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FURTHER PAPERS

RELATING TO

AMERICAN LOYALISTS:

viz.

Copy of a Letter from GERMAIN LAVIE, Esq. to the Right honourable N. VANSITTART, dated 19th March 1816;—Copy of REMARKS on the NOVE of the *American Loyalists*, dated 31st January 1815;—and, Copy of a MEMORANDUM of Facts and Suggestions on the Claims of the *American Loyalists*.

Whitchell, Treasury Chambers, } S. R. LUSHINGTON.
30th April 1821.

Ordered, by The House of Commons, to be Printed,
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19th March 1816; Copy of a LETTER from Germain Lavie, esq.
to the Right Honourable N. Vansittart.

SIR,

IN consequence of a letter received by Mr. Powell, from lord Tyrconnel, dated the 26th January last, the committee of American loyalists have been most anxiously expecting an answer to their several representations to yourself and lord Liverpool, of the 31st January, 17th May, 5th October and 16th December, in the last year; and, fearful that any longer delay may occasion the loss of another session, they have now called upon me to make the necessary preparations for bringing their case before Parliament.

On examining the papers laid before me for this purpose, I find, that on the 3d December 1812, and pending the discussion in Parliament on the general petition of the American claimants, the loyalists presented their petition to the Lords of the Treasury, stating their distinct and separate case; and that on the 26th May 1814, they made a representation to yourself and lord Liverpool, with a view to establish this distinction.

These two papers appear to me to bring the subject forward in so strong a point of view, that I think it for the interest of these unfortunate sufferers to place them again under your eye, and I accordingly take leave to transmit you copies thereof, No. 1 and 2.

I have also, on this occasion read over the report of the committee of the House of Commons, to whom the above-mentioned general petition was referred, and I find that that report, together with the matters of the Appendix, were confined to the question of the British creditors claiming for their loss by their American debtors. And the particular case of the American loyalists does not appear to have been at all brought before that committee; indeed I am told, that all discussion on their claims was purposely avoided, which is confirmed by your letter to Mr. White, of the 10th July 1813, of which I also beg leave to hand you a copy of, No. 3.

These several papers, with the continued representations of the last year, afford such indisputable arguments in favour of the claims of the American loyalists, that I am certain His Majesty's ministers, on a full consideration of the subject, must feel themselves compelled to assent to this debt, so long owing by the country, being discharged, in such manner as may be found convenient to the public interest.

I do not know any better mode of framing a petition to Parliament, than adopting the terms and prayer of the memorial of 1812, No. 1; but if a petition be to be presented without the assent of Government (a measure of the last resort, and on which I have already given my opinion,) the prayer must be materially altered.

I have felt it my duty to bring this important subject once more before you, previous to my proceeding to execute the instructions of my employers.

I have the honour to be, Sir, your very obedient humble servant,

(Signed) *Germain Lavie,*

Frederick's Place, 19th March 1816.

The Right honourable
Nicholas Vansittart.

REMARKS on the Subject and Contents of the "Note" presented by the American Loyalists.

THE object of the argument in the note is to show, that, although those of His Majesty's subjects, *not having been American loyalists*, who, by adjudications obtained from the late board of American claims, were declared as creditors to have suffered losses, to a certain extent, from the "lawful impediments," or laws and judicial practices of the United States, in breach of the 4th article of treaty of 1783, for protecting the recovery of *debts*, should not be found entitled to receive from the public the difference between the amount of those adjudications respectively, and the smaller amount of the sum distributed among them by that board; yet, such of His Majesty's subjects having, in like manner as creditors, obtained such adjudications
and

and payments from the board, as came also within the description of "*American Loyalists*," were entitled to claim, and respectively receive the difference.

But there seems to be no ground for any such distinction, either on general principles of justice, or in any public acts or proceedings on the subject.

In fact, the appellations of "*American loyalist creditors*," and "*English merchant creditors*," adopted in this note, are altogether new; nor can they be so contra-distinguished; for many, nay, most of the American loyalists were also merchant creditors, to whom whatever is said in the note against the indemnification of merchants, as such, applies.

When, by the treaty of peace of 1783, the United States were established as a separate and independent nation, those of His Majesty's subjects who were creditors of citizens or inhabitants of the new country, consisted either of merchants and other persons, residing and settled in Great Britain, or other parts of His Majesty's dominions, who had given credit to inhabitants of the United States, while they were also subjects of His Majesty, on the faith of British or colonial laws, which they knew, and had no reason to think, would be abrogated or given up, by any such acknowledgment of independence; or of other merchants and persons, of different descriptions, who were natives of, or had settled themselves in, the colonies, and being equally subjects of His Majesty, had not departed from their allegiance, and were therefore generally called American loyalists.

But no such distinctive appellation ever was or could have been given to them, as applicable to their character *as creditors*.

Those two descriptions of persons bore, *as creditors*, one and the same character; both *equally* entitled, for the security and recovery of their debts, to the protection of their country, by whose acknowledgment of the independence of the United States, their hold upon the known laws to which both equally trusted when they gave the credit, was lost; and therefore, if either of them had an "*original right*," as it is expressed in the note, to claim redress, in point of justice, from the public, in case the Government should, on grounds of general policy, refuse to interfere for their protection, or should compromise their claim, so had the other. The merchant of London, of Bristol, or of Glasgow, who had sold and sent his goods to his fellow subjects in the colonies, without any reasonable anticipation of such a risk, (entirely out of the course of trading calculation or ordinary events,) as that of a revolution in the colonies, and surrender by the nation, of the British government and laws; to which they trusted, he had surely the same right to redress, for the injury thereby occasioned, (whatever that right might be,) as the merchant of Charlestown or New York, who, on the same faith, had sold his goods to his neighbour. If the right or remedy against the debtor was taken away, the injury in both cases was exactly the same; and if that injury sprung from the same root or cause, the title to redress could not possibly, either in a moral or natural view, be different.

Nothing therefore can be more groundless than the proposition stated in the note, as being, what it truly is, the substance of the whole, in the following words: "In this consists the total difference of the two cases of the general creditors and the loyalists; the first were entitled to the strongest and best efforts of Government, to induce the American States to afford them the means of recovering their just debts, but there *their* claims upon Government ended. The loyalists were entitled, if those efforts failed, to relief and compensation for their losses from the mother country." A proposition which is merely asserted, without explanation or reasoning to support it; reference only being made to the Act of the 23d Geo. 3, c. 80, regarding the loss of real estates and effects sustained by the loyalists *in particular*, no part of which is therefore recited as applicable to the loss of *debts*, to which they *were* not exposed in particular, but in common with His Majesty's other subjects.

In truth, the single peculiarity in the case of the American loyalists consisted of this, that after the declaration of independence in 1776, the revolted states considering those persons no longer as subjects of His Majesty, but *their* subjects, attainted them as such, and confiscated not only their real estates, but their debts due to them. But for the former, as well as for their professions and offices, being the only loss sustained by them *singly*, in the character of loyalists, they obtained ample parliamentary compensation on the reports of special commissioners of inquiry, appointed by the above-mentioned Act of Parliament for that purpose; and for the latter, namely, the loss of debts, which had then only in part accrued, and which was not peculiar to them as attached to the character of loyalists, they

were left by those Parliamentary commissioners and by parliament, not "*erroneously*," as the note, without assigning any reason, asserts, but advisedly and as matter of course, to the protection and subsequent effect of the 4th article of the treaty of 1783, which laid a ground for future indemnification, in that respect, in favour of *all* His Majesty's subjects, without distinction, in terms which included the impediments of attainder and confiscation, attached to the character of the loyalist, along with all other impediments of the law whatever; and so the board, at Philadelphia, rejecting the argument of the Attorney General of the United States against their title, and sustaining their right to claim as British subjects, as well as the late board expressly decided, giving to them, of course, the same right to compensation for the impediment arising from attainder and confiscation of *debts*, in breach of the 4th article of the treaty, as to the British merchant, for the various impediments which were directed against him, such, for example, as the total bar by the plea of "*British debt*," every adjudication of the late Board having for its rule the extent to which the impediment or impediments complained of operated, and consequently when the operation was a *total* bar to the remedy, (as that of *confiscation* in the one case, and plea of "*British debt*," in the other) adjudging a compensation to the amount of the *estimated* value of the *whole* debt or debts so affected.

The words of the fourth article of the treaty of 1783, were as general as possible, that "there should be no lawful impediments on *either side* to the recovery, &c." including, of course, *all* creditors on the side of His Majesty equally, whether in Great Britain or America, that is, whether, as the note distinguishes, "*English merchant* creditors," or "*American loyalist* creditors;" and the terms of the sixth article of the treaty of 1794, "whereas it is alledged by divers *British merchants and others*, His Majesty's subjects," were at least equally so; containing no other allusion to any one class of creditors in particular, than what might be inferred from the special description and precedence given to "*British merchants*," on account no doubt of the superior magnitude of their interest; and yet, if there had been persons who possessed rights of a superior nature to those who were thus expressly described and prominently brought forward, it is not probable that they would have been thus thrown behind, under the general expression "*and others* His Majesty's subjects."

The assertion in the note, that the stipulation by the 4th article of the treaty of 1783, was solicited by "the *English merchant creditors*," only, and that the negotiator who settled that business, was sent to Paris for that purpose, on the application of those English merchant creditors only, as if the creditors, who were American loyalists had then stood aloof, or some peculiar title which required no stipulation to protect it, as apparently, though of little consequence, without foundation. Nor does it appear, that in any part of the long train of communication between Government and the creditors, including the American loyalists as creditors, from the year 1783 till the 6th article of the treaty of 1794, was, after an intricate and laborious negotiation, agreed on; or in any part of the terms of that well considered article; in the commission, or any of the anxious and controversial proceedings at Philadelphia under it; or in the remonstrances and manifold applications to His Majesty's Government from the creditors at large, including those of them who were American loyalists, on the disappointment of that commission; or in the Act of Parliament passed in 1803, in consequence of the compromise with the United States, by the convention of 1802, appointing the new commission; or in any of the proceedings under that new commission; or in the petitions to the House of Commons of the holders of adjudications under that commission, including those loyalists; or in the reports of the select committees of the House of Commons on those petitions, and the evidence taken before them, any such separation of character or distinction of title, as that now set up, was ever recognized.

The writer of these remarks, therefore, presumes to think it perfectly clear, that the answer stated in the note to have been given by His Majesty's ministers, viz. "that there did not appear any such material distinction between the case of the loyalists and creditors, as to justify any new proceeding; and that it is not possible now to separate the case of the loyalists from that of the creditors, with which it
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Note.—Accordingly this paper, which abounds in assertions against the plainest facts and documents, presents the following axiom—"It is clear, that the 4th article never contemplated the situation of the loyalists in any shape!" What, not *as creditors on the side of His Majesty*; their claims and complaints, and the adjudications they obtained, proceeding expressly on the losses they sustained in breach of that article.

has been so long united," is considerably within the scope of what may be fairly concluded; namely, that there neither is now, nor ever was, any distinction whatever, either on original right and principle, as argued in the note, or under treaties or public proceedings, between the case of those creditors who were American loyalists, and that of the British merchants and other creditors, His Majesty's subjects in general.

N.B.—Since writing the above it has occurred, that it may further be proper to take notice of the following passage in "the note."

"Those (loyalists) who lost their landed properties, and many whose prospects with reference to office or profession, were wholly destroyed, were accordingly compensated (under the 23d Geo. 3. c. 80.) How came it then, it may be asked, that *any of us* loyalists remain still uncompensated, and unfortunately, petitioners for the common justice which has been granted to our fellow sufferers?"

There is no such case as that which is put in this question. None of the loyalists have occasion to be petitioners for any thing "which has been granted to their fellow sufferers," and denied to them; for all have, in every respect, been treated in the same manner. All of them who lost lands, offices or professions, were, it is admitted, fully compensated for such losses, as being the only losses peculiarly arising from, or exclusively incident to, their character of *loyalists*. And all of them who lost the *debts* due to them, *which, it may be repeated, was not a loss peculiar to, or exclusively arising from, their character of loyalists, but incident to that of British subjects in general,* (a distinction which, if kept in view, would defeat the whole fallacy of the argument in the note,) have received equally the same proportion of compensation. The merits of the ulterior claim they refer to, (whatever they may be,) being *equally* available to *all* the holders of the adjudications, or to *none*.

MEMORANDUM of Facts and Suggestions, for the Consideration of
the following Question, viz :

THE commissioners appointed by the 43d Geo. 3, c. 39, having conclusively decided and adjudged on the merits of all the claims which had been laid before them by individuals, in the character of His Majesty's subjects, and creditors of citizens or inhabitants of the United States, (without referring in any case to any additional description, as giving a title of preference to others,) for losses alledged to have been occasioned by the breach, on the part of the United States, of the 4th article of the treaty of peace of 1783, and the non-execution of the 6th article of the treaty of amity of 1794, whereby the United States became bound to pay to "divers British merchants, and others His Majesty's subjects," whatever sums should be ascertained, under a commission thereby authorized, to have been the just amount of the losses sustained by the said individuals, from the causes therein described, respectively; the said adjudications having not only adjudged the said claims to be good to the total amount of £. 1,420,000, but also, as the declared object of the Act, apportioned and distributed accordingly the sum of £. 600,000, of which His Majesty, by convention, dated the 2d of January 1802, accepted from the United States, "for the use of the persons described in the said 6th article of the treaty of 1794." And the holders of those adjudications having, in that general character, applied, by petition, to the House of Commons, for payment of the differences, between the sums thereby adjudged to be due, and the proportions received as above under the same, claiming the said differences as a debt in equity against the public, but which has not been complied with. Whether the case of such of those individuals, holders of adjudications and petitioners, as, in addition to the above general character, in which they, in common with all others, obtained those adjudications, come also within the description of that meritorious class of persons, known under the appellation of *American loyalists, can*, on the ground of any special consideration due to that particular description, as connected with that of *British* creditors, or of any stronger equity or pledge, on the part of His Majesty's Government, or the public, as the result of particular circumstances, *be so distinguished*, as to entitle *them*, exclusively, to that full indemnification which has been hitherto refused to *all* the holders of those adjudications without distinction?

That numerous and respectable body of His Majesty's subjects, to whom debts were due to a vast amount in those colonies, which, by the treaty of peace of 1783, were acknowledged as the United States of America, having been well aware that the hope of getting clear of those debts were the decided inducement, with many

individuals and inhabitants of that country, to join in the revolt, early and urgent applications were made to His Majesty's ministers, during the negotiation for peace, by the principal creditors, stating the immense amount of those debts, and the necessity of laying a precise ground for just claims of indemnification, by a strict and special stipulation in the treaty against the operation, after the peace, not only of laws already made, by the ruling powers of that country, to defeat the recovery of British debts, but of those which they had good reason to apprehend, would afterwards, in time of peace, be made by the new republic for the same dishonest purpose.

By the fourth article of the treaty, it was accordingly provided, that "creditors on either side should meet with no *lawful impediments* to the recovery of the *full value*, in sterling money, of all *bonâ fide* debts theretofore contracted." But, notwithstanding the skill and ability with which the comprehensive terms of this short article were adapted to the object, including, by anticipation, every sinister practice of judges, juries, or ministerial officers, which might be made to bear a *lawful form*, or rise evasively out of legal proceedings, as well as positive acts of those various independent and licentious legislatures, in which practising attorneys were the ruling statesmen, the peace was no sooner concluded, than the previous determination to aid and shelter the dishonest debtor to the British subject, and to retain the money in the country, began to operate in the most flagrant manner; and all that had been anticipated was more than realized, in manifest breach of the article.

The sufferers under this gross infringement of treaty (placing them in the order of the extent to which they were respectively interested,) may be stated as having consisted of the following descriptions of persons, viz. :—

First, of *British merchants*, who had been long in the practice, not only of shipping goods from London, Bristol, Liverpool, Glasgow, and other parts of the British dominions, to traders, planters, and others, in the American colonies, but also of making large advances in money, by the acceptance and payment of bills, on the credit or expectation of adequate consignments of tobacco, or other produce; or who shipped goods to a large amount for the supply of *retail stores*, established by them in Maryland, Virginia, North Carolina, and Georgia, (this description of merchants belonging chiefly to Glasgow,) to be in that manner sold in their colonies, on their account, by partners, agents, or clerks, who were in general sent out by them for that purpose.

Secondly, of persons who were settled in those colonies, including a great variety of different descriptions, such as the heirs or representatives of the great original proprietors, or holders of paramount territorial rights, under royal grants at the first establishment of the colonies, to whom arrears of quit rents, duties of tonnage, &c. were due; clergymen with benefices, having also arrears due to them; colonial merchants and traders by wholesale or retail; planters, land dealers, money lenders, lawyers and others, who had either constantly adhered (some with much zealous and active loyalty,) under every form of proscription and persecution, to their native allegiance; or, after a temporary defection, (of which, however, the instances were few,) had returned to that allegiance, and were "on the side of His Majesty" at the peace. To all of whom, with reference to the merits and fidelity which, in different degrees, they had displayed, the appellation of "*American loyalists*," alluded to in the question, was under the operation of an Act of Parliament in their favour, to be mentioned in the sequel, afterwards applied.

And, Thirdly, of subjects of His Majesty in different parts of the world, having debts due to them in the United States, who did not come within any of the above descriptions.

Every individual of those different descriptions of sufferers appeared, in the character of British creditor, to have an *equal* right to the protection of His Majesty's Government, against the consequences of this grievous injury; but the British merchants whose money, to the amount of millions, was thus iniquitously detained, stood forward as the leaders of those measures which gave His Majesty's Government an adequate view of the hardship they all endured. Committees were formed at London and at Glasgow, from whom jointly such statements and representations proceeded, as did not fail to make the strongest impression. Certain military posts, which by the treaty had been agreed to be delivered up, were in consequence retained; and at length, but not till after a period of nearly ten years had elapsed during which many of His Majesty's subjects, thus aggrieved, had fallen in the utmost indigence and distress, a sure foundation appeared to be laid
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for the final settlement of this important business by a special article, drawn up with much accuracy and anxious precision, after a long and laborious negotiation between lord Grenville, in person, (who was in constant communication with the London and Glasgow committees,) and Mr. Jay, chief justice of the United States, the minister plenipotentiary appointed (as being a lawyer, with a view to that difficult subject,) in the treaty of amity commerce and navigation, concluded in November 1794.

This article (the 6th) authorized the establishment of a board of commissioners, finally as arbitrators, to decide on the matter between the two nations, by awarding to the individual sufferers such compensation, as after the fullest investigation, (the means of which were amply provided for,) those commissioners should find to be just. The preamble of which referred to the complaints of "divers British merchants and others," giving the lead to the particular description so specified, not as having any higher pretensions, but being more prominent in the proceedings, and more deeply interested than others. The description of "British creditor," being the essential character which applied equally to all.

Accordingly, the majority of the commissioners, who were appointed and sat at Philadelphia, under this article, considered themselves as bound to proceed on the claims of all persons, without distinction, whose *national character* came within the description of the treaties, and who had not lost the benefit of it under them, that is, of all who appeared to their satisfaction to be, in the general language of the above article, "His Majesty's subjects," and had not, by accepting of American citizenship after the peace, barred their claim, including those who, having been colonists, were, according to the 4th article of the treaty of peace, "on the side" of His Majesty at the peace, and to whom, as already mentioned, the appellation of American loyalists had been given; no such appellation, or distinct class or character, had, however, been recognized before the board; there being no difference whatever, under the above articles of treaty, between the individuals of that description and the rest of His Majesty's subjects generally; though, on the part of the United States, the loyalty of those former colonists was made the ground of a favourite objection to their claims. They contended, with much warmth, that their own declaration of independence, in 1776, was the instrument which, even as to Great Britain, gave them independence as a nation; that all who were then settled on their territory became instantly their subjects; and that the acts of attainder and confiscation, which their legislatures had passed during the war, against those who, in breach (it was said) of their *new* allegiance, had adhered to His Majesty, were justly recognized by their courts of law, as having divested the persons, thereby attainted, of all right to recover payment of their debts, which had been thereby confiscated to the state; but the board decided, that as *against His Majesty and his subjects*, the date of the treaty of peace, whereby His Majesty, without any retrospect, acknowledged their independence was the rule; and that those previous acts of attainder and confiscation against His Majesty's subjects, instead of barring their claims, did, in fact, so far as they affected the recovery of debts, constitute clear and manifest "lawful impediments." within the direct meaning of the treaties; entitling them in common, and as standing exactly on a level with the rest of His Majesty's subjects, to compensation for whatever loss the board should, on investigation, see cause to ascribe to their operation.

When, after a long protracted course of controversy on points of construction and principle, the further proceedings of that board were prevented by the unexampled conduct of both the American commissioners, who in obedience, as they avowed, of the instructions of their Government, and notwithstanding their oaths of office, and the nature of their trust, which rendered all instructions, from either of the parties, altogether inadmissible, seceded or withdrew from the board as soon as they found that the majority (whose voices, by the treaty, were to be decisive) could not be diverted from their duty, but were determined not to suffer the object of the commission to be defeated by those sinister and evasive means, which there was reason to believe had been contemplated from the beginning, the claimants of course complained loudly of the accumulated hardships they had so long suffered, but expressed their confidence, that His Majesty's Government would protect their rights to the full extent of whatever it might, on further investigation, be shewn that the above board would have awarded, if this flagrant infraction of treaty had not taken place. But those well founded complaints proceeded from all the claimants in the single character of His Majesty's subjects, and on grounds which were common to all without distinction. The *British merchants*, properly so called,

did not claim a higher or better title to such protection, because their interest at issue was so much greater than that of any other description of creditors, or because they had made greater exertions to procure what appeared to be an efficient remedy: nor did the former colonists, who had loyally done their duty, and thereby retained their original character of British subjects, allude to any higher pretensions on that account, to a larger share, either then or thereafter, of aid or relief from His Majesty's Government. *All*, it was perfectly understood, would equally, and without distinction, have been entitled to *full* payment from the United States of the awards of the board, if the article had been fulfilled. Or, if the United States had, from inability at the time, or any other cause, paid only a certain part or proportion of each award, delaying or withholding the remainder, no particular class of the holders of those awards could have had more or less right to claim the protection of His Majesty's Government, in enforcing payment of the balances remaining due, of what had been thus ascertained to be their right, in a manner which could not be questioned, or again laid open for investigation.

A negotiation having ensued, it terminated in the convention of 1802, by which His Majesty's Government thought it expedient, by accepting of £. 600,000 from the United States, in satisfaction, as to them, of what they might have been liable to pay in pursuance of the said 6th article of the above treaty, to put an end (unquestionably an object of great public importance) to all further disputes on this irritating subject, between the two nations; the above sum being so accepted "for the use of the persons described in the said 6th article;" that is, for the use of "the British merchants and others His Majesty's subjects," to whom the United States "would have been liable to pay," in pursuance of the said article; the acceptance of the sum, and the liability of the United States, being both equally applicable to the same persons, without any distinction, in the one more than in the other.

But as the amount of the sum thus accepted by His Majesty, had not been fixed in consequence of any new investigation or understanding with the individuals interested, who those "British merchants and others" were, to whom the United States would have been so liable, and to what extent respectively? was a question of great extent, and (from the additional lapse of time, and there being now but one party, (*viz.* claimants without opponents) whose statements would therefore require the strictest scrutiny) of greater difficulty than ever; involving claims from all the above descriptions of persons, who did not, however, allude to any priorities of character thence arising, which, after deducting all that had been recovered, were supposed still to amount, good and bad, to five millions and a half sterling. And that question, it was therefore found, could not be determined, but by means of a board of commissioners, who should be vested with a special jurisdiction, having final and conclusive powers, such as Parliament alone could give.

The Act of the 43d of the King was accordingly passed, for enabling commissioners to receive the claims of *all* His Majesty's subjects, without distinction, to decide conclusively on the particular merits of each, so as to ascertain the amount of loss truly incurred, and to distribute or apportion the above mentioned sum, thereby placed at their disposal for that purpose.

And as this Act was altogether general in the description of persons interested, so the public notices of the board was equally so in that respect, calling upon all those whose "national character entitled them to claim as *His Majesty's subjects*," to come forward, without alluding to any distinction or particular description of persons, such as that of *American loyalists*, because nothing appeared in the treaties or nature of the subject before them, to suggest any such distinction.

At the same time it will appear, from the following account of the manner in which they proceeded, that no peculiarity or distinction, which could affect the merits of any of the cases before them, were overlooked or excluded from their consideration. Adopting the interpretations and principles established at Philadelphia, of which they approved, with such other constructions and rules of judgment as they conceived that board would have settled, they satisfied themselves, in the first place, that the claimants were His Majesty's subjects, and had not accepted of American citizenship. In the next place, they considered how far recovery of the debts claimed on in any case, supposing them just, had been barred or impeded by any of the following laws, or lawful obstacles, in breach of the 4th article of the treaty of peace, *viz.* by such acts of *attainder and confiscation*, as have been already explained; by the extension or misapplication of *statutes of limitation*, during periods when British creditors were deprived of all legal remedy; by nonsuits in the courts after the peace,

on the short and compendious plea of "*British debt*;" or by the *verdicts of juries* for the defendant, as matter of course on the same ground, either under the direction of the judge, or otherwise with a manifest view to the plaintiff's national character, and often without receiving answer or evidence. On the part of the defendant, by the plea of "*payment into the Treasury*" of the State, in *State paper*, in discharge of the debtor, under positive laws for that iniquitous purpose; or of a *tender* in payment to the British creditor or his agent, of the same *paper money* at its *nominal* value, such paper being depreciated in many instances to the extent of a thousand for one; and which dishonest tender, with refusal, had been solemnly declared under laws made for that end, to be a legal acquittance of the debt; by laws or legal practices to defeat and disappoint *executions* on former judgments for British debts; or in cases where advantage had not been taken of those *total bars* and impediments, by the arbitrary deduction in the courts on public grounds, with which the private creditor had no concern, of all *interest during the war*, amounting nearly to one-half the principal sum; or by any other form of "*lawful impediment*," within the intent and meaning of the treaties.

Having determined in any case, that any one of those lawful impediments had operated against the claimant, the next subject of investigation was the amount of the actual loss he had thereby sustained; involving the consideration, first, whether, on examining the nature and particulars of all questionable transactions (as far as this could be done) the debts claimed on were in the words of the fourth article of the treaty of peace, *bonâ fide* debts, truly contracted before the peace. Secondly, whether the lawful impediment operated as a total bar, striking at once at the creditor's remedy or means of enforcing payment over the *whole* debt, such as the plea of "*British debt*," an act of limitation, or attainder and confiscation, and the like; or affected the recovery of only part of certain debts, such as forced payments in depreciated paper, *evasive practices* against the just benefit of executions, or the deduction of interest during the war. And, Thirdly, not only how the different debts in question were constituted and secured; whether by open account, bill, note, bond, judgment, mortgage, or other real security; including all considerations, in favour of the fairness and validity of those documents and securities, on the one hand; or their probable inefficiency on the other, if *litigiously* contested in courts of law, on grounds which could not be brought within the description of lawful impediments under the treaties; but also, and more particularly, by whom those debts were due, involving the important and complicated inquiry to what extent, in each case, those debts might reasonably be considered as having been good, or due by persons who were solvent at the peace, and within such a period, subsequent to it, as would have been sufficient for the recovery of them in the ordinary and *unimpeded* course of justice; or as having, on the contrary, either become bad by the insolvency, deaths or removal of the debtors, before the lawful impediments in breach of the treaty above described could have operated; or whether they had been lost (to use the words of the treaty of 1794), "*by the wilful omissions or negligence*" of the creditors, or might yet in part or in whole be recovered.

Under none of those heads was there any thing material to the issue to distinguish the claims of the American loyalists, or any other description of individuals, from others; for although one of the many lawful impediments which occurred, viz. the bar to recovery arising from the acts of attainder and confiscation, already mentioned, was particularly applicable to a considerable number of those loyalists, yet the plea founded on those acts was not more effectual as an impediment than that of *an act of limitation*; of *British debt*, of *payment into the Treasury*, or others which operated against the British merchant; it being of no importance to the issue before the board, by what *species* of impediment, operating as a total bar to the recovery, the loss incurred by the claimant was occasioned. Nor was there any thing peculiar to the claims of any particular description of creditors, in the nature of the debts and securities claimed on; for debts and securities of every species were to be found equally in the claims of American loyalists, and of British merchants; no particular kind of debt or security being confined to the cases of any particular class of creditors.

It appears indeed, from some of the special orders of the Board, that claimants have sometimes alluded incidentally to their personal merits and services as loyalists; but on such occasions, which were very rare, they were always informed, by the board, how inapplicable such considerations were to the merits of their claims as

British creditors; and it does not appear that any complaint has ever been made, that those claimants, who were American loyalists, have been particularly unfortunate under the proceedings of the board. Nor is it improper just to mention, though not as matter of correct consideration, that great as were the reductions made on many of their claims, proceeding often on grounds which, with them, as with others, were their misfortune, not their fault, it will be found that reductions equally great, if not greater, took place in the cases of British merchants, and other claimants, before the board.

It is indeed fair to say, that if any distinction, in favour of a particular class of claimants, had occurred, it would have received its full effect before the board, and yet their impartiality and equal attention to the peculiar merits of every particular case cannot now be proved; but it will be presumed, their adjudications being not only conclusive under the Act, and actually carried into effect by the immediate distribution of the money at their disposal, but having proceeded on grounds and inferences, of which the commissioners themselves could now give no other account, than that they satisfied their own minds at the time, as far as they could be satisfied on such a subject. The evidence on which they decided was of every possible kind, including a voluminous mass of American letters of correspondence, which was obtained, under their authority, from their claimants, or their agents; and laid open the most useful and pertinent information, respecting the situations of debtors, and other circumstances generally or specially affecting the value of the debts claimed on at the different periods in question; the losses to which creditors in that country had at all times been subject; the game of hazard, in giving credits, which many of them played; the delays and disappointments to which the necessities, loose principles, and general habits of debtors, before as well as since the revolution, gave rise, for none of which, as causes of loss, the United States were liable; from all which matter, *taken* together, including the facts communicated in special orders to the parties, and the explanation in their representations, (many circumstances appearing, in one case, which materially affected others,) with the addition of those impressions which, in many instances, the manner in which claims were conducted before them, whether by open and candid disclosure on the one hand, or attempts to conceal the truth and deceive the board on the other, they drew their final conclusions to the best of their judgment, considering themselves, as they explained in their general printed order of the 17th of May 1806, as placed in the situation of "jurors assessing damages in a complicated cause, where it was not possible to arrive exactly at the truth, but which they were nevertheless bound to decide."

But, although nothing express or implied is to be found in the treaties, or the proceedings under them, or in the act of Parliament, or the proceedings under it, to distinguish the case of those holders of adjudications who were American loyalists, it may perhaps be said, that they derived pretensions, on this subject, from a former proceeding, which related to them only. The 5th article of the treaty of peace had *recommended* to the United States the restitution of the real and other property, which had been confiscated, as belonging to the loyalists, on the principle already referred to, but, as might well have been anticipated, no regard whatever was paid by the United States to that recommendation; a board of commissioners was therefore, in 1784, established by act of Parliament, with power to inquire and report on the actual losses sustained by those loyalists, and on the estimates and report of that board, including, on principles of great liberality, allowances for loss of profession and office, adequate provision was made for them by Parliament. But claims for loss of *debts* were not admitted by that board, the loyalists having, on that head, been referred to the 4th article of the treaty of peace; to the benefit of which, and all its consequences, they would be entitled in the distinct character of *British creditors*, in common with all other His Majesty's subjects of that description. On this it is said they contend, that because they were prevented by this reference to the 4th article of the treaty of peace, from receiving, at that time, a full and adequate allowance for loss of debts, they hold a stronger pledge now, for the *full* and complete benefit of that article, and all its consequences, than the other creditors it was meant to secure. But, in fact, they were not prevented by the reference to the above article, rightly so made by that board, from receiving an allowance for any such loss, but by the nature of the case; for no such loss could at that time (immediately after the peace) be charged as incurred in breach

of the article, and when it was incurred, it raised a debt against the United States, for the discharge of which, by anticipation, Parliament could not, on any rational ground, have been expected to provide.

On the whole, therefore, it does not appear on what ground those holders of the adjudications stated in the question, who were American loyalists, can maintain a better title on the subject of that question, than that on which the British merchants, and His Majesty's other subjects, holding such adjudications, have relied.
