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Mr. Davidson's opinion on Dr. Mason's claim for \$428 - the loss on the sale of ponies &c bought by him at the request of General Le Gendre for the Formosan Expedition.

Dr. Mason certainly knew (at the time he accepted General Le Gendre's proposal to go on the expedition to Formosa) that the expedition was of a warlike character & directed against China he would have no legal claim whatsoever. But there is no evidence before me which proves that he did know this at that time or when he bought these ponies &c. He did know afterwards, and some time before the sale, as is proved by his letter of 29<sup>th</sup> Sept. 1874 where he says that "before news of the Japanese attitude towards China came" he had conversations with Pye<sup>20</sup> to the risks were running.

But when he did discover his true position he should at once have either telegraphed that he could no longer act so that General Le Gendre might have supplied his place with a person who would have done what was wanted, or he should have made up his mind to carry out the contract facing all the risks incident to such an undertaking. He should have done one or other of these two things. Instead of which he did neither. He determined to hold the ponies &c until the event occurred (namely war) for which the Government,

wanted them & then to act in such a way that Government would not get them. He continued to act for a time during which he disclosed to Mr. Pedder the circumstances of the sale regardless of the interests of his principal, & increasing the danger of seizure & then he threw the whole thing up & sold the ponies at a ruinous loss. In all this he was to blame: & By continuing to act after he knew of the real nature of the expedition he knowingly became a party to a contract which was illegal & unenforceable. His claim therefore is bad in law.

That being so the only question remaining is whether there is anything in these circumstances entitling D. Manson to some consideration. I can see only one which it is possible even to discuss - viz. the possibility that he saved the ponies &c from seizure. I cannot however admit this plea because had he acted rightly & with decision either one way or the other at the time when he came to know of the real nature of the expedition these chances would have been very slight indeed. He himself was the cause of their being increased.

My opinion therefore is that D. Mason's claim should not be allowed.

Signed Mr. John R. Davidson

5<sup>th</sup> Feb 1875