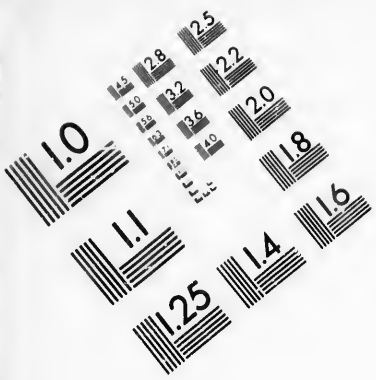

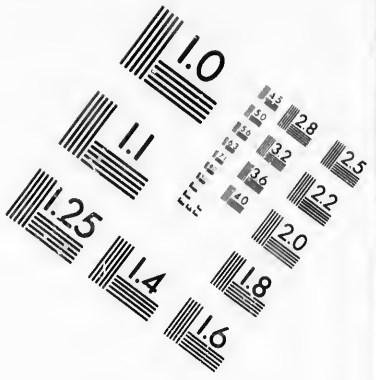

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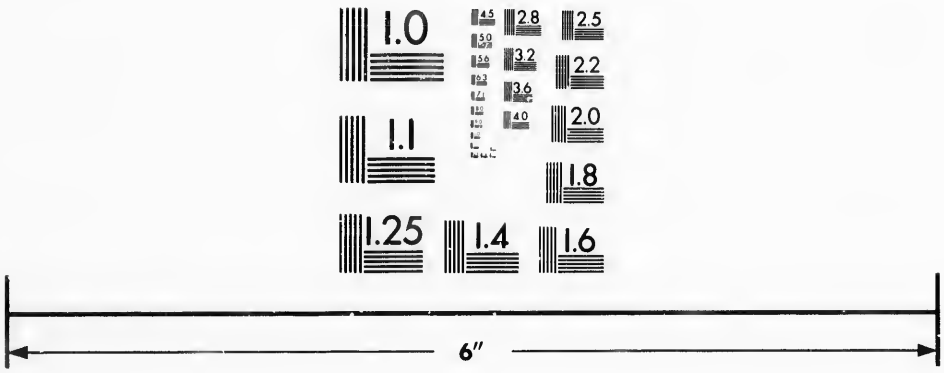

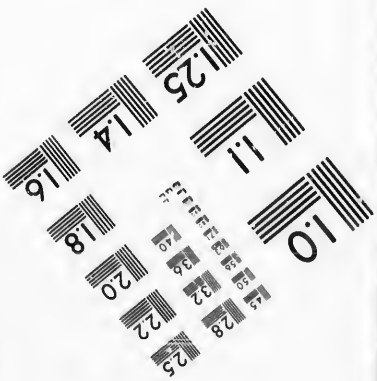

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SUNDRY

RESOLUTIONS AND PROCEEDINGS,

IN

CASES

BEFORE THE

Board of Commissioners,

FOR CARRYING INTO EFFECT

THE SIXTH ARTICLE

OF THE

TREATY

OF

AMITY, COMMERCE AND NAVIGATION,

CONCLUDED BETWEEN

HIS BRITANNIC MAJESTY

AND

THE UNITED STATES OF AMERICA.

(British v America Mixed Claims Commission)

PHILADELPHIA:

PRINTED BY R. AITKEN, No. 22, MARKET STREET.

1799.

140974

COMMISSIONERS' OFFICE,
Philadelphia, 10th July, 1797.

PRESENT,

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. GUILLEMARD.

The Board laid down the following rules, viz:

CLAIMS will only be received from the claimant in perſon, or from ſome agent appointed by him, and in every caſe the perſon preſenting the claim ſhall be informed that his attendance will be required.

Every claim ſhall be read by the ſecretary, and the firſt object of deliberation ſhall be, whether it is within the meaning of the 6th article of the treaty between Great Britain and the United States.

If the Board ſhall determine that ſuch claim is not within the meaning of the ſaid 6th article, the party preſenting the ſame ſhall be informed, and the ſaid claim with the vouchers thereof ſhall be returned.

In every caſe where the claim is entertained as within the treaty, notice thereof ſhall be given to the attorney-general of the United States. A record of each claim,

claim, the time when preſented and a liſt of the papers accompanying it, ſhall be kept by the ſecretary.

On the application of the attorney-general of the United States, by himſelf or the public agents appointed by law, the original papers reſpecting each claim ſhall be delivered to him, and a receipt taken for the return of ſuch papers within eight days.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 6th Nov. 1797.

PRESENT, *AS BEFORE.*

The following amendment and explanation of one of the rules laid down by the Board on the 10th day of July laſt was adopted, viz :

THAT on the preſenting and reading of every claim or complaint the Board will either immediately or upon farther conſideration reject it on its own ſtatement, if it ſhall appear not to contain matter entitling it to be entertained by the Board, or will require ſome additional ſtatement or explanation, or will order notice of ſuch claim to be ſerved upon the attorney-general or agent for the United States, that the ſame may receive an anſwer on their part within a limited time ; but that an order for the ſervice of ſuch notice ſhall not be conſidered as implying any opinion or declaration that the caſe is within the meaning of the treaty.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS'

COMMISSIONERS' OFFICE,
Philadelphia, 6th Nov. 1797.

PRESENT, *AS BEFORE.*

ORDERED—That in every cafe, on the prefentment of a claim by an agent, a power of attorney fhall either be produced at the time of prefenting the claim, or pending the conſideration thereof, and that notice be given to the agent accordingly, in order th t fuch power of attorney if not then produced may be procured as ſoon as poſſible.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 8th Dec. 1797.

PRESENT, *AS BEFORE.*

ORDERED—That the general agent for claimants, and the agent for the United States be informed, that in all cafes where claimants can produce evidence reſpecting the ſolvency of their debtors during the operation of the lawful impediments complained of, the Board will expect to have ſuch evidence ſtated and laid before them, without prejudice however to the right of the claimants to maintain, that it is not incumbent on them to prove ſuch ſolvency.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS'

COMMISSIONERS' OFFICE,
Philadelphia, 11th Dec. 1797.

PRESENT, *AS BEFORE.*

ORDERED—That all applications for the examination of witneſſes ſhall be lodged with the ſecretary in writing, ſigned by the agent of the party by whom they are to be adduced; and ſhall ſtate not only the names of the witneſſes, but the points generally on which they are to be examined; and that a copy of ſuch application ſhall at the ſame time be delivered to the agent for the oppoſition party.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 26th Jan. 1798.

PRESENT, *AS BEFORE.*

RESOLVED—That no claim or complaint, ſhall be conſidered as barred by the limitation of time in the treaty, if a memorial containing the full demand has been duly preſented to the Board within the time thereby preſcribed, although ſuch proceedings at law as may from the circumſtances of the caſe be neceſſary for the purpoſe of obtaining evidence in ſupport of the ſame, or any part thereof, have not been completed within the time ſo limited; but that all poſſible diſpatch and diligence in commencing and completing ſuch proceedings will in every caſe be expected by the Board.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS'

COMMISSIONERS' OFFICE,
Philadelphia, 18*th April*, 1798.

PRESENT, *AS BEFORE.*

ORDERED—That no pleadings in cases before the Board, shall in future be printed till after the manuscripts has been laid before them.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, *April*, 1798.

PRESENT, *AS BEFORE.*

In the Case of WILLIAM CUNNINGHAM, *and others.*

THE answer of the United States, signed by their agent, having in this case been printed and laid before the Board. ORDERED—That the general agent for claimants, or attorney for these claimants, have leave to see and reply to the same within three weeks; but with the exception of the introductory argument, "to impress on the commissioners (as it is there said) the primary importance of understanding the limits" of their duty, and instructing them, on the authority of Vattel, and with reference to a supposed case, of manifest and intentional wrong, in the expediency of taking care, that they do not "renew the dissentions between the two nations," by deciding in a manner so palpably "*absurd*," or so clearly proceeding from "*corruption or flagrant partiality*," as to entitle "*either nation to disregard the award.*" The Board make no further animadversion on the above argument than thus to state its import, and prohibit all illusion to such topics in future. They know no policy but that of justice, and look forward to no consequence but the consciousness of having done their duty.

ORDERED

ORDERED—That the reply in this caſe be printed; that this order be therein fully recited, and copies hereof ſerved upon the agents for both parties.

Extract from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 21ſt May 1798.

PRESENT,

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMMONS,
Mr. INNES, AND
Mr. GUILLEMARD.

In the Caſe of the Right Rev. CHARLES INGLIS.

The Board having reſumed the conſideration of this caſe, came to the following reſolutions, viz.

RESOLVED—That the claimant's character of Britiſh ſubject was not affected or impaired by the act of attainder and confiſcation, paſſed by the State of New York on the 21ſt of October 1779, attainting him with the Earl of Dunmore, Governor Tryon, Sir, Henry Clinton and many other Britiſh ſubjects who are therein deſcribed, not as ſubjects of the State, but as "perſons holding or claiming property within the State;" and forfeiting and confiſcating their whole eſtates real and perſonal for their adherence to his Britannic Majeſty: But that on the contrary, the ſaid act of attainder and the deſcription of loyaliſt or refugee applied

applied to the claimant, on the part of the United States, in conſequence of his ſaid adherence, are concluſive evidence that he ſtill maintained his original allegiance:—that therefore he is entitled to claim before this Board, under the 4th article of the definitive treaty of peace, and the ſixth article of the treaty of amity between his ſaid Majeſty and the United States.

RESOLVED—That the confiſcation of the debts in queſtion before the peace is no bar to the claim; and that the Board have ſo determined upon the ſame grounds and principles of interpretation reſpecting confiſcations before the peace, which were adopted and declared by the judges of the United States when (in the caſe of Hamilton's againſt Eaton) they decided in their circuit court for North Carolina diſtrict, that debts due to Britiſh ſubjects who reſided in the province now State of North Carolina at the date of the Declaration of Independence and continued there to reſide till the 20th day of October 1777, when they were obliged by law either to take an oath of abjuration and allegiance to the State or to depart; and which debts had been confiſcated or forfeited to the State before the peace, were nevertheleſs due and owing by virtue of the treaty.

RESOLVED— That the terms of the ſaid 4th article of the definitive treaty of peace, are in themſelves plain, explicit and unambiguous; and do not require or admit of any conſtruction or explanation from the 5th article, to which the 4th article bears no relation whatever.

ORDERED— That the general agent for claimants and the agent for the United States be furniſhed with copies of the foregoing reſolutions.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 28th May, 1798.

PRESENT,

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS.
Mr. GUILLEMARD.

In the Caſe of CHARLES INGLIS.

ORDERED—That the agent for the United States have leave on or before the firſt day of June next, to ſhew cauſe why the act of attainder and confiſcation paſſed by the State of New York, againſt the claimant before the peace, and the other acts of that State ſubſequent to the peace, with the ſtatement given on the part of the United States, of their operation and effect as neceſſarily diveſting the claimant of all right at law, ought not to ſatisfy the Board that at law he could not recover, and why the additional expence and delay of reſorting to a courſe of judicial proceedings, by which the eventual loſs might be greatly increaſed, ſhould now be incurred.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 1ſt June, 1798.

PRESENT, *AS BEFORE.*

In the Caſe of INGLIS.

An argument on the part of the United States, purſuant to the order or rule to ſhew cauſe of the 29th ultimo, having been read,

RESOLVED—That the ſaid order has been miſunderſtood; the queſtion being, whether there is good ground *by the law of the land,* and not under any reſolution

reſolution of the Board (which cannot affect the law of the land or the courts of juſtice) for now proceeding judicially in the recovery of the debt on which the claim is founded.

Therefore, ORDERED—That the agent for the United States have leave, on or before the 6th current, to add to the argument which has been read, what he may think material on that queſtion.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 4th June, 1798.

PRESENT, *AS BEFORE.*

In the Caſe of INGLIS.

THE Board having obſerved from the argument read at the laſt meeting on the part of the United States, that the word "interpretation" made uſe of in the reſolution of the 21ſt May laſt, wherein they refer to the principles of interpretation reſpecting the confiſcation of debts before the peace, which were declared by the judges of the United States in the caſe of Hamilton's againſt Eaton, has been miſunderſtood.

RESOLVED—For the prevention of future argument on that miſapprehenſion, that in adopting the word *interpretation,* the Board had in view the proper ſenſe of the word, namely—the meaning of the article as to the right thereby given to Britiſh creditors, notwithſtanding ſuch confiſcation of their debts without deciding (upon the operation of that article) whether it did or did not, of itſelf, repeal the exiſting law of particular States.

ORDERED

ORDERED—That both the agents be furniſhed with copies of the foregoing reſolution.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 11th June, 1798.

PRESENT, *AS BEFORE.*

ORDERED—That the agent for the adverſe party ſhall have leave to ſee every paper, in every caſe before the Board, though there may be no ſpecial order for that purpoſe or for any anſwer thereto.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE.
Philadelphia, 15th June, 1798.

PRESENT, *AS BEFORE.*

ORDERED—That where an agent does not intend to take the benefit of an order for leave to put in any paper or argument before the Board, notice be given to the Board to that effect without delay.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS'

COMMISSIONERS' OFFICE,
Philadelphia, 9th July, 1798.

PRESENT, *AS BEFORE.*

THE agent for the United States having repreſented to the Board the difficulties he labours under in his enquiries for want of a competent knowledge of the places of reſidence of the debtors,

ORDERED—That the claimants ſpecify as well the State as the county, town or place where the debtor reſided at the time the debt was contracted, and if now living, their preſent places of reſidence, or if dead the names and places of reſidence of their heirs or repreſentatives, as far as theſe particulars may be known to the ſaid claimants or their agents.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 13th July, 1798.

PRESENT, *AS BEFORE.*

In the Caſe of STRACHAN *and* M'KENZIE.

RESOLVED—That the laws of the State of South Carolina paſſed ſubſequent to the peace, and known under the denomination of the *inſtalment laws*, were lawful impediments to the recovery of debts, ſecured by the treaty of peace, and in this caſe operated as ſuch, within the meaning of the ſixth article of the treaty of amity.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS'

COMMISSIONERS' OFFICE,
Philadelphia, 16th July, 1798.

PRESENT, *AS BEFORE.*

RESOLVED—That till the anſwer to a claim has been put in and laid before the Board, raiſing a queſtion of fact between the parties, no application can in common courſe, or without very ſpecial reaſons be received for leave to examine witneſſes againſt ſuch claims.

ORDERED—That all applications out of the ordinary courſe of proceeding before the Board, ſhall ſtate ſpecially the grounds on which they are made, and meant to be ſupported; and when the urgency of circumſtances renders it neceſſary to make any ſuch application between the ſittings of the Board, that a copy thereof be forthwith ſent to each commiſſioner as well as the agent for the adverſe party.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 23d July, 1798.

PRESENT, *AS BEFORE.*

ORDERED—That agents ſhall in every caſe make their enquiries, and inform themſelves fully as to all the material facts as ſoon as poſſible, after the caſe comes before the Board, and that every application for leave to examine witneſſes at a diſtance from where the Board is ſitting at the time, ſhall ſet forth by *ſpecial averments*, the preciſe facts on which ſuch an examination is propoſed, the names and places of reſidence of the witneſſes to be adduced, the circumſtances on which each of them can give teſtimony, and their means and opportunities reſpectively,

reſpectively, of ſpeaking from their knowledge; on which application (to be ſtyled *ſpecial averments for evidence)* the Board truſting that agents will not make averments without good reaſon to believe they can be ſubſtantiated, will conſider the relevancy of ſuch averments, and either order ſuch examination to take place before themſelves, or authorize the ſame to be taken at a diſtance, on ſpecial interrogatories to be ſettled by the Board, and under ſuch directions as the caſe may require.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 6th Aug. 1798.

PRESENT,

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMMONS,
Mr. GUILLEMARD.

In the Caſe of CUNNINGHAM & CO.

RESOLVED—That in the State (formerly province) of Virginia, the recovery of debts due to Britiſh ſubjects was prevented by the war, and the operation of various lawful impediments which aroſe or were created during the courſe of the war, or immediately preceding the ſame. That after the peace, to wit: On the 22nd day of June 1784, and before the expiration of certain acts of the State paſſed during the war, againſt the recovery of Britiſh debts, which were of limited duration, and which it is admitted did not expire till the month of July 1784, a *reſolution* was paſſed by the legiſlature in the general aſſembly of the ſaid State

State of Virginia, whereby it was RESOLVED—" That ſo ſoon as reparation " ſhould be made for an infraction of the treaty of peace therein charged againſt " Great Britain, or congreſs ſhould judge it indiſpenſably neceſſary ; ſuch acts of " the legiſlature paſſed during the war as inhibited the recovery of Britiſh debts, " ought to be repealed, and payment thereof made *in ſuch time and manner as* " *ſhould conſiſt with the exhauſted ſituation of the commonwealth.*" That by the above reſolution the legiſlature of Virginia did in ſubſtance declare, that the State was not bound to give effect to the treaty of peace; that laws againſt the recovery of Britiſh debts did then exiſt; that notwithſtanding the 4th article of the ſaid treaty ſuch laws ſhould continue to exiſt in their utmoſt extent till certain conditions were fulfilled ; and that even then, ſuch laws ſhould only be ſo far repealed as to enable Britiſh creditors to recover payment of their debts in ſuch manner as might be found moſt convenient for the commonwealth. That on the 12th day of December 1787, an act was paſſed by the ſaid general aſſembly of the State, whereby it was enacted, " That ſuch of the acts or parts of the acts of the legiſ- " lature of the commonwealth, as had prevented or might prevent the recovery " of debts due to Britiſh ſubjects according to the true intent and meaning of the " treaty of peace ſhould be repealed." But with an expreſs proviſo that ſuch repeal ſhould be *ſuſpended* " until the governor with the advice of council ſhould " by his proclamation notify to the State, that Great Britain had delivered up to " the United States the poſts therein occupied by Britiſh troops, and the negroes " alledged to have been taken away contrary to the treaty, or had made ſuch " compenſation for them as ſhould be ſatisfactory to congreſs." That although Great Britain has delivered up the ſaid poſts to the United States, agreeably to and in compliance with the ſecond article of the treaty of amity, the ſaid negroes have not been delivered up nor compenſation made as preſcribed by the ſaid act of the State of Virginia, and the ſaid treaty of amity contains no ſtipulation for that purpoſe. That as the exiſtence of lawful impediments in the State of Virginia, to the recovery of Britiſh debts nowithſtanding the treaty of peace, was thus repeatedly declared and their operation recognized and enjoined by the higheſt authority in the State, ſo it appears from the records of adjudged caſes, ſubſequent to the adoption of the preſent conſtitution of the United States which have been laid before the Board, with a reference to known and general practice, that judgments for the defendants were accordingly given in the courts of law, on the pleas of *Britiſh debt* and the *ſtatute of limitations*. And that it is ſtated by the preſent Chancellor of Virginia " diſtinguiſhed (as in the anſwer for the United " States he is deſcribed to be) for his probity, learning and experience," and whoſe reports, containing the paſſage now to be recited have been produced and referred to by the agent for the United States, " That ſome months before" the 3d day of May 1793, the doctrine " *That an American citizen might honeſtly* " *as well as profitably withhold money which he owed to a Britiſh ſubject*," was received in a court of juſtice in Virginia, with " *conviction*" and applauſe. That the adjudged caſes of which the records have been laid before the Board, in evidence of the ſaid reference to the general practice of the courts are the following,

to

to wit: A judgment of the court of quarter ſeſſions held for Lancaſter county in the ſaid State of Virginia, on the 19th day of March 1788, in an action in which *Warwick* adminiſtrator was plaintiff and *Gaſkins* defendant, which judgment is in theſe words, "On this day came the parties by their attornies, and upon hearing the "arguments that were offered by the ſaid attornies, and all matters of law ariſing "thereupon *the court are of opinion that this ſuit be diſmiſſed, it appearing to the court to be a Britiſh debt.* A judgment of the county court of Prince George on the 12th day of Auguſt 1791, in an action in which Gibſon Donnaldſon and Hamilton were plaintiffs and Banniſters executors were defendants; and which judgment is in theſe words, "And now at this day came the parties by their attornies, and *it appearing to the court that the plaintiffs or ſome of them are Britiſh "ſubjects this cauſe is ordered to be diſmiſſed.*" A judgment of the circuit court of the United States for the middle circuit in the Virginia diſtrict, held at Richmond, in the ſaid diſtrict on the 1ſt day of June 1797, in an action for a debt due on the 22d day of May 1775, brought into court on the 22d day of November 1793, in which *Henderſon's* ſurviving partners of *Glaſsford and Henderſon* were plaintiffs and *Bunbury's* executors were defendants, and to which the defendants pleaded *firſt* the general iſſue, and *ſecondly* the ſtatute of limitations, to which ſecond plea the plaintiffs replied as follows, to wit: "And the plaintiffs by their attorney ſay as to "the ſecond plea by the defendants aforeſaid pleaded that they ought not to be "precluded from having and maintaining their ſaid action againſt the defendant, "becauſe they ſay, that from and after the 4th day of July in the year 1776, until the 5d day of September 1783, there was open war between the United "States of America, whereof the defendant was a citizen and the king of Great "Britain to whom the plaintiffs were ſubjects; and that the various laws of the "State of Virginia prohibited the recovery of the demand in the declaration "mentioned." But the ſaid ſecond plea was adjudged to be good. A judgment of the county court of Prince William county on the 8th day of Auguſt 1797, in an action brought into court on the 4th day of Auguſt 1795, for a debt due on the 2d day of December 1775, in which *William Cunningham and Co.* were plaintiffs and *Purcil* adminiſtratrix was defendant, and in which there was a verdict for the defendant on the direction of the court that the demand was barred by the ſtatute of limitations. And a judgment of the diſtrict court compoſed of the counties of Prince George, Suſſex, Dinwiddie, Hallaway and Amelia, on the 16th day of April laſt in an action for a debt due on the 16th day of January 1776, brought into court on the 27th day of April 1796 in which *William Cunningham and Peter Murdoch* deſcribed as ſubjects of the king of Great Britain were plaintiffs, and *Sturdivant's* executor was defendant, and in which the ſtatute of limitations was pleaded, the 4th article of the treaty of peace ſtated in reply, and on demurrer the plea adjudged to be good. To all which evidence of the exiſtence and actual operation of lawful impediments to the recovery of Britiſh debts, nothing has been oppoſed but an averment that the legiſlature of the State of Virginia were ignorant of their own laws; and an argument to prove that according to the theory of the law, and conſtitution of the United States, ſuch legiſlative acts ought not to have paſſed, nor ſuch judicial deciſions to have been given.

RESOLVED—That ſo far as the full recovery of the debts in this caſe claimed, has, during the operation of the ſaid lawful impediments been delayed, and the value and ſecurity thereof impaired and leſſened, or totally loſt, by lapſe of time, the loſs of legal evidence, inſolvency of debtorsor otherwiſe; ſuch delay of recovery and diminution, or loſs of value and ſecurity are to be aſcribed to ſuch operation of lawful impediments; unleſs it be ſhewn within the proviſion of the treaty of amity, that ſuch delay of recovery and diminution or loſs of value and ſecurity were occaſioned by other cauſes which would equally have ſo operated if the ſaid lawful impediments had not exiſted, or aroſe from the manifeſt delay or negligence or wilful admiſſion of the claimant.

RESOLVED—That no part of the debts in queſtion which are claſſed or deſcribed as "doubtful" in the liſts referred to in the memorial, and which are ſtated to have been ſo deſcribed in the year 1775, and not alledged to have ſince become good, can be the ſubject of claim before this Board.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 6th Auguſt, 1798.

PRESENT,

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. GUILLEMARD.

In the Caſe of D. DULANY.

The Board reſumed the conſideration of the reſolution which was propoſed in this caſe on the 13th day of June laſt, and had been the ſubject of frequent conference and deliberation; and the ſame was paſſed as follows:

THE Board having conſidered the pleadings in this caſe, and particularly the additional argument on the part of the United States in conſequence of the order

order dated the 7th day of May laſt, ſuggeſting to their agent certain points and principles for further diſcuſſion, to which order reference is now had.

RESOLVED—That the claimant, Daniel Dulany, a Britiſh ſubject, became immediately on the death of the teſtatrix Ann Taſker, as reſiduary legatee under her will, entitled to, and creditor in equity, in all debts due to the ſaid teſtatrix at the time of her death—that depreciated paper money was at different times during the war tendered to the executor under the will in payment of certain debts ſo due; which depreciated paper was received by the ſaid executor in *obedience* to an act of the general aſſembly of the State of Maryland, paſſed in April 1777, whereby it was enacted that the paper money therein mentioned ſhould be "received in payment "and diſcharge of all manner of debts;" and that if a creditor refuſed to receive ſuch paper money when tendered in payment and diſcharge of his debt, the whole debt and demand ſhould be "*for ever extinguiſhed*," the bond or other voucher of the debt delivered up, or a diſcharge given to the debtor who might ſue the creditor for damages to the amount of the debt with coſts of ſuit, if on refuſing the tender he alſo refuſed on demand to deliver up the bond or other voucher of debt, or to give ſuch diſcharge to the debtor—That the act of an individual in obedience to a peremptory law is the act of the law itſelf. That in every ſuch caſe of tender the extinction of the debt at law was by act and operation of law, which it was not in the power of the creditor either to promote or prevent; for whether he received the tender and obeyed the law, or refuſed and diſobeyed, the debt was thereby immediately extinguiſhed. That the Board are bound to award relief wherever the right is good in juſtice, and the remedy without fault in the creditor is gone at law. That the exiſtence in this caſe of the creditor's right in juſtice to the extent of all that has been withheld of a fair debt, has not been made the ſubject of diſpute; but his remedy at law has been loſt by his obedience to law; and therefore it is maintained that the nation is not bound to relieve. That it is incumbent on every individual, whether alien or citizen to yield obedience to the authority under which he lives at the time, ſo far as that obedience is not directly inconſiſtent with prior duties, nor is it a doctrine to be admitted in any caſe that a nation has a right to complain of an individual for having obeyed their laws; or under an agreement to allow compenſation for certain loſſes ariſing from their operation to refuſe ſuch compenſation becauſe thoſe laws have ſo operated and were obeyed. That diſobedience to the law could in this caſe have proceeded from no rational inducement; for without enquiring whether as is alledged, the courts of juſtice did afterwards and ſubſequently to the peace in many inſtances of tender and refuſal, defeat the operation of the above law by taking advantage of defects in form, ſo as that the creditor "might have recovered (as it is ſaid on the part of "the United States) the whole from the debtor, the principal as well as the in-"tereſt to which juſtice would have entitled him" it is ſufficient that no motive could ariſe from events which had not then happened; while refuſal of tender in diſobedience of the law, and in circumſtances which gave no preſage of favor in ſuch caſes, and when "the doctrine of tender it is ſaid was little underſtood," would have deprived the creditor of an immediate ſatisfaction, in part ſubjected him

him to a judgment and execution for damages to the extent of the whole debt, with coſts of ſuit, and expoſed him to all the hazard of perſonal inconvenience, which in ſuch times and circumſtances is neceſſarily incident to the open and avowed breach and contempt of poſitive law. That therefore the amount of what remains unpaid of the full value in ſterling money of the debts in queſtion, as ſecured againſt the operation of lawful impediments by the 4th article of the treaty of peace, is a loſs which aroſe from the act and operation of law, ſtill impeding and preventing the attainment of remedy in the ordinary courſe of juſtice, and as ſuch the proper ſubject for claim for compenſation under the 6th article of the treaty of amity.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 6th Aug. 1798.

PRESENT, *AS BEFORE.*

In the Caſe of D. DULANY.

RESOLVED—That in order to prevent as much as poſſible the inconveniencies which muſt ariſe from erroneous impreſſions of the principles entertained or adopted by the Board in the interpretation of the treaties, more eſpecially when ſuch erroneous impreſſions are produced by the publication of printed arguments, it becomes them to declare that the firſt point ſuggeſted for further argument in this caſe by the order of the 7th day of May laſt, referred to in the above reſolution, and which point is in theſe words, " Is it not therefore clearly underſtood by " both parties, as a principle, *that a diſcharge or extinction of the debt at law before* " *the treaty is not of itſelf a bar to the remedy thereby provided; but that it muſt alſo* " *appear* to have been ſuch an extinction and diſcharge as proceeded from the *free* " concurrence and *voluntary* act of the creditor, and not from the effect and ope- " ration of law; ſuch operation of law, in bar of all legal remedy, being on the " contrary

" contrary" relied on as the main foundation of a right to claim under the treaty?" is altogether misrepresented in the following answer laid before the Board, and printed on the part of the United States. " But the agent for the United States " does not admit that it was ever understood by him or by the United States as a " general '*principle that the discharge or extinction of the debt at law before the peace* " *was a legal impediment which the treaty of peace removed*,' and consequently that " every adjustment and payment between the debtor and creditor, before that " period, was liable to be re-examined and unsettled. *On the contrary, the agent* " *denies such a principle*, and contends that the Board has no power to make exa- ", rination into any matter that has been settled by the debtor and creditor " according to the laws of the land." That the following words in the above passage, viz. " principle that the discharge or extinction of the debt at law before " *the peace was a legal impediment which the treaty of peace removed*," are printed in the said answer with full marks of quotation as if not only the substance but the very terms made use of in the order had been therein faithfully given; whereas every word of the latter part of the sentence is a misquotation, tending to support the conclusion *imputed* to the Board, but totally different from and in part precisely the reverse of the plain proposition they expressed. For the Board have never suggested or given any reason to ascribe to them the opinion either that the validity of " payments accepted by the creditors whether in paper money, in lands, in " houses, in public securities, or in any other commodity to which both parties the " creditor and debtor had agreed is questionable," as stated in the first paragraph of that printed paper. Or " that *every* adjustment and payment between the debtor " and creditor before the peace is liable to be re-examined and unsettled," as stated in the paragraph before recited. Nor have any such propositions ever been maintained before them.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 8th Auguſt, 1798.

PRESENT,

Mr. MACDONALD,
Mr. FITZSIMONS,
Mr. GUILLEMARD.

In the Caſe of DANIEL DULANY.

Mr. Fitzſimons read in his place his proteſt againſt the proceedings in this caſe at the laſt meeting, as follows, viz :—

ON Monday the 6th inſtant the Board propoſing to take up a reſolution upon the claim of Daniel Dulany, whereby the right of the claimant to compenſation for depreciation on payments made to his repreſentative during the war, is recognized, notwithſtanding the debts for which ſuch payments were made were at the time finally ſettled and the evidence thereof given up or cancelled.

It was objected to on my part that ſuch a claim ought not to be entertained by the Board, becauſe neither the words nor the ſpirit of the treaty would warrant the conſtruction, that payments thus made could now be ſet aſide, or be conſidered as legal impediments. That rather than give countenance to a reſolution which (in my opinion) was ſo manifeſtly unjuſt, I ſhould withdraw from the Board to prevent its adoption; (a determination I had explicitly expreſſed when the ſame reſolution was before under conſideration) being aſked however to hear the reſolution read and without the ſmalleſt expectation that after my declaration the other members would conſider me as preſent to this purpoſe I remained in my place, after the ſecretary had finiſhed the reading (and ſome obſervations had been made by a member of the Board purporting that I had not a right to withdraw) I heard with infinite concern an order given to him, to enter it as agreed to; and to furniſh copies to agents as in other caſes.

Under theſe circumſtances it becomes my duty to proteſt againſt the validity of the ſaid reſolution which I do not conſider as having paſſed the *Board*, and I requeſt that the agent for the United States and the agent for claimants be furniſhed with a copy of this ſtatement and declaration.

(Signed) THOMAS FITZSIMONS.

Auguſt 8, 1798.

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The above being read, Mr. Guillemard and Mr. Macdonald repreſented, that after the reading of the reſolutions, and after obſervations had been made as above, the queſtion was diſtinctly put and Mr. Macdonald, Mr. Rich and Mr. Guillemard gave their aſſent, the one after the other to the paſſing of the reſolutions, on which the ſecretary was deſired to enter them as paſſed, Mr. Fitzſimons ſtill continuing in his place, and that the whole buſineſs was done deliberately, it having been ſettled on Wedneſday the firſt day of Auguſt, that it ſhould be taken up on the Monday following.

Extracted from the proceedings of the Boara,

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 8th Aug. 1798.

PRESENT,

Mr. MACDONALD,
Mr. FITZSIMONS,
Mr. GUILLEMARD.

In the Caſe of CUNNINGHAM *and* Co.

Mr. Fitzſimons read in his place his diſſent from the reſolutions agreed to in this caſe at the laſt meeting, as follows, viz :—

THE reſolutions paſſed by the Board in the caſe of Cunningham and Co. containing as I believe, principles inconſiſtent with the true intent and meaning of the treaty under which we act—I deſire to enter my diſſent from them on the following grounds :

1ſt.

1ſt. Becauſe the proofs before the Board are not ſufficient to warrant the concluſion, that lawful impediments to the recovery of Britiſh debts exiſted *generally* in Virginia.

The records of judgments in two caſes in county courts, and the acts and reſolutions of the legiſlature, are cited, with a reference to the general practice of the courts; but it is alledged on the part of the United States, that judgments in numerous inſtances were obtained in the courts of Virginia by Britiſh creditors, that no appeal was ever carried up from the lower to the higher courts where the judgments might have been corrected; and that it was incumbent upon the parties to have reſorted to theſe tribunals before a principle ſo important ſhould be admitted to the extent laid down in the reſolution more particularly as it has always been held that the treaty of 1783 controuled the laws of the particular States.

2d. Becauſe judgments given upon the ſtatute of limitation are cited without any ſpecification of the circumſtances upon which they were given, and inferences are drawn from thoſe judgments, that they were legal impediments, no diſcuſſion or examination of the grounds or principles was ever had before the Board upon that ſubject; nor are the records ſufficient to warrant the concluſion that they are legal impediments.

3d. Becauſe a principle is laid down which throws the whole burden of proof upon the United States in every caſe where legal impediments exiſted, contrary as is believed, to the clear principles of law and equity. By this deciſion the creditor is excuſed from proving that his debtor was ſolvent at the expiration of the war, or that he has uſed due diligence for the recovery of his debt. To avoid the payment the United States muſt prove the contrary in both inſtances. The injuſtice that may be done to the United States by the application of this principle, is too obvious to require elucidation. Reaſon and juſtice would require, that before the United States could be called upon to pay the Britiſh creditor, he ought to prove that he loſt his debt by reaſon of the impediment which prevented his reſorting to the courts for its recovery, but under this principle it is preſumed not only that the debtor was ſolvent during the operation of the lawful impediments, but that the creditor took all proper methods within the meaning of the treaty to recover payment from him.

The preſumption that the debtor was ſolvent at the time the treaty was concluded is the more inadmiſſible, when the circumſtances of the country at that period of time is taken into view; it is a fact too notorious to be denied, that by far the greateſt part of the perſonal property of the citizens was waſted and loſt during the war, and that for want of markets for the products of the country, the prices were ſo low for ſome years after, as to afford no means of paying old debts; the preſumption therefore is totally inadmiſſible on this ground, and the application of the rule if adhered to, will prove beyond contradiction the injuſtice of the principle.

By

By the treaty of amity the United States have only promiſed the creditors to pay what they have loſt by the operation of legal impediments to the recovery of their debts—not all that they ſhould demand on that account, except they could prove that the demand was juſt.

The deciſion of a queſtion of this importance, at a time when only o e of the commiſſioners appointed by the United States was preſent, will certainly not contribute to render it more acceptable.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

In the Caſe of D. DULANY.

Explanatory obſervations on behalf of the United States.

IN anſwer to the third point ſuggeſted by the Board, the agent for the United States contended, that by refuſing the tender, the creditor would have had it in his power under the laws of the country and the treaty of peace, to have recovered afterwards the full value thereof in ſterling money from the debtor. In order to have a proper view of this argument, and before a final deciſion is made, the agent inſiſts, that proof be produced of the emiſſion of the bills of credit which were tendered and received. None but bills emitted by congreſs or by the State of Maryland prior to the 18th April 1777, were ever a legal tender in that State. Were the bills of either deſcription which were tendered and received? If they were not, the act of 1777 did not embrace them, and the operation of that law on this caſe is wholly denied. The payment cannot be ſaid to have been the effect of that law and to have derived any validity therefrom.

It is incumbent on the claimant to produce this proof, and the agent for the United States will produce proof that this is the eſtabliſhed interpretation in the State of Maryland of that act. The agent for the United States has thought it

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his duty thus expreſsly to urge this point leaſt it ſhould be ſuppoſed not to have been implied in his former remarks.

JOHN READ, JUN.

Agent general for the United States.

10*th Auguſt*, 1798.

The foregoing explanatory obſervations were tendered by me to the Board on the 10th Auguſt 1798, which they refuſed to accept, aſſigning as a reaſon for the ſame, that the pleadings in this caſe were cloſed.

JOHN READ, JUN.

Agent for the United States.

COMMISSIONERS' OFFICE,
Philadelphia, 5*th Dec.* 1798.

PRESENT,

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. SITGREAVES,
Mr. GUILLEMARD.

ORDERED—That the general agent for claimants do without delay lay before the Board the ſeveral titles of claimants, ſtating themſelves to be ſurviving partners, adminiſtrators, executors or truſtees; and alſo the powers of attorney, or other authorities, by virtue of which claims have been preſented.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

OFFICE

OFFICE OF THE COMMISSIONERS,

Under the Sixth Article of the Treaty of Amity, &c. with Great Britain.

Philadelphia, 18th Dec. 1798.

PRESENT,

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. SITGREAVES,
Mr. GUILLEMARD.

In the Case of CUNNINGHAM & CO.

THE reſolution moved by a member of the Board on the 23d day of October laſt, on the queſtion of *intereſt during the war*, which, with other general queſtions of interpretation, was in the anſwer to the United States, ſpecially raiſed and ſubmitted, on full argument, for the determination of the Board in this particular caſe, as involving "many important principles neceſſary to be decided," (which anſwer it appears from the letter annexed to, and printed therewith, was drawn up by the attorney general of the United States, as a leading argument to be referred to in ſimilar caſes, and to which reference has accordingly been made) having been again moved, the matter was this day fully diſcuſſed, and the reſolution paſſed as follows:—

The Board having conſidered the argument of both parties on the claim of intereſt during the war, which is oppoſed on the following general grounds and principles, as ſtated in the anſwer of the United States, viz.

The rules of conſtruction eſtabliſhed by the law of nations for the interpretation of "obſcure or ambiguous pacts:"—

The meaning of the word "*debts*" in the *fourth* article of the treaty of peace as not comprehending intereſt, becauſe intereſt is recoverable at law in the technical form of *damages*, for the detention of the debt; "being what is given more than "the principal, that the creditor may not be a loſer:"—

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The inference to be drawn from the demand of a deduction of intereſt during the war, which had been made on the part of the United States in the courſe of the negociation previous to the formation of the ſaid article, and from a converſation ſubſequent to the treaty, viz. in the year 1786, between the Britiſh ſecretary of ſtate for foreign affairs, and the American miniſter at London; in which the latter ſuggeſted "the policy of giving up the intereſt during the war, and of agreeing to "a plan of payment by inſtalments;" and the former, after "ſome ſlight ex- "preſſions concerning the intereſt, wiſhed that the courts were opened for recover- "ing the principal," and obſerved "that the intereſt might be left for an after- "conſideration:"—

The nature and cauſes of the war; in the courſe of which "the products of the "land were indiſpenſably neceſſary for defence againſt that which, on the ſide of "the Americans, was a war for life, liberty and property: A war pro aris et "focis;" attended with circumſtances of ſuch deſolation (as deſcribed in the "printed anſwer) that after the application of what was thus neceſſary for defence, "there was nothing left to an individual for paying intereſt on his debt:"—

"The interdiction of commerce to the United States by the Britiſh parliament," and ſtoppage of "intercourſe and acceſs between the American debtors and Britiſh "creditors," by which "the detention of the debt during the war was unavoid- "able:"—

The departure of creditors, and their factors, from the State, ſo that no perſon remained in the country to receive payment of the debt:—

The analogy between the preſent caſe, and that quoted from Viner's abridgment, in which it is ſtated, "that where by a general and national calamity, nothing is "made out of lands which are aſſigned for the payment of intereſt, it ought not "to run on during the time of ſuch calamity:"—

The authority of writers on the law of nations, who ſupport the general poſition, (which as ſuch has been ſtated, and not diſputed on the part of the United States) viz. "that debts due to private perſons before a war, ſhall be paid after the war; "and with intereſt during the war, if ſuch was the contract, either tacit or ex- "preſs:" —But who alſo lay it down, that "if nothing elſe be agreed upon, yet "this is to be ſuppoſed in every peace, that no action ſhall be commenced for da- "mages done in war, which is alſo to be underſtood of thoſe done to private per- "ſons; theſe being alſo the effects of war:"—

The equity, as between creditor and debtor, of denying intereſt during the war, whereby "the creditor and debtor will be put upon a more equal footing; and a "loſs will not be incurred by the debtor, for the ſake of a gain to the creditor:"—

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The evidence of ſuch equity, ariſing from " the practice of the courts and juries " in diſallowing intereſt during the war, generally, throughout the United States;" ſuch being ſtated to have been, and to be " the practice of the courts" (and of juries in all caſes that were " under the power of their verdicts") of *New-* " *York, New-Jerſey, Pennſylvania, Delaware, Maryland, Virginia,* and *South-* " *Carolina;* in ſome of which States the claims (it is ſaid) of Britiſh debts were " ſo inconſiderable, and ſo few, as not to have occaſioned public concern, or to " have excited any prejudices :"—

The evidence of ſuch equity, in particular, ariſing from the judgment and opinions delivered by the judges of one of the State courts of Virginia againſt the allowance of ſuch intereſt, in the caſe of *M'Call againſt Turner*, decided in 1796; On which occaſion it was ſtated from the bench (as appears from the report of the caſe in the appendix to the anſwer) that on comparing " the conduct of the " two nations" during the war, " the compariſon was evidently in favour of Ame- " rica;" that of Great Britain amounting to ſo many deflections from the modern " rules of warfare, which did not entitle the creditors even to the principal debts " themſelves, had they not been ſtipulated for by the treaty of peace;" a ſtipulation which " although it was unjuſt and inconvenient in one reſpect, yet as the " other parts were eſteemed beneficial, it was right to accept, for the ſake of the " general advantages it contained :"—.

And the further evidence of ſuch equity ariſing from the general impreſſion in America during the war, that " in a conteſt of that kind, if ſucceſsful," few would be " required at a future day to pay ſuch intereſt."

RESOLVED—That the deſcription contained in the 4th article of the treaty of peace, of the nature and extent of the right and property thereby ſecured againſt the operation of lawful impediments, viz. " the *full value* in ſterling money of all " bona fide *debts*, theretofore contracted," is a deſcription in terms which are clear and explicit; and therefore, the authorities which have been referred to on the conſtruction of " obſcure or ambiguous pacts," bear no application to the preſent queſtion :—That the *full value* of a bona fide debt muſt mean *the full amount of the obligation*, with all its incidents, according to the contract :—That intereſt has been rightly deſined on the part of the United States, to be a fixed and ſettled compenſation for the damages ſuſtained by the creditor through the detention or delay of payment of the original debt, " that he may not be a loſer;" and in law as well as in equity, ſuch compenſation is conſidered as a growing increaſe of the debt itſelf; the form, in certain caſes of recovering or awarding ſuch increaſe of *debt* in courts of law, by the name of *damages*, leading to no ſubſtantial diſtinction, inconſiſtent with the known and long eſtabliſhed nature of the right, and that common acceptation of language by which alone the treaty muſt be conſtrued :—For the argument which has been laid before the Board, from the letter of Mr. *Jefferſon* to Mr. *Hammond*, previous to the treaty of amity, referred to in the anſwer to the

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claim, is an elaborate misapplication of authorities on the technical distinctions and restrictive language of form in courts of law, which the framers of the treaty cannot be presumed to have known, and never meant to apply :—That if from the denomination of damages, as applied to interest in courts of law, the conclusion could be drawn, *that interest was not debt, and therefore not within the meaning of the treaty*, such conclusion would affect the claim of interest in time of peace, as well as during the war, and therefore reach too far for the argument, which admits that interest accruing in time of peace is due according to the contract :—That if any reasonable ground of doubt remained, it would be removed by certain facts, as stated on the part of the United States, and from which a contrary inference has been drawn, viz. the demand, in the course of the negociation previous to the treaty, of a deduction of interest during the war ; the silence of the article on that head ; the subsequent suggestion by the American minister in the year 1786, of "*the policy* of "giving up" such interest, thereby admitting, as a matter of necessary implication, that the payment of the interest to be thus "*given up*," had been previously stipulated and secured ; and the answer made by the British secretary of state to the suggestion of thus "*giving up*" the said interest on principles of policy, viz. "that "it might be left for an after consideration ;" with the fact that it never was on after consideration given up, but on the contrary, by the 6th article of the treaty of amity, which adopts the same general term "*debts*" as descriptive of the subject matter thereof, "the commissioners are empowered and required, in pursuance of "*the true intent and meaning* of the said article, to take into their consideration all "claims, *whether of principal or interest*, or balances of principal and interest" (without any allusion whatever to a distinction between the case of interest during the war, and interest in time of peace) "and to determine the same respectively, "*according to the merits of the several cases ;* due regard being had to all *the circum-* "*stances thereof*, and as equity and justice shall appear to them to require :"—That the Board are thus empowered by the treaty of amity to award interest during the war ; but it is rightly maintained on the part of the United States, that no award can be made under the treaty of amity, which is not founded on a right secured by the treaty of peace ; therefore, an award of interest during the war will be founded on a right secured by the treaty of peace :—From all which it follows, not only that the general term "*debts*" in the 4th article of the treaty of peace, comprehends the *whole* interest, as well as the *whole* principal ; and that the Board are, by the treaty of amity, required to take the same into their consideration ; but also, that they are bound to decide "according to the merits and circumstances "of the *several cases*," upon such principles as (with reference to the said merits and circumstances of each particular case) shall appear to them to be just and equitable :—Nor is any distinction to be found in any of the treaties between that part of the claim which is composed of interest and that which is composed of principal, the Board having no greater power of decision over the one than over the other :—That it is not alledged, nor does it appear, that any special bar or ground of objection against interest during the war, arises out of the nature or terms of the contracts, or other particular merits or circumstances of this case ; neither is there any general ground on which the case can be considered as forming an exception

exception to the position arising out of the law of nations and before recited (as ſtated and referred to on the part of the United States) viz. " that debts due to private " perſons before a war, ſhall be paid after the war; and with intereſt during the " war, if ſuch was the contract either tacit or expreſs." For every inference which can be drawn from the particular nature of the war, as diſtinct from that " of or- " dinary wars between independent nations," is in favour of the original contract between the parties, and gives ſtrength and application, *a fortiori*, to the ſound policy of juſtice, which preſerves unimpaired by national hoſtility, the full effect and integrity of good faith in private tranſaction:—But on this head, the ſentiments of the Board cannot be better expreſſed than in the words of a learned judge *(Patterſon)* who, in delivering his opinion in the ſupreme court of the United States on the 7th day of February 1796, in the caſe *Jones v. Hylton*, expreſſed himſelf as follows:—" I feel no heſitation in declaring, that it has always appeared to me to " be incompatible with the principles of juſtice and policy, that contracts entered " into by individuals of different nations ſhould be violated by their reſpective go- " vernments in conſequence of national quarrels and hoſtilities—*National differences* " *ſhould not affect private bargains.* The confidence, both of an individual and na- " tional nature, on which the contracts were founded, ought to be preſerved invio- " late. Is not this the language of honeſty and honour? Does not the ſentiment " correſpond with the ſentiments of juſtice and the dictates of the moral ſenſe? In " ſhort is it not the reſult of right reaſon and natural equity? The relation which " the parties ſtood in to each other at the time of contracting theſe debts, ought not " to paſs without notice. The debts were contracted when the creditors and debt- " ors were ſubjects of the ſame king and children of the ſame family. They were " made under the ſanction of laws common to, and binding on both. *A revolu-* " *tionary war could not like other wars* be foreſeen or calculated upon:—The thing " was improbable:—No one at the time debts were contracted had any idea " of a ſeverance or diſmemberment of the empire, by which perſons who had " been united under one ſyſtem of civil polity ſhould be torn aſunder, and become " enemies, for a time, and perhaps aliens for ever. Contracts entered into in ſuch " a ſtate of things ought to be ſacredly regarded:—Inviolability ſeems to be at- " tached to them:"—" The conſtruction of a treaty made in favour of ſuch cre- " ditors, and for the reſtoration and enforcement of pre-exiſting contracts, ought " to be libe al and benign:—For theſe reaſons this clauſe in the treaty *deſerves the* " *utmoſt latitude of expoſition:*"—That independent of the irrelevancy of the fact in a queſtion of private right ſecured to creditors by treaty and the law of nations, the prevention of remittances to Great Britain, and " detention of debts during " the war," ought not to have been aſcribed to the " interdiction of commerce to " the United States by the Britiſh parliament:"—For by virtue of a reſolution of congreſs, which took place on the 10th day of September 1775, and which was ſtated and recognized by the ſupreme court of Pennſylvania in deciding the caſe of *Hoare againſt Allen*, the exportation of all merchandize and commodities whatſo- ever to Great Britain, Ireland or the Weſt Indies, was prohibited; the ſaid reſo- lution rendering it afterwards (as laid down by the court in that caſe) " unlawful " to make remittances to Great Britain:" And on the 20th day of October

1777,

1777, an act of aſſembly was paſſed by the State of Virginia, whereby authority was given and an invitation held forth to the debtors of Britiſh creditors, to pay their debts into the *Loan Office* of the State; (and ſuch payments were afterwards accordingly made in depreciated paper money, at the nominal value, to a great amount;) the preamble of which act of aſſembly ſtates a motive for the law in the following terms; " But the ſafety of the United States demands, and the law and " uſages of nations will juſtify, *that we ſhould not ſtrengthen the hands of our enemies* " during the continuance of the preſent war, by remitting to them the profits or " proceeds of ſuch eſtates, or the *intereſt or principal* of ſuch debts:" Nor can it be received as a better reaſon for withholding intereſt on juſt debts, that " cre- " ditors and their factors left Virginia and carried away their books and vouchers, " and were inacceſſible to the debtors till the return of peace:"—For the proclamation by the governor of Virginia, dated the 3d day of June 1776, which, with the charges and accuſations it contains, as iſſued in the heat of war, has been printed at full length in the appendix to the anſwer " ſtrictly requires and *enjoins* " *all the natives of Great Britain who were partners with, factors, agents, ſtore-* " *keepers, aſſiſtant ſtorekeepers, or clerks here, for any merchant or merchants in Great* " *Britain, on the firſt day of January* 1776, *to depart this commonwealth with their* " *goods*, within forty days from the date hereof, except ſuch of the ſaid natives as " have heretofore uniformly manifeſted a friendly diſpoſition to the American " cauſe, or are attached to this country by having wives or children here agreeable " to a reſolution of the general aſſembly in that caſe made;" in conſequence of which proclamation, many perſons of the deſcription therein mentioned did of courſe depart. That as all coercive meaſures for recovering payment of Britiſh debts were of courſe ſuſpended during the war, ſo voluntary payments were thus prevented by laws or public acts of the State, prohibiting remittances to Britiſh creditors who were not within the State, and compelling thoſe who were within the State to depart. And it cannot be juſt, that laws ſhould firſt be paſſed, making remittances unlawful, and driving creditors and their agents from the State; and then intereſt withheld, becauſe remittances were unlawful, and creditors and their agents abſent:—That if it could be maintained, that laws which were avowedly made to detain the money in the country, for the double purpoſe of weakening the enemy by withholding their property during the war, and of ſecuring the uſe of it for the public ſervice, had the effect to deprive the creditor of his right to demand payment of intereſt as well as principal on the return of peace, ſuch laws ſo operating againſt the recovery of the full value of bona fide debts, would of courſe come within the deſcription of lawful impediments, entitling the creditor, under the treaty of amity, to compenſation for the loſs thereby ſuſtained;—But from the facts which have been ſet forth on the part of the United States, there is at leaſt no room for any general preſumption, that if the courſe of remittance had been free, remittance would have been made; or if Britiſh creditors and factors had remained in the State, payments would have been received:—For it is ſtated in the anſwer, that " all the products of the land were indiſpenſably neceſſary for defence, and " nothing was left to an individual for paying intereſt on his debt;" from which it alſo follows, that nothing can be more remote from all reſemblence to the preſent

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caſe, than that of *tender and refuſal* at law, to which it has been aſſimilated in the letter from Mr. *Jefferſon* before-mentioned; the very eſſence of tender and refuſal conſiſting in the actual offer of the money, and its being *always ready* to be paid:—That as the means which might otherwiſe have been applied towards payment of Britiſh debts, were thus expended in ſupport of the war with Great Britain, it is of no importance to the concluſion, whether that war "was on the ſide of America" maintained under the circumſtances which have been deſcribed, and merely "for defence" againſt hoſtile aggreſſion; or for the attainment of great and valuable public objects:—For Britiſh creditors were individually on the return of peace as little reſponſible in the one caſe, as entitled to or poſſeſſed of any participation of benefit from the event in the other:—That all arguments againſt the juſt rights of individuals derived from the nature and cauſes of the war, or reflections on the manner in which it was conducted on the one ſide or on the other, are beſides, as inconſiſtent with the eſtabliſhed principles of the law of nations, as repugnant to the ſpirit of that diſcuſſion which ought to take place *in the execution of a treaty of amity*:—And ſo far only will the Board animadvert on the publication of charges againſt Great Britain reſpecting the nature and conduct of the war, as ſtated in the printed anſwer in this caſe, and documents thereto annexed, in terms of deſcription which little accord with the buſineſs of conciliation and peace:—That the general poſition in favour of debts due to private perſons before a war, as being recoverable on the return of peace, with intereſt according to the contract, has been ſtated and admitted on the part of the United States; and in addition thereto the following paſſage has been quoted from Vattel, viz. "*if nothing elſe be agreed upon*, yet this is to be ſuppoſed, that no "action ſhall be commenced for *damages* done in war, which alſo is to be underſtood of thoſe done to private perſons, theſe being alſo the effects of war:"—But if this latter poſition had reference as has been argued, to the caſe of intereſt, it would be directly inconſiſtent with the former; beſides being precluded in its application to the preſent caſe by the condition it contains; for here there is an *expreſs agreement* by treaty to the contrary; and as damage done in war to the property or effects of individuals is not the ſubject of an action on the return of peace, ſo it cannot in juſtice be the ground of objection or defence againſt an action for recovery on an antecedent right:—That the caſe which has been put and relied on, as ſtated in the ſaid letter from Mr. *Jefferſon*, of intereſt ſeparately ſecured by an *aſſignment of lands*, of "a general and national calamity" by which "nothing is "made out of the lands" ſo aſſigned, and of the ſtoppage of the currency of ſuch intereſt during ſuch calamity, bears no analogy whatever to the preſent caſe:—For, without enquiring how far the nature of "the general and national calamity" contemplated in the caſe referred to, ſupports the compariſon; or reſting upon the fact, that in this caſe payment was not withheld from a failure of means, but from the application of thoſe means on the part of the debtor to other purpoſes, it is ſufficient that here there is no ſuch aſſignment of lands, or ſpecific appropriation and acceptance of a particular ſecurity or fund of payment; but a ſimple, abſolute, and unqualified obligation by the debtor, that the debt, principal and intereſt, without

diſtinction, ſhall be paid, which nothing ſhort of performance or the creditors voluntary acquittance can either abridge or releaſe :—That the true nature of intereſt cannot be better deſcribed than in the words of Mr. *Juſtice Shippen* in the caſe of *Petit againſt Wallis*, as follows, viz. " In ſhort, the £.5,000 paid with intereſt at " this day is not, in fact or law, more than the £.5,000 paid without intereſt at " the day it becomes due :"—That an award of intereſt during the war, would not (as has been urged) create " a loſs to the debtor for the ſake of a gain to the " creditor ;" for according to the compendious deſcription of the nature of intereſt which has juſt been referred to, and the definition already ſtated, as maintained with much argument, and on many authorities, on the part of the United States, intereſt is not gain, but compenſation to prevent loſs ; ſo that the denial of intereſt would be gain to the debtor, and loſs to the creditor ; with an increaſe in proportion to the additional value of money during the war :—That therefore if the Board were to depart from their duty, in the impracticable attempt ſuggeſted in the anſwer, of placing debtor and creditor " upon an *equal footing*," by eſtimating conjectural loſſes and balancing inequalities in their reſpective ſituations, advantages, or ſufferings, during the war, the ſettled rate of intereſt might be found in many inſtances to fall very far ſhort of the loſſes, immediate or remote, ſuſtained by the creditor through the detention of his debt, at a time when payment was moſt wanted ; while the gain of the debtor, in the application or uſe of the money or property ſo withheld, might far exceed the amount of intereſt for which he was liable ;—That as many individual inhabitants of the United States were, doubtleſs, reduced to a ſtate of inſolvency by the war, ſo it is matter of equal notoriety, that many Britiſh merchants, and other ſubjects of his Britannic majeſty, were driven to bankruptcy and ruin through the loſs of trade, non-payment of debt, and other circumſtances ariſing from the ſame common calamity ; but it does not appear, nor has it been alledged, that any ſuch claim of exemption from intereſt during the war has ever on that account been attempted or ſet up, or could be maintained in any of his ſaid majeſty's dominions by any ſuch Britiſh debtor, however unfortunate, or however clearly his loſſes might be deduced from the ſame cauſe which has been held a ſufficient ground for ſuch exemption in favour of American debtors ; ſo that *the principle* applied by the learned judge, and on the occaſion firſt above-mentioned, to the caſe of Britiſh creditors whoſe debts had been paid into the State treaſury, is equally applicable to the preſent queſtion, and was ſtated by the ſaid learned judge in the following terms : " The conſtruction on the part of the defendants *excludes* " *mutuality*. The debts due from Britiſh ſubjects to American citizens were not " confiſcated or ſequeſtered, or drawn into the public coffers. They were left un- " touched. Now if all the Britiſh debtors be compelled to pay their American " creditors, and a part only of the American debtors be compelled to pay their " Britiſh creditors, there will not be that mutuality in the thing which its nature " and juſtice requires. The rule in ſuch caſe ſhould work both ways ; whereas " the other conſtruction creates mutuality and proceeds upon indiſcriminating prin- " ciples. The former conſtruction does violence to the letter and ſpirit of the " inſtrument ; the latter flows eaſily and naturally out of it :"—And ſo it may be ſaid,

ſaid, that if debtors in Great Britain to American creditors may be compelled to pay their full debts, intereſt as well as principal, and debtors in America to Britiſh creditors can only be compelled to pay a part of their debts, viz. principal and part of the intereſt, the conſtruction "excludes mutuality" in the execution of the article, and "does violence to the letter and ſpirit of the inſtrument:"—That the alledged equity of denying intereſt during the war, derives no ſupport from the expectation which it is ſaid prevailed during the war on the part of debtors in America, that "if the event proved ſucceſsful" they would be thereby ſo far relieved from the payment of their debts; for the ſame expectation may have prevailed to the full extent of the *whole debt* due to ſubjects of Great Britain, principal as well as intereſt:—Nor can any ſuch equity be ſupported on the verdicts and deciſions of courts againſt ſuch intereſt; whether they have been given in thoſe particular States in which it is alledged "the claims of Britiſh debts were ſo inconſiderable "and ſo few as not to have occaſioned public concern, or to have excited any "prejudices;" or in States where the claims of Britiſh debts were ſo conſiderable and ſo many as to occaſion "public concern" and "excite prejudices:"—For ſuch verdicts and deciſions againſt any part of the ſtipulated or ſettled intereſt of juſt debts, are themſelves the ſubject of complaint before this Board, as lawful impediments to the full recovery of ſuch debts; on the exiſtence and juſtice of which the Board are bound and authorized excluſively to decide:—That therefore no ſufficient cauſe has been ſhewn, why in awarding full and adequate compenſation for ſuch debts as may be proved, within the intent and meaning of the treaties, full intereſt ſhould not be awarded for the detention and delay of payment during the war, as well as in time of peace; but on the contrary, for the above reaſons, and others which might be ſtated, it is juſt that ſuch intereſt ſhould be awarded, according to the nature and import, expreſs or implied, of the ſeveral contracts on which the claim is founded.

Mr. SITGREAVES diſſented from the above reſolution.

Mr. FITZSIMONS alſo diſſented.

Philadelphia, 19th Dec. 1798.

In the Caſe of CUNNINGHAM *and* CO.

MR. SITGREAVES deſired to enter his diſſent from the reſolution in this caſe paſſed at the laſt meeting, for reaſons ſtated in a minute which he preſented and read before the Board.

Mr. FITZSIMONS ſtated that he would prepare a minute containing his reaſons againſt next meeting.

Philadelphia,

Philadelphia, 21ſt Dec. 1798.

In the Caſe of CUNNINGHAM *and* Co.

The minute of diſſent of Mr. *Sitgreaves*, read at the laſt meeting, is in the following terms, viz.

I HAVE deſired to enter my diſſent to this reſolution, not becauſe I differ from *all* the principles and inferences contained in it, but becauſe there are *many* in which I cannot concur.

I diſſent alſo, becauſe it does not ſpecifically apply to the caſe in which it purports to be reſolved:—Becauſe it attempts to eſtabliſh a general concluſion on a ſubject, on which no *general* or *univerſal propoſition* can be accurate or correct:—And becauſe it preceedes the proof of the facts, without the knowledge of which it cannot be determined that any *particular* or *ſpecial* rule, in this caſe, would be juſt or equitable.

I will proceed to explain, in detail, but with as little prolixity as poſſible, theſe different grounds of diſſent.

1ſt. I agree explicitly that the Board, by the 6th article of the treaty of amity, are authorized to conſider and determine all claims "whether of prineipal or "*intereſt*;" and that therefore there is no ſufficient reaſon, derived from any technical interpretation of the word "debts" in the treaty of peace to *exclude* the conſideration of demands of intereſt *during the war*; or for any other period:—Or to prevent the award of intereſt, in any caſe, where it may be deemed juſt and equitable that it ſhould be paid.

But on the other hand, it is equally clear to my judgment, that the ſame word "debts," does not neceſſarily *include* intereſt, either during the war, or for any other period:—That this obſervation is alſo true of the words "full value" in the treaty of peace, which by ſound conſtruction ought to be taken, not as a diſtinct member of the ſentence, but in connection with the words immediately following "in ſterling money," and are indicative, not of the *quantum of the demand*, but of the *mode* or *quality of the payment*:—That as by the treaty of amity, all claims, "whether of prineipal or intereſt," are to be "determined" according to the merits of the ſeveral caſes; "due regard being had to all the circumſtances there-"of, and as equity and juſtice ſhall appear to require," it obviouſly follows that the Board are not of neceſſity bound by any interpretation of the words of the former treaty, to award intereſt, during the war, in *all* caſes, but may refuſe to award intereſt in whole or in part, if the *merits* and *circumſtances* of a caſe ſhall make it juſt and equitable that it ſhall be denied or reduced.

And therefore that any *general* reſolution on the ſubject of intereſt, either allowing or denying it during the war, or for any other time, is improper, and not conformable

formable to the ſubmiſſion in the treaty; becauſe the allowance or denial is, by the terms of the treaty, made to depend on the *merits* and *circumſtances* of each caſe;—Not of each *claim*, but of each *caſe* or item of debt contained in, and conſtituting a part of each claim.

2d. That "equity and juſtice" will require us to deny intereſt in a variety of caſes, in ſome during the war, in others for a longer term, and in others altogether, will be evident on a conſideration of the nature, the meaning and character of intereſt:—From this conſideration it may alſo reſult that, in ſome caſes, the *whole* intereſt ought to be awarded.

The word "INTEREST" has not always the ſame ſignification:—Or rather, it has *two* different and diſtinct ſignifications. It ſometimes means 'the hire of money," or "wages for the uſe of money:"—This was the ancient acceptation of the term, and is the acceptation in which it is ſtill uſed by writers on the law of nature and of nations, and on political œconomics:—This is its proper import when it is ſtipulated to be paid on a loan, in which caſe it may be deſcribed as of *ſtrict* obligation, becauſe it is the eſſential conſideration of the contract, and is emphaticaly *a part of the debt*:—It is a diſtinguiſhing feature of this ſpecies of intereſt, that it may be owing *before the principal is due*, as in contracts for money payable at a diſtant day, but bearing a preſent annual intereſt.

In the *other* ſignification of the term, *intereſt* is ſynonimous with *damages*:—It is damages for the breach of contract, or more properly 'it is the *common meaſure* "*of damages* where the contract is for money." 2 Tr. Eq. lib. 5. ch. 1. s. 1. This is the acceptation which moſt frequently occurs in municipal juriſprudence, and which chiefly applies to that vaſt variety of the common tranſactions between individuals, in which the failure of punctuality is a ground of complaint in the courts of juſtice:—In this ſenſe it partakes eſſentially of the nature of *damages in general*, from which it is only diſtinguiſhable in this that it is meaſured by an uniform rule, "fixed by the law to a certain portion of the ſum that is due for "the ſpace of a year, and proportionably for a longer or ſhorter time.' 1 *Dom. lib.* 3. *tit.* 5. But conformably to the general character of *damages* and contrary to the attribute of the ſort of intereſt firſt deſcribed, it can *never accrue until* there has been a *default of the party* in the performance of his contract—and, like damages, it is dependent on the circumſtances of that default; for, when it ſhall *commence*, when it ſhall *ceaſe*, when it may be *ſuſpended*, when it ſhall be *revived*, or whether it ſhall be paid *at all*, are all queſtions to be governed by the circumſtances, and decided differently as thoſe circumſtances ſhall vary:—This ſort of intereſt has been obviouſly contemplated by the treaty, when it has adopted the expreſſions before quoted, and which it has well deſcribed by directing that ſuch claims ſhall be determined "according to the merits of the ſeveral caſes, due regard being "had to all the circumſtances thereof."

In caſes to which the *firſt* ſenſe of the word applies that is in caſes where intereſt is of ſtrict obligation and forms a *part of the debt* I agree that the *whole* intereſt muſt be paid, as well during the war as for any other period. I think the law of nations, and the ſtipulation of the treaties equally produce this effect, and

that

that though the ſtate of war ſuſpended the *remedy* it did not ſuſpend the *right* :—. I incline to think that the ſame acceptation of the term will apply to thoſe caſes of *ſpecialty*, for whatever reaſon given, which *expreſsly* bear intereſt on the face of the *inſtrument*, although on this ſubject I deſire that I may not be conſidered as concluded by this intimation, as the enquiry does not, at leaſt *yet*, appear to be eſſentially connected with this argument, *in this caſe* :—The queſtion of intereſt, according to the *uſage of a trade* is ſtill more doubtful, and I decline at preſent giving any opinion upon it.

But as to all *other* kinds of debt which may be the ſubjects of claim, it does not ſeem to me to admit of a doubt, that intereſt, during the war, *cannot* rightfully be awarded. It is already ſhewn that intereſt, in caſes of every other deſcription than thoſe juſt enumerated, being in the nature of *damages*, can *only* accrue on the *default* of the party —It cannot be pretended that there is a *default*, where, from circumſtances *beyond the controul of the party*, payment is rendered impracticable :—Nor can it be denied that a ſtate of *war* between the nations of the creditor and debtor is *ſuch a circumſtance*. This is a poſition altogether independent of any ſuppoſed diſtinction grounded on the nature of the war between the United States and Great Britain, as different from ordinary wars, which has been contended for in the anſwer, and ſo elaborately combated in the reſolution ; and it is equally uninfluenced by any conſiderations deduced from the merits of the conteſt, or from the legiſlative acts paſſed on the one ſide or the other. I agree, that in executing a treaty, deſigned to terminate differences between the nations, " in ſuch a manner as " without reference to the merits of their reſpective complaints and pretenſions, " may be beſt calculated to produce mutual ſatisfaction and good underſtanding," theſe conſiderations, on either ſide, are irrelevant and improper :—But it is a *neceſſary incident of all wars*, to interdict and cut off all communication between the individuals of the hoſtile nations ; and this is completely effected without any prohibitory laws on either ſide. It is of no import, therefore, what thoſe laws were, or on which ſide aggreſſion commenced—it is ſufficient to the purpoſe that the nations were *at open war*, and that their people reſpectively could not lawfully have intercourſe with each other. From this ſtate of things it is inevitably reſulted, that the debtor was prevented by the intervention of a circumſtance, not attributable to him as *fault* or *laches*, from compliance with his contract ; and that if thereby the creditor has ſuſtained a loſs it is *damnum abſque injuria*, and he is not entitled to reparation in damages from the debtor.

If this obvious inference from undeniable principles could need any confirmation, it is to be expreſsly found in the letter from Mr. Hammond to the ſecretary of State, complaining of infractions of the treaty of peace by the United States :—On this very ſubject of intereſt during the war, he thus writes, " In one State " (Maſſachuſetts Bay) where great property was at ſtake, *juſtice has been liberally* " *diſpenſed*, and, notwithſtanding a particular regulation of the State warranted " the deduction of that portion of the intereſt on the Britiſh debts which accrued " during

" during the war, the courts, in *conformity to the plain terms of the treaty*, have " admitted and directed the quantum of the demand to be *regulated by the original* " *contract*, and where the *contract bore intereſt*, or the *cuſtom of the trade juſtified the* " *charge* the full intereſt has been allowed to Britiſh creditors, notwithſtanding the " intervention of war :"—This is conceived to be a formal and expreſs admiſſion, on the part of the Britiſh government, that the payment of intereſt during the war, in caſes " where the contract bore intereſt, or the cuſtom of the trade juſtified " the charge, was all that was required by " the plain terms of the treaty of peace" —and that in caſes of every other deſcription, there cannot be a reaſonable pretence to claim or demand it.

In truth, the books of authority on natural and civil law, as well as on the laws of England, leave no room for doubt on the ſubject :—A few, and but a few, are here cited.

" All the ſorts of *reparation of damage* are reduced to two kinds ; one of which " is barely called intereſt—and the other coſts and damages."

1 *Do. lib.* 3. *tit.* 5.

2 *Tr. Eq. lib.* 5. *ch.* 1. *s.* 1.

" *Intereſt* is the reparation of *damages* which is due from debtors who owe ſums " of money, and who fail in the payment thereof."

1 *Do. lib.* 3. *tit.* 5. § 1.

" Debtors incur the penalty of intereſt by their delay to pay what they owe, " *according as the ſaid delay may be imputed to them*, and may have that effect, which " depends on the *nature of the credits* and the circumſtances. *Ibid.*

" In caſe of accidents which happen *without any fault* of the party, he will not " be liable to reparation of damages, by the rule that nobody is to anſwer for acci- " dents, except there be ſome fault on their part."

1 *Do. ubi. ſup.*

2 *Tr. Eq. Lib.* 5 *ch.* 1. § 1.

" By *damage* we underſtand any loſs or diminution of what is a man's own, oc- " caſioned by the *fault* of another :—And by a fault we underſtand every *unlawful* act or omiſſion."

1 *Ruth. ch.* 17. § 1.

If a misfortune has happened without the *fault of either party*, " there is no " reaſon to throw off the loſs from *one innocent man* to *another innocent man :*"—In ſuch caſe *potior eſt conditio defendentis.*

3 *Burr.* 1357.

" *Damages*

" *Damages* are in the *power of the court*, and therefore they uſually order them " as they ſee convenient." 2 *Tr. Eq. Lib.* 5. *ch.* 1. § 5. The caſes cited to illuſtrate this poſition are *all* of *intereſt*.

" The inſtances in which the court has exercifed its diſcretion, in allowing a " *greater* or leſs rate of intereſt, are too many and various to allow of enumera- " tion."

Ibid in notis.

" It would be unreaſonable that thoſe things which are inevitable, which no in- " duſtry can avoid, no policy prevent, ſhould be conſtrued *to the prejudice of any* " *perſon in whom there is no laches.*"

1 *Powell on Cont.* 446.

There might be added a great many more authorities of the moſt unequivocal in[illegible]t; but theſe are deemed ſufficient to prove what has been advanced.

3d. The claim in which this reſolution is offered, is a moſt unfortunate one for the eſtabliſhment of an affirmative rule on the allowance of intereſt *during the war*, or even for any period whatever.

From all that yet appears, and ſo far as a judgment may be formed from the claim and ſchedules which accompany it, there is not a ſingle item which can be ſaid to come within that claſs of contracts, that carry intereſt of the firſt deſcription I have mentioned; that is, where the intereſt is a *part of the debt*, either by the terms of the contracts or even by the uſage of trade.

The items are principally of *accounts* which have been incurred in the courſe of *retail dealings* in the State of Virginia; and which, ſo far from being entitled to intereſt during the war, are not, either by the law of England or America, entitled to intereſt at all as a matter of courſe:—And even if it ſhould be denied, that the intervention of war is an excuſe for the debtor, it cannot ſurely be pretended that it gives to the creditor an accumulative right which he would not otherwiſe have poſſeſſed.

It is aſſumed in the anſwer on the part of the United States, that debts of this deſcription have at no time carried intereſt in Virginia; and the contrary has not been aſſerted either in the claim or reply.

And the acknowledged doctrine of the law of England muſt, on every principle of mutuality, preclude all demand of intereſt in ſuch caſes.

It is a general rule of the Engliſh law, as well as of the civil law, that intereſt ſhall not be allowed on *profits*; and the reaſon aſſigned is, that as intereſt, ſtrictly ſpeaking,

ſpeaking, is itſelf the *profit* to which a man is entitled for the uſe of his money, ſo the right is ſatisfied if that profit is obtained in another way, in which caſe the profit is in lieu of intereſt—thus, intereſt, except in very ſpecial caſes, ſhall not be allowed on *intereſt*:—Nor on *rents* which are the *profits* of land that repreſents money:—Nor on arrearages of *annuities*, which are compounded of principal and the intereſt or *profit*—nor on *goods ſold and delivered*, the profit on which is equivalent to the intereſt on the capital employed in the trade.

But whatever may be the reaſon, it is moſt clearly ſettled by numerous deciſions, both at law and in equity, that *ſimple contracts*, and debts *on open accounts*, and for *goods ſold and delivered*, do not, of courſe, carry intereſt:—And this has, ſo late as in 1793, been ſolemnly determined by the preſent lord chancellor, even where the amount has been aſcertained by the maſter's report, in the caſe of *Creuze* v. *Lowth*, 4 *Br. Ch. Rep.* 317. Reported alſo in 2 *Veſey, junior*, 157, under the title of *Creuze* v. *Hunter*—which caſe was decreed after a careful reviſion of the rules and practice of the court in former caſes.

The opinion of the preceding lord chancellor, in the caſe of *Boddam* v. *Riley*, 2 *Br. Ch. Rep.* 3, and which I tranſcribe here becauſe it is concluſive on moſt of theſe items, ſhews alſo, that they derive no additional title to intereſt from the mere circumſtance of their being due on *balances*:—He ſays,

" The caſes cited apply only where there are accounts regularly ſtated *between* " *the parties*, in which caſe there is an implied contract on the part of the debtor " to pay; and all contracts to pay, undoubtedly give a right to intereſt from the " time when the principal ought to be paid:—But this is not ſo here:—It is true, " the ſum claimed does, in fact, appear to be due, on a balance, at the cloſe of " the account; but there was no ſettlement, or acknowledgment by *the debtor*, " which raiſes a contract to pay, and which is *the only ground upon* which intereſt " is given, 1 *Wms.* 653, for according to the argument of the exceptant, that " whatever appears to be due on the balance of an account ſhall carry intereſt, the " rule muſt go to *every debt for goods ſold and delivered*, which *certainly is not the* " *law of this country*."

There are unqueſtionably, many qualifications and exceptions to this rule relative to intereſt on ſimple contract debts, as well as to the rules relative to every other deſcription of debts:—But it is not neceſſary to advert to theſe exceptions in an argument of this general nature, eſpecially as they are not ſtated to apply to any part of this caſe:—Theſe exceptions however prove how impracticable it is to arrive at any general reſult on a ſubject, which is liable to ſuch an infinite variety of modifications, and how improper it is, that any reſolution ſhould precede the proof of the merits and circumſtances of the particular caſe in which intereſt is demanded.

It would be eaſy to adduce numberleſs other proofs and illuſtrations in ſupport of the principles herein advanced:—And alſo to lay down many other poſitions affecting the claim of intereſt, in whole or in part, in various caſes ſubmitted to the deciſion of the Board:—I have purpoſely avoided this ſort of anticipation, and have endeavored to be as brief as poſſible; becauſe, as I diſapprove altogether of theſe premature and argumentative reſolutions, it is proper that I ſhould conform my practice to this ſentiment, as far as the courſe which has been purſued will permit for the explanation and vindication of my own opinions.

(Signed)

S. SITGREAVES.

September 19, 1798.

Mr. FITZSIMONS read a minute of his diſſent, which is as follows:—

I deſire to enter my diſſent to the reſolution paſſed by the Board on the 18th inſt. in this caſe, on the ſubject of intereſt during the war—for the following reaſons:—

Becauſe, the debts which are the ſubject of the reſolution, were payable in the then colonies now United States: And it is admitted by the creditors, that for a conſiderable period there were no perſons in the United States authorized to receive theſe debts:—

It therefore appears to me to be highly unreaſonable, that a debtor ſhould be made ſubject to the payment of intereſt on a debt, which the abſence of the creditor rendered it impoſſible for him to diſcharge:—

Becauſe, at the cloſe of the war, when all its effects were ſtrongly impreſſed upon the minds of the creditors, an abatement of intereſt for that period was generally allowed, and ſettlements to a very great amount have ſince been made with that allowance.

Judgments of courts, verdicts of juries, and awards of referees, have almoſt univerſally been made upon the ſame principle, which proves irreſiſtably the general opinions of its equity by people perfectly well informed of all the circumſtances of the caſe; nor ought their opinions to be ſhaken by a deciſion given at a time when many of the circumſtances which influenced them muſt have loſt their effect.

(Signed)

THOMAS FITZSIMONS.

The ſaid minutes of diſſent having been read, the Board RESOLVED—That in deciding againſt an objection to the payment of intereſt during the war, maintained

tained generally and without regard to the nature and import of the contract, expreſs or implied. They do not preclude, but neceſſarily ſave all objections to the payment of intereſt which may ariſe out of the contract, or other ſpecial circumſtances of the caſe.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 18*th Dec.* 1798.

PRESENT, *AS BEFORE.*

RESOLVED—That the Board will receive ſuch evidence only to prove the debts which are the ſubjects of claim before them, as would have been competent and admiſſible to prove the ſame immediately previous to the operation of lawful impediments in the courts of the States where the debtors at that time reſpectively reſided, unleſs upon ſpecial cauſe firſt ſhewn, and an order of the Board for the admiſſion of evidence of any other deſcription.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 18*th Dec.* 1798.

PRESENT, *AS BEFORE.*

ORDERED—That the general agent for claimants and agent for the United States reſpectively furniſh the commiſſioners with copies of all papers laid before the Board, whether averments for evidence, or other repreſentations, or ſtatements containing incidental objections, or queſtions for their conſideration.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS'

COMMISSIONERS' OFFICE,
Philadelphia, 8th Jan. 1799.

PRESENT, *AS BEFORE.*

ORDERED—That the general agent for claimants do immediately lay before the Board, ſuch powers of attorney or other authorities by virtue of which claims have been preſented or proſecuted as are in his poſſeſſion: And renewed the general order of the fifth December laſt with this intimation, that the ſaid general order, if not obeyed within a reaſonable time will be enforced by a reſolution, that all claims not ſupported by the production of titles and authorities to proſecute the ſame, within a certain term to be therein preſcribed, ſhall on that account be diſmiſſed.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
23d October, 1798.

A RESOLUTION on the ſubject of the proteſt in the caſe of *Dulany*, and diſſent in the caſe of *Cunningham & co.* propoſed for the deciſion of the Board on a future day, was read.

COMMISSIONERS' OFFICE,
11th January, 1799.

PRESENT, *AS BEFORE.*

In the Caſe of DANIEL DULANY.

THE reſolution on the ſubject of the proteſt and diſſent therein mentioned, laid before the Board on the 23d day of October laſt for their deciſion on a future day, was now (purſuant to intimation given on Tueſday laſt) again moved for that

that purpoſe; the member who made the motion obſerving that the proceedings in queſtion, which ſtand recorded in the minutes of the Board, and were by ſpecial order communicated to the agents, had become matter of very general notoriety, and could not fail, from the imputations and ſuggeſtions they contained, to produce impreſſions unfavorable to that confidence which ought, in juſtice and expediency, to be repoſed in the principles of men, who are charged with the impartial duties of arbitrators by treaty between two friendly nations:—He therefore hoped that the animadverſion neceſſarily, and with reluctance, conveyed by the reſolution, would never be aſcribed to any perſonal feeling on the ſubject. It cannot be forgotten that much remonſtrance and expoſtulation were employed in vain to prevent all occaſion for any ſuch reſolution; and ſufficient time has elapſed (from the occurrence of circumſtances) to prove the deliberate conviction on which the motion proceeds. The maſs of buſineſs now at length brought before the Board will demand a ſteady courſe of uninterrupted proceeding; and amidſt the variety of caſes which muſt occur, either in the eſtabliſhment and application of general principle, or the inveſtigation of fact, it is impoſſible to expect that unanimity will in every inſtance obtain; even with the beſt diſpoſition in the members of the Board to refrain from all frivolous diſſention or immaterial controverſy. The object of the reſolution ought therefore to be well underſtood; and as it may correct miſapprehenſions, of no convenient tendency, ſo it cannot poſſibly be productive of bad conſequence—for the public profeſſion of principles of conduct which ought to give ſatisfaction to all parties, will not at leaſt weaken the influence of ſuch principles on thoſe who profeſs them.

The reſolution propoſed was as follows:

The Board, conſidering how much it imports the right and decorous exerciſe of the powers and duties with which they are charged, that thoſe powers and duties ſhould not be ſuffered to remain the ſubject of queſtion or diſpute, in matters eſſential to the exiſtence of all certainty and order in the courſe of their proceedings:—And in particular conſidering that, by the terms and tenor of the proteſt which was entered againſt the reſolution of the Board in the caſe of *Dulany*, dated the 8th day of Auguſt laſt, and the minute of diſſent of the ſame date, in the caſe of *Cunningham* and *Company*, certain queſtions of order have been raiſed, which it therefore behoves them finally to ſettle and decide, RESOLVED as follows, viz.

That by the ſaid proteſt it is either expreſsly or in effect aſſerted and maintained, that any one or more of the commiſſioners differing in opinion from the majority preſent, have a right to be abſent, or to withdraw from, and thereby to prevent the meeting, or cauſe the diſſolution of the Board, for the purpoſe of preventing the paſſing of any propoſed order, reſolution, or award which may then be under diſcuſſion; and that the previous declaration of a commiſſioner that he would not "give countenance" to the paſſing of a propoſed reſolution, as being

"*manifeſting*

" *manifeſtly unjuſt*," but ſhould withdraw to prevent it, entitles him to be conſidered as having actually ſo withdrawn, and as being abſent from the Board " *to* " *that purpoſe*," ſo that " *it becomes his duty* to proteſt againſt the validity of ſuch " reſolution as not having paſſed the Board," notwithſtanding his having remained, and been perſonally preſent in his place, when ſuch reſolution was paſſed, by the aſſent and with the concurrence of all the other commiſſioners preſent. That further by the ſaid proteſt it is formally and officially declared, and entered on the minutes of the Board, as the opinion of *one* commiſſioner, that a reſolution which after long and mature deliberation had been agreed to, and on ſpecial grounds and reaſons therein ſet forth, determined to be juſt by three commiſſioners, being all the other commiſſioners (including the fifth commiſſioner) then preſent, was not only unjuſt, but " *manifeſtly* unjuſt ;"—And the injuſtice being thus declared to be manifeſt, or palpable on the face of the reſolution, no reaſon whatever is aſſigned in ſupport of the charge.

That the concluding paragraph of the diſſent, in the caſe of *Cunningham and company*, which is in theſe words, viz : " That the deciſion of a queſtion of this " importance at a time *when only one of the commiſſioners appointed by the United* " *States was preſent*, will certainly not contribute *to render it more acceptable*," contains, in ſubſtance, the two following ſuggeſtions : *Firſt*, that no matter of importance ought to be decided in the abſence of one of the commiſſioners named on either ſide, unleſs the deciſion propoſed by a majority of the Board be favorable to the ſide on the part of which ſuch abſent commiſſioner was named :—And *ſecondly*, that the queſtion, how far the proceedings of the Board, or the reſult of any of their deliberation may or may not be " *acceptable*" to thoſe concerned, is a fit ſubject for their *official* conſideration and regard :—

That the ſeveral matters above ſtated, as contained, or ſuggeſted by the ſaid proteſt and diſſent, are inconſiſtent in themſelves, without foundation in the 6th article of the treaty, and repugnant to thoſe principles of impartiality and independence, on which alone the Board will ever ſuffer themſelves to proceed, or the ſaid article can be executed :—

1ſt. *Becauſe* the right aſſumed in the proteſt is a right of refuſing to diſcharge the duties which every commiſſioner by the ſaid article of the treaty is ſpecially " *required*," and by the oath thereby preſcribed, has ſolemnly promiſed to diſcharge. By the ſaid article the commiſſioners " are empowered and required, in purſuance " of the true intent and meaning of the article, to take into their conſideration all " claims, and *to determine the ſame* reſpectively, according to the merits of the ſeveral " caſes, due regard being had to all the circumſtances thereof and as equity and " juſtice ſhall appear to them to require," and by the oath thereby preſcribed every " commiſſioner has ſworn, " that he will honeſtly, *diligently*, impartially, and care- " fully *examine*, and *to the beſt of his judgment*, according to juſtice and equity, *decide* " all ſuch complaints, as under the ſaid article *ſhall be preferred* to the ſaid com- " miſſioners:"

" miſſioners :"—But as by the expreſs proviſion of the article there can be no official deliberation, examination or deciſion of claims without the conſtitution of a Board, by the attendance of " one of the commiſſioners named on each ſide, and " the fifth commiſſioner," the refuſal of a commiſſioner to attend, or his withdrawing for the purpoſe of preventing the formation of, or diſſolving a Board, would evidently be in effect a refuſal " diligently to examine, and to the beſt of his judg- " ment to decide" ſuch complaints, purſuant to the treaty, and to the oath which ſuch commiſſioner had taken.

2d. *Becauſe* the treaty having provided that the act of the majority ſhall be the act of the Board, ſuch act cannot be impaired in its operation or effect by the diſſent of the minority. But according to the right aſſumed in the proteſt, there could be no certainty without unanimity : Every deliberation might be defeated, and all deciſion prevented, by the ſeceſſion of the minority, who would therefore ſo far poſſeſs the abſolute controul of the Board.

3d. *Becauſe* if ever it could *become* " *the duty*" of a commiſſioner in *any caſe* to withdraw, ſo as to prevent a deciſion, on account of his holding a different opinion from the majority preſent, it would be his duty ſo to do *in every ſuch caſe*, without exception :—And thus the neceſſary exerciſe of a duty, under the ſaid article of the treaty, would in every ſuch caſe neceſſarily prevent its execution.

4th. *Becauſe* the proviſion that a Board cannot be formed without the preſence of " one of the commiſſioners named on each ſide and the fifth commiſſioner," affords no rational ground for the inference, that therefore every ſuch commiſſioner has a right, by non-attendance, to prevent a Board from being formed, or when formed, by ſeceſſion to diſſolve it. Death, ſickneſs, or other accidents may prevent the formation of a Board ; but it were prepoſterous to conceive that the article, in providing for its execution, intended to authorize a *wilful* abſence, for the very purpoſe of defeating what it profeſſed to ſecure.

5th. *Becauſe* the diſtinction which has been made between corporeal and official preſence, or preſence to one purpoſe and not to another, has, at leaſt, nothing to ſupport it in any part of the treaty, and cannot be conſidered as rational in itſelf. It would at beſt be a refinement of little utility ; for the contrivance of a *fictitious abſence* is not neceſſary for the purpoſe of reconciling the actual preſence of a member with his previous declaration of an intention to withdraw. It were more natural, and not leſs conſiſtent, to ſay, that after declaring an intention, he refrained, on better reflection, from carrying ſuch intention into execution. The *fact* in the preſent inſtance, that the member proteſting was preſent in his place, with all his faculties about him, when the reſolution againſt which he proteſts was paſſed, can never be ſhaken by words ; and the condition of the article is fully ſatisfied, in ſubſtance as well as in terms, if the members thereby required, in ſufficient capacity to deliberate, diſcuſs and decide, are actually preſent.

6th.

6th. *Becauſe* the official publication on record, of the opinion of one commiſſioner, that a reſolution deliberately conſidered and agreed to by three, being all the other members of the Board for reaſons therein ſpecially ſet forth, was "ſo *manifeſtly* unjuſt" as not to be entitled to "*the countenance*" of his ſupport, can only be palliated in part, by the preſumption, that the true meaning and injurious operation of the terms made uſe of have not been underſtood:—For without adverting to the importance of one withholding his "countenance" from the joint and deliberate act of *three*, injuſtice to be "*manifeſt*" as charged, or palpable on the face of the act, muſt of neceſſity be intentional; and the reaſons ſet forth in ſupport of it, mere artifice and pretext;—contrary to oath, honour, and reputation.

And in regard to the ſuggeſtions above ſtated, as contained in the diſſent in the caſe of *Cunningham and company:*

7th. *Becauſe* the firſt of thoſe ſuggeſtions reprehends what the 6th article of the treaty expreſsly directs. It is thereby declared, that "three of the commiſſioners ſhall conſtitute a Board; and ſhall have power to do any act appertaining "to the ſaid commiſſion, provided, that *one* of the commiſſioners named on each "ſide, and the fifth commiſſioner ſhall be preſent, and all deciſions ſhall be made "by the majority of the voices of the commiſſioners then preſent." But the ſuggeſtion declares that three members, as therein deſcribed, *ought not* to form a Board for the deciſion of any important matter, the preſence of one of the ſaid commiſſioners on each ſide not being in propriety ſufficient for that purpoſe; from which it would neceſſarily follow, that the deciſion of a queſtion of importance, however elaborately it may have been argued or maturely conſidered, and however clearly a majority of all the five commiſſioners may have formed and declared their concurrence in opinion, ought, notwithſtanding, to be kept back and withheld from the parties, and all concerned in caſes of the ſame nature and import, becauſe one commiſſioner diſſents, and the other commiſſioner named on the ſame ſide whoſe preſence the treaty does not require is abſent; the attending and diſſenting commiſſioner having moreover ample means of information, and conſtant opportunity of bringing forward in ſupport of his diſſent, every aid which ſuch information can afford or the beſt abilities ſuggeſt: The Board cannot but withhold their ſanction from ſuch propoſitions:—But they have ſufficiently proved, by the whole courſe of their conduct during the ſickneſs of one of the commiſſioners, named on the part of the United States, for many months, and as long as the ſtate of the buſineſs before them, and other circumſtances, could juſtify a delay of important determinations, that they are little diſpoſed to be precipitate in any of their proceedings.

And laſtly. *Becauſe* the ſecond ſuggeſtion above ſtated as contained in the ſaid diſſent, viz. That the Board are officially to conſider how far their proceedings may be "*acceptable*" to thoſe concerned, would add a duty to their taſk which the treaty has not impoſed. They are not to court favour, but to do juſtice; not to conſult

conſult the wiſhes, but to decide upon the rights of parties. The object of their functions neither requires, nor can admit of management or addreſs. They have engaged, as they ſhall anſwer to their own conſciences, that their principles ſhall be pure, their diligence exact, and their deliberations ſuitable to the ſubject. Within the ſcope of their office they can have no other care; and are entitled, without ſolicitude, to expect, that whatſoever they determine to be juſt, will be "acceptable."

The ſaid reſolution having been read, Mr. SITGREAVES moved the following reſolution, and was ſeconded by Mr. FITZSIMONS:

The reſolution heretofore preſented for conſideration on the ſubject of the diſſent in *Cunningham's* caſe, and the proteſt in *Dulany's* caſe, being moved this day for deciſion, the commiſſioners named on the part of the United States moved, that it be reſolved, that it is inexpedient that any queſtion be taken upon the propoſed reſolution.

The queſtion having been put upon the ſaid motion, the ſame was negatived by the Board.

It was then propoſed to put the queſtion on the principal reſolution, when Mr. FITZSIMONS read the following paper:

The commiſſioners named on the part of the United States, ſincerely deſirous of executing with juſtice and impartiality and in a manner conformable to the moſt liberal principles of equity and good faith, the important duties aſſigned to them by the treaty of amity:—And ſolicitous that every thing ſhould be avoided in the proceedings of the Board, incompatible with that harmony and moderation, and hat mutual deference and reſpect which ought to prevail among perſons engaged in the adjuſtment of national differences, have obſerved with great concern and regret, the reſolutions propoſed by Mr. MACDONALD on the 23d of October, for ſubſequent diſcuſſion and deciſion by the Board, in relation to the proteſt in the caſe of *Dulany*, and the diſſent in the caſe of *Cunningham and co.* and they had hoped that on more mature reflection, a ſenſe of propriety and decorum, and a deſire to conduct the buſineſs of the commiſſion to an iſſue honorable and ſatisfactory to all parties, would eventually have prevented a perſeverance in propoſitions not neceſſarily or eſſentially connected with the duties preſcribed by the treaty.

Being unfortunately diſappointed in this hope, and finding that it is intended to inſiſt upon a diſcuſſion and deciſion of the propoſitions referred to, they owe it to the individual member whoſe acts are the ſubjects of thoſe reſolutions, to their own character, and to the honor of their nation, to prevent, by the only method in their power, a proceeding not juſtified by the authorities veſted in the Board, injurious in its form, exceptionable in its ſubſtance, and in its conſequences deſtructive of the means, by which alone the objects of the commiſſion can be honorably or impartially effected.

They deem it to be indiſputably true, that neither the terms nor the ſpirit of the ſixth article of the treaty of amity, give any authority to the Board to ſit in judgment on the acts of its members, or to limit or preſcribe the ſeveral exerciſe of their individual duties, and they cannot by any indirect or implied acquieſcence conſent, that the Board ſhall denounce with its cenſures, that exerciſe of individual diſcretion and opinion which is beyond its controul; or by aſſuming this power of cenſure, in any degree affect or abridge the perfect freedom and independence of individual ſentiment and conduct. Much leſs can they conſent to propoſitions, which beſides the defect of authority already ſuggeſted, are highly offenſive in their terms, and which directly and unequivocally reflect on the integrity of one of the commiſſioners on the part of the United States. They cannot conſent even to the diſcuſſion of ſuch propoſitions; for merely to diſcuſs them would be, in a great degree, to ſuffer the indignity, and to partake of the indecorum.

The commiſſioners named on the part of the United States, therefore, with much regret for the occaſion, but with the moſt perfect conviction of their duty, are compelled to withdraw from the Board for the reaſons ſtated: But they expreſsly declare, that they are ſincerely diſpoſed to proceed with the utmoſt diligence and fidelity in the proper buſineſs of the commiſſion, and are ready and willing to conſtitute the Board at all times, for the purpoſe of examining and deciding ſuch claims as have been or ſhall be duly preferred, and are ſubmitted to its deciſion under the treaty of amity, commerce and navigation.

THOMAS FITZSIMONS.
S. SITGREAVES.

Mr. FITZSIMONS and Mr. SITGREAVES then withdrew.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS'

COMMISSIONERS' OFFICE,
19th February, 1799.

PRESENT,

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. SITGREAVES,
Mr. GUILLEMARD.

In the Case of the Right Rev. CHARLES INGLIS.

The following resolution having been the subject of full discussion in the Board during several sittings, Mr. MACDONALD with the concurrence of Mr. RICH and Mr. GUILLEMARD, moved that the same should be passed.

RESOLVED—That the personal incapacity to sue and recover in the courts, under the 4th article of the treaty of peace, arising from the description and character ascribed to the claimant, as maintained (with reference to authority) on the part of the United States, and from the act of *attainder* and confiscation before stated, by which *attainder* the claimant "lost all civil and political relation to the "State;" the total extinction of his right to the debts in question, notwithstanding the treaty of peace, by virtue of the said act of *confiscation*, and other acts and proceedings pursuant thereto, as declared by the concurring decisions of courts of competent jurisdiction before the treaty of amity; and particularly as declared, (respecting the conclusive effects of *confiscation* against the right of the original creditor) by the unanimous opinion of the judges of the *supreme court* of the United States in Feb. 1794, delivered by chief justice Jay, in the case of *Georgia against Brailsford* and others, before recited, agreeably to the statement of the law which has been laid before the Board on the part of the United States, in the manner before mentioned; and the general course of judicial practice *in deducting interest*, as before referred to, *were lawful impediments*, operating against the recovery of the debts due to the claimant, within the meaning of the treaty of amity, at the date of the said treaty; "so "that by the ordinary course of judicial proceedings, the claimant could not *then* "obtain, and actually have and receive, full and adequate compensation for the loss "and damage which he had thereby sustained:"—That the loss stated to have arisen from the operation of the said lawful impediments, was not occasioned by "the ma-

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" nifeſt delay, negligence, or wilful omiſſion" of the claimant; for no duty of diligence could demand the proſecution of expenſive proceedings at law, on the ſurmiſe of a chance, in oppoſition to legiſlative acts, the uniform deciſions of competent courts, and the eſtabliſhed courſe of judicial practice; nor can the claimant be held to have known, that what the courts had determined to be law was not law; that bound and authorized as they were to apply the conſtitution, their deciſions were againſt the conſtitution, and therefore void; and that what they had adjudged *not* to be within the treaty of peace, was nevertheleſs within the treaty, and would be judicially ſo conſidered if again tried:—That, (however unneceſſary the enquiry may be in the preſent caſe, ſupported as it is by ſufficient evidence of the law, as it reſpects the claimant at and before the concluſion of the treaty of amity) it does not appear that any deciſion of any court within the United States, has ſince been given, inconſiſtent with the deciſions already referred to; for the caſe of *Hamilton* againſt *Eaton*, decided in the *circuit court* for North Carolina diſtrict, in June 1796, was a caſe of confiſcation affecting perſons in the peculiar ſituation deſcribed in the pleadings, under the operation of an act of the State of North Carolina, paſſed in April 1777, whereby it was among other things enacted, " that all perſons being " ſubjects of the States and then living therein, or who ſhould thereafter come to " live therein, who had traded immediately to Great Britain or Ireland within ten " years then laſt paſt, in their own right, or acted as factors, ſtore-keepers or " agents there, or in any of the United States of America, for merchants reſiding " in Great Britain or Ireland, ſhould take an oath of abjuration or allegiance, or " depart the State;" and notwithſtanding the general grounds and principles adopted by the judges, individually, in declaring their opinions in that caſe, the judgment (which though not in the laſt reſort, was a binding precedent as far as it went) was no precedent beyond the caſe deſcribed in the pleadings, and which is ſtated in the paſſage referred to on the part of the United States, in the opinion then delivered by *chief juſtice Elſworth*; the ſaid paſſage being in the following words, viz: " To " bring it within the article, it is alſo requiſite, that the debtor and creditor ſhould " have been *on different ſides*, with reference to the parties to the treaty, and as " the defendant was confeſſedly a citizen of the United States, it muſt appear " that the plaintiffs *were ſubjects of the King of Great Britain*, and it is pretty " clear from the pleadings and the laws of the State, that they were ſo. It is " true that on the 4th of July 1776, when North Carolina became an inde- " pendent State that they were inhabitants thereof, though natives of Great " Britain, and they might have been claimed and holden as citizens, whatever " were their ſentiments and inclinations. *But the State afterwards in* 1777, " *liberally gave them* with others ſimilarly circumſtanced, the *option* of taking " an oath of allegiance, *or of departing the State*, under a prohibition to return, " with the indulgence of a time to ſell their eſtates and collect and remove their " effects—*They choſe the latter*, and ever after have adhered to the King of " Great Britain, and muſt therefore be regarded as on the Britiſh ſide:" From which the neceſſary inference is, that if the plaintiffs in that caſe had not been within the deſcription and operation of the ſaid act of North Carolina, they would

would not, in the opinion of the ſaid learned judge, have been entitled to recover :—And in the caſe of *Warre*, executor of *Jones*, plaintiff in error againſt *Hylton*, decided in the *ſupreme court* of the United States in February 1796, reverſing the judgment of the circuit court for the diſtrict of *Virginia*, in February 1793, the act of aſſembly ſtated in the plea on which the judgment was founded, and payment had been made into the loan-office of the State, was in expreſs terms declared to be no more than an act of *ſequeſtration;* as appears from the recital already given, and the ſubſequent act of *confiſcation* paſſed in the ſaid State, *referring to the ſaid former act, as an act of ſequeſtration only*, alſo before recited :—And therefore whatever may have been the extent of general reaſoning, adopted by ſome of the judges who concurred in the ſaid deciſion of the ſupreme court, againſt the judgment of the circuit court, that deciſion was confined to *ſequeſtration*, and left the law on the concluſive effect of *confiſcation* againſt the right of the original creditor, as it ſtood on former deciſions of competent courts and had been ſolemnly and unanimouſly declared by the judges of the ſaid ſupreme court, in the caſe of *Georgia* againſt *Brailsford*, particularly above recited and referred to :—But if it were true that, *after* the treaty of amity, which made no change upon the law, but ſecured to certain creditors the benefit of an arbitration, and of relief from the United States, wherever they could not then recover in the ordinary courſe of judicial proceedings, deciſions had been given, in direct and manifeſt contradiction to what had been ſolemnly, and even in the laſt reſort declared to be the law, *before* the ſaid treaty ; ſuch ſubſequent deciſions would not affect the claimant's right to a remedy before the Board, unleſs it could ſucceſsfully be maintained that his conduct was to be eſtimated, not by events then paſt or preſent, but by ſubſequent events ; that (according to an argument which has been held) deciſions in the year *one thouſand ſeven hundred and ninety-ſix*, were by a technical retro-action of their effect, to be conſidered by the Board, as information of the law in the year *one thouſand ſeven hundred and ninety-four*, and ſuch information as to ſubject the claimant to the *forfeiture* of his rights for *culpable* negligence, in not having acted *then* according to the knowledge he thus *afterwards* received :—Or, that in determining whether a claimant is entitled to proceed before the Board, for want of remedy in the ordinary courſe of judicial proceedings, *the laſt deciſion* whenſoever it may be given, or *the laſt alteration of circumſtances in the ſituation of debtors* whenſoever it may happen, muſt be the rule : And if the right to a remedy before the Board, did not by the treaty attach, according to the ſtate of things at or preceding the concluſion thereof, as the period to which all evidence on that head was to relate, and from which, as a fixed and ſettled point of departure, the Board were to proceed, ſuch muſt be the rule, with all its conſequences of uncertainty, confuſion, and incalculable delay : —Nor could it ever be ſaid that the juriſdiction of the Board, ſhifting with every occurrence, had efficient operation upon a ſingle caſe till the very moment of a final award ; for at any one period of the diſcuſſion, the following might be the terms of a repreſentation on the part of the United States.—" The proceedings before the " Board muſt in this caſe ceaſe, as a remedy may *now* be obtained in the ordinary " courſe of juſtice; it is true that the debt appears to be juſt, that the debtor

" was

" was ſolvent at the peace, and that he became inſolvent during the operation of " lawful impediments; but he is *now* again ſolvent; it is true, that under the " ſhelter of ſuch impediments he abſconded with all his effects, leſt the law ſhould " change its courſe, and compel him to do juſtice, but he is *now* diſcovered, or " ſome of his effects are to be found in different States, or *fraudulent* conveyances " may be detected and ſet aſide in *chancery*, and a recovery thus obtained; it is " true that the courts were ſhut, or that deciſions were given againſt the creditor " in caſes preciſely ſimilar, but the courts are *now* open, and deciſions have *ſince* " been given in favor of ſuch rights:"—While the following might at ſome future period, before the final breaking up of the Board, be the terms of repreſentation on the part of the creditor: " The remedy before the Board was formerly ſtopped in " its courſe by the then recent ſolvency, or diſcovery of the debtor or of his effects, " and by a change of deciſion at law: but *now* again it is reſtored by the inſolvency " which has *ſince* occurred of the ſame debtor, his having again diſappeared, or " the courſe of judicial opinion and practice having returned to its former channel;" —or it might be ſaid, " the creditor has ſince gone through the whole courſe of " law and legal remedy in vain, and now again appears before the Board, to claim " compenſation for all that he has ſuffered, including the loſs which has been incur- " red through the coſtly experiments he has made:"—And thus, as every tribunal of juſtice, ordinary or extraordinary, by arbitration or at law, *muſt afford ſufficient time* and opportunity for ſubſtantiating, by the beſt evidence of which the caſe is capable, ſuch averments, as according to the principles by which they are governed, are material and relevant, it never could be known when the courſe of litigation and of legal execution would terminate; for the period muſt for ever recede from the purſuit, and elude the hope of promiſed ſatisfaction; while under the operation of a treaty of *amity* between the two nations, *Britiſh ſubjects*, claiming an exemption from the operation of general law, would be placed in array againſt *American citizens* in all the tedious and litigious hoſtility of actions at law, ſuits in chancery, and writs of execution; the Board in the mean time, either employing itſelf in the inveſtigation of facts (on the ſtatement of circumſtances, the nature and variety of which may be conceived from the reference *in one ſingle caſe* to a liſt of debtors amounting to *ſeveral thouſands* in number) the whole of which inveſtigation might be rendered of no avail by ſuch ſuggeſtions as thoſe which have been ſtated; or ſitting inactive for years, till the reſult of various experiments enabled them to proceed in eſtimating *partial* recoveries, aſcertaining and deducting coſts of litigation, ſtriking balances, awarding compenſation for deficiencies, and (under a condition which was ſtipulated by the treaty, for the purpoſe of enabling the United States to avail themſelves of ſuch changes as might occur in favor of judicial recovery) *directing aſſignments* to the United States, after it had been proved by actual proceedings through the whole compaſs of legal poſſibility, that all recovery of the debt ſo aſſigned was impracticable;—conſequences which would inevitably follow from the poſition, that the queſtion of legal remedy may depend upon future events.—But whatever might be the conduct of the Board, whether they acted conſiſtently, and according to rule, in yielding to ſuch conſequences, or diſappointed the appli-

cation

cation of their own principles by the irregular exercise of a loose and arbitrary discretion, every exposition of the treaty *which would in any degree warrant such consequences must be erroneous:* That therefore the experiments which have been suggested and proposed on the part of the United States, as still necessary (before the Board can proceed in this or similar cases) to be tried by judicial proceedings, for the purpose of ascertaining, whether the courts will now determine to be law, that which was held not to be law at the date of the treaty of amity, and set aside the operation of the legislative acts and decisions before stated; so as to afford, if not complete, at least a *partial* satisfaction for the loss sustained, would in all respects counteract the whole tenor and intent of the sixth article of the said treaty, which regarded the state of things at the period of its conclusion, and by which a right to "*full and adequate*" compensation from the United States, was completely vested in those individuals *whose cases were then within the description it contained;* a right not contingent or fluctuating on future circumstances, but perfect and entire; to be carried into effect, not according to the precarious result of different experimental proceedings, in their nature dilatory, and tending from the costs of litigation, and the protraction of dispute, to an increase of the evil; but by one simple and definitive course of remedy, prescribed jointly by the two nations, in the spirit of friendship and peace, for the purpose of speedily putting an end to the only remaining cause of irritation and discontent; and to be exclusively administered by arbitrators whom they have mutually chosen, and invested with ample powers for that wise and amicable purpose.

COMMISSIONERS' OFFICE,
Philadelphia, 26th March, 1799.

PRESENT,

Mr. MACDONALD,
Mr. RICH,
Mr. SITGREAVES,
Mr. GUILLEMARD.

In the Case of HANBURY *and others, Executors of* MARY HANBURY.

ORDERED—That the general agent for claimants make up and lay before the Board an account of the principal sum and interest claimed in this case; and that the agent for the United States prepare and lay before the Board, a draught of

of an aſſignment of the debt in queſtion to the United States, to be ſettled and directed by the Board purſuant to the treaty; and that the ſaid account and draught reſpectively be laid before the Board within eight days.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

In the Caſe of HANBURY'S *Executors.*

A STATEMENT of the debt in this caſe having been preſented by the general agent for claimants to the Board, and by their order of the 24th ultimo, leave having been given to the agent for the United States to ſee and make objections to the ſame if any he had within eight days. In purſuance of the leave given by that order, the agent for the United States objects to the ſtatement of the debt exhibited by the general agent, in as much as that ſtatement is unprecedented in the courts of England as well as America, whether of law or of equity and is unjuſt.

The ſtatement is as follows:

Dr. *The United States to the Executors of Mary Hanbury.*

		Sterling. £.	s.	d.
1793. *Dec.* 21.	To the penalty of Stephen Weſt's bond, dated 21ſt Dec. 1773, payable with intereſt from date, the ſaid intereſt at 5 per cent. having equalled the condition in twenty years, - - - - - - - - -	740	0	0
1799. *March* 21.	To five years three months intereſt on 740l. - - -	194	5	0
	Additional intereſt on 740l. ſterling until award, - -	934	5	0

(Errors excepted.)

WILLIAM MOORE SMITH,
General agent.

This

This ſtatement of the general agent is formed, by adding the intereſt to the principal at the expiration of twenty years from the date of the bond by which time the amount expreſſed in the condition and the intereſt on that ſum becomes equal to the penalty. The penalty is then conſidered as the debt due to the claimant, and on which intereſt is calculated to the time of the award.

It is a ſettled rule in the courts of equity in England, that intereſt cannot be calculated beyond the penalty of a bond. So late as 1792 the rule was confirmed by Lord Thurlow on exceptions to a maſter's report in two caſes. *Tew, verſus the Earl of Winterton*, and *Knight, verſus M'Lean*, 3 Brown, Chan. Rep. 489. 496. As theſe are the laſt caſes in the equity courts of England on the ſubject, and as the caſes which had preceded theſe are well examined in the arguments of counſel, the agent for the United States will do no more than refer the Board to them taking it for granted that the rule is now ſettled in chancery on this ſubject.

The agent for the United States acknowledges, that a different principle prevails in the courts of common law. There the penalty of a bond is merely a ſecurity, and where it is not ſufficient the plaintiff may recover damages as well as the penalty. But theſe damages are intereſt on the ſum in the *condition of the bond*, not formed from a calculation of intereſt on the penalty. In Elliot, verſus Davis, Bunb. 23, intereſt was decreed to be paid though it exceeded the penalty. In *Lord Lonſdale and others, verſus Church*, the court were of opinion that damages for more than the amount of the penalty may be recovered. Theſe *caſes at law*, ſhew that intereſt may be recovered beyond the penalty of a bond; but the intereſt ſo recovered beyond the penalty, is intereſt on the principal ſum expreſſed in the *condition of the bond*, and not intereſt upon a new capital, compounded of the old capital, and intereſt thereupon to a certain day as the creditor ſhall at his mere pleaſure determine.

According to the civil law, intereſt upon intereſt is not allowed. "Whatever "delay there may be on the part of the debtor to pay the intereſt and whatever may be the cauſe of it, he is never bound to pay ſecond intereſt for "the intereſt which he owes. And the creditor cannot accumulate the arrears "of intereſt with the principal ſum in order to make the whole a capital which "may produce intereſt; but the ſame will be reduced to the amount of the princi-"pal ſum which is capable of producing intereſt." 1ſt Domat. 399.

The agent for the United States does not conſider it neceſſary at this time to urge further reaſons to the Board in ſupport of his objections to the ſtatement of this debt on behalf of the claimants. The ſtatement he feels confident will not be received by the Board in as much as it is not authorized by the rules of the common law, and is repugnant to thoſe principles of equity and juſtice which muſt govern the Board in their determination on claims.

JOHN READ, JUN.

3*d May*, 1799. *Agent general of the United States.*

In the Caſe of HANBURY'S *Executors.*

AS the Board in rendering their awards will certainly decide as equity and juſtice ſhall appear to them to require, the agent for the claimants will make no obſervations upon the caſes referred to in the remarks upon the calculations of intereſt in this caſe. Their conſciences being ſatisfied from the merits and circumſtance of any particular caſe, that even compound intereſt is not too large a meaſure of damages, they have a right to award it, and no rules of courts in either country are to be abſolute and binding upon them; nor can the caſe of creditors voluntarily delaying any demand for a great number of years be applicable to the caſe of perſons prevented from recovery by the laws of the debtor's country, kept in force contrary to poſitive ſtipulation.

There are two other modes of calculation:

1ſt. Simple intereſt on the condition from the date to the award.

2d. Simple intereſt on the condition from date to the judgment, and then intereſt on that ſum for which judgment ought to have been rendered.

Intereſt is univerſally allowed on judgments.

The general agent for claimants is ready to make a calculation on any principle adopted by the Board, to which the claimants are bound to ſubmit.

WILLIAM MOORE SMITH.

10th May, 1799.

COMMISSIONERS' OFFICE,
Philadelphia, 10*th May*, 1799.

PRESENT,

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. SITGREAVES,
Mr. GUILLEMARD.

In the Caſe of HANBURY *and al. Executors of* MARY HANBURY.

THE reſolution and order formerly propoſed on the refuſal of the agent for the United States under the direction of the attorney general to comply with the order of the Board in the caſe of the 26th day of March laſt, having been moved by Mr. MACDONALD, with the concurrence of Mr. RICH and Mr. GUILLEMARD.

Mr. SITGREAVES moved that the following be ſubſtituted in lieu thereof:

The Board having conſidered their order in this caſe of the 26th day of March laſt, and the repreſentation of the agent for the United States thereon dated on the 11th and read on the 12th ultimo, together with the letters from the attorney general of the United States to the ſaid agent accompanying the ſaid repreſentation.

ORDERED—That the ſaid repreſentation and the letters accompanying the ſame be entered at length on the minutes.

ORDERED—That the general agent for claimants do prepare and lay before the Board, the draught of a releaſe or aſſignment to the United States to be ſettled and directed by the Board purſuant to the treaty.

And the queſtion having been put on Mr. SITGREAVES' motion, and Mr. FITZSIMONS and SITGREAVES only, having voted for the ſame, the ſaid motion was negatived.—Whereupon the queſtion having been put on Mr. MACDONALD's motion that the reſolution and order propoſed by him ſhould be paſſed—the ſame was paſſed as follows:—viz.

Mr.

Mr. FITZSIMONS and Mr. SITGREAVES diſſenting.

The Board having conſidered their order, in this caſe, of the 26th day of March laſt, whereby it was ordered that the general agent for claimants, ſhould make up and lay before the Board an account of the principal ſum and intereſt claimed, which has been done accordingly: And the treaty having provided in favour of the United States that the ſum awarded ſhould be paid on condition of their receiving ſuch a releaſe or aſſignment as the Board ſhould direct; it was alſo ordered for the purpoſe of enabling them to carry the ſaid proviſion into effect in the manner beſt calculated to prevent all diſpute or objections to the form and agreeably to the general practice in buſineſs, that the draught of an aſſignment to the United States, ſhould be prepared by their own agent. And having alſo conſidered the repreſentation of the agent for the United States dated on the 11th and read on the 12th day of April laſt, not applying for any review or alteration of the ſaid order, but directly and peremptorily in the firſt inſtance refuſing to comply with the ſame, which repreſentation is in the following terms:—"The agent for the "United States not conſidering it as part of his official duty to prepare draughts of "aſſignments, which when complete and approved of by the Board, were to enti- "tle creditors to the benefit of awards made in their favour, ſubmitted that order "to the attorney general of the United States for his opinion and directions. Thoſe "directions the agent for the United States has ſince received which *expreſsly re-* "*quire him not to prepare for the creditors* the draughts of the aſſignments they are "execute, the ſame being no part of his official duty. The agent for the United "States accompanies this note with copies of two letters from the attorney general, "which contain the agent's directions and the reaſons which influenced them." And which directions and reaſons are ſtated in the ſaid letters from the attorney general as follows:—"Being perſuaded that it is not your official duty to perform "this act and more eſpecially that a *juſt* regard to the intereſt of the United States "requires you to adopt a proper rule of conduct to be obſerved in all inſtances of "this kind, I think it neceſſary to ſay *that you are not bound to comply with the* "*order*, to which I have referred, or in any other caſe that at preſent occurs to "my mind, to prepare an inſtrument of aſſignment, *and that you ought not to do it.* "Since the claimant is to give the releaſe or aſſignment he is bound to prepare the "draught and to lay it before the Board for their approbation; *after this is done* if "the Board before they decide upon the draught chooſe to ſubmit it to your conſi- "deration for the purpoſe of *knowing if any reaſonable objection* can be made to it, "it will be your duty then to examine it, and to make known your objections if "any you ſhall have." I am fully convinced that the Board cannot impoſe this "duty of a *ſcrivener of aſſignments* on any officer of the United States who derives "his authority not from the Board or the treaty, but from the preſident. In the "treaty the United States have not undertaken to draw the aſſignments to be "given by the creditors or claimants *and it does not comport with my ideas of the* "*honor of the United States* to admit that the Board may order an officer of the "United States to perform a ſervice, which on their part has never been ſtipulated

"to

" to be performed by them, *nor do I conceive that it will conduce to the intereſt of* " *the United States* to permit the agent of the United States to prepare the inſtru- " ments of aſſignment. In the caſe of Hanbury's executors it is remarkable that " the defence of the United States has been placed on the ground that the creditor " having releaſed the debtor by his voluntary act had no right to the money claim- " ed, and it is not denied on either ſide that the debtor is for ever diſcharged by " virtue of the agreement between the parties; if this be ſo, what is there in the " claimant that is aſſignable? Deſirous as I am that the buſineſs before the Board " ſo far as it depends on thoſe employed on the part of the United States ſhould " be conducted conformably to the directions of the Board, *yet this deſire muſt yield* " *to the higher conſiderations of what is due to the United States* Juſtice to my country " and *its honor* too forbid any acquieſcence in the opinion that the Board may " compel the United States or any of their officers, without their conſent to *become* " *the drawers of releaſes and aſſignments* for the Britiſh claimants."

RESOLVED—That it would not become the Board to enter into controverſy upon this ſubject. But it does not appear how "the honor of the United States" can be affected by an order on the agent, whom they have appointed, to prepare the draught of an aſſignment any more than that of his Britannic majeſty by an order on the agent appointed by his ſaid majeſty to make up an account: That the Board are dependant for that reſpect which may be due to their acts on the ſeveral governments of the two nations who have entruſted them with the final ſettlement of important differences; and as it is indeed true that the Board cannot of themſelves "*compel*" obſervance of any of their rules and orders for regulating the courſe of their proceedings, and the conduct *in that reſpect*, of the agents practiſing before them and which by an authority incidental to the greater power of ultimate deciſion they are entitled to preſcribe—therefore and for the purpoſe of effectuating the determination which the Board on full deliberation and after many conferences had unanimouſly agreed on to make an award in this caſe in favour of the claimants —recalled the ſaid order of the 26th day of March laſt, and ORDERED—That the general agent for claimants, acting under the authority of his Britannic majeſty, do immediately prepare and lay before the Board the draught of a releaſe to the United States, to be ſettled and directed by the Board purſuant to the treaty.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 14*th May*, 1799.

PRESENT, *AS BEFORE.*

THE Board having considered the representations of the agent for the United States respecting the imperfect statement of special circumstances on the part of claimants, and of which he justly complains, as preventing him in many instances from making full answers to the whole matter:

ORDERED—That the agent for the United States make answer in every case with as much dispatch as possible, and in whatever order he may find convenient upon such general objection affecting the whole case as such case may present—As for example, the objection that there was no lawful impediments or that the claimant does not possess a character entitling him to claim.

From which order Mr. FITZSIMONS and Mr. SITGREAVES dissented.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 15*th May*, 1799.

PRESENT.

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. GUILLEMARD.

In the Case of HANBURY *&* *als. Executors of* M. HANBURY.

A DRAUGHT of a release of the debt in this case presented by the general agent for claimants pursuant to the order of the Board of the 10th current, having been read,

ORDERED—That the agent for the United States have leave to see and make objections to and propose alterations on the same within eight days.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS'

COMMISSIONERS' OFFICE,
Philadelphia, 17th May, 1799.

PRESENT,

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. SITGREAVES,
Mr. GUILLEMARD,

In the Claim of W. R. LIDDERDALE, *Executor of* JOHN LIDDERDALE *for the Debt of* THOMAS MAN RANDOLPH.

RESOLVED—That no legiſlative act having been paſſed to repeal the act of aſſembly of the State of Virginia, made in the year 1777, whereby it was enacted, that it ſhould be lawful for any citizen of Virginia owing money to a *ſubject of Great Britain* to pay the ſame, or any part thereof, into the loan office of the State in diſcharge of the debt, or to prevent the operation of payments into the loan office purſuant thereto againſt the right of the Britiſh creditor, as ſecured by the 4th article of the treaty of peace;—But on the contrary, the repeal of "all ſuch acts or parts of acts of the legiſlature of the ſaid common-"wealth, as had prevented or might prevent the recovery of debts due to *Britiſh* "*ſubjects*, according to the true intent and meaning of the treaty of peace," having by the proviſo in the act of aſſembly paſſed on the 12th day of December 1787, been expreſsly ſuſpended, on a condition which was never removed:—And the claimant having brought his action in this caſe, in the circuit court of the United States for the diſtrict of Virginia, in which the defendant pleaded payment into the loan office, purſuant to the ſaid act of aſſembly;—And the ſaid *circuit court of the United States* (eſtabliſhed by the act commonly called the *judiciary act*, paſſed in the year 1789, under the preſent conſtitution of the United States) having in the caſe of Warre, Executor of Jones againſt Hylton in June 1793, determined on full argument and conſideration, that ſuch payments into the loan office were good againſt the Britiſh creditor, notwithſtanding the ſaid 4th article of the treaty of peace and the 6th article of the ſaid conſtitution, declaring "all treaties made "under the treaties of the United States to the ſupreme law of the land," the recovery of the debt in queſtion was in conſequence of the payment into the loan office in this caſe made, impeded by the operation of the ſaid act of aſſembly, the

effect

effect whereof was ſo ſettled and declared by the ſaid circuit court of the United States under the preſent conſtitution, againſt the right of th British creditor to recover in ſuch caſes; and which deciſion remained the evidence of the law at the date of the treaty of amity, and till February 1796, when the ſame was reverſed by the ſupreme court of the United States:—And that during the operation of the ſaid act of aſſembly as a lawful impediment, viz. in the year 1795, the ſaid Thomas M. Randolph, the debtor in this caſe, died, having in the years 1790 and 1791. in conſideration of marriage and marriage portions, made conveyances of lands and other valuable property to a large amount, by virtue of which conveyances it appears from the pleadings before the Board, that the children of the ſaid Thomas M. Randolph, or others, are in poſſeſſion.—And further that if the claimant were ſtill bound to commence and go through the *ordinary* courſe of judicial proceedings for the recovery of the debt in queſtion, it would not be incumbent on him (as urged in this caſe) to "exhauſt *every means* of payment which "the laws of the country furniſhed"—And in particular, that it would not be incumbent on him, as urged in the caſe of Stanſield, to which the argument in this caſe refers, to inſtitute proceedings in chancery or otherwiſe, for the purpoſe of trying whether conveyances executed by the ſaid Thomas M. Randolph, now deceaſed, during the operation of the ſaid lawful impediment, could be ſet aſide as fraudulent, ſuch proceedings in chancery, or otherwiſe, for the diſcovery and correction of fraud, not being *in the ordinary courſe of judicial proceedings* for the recovery of debt, within the deſcription and meaning of the treaty of amity.—Reſerving all other points in this caſe, and particular the full effect of all facts and circumſtances, to ſhew that the loſs charged to have been occaſioned by the lawful impediment above ſtated, "was occaſioned by ſuch inſolvency of the debtor "or other cauſes, as would equally have operated to produce ſuch loſs, if the "ſaid impediment had not exiſted," "or by the manifeſt delay or negligence or "wilful omiſſion of the claimant."

From which reſolution Mr. FITZSIMONS and Mr. SITGREAVES diſſented, ſtating their intention of placing on the minutes the reaſon of their diſſent at a future day.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

In

In the Case of HANBURY *and others, Executors of* MARY HANBURY.

A DRAUGHT of a releaſe of the debt in this claim to the United States, having been preſented to the Board by the general agent for claimants and leave having been given to the agent for the United States by the order of the Board of the 15th. inſtant, to ſee and make objections and propoſe alterations to the ſame within eight days.

The agent for the United States in purſuance of that order obſerves, that the draught of the releaſe ſubmitted to the Board by the general agent for claimants, is in his opinion defective.

1ſt. *Becauſe* the draught does not particularly deſcribe the debt by ſuch words, that it may be ſpecifically known and diſtinguiſhed from other debts, for which purpoſe the inſtrument ſhould contain an apt reference to the evidence of the debt, if there be any ſuch evidence, which alſo, if in poſſeſſion of the claimant, ſhould be delivered to the agent for the United States for their uſe.

2d. *Becauſe* the draught contains words of *acquittance* only, and if the claimants have any right againſt the debtor to the debt, concerning which the claim for compenſation has been made, ſuch right is not transferred to the United States. Though the defence of the United States was in this caſe placed on the ground that the original right of the claimants was extinguiſhed in conſequence of the agreement of the parties; yet it is poſſibly otherwiſe. It is ſuppoſed by the agent that the inſtrument of releaſe to be given by the claimant in purſuance of the treaty ſhould operate not only by way of diſcharging the United States from the future demands of the claimants but by way of paſſing to them the intereſt and right whatſoever it be, of the claimants againſt the debtors to the debts concerning which the claims are made. A perſon inſolvent at one time may become ſolvent afterwards, and the United States paying the awards are entitled to the poſſibility, however ſmall, of obtaining reimburſement from the debtors at a future day.

Theſe objections to the draught are reſpectfully ſubmitted to the Board.

JOHN READ, JUN.

Agent General for the United States.

20th May, 1799.

COMMISSIONERS' OFFICE,
Philadelphia, 22d May, 1799.

PRESENT, *AS BEFORE.*

In the Claim of CLARK, *Adminiſtrator of* RUSSEL, *for the Debt of* J. DORSEY.

RESOLVED—That no legiſlative act having been paſſed to repeal the act of aſſembly of the State of Maryland made in the year 1780 whereby, after enacting "that all debts and agreements *thereafter made* ſhould be paid or executed agreeable to the bond, promiſe, or agreement, and the intent and meaning of the "parties, any law to the contrary notwithſtanding," "the debtors of creditors who "had not become ſubjects and reſidents of ſome one of the United States," were authorized to make payments into the treaſury of the State in diſcharge of the debts due to ſuch creditors; or to prevent the operation of payments into the treaſury purſuant thereto againſt the right of the Britiſh creditor, as ſecured by the 4th article of the treaty of peace; and neither the general act of aſſembly paſſed in May 1787, declaring the ſaid treaty "to be the ſupreme law within the State, nor the 6th article of the conſtitution of the United States, declaring all "treaties made under "their authority to be the ſupreme law of the land," and "binding on the judges "in every State" as ſuch, having the effect of ſuch repeal or to prevent the operation of ſuch payments, as appears, not only from the uniform courſe of deciſions of the high court of appeals, being the higheſt court of the State, certified to the Board in the caſe of Hanbury, by the certificate of the proper officer, dated the 19th day of Auguſt 1797, and particularly the deciſion of the ſaid high court in June 1795, in the caſe of *Harwood againſt this claimant*, adjudging ſuch payment into the treaſury to be good againſt the Britiſh creditor, but alſo from the judgment of the circuit court of the *United States*, eſtabliſhed by the act commonly called the *judiciary act*, paſſed under the preſent conſtitution, in the year 1789, where on full argument and conſideration it was determined in the caſe of Warre executor of Jones againſt Hylton, in June 1793, that payments into the *loan office* of the State of Virginia (in their nature ſimilar to payments into the treaſury of the State of Maryland) were good againſt the Britiſh creditor, notwithſtanding the ſaid treaty of peace; the ſaid deciſions of the higheſt court of the State, and of the circuit court of the United States, under the preſent conſtitution, againſt the right of the Britiſh creditor to recover in ſuch caſes, remaining the evidence of the law at the date of the treaty of amity, and till the reverſal in the ſupreme court of the United States in 1797, of the ſaid judgment of the high court of appeals of Maryland, in the caſe of *Harwood againſt this claimant* as a caſe preciſely ſimilar in its principles to that of *Warre executor of Jones, againſt Hylton*, reſpecting payments into the loan office of Virginia, in which the judgment of the circuit court of the United States had been

been reverſed in February 1796; and the ſaid John Dorſey having been diſcharged as an inſolvent debtor on the 11th day of December 1783, as appears from the record before the Board, the ſaid act of aſſembly with the payment into the treaſury in this caſe made purſuant thereto, operated within the meaning and deſcription of the treaty of amity, as a lawful impediment to the recovery of the ſaid debt, to the extent of the ſaid payment into the treaſury; reſerving the queſtion, whether the ſaid lawful impediment ſo operated beyond the ſaid payment into the treaſury; and further—Reſerving all objections to the evidence and amount of the ſaid debt, and the full effect of all facts and circumſtances to ſhew that the loſs "was occaſioned by ſuch inſolvency of the debtor, or other cauſes as would "equally have operated to produce ſuch loſs, if the ſaid impediment had not ex-"iſted, or by the manifeſt delay, or negligence, or wilful omiſſion of the claimant."

From which reſolution Mr. FITZSIMONS and Mr. SITGREAVES diſſented.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 12th June, 1799.

PRESENT,

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. SITGREAVES,
Mr. GUILLEMARD.

Mr. MACDONALD again moved the order propoſed yeſterday—the ſame was paſſed as follows:

ORDERED—That the agent for the United States inform the Board whether he is in the courſe of complying with the general order of the 14th day of May

May laſt, by preparing anſwers on ſuch *general* objections as occur in thoſe caſes in which full anſwers cannot be made to the whole of the ſpecial matter reſpectively therein contained.

From which order Mr. FITZSIMONS and Mr. SITGREAVES diſſented.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 12th June, 1799.

PRESENT, *AS BEFORE.*

In the Caſe of HANBURY, *Executors of* HANBURY.

THE Board having conſidered the objections ſubmitted on the part of the United States to the draught in this caſe propoſed by the general agent for claimants purſuant to the order of the 15th ultimo, ſtating generally "that the draught does "not particularly deſcribe the debt by ſuch words as it may be ſpecifically known "and diſtinguiſhed from other debts, for which purpoſe the inſtrument ſhould con- "tain an apt reference to the evidence of the debt, *if there be any ſuch evidence*, and "that the draught contains words of acquittance only."

ORDERED—That the agent for the United States lay before the Board the ſpecial alterations he would propoſe to have made on the ſaid draught. With this obſervation that there can be no award in any caſe where there is no evidence, and that in this caſe the evidence aroſe from matter of record filed with the claim.

Mr. FITZSIMONS and Mr. SITGREAVES diſſented from the ſaid order, and preſented the following minute of their reaſons, viz.

1ſt.

1ſt. *Becauſe* it is in effect renewing upon the agent for the United States an order in this caſe which the Board have already recalled.

2d. *Becauſe* it implies a cenſure on the agent for the United States for an expreſſion which is deemed correct and proper, in as much as an award may be founded on a debt, or debts not of ſpecialty, the evidence of which cannot be referred to by terms of apt deſcription in an inſtrument of aſſignment.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 21ſt June, 1799.

PRESENT, *AS BEFORE.*

In the Caſe of JOHN BOWMAN *and others, ſurviving Partners of* SPIERS, BOWMAN *and co.*

THE Board having conſidered the argument ſtated in the anſwer in this caſe in the following words, " But this admiſſion is not meant to wave what has " been before contended, *that ſuits ſhould be brought*, as well for aſcertaining the " amount as to prove that the payment is not attainable from the debtor, or to " excuſe the claimants for the neglect of not making perſonal application for the " debts," RESOLVED (to prevent miſapprehenſion and waſte of time in unneceſſary controverſy) that *it is not incumbent* on claimants now to bring actions or inſtitute ſuits, or in any other manner to proceed againſt the debtor or his eſtate for the recovery of the debts on which compenſation is claimed, or any part of them—without prejudice to the queſtion whether the claimants ought before to have ſo proceeded, or whether the loſs complained of, or any part of it, has been occaſioned by the manifeſt negligence or wilful omiſſion of the claimants, within the intent and meaning of the proviſo in the treaty of amity.

From

From which reſolution, Mr. FITZSIMONS and Mr. SITGREAVES diſſented, ſtating their intention of placing on the minutes the reaſons of their diſſent at a future day.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 26th June, 1799.

PRESENT, *AS BEFORE.*

In the Caſe of J. BOWMAN, *ſurvivor of* SPIERS, BOWMAN *& co.*

THE Board having conſidered, that in the anſwer in this caſe, the agent for the United States inſiſts that the claim, though ſupported in all other points, would not be good, even on ſpecialties, for "*intereſt during the war*," and that the ſame general objection is ſtill inſiſted on in other caſes, RESOLVED—That by the reſolution paſſed by the Board on the 18th day of December laſt, they have ſolemnly determined the contrary, and that agents practiſing before them are bound to pay reſpect to their reſolutions by refraining from all argument or oppoſition on queſtions which they have diſtinctly ſettled.

From which reſolution Mr. FITZSIMONS and Mr. SITGREAVES diſſented.

COMMISSIONERS'

COMMISSIONERS' OFFICE,
Philadelphia, 26th June, 1799

PRESENT, *AS BEFORE.*

In the Case of GEORGE ANDERSON, *surviving Partner of* ANDERSON & HORSEBURGH.

THE Board having considered their resolution in the case of *Cunningham and company*, passed on the sixth day of August last, in the following words:— "RESOLVED—That so far as the full recovery of the debts in this case claimed, "has during the operation of the said lawful impediments been delayed, and "the value and security thereof impaired or lessened, or totally lost, by lapse "of time, the loss of legal evidence, insolvency of debtors, or otherwise; such "delay of recovery, or diminution, or loss of value and security, are to be "ascribed to such operation of lawful impediments; unless it be shewn, with- "in the provision of the treaty of amity, that such delay of recovery and dimi- "nution, or loss of value and security, were occasioned by other causes, which "would equally have so operated if the said lawful impediments had not existed; "or arose from the manifest delay or negligence, or wilful omission of the claim- "ant," from which resolution MR. FITZSIMONS entered his dissent, on the ground stated in his minute of dissent of the 8th day of August last, as follows:— "*Because*, a principle is laid down which throws the whole burden of proof upon "the United States in every case where legal impediments existed, contrary as is "believed, to the clear principles of law and equity:—*By this decision the creditor* "*is excused from proving that his debtor was solvent* at the expiration of the war, "or that he has used due diligence for the recovery of his debt; to avoid the "payment of the United States must prove the contrary in both instances." And further, having considered that notwithstanding the known meaning and intent of the above resolution, as stated and opposed in the minute of dissent before recited, it has since been repeatedly, and in almost every case before the Board, maintained and argued on the part of the United States, in direct opposition to the said resolution, or as if no such resolution had ever passed, that the claimant is bound to prove the *solvency* of debtors at and subsequent to the peace, as an indispensable requisite in support of a claim before this Board, which position, notwithstanding the said resolution, whereof the known meaning was so stated and declared in the dissent of Mr. FITZSIMONS, has been asserted and confirmed in the paper entered on the minutes in case of *Inglis*, of the 19th day of February last signed by Mr. FITZSIMONS and Mr. SITGREAVES, as follows:—"It is agreed on all hands, "that

" that a claimant muſt prove a debtor to have been ſolvent *at the peace*, in order to " charge the United States with a loſs;" the words " *It is agreed on all hands*" having been afterwards by leave ſtruck out, but the poſition ſtill remaining abſolute, as an axiom, notwithſtanding the above recited reſolution; in conſequence of all which, the ſaid reſolution or ſolemn determination of the Board on the point in queſtion, paſſed after much conference and on mature deliberation, and of which, it never has been ſuggeſted, that the meaning was underſtood to be different from that which is expreſſed in Mr. Fitzſimons's diſſent, appears now to be held by one of the parties, as not entitled to any conſideration, inaſmuch, that the agent for the United States in this caſe declines offering ſuch evidence as he has in his power, to prove the *inſolvency* of a debtor at and ſince the peace, till the claimant has produced his evidence to prove his ſolvency, as appears from the following paſſage in the anſwer:—" Upon the ſecond point, viz. (that the defendant, Robert Hart, " was inſolvent at the peace, and his eſtate unequal then and ſince to the payment " of his debts) as this muſt reſt on proof, and from that cauſe can now require no " obſervation, the agent for the United States will endeavor to be prepared, " *whenever the claimant ſhall attempt to ſhew the ſolvency of Robert Hart at the peace*, " to produce ſuch proof to invalidate it, as the nature of the teſtimony offered by " the claimant may require. *Until ſuch teſtimony* is offered by the claimant, as " well as *all other teſtimony neceſſary to ſupport his claim*, it will be irregular and " premature for the agent for the United States to offer any teſtimony in their " defence."

RESOLVED—That it becomes the duty of the Board, to prevent the great diſorder and delay which in the courſe of evidence would ariſe from the diſregard of the ſaid reſolution, by enjoining a due attention to the ſame in conformity to the known and declared meaning of the Board;—that the ſaid reſolution, by neceſſary implication, lays down the rule reſpecting the *onus probandi* in the matter in queſtion; and on the plaineſt principles of reaſon;—for whatever deprived the creditor of the means, *is in the firſt inſtance* to be held as the cauſe of his not arriving at the end; whatever in the poſitive inſtitution of the law, or the ſettled courſe of judicial practice, prevented him from *proceeding* for the recovery of his debt, is to be deemed a lawful impediment which *prevented ſuch* recovery; conſequently the loſs ariſing from his not recovering, is in the firſt inſtance, to be aſcribed to the operation of the ſaid lawful impediment,—that the above propoſitions are *prima facie* complete, ſtanding on their own intrinſic evidence, and ſubject only to the effect of ſufficient evidence to the contrary: So that it is not incumbent on the claimant, to prove the *ſolvency* or capacity of the debtor to ſatisfy the creditor at or ſince the peace, but open to the United States to meet the *prima facie* evidence already ſtated, by reaſonable evidence to the contrary;—and although the Board are to be determined by principles of ſound reaſon and juſtice, and not to be affected by ſuggeſtions of hardſhip or difficulty, yet deſirous as they are, in this great national buſineſs, to diſcharge their duty in a manner which may be as generally ſatisfactory as the natural prejudices of parties intereſted will permit, they think it not improper, in conſideration of the earneſt oppoſition which was made in the Board to the above recited reſolution

lution in the caſe of Cunningham and co. on the ground that it never could have been intended to impoſe ſo great a hardſhip on the United States, to ſuggeſt the reflection that it cannot prove a taſk of greater difficulty to the United States, with all the means of enquiry and information which they poſſeſs, and under their reſponſibility of indemnifying againſt lawful impediments to the recovery of juſt debts, to ſatisfy this Board on ſufficient evidence of what muſt *in many inſtances* have been, and may ſtill be matter of great notoriety, viz. that at a certain period a debtor was in ſuch a ſituation, that according to reaſonable inference, he could not have raiſed money or procured ſecurity for the payment of a certain debt, although the full force of leg ' execution had been brought againſt him, than it would be to a *foreign* creditor, perhaps the repreſentative only of him who made the contract, and totally unacquainted with the former ſituation of the debtor, to bring evidence of the reverſe;—the facts and circumſtances neceſſary to eſtabliſh the latter propoſition, being in their nature at leaſt as much affected by the long lapſe of time ſince the peace, when every lawful impediment to the full recovery of the debts in queſtion ought to have been removed, as thoſe by which the former may be ſubſtantiated; and ſuch lapſe of time, ſo impairing the means of evidence, being the juſt cauſe of complaint, not to the United States, but *to creditors only*, wherever the delay appears to have ariſen from the operation of lawful impediments to the full recovery of debts, fairly contracted before the peace, and protected againſt ſuch impediments by the 4th article of the definitive treaty.

From which reſolution Mr. FITZSIMONS and Mr. SITGREAVES diſſented.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

To the Commiſſioners for carrying into effect the Sixth Article of the Treaty of Amity, Commerce and Navigation, concluded between his Britannic Majeſty and the United States of America, on the nineteenth of November 1794.

Repreſentation on the part of the United States relative to the order of the Board of the 12th June, 1799.

IN conſequence of the order of the Board of the 12th inſtant, requiring the agent for the United States to inform the Board, " whether he is in the courſe of " complying with the general order of the 14th day of May laſt, by preparing an-

" ſwers on ſuch general objections as occur in thoſe caſes in which full anſwers " cannot be made to the whole of the ſpecial matter reſpectively therein contained;" the agent for the United States reſpectfully informs the Board:

That many claims were preſented to the Board in a ſtate extremely vague, defective and imperfect, and to theſe in their preſent condition he has not yet prepared any anſwers, intending in the firſt place to anſwer thoſe which are more certain and complete.

That he has not conſidered himſelf bound in any caſe, to take for true the ſtatement contained in the memorial, and therefore has conſidered it his duty, to ſeek for information concerning the matters ſet forth in the memorial or ſuggeſted by it. As moſt of the claims are founded on debts ſaid to be due from citizens reſiding in ſome of the following States, namely, New York, Maryland, Virginia, North Carolina, South Carolina or Georgia, it has been neceſſary to ſeek for information in theſe States reſpectively as the caſe may require, which being remote from Philadelphia cannot fail to take up a good deal of time.

When prepared for making an anſwer to a claim, the agent for the United States conceives it his duty to ſet forth every objection, whether general and extending to the whole claim, or ſpecial and applying to a particular part of the claim, for he has not permitted himſelf to ſuppoſe, that the above recited order, was intended to infringe or reſtrain the right which the United States poſſeſs of making their anſwers to claims, whether generally or ſpecially which their agent ſhall deem moſt proper for obtaining a juſt award in each particular caſe. A claimant may in one memorial demand compenſation for a great number of debts under different circumſtances, relative to which different objections may be made, and each objection containing a general principle; for example, one debtor may have paid his debt, another may have been inſolvent at the peace, another may have been and is now ſolvent.

Believing that every claim brought before the Board, is to be determined by equity upon its own circumſtances, the agent for the United Sates is in the courſe of preparing anſwers with all poſſible diſpatch, ſtating as ſpecially and as fully as in his power, all facts not contained in the memorial which have come to his knowledge, and all objections whether general or ſpecial which appear to him material for the conſideration of the Board. He is not in the courſe of preparing anſwers merely of form.

The claimants have been upwards of four years preparing their claims, with the aſſiſtance of able counſellors in every particular State, as well as in Great Britain. The amount of claims is computed to exceed twenty millions of dollars. The number of claimants are many hundred, and the number of debts for which compenſation is claimed are many thouſand. The difficulty of obtaining uſeful knowledge concerning the multifarious matters neceſſary to be known is extremely great.

The

The agent for the United States hopes the Board will conſider all theſe circumſtances, and allow him reaſonable time and opportunity to defend the United States, ſo that right may be done.

JOHN READ, JUN.
Agent general for the United States.

2d of July, 1799.

COMMISSIONERS' OFFICE,
Philadelphia, 26th June, 1799.

PRESENT,

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. SITGREAVES,
Mr. GUILLEMARD.

In the Caſe of ANDREW ALLEN.

The Board taking into their conſideration the following paſſage in the obſervations on the reply, viz.

" IN the caſe of Doctor *Inglis*, the Board on the 21ſt May 1798, RE-
" SOLVED—' That the claimant's character of Britiſh ſubject was not affected
" or impaired by the act of attainder and confiſcation paſſed by the State of New
" York on the 21ſt of October 1779, attainting him, the Earl of *Dunmore*, Go-
" vernor *Tryon*, Sir *Henry Clinton*, and many other Britiſh ſubjects, who are
" therein deſcribed, *not as ſubjects of the State, but as perſons holding or claiming*
" *property within the State*, and forfeiting and confiſcating their whole eſtates real
" and

" and perſonal, for their adherence to his Britannic majeſty; but that on the " contrary, the ſaid act of attainder, and the deſcription of loyaliſt or refugee, " applied to the claimant on the part of the United States, in conſequence of his " ſaid adherence, are concluſive evidence that he ſtill maintained his original alle- " giance: that therefore he is entitled to claim before this Board under the *fourth* " article of the definitive treaty of peace, and the *ſixth* article of the treaty of " amity, between his ſaid majeſty and the United States.' " This reſolution has " been exactly recited, becauſe it may be underſtood to have omitted the caſe of " the claimant, who in the act of attainder and forfeiture is expreſsly deſcribed as " a ſubject of the State of Pennſylvania, and puniſhed as ſuch by a forfeiture of " his eſtates and debts. Indeed the expreſſions in this reſolution ſeem to imply, " that if Doctor *Inglis* had been attainted *as a ſubject of New York, and his debts* " *confiſcated for a crime committed by him as a ſubject*, the Board would have diſ- " miſſed his claim. The diſtinction ſo explicitly taken by the Board, between " attainting and puniſhing a man as a *ſubject*, and attainting and puniſhing him ' *as* " *a perſon holding or claiming property within the State*,' muſt have been meant for " ſome uſe. At all events, this reſolution cannot be conſidered as deciding that " the *fourth* article of the treaty of peace ſet aſide legiſlative acts of attainder and " forfeiture, paſſed againſt individuals deſcribed and holden as ſubjects of the " State, and puniſhing them for their criminal conduct. There is certainly a " difference between a confiſcation of an enemy's property by the right of war, " and a forfeiture of a ſubject's property by law for criminal conduct:"

RESOLVED—That in the abovementioned reſolution in the caſe of Dr. *Inglis*, the Board did not decide on the diſtinction ſtated in the above paſſage to be " between attainting and puniſhing a man as a ſubject, and attainting or puniſh- " ing him as a perſon holding or claiming property within the State;" having only referred to the fact for the purpoſe of ſhewing, that the caſe ſtood clear of all objection on the ground of that alledged diſtinction.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 9th July, 1799.

PRESENT,

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. SITGREAVES,
Mr. GUILLEMARD.

In the Case of ANDREW ALLEN.

THE following resolution having been the subject of full discussion in the Board during several sittings—Mr. MACDONALD with the concurrence of Mr. RICH and Mr. GUILLEMARD, moved that the same should be passed.

The Board having considered the "*first ground of defence*" taken by the United States in this case, as founded on the act of attainder and confiscation, passed by the State of Pennsylvania against the claimant on the 6th day of March 1778, in the following terms, "Whereas *Joseph Galloway, Andrew Allen*, &c. "&c. *being all subjects and inhabitants of the State of Pennsylvania*, have most trai- "terously, and wickedly, and contrary to the allegiance they owe to the said "State, joined and adhered to, and still do adhere to, and knowingly and wil- "lingly aid and assist the army of the king of Great Britain, now enemies at "open war against this State and the United States of America, and yet remain "with the said enemies:—Be it therefore enacted, and it is hereby enacted *by the* "*representatives of the freemen of the commonwealth of Pennsylvania* in general assem- "bly met, and by the authority of the same, that if the said *Joseph Galloway*, "*Andrew Allen*, &c. shall not render themselves respectively, to some one or "other of the justices of the supreme court, &c. on or before the 20th day of "April next, and also abide their legal trial for such their treasons, then every "one of them shall stand and be adjudged, and by the authority of the present "act be convicted and attainted of *high treason*, to all intents and purposes what- "soever and shall suffer and forfeit as a person attainted of high treason by law "ought

" ought to ſuffer and forfeit ;"—and which "*firſt ground of defence,*" taken by the United States on the above act of attainder and confiſcation, is ſet forth in the obſervations on the reply as follows, viz. " The claimant has ſtated in his reply, " that it is not to be diſputed or denied in this caſe, that the legiſlature of Pennſylvania proceeded againſt the claimant as *an inhabitant or ſubject of Pennſylvania,* " and confiſcated his whole eſtate, real and perſonal, debts included; and the " legiſlative act expreſſes, that the attainder and forfeiture was inflicted for the " crime of high treaſon." " That the State of Pennſylvania in paſſing the act of " attainder and forfeiture againſt *Andrew Allen* the claimant, deſcribed and conſi- " dered him as *a ſubject,* is apparent from the words of the act. If he had not " been a ſubject of Pennſylvania, he could hot have committed the crime of trea- " ſon, of which he was by legiſlative act attainted. That legiſlative act is itſelf evi- " dence, the beſt and higheſt evidence of his being a ſubject of the State. Such " faith is due to the act of a legiſlature of an independent State, that other teſtimony " of the facts contained in it, is not to be required. On the act of attainder and " forfeiture therefore, the agent for the United States might reſt as ſufficient proof, " that the claimant was a ſubject of Pennſylvania. Aware of this, the general " agent for claimants has advanced the extraordinary poſition—that the treaty of " peace is the only point of time from which agreeably to the Britiſh conſtitution " and laws, the United States ceaſed to be a part of the Britiſh empire.—Accord- " ing to this doctrine, Pennſylvania was not an independent State until the peace, " for ſhe could not be an independent State while ſhe remained a part of the Bri- " tiſh empire. According to this doctrine her legiſlative acts prior to the peace, " are not to be regarded as the acts of an independent State.—This poſition being " important to the juſt deciſion of this claim, ſhall be examined. When the " United States became independent and took their place among the nations " of the earth, is a matter not to be determined agreeably to the Britiſh conſti- " tution and laws, but agreeably to the laws of nature and of nations. *In fact* " *they were independent ſo early as* 1775, and *on the ever glorious and memorable* " *fourth of July* 1776, they ſolemnly and formally declared to the world they " were independent, and from *that* period have maintained their independence with " honor and proſperity.—Prior to the treaty of peace they made treaties of alli- " ance, commerce and navigation, and were thus publicly recognized by foreign " powers as an independent nation. *They carried on war,* they made laws for " their own government, and did every other act of a ſovereign power. *The* " *formal acknowledgment by his Britannic majeſty added nothing to their real inde-* " *pendence,* and if the treaty of peace had never been made, the United States " would have actually continued an independent *nation though at war with Great* " *Britain to this moment.* What is it the United States were incompetent to do as " a ſovereign power, between the 4th July 1776, and the 3d September " 1783, which they can now do? ' Every nation that governs itſelf under what ' form ſoever without any dependence on a foreign power is a ſovereign State, its ' rights are naturally the ſame as thoſe of any other State. Such are moral perſons ' who live together in a natural ſociety, under the law of nations. To give a

' nation

' tion a right to make an immediate figure in this grand ſociety, it muſt [illegible]
' it be really ſovereign and independent, that is, it muſt govern itſelf by its
' own authority.' *Vattel B.* 1. *S.* 4. ' When a nation becomes divided into
' two parties abſolutely independent, and no longer acknowledging a common
' ſuperior, the State is diſſolved, and the war betwixt the two parties in every
' reſpect is the ſame with that of a public war between two different nations.' *Id.*
B. 3. *S.* 295.—" Applying theſe paſſages to the ſituation of the Britiſh empire
" when the American colonies ſeparated from Great Britain, *declaring their inde-*
" *pendance and maintaining it by the ſword*, they prove the ſeveral United States to
" have been independent as early as the *fourth* of July 1776; that day is the
" anniverſary of their ſovereignty, and as ſuch celebrated in every part of the
" country. In the year 1776, the States generally formed their conſtitutions of
" government, ſome of which remain to this moment unaltered; and are conſi-
" dered as the palladium of their rights, the ſource of all lawful authority.
" Even in Weſtminſter hall the judges have frequently declared, that the acts of
" the legiſlatures of the ſeveral States which were paſſed during the late war,
" could be regarded by them in no other light than acts of independent States.
" Though *Andrew Allen* after being a ſubject to Pennſylvania *joined the Britiſh*
" *forces in December* 1776, *and returned to his natural allegiance* this did not diſ-
" ſolve the right of Pennſylvania to hold him as its ſubject, and as its ſubject to
" puniſh him: Having done this by a legiſlative act, it only remains to be conſi-
" dered, whether that act was repealed as to debts, by the *fourth* article of the
" treaty of peace. The agent for the United States contends that it was not,
" and that the debts forfeited for treaſon during the war, were not embraced by
" that article, becauſe *Andrew Allen*, and all others in the like predicament,
" were civilly dead as to the United States, and were not creditors when the
" treaty of peace was concluded, of the debts that had been forfeited. The
" ſtipulation that *creditors on either* ſide ſhall meet with no lawful impediment
" to the recovery of the full value in ſterling money, of all *bona fide* debts here-
" tofore contracted, does not include perſons, who *as ſubjects* had become
" deprived of their eſtates and debts for their *criminal conduct; Andrew*
" *Allen* having joined the American ſide, as is proved by the higheſt evidence,
" the legiſlative act of Pennſylvania, and having deſerted it and thereby incurred
" a forfeiture of all his rights, is in no point of view to be conſidered as a creditor
" on the Britiſh ſide. To conclude, the firſt ground of defence, if the legiſlative
" act of attainder and forfeiture paſſed by Pennſylvania on the 6th of March 1778
" is to be conſidered as an act of a ſovereign independent State, it is concluſive proof
" that *Andrew Allen* was *once* a ſubject of Pennſylvania and had forfeited his eſtate
" including his debts prior to the treaty of peace, for his criminial conduct as a ſub-
" ject. If as a ſubject he was attainted and puniſhed by the loſs of his debts the
" treaty of peace did not annul the legiſlative act of forfeiture, and reſtore to him a
" right to recover his forfeited debts. If the treaty of peace did not reſtore to him
" a right to recover ſuch forfeited debts, there has been no loſs proceeding from a
" violation of it, for which he is entitled to claim before the Board under the treaty
" of amity." And in the following paſſage in a ſubſequent part of the paper—

" The

" The plaintiffs in this caſe *(Hamiltons vs. Eaton)* were allowed by a law of " North Carolina, together with others ſimilarly circumſtanced, the option of " taking an oath of allegiance to the State or of departing it. They choſe the " latter and were never regarded as ſubjects of the State. Their confiſcated " debts they have been adjudged to be capable of recovering of their debtors. " It is not to be denied, that the *Chief Juſtice Elſworth* in delivering his ſen- " timents on this caſe does ſtrongly imply, if the plaintiffs had been claimed " and holden as citizens, and for their crime had been deprived of their debts, " that they could not have recovered them under the treaty of peace. This " opinion the agent for the United States conſiders as a very reſpectable ſup- " port of the firſt ground of defence taken in this claim;—upon all occaſions the " chief juſtice has been ready to allow the fulleſt force of the treaty of peace " upon caſes within it, and if debts forfeited for treaſon are not in his opinion " recoverable in the federal court, it can only be becauſe he thinks they are not " within the operation of the treaty, for if they were, it is difficult to aſſign a " reaſon why they ſhould not be recoverable at law, as well as debts confiſcated " by right of war:"—In aid of which argument two letters have been produced from a learned judge of the United States *(Patterſon)* to the agent for the United States, in anſwer to his enquiries reſpecting the nature and import of certain deciſions therein mentioned, one of which letters, recited in the *obſervations* dated the 27th day of May laſt, gives an account of the caſe of *Mutter* and *Hamiltons* againſt *Moore* therein mentioned, as follows, " The declaration ſtates that *A.* and " *J. Hamilton are ſubjects of the king of Great Britain.* The defendant pleaded " that the plaintiffs are on the confiſcation act of North Carolina, and payment to " the commiſſioners. The plea ſtates that the ſaid *A.* and *J. Hamilton* were " inhabitants of North Carolina, and continued to be ſo until September 1777. " To this plea the plaintiffs demurred. I well remember that it was urged by " Mr. Noel, one of the counſel on the part of the defendant, *that all inhabitants* " *became citizens by the declaration of independence.* On this point the court gave " no opinion, it was not neceſſary; the caſe did not require it. As it was ad- " mitted by the pleadings that *A.* and *J. Hamilton* were inhabitants of North " Carolina on the 4th of July, 1776, and continued to be ſo till September 1777, " a period more than ſufficient for them to *make their election* agreeably to the law " of nations, *I conſidered them as citizens of North Carolina, and not as ſubjects of the* " *king of Great Britain.* So the law appeared to me as ariſing on the facts de- " tailed in the pleadings. In my judicial capacity I was obliged to take the caſe " from the declaration, plea, and demurrer; but I intimated more than once the " propriety of moving to amend the proceedings. It was not done. The deciſion " paſſed againſt the plaintiffs. I cannot undertake to ſay of what opinion the " court would have been, *if the plaintiffs had replied that they were ſubjects of his* " *Britannic majeſty*, and *alſo, the treaty of peace.*"—The diſtinction between a " Britiſh ſubject, reſiding in England, and an American Britiſh ſubject, never " entered my head. The only enquiry was, whether it ſufficiently appeared on " the pleadings that the plaintiffs were Britiſh ſubjects and could avail themſelves " of the treaty."

RESOLVED

RESOLVED on the ſaid "*firſt ground of defence*," and reſerving the other points in the caſe, that it becomes the Board to refrain from all obſervation on the *general* queſtions ſuggeſted in the above argument; namely, whether a part of a nation becomes independent of the government which had been eſtabliſhed over the whole merely by declaring itſelf to be ſo, and ſupporting ſuch declaration "by the "ſword?"—whether a part of a nation by thus "carrying on war" againſt that which had till then been maintained as the government of the whole; "making "laws for their own government; and doing every act of a ſovereign pow-"er," does truly become a ſovereign power?—whether the aſſertion be well founded, that "the formal acknowledgment by his Britannic majeſty added nothing "to the *real* independence of the United States?"—what would have been the caſe "if the treaty of peace had never been made?"—whether "the United "States would" have actually continued an "independent nation though at war "with Great Britain at this moment?"—and how far "the celebration in every "part of the country of the ever glorious and memorable 4th day of July 1776," (according to the language made uſe of before the Board) "as the anniverſary of "their ſovereignty" can affect the preſent caſe?—that the Board think it fit alſo to refrain from all obſervation on the caſe which is in ſubſtance put, of an *unconditional ſubmiſſion* on the part of Great Britain to the independence of the United States, *and to all that had been done under the authority they exerciſed;* becauſe the caſe ſo put, is not the caſe which actually exiſts; there having been no ſuch *unconditional* ſubmiſſion, or acknowledgment of the independence of the United States on the part of Great Britain, but a recognition by ſolemn treaty, *containing reciprocal ſtipulations*, as the price of peace, and for the mutual benefit of *both* countries:—that as it has however been maintained in the Board, that the independence of the United States was complete even as againſt Great Britain before the treaty of peace, it cannot be improper to ſtate, the impreſſions entertained on that important ſubject by judges of great name and authority in the United States, from their opinions judicially delivered, and as the ſame are recited and referred to in the paper read by M. SITGREAVES, and put on the minutes of the Board on the 19th day of February laſt, in the caſe of the Right Reverend *Charles Inglis*:—That in the caſe of *Warre* adminiſtrator of *Jones* againſt *Hylton*, decided in the ſupreme court of the United States in February 1796, Judge CHASE, in ſtating the outline of *reciprocal ſtipulation* contained in the treaty of peace, expreſſes himſelf as follows, "I will now proceed to the conſideration of the treaty of 1783. "It is evident on a peruſal of it what were the *great* and principal objects in view "by both parties. There were *four* on the part of the United States, to wit, "*Firſt, An acknowledgment of their independence by the crown of Great Britain.* "*Second*, A ſettlement of their weſtern bounds. *Third*, The right of fiſhery. "And *fourth*, The free navigation of the Miſſiſippi. There were *three* on the "part of Great Britain" &c. the recovery of debts provided for by the *fourth* article being referred to as the firſt of theſe three objects—and another learned judge of the United States (*Paterſon*) whoſe opinion in the ſaid caſe is alſo recited in the ſame paper, obſerves as follows—"The traders and others of this country

" were largely indebted to the merchants of Great Britain. To provide for pay-
" ment of thefe debts, and give fatisfaction to this clafs of fubjects, muft have
" been a matter of primary importanee to the Britifh miniftry. This doubtlefs is
" at all times, and in all fituations, an object of moment to a commercial country.
" The opulenee, refources and power of the Britifh nation, may in no fmall degree
" be afcribed to its commeree: it is a nation of manufacturers and merchants.
" To protect their intereft and provide for the payment of debts due to them,
" efpeeially when thofe debts amounted to an immenfe fum, could not fail of
" arrefting the attention, and ealling forth the utmoft exertions of the Britifh
" eabinet. A meafure of this kind it is eafy to perceive wou'd be purfued with
" unremitting diligence and ardor.—Saerifiees would be made to enfure its fueceft,
" and perhaps nothing fhort of extreme neceffity would induce them to give it up."
—Conclufions which are not weakened by the eonfideration, that although it is
true the greater part of the "*immenfe*" debt thus provided for, was due to Britifh
merchans, part of it was alfo due (in the language of the treaty of amity) "to
" others his majefty's fubjects."—That another learned judge, whofe opinion in
the cafe of *M'Call againft Turner*, was publifhed at full length, and fpecially
referred to on the part of the United States in their printed anfwer to the claim of
William Cunningham and co. namely, judge *Pendleton*, expreffed himfelf in the
Virginia convention (of which he was prefident) when debating on the adoption of
the federal conftitution, as follows: "Congrefs were empowered to make war and
" peaee. A peaee they made, *giving us the great object, independence*, and yield-
" ing us a territory that exceeded my moft fanguine expectations. Unfortunately
" *a fingle difagreeable clauſe*, not the object of the war, has retarded the perform-
" ance of the treaty on our part.—Congrefs could only reeommend its perform-
" ance, not enforee it."—That in order to determine the preſent queſtion the
Board have only to apply the plain and unambiguous terms of the faid *fourth*
article, for which "*facrifices*" were thus held to have been, and certainly were
made on the part of Great Britain;—and that the terms thereof *are* plain and un-
ambiguous ſtands confirmed by the reſpectable authority already referred to. "On
" the beft inveftigation (fays judge *Chafe*) which I have been able to give the
" *fourth* artiele of the treaty, I cannot conceive that the wifdom of man could
" expreſs their meaning in more accurate or intelligible words, or in words more
" proper and effectual to carry their intention into execution"—and judge *Pater-
ſon* expreſſes himſelf thus—" The phraſeology made uſe of leaves in my mind no
" room to heſitate as to the intention of the parties. The terms are unequivocal
" and *univerſal* in their ſignifieation, and obvieufly point to, and eomprehend *all*
" *creditors*, and all debtors previouſly to the 3d September 1783. In this artiele
" there appears to be a *ſelection of expreſſion*, plain and extenſive in their import,
" and *admirably calculated to obviate doubts*, to remove difficulties, to deſignate the
" objects, and aſcertain the intention of the contending powers."—" The words
" *creditors on either ſide* embrace *every deſcription of creditors*."—" All ereditors
" on either ſide *without diſtinction* muſt have been contemplated by the parties in
" the *fourth* article: Almoſt every word ſeparately taken is expreſſive of this idea,
" and

" and when all the words are combined and taken together, they remove every " particle of doubt."—That the ſame impreſſion of the ample, comprehenſive and unreſtrained force of the ſaid *fourth* article, is further confirmed by another learned judge *(Sitgreaves)* in the opinion delivered by him in the caſe of *Hamilton againſt Eaton*, in June 1796, alſo referred to and recited in the abovementioned paper, entered on the minutes of the Board in the caſe of *Inglis;* the ſaid learned judge, in ſtating the general and unlimited import of the expreſſion " *all creditors on either ſide*" in the ſaid *fourth* article, where no other diſtinction of perſon or character was intended than that of being on the one ſide or the other at the peace, having therein referred to the ſeveral diſtinctions of character anxiouſly marked out in the very next article, viz, the *fifth*, where ſuch diſtinctions were intended, (but which *fifth* article has no relation to the recovery of the debts ſecured by the *fourth* article) as follows:—" The *fourth* article contains the only ſtipulation with " reſpect to debts in the whole inſtrument. It is mutual and *general* in its expreſ- " ſion, not limited or reſtrained by any particular words *to any deſcription of perſons*, " as is evident in the *fifth* article. If that had been in the contemplation of the " parties, they could not have overlooked the neceſſity for theſe diſtinctions, nor " are we at liberty to preſume it. In the next article, the diſtinction is made " with great accuracy with regard to thoſe who endeavor to procure a reſtitution " of their lands and other property:"—That the extent equally unlimited of the expreſſion ' *lawful impediments*" is likewiſe referred to and explained by the ſame, and other learned judges of the United States, whoſe opinions are quoted in the abovementioned paper, in the caſe of *Inglis*, judge *Chaſe* having expreſſed himſelf on that ſubject as follows—" *Shall meet with no lawful impediment;*" that is, "with " no obſtacle (or bar) *ariſing from the common law*, or acts of parliament, *or acts* " *of congreſs* or acts of any of the States, *then in exiſtence*, or thereafter to be " made, that would *in any manner* operate to prevent the recovery of ſuch debts as " the treaty contemplated.' —" The prohibition that no lawful impediment ſhall " be *interpoſed* is the ſame as that all lawful impediments ſhall be *removed*. The " meaning cannot be gratified by the removal of one impediment and leaving ano- " ther; and *a fortiori*, by taking away the leſs and leaving the greater; theſe " words have both a *retroſpective* and future aſpect."—Judge *Paterſon*, " The " words ſhall meet with *no lawful impediment* refer to legiſlative acts and *every* " *thing done under them*, ſo far as the creditor may be *affected or obſtructed in regard* " *to his remedy or right*. All lawful impediments of whatever kind they might be " whether they related to *perſonal diſabilities*, *or confiſcations*, &c. are removed. " *No act of any State legiſlature* ſhall obſtruct the creditor in his courſe of reco- " very againſt his debtor."—Judge *Cuſhing*, the words " *ſhall meet with no law-* " *ful impediment*," are as ſtrong as the wit of man could deviſe *to avoid all effects* " of ſequeſtration, confiſcation, *or any obſtacle* thrown in the way by any law " particularly pointed againſt the recovery of ſuch debts."—And to ſhew that a lawful impediment might operate within the meaning of the treaty, though there ſhould be *legal debts* at the date of the treaty of peace, judge *Wilſon* obſerves, that the *fourth* article " is not confined to *debts exiſting* at the time of " making the treaty, but is extended to debts *heretofore contracted*."

That

That the exposition thus given, *since the treaty of amity*, viz. in the year 1796, by the learned judges of the United States above named, corresponds with the opinion which, on mature deliberation, the Board have clearly formed on this subject, and which they now declare, viz.

That the same instrument, by the *first* article whereof his Brittannic majesty on the 3d day of September 1783, "acknowledged the United States" (not to have been from the 4th day of July 1776, but) "*to be* free, sovereign, and independent "States; that he treated with them as such, and relinquished all claims to the "government, propriety, and territorial rights of the same," provided also in effect by the mutual stipulation in favor of "creditors on *either side*," contained in the *fourth* article thereof, that no act which had then been, or should thereafter be done or passed, by or under the authority of the said United States, or any of them, whatever might be its form or import; whatever the terms therein employed; whatever the extent of power thereby assumed or declared; whatever the character *thereby* ascribed to the individual against whom it was directed, should be suffered to operate as a lawful impediment to the recovery of debts "theretofore contracted" to a creditor on the side of his Britannic majesty at the date of the said treaty: Nor can the objection be supported, that the above interpretation would extend to the *ordinary operation of criminal law* in cases of felony, and such other offences as did not arise from the part taken by individuals during the war; for the ordinary operation of criminal law thus suggested as the ground of an objection, has no relation whatever to the subject matter of the said article:—That in the case of the Right Reverend *Charles Inglis*, the Board by their unanimous resolution of the *twenty-first* day of May 1798, determined, that an act of the State of New-York passed during the war, attainting the said *Charles Inglis* for the imputed *crime of adhering to his Britannic majesty* was a lawful impediment within the meaning of the treaties; the only difference between that case and the present consisting in the different words of description contained in the two several acts;—but as the act of the State of Pennsylvania cannot have any greater effect or operation against the *fourth* article of the treaty of peace than that of New York, and as the fact charged to be a crime, viz. adherence to the cause of his Britannic majesty is the same in both cases, the mere words of description *assumed* in the act of Pennsylvania, cannot prove *against* the true character of the party as a British subject, or give efficacy to itself, so as to take the case out of the meaning and operation of the said article:—Nor does it appear how the claimant became lawfully subjected to that State any more than the said *Charles Inglis* to the State of New York, or the former less entitled to the character of British subject than the latter:—That all *general* argument on the declaration of independence, and the effect of acts done under it, whether by the law of nations, or by virtue of the alledged retrospect of the above recognition by the treaty of peace, is therefore precluded, so far as regards the present subject, *by the plain terms of a positive compact*:—That the comprehensive expression "*creditors on either side*," contained in the *fourth* article of the said treaty, *unrestrained by exception, by description of special character*, or *restriction of any kind*, was evidently selected for the very purpose of avoiding all doubts or difficulties, which

which might otherwiſe have been raiſed upon ſuch diſtinctions of character, as (with reference to a different ſubject) are anxiouſly delineated in the article immediately following:—That if the claimant could be ſaid to have at any time *made his election* in favor of the United States under the declaration of independence, and ſo departed for a time ſubſequent to that event from his native allegiance, (the contrary of which appears to have been the caſe) his return to, and having been *on the ſide* of his ſaid native allegiance *at the peace*, would have ſecured to him the benefit of the ſaid *fourth* article of the treaty.—That accordingly, having been on the ſide of his Britannic majeſty at the date of the treaty of peace, and being a natural born ſubject of his ſaid majeſty, not barred by the acceptance of citizenſhip, from the right of claiming againſt the United States, the claimant is entitled under the treaty of amity, to complain to this Board of the ſaid act of attainder and confiſcation before recited, as being a *lawful impediment* within the deſcription of the *fourth* article of the treaty of peace, and the *ſixth* article of the treaty of amity, to the recovery of ſuch debts, as he ſhall prove to the ſatisfaction of the Board, within the meaning of the ſaid treaties:

And in regard to the ſtatement before recited of the agent for the United States, which has been referred to in the Board as follows, "even in Weſtmin-"ſter hall the judges have *frequently* declared, that the acts of the legiſlatures "of the ſeveral States which were paſſed during the late war, could be regarded "by them in no other light than acts of independent States." That no caſe has ever occurred in the courts of Weſtminſter hall where the above general propoſition was ſo declared; and occaſions have not *frequently* occurred for conſidering that ſubject; nor is it the practice of the judges to enter upon the diſcuſſion of matter not neceſſary to the termination of the queſtion before them: But whatever has been ſaid by any of the judges in Weſtminſter hall which may be held as applicable to the preſent queſtion, will be found correctly to agree with the principles and concluſions now declared by the Board;—the ſaid principles and concluſions containing nothing inconſiſtent with that perfect reſpect which is due to the independence of the United States, as the ſame was recognized on the part of his Britannic majeſty, by the *firſt* article of the treaty of peace.

And the ſaid reſolution having been read Mr. FITSZIMONS and Mr. SITGREAVES withdrew.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

COMMISSIONERS' OFFICE,
Philadelphia, 9th July, 1799.

PRESENT,

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. SITGREAVES,
Mr. GUILLEMARD.

In the Case of DANIEL DULANY.

Reasons for withdrawing from the Board on the occasion of the order proposed to be made, on the 27th of February 1799, in this case.

1. BECAUSE the said proposed order appears to be intended to carry into effect the proceeding in this case of the 6th August 1798, notwithstanding the protest of Mr. FITZSIMONS in relation to that proceeding.

2. *Because*, from the preliminary reference to certain orders of the 14th and 18th December and the 8th January last, which orders although not assented to by us were not *then* deemed of sufficient importance to induce a separation from the Board, there is ground to apprehend that our presence on such occasions has been and therefore may again be construed into an acquiescence in the validity of the proceeding aforesaid of the 6th August 1798; which construction we desire to remove and to avoid.

3. *Because*, being perfectly satisfied, on the claimant's own shewing, that the treaty of amity does not give to the Board any cognizance in this case, we are determined not to participate by our presence in the exercise of a power which we believe has not been vested in us.

THOMAS FITZSIMONS,
S. SITGREAVES.

In

In the ſame Caſe.

Declaration, by Mr. SITGREAVES, of the reaſons for his opinion, that this caſe is not ſubmitted by the treaty to the deciſion of the Board.

AS I was not a member of the Board on the 6th of Auguſt laſt; and as no occaſion, except the preſent, has ſince occurred, which I deemed to be proper for the explanation of my opinion on this caſe; I now deſire to put upon the minutes ſome reaſons which have influenced me to concur in the third propoſition of the preceding declaration.

This claim, as I collect from the averments or the admiſſion of the claimant, appears to be preferred by him as reſiduary legatee of Ann Taſker, for loſs which he alledges that he has ſuſtained by the reduction in value of the reſiduum of the perſonal eſtate of the teſtatrix; inaſmuch as many debts contracted to her were tendered to the executor and received by him, in paper money which had depreciated, and which is ſaid to have been within the proviſions of an act of the legiſlature of the State of Maryland, paſſed in 1777, whereby it was enacted, that bills of credit of a certain deſcription "ſhall paſs current and be received in payment "and diſcharge of all manner of debts;" and further that if any creditor ſhall refuſe to receive the ſaid bills of credit, when tendered in payment of any debt, ſuch creditor ſo refuſing ſhall forever be barred from ſuing for or recovering ſuch debt, or ſo much thereof as ſhall be tendered as aforeſaid, and the ſaid debt or ſo much thereof as ſhall be tendered ſhall be forever extinguiſhed; and if after ſuch tender and refuſal, the creditor ſhall refuſe on demand to give up the evidence of the debt or to give a diſcharge, it ſhall be lawful for the debtor to ſue for and recover his damages not exceeding the ſum due, with coſts of ſuit.

It appears that Ann Taſker the original creditor, and the debtors were inhabitants of Maryland, that the debts were contracted and payable in Maryland and that Daniel Dulany the elder, the executor, was a citizen of Maryland and ſo continued from the date of the letters teſtamentary until his death ſince the peace, in ſolvent circumſtances, ſufficient to meet all pecuniary reſponſibility on account of his executorſhip, that the money aforeſaid was paid to the ſaid executor before the peace, and that the executor accepted the ſaid payments in diſcharge of the ſaid debts, and cancelled and delivered up the obligations and other evidences thereof or gave acquittances to the debtors.

Neither the treaty of peace nor the treaty of amity, provided for the retribution of all loſſes which grew incidentally out of the war. The ſtipulation of the treaty of

of peace, is ſpecial and reſtricted to creditors only, " *creditors* on either ſide ſhall " meet with no lawful impediment to the recovery of the full value, in ſterling " money, of all bona fide debts heretofore contracted:"—The ſixth article of the treaty of amity reciting that "it is alledged by divers Britiſh merchants, and others " his majeſty's ſubjects, that debts to a conſiderable amount, which where bona " fide contracted before the peace, ſtill remain *owing to them* by citizens or inha- " bitants of the United States," and that by reaſon of lawful impediments ſince the peace, the recovery of the ſaid debts, has been delayed or the value and ſecurity thereof impaired, " ſo that by the ordinary courſe of judicial proceedings, the " *Britiſh creditors* cannot now obtain and actually have and receive full and adequate " compenſation for the loſſes and damages which they have thereby ſuſtained," ſtipulates that the United States in all ſuch caſes will make full compenſation for the ſame to the ſaid *creditors*, a claimant therefore muſt be a *Britiſh creditor* of a debt which ſtill remains *owing to him* by a citizen or inhabitant of the United States.

The principle then, which is aſſumed on this occaſion lies at the root of the claim, to wit, " That the claimant Daniel Dulany, a Britiſh ſubject, became immedi- " ately on the death of the teſtatrix, Ann Taſker, as reſiduary legatee under her " will, entitled to and creditor in equity in, all debts due to the teſtatrix at the " time of her death."—I am of opinion that nothing can be more incorrect than this propoſition; that the converſe thereof is incontеſtably true, and that by the known and eſtabliſhed rules of law and equity, all the right and intereſt and power of the teſtatrix, in and over the debts which were due to her, devolved upon the executor, who from the moment of her deceaſe, became both in law and equity, excluſively the creditor of thoſe debts, he alone could lawfully demand payment, inſtitute ſuits for their recovery, or give acquittances to the debtors. the reſiduary legatee could do neither, the releaſe of the reſiduary legatee could not diſcharge the debtor againſt the action of the executor; and it is inconceivable that he can be a creditor who has no power to acquit or diſcharge the debtor:—A reſiduary legatee has a right only to what remains after payment of debts and other legacies; and the amount of his right muſt depend upon an account to be taken and a liquidation of the whole; which neceſſarily pre-ſuppoſes the right of the executor to collect, to alien, and to diſpoſe of the aſſets, in order to make ſatisfaction for thoſe demands which muſt precede the reſiduum. The title of the executor is ſpecific to each and every part of the perſonal eſtate, the intereſt of the reſiduary legatee is only in the general ſurplus, after the adminiſtration is complete. He is certainly not entitled to all the *debts*, becauſe other demands muſt be firſt paid out of them; and of what particular debts will it then be ſaid that he is the creditor, by reaſon of his reſiduary intereſt? Is it the debt of A or of B? Is it the debt which was diſcharged in ſpecie, or that which was paid in depreciated paper? The truth is, that he has no right to any, no power over any;—that between him and the debtor there is no ſort of privity or relation; while between the executor and the debtor the privity continues in all the force in which it ſubſiſted between the original parties, that the right of the executor is preſent, poſitive, and ſpecific; the demand of the reſiduary legatee is future, contingent, and uncertain.

I

I believe it therefore to be very clear that the executor, and not the reſiduary legatee was in law and in equity, the abſolute creditor of the debts due to the eſtate of Ann Talker, this executor, who became veſted with her full power over the debts, as well by her own ſpecial confidence and appointment as by the known and ſettled operation of law, was a citizen of the State of Maryland, and not a Britiſh ſubject. He was entitled to no exemption from the general effect of the laws to which he and the debtors were equally parties, or to any benefit of a ſtipulation made in favor of the ſubjects of another nation.

The reſiduary legatee was not the creditor of any one debtor---he was entitled merely to the reſiduum after a due adminiſtration. If, to his prejudice, the eſtate had not been duly adminiſtered, the executor has been ſufficiently reſponſible, and the remedy againſt the executor unimpaired by any legal impediment. But if circumſtances occurring in the courſe of a faithful adminiſtration, have leſſened the amount which he expected the reſiduum to produce, it is a misfortune which has grown out of the war, but to which the treaties have no reference.

Nor is this a merely *formal* objection: It is properly admitted by the claimant, "that the treaty made between his Britannic majeſty and the United States of "America, bearing date the 3d day of September 1783, could not of itſelf revive "his remedy for the recovery of ſuch debts; the ſaid treaty reviving his remedy "only in thoſe caſes where the ſuits could be ſuſtained in the name of a ſubject "of his ſaid Britannic majeſty." And it is ſubſtantially true that the treaty of 1794, provided for compenſation to ſuch creditors only whoſe remedy was reſtored or revived by the ſtipulation of the former treaty; which can, by no equitable conſtruction be deemed to require that the eſtabliſhed forms of judicial proceeding ſhould be altered in favor of Britiſh creditors, or by particular or partial regulations be made to bend or yield to the ſpecial caſe of every individual who had conſequentially or incidentally ſuſtained damage by the war. The extravagance of ſuch a doctrine will be illuſtrated by ſuppoſing that in this caſe, there had been two or more joint reſiduary legatees, of whom all except the claimant were American citizens. By what ſtrange or complicated perverſion of the eſtabliſhed modes of ſuit could the adminiſtration of juſtice in the courts of the country be ſo modified as to meet the demand of a caſe thus circumſtanced, and agreeably to the doctrine contended for on the part of the claimant, ſecure his alledged right without impairing the operation of the law in regard to the citizens who would confeſſedly be bound by it in all its conſequences? It was in effect agreed by the treaty of peace, that a free courſe ſhould be allotted to the judicial proſecution of the demands of creditors on either ſide, but not that the courſe of judicial proceeding ſhould be diverted or led aſide from its ordinary channel in every perplexed or faneiful direction which might be thought neceſſary to facilitate the cauſe of every claimant. It agreed in effect to reſtore the creditor to the ſame ſituation in which he would have been, if no impediments had been interpoſed to prevent his remedy; but not to deviſe or invent new remedies inconſiſtent or incompatible with the whole ſyſtem of juriſprudence. It operated as a repeal of the legiſlative acts which had

 been

been made impairing the right of British creditors to avail themſelves of the ordinary modes of relief; but did not require that laws ſhould be paſſed to afford them modes of relief unknown before the conteſt between the two nations.

As the preceding reaſons, deduced from facts which are peculiar perhaps to this caſe, are ſufficient to determine my judgment and conduct herein, I forbear to enter into the diſcuſſion or conſideration of other queſtions which have been raiſed and which are common to a large claſs of caſes. I only think it proper, in order to prevent miſapprehenſion, to declare that it is perfectly clear to my underſtanding that the expreſſion, "lawful impediment," in the treaty of peace, can mean only impediments created by the law, and cannot by fair interpretation be extended to include impediments of fact or impediments directly ariſing from the act of the creditor or his authorized agent.

S. SITGREAVES.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

To the Commiſſioners for carrying into Effect the Sixth Article of the Treaty of Amity, Commerce and Navigation, concluded between his Britannic Majeſty and the United States of America.

The memorial of John Bowman, William French, Andrew Buchannan, James Hopkirk, Ronald Crawford and John M'Kee, who ſurvived Alexander Speirs deceaſed, merchants trading under the firm of Alexander Speirs, John Bowman and company, of Glaſgow.

RESPECTFULLY SHEWETH,

THAT the memorialiſts are and always have been ſubjects of his Britannic majeſty.

That the ſaid houſe of Alexander Spiers, John Bowman and company, for many years prior to the American revolution, carried on extenſive buſineſs as merchants in the then colony now State of Virginia, where they had eſtabliſhed fourteen different ſtores under the management and direction of their factors.

That

That at the time their factors were generally obliged to leave Virginia under the act and proclamation for enforcing the ſtatute ſtaple, there were numerous and extenſive debts before then bona fide contracted, due and owing to them by different citizens of the United States, at each of their ſaid ſtores, all of which with the intereſt thereon accrued, ſtill remained due owing and uncollected, at the definitive treaty of peace between Great Britain and the United States.

Your memorialiſts further beg leave to ſtate and ſhew, that notwithſtanding every exertion and induſtry of your memorialiſts through their agents and collectors employed and ſent out at the peace and continued ever ſince, a very large part of the ſaid bona fide debts ſtill remain due and owing by, and uncollected from divers citizens of the States of Virginia and North Carolina, whoſe eſtates were reputed and believed ſolvent at and ſince the peace; that the recovery of the ſaid debts has hitherto been prevented by the lawful impediments in the ſaid States, ſince the peace, which have heretofore been ſtated to the Board, and that full and adequate compenſation for the ſame cannot now be actually obtained, had and received in the ordinary courſe of juſtice; and that the loſſes and damages they have ſuſtained, have not been occaſioned by the manifeſt delay, negligence or wilful omiſſion of your memorialiſts.

True and accurate ſtatements of the principal ſum of each particular debt yet due, outſtanding and uncollected, the names and reſidence of the ſeveral debtors, the nature of each demand, and the dates of the ſpecialties notes and ſigned ſettlements accompany this memorial, and your memorialiſts pray the ſame may be taken conſidered and received as forming part thereof.

The ſaid ſtatements or ſchedules are deſignated by the marks and figures as follow:

N°. 1. Liſt of debts due to Alexander Speirs, John Bowman and company, merchants of Glaſgow, at their Peterſburg ſtore.—Andrew Johnſton, *jun.* laſt factor.

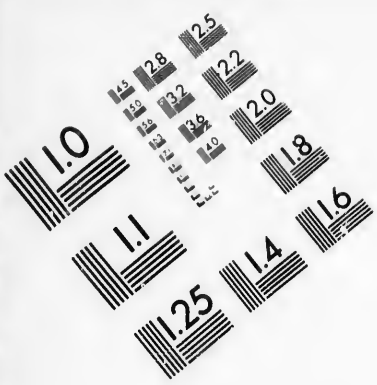
2. $\overset{O}{SB}$ Debts due at their Oſborne ſtore.

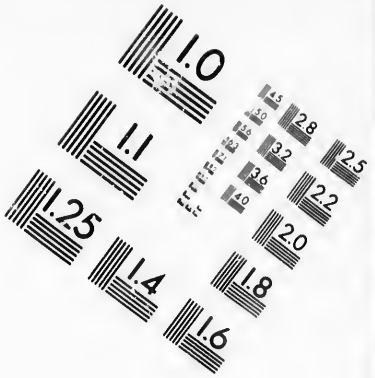
3. $\langle W \rangle$ Debts due at their Peterſburg ſtore; Emanuel Walker laſt factor.

4. SB Debts due at their Warwick ſtore.

5. $\overset{R}{SB}$ Debts due at their Manchester ſtore.

6. $\overset{E}{SB}$ Debts due at their Prince Edward ſtore.





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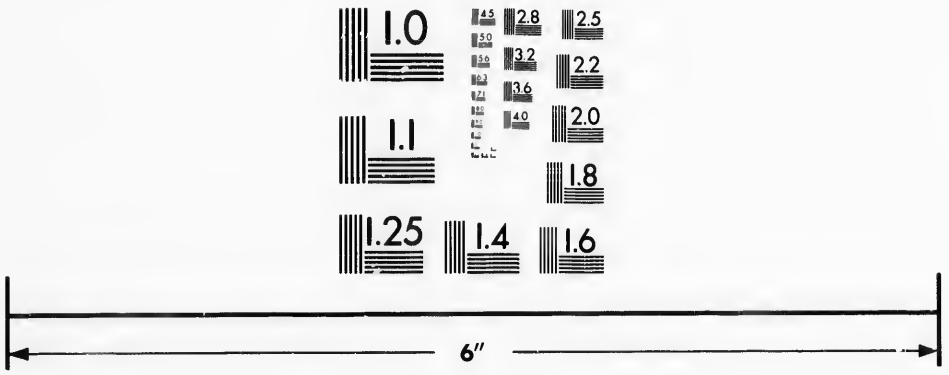

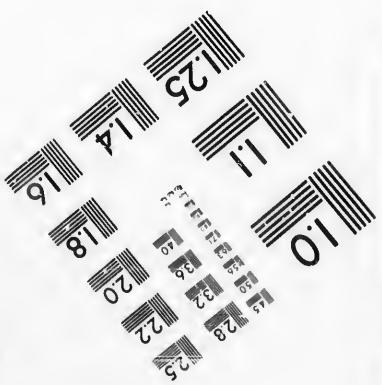

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7. SB^{C} Debts due at their Charlotte county ſtore.

8. SB^{L} Debts due at their Lunenburg ſtore.

9. SB^{H} Debts due at their Halifax ſtore.

10. SB^{D} Debts due at their Cumberland ſtore.

11. SB^{M} Debts due at their Mecklenburg county ſtore.

12. SB^{B} Debts due at their Bedford county ſtore.

13. SB^{H} Debts due at their Amhurſt ſtore.

14. SB^{S} Debts due at their Richmond ſtore.

While your memorialiſts pray that this their claim may at preſent be received for each and every of the principal ſums ſtated in the above liſts, with legal intereſt from the times when by the ſpecial contracts or the cuſtom of the trade intereſt became chargeable, to prevent all miſunderſtanding or any imputation on them, of claiming any farthing not juſtly due and owing, they think it neceſſary here to ſtate, that the foregoing liſts have been made out for ſome conſiderable time paſt; that in a concern of this magnitude, a regard to their own intereſt as well as a moſt ſincere deſire to leſſen the burthen of the United States, dictated the propriety of keeping their agents and collectors employed in endeavours to collect as much as poſſible from the original debtors or their repreſentatives; that they are yet employed in that buſineſs, and your memorialiſts are not without hopes that conſiderable credits may yet be given on the above liſts.

Your memorialiſts therefore pray, that they may hereafter be indulged in the priviledge of filling additional ſchedules in which the above named debtors will be claſſed according to the nature of the demand, the circumſtances of the debtor at the peace, during the exiſtence of lawful impediments, and at preſent, together with the neceſſary calculations in which ſchedules credit will be duly and faithfully given for all ſuch ſums of money which may have been, or yet may be collected, and from which will be omitted all ſuch demands, if ſuch there are, for which your memorialiſts on the moſt mature conſideration, ſhall not think themſelves juſtly and conſcientiouſly entitled to compenſation within the true intent, ſpirit and meaning of the treaty.

WILLIAM MOORE SMITH,
General agent for claimants.

16*th October*, 1798.

To the

To the Commiſſioners for carrying into Effect the Sixth Article of the Treaty of Amity, Commerce and Navigation, concluded between his Britannic Majeſty, and the United States of America, on the 19th November 1794.

The anſwer on the part of the United States to the memorial and claim of John Bowman, William French, Andrew Buchanan, James Hopkirk, Ronald Crawford and John M'Kee, who ſurvived Alexander Speirs, deceaſed, Merchants trading under the firm of Alexander Speirs, John Bowman and co. of Glaſgow.

NOT admitting or confeſſing that the ſeveral debts or any of them ſet forth by the claimants, were juſtly due at the date of the execution of the treaty of peace, to wit—On the third day of September 1783, or remain at this time due, nor admitting that the ſeveral perſons ſtated to be debtors or any of them were citizens or inhabitants of any one of the United States when the ſaid treaty of peace or when the treaty of amity was finally concluded, but ſaving and reſerving all juſt exceptions to the proofs of theſe matters when any ſuch ſhall be offered to the Board and the benefit of repelling them by other teſtimony if neceſſary, the agent for the United States will proceed to anſwer the matters in the ſaid claim ſet forth ſo far as he has been informed of the ſame.

On the liſt of the claimants, Brunſwick ſtore, No. 6, Lewelling Williamſon appears to be a debtor to the claimants to the amount of £ . From an execution iſſued in the name of the claimants, a copy of which accompanies this anſwer, it appears that the claimants obtained a judgment againſt Lewelling Williamſon and on that judgment iſſued the beforementioned execution, teſted the 26th of June 1797, which was endorſed to be diſcharged on the payment of 500 dollars, with intereſt from the firſt of September 1783 until paid, and nineteen dollars and ſixteen cents coſts. To which writ the marſhal of Virginia on the 13th of November 1797 returned, that he could find no goods or chattels of the defendant's whereof to make the debt and coſts.

From the information communicated to the agent for the United States, it appears that Lewelling Williamſon was ſolvent at the peace in 1783, and continued ſo a ſhort time thereafter, when he became inſolvent during the exiſtence of legal impediments in Virginia, as determined by the Board in the claim of Cunningham and

and company and is inſolvent at this time. With a belief of the truth of theſe facts and on proof of ſuch facts as it is neceſſary for the claimants to produce to entitle them to claim, to wit—That they were all Britiſh ſubjects at the peace and at the concluſion of the treaty of amity, and that the debt was contracted before the peace, the agent for the United States admits that the United States are chargeable, with the amount recovered againſt Lewelling Williamſon, viz. five hundred dollars with intereſt from the 1ſt January 1783 till paid, after the rate of five *per centum per annum*, and on the claimants giving ſuch an aſſignment of this debt to the United States as the Board ſhall direct, the ſame ought to be paid by the United States to them, at ſuch time and place as ſhall be awarded by the Board.

JOHN READ, JUN.

17th of April, 1799. *Agent general for the United States.*

The further anſwer on the part of the United States to the memorial and claim of the ſurviving partners of Speirs, Bowman and company.

ON the liſt of the claimants Richmond ſtore John Smith appears to be a debtor.

From an execution iſſued in the name of the claimants, a copy of which accompanies this anſwer which is ſuppoſed to be for the ſame debt as that ſtated to be due by the ſaid John Smith, it appears that the claimants obtained a judgment againſt John Smith in the circuit court of the United States for the diſtrict of Virginia and on that judgment iſſued, the beforementioned execution teſted 30th January 1798, directed to the marſhal of that diſtrict commanding him of the goods and chattels of John Smith to cauſe to be made nine hundred and ſix dollars and fifty-two cents, and twenty-four dollars and forty-three cents for damages and coſts for the non-performance of a certain promiſe and aſſumption whereof the ſaid John Smith was convicted as appears by the records of that court. To which writ the marſhal returned he could find no goods or chattels whereof to make the amount, or any part of this execution.

From the information communicated to the agent for the United States it appears that John Smith was ſolvent at the peace in 1783, and continued ſo a ſhort time thereafter,

thereafter, when he became infolvent during the exiſtence of legal impediments in Virginia as determined by the Board in the claim of Cunningham and company, and is infolvent at this time. With a belief of the truth of theſe facts and on proof of ſuch facts as it is neceſſary for the claimants to produce to entitle them to claim, to wit—That they were all Britiſh ſubjects at the peace and at the concluſion of the treaty of amity, and that the debt was contracted before the peace; the agent for the United States admits, that the United States are chargeable with the amount recovered againſt John Smith, to wit—Nine hundred and ſix dollars and 52 cents with intereſt from the judgment, after the rate of five *per centum per annum*, and on the claimants giving ſuch an aſſignment of this debt to the United States as the Board ſhall direct, the ſame ought to be paid by the United States to them at ſuch time and place as ſhall be awarded by the Board.

JOHN READ, Jun.

Agent general for the United States.

9th of May.

Additional Memorial and ſpecial averments for evidence in the claim of Speirs, Bowman and company, for compenſation for debts contracted at the following ſtores, viz.

LUNENBURG,
HALIFAX and
MECKLENBURG,
} *In Virginia.*

THE memorialiſts reſpectfully referring to their memorial and claim already before the Board, and to the ſeveral matters and things therein contained, more particularly to their engagement to arrange their ſeveral debts under proper claſſes, ſo that an inveſtigation of them might be rendered more eaſy, and to their requeſt for time to make ſuch arrangement, beg leave now to ſtate that in the ſeveral ſchedules which accompany this their additional memorial, they have omitted every debt ſuppoſed bad at the peace, or which might probably have been loſt if no lawful impediment had exiſted ſince the peace, they have ſtated only the actual loſs ſuſtained upon many debts partially paid ſince the peace, and they have claſſed every debt or part of debt claimed in the following order:

A.

A. Debts on open accounts, ſigned accounts, or notes without ſeal, &c.

Theſe debts cannot be recovered for the following reaſons:

1. The open accounts can only be proved by the ſtore books, which the courts will not now admit as evidence, and which would have been admitted, and were never diſputed before the war.

2. The ſigned accounts, notes, &c. are all barred by the act of limitation, and were ſo barred during the exiſtence of lawful impediments, but were not ſo barred at the peace, if the courts had been open.

B. Debts on ſpecialties, ſolvent at the peace and become inſolvent during the exiſtence of lawful impediments.

C. Debts on ſpecialties from perſons yet reputed ſolvent, from whom a recovery may probably be had, except ſuch deductions of intereſt as juries may chuſe to make and courts to ſanction.

D. Debts on ſpecialties from perſons who are dead, and their property divided, or who have removed during the exiſtence of the impediments or whoſe reſidence and preſent circumſtances are unknown.

E. Loſſes ſuſtained by deductions of intereſt on debts ſettled by payment, or giving new bonds without ſuit.

F. Loſſes ſuſtained by deductions of intereſt made by juries, &c.

In a column of remarks, and oppoſite to the name of each debtor, are ſtated ſuch facts as are deemed material, and the names of the witneſſes by whom the ſame may be proved.

The following is the teſtimony by which the claimants expect to ſupport their claims and is the beſt now in their power.

LUNENBURG STORE.

John Patterſon their factor at the ſaid ſtore is dead; his hand writing can be proved by Chriſtopher M'Cormic, Eſq. of Peterſburg and Jonathan Patterſon, who has removed to Kentucky to a regular ſet of books—James Burns was his aſſiſtant; it is not known what is become of him; his hand writing can be proved by the above gentlemen. There is no perſon who can prove the delivery of the goods, and the books are the only evidence of the open accounts. Henry Stokes, Peter Stokes and others of Lunenburg; John Ballard, Newman Dorteh and others of Mecklenburg, and Jonathan Patterſon now of Kentucky, can prove the ſolvency, inſolvency, deaths,

deaths, removals, &c. as ſtated in the remarks. Their affidavits are already taken ex parte, and the accounts have all been correctly copied and ready to be compared with the books, in the preſence of any perſon who may be appointed for that purpoſe. The ſum total claimed at this ſtore is fourteen thouſand ſix hundred and forty-five pounds, fifteen ſhillings and five pence halfpenny, with additional intereſt from the firſt day of June 1798, to which time intereſt is calculated in the ſchedule.

John Patterſon and James Burns aforeſaid, are the witneſſes to moſt of the bonds; Henry Stokes and others to ſome few—Newman Dortch, at preſent in Philadelphia, can prove the ſeveral deductions of intereſt that they were ſubmitted to from the conviction that it was the utmoſt ſum that could be obtained in any caſe even upon bond, and that moſt of the debts ſo ſettled at this ſtore were accounts on which nothing could be recovered at law.

HALIFAX STORE.

The amount of loſs at this ſtore for which compenſation is claimed, is twelve thouſand three hundred and twelve pounds ſix ſhillings and ten pence half penny, with additional intereſt from the firſt day of June 1798, as aforeſaid.

John Calder the company's factor at this ſtore, is dead. Hector M'Neil who was the aſſiſtant, lives in Peterſburg Virginia, and is the witneſs to the ſigned ſettlements generally, he can prove the books and the hand writing of ſaid Calder, who is a witneſs in ſome inſtances. Remarks are alſo pretty generally made oppoſite to the names of the debtors, the truth of which can be eſtabliſhed by Hampton Wade, James Boyd and others of Halifax, William Willis and Spencer Speed of Mecklenburg, and Peter Stokes of Lunenburg, and Newman Dortch, above named.

MECKLENBURG STORE.

The amount of loſs at this ſtore for which compenſation is claimed is nine thouſand one hundred and ninety-two pounds three ſhillings and one farthing with additional intereſt from the firſt day of June 1798, as aforeſaid.

Thomas Banks the company's factor at this ſtore lives in Manchеſter Virginia; he is very infirm and in the different ſuits brought by the company in Mecklenburg, his depoſition has been taken on account of his infirmity.

John Brown was his aſſiſtant; it is not known what is become of him—they are the ſubſcribing witneſſes to the ſpecialties &c. generally at this ſtore, and the hand writing of Brown can be proved by Mr. Banks.

Remarks are made to the names of the different debtors at this ſtore, the truth of which can be proved by John Holmes, John Ballard, Lewis Parkam, Thomas Burnett, Spencer Speed, and others of Mecklenburg, and the ſaid Newman Dortch. At this ſtore there is a claim under claſs F for deductions of intereſt by judgments and verdicts in fifteen ſuits. The records of all thoſe ſuits are obtained and ready to be delivered herewith. In every other caſe at each of the ſaid ſtores where any matter of record is ſtated in ſupport of the claim, copies will be procured as ſoon as poſſible they have long ſince been applied for and promiſed to be made out as ſoon as the officers can obtain time for the purpoſe.

The ſaid Newman Dortch who ſuperintended the tranſcribing and arranging theſe liſts and the copying and comparing the accounts with the original books can alſo prove that no claim is brought forward therein for any debt deemed bad or ſuſpicious at the peace.

Theſe three ſtores being near each other and the witneſſes offered in ſupport of the claim being in the ſame neighbourhood, the claimants have joined them in this ſupplimentary memorial particularly as all the books of the ſaid ſtores are now at one place, the houſe of Mr. Thomas Vaughan in the county of Mecklenburg.

The memorialiſts in filing their ſupplimentary memorial and averments for the claims at their other ſtores, will purſue the ſame conduct as in theſe, and if any improvement in the arrangement ſhall appear practicable, in the courſe of examining into the preſent claim and before the other ſupplementary memorials are finiſhed ſo as to facilitate the enquiries it will be adopted, if it can be ſo done without a loſs of time which would over-balance the benefits to ariſe from ſuch improvement.

WILLIAM MOORE SMITH,
General agent for claimants.

23d April, 1799.

To the Commiſſioners for carrying into Effect the Sixth Article of the Treaty of Amity, Commerce and Navigation, concluded between his Britannic Majeſty and the United States of America, on the nineteenth of November 1794.

The anſwer on the part of the United States to the additional memorial and ſpecial averments for evidence in the claim of Speirs, Bowman and company for debts contracted at their Lunenburg, Halifax and Mecklenburg ſtores.

THE incomplete ſtate of the original memorial and the ſchedules of debts filed with it by theſe claimants, rendered it improper on the part of the United States, to anſwer the claim in that State, and more particularly as the claimants prayed

prayed to be indulged in the priviledge of filing additional ſchedules in which the debts were intended to be properly claſſed according to the nature of the demands, and other information given which was neceſſary to a proper underſtanding of the claim. This the claimants have done with reſpect to three of their ſtores, to wit. the Lunenburg, Halifax and Mecklenburg ſtores in their additional memorial which will now be obſerved on.

The debts claimed of the United States as due at the three ſtores before mentioned, are divided into ſix claſſes amounting with intereſt to the 1ſt June 1798, to £36,15. 5 4½.

The firſt claſs of debts on liſt A are repreſented to be due on *open accounts, ſigned accounts*, or notes without ſeal &c and that they cannot be recovered becauſe the ſtore books will not now be admitted as evidence, which would have been admitted before the war. That the ſigned accounts, notes &c. are all barred by the acts of limitation, and were ſo barred during the exiſtence of lawful impediments, but were not ſo barred at the peace. With reſpect to theſe debts, it muſt appear that the operation of laws in Virginia contrary to the treaty of peace, have impeded the recovery of them, and that the ſame are not recoverable in the ordinary courſe of juſtice that payment has been demanded by perſonal application to the debtors, and if denied, that recourſe has been had to ſome tribunals of juſtice having competent juriſdiction, which recourſe has been unſucceſsful, even though lawful impediments have exiſted in Virginia for a certain ſpace of time, yet ſince the adoption of the new conſtitution in 1789, there have been none. At all times perſonal application might have been made to the debtors, and it is to be preſumed they would have made no difficulty in the caſes of accounts or ſettlements, if the balances were really due.

The claimant in his original memorial ſtates that " notwithſtanding every exertion " and induſtry of the claimants through their agents and collectors ſent out after " the peace, a large part of the ſaid debts remains uncollected." The agent for the United States inſiſts that the claimants be required to produce proof of their agents, having uſed " every exertion and induſtry" to collect theſe debts for having ſaid they uſed every exertion and induſtry to collect their debts it is reaſonable to require proof of it. Nothing would be more unreaſonable than to make the United States pay claims againſt individual citizens, to whom the creditors have neither actually or legally applied for payment, and to whom they have never given notice that ſuch claims againſt them, are in exiſtence.

As to the aſſertion in the claim that the ſtore book which was never diſputed before the war will not now be admitted to prove their open accounts. It is obſerved that the acts of 1748 and 1765, which permitted this deſcription of evidence, which is unknown to the common law never have been repealed and exiſt at this moment in full force relative to theſe debts ; and if the claimants have

not

not the means under thoſe laws of proving their debts more than they had before the war, it is becauſe the requiſites of thoſe laws have not been complied with, and is attributable to their laches. As this ſubject is very fully obſerved on in the anſwer in the caſe of Cunningham and company, from page thirty-two to page thirty-ſix, both incluſive; the agent for the United States will reſt ſatisfied with referring the Board to that argument.

The operation of the acts of limitation on this deſcription of debts has been remarked on in the anſwer to the claim of Dinwiddie, Crawford and company, under the head of their upper Mecklenburg ſtore and in other caſes to which the agent for the United States prays leave alſo to refer the Board.

2d. As to the ſecond claſs of debts due on ſpecialties where the debtors were ſolvent at the peace and became inſolvent during the exiſtence of lawful impediments. If it be ſatisfactorily proven to the Board on the part of the claimants that the legal impediments decided by the Board to have exiſted in Virginia contrary to the treaty of peace prevented the recovery of theſe debts, that each debtor was ſolvent at the peace; and became inſolvent during the exiſtence of thoſe impediments, and is ſo now, and that the ſum ſtated to be due from each debtor is juſtly due; in each and every ſuch caſe it is admitted, the United States are reſponſible to the claimants except for the intereſt during the war; but this admiſſion is not meant to wave what has been before contended that ſuits [illegible] brought as well for aſcertaining the amount as to prove that the payment is not attainable from the debtor, or to excuſe the claimants from the neglect of not making perſonal application for the debts.

3d. As to the third claſs of debts on ſpecialties from perſons yet reputed ſolvent from whom a recovery may probably be had except ſuch deductions of intereſt as juries may chooſe to make and courts to ſanction. It has been uniformly contended on the part of the United States that claimants are bound by a fair interpretation of the treaties, and by the principles of common juſtice, to exert to their debtors to recover from them all that is in their power, that if any [illegible] remains due after this for which a claim can be ſupported under the treaty of amity, that then and only then can a claim be made before the Board for ſuch deficiency. The ſtipulations of that treaty never impoſed on the United States the collection of all outſtanding Britiſh debts which had been contracted before the late war and were remaining due from American citizens to Britiſh ſubjects. It is not denied that the creditors loſs deſcribed in the treaty muſt be fully compenſated: But that part of a debt cannot be conſidered as loſt which the debtor is able and may be compelled to pay in the ordinary courſe of juſtice.

4th. As to the fourth claſs of debts, repreſented to be due on ſpecialties from perſons who are dead and their property divided, or who have removed during the exiſtence of the impediments, or whoſe reſidence and preſent circumſtances are unknown.

unknown. It is inſiſted on the part of the United States, that although the debtor is deceaſed, and his property has been divided, it does not follow that the United States are to be awarded to pay the debt. By the laws of Virginia the perſonal property of the deceaſed is liable in the hands of his repreſentatives to pay all his debts, and the lands and real property of the deceaſed are liable in the hands of his heirs or deviſees to pay his ſpecialty or judgment debts, and therefore where the eſtate is ſo liable it ought to be purſued by the creditor. Virginia Laws, Reviſal of 1794, page 54. Nor although it has been ſquandered either by the deceaſed in his life time or by his repreſentatives, does it follow that the United States are to be awarded to pay the debt. If the creditor has neglected for a long time to proſecute the debtor, or his repreſentatives when he might have proſecuted them, and in this interval the eſtate has been waſted the loſs ought to remain with the creditor for his wilful laches. The removal of a debtor from one county to another, or from one State to another, or the creditor's want of knowledge at this day of the reſidence and circumſtances of his debtors, cannot form a ſubject of complaint, or give creditors a right to claim compenſation from the United States.

5th. As to the fifth claſs of debts repreſented to be for loſſes ſuſtained by deduction of intereſt on debts ſettled by payment or giving new bonds without ſuit. Theſe deductions it is ſtated were ſubmitted to form a conviction that it was the utmoſt that could be obtained even [illegible] and that moſt of the debts ſo ſettled at the Mecklenburg ſtore were acc[illegible]ſt in theſe caſes where the creditors and debtors reſided in Virginia [illegible] debts were contracted in retail dealing is not juſtly recoverable. I[illegible]actice for juries in Virginia for goods ſold before the war, to allow in[illegible]ſal of which induced the merchants to ſell their goods at higher prices. [illegible]orbitancy of price compenſated for the denial of intereſt which was generally refuſed by the juries.

This ſubject is obſerved upon in the anſwer to Cunningham's c[illegible]e, pages 62 and 63, and what is there ſtated is proved to be true by the letters from the judges, and other learned gentlemen in the juriſprudence of Virginia, laid before the Board by the agent for the United States at different times in that caſe, to which the Board are reſpectfully referred.

6th. As to the claims for loſſes ſuſtained by deductions of intereſt made by juries, &c. This deſcription of claims is ſubmitted to the Board with the obſervations frequently before made on them on the part of the United States.

Some remarks will now be made on the teſtimony by which the claimants expect to ſupport their claim and which they ſay is the beſt in their power.

The Board in their reſolution of the 18th December 1798, "reſolved that "they will receive ſuch evidence only to prove the debts which are the ſubjects of "claim before them as would have been competent and admiſſible to prove the ſame "immediately

" immediately previous to the operation of lawful impediments in the courts of " the States where the debtors at that time reſpectively reſided; unleſs upon ſpe- " cial cauſe firſt ſhewn, and an order of the Board for the admiſſion of evidence " of any other deſcription." To have entitled the claimants to the proof of their book debts in the courts of Virginia the following circumſtances would have been neceſſary. The plaintiff at the trial would have been called on to ſwear or ſolemnly affirm that the matter in diſpute was a ſtore account, and that they had no other means to prove the delivery therein contained. The oath or affirmation is to ſet forth, that the book contains a true account of all the dealings or laſt ſettlement of accounts between the parties, and that all the articles therein contained were bona fide delivered, and that all juſt credits have been given to the defendant. Such book accompanied with the oath or affirmation would have been received as good evidence to prove the delivery of the articles within two years before the ſuit was brought, but not for an article of a longer ſtanding, unleſs the defendant had removed from the county where the debt was contracted, then the time was to be extended to three years. A copy of the book with the like oath or affirmation, would have been received in the place of the book, unleſs the book was required to be produced at the joining of the iſſue. If the creditor who delivered the merchandize was dead, his executor or adminiſtrator on making oath that there were no witneſſes to his knowledge to prove the delivery of the goods, and that the book was found ſo ſtated, and that he does not know of any juſt credit to be given; might give ſuch book and oath in evidence for any articles delivered within the time aforeſaid. The factor of a merchant reſident in Great Britain or Ireland was allowed to take the ſame oath to his book of accounts or to a copy thereof which was admiſſible evidence in like manner and under like limitations, as was impoſed on the creditor.

Each account ſhould exactly appear before the Board, that the date and amount of each item may be ſeen for the purpoſe of aſcertaining what part is within the operation of the acts of 1748 and 1755, to which reference has been made.

Proof of the hand writing of John Patton formerly factor at the *Lunenburg* ſtore, who is now repreſented to be dead, is offered to prove the book debts due at that ſtore. The death of a factor at a ſtore rendering it impoſſible to comply with the requiſites preſcribed in the two acts, as before particularly ſtated, in the like manner as if he had been living, which the proviſions of thoſe laws had in view; the courts in Virginia admit proof of the hand writing of the factor and clerk or aſſiſtant in a ſtore who made the entries in the ſtore books of original entries. In the additional memorial it is not *ſtated that John Patton made the entries in the ſtore books of original entries.* As the proof of this fact would be required in the courts of Virginia to entitle ſuch evidence to be admitted there, ſome ſufficient cauſe ſhould be ſhewn to the Board according to the terms of their reſolution to ſatisfy them to diſpenſe with it, or the Board cannot conſiſtently admit it.

Theſe

These obſervations apply alſo to the evidence to prove the book debts at the *Haliſax* ſtore.

Thomas Banks the company's factor at the Mecklenburg ſtore is repreſented to be ſtill living; if his evidence is to be taken to prove the book debts at this ſtore, it is inſiſted that it ſhould be admitted only in the manner in which ſuch proof would be received in the Courts of Virginia, unleſs ſufficient cauſe is ſhewn to the Board to depart from their reſolution on this ſubject.

JOHN READ, Jun.

Agent general for the United States.

4th June, 1799.

To the Commiſſioners for carrying into Effect the Sixth Article of the Treaty of Amity, Commerce and Navigation, between his Britannic Majeſty and the United States of America.

The Memorial of Charles Oſborne, of Yorkſhire, in the kingdom of Great Britain, Eſquire.

Rrspectfully Sheweth,

THAT your memorialiſt is a natural born ſubject of his Britannic majeſty.

That on the fourteenth day of March 1771, William Nicholls, Phineas Bond and Samuel Mifflin, of the city of Philadelphia, were juſtly indebted to your memorialiſt in the ſum of ſix hundred pounds Pennſylvania currency, for the payment whereof in one year from the date with lawful intereſt at ſix per cent, they executed their joint and ſeveral obligation in the penalty of twelve hundred pounds like money.

Your memorialiſt further ſhews, that William Nicholls died inſolvent; that afterwards in the year 1773, Phineas Bond died leaving aſſets, and Samuel Mifflin died leaving aſſets, and that the repreſentatives of the ſolvent obligors at the treaty of peace

peace between Great Britain and the United States were citizens of Pennſylvania, poſſeſſed of aſſets ſufficient to diſcharge all the debts of the ſaid deceaſed ſolvent obligors.

Your memorialiſt further ſhews, that the principal and intereſt of the ſaid bond remained due and owing at the concluſion of the ſaid peace to your memorialiſt, that the executors of the ſaid Samuel Mifflin not denying their obligation to pay the ſaid principal and the intereſt on the ſame, except intereſt during the war, abſolutely refuſed to pay their equal proportion or half part of the ſaid debt unleſs a deduction of the ſaid war intereſt was made, which your memorialiſt did not think himſelf under any obligation of equity or juſtice to allow.

Your memorialiſt further begs leave to ſtate and ſhew, that a ſuit was thereupon commenced upon the ſaid obligation which came on to trial in the ſupreme court of Pennſylvania in July 1787, a tranſcript of the record of which will be produced, and at the ſaid trial, the jury impanneled to try the iſſue under and in conformity to the expreſs charge of the court, deducted ſix years and an half year intereſt from a debt bona fide contracted before the peace, and then due and owing to the memorialiſt, a ſubject of his Britannic majeſty.

Your memorialiſt further ſtates and admits, that the repreſentatives of the ſaid Phineas Bond did not avail themſelves or attempt to avail themſelves of the advantage of the ſaid verdict but ſo far as the eſtate of the ſaid Phineas Bond was in equity and juſtice anſwerable for one half of the debt aforeſaid, after the inſolvency of the ſaid William Nicholls, the ſame with full intereſt has been ſettled and ſatisfied.

Your memorialiſt ſtates and avers the opinion and verdict aforeſaid to have been a lawful impediment ſince the peace, by which he has actually ſuſtained a loſs of one hundred and ſeventeen pounds money of Pennſylvania, the amount of ſix and an half year's intereſt on the one half the ſaid bona fide debt, and the further loſs of intereſt upon the ſaid £117, at the rate of ſix per cent. per annum, from July 1787, when the ſame according to treaty ought to have been recovered, and would have been recovered but for the lawful impediment aforeſaid.

Your memoraliſt therefore prays, that his claim may be received for £117, Pennſylvania currency, with the intereſt as aforeſaid, and ſuch award made thereon as equity and juſtice ſhall require.

WILLIAM MOORE SMITH,

General agent for claimants.

20th November, 1798.

In

In the Claim of CHARLES OSBORNE.

BEFORE making defence againſt this claim the agent for the United States feels it his duty to repreſent that Charles Oſborne reſides in Great Britain, and it does not appear from any document before the Board that the claim has been made with his privity or conſent or for his benefit, but on the contrary it may have been made at the mere inſtance of a ſtranger who without authority has thought proper to bring forward this claim, to try a queſtion of the moſt momentous conſequences.

The agent for the United States ſubmits to the Board, whether it is not juſt and reaſonable that there be produced, previous to the filing the anſwer of the United States in this caſe, ſome ſatisfactory evidence that the claim has been made with the knowledge and by the direction of Charles Oſborne or his attorney duly authorized.

It is evident that the United States will neceſſarily incur great expences in their defence againſt the many various claims that have been produced; and the agent for the United States believes there can be little doubt, that the Board has not authority in any caſe where the claimant ſhall fail to make good his complaint, to award that he ſhall reimburſe to the United States the neceſſary expences incurred in their defence. This conſideration it is hoped will alone point out the juſtice and reaſonableneſs of requiring ſatisfactory evidence by ſufficient powers of attorney or other documents, that the claim made in the name of an abſentee has been duly authorized by a ſubject of his Britannic majeſty, for his own uſe and benefit and of poſtponing until ſuch evidence ſhall be produced the anſwer and defence of the United States.

By the orders of the Board of the 5th December 1798, and 8th January 1799, claimants are required to lay before the Board the powers of attorney or other authorities by virtue of which claims have been preſented. In but few caſes have theſe orders been complied with. In the preſent caſe it could be immediately known whether Charles Oſborne had authorized any perſon to file this memorial, in his behalf, and whether a power of attorney is now exiſting which gives this authority. In ſuch a caſe where the order of the Board can be immediately obeyed, it is deemed reaſonable it ſhould be, if it cannot, according to the ſpirit of the reſolution of the 15th July laſt, notice of the ſame ought to be given to the Board, that the United States may not be put to the trouble and expence of enquiries which may be uſeleſs from the want of the neceſſary powers to make the claim.

In this caſe the memorial makes mention of a record that is not laid before the Board, and the agent for the United States will take occaſion now to obſerve that in many inſtances the memorials refer to papers *as part thereof*, which are not with them laid before the Board, and frequently thoſe papers are ſo material that anſwers cannot be made before they are inſpected. It would tend very much to expedite buſineſs, if the papers referred to in the memorial *as parts thereof* were at the ſame time exhibited. In ſuch caſes where the complaints are ſo incompletely preſented if the anſwers on the part of the United States are not made, the Board will pleaſe to aſcribe the delay, not to them but to the claimants.

JOHN READ, JUN.

Agent general for the United States.

9th May, 1799.

In the Claim of CHARLES OSBORNE.

IN this caſe the general agent for claimants now files a power of attorney from the claimants to Mr. W. Bond, and in no inſtance has he yet filed a claim unleſs at the inſtance of attornies, in fact regularly conſtituted, or of the parties perſonally preſent or ſome one partner of a firm.

True it is that in moſt inſtances the powers of attorney are in the moſt general and ample form to tranſact all the buſineſs of the grantors in as full and ample a manner to all intents and purpoſes, as if they were perſonally preſent, and in general theſe powers were executed ſhortly after the peace; it is in the correſpondence between the claimants and their attornies, that inſtructions are given to proſecute the claims before the Board.

Moſt of theſe powers will be wanted by the attornies for other purpoſes after the Board may break up. and have hitherto been detained for the purpoſe of collecting as much as poſſible from the debtors, and to produce if called for at any trial of cauſes yet undetermined.

The general agent has long ſince given particular inſtructions to the claimants to ſend out new and ſpecial powers "to make and execute all ſuch releaſes and aſſign-

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" ments as ſhall be directed by the Board, &c." ſome of theſe have arrived and are filed, and duplicates ſince have come to hand.—He is in daily expectation of the reſt, and among them, the ſpecial power from the preſent claimant.

WILLIAM MOORE SMITH,

General agent for claimants.

22d May, 1799.

To the Commiſſioners for carrying into Effect the Sixth Article of the Treaty of Amity Commerce and Navigation, concluded between his Britannic Majeſty and the United States of America, on the 19th November 1794.

The anſwer on the part of the United States to the memorial and claim of Charles Oſborne.

THE memorial repreſents that William Nicholls, Phineas Bond, and Samuel Mifflin were indebted to the claimant by their joint and ſeveral bond dated the 14th March 1771, in £1200 Pennſylvania currency conditioned for the payment of £600 one year from the date of the bond, with lawful intereſt at ſix per cent. per annum. That William Nicholls died inſolvent in 1773. That Phineas Bond and Samuel Mifflin died leaving aſſets. That their repreſentatives were citizens of Pennſylvania, and poſſeſſed aſſets ſufficient to ſatisfy all their debts. That a ſuit was commenced on the ſaid bond in the ſupreme court of Pennſylvania, and on a trial of the cauſe at the June term 1787, the jury in conformity to the charge of the court diſallowed intereſt during the war. The claimant ſtates the opinion of the court and verdict of the jury to have been a lawful impediment ſince the peace, by which he has ſuſtained a loſs of £117 money of Pennſylvania, being for ſix and one half years intereſt, which with intereſt on that ſum from July 1787, forms the amount of the preſent claim.

The defence againſt this claim reſts on the ground, that in the State of Pennſylvania no laws operated againſt the treaty of peace, and the judgment of the court, independent of, and unconnected with any ſuch law, is not of itſelf a lawful impediment within the meaning of the treaties.

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It is not alledged by the claimant that the verdict and judgment of which he complains, was connected with, or dependant upon, any legiſlative act of any of the States contravening the treaty of peace in the State of Pennſylvania, where the debt which is the foundation of this claim was contracted, and where the debtors reſided, no ſuch act of the legiſlature was paſſed or permitted to operate after the concluſion of peace. In the State of Pennſylvania the courſe of juſtice ever ſince the peace, has been as free and unimpeded in reſpect to Britiſh creditors as it was before the war. The demands of Britiſh creditors againſt American citizens which have been proſecuted in the courts of that State, have been judicially decided and aſcertained according to the ſame principles and rules of law and equity that prevailed there before the war; and juſtice has been impartially adminiſtered in thoſe courts without diſtinction of perſons, whether Britiſh ſubjects, or American citizens. The verdict and judgment of which the claimant complains was rendered in the ſupreme court of Pennſylvania, in the ſame form and under the ſame laws which were in force before the war. The contract was originally made ſubject to the laws of Pennſylvania, which ſubmit to the diſcretion of juries and courts the allowance, or diſallowance of intereſt according to equity. The contract has been carried into effect and ſatisfied according to the laws in force where it was made, and no new law whatſoever has been introduced on the ſubject determined by the jury and court. This is all that juſtice required, and more than juſtice the fourth article of the treaty of peace did not require. This treaty is not to be underſtood as requiring the inſtitution of new laws or new tribunals for the recovery of debts contracted before the war. The lawful impediments meant to be removed by the treaty of peace, were impediments proceeding from or connected with *legiſlative acts* ſubſequent to the commencement of hoſtilities. In this caſe the verdict and judgment being entirely independent of any legiſlative act contravening the treaty of peace, is not a lawful impediment in the contemplation of that treaty, but the diſallowance of intereſt being made by a competent tribunal in purſuance of ancient forms, upon principles of equity recognized before the war, is not to be imputed to the operation of a lawful impediment, contrary to the treaty of peace If the matter complained of may be called a loſs, it is not a loſs proceeding from the violation of that treaty. It was intended by the fourth article of the treaty of peace that the courts of juſtice ſhould be completely open to the recovery of Britiſh debts in ſterling value, and the courts being open and no law exiſting contrary to that treaty, all was done that the treaty required.

It may be ſtated as an uncontroverted propoſition, that no loſs or damage is to be retributed by the United States under the treaty of amity, unleſs it has been occaſioned by a violation of the treaty of peace. In thoſe States where no lawful impediments, or in other words no legiſlative acts or ſtatutes containing impediments to the recovery of Britiſh debts had been permitted to operate after the peace, no caſe of loſs or damage ariſing from the verdict of a jury and judgment of a court can have occurred that is embraced by the ſixth article of the treaty of amity. It was not to enquire into and adjuſt the complaints of Britiſh ſubjects for loſſes and damages

damages occaſioned by judgments of courts rendered in States where no legiſlative acts contrary to the treaty ever operated, and which therefore could not have been influenced by any ſuch legiſlative acts, but ſuch loſſes and damages only as had been occaſioned by the operation of *laws* impeding the recovery of Britiſh debts. When the demand of a Britiſh creditor ſhall have been fairly and regularly aſcertained by the judgment of a competent court free from the operation of any legiſlative act contravening the treaty of peace, ſuch judgment is definitive as to the amount of the ſum, principal as well as intereſt; and when ſuch judgment ſhall have been ſatisfied, there can be no foundation for an application to the Board for compenſation for a ſuppoſed loſs ariſing from ſuch a judgment. Legal judgments on the real merits of the demand where no queſtion of lawful impediment is implicated are not liable to be re-examined before the Board.

It deſerves to be attentively conſidered, that there is a material difference between the ſixth and ſeventh articles of the treaty of amity in relation to the loſſes and damages ſubmitted to arbitration by thoſe two articles, as from their ſuppoſed ſimilarity, the former may be executed in a manner very injurious to the United States.

The ſource of foundation of the ſixth article is the operation of legiſlative acts contrary to the treaty of peace, which *had* exiſted, and *had* produced certain loſſes and damages to Britiſh creditors, for which compenſation could not be obtained in the ordinary courſe of juſtice when the treaty of amity took effect.

The ſource or foundation of the ſeventh article is the irregular captures, or *condemnations* of the veſſels and other property of American citizens under colour of authority, or commiſſions from his Britannic majeſty.

The former article repreſents, that the complaints of the Britiſh ſubjects were againſt the *laws* which had impeded the recovery of their debts. The latter article repreſents the complaints of the American citizens were againſt illegal captures or *condemnations*. The expreſſion uſed in the former article is "operation of lawful impediments," that is to ſay, impediments of law or impediments of legiſlative acts. The expreſſion uſed in the latter, is "irregular or illegal captures or *condemnations*," that is to ſay judicial proceedings and ſentences.

The ſixth article of the treaty of amity was not intended to enlarge the rights of Britiſh creditors beyond what they were under the treaty of peace by relieving againſt the judgments of the courts of juſtice upon the real merits of the demands in caſes where no queſtion of lawful impediments had ariſen; but complaints againſt judgments of courts unconnected with laws contrary to the treaty of peace, are not ſubmitted to arbitration and cannot be redreſſed.

The ſixth article does not refer to the ſeventh in any particular; nor has the ſeventh any reference to the ſixth in relation to the *ſubject matter of ſubmiſſion*, although

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in the ſecond ſection of the ſeventh article there is a reference to the ſixth as to the manner of conſtituting a Board and of receiving teſtimony; conſequently the conſtruction of the ſixth article is not to be influenced in any degree by the ſeventh article in relation to the queſtion of re-examining judgments of courts of juſtice between Britiſh ſubjects and American citizens, in which no queſtion of *lawful impediment* has been or could be made; and which were rendered upon the merits of the demands, independent of any laws contrary to the treaty of peace.

In the reſolution of the Board on the queſtion of war-intereſt in Cunningham's caſe it is ſtated, that in deciding againſt an objection to the payment of war-intereſt, they do not preclude, but neceſſarily ſave all objections to the payment of intereſt which may ariſe out of the contract, or *other ſpecial circumſtances of the caſe.*

The foregoing obſervations ſtate a ground of defence conſiſtent with that reſolution which had been made concerning claims ariſing out of debts contracted in Virginia; the legiſlature of which State in the opinion of the Board, had paſſed laws which impeded the recovery of Britiſh debts. During the exiſtence of ſuch lawful impediments in that State, (the period of which the Board has not yet decided) it is admitted that intereſt on the bonded debts is juſtly due, and if not obtainable from the debtors, ſhould be paid by the United States.

The defence here meant to be taken is created by the *ſpecial circumſtances of the caſe;* and is no more confined to a claim for intereſt than to a claim for principal, but is equally applicable to both principal and intereſt. It is grounded on this propoſition, that it is *indiſpenſable*, on the part of the claimant, to ſhew that the loſs for which he applies for compenſation, has proceeded directly or indirectly from a *legiſlative act* in violation of the treaty; otherwiſe the caſe is not ſubmitted to the juriſdiction of the Board. In the claim of Charles Oſborne, no ſuch legiſlative act has been or can be produced, and therefore the agent for the United States relies that the Board will diſmiſs the claim, as not being within the 6th article of the treaty of amity.

JOHN READ, JUN.

Agent general for the United States.

7th June, 1799.

To

To the Commiſſioners for carrying into Effect the Sixth Article of the Treaty of Amity, Commerce and Navigation, concluded between his Britannic Majeſty and the United States of America.

The Memorial of William Shermer, of the Kingdom of Great Britain, Heir, Executor and Reſiduary Legatee of Richard Shermer, late of Higleworth, in the County of Wilts, in the Kingdom of Great Britain.

RESPECTFULLY SHEWETH,

THAT the ſaid Richard Shermer was, and during his life continued, and your memorialiſt is and from his birth has been a ſubject of his Britannic Majeſty.

Your memorialiſt further begs leave to ſtate and ſhew that John Shermer, late of Bliſland Pariſh, New Kent County, Virginia, deceaſed, on the 11th day of June 1766, made his laſt will and teſtament in writing, in due form of law which was duly and legally proved after his death, to wit—On the 13th of February 1775, in which he deviſed and bequeathed the uſe and profits of the whole of his eſtate real and perſonal, to his wife during her natural life, and after death he deviſed the ſame to be equally divided between whoever his ſaid wife ſhould think proper to make her heir, and his brother Richard Shermer who ſurvived the ſaid teſtator, and he appointed his ſaid wife executrix; and Truſton James, Dudley Richardſon, George Booth and Thomas Booth, executors of the ſaid will, with powe and directions to ſell the ſaid eſtate after the deceaſe of his ſaid wife, as by the ſaid laſt will and teſtament, a copy whereof is annexed will appear. Your memorialiſt further begs leave to ſtate and ſhew that Ann Shermer, the wife of the ſaid John Shermer, ſurvived the teſtator ſix days, and on the 15th day of January 1775, ſhe departed this life inteſtate, and without having made any gift, or appointment whatſoever, in conſequence of the power given her in and by the ſaid will.

Your memorialiſt further begs leave to ſtate and ſhew that afterwards, to wit—On the 13th day of February 1775, the will of the ſaid John Shermer was duly proved, the other executors therein named, qualified as ſuch, and ſoon after proceeded to ſell the whole eſtate of the ſaid teſtator, to the amount of eleven thouſand pounds and upwards on credit, taking bonds with ſecurity, payable the 1ſt day of May, 1776.

Your

Your memorialiſt further ſtates, avers and reſpectfully inſiſts, that by the deviſe aforeſaid, nothing more than a life eſtate paſſed to the ſaid Ann Shermer, with a power to make an heir or heirs; that an act of her own was abſolutely neceſſary to be performed to create or deſignate the perſon or perſons who ſhould ſucceed to that part of the ſaid John Shermer's eſtate, over which ſuch power was given to her, that having omitted, neglected or refuſed to exerciſe ſuch power, the ſaid eſtate, on her deceaſe, by the law of England which in this caſe was then the law of Virginia, became the ſole property of the ſaid Richard Shermer, father of your memorialiſt and elder and only brother and ſole heir at law of the ſaid John Shermer, and the ſaid ſurviving executor of the will of the ſaid John Shermer, became truſtee for the benefit and behoof of the ſaid Richard; and the purchaſers of the ſaid eſtate and their ſureties were the real and bona fide debtors of the ſaid Richard.

Your memorialiſt further ſhews, that notwithſtanding the whole proceeds of the ſaid eſtate was juſtly due to the ſaid Richard Shermer, the ſaid executors divided and diſtributed £5,372 19 8½ Virginia currency, one half of the proceeds of the ſaid eſtate among the next of kin of the ſaid Ann Shermer, which diſtribution has been ratified by a decree of the high court of chancery, affirmed by the court of appeals of Virginia, in a ſuit brought by your memorialiſts againſt the ſurviving executor of the will aforeſaid, and the repreſentatives of the next of kin of the ſaid Ann Shermer, which decree is a lawful impediment ſince the peace, preventing your memorialiſt from recovering a debt bona fide, contracted before and ſtill juſtly due and owing to your memorialiſt as repreſentative of his deceaſed father.

Your memorialiſt further begs leave to ſtate and ſhew, that Dudley Richardſon, one of the executors of the laſt will of the ſaid John Shermer and attorney in fact to the ſaid Richard Shermer, was compelled by the laws of Virginia to receive other part of the debts aforeſaid, juſtly due to the ſaid Richard Shermer, amounting to £2677 2 6 Virginia currency, principal, and £199 17 6½ intereſt, in the paper currency of the United States, depreciated to a great degree, inſtead of gold and ſilver currency, part of which he loaned to other citizens of Virginia, and has ſince been recovered according to a ſcale of depreciation eſtabliſhed after the ſaid loan, and other parts amounting to £1546 10, he depoſited in the treaſury of Virginia, and obtained therefor a certificate worth one pound thirteen ſhillings, as will appear by his account annexed to the decree aforeſaid, and by a general ſtatement hereunto annexed.

And your memorialiſt further ſtates, that although neither the United States or the State of Virginia have redeemed the ſaid paper, and although the original debtors cannot be now made to pay the difference between the real and nominal ſums paid by them in diſcharge of a bona fide ſpecie debt contracted before the peace, ſtill the ſaid Dudley Richardſon has been credited to the full nominal amount of the ſaid ſums, as if they were ſpecie, and has been exonerated and diſcharged, and by law is exonerated and diſcharged from accounting with your memorialiſt otherwiſe than by delivering the ſaid certificate.

Your

Your memorialiſt therefore avers, that by reaſon of the decree aforeſaid, he is prevented from recovering, and has totally loſt the principal ſum of £7473 11 6¼ Virginia currency, and £8878 8 3½, the intereſt thereon calculated to the firſt of May 1798, for which two ſums and the intereſt ſince accrued and to accrue; he prays this his claim may be received, and that ſuch award may be made thereon as equity and juſtice ſhall require.

WILLIAM MOORE SMITH,

General agent for claimants.

20th November, 1798.

To the Commiſſioners for carrying into Effect the Sixth Article of the Treaty of Amity, Commerce and Navigation, concluded between his Britannic Majeſty and the United States of America.

The Anſwer on the part of the United States to the Memorial and Claim of William Shermer, Heir, Executor and Reſiduary Legatee of Richard Shermer, deceaſed.

THE memorial repreſents, that John Shermer the brother of the ſaid Richard Shermer, reſided in Bliſland pariſh, new Kent county in Virginia, where he intermarried with Mrs. Ann Read. That on the 11th June 1766, the ſaid John Shermer made his laſt will and teſtament, which was proved on the 13th February 1775. By his will he deviſed to his ſaid wife the rents and profits of his whole eſtate during her life, and after her death he deviſed the ſame to be equally divided between whomſoever his ſaid wife ſhould appoint for that purpoſe, and his brother Richard Shermer, who gave a power to the executors to ſell the eſtate after the death of his wife.

That Mrs. Shermer died on the 13th January 1775, ſix days after her huſband, without making any appointment under the power given by his will.

That his executors, Thruſton James, Dudley Richardſon, George Booth and Thomas Booth after probate of the will, ſold the whole eſtate amounting to £11,000 and upwards on credit, and took bonds with ſecurity, payable 11th May 1776.

That by the deviſe aforeſaid, nothing paſſed by the will of John Shermer to his wife but a life eſtate with a power to make an heir or heirs. That having neglected to do this, the eſtate on her deceaſe became the ſole property of the ſaid Richard Shermer, the father of the claimant for whom the ſurviving executor was a truſtee.

That although the whole of the ſaid eſtate was the property of Richard Shermer, the executors diſtributed among the next of kin of the ſaid Ann Shermer £5372 19 8½ Virginia currency, which was one half of the proceeds of the ſaid eſtate, which diſtribution has been approved by a decree of the high court of chancery, and affirmed in the court of appeals in Virginia, in a ſuit brought by the claimant againſt the ſurviving executor and other perſons intereſted in the diſtribution, which decree the claimant inſiſts is a lawful impediment ſince the peace, preventing the recovery of a debt theretofore contracted, which is ſtill owing to the claimant.

The memorial further ſtates, that Dudley Richardſon one of the executors of John Shermer, as the attorney in fact to the ſaid Richard Shermer, was compelled by the laws of Virginia, to receive as attorney to the ſaid Richard Shermer, other part of the debts due to Richard Shermer amounting to £2677 2 6 principal, and £199 17 6½ intereſt in paper currency, part of which he loaned to citizens of Virginia, which has ſince been recovered according to the ſcale of depreciation; another part amounting to £1646 10 0 he depoſited in the treaſury of Virginia, and obtained a certificate worth £1 13 0.

That the ſaid Dudley Richardſon, has been diſcharged from accounting with the claimant, for the difference between the real and nominal amount, having been credited to the full nominal amount of the ſaid ſum as if paid in ſpecie.

That by the ſaid decree he has totally loſt £7473 11 6¾ Virginia currency, and £8878 8 3½ the intereſt thereon to the 1ſt May 1798, for which he prays for an award, and ſuch further ſum as equity and juſtice may require.

This claim is made on the United States for £5372 19 8½ which was one half of the amount of the ſales of John Shermer's eſtate, made under the directions of his will, after deducting £116 16 11¾ for plate left Mrs. Shermer, which ſum of £5372 19 8½ has ſince been decreed to belong to the legal repreſentatives of Mrs. Shermer, by the high court of chancery of Virginia, and the decree affirmed in the court of appeals in that State.

The

The claim is alſo made for the further ſum of £2677 2 6½ received by Dudley Richardſon as agent for Richard Shermer in May 1776, and £199 17 6½ for intereſt on that ſum alſo received by him. Of this £1161 19 8 is ſtated to have been loaned in 1777 and 1779, for the benefit of Richard Shermer, and £1646 10 was paid in 1782, into the treaſury of Virginia on his account, which with the ſum of £82 6 6 charged for commiſſions on that payment, will leave a balance due in paper money to the executor, of £13 16 1 as appears from the executor's account filed in chancery, and which accompanies the claim.

The following circumſtances appear from the anſwer of Dudley Richardſon to the bill of the claimant exhibited 5th November 1789, and in anſwer to the amended bill filed in Auguſt 1789. That John Shermer had acquired the greater part of his fortune by his intermarriage with his wife Ann, that he had frequently declared in the preſence of the ſaid Dudley Richardſon, that if he out-lived his wife he would divide one half of his eſtate among her relations, in the manner ſhe ſhould think moſt proper. That the ſaid Dudley Richardſon ſhortly after the death of the ſaid Ann Shermer, having conſulted with two of the moſt eminent counſel then in Virginia on the will of John Shermer, they gave it as their opinion that the repreſentatives of Mrs. Shermer were entitled to a moiety of John Shermer's eſtate. That he wrote to Richard Shermer, encloſing him the will, and copies of the opinions, with the ſuppoſed amount of John Shermer's eſtate. That ſhortly after he received a letter of attorney from Richard Shermer, with inſtructions to receive and collect *his proportion* of John Shermer's eſtate. That in conſequence of the letter of attorney, the ſaid Dudley Richardſon divided the eſtate of John Shermer with the other executors, and received for the ſaid Richard in bonds bills and accounts, £5372 19 5½ and paid the other legatees their reſpective proportions. That the ſaid Dudley Richardſon undertook to collect the proportion of the eſtate belonging to Richard Shermer, with intention to make remittances to him which he was unable to do owing to the war. That a conſiderable loſs has happened thereon from depreciation in paper money. That having taken the opinion of counſel and communicated the ſame to the ſaid Richard Shermer, who not only acquieſced therein, but directed his *proportion* to be collected, he conceived he had acted according to law in dividing the eſtate. That Richard Shermer never claimed more than a moiety, although he received a letter from him in the year 1783, by the hands of the preſent claimant whom he ſaw frequently in that year, and who alſo never hinted to the ſaid Dudley, that there was any claim but to a moiety ſet up by his father. That the repreſentatives of Ann Shermer were numerous, and in diſperſed ſituations, and that great alteration of property had taken place among them ſince the diviſion of the eſtate.

On the 7th September 1792, this cauſe came on to be heard, on the bills, anſwers, exhibits and examinations of witneſſes, and was then argued by counſel. On conſideration whereof, the court gave it as their opinion, that in the deviſe to his wife by the teſtator John Shermer, ſtated in the bill, the words "during her "natural

"natural life" ought not to be applied to that moiety of his eſtate of which he *empowered* her to *diſpoſe*, becauſe ſuch application would be *inconſiſtent* with his *intention manifeſtly indicated* by giving her *ſuch power* that ſhe ſhould have and *intereſt* in *that moiety* which would continue after her death, namely, the *abſolute* property, but ought to be confined to the other moiety which he gave to his brother Richard Shermer, and in which he intended her intereſt ſhould continue no longer than ſhe ſhould live, and conſequently that the plaintiff is not entitled to the wife's moiety, and therefore doth adjudge, order and decree, that the bill of the plaintiff claiming the laſt mentioned moiety be diſmiſſed, as it is accordingly hereby ſo far diſmiſſed; and do further order, that the defendant Dudley Richardſon ſettle an account of his adminiſtration, &c.

On the 18th October 1794, the decree of the court of chancery was affirmed in the court of appeals.

The deliberate decree of the chancellor of Virginia on the *conſtruction* of a *deviſe* independent of *any law* operating upon the rights of Britiſh ſubjects and without any reference to the national characters of the parties, which has been affirmed in the court of appeals, is repreſented as an *impediment* contrary to the treaty of peace.

As to ſo much of this claim as ſeeks relief againſt this decree, the agent for the United States reſts the defence on two grounds. 1ſt. That judgments or decrees of competent courts on the real merits of the controverſy, unconnected with the *national* character of the parties, and where no queſtion concerning the operation of lawful impediments, that is to ſay, impediments of *legiſlative acts* has been involved, are not liable to be re-examined before this Board, inaſmuch as ſuch caſes are not within the meaning of the 6th article of the treaty of amity; and upon this point the agent prays leave to refer the Board to the anſwer in the caſe of Charles Oſborne. 2d. That the decree in relation to the queſtion whether Richard Shermer was entitled to the whole, or to the moiety of the teſtator's property and eſtate, is juſt in itſelf and ſuch as a court of equity ought to have decreed.

The diviſion of the eſtate of John Shermer was made in 1776, in conſequence of the opinion of two eminent counſel, that ſuch was the intention of the teſtator, which opinion had been ſent to him, with the will of John Shermer, from which he obtained all the information that Dudley Richardſon poſſeſſed, and in which opinion he acquieſced. After this he appointed Dudley Richardſon his attorney in fact, as to his moiety of his brother's eſtate. There was no change in his opinion as to the operation of the deviſe after the war, or during his life time; but after his death the preſent claimant who is his ſon, filed the bill on which the foregoing decree was made.

Upon

Upon the bill and anſwer with the exhibits and proofs, the chancellor conſidered the will of John Shermer intended one half of his eſtate ſhould go to the heirs of his wife. This diſpoſition was conſiſtent with the *principles* of *equity* and comported with the *intention* of John Shermer. The greater part of his eſtate had come with his wife, and to admit her repreſentatives to an equal ſhare with his own in that eſtate, was natural to a perſon ſenſible of thoſe duties, which a regard to the ſources from which his property was derived, impoſe. On the face of the will, diſtinct from any proofs, the intention of the teſtator is *plain* and *manifeſt* and not to be miſunderſtood. The power given to her in the will, to diſpoſe of a moiety of the eſtate deviſed to her, among her family, ſhews that it was the intention of the teſtator that that portion ſhould be diſtributed among her kindred, and not among his. It is a ſettled rule of law that where the *intention* is *plain* it ought to controul the legal operation of the words in a will—2 *Peere Williams* 741. The intention of a teſtator is always to govern, unleſs it is oppoſed to ſome fixed and ſettled rule of law; and the intention of John Shermer, collected from the will, is not oppoſed by any rules of law. A ſimilar decree, it is believed, would have been made on this will by the court of chancery in England.

The remaining part of the claim is for £2877 0 0½ received in paper money by Dudley Richardſon as agent, under the power given him by Richard Shermer, part of which the agent loaned on bonds and the remaining part he paid into the treaſury of Virginia. The agent for Richard Shermer was appointed with full power to manage his concerns. Under that power he received and paid money, and gave acquittances, and exerciſed the ſame authority, which Richard Shermer could have exerciſed had he been preſent. Under ſuch circumſtances the receipts and loans are binding on the creditor, as if the former had been accepted, and the latter advanced by himſelf. It was voluntary on the part of the claimant's anceſtor, to have an agent in Virginia authorized to receive his debts, and to loan the monies ſo received. The payments were made and the debts ſatisfied, according to the laws of the country where they were contracted, and to be paid, by the payment of the debtor to the authorized agent of the creditor, who had accepted the ſame and given a final diſcharge for the old debts, and who voluntarily releaſed them.

With reſpect to the loans, they were in paper money, and the ſpecie value at the time of theſe loans has been fully paid, and to no more is there a juſt title.

This part of the claim being for depreciation, it is contended not to be within the meaning and intent of the treaties, for the reaſons which have been ſubmitted to the Board in the caſe of Dulany, to which the agent for the United States, that he may avoid repetition, prays leave to refer.

On the conſtruction of the treaties, on the claim for intereſt, on the juriſdiction of the arbitrators, and other matters for the conſideration of the Board, the agent for

for the United States reſpectfully refers them to the arguments heretofore laid before the Board.

JOHN READ, Jun.

Agent general for the United States.

7th June, 1799.

Extract from the Anſwer on the part of the United States to the Claim of William Cunningham & co.

THE United States and his Britannic majeſty have conſtituted by mutual conſent an extraordinary tribunal for hearing and deciding the ſpecial caſes contained in the 6th article of the treaty of 1794. As the cognizance of this tribunal is expreſsly limited to ſpecial caſes, nothing can be more indiſpenſably requiſite than to underſtand the limits which are ſet to it. In arbitraments between man and man under the municipal regulations of a State, it is a rule that the arbitrators ought not to exceed their juriſdiction, and if they do, a remedy may be eaſily ſupplied in the ordinary courſe of juſtice, for by the civil as well as the common law an award upon a caſe to which the ſubmiſſion does not extend is void. In arbitraments between nation and nation the ſame rule prevails that the arbitrators ought not to exceed their juriſdiction, but if they do, there being no common controuling power to correct the error, each nation has a juſt right to judge for itſelf, and may juſtly conſider as void every arbitrament upon a caſe out of their limited juriſdiction. This obſervation is made to impreſs on the commiſſioners the primary importance of underſtanding the limits which are preſcribed to them by the terms of the article: For ſhould an error unfortunately occur on this point it may lay a foundation for diſappointing all the good conſequences that have been expected from the article, and perhaps for renewing the diſſenſions between the two nations, which it is ſo deſirable ſhould be forever compoſed.

In expreſſing on the part of the United States their opinion, that it is neceſſarily reſerved to each nation to determine for itſelf whether an award is within the ſphere of the ſubmiſſion, it is not meant to aſſert that the arbitrators are not to decide for themſelves whether a caſe is cognizable before them or not, but it is meant to aſſert

that

that though they ſhall decide a caſe to be cognizable before them, yet if it appears to either nation that it is not, either has a juſt right to diſregard the award. If this were not ſo, there would be no difference between a limited and an unlimited ſubmiſſion. If this were not ſo, the commiſſioners might determine any and every queſtion upon any and every ſubject which concern the two nations. Though this opinion is ſo reaſonable in itſelf that it need not be ſupported by any authority, yet what a learned modern writer has ſaid upon this ſubject deſerves to be noticed. Vattel relative to the arbitration of national diſputes obſerves, " It may then happen, as in the exam-
" ple juſt alledged, that the arbitrators may exceed their power, and paſs their
" judgment on what has not been really ſubmitted to their deciſion: And being
" called to judge of the ſatisfaction a State ought to make for an offence, they may
" condemn it to become ſubject to the offended. Certainly that State never gave
" them ſo extenſive a power, and their abſurd ſentence is not binding. To avoid
" all difficulty, and to take away every pretence from bad faith, it is neceſſary to
" determine *exactly in the compromiſe, the ſubject of the diſpute, the reſpective and*
" *oppoſite pretenſions, the demands of the one, and the oppoſitions of the other.* This
" is what is ſubmitted to arbitrators, and upon this they promiſe to adhere to their
" judgment. If then their ſentence is confirmed within theſe bounds, it is neceſ-
" ſary to ſubmit to it. It cannot be ſaid that it is manifeſtly unjuſt, ſince it is
" pronounced on a queſtion which the diſſention of the parties renders doubtful,
" *and which has been ſubmitted as ſuch.* In order to be free from *ſuch* a ſentence,
" it ſhould be proved by indubitable facts, that it was produced by corruption, or
" a flagrant partiality."—Book 2d, ſection 329.

Hence it appears if a caſe within the ſubmiſſion is decided by arbitrators, even though the ſentence is conceived to be unjuſt it ought to be executed unleſs proceeding from corruption; but if the caſe be out of the ſubmiſſion, then the ſentence is not obligatory.

When the treaty of 1794 was formed, the courts of juſtice in all the States of America were open. This was well known to the negociators on both ſides as well as to both nations. But there were ſome particular and extraordinary caſes in which complete juſtice was not attainable in the ordinary courſe of juſtice, and to decide theſe a particular and extraordinary tribunal was inſtituted. The treaty having been made between two nations who ſpeak the ſame language, who are alike in manners and morals, who till lately were united under the ſame empire, and whoſe principles and ideas of juſtice are derived from the ſame ſources, it may be hoped to receive the ſame interpretation in both countries, and eſpecially that there will be no diſagreement reſpecting the meaning of the 6th article among the commiſſioners who are ſelected to decide upon it. In the propoſed diſcuſſion much aid will be ſought by the agent for the United States, from the rules and principles of equity recognized by the judicial determinations of the Britiſh courts, whoſe pure and wiſe adminiſtration of juſtice for many ages, while it has been the ſource of happineſs to the people of that country, has alſo been an object of the higheſt admiration among mankind.

COMMISSIONERS' OFFICE,
Philadelphia, 18*th April*, 1798.

PRESENT,

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. GUILLEMARD.

In the Case of WILLIAM CUNNINGHAM, *and others.*

THE answer of the United States signed by their agent, having in this case been printed and laid before the Board, ORDERED—That the general agent for claimants or attorney for these claimants, have leave to see and reply to the same within three weeks; but with the exception of the introductory argument "to impress on the commissioners (as it is there said) the primary importance of understanding the limits" of their duty, and instructing them, on the authority of Vattel, and with reference to a supposed case of manifest and intentional wrong, in the expediency of taking care that they do not "renew the dissentions between the two nations," by deciding in a manner so palpably "*absurd*," or so clearly proceeding from "*corruption, or flagrant partiality*," as to entitle "*either nation to disregard* "*the award.*" The Board make no further animadversion on the above argument than thus to state its import, and prohibit all allusion to such topics in future. They know no policy but that of justice, and look forward to no consequence but the consciousness of having done their duty.

ORDERED—That the reply in this case be printed; that this order be therein fully recited, and copies hereof served upon the agents for both parties.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.

AGENT

AGENT GENERAL'S OFFICE,
Philadelphia, 26th April, 1798.

THE agent for the United States encloſes to the Board a letter addreſſed to him from the Attorney General of the United States. It relates to their order of the 18th inſtant, which prohibits all alluſions in future to the juriſdiction of the arbitrators and directs the claimant to take no notice of this argument. As it is of the utmoſt importance to the United States clearly to underſtand this prohibition, their agent reſpectfully requeſt of the Board ſuch explanation of the order as they may pleaſe to give.

JOHN READ, JUN.
Agent general for the United States.

To the Commiſſioners under the ſixth article of the Treaty of Amity.

ATTORNEY GENERAL'S OFFICE,
Philadelphia, 24th April, 1798.

SIR,

I HAVE read and conſidered the order of the Board of Commiſſioners bearing date the 18th of this month, relative to that part of the argument which in the caſe of William Cunningham and company, related to the limited juriſdiction of the arbitrators. I did not ſuppoſe that the obſervations which were made upon this point could have been miſapprehended in the manner they appear to have been by the Board, and I yet indulge the hope that when the quotation from Vattel ſhall be underſtood by them, as it is by me, that it will not be thought in the leaſt

degree

degree exceptionable. I underſtand the quotation to embrace two caſes, in which the Civilian thinks the award of national arbitrators void. One whereon a matter ſubmitted to them, the award ſhall be flagrantly unjuſt or abſurd, or ſhall manifeſtly proceed from corruption; the other whereon a matter not within the terms of the ſubmiſſion, the arbitrators ſhall erroneouſly undertake to make an award, though it be neither unjuſt nor abſurd, nor proceeding from corrupt motives. The former is not contemplated in any part of the argument to be poſſible, and the latter only is the caſe to which the quotation is applied, and ſo it was hoped the obſervations would have been underſtood. I truſt this will ſerve to ſhew, that the import of the above argument has not been correctly ſtated by the Board.

I have always entertained the opinion relative to every tribunal for determining diſputes and controverſies of a civil nature, that it was allowable to enquire into the limits of its juriſdiction, and I have thought too that the objection to juriſdiction ſhould in every caſe be made as early as poſſible, becauſe if ſuſtained it would preclude the trouble and the expence of further inveſtigation. This remark has been made becauſe the Board in their order having directed the claimant to take no notice of this argument, and having repreſented how they underſtand the import of it as well as the application of the quotation, have proceeded to "prohibit all alluſions to ſuch topics in future." I am at a loſs how the Board expect this prohibition is to be underſtood. Does it mean if a claim ſhall be made before the Board, which the agent for the United States ſhall deem out of the ſubmiſſion of the 6th article of the treaty of amity, commerce and navigation, that he ſhall be prohibited from endeavoring to ſhew that it is not ſubmitted to the Board, and therefore that an award in ſuch caſe ought not to be made againſt the United States, and if made againſt them may be juſtly regarded by them as void. Does it mean that it is the opinion of the Board that whatever award ſhall be made by them concerning a debt due to a Britiſh ſubject from an American citizen, contracted before the war, will be obligatory on the United States, and that it belongs not to the Board to conſider what the United States may think of their awards.

This topic I formerly viewed and yet view of the utmoſt importance to the United States, and I therefore conceive it my duty to inſtruct you to requeſt of the Board ſome explanation of their order, and to tranſmit to me whatever they may pleaſe to give.

I am Sir, very reſpectfully, your obedient ſervant,

CHARLES LEE.

To JOHN READ, Esq.
Agent for the United States relative to Britiſh debts.

COMMISSIONERS' OFFICE,
Philadelphia, 27th April, 1798.

PRESENT,

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. GUILLEMARD.

A REPRESENTATION from the agent for the United States, and a letter from the attorney general requeſting an explanation of the order of the Board in the caſe of Cunningham and others, dated the 18th current, having been read and the ſaid order having been alſo read,

RESOLVED—That the terms of the ſaid order as it appears to the Board, are clear and explicit and the general topics therein referred to (and all alluſions to which in future is thereby prohibited) have no connection whatever with the primary and important queſtion, how far a particular caſe is within the intent and meaning of the treaty, or to uſe the words of the repreſentation that the agent for the United States is not thereby prohibited from endeavoring to ſhew that a claim is not ſubmitted to the Board.

Extracted from the proceedings of the Board.

G. EVANS, SECRETARY.