terms of the directive.  
Mexico. 24<sup>th</sup> of March, 1806.

[Document is unsigned.]

[Page 2]

Aguirre is of the opinion that the lawsuit from 89[?] could correspond to the Audience but not to the one from 179[?]. The first one seems to be characterized as a continuation or amplification of the executive lawsuit that was observed by that tribunal. Valenciana outlined his opposition in this document but he did not prove anything and the arbitration is left to be proven in another [crossed out word] argument. To this end, I leave Emparan bound to the surety he gave before the same tribunal that postponed confirmation or revocation of payment in light of what Valenciana may or may not prove. For this reason, this lawsuit seems indivisible as it is without other results or consequences.

The second [lawsuit] is diverse in nature. It was opposed during the Audience as exclusive of comparison. What Valenciana may request from the Audience is the same amount that he lost there and to which he was condemned. This was the postponement and this was the delay. It could not be set aside for him and it could not be set aside that he should ask for another diverse amount due to a different cause, origin and proceeding, because in such a case, such a petition ceases to be an integral part of that first lawsuit.

The common opinion is that our petition or charge does not extend jurisdiction in executive lawsuits. I think that it is more established than the opposite ?, at least with regard to the case at hand, where a remaining exception was opposed and it will be examined [inserted words] with care, as will be the case with another accusation, which will begin with an examination. This is understood even in a situation where Valenciana would have used the mutual petition, expressly in time but he assured me that he only mentioned the [128 or 129?] as an exception to the allegation in the executive lawsuit and in the other [inserted word] written document where the extension was opposed.

Refer to the Count de la Cañada. Practical Instrument, Part 1, Chapter 6, pages 39, 90 and 91 and following. Revised Part 2, Book 3, Chapter 1.86 to 2.8 and the footnotes in February.