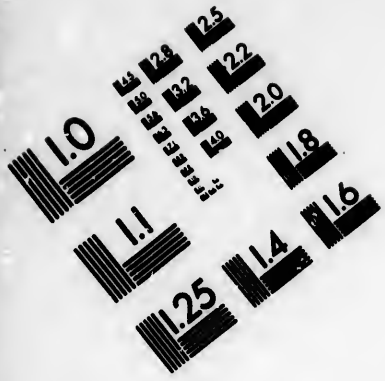

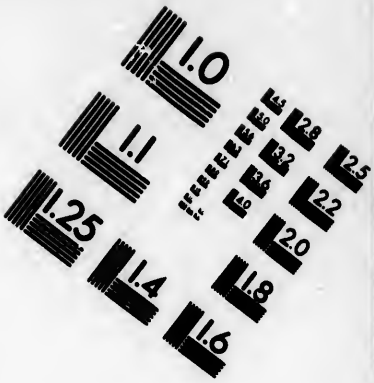

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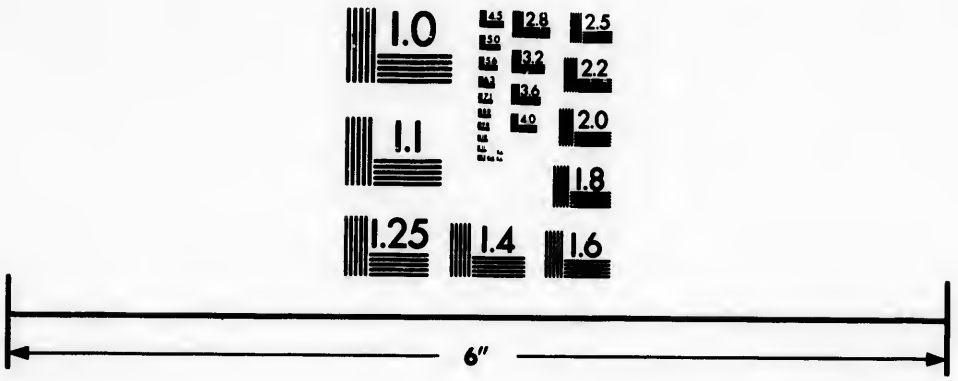

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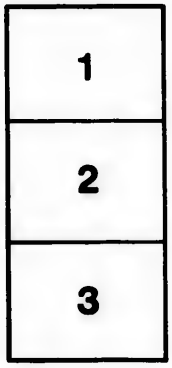

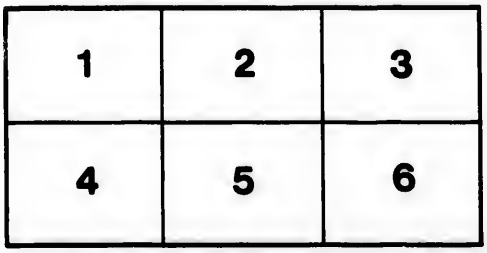

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REPORT OF DECISIONS

OF

THE COMMISSION OF CLAIMS

UNDER

THE CONVENTION OF FEBRUARY 8, 1853,

BETWEEN THE

S. 3881
25-11-29

UNITED STATES AND GREAT BRITAIN,

TRANSMITTED TO THE SENATE

BY

THE PRESIDENT OF THE UNITED STATES,

AUGUST 11, 1856.

WASHINGTON:
A. O. P. NICHOLSON, SENATE PRINTER.
1856.

MESSAGE

OF THE

PRESIDENT OF THE UNITED STATES,

COMMUNICATING THE

PROCEEDINGS OF THE COMMISSIONERS

FOR THE

ADJUSTMENT OF CLAIMS

UNDER

THE CONVENTION OF FEBRUARY 8, 1853,

BETWEEN

THE UNITED STATES AND GREAT BRITAIN.

WASHINGTON:
A. O. P. NICHOLSON, SENATE PRINTER.
1856

IN SENATE OF THE UNITED STATES,

March 3, 1855.

Resolved, That the President be requested to furnish to the Senate the report of the commissioners for the adjustment of claims, under the convention of February 8, 1853, between the United States and Great Britain, with the decisions of the commissioners and umpire, and the arguments of the agents, as reported by them, and that the usual number of copies of the same be printed for the use of the Senate, under the direction of the Department of State; said reports to be properly bound, edited, and indexed.

Attest: ASBURY DICKINS,

Secretary.

IN SENATE OF THE UNITED STATES,

August 12, 1856.

Resolved, That, in addition to the usual number of copies of the report of the commissioners for the adjustment of claims, under the convention of February 8, 1853, between the United States and Great Britain, and the convention connected therewith, heretofore ordered to be printed for the use of the Senate, there be printed five hundred copies for the use of the Department of State.

Attest: ASBURY DICKINS,

Secretary.

INTRODUCTION.

The convention under which the commission, whose proceedings are hereinafter detailed, derived its authority, was entered into between the United States and Great Britain, on the 8th day of February, 1853, the ratifications of which were exchanged on the 26th of July, 1853.

It provided for the adjustment of claims made upon the government of the United States by corporations, companies, and private individuals, subjects of her Britannic Majesty, and claims made upon the government of Great Britain by corporations, companies, and private individuals, citizens of the United States.

The jurisdiction of the commissioners extended to all cases remaining unsettled, which had been presented to either government for its interposition with the other, since the signature of the treaty of peace, on the 24th of December, 1814; and such other claims, subsequent to that time, as might be presented to the commissioners within six months from the day of their first meeting.

These claims were to be impartially and carefully examined by the commissioners, and decided "according to the best of their judgment, and according to justice and equity;" and their decision was to be "a full, final, and perfect settlement of every claim arising out of any transaction of a date prior to the exchange of the ratifications of the convention."

The respective governments engaged to give full effect to these deci-

sions, without objection, delay, or evasion; and further engaged that all claims within the jurisdiction of the commissioners, whether presented or not for their consideration, should, from and after the conclusion of the proceedings of the commission, "be considered and treated as finally settled, barred, and thenceforth inadmissible."

One commissioner was to be appointed by each government, and the two were to name some third person to act as arbitrator or umpire, in cases in which they might differ in opinion, and if they could not agree on such person, each commissioner was to name an umpire, and the umpire was to be selected by lot to act in such cases.

The responsibility of selecting an umpire for the two governments was thus devolved on the commission, as well as the final settlement of all claims between the countries for a period of nearly forty years.

The commission consisted of NATHANIEL G. UPHAM, on the part of the United States, and EDMUND HORNBY, on the part of Great Britain. They met at London on the 15th of September, 1853, and, after various conferences, on the 31st of October, agreed on JOSHUA BATES, of London, as arbitrator or umpire, in cases in which the commissioners might disagree.

JOHN A. THOMAS was appointed agent of the United States, and JAMES HANNEN agent of Great Britain, to present the claims made in behalf of their respective governments, and to answer all claims made upon them.

As all claims not presented were to be finally barred, the respective governments caused all applications for redress, coming within the period prescribed by the convention, to be submitted for the action of the commission. Many of these claims required but little investigation and were readily disposed off. Others, mainly of a private character, were rendered doubtful by conflicting and uncertain testimony, and were strenuously contested.

There was another class of cases where the governments were directly

at issue on grave questions of international law, that had caused much irritation between the two countries. These cases had been the subject of laborious investigation and frequent discussion in Congress, and had been argued with eminent ability by Messrs. Everett, Stevenson, Bancroft, and other American ministers to Great Britain, and by various members of the British ministry, until all hope of a settlement of them in the ordinary mode had been abandoned.

This convention was then entered into for the adjustment of these claims between the countries by a court of final jurisdiction, "with the belief that their settlement would contribute much to the maintainance of friendly feeling between the two countries."

By the terms of the convention, these cases were to be decided within one year from the opening of the commission. As this was found to be impracticable, the time was extended by a supplementary convention to a further period of four months. Within the period, thus extended, the commissioners acted upon, and finally disposed of, all claims before them, and united, on the 15th of January, 1855, in mutual reports to their respective governments of the result of their labors.

Congress and Parliament early made appropriations for payment of the several awards made by the commissioners, and all claims between the citizens or subjects of either country against the other, to the date of the ratification of the convention, July 26, 1855, have since been fully and finally settled.

Those gentlemen most conversant with the trouble and difficulties attending these claims have expressed, in strong terms, their views as to the importance of this result. Mr. Buchanan, minister to England, in his letter addressed to the Secretary of State, at the close of the commission, dated London, January 26, 1855, states that "the commission for the settlement of outstanding claims between the United States and Great Britain had just terminated," and that "the relations

which the instructions from the Secretary had established between himself and the American commissioner and the agent, rendered it proper for him to express an opinion of the manner in which these gentlemen had respectively performed their duties."

"This," he says, "is a pleasing office; because it would scarcely be possible for any individuals to have discharged these duties in a more satisfactory manner.

"The business of the commission was conducted by Judge Upham and General Thomas, in their several spheres of action, with much ability, as well as indefatigable industry and perseverance; and the result of their labors has proved to be quite as favorable to our country as could have been reasonably anticipated.

"The action of this commission will be a great relief to the two governments. All the claims of the citizens and subjects of each on the government of the other, which had been accumulating since the date of the treaty of Ghent, (24th December, 1814,) and had given rise to so much diplomatic correspondence, have happily now been decided, and can no longer become subjects of discussion.

"These claims in number exceeded one hundred, and in amount involved millions of dollars. The sum actually awarded was about $600,000, of which the American claimants will receive considerably more than one-half."

Similar favorable views, as to the result of the commission, and its great relief to the diplomatic relations between the two countries, have been expressed by Mr. Everett, in letters congratulating the commission on the successful completion of their labors.

The report submitted consists of several distinct parts, containing—

1. The journal of the proceedings of the commission.

2. The docket of the American claims, with the awards and disposal of cases thereof.

3. The docket of British claimants, and awards thereon.

4. A report of those cases involving important principles, which were drawn up at length by the commission.

5. Appendix, containing correspondence as to the appointment of umpire, and other papers connected with the commission.

6. Index of cases.

WASHINGTON, *September* 30, 1856.

LIST OF CASES

WHERE THE OPINIONS OF THE COMMISSIONERS AND UMPIRE ARE REPORTED AT LENGTH.

MESSAGE

OF

THE PRESIDENT OF THE UNITED STATES,

COMMUNICATING,

In compliance with a resolution of the Senate of March 3, 1855, *information relative to the proceedings of the commissioners for the adjustment of claims under the convention with Great Britain of February* 8, 1853.

AUGUST 12, 1856.—Read, ordered to lie on the table and be printed, and that 500 additional copies be printed for the use of the Department of State.

To the Senate of the United States:

In compliance with the resolution of the Senate of the 3d March, 1855, requesting information relative to the proceedings of the commissioners for the adjustment of claims under the convention with Great Britain of the 8th of February, 1853, I transmit a report from the Secretary of State, to whom the resolution was referred.

FRANKLIN PIERCE.

WASHINGTON, *August* 11, 1856.

DEPARTMENT OF STATE,
Washington, August 9, 1856.

The Secretary of State, to whom was referred the resolution of the Senate of the 3d March, 1855, requesting "the President to furnish to the Senate the report of the commissioners for the adjustment of claims under the convention of February 8, 1853, between the United States and Great Britain, with the decisions of the commissioners and umpire, and the arguments of the agents as reported by them, and that the usual number of copies of the same be printed for the use of the Senate, under the direction of the Department of State, to be properly bound, edited, and indexed," has the honor to lay before the President a copy of all the papers called for by the resolution, which are on file in this department.

Respectfully submitted.

W. L. MARCY.

To the PRESIDENT OF THE UNITED STATES.

COPY OF RESOLUTION FOR THE PUBLICATION OF THE REPORT OF THE COMMISSIONERS.

UNITED STATES SENATE, *March* 3, 1855.

Resolved, That the President be requested to furnish to the Senate the report of the commissioners for the adjustment of claims under the convention of February 8, 1853, between the United States and Great Britain, with the decisions of the commissioners and umpire, and the arguments of the agents as reported by them, and that the usual number of copies of the same be printed for the use of the Senate, under the direction of the Department of State; said report to be properly bound, edited, and indexed.

OFFICE OF COMMISSION,
LONDON, JANUARY 15, 1855.

REPORT OF THE COMMISSIONERS UNDER THE CONVENTION OF FEBRUARY 8, 1853, FOR THE ADJUSTMENT OF CLAIMS OF CITIZENS OF THE UNITED STATES AGAINST THE BRITISH GOVERNMENT, AND OF SUBJECTS OF GREAT BRITAIN AGAINST THE UNITED STATES, TO THEIR RESPECTIVE GOVERNMENTS

The undersigned commissioners, herewith, respectfully report to their respective governments their proceedings and awards, under the convention of February 8, 1853, for the adjustment of claims of citizens of the United States and subjects of Great Britain against either government.

The cases submitted for the consideration of the commissioners have greatly exceeded the number originally anticipated. This has arisen from the fact that the agents of the governments have deemed it their duty to submit all claims coming within the period prescribed by the convention, which had been presented to either government for its interposition with the other.

Many of these cases might never have been made a matter of consideration, had they not been thus brought forward.

The mere statement of some of them would justify their rejection, but in most instances they have required very considerable investigation.

The duties of the commissioners have thus been greatly increased beyond what was originally contemplated. Many of the cases also had formed the subject of long and serious discussions between the two governments. In the adjustment of these claims the commissioners have naturally felt the responsibility cast upon them, and have, therefore, devoted no inconsiderable amount of time and labor to their settlement, and they have found it difficult to conclude the business of the commission within the time to which it had been extended.

They have, however, passed upon all the cases before them, and beg to report their action, and that of the umpire thereon, as the best result they have been able to attain in discharging the important duties intrusted to them.

The papers herewith presented consist of the journal of proceedings of the commissioners and umpire; the list of claims of the citizens or subjects of either country against the other, with the awards and opinions thereon; together with the correspondence relative to the appointment of an umpire, and other matters pertaining to the commission.

All which is respectfully submitted.

N. G. UPHAM,
United States Commissioner.

EDMUND HORNBY,
British Commissioner

PROCEEDINGS AND AWARDS

OF THE

COMMISSIONERS AND UMPIRE,

UNDER THE

Convention of February 8, 1853, *for the adjustment of claims of citizens of the United States against the British government and of subjects of Great Britain against the United States.*

JOURNAL OF THE COMMISSION.

9 Wellington Chambers, Lancaster Place,
Waterloo Bridge, London, September 15, 1853.

On the eighth day of February, one thousand eight hundred and fifty-three, a convention was concluded between the United States of America and her Britannic Majesty, for the adjustment of certain claims of citizens of the United States on the British goverment and of British subjects on the government of the United States, by means of a mixed commission to be duly constituted for that purpose, which convention is as follows:

Convention between the United States of America and her Britannic Majesty for the settlement of outstanding claims of the citizens of either country against the other.

Whereas, claims have at various times, since the signature of the treaty of peace and friendship between the United States of America and Great Britain, concluded at Ghent on the 24th of December, 1814, been made upon the government of the United States on the part of corporations, companies, and private individuals, subjects of her Britannic Majesty, and upon the government of her Britannic Majesty

on the part of corporations, companies, and private individuals, citizens of the United States; and whereas some of such claims are still pending and remain unsettled, the President of the United States of America and her Majesty the Queen of the United Kingdom of Great Britain and Ireland, being of opinion that a speedy and equitable settlement of all such claims will contribute much to the maintenance of the friendly feelings which subsist between the two countries, have resolved to make arrangements for that purpose by means of a convention, and have named as their plenipotentiaries to confer and agree thereupon, that is to say—

The President of the United States of America, Joseph Reed Ingersoll, envoy extraordinary and minister plenipotentiary of the United States to her Britannic Majesty;

And her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honorable John Russell, (commonly called Lord John Russell,) a member of her Britannic Majesty's most honorable privy council, a member of parliament, and her Britannic Majesty's principal secretary of state for foreign affairs;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed as follows:

ARTICLE I.

The high contracting parties agree that all claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the government of her Britannic Majesty, and all claims on the part of corporations, companies, or private individuals, subjects of her Britannic Majesty, upon the government of the United States, which may have been presented to either government for its interposition with the other since the signature of the treaty of peace and friendship, concluded between the United States of America and Great Britain at Ghent, on the 24th of December, 1814, and which yet remain unsettled, as well as any other such claims, which may be presented within the time specified in article III, hereinafter, shall be referred to two commissioners, to be appointed in the following manner, that is to say: One commissioner shall be named by the President of the United States, and one by her Britannic Majesty. In case of the death, absence, or incapacity of either commissioner, or in the event of either commissioner omitting or ceasing to act as such,

the President of the United States, or her Britannic Majesty, respectively, shall forthwith name another person to act as commissioner in the place or stead of the commissioner originally named.

The commissioners, so named, shall meet at London at the earliest convenient period after they shall have been respectively named; and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, without fear, favor, or affection to their own country, upon all such claims as shall be laid before them on the part of the governments of the United States and of her Britannic Majesty, respectively; and such declaration shall be entered on the record of their proceedings.

The commissioners shall then, and before proceeding to any other business, name some third person to act as an arbitrator or umpire in any case or cases on which they may themselves differ in opinion. If they should not be able to agree upon the name of such third person, they shall each name a person; and in each and every case in which the commissioners may differ in opinion as to the decision which they ought to give, it shall be determined by lot which of the two persons so named shall be the arbitrator or umpire in that particular case. The person or persons so to be chosen to be arbitrator or umpire shall, before proceeding to act as such in any case, make and subscribe a solemn declaration in a form similar to that which shall already have been made and subscribed by the commissioners, which shall be entered on the record of their proceedings. In the event of the death, absence, or incapacity of such person or persons, or of his or their omitting, or declining, or ceasing to act as such arbitrator or umpire, another and different person shall be named as aforesaid, to act as such arbitrator or umpire in the place and stead of the person so originally named as aforesaid, and shall make and subscribe such declaration as aforesaid.

ARTICLE II.

The commissioners shall then forthwith conjointly proceed to the investigation of the claims which shall be presented to their notice. They shall investigate and decide upon such claims, in such order, and in such manner, as they may conjointly think proper, but upon such evidence or information only as shall be furnished by or on behalf

of their respective governments. They shall be bound to receive and peruse all written documents or statements which may be presented to them by or on behalf of their respective governments, in support of, or in answer to, any claim; and to hear, if required, one person on each side, on behalf of each government, as counsel or agent for such government, on each and every separate claim. Should they fail to agree in opinion upon any individual claim, they shall call to their assistance the arbitrator or umpire whom they may have agreed to name, or who may be determined by lot, as the case may be; and such arbitrator or umpire, after having examined the evidence adduced for and against the claim, and after having heard, if required, one person on each side as aforesaid, and consulted with the commissioners, shall decide thereupon finally, and without appeal. The decision of the commissioners, and of the arbitrator or umpire, shall be given upon each claim in writing, and shall be signed by them respectively. It shall be competent for each government to name one person to attend the commissioners as agent on its behalf, to present and support claims on its behalf, and to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision thereof.

The President of the United States of America, and her Majesty the Queen of the United Kingdom of Great Britain and Ireland, hereby solemnly and sincerely engage to consider the decision of the commissioners conjointly, or of the arbitrator or umpire, as the case may be, as absolutely final and conclusive upon each claim decided upon by them or him respectively, and to give full effect to such decisions without any objection, evasion, or delay whatsoever.

It is agreed that no claim arising out of any transaction of a date prior to December 24, 1814, shall be admissible under this convention.

Article III.

Every claim shall be presented to the commissioners within six months from the day of their first meeting, unless in any case where reasons for delay shall be established to the satisfaction of the commissioners, or of the arbitrator or umpire, in the event of the commissioners differing in opinion thereupon; and then, and in any such case, the period for presenting the claim may be extended to any time not exceeding three months longer.

The commissioners shall be bound to examine and decide upon every claim within one year from the day of their first meeting. It shall be competent for the commissioners conjointly, or for the arbitrator or umpire, if they differ, to decide in each case whether any claim has or has not been duly made, preferred, and laid before them, either wholly, or to any and what extent, according to the true intent and meaning of this convention.

ARTICLE IV.

All sums of money which may be awarded by the commissioners, or by the arbitrator or umpire, on account of any claim, shall be paid by the one government to the other, as the case may be, within twelve months after the date of the decision, without interest, and without any deduction, save as specified in article VI hereinafter.

ARTICLE V.

The high contracting parties engage to consider the result of the proceedings of this commission as a full, perfect, and final settlement of every claim upon either government arising out of any transaction of a date prior to the exchange of the ratifications of the present convention; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said commission, shall, from and after the conclusion of the proceedings of the said commission, be considered and treated as finally settled, barred, and thenceforth inadmissible.

ARTICLE VI.

The commissioners, and the arbitrator or umpire, shall keep an accurate record, and correct minutes or notes of all their proceedings, with the dates thereof, and shall appoint and employ a clerk, or other persons, to assist them in the transaction of the business which may come before them.

Each government shall pay to its commissioner an amount of salary not exceeding three thousand dollars, or six hundred and twenty pounds sterling, a year, which amount shall be the same for both governments.

The amount of salary to be paid to the arbitrator (or arbitrators, as

the case may be) shall be determined by mutual consent at the close of the commission.

The salary of the clerk shall not exceed the sum of fifteen hundred dollars, or three hundred and ten pounds sterling, a year.

The whole expenses of the commission, including contingent expenses, shall be defrayed by a ratable deduction on the amount of the sums awarded by the commission; provided always that such deduction shall not exceed the rate of five per cent. on the sums so awarded.

The deficiency, if any, shall be defrayed in moieties by the two governments.

ARTICLE VII.

The present convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by her Britannic Majesty; and the ratifications shall be exchanged at London as soon as may be within twelve months from the date hereof.

In witness whereof, the respective plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at London, the eighth day of February, in the year of our Lord one thousand eight hundred and fifty-three.

J. R. INGERSOLL. [L. S.]
J. RUSSELL. [L. S.]

Ratifications of said convention were exchanged at London on the twenty-sixth of July, 1853.

In accordance with the terms of this treaty, the President of the United States of America nominated and, by and with the advice and consent of the Senate thereof, appointed Nathaniel G. Upham, commissioner on the part of the United States, and her Britannic Majesty, Edmund Hornby, esq., commissioner on the part of the United Kingdom of Great Britain and Ireland, to meet and carry into effect the provisions of the above named convention; and the said commissioners met on this the fifteenth day of September, one thousand eight hundred and fifty-three, at their office in London, and interchanged their respective commissions, found in good and due form, which are as follows:

COPY OF THE COMMISSION OF THE AMERICAN COMMISSIONER.

Franklin Pierce, President of the United States of America, to all who shall see these presents, greeting:

Know ye, that reposing special trust and confidence in the integrity and abilities of Nathaniel G. Upham, of New Hampshire, I have nominated and, by and with the advice and consent of the Senate, do appoint him commissioner of the United States, under the convention with her Britannic Majesty on the subject of claims, and do authorize and empower him to execute and fulfil the duties of that office according to law, and to have and to hold the said office with all the powers, privileges, and emoluments thereunto of right appertaining unto him, the said Nathaniel G. Uphain.

In testimony whereof, I have caused these letters to be made patent and the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, the twenty-third day of March, in the year of our Lord one thousand eight hundred and fifty-three, and of the independence of the United States the seventy-seventh.

FRANKLIN PIERCE.

By the President:

W. L. MARCY,
Secretary of State.

COPY OF THE COMMISSION OF HER BRITANNIC MAJESTY'S COMMISSIONER.

VICTORIA R.

Victoria, by the grace of God, Queen of the United Kingdom of Great Britain and Ireland, defender of the faith, &c., &c., to all and singular to whom these presents shall come, greeting:

Whereas a convention was concluded and signed at London, on the eighth day of February, one thousand eight hundred and fifty-three, between us and our good friends the United States of America, for the settlement of outstanding claims of the one contracting party upon the other by means of a mixed commission:

Now know ye, that we, reposing especial trust and confidence in the approved learning, wisdom, and fidelity of our trusty and well be-

loved Edmund Hornby, esquire, have named, made, constituted, and appointed, and do, by these presents, name, make, constitute, and appoint him our commissioner, under and pursuant to the said convention, to meet the commissioner appointed, or to be appointed, on the part of our good friends the United States of America, and, in conjunction with him, to investigate and decide upon all such claims as shall be presented to the notice of the commissioners, according to the true intent and meaning of the convention above mentioned.

In witness whereof, we have signed these presents with our own royal hand.

Given at our court at Osborne House, the twenty-sixth day of August, in the year of our Lord one thousand eight hundred and fifty-three, and in the seventeenth year of our reign.

By her Majesty's command:

CLARENDON.

COPY OF DECLARATION MADE AND SUBSCRIBED BY THE COMMISSIONERS.

We, the undersigned commissioners, appointed in pursuance of a convention for the adjustment of certain claims of citizens of the United States on the British government, and of British subjects on the government of the United States, concluded at London the eighth day of February, one thousand eight hundred and fifty-three, do severally and solemnly declare that we will impartially and carefully examine and decide, to the best of our judgment and according to justice and equity, without fear, favor, or affection to our countries, upon all such claims as shall be laid before us on the part of the governments of the United States and of her Britannic Majesty respectively.

In witness whereof we have, this fifteenth day of September, one thousand eight hundred and fifty-three, made and subscribed this our solemn declaration.

NATHANIEL G. UPHAM,
Commissioner on the part of the United States.

EDMUND HORNBY,
Commissioner on the part of her Majesty.

THURSDAY, SEPTEMBER 15, 1853.

The commissioners proceeded, in compliance with the first article of the convention, to the selection of an arbitrator "or umpire to act in any case or cases on which the commissioners might differ in opinion." The names of several gentlemen were mentioned on either side, and the subject was deferred for further consideration.

The mode of notifying claimants of the meeting of the commissioners and of the time within which their claims should be presented was considered, and it was determined that the commissioners should severally notify their respective governments of the time and place of meeting of the commission, and request that such notice should be given by them to claimants of the pendency of the commission as they should deem proper; which resolution was duly communicated to the two governments. The commissioners then adjourned to meet on Saturday, the seventeenth instant, at half-past twelve.

SATURDAY, SEPTEMBER 17, 1853.

The commissioners met pursuant to adjournment, and after further conference in reference to the appointment of an umpire, adjourned until Monday, the 19th instant, at half-past twelve o'clock.

MONDAY, SEPTEMBER 19, 1853.

The commissioners agreed that they would communicate to each other in writing their opinions relative to the proper qualifications of an umpire, and the nominations they proposed to make, and further adjourned to meet on Thursday, the twenty-second instant.

THURSDAY, SEPTEMBER 22, 1853.

The commissioners met pursuant to adjournment. The subject of the future meetings of the commissioners was taken into consideration, and it was determined that from and after this date meetings be holden at the office of the commission, at 9 Wellington Chambers, Lancaster Place, Waterloo Bridge, London, daily, from twelve to three o'clock, until otherwise ordered.

WEDNESDAY, OCTOBER 12, 1853.

Various letters having passed between the commissioners relative to the choice of an umpire, which letters are placed on file, they this day

agreed on the appointment of Martin Van Buren, late President of the United States, now in Florence, to act as umpire in case of disagreement between them.

THURSDAY, October 13, 1853.

A joint letter was drawn up and forwarded to Mr. Van Buren, communicating to him his appointment by the commissioners as umpire under the convention between the United States and Great Britain of February 8, 1853.

The commissioners then proceeded to the selection of a secretary or clerk, in accordance with the sixth article of the convention, and Nathaniel L. Upham was appointed and entered upon the duties of his office.

The clerk was directed to make up the records of the commission to the present time, from minutes furnished by the commissioners.

SATURDAY, October 15, 1853.

The following rules and regulations relative to the transaction of business before the commissioners were adopted:

I. The secretary, or clerk, shall keep a docket, and enter thereon a list of all claims as soon as they shall be filed, specifying briefly the grounds and nature of such claim.

He shall also keep duplicate records of the proceedings had before the commissioners, and of the docket of claims filed with them, so that one copy of each shall be supplied to each government.

II. Cases shall be considered in order for the action of the commissioners whenever they shall be presented to them for their decision, or, if parties or agents for the governments appear, whenever they shall agree that the same shall be taken up for hearing.

III. All claims must be presented within six months from the fifteenth of September last, unless reasons be assigned for the delay satisfactory to the commissioners, and where cases, by leave of the commissioners, are presented after such time, they will be required to be in order for hearing as soon after presenting the same as may be.

IV. Cases presented within the first six months, where agents for the claimants appear, and which have not been previously disposed of, will be required to be in order for hearing and decision at any time after the said six months the commissioners may direct.

V. Claims presented to the commissioners by the agents of either government will be regarded as presented by their respective governments, in accordance with the provisions of the convention.

TUESDAY, OCTOBER 18, 1853.

The commissioners having met as usual, John A. Thomas, esq., agent of claims on the part of the government of the United States, was introduced, and presented to them his commission from the Department of State, a copy of which was ordered to be placed on record, which, on being read, is as follows:

COMMISSION OF THE AGENT ON THE PART OF THE GOVERNMENT OF THE UNITED STATES.

Franklin Pierce, President of the United States of America, to all who shall see these presents, greeting:

Know ye, that reposing special trust and confidence in the integrity and ability of John A. Thomas, of New York, I do appoint him to be agent of the United States under the convention with her Britannic Majesty of February 8, 1853, on the subject of claims, and do authorize and empower him to execute and fulfil the duties of that office according to law.

And to have and to hold the said office with all the powers, privileges, and emoluments thereunto of right appertaining unto him, the said John A. Thomas, during the pleasure of the President of the United States.

In testimony whereof I have caused these letters to be made patent and the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, the nineteenth day of April, in the year of our Lord one thousand eight hundred and fifty-three, and of the independence of the United States of America the seventy-seventh.

FRANKLIN PIERCE.

By the President:

WILLIAM L. MARCY,
Secretary of State.

FRIDAY, October 21, 1853.

General Thomas, United States agent, presented the statement of, and the testimony in, the claim of Messrs. Rogers & Brothers, of Salem, Massachusetts; he also introduced J. C. Bancroft Davis as private agent of the claimants in the above case.

After a partial hearing, the further consideration of the claim was referred to a future meeting, and the commissioners adjourned.

FRIDAY October 28, 1853.

A letter was received by the commissioners from Mr. Van Buren, stating his inability to attend to the duties of the office of umpire on account of other engagements, and declining the acceptance of the appointment; which letter was directed to be placed on file.

MONDAY, October 31, 1853.

The commissioners, after conferring relative to the selection of an umpire in the place of Mr. Van Buren, agreed upon Joshua Bates, esq., of London, to act as arbitrator, or umpire, in case of disagreement between them.

General Thomas presented papers and evidence relative to the seizure and claim of the barque Jones, and introduced Mr. Rockwell, agent of the claimants, to the commissioners. A partial hearing was had in reference to the case, when its further consideration was postponed until the agent appointed by her Majesty's government could attend.

TUESDAY, November 1, 1853.

The commissioners drew up a joint letter to Mr. Van Buren, acknowledging the receipt of his note of October the twenty-second, in which he declines to accept the appointment of umpire.

They further notified, by letter, Mr. Bates of their appointment of him to act as umpire in case of a disagreement between the commissioners; copies of which letters were ordered to be placed on file.

WEDNESDAY, November 2, 1853.

A letter was received from Mr. Bates accepting the appointment of arbitrator, or umpire, tendered him by the commissioners; which letter was placed on file.

MONDAY, NOVEMBER 14, 1853.

Mr. Bates attended the meeting of the commissioners and received from them his commission as arbitrator, or umpire, which is as follows:

COPY OF THE UMPIRE'S COMMISSION.

To all and singular to whom these presents shall come, greeting:

Whereas, a convention was concluded and signed, at London, on the eighth day of February, one thousand eight hundred and fifty-three, between the United States of America and her Britannic Majesty, for the adjustment of certain outstanding claims of citizens of either government against the other, by which it is provided that one commissioner shall be named by each of said governments, with power to investigate and decide upon such claims, and that the said commissioners shall name some third person to act as arbitrator, or umpire, in any case or cases on which they may differ in opinion; and the honorable Nathaniel G. Upham having been appointed commissioner on the part of the United States, and Edmund Hornby, esquire, on the part of her Britannic Majesty, and having been, severally, duly qualified and entered on the duties of their commission, and on the thirty-first day of October, 1853, having agreed on Joshua Bates, esquire, of London, as arbitrator, or umpire:

Now, therefore, be it known that we, the undersigned commissioners, reposing especial trust and confidence in the impartiality, integrity, and ability of said Joshua Bates, esquire, do hereby, by virtue of the authority vested in us as aforesaid, appoint him arbitrator, or umpire, under said convention, and do authorize and empower him to execute and fulfil the duties of said office, with all the powers and privileges connected therewith, according to the provisions of the convention.

In witness whereof, we have hereunto severally affixed our signatures this thirty-first day of October, one thousand eight hundred and fifty-three.

NATHANIEL G. UPHAM,
Commissioner on the part of the United States.

EDMUND HORNBY,
Commissioner on the part of Great Britain.

The umpire then made and subscribed the following solemn declaration, in accordance with the provisions of the first article of the convention:

COPY OF THE UMPIRE'S DECLARATION.

I hereby solemnly declare that I will impartially and carefully examine and decide, according to the best of my judgment and according to justice and equity, without fear, favor, or affection, to the government of the United States or of her Britannic Majesty, all such claims as may be submitted to me as arbitrator or umpire by the commissioners of the said governments appointed for the adjustment of certain claims on the part of citizens of either of the said governments against the other, under a convention signed at London, February eight, one thousand eight hundred and fifty-three.

In witness whereof, I have, this fourteenth day of November, made and subscribed this solemn declaration.

JOSHUA BATES.

THURSDAY, NOVEMBER 17, 1853.

James Hannen, esq., attended before the commissioners and presented his appointment as agent of claims on behalf of the government of her Britannic Majesty, a copy of which was ordered to be placed on record.

COMMISSION OF THE AGENT ON THE PART OF GREAT BRITAIN.

VICTORIA R.

Victoria, by the grace of God, Queen of the United Kingdom of Great Britain and Ireland, defender of the faith, &c., &c., &c., to all and singular to whom these presents shall come, greeting:

Whereas, a convention was concluded and signed at London, on the eighth day of February, one thousand eight hundred and fifty-three, between us and our good friends the United States of America, for the settlement of outstanding claims of one contracting party upon the other by means of a mixed commission:

Now know ye, that we, reposing especial trust and confidence in the approved learning, wisdom, and fidelity, of our trusty and well beloved James Hannen, esq., have named, made, constituted, and appointed, and do by these presents name, make, constitute, and ap-

point him our agent, under and pursuant to the said convention, and do hereby authorize and empower him to act in that capacity on our part in regard to all claims which may have been, or which may be, presented to the notice of the commissioners appointed or to be appointed by us, and by the President of the United States of America, under and pursuant to the convention aforesaid.

In witness whereof, we have signed these presents with our royal hand.

Given at our court, at Windsor Castle, the sixteenth day of November, in the year of our Lord one thousand eight hundred and fifty-three, and in the seventeenth year of our reign.

By her Majesty's command:

CLARENDON.

MONDAY, November 28, 1853.

Further hearing was had on the claim of Messrs. Rogers & Co. General Thomas, United States agent, offered affidavits on behalf of the owners of the barque Jones, that their vessel was not engaged in the slave trade; and, in addition, a statement of the amount of damage claimed.

He also presented an abstract of the claim of William Cook and others, avowing themselves to be the heirs of one Mrs. Frances Shard, and entitled to such property as she had died possessed of, and which, for want of representatives, it was alleged, had lapsed to the crown, and was in the possession of her Britannic Majesty's government.

THURSDAY, December 1, 1853.

Mr. Hannen, agent of her Majesty's government, presented to the commissioners the claim of Messrs. Kerford & Jenkin, for losses sustained through a detention by the United States army of merchandise forwarded by them to Mexico during the years 1846 and 1847.

SATURDAY, December 3, 1853.

Mr. Hannen presented the claim of William McGlinchy, for the illegal seizure and detention of certain papers and property by United States custom-house officers on the river St. John.

TUESDAY, DECEMBER 6, 1853.

The claim of William Allen, for the seizure and detention, at San Francisco, of the Joseph Albino, by United States custom-house officers, under charge of smuggling, was submitted to the commissioners, and was disallowed.

The claim of Messrs. Loback & Co., for the seizure of logwood, at Tabasco, by United States naval officers, was also submitted to the commissioners, and was disallowed.

WEDNESDAY, DECEMBER 7, 1853.

Mr. Hannen presented the claim of Messrs. Calmont & Co. for the seizure of goods by Mexicans while under convoy of United States forces, which was disallowed.

A claim was then presented for the return of the duties paid on the goods seized, which was deferred for consideration.

THURSDAY, DECEMBER 15, 1853.

Mr. Hannen attended and took exception to the jurisdiction of the commissioners in the case of William Cook and others, and presented a protest against the same, which was ordered to be placed on file.

FRIDAY, DECEMBER 30, 1853.

Mr. Hannen presented the claim of Christopher Richardson for the seizure of the Frances and Eliza, at New Orleans, and the claim of Messrs. Calmont & Greaves, for excess of duties levied on their goods at Vera Cruz.

TUESDAY, JANUARY 3, 1854.

Mr. Hannen presented the claim of George Buckham for the seizure and sale of the brig Lady Shaw Stewart, at San Francisco, for alleged violation of the revenue laws.

SATURDAY, JANUARY 7, 1854.

Mr. Hannen presented the claim of Francis Watson and others, for lands in the territory formerly claimed by New Brunswick, but now, by adjustment of the boundary, situated in the State of Maine.

MONDAY, JANUARY 9, 1854.

Mr. Hannen presented the claim of Lord Carteret to lands in North and South Carolina.

TUESDAY, JANUARY 10, 1854.

Mr. Hannen presented the claim of the Earl of Dartmouth to lands in East Florida.

FRIDAY, JANUARY 13, 1854.

Mr. Hannen presented the claim of John Potts for damages sustained in Chihuahua, in Mexico, from the American forces.

MONDAY, JANUARY 16, 1854.

Mr. Hannen presented the claim of the Messrs. Laurents for the seizure of property in Mexico by General Scott.

FRIDAY, JANUARY 20, 1854.

Mr. Hannen presented the claim of John Lidgett for the alleged illegal seizure of the ship Albion by the custom-house authorities of the Territory of Oregon.

TUESDAY, JANUARY 24, 1854.

General Thomas presented the claim of Thomas Tyson, of Baltimore, for the seizure of the schooner Fidelity, at Sierra Leone, by the collector of that port, in 1825.

FRIDAY, JANUARY 27, 1854.

Mr. Hannen presented the claim of Thomas Rider to remuneration for losses and injury sustained by his arrest and detention at Matamoras by the military authorities of the United States.

THURSDAY, FEBRUARY 9, 1854.

General Thomas presented the claim of the fishing schooner Caroline Knight, for its illegal seizure and sale, at Prince Edward's Island, by the officers of her Majesty's government.

FRIDAY, February 17, 1854.

Mr. Hannen presented the claim of Messrs. Whitemill & Lyon for damages caused by their brigantine, the Confidence, being run down in the Straits of Gibraltar, by the United States frigate Constitution, in December, 1850.

THURSDAY, February 23, 1854.

General Thomas presented the affidavits of William Mayhew, relative to the claim of Messrs. Rogers & Brothers, which were ordered to be placed on file.

Mr. Hannen presented the claim of William Patterson for injuries received from the United States forces at Matamoras.

MONDAY, February 27, 1854.

Further hearing was had relative to the claim of Messrs. Rogers & Brothers, which was submitted.

The claim of Thomas Rider was then argued by the agents, and, after some discussion, deferred for further consideration.

MONDAY, March 6, 1854.

The case of the Frances and Eliza, which vessel was seized at New Orleans by the United States revenue officers, was considered.

Mr. Hannen presented the claim of Duncan Gibbs for the seizure of the ship Baron Renfrew, in California; and the claim of James Crooks for amount of judgment of the court of admiralty, in the case of the Lord Nelson, which was seized, prior to the war of 1812, by the United States ship-of-war Oneida, on Lake Ontario.

MONDAY, March 13, 1854.

Mr. Hannen presented, on behalf of the government of her Majesty, the following claims:

Messrs. Glen & Co.
Maurice, Evans & Co.
Barque Pearl.
The ship Herald.
Charles Green.
The James Mitchell.

Hudson Bay Company.
A claim for drawback.
For supplies furnished American troops.
For seizure of the schooner Cadboro'.
For interruption of trade of the steamer Prince of Wales, on the Columbia river.
For return of certain revenue duties.
For seizure of the Beaver and Mary Dare.
The Union.
Joseph Wilson.
The Young Dixon.
Godfrey, Pattison & Co.
Messrs. Butterfield & Bros.
The Irene.
Messrs. Cotesworth, Powell & Pryor.
H. U. Derwig and others, Florida bondholders.
Miller & Mackintosh.
George Houghton.
Hon. W. Black.
Sam. C. Johnston.
Thomas Whyte.
Alexander McLeod.
P. B. Murphy.
Charles B. Hall.
The Mary Anne.
The Sir Robert Peel.
The Great Western Steamship Co.
G. Rotchford Clarke.
Representatives of Colonel Elias Durnford.
Messrs. Baker & Co.
Anglo-Mexican Mint Co.
The Crosthwaite.
Ship-owner's Society.
The Prosperity.
The Duckenfield.
The Science.

TUESDAY, MARCH 14, 1854.

General Thomas presented papers relative to the following claims, on behalf of the government of the United States:

Brig Creole.
Schooner John.
Brig Enterprize.
Schooner Washington.
The Levan Lank.
Brigantine Volusia.
Brig Cyrus.
Schooner Director
The Maria Dolores.
The Tigris and Seamew
The Only Son.
The Julius and Edward.
Brig Lawrence
Brig Charlotte.
The Jubilee.
John McClure and others.
The Cicero.
The Olive Branch.
Brig Evelina.
Schooner Hero.
Schooner Washington, seized 1818.
Schooner Argus.
The Robert.
Schooner Hermosa.
Barque John A. Robb.
The Joseph Cowperthwait.
Schooner Pallas.
The Elvira.
George Attwood.
And a claim for return of duties levied on woolen goods.

WEDNESDAY, MARCH 15, 1854.

The following claims, for return of money collected for duties in New York, were presented by Mr. Hannen, viz:

James Buckley.
Arnon Buckley.
James Mallalieu.
Francis S. Buckley.
Charles Kenworthy.
George Shaw.
Samuel Bradbury.
John Platt.
Joseph Wrigley.
William Broadbent.
Charles Clifton.
James Shaw.
Amon Schofield.

He also presented the claims of—

William Bottomley's executors.
James Rogers.
The executors of James Holford.
Sam. Shaw.
Sam. Bradbury.
Platt & Duncan.
George Shaw.
John Taylor.
Alfred T. Wood.

Mr. Hannen also presented the claim of Charles Wirgman, agent of Timothy Wiggin, J. Knight & Co., and of fifty-one others, for repayment of excess of duties charged on cotton goods in ports of the United States.

Hearing was had in the case of the Frances & Eliza, and it was submitted for the decision of the commissioners.

FRIDAY, March 17, 1854.

Further hearing was had in the case of the barque Jones, which vessel had been seized at St. Helena, on charge of being engaged in the slave trade, and for being in British waters without a national character.

SATURDAY, March 18, 1854.

The hearing in the case of the barque Jones was continued, and the claim was finally submitted to the commissioners.

TUESDAY, March 21, 1854.

Mr. Hannen presented, by leave, the claim of Messrs. Weymouth and others, respecting certain bonds guarantied by the Territory of Florida.

Hearing was had on the claim of Duncan Gibbs, when the case was closed and submitted for decision.

THURSDAY, March 23, 1854.

Hearing was had on the claim of Thomas Tyson, relative to the seizure of the schooner Fidelity, of Sierra Leone, on a charge of having smuggled goods on a previous voyage, and the case was submitted.

The claim of James Crooks, relative to the Lord Nelson, was also heard and submitted.

MONDAY, April 3, 1854.

The case of William Cook and others was assigned for hearing on the 13th April.

Hearing was had by the agents in the case of the Albion, John Lidgett, owner.

WEDNESDAY, April 5, 1854.

Letters were submitted by General Thomas, from the State Department, by which it appeared that the case of William McGlinchy, which had been heard on the third of December last, had been settled.

Hearing was then had on the question of the jurisdiction of the court in the claim of the Messrs. Laurents, and after full argument of the same it was submitted to the commissioners.

SATURDAY, April 8, 1854.

General Thomas made some remarks in continuation of the hearing in the case of the Messrs. Laurents.

Hearing was had on the claim of Joseph Wilson, . officer of the Canadian government, on account of an alleged illegal arrest in Michigan, and the case was submitted to the commissioners.

The claim of Alfred T. Wood for compensation, in consequence of his being arrested and detained by citizens of the State of Maine while resident in New Brunswick, was also submitted.

TUESDAY, April 11, 1854.

General Thomas presented affidavits concerning the goods of certain parties on board the Jones.

Hearing was had on the claim of Samuel Johnston for damage on a charge of violating the immigration act, and the case was submitted for decision.

Mr. Hannen was heard on the claim of Robert Hill for damage arising from the capture of the Union by an American ship-of-war after peace had taken place, and the same was submitted after a few remarks by the agent of the United States government, and disallowed.

The claim of Riddell Robson, for the seizure and detention of the Irene, was also submitted for decision and disallowed.

THURSDAY, April 20, 1854.

J. L. Clarke, esq., attended before the commissioners, and submitted, as the attorney of the claimants, an argument in answer to the protest filed by the agent of her Majesty's government as to the claim of William Cook and others.

Mr. Hannen proposed to reply in writing, and the case was adjourned for this purpose.

SATURDAY, April 22, 1854.

General Thomas presented, by leave, the claim of Amos Frazer as to the brig Douglas.

The commissioners having been unable to agree in the case of the barque Jones, opinions were severally delivered by them, and the case was directed to be committed to the decision of the umpire.

Some discussion was had on the case of McCalmont & Greaves, when the further hearing of the same was postponed.

TUESDAY, April 25, 1854.

The hearing on the claim of Messrs. Calmont & Greaves was continued, and the case was finally submitted for the decision of the commissioners.

FRIDAY, May 5, 1854.

Hearing was had in the claim of Mr. G. Rotchford Clarke for the recovery of the value of lands in Vermont, granted prior to the admission of that State into the Union.

SATURDAY, MAY 6, 1854.

Mr. Clarke was further heard relative to his claim to lands now in the State of Vermont, and the case was submitted for the decision of the commissioners.

WEDNESDAY, MAY 10, 1854.

Mr. John L. Clarke, counsel in the case of the schooner John, captured after peace was concluded in 1814, was heard, and the claim submitted. Mr. Hannen read his reply to the argument filed by Mr. Clarke in the case of William Cook and others.

SATURDAY, MAY 13, 1854.

Hearing was had as to the brig Lady Shaw Stewart, seized at San Francisco.

General Thomas submitted, by leave, additional evidence in the case of the Frances and Eliza.

Hearing was had in the case of the ship Albion, Lidgett, owner.

A memorial was also submitted by General Thomas in the claim of the brig Douglas.

The case of the Enterprize was assigned for hearing on Tuesday, the 23d of May instant.

MONDAY, MAY 15, 1854.

Mr. Hannen made further remarks as to the question of damage in the case of the brig Lady Shaw Stewart, and the case was submitted.

General Thomas introduced, by leave, the affidavit of Mr. Frye, in the case of the barque Jones.

THURSDAY, MAY 18, 1854.

Hearing was had in the case of the barque Pearl, James Tindale, owner, and the case was submitted.

Mr. Hannen was heard in the claim of Messrs. McCalmont & Co. for return of duties paid on goods afterwards seized by Americans.

The umpire met the commissioners by their appointment, and arrangements were made as to the mode of proceeding in the cases to be submitted for his decision.

The papers in the claim of the barque Jones, on which the commissioners had disagreed, with the opinions delivered by them, were directed to be sent to the umpire.

TUESDAY, MAY 23, 1854.

Mr. Hannen presented a memorial on behalf of James Crooks, in the case of the Lord Nelson. Various English and American claims for returns of duties were presented by Messrs. Hannen and Thomas.

Hearing was commenced in the case of the brig Enterprize.

WEDNESDAY, MAY 24, 1854.

Hearing in the case of the Enterprize was continued and concluded, and the case was submitted for the decision of the commissioners.

FRIDAY, MAY 26, 1854.

The claims of the representatives of Colonel Elias Durnford, and the claim of Thomas Whyte, for certain lands in Florida, was submitted by Mr. Hannen.

Hearing was also had on the claims of Hon. W. Black and of Francis Watson and others, to lands in the State of Maine, and on the claim of George Houghton for specie taken from him by pirates, who were subsequently captured by a United States vessel of war.

Mr. Hannen also presented, by leave, the claim of certain individual holders of bonds guarantied by the Territory of Florida.

THURSDAY, JUNE 1, 1854.

General Thomas presented, by leave of the commissioners, the claim of Robert Roberts for the seizure of the ship Amelia, in January, 1815.

SATURDAY, JUNE 3, 1854.

Hearing was had in the case of the brig Creole, the ship Amelia, and the claim of James Young, for slaves captured during the war and sold in the West Indies by British government officers. These claims were then submitted to the commissioners for decision.

The case of William Cook and others was assigned for Wednesday, 19th instant.

WEDNESDAY, JUNE 7, 1854.

In the case of the barque Jones, General Thomas presented certain papers and correspondence from the legation of the United States in London, which were directed to be furnished to the umpire.

He also presented the correspondence of the governments in the case of the Creole.

Mr. Hannen presented the claim of Messrs. Dawson and others, for bonds issued by the republic of Texas.

The case of the Confidence was assigned for hearing on Saturday, the 10th, and the cases of Pattison & Mitchell on Thursday, the 29th instant.

FRIDAY, JUNE 9, 1854.

General Thomas, by leave, presented the claim of the brig Brookline, for the seizure, in 1848, and removal of one of her crew as a deserter from her Majesty's navy.

SATURDAY, JUNE 10, 1854.

A hearing was had in the case of the brigantine Confidence, by Dr. Adams, the special agent of the claimants, and General Thomas.

General Thomas then, by leave, presented two claims for property on board the brig Creole, and the claim of Henry Schieffelin for the detention and refusal of the British government to carry out an award of the court of admiralty.

MONDAY, JUNE 12, 1854.

The commissioners took into consideration the propriety of requesting from the two governments an extension of the time originally assigned for the termination of the commission, the better to enable them to dispose of the very great and unanticipated amount of business which had devolved upon them, and a letter was drawn up by them to the American minister, and to her Majesty's principal secretary of state for foreign affairs, recommending the extension of the commission for four months.

WEDNESDAY, JUNE 14, 1854.

General Thomas, by leave, presented the memorial of Charles Barry, in behalf of claims for returns of duties on woolens, levied contrary

to the treaty of 1815, and also the claims of James Heard and of the Merchants' Insurance Company of New Orleans, to property in slaves on board the brig Creole.

Mr. Hannen presented the claim of Charles Uhde for the seizure of goods by the United States army, and a memorial of Andrew Mitchell relative to the return of duties levied contrary to the treaty of 1815.

Hearing was had on the claim of William Cook and others by Mr. John L. Clark, attorney for the claimants, and the case was submitted to the commissioners.

THURSDAY, JUNE 15, 1854.

Mr. Hannen presented a memorial on behalf of Messrs. Godfrey, Pattison & Co., for interest on their claim.

The commissioners received a letter from the counsel on the claim of the Florida bondholders, asking for a postponement of the hearing in their case to June 21, which was agreed to, and the secretary was directed to request the attendance of the umpire at that time.

Mr. Charles Barry, by leave, presented claims relative to the return of duties on woolens.

MONDAY, JUNE 19, 1854.

General Thomas submitted, by permission, papers in the cases of the brig Enterprize and schooner Hermosa, and in that of the Brookline.

In the case of the Confidence, Mr. Hannen presented a letter written by one of the sailors on board, dated at Lisbon.

The case of Platt & Duncan was assigned for hearing on Saturday, July 1, at 11 o'clock.

WEDNESDAY, JUNE 21, 1854.

Hearing was had on the claim of the Florida bondholders. Mr. Rolt, Queen's counsel, and Mr. Cairns, special agents and counsel of the claimants, and Mr. Thomas for the United States; the case was committed for the decision of the commissioners.

Mr. Bates, the umpire, attended on the hearing.

SATURDAY, JUNE 24, 1854.

In the claim of Messrs. Kerford & Jenkin, for damages caused through delays of a caravan of merchandise by United States forces in Mexico, a hearing was had and the case submitted.

THURSDAY, JUNE 29, 1854.

The claim of Messrs. Pattison & Co., and of Andrew Mitchell, for return of duties levied contrary to treaty of 1815, was heard and submitted.

In the claim of the brig Brookline a hearing was also had, and the case was submitted.

SATURDAY, JULY 1, 1854.

In the claim of Messrs. Platt & Duncan, hearing was had before the commissioners by Mr. Butt, Queen's counsel, and special agent and counsel of the claimants, and the case was submitted for decision.

WEDNESDAY, JULY 5, 1854.

General Thomas presented for hearing the claim of the brigantine Volusia, for seizure and condemnation on charge of being concerned in the slave trade, which was submitted.

Hearing was had on the claim of the Great Western Steamship Company, for return of duties paid on coals used at sea, and the case was submitted.

SATURDAY, JULY 8, 1854.

Hearing was had on the claim of Messrs. Butterfield & Brothers, and the case was submitted.

General Thomas, on behalf of the claimants, presented the protest of the captain in the case of the Volusia.

Hearing was had on the claims of Timothy Wiggins, et als., (Wirgman, agent,) and on the claim of J. P. Oldfield & Co.; and the cases were submitted for decision.

WEDNESDAY, JULY 12, 1854.

The claim of the executors of James Holford was assigned for hearing July 18.

Mr. Hannen presented affidavits in the case of Joseph Wilson, heard April 8, 1854.

Hearing was had on the claim of the owners of the schooner Caroline Knight, for seizure of the same in 1852; and the case was submitted to the commissioners.

TUESDAY, JULY 18, 1854.

Hearing was had on behalf of the executors of James Holford, relative to the payment of Texan bonds, by Mr. Cairns, special agent of the claimants. General Thomas read a protest against the jurisdiction of the commissioners over this case, which was directed to be placed on file.

The case of Messrs. Dawson and others was assigned for hearing on Friday the 28th, and those of the Hudson Bay Company on Saturday the 29th instant.

SATURDAY, JULY 15, 1854.

The claims of the brig Crosthwaite, the Prosperity, the ship Science, and the Duckenfield, were submitted to the commissioners.

Hearing was had on the case of the John A. Robb, which was submitted.

In the claims of the Argus and Washington, General Thomas was heard as to the interpretation of the treaty of 1818 relative to the fisheries, and Mr. Hannen had leave to reply at a future time.

The case of the Maria Dolores was assigned for August the 9th, proximate.

FRIDAY, JULY 21, 1854.

The claim of the Cicero, for seizure and detention in 1809, was rejected, as being without the jurisdiction of the commission.

The claims of the Joseph Cowperthwait, for detention and search at Cape Coast Castle; of the brig Charlotte, for refusal of the admiralty court to award costs for its detention; and of the brig Douglas, for detention and being taken out of its course on the coast of Africa; were severally heard and submitted.

MONDAY, JULY 24, 1854.

In the claim of William Cook and others, the commissioners decided that the claim is not included within the terms of the convention, and it was therefore dismissed on the ground of want of jurisdiction.

FRIDAY, JULY 28, 1854.

The claim of Philip Dawson and others, relative to Texas bonds, was argued by Mr. Cairns. Exception was taken by General Thomas

to the jurisdiction of the commissioners, on the ground that Mr. Dawson was a naturalized citizen of the United States.

General Thomas filed, by leave, an affidavit in the case of the brig Douglas.

SATURDAY, JULY 29, 1854.

Hearing was had on the several claims of the Hudson Bay Company, for detention of the steamer Beaver, for the prevention of trade on the Columbia river by their steamer Prince of Wales, for expenditures in obtaining the release of persons taken captive by the Indians, and for the payment of drawback on goods re-exported from Oregon.

The claims of said company for the refunding of duties levied on live stock for the seizure of the schooner Cadboro' and their brigantine Mary Dare, were withdrawn.

TUESDAY, AUGUST 1, 1854.

The claim for return of duties levied between 1815 and 1823 was taken up for hearing, and the letter of Mr. Everett relative to the effect of the treaty on the duty imposed on rough rice was read and placed with the papers.

The cases of the Washington and Argus, involving the fishery question, were discussed, and the claims submitted for decision.

WEDNESDAY, AUGUST 2, 1854.

In the claim of the brig Cyrus, Dumas, owner, seized and detained on the coast of Africa on charge of being concerned in the slave trade, a hearing was had, and the case was submitted.

WEDNESDAY, AUGUST 9, 1854.

In the claim of the Maria Dolores, Colonel Aspinwall, agent of the parties, appeared, and made a statement of the facts, and the case was submitted.

WEDNESDAY, AUGUST 16, 1854.

Hearing was had in the case of the schooner Levin Lank, James Sullivan, owner, for the seizure and subsequent condemnation of the same at St. Helena.

THURSDAY, AUGUST 17, 1854.

The claim of John McClure and others, relative to the removal of slaves from Cumberland Island, was heard; also the claim of Henry Schieffelin, by Mr. Lovel, on the question of the jurisdiction of the commissioners.

General Thomas placed on file a copy of his protest as to the Texas bond claims, made by him on Friday, the 28th ultimo.

FRIDAY, AUGUST 18, 1854.

The commissioners received information from the Department of State at Washington that the time for the close of the commission had been extended for four months by a convention entered into between the United States and Great Britain. A copy of this convention was forwarded to the commissioners by her Britannic Majesty's secretary of state for foreign affairs, which being read is as follows:

Convention extending the term allowed for the operations of the Commission established under the convention of February 8, 1853, for the mutual settlement of claims.

Whereas a convention was concluded on the 8th day of February, 1853, between the United States of America and her Britannic Majesty for the settlement of outstanding claims by a mixed commission, limited to endure for twelve months from the day of the first meeting of the commissioners; and whereas doubts have arisen as to the practicability of the business of the said commission being concluded within the period assigned, the President of the United States and her Majesty the Queen of the United Kingdom of Great Britain and Ireland are desirous the time originally fixed for the duration of the commission should be extended, and to this end have named plenipotentiaries to agree upon the best mode of effecting this object, that is to say: the President of the United States, William L. Marcy, Secretary of State of the United States; and her Majesty the Queen of the United Kingdom of Great Britain and Ireland, John Fiennes Crampton, esquire, her Majesty's envoy extraordinary and minister plenipotentiary at Washington, who have agreed as follows:

ARTICLE I. The high contracting parties agree that the time limited in the convention above referred to for the termination of the commis-

sion shall be extended for a period not exceeding four months from the 15th of September next, should such extension be deemed necessary by the commissioners, or the umpire, in case of their disagreement; it being agreed that nothing contained in this article shall in anywise alter or extend the time originally fixed in the said convention for the presentation of claims to the commissioners.

ARTICLE II. The present convention shall be ratified, and the ratifications shall be exchanged at London as soon as possible, within four months from the date thereof.

In witness whereof, the respective plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Washington the seventeenth day of July, in the year of our Lord one thousand eight hundred and fifty-four.

WM. L. MARCY. [L. S.]
JOHN F. CRAMPTON. [L. S.]

TUESDAY, AUGUST 22, 1854.

The commissioners adjourned to Monday, the 25th of September next.

MONDAY, SEPTEMBER 25, 1854.

Mr. Hannen asked permission for Alexander McLeod, who was desirous of leaving for Canada, to make a statement relative to his claim before the commissioners.

In the claim of the brig Lawrence, Colonel Aspinwall was heard, as agent of the claimants, and the case was adjourned to Friday, October 6th.

TUESDAY, SEPTEMBER 26, 1854.

The commissioners being unable to agree in the cases of the Enterprize, Hermosa, and Creole, and of the Washington, Argus, and Director, as well as in the case of the Messrs. Laurent, severally delivered their opinions.

These cases were then ordered to be committed to the decision of the umpire.

WEDNESDAY, SEPTEMBER 27, 1854.

In accordance with the permission of the commissioners, given on the 25th instant, Mr. McLeod made a statement before them relative

to his claim, it being understood that the question whether or not the claim was properly before the commissioners should not be prejudiced by such proceeding.

Mr. Bates called, and had a consultation with the commissioners, and the case of the Messrs. Laurents was assigned for hearing before the umpire for Thursday next, October 5.

WEDNESDAY, October 4, 1854.

Further hearing was had on the claim of Henry Schieffelin, by Mr. Lovell, special agent for the claimants.

THURSDAY, October 5, 1854.

Agreeably to the appointment made on the 27th ultimo, hearing was had on the claim of the Messrs. Laurent before the umpire, and the case was submitted.

The claims of the Washington, Argus, and others, were assigned for hearing on Wednesday, the 11th October.

FRIDAY, October 6, 1854.

In the case of the brig Lawrence, Colonel Aspinwall, special agent of the claimants, had a further hearing. General Thomas submitted a paper relative to the case of the brig Confidence.

He also read a letter from the State Department, relative to the suits brought for violations of the revenue laws on which certain claims before the commissioners are founded; and relative to the return of duties on coals used at sea, on which drawback is claimed.

The claim of the Evelina was brought up for hearing, and the case submitted. Discussion was had as to the amount of damages in the case of the Tigris and Seamew.

TUESDAY, October 10, 1854.

Mr. Spinks appeared, and Wednesday, November 1, was assigned for the re-opening of the case of Messrs. Platt & Duncan.

WEDNESDAY, October 11, 1854.

Hearing was had before the umpire, by the respective agents, on the claims of the Washington, Argus, and others, as to the interpretation of the convention of 1818, relative to the fisheries, and the cases were severally submitted.

The case of the Enterprize was assigned for hearing on Wednesday, October 18. The claims of the Prince of Wales, the Amelia, the Brookline, of James Young, and of William Patterson, the barque John A. Robb, and the schooner Fidelity, were severally disallowed.

The claim of the Hudson Bay Co., for drawback, was allowed.

THURSDAY, October 19, 1854.

In the claims of the brig Enterprize, and Creole, and the schooner Hermosa, hearing was commenced before the umpire.

SATURDAY, October 21, 1854.

Hearing was continued in the Enterprize, Hermosa, and Creole, and the cases were submitted. The claim of Messrs. King & Gracey, Mr. Barry, agent for the claimants, was assigned for hearing on the 25th October instant, of Mr. Kenworthy on the 1st, and Messrs. Dawson and als. on the 2d November next.

MONDAY, October 23, 1854.

In the claims of the Jubilee, for salvage, of the Robert, the Elvira, and the Olive Branch, the commissioners decided the evidence to be incomplete, and the cases were accordingly dismissed.

The claims of the Crosthwaite, of the Ship-owner's Society, in the case of the Ann, of the Duckenfield, the Science, the Prosperity, and of the Anglo-Mexican Mint Co., were, for the same reason, also dismissed.

WEDNESDAY, October 25, 1854.

Hearing was had as to the claims of Messrs. Barry and others, for the return of duties on woolen goods, levied contrary to the provisions of the treaty of commerce of 1815.

Mr. Hannen, by leave, presented for the use of the umpire the opinion of Dr. Phillimore on the claim of Charles Uhde, as applicable to the question raised in the case of the Messrs. Laurent.

General Thomas was to reply in writing to the same.

SATURDAY, October 28, 1854.

The commissioners delivered their opinions relative to the Frances & Eliza, Baron Renfrew, Tigris & Seamew, the Lady Shaw Stewart, and the Albion, and these cases were severally referred to the umpire for decision.

The claim of the barque Pearl was disallowed. The commissioners having disagreed upon the claim of the Beaver, it was referred to the umpire for decision.

WEDNESDAY, November 1, 1854.

The case of Platt & Duncan was, on leave, re-opened, and General Thomas proposed to present certain affidavits; but objection being made to the introduction of further testimony, and it being suggested that the case would probably turn on the question of jurisdiction, the affidavits were withdrawn.

Some remarks were made by Messrs. Spinks and Thomas, on the question of jurisdiction, and the effect of the treaty of commerce as bearing on that question, when the case was submitted.

In the case of Charles Kenworthy, Mr. Willes, special agent and counsel of the claimant, was heard, and the claim was submitted for decision, and in case of disagreement, to that of the umpire, who was present.

SATURDAY, November 4, 1854.

In the claim of James Shaw, the umpire being present, Mr. Willes, special agent and counsel for the claimant, was heard, and the case was submitted.

The case of the Lawrence, the John, and of Messrs. Rogers, were referred to the umpire as to the amount of damages to be awarded.

SATURDAY, November 11, 1854.

Hearing was had before the commissioners and umpire by Hon. Reverdy Johnson, special counsel of Philip Dawson and others, holders of bonds issued by the republic of Texas, and General Thomas for the United States; the case was submitted.

MONDAY, November 13, 1854.

In the claim of the Lady Shaw Stewart, the umpire being present, Mr. Hillyard made a statement relative to the amount of damages claimed, and the case was submitted for decision.

In the case of the Only Son, hearing was had in the presence of the umpire, when the commissioners disagreed upon the allowance of the same.

The claim of Messrs. Platt & Duncan was disallowed.

The claim of Charles Kenworthy was disallowed.

The claim of James Shaw was disallowed.

The commissioners being unable to agree in the case of the Florida bondholders, that claim was referred to the umpire for decision; as was also that of Messrs. Kerford & Jenkin.

WEDNESDAY, NOVEMBER 15, 1854.

In the case of Messrs. Kerford & Jenkin, Mr. Hannen and General Thomas were respectively heard, the umpire being present, and the claim was submitted for his decision.

THURSDAY, NOVEMBER 16, 1854.

Hearing was had before the umpire in the claim of the brig Lawrence, which was submitted. Appointments were made for hearing in the case of the James Mitchell on Monday, and for the claim of Messrs. Cotesworth, Powell & Pryor, and the brig Confidence, on the same day.

SATURDAY, NOVEMBER 18, 1854.

The umpire being present, Mr. Hannen was heard upon the case of the steamer Beaver, and General Thomas in reply.

General Thomas placed on file a letter in the claim of the Only Son.

In the Florida bond case, an appointment was made for hearing on Tuesday week at twelve o'clock.

MONDAY, NOVEMBER 20, 1854.

Hearing was had before the umpire in the case of the brigantine Confidence, by Dr. Adams, Queen's counsel, and by General Thomas.

In the case of the assignees of the James Mitchell, hearing was had before the commissioners and umpire, by Messrs. Hannen and Thomas, and both cases were submitted for decision. Hearing was also had before them in the case of Messrs. Cotesworth, Powell & Pryor, as to the recovery of certain lands granted in Texas, which was also submitted for decision.

SATURDAY, NOVEMBER 25, 1854.

The commissioners disallowed the claims of the brig Cyrus, the Hero, the schooner Levin Lank, and the claim of Messrs. Cotesworth, Powell & Pryor.

They also agreed on an award in the case of the brig Douglas.

The claims of the Lord Nelson, the Volusia, and the brig Lawrence, were severally disagreed upon, and appointments were then made for hearing the same before the umpire.

MONDAY, NOVEMBER 27, 1854.

In the claim of the brigantine Volusia, John Graham, owner, hearing was had by the agents of the two governments, and the same was submitted for the decision of the umpire.

WEDNESDAY, NOVEMBER 29, 1854.

The umpire reported to the commissioners his opinion upon a portion of the claims referred to him for decision. The claim of the executors of James Holford for the payment of bonds issued by the republic of Texas, the umpire decided to be without the jurisdiction of the commissioners.

The claim of Philip Dawson, for the payment of bonds similarly issued, was also decided to be without their jurisdiction.

In the claim of the barque Jones, and for sundry ventures thereon, the umpire awarded the sum of one hundred thousand six hundred and twenty-five dollars, due the 15th of January, 1855.

In the claim of the schooner John, the umpire awarded to the owners, or their legal representatives, the sum of thirteen thousand six hundred and eight dollars, due the 15th of January, 1855.

In the claim of the ship Lady Shaw Stewart, the umpire awarded the sum of six thousand dollars, due the 15th of January, 1855.

In the claim of the Frances and Eliza, the umpire awarded the sum of thirty-four thousand two hundred and twenty-seven dollars, due the 15th of January, 1855.

In the claim of the Hudson Bay Company's steamer Beaver, the umpire awarded the sum of one thousand dollars, all of which awards are in full of said claims, and due to the claimants from the respective governments on the 15th of January, 1855.

FRIDAY, DECEMBER 1, 1854.

In the claim of the Hudson Bay Company, for drawback, the sum of fifteen hundred and twenty-three dollars and sixty-eight cents was awarded by the commissioners.

In the claim of the Hudson Bay Company for supplies furnished volunteers of the settlers against the Indians, the commissioners awarded the sum of three thousand one hundred and eighty-two dollars and twenty-two cents in full of said claim to the 15th of January, 1855.

In the claim of the Albion, the umpire awarded the sum of twenty thousand dollars, due the 15th of January, 1855.

The claim of the Volusia was disallowed by the umpire.

In the claim of the ship James Mitchell, the umpire awarded the sum of twenty thousand dollars, due the 15th of January, 1855.

The commissioners disagreed in the case of McCalmont & Greaves, in that of Calmont & Co., and on the amount to be awarded in the claim of the Great Western Steamship Company.

Appointments for hearing were made for those of McCalmont & Greaves and Calmont & Co. on Thursday at 12 o'clock, m.

THURSDAY, DECEMBER 7, 1854.

In the claim of Messrs. McCalmont & Greaves, for return of duties levied on goods imported into Vera Cruz during the Mexican war, hearing was had before the umpire. Also in the claim of Messrs. Calmont & Co., for return of duties levied on goods taken possession of by Mexicans, while under a convoy of United States forces, and both cases were submitted to the umpire for his decision.

In the claim of Messrs. Rogers & Brothers, the umpire awarded the sum of seven thousand six hundred and seventy-six dollars and ninety-six cents, due the 15th of January, 1855.

SATURDAY, DECEMBER 9, 1854.

In the claim of Miller & Mackintosh, hearing was had before the commissioners and umpire. Hearing was also had before the umpire in the claim of the Lord Nelson, and both cases were submitted for decision.

The case of the Great Western Steamship Company was argued by the agents and submitted for the decision of the umpire.

The claim of the Sir Robert Peel was submitted to the commissioners on the papers.

MONDAY, DECEMBER 11, 1854.

In the claim of Alexander McLeod for his arrest and imprisonment in New York on charge of being engaged in the destruction of the steamer Caroline, hearing was had in the presence of the umpire. Mr. McLeod was also personally heard relative to his claim, when the same was submitted to the commissioners for decision, and in case of their disagreement to the umpire.

In the claim of Charles Barry, on behalf of American importers of woolens, discussion was had as to the evidence requisite to establish proof of such ownership.

WEDNESDAY, DECEMBER 13, 1854.

In the claim of Mr. Barry for return of duties improperly levied, further discussion was had as to the evidence necessary to prove the ownership of the parties for whom duties were paid, and a form of evidence to be obtained was drawn up for this purpose.

THURSDAY, DECEMBER 14, 1854.

In the claim of the schooner Only Son, the umpire awarded the sum of one thousand dollars, due the 15th of January, 1855.

The claim of the schooner Lord Nelson, the umpire decided to be not within the jurisdiction of the commissioners.

In the claim of the Tigris and Seamew, the umpire awarded the sum of twenty-four thousand and six dollars and forty cents, due the 15th of January, 1855.

In the claim of the Great Western Steamship Company, the umpire awarded the sum of thirteen thousand five hundred dollars, due the 15th of January, 1855.

In the claim of Miller & Mackintosh, the commissioners awarded the sum of six thousand dollars, due the 15th of January, 1855.

The case of the Florida bondholders was disallowed by the umpire.

The commissioners gave instructions to Messrs. Quilter & Ball to complete and verify certain calculations in the claim preferred by the firm of Messrs. Godfrey, Pattison & Co., of Glasgow.

WEDNESDAY, DECEMBER 20, 1854.

The claim of the Messrs. Laurents was disallowed by the umpire, as not being in the jurisdiction of the commissioners.

SATURDAY, DECEMBER 23, 1854.

In the claim of the fishing schooner Argus, the umpire awarded the sum of two thousand dollars, due on the 15th of January, 1855.

In the claim of the schooner Washington, the umpire awarded the sum of three thousand dollars in full of said claim, to the 15th of January, 1855.

In the claim of the brig Enterprize, the umpire awarded to the Augusta Insurance Banking Company the sum of sixteen thousand dollars, and to the Charlestown Marine Insurance Company the sum of thirty-three thousand dollars, in full of their respective claims to the 15th of January, 1855.

In the claim of the Baron Renfrew, the umpire awarded the sum of six thousand dollars, in full of said claim to the 15th of January, 1855.

TUESDAY, DECEMBER 26, 1854.

The claim of Messrs. Calmont & Co., for return of duties paid on goods captured by the Mexicans, was disallowed by the umpire.

WEDNESDAY, DECEMBER 27, 1854.

The papers constituting the claim of Andrew Mitchell were sent to Messrs. Quilter & Ball, with instructions from commissioners to complete and verify the same.

SATURDAY, DECEMBER 30, 1854.

Hearing was assigned in the cases of Charles Barry for Wednesday next, at 1 o'clock.

Sundry cases relative to the payment of customs duties at New York were assigned for hearing on Thursday next, at 1 o'clock.

TUESDAY, JANUARY 2, 1855.

The commissioners disallowed the claim of the Sir Robert Peel.

In the claim of George Houghton, the commissioners award the sum of two thousand five hundred dollars.

The commissioners disagreed on the allowance of the claim of Alexander McLeod, and that case was referred to the umpire.

SATURDAY, JANUARY 6, 1855.

In the claim of the executors of John Taylor, hearing was had by Mr. Butt, Queen's counsel, and General Thomas, as also in the claim of Samuel Bradbury ; both of which were submitted for decision.

In the claim of Andrew Mitchell, agent for R. G. Finlay Brothers and others, the commissioners awarded the sum of twenty thousand six hundred and two dollars and sixty-four cents.

Appointment was made for hearing in the claim of Charles Uhde for 12 o'clock on Monday, for the claim of William Broadbent at 12 on Tuesday, and for that of Messrs. Shaw at 2 o'clock the same day.

MONDAY, JANUARY 8, 1855.

Hearing was had by the agents before the commissioners and umpire in the claim of Charles Uhde for the alleged confiscation of merchan-

dise at Matamoras during the Mexican war, and the case was submitted for decision.

The claim of the Evelina was disallowed.

In the claim of McCalmont and Greaves, the umpire awarded the sum of eleven thousand seven hundred and thirty-three dollars and fifty-eight cents, in full of the same to January 15, 1855.

TUESDAY, JANUARY 9, 1855.

In the claim of the brig Creole, the umpire awarded the sum of one hundred and ten thousand three hundred and thirty dollars, in full of the same to January 15, 1855.

The commissioners disagreed on the allowance of the claim of Charles Uhde, and it was referred to the umpire.

WEDNESDAY, JANUARY 10, 1855.

In the claim of William Broadbent, hearing was had, and the same submitted for decision.

Hearing was also had in the claim of Messrs. George and Samuel Shaw, which was submitted.

The claim of Messrs. Kerford and Jenkin was disallowed by the umpire.

THURSDAY, JANUARY 11, 1855.

In the claim of the schooner Hermosa, the umpire awarded to the Louisiana State Marine and Fire Insurance Company the sum of eight thousand dollars, and to the New Orleans Insurance Company eight thousand dollars, in full of their respective claims to January 15, 1855.

FRIDAY, JANUARY 12, 1855.

Hearing was had by Mr. Butt, Queen's counsel, on the claim of William Bottomley's executors, for the return of moneys alleged to have been illegally exacted from him by the collector of customs at New York, and it was submitted for decision.

SATURDAY, JANUARY 13, 1855.

The claims of the fishing schooners Pallas and the Director were disallowed by the umpire for want of evidence.

The claim of the schooner Washington, seized in 1818, and condemned at Halifax, in Nova Scotia, for violation of the hovering act, &c., was disallowed by the commissioners, the evidence in said case being incomplete.

The claim of the brig Lawrence was disallowed.

In the claim of Messrs. Godfrey, Pattison & Co., the commissioners awarded the sum of sixty-one thousand six hundred and eighty-nine dollars and fifty-four cents, in full of the same, due January 15, 1855.

In the claim of the brigantine Confidence the umpire awarded the sum of nine thousand nine hundred and forty-six dollars and twenty cents, in full of the same to January 15, 1855.

The claims of Samuel Bradbury, of John Taylor, of George and Samuel Shaw, of William Bottomley, and of William Broadbent, were severally disallowed.

In the claim of J. P. Oldfield & Co., the commissioners awarded the sum of three thousand and ninety-nine dollars and fifty-four cents, in full of the claim of said company to January 15, 1855.

In the claims of Charles Wirgman, agent for T. Wiggin and others, the commissioners awarded the sum of thirty thousand four hundred and seventy-three dollars and forty-eight cents, in full of said claims, respectively, to January 15, 1855.

The commissioners affixed their names to the United States docket of claims, and also to the British docket of claims, as applicable to the several decisions and awards made in each docket respectively.

They also drew up and signed a general order at the close of said docket, by which all awards were to take effect from this day, and are made payable to the claimants, their attorneys, legal representatives, or assigns.

MONDAY, JANUARY 15, 1855.

The commissioners met to-day with the umpire for the consideration of claims remaining undisposed of.

The umpire announced his opinion in the cases of Charles Uhde and Alexander McLeod.

Directions were given for the collection of all accounts of expenditures incurred during the sittings of the commission, and for the completion of the records and proceedings in full to this date.

The report of the commissioners to their respective governments was then drawn up and signed, and the business of the commission terminated.

N. L. UPHAM,
Secretary of Commission on Claims.

CLAIMS OF AMERICAN CITIZENS UPON THE GOVERNMENT OF HER BRITANNIC MAJESTY, WITH THE JUDGMENTS AND AWARDS THEREON.

1. N. L. Rogers and Brothers.

Presented October 21, 1853—Heard November 28—Further affidavits filed February 23, 1854—Further heard February 27, and submitted—Disagreement of commissioners on the amount of damage—Award of umpire.

For the return of customs duties assessed in the Bay of Islands, New Zealand, during the years 1840 and 1841.

November 4.—The commissioners disagreed as to the amount of damage to be awarded, and the case was referred to the umpire, and was submitted by the agents for his decision on the papers.

December 7.—The umpire awarded the sum of seven thousand six hundred and seventy-six dollars and ninety-six cents, due on the 15th of January, 1855.

2. Schooner Fidelity, *Thomas Tyson, owner.*

Presented January 24, 1854—Heard March 23, and submitted—Disallowed.

For seizure of the above vessel at Sierra Leone on a charge of smuggling.

October 11.—The vessel was discharged after a brief detention, and, it appearing to the commissioners that there existed probable cause of seizure, the claim was disallowed.

3. Barque Jones, *P. J. Farnham & Co., owners.*

Presented October 31, 1853—Further papers presented November 28—Heard March 17 and 18, 1854—Further affidavits filed April 11 and May 15—Disagreement of commissioners—Heard before umpire—Award of umpire.

For seizure at St. Helena, on charge of being concerned in the African slave trade, and for assessment of costs on the vessel at Sierra Leone, and sale of vessel and cargo.

April 22.—The commissioners being unable to agree, severally delivered their opinions, which were placed on file, and the case was committed to the decision of the umpire.

November 29.—The umpire awarded to the owners of the Jones the sum of ninety-six thousand seven hundred and twenty dollars, and to sundry persons, for ventures of goods therein, as follows, viz: to James Gilbert, the master, one thousand eight hundred and sixty-three dollars; to Ebenezer Symonds, the mate, eight hundred and forty-two dollars; to F. Sexton, the supercargo, one thousand two hundred dollars, amounting in all to the sum of one hundred thousand six hundred and twenty-five dollars.

4. Brig Cyrus, *Peter C. Dumas, owner.*

Presented March 14, 1854—Heard August 2, and submitted—Disallowed.

For seizure and detention of this vessel by the brig-of-war Alert, on charge of being concerned in the slave trade.

November 25.—Claim disallowed.

5. Schooner John, *Reuben Shapely, owner.*

Presented March 14, 1854—Heard May 10, and submitted—Disagreement of the commissioners—Award of umpire.

For capture of the above vessel by the British ship-of-war Talbot, March 5, 1815, after the close of the war, when peace existed by the terms of the treaty in the latitude where she was seized.

November 4.—The commissioners disagreed on the amount of damage, and it was referred to the umpire.

November 29.—The umpire awarded the sum of thirteen thousand six hundred and eight dollars and twenty-two cents, in full of said claim, due January 15, 1855.

6. Schooner Levin Lank, *James Sullivan, owner.*

Presented March 14, 1854—Heard August 16, and submitted—Disallowed.

This vessel was sold by her master and lessee to foreign owners on the coast of Africa. She was afterwards seized and condemned at St. Helena for being concerned in the slave trade. Claim was made here for her by her original owner.

November 25.– Disallowed.

7. Brigantine Volusia, *John W. Disney and John Graham, owners.*

Presented March 14, 1854—Heard July 5, and submitted—Further papers filed, by leave, July 8—Disagreement of the commissioners—Heard before umpire November 27—Disallowed by the umpire.

For seizure of the above in 1850, by the British steamer Rattler, while on a voyage from Rio Janeiro, on the charge of being concerned in the slave trade, and for her condemnation as having false papers.

November 25.—The commissioners disagreed on the allowance of the claim, and it was referred to the umpire.

December 1.—Claim disallowed by the umpire.

8. The Only Son, *Fuller and Delano, owners.*

Presented March 14, 1854—Heard before the commissioners and umpire November 13, and submitted—Disagreement of the commissioners—Award of umpire.

For compelling the above vessel to be entered at Halifax, and to pay duties in 1822, when she had put in there on her way to a market merely, whereby she was compelled to dispose of her cargo there at a loss.

November 13.—The commissioners disagreed on the allowance of the claim, and it was referred to the umpire.

December 14.—The umpire awarded the sum of one thousand dollars in full of said claim, due the 15th of January, 1855.

9. Ship Amelia, *Robert Roberts, owner.*

Presented June 1, 1854—Heard June 3, and submitted—Disallowed.

For capture of the above by a British cruiser, while on her way from Porto Rico to Guadaloupe, on the 11th of February, 1815, and for her subsequent condemnation.

October 11.—It appearing that the date of the capture of the above vessel was prior to the ratification of the treaty of peace of December, 1814, the claim was disallowed.

10. John McClure and others.

Presented March 14, 1854—Heard on question of jurisdiction August 17, and submitted—Disallowed.

Claim for slaves alleged to be owned by citizens of the United States in Florida, while that Territory belonged to Spain, and which escaped from Florida to Cumberland Island, and were taken away by the British authorities at the close of the war of 1815.

September 26.—Disallowed on the ground of want of jurisdiction, also of an adjustment under a prior convention for all slaves removed, holden under American laws.

11. JAMES YOUNG.

Presented, by leave, June 3, 1854—Heard and submitted—Disallowed.

Claim for slaves captured on the high seas during the war of 1812, taken to the West Indies, and there disposed of by the British authorities.

October 11.—Claim disallowed.

12. BRIG CREOLE, *Edward Lockett and others, owners of slaves on board.*

Presented March 14, 1854—Further papers filed May 23—Heard June 3, and submitted—Further claims to property on board presented, by leave, June 10 and 14, 1854—Disagreement of the commissioners—Heard before umpire October 19 and 21—Award of umpire.

Claim for liberating slaves on board said vessel at the Bahamas islands, which had been compelled to put in there by the slaves, who had mutinied and obtained control of the vessel by killing one of the passengers, and severely wounding the captain, chief mate, and a portion of the crew.

September 26.—The commissioners disagreed on the allowance of the claim, and it was referred to the umpire.

January 9.—The umpire awarded to the several claimants in this case, hereafter mentioned, the sums set against their respective names, amounting in all to one hundred and ten thousand three hundred and thirty dollars, in full, to the 15th of January, 1855, viz:

To Edward Lockett - - -	$22,250	
John Hogun - - - -	8,000	
William H. Goodwin, for self, and Thomas McCargo - - - -	23,140	
John Pemberton, liquidator of the Merchants' Insurance Com'y of New Orleans	12,460	first claim.
G. H. Apperson and Sherman Johnson -	20,470	
P. Rotchford - - - -	2,136	
John Pemberton, liquidator of the Merchants' Insurance Com'y of New Orleans	16,000	second claim.
James Andrews - - - -	5,874	
	110,330	

13. Barque John A. Robb.

Presented March 14, 1854—Heard July 15, and submitted—Disallowed.

For the removal of a sailor from this vessel by a British cruiser on the coast of Africa.

October 11.—The right to enter the vessel for such purpose was disavowed; and it appearing, on the evidence submitted, that the sailor, who had some controversy with his captain, left the vessel ultimately with the master's consent, the claim was disallowed.

14. Maria Dolores, *William Taggart and others, owners.*

Presented March 14, 1854—Heard August 9 and September 25, and submitted—Disallowed, as not being within the jurisdiction of the commissioners.

For proceeds of said vessel and cargo, captured by a Bolivian privateer, and brought into Barbadoes, where the vessel and cargo were sold by the British colonial authorities, the present claimant being a citizen of the United States.

Held not to be within the jurisdiction of the commissioners.

15. Brig Douglas, *Amos Frazar, owner.*

Presented April 22, 1854—Further papers filed May 13—Heard July 21, and submitted—Award.

For seizure and detention of the above vessel on charge of being engaged in the slave trade.

November 25.—The commissioners awarded the sum of six hundred dollars in full of said claim, due January 15, 1855.

16. Schooner Caroline Knight, *George W. Knight and others, owners.*

Presented February 2, 1854—Heard July 12, and submitted—Award.

For capture of the above vessel and proceedings in the sale of the same at Prince Edward's Island, in 1852.

October 10.—The commissioners awarded the sum of one thousand eight hundred and eighty-seven dollars and sixty cents, in full of said claim, due the 15th of January, 1855.

17. The vessels Tigris and Seamew, *Messrs. Brookhouse & Hunt, owners.*

Presented March 14, 1854—Submitted on the papers—Disagreement of commissioners as to amount of damages—Award of umpire.

Damage for seizure of the above vessels, in 1840, by the British cruiser Water Witch, on the coast of Africa, and sending them to America for trial for violation of laws of the United States.

October 28.—The commissioners disagreed on the amount of damage to be awarded, and the case was referred and submitted on the papers to the decision of the umpire.

December 14.—The umpire awarded twenty-four thousand six dollars and forty cents, in full of said claim, due the 15th of January, 1855.

18. Schooner Pallas, *Edward Haskell and others, owners.*

Presented March 14, 1854—Heard July 15 and August 1, and submitted—Disagreement of the commissioners—Disallowed by the umpire.

For illegal seizure of the same off Chittican bay, and its detention during the fishing season.

October 28.—The commissioners disagreed on the allowance of the claim, and it was referred to the umpire.

January 15.—Claim disallowed by the umpire for want of sufficient evidence.

19. Schooner Argus, *Doughty, master.*

Presented March 14, 1854—Heard July 15 and August 1, and submitted—Disagreement of commissioners—Heard before umpire October 11, and submitted—Award of umpire.

For seizure of the above vessel, on St. Ann's bank, by the British revenue cruiser Sylph, and her removal to Sydney, where she was subsequently sold.

September 26.—The commissioners disagreed in said case, and the same was submitted to the umpire.

December 23.—The umpire awarded the sum of two thousand dollars, in full of said claim, due the 15th of January, 1855.

20. The Julius and Edward, *Charles Tyng, owner.*

Presented March 14, 1854—Submitted on the papers—Dismissed.

Vessel seized by British cruiser and taken to Bremen.

No evidence submitted; claim dismissed.

21. Schooner Hero, *James B. McConnel.*

Presented March 14, 1854—Submitted on the papers—Disallowed.

For seizure and detention of the above vessel by her Majesty's brig Lynx, off the coast of Africa.

November 25.—Claim disallowed.

22. Brig Charlotte, *Hart, Sands and others, owners.*

Presented March 14, 1854—Heard July 21, and submitted—Disallowed.

For seizure, under legal process, by a British claimant, on the coast of Ireland, and her subsequent release by the court of admiralty without costs for her detention.

Claim disallowed, on ground of its being a controversy between private individuals, settled by a competent court within whose jurisdiction the property was.

23. Henry H. Schieffelin.

Presented, by leave, June 10—Heard August 17 and October 4, on question of jurisdiction, and submitted—Disallowed on the ground of want of jurisdiction.

Case pending in admiralty court for seizure of a vessel prior to the war of 1812, on which restitution was ordered; but, during the war, the property was confiscated.

Claim is now made for damage in refusing to proceed with suit in court after peace.

Claim disallowed on the ground of want of jurisdiction.

24. Schooner Washington.

Presented March 14, 1854—Submitted on the papers—Disallowed.

For capture and condemnation of the above vessel, at Halifax, by the British authorities, in 1818.

January 13, 1855.—Evidence incomplete; disallowed.

25. The Joseph Cowperthwait, *William J. Smith and others, owners.*

Presented March 14, 1854—Heard July 21, and submitted—Dismissed.

For search and detention of the above vessel by the governor of Cape Coast Castle.

No evidence submitted; dismissed.

26. Schooner Washington.

Presented March 14, 1854—Heard July 15 and August 1, and submitted—Disagreement of commissioners as to construction of fishery treaty—Heard before umpire October 11—Award of umpire.

For the capture and condemnation of the above vessel, at Halifax, in 1843, by the colonial authorities, for taking fish in the bay of Fundy when more than three miles from the shore.

September 26.—The commissioners disagreed on the construction of the treaty of 1818 as to fisheries applicable to this case, and the same was submitted to the umpire.

December 23.—The umpire awarded the sum of three thousand dollars, in full of said claim, due the 15th of January, 1855.

27. Schooner Director.

Presented March 14, 1854—Heard July 15 and August 1, and submitted—Disagreement of commissioners as to construction of fishery treaty—Heard before the umpire October 11—Disallowed by the umpire.

For capture of the above vessel, in 1840, by the British armed vessel "John and Louisa Wallis."

September 26.—The commissioners disagreed on the construction of the treaty of 1818 as to fisheries applicable to this case, and the same was submitted to the umpire.

January 13.—Claim disallowed by the umpire for want of sufficient evidence.

28. George W. Atwood.

Presented March 14, 1854—Submitted on the papers—Disallowed.

The claimant chartered a British vessel to take passengers and freight from England to California. Controversies having arisen between him and the captain and passengers, Atwood appealed for aid to the British minister at Rio. After various difficulties, the matters in controversy were there settled by arbitrators mutually appointed.

Claim disallowed.

29. William Cook and others.

Presented November 28, 1853—Exception taken as to jurisdiction of the commissioners December 15, 1853—Heard on same June 14, 1854, and submitted—Dismissed.

Claim for the proceeds of the personal property and effects of Mrs. Frances Mary Shard, deceased, of whom the claimants allege themselves to be the legal heirs, and that the proceeds of her property have gone into the treasury of her Majesty's government.

July 23.—The commissioners in this case are of opinion that the claim is not included within the terms of the convention, and it is therefore dismissed on the ground of want of jurisdiction.

30. Brig Enterprize, *Joseph W. Neal and others, owners of slaves on board.*

Presented March 14, 1854—Further papers filed June 19—Heard May 23 and 24, and submitted—Disagreement of the commissioners—Heard before umpire October 19 and 21—Award of umpire.

Claim for damage in liberating slaves on board of said vessel under the laws of Bermuda, when driven into harbor in that island by stress of weather.

September 26.—The commissioners disagreed on the allowance of the claim, and it was referred to the umpire.

December 23.—The umpire awarded to the claimants in this case the following amounts. To the Augusta Insurance Banking Company, the sum of sixteen thousand dollars; and to the Charleston Marine Insurance Company, the sum of thirty-three thousand dollars, due the 15th of January, 1855.

31. Schooner Hermosa, *New Orleans Insurance Company and others, underwriters and owners of slaves on board.*

Presented March 14, 1854—Further papers filed June 19—Heard May 23, 24, and 26, and submitted—Disagreement of the commissioners—Heard before umpire October 19 and 21—Award of umpire.

Claim for damage in liberating slaves forced on the Bahamas by stress of weather.

September 26.—The commissioners disagreed on the allowance of the claim, and it was referred to the umpire.

January 11.—The umpire awarded to the Louisiana State Marine and Fire Insurance Company, eight thousand dollars; and the New Orleans Insurance Company, eight thousand dollars; in full of their claims in said case to January 15, 1855.

32. The Brookline.

Presented June 9, 1854—Further papers filed June 19—Heard June 29, and submitted—Disallowed.

For damage in reclaiming from said vessel, in British waters, a deserter from a British ship of war, who had been received and was secreted on board the Brookline.

October 11. Claim disallowed.

33. Brig Evelina.

Presented March 14, 1854—Heard October 6, and submitted—Disallowed.

For damage alleged to be caused by her Majesty's ship-of-war Winchester running foul of the above vessel in the English channel, in the year 1833.

January 8.—Claim disallowed.

34 Brig Lawrence, *Edward Yorke and others, owners.*

Presented March 14, 1854—Heard September 25, and October 6, and November 16, before the umpire, and submitted—Disagreement of the commissioners—Disallowed by the umpire.

Seized at Sierra Leone, in 1848, and condemned on the charge of being concerned in the slave trade.

November 25.—The commissioners disagreed on the allowance of the claim, and it was referred to the umpire.

January 13, 1855.—Claim disallowed by the umpire.

35. Duties on Woolen Goods, *Charles Barry, William Frost, and others, agents.*

Presented March 14, 1854, May 23, and June 15—Memorial submitted June 19—Heard August 1, October 25, December 11 and 13—Withdrawn.

Claims for return of duties levied on woolen goods by the British government beyond those paid by citizens of other nations, contrary to treaty between the United States and Great Britain, of 1815.

January 13, 1855.—The agent for the said claims, Charles Barry, addressed a letter to the commissioners, informing them that, having deemed it advisable for the parties to adjust the same without recourse to the adjudication of the board, he had effected a settlement with the government, and desired to withdraw the claims.

Claims withdrawn.

36. The Cicero.

Presented March 14, 1854—Dismissed.

For seizure and detention for alleged violation of revenue laws.

July 21.—Not sustained. Dismissed.

37. The Jubilee.

Presented March 14, 1854—Dismissed.

Claim for salvage. No evidence submitted. Claim dismissed.

38. THE ROBERT.

Presented March 14, 1854—Dismissed.

Not sustained. Dismissed.

39. THE ELVIRA.

Presented March 14, 1854—Dismissed.

No evidence submitted. Dismissed.

40. THE OLIVE BRANCH.

Presented March 14, 1854—Dismissed.

No evidence submitted. Dismissed.

JANUARY 13, 1855.

The foregoing docket contains a correct report of awards and judgments made on claims of citizens of the United States against the British government, after full hearing and examination thereof; and we hereby place our signatures to the same, to be applied thereto in the same manner and as fully as if severally affixed to each of said awards and judgments.

The awards of moneys therein made are to be paid by the British government to the government of the United States for the benefit of the several claimants, their attorneys, legal representatives, or assigns, and said awards are to be regarded as bearing date from the 13th of January, 1855.

EDMUND HORNBY,
British Commissioner.

N. G. UPHAM,
United States Commissioner.

CLAIMS OF BRITISH SUBJECTS UPON THE GOVERNMENT OF THE UNITED STATES, WITH THE JUDGMENTS AND AWARDS THEREON.

1. William McGlinchy.

Presented December 3, 1853—Heard April 5, 1854, and submitted—Claim dismissed.

For the seizure and detention of papers and personal property not subject to duties, by United States revenue officers, on the river St. John's, in the year 1845.

April 5.—Evidence having been submitted of the return and acceptance of the articles seized, the claim was dismissed.

2. Thomas Rider.

Presented January 27, 1854—Heard February 27, and submitted—Award.

For losses sustained in consequence of an arrest and detention in custody by the military authorities of Matamoras, during a period of five and one half months, in the year 1846.

The commissioners awarded the sum of six hundred and twenty-five dollars, in full of said claim, due January 15, 1855.

3. The Joseph Albino, *William Allen, owner.*

Presented December 6, 1853—Heard and submitted—Disallowed.

For injury and detention at San Francisco, on charge of violating the revenue laws of the United States in respect to foreign vessels.

Claim disallowed.

4. The Frances and Eliza, *Christopher Richardson, owner.*

Presented December 30, 1853—Heard March 6 and 15, and submitted—Reopened for the admission of further testimony, and again submitted May 13, 1854—Disagreement of commissioners on the amount of damages—Submitted to the umpire—Award of umpire.

For the seizure of this vessel at New Orleans, in 1819, and sale under a judgment of the United States district court, which was subsequently eversed by a decision of the Supreme Court of the United States.

October 28.—The commissioners disagreed on the amount of damages to be awarded, and the case was referred to the umpire, and was submitted by the agents for his decision on the papers.

November 29.—The umpire awarded the sum of thirty-four thousand two hundred and twenty-seven dollars, in full of said claim, due January 15, 1855.

5. Ship Albion, *John Lidgett, owner.*

Presented January 20, 1854—Heard April 3 and May 13, and submitted—Disagreement of the commissioners—Award of umpire.

For seizure of the above vessel by the United States officers of revenue for non-payment of customs duties; for cutting timber in Oregon; and for trading with the natives in violation of acts of Congress.

October 28.—The commissioners disagreed on the allowance of the claim, and it was referred to the umpire.

December 1.—The umpire awarded the sum of twenty thousand dollars in full of said claim, due January 15, 1855.

6. Messrs. Loback & Co.

Presented December 6, 1853—Submitted—Disallowed.

For the seizure of logwood, at Tabasco, by American seamen during the Mexican war.

Claim disallowed.

7. Hudson Bay Company.

Presented March 13, 1854—Withdrawn.

For exemption from taxes on live stock in Oregon, and repayment of duties collected thereon.

July 29.—Claim withdrawn.

8. Hudson Bay Company.

Presented March 13, 1854—Heard July 29, and submitted—Disagreement of the commissioners—Heard before the umpire November 18—Award of umpire.

For seizure of the steamer Beaver, in December, 1851, in Oregon, on the charge of having violated the United States revenue laws.

October 28.—The commissioners disagreed on the allowance of the claim, and it was referred to the umpire.

November 29.—The umpire awarded the sum of one thousand dollars in full of said claim, due the 15th of January, 1855.

9. Hudson Bay Company.

Presented March 13, 1854—Withdrawn.

For loss occasioned by the seizure of their schooner Cadboro'.

July 29.—Claim withdrawn.

10. Hudson Bay Company.

Presented March 13, 1854—Heard July 29, and submitted—Disallowed.

For obstruction, by United States revenue officers, of rights of transportation by their vessel, the Prince of Wales, under the treaty of 1846.

October 11.—Claim disallowed.

11. Maurice Evans & Co.

Presented March 13, 1854—Heard July 1, and submitted—Disallowed.

For return of duties assessed by United States revenue officers, in over valuation of wines and porter imported into New York city during the years 1850 and 1851.

Claim disallowed.

12. Joseph Wilson.

Presented March 13, 1854—Heard April 8, and submitted—Further affidavits filed July 12—Disallowed

For his arrest and detention in Michigan on charge of exercising his authority as British land officer on an island alleged to be within the limits of that State, afterwards found to be within British jurisdiction.

Claim disallowed.

13. Platt and Duncan.

Presented March 15, 1854—Heard July 1, and submitted—Re-opened November 1, and again submitted—Disallowed.

For return of moneys alleged to be illegally obtained as an adjustment of suits brought against them by the United States collector at New York city in 1840, on the charge of having entered goods with false invoices.

November 13.—Claim disallowed.

14. THE EXECUTORS OF JAMES HOLFORD *and other claimants.*

Presented March 15, 1854—Protest filed as to the jurisdiction of the commissioners, July 18—Heard July 18—Disagreement as to jurisdiction, heard before the umpire July 18—Disallowed by the umpire.

For money due on bonds issued by Texas prior to its admission into the Union, for payment of which bonds the Texan duties were pledged, and were afterwards transferred to the United States.

The commissioners disagreed on the question of jurisdiction of said case, and it was referred to the umpire.

November 29.—Claim disallowed by the umpire.

15. PHILIP DAWSON *and others.*

Presented June 7, 1854—Protest filed against the jurisdiction of the commissioners July 28—Heard July 28, and submitted—Disagreement as to jurisdiction—Heard before the umpire November 11—Disallowed by the umpire.

For money due on bonds issued by Texas prior to its admission into the United States.

The commissioners disagreed on the question of jurisdiction, and the case was referred to the umpire.

November 29.—Claim disallowed by the umpire.

16. THE LORD NELSON, *James Crooks, owner.*

Presented March 6, 1854—Heard March 23, on question of jurisdiction—Further argument submitted, by leave, May 23, 1854—Disagreement as to jurisdiction—Heard before the umpire December 9—Disallowed by the umpire.

For proceeds of a judgment in the court of admiralty in 1818, which proceeds were not received on account of the clerk of the court proving a defaulter, said judgment being founded on a suit for seizure of a vessel made prior to 1855.

The commissioners disagreed on the question of jurisdiction of the case, and it was referred to the umpire.

December 14.—Claim disallowed by the umpire.

17. ALFRED T. WOOD.

Presented March 15, 1854—Heard April 8, and submitted—Disallowed.

For seizure in New Brunswick and removal to Maine, for offences said to have been committed in that State.

Claim disallowed.

18. SAMUEL C. JOHNSTON.

Presented March 13, 1854—Heard April 11, and submitted—Disallowed.

For arrest and prosecution at New York, on the charge of violating the emigrant passenger act.

Claim disallowed.

19. THE UNION, *Robert Holl, master*.

Presented March 13, 1854—Heard April 11, and submitted—Disallowed.

For additional payment of damage on account of the capture of this vessel by the United States sloop-of-war Peacock, after peace had taken effect, where the capture was made.

Claim disallowed.

20. GREAT WESTERN STEAMSHIP COMPANY.

Presented March 13, 1854—Heard July 5, and submitted—Disagreement of commissioners on the amount of damage—Heard before the umpire December 9—Award of umpire.

For return of duties on coal entered and stored at Boston and consumed on outward bound voyages of their steamers, for which they claim that they are entitled to drawback.

December 1.—The commissioners disagreed as to the amount to be allowed and the same was referred to the umpire.

December 14.—The umpire awarded the sum of thirteen thousand five hundred dollars, due the 15th of January, 1855.

21. HENEAGE W. DERING AND OTHERS.

Presented March 13, 1854—March 21 and May 26—Heard June 21 and submitted—Disagreement as to jurisdiction—Heard before the umpire—Disallowed by the umpire.

For sums due on bonds issued by the territorial government of Florida.

November 13.—The commissioners disagreed on the question of jurisdiction, and also on the merits of the case, and it was referred to the umpire.

December 14.—Claim disallowed by the umpire.

22. THE JAMES MITCHELL, *Francis Ashley and others, owners*.

Presented March 13, 1854—Heard before the commissioners and umpire November 20, and submitted—Disagreement of the commissioners on the amount of damage—Award of umpire.

Claim for damage in removal of the above vessel to Key West in Florida for trial as to salvage, and sale there of vessel and cargo.

The commissioners disagreed as to the amount of damage to be allowed, and the same was referred to the umpire.

December 1.—The umpire awarded the sum of twenty thousand dollars, due the 15th of January, 1855.

23. THE YOUNG DIXON, *Samuel Moats, owner.*

Presented March 13, 1854—Submitted on the papers October 18—Disallowed.

For excess charged on tonnage duties of the above vessel by custom-house officers at Philadelphia on her arrival from Honduras.

Claim disallowed.

24. FRANCIS WATSON AND OTHERS.

Presented January 7, 1854—Heard May 26, and submitted—Disallowed.

For lands granted them in the Territory of New Brunswick, but by adjustment and location of boundary line now included in the State of Maine.

Claim disallowed.

25. THE IRENE, *Riddell Robson, owner.*

Presented March 13, 1854—Dismissed.

For the seizure and detention of this vessel for violation of the emigrant passenger act.

October 18.—Dismissed.

26. MILLER & MACKINTOSH.

Presented March 13, 1854—Heard December 9, and submitted—Award.

For damage from seizure of wines at San Francisco, in 1849, by the United States revenue officers.

December 14.—The commissioners awarded the sum of six thousand dollars, in full of said claim, due the 15th of January, 1855.

27. BRIG LADY SHAW STEWART, *George Buckham, owner.*

Presented December 3, 1854—Heard May 13 and 15, and submitted—Disagreement of commissioners on the amount of damage—Case submitted to the umpire on the papers—Award of umpire.

For the alleged illegal seizure and sale of the above vessel at San Francisco by the United States authorities.

October 28.—The commissioners disagreed on the amount of damage to be awarded, and the claim was referred to the umpire, and was submitted by the agents to his decision on the papers.

November 29.—The umpire awarded the sum of six thousand dollars, in full of said claim, due the 15th of January, 1855.

28. GODFREY, PATTISON & Co.

Presented March 13, 1854—Further memorial presented by leave June 15, 1854—Heard June 29, and submitted—Award.

For the repayment of duties levied on their goods beyond those paid by citizens of other nations, contrary to the treaty of 1815.

January 13, 1855.—The commissioners award the sum of sixty-one thousand six hundred and eighty-nine dollars and fifty-four cents, in full of said claim to January 15, 1855.

29. MESSRS. BAKER & Co.

Presented March 13, 1854—Dismissed.

For expulsion from Tampico by the forces of the United States.

Claim dismissed.

30. MESSRS. MCCALMONT & GREAVES.

Presented December 30, 1853—Heard April 22 and 25, 1854, and submitted—Disagreement of the commissioners—Heard before the umpire December 7—Award of umpire.

For return of duties levied at Vera Cruz during the Mexican war, through change and alleged mistake in the American tariff.

December 1.—The commissioners disagreed on the allowance of the claim, and it was referred to the umpire.

January 8.—The umpire awarded the sum of eleven thousand seven hundred and thirty-three dollars and fifty-eight cents, due January 15, 1855.

31. MESSRS. CALMONT & Co.

Presented December 7, 1853—Heard and submitted—Disallowed—Further claim for return of duties paid on the above—Presented December 3, 1853—Heard May 18, 1854—Disagreement of the commissioners—Heard before umpire December 7, 1854—Disallowed by the umpire.

For the seizure of goods belonging to them by the Mexicans, while under convoy of the United States forces.

December 7.—Claim for seizure disallowed.

A further claim was then made for return of duties paid on the above goods.

December 1.—The commissioners disagreed on the allowance of the same, and it was referred to the umpire.

December [illegible].—Claim for the return of duties disallowed by the umpire.

32. Messrs. Cotesworth, Powell & Pryor.

Presented March 13, 1854—Heard before the commissioners and umpire November 20—Disallowed.

For lands granted them in Texas while under the government of Mexico.

November 25.—Claim disallowed.

33. Messrs. T. & B. Laurent.

Presented January 16, 1854—Question of jurisdiction raised April 5, heard, and submitted—Disagreement of the commissioners—Heard before the umpire October 5—Disallowed by the umpire.

For the seizure and confiscation, by General Scott, of a debt alleged to be due from the Messrs. Laurents to the Mexican government, on a contract for the purchase of real estate, which contract was denied by the government, and of which estate the Messrs. Laurents were dispossessed by judgment of the Mexican courts.

September 26.—The commissioners, being unable to agree, severally delivered their opinions, which were placed on file, and the case was committed to the decision of the umpire.

December 20.—Claim disallowed by the umpire.

34. Brigantine Confidence.

Presented February 17, 1854—Heard June 10, and submitted—Further papers filed by leave, June 19 and October 6—Award of umpire.

Claim for the running down the above vessel by the United States frigate Constitution, in the straits of Gibraltar, December 1, 1850.

Referred by commissioners to the umpire.

January 13.—The umpire awarded the sum of two thousand and fifty-five pounds, or nine thousand nine hundred and forty-six dollars and twenty cents, in full of said claim, due January 15, 1855.

35. Samuel Bradbury.

Presented March 15, 1854—Heard January 6, 1855, and submitted—Disallowed.

For return of moneys alleged to be illegally obtained by the collector of customs of New York, in compromise of a suit brought on a charge of having entered goods with false invoices.

January 13.—Claim disallowed.

36. Hudson Bay Company.

Presented March 13, 1854—Heard July 29, and submitted—Award.

For drawback of duties on goods paid at Astoria in 1852, and re-exported to Fort Vancouver.

October 11.—The commissioners award the sum of fifteen hundred and twenty-three dollars and sixty-eight cents, in full of said claim, due the 15th of January, 1855.

37. Hudson Bay Company.

Presented March 13, 1854—Heard July 29, and submitted—Award.

For supplies furnished volunteers raised in Oregon, on breaking out of hostilities with the Indians, and expenditures incurred in rescue of captives from them prior to the organization of the territorial government.

December 1.—The commissioners award the sum of three thousand one hundred and eighty-two dollars and twenty-one cents, in full of said claim, due the 15th of January, 1855.

38. George Houghton.

Presented March 13, 1854—Heard May 26, and submitted—Award.

For return of specie, alleged to belong to the claimant, taken on board a pirate vessel captured by a United States vessel of war.

January 2, 1855.—The commissioners awarded the sum of two thousand five hundred dollars, in full of said claim, due the 15th of January, 1855.

39. The Baron Renfrew, *Duncan Gibb, owner.*

Presented March 6, 1854—Heard March 21, and submitted—Disagreement of commissioners on the amount of damage—Award of umpire.

For seizure and detention of the above vessel at San Francisco.

October 28.—The commissioners disagreed as to the amount of damage to be awarded, and the case was referred to the umpire, and was submitted by the agents to his decision on the papers.

December 23.—The umpire awarded the sum of six thousand dollars, in full of said claim, due the 15th January, 1855.

40. Alexander McLeod.

Presented March 13, 1854—Statement made by Mr. McLeod, by consent, September 27—Heard before the commissioners and umpire December 11—Disagreement of commissioners January 2—Disallowed by the umpire.

For damage occasioned by his arrest, detention, and trial in New York, on charge of being concerned in the destruction of the steamer Caroline.

January 2.—The commissioners disagreed on the allowance of the claim, and it was referred to the umpire.

January 15.—Claim disallowed by the umpire.

41. Charles Uhde.

Presented June 14, 1854—Heard January 8, 1855—Disagreement of commissioners—Award of umpire.

For the seizure and alleged confiscation of merchandise by the United States forces in Matamoras, during the year 1846.

January 9, 1855.—The commissioners disagreed on the allowance of the same, and it was referred to the umpire.

January 15.—The umpire awarded the sum of twenty-five thousand dollars, in full of said claim, due the 15th of January, 1855.

42. The Sir Robert Peel, *Jonas Jones and als., owners.*

Presented March 13, 1854—Submitted on the papers for decision December 9—Disallowed.

For destruction of the above vessel in the river St. Lawrence, in 1838, by persons alleged to be citizens of the United States.

January 2.—Claim disallowed.

43. Messrs. Butterfield and Brothers.

Presented March 13, 1854—Heard July 8, and submitted—Dismissed.

For the repayment of duties levied on their goods beyond those paid by citizens of other nations, contrary to the treaty of 1815.

No evidence submitted.

Dismissed.

44. J. P. Oldfield & Co.

Presented May 23, 1854—Heard July 8, and submitted—Award.

For the repayment of duties levied on their goods beyond those paid by the citizens of other nations, contrary to the treaty of 1815.

January 13, 1855.—The commissioners award the sum of three thousand ninety-nine dollars and fifty-four cents to Charles Turner, official assignee of J. P. Oldfield, of Manchester, in full of the claim of said company, to the 15th of January, 1855.

45. CHARLES KENWORTHY, (*George H. Taylor, agent.*)

Presented March 15, 1854—Heard November 1, and submitted—Disallowed.

For return of moneys alleged to be illegally obtained by the collector of customs of New York, on a charge of having entered goods with false invoices.

November 13.—Claim disallowed.

46. JAMES SHAW, (*George H. Taylor, agent.*)

Presented March 15, 1854—Heard November 4, and submitted—Disallowed.

For return of duties as above, in No. 45.

November 13.—Claim disallowed.

47. JOHN TAYLOR, JUN., *by his executors, Francis Shaw and als.*

Presented March 15, 1854—Heard January 6, 1855, and submitted—Disallowed.

For return of moneys alleged to be illegally obtained by the collector of customs at New York, as a compromise of a suit brought on a charge of having entered goods with false invoices.

January 13.—Claim disallowed.

48. MESSRS. KERFORD & JENKIN, *merchants in Zacatecas, Mexico.*

Presented December 1, 1853—Question of jurisdiction raised—Heard April 6—Heard also on its merits June 24—Disagreement of the commissioners—Heard before the umpire on its merits November 15—Disallowed by the umpire.

Claim for detention by the United States forces of the caravan of Kerford & Jenkin, conveying goods to the interior of Mexico, during the year 1846.

November 13.—The commissioners disagreed on the allowance of the claim, and the case was referred to the umpire.

January 10.—Claim disallowed by the umpire.

49. CHARLES GREEN.

Presented March 13, 1854, and submitted on the papers—Disallowed.

For the seizure of certain hardware goods at San Francisco, by United States revenue officers.

October 10.—Claim disallowed.

50. WILLIAM PATTERSON.

Presented February 23, 1854—Heard and submitted—Disallowed.

For injuries alleged to have been received at Matamoras from the forces of the United States.

October 11.—Claim disallowed.

51. JOHN POTTS.

Presented January 13, 1854—Disallowed.

For losses occasioned by the closing of his mint in Mexico by the forces of the United States.

Claim disallowed.

52. MESSRS. GLEN & Co.

Presented March 13, 1854—Submitted on papers—Dismissed.

For the seizure of wines and other spirits, at San Francisco.

October 18.—Claim dismissed as being in progress of settlement by the Secretary of the United States Treasury.

53. P. B. MURPHY.

Presented March 13, 1854—Withdrawn.

For return of duties on brandy, levied at San Francisco.

Claim withdrawn—the duties having been refunded by the collector.

54. CHARLES B. HALL.

Presented March 13, 1854—Withdrawn.

For the illegal seizure of goods at Cincinnati, by United States custom-house officers.

Claim withdrawn.

55. THE MARY ANNE.

Presented March 13, 1854—Disallowed.

For loss arising out of infringement of the emigrant passenger's act.

Claim disallowed.

56. THE SHIP HERALD.

Presented March 13, 1854—Submitted on the papers—Dismissed.

For injuries received at Marseilles by the United States sloop-of-war, Erie.

Claim dismissed.

57. Hon. W. Black.

Presented March 13—Submitted on the papers May 26—Disallowed.

For lands in the Territory of New Brunswick, included by location and adjustment of boundary line within the State of Maine.

Claim disallowed.

58. Lord Cartaret.

Presented January 9, 1854, and submitted on the papers—Disallowed.

Claim to lands granted his ancestors in North and South Carolina, of which he alleges himself to be entitled.

Claim disallowed.

59. Earl of Dartmouth.

Presented January 10, 1854, and submitted on the papers—Disallowed.

Claim for lands formerly granted to him, situated in East Florida.

Claim disallowed.

60. The Representatives of Colonel Elias Durnford.

Presented March 13, 1854—Heard May 26, and submitted on the papers—Disallowed.

Claim for lands formerly granted Colonel Elias Durnford in Florida.

Claim disallowed.

61. James H. Rogers.

Presented March 15, 1854, and submitted on the papers—Disallowed

For the recovery of lands in Florida.

Claim disallowed.

62. Thomas Whyte.

Presented March 13, 1854—Heard May 26, and submitted—Disallowed.

For the recovery of lands in Florida.

Claim disallowed.

63. G. Rotchford Clarke.

Presented March 13, 1854—Heard May 5th and 6th, on question of jurisdiction, and submitted—Disallowed.

For the recovery of lands in Vermont, or the value thereof, granted to his ancestors by the State of New York, prior to the admission of Vermont into the Union, and which were claimed to be reserved to the proprietors under provisions of treaty between the United States and Great Britain.

Claim disallowed.

64. BARQUE PEARL, *James Tindoll, et al., owners.*

Presented March 13, 1854—Heard May 18, and submitted—Disallowed.

For the seizure and confiscation of the above vessel at San Francisco, for alleged breach of the United States navigation laws.

October 28.—Claim disallowed.

65. DUTIES ON COTTON GOODS, *Charles Wirgman, agent.*

Presented March 15, 1854—Heard July 8, and submitted.

Claim for return of duties levied on cotton goods beyond those paid by other nations, in contravention of the treaty of commerce of 1815.

January 13, 1855.—Claims in favor of the following persons were severally allowed by the commissioners for the sums specified against their names, amounting in all to twenty-nine thousand seven hundred and sixty dollars and fourteen cents:

Names.	Residence.	Amounts.
Wotherspeon & Wolford	Liverpool	$1,510 60
John Twigg	do	97 20
William A. Brown	do	338 82
Andrew Taylor	do	337 27
William Fielden & Co	do	158 95
Timothy Wiggin	London	2,816 94
George Wildes	do	68 06
Charles Jackson	Leigh	292 51
Abraham Turner	Chorley	129 81
John Cardwell & Co	Paiswell	44 50
Martin & Lee	Panhead	218 06
Patrick Mitchell	Glasgow	296 72
John Frame & Son	do	1,016 39
John McPhail	do	286 48
Jared R. Cogan	do	250 86
Buchanan & Mitchell	do	278 61
P. Hutchinson & Co	do	326 59
William Snell	do	177 00
J. Rollo & Co	do	147 39
John Black	do	116 39
William Alston	do	113 75
J. Walston	do	107 25
J. McDougall	do	112 66
Warden, Walker & Hill	do	102 40
Patrick McGregor	do	90 10
David Mackinlay	do	95 00
John Todd & Co	do	100 93
Gilchrist, Risk & Co	do	76 72
John Dick	do	[illegible] 85

Names.	Residence.	Amounts.
Black & Stewart	Glasgow	$69 58
John Finley	do.	58 83
Charles Kerr & Co.	do.	85 29
John McAlister & Co.	do.	72 95
Ure & Monteith.	do.	65 65
Duff & Stevenson.	do.	47 13
Strine Printing Company.	Manchester	605 79
Fielden Brother & John Crosby.	do.	309 34
John Kelsal.	do.	269 21
T. Longshaw.	do.	225 39
John Ingham & Co.	do.	234 60
John Knowles	do.	105 00
T. Cardwell & Co.	do.	297 70
J. & S. Bury	do.	207 55
William Lindsay.	do.	200 73
R. Foot	do.	87 20
Hargreeves, Dugdale & Co.	do.	1,089 48
*Dean & Brothers, (Bolton,) near	do.	1,293 69
F. Fern & Brothers	do.	1,225 65
Harrison & Bearn	do.	1,262 18
J. & T. Ramsbotham.	do.	500 00
J. & G. Jones.	do.	1,253 34
†James Woods Weston, exect'r of Thos. Calvert, late of.	do.	1,329 51
†John Clegg, executor of William Turner, late of	do.	3,640 87
John Knight & Co.	do.	948 54
J. & J Ashton.	do.	788 45
R. Bleasby	do.	405 51
F. Dixon	do.	378 02
John A. Hobson	do.	373 18
F. Slatter	do.	339 17
†George Faulkner, executor of John Owens, late of	do.	325 07
T. Burgess	do.	203 82
William Gray	do.	475 41
Sykes & Yates	London	638 95
		30,260 14

* Jane Dean, executrix of J. Dean, (Bolton)

† In these three cases, the probates of the wills of the parties named in this list, (being the surviving partners of the firms to which the amounts were found to be due,) have been duly examined by the commissioners, and found to be in due form and properly executed, attested, &c.

DUTIES ON COTTON GOODS, *Charles Wirgman, agent.*

Claim for return of duties, as above, by John A. Hobson and Andrew Taylor.

January 13.—The commissioners award to John A. Hobson the sum of forty-two dollars fifty-eight cents, and to Andrew Taylor the sum of one hundred and seventy dollars and seventy-six cents, in full of said claims, respectively, to January 15, 1855.

66. CLAIM FOR RETURN OF DUTIES LEVIED ON COTTON GOODS, AS ABOVE, IN No. 65, *Andrew Mitchell, agent.*

January 6, 1855.—Claims in favor of the following persons were severally allowed by the commissioners for the sums specified against their names, amounting, in all, to twenty thousand six hundred and two dollars and sixty-five cents:

Names.	Residence.	Amounts.
Robert Gourlay & Co.	Glasgow	$501 52
R. G. Finlay & Brothers	do	2,395 01
John Alston & Son	do	336 79
John Ker, jr.	do	806 64
John Spencer & Son	Manchester	180 76
Fort, Brothers & Co.	do	1,112 27
Late Patrick Mitchell	Glasgow	4,007 55
George Berrell	Dunfermnline	516 64
Mitchell & Ker, jr.	Glasgow	452 01
Fort, Brothers & Co., Manchester, and Ker, jr., and Alston & Son	do	1,012 30
Berrell (Dunfermnline) and Mitchell	do	3,840 76
Berrell (Dunfermnline) and Finley & Brothers	do	1,339 53
Spencer & Sons (Manchester) and Mitchell	do	1,183 96
Berrell, (Dunfermnline,) and Brown & Co., Mitchell, and Finlay & Brothers	do	2,062 03
Mitchell, Finlay & Brothers	do	914 91
		20,602 65

67. GEORGE AND SAMUEL SHAW.

Presented March 15, 1854—Heard January 6, 1855, and submitted—Disallowed.

For return of moneys alleged to be illegally obtained by the collector of customs of New York in compromise of a suit brought on charge of having entered goods with false invoices.

January 13.—Claim disallowed.

68. WILLIAM BROADBENT.

Presented March 15, 1854—Heard January 6, 1855, and submitted—Disallowed.

For return of moneys as above, in No. 67.

January 13, 1855.—Claim disallowed by the umpire.

69. WILLIAM BOTTOMLEY, *by his executors.*

Presented March 15, 1854—Heard January 12, 1855, and submitted—Disallowed.

Claim for return of moneys, as above, in No. 67.

January 13.—Claim disallowed.

70. The Crosthwaite, *Messrs. Stuart & Simpson, owners.*

Presented March 13, 1854—Dismissed.

For seizure of the above vessel at New Orleans.
Dismissed.

71. Ship-owner's Society.

Presented March 13, 1854—Dismissed.

For seizure of the Ann in 1819.
Dismissed.

72. The Duckenfield, *Messrs. David Lyon & Co., owners.*

Presented March 13, 1854—Dismissed.

For return of discriminating duties levied on the above vessel.
Dismissed.

73. The Science, *Messrs. Wilson & McLellan, owners.*

Presented March 13, 1854—Dismissed.

For return of duties levied on the above vessel during the year 1846.
Dismissed.

74. The Prosperity, *Messrs. Musgrave, owners.*

Presented March 13, 1854—Dismissed.

For excess of duties imposed on said vessel.
Dismissed.

75. Anglo-Mexican Mint Company.

Presented March 13, 1854—Dismissed.

For loss caused by order of the United States prohibiting the exportation of gold from Mexico.
Dismissed.

The foregoing docket contains a correct report of awards and judgments made on claims of British subjects against the United States government, after full hearing and examination thereof, and we hereby place our signatures to the same, to be applied thereto in the same manner and as fully as if severally affixed to each of said awards and judgments.

The awards of moneys therein made are to be paid by the United States government to the British government, for the benefit of the several claimants, their attorneys, legal representatives or assigns, and said awards are to be regarded as bearing date from the 13th of January, 1855.

N. G. UPHAM,
United States Commissioner.

EDMUND HORNBY,
British Commissioner.

JANUARY 13, 1855.

ORDER OF COMMISSIONERS AND THE UMPIRE, AS TO THE RATE OF EXCHANGE APPLICABLE TO THE AWARDS MADE BY THEM.

The commissioners, by and with the concurrence of the umpire, hereby establish the relative rate of payments of the awards made by them in the currency of the respective countries of Great Britain and the United States, at four dollars and eighty-four cents to the pound sterling.

N. G. UPHAM,
United States Commissioner.

EDMUND HORNBY,
British Commissioner.

JOSHUA BATES, *Umpire.*

JANUARY 13, 1855.

RECAPITULATION.

Awards of moneys made under the convention for the adjustment of claims of February 8, 1853, *in behalf of the United States claimants against the British government.*

Names of parties	Amounts awarded.
N. L. Rogers & Brothers	$7,676 96
Barque Jones, P. J. Farnham & Co. owners	100,625 00
Schooner John, Reuben Shapely owner	13,608 22
The Only Son, Fuller & Delano owners	1,000 00
Brig Creole, Edward Lockett *et als.* owners	110,330 00
Brig Douglas, Amos Frazar owner	600 00
Schooner Caroline Knight, George W. Knight *et als.* owners	1,887 60
The Tigris and Seamew, Messrs. Brookhouse & Hunt owners	24,006 40
Schooner Argus, Doughty master	2,000 00
Schooner Washington	3,000 00
Brig Enterprize, Joseph W. Neal *et als.* owners	49,000 00
Schooner Hermosa, New Orleans Insurance Company *et als*	16,000 00
Amounting in all to the sum of	329,734 16

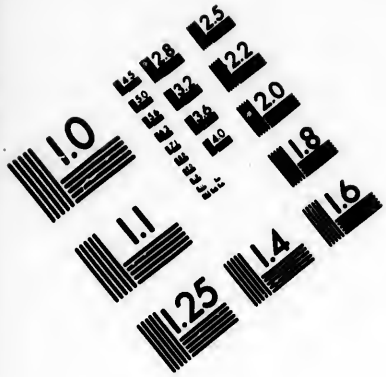
Or, at the relative value of exchange as established by the commissioners, to (£68,131 0*s.* 7½*d.*) sixty-eight thousand one hundred and thirty-one pounds seven and one-half pence sterling.

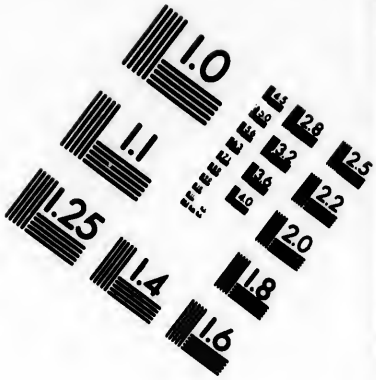
RECAPITULATION.

Awards of moneys made under the convention for the adjustment of claims of February 8, 1853, in behalf of British claimants against the United States government.

Names of parties.	Amounts awarded.
Thomas Rider	$625 00
The Francis and Eliza, Christopher Richardson owner	34,227 00
Ship Albion, John Lidgett owner	20,000 00
Steamer Beaver, Hudson Bay Company owner	1,000 00
Great Western Steamship Company	13,500 00
The James Mitchell, Francis Ashley et als. owners	20,000 00
Miller & McIntosh	6,000 00
Brig Lady Shaw Stewart, George Buckham owner	6,000 00
Godfrey, Pattison & Co	61,689 54
Messrs. McCalmont & Greaves	11,733 58
Andrew Mitchell	20,602 65
Hudson Bay Company, (claim for return of duties)	1,523 68
Brigantine Confidence	9,946 20
Hudson Bay Company, (Cayeuse war claim)	3,182 21
George Houghton	2,500 00
The Baron Renfrew, Duncan Gibb owner	6,000 00
J. P. Oldfield & Co	3,099 54
Charles Wirgman	30,473 48
Charles Uhde	25,000 00
Amounting in all to the sum of	277,102 88

Or, at the relative value of exchange as established by the commissioners, to (£57,252 13*s.* 4*d.*) fifty-seven thousand two hundred and fifty-two pounds thirteen shillings and four pence.





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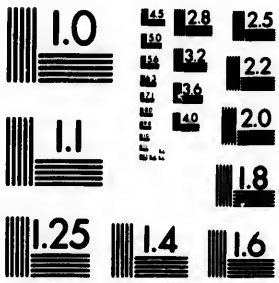

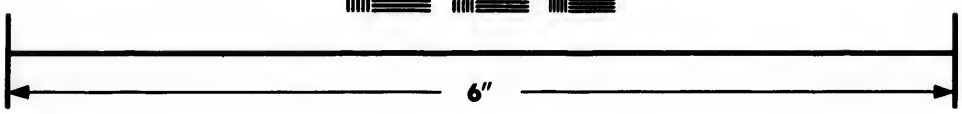

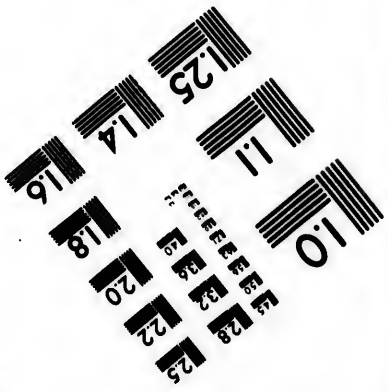

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23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

EXPENSES OF COMMISSION.

	£	d.	s.
Salary of commissioners at $3,000 or £620 per annum, each, for sixteen months, from September 15, 1853, to January 15, 1855, during the actual time of session	1,653	6	8
Clerk's salary	399	8	4
Messenger's salary, &c	97	0	0
Rent of office from September 29, 1853, to March 25, 1855, at £90 per annum.	135	0	0
Housekeeper's account during the above time	24	0	0
Stationers' and copyists' bills	68	6	6
Printing and binding of the commissioners' judgments and printing also of report for the two governments	120	0	0
Messrs. Quilter & Ball's bill, as accountants	57	15	0
Clerk hire of umpire	4	10	0
Coals and wood	11	10	0
Incidental postage, &c	18	0	0
	2,588	16	6

The commissioners leave it to the two governments to determine the time when the salaries of the commissioners should commence and terminate, and what travelling expenses, if any, should be allowed to the appointed place of meeting, and return from the same, and the compensation to be allowed to the umpire.

Such further amounts as may be allowed on these accounts are to be added to the expenses hereabove written, which expenses we certify to be true and correct, and that they are to be defrayed by a ratable deduction from the total amount awarded by the commissioners, agreeably to the 6th article of the convention, provided that, if they shall exceed the rate of five per cent. on such total amount, the deficiency is to be defrayed in moieties by the governments.

By the convention it was left to the respective governments to appear in behalf of the claimants by counsel or agents, or not, at their

option, and no compensation was established for such agents. The commissioners, therefore, leave the amount due to the agents to be determined by their respective governments.

N. G. UPHAM,
United States Commissioner.

EDMUND HORNBY,
British Commissioner.

NOTE.—By the civil and diplomatic appropriation bill of March 3, 1855, the sum of twelve thousand dollars each was allowed by Congress for the services and expenses of the American commissioner and agent.

I hereby certify that I have duly examined, with a view of authenticating the same, the foregoing records of the commission, with the transcript thereof for the government of Great Britain, and have found the same to be correct.

And I further certify that the signatures therein are the genuine signatures of the commissioners and umpire.

Dated this 20th day of January, in the year of our Lord 1855.

N. L. UPHAM,
Secretary of Commission on Claims.

[SEAL OF COMMISSION.]

THE UMPIRE OF THE LONDON COMMISSION.

NOTE.—Mr. Bates, of London, was selected as umpire, by agreement between the commissioners. It so happened that many of the most important questions that came before the commission were referred to him for decision, which rendered his labors arduous, and his responsibility great. Although provision was made in the treaty to compensate him for his services, yet he refused to receive any remuneration whatever.

REPORTS OF DECISIONS BY THE COMMISSIONERS,

AND THE

ARGUMENTS OF COUNSEL.

The following constitute the reports of decisions drawn up in the principal cases by the commissioners.

Other cases, which depended mostly on questions of fact, or in which no important principle of international law was involved, are briefly stated, with the reasons assigned for their decision, in the preceding report of awards.

BARQUE JONES.

The barque Jones was seized in the harbor of St. Helena, on charges—

I. Of being in British waters, without having ship's papers on board, and therefore without national character.

II. For being engaged in and equipped for the slave trade.

There was a competent court for the trial of these charges at St. Helena, but the barque was taken to Sierra Leone for trial, and the charge of being engaged in and equipped for the slave trade was adjudged by the court there "to be without foundation, and destitute of any probable cause to sustain it." It appeared, also, that the ship's papers were duly deposited at the collector's and consul's offices, on her arrival, as required by law, but the court assessed the vessel in costs, on the ground of alleged resistance to constituted authorities, and it was sold at auction for the payment of these charges.

Held, that the allegation of being without ship's papers, and without a national character, was unsustained by evidence.

Held, also, on the judgment delivered by the court, that no costs could be taxed against the vessel, and that no resistance to authorities was shown. And further, that the removal of the vessel from St. Helena, where a competent court existed for the trial of these charges, to Sierra Leone for trial, was a violation of the rights of the parties, and that the owners of the Jones were entitled to full remuneration for all damages sustained.

The case was fully argued by J. A. THOMAS, agent and counsel for the United States, and by JAMES HANNEN, agent and counsel for the British government.

UPHAM, United States Commissioner:

The barque Jones, owned by P. J. Farnham and Company, of Salem, Massachusetts, having shipped her crew for Montevideo, and other ports north of the thirty-sixth parallel of south latitude, sailed from Boston, in March 1840, for the west coast of Africa, having a valuable assorted cargo for a trading voyage upon that coast.

She arrived at Ambriz, on the coast of Africa, on the 17th of June, and landed, and disposed of a considerable portion of her cargo, consisting of flour, biscuit, soap, candles, tea, fish, furniture, lumber, and gunpowder. After receiving on board a quantity of African produce, she sailed for Loando, on the same coast. On this passage she was, in violation of the rights of her flag, boarded and overhauled by her Majesty's armed brig Water Witch, but, after examination of her papers and cargo, was permitted to proceed on her voyage.

At Loando the Jones landed a considerable quantity of merchandise, and received in return ivory and other African produce. From Loando she returned again to Ambriz, and, after taking on board more produce, sailed for St. Helena, where she arrived on the 24th of August, 1840.

She was regularly entered at the custom-house, and had remained at St. Helena twenty-one days, until the 14th of September, discharging and receiving cargo, when she was seized by her Majesty's ship Dolphin, Lieutenant Littlehales, commander, and taken from St. Helena to Sierra Leone for adjudication, on charges specifically set forth in the affidavit of seizure, the opinion of the court, and other papers in the case.

The grounds of seizure of the Jones, as set forth in the affidavit of A. C. Murray, mate of the Dolphin, taken before the officiating judge of the vice-admiralty court of Sierra Leone, on the 5th of October, 1840, are, that the Jones "was found in British waters, without any national character, and having no ship's papers or colors on board, and for being engaged in and fitted and equipped for the slave trade, contrary to the provisions of the acts of 5 *Geo. IV, ch.* 113, *and of* 2 *&* 3 *Vic., ch.* 73."

The officiating judge in the court of vice-admiralty states the charge in the same manner, reciting that it was alleged "the barque Jones had violated two acts of the British parliament, viz: the 2 *and* 3 *Vic.*,

ch. 73, and the 5 *Geo. IV, ch.* 113; against the *first*, for being found in British waters without any national character, having no ship's papers on board; and against the *latter*, for being engaged in and equipped for the slave trade."

Lord Palmerston states the case in almost the same words. He says that the Jones was seized upon two grounds:

"*First*, under the act of 2 *and* 3 *Vic., ch.* 73, for being found in British waters without having ship's papers on board, and for being therefore without any national character."

"*Secondly*, under the act of 5 *Geo. IV, ch.* 113, for being engaged in and equipped for the slave trade."

In each of these statements two distinct and independent charges are alleged as separate grounds of seizure, and each of them are based on different statutes. It is perfectly clear, however, that the first charge, "of being found in British waters, without having ship's papers on board," is not an offence, as alleged under the 2 *and* 3 *Vic.*, and that no jurisdiction over, or right of seizure of the vessel, exists by that statute, whatever may be her papers, except as based on her *connexion with the slave trade*; and this view of the statute is important, as an erroneous construction in this respect has caused an undue and unwarrantable importance to be given to a controversy which has arisen as to the papers of the vessel.

A brief reference to the act of 2 *and* 3 *Vic.* will sustain us in this position. This act empowers British cruisers "to capture Portuguese vessels *engaged in the slave trade*, and other vessels *engaged in the slave trade*, not being entitled to claim the protection of the flag of any state or nation;" and, by its terms, unless the charge of being engaged in the slave trade is sustained, it becomes wholly immaterial whether the Jones had papers or not, so far as the statute of 2 *and* 3 *Vic.* is concerned.

The charge, therefore, "of being found in British waters without having ship's papers on board, and having no national character," is no allegation of an offence against 2 *and* 3 *Vic.*, and the whole proceeding, so far as it is based on that act, falls to the ground.

The only remaining ground of seizure of the vessel is "her being engaged in and equipped for the slave trade," which is charged as a violation of the act of 5 *Geo. IV.* It becomes necessary, then, to look into the provisions of that act. We concede that the charge of being

concerned in and equipped for the slave trade is well alleged as against that statute, and the vessel is to be holden responsible if the charge is sustained and the offence is prosecuted agreeably to the requirements of law.

By that act, however, it appears that all vessels, seized for being concerned in the slave trade, "shall and may be sued for, prosecuted, and recovered in any court of record, or vice-admiralty, in any port *in, or nearest* to which such seizure may be made, or to which such vessels, if seized at sea, or without the limits of any British jurisdiction, may most conveniently be carried."

By this act, vessels seized "*at sea*, or without the limits of any British jurisdiction," are to be taken to *the nearest* and *most convenient* port for trial; but, if within a harbor, and an established and competent jurisdiction, they are to be *there* tried. The vessel in this case was seized at St. Helena, where there had long been a court of record of an established character, and competent to try any felony or capital offence against the laws of Great Britain. The removal, therefore, of the vessel from this jurisdiction to the remote jurisdiction of Sierra Leone, upon the coast of Africa, was an illegal act.

The object of the act of 2 *and* 3 *Vic.* undoubtedly was to give authority to seize, in *the open sea*, Portuguese vessels and vessels having no national character, concerned in the slave trade.

In *harbor, or in British waters*, Portuguese and other vessels had always been liable to seizure under the prior act of 5 *Geo. IV*, if their masters were engaged in fitting them out for the slave trade. The act of 2 *and* 3 *Vic.* was not at all required to give jurisdiction over the Jones in the *harbor* of St. Helena. If she was guilty of being concerned in the slave trade there, whatever might be her papers, she could be seized, and tried at once, under the act of 5 *Geo. IV*, where the parties were all present, and ready for trial, without removal to a distant jurisdiction where the very same issue, of *being concerned in the slave trade*, was to be tried. Her removal, therefore, to Sierra Leone was without any excuse, and was rendered peculiarly oppressive against these owners, as their captain was excluded from his vessel, without money or means of conveyance to the remote jurisdiction of Sierra Leone, a thousand miles distant by water, and the trial was proceeded with without any attendance on the part of the owners.

The proceedings of Lieut. Littlehales were in clear violation of the

act of 5 *Geo. IV*, under which the only valid offence against the vessel was charged, and, under the circumstances of the case, were of a character that should, of itself, render him and his government responsible for all damage that subsequently accrued to the owners in the loss of their vessel. If the seizure had been made and the offence had been solely set up under the 2 and 3 *Vic*, it would, in my opinion, have made no difference, as there certainly was the alternate of a fair and speedy trial of the vessel at St. Helena, under the act of 5 *Geo. IV*, for the only essential charge against her; and, under the circumstances of this case, it would have been the imperative duty of Lieut. Littlehales to have proceeded under that statute. His removal of the vessel to Sierra Leone, under any form of process, would have been in violation of the spirit of the statutes relative to the slave trade, taken in connexion with each other, and against the first principles of right and justice in the trial of offences.

We shall now proceed to consider the proceedings had at Sierra Leone.

Immediately on the arrival of the vessel there, it appears, from the papers in the case, that public notice was given, for the first time, of the offence for which the vessel was seized, by posting up a notice "on a conspiciuous part of the public wharf of Freetown," fourteen days before the adjudication of the court, not that the vessel was to be tried, but that, according to the provisions of law, she was to be "condemned, unless the owners should appear and show just cause to the contrary."

For the facts proved on trial relative to the offence charged, we shall look to the decision of the court, without going behind it, unless it should be hereafter deemed necessary.

The knowledge of the court, by its residence on the African coast, with all matters of African commerce, and its familiarity with every fact tending to show a connexion with the slave trade, is far greater than any information that can be possessed on these subjects by this commission. So long, therefore, as the decision of the court is confined to facts of this nature, relative to the offence on trial before it, we shall regard it as the highest authority of which the case admits. The captors, also, cannot complain, as the decision of the court at Sierra Leone was made after a full hearing on their part, and an examination of all testimony they chose to present.

The witnesses, also, selected and taken to Sierra Leone, had been

engaged in a bitter controversy with the captain of the vessel, and were in open hostility to him. Notwithstanding these adverse circumstances, and the fact that the court were to proceed by law, in the outset, on the assumption that the vessel was guilty, her acquittal on all the grounds on which she was seized was most triumphant and complete. The court, in its opinion, from which I shall make full extracts, says: "I shall dispose, in the first place, of the question as regards this vessel's national character; for, if it be made to appear to my satisfaction that she was duly documented, and that there are fair and reasonable grounds for presuming that she was entitled to claim the protection of the flag and pass of the United States, the allegation against her, under the act of 2 *and* 3 *Vic., ch.* 73, must consequently fail and fall to the ground."

"I have had already occasion," he observes, "to remark, that the vessel was visited and detained for two hours, on the 2d of July last, by her Majesty's brig Water Witch, and I can have no rational doubt but that her papers then exhibited to the boarding officer fully proved her American character. The vessel having gone to St. Helena, and having remained there twenty-one days, discharging and receiving cargo, must necessarily have come under the immediate notice of the constituted authorities of that island; and it cannot be supposd that, at a place where a custom-house is established, a vessel would be allowed to lie so long, and transact business with the island upon an extensive scale, and which must have been done with the knowledge and consent of the collector, without his satisfying himself of her national character."

To ascertain this point, the first preliminary step would be the production of the ship's papers at the custom-house. I have therefore come to the conclusion that the charge of the vessel "being found in British waters, without a national character, must be dismissed."

The court then proceeds to examine into the charge of the vessel's being concerned in the slave trade. In remarking on the paper which had been signed by a portion of the crew of the Jones, protesting against going to the coast of Africa, and which is alleged as the original cause of proceeding against the vessel, the judge states "that not even the most distant allusion is made by the seamen, whose names are affixed to that paper, that the vessel had been, or was about to be, engaged in the slave trade." He states as his conclusion, after

a full examination of the testimony presented, "that not a single article of slave equipment is established against her;" that "the evidence of the witnesses has literally produced nothing which can by possibility affect the character of the vessel;" that "no indication has been adduced, showing the vessel's employment in the slave trade, and that there has not been a single paper found on board the ship that could warrant him in drawing such a conclusion."

And he further says that, "after having carefully reviewed the grounds upon which sentence of restoration had been given by him, with a view of discovering, if *possible*, SOME PROBABLE CAUSE OF SEIZURE as regards the vessel's alleged equipment for the slave trade, he never saw a case so free EVEN FROM SUSPICION."

Thus the vessel was fully exonerated by the decision of the court on all the grounds on which she was seized, and the judgment is as clear, distinct, and explicit as words can make it, that there was NO PROBABLE CAUSE, or ground of suspicion of the vessel's being concerned in the slave trade.

The necessary result of this finding by the court is, that the vessel must be discharged; and not only so, but, the judgment being that the seizure was without probable cause, Lieutenant Littlehales, and the government for which he was acting, are left entirely unprotected as wrongdoers and trespassers from the beginning.

By a most singular proceeding, however, the court has undertaken to consider another charge, without the statute, and of which it had no cognizance, which was of a personal character, against an individual who was not present, and not against the vessel, and which, whether well or ill founded, could in no manner avoid or alter the judgment previously delivered. Notwithstanding the judge had fully discharged the vessel on all grounds on which she was seized, he assessed her in costs, as he says, "for resistance of the master to fair inquiry," and for "his wilful misconduct in resisting *constituted authorities;*" and it is contended that the error of the court, in this respect, is to overrule its decision in the matters strictly before it.

Now the entire evidence on which this charge is founded is before us in writing, and after full examination of it, we express the opinion with entire confidence, that it is wholly unsustained by testimony.

But admitting it was fully sustained, and that Captain Gilbert had forcibly resisted British authorities, so that he had been capitally

liable for an offence of that description; it would have made no difference as to the decision, or liability of this vessel as to other matters charged against it.

If the vessel is exonerated and cleared from all suspicion of offence, the hasty or wilful misconduct of the master, in resisting a British armed force, has nothing to do with the national character of the vessel, or her being engaged in the slave trade.

He might have resisted the more obstinately for the very reason that he knew his vessel was clear of all probable cause of charge, and because he believed its seizure was an abuse of authority; but, on whatever ground he might make such resistance, it would be an offence of which no cognizance could be had except the party was specifically arraigned, and on trial for that cause.

It is an offence also for which a trial could only be had at St. Helena, where the acts complained of were committed, and before a jury of the country.

No provision of the statute, or any principle of common law, gives authority to the court to assess a vessel in costs, when discharged from all legal ground of seizure and probable cause of offence. The court might, for proper cause, have omitted to tax costs against the captors, but this is the utmost extent of any discretionary power vested in them in such case.

In statutes where the delivery of papers is an imperative duty, as in the seamen's act of 7 *and* 8 *Vic., ch.* 112, *sec.* 56; where the master of a vessel is required to produce certain papers to the consul, a refusal to deliver them is a distinct offence, and is punishable under a penalty of £20. Here there is no requirement to deliver papers.

An assessment of costs against the vessel clearly could not be made under the 2 *and* 3 *Vic.*, as that statute provides that, "no court shall proceed to condemn any vessel," (and if so, it cannot assess her in costs,) "where the owners shall establish, to the satisfaction of the court, that they are entitled to claim the protection of the flag of a State other than Great Britain or Portugal." And this provision further shows that the act of 2 *and* 3 *Vic.* was intended to apply merely on the high seas, and that, in harbor, the only act justifying the seizure of a vessel engaged in the slave trade is 5 *Geo. IV.*

The case then shows that Lieutenant Littlehales stands condemned, by a court of his own choosing, on a wholly *ex parte* examination,

and by a judgment unimpeached, of the seizure of a vessel having an established national character, and against which there was no probable ground of charge of her being concerned in the slave trade. Such being the case, it is clear that the party offending is directly responsible to the owners of the vessel. No obligation rested on the owners to follow their property to a remote jurisdiction, to rescue it from the control of law thus unwarrantably asserted.

No principle of common law is plainer, than that trespassers and wrongdoers, *ab initio*, in the seizing and removal of property, are at once personally liable, and it rests not in their mouths to say that the party aggrieved should not prosecute them, but must follow the property and abide the result of the legal proceedings instituted against it. With much more propriety might the owners of the Jones have said that Lieutenant Littlehales, after the discharge of the vessel, instead of instituting an appeal from the decision of the court, which he never prosecuted, should have at once returned the vessel to America, and made ample indemnity to the owners for all costs and damages for its illegal seizure and detention.

For the seizure of a vessel without probable cause, the legal rule of damage is full restitution and compensation for all costs and injury sustained.

We hold, for the reasons thus set forth, that the following points are sustained:

I. The not having ship's papers is not an offence under 2 *and* 3 *Vic.*, and is of no consequence in any way except as secondary and subsidiary to the charge of being engaged in the slave trade.

II. Where no probable cause, or ground of suspicion exists, of being concerned in the slave trade, no right of entry upon, or seizure of any vessel exists, either by 2 *and* 3 *Vic.*, or by 5 *Geo. IV;* and whoever enters upon or seizes such vessel is a wrongdoer from the beginning.

III. In case of entry upon or seizure of a vessel under such circumstances, the owner is not bound to follow the property and take an appeal from any proceedings of the party, but he has, at once, a remedy on the wrongdoer, or his aiders and abettors, if he so elects.

IV. Where a vessel has been seized, on a charge of being concerned in the slave trade, and is acquitted from all grounds of probable cause of being concerned in such offence, the court cannot impose costs

against the vessel "for resistance of the master to constituted authorities" in seizing the vessel; but it is a personal and distinct ground of offence, that must be separately prosecuted. Further, it cannot assess costs against the vessel in any case when discharged from all probable cause or suspicion of the offence for which it was seized.

V. Where a vessel is seized in harbor and is subject there in all respects to the jurisdiction of competent authorities for the punishment of the offence charged against her, the removal of such vessel to a remote and distant jurisdiction for trial, even though it may be done under the form of law, is an unjust and oppressive act, in violation of the spirit of British institutions.

VI. The lowest rule of damages for the seizure of a vessel without probable cause, or color of right, is full compensation for all injury incurred.

Having arrived at these results, it would be unnecessary to go further were it not for the exaggerated and erroneous statements that have been made as to opposition "to constituted authorities;" and the attempt to palliate and excuse the conduct of Lieutenant Littlehales, to the prejudice of the fair consideration of this case, and the just rights of the parties.

We go into the consideration of this matter with great reluctance for the reason of the time it must consume, and that it is wholly irrelevant to the proper issue between the parties; but so much prominence has been given to it in the correspondence relative to this claim, and the evidence upon it has been so imperfectly understood, that we deem it our duty to look into the facts, to see how far any charge of the kind is borne out by the testimony, and to determine whether any justification or mitigation of the circumstances of the seizure of the vessel can be drawn from it.

We will first state the charges made as to "resistance to constituted authorities," and then compare these charges with the evidence on the subject.

Before doing this, however, we would state the facts relative to the arrival and position of the Jones in the harbor of St. Helena, and the laws of the two countries applicable to the custody of her papers while in port. We have already stated the decision of the court that there was no probable ground of charge against the Jones, of being

concerned in the slave trade; and we may here add the sworn testimony of Mr. Frye, "that he had been a member of the firm of Farnham & Co. for twenty years, and that he had neither directly nor indirectly been concerned in the slave trade; nor, according to the best of his knowledge and belief, had Mr. Farnham, or any other partner, ever been concerned in the slave trade; and that the barque Jones was fitted out solely for carrying on a legitimate trade, and without the slightest intention or remotest design, either directly or indirectly, of engaging in the slave trade."

The Jones, as previously appears, cleared from Boston in March, 1840, and proceeded with a valuable cargo of assorted merchandise for the western coast of Africa. After trading at different places along that coast, and exchanging a considerable portion of the original cargo for African products, it left for the island of St. Helena, where it arrived on the 24th of August.

Immediately on her arrival, Captain Gilbert, as is shown by his testimony and that of the supercargo, "caused the vessel to be entered at the custom-house, and handed in there a manifest of articles intended for sale at St. Helena. He then proceeded to the United States consulate, and there deposited the register of the vessel, ship's articles, list of crew, manifest of outward cargo from Boston, and bill of health also from Boston."

The laws of Great Britain, see act 3 & 4 *Will. IV, ch.* 52, require that "the commander of every vessel arriving from ports beyond seas, at any port in the United Kingdom, shall, within twenty-four hours from his arrival, make due report of his ship, and shall make and subscribe a declaration to the truth of the same before the collector or comptroller of the port, and such report shall contain an account of the particular marks, numbers and contents of all the different packages or parcels of goods on board such ship, and of the place or places where such goods were respectively taken on board, and of the burden of such ship; the country where it was built and belongs; the name of the master and the number of seamen, stating how many are subjects of the country to which the ship belongs, and how many are subjects of some other country." Similar regulations are believed to exist as to all colonial ports. It is further lawful and customary for agents of the collector to board all ships coming within their jurisdiction, and remain on board them until the goods have been

delivered from them. They are at all times while in port strictly under the watch and guard of the collector.

It is made the imperative duty also of the collector of customs, commanders of forts, governors of colonies, &c., to guard against and prosecute for all violations, within their jurisdiction, of the laws prohibiting the slave trade.

The laws of the United States, passed February 28, 1803, in relation to commercial agents or consuls, provide "that every master of an American vessel, immediately upon his arrival at a foreign port, shall deposit his register, sea letter, and Mediterranean passport with the American consul, or commercial agent, at such port, under penalty of five hundred dollars, which the consul may recover in his own name for the use of the United States."

These papers are required by statute to remain in the hands of the consul until the master has exhibited to the consul his clearance from port. The consul is also required to enter on his consulate records the time of the receipt and delivery of these papers.

Provisions of a similar character are believed to be universal as to the power and duties of the consuls of all nations.

These laws had been fully complied with, as we have already shown, by the deposit of the proper papers of the vessel at these offices.

It should be further understood that these requirements, as to ship's papers, are of such public character and notoriety, that no master of an armed vessel in her Majesty's service, who, from his position, is necessarily familiar with the ordinary details of commercial intercourse between nations, can be supposed to be ignorant of them.

The vessel was thus duly entered in port, and had remained there twenty-one days, from the 24th of August to the 14th of September, as appears by the decision of the court, "unmolested, having during that time discharged a large quantity of flour, biscuit, and other articles, and shipped thirty-nine bales of goods from the town," when, late on Saturday afternoon, Lieut. Littlehales met Capt. Gilbert, the master of the Jones, in the street in St. Helena, and demanded of him the *ship's papers*, and the charge of "wilful misconduct and illegal opposition to constituted authorities" arises out of a refusal, as it is said, to produce the ship's papers at that time, and a refusal, on subsequent demand made soon after, the same evening, on board the vessel. No other demand for these papers was ever at any time made.

Having stated these facts, we will now proceed, as we before proposed, to specify the charges as to the resistance complained of, and compare these charges with the evidence on the subject.

The court states: "that the resistance of the master of the Jones to fair inquiry, in having refused to produce his papers for inspection to the commander of the Dolphin, probably led to the seizure of the Jones," and this refusal he designates as "wilful misconduct and illegal opposition to constituted authorities."

Lord Palmerston, in his letter to Mr. Bancroft of Dec. 9, 1847, represents the testimony on this subject in this manner. He says that Mr. Littlehales having met Mr. Gilbert in the street, requested to see his ship's papers, and Mr. Gilbert "refused to produce them," and that Mr. Murray afterwards asked him for his papers on board the vessel, and Mr. Gilbert "again positively refused to produce them, and said they were in possession of Mr. Carroll." Lord Palmerston then says that Mr. Littlehales, "on learning this," went to Mr. Carroll's office, and there requested the production of the papers in the presence of Messrs. Murray and Rowe, officers of the Dolphin, Mr. Pike, admiralty passenger, and Mr. Carroll; and that, on this occasion, as he had done before, Lieut. Littlehales disclaimed any right to call for the papers on shore, but said he had that right afloat, and it might be a convenience to both parties to have the papers shown to him at once, but Mr. Gilbert however *pertinaciously and peremptorily refused to show them.*

Such are the allegations and conclusions at which Lord Palmerston arrives. On examining the testimony, however, in the case, it will be found that the third meeting, represented by Lord Palmerston to have taken place, never occurred. It is a mere repetition, doubtless by mistake, of the first meeting, only, in the repetition, the facts are stated as taking place after the demand for the papers on board the vessel was made, and after Mr. Gilbert's reply that the papers were in the possession of Mr. Carroll, when, "on learning this," as Lord Palmerston says, Lieut. Littlehales went to *Mr. Carroll's* OFFICE, and *there* requested the papers. So that the third repetition of this statement, the particular cause, or occasion on which the demand was made, and the place of making it, are all without foundation in fact.

We have no belief that this error was designed, but we allude to it merely as an instance of the hasty and inconsiderate manner in which this case has been examined and conclusions have been arrived at.

But this is not all; the assertion that Capt. Gilbert refused to show his papers, at any time, is not sustained by the evidence. The only pretence pointed out by Lieut. Littlehales, as constituting a refusal to show his papers, is that Capt. Gilbert, on the first demand for the papers, in the street, stated, in his testimony, that the papers were at the custom-house, and on a second demand made on board the vessel, by Mr. Murray, he said they were at the consul's office.

Lieutenant Littlehale's quotation, however, from the testimony of Captain Gilbert is not correct. He does not say in his testimony that the papers, on the first demand in the street, were at the custom-house, but he says he was asked for his manifest, and he stated the manifest was at the custom-house, and afterwards, when asked for his papers on board his vessel by Mr. Murray, he said his papers were at the consul's house. Both of which statements were correct. But taking the statements precisely as Lieutenant Littlehales chooses to represent them, they are entirely different from a refusal to show his papers.

Waiving all right and propriety of Lieutenant Littlehales making a demand in the street, where he admits he had no authority to make it, and his refusal to assign any reason why he demanded the papers, which he clearly should have done, to entitle him to a reply anywhere, the answer of Captain Gilbert, on both these occasions assigning a reason why he could not produce his papers, is not a refusal to deliver them.

Satisfactory papers as to the character of the vessel were at both the places named, and there is no such contradiction in the statements as shows any design to vary from the literal truth in the case, or in the east degree to embarrass the proceedings of Lieutenant Littlehales. But the testimony of Captain Gilbert does not terminate here. Lieutenant Littlehales chooses to call his reply thus far a refusal, because the papers were not delivered on the spot, and therefore he pursues his testimony no further. Captain Gilbert, however, when demand was made of him for the papers on board the vessel, by Mr. Murray, which is the only place where it is pretended a proper demand was made, not only stated to him that the papers were in the hands of Mr. Crroll, the United States consul, but he further told Mr. Murray, "it was then late on Saturday night, and the next day, being Sunday, there would be no business done, but on Monday he would show him

all his papers, and give him every satisfaction as to his voyage and cargo." So that there was not only no refusal to deliver the papers, but a promise to produce them at the earliest possible moment on Monday.

Captain Gilbert also states that "at eight o'clock on Monday morning, he took a boat, and attempted to go on board his vessel, and was warned off and refused admittance. That he immediately afterwards went to the office of the consul, took his papers, and proceeded with the supercargo in a boat towards the vessel, but was again warned off, and threatened to be fired into if he approached any nearer. So that the promise was not only made to produce the papers, but Captain Gilbert did all in his power to carry this promise promptly into effect, and was prevented from doing it only by threats of violence; and this statement does not rest on the testimony of Captain Gilbert alone, but he is fully sustained in these facts by the testimony of three other witnesses.

Captain Gilbert further states that the same morning, in consequence of these extraordinary and harsh proceedings, he made complaint to Mr. Carroll, the consular agent of the United States, representing to him these facts, and that Mr. Carroll addressed a letter to Lieutenant Littlehales on the subject, which Lieutenant Littlehales declined receiving, stating that he did not recognize him as consul. Captain Gilbert then immediately wrote to Lieutenant Littlehales himself, but he made him no reply.

He also, on the same day, on Monday, in company with Mr. Carroll and the supercargo of the vessel, called on the collector of the port, and exhibited to the collector the register of the Jones, the manifest of outward cargo from Boston, clearance, bill of health, and list of crew from Boston, and ship's articles executed in Boston, and offered to give any and every information in his power relating to the barque Jones.

Captain Gilbert testifies that the collector examined all these papers carefully, and said he was perfectly satisfied the Jones was on a legal voyage, and that he would do all in his power to have the vessel released; and he immediately wrote to the commander of the Dolphin, asking the reason of his conduct, and received no answer that day, as the collector told him; and he wrote again the next day, and in the afternoon received a few lines from the commander, in which he gave

him no satisfactory answer, and assigned no reason for what he had done, and the collector then said he could do nothing more.

These facts are in no manner contested. Lieutenant Littlehales, indeed, says, in reply to this statement: "I received or held no communication with the collector of her Majesty's customs, after having informed that gentleman, *in the early part of the seizure* of the barque's detention." No one alleges that he held communication with the collector, after giving him this information; but he had given no information of the seizure to the collector till after the papers had first been shown to the collector by Captain Gilbert, and the collector had written to Lieutenant Littlehales fully on the subject. He then wrote a brief line to the collector, as Captain Gilbert says he did, and this is the communication had by Lieutenant Littlehales with the collector, "*in the early part of the seizure,*" to which he refers.

Captain Gilbert then addresses the governor of the island, asking his interference and protection, and Mr. Carroll also wrote a letter to the colonial secretary to the same purport. Every possible effort was thus put forth, down to the time the Jones was taken away to Sierra Leone, to communicate the facts in relation to the vessel.

To the lines written to the governor and secretary, replies were received, after the barque left, that they had no control over her Majesty's naval officer.

The vessel was removed without giving to Captain Gilbert any information as to the charges against her, or any notice where she was to be taken.

Lieutenant Littlehales attempts to avoid portions of this statement, by saying that Captain Gilbert "did not offer to show him his papers at any one time." But Captain Gilbert does not so say. He states that he proceeded to his vessel, and when Mr. Murray, who had charge of her, by command of Lieutenant Littlehales, demanded his papers, he told him they were at Mr. Carroll's, but he would produce them on Monday, and on Monday, when he attempted to do it, he was prevented by being warned off, and by threats.

Lieutenant Littlehales further says, "that no threats of violence were used by persons on board the barque;" but he was not present, and could have no knowledge on the subject. He is also contradicted by five witnesses on this point.

Such is a plain statement of the facts relative to this transaction.

We have given it a careful examination, and are wholly at a loss to say what course of conduct could have been pursued by Captain Gilbert that would have been more proper, or in what respect he has failed in his duty in any particular. There is clearly no ground for the charge that he was guilty of "a pertinacious and peremptory refusal to produce the ship's papers," or "of wilful misconduct, and illegal opposition to constituted authorities."

It would have been a great gratification to me, and certainly highly important, in an international point of view, if the court of Sierra Leone, and Lords Palmerston and Aberdeen, who give this construction to Captain Gilbert's conduct, had specified what answer the captain of an American merchant vessel in port should make to her Majesty's cruiser, where his vessel has been regularly entered, and her papers are at the custom-house and at the consul's, as they are required by law to be.

What more the captain of such a vessel can do than to say that his papers are at these offices, and that he will produce them at the earliest possible moment, and carrying out this promise promptly by his acts, I don't know; or how such a reply can constitute a legal justification for the seizure of the vessel of a friendly nation, breaking up her voyage, dispersing her crew, removing her to a jurisdiction a thousand miles from her course, and assessing her in the costs of seizure, though most honorably acquitted, by a British court, from "all probable cause, or suspicion of any offence," except the proper answer to constituted authorities.

While I thus consider the conduct of Captain Gilbert as free from blame, and the decision of the court in this respect as wholly erroneous, the conduct of Lieutenant Littlehales impresses me in a different light.

A controversy had arisen between Captain Gilbert and his men as to the legal effect of their shipping articles. This had been settled, after a full hearing, by the United States consular agent, at St. Helena, who had full power, by the laws of the United States, to adjust such controversy, in the same manner that British consular agents have, by law, to adjust such controversies between British masters and seamen. Notwithstanding this decision, Lieutenant Littlehales interposed in the matter, "these seamen having come to him," as he says, "for protection and assistance, the same having been denied them by Mr. Carroll." So that, in the outset, Lieutenant Littlehales

not only claims cognizance and control over Captain Gilbert and his vessel, but over the proceedings of the United States consular agent.

Having thus embarked in this business, and seized the vessel while in port, because on demand for her papers they were not delivered at once on the spot he chooses to consider it an absolute and wilful refusal to exhibit them; he prohibits all access of Captain Gilbert to the vessel; refuses to receive any explanation from him or his friends, or to give any information as to his grounds for seizing the vessel, or the course he designed to pursue in relation to her. These acts furnish to us no favorable example of official conduct or character.

Mr. Carroll was appointed as consul of the United States, and was recognized as such on the 15th of February, 1833, by the court of directors of the East India Company, who were at that time competent agents for that purpose under the British government, and held the island of St. Helena as a portion of their territories. From that period for seven years, up to the time of the seizure of the Jones, he had been uniformly recognized and treated as consul by the British authorities.

A British consul, by the regulations of the British government, is an officer who would out-rank Lieutenant Littlehales, and on whom he is required to wait immediately on arriving in port. An American consul holds a similar position as regards American officers. Common courtesy would require that Lieutenant Littlehales should have received from any individual of respectable character such communication as Captain Gilbert desired to make as to his vessel; but notwithstanding Mr. Carroll was entitled to consideration in every respect as a man and as a British citizen, as well as from his position of holding an appointment from the United States, his letter on this occasion was returned unopened, and all aid from him was denied by Lieutenant Littlehales.

Captain Gilbert seems to have been very unfortunately situated. When called upon for his papers, his precise form of reply, though he offers to produce them at the earliest possible moment, is regarded as opposition to authorities; if he goes to his vessel to deliver his papers, he is threatened to be shot at; if he writes a letter to Lieutenant Littlehales, he receives no answer; if he gets the American consul to write for him, his letter is returned unopened, because, though previously acknowledged by competent British authorities for seven

years, it is now said he has no *exequatur;* if he gets the collector of customs to write, Lieutenant Littlehales tells him he has seized the vessel, and the collector says he can go no further; if he applies to the governor and secretary, he is informed they have no power over the commander of her Majesty's armed vessel; if he applies, as a last resort, to his government for redress, it is held to be an improper appeal from the jurisdiction of British courts, "whose duty it was," it is said by Lord Palmerston, "if circumstances required it, to give the claimant full indemnity," and that Captain Gilbert "had *no right* to call for the interposition of the state to do that which he might, *by ordinary care and diligence,* have done for himself" through the aid of such tribunals.

And this is said when a commander of her Majesty's cruiser has expelled the captain from his vessel, refused all specification of charge against her, and taken her away to a coast, no one knew where, except by hearsay—that the captain of a vessel, under such circumstances, not knowing where to follow his vessel, and deprived of all means of following it, might, "by the exercise of ordinary care and diligence," have reached Sierra Leone from St. Helena in season to have taken cognizance of a notice posted up, for fourteen days, "on the public wharf of Freetown," that the vessel would be "condemned, unless the owners should appear, and show just cause to the contrary."

Such reproach addressed to Captain Gilbert, in the distressed condition in which he was left at St. Helena, would have probably seemed to him an unnecessary addition to the wrongs already received; and it seems to me to be a harsh application of the rule of due diligence in the mouth of one who has taken away from an innocent party all means of its exercise.

If the seizure of the Jones had been made at sea, and Lieutenant Littlehales had expelled Captain Gilbert from the vessel on some distant coast, the outrage would have been too great to have been tolerated, but in this case it is practically as bad.

Lieutenant Littlehales should have promptly furnished his charges against the vessel, should have been ready to receive, from any respectable source, any and every information in relation to her. He should have notified Captain Gilbert of his intention to take the vessel to Sierra Leone, and furnished him the facilities of his vessel to have gone there. His conduct in all these respects has been the reverse.

But the wrongs to these owners do not terminate here. When the decision was rendered against the captors, the absurd charge of a resistance to authorities was made to prejudice the vessel; and an appeal was also taken from the decision of the court, and bonds were filed.

The appeal was never prosecuted. The ordinary effect of an appeal, however, is to hold custody of the property seized for the further term of one year. The hands of the court are not, indeed, tied up by such an appeal until the service of an inhibition upon it, obtained from the higher court; but whether any intermediate steps, in the mean time, shall be taken, depends, under the particular circumstances of the case, on the discretion of the court. The ordinary practice, however, is to defer to an appeal, certainly till a reasonable time be had to obtain an inhibition, which would have required a number of months in this case for the proper application to the higher court. It is an established principle also of courts of admiralty that, where there is an appeal, the property in question cannot be withdrawn but upon security given for the value. *The Woodbridge*, 1 *Hagg.* 76. Proceedings were thus stayed, and the case rendered still more difficult and complicated.

A yet further wrong was done by Lieutenant Littlehales. The regulations of the British service, as we learn from a letter of Lord Aberdeen to Mr. Everett, December 29, 1841, "require all cruisers, under the several acts for the suppression of the slave trade, to enter on their log-book all particulars relating to the seizure of all vessels for the violations of those acts, and that a full statement of these particulars should be sent by *the first opportunity* to England."

No such return was, for a long period, made by Lieutenant Littlehales. The two volumes submitted to Parliament, purporting to be a list of vessels detained and captured by her Majesty's cruisers employed for the suppression of the slave trade, published succeeding this date, covering a period of some years, contain no report of the seizure of the Jones. So that Lieutenant Littlehales has failed in his duty as an officer of the British government, in not complying with orders important to the interests of these parties and to the protection of the commerce of the United States.

Lieutenant Littlehales had all the means of knowledge before him that was subsequently possessed by the court of Sierra Leone. He was bound to come to the same just and impartial decision as to the

character of the vessel, and the want of all probable ground of her connexion with the slave trade. By his hasty and ill-judged proceedings, and relying on trival circumstances and vague surmises, of no weight to an unprejudiced mind, contrasted with known facts before him, he has been guilty of a wrong against unoffending citizens of the United States, that has ruined their pecuniary prospects, and has caused an embittered state of feeling between the two countries in reference to his acts.

The course of the British government, also, not only in not affording redress in this matter, but in delaying prompt inquiry and investigation, and in not holding its officers and tribunals responsible for the enforcement of their own laws and rules important to the protection of American commerce, is a ground of grave and serious complaint by the parties in this case.

Both the 5 *Geo. IV* and the 2 *& 3 Vic.*, as amended, require the vice-admiralty courts, on the first Monday of January and July of each year, to report to her Majesty's commissioners of the treasury all cases which have been adjudged in the court for the six months preceding. These returns are to give "the date of seizure; the property seized; the name of the seizer; the sentence, whether of forfeiture or restitution; whether the property has been sold or converted, and whether any part remains unsold; and in whose hands the proceeds remain."

When it has answered the occasion of the British government to represent its regard for the rights of American commerce, the provisions of law as to immediate returns, and the particular and cautious instructions to their cruisers on this subject, are pointed to as proof of their prompt watchfulness over every invasion of the American flag. But here, where these provisions have been wholly disregarded, we have yet to learn that there has been a word of reproof to these officers; and through the whole correspondence on this subject there has been no explanation, palliation, or apology on this account, but these provisions of law have been permitted to remain a dead letter.

And this has greatly prejudiced the interests of these parties. Capt. Gilbert returned from St. Helena, at the earliest possible moment, to his employers to represent the facts as to the Jones, and the American consul at St. Helena sent immediately to his government an account of the seizure of the vessel, and the circumstances in relation to it. Representations were at once made in London to the British govern-

ment, by Mr. Stevenson, the American minister, and until some answer could be had on his application, indicating the determination and disposition of the British government in relation to the claim, no other course seemed advisable or proper by the owners of the vessel.

The case was one requiring urgent and prompt action on the part of the British government, so that, if the proceedings of Lieutenant Littlehales were not disavowed, any other less adequate remedy the case might admit of could be resorted to in season to retrieve the owners of the vessel from destructive loss.

The communication from Mr. Stevenson to Lord Palmerston on the subject was on the 16th of April, 1841, five months after the adjudication at Sierra Leone. But it appears from the correspondence in the case, that no inquiry was instituted in reference to it for more than four months after that time; and though the attention of the British government was repeatedly and earnestly called to this subject, as late as October 5, 1842, Lord Aberdeen, in reply to a letter from Mr. Everett in relation to the Jones, states that, "from the want of the proceedings at Sierra Leone, her Majesty's government have been unable yet to come to a decision in the case, and that a renewed application has this day been made to the proper department on the subject, and that, so soon as her Majesty's government shall have received the necessary information, he will lose no time in communicating to Mr. Everett the decision of her Majesty's government in the case."

Five months after this time, on the 2d of March, 1843, and *more than two years after the adjudication at Sierra Leone,* the first information is given "of the decision of her Majesty's government," and of the grounds on which the justification of the seizure of this vessel, and of the conduct of Lieutenant Littlehales, is placed.

During all this time the owners of the Jones were kept in entire suspense as to what course would be adopted, and the vessel and cargo had been long before this sold, by order of court, at a ruinous sacrifice.

To the communication, giving the decision of her Majesty's government, received after a delay of such extraordinary duration, and against which delay Mr. Everett strenuously remonstrates, a full and elaborate reply was drawn up by Mr. Everett on the 18th of May, 1843. In this reply he presented the views of his government, and his comments on the evidence and grounds taken by her Majesty's ministers, and earnestly asked Lord Aberdeen's attention to the statements and grounds submitted to him, representing "the transaction

on which it had been his painful duty to dwell as extraordinary and oppressive in all its parts," and that a denial of reparation "would produce a degree of discontent on the part of the government and people of the United States of a character greatly to be deprecated."

To this urgent letter, to which the attention of the British government was again called by Mr. Everett in June, 1846, no reply was made by the British government for more than *three and a half years*, when Mr. Bancroft, November 26, 1846, addressed a letter to Lord Palmerston in reference to the unanswered letter of Mr. Everett of May, 1843, stating "that he was *instructed* by his government to ask an early and definite reply."

A reply was then made early in the ensuing month, which was responded to by Mr. Bancroft, and which was again replied to by Lord Palmerston, in which he sets up the closest technical ground and objections to the claim of the owners of the Jones, and alleges that they had had "ample opportunities to assert their rights, either in the court below, or by an appeal from the decision of that court to the judicial committee of her Majesty's privy council," and denying to them all other remedy.

In March, 1849, this whole subject and the correspondence in relation to it, was communicated to Congress, and was passed upon by a very intelligent committee, who unanimously reported, through Mr. Marsh, of Vermont, their chairman, "that the government of the United States was under a solemn obligation to protect the citizens of the Union, at whatever hazard, in the exercise of their lawful callings in their commerce with foreign nations, and that, in the deliberate judgment of the committee, the case of the Jones was one of the strongest in which the American government had ever been called upon to discharge that obligation. That in the history of our intercourse with civilized nations they knew few instances of more wanton and unprovoked outrage than this case exhibited, and that they believed the honor and the interest of the nation demanded that the government should insist upon the most full and ample pecuniary redress to the owners of the vessel, if not upon reparation for the indignity to the American flag, by the condign punishment of the offender, and that it was the duty of the government of the United States to renew the demand for redress to the owners of the Jones, and strenuously urge the same."

From the proceedings in this and other cases this commission ultimately originated, by which it has been proposed to settle equitably

and justly all outstanding claims between the governments accruing since 1814.

The case is therefore now submitted to this tribunal under circumstances, after this long delay and hardship to these parties, entitling it to great deliberation and consideration. It has been fully argued. I have given the most attentive consideration to every suggestion that has been urged in defence of these proceedings, with a desire to regard equally the rights and interests of the two governments as an arbiter between them, bound by every consideration, as well as the explicit declaration subscribed by me, to decide all matters submitted to our decision, "to the best of my judgment, without fear, favor or affection to my own country."

After such examination, I have arrived at the conviction that the complaint, made by the owners of the Jones, is fully sustained; that the wrong done to them has been characterized, in its initiation, and in almost every step of its progress, by oppressive acts wholly uncalled for in the circumstances of the case; that the seizure of the vessel was without just cause; that its detention, on the charge of being concerned in the slave trade, had no probable ground to sustain it; that its removal to Sierra Leone for trial was in violation of just rights of these parties and of settled principles of English law; that the charge against Captain Gilbert "of wilful misconduct and opposition to constituted authorities" had nothing to justify its connexion with charges against the vessel, and are wholly unfounded in fact; that the delay and neglect of the British government in looking into the circumstances of the case, after most earnest remonstrances of the United States had been repeatedly made to them, is without excuse, and has greatly prejudiced the just rights of these claimants; and that the owners of the Jones are entitled to full compensation against Lieutenant Littlehales and the British government, who have throughout justified and sustained him as their agent, for all injury which has, directly, or indirectly, arisen from these wrongs, and for the unjust delay of reparation of them to the present time.

In coming to this result, it is with deep regret I find I have not the full concurence of my associate commissioner as to the extent of redress these claimants are entitled to, and that this long litigated controversy must remain unadjusted to abide the final decision of the umpire appointed under this commission, to whom it is now ordered to be committed.

HORNBY, British Commissioner:

This is a claim made upon the British government by the representatives of Messrs. Farnham & Frye, of Boston, in respect of losses caused by the seizure of their vessel, the "Jones," by a British cruiser at St. Helena, on September 12, 1840, on a charge of being in British waters without a national character, and on suspicion of being engaged in the slave trade, such an offence being punishable under the *2d and 3d Vic., ch.* 73. The ship, it appears, was sent to Sierra Leone for adjudication, on the ground of there being no vice-admiralty court at St. Helena—the particular offence charged being only cognizable in such a court. One, however, of the grounds of complaint is specially founded upon this proceeding, inasmuch as it is alleged that any court of record had jurisdiction over the charge under the *5th Geo. IV, ch.* 113. To this point I shall presently advert.

The trial came on at Sierra Leone, and in the month of November following the judge declared the charge unsustained, and directed that the vessel should be released. Costs, however, were given to the captor, on the ground that the error into which he had been led in seizing the vessel was the result of the "wilful misconduct of the master."

The master was not present at the trial, nor does it appear that either he or the owners were represented before the court.

The costs were not paid; and, nobody appearing to claim the vessel, it was ultimately sold in the usual manner, for the benefit of all concerned.

Practically, then, the commissioners are asked to review the decision of the vice-admiralty court, which has never been appealed against, and which decided two points: First, that the vessel was not engaged in the slave trade; secondly, that she had a national character; with reference to which latter point the court expressed its opinion of the conduct of the master, as supplying a probable cause for the seizure, by awarding costs to the captor.

The claimants approve the first portion of the judgment, but declare the latter part to be wholly unfounded in either reason or justice.

Now I do not think it was ever intended that the commissioners should sit as a court of appeal from the properly constituted courts of either country; and if there were no facts before us but those on which

the vice-admiralty court decided, I should, without hesitation, reject this claim on the ground that this was not a court of appeal.

I do not mean to say that circumstances might not arise in many cases which would induce me to reverse the judgment of a court—but the circumstances must be of a certain character and importance. It would not be sufficient simply to show that a point of law was doubtful, or that another judge might have taken a different view of the facts. Such matters are within the jurisdiction and province of a court of appeal; but if, in a case like the present, additional evidence was offered—evidence of a character tending to show that had it been brought before the judge of the vice-admiralty court, a judgment more favorable to the claimants might have been passed, or that the wrongful act of the party complained against prevented such evidence from being taken—then I think the way would be opened for our action.

In the present case, the commissioners have before them the additional evidence of the master, the supercargo, and such members of the crew as were not present at the trial. Two points therefore arise for us to determine: First, whether this additional evidence is of such a character as to induce us to overrule the judgment of the vice-admiralty court as to costs; and secondly, whether upon this evidence we ought to award compensation in the nature of damages to the owners for the losses which they have sustained *subsequent* to the date of the judgment.

As I differ from my learned colleague on both points, I feel bound to go somewhat at length into the evidence.

In doing this I propose to divide the case into two parts; the one having reference to the seizure and its immediate consequences, the other to the damages which may be said to have been sustained subsequently to the judgment of the vice-admiralty court. Before doing so, however, I must repeat that, as a *general principle*, effect ought to be given to the judgment of every competent tribunal, when nothing appears tending to impugn the integrity or fair-mindedness of the court.

The commissioners are asked to adopt one part of the judgment in question and to reject the other portion of it. I cannot accede to this course, because both parts appear to me to be founded upon an equally careful consideration of the circumstances and evidence, and arrived at after equal deliberation.

The first fact in the case which has reference to the subsequent seizure, is the application of the crew of the "Jones" to Lieutenant

Littlehales, of H. M. S. Dolphin, for his assistance and intervention on finding that they were about to return to the coast of Africa. The crew contended that they had signed articles to proceed to "Montevideo" and a market, and thence to a port of discharge in the United States—the undisputed fact being that they had agreed to go to "Montevideo or other parts between the line of latitude 36° south and back." In their affidavits subsequently made in London before the American consul, they state that the ship never did go to Montevideo, but, avoiding the South American coast, steered for the coast of Africa. The consular agent at St. Helena had decided, when appealed to by the master, that the crew were bound to go to the ports on the coast of Africa between the line of latitude of 36° south.

From the crew Lieutenant Littlehales learnt that they suspected there was a false set of shipping articles on board; and the mate said that the papers exhibited by the master to an officer of a Portuguese man-of-war at Loanda were headed "Ambriz," and not "Montevideo."

On this information Lieutenant Littlehales appears to have determined to inspect the ship's papers; and, after being told by a clerk at the custom-house that the papers were not there, on meeting the master, W. Gilbert, in the street, he asked to see the "Jones" papers. To this request he obtained what he considered an unsatisfactory and evasive answer. This is the version given of this interview by the lieutenant, as well as by his mate and a passenger on board the "Dolphin;" and it is important to observe here, with reference to the accounts of the same rencontre given by the master in two affidavits, that the supercargo, who was with the master, states the latter said "the ship's papers" were at the "custom-house." Now the master, in his first affidavit, states that Lieutenant Littlehales asked to see the "manifest" of the "Jones," whereupon he, the master, inquired his motive. He then goes on to say that the lieutenant repeated his request, to which he made the same answer; when the lieutenant observed that if he, the master, showed them, "much trouble would be saved to both of them;" upon which Gilbert states he asked the officer "if there was not a custom-house at St. Helena?" whereon Lieutenant Littlehales turned round and went towards the sea. In the second affidavit the master gives another version, as follows: "About six or seven o'clock on Saturday afternoon I was accosted by Lieutenant Littlehales of the

British armed brig Dolphin, who very abruptly demanded my manifest. I did not then know Lieutenant Littlehales. I asked who he was? He said 'he was commander of H. M. brig Dolphin.' I asked if he considered it a matter of right to demand my manifest in the public streets, or whether he asked it as a favor? He said he did *not* consider it a matter of right, and then said, 'You won't show it me, will you?' *and before I could make answer he turned round and went away.*"

I confess I find it difficult to reconcile these two statements. Either the first long conversation took place, or Lieutenant Littlehales turned away so abruptly—as described in the last statement—that there was no time for it to have taken place.

But whatever the master was asked for, whether "papers" or "manifest," the important question is, what did he say on the subject of the "papers?" and this is at least clear, for the supercargo himself distinctly declares that the captain replied *that his* "PAPERS" *were at the custom-house.*

The master and supercargo also say that the lieutenant was not in uniform. The lieutenant and those that were with him declare that he was.

The next scene is on board of the "Jones" about two hours afterwards, when no one disputes that it was the ship's "papers" that were then asked for, and no one denies that the answer *then* returned by the master was that they were at the "consul's." The master then goes on to say that he offered to bring the papers to Lieutenant Littlehales on the Monday morning; that he wrote to Lieutenant Littlehales, offering to show them to him; and that after all this, the collector of customs wrote to Lieutenant Littlehales an explanatory and expostulatory letter. Lieutenant Littlehales, on the other hand, flatly denies that the master ever offered, either in writing or otherwise, "to show his papers" or "to give any information on the Monday morning," and he also denies "receiving" or "holding" "any communication" with the collector after the seizure. It is not pretended that the master attempted to see or speak to Lieutenant Littlehales personally on board the "Dolphin," where the latter was to be found, although it is said that he twice endeavored to go on board the "Jones," where the lieutenant was *not*, for the purpose of showing him his papers, a prize crew under a subaltern being in possession.

And it is a curious fact that neither these papers or copies of them are now before the commissioners, nor at any time does it appear that they were ever shown to any one whose seeing them would have facilitated the discharge of the vessel, or is there any confirmation of the alleged explanatory or expostulatory letter from the collector of the customs.

In the course of the argument it was urged by the learned agent of the United States that it was the duty of the lieutenant to have offered every facility to the master to clear his vessel, and that the master was justified in standing upon his "rights," let the consequences be what they might. It was undoubtedly the duty of the captor to *inspect* any papers offered to him for inspection by the master; but it was most unquestionably the duty of the master to have facilitated the inspection of his ship-papers by the captor. If he had done so, all the subsequent mischief would, in my opinion, have been avoided. Nothing would have been easier than to have sought Lieutenant Littlehales on board H. M. S. Dolphin, yet this was never attempted, and *in fact no attempt* was ever made to show this officer the papers, nor does it appear that the subaltern in command of the prize was ever asked to look at them, or was even told that the captain had them with him when he went alongside the "Jones" on the Monday following the seizure. Nor does it appear in the affidavits of the master and supercargo that the former really had his papers with him on these occasions, or went for the purpose of showing them. At page 238 of the printed evidence, both these individuals say that James Gilbert went "with a view of getting on board of the vessel *on business*." I confess that it does appear to me to be a strangely suspicious circumstance, that the master never attempted to explain the facts of the case to Lieutenant Littlehales, when his obvious duty, and indeed his interest and that of his owners demanded that, on being refused admission to his ship, he should have gone at once to Lieutenant Littlehales, asked him the reason, and showed him that his papers—if he had them (which even now does not very clearly appear)—were all right and as they ought to be. That this would have been the conduct of a man *really* anxious to prevent a calamity, such as that which has ultimately fallen on the owners, appears to me to be indisputable.

The next step in the case is the overhauling the vessel and the

finding of two letters, both addressed to the supercargo; one being from the owners, and the other from a Spaniard of the name of D Masoro Maray. They are as follows:

Messrs. Farnham and Co. to Mr. Sexton.

SALEM, *March* 12, 1840.

DEAR SIR: Your much esteemed favor of December 4 from Ambriz, per "Quill," was promptly delivered on the arrival of that vessel, February 2. Your remarks on the trade with Doctors Wilson and Savay, and others, at Cape Palmas, are noted, but will not be acted upon at present. We have no doubt there is a field there to work in to advantage, but we shall probably omit it till your return. The information however is very acceptable. Your sales at other places were so limited that the profits will not pay for the delay; but we think you will have found a very good market at Loanda for all the flour you had on board, provided you did not report over one hundred barrels. If you obtain the quoted rates, or even thirty dollars per barrel, for the 470 barrels remaining, the "Sarah" must make a fine voyage, unless she is very badly mismanaged on her return passage, of which there is much reason to fear. We regret much that we were so greatly deceived in Captain Cork.

We know not whose fault it was that the specie was left in New York. The writer found it in the safe after you sailed, and used it; he knew nothing of it before.

We heard of your arrival at Sierra Leone in twenty-four days by the British man-of-war brig "Butterfly" and her prize; but your letters did not come to hand till January 21, (four months after they were written,) and then by the "Saladin."

George and Cork's letters of November 21, *via* Rio, came to hand two weeks since, and we hope soon to hear in the same way or direct. The "Sea-mew" arrived at St. Helena January 6, and sailed 14th for Africa, and perhaps will soon get home. We hope you closed your sales however before she arrived at Loanda. The "Quill" is here, and idle we believe. Nathan Augustus Frye was married last night, and probably will not wish to sail very soon for Africa. *It is not known that the "Jones" is going to Africa, and we hope she will not be followed very closely; but the "Jones" is a fast sailer, and we hope will have a short passage.*

Mr. Hunt has just been in to ask plainly, if the "Jones" goes to Africa. He writes to Captain Bryant by her. He says the "Quill" is doing nothing yet.

Yours truly,

P. J. FARNHAM & CO.

Captain FRANCIS W. SEXTON, *Ambriz.*

[Translation.]

*D. Masoro Muray to "Captain Sequeson."**

BORNA, *June* 16, 1840.

SIR AND ESTEEMED FRIEND: I hope you are well. I inform you now of all the trouble I had respecting the ivory. I am in expectation of "Chibuca," containing one hundred teeth of ivory "*together with one hundred slaves;*" and yet I shall not be able for the present *to purchase them.* It would not be amiss if you please to let me have some cash for me to finish this business, and also the barraca. At this moment I am in expectation of the boat from Loango, with her cargo, and also the launch in question. You will hear several more particulars from Juan Maray, who will communicate them to you in person. My desire is, sir, that you may keep in health.

Your faithful servant.

DOMINGO MASORO MARAY

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* Mistake for Sexton.

Besides these letters, irons, spare plank, and articles used for slave-food were found.

This is the evidence with reference to *the cause* of seizure. And as the judge at Sierra Leone, whose experience enabled him to form an opinion on such a subject, has decided that the evidence was insufficient to sustain so serious a charge, I have no hesitation in giving my full assent to that judgment; but on the other hand I cannot but feel, when endeavoring to place myself in the position of Lieutenant Littlehales, and viewing these events and circumstances separately and in the order in which they happened, and not collectively and from an epoch long subsequent to the time of their occurrence, that the judge at Sierra Leone was right in considering the error of the seizure materially induced by the conduct of the master. The suspicious circumstances were undoubtedly those connected with the shipment of the crew, their assertions with regard to false papers and the objects of the voyage, the evasive answers and questionable conduct of the master and lastly, the two letters to which I have alluded.

The seizure being complete, on the *sixth day* after it the vessel sailed for Sierra Leone with three of the "Jones" crew. It is not alleged that the master, or the supercargo, asked to be allowed to go, although this is sought to be inferred when it is stated, *but contradicted*, that he twice, before the Monday previous to the departure of the vessel, tried to get on board. About six or seven weeks after the arrival of the vessel at Sierra Leone she was libelled, tried, and declared free.

The reason why Lieutenant Littlehales sent the vessel for adjudication before a vice-admiralty court, instead of libelling her before a court of record at St. Helena, is stated to be that the latter court had only jurisdiction under 5 *Geo. IV, ch.* 113, to try the simple question of *whether or not the ship was* ACTUALLY *engaged in the slave trade*, while the charge made against the "Jones," involving the doubt of her nationality, suggested by the suspicion of her having double or false sets of papers on board, coupled with *a suspicion* of her being engaged in the slave trade, being only *an offence* created by the 2 & 3 *Vic., ch.* 73, it could not be tried by any other court except that specially pointed out by the statute.

I come now to the second division of the case, namely, to that part which has reference to the cause of the damage subsequent to the

decree of the court; and the first question which I find myself called upon to answer is this: Was the master justified, under the circumstances, in abandoning his vessel so entirely as he did? I believe that he was; and if I am right in the view which I take upon this part of the case, namely, that the conduct of the master in abandoning his vessel was, under the circumstances, *unjustifiable*, and that the losses subsequent to the judgment of the court were in the first instance the result of such abandonment by him, and afterwards by his principals, (the owners of the vessel,) it follows that it would be an act of injustice to hold the British government responsible in damages for consequences which were the natural result of the conduct primarily of the claimant's agents, and subsequently of their own. In making these remarks I am, of course, confining myself to the losses suffered *after* the judgment decreeing the vessel "recete."

Now, in order to test the conduct of the master, I propose to inquire whether, as between insurers and owners, such an abandonment (supposing capture to be a risk insured against) would have been justifiable, so as to render the former liable, as on a total loss, to the latter; and on looking carefully through the cases on the subject, I do not find anything to justify me in deciding this case upon the basis that the master acted either prudently, fairly, or for the interests of all parties. The rules laid down, so far as they concern the master, and in so far as the British government may now, for the *purpose of illustration*, be considered as standing in the position of insurers called upon to pay as in the case of a total loss, are, in my judgment, equally applicable. It is stated in *Phillips on Insurance* (vol. i. page 38) that "abandonment is only justifiable as against insurers when the thing insured is *irretrievably* lost;" and it is elsewhere laid down that the total loss upon which abandonment is naturally consequential must be "clear and absolute," that is, "*where all probable hope of recovery is gone.*" Lord Mansfield, too, in giving judgment in a case in which the alleged loss was the consequence of a capture, said (*M. & J.*, 2 *Douglas*, 232) the question is, "whether the consequences of the capture were such as, notwithstanding the recapture, occasioned a total obstruction of the voyage, or whether they merely occasioned a partial stoppage, as in the case of '*Hamilton* v. *Mendes.*'" It has been held also that, although capture will sanction an abandonment, as in the case of a total loss, yet when followed by a recapture or *restitution* (and it must

be recollected that by the maritime law no change of property takes place until after condemnation) *it does not do so;* and this doctrine is practically laid down by Chief Justice Marshall, in a case cited in the work of Mr. Phillips, to which I have referred. In the case of *Gardere* v. *Col*, 7 *John's*, 514, Mr. Justice Yates says that it is the bounden duty of a master to labor diligently for the recovery of his owner's property; and that if he does not, he lays himself open, after abandonment by his owners, to an action at the suit of the insurers, whose agent by that act he becomes in the contemplation of the law. And in numerous other works it is laid down as a maxim of maritime law, that it is incumbent on the master "to stick" to the vessel until the last moment, and even to its "planks." I have merely cited these authorities in proof of what I consider to be the undisputed duties of a master of a vessel; and if a fulfilment of them were necessary to enable an owner to recover as against his insurers, there is no good reason for assuming them to be unnecessary as between parties situated as the claimants are towards the British government. If then, in the present case, the insurers could not have been called upon to pay, as in the case of a total loss, it is difficult to discover any principle which should impose a heavier obligation on the British government.

Having then determined the question of what was the duty of the master under the circumstances of this case, I proceed to examine the grounds upon which its performance is sought to be excused; and the first is that Lieutenant Littlehales did not send him and the supercargo with the prize crew to Sierra Leone. I do not find, however, that either of them ever asked to go, nor is it stated anywhere that they were unable to go there, or that no subsequent opportunity presented itself; while the presumption is, from what is well known concerning the intercourse between the African coast and St. Helena in 1840, that communication between the two places was frequent. Not only, however, was no attempt made, either by the captain or supercargo to accompany the vessel, (for the alleged refusal of the subaltern in command of the "Jones" to permit them to come on board only extended to the Monday, and the vessel, it must be borne in mind, did not sail before the following Saturday,) but it does not appear that they ever attempted to apprise, or ever did apprise, by letter or otherwise, the factors of Messrs. Farnham and Frye on the coast of Africa, or, in short, any of the trading connexions of the owners; and it is in evidence

that they had large trading connexions on the coast, who could have watched the proceedings on behalf of the owners, and who might have reclaimed the vessel the moment she was declared free from the charge made against her, and enabled her to continue her voyage. Nothing, however, was done; the most ordinary precaution, against consequent losses were systematically neglected, and thus it appears, from the first, that those most concerned and interested in the case made up their minds to wash their hands of the whole affair—therein, as it appears to me, neglecting the very first duties of men in their position, and strongly suggesting the suspicion that the master and supercargo, *at least*, must have had pretty strong grounds, only known perhaps to themselves, for suspecting that the charge would be substantiated; in which case they may have considered that their own personal safety within the jurisdiction of the court would have become somewhat problematical.

It has been said, however, that the master, being left without money or clothes, could not proceed to Sierra Leone. But the same means which enabled him to take the longer journey to England, and thence to America, would also, it may be fairly presumed, have enabled him to make the shorter journey to the coast of Africa.

Passing by the question as to whether the master and supercargo were guilty of misconduct, it becomes important to ascertain the course pursued by the owners on their being made acquainted with what had taken place.

In the month of January, 1841, they had received intelligence of the capture and sending of the "Jones" to Sierra Leone, and as early as the 8th of February, in the same year, they had notice of the clearance of the vessel by the judgment of the court. Both prior and subsequent to these dates, they had other vessels trading on the coast; their supercargo had returned to Africa, and yet no attempt was made by them, or by any one in their behalf, to reclaim the "Jones," or to prevent the damage which was then going on. These are *laches* which I cannot overlook. It is conduct strictly in keeping with that of the captain, and was probably suggested by him; and throughout it savors of a determination, through the instrumentality of the United States government, to make the British government answerable, not only for losses sustained through the error of an officer in its service, but also for losses the immediate result of *laches* which even the most vexatious, unjus-

tifiable, and improper conduct on the part of the British authorities would have neither justified nor excused.

Feeling therefore that the seizure, though not justified on the ground upon which it has been asserted the vessel was seized—namely, that she was engaged in the slave trade—was the consequence of the suspicions excited in the mind of Lieutenant Littlehales by the crew, of the unsatisfactory conduct of the master, and of the discovery of the letters addressed to the supercargo, I must say that I agree with the spirit of the judgment pronounced by the vice-admiralty court at Sierra Leone, which by its terms attributed, to a very great degree, the "error of the seizure" to the conduct of the master. The case, however, is now brought before the commissioners upon different grounds. We are not asked to declare the vessel guilty or not guilty of the charge under which she was libelled, but we are simply asked to give the owners compensation for any damages they may have sustained through the conduct of an officer of the British government. To this extent I am willing to accede to the prayer of the claimants; but I cannot go further, and compensate them for losses which appear to me the direct and natural result of their own *laches* and those of their authorized agents. One fact, however, has entered into my computation of the compensation to which I conceive the owners have a fair claim, and I mention it because on principle I shall feel it my duty, whenever it occurs, to treat it in the same way. To the judgment of the court, the captors thought fit to enter an appeal; and although such a proceeding does *not* appear in the present case to have in any way affected the vessel, yet I consider that where an appeal is entered without any sufficient or probable cause for disputing the judgment of the court, and subsequently abandoned, the parties *intended* to be affected thereby are fairly entitled to compensation for any expense, inconvenience, or loss of time to which they may have been put.

The cargo, of whatever it consisted, (and on this head there is very great disparity, both as to quantity and value, in the evidence of the master and owners and that of the supercargo—see statement in memorial and affidavit of F. Sexton, p. 218 of printed evidence,) was sold simply for the benefit of all concerned, because it was deteriorating in value in consequence of the neglect of the owners to look after it, after they had notice that the vessel was acquitted; and for this

reason I do not consider them in justice or equity entitled to more than the proceeds of the sale.

Estimating therefore the detention of the vessel consequent on the seizure—as from the 12th of September, 1840, to the 12th of May, 1841, a period of eight months—at £1,500; putting down also the probable injury sustained by the vessel in that climate at a third of its alleged value, that is to say, at £1,000; and awarding for the loss suffered on a forced sale of stores, rendered necessary by such detention, at £300, with interest on these three sums for twelve years and six months at five per cent. per annum from September, 1840, to February, 1853, equal to £1,749—I adjudge to the claimants these four sums of £1,500, £1,000, £300, £1,749, together with the sum of £1,635 3*s.* 7*d.*, the amount realized by the sale of the ship, stores, cargo, &c., and also the bags of coin and specie found on board the "Jones," and now in the custody of the marshal of the vice-admiralty court of Sierra Leone, making a gross total, exclusive of the said coins, &c., of £6,184 3*s.* 7*d.*

BATES, umpire:

The umpire, appointed agreeably to the provisions of the convention entered into between Great Britain and the United States, on the 8th of February, 1853, for the adjustment of claims by a mixed commission, having been duly notified by the commissioners under the said convention that they had been unable to agree upon the decision to be given with reference to the claim of the owners of the barque "Jones," so far as regards the amount of compensation to be paid by the government of Great Britain; and having carefully examined and considered the papers and evidence produced on the hearing of the said claim; and having conferred with the said commissioners thereon, hereby reports and awards that there is due from the government of Great Britain to the owners of the barque "Jones," or their legal representatives, the sum of ninety-six thousand seven hundred and twenty dollars; to the supercargo, Sexton, the sum of twelve hundred dollars; to James Gilbert, the master, the sum of eighteen hundred and sixty-three dollars; to Ebenezer Symonds, the mate, the sum of eight hundred and forty-two dollars—together one hundred thousand six hundred and twenty-five dollars; or, at the exchange of $4 85 per pound sterling, twenty thousand seven hundred and forty-seven pounds eight shillings and five pence. The British government retaining the proceeds of the sales of the brig and cargo at Sierra Leone, and the silver coin now in the possession of the vice-admiralty court at that place.

THE MESSRS. LAURENT.

Where claimants, who were originally British subjects, had become domiciled in Mexico and continued to reside there, engaged in trade, during war between Mexico and the United States, *held*, that they had so far changed their national character that they could not be considered "British subjects" within the meaning of these terms as used in the convention for the settlement of claims of British subjects upon the government of the United States.

It appears from the memorial of the claimants, filed in this case, that the Messrs. Laurent have been resident merchants, engaged in business in Mexico, from 1829 to the present time, a period of twenty-five years; that, in 1847, a law was passed by the Mexican Congress, authorizing a sale of certain church property, for the purpose of raising the sum of $15,000,000 for the necessities of the government.

The claimants occupied a house belonging to the church, and made proposals to the government to purchase it. These proposals were accepted, and the government ordered the contract to be duly drawn up, and executed by the authorized officer appointed for this purpose. The contract was signed by the Messrs. Laurents, and the purchase-money was deposited in the hands of a banker, to await the execution of the instrument by the government officer; but owing to some neglect it was not signed by him, and in the meantime a revolution occurred, and the new president was authorized to annul the law for the sale of the church property, which he did. The claimants remonstrated against the proceeding, and claimed the property under their contract with the government.

While such was the existing state of things in reference to this property, war occurred between the United States and Mexico. The city of Mexico was taken, and the money of the Messrs. Laurents thus deposited was confiscated by the commander of the American army as the property of the Mexican government.

After peace was made between the two countries, the church claimed the house as their property, and instituted suit to obtain possession of it. The Mexican courts sustained the claim of the church, and dispossessed the Messrs. Laurents of the house; and they now seek remuneration against the United States for the money confiscated as *British subjects*, entitled to prosecute their claim under the provisions of this convention.

The agent of the United States having taken exception to the jurisdiction of the commission, on the ground that the Messrs. Laurent, under the facts disclosed, were not to be regarded as British subjects within the meaning of the convention, the case was fully argued on this point, and submitted.

HANNEN, agent and counsel for Great Britain:

It cannot be disputed that *prima facie* the Messrs. Laurents are entitled under the terms of the convention—namely, "subjects of her Britannic Majesty"—to have their claim entertained by the commissioners.

I agree, however, that a treaty or convention is to be construed, and particular expressions in it interpreted agreeably to the rules of international law.

I do not know upon what principle of law, or what authority among jurists, a *restrictive interpretation* could be affixed upon these words of the convention, unless, indeed, (as I understand the American counsel to argue,) they happen to have received such *restrictive interpretation* from an uniform current of decisions of acknowledged international authority.

I do not see that the authority of any writer on international law is referred to to sustain this position, and the cases which are cited are far from satisfying me that the commission could legally adopt any such *exceptional construction* of the terms as is contended for. They are taken from the prize courts, from the privy council, from the common law, and from the equity courts.

A misunderstanding of the cases in the prize courts appears to me to lie at the root of the argument contended for.

It is quite true that, *flagrante bello*, merchants residing in the enemy's country are considered, with reference to the belligerent rights of maritime prize, as subjects of that country, without reference to the country of their origin or allegiance, and without much reference to the length of their residence. Their domicil, *for this particular purpose*, is said to be sufficient to found the right of the maritime captor; but it would be stretching the principle of those decisions to an extent which was never intended, to say that they were not British subjects in the sense of this convention: for instance, and the example alone is sufficient to answer the whole question, is there any jurist who would say, that an injury offered to a British merchant, residing at Mexico, would not, all other means of redress being exhausted, justify the issue of reprisals on the part of Great Britain?

I contend that the principles of international law do not warrant the *restrictive interpretation* sought to be put upon the *plain words* of the convention, and that the Messrs. Laurents are not disentitled to have their claim entertained by the commissioners.

THOMAS, agent and counsel for the United States:

In his opening speech, the counsel for the British government has addressed himself to the question of the jurisdiction of the commission, which I gave him notice I should deny in this case; and I shall in my reply confine myself entirely to this preliminary inquiry.

I deny the jurisdiction of the commission, on the ground that the claimants are not "British subjects," in the sense in which these terms are used in the convention, and, consequently, they have no right to present for the decision of this commission a claim against the United States. I am glad to see the claimants present, and I hope they will listen attentively to the argument, for, besides satisfying the commissioners, I shall be disappointed if, by the reasons I shall advance, and the authorities I shall cite, I do not convince the claimants themselves, that they will have no just ground for dissatisfaction with the decision, to which I feel confident the commissioners must come—namely, that the claimants are not entitled to be heard by this commission as "British subjects," being domiciled citizens of Mexico, and by the law of nations invested with the national character of that country.

In order, however, to a fair understanding of the manner in which this question arises, it may be well to state the facts as they appear from the memorial of the claimants themselves.

This is a claim presented on the part of the British government in favor of the Messrs. Laurent, residents of Mexico, who claim indemnity from the United States for the confiscation as prize of war, of a debt, owing by them to the government of Mexico.

These claimants represent that they are resident merchants and traders in the city of Mexico, and that they had been established there eighteen years in that capacity, previous to 1847. During that year they further state that a law was passed by the Mexican Congress, authorizing the raising of fifteen millions of dollars by the hypothecation or sale of church property. Afterwards, in the same year, the Congress, by law, gave extraordinary powers to the executive authority to raise immediately five millions by the sale of the said property. The house occupied by the claimants belonged to the church, and they being notified that it was to be sold, determined to purchase it. The Mexican government accepted their proposal, and an agreement was drawn up, by which the claimants undertook to pay a specified

amount, in different payments, for which the government was to transfer to them the ownership of the house, with the proper muniments of title. The government ordered the contract to be properly drawn up and duly executed by its authorized officer. It was finally signed by the claimants, and the money deposited in the hands of a banker to await the execution of the contract by the government; but in consequence of some inattention of those charged with this duty, it was not executed by the government. In this state of the matter a revolution occurred, and the new President was authorized to annul the laws for the sale of the church property, which he did. Remonstrances were made by the claimants against this proceeding, and while negotiations upon this subject were going on, the tenant of the house, under whom claimants were sub-tenants, commenced a suit against them for rent, and they set up their purchase from the government in defence, and a satisfactory arrangement was confidently expected, when the city of Mexico was taken by the United States forces. Not long after that event, the military secretary of the commanding general notified the claimants that the general would confiscate this debt owing by them, as prize of war, it being property belonging to the Mexican government, and this was done accordingly.

The general gave them a certificate that this money was confiscated as a prize, put them in possession of the house, and received the money. They continued to enjoy unmolested possession of this property during the occupation of the country by the United States forces. After peace was made, and the government had been surrendered to the Mexican authorities, the church then claimed this property, and commenced a suit for it in the Mexican courts, which, by appeal, these claimants carried up to the highest tribunal, where it was decided that Mexico would not acknowledge the acts of the government *de facto*, represented by the commanding general, and the claimants were dispossessed of their property; and they now seek remuneration for their losses from the United States.

The first question that arises upon this state of facts is this: Have the claimants a right to redress at the hands of this commission? I expect to make it clear to the mind of any one that by the law of nations, which must give the rule for the interpretation of the convention, the claimants are citizens of Mexico, and were so at the time this claim arose; that they do not come within the

meaning of the words "British subjects," as these terms are used in the convention; and that, therefore, this commission has no jurisdiction of the case.

The counsel for the British government has presented to the commissioners the hardship to the claimants if this proposition should be maintained. Whatever hardship there may be, the government of the United States is in no way chargeable with it. The claimants went to that country for the advantages which it held out to them, and they must take also the disadvantages of a residence there, more especially when they continue to adhere to, and give the benefit of their capital and industry to, the government of that country in time of war.

But, the counsel says, the government of the United States has paid a Frenchman for losses sustained in Mexico under like circumstances, and hence this commission ought to follow this example. If it is true that the government did pay a Frenchman for his losses in Mexico, of which no proof is offered, to ask this commission to be guided by that example would not be unlike asking a prize court to refuse to condemn a vessel found trading with the enemy because the sovereign authority in another case had given permission to trade. A nation may dilute its power, and exempt any person from the effects of his enemy-character, but it is not permitted to this commission to do so. Its duty is to be governed by the law of nations, and it is not at liberty to assume for the United States the exercise of a power which every nation regards as a high attribute of sovereignty, and which is there confided to Congress.

The memorial of the claimants states that they are now residents in the city of Mexico; that they were residing there at the time this claim arose in 1847, and had been during many years previous. War between the United States and Mexico was legalized in May, 1846, and more than a year after this event they were still residents of Mexico, giving to that country the benefit of their industry and capital; and when the city of Mexico was taken by the United States forces, they were found engaged in business, like any other Mexican citizens. The question is, to what government did they owe allegiance, and consequently under whose protection were they when the transaction took place with the consequences of which they now seek to charge the United States.

The principles of international law, recognized by the British court

of admiralty, when applied to persons in the condition of these claimants, affix to them the national character of Mexicans, and their property found in Mexico is subject to all the consequences that attach to the property of native-born citizens resident there. Redress for any wrongs done to them or their property must then be sought in the tribunals of that country or through its government. The seizure by the United States of any property belonging to the claimants, which might have been found during the war on the high seas, where England enjoys a common jurisdiction with other nations, could not have been inquired into by her, nor by any tribunal in which she could take part; for a still stronger reason, then, she can have no voice in deciding a question in regard to property, which arose wholly within the enemy's country, and where England had no sort of jurisdiction, either over the territory, the persons, or property of the claimants.

But these principles do not rest upon general reasoning alone. They have long been considered fundamental doctrines of international law, and have had the sanction of the British court of admiralty for the last half century, as I shall proceed to show.

In the case of the "Indian Chief," the distinguished judge, Sir William Scott, said, "No position is more established than this, that if a person goes into another country, and engages in trade and resides there, he is by the law of nations to be considered a merchant of that country."

The case of the ship "President," however, illustrates this principle more strongly. England and Holland were at war, and the Cape of Good Hope was in the possession of Holland. This ship was taken on a voyage from the Cape to Europe, and was claimed by Mr. Elmslie, as an American citizen residing at the Cape. It appeared that he was a British-born subject who had lived in America, and had gone to the Cape during a former war, and while the British had possession of it. He continued to reside there after it again fell into the hands of Holland, and it was during this last residence that the vessel was seized. Sir W. Scott says, in this case, "I think the court must surrender every principle on which it has acted in considering the question of national character, if it was to restore this vessel. The claimant is described to have been many years settled at the Cape, with an established house of trade and as a merchant of that place, and must be taken as a *subject of the enemy's country.*"

These two cases abundantly establish the principle that every person is, *by the law of nations*, considered as belonging to, and is a citizen or subject of, that country where he has his domicil, whatever may be his native country.

But it may be useful to cite yet other cases. In the case of the ship "Ann" (1 Dod. Adm. Rep.,) it is distinctly settled that, in order to enjoy the benefit of being a "*British subject*," in the sense in which the counsel for her Majesty's government now seeks to interpret these terms, "the person must be clearly and habitually a British subject, having no intermixture of foreign commercial character;" that was the case of a vessel seized in the river Thames, in August, 1812. The master was a British-born subject, and his wife and family still resided in Scotland. He had resided in America, and was naturalized, as he alleged, for commerce only, in order to purchase a vessel and trade there. An order in council directed that all vessels under the the flag of the United States, which were *bonâ fide* the property of his Majesty's subjects, purchased before the declaration of war by the United States, should be restored; and the question was whether the master of the "Ann" was a British subject. On this point, Sir W. Scott observes: "It is true he had no house, and was there (in the United States) as a single man. He cannot take the advantage of both characters at the same time. He has been sailing out of American ports. It is quite impossible he can be protected under the order in council, which applies only to those who *are clearly and habitually British subjects, having no intermixture of foreign commercial character.* It never could be the intention of his Majesty's government that the benefit of this order should be extended to a person who has thrown off his allegiance and estranged himself from his British character, as far as his own volition and act could do;" and his ship was not restored, but condemned on the ground that he was not a British subject, but a citizen of the United States. There could be no doubt that, according to both the common law and the naturalization acts of England, he was a British subject, yet the court declined in the most emphatic manner to interpret the words "British subject" used in the order in council by the municipal law, but the law of nations was recognized as furnishing the rule. He had changed his national character, his domicil was in the United States, and it was held that he was to be regarded as a citizen of that country.

According to the rule here laid down, the claimants, who now seek to bring their claim before this commission, are Mexicans by allegiance and character, and theirs is a Mexican claim.

This commission was instituted to settle claims on behalf of "corporations, companies, or private individuals, subjects of her Britannic Majesty, upon the government of the United States," and the claims of citizens of the latter upon the former government; but if the opinion of Sir William Scott upon the meaning of the same words used in the order in council is to be followed, in order to enjoy the privilege of coming here and presenting a claim as a "British subject," the claimant must be "*clearly and habitually a British subject, having no intermixture of foreign commercial character.*"

This is a judicial construction of the words "British subject," used precisely in the sense in which those terms are employed in the convention. It may, however, be satisfactory to the commissioners for me to state that a similar construction has been given to them by his Majesty's privy council in interpreting the treaty of 1814 between Great Britain and France, for the settlement of claims of British subjects upon the French government.

At the peace of Paris, in 1814, a treaty was entered into, by which the French government agreed to pay for property, debts, &c., belonging to British subjects, and unduly confiscated, subsequent to the 1st of January, 1793. This treaty was confirmed by conventions in 1815, and commissions were organized for carrying them into effect. An English commission was charged with the distribution of the money set apart for English claimants; and an act of parliament provided that, should the claimant be dissatisfied with the award of the commissioners, he should be at liberty to appeal to his Majesty's privy council.

An appeal was taken in Drummond's case, which is reported in 2 *Knapp's Privy Council Reports*, and it is to that case that I wish to direct the attention of the commissioners. Drummond's estate had been confiscated in France. He was the grandson of John Drummond, Lord Forth, a natural-born British subject. By the statutes of 7 *Anne*, *c.* 5; 4 *Geo. II*, *c.* 21; *and* 13 *Geo. III*, *c.* 21, the children and grandchildren of natural-born British subjects, although they may be born out of the realm, are declared to be "British subjects" to all "*intents, constructions, and purposes whatsoever;*" and

under these acts, Drummond, notwithstanding he was born abroad, and had generally lived in France, was clearly a British subject. The commissioners, however, erroneously believed that his grandfather had been included in the Scotch act of attainder, and that he was hence not a British subject, and rejected his claim chiefly on that ground. From this decision he appealed to the privy council, and the question was, whether Drummond was a British subject within the meaning of the treaty.

The arguments and decision in this case will not only show clearly the sense in which the terms "British subject" are used in the treaty under which this commission is sitting, but they will demonstrate beyond doubt the Mexican character of the Messrs. Laurent, the claimants in this case. The joint argument of the King's advocate, Sir Herbert Jenner, and the attorney general, Sir John, now Lord Chief Justice, Campbell, deserves to have great influence in determining the question before the commission, as well from the soundness of the reasoning as from the distinguished position and reputation of its authors.

They say: "Admitting that the grandfather of Drummond was not affected by the act of attainder, and that, technically speaking, he was, according to the statutes of *this* country, a British subject; still *treaties must be interpreted according to the law of nations*, which requires words to be taken in their ordinary meaning, not in the artificial sense which may have been imposed upon them by the particular statutes of a particular nation. When, therefore, a treaty speaks of the subjects of any nation, it must mean *those who are actually and effectually under its rule and government.*"

In another part of the argument they say: "It never could have been the intention of the framers of this treaty that the expression, *British subjects*, should include persons who are also French subjects. There is no doctrine better established in the British court, than that the duties of *allegiance* and the right of *protection* are inseparable, and the subject who is entitled to protection is also bound to render allegiance; yet if Drummond had served in the French army against Great Britain, and been taken prisoner, would any one have contended that he was guilty of high treason, and liable to be executed? If, however, he was entitled to the protection of a British subject, he must be considered as having been liable to the consequences of the breach of his duties as one."

In delivering the judgment of the privy council, the vice chancellor said: "Drummond was a British subject. But though, formally and literally, by the law of Great Britain, he was a British subject, the question is, whether he was a British subject within the meaning of the treaty. He might be a British subject, and he might also be a French subject, and if he was a French subject, then no act done towards him by the government of France would be considered an illegal act within the meaning of the treaty, which could only mean to provide indemnity where the act done towards the British subject was illegal by reason of the law of nations." This is precisely the case before the commissioners. By the terms "British subjects," used in this convention, as in the treaty with France, it was only meant to provide indemnity to those persons who were, by the *law of nations*, at the time of the injury complained of, subjects of Great Britain. That law does not recognize those persons as a nation's subjects who are living in another country, but it regards them as subjects of that country where they are domiciled. Drummond had been living in France, as the Laurents have been in Mexico, and their lordships finally said, "that Drummond was technically a British subject in the years 1792 and 1794, yet he was also in form and substance a French subject, domiciled in France, with all the marks and attributes of a French character, and was not entitled to indemnity."

The counsel of the British government has said this case does not apply, because the Laurents were not naturalized Mexican citizens. The laws of that country not authorizing the naturalization of Protestants, it is said they could not have become citizens, even if they had so desired. The decision in Drummond's case does not require that they should be naturalized citizens, it only requires that they should be domiciled there. It is of no importance whether they enjoyed the privileges accorded to native-born citizens or not; that is a municipal question altogether. The law of nations does not look to see who, by the municipal law, enjoys the most complete rights of citizenship, or who possesses them to a less extent, but only to discover who are the persons domiciled in the country, and they are declared to belong to it, and take their national character from it. But, in point of fact, the claimants were, to some extent, naturalized citizens.

The counsel for the British government, in order to show their British character, has produced here their annual oath, or obligation, by which

they solemnly undertook to subject themselves to the laws of the country; and for this undertaking they were permitted to live there, to possess real property, and trade and enjoy the advantages of the government. This they did for eighteen years in succession. Now I maintain that this was naturalization. Perhaps it did not give them all the rights of native-born Mexicans, neither do the laws of any country give *all* the rights of native citizens to those who are naturalized, but in this case the municipal law accorded to them the important rights of citizens of the country.

The effect of domicil in changing the national character of the citizen or subject has been very strikingly illustrated in Conway's case, reported also in 2 Kapp's Privy Council Reports, to which I have already referred. It was there held, "that a foreigner domiciled in England at the period of the confiscation of his property by the government of France, from which country he immigrated, and settled in England, was entitled to claim compensation for his losses, under a treaty providing such compensation to British subjects." This is a declaration, by the highest authority, that a foreigner domiciled in England becomes invested with the British character. It is not said that he is entitled to be admitted to all the rights that any British subject may enjoy. That can be affirmed of only a limited number of those who are native-born, and have always resided within English jurisdiction; but it establishes the exact principle for which I am contending. If a Mexican, for example, by residence in England may become a British subject, as the privy council says he can, may we not reasonably infer that a British subject residing in Mexico may, upon the same principle, become a subject of that country.

It seems to me that, taking the decision of the privy council in Conway's case as law, there is no escape from this conclusion. If there is not, then the Laurents, by being domiciled in Mexico, ceased to be clothed with the nationality of Great Britain, and became citizens of Mexico.

There is a remarkable uniformity on this point in the decisions of the British courts, as will be further shown by the case reported in 3 *Bos. and Puller*, *p.* 114—Lord Alvanley, chief justice. In that case, he observed: "The question is, whether a man who resides under the allegiance and protection of a hostile state for all commercial purposes, is not to be considered to all civil purposes as much an alien enemy as

if he were born there. If we were to hold that he was not, we must contradict all the modern authorities on this subject. That an Englishman, from whom France derives all the benefit which can be derived from a natural-born subject of France, should be entitled to more rights than a native Frenchman, would be a monstrous proposition. *While the Englishman resides in the hostile country he is a subject of that country;* and it has been held that he is entitled to all the privileges of a neutral country while resident in the neutral country."

But the counsel for the British government replies, "what the learned chief justice says is very true, but it applies to the remedy." I admit the party was in search of a remedy, but his national character had first to be ascertained before it could be decided that he was entitled to it, and for this purpose it was that the learned judge announced the great principle to which I have referred. It is a general truth discovered by the reason and experience of nations, and it will endure as long as civilization exists among men. How else could belligerents ever settle their quarrels, if the treaty of peace is not to bind all the parties to the war. The adventurers from neutral nations who choose to take part in it could continue to bring up terms of peace for themselves during an indefinite period, and by entertaining their propositions, you would thus offer a bounty for their conduct, and give them the advantages of both the neutral and belligerent country, with the disadvantages of neither. The law of nations makes these claimants as much parties to this war as if they had been in the ranks of the army; and to maintain that they are nevertheless to have the right of neutrals is, in the language of Chief Justice Alvanley, a "monstrous proposition."

The Laurents were, if any regard is paid to the decision of the chief justice, citizens of Mexico before the war, as well as during its continuance, and are so at this moment.

It would seem to be impossible, in the face of these authorities, to resist the conclusion, that where nations are concerned the place of domicil is the true place of which a person is a citizen. It is not only so in time of war, but Lord Alvanley has said it is so in time of peace. This would be established as the rule in the time of war, if the question rested solely on the case of *Albers cht v. Sussman* (2 *Vesey and Beame*, 323. In that case it was decided that an alien carrying on trade in an enemy's country, though resident there also in the

character of consul of a neutral state, was held to be an alien enemy, and as such disabled to sue, and his property liable to confiscation. Now, if a British consul, residing in Mexico during the war with the United States, was disabled to sue as a neutral British subject in the courts of the United States, and his property was liable to confiscation, the case of the Laurents can admit no doubt. They were Mexican citizens, and liable to all the obligations and disabilities of native-born citizens of that country, and they must seek redress for any grievance through the government under which they have chosen to live.

But if national law, as declared by British courts, is to have any weight with this commission, it must decide that they are Mexican citizens now, at this moment. They state that they still reside there; and Sir William Scott clearly established, in the case of the "Matchless," that this was sufficient to change the national character, and constitute citizenship. The case of the "Matchless" arose in 1822, and will be found reported in 1 Hagg. Ad. Rep. It was an appeal from a sentence pronounced in the vice-admiralty court of Newfoundland, condemning this vessel for an alleged violation of the navigation laws. The question turned principally upon the second section of the act, which provides "That *no alien shall exercise the trade or occupation of a factor or merchant in the plantations*," &c. The claimant was described as a British-born subject, but at that time residing in Boston. Lord Stowell asks the question: "Is such a person to be considered a merchant of Great Britain, or a merchant of America? Upon such a question it has certainly been laid down, by accredited writers, on general law, and upon grounds apparently not unreasonable, that if a merchant expatriates himself as a merchant to carry on the trade of another country, exporting its produce, paying its taxes, employing its people, and expending his spirit, his industry, and his capital in its service, he is to be deemed a merchant of that country, *notwithstanding he may in some respects be less favored in that country than one of its native subjects.* Our own country, which is charged with holding the doctrine of unextinguishable allegiance more tenaciously than others, is no stranger to the application of this rule. Its highest tribunals, which adjudicate the national character of property, apply it universally. They privilege persons residing in a neutral country to trade as freely with the enemy of Great Britain in war as the native subjects of that neutral country, although our own resident merchants cannot, without the special permission of the crown; and they confis-

cate the property of an English subject resident in any enemy's country as freely as that of a native subject." Lord Stowell also cites Lord Kenyon as having declared that persons residing in this country must, for the purposes of trade, be considered as belonging to this country; and he further states that, in Wilson *v.* Marryatt (1 Bos. and Pull,) it was settled, "that a British-born subject residing in America might trade to the East Indies, though a British subject could not. And, surely, if the acquired residence takes off the incapacities, he has no right to complain if it fixes upon him some disabilities of its own." Under the shelter of these authorities, his lordship continues, "I should incline to hold, if I am compelled to face the general question, that a British merchant resident in a foreign country, must part with some commercial privileges, which he would preserve if resident at home, whilst he acquires others by residence abroad." "In this transaction the claimant must be taken to be an American and not a British merchant."

I would beg here to call the particular attention of the commissioners to the language of the treaty of commerce between Great Britain and the United States, of the 3d July, 1815, in connexion with the decision in this case of Wilson *v.* Marryatt. The 3d article of that treaty says, "that the citizens of the United States may freely carry on trade between the said principal settlements (in the East Indies) and the United States." This trade, it will be remembered, was prohibited to British subjects, yet Sir William Scott said, a British subject residing in the United States could carry it on. Does this not prove that the Englishman changed his national character, by being domiciled in the United States, and by the law of nations became a citizen of that country?

Now if there is any respect to be paid to the English courts of admiralty, this commission cannot refuse to declare, on the authority of this case alone, that these claimants who come here from Mexico are not entitled to be heard.

I submit that the authorities I have produced settle this question upon the broad and impregnable principles of the law of nations, as declared by the British courts and adopted in the policy of the government for a long period.

These principles apply not only to these claimants, but to all persons whose claims arose while they were domiciled in Mexico. It cannot

be supposed that the two governments, in framing this convention, meant that you should look to the municipal law of either country for the definition of the words "citizen" or "subject;" on the contrary, it was undoubtedly considered that you would determine these questions by that international law which is always understood as furnishing the rule of interpretation, in the construction of treaties. They never intended that the vague common law prerogative of perpetual allegiance from the subject, founded solely on an imperfect common law right of the crown, should give the construction to the words "British subject," used in this treaty. No such technical and local meaning was ever in the mind of the negotiators. I am not disposed to go into any lengthened discussion of this doctrine of allegiance, but I must be permitted to observe that, whatever may be the relation of the subject of Great Britain to the crown, it rests wholly on the municipal law of this country, and forms no part of the law of nations. It is, and always has been a right of imperfect obligation while the subject remained beyond the nation's jurisdiction; and it only becomes a perfect right by his return to his native country, for then his obligation to the place of his birth can be enforced. Native citizenship may then revive, and that of his adoption may cease. Hence there need be no conflict between this perpetual allegiance or gratitude, as it might rather be termed, which the subject is said to owe to the land of his birth, and that which he owes to the country of his domicil, and to which the law of nations regards him as belonging.

In the construction of this convention, the necessity of adopting international law, as determining the country of which one is a citizen, is shown by a decision of the lord chancellor, delivered yesterday in Lincoln's Inn, and reported in the London *Times* of this morning. The case is entitled Dawson *v.* Jay. The subject-matter of the dispute was the custody of a young lady, about eleven years of age. The mother was an American woman, and her father was a Englishman, but he became a naturalized citizen of the United States. They were both dead, and there was a guardian appointed on the paternal and maternal side in different States in America. Her maternal guardian procured an injunction of the supreme court of New York to prevent the removal of the child to England, but the paternal guardian evaded the service of it, and brought the young lady to England; and the question was, which should have the guardianship of her, the

paternal guardian and uncle praying to be appointed as guardian in England. The decision was in favour of the paternal uncle, but we are more immediately concerned with other points settled by this case. The lord chancellor declared, that "although the father's naturalization gave him the privileges of an American citizen, it did not absolve him from the duties, or deprive him of the rights, of a British subject; and further, that the infant, although born in the United States of a marriage contracted with an American lady, and having an American domicil, and residing there during the first ten years or thereabouts of her life, was nevertheless a subject of the crown of England." Now it will not be denied that the father, child, and mother were citizens of the United States, and this young lady, as such citizen, might present a claim to this commission against England, under the provisions in favor of citizens of the United States. But if the *municipal law* sense of the term "British subject," is to govern in the construction of this treaty, she may also present a claim as a subject of Great Britain against the United States. Certainly neither the negotiators of this convention nor their governments meant that any one should enjoy the advantage of being a citizen of both countries at the same time. If you will adopt the place of domicil as the country of which the person is a citizen or subject, there can be no such conflict, for no person can at the same time have more than one domicil. This is an ancient and well-established principle of international law, and must govern the commissioners in this case.

I am asked by the counsel for her majesty's government, whether I would maintain that a British-born subject found in arms against England could not be executed for treason. It is not necessary to the correct decision of the question under discussion that I should answer this interrogatory; but I will say, however, that I do maintain that very proposition, always supposing that the change of domicil is made in good faith. There must be fitness in point of time, and fairness of intent, and publicity of the act; when these circumstances concur, no nation would now be justified by the law of nations in executing for treason one of its native-born subjects found in the military service of another country with which it might be at war. In maintaining this proposition, I am perfectly aware that Sir William Scott has held, that an adopted citizen must not be found in hostility to his native country, and that Blackstone and Lord Hale have held a like

doctrine; but these distinguished judges recorded these opinions at a time when feudal institutions had a firmer hold on England than they have now; and the latter two, before the States and nations of America had taken their places among the independent nations of the world, and before half a million of people swarmed annually from the British isles to light upon and make their homes in nearly every inhabited spot on the globe. They would not now, if they could be here to witness this wonderful change in the condition of the world, contend that these persons, many of whom were forced by necessity to quit the land of their birth, ought to be subject to the obsolete claim of perpetual allegiance, or the penalties of treason, if found in hostility to their native country, under the circumstances I have mentioned. Under a long-continued practical recognition of the right of emigration by Great Britain, will it still be asserted that she claims the old feudal prerogative of recalling these persons, and exacting the same duties as if they had never left the country? No such doctrine will, I apprehend, ever be again *practically* applied by the British government. The American doctrine on this point is that which is more in conformity with the practice and progress of the age. It was very formally declared by the government of the United States, in answer to the Austrian demand for the liberation of Koszta. It is there laid down, "that the sounder and more prevalent doctrine is, that the citizen or subject, having faithfully performed the past and present duties resulting from his relation to the sovereign power, may at any time release himself from the obligation of allegiance, freely quit the land of his birth or adoption, seek through all countries a home, and select anywhere that which offers him the fairest prospect of happiness for himself and his posterity."

If, however, the rule in support of which I have produced such abundant authority be not admitted, and the commission should say they will disregard the law of nations, and especially that law as recognized by England, and adopt an ancient impracticable prerogative of the crown in its stead, then every question that has been decided in the United States, in which a British-born subject has been a party during the last forty years, may be re-examined and reversed by this commission. You will practically declare that the thousands of persons that England has induced to leave her shores and seek their support in other lands, are still retained as *British subjects*, and may, as such, present claims to this commission against the United States.

To this doctrine I do not expect to be asked to assent. It is too palpably at war with the decisions of the highest legal authority in England and America, to suppose that this commission would sanction a principle so unfounded, and fraught with so much evil. It would make it not what it really is—a commission to settle the claims of the respective citizens of the two countries upon the government of the other—but a commission to settle claims upon the United States by Englishmen. The rule laid down on this subject by the United States in the case of Koszta is the only one that can relieve the question of all difficulty. It is this: "The conflicting cases on the subject of allegiance are of a municipal character, and have no controlling operation beyond the territorial limits of the countries enacting them. All uncertainty as well as confusion on this subject is avoided by giving due consideration to the fact, that the parties to the question now under consideration are two independent nations, and that neither has the right to appeal to its own laws for the rules to settle the matter in dispute, which occurred within the jurisdiction of a third independent power." This case arose in the jurisdiction of Mexico. England and the United States are the parties. The laws of England cannot, therefore, give the rule, but the matter in dispute must be settled by the law of nations.

It is not denied that a contract with an alien enemy made in time of war cannot be enforced in the English courts on the return of peace. This has been often settled, but especially in the case of Willison *v.* Pattison, 7 Taunton, 439, that is to say, no contract made by a person domiciled in England with another person now domiciled in Russia, no matter where he may have been born, or to what country he may claim to owe allegiance, can ever be enforced in the British courts. This is as true of British-born subjects as it is in regard to all others, and certainly for a much stronger reason; no claim against England, arising from an act of her agents towards an enemy thus situated, would ever be acknowledged by her. If, however, British subjects, residing in Mexico during the war, are to be allowed to present to this commission a claim against the United States, the deliberate decisions of the British courts of admiralty for a series of ages will not only be overthrown, and the law of nations treated as of no force, but the American citizen, who may be in Russia during this

whole war contributing his money, and, in the language of Sir William Scott, "his spirit and industry," to oppose England, may come before some future commission to settle claims between the United States and Great Britain, and there enforce against her a claim, the principle of which could not be maintained in the British court of admiralty, and which is, in fact, invalid by the law of nations.

The writers on international law are very clear and uniform in their recognition of the rule that a person is to be regarded as the subject of that country where he has his domicil. Grotius says: "By the law of nations all the subjects of the offending state, who are such from a permanent cause, whether native or emigrants from another country, are liable to reprisals, but not so those who are only travelling or sojourning for a little time." Wheaton, in his treatise on international law, lays down expressly, that "whatever may be the extent of the claims of a man's native country upon his *political* allegiance, there can be no doubt that the natural-born subject of one country may become the citizen of another in time of peace for the purposes of trade, and may become entitled to all the commercial privileges attached to his acquired domicil." Here it is asserted distinctly, that living in a country in time of peace, and carrying on trade, renders him a citizen of that country in the view of national law; and I have already shown, by numerous authorities, that this doctrine is in conformity with British adjudications on this point.

Having seen that a residence in a foreign country constitutes a person a domiciled citizen there, and renders that country answerable for his conduct to other nations, it may be worth while to inquire more fully, what species of residence will render the party liable to have his property subject to the same rules as other citizens?

Lord Camden, in delivering the judgment of the court in the cases arising out of the capture of St. Eustatius, stated, "that if a man went into a foreign country upon a visit, to travel for health, to settle a particular business, or the like, he thought it would be hard to seize upon his goods; but a residence not attended with these circumstances ought to be considered as a permanent residence." Then, in speaking of the resident foreigners in St. Eustatius, he said, "that in every point of view they ought to be considered as resident subjects. Their persons, their lives, their industry, were employed for the benefit of the state under whose protection they lived; and if war broke out,

they, continuing to reside there, paid their proportion of taxes, imposts, and the like, equally with natural-born subjects, and no doubt came within that description."

Sir William Scott observes that time is the grand ingredient in constituting domicil. But he was clearly of opinion that mere recency of establishment would not avail, if the intention of making a permanent residence there was fixed upon the party; and he referred to the case of Whitehill, one of the persons whose property was confiscated on the seizure of St. Eustatius. He was an Englishman, and had arrived at St. Eustatius only two days before it was seized by the British forces, but it was proved that he had gone there to establish himself, and his property was condemned. Thus a residence of forty-eight hours transformed the political character of an Englishman into that of a Dutchman; and it ought not to require a longer time to work a like change in an Englishman on his going to Mexico.

I am very glad the counsel for her Majesty's government has referred to "Kent's Commentaries on the Law of Nations." There is no author on either side of the Atlantic that stands higher as an authority on international law than Chancellor Kent, and I propose to add his conclusive authority to that already cited. "Concerning domicil," he states, "if a person has a settlement in a hostile country by the maintenance of a commercial establishment there, he will be considered a hostile character, and a subject of the enemy's country in regard to his commercial transactions connected with that establishment. The position is a clear one, that if a person goes into a foreign country, and engages in trade there, he is, by the law of nations, to be considered a *merchant of that country, and a subject for all civil purposes, whether the country be hostile or neutral,* and he cannot be permitted to retain the privileges of a neutral character during his residence and occupation in an enemy's country." "This general rule," he adds, "has been applied by the English courts to the cases of Englishmen residing in a neutral country, and they are admitted, in respect of their *bonâ fide* trade, to the privileges of the neutral character."

"This same principle, that for all commercial purposes the domicil of the party, without reference to the place of birth, becomes the test of national character, has been repeatedly and explicitly admitted in the

courts of the United States. If he resides in a belligerent country, his property is liable to capture as enemy's property; and if he resides in a neutral country, he enjoys all the privileges, and is subject to all the inconveniences of the neutral trade. He takes the advantages and disadvantages, whatever they may be, of the country of his residence." "This doctrine," says this distinguished writer, "is founded on the principles of national law, and accords with the reason and practice of all civilized nations."

Would it be in conformity with this doctrine to give these claimants the advantage of British subjects at the same time that they are domiciled in Mexico, and enjoying the benefits of citizenship in that country? Such a thing is totally unheard of as that England should undertake to redress the grievances arising within the territory of another country. It is, I repeat, entirely opposed to the notion of independence in other countries, to the decisions of her own courts, and the practice of her government. If she can redress the grievances of an Englishman *domiciled* in Mexico, she can those of a Mexican, (for the law of nations places them both on the same footing,) and we shall have before this commission yet other Mexican claims.

By the recent action of the British government, these principles have received important and authoritative confirmation, which must have great weight with the commissioners in determining this question. The exact question for which I have been contending in this case, has been practically decided by a despatch from the secretary of foreign affairs, in answer to an application from the British consul at Riga, asking to be informed in what condition war would place British merchants residing in Russia. In reply, Lord Clarendon said, on the 16th of February, "that, by the law and practice of nations, a belligerent has a right to consider as enemies all persons who reside in a hostile country, or who maintain commercial establishments therein, whether these people are by birth neutral, allies, or enemies, or fellow-subjects; the property of such persons, exported from such countries, is therefore *res hostium*, and, as such, lawful prize of war; such property will be considered as a prize, although its owner is a native-born subject of the captor's country, and although it may be in transition to that country, and its being laid on board a neutral ship will not protect the property."

This is a declaration, that every person domiciled in Russia during the war will be regarded as a Russian. We have seen that it is merely an announcement of the law of nations on this point, and presents nothing new. If, therefore, persons are to be considered as Russian subjects who remain under that government during war, the same rule must be applied to those who adhered to the Mexicans while the United States were at war with that country, and hence this commission is bound to declare that it has no jurisdiction in this case.

UPHAM, United States Commissioner:

The first article in the convention provides "that all claims of corporations, companies, or private individuals, *subjects* of her Britannic Majesty, upon the government of the United States, and all claims of *citizens* of the United States against the British government" from the year 1814 to the present time, shall be submitted to the decision of this commission.

It has been objected, on the part of the United States, that the claimants in this case are not *British subjects* within the meaning of the terms of this convention, but were domiciled merchants in Mexico, engaged in trade there during war between that country and the United States, and are therefore to be regarded as Mexican citizens and alien enemies; and that all acts of hostility between the two countries were settled and adjusted by the treaty of peace, or, if unsettled, can only be adjusted by the United States and Mexico.

On the other hand, it is contended that the claimants are subjects within the terms of the British statute, and are to be held as such, so far as regards their *remedy* under this convention, though in adjudicating upon their claim they may be entitled to no greater rights than a Mexican citizen.

It is quite clear to me that the correlative terms "*citizens*" and "*subjects*" were used by the contracting parties in the convention in contrast with and exclusive of each other; and that it was not contemplated by them that subjects of Great Britain could be regarded, at the same period of time, as *citizens* of the United States, or that citizens of the United States might in the same manner have the additional character of *subjects* of Great Britain.

If, however, we affix to the term British subjects the meaning established by the municipal laws of England in their statutes, it will include vast numbers of American citizens, embracing not only all the emigrants from Great Britain who have become settled and naturalized citizens of the United States since the revolution, but their children and grandchildren who may have been born there.—(*See* 7 *Anne, ch.* 5; 4 *Geo. II, ch.* 21; *and* 13 *Geo. III, ch.* 21.)

Thus, under this construction, every officer in the American government might be entitled to enforce before this commission claims, as British subjects, against their own government, as their grandfathers may have been subjects of Great Britain.

This constructive doctrine as to British subjects, though it still remains upon the British statute-book, has long been wholly obsolete as to all international action between Great Britain and other States. Many years since the claim was put forth by a British commander, that naturalized citizens of America engaged in war against their native country would be summarily proceeded against as British subjects. But the claim was at once met by the declaration, that for every American citizen thus proceeded against, a similar example would be made of British prisoners, and it was abandoned.

It is possible that Great Britain may keep this provision upon her statute-book in order that the children and grandchildren of emigrants from that country who may choose to return again to her jurisdiction shall be received at once into full fellowship as subjects; but in the decisions of her courts, in her international contracts, in her construction of the rights of actual subjects, and the disabilities of aliens, she holds, without exception, that a person going to a foreign country and becoming domiciled there, in the legal sense of that term, is to be regarded, for all civil purposes, as a subject and citizen of such country, entitled to the rights and subject to the disabilities arising from his domicil.

There never has been any international difference of opinion between the two governments as to who are actual citizens and subjects of either power in their dealings and relations with each other, and there can be no doubt that this well-understood international meaning was adopted and used in this convention in reference to the terms citizens and subjects of either country.

I contend, then, that we are not to look to the *Statutes of England* for the definition of the term *subjects*, but to the settled practice and usages of nations. The same rule of interpretation applies to the term *citizens*. The only difference in the two cases is, that the United States have established conditions of citizenship in harmony with the present views and usages of nations, while such is not the case with the term *subject* as established by the municipal law of England.

It seems to me hardly necessary to sustain, by authorities, the position taken as to the proper construction of the terms under consideration.

The decisions of England and the United States, as well as those of every other nation, are uniform to the point, that an individual going

to another country, and becoming domiciled there for purposes of trade, is, by the law of nations, to be considered a subject of such country for all civil purposes, whether such government be a hostile or neutral power.

Authorities to this effect will be found in *Wilson* v. *Marryat*, 8 *Term Rep.* 31; *M'Connel* v. *Hector*, 3 *Bos. & Pull.* 113; *The Indian Chief*, 3 *Rob. Rep.* 12; *The Anna Catherina*, 4 *Rob. Rep.* 107; *Do. Danous, note*, 255; *The President*, 5 *Rob. Rep.* 277; *The Matchless*, 1 *Hagg. Ad. Rep.* 103; *The Odin, Hall, master*, 1 *Rob. Rep.* 296; *Bell* v. *Reid*, 1 *Maule & Selw.* 726.

American authorities to the same point will be found in the case of *The Sloop Chester*, 2 *Dallas*, 41; *Murray* v. *Schooner Betsey*, 2 *Cranch*, 64; *Maley* v. *Shattuck*, 3 *Cranch*, 488; *Livingston* v. *Maryland Insurance Company*, 7 *Cranch*, 506; *The Venus*, 8 *Cranch*, 253; *The Frances*, 8 *Cranch*, 363; *Los Dos Hermanos*, 2 *Wheat.* 76. These authorities, with various others, are cited and approved by Chancellor Kent in 1 *Kent's Commentaries*, 75; and he alleges that the doctrine sustained by them "is founded on the principles of international law, and accords with the reason and practice of all civilized nations."

All writers on international law concur in these views, and adopt the maxim, "*Migrans jura amittat ac privilegia et immunitates domicilii prioris.*"—(*Voet, tome* 1, 347; *Grotius, Book* 3, *p.* 56, *ch.* 2, *sec.* 2; *Book* 3, *ch.* 4, *sec.* 6; *Vattel, Book* 1, *ch.* 19, *sec.* 212; *Wheaton's International Law, Part* 4, *ch.* 1, *secs.* 17 & 19.)

The same principles are declared by public announcement of the present English ministry in reference to the existing war with Russia, "as the settled law and practice of nations," and that, "by such law and practice, a belligerent has a right to consider as *enemies* all persons who reside in a hostile country, or maintain commercial establishments therein, whether such persons are by birth neutrals, allies, enemies, or fellow-subjects."

And in conformity with this declaration, and the previous decisions on this subject, it was adjudged by the admiralty court, a short time since, in the case of *The Abo*, that "in time of war a person must be considered as belonging to the nation where he resides and carries on his trade, so far as the principles and rules of law are concerned, whether he reside in the enemy's or a neutral country."—(*The Times*, July 22, 1854.)

The English authorities which have been cited expressly declare, that a person domiciled in another country "is to be taken as a subject of such country." These are the words of Lord Stowell, in the case of the President, above cited. And, in making such decision, he does not mean to be understood that such a person may be a citizen of another country, and at the same time a British subject, as is contended before us; but he expressly declares, in *The Ann*, 1 *Dod. Ad. Rep.* 224, that this cannot be, because, he says, "he cannot take advantage of *both characters at the same time.*"

The owner of the Ann was a British-born subject, and his wife and child resided in Scotland, but he himself personally was domiciled in the United States. He was therefore clearly a British subject by *the municipal laws* of England, but Sir William Scott (Lord Stowell) held that, as regarded his *international intercourse and character*, he was not a British subject, or entitled to redress as such, and his property was condemned accordingly, notwithstanding the decree in council declared "that all property of British subjects," seized under like circumstances, "should be restored."

The international definition of subject is also recognized and adjudged in *Drummond's case*, 2 *Knapp's Privy Council Reports*, 295, where it was holden that, though an individual might be formally and literally, by the law of Great Britain, a British subject, still there was a question beyond that, and that was, whether he was a British subject within the meaning of the treaty then under consideration; and it was there contended that all treaties must be interpreted according to the law of nations, and that where a treaty speaks of the subjects of any nation, it means those who are actually and effectually under its rule and government, and not those who, for certain purposes, under the mere municipal obligations of a country, may be held to maintain that character.

And in *Long's case*, 2 *Knapp's Privy Council Reports*, 51, it was holden that a corporation, composed of British subjects, existing in a foreign country, and under the consent of a foreign government, must be considered as a foreign corporation, and is not therefore entitled to claim compensation for the loss of its property under a treaty giving the right of doing so to *British subjects*.

In the same manner, and on the same principle, the converse of the proposition was holden in the *Countess of Conway's case*, 2 *Knapp's Privy Council Reports*, 364, that a French native-born subject, residing

in England, had the character of a British subject, and was entitled to claim compensation as such, against *his own country*, for losses under a treaty providing compensation to be made "to British subjects."

These cases seem to me to be sound in principle and explicit in authority; and I am surprised, after these well-established and adjudicated decisions, the doctrine is still contended for, that in the interpretation of the term *subject*, in this convention, we are to be confined to the meaning affixed to it by the English statute.

It is desirable, before giving to it this construction, we should ascertain precisely what it means.

By applying this construction to the convention, the second article would be made to read as follows: "That all claims against the United States, of corporations, companies, or private individuals, resident subjects of her Britannic Majesty, and of all native-born citizens of Great Britain, who may have emigrated to the United States since the revolution, and of their children and grandchildren who may have been born there, and all claims of citizens of the United States against the British government, shall be submitted to the decision of the board of commissioners, whose decision shall be final," &c.

It seems to me that such an interpolation in the terms of this convention, or such a construction of it, would strike no persons with more surprise than its negotiators.

It is said, however, in order to obviate the evident difficulty of regarding the treaty in this light, that a person holding the statute relation of *subject* to England, may appear before this commission, and prosecute his claim as such; but if he is domiciled in another country, his case is to be adjudged and determined by the commission as though he were a citizen of that country.

But I regard this as an erroneous and untenable position for any court or tribunal to take.

Suppose, for instance, that an American citizen, whose grandfather was born in England, should come before this commission, armed with the power and authority of the British government, to enforce his claim here against his own country, will it answer for this commission to say, that by the law of England he is a British *subject*, and as such we must *hear him*, but we will adjudge his case precisely as though he were a *citizen of the United States?* Surely not. Like any other citizen of the United States, he must pursue his remedy before the ordinary constituted tribunals of his country, or before Congress. It

would be a futile attempt in us to undertake to make any award on the merits of his case, as it cannot be supposed that either nation would sanction such an extraordinary assumption of power.

This tribunal was not constituted to pass upon any such claim; neither was it constituted to pass upon the claim of any British-born subject who may have domiciled himself in Mexico, and who continued to reside there during a war between the United States and that country, "carrying on," in the words of the legal authorities, "trade there, paying the taxes, and employing the people of the country, and expending his industry and capital in her service."

"Such a person," says Lord Chief Justice Alvanly, "who resides in a hostile country, is a subject of such country. He is to all civil purposes as much an alien enemy as if he were born there, and to hold to a different conclusion would be to contradict all the modern authorities on the subject."—(*M'Connel* v. *Hector*, 3 *Bos. & Pull.* 114.)

This foreign character, however assumed, is a substantial recognized civil relation, as much so as the prior subsisting relation with England. The Messrs. Laurent, in this case, are citizens of Mexico, and their claim against the United States is a Mexican claim. Such a claim can only be adjudicated between the two governments where it originated. They alone are the national parties to it. And neither Mexico nor the United States are here with the necessary papers and evidence for its adjustment, for the reason that neither of those governments has delegated to us any such authority, and an attempt by us to bind them in the decision of such claims would be wholly nugatory.

It is suggested in the argument in this case, "that the claim of English *subjects* cannot extend to every case in which a British subject has been a party, but would only extend to claims upon the United States government, preferred by persons who had not by their acts *forfeited their right* to appeal to the English government for its interposition."

What would constitute a forfeiture of such right of a British subject is not stated; whether the act of the father would bar the son of his right as a British subject; or whether being born in a foreign country, where his father was domiciled, would have such effect. Many such questions would arise under such a mode of determining the national character. If however the question, whether an individual is to be regarded as a subject of Great Britain, is to depend upon the fact whether he has, *by his own acts*, forfeited the right to

appeal to the English government for protection, it seems to me this case is clearly of that character.

The injury of which the Messrs. Laurent complain arose from their placing themselves in the position of *alien enemies* of the United States in the war with Mexico; they thereby forfeited their right to protection on the part of England, whose government was *neutral*, and could neither aid, abet, nor countenance any of its subjects in such acts of hostility. They could only, on this principle, be regarded as British subjects while holding the position of the British nation; and when they departed from such position, and became alien enemies of the United States, they *forfeited the protection of England* and their right to appear before this commission.

The United States has no remedy against Great Britain for the *conduct* of the Messrs. Laurent while domiciled in a foreign country, as her *subjects;* and they, as British subjects, have no claim to redress against the United States, or to appear before this tribunal in that character.

Domicil, under all circumstances, stamps upon the individual the character of *foreigners*, *neutral* or *alien*, as the case may be. Chancellor Kent says it is "*the test of national character;*" and that the only limitation upon the principle of determining character from residence laid down in any authority, is that the party, so far as regards his own country, must not take up arms against it.—(1 *Kent's Com.*, 76.)

The municipal relation of *subject* is, for the time being, wholly subordinate to the new relation impressed upon the individual, and cannot exist as an *international relation*. His original right, as subject, may revive or revert if he returns to his native country, but it is otherwise inoperative.

Each nation may well claim of other governments that its own native-born citizens, who are domiciled with them, should be equally protected by law with the native-born citizens of other countries. Invidious distinctions in this respect would manifest a spirit of hostility against the parent country that could not be overlooked. But when individuals leave their own land, and have become domiciled in another country, and enjoy there the protection and the benefit of availing themselves of its laws, courts, tribunals, and appeals to its general government, as fully and freely as the native-born citizens of that country, for the protection of their rights and the business in which they are engaged, the original government of such persons has no

claim to interfere in their behalf. Such persons become, by the settled adjudications of all countries, and the judgment of all writers on public law, in an international point of view, citizens of such country, as to all matters arising from such business and residence; and the treaties and conventions between foreign States are framed on this basis.

An attempt on the part of this commission to overrule or revise the decisions of British or American courts as to the business matters, transactions, or liabilities of persons thus domiciled in either country, or to pass upon them while such courts were fully open for their hearing and decision, would be an utter perversion of the powers granted by this convention.

Persons thus domiciled have the rights and the disabilities, under this convention, of the country under whose protection they have chosen to reside. An American native-born citizen who has taken up his residence in London, and engaged in business there, has the same rights, under this convention, against the United States, for any claims arising from his business there, as any other citizen of London, but his claim is as a *British subject;* his domicil, by the settled construction of public law, affixes on him that character. The same is the case with an English native-born subject resident in New York: his claims under this convention can be those only of an American citizen, so far as regards the business of his elected domicil, or any adjudications upon it.

And where an individual is domiciled in another country, different from that of either of the contracting parties to this convention—as in Mexico, for instance—his claim arising from acts connected with and partaking of such domicil is not included in a convention for the adjustment of the claims of British subjects and American citizens.

Such a claim must be prosecuted through conventions made between the country of his adoption, under whose protection his business was carried on and his claim arose, and the United States. As regards any powers confided to us, he is to be holden as a Mexican citizen. Such a decision in no manner conflicts with or infringes on any international right of England as regards her subjects.

For these reasons, I am of opinion that the exception taken to our jurisdiction over the claim of the Messrs. Laurent, as presented to us, is sustained, and that no authority has been delegated to this commission to adjudicate upon it.

HORNBY, British Commissioner:

I am of opinion that the Messrs. Laurent are entitled, as British subjects, within the meaning of the convention of 1853, to be heard before the commissioners in support of their claim to compensation from the government of the United States.

The first article of the convention provides that "all claims on the part of corporations, companies, or private individuals, *subjects* of her Britannic Majesty, upon the government of the United States, and all claims on the part of corporations, companies, or private individuals, *citizens of the United States*, upon the government of her Britannic Majesty, which may have been presented to either government for its interposition with the other since the signature of the treaty of peace and friendship concluded between Great Britain and the United States of America at Ghent, on the 24th of December, 1814, and which yet remain unsettled, as well as any other such claims which may be presented within the time specified in article III, hereinafter mentioned, shall be referred to two commissioners, to be appointed in the following manner."

It is not disputed that the Messrs. Laurent are British-born subjects, nor pretended that, except in so far as their character of British subjects may be affected by *mere* residence abroad, they have done anything to divest themselves of this character. They have not been naturalized in Mexico; on the contrary, they have annually taken out a permission to reside in Mexico, in which permission they have been uniformly designated as British subjects, and generally they have, so far as lay in their power, perserved their English character. This being so, and having, as they conceive, some ground of complaint against the United States government, they have appealed to the English government for its interposition on their behalf with that of the United States. It appears therefore to me, that this case comes within the LETTER of the convention, and is *primâ facie* within our jurisdiction.

But it is contended by the learned agent of the United States, that though within the *letter*, the case is not within the *spirit* of the convention; submitting that the term "British subjects," used in the treaty, is not to be interpreted according to English law, but according to international law, and that by the latter a person *can only* be regarded as a citizen or a subject of the country in which he is for the

time being domiciled. I do not, however, understand it to have been assumed by the agent of her Majesty's government that the claimants, being "British subjects" within the terms of a British statute, are therefore *necessarily* "British subjects" within the meaning of the convention. It is clearly not the statute law of England which is to give the rule of interpretation, but the obvious intention of the parties to the treaty.

Now, it is undoubtedly true that treaties are to be interpreted according to international law, but international law does not affix an unvarying meaning to particular words, or prescribe any rule for the construction of treaties, other than that applicable to the interpretation of all written documents—namely, to discover and give effect to the intention of the contracting parties, which intention is to be collected from the language of the instrument of agreement, taken in connexion with surrounding circumstances to which it has reference.

The cases which have been cited by the American agent are authorities for the well known principle of international law, that foreigners, domiciled in an enemy's country, cannot set up a *neutral* character as against an invading force on account of their *foreign* origin, so as to entitle them to immunity from the ordinary consequences of war; and with this undoubted principle, the declarations of the English ministers in reference to the present war with Russia, as well as the recent decision of the admiralty court in the case of "The Abo," cited by the learned agent of the United States, are in strict conformity. It may be also, when we come to consider the *merits* of the Messrs. Laurent's claim, that this principle will be found to govern the decision which we shall have to give for or against the claimants; but upon examination of the cases cited, it is clear they do *not* establish the principle which they have been supposed to prove, viz: that the term "British subjects," as used in this treaty, cannot, under *any circumstances whatever*, be intended to apply to British subjects domiciled out of her Majesty's dominions.

Several cases which were decided under the treaty of 1814, between France and England, have been referred to.

The object of that treaty was to provide compensation for all "British subjects" whose property had been confiscated by the revolutionary government of France. If the construction which is *now* contended for by the American agent had been put upon the language of that

treaty, it would have followed that no persons domiciled in France could have been admitted to claim compensation under the title of "British subjects;" and such a construction would have gone far to defeat the very object for which the treaty was entered into, as it is a matter of history that the property of many persons, established as merchants or otherwise in France at the time of the revolution, was seized upon the very ground that the owners were British subjects, which shows that mere domicil does not settle the question; and moreover, on reference to the cases, I cannot discover that the construction contended for by the learned agent was put upon the French and English treaty.

Genessee's case, reported in the 2d volume of *Knapp's Reports*, *p.* 345, is one in which it distinctly appears that Messrs. Boyd and Kerr, the claimants, were established as bankers at Paris. Now, if the present objection were valid, it would have been a sufficient answer to that claim to have said, Messrs. Boyd and Kerr had established themselves for commercial purposes, and were domiciled in France; that they had voluntarily divested themselves of the character of British, and had assumed that of French subjects; and cannot therefore claim the benefit of a treaty which was intended for the protection of those British subjects only who had not quitted their own country. Messrs. Boyd and Kerr, however, were held to be clearly entitled to compensation as British subjects; and by the decision of the same eminent judge, Sir William Scott, whose judgments in other cases have been quoted in opposition to the admissibility of the claim of Messrs. Laurent in the present case. Drummond's case, decided under the same convention, has been especially relied on. The reasons, however, which are expressly given for the decision in that case, show it was *not* determined on the mere fact of the claimant being domiciled in France, *but that* from special circumstances—such as accepting military employment under the French crown—he had voluntarily taken upon himself the character of a French subject, and having done so, the new French government had a right to treat him as such, and consequently that he was not entitled to indemnity.

If there had been analogous circumstances in the present case I might have felt bound to hold that the Messrs. Laurent were not entitled to resume at pleasure, for their advantage, the character of British subjects, which, for their advantage, they had voluntarily renounced; but

in the entire absence of such circumstances, I am of opinion that mere residence abroad does not deprive them of all title to the protection of the British government, or can preclude that government from taking steps to procure for them redress if they have suffered an injury in violation of the law of nations, or absolve the American government from the liability to redress such an injury.

In the case of the "Ann," a British subject, who had been domiciled in the United States during the war between that country and Great Britain, sought to be admitted to the benefit of the orders in council which were intended to provide compensation for those British subjects who had been inadvertently injured in the course of the war by the English cruisers, the claimant, having adhered to the enemy, was plainly not one of the class of persons for whose relief the orders in council were issued. The injury he sustained was, under these circumstances, in no way wrongful. The decision therefore was not, as we are now asked to decide, that the claimant being domiciled abroad, could not, under any circumstances, be entitled to the character of British subject; but that he was not a British subject, within the meaning of the instrument then under consideration, entitled to redress. The "Indian Chief," reported in 3 Rob. Rep. 12, as well as the "President," in 5 Rob. Rep. 107, are both cases in which the claimants had acquired a hostile character against their own country, and, as enemies, had sustained losses which were rightfully inflicted on enemies. It was impossible therefore for them to establish a claim *against this country* upon the ground that they were British subjects, in the face of the fact of their having been in a position of hostility to Great Britain. In these cases, however, the *merits* and justice of the claim were in question, and they did not depend, nor were they decided, upon a mere question of domicil. It does not appear to me necessary to examine the other cases in detail, inasmuch as *none of them*, in my judgment, show that the term "British subject" necessarily excludes every person domiciled out of the British dominions. And it becomes our duty to ascertain, from the object and language of the present convention, the sense in which the words in question were employed by the contracting parties.

The object of the convention is stated to effect "a speedy and equitable settlement" of certain claims pending and which had become the subject of discussion between the two governments; and it is not merely for the settlement of the claims themselves, but, rather, to remove

them from the arena of discussion between the two governments, that the present tribunal has been erected; and it is therefore provided that all claims, &c., which may have been or might be presented to either government for its interposition with the other, should be referred to this commission.

It is a *fact* that the applications to the English and American governments for their interposition, one with the other, *have not* been confined to citizens or subjects domiciled in their own country, but the claims of persons domiciled abroad have in several instances become the subject of correspondence between the two governments; it appears to me therefore that if the sense in which the term "British subject" or "American citizen" are to be construed be sought in the context of the convention, it will be found that the contracting parties contemplated American citizens or British subjects, wherever resident, whose claims had actually been or might properly become the subject of the interposition of the one government with the other.

If, then, this be a correct mode of stating the question which we have to determine, it cannot be denied that the *practice* of governments has been to extend their protection to such of their citizens as may be domiciled abroad, and to insist upon, and with success, redress for injuries. Instances in which the American government has so extended its protection and demanded compensation have been mentioned; and the case of Don Pacifico shows that the English government has considered itself entitled to interfere on behalf of an Englishman, though domiciled abroad. And many other instances might be collected from the history of recent times.

Having regard therefore to the fact that both the English and American governments have from time to time interposed in respect of their subjects or citizens domiciled out of their respective countries, and that such interposition has in some instances led to the preferment of claims by the one government on the other which were pending at the time that the present convention was entered into, it is clear to me that the high contracting parties in entering into the present treaty intended to provide a tribunal for the settlement of all claims, whether preferred on behalf of subjects domiciled in the British dominions or elsewhere, and consequently that the claim of the Messrs. Laurent is admissible before us.

I cannot find any force in the argument, that if the Messrs. Laurent

are admitted under this convention as British subjects, thousands of American citizens by birth having claims against the American government, might also have presented them before the commissioners as British subjects by descent. If I am right in the rule of interpretation which I have adopted, it is clear that they could not; for it would be ridiculous to suppose that either of the contracting parties intended this international tribunal to adjudicate upon the claims of acknowledged citizens or subjects upon their own governments. The effect also of acquiescence in the interpretation to be given to the words "British subjects" in the treaty contended for by the learned agent of the United States, would be that henceforth no merchant residing in a foreign country could ever claim the assistance and protection of the government of the country of which he was a native, and to which country he owes allegiance. Thus an English merchant residing in France, or an American merchant residing in England, is to be considered as barred from appealing to England or America for protection and assistance.

Mr. Everett, in his correspondence with Lord Aberdeen on the rough rice question, incidentally maintains the same view of the law and practice of nations which I have already expressed, although he carries it somewhat further than is necessary for the purposes of the argument in the present case. The American minister there insisted on his right to interfere, under the treaty of commerce between Great Britain and the United States, on behalf of an English firm, claiming compensation for pecuniary damage done in consequence of a non-observance of the treaty, because *one* of the members of that firm was an American citizen, *domiciled* in England. If in that case *domicil* in England had ousted the American partner of his right to appeal to the United States government for protection, or for its interference in obtaining for him the compensation due for an injury thus done to him, Mr. Everett was wrong in claiming the right to interfere, and Lord Aberdeen was wrong in admitting it.

My judgment is founded on the following conclusions, at which, after a careful consideration of the arguments that have been advanced on either side, I have arrived. To recapitulate them, they are shortly as follows:

That the Messrs. Laurent are admitted to be—whatever else they may also be—British subjects.

That mere residence in a foreign country, in time of peace or war, does not deprive a merchant of his original citizenship or of the right to call for the protection of the government of his native country; although his continued residence in the country in time of war gives the right to the enemies of that country to consider and treat him as an enemy.

That although such residence may clothe him with certain rights of citizenship and involve certain liabilities, it does not divest him of his original national character.

That the practice and usage of nations sanction the interference of a government on behalf of its subjects or citizens resident abroad, as well as at home.

That consuls and diplomatic agents are specially instructed to watch over and protect the subjects of the countries of their respective governments resident in the countries to which they may be accredited.

That such being the usage and practice of nations, the words used in this treaty are to be interpreted in connexion with and by the aid of such usage and practice.

That, consequently, it was the intention of the contracting parties to the convention of 1853, that the commissioners appointed under it should decide according to justice and equity upon the claims of individuals in the position of the Messrs. Laurent.

BATES, Umpire:

The claim by the Messrs. Laurent is for damages which, they allege, they received in the year 1847, from the conduct of the United States General, Scott, who captured the city of Mexico in that year. The treaty of peace between the United States and Mexico settled all claims of Mexican citizens against the United States. The Messrs. Laurent present their claim as British subjects. It is quite clear that none but British subjects or citizens of the United States can have any *locus standi* before this commission.

It is denied, on behalf of the United States, that the Messrs. Laurent can claim to be British subjects within the meaning of the words "British subjects" as used in the convention by virtue of which this commission was appointed; and this seems to me to be the correct view of the case, both on principle and with reference to the reported authorities on the subject.

According to the municipal law of England, the Messrs. Laurent may be, for some purposes, still British subjects, but the language of the convention must be construed in accordance with the law of nations, and not according to the laws of any one nation in particular; and it is sufficiently clear that, by the rules of international law, and for the purposes of this commission, the Messrs. Laurent were, for the time being at least, Mexican citizens and not British subjects.

There are many authorities which bear on this question. Lord Stowell, in giving judgment in the case of the "Matchless," (1 *Haggard, page* 97,) said: "Upon such a question it has certainly been laid down by accredited writers on general law, and upon grounds apparently not unreasonable, *that if a merchant expatriates himself as a merchant to carry on the trade of another country, exporting its produce, paying its taxes, employing its people, and expending his spirit, his industry, and his capital in its service, he is to be deemed a merchant of that country, notwithstanding he may, in some respects, be less favored in that country than one of its native subjects.* Our own country, which is charged with holding the doctrine of unextinguishable allegiance more tenaciously than others, is no stranger to this rule. Its highest tribunals which adjudicate the national character of property taken in war apply it universally. They privilege persons residing in a neutral country to trade as freely with the enemies of Great Britain in

war as the native subject of that neutral country, although our own resident merchants cannot without special permission of the crown."

The words of Lord Stowell apply exactly to the case of the Messrs. Laurent. They, as far as in them lay, had expatriated themselves; they had resided twenty years in Mexico carrying on their business, and with every intention of remaining there, as is sufficiently evidenced by their wishing to buy the freehold of the house in which they were living; and, according to Lord Stowell's judgment, ought to be considered Mexican citizens.

In the case of the President, (5 *Robinson*, 277,) which vessel was captured on a voyage from the Cape of Good Hope to Europe, and claimed for Mr. J. Elmslie, as a citizen of the United States, it appeared that he had been a British-born subject who had gone to the Cape during the last war, and had been employed as American consul at that place. In giving judgment, Sir William Scott said: "This court must, I think, surrender every principle on which it has acted in considering the question of national character if it was to restore this vessel. The claimant is described to have been for many years settled at the Cape, with an established house of trade, and as a merchant of that place, and must be taken as a subject of the enemy's country." (The Dutch being then at war with England.)

In a recent case, "the Aina," decided in the admiralty court in June last: The claimant was a native of the free Hans Town of Lubec, and consul of his Majesty the King of the Netherlands, at Helsingfors, in Finland; he had lent money, before the war with Russia, on bottomry on the ship, which ship was captured by the British fleet in the Baltic. Doctor Lushington, in giving judgment, is reported to have said: "Two questions have arisen with respect to the present claim; first as to the national character of the claimant, whether he is to be considered an enemy or a neutral. With reference to this question, it is stated that he is a citizen of the free Hans Town of Lubec, and consul of his Majesty the King of the Netherlands, at Helsingfors, in Finland. Upon this I can put but one construction: that he is a resident in Finland, and carrying on business there. I take it to be a point beyond controversy that, where a neutral, after the commencement of the war, continues to reside in the enemy's country for the purposes of trade, he is considered as adhering to the enemy, and is disqualified from claiming as a neutral altogether."

I am unable to see why the principle laid down so fully in these cases (and many more might be cited) should not be applied to that of the Messrs. Laurent. They had, as before observed, long been residents in Mexico, they had a fixed home there, with apparently every intention of continuing to reside there, insomuch that they endeavored to buy a portion of the soil of Mexico.

I think, therefore, that for the purposes of this commission they were Mexican citizens and not British subjects, and that the commissioners do not form a tribunal competent to entertain their claims.

GEORGE HOUGHTON.

Where a ship, containing property of an English subject, was seized by a piratical vessel on the high seas, and was subsequently recaptured by a United States cruiser, and the ship and property was sold, and the proceeds went into the United States treasury, subject to certain claims of the captors, as established by law; *held* that remuneration should be made to the owner, deducting reasonable expenses and salvage.

The claimant is a British merchant, who was on his way from the Canary Islands, in a Spanish vessel, to Madeira, when, on the 23d day of May, 1816, they were seized by a pirate, who put most of the crew to death and robbed the vessel, whereby he lost, as he alleges, £1,500 in gold and silver.

The vessel was soon afterwards taken by a United States cruiser, and the crew was tried for piracy and the vessel sold; the proceeds of which, in part, with half of what was found on board at the time of the seizure, went into the United States treasury.

The memorialist brings his claim against the United States government for such just sum as the commissioners may deem right to award him, after deduction of proper salvage and expenses.

HANNEN, agent and counsel for Great Britain.

THOMAS, agent and counsel for the United States.

UPHAM, United States Commissioner, delivered the opinion of the commission:

This case has been submitted to us by the claimants and counsel, as one entitled, as far as we can consider it, to our sympathy, and to such relief as may be granted within the powers committed to us.

The prominent facts set forth in the memorial of the claimant are clearly shown. The property of which he was divested, in no manner passed to those who deprived him of it, and its recapture by a government vessel of the United States, did not change the right of ownership, except to the extent of such just claim of salvage as should be allowed on this account.

On every principle of justice and equity, and, as we believe, of sound international law, the claimant is entitled to remuneration to the extent named. It is to be regretted, however, that application was not early made to sustain the claim, by the requisite proof, before the proper tribunals appointed for this purpose, but we do not consider this omission should preclude him from all relief here.

The right to recover in such case is not a mere matter of clemency on our part. The obligation to make compensation, or restoration, where property has been piratically seized on the high seas, has been recognized in the treaties between the two governments, and their aid mutually pledged both to punish such offences and to restore such property.

The 20th article of the treaty of amity, commerce, and navigation, concluded between the United States and Great Britain on the 19th of November, 1794, provides that the governments will exert themselves to bring to condign punishment all persons concerned in piratical offences, and that "all ships, with the goods or merchandises taken by them, and brought into the port of either of the said parties, shall be seized, as far as they can be discovered, and shall be restored to the owners, or their factors or agents, duly deputed and authorized in writing by them, (proper evidence being first given in the court of admiralty for proving the property,) even in case such effects should have passed into other hands by sale, if it be proved that the buyers knew, or had good reason to suspect, that they had been piratically taken."—(1 *Laws of United States, ed. of* 1815, *p.* 218.)

This provision contemplates seasonable application and proper proof of ownership to be filed in the court of admiralty to secure such claim. The justice of it is, however, acknowledged, and we feel ourselves empowered to go behind the mere form of relief, and grant some compensation for the loss incurred; and we therefore allow the claim, deducting such reasonable expenses and salvage as is established by the laws of the United States.

HUDSON'S BAY COMPANY.

Prior to the extension of a territorial government over Oregon Territory, the settlers had voluntarily formed themselves into a temporary government. While in this situation war occurred with the Indians, and various settlers were killed or taken into captivity by them. Application of the then existing government was made to the Hudson's Bay Company for assistance, which was rendered, and resulted in the relief and restoration of the Americans who had been captured; *held* that a claim for compensation against the United States under such circumstances should be allowed.

Held, also, that a similar claim for expenditures incurred in procuring, by request of United States officers on the coast, the release of American shipwrecked mariners from captivity by the Indians should be allowed.

In the autumn of 1847, a number of American emigrants and settlers in Oregon were attacked and captured by the Cayeuse Indians. In this attack Dr. Whitman, an American missionary, and his wife and eleven others, were murdered, and sixty-four persons captured. These captives were ransomed through the agency of the Hudson's Bay Company.

The country was not at that time under a government regularly established by the United States, but the settlers had formed themselves into an organization and government of their own, and they immediately passed resolves authorizing the enlistment of five hundred men, and the borrowing of ten thousand dollars, to repel the attacks of the Indians, and appointed commissioners to negotiate a loan.

They applied for this purpose to the Hudson's Bay Company. Their agents did not feel authorized to make a loan, but rendered to the volunteers who were raised assistance in provisions and stores to the amount of $1,800, as is alleged by them, and is acknowledged by the officers of the said government. Of this amount, it appears that $599 have been paid by the Oregon government, leaving a balance due of $1,201.

The company also claim a further sum of $1,838 91 of the United States government for goods supplied from Vancouver's Island in December, 1851, on the application of American officers on that coast for the purpose of procuring the release of certain American mariners who were shipwrecked near Queen Charlotte's Sound, and were retained in captivity by the Indians.

HANNEN, agent and counsel for Great Britain.

THOMAS, agent and counsel for the United States.

HORNBY, British Commissoner, delivered the opinion of the commission:

In this case, we are fortunately relieved from any conflict between the parties, as I understand it to be conceded that the case is submitted to our consideration for such allowance as we think is justly sustained.

It will not be denied that the settlers of the Oregon Territory were entitled to the protection and aid of the United States government. She had not, up to the period of the calamity referred to, extended a formal territorial government over the country, but her citizens, in considerable numbers, had gone on, in advance of provision made for them in that respect, and were occupying the country for the ultimate benefit of the United States, and with the early expectation of the formal extension of the powers of the government over them.

While in this situation, they had established, temporarily, a government of their own, and were attacked by the Indians, under circumstances of much barbarity, and which were calculated to put in jeopardy the safety of the whole colony.

The circumstances required immediate effort and assistance, and this assistance, as far as was in their power, was promptly rendered by the agents of the Hudson's Bay Company.

The form of the claim as it originally existed, was not directly against the United States, but no objection is interposed from that cause. The assistance is precisely of the character the government would have rendered, could application have been made to it; and, on every consideration, we are quite sure we shall have its approbation in the allowance of the claim which appears to be preferred here for the first time.

The other item of claim depends on circumstances somewhat similar.

Assistance rendered to shipwrecked mariners is in conformity to the established policy of both governments through their consuls, and other officers abroad, and in this case, the captivity of these men by savages was superadded.

The assistance rendered through the agents of this company, made by request of Americans on the coast, secured the release of these unfortunate men, and I am happy in having the concurrence of my colleague in granting full remuneration for the expenditures incurred in effecting so laudable an object. The claims for these services are therefore allowed.

WILLIAM COOK AND OTHERS.

Where claim was presented by American citizens as next of kin and heir of a deceased intestate in England, whose property had gone into custody of the crown, for want of heirs, *held* that it did not come within the jurisdiction of the commissioners, and was not within the class of cases designed to be embraced in the convention.

The fact that a case is brought within the letter of the convention is not conclusive as to the question of jurisdiction. The commissioners may go behind this to inquire whether it is within the class of cases that have been recognized and acted upon as matters of international adjudication.

This is a claim for £24,000 and upwards, alleged to be in the custody of her Majesty's government, it being the personal property, and effects of the late Frances Mary Shard, widow, formerly of Trenton, New Jersey.

The claimants assert that they are the only surviving relations, and next of kin of Mrs. Shard, and as such, are entitled to the property of which she died possessed. That Frances Mary Shard was the relict of William Shard, esq., and was the daughter of Robert Rutherford, (an innkeeper,) and his wife Margaret, and was born in Trenton, about the year 1758.

That she left Trenton when about fifteen years of age, went to Europe, and married in London, in 1788, and at the time of her death, in 1819, had no surviving relatives, excepting the children of her father's sister, who, in 1743, married George Davis, a tailor, at Trenton, from whom the claimants are descended.

The claimants allege that the property of Mrs. Shard has gone into the custody of the British government, to be holden in trust for her heirs, and that they now make their claim as such, and as American citizens for its recovery from the British government.

Exception was taken to the jurisdiction of the commissioners, on grounds that will appear in the points taken by the counsel, and was fully argued, and submitted on this question.

HANNEN, counsel and agent for Great Britain:

Contended that the claim was not within the jurisdiction of the commissioners.

The convention was entered into for the settlement of those claiming only upon either government, which might properly have been made the subject of diplomatic action or intervention. Had this case ever been presented to the notice of her Majesty's government by that of the United States, previous to this convention being entered into, the obvious answer would have been, that it was a matter exclusively within the cognizance of the ordinary courts of law, and that the claimants must establish their rights there in the same way that English subjects would be bound to do under similar circumstances.

The same answer must be given now, that the case is presented to the commissioners. It is not intended to invest them with a supreme power in all cases in which a citizen or subject of the one country might assert a claim against the government of the other. Their commission does not authorize them to assume the peculiar functions of the courts of either country.

The universal doctrine now recognized by the common law is, that succession to personal property is governed, exclusively, by the law of the actual domicil of the intestate at the time of his death. (*Story's Conflict of Laws, sec.* 451.)

It is also well settled by the same authority, *sec.* 513, that an estate cannot be administered in the absence of a personal representative, and such personal representative in England, must obtain his right to represent the estate from the ecclesiastical courts of the country.

2. It is further contended that the property of Mrs. Shard had never vested in the crown, but was holden by specific agents of the crown, as trustees, answerable in the courts of the country to any rightful administrator who might appear, and that the funds thus holden were, in no proper manner, the funds of the government.

THOMAS, Agent and Counsel for the United States, and J. L. CLARK, counsel for claimants, contended:

I. That the method of treating similar cases in the English courts was inconclusive, as to the question of jurisdiction, and that it was a well known principle that whenever treaties between nations come into collision with local regulations they entirely override and annul them.

This case, is, in its terms, clearly within the provisions of the treaty of February 8, 1853, and any supposed inconvenience in adjudicating on that class of cases should not be permitted to oust the commissioners of their jurisdiction over them.

II. Her Majesty's government has an interest in the subject matter of dispute. The property of Mrs. Shard is now in the hands of the government, and is claimed as the property of the government.

Formerly the right of ultimate heirship was one of the personal rights of the crown, but this right, with various other rights, pertaining to the personal occupant of the crown, has long since been transfered to and vested in, the government, or crown, as distinct from the person. This surrender was made by George III, in consideration of a clear yearly revenue settled upon him, to be paid out of the aggregate funds of the government, for the support of his Majesty's household. (See act of 1 *Geo. III, chap.* 12.) Similar provisions have been made on each subsequent accession to the throne, as see 1 *Geo. IV, chap.* 1; 2 *and* 3 *William IV, chap.* 116; 1 *and* 2 *Victoria, chap.* 2.

In this case the Queen, in her private capacity, is wholly uninterested as to what is done with the property now claimed. Her personal income is, in no manner, increased, diminished, or effected by any disposition which has been, or may be hereafter made of it.

UPHAM, United States Commissioner, delivered the opinion of the commission:

This case has been ably argued on the question, what are the rights of the crown as to this property, and whether it is a mere personal claim or a claim of the government. The laws settling on the personal representative of the crown, from time to time, a fixed yearly income, on the express relinquishment of the former uncertain and changeable revenues of the crown, seems to place them on the same basis as other revenues.

The act of 39 and 40, Geo. III, also expressly declares that the representatives of the crown are unable to dispose of, by will or otherwise, any property which comes to them with or in right of the crown. This would seem to set at rest any claim to control over such revenues as personal property.

There is a question, however, behind this which I regard as fully conclusive of our jurisdiction in this case.

It may be conceded that the claim comes nominally within the letter of the convention. This, however, does not settle the question of jurisdiction. It is quite clear we may go beyond its terms to the consideration of the various classes of cases embraced in ordinary international controversies; and if any class of claims have not been heretofore regarded as matters of international adjustment, we are not necessarily bound to regard them as included within the provisions of the convention.

No instance can be found of the interference of government with the question of ordinary heirship and succession of estates in other jurisdictions. They are ever left to local action and jurisdiction of the courts of the countries where situated. There is every reason why it should be so.

The claim comes before us, then, in altogether an unwonted position; and we are fully of the opinion that it is not of the class of cases designed to be embraced within the convention, and that we have no jurisdiction over it.

SCHOONER WASHINGTON.

Construction of the treaty of 1818 *relative to fisheries on the coasts of North America.*

The clause in said treaty in which the United States renounced the liberty "to take, dry, and cure fish, on certain coasts, bays, harbors, and creeks of his Britannic Majesty's dominions of North America," *held* not to include the Bay of Fundy.

The Bay of Fundy *held* to be an open arm of the sea, so as not to be subject to the exclusive right of Great Britain as to fisheries.

The schooner Washington, while employed in fishing in the Bay of Fundy, ten miles distant from the shore, was seized by her Britannic Majesty's cruiser, and taken to Yarmouth, in Nova Scotia, and condemned, on the ground of being engaged in fishing in British waters, in violation of the provisions of the treaty relative to the fisheries, entered into between the United States and the British government on October 20, 1818.

Claim of damage was made before the commission on the ground that the seizure was in violation of the provisions of that treaty and of the law of nations.

THOMAS, agent and counsel for the United States.

HANNEN, agent and counsel for Great Britain.

UPHAM, United States Commissioner:

In 1843 the fishing schooner Washington was seized by her Britannic Majesty's cruiser, when fishing, broad, as it is termed, in what is called the Bay of Fundy, ten miles from the shore.

This seizure was justified on two grounds.

1. That the Bay of Fundy was an indentation of the sea, extending up into the land, both shores of which belonged to Great Britain, and that for this reason she had, by virtue of the law of nations, the exclusive jurisdiction over this sheet of water, and the sole right of taking fish within it.

2. It was contended that, by a fair construction of the treaty of October 20, 1818, between Great Britain and the United States, the United States had renounced the liberty, heretofore enjoyed or claimed, to take fish on certain bays, creeks, or harbors, including, as was contended, the Bay of Fundy, and other similar waters within certain limits described by the treaty.

The article containing this renunciation has various other provisions, supposed to throw some light on the clause of renunciation referred to. I therefore quote it entire, which is as follows: "Whereas differences have arisen respecting the liberty claimed by the United States to take, dry, and cure fish on certain *coasts*, *bays*, harbors, and creeks of his Britannic Majesty's dominions *in America*, it is agreed that the inhabitants of the United States shall have, in common with the subjects of her Britannic Majesty, the liberty to take fish on certain portions of the southern, western, and northern *coast* of Newfoundland, and also on the *coasts*, *bays*, harbors, and creeks from Mount Joly on the southern *coast* of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along *the coast*; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled *bays*, harbors, and creeks of said described *coasts*, until the same become settled. And the United States renounce the liberty *heretofore enjoyed* or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of *the coasts*, *bays*, creeks, or harbors of his Britannic Majesty's dominions *in America*, not included within the above mentioned limits: provided, however, that the American fishermen shall be admitted to enter *such bays* or harbors for the purpose of *shelter*,

and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

The first ground that has been taken in the argument of this case is that, independent of this treaty, Great Britain had the exclusive jurisdiction over the Bay of Fundy as part of her own dominions, by the law of nations. As this matter, however, is settled by the treaty, the position seems to have no bearing on the case, except as it may tend to show that the United States would be more likely to renounce the right of fishing within limits thus secured to Great Britain by the law of nations, than if she had no such claim to jurisdiction.

But on this point we are wholly at issue. The law of nations does not, as I believe, give exclusive jurisdiction over any such large arms of the ocean.

Rights over the ocean were originally common to all nations, and they can be relinquished only by common consent. For certain purposes of protection and proper supervision and collection of revenue, the dominion of the land has been extended over small enclosed arms of the ocean, and portions of the open sea, immediately contiguous to the shores. But beyond this, unless it has been expressly relinquished by treaty or other manifest assent, the original right of nations still exists of free navigation of the *ocean*, and a free right of each nation to avail itself of its common stores of wealth or subsistence.—(*Grotius, Book* 2, *ch.* 2, *sec.* 3; *Vattel, Book* 1, *ch.* 20, *secs.* 282 *and* '3.)

Reference has been made to the Chesapeake and Delaware bays, over which the United States have claimed jurisdiction, as cases militating with this view; but those bays are the natural outlets and enlargements of large rivers, and are shut in by projecting headlands, leaving the entrance to the bays of such narrow capacity as to admit of their being commanded by forts, and they are wholly different in character from such a mass of the ocean-water as the Bay of Fundy.

There is no principle of the law of nations that conntenances the exclusive right of any nation in such an arm of the sea. Claims, in some instances, have been made of such rights, but they have been seldom enforced or acceded to.

This is well known to be the prevailing doctrine on the subject in

America, and it would have been surprising if the United States negotiators had relinquished, voluntarily, the large portions of the ocean now claimed by Great Britain as her exclusive right, under the provisions of this treaty, on the ground that it was sanctioned by the law of nations.

It would have been still more surprising if it had been thus relinquished, after its long enjoyment by the inhabitants of America in *common*, from the time of their first settlement down to the revolution, and from that time by the United States and British provinces, from the treaty of 1783 to that of 1818.

I see therefore no argument, in the view which has been suggested, to sustain the right of exclusive jurisdiction claimed by England.

2. I come now to the consideration of the *second* point taken in the argument before us, which is, that by the treaty of 1818 the United States *renounced* the right of taking fish within the limits now in controversy. This depends on the construction to be given to the article of the treaty which I have already cited.

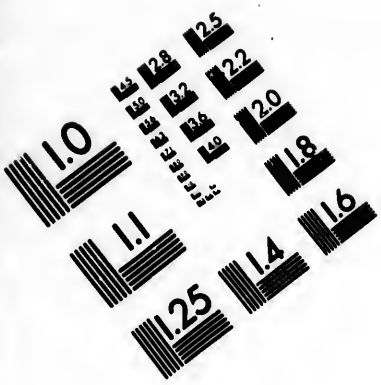
In the construction of a treaty, admitting of controversy on account of its supposed ambiguity or uncertainty, there are various aids we may avail ourselves of in determining its interpretation.

"It is an established rule," says Chancellor Kent, "in the exposition of statutes," and the same rule, I may add, applies to treaties, "that the intention of the lawgiver is to be deduced from a view of the whole and of every part of a statute, taken and compared together, and the real intention, when accurately ascertained, will always prevail over the literal sense of the terms."

He further says, "when the words are not explicit, the intention is to be collected from the occasion and necessity of the law, from the mischief felt, and the remedy in view; and the intention is to be taken or presumed, according to what is consonant to reason and good discretion.—(1 *Kent's Com.* 462.)

Now there are various circumstances to be considered in connexion with the treaty, that will aid us in coming to a correct conclusion as to its intent and meaning.

These circumstances are the entire history of the fisheries; the views expressed by the negotiators of the treaty of 1818, as to the object to be effected by it; the subsequent practical construction of the treaty for many years; the construction given to a similar article



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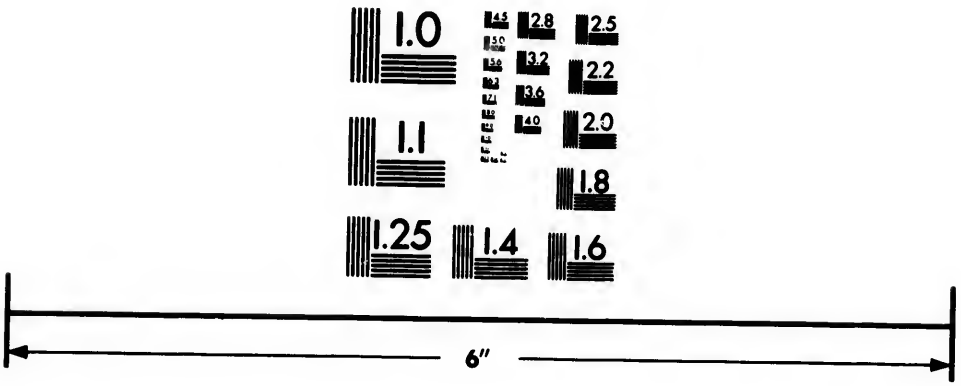

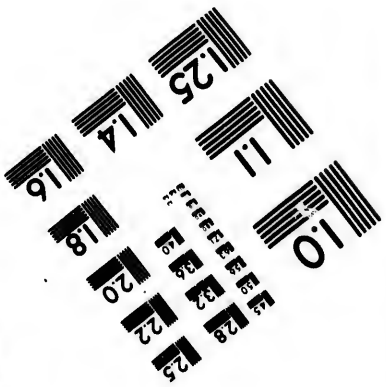

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in the treaty of 1783; the evident meaning to be gained from the whole article taken together; and from the term "*coasts*," as used in the treaty of 1818, and other treaties in reference to this subject. All these combine, as I believe, to sustain the construction of the provisions of the treaty as contended for by the United States.

It will not be contested that the inhabitants of the territory now included within the United States, as a matter of history, have had generally the common and undisturbed right of fishery, as now claimed by them, from the first settlement of the continent down to the time of the revolution, and that it was subsequently enjoyed in the same manner, in common by the United States and the British provinces, from the treaty of 1783 down to the treaty of 1818.

This right was based originally on what Dr. Paley well regards, in his discussion of this subject, "as a general right of mankind;" and the long and undisturbed enjoyment of it furnishes just ground for the belief that the United States negotiators would be slow in relinquishing it. They certainly would not be likely to relinquish more than was asked for, or what the United States negotiators a few years before contended was held by the same tenure as the national independence of the United States, and by a perpetual right.

In the negotiation of the treaty of peace of 1814 no provision was inserted as to the fisheries. Messrs. Adams and Gallatin notified the British commissioners that "the United States claimed to hold the right of the fisheries by the same tenure as she held her independence; that it was a perpetual right appurtenant to her as a nation, and that no new stipulation was necessary to secure it."

The negotiators on the part of the British government did not answer this declaration, or contest the validity of the ground taken.

Afterwards, in 1815, the consultations had between Lord Bathurst and Mr. Adams, the then Secretary of State, relative to the fisheries, show on what grounds negotiations were proposed, which were perfected by the treaty of 1818; and that the renunciation desired, from the treaty of 1783, consisted of the *shore* or *boat fisheries*, which are prosecuted within a marine league of the *shore*, and of no others.

At the first interview of the commissioners, Lord Bathurst used this distinct and emphatic language: "As, on the one hand, Great Britain cannot permit the vessels of the United States to fish within the creeks and *close upon the shores* of the British territories, so, on

the other hand, it is by no means her intention to interrupt them in fishing anywhere in the open sea, or without the territorial jurisdistion, *a marine league from the shore.*''

Again; he said, on a subsequent occasion: ''It is not of fair competition that his Majesty's government has reason to complain, but of the preoccupation of British *harbors* and *creeks.*''—(*Sabine's Report on Fisheries, p.* 282.)

It is clear that it was only within these narrow limits the British government designed to restrict the fisheries by the citizens of the United States.

The views of Messrs. Gallatin and Rush, the American negotiators of the treaty of 1818, appear from their communication made to the Secretary of State, Mr. Adams, immediately after the signature of the treaty.

In this communication they say: ''The renunciation in the treaty expressly states that it is to extend only to the distance of three miles from the coast; and this point was the more important, as, with the exception of the fisheries IN OPEN BOATS IN CERTAIN HARBORS, it appeared that the fishing-ground on the *whole coast of Nova Scotia* was more than three miles from the shore.''

It thus appears that the negotiators of both governments concurred, at the time of making the treaty, in giving to it the intent and meaning now contended for by the United States.

It further appears that such was the intent and effect of the treaty of 1818, from the fact that the construction practically given to it for more than twenty years, and indeed down to the year 1842, conformed to the views of the negotiators as thus expressed.—(See *Sabine's Report, p.* 294.)

There are certain circumstances also appearing in the case, which show the evident reluctance of the British government to assert the exclusive pretensions ultimately put forth by them, and that they had been goaded to it, against their better sense, as to the construction of the treaty, by jealousies and laws of the colonists of a very unusual character, and which Great Britain was slow to sanction. And when she ultimately concluded to assert this claim, she tendered with it propositions for new negotiations, by which all matters connected with the colonies should be amicably adjusted.

I shall now consider the construction given to similar words of the treaty of 1783.

It will not be denied that the words used in the treaty of 1783 and the treaty of 1818, where they are identical, and where express reference is made to the provisions of the former treaty, mean the same thing. When the United States are said, in the treaty of 1818, to *renounce* the liberty *heretofore enjoyed and claimed*, it means the liberty heretofore enjoyed under the treaty of 1783; and the liberty *then* enjoyed was to take fish "*on certian bays and creeks*," without any limitations as to distance from them.

Now, what were *those bays and creeks* ON which—that is, *along the line of which*, drawn from headland to headland, the citizens of the United States were allowed to take fish under the treaty of 1783? It cannot be pretended that *the bays and creeks* there intended were any other than small indentations from the great arms of the sea. They certainly did not include the Bay of Fundy and other large waters. Because, if fishing was allowed merely ON that bay, as is now contended—that is, on and along the line of the bay from headland to headland—then all fishing *within* the Bay of Fundy would be excluded. But it is a well-known fact that the suggestion never was made, or a surmise raised, that the expressions used in the treaty of 1783 permitted the fishermen of the United States to go merely to the line of the Bay of Fundy, and restricted them from fishing within it.

A practice, therefore, for thirty-five years under this treaty of 1783 had determined *what classes of bays and creeks* were meant by the expressions there used.

The treaty of 1818 *renounced* the liberty *heretofore* enjoyed of fishing on these *identical bays and creeks*—that is, immediately on the line of them—and also further renounced the liberty of fishing *within a space of three miles of them*. But *the bays and creeks* here referred to were the same as those referred to in the treaty of 1783, and neither of them ever included the Bay of Fundy.

The express connexion between these two treaties is apparent from the face of them. Reference is made to the treaty of 1783 in a manner that cannot be mistaken; the subject matter is the same, and the language, as to the point in question, identical.

I contend, therefore, that the governments, in adopting the language of the treaty of 1783, in the treaty of 1818, received the words with

the construction and application given to them up to that time, and that neither party can now deny such construction and application, but is irrevocably bound by it.

There are other portions of the article in question that aid in giving a construction to the clause under consideration, and that irresistibly sustain the view I have adopted.

Thus it is provided, in another portion of the *same article* in reference to these *same creeks and bays*, that the fishermen of the United States shall be admitted to enter "SUCH *bays*," *for the purpose of shelter, and to obtain wood and water;* thus clearly implying that such bays are small indentations extending into the land to which fishing craft would naturally resort for *shelter, and to obtain wood and water*, and not large open seas like the Bay of Fundy.

There are numerous bays of this character, along the coast, within the Bay of Fundy; such as the Bay of Passamaquoddy, Annapolis, St. Mary's, Chignecto, Mines Bay, and other well known bays extending up into the land.

There is a further argument to sustain the American construction given to the treaty, derived from the meaning affixed to the term "*coasts*," as applied by the usage of the country, and which was adopted and embodied in the various treaties between France and England from a very early period, and has been continued down to the present time.

I have not seen this argument adverted to; but it seems to me important, and indeed of itself quite conclusive as to the matter in question, and I shall now consider it.

The term "*coasts*," in all these prior treaties, is applied to all the borders and shores of the eastern waters, not only along the mainland, but in and about the Gulf of St. Lawrence, and around all the larger and smaller islands where fisheries were carried on.

These coasts are thus defined and specified in the treaty of Utrecht between Great Britain and France in 1713, of Paris in 1763, and other treaties to the present time. In the treaty of Utrecht betwen France and England, the liberty of taking and drying fish is allowed "on the *coasts* of Newfoundland;" provision is also made as to the fisheries on the *coasts*, in the *mouth*, and in the *Gulf of* St. Lawrence.

Reference is made to these "*coasts*" in the same manner in the treaty of Paris, which took place after the conquest of Canada. The

French are permitted by this treaty to fish in *the Gulf* of St. Lawrence at a given distance from all "*the coasts*" belonging to Great Britain, as well those "of the continent" as those of the *islands* situated in the Gulf of St. Lawrence." The fishery also "*on the coasts*" of the comparatively small island "of Cape Breton out of said Gulf" is regulated and provided for; and further it is provided "that the fishery on the *coasts of Nova Scotia*, or Acadia, and everywhere else, out of the said Gulf, shall remain on the footing of former treaties."

Now I regard it as utterly impossible for any one looking at these treaties, with the map of the islands and waters in the Gulf or Bay of St. Lawrence, and in and around Nova Scotia, referred to in these treaties, to doubt for a moment that the term "*coasts*" was designed to apply, and did, in terms, apply to the whole contour of the mainland and the islands referred to, including the entire circuit of *Nova Scotia on the Bay of Fundy*.

These expressions are continued in the same manner in the treaty of 1783. The United States are there allowed to take fish in the Gulf of St. Lawrence, "on *the coast* of Newfoundland," and also "on the *coasts*, bays, and creeks of all other of his Britannic Majesty's dominions in America."

Again, in the preamble to the treaty of 1818, which we are now considering, it is said to have been caused by differences as to the liberty claimed to take fish on certain COASTS, bays, harbors, and creeks of his Britannic Majesty's dominions in America, and by the treaty provision is made as to the fisheries on *the coasts* of Newfoundland, and on "*the coasts*, bays, harbors, and creeks from Mount Joly, on the southern coast of Labrador, to and through the straits of Belle Isle, and thence northwardly indefinitely along the *coast;*" and then follows the renunciation from *the right before enjoyed* by the United States "to take, dry, or cure fish on or within three marine miles of any of THE COASTS, bays, creeks, or harbors of his Majesty's dominions in America."

It seems to me undeniable that the term *coasts* in all these treaties was well defined and known. The outlet of the St. Lawrence is equally well known by the term bay or gulf. The shores on that bay or gulf, and on the islands within it, are uniformly spoken of as "*coasts;*" and the same mode of designating the shores along this entire country is used in all these treaties in reference to the various waters where fisheries were carried on.

"The coasts" named in these treaties were not only the coasts of the Bay or Gulf of St. Lawrence, and of the island of Cape Breton, but extended from the head of the Bay of Fundy along the bay entirely around Nova Scotia to the Gulf or Bay of St. Lawrence.

There never had been any misunderstanding as to the application of this term, or denial of the right to fish on these coasts, as I have named them, under all these treaties down to 1818. The term coasts, as applied to Nova Scotia during this long period, was as well known and understood as the term "coasts" applied to England or Ireland; and it included the coasts on the Bay of Fundy as fully and certainly as the term coasts of England applies to the coasts of the English channel. It was a fixed locality, known and established, and the right of taking fish had always been "enjoyed there."

When, therefore, the treaty of 1818 "renounced the liberty, *heretofore enjoyed*, of taking fish within three marine miles of any of THE COASTS, bays, creeks, etc., of his Britannic Majesty's dominions," the renunciation was, for this distance from a fixed locality, as fully settled and established as language, accompanied by a long and uninterrupted usage, could make it.

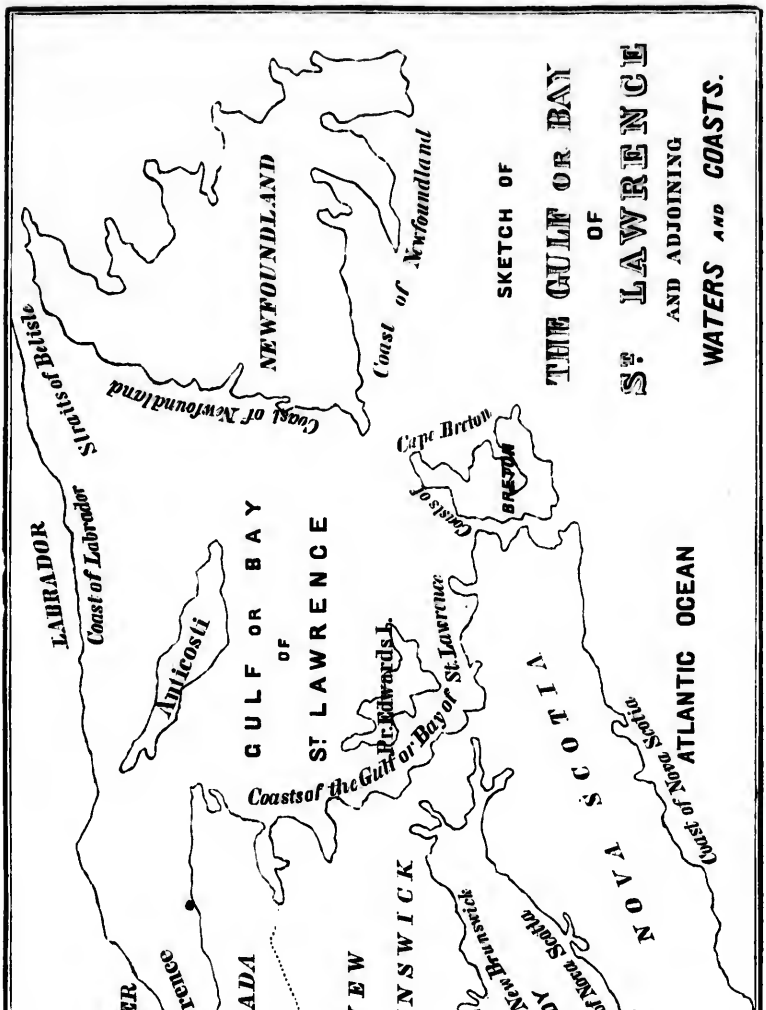
"The coasts" named are those of 1783, and of prior treaties, and the renunciation of three miles was to be reckoned from these coasts. The Bay of Fundy was therefore not excluded from the fishing grounds of the United States.

The annexed sketch of the Gulf or Bay of St. Lawrence, with the adjoining waters and coasts, will show how the term coasts was practically applied under all the treaties referred to prior to 1818.

I am not aware of any reply to the points here taken that I think can at all invalidate them.

From the papers filed in the case, it appears that in 1841, the province of Nova Scotia caused a case stated to be drawn up and forwarded to England, with certain questions to be proposed to the law officers of the crown.

One inquiry was, whether the fishermen of the United States have any authority to enter any of *the bays of that province* to take fish. These officers, Messrs. Dodson and Wilde, reply that no right exists to enter the bays of Nova Scotia to take fish, "as they are of opinion the term headland is used in the treaty to express the part of the land excluding the interior of the bays and inlets of the coasts."


SKETCH OF
THE GULF OR BAY
OF
ST. LAWRENCE
AND ADJOINING
WATERS AND COASTS.
LABRADOR
Coast of Labrador
Straits of Belisle
Coast of Newfoundland
NEWFOUNDLAND
Coast of Newfoundland
Cape Breton
Coasts of
BRETON
Anticosti
GULF OR BAY
OF
ST. LAWRENCE
Coasts of the Gulf or Bay of St. Lawrence
Pr. Edwards I.
LOWER
CANADA
River St. Lawrence
NEW
BRUNSWICK
Coast of New Brunswick
BAY OF FUNDY
Coasts of Nova Scotia
NOVA
SCOTIA
Coast of Nova Scotia
ATLANTIC OCEAN
MAINE

Now it so happens that no such term is used in the treaty, and their decision, based on it, falls to the ground.

They were also specifically asked to define what is to be considered a headland. This they did not attempt to do. The headlands of the Bay of Fundy have never been defined or located, and, from the contour of the bay, no such headlands properly exist.

These officers held that the American fisherman, for the reason named, could not enter the bays and harbors of Nova Scotia. But the Bay of Fundy is not a bay or harbor of the province of Nova Scotia, and was never included in its limits. The Bay of Fundy is bounded on one side by Nova Scotia, and on the other by New Brunswick, and it is not clear that either the question proposed, or answer given, was designed to include this large arm of the sea.

It is also said, that Mr. Webster has conceded the point in issue in a notice given to American fishermen. The claims, now asserted, were not put forth till many years after the treaty of 1818; and it was not until 1852 the British government gave notice that seizures would be made of fishermen taking fish in violation of the construction of the treaty of 1818, as then claimed by them, when Mr. Webster, to avoid the collisions that might arise, issued a notice setting forth the claims put forth by England.

In one part of his notice he says: "It was an oversight to make so large a concession to England," but closes by saying: "Not agreeing that the construction put upon the treaty by the English government is conformable to the intentions of the contracting parties, this information is given that those concerned in the fisheries may understand how the concern stands at present, and be upon their guard."

Mr. Webster subsequently denied relinquishing, in any manner, by this notice, the rights of the United States, as claimed under this treaty.

Detached expressions quoted from it, to sustain a different opinion, can hardly be regarded, under such circumstances, as an authority.

I have seen no other argument or suggestions tending, as I think, to sustain the grounds taken by the British government.

On the other hand, I have adverted, briefly, as I proposed, to the history of the fisheries; the views expressed by the negotiators of the treaty of 1818, as to the object to be effected by it; the subsequent

practical construction of it for many years; the construction given to a similar article in the treaty of 1783; the evident meaning to be gained from the entire article of the treaty taken together; and from the term "coasts" as used in the treaty of 1818, and other treaties in reference to this subject; and the whole combine, as I believe, to sustain the construction contended for by the United States.

I am therefore of opinion, the owners of the Washington should receive compensation for the unlawful seizure of that vessel by the British government, when fishing more than three miles from the shore or coast of the Bay of Fundy.

HORNBY, British Commissioner:

An opinion was delivered by Hornby conflicting with the views and conclusion of the United States commissioner, and sustaining the position taken by his government, on the ground that Great Britain, by virtue of her ownership of both shores of the Bay of Fundy, had exclusive jurisdiction over the waters of the bay, by virtue of the law of nations, applicable to such sheets of water, and cited various claims that had been put forth to a similar jurisdiction.

He also held that the provision in the treaty by which the United States "renounced the liberty previously enjoyed to take, dry, or cure fish on, or within three marine miles of any of the coasts, bays, creeks, or harbors of his Britannic Majesty's dominions in North America," excluded by its terms, and by a just construction of the treaty, fisheries of the United States citizens in the Bay of Fundy.

NOTE.—The opinion of the British commissioner in this, and some other cases, was to hav been drawn up at length, and furnished, to be placed on file. It is to be regretted that these opinions have not been received, and that, after this length of time, they pro bably will not be.

BATES, Umpire:

The schooner Washington was seized by the revenue schooner Julia, Captain Darby, while fishing in the Bay of Fundy, ten miles from the shore, on the 10th of May, 1843, on the charge of violating the treaty of 1818. She was carried to Yarmouth, Nova Scotia, and there decreed to be forfeited to the crown by the judge of the vice admiralty court, and with her stores ordered to be sold. The owners of the Washington claim for the value of the vessel and appurtenances, outfits and damages, $2,483, and for eleven years interest, $1,638, amounting together to $4,121. By the recent reciprocity treaty, happily concluded between the United States and Great Britain, there seems no chance for any future disputes in regard to the fisheries. It is to be regretted, that in that treaty, provision was not made for settling a few small claims of no importance in a pecuniary sense, which were then existing, but as they have not been settled, they are now brought before this commission.

The Washington fishing schooner was seized, as before stated, in the Bay of Fundy, ten miles from the shore, off Annapolis, Nova Scotia.

It will be seen by the treaty of 1783, between Great Britain and the United States, that the citizens of the latter, in common with the subjects of the former, enjoyed the right to *take* and *cure* fish on the shores of all parts of her Majesty's dominions in America, used by British fishermen; but not to dry fish on the island of Newfoundland, which latter privilege was confined to the shores of Nova Scotia in the following words: "And American fishermen shall have liberty to dry and cure fish on any of the unsettled bays, harbors, and creeks of Nova Scotia, but as soon as said shores shall become settled, it shall not be lawful to dry or cure fish at such settlement, without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground."

The treaty of 1818 contains the following stipulations in relation to the fishery: "Whereas, differences have arisen respecting the liberty claimed by the United States to *take*, *dry*, and *cure fish* on certain *coasts*, *bays*, *harbors*, and *creeks* of his Britannic Majesty's dominions *in America*, it is agreed that the inhabitants of the United States shall have, in common with the subjects of his Britannic Majesty, the liberty to fish on certan portions of the southern, western, and northern

coast of Newfoundland; and, also, on the coasts, bays, harbors, and creeks, from Mount Joly, on the southern coast of Labrador, to and through the straits of Belle Isle; and thence northwardly indefinitely along the coast, and that American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbors, and creeks of said described coasts, until the same become settled, and the United States renounce the liberty *heretofore enjoyed* or claimed by the inhabitants thereof, to take, dry, or cure fish, *on or within three marine miles* of any of the coasts, bays, creeks, or harbors of his Britannic Majesty's dominions in America, not included in the above mentioned limits: provided, however, that the American fishermen shall be admitted to enter such bays or harbors, for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

The question turns, so far as relates to the treaty stipulations on the meaning given to the word "bays" in the treaty of 1783. By that treaty the Americans had no right to dry and cure fish on the shores and *bays* of Newfoundland, but they had that right on the coasts, *bays*, *harbors*, and *creeks* of Nova Scotia; and as they must land to cure fish on the shores, bays, and creeks, they were evidently admitted to the shores *of the bays, &c.* By the treaty of 1818, the same right is granted to cure fish on the coasts, bays, &c., of Newfoundland, but the Americans relinquished that right, *and the right to fish within three miles* of the *coasts, bays, &c., of Nova Scotia.* Taking it for granted that the framers of the treaty intended that the word "bay or bays" should have the same meaning in all cases, and no mention being made of headlands, there appears no doubt that the Washington, in fishing ten miles from the shore, violated no stipulations of the treaty.

It was urged on behalf of the British government, that by coasts, bays, &c., is understood an imaginary line, drawn along the coast from headland to headland, and that the jurisdiction of her Majesty extends three marine miles outside of this line; thus closing all the bays on the coast or shore, and that great body of water called the Bay of Fundy against Americans and others, making the latter a British bay. This doctrine of headlands is new, and has received a proper

limit in the convention between France and Great Britain of 2d August, 1839, in which "it is agreed that the distance of three miles fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries shall, with respect to bays, the mouths of which do not exceed ten miles in width, be measured from a straight line drawn from headland to headland."

The Bay of Fundy is from 65 to 75 miles wide, and 130 to 140 miles long, it has several bays on its coasts; thus the word bay, as applied to this great body of water, has the same meaning as that applied to the Bay of Biscay, the Bay of Bengal, over which no nation can have the right to assume the sovereignty. One of the headlands of the Bay of Fundy is in the United States, and ships bound to Passamaquoddy must sail through a large space of it. The island of Grand Menan (British) and Little Menan (American) are situated nearly on a line from headland to headland. These islands, as represented in all Geographies, are situate in the Atlantic ocean. The conclusion is, therefore, in my mind irresistible, that the Bay of Fundy is not a British bay, nor a bay within the meaning of the word, as used in the treaties of 1783 and 1818.

The owners of the Washington, or their legal representatives, are therefore entitled to compensation, and are hereby awarded not the amount of their claim, which is excessive, but the sum of three thousand dollars, due on the 15th January, 1855.

THE BRIG ENTERPRIZE.

Every country is entitled to the free and absolute right to navigate the ocean, as the common highway of nations; and, while in the enjoyment of this right, retains over its vessels the exclusive jurisdiction.

A vessel, compelled by stress of weather, or other unavoidable necessity, has a right to seek temporary shelter in any harbor, *as incident to her right to navigate the ocean*, until the danger is past, and she can proceed in safety.

When a vessel, engaged in a lawful voyage by the law of nations, is compelled, by stress of weather, or other inevitable cause, to enter a harbor of a friendly nation for temporary shelter, the enjoyment of such shelter, being incident to the right to navigate the ocean, carries with it, over the vessel and personal relations of those on board, the rights of the ocean, so far as to extend over it, for the time being, the protection of the laws of its country.

The act of 3 *and* 4 *William IV., ch.* 73, abolishing slavery in Great Britain and her dominions, could not overrule the rights of nations, as sustained by these propositions.

The brig Enterprize sailed from Alexandria, in the District of Columbia, on the 22d of January, 1835, for Charleston, South Carolina.

She had on board seventy-three slaves, besides the owners of the vessel. She encountered severe weather on her passage, was driven from her course, and was ultimately compelled, by stress of weather, and her leaky condition, after being three weeks at sea, to put into Port Hamilton, in Bermuda, to refit, in order to enable her to proceed on her voyage.

While in port, the vessel was entered by persons claiming authority under the government, and the slaves were liberated.

Claim was early made for indemnity for such liberation, under the circumstances in which the vessel entered into port; and after much correspondence between the governments in reference to it, the claim was still pending at the time the convention was entered into, and it was then presented for adjustment by the commission.

HANNEN, agent and counsel for Great Britain, resisted the claim on the several grounds following, viz:

1. That laws have no force in themselves beyond the territory of the country by which they are made.

2. That, while by the comity of nations, the laws of one country are, in some cases, allowed by another to have operation within its territory when it is so permitted, the foreign law has its authority in the other country from the sanction given to it there, and not from its original institution.

3. That every nation is the sole judge of the extent and the occasions on which it will permit such operation, and is not bound to give such permission when the foreign law is contrary to its interests or its moral sentiments.

4. That England does not admit within its territory the application of any foreign law establishing slavery, having abolished the *status* of slavery throughout her dominions.

5. He contended that the condition of apprenticeship, as permitted to remain in the West India islands, formed no exception to the abolition of slavery throughout the British dominions, as it was a system entirely different from slavery, and would not justify sustaining any other description of slavery.

6. That the liberty of any individual in British territory could not be restrained without some law to justify such restraint, and that neither the apprentice law nor any other law could be appealed to to justify the detention of these negroes.

7. That slavery was not a relation which the British government, by the comity of nations, was bound to respect.

THOMAS, agent and counsel for the United States:

The transaction out of which this claim arose took place in the year 1835. On the 22d of January in that year, the brig Enterprize sailed from Alexandria, in the District of Columbia, bound for Charleston, South Carolina, having a number of negro slaves on board. Her papers were regular, and the voyage in all respects lawful. She encountered tempestuous weather and was driven from her course, and after having been three weeks at sea, she was unavoidably compelled, by stress of weather, to enter into Port Hamilton, Bermuda Island, where the negroes were forcibly seized on board and liberated by the local authorities of Great Britain.

It will be remembered that the slaves on board the Comet, in 1830, and the Encomium, in 1834, were liberated by the British authorities under circumstances entirely similar in principle. The owners of the negroes in all these cases, after applying, without success, to the authorities in Bermuda for their surrender, brought the matter before the United States government for the redress of the injury, and many years were consumed in negotiation; the British government, however, finally agreed to compensate the owners of the Comet and Encomium, on the ground that these cases occurred while slavery existed by British law, but refused compensation in the case of the Enterprize, for the alleged reason that at the time this vessel arrived at Bermuda, slavery had, by the emancipation act of 1833, been abolished throughout the British empire.

These are the important facts in this case, and I propose to show first that the principle which grants compensation in the cases of the Comet and Encomium, applies in all its force to the case of the Enterprize.

Compensation was not granted in the cases of the Comet and Encomium, because the owners were entitled to it by the laws of Great Britain. This is evident from the act of Parliament of 5 Geo. 4, c. 113, consolidating the laws for the abolition of the slave trade, and which received the royal sanction in 1824. The third and tenth section of that act provides "that any person who shall import or bring into any place whatever in the British possessions, slaves or other persons, in order to their being dealt with as slaves, shall be declared guilty of felony, and may be transported for a term of fourteen years."

This law was in force when both the Comet and Encomium arrived in Bermuda. It abolished slavery in regard to all persons imported, or brought into Bermuda, as effectually as did the act of the 28th August, 1833, abolish slavery in those persons who were already within the British empire. Yet the British secretary for foreign affairs admits that, notwithstanding the law forbidding the bringing in of slaves, the owners of those slaves on board the Comet and Encomium were lawfully in possession of them within British jurisdiction. It is, therefore, evident that the right to them did not depend upon British law, but must have rested upon the laws of their own country. The question then arises, how the laws of the United States could have force within British territory, and especially when contrary to the laws there existing? The answer to this question will be found in the code which regulates the intercourse of nations. These vessels, when on the high seas, were under the protection of the law of nations, and when driven by necessity into a foreign jurisdiction, they were surrounded by that law and shielded from any control of the local authorities. The overruling power of international law isolated the distressed vessel and the persons and property on board, and withdrew them from the operation of a municipal law to which they had not voluntarily submitted themselves, and preserved in force that of their own country.

The British secretary for foreign affairs has admitted that there is no difference between the cases of the Comet and Encomium and that of the Enterprize, except that the two former occurred before, and the latter one after the act of Parliament for the abolition of slavery in the British islands had taken effect. The act putting an end to the slave trade, to which I have referred, prohibited slaves from being brought in under any circumstances; but it did not overrule the law of nations. When slaves were found in Bermuda on board the Comet and Encomium, the American citizens, notwithstanding this law, kept possession of their slaves. Why, then, should the act of Parliament for the abolition of slavery in those negroes already in Bermuda have the effect to liberate slaves not brought in, but forced into British jurisdiction by necessity? The law emanated from the same authority; and if the slaves on board the Comet and Encomium were lawfully in possession of their owners within British territory, as Lord Palmerston says they were, for the same reason the

conclusion is irresistible that the slaves on board the Enterprize were in like manner lawfully held there by their masters.

But the chief argument in support of the position of the British minister, in justification of his refusal to grant compensation in the case of the Enterprize, and which has been strongly urged here, is, that "before the time this vessel arrived at Bermuda, slavery had been abolished throughout the British empire. Is this true? Had Great Britain done what the title of the act of Parliament imports? I propose to show that this so called philanthropic law did not abolish slavery throughout the empire; that it had in it a proviso which exempted a large part of the British possessions from its operation; and, consequently, that Lord Palmerston's argument entirely fails. I have before me the act of Parliament, dated the 28th of August, 1833, and which is entitled, "An act for the abolition of slavery throughout the British colonies." It partly took effect on the 1st day of August, 1834, and the twelfth section declares, "that from and after the said first day of August, 1834, slavery shall be, and is hereby, utterly and forever abolished and declared unlawful throughout the British colonies, plantations, and possessions abroad." If there was no reserving clause in this act, it would certainly mean that slavery had been abolished throughout the British colonies; but when we look at the forty-fourth section, it appears that no such interpretation can be given to it. That section is in these words:

"*And be it further enacted*, That nothing in this act contained doth or shall extend to any of the territories in the possession of the East India Company, or to the Island of Ceylon, or to the Island of St. Helena."

I have repeatedly called the attention of the British agent to this section of the law, which re-established slavery in these possessions, if the twelfth section abolished it, but he has been unable to make any explanation. I have asked him to show me when and how Parliament abolished slavery in these possessions of her Majesty in the east, and he has been unable to give me any answer. He has reposed entirely upon the assertion of the British minister, that slavery had been everywhere abolished in her Majesty's dominions, which we have seen is not sustained by the act of Parliament. The law for the extension of the East India Company's charter, passed on the very same day, proves even more clearly that the so-called emancipation act was

not designed to abolish slavery beyond the Cape of Good Hope, as it has been alleged it did. It will be seen by the eighty-eighth section of that act, that only a prospective abolition of slavery was designed in the parts of the empire under the East India Company. This act requires the governor general of India, in council, "to take into consideration the means of *mitigating* the state of slavery, and of extinguishing it throughout the said territories so soon as such extinction shall be practicable and safe;" and it further requires that "all the measures adopted for this purpose should every year be laid before both houses of Parliament." If it was true that slavery had been abolished before the time when these slaves on the Enterprize were liberated, the British agent could very easily give the proof by laying before the commission the documents submitted to Parliament by the governor general of India, but he has produced none; and I now repeat the call upon him, to show whether it ceased in the parts of the empire exempted by the act of 1833, before the time when these transactions took place. This he cannot do; for it will be found, by reference to Campbell's History of India, that the British courts in that colony took cognizance of the *institution of slavery*, as existing under *English law*, during Lord Ellenborough's governor-generalship. He entered on his duties in 1841. This was after all the slaves were liberated for which we claim compensation. So that slavery was recognized and existed by force of British law during the whole period of these transactions. The laws so recognizing it were on the statute book, yet, in the face of these acts of Parliament, the British minister formally maintained that slavery had been abolished throughout the British empire.

If the existence of slavery, which these facts so incontrovertibly establish, was known to the British minister when he made the assertion that it had been abolished throughout the British empire, then his declaration needs no comment from me; but if, on the contrary, he was ignorant of any such provision of the law, the government, or the British agent on its behalf, should hasten to retract this statement, and admit the justice of our claim.

In the argument of Lord Palmerston, which has been so much relied upon, he says: "If a ship containing animals were driven by stress of weather into a foreign port, it would be unjust to deprive the owner of his property by the operation of any particular law in force in that port." This is true, and because it is unjust the law of nations inter-

poses its authority, and takes the individual and his property under its protection.

A different doctrine is, however, held by his lordship in regard to a vessel so driven into a foreign port, having slaves on board. It is alleged that "there are then three parties to the transaction—the owner, the local authority, and the alleged slave;" and it is said that "the latter has an equal right with the former to appeal to the local law for such protection as the law of the land may afford him." This is an assumption of the whole question at issue, and in the next sentence he proceeds to make this assumption even more manifest; his lordship continues, "if men who have been held in slavery are brought into a country where the condition of slavery is unknown and forbidden, they are necessarily, and by the nature of things, placed at once in the situation of aliens, who have at all times from their birth been free."

Here it is assumed that these slaves were *brought into* the country, which was not the case, as they were forced in by distress. It is not denied that the "Enterprize" was driven in by necessity, as were the "Comet" and "Encomium." The latter two vessels, under the circumstances in which they entered into British jurisdiction, were not regarded by her Majesty's government as being under the control of the law for the abolition of slavery in slaves *brought in;* and it would then surely be unjust to construe any other law, emanating from the same legislature, to deprive persons of their slaves under the same circumstances. Not one of these vessels could, under the law of nations, be regarded as within the British jurisdiction. It is true, they were inside the boundaries of the territory of Great Britain, but in the waters where they floated the law of nations was supreme. It is not a new principle that persons and property may be within the limits of a foreign country and still be exempt from its control. It is so with ambassadors and other public ministers and their suites, and it is equally applicable to vessels that enter a blockaded port from necessity. The foundation of this right of foreign vessels to take possession of a part of the ocean, which one nation usually occupies as property, is to be found in the institution of property itself. Property was never designed to effect its own destruction, and hence, when that would take place, it ceases to be property. When a vessel at sea is in imminent danger of sinking, the captain or any other person on board has, in

order to save the vessel, the right to throw overboard his neighbor's property as well as his own. The division of property is at an end, and it becomes as common as the air or the light of heaven. A like principle is applicable to the individual member of society. He surrenders to the state the right to redress his wrongs and protect him from injury; but when he is attacked on the highway and his life put in imminent danger, his original rights revert to him, and he may lawfully put the assassin to death. If this same doctrine be applied to the division of portions of the high seas among nations, it will exempt the "Enterprize" from molestation in British waters. The ocean is the common property of all nations, and their vessels have the equal right to navigate it. But, by consent, nations have appropriated the bays and harbors and exercise a control over the distance of a marine league from the shore. When a vessel in distress comes into these waters where the nation ordinarily exercises jurisdiction, the nation's authority does not attach to the necessitous vessel. She has a right to enter the port, and may do so even in opposition to the authorities of the place.

This doctrine does not rest alone on general reasoning, but it is fully supported by Vattel. In remarking upon the duty of a nation to allow vessels the use of their waters, even when they are not in distress, and when it may be done without damage or danger, he admits, that in that case it may be refused, and makes the nation claiming the waters the judge in each particular case. But he says "it is otherwise in cases of necessity, as for instance, when a vessel is obliged to enter a road which belongs to you in order to shelter herself from a tempest." "In this case the right of entering wherever we can, provided we cause no damage, or that we repay any damage done, is, as we shall show more at large, *a remnant of the primitive freedom of which no man can be supposed to have divested himself, and the vessel may lawfully enter in spite of you, if you unjustly refuse her permission.*"

If the vessel can enter under these circumstances, it is the law of nations which enables her to do it, and exempts her from the local law, and secures her in the enjoyment of the laws of the country to which she belongs, till the distress be relieved, and she is enabled to depart with her cargo.

The argument of Lord Palmerston continues thus: "If, indeed, a municipal law be made, which violates the law of nations, a question of another kind may arise, but the municipal law which forbids

slavery is no violation of the law of nations. It is, on the contrary, in strict harmony with the law of nature, and therefore, when slaves are liberated according to such municipal law, there is no wrong done, and there can be no compensation granted."

I am unable to perceive any less criminality or less offence to foreign nations in construing a municipal law so as to violate international rights, and in making one to do that in express terms. The emancipation act of Great Britain is certainly no violation of the law of nations when its effect is confined to British jurisdiction; but when it is enforced in the territory of another country, it is as much so as if it had been expressly designed for that object. It has been shown by reason and by authority that the vessels of a nation driven by distress to seek shelter in a foreign port are guarded by international law, and remain subject to the laws of the country to which they belong. The enforcement of the emancipation act of Great Britain upon the American brig "Enterprize" was then a violation of the law of nations, for which we are entitled to damages.

The fallacy of his lordship's argument may be further shown by illustration. Suppose a vessel transporting soldiers from England to Canada should, by stress of weather, be compelled to enter the port of New York, and the marshal should go on board and say to the commander, your soldiers are enlisted for life, our law forbids the holding of soldiers for a longer time than five years, and those on board your vessel must be set at liberty. When her Majesty's government shall demand redress for this act, Lord Palmerston has furnished us the answer. We may reply, that the municipal law which forbids the enlistment of soldiers for more than five years is no violation of the law of nations; on the contrary, it is in strict harmony with it, and when soldiers are liberated according to this law there is no wrong done. This is an answer which would, I imagine, be quite as unsatisfactory to her Majesty's government as it has been to the United States.

At the risk of fatiguing the patience of the umpire on a question that must be already understood by him, I will illustrate, by another example not unlikely to occur, the fallaciousness of the British argument. By the laws of Turkey, one man is allowed to have a plurality of wives; in Christian countries it is not so. If a Turkish vessel should be driven by a storm into a British port, could the sheriff go

on board and take away one of the captain's wives by authority of the British law? The principle of the British government contended for is, that he could and might reply in his own justification, and on behalf of his government to any claim for reparation, that the municipal law of England, which forbids a man to have more than one wife, is no violation of the law of nations; it is, on the contrary, in strict harmony with the law of nature, and therefore when wives are liberated according to such municipal law, there is no wrong done, and no reparation can be made. These propositions are perfectly true, yet who will say this answer ought to be accepted by Turkey, or acquiesced in by the civilized world. It is, nevertheless, the response made by the British government to avoid making compensation for a violation of national rights under circumstances entirely similar. It is to prevent the injustice and confusion which the British rule would produce, that international law interposes its authority; and it has been a matter of surprise to me that the British government should wish to set aside a rule so beautiful in principle and so salutary in its results.

I have shown by the acts of Parliament that slavery was not abolished in the island of St. Helena, nor in her Majesty's possessions east of the Cape of Good Hope, by the emancipation act of 1833; and I shall now endeavor to prove that it had no such effect even in the West India colonies, till 1840.

The name of the condition of slavery was changed for that of apprenticeship, during the period from 1834 to 1840, the time the act took complete effect, and the civil rights of the slave received a gradual increase during that period; but they were still controlled by their masters, could be transferred by will, by bargain and sale, or sold under execution. These are the essential qualities of property, and not at all similar to the rights which the law of England gives to the master over his apprentice. Nevertheless, Lord Palmerston says: "These apprenticeships only give to the master, and for a limited time, with respect to the individual who was once his slave, the same rights which a master in England has by law over his apprentice." Lord Mansfield was of a different opinion, and held, in the case of the King *vs.* the Inhabitants of Stockland, that an apprentice was not assignable or transferable, without his consent. The West India apprentices could, as I have already said, be transmitted by will, transferred by bargain and sale, or sold on

execution, in the same manner as a horse or any other piece of personal property. Who ever knew an apprentice in England to be transmitted by will, or levied on as property and sold at auction? Apprenticeship is a personal trust which ceases on the death of the master; hence there is no similarity between the condition of apprentices and that of the negroes called apprentices in the West Indies, except in name. It is not true, then, as Lord Palmerston asserts in his despatch, that "these apprenticeships only gave to the master the same rights which a master in England has by law over his indentured apprentices."

The West India negroes were really slaves still; possessing, it is true, a few more rights than they had previous to the emancipation act. If these increased rights of the slave can change the name of his condition, we should also change the name of *slave* in the United States to something less harsh. The name *slave* was originally designed to describe a condition which no longer exists. When slavery was first established among men, it was a substitute for death, which the conqueror assumed the right to inflict upon his enemy. The slave had no rights except those which depended on the will of his master, but in the United States now, he possesses a large share of civil rights, and has become a domestic servant.

The policy of this act, in gradually augmenting the privileges of the negro, is not original with Great Britain; it had its origin in America. In those States where slavery has been abolished, slavery for years was first substituted instead of that for life; and the civil rights of the slave received an augmentation quite equal to that of the apprentices in the West Indies, yet they were still designated as slaves. If a vessel containing slaves of this description should, by stress of weather, be forced to seek refuge in Bermuda, could her Majesty's government discriminate between them and the negro apprentices in that island? I apprehend not. It cannot, therefore, be true that slavery was abolished at the period of these transactions, even if the municipal law be appealed to for the rule. On the contrary, the actual relation of the master and the negro was in effect the same as it was when the Comet and the Encomium were driven into British waters, and the slaves on board liberated. The obligation to pay for the slaves on board these vessels has been acknowledged and discharged, and I can perceive no reason, even from a British point of view, for refusing compensation in the case of the Enterprize.

The British secretary, in his dispatch, announces the doctrine that, since the emancipation act, no property can exist in slaves within her Majesty's dominions; and this declaration has been relied on by the British agent. This assertion contains the assumption, invariably made, that the slaves were within British jurisdiction, which it has been shown was not the fact. They were on board the vessel, which formed a part of the territory of the United States; and to maintain the position of the British government, it is necessary to take the absurd position that a nation has no right to make laws for its own government.

This same doctrine has been advanced by the British agent himself, though in somewhat different language from his minister. The counsel says: "The principle on which the right of every man to personal liberty within British territory is attached is that some law must be appealed to to justify the restraint of liberty, and neither the apprentice law nor any other law can be appealed to to justify the restraint of these negroes," and hence her Majesty's authorities were right in liberating them.

We appeal to the law of nations and the laws of the country to which the vessel belongs to secure the owner in the possession of his slaves; and it will not be difficult to show that the laws of England have heretofore, in cases entirely similar, given him protection. Reason and authority both concur in establishing the interpretation that international law isolates the vessel driven by necessity into a foreign port, and preserves in force the laws of her own country. She carries with her the rights which she possessed on the high seas, and it has been held in Westminster Hall that those rights, when invaded, may be enforced in a British court of justice, whatever may be the law of England on the subject. This was settled in the king's bench, in the case of Madraggo *vs.* Willes, reported in 3 Barnwell & Alderson. The plaintiff was a Spaniard, engaged in the African slave trade. This trade was illegal by the laws of England, but not so by the laws of Spain. The defendant, a captain in the British navy, seized on the high seas the plaintiff's ship with three hundred slaves on board, and they were set at liberty. A suit was brought, and the jury found twenty-one thousand pounds damages, "being three thousand pounds for the deterioration of the ship's stores, &c., and eighteen thousand for the supposed profit of the cargo of slaves." It was then contended,

as it has been before this commission, that as slavery was unlawful by the British statutes, no one could recover damages for slaves liberated under the circumstances in the case. But the court did not sustain this position; it held "that although the language used by the legislature in the statutes referred to is undoubtedly very large and extensive, yet it can only apply to British subjects, and can only render the slave trade unlawful if carried on by them; it cannot apply in any way to a foreigner." The court further said "that if this was a trade contrary to the law of nations, a foreigner could not maintain this action. But it is not; and, as a Spaniard cannot be considered as bound by the acts of the British legislature prohibiting this trade, it would be unjust to deprive him of a remedy for the wrong which he has sustained. He had a legal property in the slaves of which he has by the defendant's act been deprived."

It was not the law of England which secured these slaves to the Spaniard, for that law did not recognize the right of property in them; it must therefore have been the law of nations which gave the rule and which recognized slavery in its most odious form, and enforced that law, securing the Spaniard in the possession of his property in them.

It appears from this decision, rendered in 1820, that the court of king's bench protected at that time the right of property in slaves, although that condition was not then sanctioned by the laws of Great Britain. If England acknowledged this right at that time, and deemed it so sacred that she enforced it contrary to her own laws, it would seem extraordinary that the authorities of Bermuda should disregard this interpretation of the public law, and forcibly liberate the domestic slaves of the United States, passing on the high seas from one part of our country to another, and driven by distress to seek shelter in British waters. But strange as this disregard of the law declared by the king's bench may appear, the British cabinet has sustained it, and thus sanctioned a flagrant invasion of the rights of a friendly nation. The principles of law and justice remain the same, but England has changed her policy, and the judgment of her highest common law court no longer protects the foreigner in the enjoyment of his property.

I have already said that it is admitted, in the despatch of Lord Palmerston to which I have so often called the attention of the umpire,

that if a ship containing animals were driven by stress of weather into a foreign port, it would be unjust to deprive the owner of his property, by the operation of any particular law in existence there, because, in such case, there would be but two parties interested in the transaction, the foreign owner and the local authority; but when the property cast on a foreign shore is a slave, he contends that then the rule does not apply, because there are then three parties concerned, the foreign government, the local authority, and the alleged slave, and that the slave can appeal to the local law for his protection. This statement is, I repeat, an assumption of the point in controversy. It assumes that the slave is not property, and that he is, besides, under the jurisdiction of the local law, although driven into the foreign port by distress. In reference to the latter branch of the argument, it has already been shown that the vessel, with the slaves on board, was under the guardianship of the law of nations and exempt from the operation of the local law; but if this were not the case, and the jurisdiction were acknowledged, the slaves must be regarded as property, as much so as if a horse were found there. This is the English law, declared by Sir W. Scott in the case of Demerara and its dependencies, 1 Dod. Rep. This was a question respecting certain slaves which were taken at Demarara when that colony and its dependencies surrendered to his Majesty's land and sea forces. The captors prayed the condemnation of three hundred and ninety slaves as prize of war, on the ground that under the words of the prize act they would pass to the captors as "*goods or merchandise.*"

The first question, said Sir William Scott, is whether slaves are at all given to the captors by the prize act, that is, "whether they pass by the words 'stores of war, goods, merchandize, or treasure,' which, by the statute, are to be deemed prize. Now the fact is, that slaves have generally been considered as personal property. In our West India colonies, where slavery is continued, and is likely to continue, longer than in any of the countries of Europe, slaves have been for some purposes considered as real property, but I apprehend that, where the contrary is not shown, the general character and description of them is that they are personal property, and I see no reason in the present case for saying that they are not within the general rule, and, consequently, that they are not to be considered as 'goods or *merchandize.*' They are liable to be transferred by purchase and sale; and, although the owner

may choose to employ them on his own works instead of transferring them for a valuable consideration, they are not, I apprehend, the less 'goods or merchandise' on that account." Now suppose there was a law prohibiting the introduction of horses into England, and a vessel containing a cargo of these animals should be compelled to seek shelter in an English port, the British minister says this property would be returned to the owner because the animal may be made property. But we have seen by the case of Demerara and its dependencies, that by the English law slaves are considered as "*goods or merchandise*," and the right of property is as complete in a slave as it is in the horse. It seems to me, therefore, that upon the British doctrine they cannot refuse to restore our slaves on the ground that they are not property.

UPHAM, United States Commissioner:

The Enterprize sailed from Alexandria, in the District of Columbia, on the 22d of January, 1835, for Charleston, South Carolina. She had on board a cargo of merchandise and seventy-three slaves, with their owners. She was driven from her course, and, after being at sea three weeks, was compelled, through stress of weather and her leaky condition, to put in to Port Hamilton, in the island of Bermuda, until she could refit, and proceed on her voyage. While there, the slaves on board were seized and liberated by the authorities of the island.

Claim for compensation was made on the British government for the value of these slaves, and various communications have passed between the two governments on the subject.

In March, 1840, resolutions were submitted to the United States Senate relative to this claim, by Mr. Calhoun, which were adopted by that body, and which briefly set forth the principles on which the claim is based.

These principles are: "That a vessel on the high seas, in time of peace, engaged in a lawful voyage, is, according to the law of nations, under the exclusive jurisdiction of the State to which she belongs; and that, if such vessel is forced, by stress of weather or other unavoidable circumstance, into the port of a friendly power, her country, in such case, loses none of the rights appertaining to her on the high seas, either over the vessel or the personal relations of those on board."

It was contended that the Enterprize came within these principles, and that the seizure and liberation of the negroes on board of her, by the authorities of Bermuda, was a violation of these principles and of the law of nations.

On the other hand, it was contended by the British government that slavery had been abolished in the islands of Bermuda by the statute of 3 & 4 *Wm. IV, ch.* 73, passed August 28, 1833; and that the Enterprize, being locally within the jurisdiction of that colony, the slaves on board of her were rightfully liberated by virtue of such law.

This statement of facts raises the question as to the proper jurisdiction of the laws of either country over the Enterprize, under the circumstances in which she was forced into the harbor of Bermuda

The same question had previously arisen in the cases of the Comet and Encomium. These vessels had been thrown, by stress of weather, on the Bahama Islands, with slaves on board, which were liberated by the local authorities. A claim of compensation was made for these slaves, which was allowed and paid.

It is conceded in the correspondence with the British government, that the only difference between the cases referred to and the present is, that the act 3 & 4 *Wm. IV, ch.* 73, abolishing slavery throughout the British dominions, had not been passed at the time the slaves of the Comet and Encomium were liberated, but was in force when the claim under the Enterprize arose. Various other claims for compensation, under like circumstances with this case, have occurred; and they are constantly liable to occur, from the nearness of the British islands, especially the Bahamas, to the United States, and from the vast number of vessels constantly passing from one section of the Union to another between these islands and the mainland, engaged in the American coasting trade.

Mr. Webster, in his letter to Lord Ashburton of August, 1842, urged the adjustment of this question by the British government; and thus describes the Bahama Islands and the trade passing along their borders:

"The Bahama Islands," he says, "approach the coast of Florida within a few leagues, and, with the coast, form a long and narrow channel, filled with innumerable small islands and banks of sand. On this account, and from the violence of the winds, and the variable nature of the currents, the navigation is difficult and dangerous. Accidents are therefore frequent, and necessity often compels vessels of the United States, in attempting to double Cape Florida, to seek shelter among these islands." "Along this passage," he says (which is not less than two hundred miles in length, and on an average not more than fifty miles wide,) "the Atlantic States hold intercourse with the States situated on the Gulf of Mexico and the Mississippi river; and through this channel the product of regions, vast in extent and boundless in fertility, find their main outlets to the markets of the world."

During the few years since Mr. Webster's letter was written, the population of the United States has increased fifty per cent., with a

corresponding increase in the business of the section of country to which he refers.

The question before us, then, is one of great practical importance, and should be permanently settled, so as to avoid all grounds of collision between the two governments. Our province is to settle this case merely. It can be done, however, only by applying to it those broad and acknowledged principles of international law which furnish a general rule of conduct between nations.

I shall endeavour to ascertain what this law is. Before proceeding, however, to give my views fully on this subject, I shall advert briefly to the various points taken in the argument addressed to us by the learned consul for the British government.

These points are:

1. "That laws have no force, in themselves, beyond the territory of the country by which they are made."

My reply is, that this is usually the case; but it is subject to the important addition that the laws of a country are uniformly in force, beyond the limits of its territory, over its vessels on the high seas, and continue in force in various respects within foreign ports, as we shall hereafter show.

2. It is contended "that, by the comity of nations, the laws of one country are, in some cases, allowed by another to have operation within its territory; but, when it is so permitted, the foreign law has its authortiy in the other country, from the sanction given to it there, and not from its original institution."

3. "That every nation is the sole judge of the extent and the occasions on which it will permit such operation, and is not bound to give such permission where the foreign law is contrary to its interests or its moral sentiments."

As to these points, I concede that there are many laws of a foreign country, in reference to its own citizens or their obligations, that another nation may enforce or not, where the citizens of such a country voluntarily come within its borders, in order to place themselves under its jurisdiction. But there are cases where persons are forced by the disasters of the sea upon a foreign coast, where, as I contend, a nation has fundamental and essential rights, within the ordinary local limits of another country, of which it cannot be deprived, and

that are operative and binding by a sanction that is wholly above and beyond the mere assent of any such state or community.

Such rights are defined by jurists as the absolute international rights of states. I might also add, it is not now a question whether the doctrines of international law shall prevail either in England or America.

"International law," says Blackstone, "has been adopted in its full extent by the common law of England; and whenever any question arises which is properly the subject of its jurisdiction, it is held to be part of the law of the land."—(*Black. Com. vol.* 4, *p.* 67.)

International law is also recognized by the Constitution of the United States, and it is made the duty of Congress to punish offences against it.

4. It is contended "that England does not admit within its territory the application of any foreign laws establishing slavery, having abolished the *status* of slavery throughout its dominions."

This position is open to the exception taken to the second and third propositions, and is subject to the same reply.

5. It is contended "that the condition of apprenticeship, as permitted to remain in the West India Islands by the act of 3 & 4 *Wm. IV, ch.* 73, is no exception to the abolition of slavery throughout the British dominions; because, it is said, the system is entirely different from slavery in point of fact, and because, however near a resemblance it may bear to it, it could afford no justification for an English court to hold that another sort of slavery was valid."

Our reply to this is, that slavery does not necessarily depend on the length of time the bondage exists, but on its character.

The apprenticeship system continued, as to a portion of those to whom it was applicable, for twenty-one years; and few persons can calculate on a lease of life for a longer time.

Apprentices also were liable to be bought and sold, or attached for debt. The system therefore had all the worst characteristics of slavery.

Further, the act abolishing slavery acknowledged the legality and validity of slavery as an institution, as it rendered compensation for the liberation of slaves according to their respective valuations, and also gave to the owners of slaves the benefit of a term of intermediate service. If it was not considered right to liberate *British* slaves except

on these conditions, how can it be right to compel the liberation of American slaves, casually thrown within the country, when no such compensation has been made, or term of service secured to their owners?

This forced liberation of the slaves of another government, without compensation, is placed on the ground of the universal "abolition of slavery throughout the British dominions." Such abolition, however, was not effected by this act, as the 64th section provides, "that nothing in the act contained doth or shall extend to any of the territories in the possession of the East India Company, or to the island of Ceylon, or to the island of St. Helena." It was merely enjoined on the East India Company, by Parliament at the same session, "that they should forthwith take into consideration the means of mitigating slavery in their possessions, and of extinguishing it as soon as it should be practicable and safe," and slavery was not abolished in those provinces for some years subsequent to that period.

It is also said "that the provincial government of Bermudas, after the passage of the general act abolishing slavery, abolished the apprenticeship system prior to the liberation of the slaves on board the Enterprize;" but such abolition was not made till, under the general law, they had received compensation for their slaves.

6. "The principle on which the right of every man to personal liberty within British territory is attached is, that some law must be appealed to to justify the restraint of liberty; and that neither the apprentice law nor any other law can be appealed to to justify the restraint of these negroes."

To this we reply that the law of the country from which the vessel comes, as sustained and enforced by the law of nations, can as well be appealed to on this subject as on any other. It is expressly admitted in the argument, that the law of nations may be appealed to, as exempting property, other than slaves, in cases of shipwreck and disaster, and exempting vessels of war from ordinary municipal jurisdiction; and this is done by giving to the law of nations, in such case, the force and effect of municipal law, which is all that is asked to be done in this case.

7. It is contended "that slavery is not a relation which the British government, by the comity of nations, is bound to respect."

But such is not the doctrine of the British courts. They hold them-

selves bound, by the comity of nations, to respect both slavery and the slave trade; and they uphold and sustain it, in their decisions, where the rights of other nations are concerned.

In 3 *Barn. & Ald.* 353, *Maddrazzo* v. *Willes*, Chief Justice Abbott says, "it is impossible to say that the slave trade is contrary to the law of nations;" and Lord Stowell says, in *Le Louis*, 2 *Dodson's Admiralty Reports*, 210, "that the slave trade is not piracy or crime by the law of nations, and is therefore not a criminal traffic by such law; and every nation, independent of treaty relations, retains a legal right to carry it on."

Other grounds and arguments have been presented by counsel, but they are substantially included in those already named. These points have been accompanied by numerous citations of authorities. These citations, however, consist of decisions applicable to English citizens, or to persons voluntarily subjecting themselves to English jurisdiction, and therefore are not applicable to the case under consideration. Indeed, the argument admits the distinction we take, and concedes that vessels, driven into harbor by distress or disaster, are exempted from the ordinary jurisdiction of municipal law. It denies, however, that slaves on board such vessels are included in such exemption, on account of the passage of the act of 3 & 4 *Wm. IV, ch.* 73; and to this single point the argument seems to be practically reduced.

I shall now proceed, as I proposed, to state my views as to the principles of international law applicable to cases of this description. They are—

I. That each country is entitled to the free and absolute right to navigate the ocean, as the common highway of nations; and, while in the enjoyment of this right, retains over its vessels the exclusive jurisdiction of its own laws.

II. That a vessel, compelled by stress of weather or other unavoidable necessity, has a right to seek shelter in any harbor, *as incident to her right to navigate the ocean*, until the danger is past and she can proceed again in safety.

III. That *the enjoyment of such shelter*, being *incident to the right to navigate the ocean*, carries with it *the rights of the ocean*, so far as to retain over the vessel, cargo, and persons on board, the jurisdiction of the laws of her country.

IV. That the act of 3 & 4 *Wm. IV, ch.* 73, abolishing slavery in

Great Britain and her dominions, could not overrule the rights of nations as laid down in these propositions.

It will be perceived that this chain of argument is based on fundamental rights of nations. Much has been said, in the argument of this case, as to rights of persons; but it is apparent that the preservation of these rights must depend mainly on the agency of nations. They constitute organizations, designed, in the economy of Providence, for the security of man in a state of society. The preservation therefore of national rights, as the best constituted means for individual protection, cannot be too highly regarded. I shall briefly advert to some of these rights.

One of the absolute rights of nations is, that they shall all be regarded on terms of perfect equality with each other. This must be so, otherwise the rights of a nation, as such, would vary with its extent or power. But the rights of Spain are now the same as when she governed three-fourths of the American continent, and put forth her original boast, that her morning roll-call was caught up from one military station to another, and ran on, with the sun, around the globe.

Another of the absolute righs of nations is, that each nation must work out its own internal reforms, and establish its own system of internal policy, without the interference of any other power. Its government may, as its people elect, be based on hereditary right or universal suffrage; its religion may be Christian, Mahomedan, or Pagan; the marriage relation may include two persons or more; there may be subordination of caste, or rank, or slavery; but, however these institutions or relations may be constituted, no one nation has a right to interfere with or control another in these respects, or in any other, so long as such states keep within the recognized principles of the law of nations.

Another of the essential rights of nations is, the free use of the common means granted by nature for commercial intercourse with its own citizens and other nations; or, in other words, the free right to navigate the ocean. No national right is more important than this.

This proposition, which I have laid down as the first ground on which this claim rests, is stated as follows:

I. That each country is entitled to the free and absolute right to

navigate the ocean as the common highway of nations, and while in the enjoyment of this right retains over its vessels the exclusive jurisdiction of its own laws.

The Emperor Antoninus said, "though he was the lo' ' of the world, the law only was the ruler of the sea."

Grotius says, "that the sea, whether taken as a whole or as to its principal parts, cannot become property. For the magnitude of the sea is so great, it is sufficient for all peoples' use. There is a natural reason which prevents the sea from being made property, merely because occupation can only be applied to a thing which is bounded. Now fluids are unbounded, and cannot be occupied, except as they are contained in something else, as lakes and ponds are occupied, and rivers as far as their banks; but the sea is not contained by the land, being equal to the land, or greater, so that the ancients say the land is bounded by the sea."—(*Grotius, Book* 2, *ch.* 2, *sec.* 3.)

Vattel says, "that the right of navigating the open sea is a right common to all men; and the nation that attempts to exclude another from that advantage, does her an injury, and furnishes her with sufficient grounds for commencing hostilities." And "that nation which arrogates to itself an exclusive right to the sea does an injury to all nations; and they are justified in forming a general combination against it, in order to repress such an attempt."—(*Vattel, Book* 1, *ch.* 23, *secs.* 282 & 283.)

Indeed, the free right of each nation to navigate the ocean is now nowhere contested; and it carries with it, as a necessary result, the exclusive jurisdiction on the high seas of the laws of each country over its own vessels.

Phillimore, in his recent work on *International Law*, vol. i. p. 352, says, that "all authorities combine, with the reason of the thing, in declaring that, for all offences on the high seas, the territory of the country to which the vessel belongs is to be considered as the locality of the offence, and that the offender must be tried by the tribunals of his country;" and "it matters not," he says, "whether the injured person, or the offender, belong to a country other than that of the vessel." The rule is applicable to all on board. It is further well declared, that this right to navigate the ocean is a national one, and cannot be exercised by an individual except under the patronage and protection of his government. Thus it is holden, "that every ship is bound to

carry a flag, and to have on board ship's papers, indicating to what nation it belongs, whence it sailed, and whither it is bound, under the penalty of being treated as a pirate."—(1 *Phill. Internat. Law*, 216.)

A vessel, wherever she is borne on the high seas, is bound therefore to have a national character, and is part and parcel of a recognized government.

It is contended—

II. That a vessel compelled by stress of weather, or other unavoidable necessity, has a right to seek shelter in any harbor, *as incident to her right to navigate the ocean*, until the danger is past, and she can proceed again in safety.

This position I propose to sustain on three grounds: By authority; by the concession of the British government in similar cases; and by its evident necessity, as parcel of the free right to navigate the ocean, and therefore a necessary incident of such right.

1. The effect of stress of weather in exempting vessels from liabilities to local law, when they are driven by it within the ordinary jurisdiction of another country, is well settled by authority in various classes of cases, viz: in reference to the blockade of harbors and coasts; of prohibited intercourse of vessels between certain ports that are subject to quarantine regulations; intercourse between certain countries, or sections of countries, which is interdicted from motives of mercantile policy; and in cases of liability to general customs duties.—(Authorities on these points will be found in *The Frederick Molke*, 1 *Rob. Rep.* 87; *The Columbia*, *do.* 156; *The Juffrow Maria Schroeder*, 3 *Rob.* 153; *The Hoffnung*, 6 *do.* 116; *The Mary*, 1 *Gall.* 206; *Prince* v. *U. S.*, 2 *Gall.* 204; *Peisch* v. *Ware*, 4 *Cranch*, 347; *Lord Raymond*, 388, 501; *Reeves's Law of Shipping*, 203; *The Francis and Eliza*, 8 *Wheaton*, 398; *Sea Laws*, *Arts.* 29, 30 & 31; and *The Gertrude*, 3 *Story's Rep.* 68.)

In the last named case, the learned judge remarks, "that it can only be a people who have made but little progress in civilization, that would not permit foreign vessels to seek safety in their ports, when driven there by stress of weather, except under the charge of paying impost duties on their cargoes, or on penalty of confiscation, where the cargo consisted of prohibited goods." (See also *Kent's Commentaries* 145, and authorities there cited.)

The authority of writers on international law is also directly in point. Vattel holds to the free right of all nations to the use of the

ocean, with the exception that a portion of the ocean, immediately contiguous to the land, is subject to each government for the purposes essential to its protection. Even here, however, he says: Other nations have a right of passage through such portions of the sea when not liable to suspicion, and in cases of necessity the entire right of the government ceases; as, for instance, where a vessel is obliged to enter a road, in order to shelter herself from a tempest. In such case she may enter wherever she can, provided she cause no damage or repair any damage done. This is a remnant of his primitive freedom, of which no man can be supposed to have divested himself; and the vessel may lawfully enter, in spite of such foreign government, if she is unjustly refused admission."—(*Vattel, Book* 1, *ch.* 23, *sec.* 288.)

Again, he says, in another section, "a vessel driven by stress of weather, has a right to enter, even by force, into a foreign port."—(*Vattel, Book* 2, *ch.* 9, *sec.* 123; *Puffendorf, Book* 3, *ch.* 3, *sec.* 8.)

Vattel thus considers this an absolute right, that may be asserted at any hazard; and not a right resting in comity, or dependent on license, that may be modified or revoked. In the resort to force for the preservation of such rights, he is sustained by Phillimore and other modern writers on international law, who hold that the violation of rights, *stricti juris*, or the absolute rights of nations, "may be redressed by forcible means."—(*Phill. International Law, sec.* 143.) Grotius, Puffendorf, and other writers lay down as a general principle the rule which is applicable to this case: "That, in extreme necessity, the primitive right of using things revives, as if they had remained in common; and that such necessity in all laws is excepted."—(*Grotius, Book* 2, *ch.* 2, *sec.* 6; *Puffendorf, Book* 2, *ch.* 6, *secs.* 5 *and* 6; *Vattel, Book*, 2, *ch.* 9, *secs.* 119 *and* 120; *Bowyer's Commentaries on Public Law, p.* 357.)

2. The principles of law laid down by these various writers are also sustained by admissions of the British government, and by the allowance and adjustment of claims of precisely the same character as the one before us.

In the correspondence between the two governments in reference to this claim, it is admitted by Lord Palmerston, "that where a ship, containing irrational animals or things, is driven by stress of weather into a foreign port, it would be highly unjust that the owner should be stripped of what belongs to him, through the application of the municipal law of the State to which he had not voluntarily submitted himself."

This is an admission of the high injustice of seizing all property, except property in slaves; but the British government have in other cases conceded the application of the same principle to slaves.

This was done in the case of the Comet, to which I have before alluded, which was similar, in all essential particulars to this case. The Comet sailed from the District of Columbia in 1830, for New Orleans, having a number of slaves on board; she was stranded on one of the false keys of the Bahamas, and the crew and persons on board were taken by the wreckers into the port of Nassau, where the slaves were seized by the authorities of the island and liberated.

The case of the Encomium is of the same description. She sailed from Charleston in 1834, for New Orleans, with slaves on board; was stranded in the same place, and the crew and persons on board were taken into the same port, where the slaves were seized and liberated by the authorities.

Claim was presented for redress for these injuries, and after full discussion of the subject, compensation was made by the British government for the slaves thus liberated; and this compensation was rendered solely on the principle now contended for, that where a vessel is forced by stress of weather into a foreign port, she carries with her her rights, existing on the high seas, as to the vessel, property, and personal relations of those on board, as sustained by the laws of her own country.

That such was the ground on which these claims were allowed and paid is manifest, because they were slaves of a foreign country, brought within the limits of the British government, but not held there in bondage by any British law.

So far was this from being the case, that the statute of 5 *Geo. IV, ch.* 113, then in force, expressly prohibited bringing slaves from other countries into places within British jurisdiction, or retaining them there, under heavy penalties; and all persons offending against this law were declared to be felons, and were liable to be transported beyond sea, or to be confined and kept at hard labor for a term of not less than three, nor more than five years.

There was, then, no British law in existence by which these slaves could be holden; and the claim to compensation rested solely on the laws of the United States, which were holden to be rightfully operative, and in force against the persons claimed as slaves, under the circumstances in which the vessel was driven into port.

This result it is impossible to avoid, and the principle asserted is fully sustained by these cases. I am aware that the claim of the Enterprize, which was pending at the same time, was disallowed, on the ground of a subsequent change in the local law in reference to slavery. The slaves of the Comet and Encomium, however, were not holden by any of the local laws of the island, but were there in violation of them. The repeal of such local law, therefore, can in no manner affect the principle of the decision.

3. A further reason assigned for the point now under consideration is its evident necessity as a part of the free right of each nation to navigate the ocean, and as a necessary incident of such right.

Writers on public law, we have seen, assert a right to enter a foreign port, when driven there by stress of weather, on the ground of necessity. This necessity arises from perils on the deep, to which all navigation on the ocean is subject; and if such perils from this cause give the right of refuge, it becomes necessarily what I claim for it—an incidental right to the navigation of the ocean.

It is a necessity essential to the enjoyment of a clear and undeniable right; and whatever is essential to the enjoyment of a right, or is a necessary means of its use, is, *ex vi termini*, a necessary incident of such right.

This connexion I have not seen adverted to; and it is not laid down by the writers cited, as it was not essential to their purpose to follow out the origin, or causes from which the necessity arose. It is clearly embraced, however, in their propositions, and is important in this case, as it determines the true character of the rights arising from this necessity in a manner that admits of no question or controversy.

The claim is thus an incident to an absolute and essential right of nations, and is not a claim to the mere favor of any people, which they may give or deny at pleasure, out of any supposed exclusive jurisdiction of their own.

All incidental rights are based on necessities arising from the prior and original right. A right to the end uniformly carries with it a right to the means requisite to attain that end, or, as is stated by Mr. Wheaton, "draws after it the incidental right of using all the means which are necessary to the secure enjoyment of the thing itself."—(*Wheat., Part* 2, *ch.* 4, *secs.* 13 *&* 18.)

Further, incidental rights, of a similar character and attended with precisely the same result, as to entry within the territorial jurisdiction

of another government have been asserted in connexion with the right to navigate the ocean, and are holden as undoubted law. Thus the right to navigate the ocean is holden to give the right, *as incidental to it*, to persons inhabiting the upper sections of navigable rivers to pass by such rivers through the territory of other governments in order to reach the ocean, and thus participate in the commerce of the world.

Great Britain claimed and exercised this right with all its incidents against Spain in the navigation of the Mississippi; and when a Spanish governor undertook at one time to forbid it, and cut loose vessels fastened to the shores, it is asserted by Mr. Wheaton that a British vessel moored itself opposite New Orleans, and set out guards, with orders to fire on persons who disturbed her moorings. The governor acquiesced in the right claimed, and it was afterwards exercised without interruption.—(*Wheaton, Part* 2, *ch.* 4, *sec.* 18; *Grotius, Book* 2, *ch.* 2, *secs.* 12 & 13; *ch.* 3, *secs.* 7–12; *Vattel, Book* 2, *ch.* 9, *secs.* 126–130; *ch.* 10, *secs.* 132–134; *Puffendorf, Book* 3, *ch.* 3, *secs.* 3–6.)

The right to the use of navigable rivers, further, is holden to draw after it, as a means necessary to its enjoyment, the right to moor vessels to the banks of such rivers within another country, and the very right we here contend for—"to land in case of distress," and where a vessel is damaged to deposit her cargo on the shore until the vessel can be repaired, and it can proceed in safety.—(*Wheaton's Internat. Law, Part* 2, *ch.* 4, *secs.* 13–18; *Grotius, Book* 2, *ch.* 2, *secs.* 11–15; *Puffendorf, Book* 3, *ch.* 3, *secs.* 3–8; *Vattel, Book* 1, *ch.* 9, *sec.* 104; *Book* 2, *ch.* 9, *secs.* 123–139.)

It is holden also in civil law that the use of the shores of navigable rivers and of the ocean is incident to the use of the water.—(*Inst., Book* 2, *title* 1, *secs.* 1–5.)

For the convenient use of navigable rivers by nations bordering upon them, treaties have been usually made, specifying rules and regulations in reference to their use; but it is well settled that such treaties recognize and sustain the right of use, and do not originate it.

It may be said that the right of shelter from the land, which is claimed as an incident to the use of the ocean, cannot be set up at the same time with the right over the ocean, which is admitted to a certain extent as incident to the land. But these rights do not conflict with each other. The right of a State bordering on the ocean to a

given extent over the waters immediately adjoining attaches for certain fiscal purposes and purposes of protection. But the jurisdiction thus obtained is by no means exclusive. Sovereignty does not necessarily imply all power, or that there cannot co-exist with it, within its own dominions, other independent and co-equal rights.

Indeed, the exception taken furnishes a strong argument in favor of the principle we contend for, because the same rule of justice that gives for certain purposes jurisdiction over the waters, as incident to the use of the land, extends, for like reasons, a right over the land for temporary use and shelter, as incident to the use of the ocean. The rule operates with equal validity and justice both ways, and its application in the one case sustains and justifies it in the other. If either right must give way, there seems to be no good reason why the older and better right of the nations to the free navigation of the ocean, with its incidents, should be surrendered to the exclusive claims of any single nation on its borders. But this is not necessary, as both rights in their full perfection may exist together.

I now come to the third proposition.

III. That as the right of shelter, by a vessel, from storm and inevitable accident, is incident to her right to navigate the ocean, it necessarily carries with it her rights on the ocean, so far as to retain over the vessel, cargo, and persons on board the jurisdiction of the laws of her country.

This is clearly the necessary result of the prior position. It is laid down, as an elementary proposition, by Vattel, "that where an obligation gives a right to things without which it cannot be fulfilled, each absolute, necessary, and indispensable obligation produces, in this manner, rights equally absolute, necessary, and indefeasible."—(*Vattel, Book* 2, *ch.* 9, *sec.* 116.)

Wherever the use of a minor sheet of water may be claimed, as incident to that of a larger, it is, while in use, a substitute for it, and draws after it, as of course, all the rights and privileges connected with the enjoyment of the principal right itself.

The entrance of a vessel into a foreign harbor, when compelled by stress of weather, is a matter of right. She goes there on a highway, which, for the time being, is her own. She is, as when on the ocean, part and parcel of the government of her own country, temporarily forced, by causes beyond her control, within a foreign jurisdiction.

Her presence there, under such circumstances, need not excite any more feeling than when on the ocean. It is a part of her voyage, temporarily interrupted by the viccissitudes of the sea, but carrying with it the protection of the sea; and the property and relations of the persons on board cannot, in such case, be interfered with by the local law, so as to obstruct her voyage or change such relations, so long as they do not conflict with the law of nations.

These positions do not seem to be contested, as a general rule; but it is said that, since the abrogation of slavery by England, the principles thus laid down will not apply to slave property, and this brings me to the fourth point to be considered.

IV. That the act of 3 & 4 *Wm. IV, ch.* 73, abolishing slavery in Great Britain and her dependencies, could not have the effect to overrule the rights laid down in the foregoing propositions.

It has been contended that the law abolishing slavery overruled the law of nations, on the ground that slavery is contrary to natural right, and is, in fact, beyond the protection of all law. Authorities have been cited as tending to sustain this doctrine, going back to the earliest adjudged case in France, where the question was elaborately examined, and it was held that the institution of slavery, in the absence of specific law, could not be sustained under any subsisting usage or custom of that country, as it was contrary to the laws of nature and humanity, and slaves could not breathe in France.

Long after this, the Somerset case, sustaining the same principle, came up in England, and from that time this has been considered the leading case on the subject; and the declaration founded upon it, "that slaves cannot breathe in England," has been usually regarded as a sentiment peculiarly applicable to British soil and institutions.

The doctrine of the Somerset case, and the expressions of numerous distinguished English and American jurists sustaining it, including Chief Justice Marshall, Mr. Justice Story, and Chief Justice Shaw, have been fully cited in this case, "that slavery is against the law of nature;" "has no foundation in natural or moral right;" "is odious," &c.

These doctrines are not novel on the American side of the Atlantic. They were the established sentiments there a century before the revolution, and were reiterated again and again, from that period down to the time of the separation from England, in constant acts of the colo-

nial legislatures, and in constant protests against the importation of slaves into the colonies. But the royal colonial governors were instructed to veto all such acts, and the institution of slavery was perseveringly forced upon America.

I see no occasion to dissent from the full effect of the adjudications cited or the sentiments expressed; but they do not settle any question of international right arising in this case, or define any line of limitation betwixt conflicting jurisdictions, or sustain at all the point to which they are cited, that slavery cannot subsist by valid law.

What is law is a question of fact; and though its original institution may have been of doubtful morality or justice, it is still law. It is a dangerous doctrine that all law, not originally conceived and promulgated in *abstract right*, is invalid, or is to be instantly overthrown.

This is readily shown by extending the inquiry to other subjects. By what *abstract* or *natural* right, I might ask, is one man born to rule over another, or one set or class of men by birth to become legislators for others? There is no such natural inequality; there is no principle of abstract right to sustain such an order of things. But we must deal with institutions as they are, and relations as they subsist. Reforms must advance gradually. The time will doubtless come when all things not founded in right will cease; when there will be no privileged classes by birth; no compulsory support of one religious sect by another, to which it is conscientiously opposed; no sales of religious presentations; no slavery.

But these Gordian knots, that have been compacted for centuries, and are intertwined and bound up in all the relations of men, are not to be severed at a blow. Each nation must deal with them, in its own time and manner. Such measures of reform cannot be promoted by the illegal interference of one nation with another, or by forcing upon shipwrecked individuals, temporarily thrown within the limits of another land, laws in conflict with their own rights of self-government, and the established relations of their country.

These views are sustained by the concurrence of some of the ablest English jurists, and the settled adjudications of English law. Thus it has been holden, though the slave trade is declared to be contrary to the principles of justice and humanity, no state has a right to control the action of any other government on the subject, (*The Amedie*, 1 *Dod.* 84 *n*; *The Fortuna*, 1 *Dod.* 81; *The Diana*, 1 *Dod.* 101;)

and that no nation can add to the law of nations by its own arbitrary ordinances, (*Pollard* v. *Bell*, 8 *Term Rep.* 434; 2 *Park on Insurance*, 731;) or privilege itself to commit a crime against the law of nations by municipal regulations of its own, (*Le Louis*, 2 *Dod.* 251.)

It is also holden that a foreigner, in a British court of justice, may recover damages in respect of a wrongful seizure of slaves.—(*Maddrazzo* v. *Willes*, 3 *Barn. & Ald.* 353; *The Diana*, 1 *Dod.* 95.) And in the case of *Le Louis*, 2 *Dod.* 238, above cited, Sir William Scott (Lord Stowell) says, though the slave trade is unjust and condemned by the laws of England, it is not therefore a criminal traffic by the laws of nations; and every nation, independent of its relinquishment by treaty, has a legal right to carry it on. "No one nation," he says, "has a right to force the way to the liberation of Africa by trampling on the independence of other states; or to procure an eminent good by means that are unlawful; or to press forward to a great principle by breaking through other great principles that stand in the way."

And when pressed in the same case with the inquiry, "What would be done if a French ship laden with slaves should be brought into England?" he says, "I answer without hesitation, restore the possession which has been unlawfully divested; rescind the illegal act done by your own subjects, and leave the foreigner to the justice of his own country."

The doctrine that slavery cannot be sustained by valid law must be set at rest by these authorities.

There is but one other ground on which it can be contended that the act of 3 & 4 *Will. IV, ch.* 73, overrules the principles I have laid down, and that is that the municipal law of England is paramount to the absolute rights of other governments when they come in conflict with each other. Such a position virtually abolishes the entire code of international law. If one state can at pleasure revoke such a law, any other state may do the same thing, and the whole system of international intercourse becomes a mere matter of arbitrary will, and of universal violence.

It appears to me, from a full examination of the law applicable to the case, that the Enterprize was entitled, under the immediate perils of her condition, to refuge in the Bermudas; that she had a right to remain there a sufficient time to accomplish the purposes of her entry,

and to depart as she came; that the local authorities could not legally enter on board of her for the purpose of interfering with the condition of persons or things as established by the laws of her country; and that such an exercise of authority over the commerce and institutions of a friendly state is not warranted by the laws of nations.

For these reasons I am of opinion that the claim before the commission is sustained, and that the owners of slaves on board the Enterprize are entitled to compensation for the illegal interference with them by the authorities of Bermuda.

HORNBY, British Commissioner:

The facts in this case are shortly as follows: During the early part of the year 1835, the American brig "Enterprize," having on board a large number of slaves while on her voyage from Alexandria, in the District of Columbia, to Charleston, in South Carolina, was driven from her course by prevailing contrary winds, and *being, by the delay thus occasioned, in want of provisions, put into the port of Hamilton*, in the Bermudas. On her arrival she was boarded by the colonial authorities, and taken possession of on the ground of having slaves on board. Possession, however, was given up, on the authorities being informed of the circumstances under which the vessel had put in.

Before, however, the ship could leave the harbor, a writ of *habeas corpus* was obtained, at the instance of an association of free blacks in the island, and served upon the captain, requiring his appearance before the court, and the production of the slaves still remaining on board. Upon the argument of the case, the court declared that there was no law authorizing the detention of the slaves, and they were accordingly set at liberty.

Under these circumstances the United States government claim compensation at the hands of the British government in respect of the loss sustained by the owners of the slaves, by their release, basing their demand on the following propositions:* "That a vessel on the high seas, in time of peace, engaged on a lawful voyage, is, according to the law of nations, under the exclusive jurisdiction of the State to which she belongs; and that *if such vessel is forced by stress of weather, or unavoidable circumstance*, into the port of a friendly power, her country in such case loses none of the rights appertaining to her on the high seas, either over the vessel or the personal relations of those on board."

Mr. Webster, in his letter to Lord Ashburton, on the 1st of August, 1842, states the second of these propositions in somewhat different language; he says: "If a vessel be driven by weather into the port of another nation, it would hardly be alleged by any one that, by the mere force of such arrival within the waters of the State, the law of that State would so attach to the vessel as to affect existing rights of

* United States Senate Resolutions, March, 840.

property between persons on board, whether arising from contract or otherwise. The local law would not operate to make the goods of one man to become the goods of another man; nor ought it to affect their personal obligations or existing relations between themselves."

It is undoubtedly true, as a general proposition, that a vessel driven by a stress of weather into a foreign port is not subject to the application of the local laws, so as to render the vessel liable to penalties which would be incurred by having voluntarily come within the local jurisdiction. The reason of this rule is obvious. It would be a manifest injustice to punish foreigners for a breach of certain local laws, unintentionally committed by them, and by reason of circumstances over which they had no control.

Thus, to cite one of the most ordinary instances in which the rule is applied. A storm drives a vessel, having a perfectly legal cargo according to the laws of the country from which it sailed, or to which it is bound, into the port of a country where such a cargo is illegal and contraband. To subject this cargo to the same penalty as if it were clandestinely smuggled, would be unjust. Our law, therefore, says: "The laws of the country which gives you a national character shall be considered as protecting you, and if it is not an illegal cargo in your own country it shall not be so considered in the country into which you have been involuntarily brought." And this is precisely what was done in the case of the "Enterprize." The cargo was legal according to the laws of America, illegal according to the laws of England; and if brought within British jurisdiction, it rendered the vessel liable to confiscation. It was brought within that jurisdiction, but under circumstances which exempted it from the penalty; and accordingly, so far the rule of international law was admitted and allowed to prevail. But more is demanded; for the claim is for indemnity, because the cargo had, by mere act and operation of natural law and of English law, resumed a character denied it by American law. While the vessel is, to the extent alluded to, free from the operation of the local laws, it by no means follows that it is entitled to absolute exemption from the local jurisdiction; as, for example, it can scarcely be contended that persons on board the vessel would not be subject to the local jurisdiction for crimes committed within it. If acts of violence were committed on board against subjects of the country to which the port belonged, or if a subject should be wrongfully

detained on board, the local tribunals would be entitled to interfere, to preserve the peace or protect the injured person. This position may be illustrated by the law applicable to the case of vessels of war entering a foreign port. It is admitted by most, if not all, of the writers on international law, that national vessels are exempt from the local law.—(See the case of the "Santissima Trindad," 7 *Wheaton*, 352; *Wheaton's International Law, vol.* i., *p.* 115; *Phillimore's Comm. on International Law, p.* 368 *and p.* 373.) They are, as it were, entitled to a species of extra-territoriality; yet it has been held by the Executive of the United States, on the authority of two Attorneys General,* that a foreign vessel of war entering its harbor is not entitled to absolute exemption from its jurisdiction.

"The ports and harbors of England are a part of the kingdom. The jurisdiction of the kingdom is as complete over them as over the land itself; and the laws of nations invest the commander of a foreign ship-of-war with no exemption from the jurisdiction of the country into which he comes. It cannot be conceived that any sovereign power would permit its subjects to be imprisoned in its own territory by foreign authority or violence, without using the most effectual means in its power to procure their enlargement. Even the house of a foreign minister cannot be made an asylum for a guilty citizen, nor (it is apprehended) a prison for an innocent one; and, though it be exempt from the ordinary jurisdiction of the country, yet in such cases recourse must be had to the interposition of the extraordinary powers of the State. The commander of a foreign ship-of-war cannot claim that extra-territoriality which is annexed to a foreign minister and to his domicil, but is conceived to be fully within the reach of and amenable to the usual jurisdiction of the State where he happens to be. The Attorney General therefore conceives that a writ of *habeas corpus* might be legally awarded in such a case."†

Again: "It may be assumed as a doctrine perfectly and incontrovertibly established, that the judicial power of a nation extends to every person and everything in its territory, excepting only to such foreigners as enjoy the right of extra-territoriality, and who consequently are not looked upon as temporary subjects of the State. The empire, united to the domain, establishes the jurisdiction of the nation in the territories or the country that belongs to it. It is that or its

* June 24th, 1794, Bradford. March 11th, 1799, C. Qee.
† Opinions of the United States Attorneys General, p.—.

sovereign who is to exercise justice in all the places under his obedience, to take cognizance of the crimes committed and the differences that arise in the country."—(*Vattel* c. 2, *sec.* 84.) "When a nation takes possession of certain parts of the sea, it enjoys the empire as well as the domain, for the same reason we have alleged in treating of land. These parts of the sea are within the jurisdiction or the territory of the nation; the sovereign commands them; he makes laws, and may punish those who violate them; in a word, he has the same rights there as on land, and, in general, all those given him by the law of the state."—(*Vattel* 6, 1 *sec.*, 295.) According to the general rule then established by these citations, every ship, even a public ship-of-war of a foreign nation, at anchor in the harbor of New York, is within the territory of the State of New York, and subject to the service of judicial process."*

This explanation of the law of nations shows that when a vessel is in a foreign port, under such circumstances as entitle it to exemption from the application of the local law, the exemption cannot be put on the same ground as the immunity from interference of a vessel on the high seas; for there in time of peace it is absolute. There is no right on the part of a foreign court even to inquire into the legality of anything occurring in the vessel of another country while at sea; but within the territories of a country the local tribunals are paramount, and have the right to summon all within the limits of their jurisdiction, and to inquire into the legality of their acts, and determine upon them according to the law which may be applicable to the particular case. It appears to me, therefore, that it cannot with correctness be said, "that a vessel forced by stress of weather into a friendly port is under the exclusive jurisdiction of the State to which she belongs, in the same way as if she were at sea." She has been brought within another jurisdiction against her will, it is true, but equally against the will and without fault on the part of the foreign power; she brings with her (by the law of nations) immunity from the operation of the local laws for some purposes, but not for all, and the extent of that immunity is the proper subject of investigation and adjudication by the local tribunals.

Let us consider then the principles which ought to guide the local courts in this investigation.

* Opinions of the United States Attorneys General, p—.

It is true that by what is termed the "comity of nations" the laws of one country are, in some cases, allowed by another to have operation; but in those cases the foreign law has its authority in the other country from the sanction, and to the extent only of the sanction, given to it there, and not from its original institution. On this subject Vattel observes: "It belongs exclusively to each nation to form its own judgment of what its conscience prescribes to it—of what it can or cannot do, of what is proper or improper for it to do; and of course it rests solely with it to examine and determine whether it can perform any office for another nation without neglecting the duty which it owes to itself; and for any other State to interfere, to compel her to act in a different manner, would be an infringement of the liberty of nations."—(*Story's Conflict of Laws, chap.* 2, *sec.* 37, citing *Vattel, Prelim. Disc. pp.* 61, 62, *sec.* 14, 16; *Story's Conflict of Laws, chap.* 2, *sec.* 25, and see also *sec.* 24.)

From these principles it results that no nation can be called upon, or ought, to permit the operation of foreign laws within its territory when those laws are contrary to its interests or its moral sentiments.

Mr. Justice Story says: "No nation can be justly required to yield up its own fundamental policy and institutions in favor of those of another nation; much less can any nation be required to sacrifice its own interests in favour of another, or to enforce doctrines which, in a moral or political view, are incompatible with its own safety or happiness, or conscientious regard to justice and duty." And again, after observing that "personal disqualifications, not arising from the law of nations, but from the principles of the customary or positive law of a foreign country, are not regarded in other countries," he emphatically says: "So the state of slavery will be recognized in any country whose institutions and policy prohibit slavery." In the case also of Polydor *v.* Prince, Mr. Judge Ware held that a slave might maintain an action for a tort done him on the high seas, where all nations can and do claim an exclusive jurisdiction over their own vessels, in a vessel belonging to a slave State, on the arrival of that vessel, under any circumstances, within the jurisdiction of the non-slaveholding State, observing that "it was supposed at the argument that the capacity of the libellant to maintain this action in the courts of the United States may stand on grounds somewhat different from what it would in the States courts; that slavery existing in some of the individual Sta tes

and not being prohibited by the Constitution and laws of the United States, the national courts might be bound by the principles of the *jus gentium* to recognize the incapacities of slaves having a foreign domicil, even where it would not be done by the slave courts, and that the national tribunals are under the same obligation in this respect, whether sitting in a State where slavery is admitted or where it is prohibited. If this were conceded—and in the view which I take of the case I do not think it necessary to give an opinion on the question—the answer is, that a court sitting in Louisiana is no more bound than one sitting in Maine to recognize, as to any acts or rights acquired within the exclusive jurisdiction of the United States, the artificial incapacities of persons resulting from a foreign law. The question in both cases would be, whether the party could, by the laws of the United States, have a standing in court. The court certainly is not bound to enforce against him a personal incapacity derived from the law of his domicil, *because that law can have no force* in this country any further than our law, on the principle of comity, chooses to adopt it; and every nation will judge for itself how far it is consistent with its own interest and policy to extend its comity in this respect.. * * If the incapacity alleged were slavery, it is not for me to say what would be the judgment of a court sitting within a jurisdiction where slavery is allowed; but sitting as this court does in a place where slavery by the local law is prohibited, I do not feel myself called upon to allow that disqualification when it is alleged by a wrongdoer, as attaching to the libellant by the laws of a foreign power, for the purpose of withdrawing himself from responsibility for his own wrong."—See also *Prigg* v. *the Commonwealth of Pennsylvania*, 16 *Peters* 539.

The language of Chanceller Kent* is equally emphatic on this subject; he says "there is no doubt of the truth of the general proposition, that the laws of a country have no binding force beyond its territorial limits; and their authority is admitted in other States, not *ex proprio vigore*, but *ex comitate;* or, in the language of Huberus, 'quatenus sine præjudicio *indulgentium fieri potest.*' Every independent State will judge of itself how far the *comitas inter communitates* is to be permitted to interfere with its domestic interests and policy." The general and most beneficial rule of international law contributing to the safety and convenience of mankind is: "*Statuta suo clauduntur*

*2 Kent's Comm., p. 457, 4th edit.

territorio, nec ultra territorium disponunt." Neither is comity to be exercised in doubtful cases; and whenever a doubt exists, the court which decides will prefer the law of its own country to that of the stranger. *Saul* (*his Creditors*) 17; *Martin*, 596. The question of what is or what is not within the comity of nations is for each particular nation to decide; and whether it will be bound by it, or waive in favor of another nation its private laws, is equally a matter for the consideration of each individual country. Now, in the case of slavery, Great Britain has declared that under no circumstances will she tolerate, acknowledge, or admit slavery within her dominions. This, as Mr. Webster admits, is now "the well known and clear promulgation of the will of the sovereign power, and the well known rule of English law."

The question then resolves itself into this: In what cases and to what extent does the law of nations require that the local law shall admit the application of the rules of the foreign law instead of its own? It is conceded that the foreign law must be admitted to regulate the rights of property (properly so called) concerning chattels on board the vessel, and for some other purposes; but the question we have now to determine is, whether the law of nations requires that the local law, which ignores and forbids slavery, shall admit within its jurisdiction the foreign, which maintains slavery.

Now, the two fallacies which appear to me to pervade the whole of the argument in support of the claim, and deprive it of its whole force, are these: first, that slaves are property in the ordinary sense of the word; and secondly, that international law requires that the right of the master to the person of his slave, derived from local law, shall be recognized everywhere.

It is true that by the municipal law of particular countries slaves may be treated as, and may even be declared to be, property, and this has, in past times, been the case in some portions of the English dominions; but there is an essential difference between the rights of owners in their slave and ordinary property. This difference is clearly laid down by an eminent American judge in the case of the *Commonwealth* vs. *Aves*, 18; *Pickering's Reports*, 216. Chief Justice Shaw there says, "that it is not speaking with strict accuracy to say that a property can be acquired in human beings by local laws. Each State may, for its own convenience, declare that slaves shall be deemed pro-

perty, and that the relations and laws of personal chattels shall be deemed to apply to them; but it would be a perversion of terms to say that such local laws do *in fact* make them personal property *generally;* they can only determine that the same rules of law shall apply to them as are applicable to property, and this effect will follow only as far as such laws *proprio vigore* can operate."

Mr. Webster, however, does not hesitate to place the relation of slavery on the same footing with that of marriage and parental authority; but the answer to this attempted comparison consists in this, that all nations and societies acknowledge marriage and parental authority. They are, indeed, the very foundation of society; they may vary in form, but the essence remains the same; they cannot so much be said to be in conformity with the law of nature as to be themselves natural laws. This is not the case with slavery, which is contrary to the law of nature, and, so far from being acknowledged by all nations, is now repudiated by almost all. Property in things, however, being recognized in all countries, it follows that in case of shipwreck "the local law would not operate to make the goods of one man to become the goods of another." But to make this *dictum* an authority for the principle contended for, it must first be established that there is no distinction between property in man and property in beasts or things.

In the case of Jones *vs.* Vanzandt, (2 McLean, 596,) it was held that no action could be maintained at common law for assisting a slave to escape, or harboring him after his escape into a free State, and that damages were only recoverable in such a case by virtue of the Constitution of the United States. In giving judgment in that case, Mr. Justice McLean observed: "The traffic in slaves does not come under the constitutional power of Congress to regulate commerce among the several States. *In this view the Constitution does not consider slaves as merchandise.* This was held in the case of Grooves and Slaughter, (18 Peters.) The Constitution nowhere speaks of slaves as property. * * * The Constitution treats of slaves as persons." "The view of Mr. Madison, who thought it wrong to admit in the Constitution the idea that there could be property in man, seems to have been carried out in this most important instrument. Whether slaves are referred to in it as the basis of representation, as migrating, or being imported, or as fugitives from labor, they are spoken of as persons." "What have we to do with slavery in the abstract? It is admitted

by almost all who have examined into the subject to be founded in wrong, in oppression, in power against right."

There is yet another case which affords a further striking illustration of the fact that American law recognizes an essential difference between property in slaves and property in things, so as to affect the rights of the owner independently of his will. The second section of the fourth article of the Constitution protects every slave owner from loss of his slaves by means of their flying into a free State; it gives him a right to follow the slave, and seize him wherever he may find him. Yet, in the case of The Commonwealth *vs.* Holloway, (2 Sergt. and Rawle, 304,) it was held that where a female slave flying into Pennsylvania, and there giving birth to a child, though she herself might be reclaimed by her owner, her child could not but remain free by virtue of the law of the State, which declared that "no man or woman of any nation shall at any time hereafter be deemed, adjudged, or holden within the territories of this commonwealth, as slaves or servants for life, but as free men and women." Now it is obvious that if the property in the female slave were regarded in the same light as property in an animal, the ordinary rule of law, "*partus sequitur ventrem*," referred to by the learned agent of the British government, would have been applicable. In that case, as in the present, the slave owner might have said, as he now says: "It was not by my consent that that which by the laws of my country I am entitled to claim as my property has been brought within the operation of your laws. My slave and her increase are mine; am I to be deprived of that increase because it has been by misadventure cast away upon your soil?" By the American law, as in the case before me, the English law answers: "It may be that in your own State you would have had the right you claim; but we do not acknowledge that you have a right of property in this human being as you could have in a horse or a dog; if you had, your consent alone would be considered in the matter; but as it is, here is an intelligent being who is entitled to be dealt with by our law, which we sit here to administer, and not yours, as a man, and by that law it is declared that no man shall be a slave." In the case also of Prigg *vs.* The Commonwealth of Pennsylvania, (16 Peters, 608,) it was again held that the offspring of a fugitive slave could not be reclaimed by the owner. On the authority, then, of these cases, it may be considered as settled that by the law of the United States the presence or absence of

consent or voluntariness on the part of the owner has nothing whatever to do with the question of whether his slave, when *within* the territory of a State, no matter how brought, which does not acknowledge slavery, shall be free or not. The answer that must be given by the local tribunals, when called upon, must depend on the positive law of the place.* In the United States, the Constitution has provided an answer in the fourth article; but when the circumstances are such that the letter of that enactment or some other is not applicable, the American law declares, like the English law, that it does not recognize property in man, but regards them all alike, whether black or white, as entitled to be free.

Mr. Justice Story thus distinctly explains the general principle of public law on this subject, and the modifications which have been introduced by the United States Constitution: "By the general law of nations *no nation is bound to recognize the state of slavery, as to foreign slaves found within its territorial dominions*, when it is in opposition to its own policy and institutions, in favor of the subjects of other nations where slavery is recognized. If it does, it is a matter of comity, and *not* a matter of international right. The state of slavery is deemed to be a municipal regulation, founded upon and limited to the range of the territorial laws. This was fully recognized in Somersett's case. It is manifest, then, from this consideration of the law, that if the Constitution had not contained this clause, every non-slaveholding State in the Union *would have been at liberty to have declared free all slaves coming within its limits, and to have given them entire immunity and protection against the claims of their masters.*" And again he says: "The duty to deliver up fugitive slaves, in whatever State of the Union they may be found, and of course the corresponding power in Congress to use the appropriate means to enforce the duty, *derive their sole* validity and obligation exclusively from the Constitution of the United States, and are there for the first time recognized and established in that peculiar character."—(See also *id.* ch. iv, sec. 96, p. 165–6 of 3d edit.)

That foreign nations, then, are not bound by any rule of international law to recognize slaves as property, and award to their owners the immunity which, by the comity of nations, is usually granted in respect of ordinary chattels, is clear from the course of legislation

* See judgment of Judge Ware, *ante*, p. 10.

pursued by the United States; for if they could be so bound, no law or action of the United States would have been necessary to compel one State denying the right and existence of property in a slave to deliver up a fugitive to another State admitting and maintaining the right; and for this reason, that the law of nations; being as binding between State and State as between the United States and foreign countries, would have been sufficient for the purpose, and no special law would have been necessary. By what right, then, or by force of what argument, can the United States insist that Great Britain is to be bound by the law of nations to do that which, by its own legislation, it has proved beyond all question the separate States were not and could not be bound to do?

It is evident, therefore, from a view of the American authorities alone, that the institution of slavery depends solely upon the laws of each individual State in which it is allowed, and that from its very nature it is only coextensive with the territorial limits of such laws. An American writer thus describes it: "It is an institution," says he, "in which the slave has no voice. It operates *in invitum*. The slave is no party, either practically or theoretically, to the law under which he lives in servitude. It is, moreover, an exceptional law; one which depends solely for its observance on the *continuance of the power* who made it. *The moment that power ceases, the objects of it are free to exercise their natural rights, which revive to them, because they were held only in subjection or abeyance by superior force*, but which could not be disturbed, alienated, or forfeited, except for some crime, springing as they do from the immutable and eternal principles of nature and justice."

It appears to me then to be clearly established by all the authorities on the subject, that nations or states are not bound to recognize the relation of master and slave which may be enacted by foreign law.

In the case of Forbes *v.* Cochrane (2 B. and C. 448) Mr. Justice Holroyd says: "A man cannot found his claim to slaves upon any general right, because by the English law such right cannot be considered as warranted by the general law of nations; and if he can claim at all, it must be by virtue of some right which he had acquired by the law of the country where he was domiciled; that when such rights are recognized by law, they must be considered as founded not upon the law of nature, but upon the particular law of that country, and must be coextensive, and only and strictly coextensive, with the

territories of that State; but when the party gets out of the territory where it prevails, no matter under what circumstances, and under the *protection of another power, without any wrongful act done by the party giving the protection*, the right of the master, which is founded on the municipal law of the place only, *does not continue.*"

The fallacy contained in the argument in opposition to this view of the law consists in ignoring the slave as a man, and in supposing him to be possessed of no rights, as against the individual endeavoring to keep him in slavery, which a foreign nation is justified in taking into consideration.

As a man, the slave is as much entitled to appeal to the protection of our laws as his owner, and his claim must be adjudicated upon in conformity with the same principles. In the country whence he came, his voice could not be heard in the local courts, to assert the rights which he derived from nature, as against the municipal laws of the place where he was domiciled. When he is driven, together with his so-called owner, to the shores of this country or its colonies, those rights of his master which are founded on natural law, such as property, marriage, &c., &c., are respected. Why then are we to be deaf to the appeal of the slave, when he also asks to have his rights, which are equally founded on natural law, respected? We have to choose between the natural law, supported by our own law, and foreign municipal law in direct opposition to both.

The choice is none of our seeking, it is cast upon us by chance. It would be to make international law a partial tyrant, rather than an equal arbitrator between nations—to hold that one country can be bound under any circumstances, without fault of its own, to reject the law of nature and its own law, in favor of a foreign local law in opposition to both.

"The law of nations," says an American writer, with reference to this subject, "does not deal with the fictions and conventional rules which particular societies of men may have adopted as suitable to their own interests and government. It does not establish any geographical lines, and declare that any object on one side of that line is one thing, and that when it is moved to the other side it loses or changes its nature and becomes another thing. This law of nature recognizes only manifest natural and universal truths, whether they are of a moral or a physical nature, and from these truths it deduces

its rules. One of these moral truths is, that every man has a right to be protected in the enjoyment of his property, and, therefore, the duty of protecting property is enjoined on all nations.

"One of these physical truths is, that all inanimate objects and irrational animals are capable of becoming property whenever appropriated. The quality is inherent in, and inseparable from them. They have no personality. They can have no rights while they exist; it is impossible that this character should be taken from them. A nation may declare that a particular article shall not be property, or may claim it to be contraband, or may prohibit its importation. But these laws, so far as they attempt to change the intrinsic nature of the object, are mere fictions, which are obligatory on the nation that enacts them.

"The law of nature and of nations is not affected by the local law with regard to these objects. Consequently, when the forbidden or contraband article is thrown by accident within the jurisdiction of the nation that has denounced it, the humanity and truth of the law of nature interpose with paramount authority to mitigate or suspend the harshness or fiction of the local law, and the property is protected for its owner, until, acting in good faith, he can remove it beyond the local jurisdiction.

"Let us now apply this law to the case of the slave. Man has a twofold nature. He has a material, tangible body; and, consequently, if any nation is so unjust as to declare any particular class of men within its territory to be property, this class, by means of the coercion which may be exercised over the bodies by individuals that impose it, is obliged to submit to what is a mere fiction of the local law, and, unless palliated by dire necessity, a most wicked and injurious one.

"This local rule, declaring a man to be property, is altogether untrue in fact and morals. Not all the legislation in the world can change the decrees of Providence, or reconcile the material nature of property with the spiritual nature of man. The law of nature and of nations, dealing solely in actual truths, does not recognize this local fiction; and although it refrains from interference within the limits of the nation establishing it, yet it takes every opportunity beyond these limits of asserting or vindicating its own principles.

"It is one of these first principles, that man has an immortal soul,

and it will not recognize or protect any human institution that is at war, as slavery is, with this catholic and immutable truth.

"When, therefore, a man, either by force or not (and it may be added, by accident) on the part of his owner, escapes beyond the limits of the local law that fastens slavery upon him, he falls under the benign protection of the law of nature, which steps in and sets bounds to the local fiction, and declares that it shall only be respected within the jurisdiction of the community that promulgated it. The law of nature did not make a man a slave, and therefore that law will not keep him one."

Lord Palmerston, in effect, states the principle thus announced when, with the concurrence of those eminent men who now fill the highest judicial seats in the country, viz: the present lord chancellor, the lord chief justice of England, and the judge of the admiralty court, he declares that a distinction exists between laws bearing upon the personal liberty of man, and laws bearing upon the property which man may claim in irrational animals or in inanimate things.

"If a ship," says his lordship in a despatch upon this subject, "containing such animals or things, were driven by stress of weather into a foreign port, the owner of the cargo would not be justly deprived of his property by the operation of any particular law which might be in existence in that port, because in such a case there would be but two parties interested in the transaction—the foreign owner and the local authority; and it would be highly unjust that the former should be stripped of what belongs to him through the forcible application of the municipal law of a State to which he had not voluntarily submitted himself.

"But in a case in which a ship so driven into a foreign port by stress of weather contains men over whose personal liberty another man claims to have an acquired right, there are three parties to the transaction—the owner of the cargo, the local authority, and the alleged slave; and the third party is no less entitled than the first to appeal to the local authority for such protection as the law of the land may afford him. But if men who have been held in slavery are brought into a country where the condition of slavery is unknown and forbidden, they are necessarily, and by the very nature of things, placed at once in the situation of aliens who have at all times from their birth been free.

"Such persons can in no shape be restrained of their liberty by their former master any more than by any other person.

"If they were given up to such former master, they would be aggrieved, and would be entitled to sue for damages. But it would be absurd to say that when a State has prohibited slavery within its territory, this condition of things must arise, namely, that as often as a slave-ship shall take refuge in one of the ports of that State, liability must necessarily be incurred either to the former owner of the slaves, if the slaves be liberated, or to the slaves themselves, if they are delivered up to the former owner.

"If, indeed, a municipal law be made which violates the law of nations, a question of another kind may arise. But the municipal law which forbids slavery is no violation of the law of nations. It is, on the contrary, in strict harmony with the law of nature; and, therefore, when slaves are liberated according to such municipal law, there is no wrong done, and there can be no compensation granted."

I have hitherto considered this case upon general principles, because, as other cases may occur, it is important to lay down general rules; but the special circumstances of the case would disentitle the claimants to compensation.

One ground, if indeed it be not the chief ground upon which this claim has been rested, is, that the Enterprize was compelled by *necessity* to put into the port of Bermuda, and that on this account the owners of the slaves were entitled to claim exemption from the operation of English laws. I do not think, however, that any such case of necessity has been made out as would give rise to the exemption contended for, if under any circumstances it could arise. It is not pretended that the Enterprize was forced by storm into Bermuda. All that is asserted is, that her provisions ran short by reason of her having been driven out of her course. No case of pressing, overwhelming need is shown to have existed; but, to avoid the inconvenience of short rations (and, considering the nature of the cargo, it was an inconvenience which a very slight delay was likely to occasion) the master put into an English harbor to procure supplies. These facts do not certainly disclose that paramount case of necessity which has been insisted on throughout the argument, and which alone (if *any circumstances* could give rise to the exemption upon which this claim is supported) could form the basis of such an appeal as the

present. If a mere scarcity of provisions, which might arise from so many causes, is to be considered not only as a sufficient excuse for the entrance of a vessel into a British port with a prohibited cargo, but is also to entitle it to an exemption from the operation of English law, it is impossible to say to what the admission of such a principle might lead, or what frauds on the part of slave speculators it might induce.

With respect to the cases of the "Comet" and "Encomium," it has been insisted that they are not distinguishable in principle from that of the "Enterprize;" and that, as the English government granted compensation in these cases, we are bound by the precedent thus made. Those vessels, however, were driven into British ports, and the slaves on board were set free before the passing of the act abolishing slavery. There was, therefore, no importation within the meaning of the act (5 Geo. IV, ch. 113) which declared it *illegal to import slaves*, and made it a felony to do so, and consequently there was no breach of the English law. Being then in an English port, the only question was whether there was any law which prevented their owners retaining possession of them. At that time there was not. Slavery was then in full force in the Bahamas, and of the same kind as that to which the American slaves were subject. The possession of the slaves was not therefore unlawful, nor was the relation between them and their masters liable to be dissolved by the mere accidental arrival of both in the colony. But at the time when the "Enterprize" was brought into the port of Hamilton, Great Britain had utterly and forever abolished the *status* of slavery throughout the British colonies and plantations abroad; (see act of 3 and 4, Wm. IV, ch. 73, sec. 9.) And by an act of the colonial legislature, the apprenticeship system, created by the act of William IV, was dispensed with. Slavery, therefore, in no form whatever, was known in the Bermudas at the time the "Enterprize" entered the port. It was impossible therefore that any judge called upon to administer the law within these islands could, for any purpose, or under any circumstances, recognize the relation of master and slave as subsisting within the reach of his authority.

Under these circumstances, I am clearly of opinion that the claim of the owners of the slaves on board the "Enterprize" at the time she put into Port Hamilton, cannot be sustained, and that it ought, upon every principle of law, to be rejected.

BATES, Umpire:

This claim is presented on behalf of the Charleston Marine Insurance Company of South Carolina, and of the Augusta Insurance Company in Georgia, for the recovery of the value of seventy-two slaves, forcibly taken from the brig Enterprize, Elliot Smith, master, on the 20th of February, 1835, in the harbor of Hamilton, Bermuda. The following are the facts and circumstances of the case: The American brig Enterprize, Smith, master, sailed from Alexandria, in the District of Columbia, in the United States, on the 22d January, 1835, bound for Charleston, South Carolina, after encountering head winds and gales, and finding their provisions and water running short, it was deemed best by the master to put into Hamilton, in the island of Bermuda, for supplies. She arrived there on the 11th of February, having taken in the supplies required, and having completed the repair of the sails, she was ready for sea on the 19th with the pilot on board. During the repairs, no one from the shore was allowed to communicate with the slaves. The vessel was kept at anchor in the harbor and was not brought to the wharf. Being thus ready for sea, Captain Smith proceeded, with his agent, to the custom-house to clear his vessel outward. The collector stated that he had received a verbal order from the council to detain the brig's papers until the governor's pleasure could be known.

The comptroller, and a Mr. Tucker, then went to the other public offices, and on their return to the custom-house, the comptroller, after consulting for a few minutes with the collector, declared that he would not give up the papers that evening, but would report the vessel out the next morning, as early as the captain might choose to call for the papers.

In consequence of this decision, the captain immediately noted his protest in the secretary's office against the collector and comptroller for the detention of his ship's papers, and informed the officer of the customs he should hold them responsible; that he (the captain) feared the colored people of Hamilton would come on board his vessel at night and rescue the slaves, as they had threatened to do.

The collector then replied there was no danger to be apprehended, that the colored people would not do anything without the advice of the whites, and they knew the laws too well to disturb Captain Smith.

At 20 minutes to 6 o'clock, p. m., the chief justice sent a writ of habeas corpus on board, and afterwards, a file of black soldiers armed, ordering the captain to bring all the slaves before him, the Chief Justice, which Captain Smith was obliged to do. On the slaves being informed by the chief justice that they were free persons, seventy-two of them declared they would remain on shore, which they did, and only six of them returned on board to proceed on the voyage.

This is believed to be a faithful sketch of the case, from which it appears, that the American brig Enterprize was bound on a voyage, from one port in the United States to another port of the same country, which was lawful according to the laws of her country and the law of nations. She entered the port of Hamilton in distress for provisions and water. No offence was committed against the municipal laws of Great Britain or her colonies, and there was no attempt to land or to establish slavery in Bermuda in violation of the laws.

It was well known that slavery had been conditionally abolished in nearly all the British dominions about six months before, and that the owners of slaves had received compensation, and that six years apprenticeship was to precede the complete emancipation; during which time apprentices were to be bought and sold as property, and were to be liable to attachment for debt.

No one can deny that slavery is contrary to the principles of justice and humanity, and can only be established in any country by law. At the time of the transaction on which this claim is founded, slavery existed by law in several countries, and was not wholly abolished in the British dominions; it could not then be contrary to the law of nations, and the Enterprize was as much entitled to protection as though her cargo consisted of any other description of property. The conduct of the authorities at Bermuda, was a violation of the laws of nations, and of those laws of hospitality which should prompt every nation to afford protection and succor to the vessels of a friendly neighbor that may enter their ports in distress.

The owners of the slaves on board the Enterprize are therefore entitled to compensation; and I award to the Augusta Insurance and Banking Company, or their legal representatives, the sum of sixteen thousand dollars, and to the Charleston Marine Insurance Company, or their legal representatives, the sum of thirty-three thousand dollars, on the fifteenth of January, 1855.

THE HERMOSA.

The Hermosa, with thirty-eight slaves, bound from Richmond, Virginia, to New Orleans, was wrecked on the Spanish key, Abaco, and was relieved by wreckers, who took off the officers, crew, and persons on board, and took them to Nassau, in the Bahamas, to procure a vessel to continue the voyage.

Held, that having entered the port of Nassau in distress, from shipwreck, she was entitled to protection for the purpose under which she entered.

The several cases of the Enterprize, Hermosa, and Creole were supposed to involve substantially the same principles, and were embraced in one argument by counsel, and submitted together.

The commissioners drew up their opinions in full in the Enterprize, and having disagreed in that case, referred that and the other cases to the umpire, without a further expression of their opinions.

The particular facts in the case of the Hermosa are fully set forth in the decision of the umpire, and need not be here stated.

THOMAS, agent and counsel for the United States.

HANNEN, agent and counsel for Great Britain.

BATES, Umpire:

The umpire appointed agreeably to the provisions of the convention entered into between Great Britain and the United States, on the 8th of February, 1853, for the adjustment of claims by a mixed commission, having been duly notified by the commissioners under the said convention, that they had been unable to agree upon the decision to be given with reference to the claim of H. N. Templeman against the government of Great Britain; and having carefully examined and considered the papers and evidence produced on the hearing of the said claim; and having conferred with the said commissioners thereon, hereby reports that the schooner "Hermosa," Chattin, master, bound from Richmond, in Virginia, to New Orleans, having thirty-eight slaves on board, belonging to H. N. Templeman, was wrecked on the 19th October, 1840, on the Spanish key, *Abaco*.

Wreckers came alongside, and took off the captain and crew, and the thirty-eight slaves, and contrary to the wishes of the master of the Hermosa, who urged the captain of the wrecker to conduct the crew, passengers, and slaves to a port in the United States, they were taken to Nassau, New Providence, where Captain Chattin carefully abstained from causing or permitting said slaves to be landed, or to be put in communication with any person on shore, while he proceeded to consult with the American consul, and to make arrangements for procuring a vessel to take the crew and passengers and the slaves to some port in the United States.

While the vessel in which they were brought to Nassau was lying at a distance from the wharves, in the harbor, certain magistrates wearing uniform, who stated themselves to be officers of the British government, and acting under the orders of the civil and military authorities of the island, supported by soldiery wearing the British uniform, and carrying muskets and bayonets, took forcible possession of said vessels and the slaves were transported in boats from said vessel to the shore, and thence under guard of a file of soldiers, marched to the office of said magistrates, where, after some judicial proceedings, they were set free, against the urgent remonstrances of the master of the Hermosa and of the American consul.

In this case there was no attempt to violate the municipal laws of the British colonies. All that the master of the Hermosa required was

that aid and assistance which was due from one friendly nation to the citizens or subjects of another friendly nation, engaged in a business lawful in their own country, and not contrary to the law of nations.

Making allowance, therefore, for a reasonable salvage to the wreckers, had a proper conduct on the part of the authorities at Nassau been observed, I award to the Louisiana State Marine and Fire Insurance Company, and the New Orleans Insurance Company, (to which institutions this claim has been transferred by H. N. Templeman,) or their legal representatives, the sum of sixteen thousand dollars, on the fifteenth January, 1855, viz: eight thousand dollars to each company.

THE CREOLE.

The Creole sailed from Hampton Roads, in Virginia, for New Orleans, with slaves on board. The slaves on the passage rose on the officers and crew, severely wounded the captain, the chief mate, and two of the crew, and murdered one of the passengers.

The mate was then compelled to navigate the vessel to the Bahamas. On her arrival she was taken possession of by the American consul, authority was restored, and measures were taken to send the vessel to the United States, in order that those slaves charged with mutiny and murder on the high seas might be tried. The British authorities interfered and liberated the slaves.

Held that the circumstances under which the Creole was compelled to enter harbor entitled her to protection, and that the interference, by British authorities, to liberate the slaves in such case, or to prevent their being remanded to the United States for trial, was in violation of the rights of citizens of the United States as a friendly power, and of the law of nations.

This case was submitted to the umpire under the circumstances named in the preceding case of "the Hermosa," to which reference is made.

The facts in the case are briefly set forth above, and are also stated at length in the opinion of the umpire, so that further statement of them is unnecessary.

THOMAS, agent and counsel for the United States.

HANNEN, agent and counsel for Great Britain.

BATES, Umpire:

This case having been submitted to the umpire for his decision, he hereby reports that the claim has grown out of the following circumstances:

The American brig Creole, Captain Ensor, sailed from Hampton Roads, in the State of Virginia, on the 27th October, 1841, having on board one hundred and thirty-five slaves, bound for New Orleans. On the 7th November, at nine o'clock in the evening, a portion of the slaves rose against the officers, crew, and passengers, wounding severely the captain, the chief mate, and two of the crew, and murdering one of the passengers; the mutineers, having got complete possession of the vessel, ordered the mate, under threat of instant death should he disobey or deceive them, to steer for Nassau, in the island of New Providence, where the brig arrived on the 9th November, 1841.

The American consul was apprised of the situation of the vessel, and requested the governor to take measures to prevent the escape of the slaves, and to have the murderers secured. The consul received reply from the governor, stating that under the circumstances he would comply with the request.

The consul went on board the brig, placed the mate in command in place of the disabled master, and found the slaves all quiet.

About noon twenty African soldiers, with an African sergeant and corporal, commanded by a white officer, came on board. The officer was introduced by the consul to the mate as commanding officer of the vessel.

The consul, on returning to the shore, was summoned to attend the governor and council, who were in session, who informed the consul that they had come to the following decision:

"1st. That the courts of law have no jurisdiction over the alleged offences.

"2d. That, as an information had been lodged before the governor, charging that the crime of murder had been committed on board said vessel while on the high seas, it was expedient that the parties, implicated in so grave a charge, should not be allowed to go at large, and that an investigation ought therefore to be made into the charges, and examinations taken on oath; when, if it should appear that the

original information was correct, and that a murder had actually been committed, that all the parties implicated in such crime, or other acts of violence, should be detained here until reference could be made to the Secretary of State to ascertain whether the parties should be delivered over to the United States government; if not, how otherwise to dispose of them.

"3d. That as soon as such examinations should be taken, all persons on board the Creole, not implicated in any of the offences alleged to have been committed on board that vessel, must be released from further restraint."

Then two magistrates were sent on board. The American consul went also. The examination was commenced on Tuesday, the 9th, and was continued on Wednesday, the 10th, and then postponed until Friday, on account of the illness of Captain Ensor. On Friday morning it was abruptly, and without any explanation, terminated.

On the same day, a large number of boats assembled near the Creole, filled with colored persons armed with bludgeons. They were under the immediate command of the pilot who took the vessel into the port, who was an officer of the government, and a colored man. A sloop or larger launch was also towed from the shore and anchored near the brig. The sloop was filled with men armed with clubs, and clubs were passed from her to the persons in the boats. A vast concourse of people were collected on shore opposite the brig.

During the whole time the officers of the government were on board they encouraged the insubordination of the slaves.

The Americans in port determined to unite and furnish the necessary aid to forward the vessel and negroes to New Orleans. The consul and the officers and crews of two other American vessels had, in fact, united with the officers, men, and passengers of the Creole to effect this. They were to conduct her first to Indian quay, Florida, where there was a vessel of war of the United States.

On Friday morning, the consul was informed that attempts would be made to liberate the slaves by force, and from the mate he received information of the threatening state of things. The result was, the attorney general and other officers went on board the Creole. The slaves, identified as on board the vessel concerned in the mutiny, were sent on shore, and the residue of the slaves were called on deck by direction of the attorney general, who addressed them in the following

terms: "My friends," or "my men, you have been detained a short time on board the Creole for the purpose of ascertaining what individuals were concerned in the murder. They have been identified, and will be detained. The rest of you are free, and at liberty to go on shore, and wherever you please."

The liberated slaves, assisted by the magistrates, were then taken on board the boats, and when landed were conducted by a vast assemblage to the superintendent of police, by whom their names were registered. They were thus forcibly taken from the custody of the master of the Creole, and lost to the claimants.

I need not refer to authorities to show that slavery, however odious and contrary to the principles of justice and humanity, may be established by law in any country; and, having been so established in many countries, it cannot be contrary to the law of nations.

The Creole was on a voyage, sanctioned and protected by the laws of the United States, and by the law of nations. Her right to navigate the ocean could not be questioned, and as growing out of that right, the right to seek shelter or enter the ports of a friendly power in case of distress or any unavoidable necessity.

A vessel navigating the ocean carries with her the laws of her own country, so far as relates to the persons and property on board, and to a certain extent, retains those rights even in the ports of the foreign nations she may visit. Now, this being the state of the law of nations, what were the duties of the authorities at Nassau in regard to the Creole? It is submitted the mutineers could not be tried by the courts of that island, the crime having been committed on the high seas. All that the authorities could lawfully do, was to comply with the request of the American consul, and keep the mutineers in custody until a conveyance could be found for sending them to the United States.

The other slaves, being perfectly quiet, and under the command of the captain and owners, and on board an American ship, the authorities should have seen that they were protected by the law of nations; their rights under which cannot be abrogated or varied, either by the emancipation act or any other act of the British Parliament.

Blackstone, 4th volume, speaking of the law of nations, states: "Whenever any question arises, which is properly the object of its

jurisdiction, such law is here adopted in its full extent by the common law."

The municipal law of England cannot authorize a magistrate to violate the law of nations by invading with an armed force the vessel of a friendly nation that has committed no offence, and forcibly dissolving the relations which by the laws of his country the captain is bound to preserve and enforce on board.

These rights, sanctioned by the law of nations—viz: the right to navigate the ocean, and to seek shelter in case of distress or other unavoidable circumstances, and to retain over the ship, her cargo, and passengers, the laws of her own country—must be respected by all nations; for no independent nation would submit to their violation.

Having read all the authorities referred to in the arguments on both sides, I have come to the conclusion that the conduct of the authorities at Nassau was in violation of the established law of nations, and that the claimants are justly entitled to compensation for their losses. I therefore award to the undermentioned parties, their assigns, or legal representatives, the sums set opposite their names, due on the 15th of January, 1855.*

* The several sums named appear in the list of awards.

FLORIDA BONDS.

The territorial governments of the United States are, within the powers confided to them, independent jurisdictions; and any debts incurred by them impose no obligations on the general government for their discharge.

The facts that the governor of the Territory is appointed by the general government, and that Congress has power of disapproval of the acts of a Territory, or is the owner of large tracts of land in the Territory which is not subject to taxation, do not vary this position.

A provision in the constitution of a State "that no other or greater amount of tax or revenue shall at any time be levied than may be required for the necessary expenses of government," does not prevent taxation for the payment of already existing pecuniary obligations of the government, as they are included under the head of necessary expenses of the government.

The admission of a State into the Union with such a clause in its constitution, impose no liability or claim on the general government, in law or equity, for the payment of any debts of said State contracted while a Territory.

In 1835 the territorial government of Florida incorporated "the Union Bank," with a capital of one million dollars, with power to increase its capital to three millions. To aid in raising the capital stock, the Territory issued bonds acknowledging its indebtedness to the bank, which bonds were signed officially by the governor and treasurer, and were intrusted to the bank with authority to dispose of them for its benefit.

The stockholders of the bank were to consist entirely of citizens of Florida. They were required to mortgage personal property and real estate to an amount equal in value to the stock subscribed for by them; and this property was to be holden by the bank, and applied to the payment of the principal and interest of the bonds of the Territory as they fell due.

A charter, with provisions of a similar character, was granted about the same time to the "Southern Life Insurance and Trust Company." This company issued bonds or "certificates," as they were called, which were guarantied by the Territory; and the property of the stockholders which was holden by the company was pledged for their payment.

Through misfortunes of the times and mismanagement of these institutions, the companies failed, for the most part, to pay the bonds

and certificates issued to them by the Territory, or the interest that has fallen due upon them; and up to the present time payment has not been made either by the Territory or the State of Florida.

A portion of the bonds and certificates issued to these companies were negotiated in Europe, and in default of their payment by Florida a claim is now made before this commission for their payment by the United States government.

The following articles in the constitution of Florida have been adverted to in the remarks of counsel or in the opinions of the commissioners:

"ARTICLE 1.

"*Declaration of Rights.*

"CLAUSE 19. That no law impairing the obligation of contracts shall ever be passed.

"ARTICLE VIII.

"*Taxation and Revenue.*

"CLAUSE 2. No other or greater amount of tax or revenue shall, at any time, be levied, than may be required for the necessary expenses of the government.

"ARTICLE XVII.

"SEC. 1. Nothing in this constitution shall impair the obligation of contracts, or violate vested rights either of individuals or of associations claiming to exercise corporate privileges in this State."

Mr. Rolt, Queen's counsel, and Mr. Cairns argued the case for the claimants, assisted by Mr. Hannen, the special agent and counsel to her Majesty's government; Mr. Thomas, agent and counsel for the United States.

The following points were taken by Mr. Rolt:

1. The principles of equity, reason, and public morals require the United States to pay this debt of Florida, contracted while a Territory.

2. The treaty of cession, act 2 and 6.

3. The debt from its origin was a debt of the United States as well as of the Territory.

4. In any event, the United States government confirmed and took upon itself this debt when Florida was admitted into the Union.

THOMAS, agent and counsel for the United States:

This is a claim now presented for the first time against the government of the United States for the payment of the interest, and ultimately the principal, of certain bonds issued by the territorial government of Florida, and also for the payment of other bonds issued by banking corporations, and guarantied by that government.

In the minds of disinterested Americans but one opinion exists on this subject. The conviction is universal that there can be no constitutional or legal obligation on the part of the United States to pay the debts of a Territory, and it would be a work of supererogation to attempt to prove this proposition before an American judge; but as the question seems not to be so evident to Englishmen, and as much importance has been given to it here by the two learned and distinguished counsel who have been heard for the bondholders and her Majesty's government, I deem it respectful to submit the reason for this conviction of the American people.

As this question is more important, from the constitutional principles involved, than perhaps any other that will come before the commissioners, I desire, in the first place, to state the manner in which it is brought before them. The British government has never presented it to the government of the United States, and it has at no time been a subject of discussion between them, either before or at the signing of the convention. And when it is considered that England never refuses to urge upon the governments of other countries the just and lawful demands of her subjects, it will not be difficult for the commissioners to perceive why she never presented this claim to the government of the United States. Under these circumstances, it is fair to conclude that her Majesty's government did not consider it a claim against the United States; but it has, nevertheless, been presented as such, at the instance of the claimants.

It may be that persons interested in these bonds are now present, and I therefore wish to observe that it is matter of very great regret to me, as I doubt not it is to a large majority of my countrymen, that these bondholders should be in the situation in which they now find themselves. I am acquainted with some of these persons, and entertain sentiments of respect for their talent and character; yet I cannot refrain from expressing my astonishment that men, ordinarily so

sagacious as they are in mercantile operations, should have been enticed into purchasing the bonds of the Territory of Florida as obligations of the United States, and still more that this transaction should have been closed, and years passed by without one single reference having been made to the liability of the federal government. How this is to be accounted for—whether they simply failed to exercise that caution which is to be expected of any one when investing his money, or whether they were induced, by the temptation of high interest, to accept bad security—it is not for me to inquire; I am to show that, whatever be the cause of their misfortune, they have no claim on the United States for relief.

Although the learned counsel for the bondholders has stated the case to the commissioners, I must beg leave also to submit my view of the manner in which the claim, if there be one, is supposed to arise.

Florida was ceded by Spain to the United States the 22d of February, 1819, in full property and sovereignty; and it was agreed that the inhabitants thereof should be incorporated into the Union as soon as consistent with the principles of the federal Constitution, and admitted to the enjoyment of all the rights, privileges, and immunities of citizens of the United States. The authority by which Congress proceeded to organize a territorial government will be found in the 3d section of the 4th article of the Constitution, and is in the following words: "Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

By virtue of the cession and this provision of the Constitution, Congress authorized the President to take possession of the Territory, and provide for its government, until that body should otherwise order.

In 1822 a law was passed by Congress establishing the territorial government of Florida, which was, in fact, a constitution for the people of the Territory; and, as it is important the commissioners should fully understand the nature of that constitutional charter, I must beg leave to refer to its details.

It provides for the appointment by the President of a governor, in whom the executive power is vested; and he is clothed with the usual executive powers possessed by the governor of a State. A secretary of the Territory was also appointed by the President. The legislative power was vested in the governer and thirteen discreet persons, inhab-

itants of the Territory, called the legislative council, who were appointed annually by the President. This body had power to alter or repeal the laws in force at the commencement of this act, and possessed, besides, the broad and comprehensive power "*to legislate on all rightful subjects of legislation.*"

The governor was required to publish throughout the Territory all the laws passed by this legislature, and on or before the first day of December, in each year, to report the same to the President of the United States, to be laid before Congress, which laws, "*if disapproved of by Congress, should thenceforth be of no force.*" This is the provision of the charter on which the learned counsel for the bondholders and the British government has founded the liability of the United States; but before considering the validity of his argument based upon it, I wish further to state certain provisions of the laws of Congress relating to the government of the Territory.

In this, as in all previous territorial governments, the legislature had no power over the primary disposal of the soil, nor to tax the lands of the United States, nor to interfere with the claims to lands within the Territory.

The judicial power was vested in two superior courts, one for East and one for West Florida, and such inferior courts as the legislative council might from time to time establish. The judges were under the control of the territorial government, and were required to take jurisdiction of all cases, civil and criminal, arising under the laws of the territory then in force, or thereafter to be enacted, and of all cases arising under the Constitution and laws of the United States. The laws of the United States were extended to the Territory, and its existing laws declared in force till repealed or altered by its legislative council; and, like all former territories, Florida was authorized to send a delegate to Congress.

An important change was made in the mode of appointing the legislative council in the year 1826, which appears to have been wholly overlooked by Mr. Gilpin, the American counsel for the bondholders, whose printed argument has been presented to the commission. At that period, which was long anterior to the passage of the territorial laws out of which this debt originated, Congress amended the constitutional charter, so as to give to the people the annual election of the legisla-

tive council. This secured to them the means of governing themselves in the most complete manner, and of changing any member of the council who did not act conformably to their wishes. These are the essential provisions of the laws of Congress important to be stated in this connexion.

We have thus seen that Congress created for the people of the territory, not an agency, as Mr. Gilpin asserts in his argument in behalf of the bondholders, a government, by which the people could execute their purposes. The extent and nature of the powers embraced in the organic law show that it was a government. All the powers were conferred which are usually exercised by the government of a State. Process ran in the name of the Territory, and it had complete civil as as well criminal jurisdiction. There was not a State of the Union more completely sovereign within its sphere, for it possessed the express power "to legislate on all rightful subjects of legislation," and both in the States and Territories, the practice of fifty years had settled that the power of granting charters of incorporation is included within this legislative authority. No one, before the discovery was made by Mr. Gilpin, ever heard of an agent possessing the power of life, and liberty, and taxation without limit. It is an abuse of language to call the organization exercising such powers an agency. All the writers agree in calling that which performs these functions a government.

In pursuance of the authority derived from the constitutional charter—the important provisions of which I have recited—the legislative council, soon after its organization, commenced to grant charters of incorporation to academies, turnpike road companies, and other necessary corporations under a duly organized government. This continued to be done for more than ten years, during which period upwards of sixty acts of incorporation were passed. The acts under which the present claim is said to arise were passed at the session of the legislative council held in 1835; and I shall give briefly the essential provisions of these laws, in order to show the nature of the obligations created by them. In that year the legislative council enacted a law to incorporate the subscribers to the "Union Bank of Florida," with a capital of one million of dollars, and giving the privilege of increasing it to three millions, which capital was to be raised by means of a loan, on the faith of the Territory.

The owners of real estate situated in the Territory of Florida, and

who were citizens thereof, were the only persons entitled to subscribe to the stock. To secure the payment of the interest and principal of the bonds to be issued by the Territory, and to raise the capital, the subscribers to the stock were bound to give bonds and mortgages on land and negroes, at least equal in value to the amount of the stock taken. The charter further stated, that, in order to facilitate the negotiations of the said loan by the bank, the faith of the Territory was thereby pledged for the security of the interest and principal of the bonds, so authorized to be issued, payable in 24, 26, 28, and 30 years, respectively, and bearing an interest of six per cent. per annum. In these bonds the Territory acknowledges its indebtedness to the Union Bank of Florida, and promises to pay to the order of the president and directors thereof. The bonds were duly executed by the governor and treasurer of the Territory, and delivered to the bank to be negotiated. The surplus profits of the bank were, after paying the interest and expenses of its management, to be retained and used as additional capital, until the amount equalled the bonds issued to procure the original capital. Thereafter the legislature might direct dividends to be paid; one moiety to the Territory of Florida, in consideration of the aid afforded in raising the capital of the bank, and the other moiety to be divided among the stockholders.

About the same time, another act of the territorial legislature of Florida incorporated the "Southern Life Insurance and Trust Company," with a capital of two millions of dollars, and having power to increase it to four millions. This corporation possessed very extensive trust powers, together with those of banking.

In order to enable this company to make loans and discounts beyond the amount of its capital, it was authorized to issue certificates of one thousand dollars each, bearing not more than six per cent. interest, and redeemable within the limits of the charter, which was for fifty years, at such time as the governor and company might agree upon. It was made the duty of the governor, by this law, to endorse on these certificates the words, "*guarantied by the Territory of Florida*," and sign his name and title of office thereto, and return them to the company; and the faith of the Territory was thereby pledged for the faithful payment of said certificates. Mortgages were to be taken on personal and real estate, as a security for the payment of the interest and principal of the Territory's liabilities; and in case of the default of the company

to pay interest or principal, the court of appeals in that Territory could issue process and sell property or choses in action of the company sufficient to indemnify the Territory against loss. The company had the ordinary power of corporations of suing and being sued, and was in all respects rendered by the laws of the Territory legally responsible.

Under these territorial laws, both the Bank and the Trust Company sold a portion of these obligations in the United States and in Europe, and commenced business. It is not necessary to inquire how long it was carried on; it will be sufficient for my present purpose to state that, after the lapse of a few years, the Trust Company could not pay the interest on the certificates, nor the bank the interest on the bonds, and the holders of them applied to the territorial government to redeem its pledge, but, under various pretexts, it also refused to pay it. The State of Florida has, it is alleged, acted in the same manner in regard to these obligations; and as that State has been admitted into the Union without any provision for their payment, the British government has brought the matter before this commission, and asks it to decide that the government of the United States is bound to pay these debts of Florida. I shall now endeavor to show that no such obligation exists.

In England it is not generally understood that the government of the United States is one of limited powers, not simply restrained by the theoretical checks and balances of one branch of the government upon another, but its boundaries are defined by a written instrument, which every member of it is sworn to support. I never yet have met with any one educated under the governments of the Old World who could fully appreciate the obligations of a written constitution, and I do not find that the learned counsel who opened this discussion is an exception to the rule. The Constitution is supposed by them to be a creature of the legislature, which may be varied to suit expediency. Englishmen, when referring to the Constitution of the United States, invariably regard it as having the same adaptiveness to suit the opinions of the hour as the British Constitution, which is a mere form of government, existing in the traditions and history of the country, in no two minds possessing the same attributes, and under which any power may be exercised.

In the United States this omnipotent political power exists nowhere in an organized form. It is retained by the people. When we speak of the Constitution we mean a writing, a great fundamental law, which

prescribes the manner in which the public authority shall be administered; a statute passed by the people themselves—that true source of all political power—and wherein they agree to organize a government and define its powers. Here is the Constitution itself, the instrument by which the American people have done this; and it is written in language so plain and simple that any one who reads may understand it. Whoever asks for the exercise of a power by the government of the United States must show that there is authority for what he seeks in that Constitution.

I cannot too strongly impress this view of it upon the minds of the commissioners. So influential are the prejudices of education, that Englishmen, regarding the Parliament as all-powerful, unconsciously act upon the principle that the government of the United States is possessed of the same powers as their own. This is a fundamental error. The sources and the amount of power are widely different. In England, formerly, all power was vested in the crown, and from time to time it has yielded to Parliament; while in the United States it has ever been possessed by the people. In forming their government, they delegated a portion of their power in the Constitution of the United States, to be exercised for the good of the whole. So far they constituted themselves one nation. Another portion they retained; and the remainder, which is by far the largest division of it, they, in separate and distinct communities, have delegated to their State governments. Each government—national, State, and territorial—is sovereign within the sphere pointed out by its own constitution, but has no authority beyond it. There is not, then, I repeat, in the United States, any legislative body sovereign in the sense in which that power is exercised by the British Parliament. That sovereignty is alone to be found in the people, and I desire this distinction to be kept in view during this discussion.

This being the true exposition of the government of the United States, let us examine the Constitution and see what powers it contains, whether there is in it any authority to pay the debts of Florida.

In the eighth section of the first acticle of the Constitution, the powers of Congress are enumerated, and, with the permission of the commissioners, I will read them.

"1. Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States. * * *

"2. To borrow money on the credit of the United States.

"3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

"4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

"5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

"6. To provide for the punishment of counterfeiting the securities and current coin of the United States.

"7. To establish post offices and post roads.

"8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors the exclusive right to their respective writings and discoveries.

"9. To constitute tribunals inferior to the Supreme Court.

"10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations.

"11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

"12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years.

"13. To provide and maintain a navy.

"14. To make rules for the government and regulation of the land and naval forces.

"15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repeal invasions.

"16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress.

"17. To exercise exclusive legislation over the District of Columbia, and places purchased for the use of the general government; and,

"18. To make all laws necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or office thereof."

These are the powers of Congress in which the authority, if it exist, must be embraced. We have seen that there is a power to borrow

money on the credit of the United States and pay the debts of the national government, but there is none to borrow on the credit of a Territory, or to pay its debts. The answer of the learned counsel is, that, by the law under which the territorial government was organized, the acts of Florida were to be laid before Congress, which body had the right to disapprove of any territorial law; and that not having done so in this case, the act of the Territory becomes the act of Congress, and hence a debt of the United States.

The requirement in the law of Congress, that all laws passed by the territorial legislature should be reported to Congress, and *if disapproved by that body should thenceforth be of no force*, was not a new principle introduced for the first time into the constitutional charter of Florida. It had been equally prominent in the laws for the organization of every territorial government from the establishment of the Constitution. The ordinance of 1787 for the government of the northwestern territory, contained it; and ever since that period it has been copied from that, in the formation of new territorial governments, yet no one ever pretended until now that the reservation of that right by Congress rendered the United States liable for the contracts of the Territories. Among the reasons that may be suggested for this policy was the interest of the whole Union in the public lands, and it was deemed expedient to retain the authority to prevent any interference with them. Even the positive assent of the Congress to State laws of incorporation, has not been held to bind the United States to perform the obligations arising under such laws. This is well known to all persons acquainted with American legislation. In 1790, Congress assented to a law of Rhode Island incorporating certain persons by the name of the River Machine Company, and in 1798, to a law of Massachussetts, incorporating a company to keep in repair a pier at the mouth of the Kennebeck river. Many other instances might be cited in which the United States expressly consented to State laws, and no obligation was ever supposed to be incurred by the national government. If none is assumed by expressly confirming a State law, the United States cannot become bound by simply requiring a territorial law to be laid before Congress. It was merely the exercise of that supervision which has been practiced for three quarters of a century, without responsibility for the debts of Territories. Every State in the Union gives to certain corporations the power to contract debts, and oftentimes cities are re-

quired to submit the law by which a debt is contracted for the affirmative approval of the State legislature; but the State does not thereby become bound any more than the court is held bound for the conduct of the guardian whose appointment it had approved. The guardian's course is pointed out by law, and he is to act within the sphere which it assigns to him. It is so with corporate bodies. Ours is literally a government of corporations, with written constitutions; and the principle that their power is complete within the sphere pointed out by these constitutions runs through the whole. The doctrine that would hold the granting power responsible for their acts would not only be at war with all the legislation of the country, but presume that the American people know nothing of the laws under which they live.

In Mr. Gilpin's argument, to which I have already referred, he asks the question, whether the objection taken by the committee of the territorial legislature, "that the obligations were imposed by those who were in fact, and in law, officers of the United States, and not of the people of Florida, can be overlooked." That is, Mr. Gilpin means to assert that the legislature of that Territory was composed of officers of the United States, notwithstanding the members of it were elected annually by the people, and were in every respect their agents. The governor, who constituted the remaining part of the legislature, was not an officer of the national government—he was an officer of the Territory. It is true he was appointed by the President, but he could not be governor of that Territory and at the same time be an officer of the United States. There is no such office as governor of the United States known to the laws of the federal government. It might more reasonably be contended that the governor of Canada, or any other British province, is a governor of England. Formerly, the mayor of New York city was appointed by the governor of that State; and according to this argument of Mr. Gilpin, deriving the appointment from that source, would make the chief officer of the city the mayor of the State. I apprehend it is quite a mistake to suppose that such reasoning can influence this commission.

It can hardly be an objection on the side of the bondholders that the governor, the only part of the legislature not immediately chosen by the people, did not veto the bill, but permitted the will of the people to become law. The objection raised by the governor was in favor of the more complete sovereignty of the people. The law had passed

for the establishment of the Union Bank requiring the express sanction of Congress before taking effect, and on this provision the governor of the Territory (Duval) observes: "I object to this section of the bill, because it is not essential to its validity, and will most probably defeat the measure. Under the organic laws the powers of legislation extend 'to all *rightful subjects of legislation.*' Within this limit its powers of legislation are complete and uncontrolled in the initiatory enactment of a law, although under the negative retained by Congress it may declare such law null and void. This negative, however, neither interferes with the primary exertion of the legislative action by the council, nor relieves it from its own responsibility in the exercise of its discretion. Why the necessity of the mortifying admission that the legislative council of Florida feels itself incompetent to exercise the powers conferred upon it by its charter, or reluctant to assume that responsibility which duty and a just regard for the rights of the citizens of Florida impose. In passing the bill the council must have assumed that it came within the legislative sphere of its powers and rights, and was, in its opinion, required by the interests of those for whom we legislate. Why, then, in this, more than any other case, seek to add to it a sanction not required by the provisions of our charter? Why, to give effect to this law, require an express assent, when as to other laws they are deemed perfect and valid until annulled by express negation of Congress? In the most important of all laws, those which affect the liberty or life of a citizen, we are wont to rely upon our own discretion and responsibility. Of all the charters granted by the legislature incorporating banks in this territory, no instance has occurred where the express assent of Congress was required before the charter could become a law;" and he adds, "that he sees no good reason for departing from that rule in this case."

By this course of reasoning the governor satisfied the legislature that they ought not to require the assent of Congress, and that provision was stricken from the bill, so that it was, in fact, passed by the people themselves. What becomes, then, of Mr. Gilpin's assertion, that this debt was created by those who were officers of the United States? It is wholly without foundation.

The message of the governor, on this subject, was before the world when these bonds were sold, as well as the previous action of the legislature in granting upwards of sixty charters of incorporation, with the

power to contract debts, and it was not imagined that these were acts of the federal government till Mr. Gilpin, the American attorney for the bondholders, announced the discovery. But, if these bonds are obligations created by officers of the United States, so are the debts of turnpike-road companies, and academies, and every corporation chartered by the people of Florida. And, in this case, which does *not differ* in principle from them, it was entirely an after-thought, and totally unworthy the people of that territory to attempt to shift the responsibility of the debt which they had deliberately contracted upon the United States. Besides its own faith, it is now contended on the part of the claimants that the territory also pledged the faith of the federal government. This was not the opinion of Governor Eaton, when the act to incorporate the "Southern Life Insurance and Trust Company" was before him for his approval. His language is so clear and conclusive on this point that I must beg to cite a portion of his message to the legislature, returning this bill, and suggesting certain alterations. He says: "The guaranty of a State or Territory is nothing more than a mere promise to do a particular act. *There is no compulsory authority whereby the fulfilment of the promise can be enforced; it is but the assurance of plighted faith*, though it is that which the sovereignty making it will always be careful to redeem. If, then, from any unforseen casualty this chartered company shall fail or omit to discharge its incurred obligations, a liability on the part of this Territory will arise; and hence does prudence dictate to the representatives that an offered guaranty of the public faith shall not be carried beyond a point of safety to those whose interests are here represented."

No reference is here made to the plighted faith of the United States. Governor Eaton knew that there was no power in Congress or the territorial legislature to pledge the United States to any such debt; and he publicly warned the legislature and the people of the territory, if this corporation should fail to discharge its obligations, a liability on the part of the *territory* would arise. With this solemn warning before the purchasers of these securities, it is idle for them to contend that they invested their money in them under the expectation that the national government was in any way responsible for their payment.

If, however, other proof be wanting on this point, we have only to look back to the price of United States stock in London and the price of Florida bonds at that time. The bonds of the Union Bank of Flo-

rida were sold at ten per cent. below par, while the United States stock was selling much above it. In the face of this notorious fact it seems to me extraordinary to maintain that the purchasers of these Florida bonds believed they were guarantied by the United States.

A complete confirmation of this view of the subject is afforded by the action of Great Britain in regard to her colonies. Over these possessions Parliament has much more control than Congress exercises over the territories of the United States. The colonists contract debts and make loans; and although these acts are directly approved by her Majesty's government, with the sanction of Parliament, yet the British empire is not bound for their payment. On this point I desire to submit to the commissioners a bond of the province of New Brunswick, which I have before me. It will be seen that the form of the bond runs thus:

"PROVINCE OF NEW BRUNSWICK.

"*Under the authority of the legislature of New Brunswick.*

"The lieutenant governor, on behalf of said province and by virtue of the authority vested in him by an act of the general assembly of the same, entitled 'An act to facilitate the construction of a railway from St. Andrews to Quebec,' which act has been approved and allowed by her Majesty, has hereunto set his hand and affixed his seal of office."

This bond, as we shall hereafter show, is similar to those issued by the Territory of Florida; and when the relation of the colony to the imperial government is considered, it certainly ought to have equal extent of obligation. Every act that is passed by the colonies is assented to by the British government; and in this case the world is notified of this assent by its being expressed in the bond. Besides, the law was passed by a legislature, two branches of which—namely, the governor and council—were appointed by the crown; nevertheless, it is nowhere contended in England that the debt created under this law by the issue of these New Brunswick bonds is guarantied by the British government, and their low price in the market, in comparison with a loan really guarantied, is conclusive on this point. This case being within the knowledge of the claimants, it is remarkable that they should come before an intelligent tribunal and ask it to say that the United States guarantied the territorial bonds of Florida.

In order to make this comparison between the colonial and Florida bonds still more clear to the commissioners, I will read the bond from the law of Florida incorporating the Union Bank. It is in these words:

"ONE THOUSAND DOLLARS.

"*Know all men by these presents*, That the Territory of Florida acknowledges to be indebted to the 'Union Bank of Florida' in the sum of one thousand dollars; which sum the said Territory of Florida promises to pay, in lawful money of the United States, to the order of the president, directors, and company of the said bank, on the ——— day of ———, in the year one thousand eight hundred and ———, with interest at the rate of —— per centum per annum, payable half yearly at the place named in the indorsement hereon, viz: on the ——— day of ———, and on the ——— day of every year, until the payment of said principal sum.

"In testimony whereof, the governor of the Territory of Florida hath signed, and the treasurer countersigned, these presents, and caused the seal of the Territory to be affixed thereto at Tallahassee, this ——— day of ———, in the year of our Lord ——.

"A. B., *Governor*
"C. D., *Treasurer.*"

There is not in this bond any pledge or guaranty by the United States, and no intimation that it has ever been approved by their government. Is it not plain, according to the British construction in the case of the New Brunswick loan, and for a much stronger reason, too, that there can be no liability of the United States to pay this bond? But I have before me another bond, issued by the government of Canada, to which I would call attention:

"PROVINCE OF CANADA.

"*Under the authority of the parliament of the province of Canada.*

"The government of Canada
Promises to pay the bearer
The sum of one hundred pounds sterling,

"Twenty-five years from and after the first day of August, one thousand eight hundred and forty-nine; likewise the interest thereon,

from same date, at the rate of six per cent. per annum, to be paid half yearly on presentation of the proper coupons for the same, as hereunto annexed, on the first day of August and the first day of February in each year, at the office of the Messrs. Baring Brothers & Co., London.

"Signed and dated at Montreal this fifteenth day of ———, one thousand eight hundred, &c.

[SEAL.] "——— ———, *Receiver General.*

"——— ———, *Inspector General.*"

This bond does not bind the imperial government, although the law for its creation was, under the authority of Parliament, approved by the crown. The British, like every other government, contracts by express stipulation; and I shall now show, by reference to another Canada loan, what it deems necessary in order to bind the government to pay the debt of the colony. It will then be readily seen that no such act or guaranty was given by the United States in the case of the Florida bonds. Here is the bond to which I refer. It is in the following words:

"PROVINCE OF CANADA.

"*Guarantied Loan.*

"Under the authority of an act of the imperial Parliament of the United Kingdom of Great Britain and Ireland, passed in the sixth year of her Majesty's reign, entitled, 'An act for guarantying the payment of the interest on a loan of one million five hundred thousand pounds, to be raised by the province of Canada,' and of an act of the legislature of the province of Canada, passed in the same year, entitled, 'An act to authorize the raising, by way of loan in England, the sum of one million five hundred thousand pounds sterling, for the construction of certain public works in Canada,' this debenture entitles the bearer, twenty years after the date hereof, to the sum of five hundred pounds, lawful money of Great Britain; likewise to interest thereon, at the rate of £4 per cent. per annum, payable half yearly in London, at the Bank of England, on presentation of the proper coupon for the same, namely, £2 per cent. on the 1st of July, and £2 per cent. on the 1st of January, in each year; the same being charged on the consolidated revenue fund of the said province of Canada, next after the charges made thereon by law at the time of the passing of t h

said act of the province of Canada, and, until the said principal sum be repaid, the said interest is guarantied by her Majesty on the consolidated fund of the United Kingdom of Great Britain and Ireland under the authority of the said act of the imperial Parliament.

"Dated Treasury Chambers, Whitehall, this 2d day of January, 1853.

"HENRY GOULBURN,
"A. PRINGLE,
"HENRY BARING,

"Being three of the commissioners of the treasury, duly appointed by her Majesty to raise the said loan."

This is an obligation which binds the British government. It is so expressed on its face, and, in consequence, it was negotiated on much better terms than the unguarantied bond of Canada. The guarantied loan bears four per cent. interest, while that which is not bears an interest of six per cent. If the United States had guarantied the Florida bonds, they would have done it in a similar form by law, and the price of them would then have been at least equal to that of United States stock selling in London at the same time. But the federal government never in any way acted on or approved of the Florida loan, and the bonds of that Territory sold in London, considering the interest allowed, at about ten per cent. below par, while the stock of the United States sold above it. Under no circumstances could clearer proof be given that the purchasers of the Florida bonds knew that the United States government was not liable for their payment.

It is alleged by Mr. Gilpin that Congress knew the nature of these charters before the bonds were sold and the money paid. Suppose this to be true; did the United States become responsible by declining to interfere with the people of Florida in governing themselves? Mr. Gilpin says that obligation arose, because "the action of the territorial legislature from first to last was the action of Congress. In no constitutional aspect had that legislature any authority except as the agent or on behalf of Congress." If this be true, then not only the laws for the creation of the Union Bank of Florida, and the Southern Life Insurance and Trust Company, are laws of the United States, but every other act of that Territory will have the same force and extent

of operation. If Congress can delegate its power to a Territory to enact laws for the whole Union, it may authorize these corporations or their presidents to do so; and, instead of having a limited government in the United States, we should at once be launched into an undefined region of power where no free government could exist. Even in England, where the Parliament enjoys political omnipotence, what would be said if it should grant to the Bank of England power to pass laws for the British Empire? Who would not call it usurpation—a violation of the Constitution? yet this commission is asked to interpolate this power into the free and written Constitution of the United States. Mr. Gilpin is a lawyer, and has been Attorney General of the United States, and it is the more surprising that he should have been induced to claim such a power for Congress.

No one contends in America, nor do I suppose the learned counsel for her Majesty's government would maintain, that the law of a territorial government has any force beyond its boundaries. If he would not, then he surrenders the whole case, because this proves that the action of the territorial legislature is not the action of Congress. Every act passed by Congress is a law of the United States; and if the acts of Florida were laws of the Union, they would have force and effect beyond the boundaries of that Territory, anywhere within the limits of the federal jurisdiction. It is well settled that Congress cannot resolve itself into a legislature for particular localities. In the case of Cohens *v.* Virginia, it was held by the Supreme Court that a law for the District of Columbia, or any other place for which Congress could legislate, was a law for the whole country, and its obligations commensurate with it. This will be found to be fully sustained in all the American courts, and has received special confirmation in fourth Gill and Johnson's Maryland Reports, page 135. Any act necessary to be done to carry the law of Congress into effect, may be performed in any part of the United States. In executing the laws of the territorial government this could not be done. Process ran in the name of the people of the Territory, and was stopped by the boundaries thereof, and hence the law under which it issued could not be a law of the United States.

But the Constitution settles this question beyond all controversy, and I hasten to point out its provisions to the commissioners. The first section of the first article is perfectly conclusive, and is in these

words: "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." The power to make laws is not vested in Congress and the Territory of Florida, but in a Congress composed in a particular manner, viz: of a Senate and a House of Representatives. Could the members of Congress, after having sworn to support this Constitution, undertake to vest the legislative power in a totally distinct government? If the suggestion of such a thing had come from one unaccustomed to the obligations of a written constitution, it would not have been so astonishing, for neither in England, nor anywhere else out of the United States, does there seem to exist any correct appreciation of the obligations of a written constitution; but for it to be asserted by one who has held a high position in the government of the United States, I confess, amazes me, and I can only attribute it to over-wrought zeal in advocating the cause of his clients.

The Constitution does not merely prescribe that the legislative power shall be vested in a Congress of the United States, consisting of a Senate and a House of Representatives, but it defines the manner in which each House shall be constituted. "The House of Representatives shall be composed of members chosen every second year by the people of the several States," and it besides prescribes the qualifications of the representatives and electors. "The Senate of the United States shall be composed of two senators from each State, chosen by the legislature thereof." Each House is to determine the rules of its proceedings; and among those rules it is required that every bill shall be read three times in each House, and on different days, unless otherwise ordered; and the Constitution further requires that it shall afterwards be approved by the President before taking effect. What purpose can there be in limiting the powers of legislation to Congress, if it can vest that power in another body wholly unknown to the Constitution? If Congress may associate the territorial legislature as a co-ordinate branch of the law-making department, it may, as I have previously said, invest the Union Bank of Florida, or the British Parliament, with the same power; and we shall then find that, instead of being independent, we are still subjects of the British crown.

But the learned counsel's position is, that this act of Florida was made a law of Congress by that body having declared that the acts of the legislative council should be laid before it. This would be doing

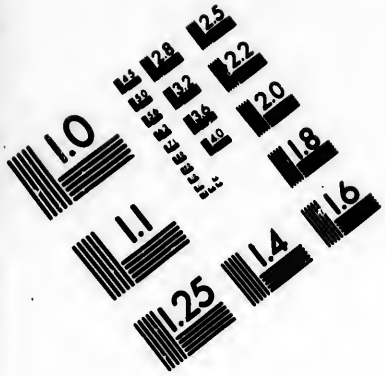
that indirectly which Congress cannot do directly. It cannot vest the legislative power in the territorial government; nevertheless the counsel maintains that it may give to that Territory authority to pass laws which Congress can silently acquiesce in, and make them, by that mode, laws of the United States. Such a doctrine can never find favor in the mind of one accustomed to a written constitution, and which the members of the government are sworn to support. The United States government expresses its will, as I have already shown, only by act of Congress or by treaty, both of which must be passed in prescribed forms. They can be bound in no other way, and none of these forms have been complied with in creating the debt of Florida.

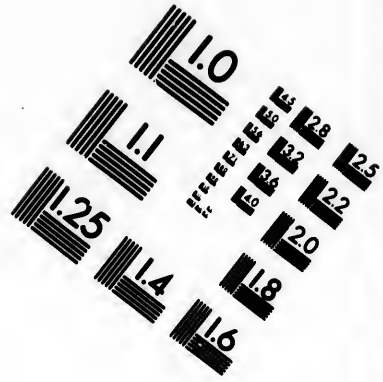
It is asked by Mr. Gilpin, "Where was the authority of the Territory of Florida to grant charters of incorporation?" That question is answered by the law of Congress organizing the territorial government. By that law it was expressly authorized "to legislate on all rightful subjects of legislation," and to grant charters of incorporation was everywhere acknowledged to come within that power. The territorial government was in all respects similar to the government of a State, which, without any express authority, exercises this power; and surely, under a specific grant "to legislate on all rightful subjects," the Territory may exercise it. The States of the Union have far more unlimited powers than those of the general government, though they are not such that foreigners so often feel their operation. Since the authority of a Territory is analogous to that of a State, we have but to see what this is in order to determine that possessed by the territorial government. Congress can only exercise those powers expressly granted in the Constitution of the United States, or which may be necessary and proper to carry these powers into effect; whereas a State may do everything which it is not forbidden to do by its own constitution, or by that of the United States. A State is not prohibited from incorporating banks and granting other charters; and hence, under the general right of sovereignty, this power has been exercised. The State derives the authority to create corporations from its inherent sovereignty. That sovereignty is embraced in the power "to legislate on all rightful subjects of legislation," and which is expressly granted to the Territory. It may, therefore, by virtue of this grant, do that which the State claims the right to do without it.

Fortunately, this question does not depend on any reasoning of

mine, however satisfactory to myself. It has been settled by one of the highest judicial tribunals in the United States. In the case of Williams *v.* the Bank of Michigan, reported in 7 Wendell, p. 539, the court of errors in New York adjudged that the power to incorporate a bank was within the scope of the general powers of territorial legislation conferred by the act of Congress. This was the unanimous opinion of the court, although there was not in the organization of the Michigan legislature that expression of the popular will which Mr. Gilpin seems to regard as so essential to the validity of an act of incorporation. The governor and the members of that legislature were appointed by the President, and their acts laid before Congress, as in the case of Florida. In giving his opinion, Judge Beardsley observed on this case, "that the bank has been created by an authority which to us may be regarded as an independent government." In another case, reported in 5th Wendell, p. 481, Mr. John C. Spencer, one of the most distinguished lawyers in America, said: "The territorial governments were alone to judge of the expediency of the laws to be adopted; and when adopted, until disapproved, they are in force."

It being established, then, that the legislative council had power to grant charters of incorporation, Mr. Gilpin admits in his pamphlet, on page 36, that these banks were the agents of the Territory. Notwithstanding these judicial decisions were within the reach of Mr. Gilpin, and probably within his knowledge, he still asks by what expression of the popular will was this action of the territorial legislature sanctioned, as if that were necessary to render the act legal. This condition which he requires was, however, fulfilled. It was approved of by the people's representatives, who were chosen annually, *by universal suffrage*. The opportunity was thus afforded to express their disapproval of any measure of the legislature at the ballot-box. This they did not do. It was not till long after the organization of these banking institutions—after the money had been borrowed and partly squandered—that the people objected to the measure. Then was sent forth that expression of the popular will that the debt is not to be paid by the people of Florida. I confess that I have not the same respect for this expression of the popular will that it seems to command in the mind of Mr. Gilpin. If the debt was legally contracted, the people of Florida ought to pay it. I am aware that it is contended on the part of Florida that at least a portion of the bonds were sold contrary





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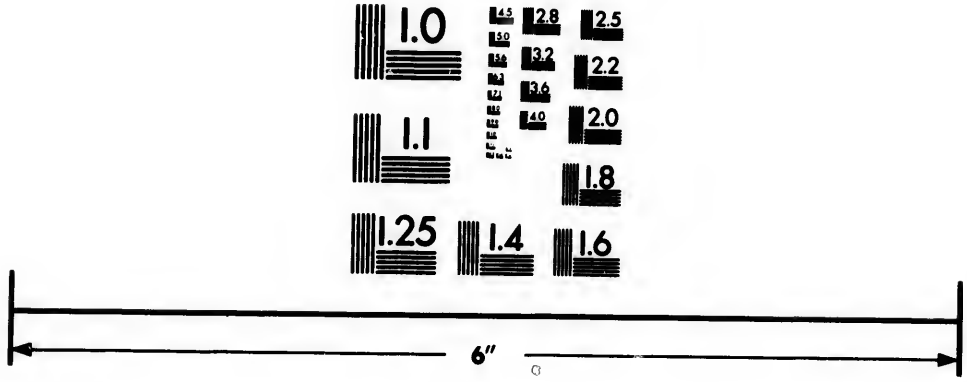

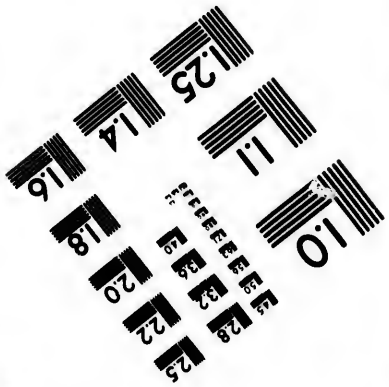

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to the provisions of the law; on that point I do not intend to express any opinion. For the purposes of this discussion I am willing to assume that the law was complied with, and then deny that the United States can be held responsible. But the objection raised on behalf of Florida certainly does not apply to the whole debt, and the repudiation of that which is just receives, I have no doubt, that condemnation of the American people which it deserves.

Mr. Gilpin refers to the clause of the Constitution which authorizes Congress to make rules and regulations for the government of the Territories, and observes: "The rules and regulations which Congress makes are constitutional, but not so are those of any other body. Congress may, and necessarily must, act through its agents; it may constitute the territorial legislature, or governor, or other functionary, such agent; but their acts are the acts of the principal, if the agent has not gone beyond the limits of the delegated powers. The creation of these was within the powers of the territorial legislature, as confirmed by Congress; it is, therefore, an act of the principal, even if not ratified by that principal." These words were, perhaps, never before arranged to violate such a well-known principle of government. I have shown, by judicial authority, entitled to the highest consideration, that the creation of these obligations was within the powers of the territorial legislature, without any confirmation by Congress. Notwithstanding this authority, Mr. Gilpin maintains that the legislature may create a corporation whose by-laws and all the acts for its internal regulations and government are not constitutional nor valid, except as the agent of the legislature creating it; and hence its acts become laws of the State. This egregious error results from misapprehending the nature of the territorial government. It was not the agent of Congress, but the agent of the people of Florida. It was appointed by them, annually, and received its instructions from them; and they are the principal, and not Congress. On the people of that Territory does the responsibility rest; and although they may not have held their representatives to a very strict accountability, nevertheless it was the act of the people of Florida, by their chosen representatives, an independent society acting for itself, and those who purchased these obligations must look to Florida to fulfil them. If the territorial government was guilty of acts of imprudence and folly, persons investing their money should have looked to it. The rule of *caveat emptor* is generally

present to the minds of capitalists; and if they did not regard it in purchasing the bonds of Florida, I am unable to perceive what justice there is in shifting the consequences upon the government of the United States.

The learned counsel who opened this discussion placed the claim "upon the principles of equity, reason, and public morals." To what kind of equity does he refer? Certainly not to that which has been, or ever can be, administered by human tribunals. He has in his mind a transcendental equity which it belongs not to man to administer. If it be legal equity to which he alludes, why has not this claim been brought before the courts of the United States?—for it is alleged that it arises under a law of the Territory which has become a law of Congress. The Constitution declares "the judicial power shall extend to all cases in law and equity arising under the Constitution and laws of the United States;" and if a question does so arise, the Supreme Court have held that they must, in some form, have jurisdiction, whoever may be the parties; yet in no way has this case been brought up for adjudication. The claimants admit in their memorial that the United States courts have no jurisdiction of the case. How, then, can it arise from a law of Congress, or be a case of equity in any sense known to the English or American law? The claimants say, because they had a legal remedy, and that Congress has taken it away by the admission of Florida into the Union as a State. What remedy had the claimants against the territorial government which they have not against the State of Florida? They could not sue the Territory in its own courts, and there is no jurisdiction of such a suit given to the courts of the United States. This must have been understood by the claimants when they purchased the bonds. We have seen in the message of Governor Eaton, returning to the legislative council the "Southern Life and Trust Company's" charter for alteration, that he said: "The guaranty of a State or Territory is nothing more than a mere promise to do a particular act. *There is no compulsory authority whereby the fulfilment of the promise can be enforced; it is but the assurance of plighted faith.*" This view of the Territory's obligations, and the warning that no remedy existed against it, was before the world, and has not been controverted. The learned counsel himself has not even attempted to support the assertion of the memorial, that we have taken away the remedy of the claimants. The equity, then, demanded,

is that which has heretofore been too subtle for courts of justice, and the case is brought before this commission under the supposition that it is endowed with superhuman power. The transcendental argument which the learned counsel constructed on the broad basis of equity, reason, and public morals, must, then, fall to the ground.

The distinguished names of Chancellor Kent and Mr. Webster have been introduced into this discussion by the learned counsel for her Majesty's government. Their opinions are entitled to the highest consideration everywhere, and no one bows to them with more profound respect than I do; but I confess that I cannot perceive the bearing of the opinions cited upon the matter before the commission. It appears that certain persons who were negotiating for the purchase of these bonds, or who were already interested in them, desired to know whether Congress could repeal the laws of the territorial government by which the debt was created, and the opinions of these distinguished jurists satisfied them that they run no risk on that score, though Mr. Webster said Congress had the power to annul them. If anything is to be built upon this dictum attributed to Mr. Webster, I must deny any such authority in Congress. The Constitution does not, in terms, prohibit Congress from passing any law impairing the obligation of contracts, though it does so in effect. It has been shown in the course of these observations that Congress can exercise no power which is not expressly delegated to it, or which is not necessary and proper to carry into effect the granted powers. The power to impair the obligation of contracts is nowhere expressly granted, and it can never be necessary or proper to attain any end of government; and hence it is altogether against the Constitution to claim for Congress either the power or right to impair the obligation of a contract, or, in other words, to do injustice. No such authority has ever been set up by it. It did require, in 1836, that all future charters granted by the Territory should be approved by Congress before taking effect; but there was no intimation that the past action of the Territory could be undone.

Mr. Gilpin says, "that, with a full knowledge of the insolvency of the corporations, and the certainty that only by taxation could either the interest or the principal of these obligations be paid to the holders, a clause was introduced into the State constitution prohibiting taxation after Florida should become a State, except for the necessary expenses of the State government. To this prohibition of taxation Congress

assented, and further stipulated that for no purpose whatever should the public lands within the State be taxed by the State legislature." Therefore Mr. Gilpin would have the commissioners conclude that the United States ought to pay the debts of Florida. Does this follow from his premises? The provision of the constitution of Florida, to which reference is here made, is in these words: "No greater amount of tax or revenue shall be levied than may be required for the necessary expenses of government."

It is a most unwarrantable construction of this provision to assert that it authorizes the repudiation of the debts of the Territory. The principle is well settled that a territorial government may contract debts which shall bind its people when they are admitted as a State into the Union. This was decided in the case of the New Orleans Navigation Company, reported in 11th Martin's, page 309. The doctrine of the writers on international law is to the same effect. Chancellor Kent thus lays down the law in his clear and emphatic style: "A State neither loses any of its rights nor is discharged from any of its duties by a change in the form of its civil government. The body politic is still the same, though it may have a different organ of communication." So that whether it was so designed by the people in framing their Constitution or not, judicial decision and international law both declare that they are unable to rid themselves of their just obligations by any new form of government. But it was never so intended. It is a necessary expense of a government to pay its debts. It is so well understood by the tax-payers of Great Britain, that the payment of the interest on a debt is a necessary expense of government, that I did not expect to be called upon to prove the proposition. The principles which regulate the obligations of Florida towards her creditors are fixed by *universal* law, and could not be affected by her admission as a State. Congress had no power to require the Territory to be out of debt before admitting it into the Union, and assumed for the United States no obligation by admitting it without such requirement.

In regard to the exemption of the public lands from taxation, that was specially mentioned in the law organizing the territorial government. It was no new thing to re-enjoin it upon the State authorities. The same provision had been introduced by Congress into every territorial charter from the foundation of the federal Constitution, and continued when the Territory became a State. Why should Florida

be an exception to the rule? It is well understood by every man of common intelligence in the United States that the public lands never were, in any State or Territory, subject to the control of either; and if the claimants did not inquire into this when they purchased these bonds, there is no justice in making the people of the United States liable for the results of their negligence. Suppose a man who is in need of money should go to another and offer to mortgage my house as security for a loan, and, without investigating the title, the lender should take a mortgage upon it. When it is afterwards shown that the mortgagor had no right whatever to my house, am I bound to pay the debt when it becomes due? According to Mr. Gilpin's doctrine, I am; but according to universal law and justice, I am not. This is Mr. Gilpin's argument in favor of the liability of the United States derived from the public lands.

In the course of these observations I have shown that the first position assumed by the learned counsel cannot be maintained, and that there is no liability of the United States upon the ground of equity and public morals.

His second point was, that from its origin this debt was a debt of the United States as well as of the Territory of Florida. I have shown that the United States can only contract debts by act of Congress passed according to prescribed forms, and that none of these forms were complied with in the supposed assent of Congress to the contraction of this debt. The United States government cannot contract a debt at all, except by law or by treaty, which is a supreme law; and in neither mode did it assent to the Florida obligations. I have moreover shown, by incontrovertible proof, that the purchasers of these bonds knew the United States government was not bound for their payment from the price they bore in the market, it being far below that of the United States stock sold in London at the same time.

The learned counsel says, whatever may be the force of this last argument, that it does not apply to his other ground, which is, "that in any event the United States government confirmed and took upon itself this debt when Florida was admitted into the Union as a State."

If the federal government took it upon itself by the admission of Florida, that was because the act of the Territory creating it thereby became a law of the United States. The same constitutional objection here arises that we have already considered, namely, that the law au-

thorizing the debt was never passed by Congress, nor approved by the President. But suppose the mere admission of Florida as a State adopted this law into the statutes of the Union, it will not be denied that it must have the same effect upon the other acts of the territory, and its laws have thus at once become laws of the United States. I understand the counsel to admit that this is a legitimate conclusion from the premises. If this is true of Florida, it is equally true of every other Territory which has been admitted as a State since the foundation of the government, and all their laws are statutes of the United States. Instead, then, of one government, in which all are represented, giving laws to the Union, we have besides had, at the same time, two or three different territorial legislatures in remote parts of the country enacting laws for the control of the whole American people—a hydra in government never before known to any nation, and this commission will not venture to assume that the people of the United States have lived under it for three-quarters of a century without having discovered its monstrosity.

To my mind this is conclusive, that by the admission of Florida, the United States did not, in any form whatever, assume the obligations of the territorial debts, and this commission cannot refuse to concur in this conclusion.

Mr. Cairns for the bondholders, assisted by Hannen, agent and counsel for Great Britain, in reply, contended at length in behalf of the allowance of the claim.

1. On the general ground of the subordinate power and position of the Territory under the general government.

That the United States held the supreme power over her Territories originally, appointed her executive, had a large interest in the lands of the Territory, and in numerous respects held such a responsibility and charge over her, and control over her legislation, that in justice and equity the general government should be responsible for her debts.

2. That the article in her constitution, limiting the right of taxation to the necessary expenses of government, might be construed, and probably was designed to be construed, in a manner to prevent the State government from making the necessary appropriations for the payment of the debts of the Territory, and that Congress, by the admission of the Territory with such a provision, became accessory to the wrong, and should be holden as pledging her own resources for the payment of the claims.

3. It was further contended that, under all the circumstances of the case, the United States was morally bound to pay these debts. That a moral obligation is as high a claim as can be set up against a sovereign power, and is as fully obligatory against such a power as a legal obligation. That a moral obligation is the only claim that can exist against a sovereign State.

OBSERVATIONS OF MR. THOMAS, AGENT FOR THE UNITED STATES, ON THE REHEARING BEFORE THE UMPIRE.

The commissioners having disagreed in opinion as to the obligation of the United States to pay the debts of the Territory of Florida, the case was submitted to Mr. Bates, the umpire, for decision. At the request of the British commissioner and agent, the umpire had attended the argument of the case before the commissioners, and it was understood by the agent of the United States that the umpire's presence would render a re-argument unnecessary; but Mr. Cairns, one of the counsel for her Majesty's government in this case, insisted upon his right to a special hearing by the umpire, and the case was accordingly re-argued before him and the commissioners. After her Majesty's counsel had closed his argument, Mr. Thomas, the agent for the United States, made the following observations in reply:

Mr. THOMAS:

When the argument of this case took place before the commissioners, I thought it was understood that the presence of the umpire, although unofficial, would render a re-argument unnecessary. In this, it appears, I was mistaken. I do not find, however, that, in the review of the subject, the learned counsel has discovered any new ground on which to rest the claim against the United States. It is still alleged that the United States government confirmed and took upon itself the obligation of these debts by the admission of Florida into the Union.

I have, in a previous discussion of this question, shown that no such legal consequence followed from the action of the general government. And, if it be not sufficiently manifest that the takers of these bonds expected the admission of Florida would occur precisely as it did, I shall be able to remove any doubt on that point by information which has recently come to my knowledge, and which I shall now present for the consideration of the umpire.

The prospectus, issued by authority of Florida, containing a full statement of the security offered, was made known to the purchasers of the bonds before they invested their money; and in that prospectus no allusion whatever is made to the liability of the United States. It is entitled, "Florida six per cent. sterling bonds," and the very first sentence commences by declaring, "these are the bonds of the Territory of Florida;" then it sets forth, with great minuteness, the advantages of the investment, and the safety of the security offered, and sums them up in the following specific manner:

"The holders of the bonds have therefore a fourfold security for their payment:

"1. The capital of the bank, equal in amount to the bonds.

"2. The sinking fund, which will effect its object in fourteen years.

"3. The property of the stockholders, originally appraised at three millions, with its increased value.

"4. The faith and credit of the Territory and State of Florida."

These are the terms of the contract proposed to and accepted by the purchasers of the Florida bonds. What is there here to warrant the inference that the government of the United States could directly or remotely be held liable for their payment? It is amazing that, with this contract so explicit, and in the hands of the claimants, they should set up this claim; and it is not less so that the learned counsel, who have appeared for her Majesty in this case, should advocate it before an intelligent tribunal.

The faith of the Territory is pledged, which is, of course, the faith of the people of that Territory; and they then pledge the faith of the same people when admitted as a State of the Union; and the near approach of that event is held out as one of the advantages of the investment. The prospectus proceeds to state that, "by direction of an act of Congress, a convention is now in session for the purpose of framing a constitution for Florida, and she will probably become a State this year." So that the purchasers of the bonds, in effect, accepted as security for the debt the faith of the State, as well as that of the Territory. The purchasers of the bonds, therefore, perfectly understood the nature and amount of the security which they received for their money; and they moreover knew that the liability of the United States was not embraced in it; and, unless it is the purpose of this commission to disregard contracts fairly made, and to declare the

property of one person to belong to another, the umpire will be bound to decide that no sort of obligation devolves on the national government to pay these debts.

If there were nothing else to be said on the subject, the prospectus would be conclusive against the claim; but besides this, I desire to call the attention of the umpire to the argument which I had the honor to deliver before the commissioners and umpire, and which will render further observations unnecessary.

UPHAM, United States Commissioner:

I have listened attentively to the arguments urged in this case, but have been unable to see any just grounds on which the claim is based.

To sustain the claim, one of two propositions must be maintained—either that the act of the Territory of Florida pledging her credit, originally bound the United States; or, that Congress subsequently approved and sanctioned the law of the Territory, so as to make it obligatory on the whole people of the Union.

I. Could the Territory of Florida bind the United States originally by her acts?

This depends entirely on the power vested in her as a government. Florida had been originally colonized by Spain, and had long been subject to her authority. It was ceded by that power to the United States, on the 22d of February, 1819, with a provision that it "should be incorporated into the Union as soon as should be consistent with the principles of the federal Constitution."

The power of holding Territories is evidently given to the general government. The Constitution of the United States provides that Congress shall have power "to make all needful rules and regulations respecting its Territories."

The course of proceeding by Congress in such cases has been to constitute, within any given Territory, whenever the number of inhabitants will justify it, a territorial government, with power to establish its own laws, subject only to such reservations and restrictions as are specifically named in the charter bestowed upon it.

The governor of Territories has been uniformly appointed by the President of the United States; and, in some instances, for a short time, a territorial council has been appointed in the same manner, having the usual powers and authority of a legislature.

A council was appointed in this manner in Florida, until 1826, when it was provided that the inhabitants should elect their territorial council or, in other words, their legislature, annually.

By the act constituting the Territory of Florida, the governor was invested with the powers of a chief executive magistrate; and the council, or legislature, was authorized, in express terms, "to legislate on all rightful subjects of legislation," provided that its laws were

to be reported to Congress annually, and "if they were disapproved by Congress, they were thenceforth to be of no force."

Under the authority thus conferred, courts were established having the highest civil and criminal jurisdiction; and her own laws, within her own jurisdiction, subject only to the Constitution of the United States and the negative of Congress, constituted the supreme laws of the Territory.

Florida exercised under this charter all the ordinary powers of a government. She regulated her own policy, assessed her own taxes, granted numerous acts of incorporation, and established various institutions deemed essential to her welfare and prosperity, until 1835, when she passed the acts under which the indebtedness of the Territory was incurred.

Can the United States be said to have enacted either of these laws, or to be holden, as a government, responsible for the payment of the obligations created by them? No evidence has been shown to sustain such a proposition, and no theory of government countenances it. Various suggestions have been thrown out as bearing on this point, to which we propose to advert.

One suggestion which has been made is: *That the Governor of Florida was appointed by the President of the United States.*

In like manner the governors of every province of Great Britain are appointed by the crown; but it was never understood that such provinces had not full power of enacting valid, binding laws, within their constituted sphere of action, to the same extent as other governments.

It is wholly immaterial, in this respect, how the chief executive magistrate of a province, or the other branches of its government, are appointed. When constituted, they form the government of the province, with the ordinary rights, duties, and powers of a government. One of the very least of these powers is the capacity to contract debts in aid of the functions for which it was constituted. Each government possesses this power as one of its attributes, in common with every other public or private corporation, except so far as it may be expressly restricted in its exercise by some organic or other law, and no such law is here intimated or pretended.

Another suggestion made is: *That the laws of Florida might be disapproved by the general government.*

But this does not make the laws of the Territory the laws of the

Union, or bind the Union to the obligations they impose. Such laws, when approved, only operate on the people of Florida. They have no power beyond her limits. If disapproved, they are a mere nullity. The power of approval of colonial laws before they take effect has always existed in the crown of Great Britain from her earliest territorial acquisitions, and in every other government having colonies or subordinate possessions. The laws made by the colonies are, notwithstanding, their own laws, and have never been holden to bind the mother country.

The capability of incurring debts for certain objects ordinarily exists in parishes, towns, cities, counties, &c.; and though they may be under the control of the general government, their contracts, and the debts incurred by them, are nevertheless their own. A different doctrine would confound all principles of just and accurate responsibility, and would seriously impair the advantages devised, through a variety of subordinate organizations, to secure the essential ends of good government.

Again it is said: *That the lands belonging to the United States within the territory of Florida were not liable to be taxed.*

This is so. The public lands, however, of the United States are graduated at a price best calculated to insure their rapid settlement, and they become at once liable to taxation on their being sold and improved. The same policy exists in other governments. Public lands and public property are nowhere taxed; but such an exemption was never construed to render the general government liable for the debts of any town, county, or province within which such lands or property might be situated.

It has been also said, and numerous authorities have been cited to the point: *That the original power of the general government over the public territory was absolute and unlimited.* So the people of the United States had originally unlimited power to adopt the form of government they preferred; and they may still change and modify their Constitution at pleasure, but this does not alter the facts as to the binding character of the acts of the government when once established.

The United States has chosen to extend to her Territories, in the outset, the right of self-government, and has intrusted them, as in the case of Florida, with powers "to act in all rightful subjects of

legislation." This power once granted is complete. From thirteen original States, the Union has thus extended to thirty-one States, formed mostly from new Territories, each of which is wholly independent of the other, as to the contracts and liabilities they may make, and the legislation they may adopt, saving only their obligation to the general Constitution of the Union. The government of a Territory does not depend so fully and perfectly on the action of its own people as that of the individual States, but its laws, once enacted and not disapproved, have precisely the same binding power and efficacy, within its limits, as those of a State. No one of these suggestions to which we have adverted, or the whole combined, tend to show that the acts of Florida are the acts of the general government, or that her responsibilities are the responsibilities of the American people.

II. It remains to consider the second point raised, whether Congress subsequently approved and sanctioned the local law of Florida, so as to make it a provision binding generally on the people of the Union. It is not contended that this local law was adopted, or liability incurred by any direct act of the general government assuming the debt. It is said, however, that the government has rendered itself liable for its payment, because she admitted Florida into the Union as a State without first compelling her to make payment of these debts.

The argument proceeds on the ground, that the United States cannot admit a portion of its Territory into the Union while in debt, without becoming responsible for such indebtedness. It asserts, in substance, the principle that whenever the government has it in its power, by the conditional denial of any privilege, to compel a Territory to make payment of a debt, it must insist on such compulsion, or it shall be holden to have assumed such debt.

This is a new responsibility imposed on governments.

It is quite clear to me, on the other hand, that the United States might well assume the position that she had nothing to do with the contracts, between her Territories and individuals, and that it is not a part of her duty to constitute herself into a judicial tribunal to pass upon the pecuniary relations existing between them. Florida might well contend that this should not be done, and that she will not be dictated to, or interfered with, by the United States on the subject.

But this point is put still stronger. It is said that a provision was inserted into the constitution of Florida, preparatory to her admission

as a State, "that no other or greater amount of tax or revenue shall at any time be levied, than may be required for the necessary expenses of government," and it is contended that this provision expressly prohibits the payment of any prior existing debt; and, that the United States, by admitting Florida into the Union, with such a clause in her constitution, became accessory to the wrong done, and should be holden responsible for it. But this is a far-fetched construction of the clause in question, and forms altogether too remote a claim to impose a legal pecuniary liability. The most necessary expenses of a government are the payment of its obligations as they fall due. It can hardly be pretended, if a tax should be assessed by the State of Florida upon its citizens to raise funds to meet such obligations, that an individual could resist payment of such tax on the ground that it was unconstitutional. No court would give such a construction to this provision of the Constitution, and unless we hold that such would necessarily be the decision of the court, then the objection is without foundation, and constitutes no ground for the assertion that the United States, by admitting Florida into the Union with this provision, should be held to have assumed the debts of the Territory.

But whether such be the interpretation of the clause in the Constitution or not, the inference attempted to be drawn from it would not follow. If Florida has repudiated her debts for any cause, it was her act, and it was not incumbent on the United States to compel her, by any denial of the ordinary right of admission into the Union, to pay such debts. She had no more rightful control over the acts of a Territory so situated, than she had over a State.

The creditors of the Territory had no power, either legal or moral, to interpose any such bar to her admission. It is not a remedy for coercing the payment of debts which was contemplated by any party to the contract when entered into.

The United States, therefore, violated no principle of law, or equity, or moral obligation in admitting Florida into the Union, and is guilty of no *laches* for which she should be holden responsible in not disapproving the acts passed by her as a Territory.

The several States and Territories are independent sovereignties for the ordinary purposes of local government. They have the power over the liberty and lives of their citizens, and the formation of their own civil and social relations within their precinct.

They can incur obligations for all expenditures coming within their appropriate sphere as fully as the general government. Their delinquencies in any matter, coming within the range of their powers, are their own; and, however grievous a wrong they may inflict by such delinquencies on their creditors, the precedent of holding the general government responsible for such wrong, would be still more disastrous. It would impose burdens on individuals having no immediate share or interest in the benefit received; would constitute taxation without representation, and would confound the necessary and rightful distinctions in the partition of responsibility and accountability essential for the maintenance of government.

The wrong complained of is not one which can be charged against the United States; she is not amenable for it, and a proper appreciation of the distinct agencies of different organizations in government will fully exonerate the United States from the claim set up in this case. In my view, therefore, the claimants have shown no ground entitling them to recovery against the general government.

HORNBY, British Commissioner:

This is a claim advanced by certain holders of bonds issued by the government of the Territory of Florida, in the year 1833, payment of which is now claimed against the United States government, under the convention of the 8th of February, 1853.

It appears that Florida was ceded, under a treaty, by Spain to the United States, in the year 1819, and the United States assumed the sovereignty as the crown of Spain had held it, and also became possessed of such part of the land as had belonged to the crown, not merely in sovereignty, but as the possessors in absolute ownership. By the sixth article of the treaty, it was arranged that the inhabitants of the Territory should be incorporated in the Union as soon as was consistent with the principles of the federal Constitution and admitted to all the privileges and rights of citizens of the United States. Previous, however, to its admission as a State of the Union, the territorial government appointed by Congress incurred certain liabilities; and the question we have now to consider is the position of the federal government, under the circumstances to which I shall presently allude, with regard to these debts.

To do this effectually, it will be necessary, in the first place to examine the nature of the government of the Territory of Florida, and its relation to the federal government of the United States.

The vast tracts of country belonging to the United States not comprised within the limits of the several States of the Union, are subject to the absolute government of Congress. An exclusive and unlimited power of legislation for these Territories is conferred upon Congress by the Constitution, and has been sanctioned by repeated decisions of the United States courts. So complete is dominion of Congress over the Territories, that it has even excited anxiety in the minds of eminent Americans, as being inconsistent in spirit with the republican institutions of the country. Chancellor Kent has the following observations on this subject.

"It would seem from these various congressional regulations of the Territories belonging to the United States that Congress have supreme power in the government of them, depending on the exercise of their sound discretion. That discretion has hitherto been exercised in wisdom and good faith, and with an anxious regard for the security of

the rights and privileges of the inhabitants, as defined and declared in the ordinance of July, 1787, and in the Constitution of the United States. 'All admit,' said Chief Justice Marshall, 'the constitutionality of a territorial government.' But neither the District of Columbia nor a Territory is a *State* within the meaning of the Constitution, nor entitled to claim the privileges secured to the members of the Union. This has been so adjudged by the Supreme Court. Nor will a writ of error or appeal lie from a territorial court to the Supreme Court, unless there be a special statute provision for the purpose. If, therefore, the government of the United States should carry into execution the project of colonizing the great valley of the Columbia, or Oregon river, to the west of the Rocky mountains, it would afford a subject of grave consideration what would be the future civil and political destiny of that country. It would be a long time before it would be populous enough to be created into one or more independent States; and in the mean time, upon the doctrine taught by the acts of Congress, and even by the judicial decisions of the Supreme Court, the colonists would be in a state of the most complete subordination, and as dependent upon the will of Congress as the people of this country would have been upon the king and Parliament of Great Britain if they could have sustained their claim to bind in all cases whatsoever. Such a state of absolute sovereignty on the one hand, and of absolute dependence on the other, is not congenial with the free and independent spirit of our native institutions; and the establishment of distant territorial governments, ruled according to will and pleasure, would have a very natural tendency, as all proconsular government have had, to abuse and oppression."

Mr. Justice Story, in his "Commentaries on the Constitution," sec. 1328, says:

"The power of Congress over the public territory is clearly exclusive and universal, and their legislation is subject to no control, but is absolute and unlimited, unless so far as it is affected by stipulations in the cessions, or by the ordinance of 1787, under which any part of it has been settled."

Not only, however, does the right of *government* belong to Congress, but the United States *also own the soil of the immense* tracts of unsettled lands throughout the Territories, and the funds derived from the sale of these lands are at the absolute disposal of the national government,

and are applied to national purposes. "The Constitution," says Chancellor Kent,* "gave to Congress the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States, and to admit new States into the Union. Since the Constitution was formed, the value and efficiency of this power have been magnified to an incalculable extent by the purchase of Louisiana and Florida; and, under the doctrine contained in the cases I have referred to, Congress have a large and magnificent portion of territory under their absolute control and disposal. This immense property has become national and productive stock, and Congress, in the administration of this stock, have erected temporary governments under the provisions of the ordinance of Congress, under the confederation, and under the constitutional power." "On the other hand," says Mr. Justice Story,† "the public lands hold out, after the discharge of the national debt, ample revenues, to be devoted to the cause of education and sound learning, and to internal improvements, without trenching upon the property or embarrassing the pursuits of the people by burdensome taxation. The constitutional objection to the appropriation of the other revenues of the government to such objects has not been supposed to apply to an appropriation of the proceeds of the public lands. The cessions of territory were expressly made for the common benefit of the United States, and therefore constitute a fund which may be properly devoted to any objects with and for the common benefit of the Union."

In a word, the Territories are declared, by the third section of the fourth article of the Constitution, to be the "property" of the United States, and as such are placed under the absolute disposal of Congress.‡

Congress might, if it so pleased, govern the various Territories directly and without the intervention of any local machinery; and it does in fact so govern the District of Columbia, which is in the same situation as the Territories. In so governing Columbia, it has been held by judicial decision that Congress does not act merely as the government of that District, but as the government of the whole Union; and the same rule is applicable to the government of the Territories.§

It is, however, impossible for Congress to govern all its many and

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*1 Kent, 276.
† Story on the Constitution, sec. 1327.
‡ Const. art. iv 3, div. 2.
§ State v. New Orleans Nav. Co., 11 Martin 313.

distant Territories directly in the same way that it governs Columbia. It is, therefore, compelled to delegate its authority to officers appointed for the purpose; it reserves to itself, however, the full power, not only of repealing, modifying, or altering the acts of the local and temporary government which it may have erected, but it may "at any time abrogate and remodel the legislature itself, and all the other departments of the territorial government."*

I have thought it necessary to go thus fully into the nature of the relations of the Territories to the federal government, and to quote *in extenso* the language used by the most eminent American authorities on constitutional law with reference to this subject, because the learned United States agent has relied chiefly, in his argument, on the assertion (for which, however, he has given no authority) that the territorial government was "as sovereign within its sphere as the United States or any other State." It is evident, however, from the passages I have cited, supported by numerous judicial decisions, that the territorial government has no attribute of sovereignty, but is at all times, even when acting within the sphere of the powers conceded to it, subject to the authority and control of Congress.†

In the exercise of the unlimited powers belonging to it, Congress established in 1822 a territorial government in Florida,‡ consisting of a governor, assisted by a legislative council, appointed by the President of the United States. The powers of the governor and council extended to all rightful subjects of legislation; but the condition was imposed that all laws should be submitted annually to Congress for its approval, and that, if disapproved, they should thenceforth be of no force.

In 1826 an alteration§ was made in the mode of appointing the legislative council, which was made elective, but in other respects the territorial government remained the same.

From an early period in its existence the territorial government created a great number of corporations for various public purposes. The laws establishing these corporations were duly submitted to Congress; some of them were disallowed, while others were permitted to pass, after having been the subject of discussion in that body.

Amongst those acts of incorporation, which were the special subject

* Attorney General Butler, Opinions of United States Attorneys General, p. 1006.
† See the judgment of Mr. Senator Sharman, Williams v. Bank of Michigan, 7 Ward 554.
‡ 7 Laws U. S. 16. § 7 Laws U. S. 470.

of consideration in Congress, was the one establishing the "Union Bank of Florida," (1833.) This act, however, though declared by a committee of the Senate to contain some objectionable provisions, was permitted to pass without amendment.

It is not necessary to trace the action of Congress on this and the various other charters granted by the territorial legislature, because it is not, and could not be, denied that Congress has, in the most complete manner, authorized and ratified the various acts of the territorial legislature relating to the corporations whose bonds are now before us, and the discussion has entirely turned upon the extent to which Congress is affected by having given such authority and ratification.

Let us now see what was done under the "Union Bank" charter. The object of this and the various other acts of incorporation appears to have been to obtain the introduction of capital into the Territory for the general public benefit. In the case of the Pensacola Bank bonds, the object was to construct a railroad which, it was thought, would be advantageous to the Territory. For similar public purposes the "Union Bank" was empowered to raise a certain capital *by means of a loan on the faith of the Territory*. The mode of carrying this out is thus prescribed by the act of incorporation:

"To facilitate the negotiation by said bank for the said loan of one million of dollars,* *the faith of the Territory is hereby pledged for the security* of the capital and interest, and that one thousand bonds of $1,000 each—viz: 250 bonds payable in twenty-six years; 250 bonds payable in twenty-eight years, and 250 bonds payable in thirty years, and bearing interest at a rate not exceeding six per cent. per annum—shall be furnished to the order of the 'Union Bank of Florida,' signed by the governor and countersigned by the treasurer, and under the seal of the Territory. Such bonds to be in the following words: 'One thousand dollars. Know all men by these presents, that the Territory of Florida acknowledges to be indebted to the Union Bank of Florida in the sum of $1,000, which sum the said Territory promises to pay in lawful money to the United States, to the order of the president, directors, and company of said bank, on the —— day of ——, 18—, with interest at the rate of —— per annum, payable half-yearly, at the place named in the endorsement hereon, viz: on the —— day of ——, and on the —— day of —— of every year until the repayment of the

* Gilpin, 14.

said principal sum. In testimony whereof, the governor of the Territory of Florida hath signed, and the treasurer has countersigned, these presents, and caused the seal of the Territory to be affixed thereto, at Tallahassee, this —— day of ——, in the year ——. ——, governor; ——, treasurer. —— (Seal.) The said bonds may be transferable by the endorsement of the president and of the cashier of the said bank, to the order of any person whomsoever or to the bearer, and the said endorsement shall fix the place where the said principal and interest shall be paid.' ''

Several series of bonds, in the form prescribed by the charter, were issued in America and elsewhere.

The greater number were negotiated in London, and the present claimants, amongst others, advanced their money on the security of the bonds which are now the subject of consideration.

Up to the 1st July, 1841, the interest on the bonds was duly paid at the times and places appointed; but from that date to the present time no payment whatever has been made on account of them, and the corporations have become completely insolvent. Upon this, payment of the interest on the bonds was sought to be obtained from the territorial government, in accordance with the terms of the bonds; but the claim was refused, and in 1842 the territorial legislature passed resolutions declaring that the governor and counsel were "never invested with authority to pledge the faith of the Territory so as to render the citizens responsible for the debts or engagements of any corporation chartered by the territorial legislature." The revenue laws of the Territory were also suspended, "so far as they authorized the assessment and collection of a territorial revenue in future," with certain specific exceptions. These acts of the territorial legislature were submitted to Congress, and were permitted to pass into law without disapproval.

From this time, then, until the admission of Florida into the Union as a State, the territorial legislature persisted in its repudiation of the engagments contracted on the bonds; and although the subject was repeatedly brought before Congress in various ways—in some cases by memorial of the bondholders praying for relief—no action of Congress took place, and the bondholders remained without redress.

Let us pause for a moment to consider what the position of the

bondholders and Congress would have been had the facts already stated constituted the whole case.

The bondholders advanced their money on an engagement entered into by the agents duly constituted by Congress for the government of the Territory, for the payment of money by the Territory; such engagement being sanctioned by Congress, its acquiescence in the passing of the bank act having induced the public, in the language of Mr. Chancellor Kent, to invest property and make contracts upon the faith and validity of the charter. The Territory acknowledged itself to be indebted in the amount of the bonds, and the "faith of the Territory" was pledged for the repayment. Now, what is the meaning of a Territory or State acknowledging itself to owe a debt, and pledging its faith for the liquidation of it? It plainly means this—or it means nothing: that the governing power engages that the revenue, resources, and property of the Territory or State are pledged for the debt, and shall be applied to its discharge. In other words, an obligation was created on the part of Florida by the executive, as the agent of the sovereign power, and by the legislature, as the agent of the people, which was sanctioned by Congress, to pay the debt; that obligation, in fact, operating on all the property of the Territory of Florida.

It has been already shown that the government of the Territory was at the absolute disposal of the United States, (represented by Congress,) in whom the right of eminent domain was vested, and that Congress assented in the fullest manner to the pledge which was given by the territorial government. There was, then, an engagement to apply the resources of the Territory for the payment of a debt incurred with the assent of the sovereign power. Upon this state of facts it is obvious that, if those principles of equity which are binding on individuals be applicable to States, it became the duty of Congress to see that the funds which it had permitted to be pledged should be applied to the discharge of the debts they were intended to secure, and the bondholders were entitled to call upon the United States government to cause those funds to be applied to their relief, or to indemnify them from loss arising from the failure to do so.

The duty of thus protecting the interests of the bondholders was the more incumbent on Congress from the fact that, by reason of its being the owner of by far the greater portion of the soil of the Terri-

tory, it was the party most benefited by the introduction of the bondholders' capital into the Territory.

But if the position of the bondholders was such as I have stated it to have been while Florida continued a Territory, it will be found that their claim assumed an entirely new form, and acquired immeasurably more force, from the moment that the Territory was admitted to the Union as an independent State.

This admission took place on March 3, 1845.

By the second section of the eighth article of the constitution of the new State, which received the assent of Congress, it was declared that "no other or greater amount of tax or revenue shall at any time be levied than may be required for the necesssary expenses of government."

By the introduction of this clause into the constitution, Congress appears to have designed to lend effect to the repudiating resolutions of the territorial legislature, to which it had already given its assent.

It has, indeed, been denied, in the course of the argument, that this clause was intended to have, or had, the effect of preventing the State from raising revenue in order to pay the debts of the Territory; but if any doubt could exist on this point, it must be removed by the fact that those best able to judge of the meaning of the constitution of Florida, and having the power to enforce its own interpretation—viz: the legislature of the State—have declared that they are precluded by the article of the constitution in question from levying any tax to provide for the payment of the interest or principal of these bonds, or from entering on any consideration of the question at all.

It was then, when Congress admitted the insertion of this clause with a full knowledge of the injustice it would work, that the power to pay was taken away from the State that was then being called into existence. But this was not all; for the power which had hitherto been vested in Congress by virtue of its very sovereignty, whenever it chose to exercise it, to compel a Territory to observe the obligation of a contract, or to do that which it was legally and morally bound to do, was also divested by the change thus effected in the form of the government of Florida. And by whom, if not by Congress, which, first, by its acquiescence in the law establishing the bank, and, secondly, by the permission granted to its agents to pledge the faith of the Territory over which it had a sovereign and complete authority, had in-

duced these loans upon the promise of repayment by the Territory, which repayment, with full knowledge of the insolvency of the corporations and the immediate pressing liability of the Territory, it has thus rendered impossible?

The argument of the United States agent has been directed to show that the Territory alone was originally liable on these bonds, and that that liability has been transferred to the *State*. It is due to the learned counsel to say that nothing could be more candid and complete than his disavowal of those doctrines of repudiation which the territorial legislature propounded, and he states a very confident hope that the public opinion of America will compel the State of Florida to do justice to the present claimants. But by whose act is it that the bondholders have only that prospective operation of public opinion to look to for their relief?

It being conceded, then, that the Territory owed the debt, it follows that it was legally bound to pay it. The Territory in its corporate capacity was the debtor, and might have been sued before a competent tribunal. Whether any of the ordinary courts of law in the United States could have entertained the claim, I am not able to say. The opinion of an American jurist has indeed been produced, to the effect that the Territory could have been sued in the United States courts; but it is immaterial to consider this point, for whether it be so or not, Congress, the sovereign power, had undoubtedly the right and the means of compelling the Territory to discharge its obligations. There was, then, a competent tribunal before which the Territory could be summoned, and by which it might have been adjudged to pay its debts. It matters not, in principle, whether that tribunal was one of the ordinary judicial ones or not. All judicial authority is but the exercise of the sovereign power directed to the object of securing that right be done within its jurisdiction. Where a direct appeal to the sovereign power is proper, it ought to be, and is, as efficient a means of obtaining the redress of a grievance as an appeal to the ordinary court of judicature. Such an appeal, under the name of a petition of right, is, in this country, the established mode of administering justice where the crown is the party complained against. It cannot be presumed that an appeal to Congress, to compel its dependencies to perform the contracts it had authorized them to enter into, would have been either inoperative or valueless.

While, then, Florida remained a Territory, the means existed of compelling it to perform the contracts entered into in its name; but from the moment that it became a State the creditors of the former Territory were deprived of all means whatever of enforcing their just demands.

For the State of Florida, to whom it is said the debts of the Territory have been transferred, cannot be sued by the creditors; for the Constitution expressly enacts that no State can be sued in the United States courts, and of course a State cannot be sued in its own courts.

Nor can Congress compel Florida to pay its debts; for it is an independent State, and cannot be coerced by the others, either singly or collectively, into doing even that which is its duty.

And, lastly, not only has Congress, by admitting Florida as a State, deprived the creditors of the means of enforcing their rights, but it has bestowed upon the State a Constitution which actually prevents it from paying its debts.

It is a mockery, under these circumstances, to refer the bondholders to the State as their debtor. What difference is there in principle between confiscating a debt, and rendering it impossible that payment can be enforced on the one hand, or voluntarily conceded on the other?

It is not for individuals to pronounce an opinion on the policy of the United States in thus starting one of its children, in its political manhood, incapacitated from discharging the debts which it had incurred during infancy for its own and its parent's benefit. There may have been better reasons than I am acquainted with for relieving the State of Florida from the burden of the obligations created by the Territory; but it has long been a settled principle of legislation in all civilized nations, that no public advantage is to be attained by the destruction of private interests, without compensation being made to the individuals injured. If it was for the general good that the inhabitants of Florida should not be taxed alone for the payment of money advanced to their former government, justice imperatively requires that the repayment of the money should be provided for from national sources.

It has, indeed, been suggested that, as it is in the power of the State of Florida at some future time to change its constitution, so as to enable it to raise revenue for the payment of these bonds, it cannot be said that the bondholders are deprived of a remedy. But we have

to deal with the case upon existing facts, and not upon possible though highly improbable contingencies. Such an argument would equally apply, if the claim were a direct one upon the United States, and payment had been rendered impossible by a clause in the United States Constitution. Or suppose that an article of the union between England and Ireland had been inserted prejudicial to the existing interests of an American citizen, would it be a valid answer for the government of the United Kingdom to say that the imperial Parliament might possibly at a future period repeal the obnoxious clause, and restore the United States citizen to his former position?

The debt, then, is at present practically confiscated. This is the wrong which is complained of, and we have to determine whether it is one for which the United States is answerable. The possibility of a better state of public opinion inducing the inhabitants of Florida at some future time to remodel their constitution, so as to rescind the existing confiscation, cannot affect the rights and liabilities arising out of the present state of facts.

The principal arguments advanced in opposition to the claim, which I have not already incidentally adverted to, are these:

1. That Congress, having only the powers enumerated by the Constitution, can do no more than is to be found within that document, and that the power to pay the debts of a Territory is not specified or to be implied.

2. That Congress has not the power of rejecting the clause of the constitution of the proposed State of Florida which forbade the collecting of revenue for any other purpose than the necessary expenses of government, but that it was bound to admit the new State with this clause in its constitution, however objectionable it may be.

The first of these objections tends to raise a discussion on a point which has long been definitively settled in the United States.

In the first place, it assumes the whole question at issue in this case. If the United States have, by the acts of Congress, incurred an obligation to indemnify the present claimants, then a debt has arisen, and Congress has express power to levy taxes in order to pay its debts. I presume that it is not necessary to show by argument that a technical meaning is not to be attached to the word debts, but that it signifies any pecuniary claim, whether for a sum certain or for unliquidated damages. But, secondly, the Constitution only prescribes

the purposes for which *taxes*, &c., are to be levied; it is wholly silent as to the appropriation of national funds arising from other sources, such as the sale of public lands; and it has been shown that this is a source of revenue which is peculiarly proper to be applied to the relief of the present claimants. And, lastly, the Constitution has never been construed in the United States in the narrow spirit in which it is now sought to interpret it. It is fully established by Mr. Justice Story, in his "Commentaries on the Constitution," book 3, ch. 14, that Congress has full power to apply the funds of the nation, from whatever source derived, to all purposes which they may deem national.

That learned writer concludes his remarks with these words: "In regard to the practice of government, it has been entirely in conformity to these principles. Appropriations have never been limited by Congress to cases falling within the specific powers enumerated in the Constitution, whether those powers be construed in their broad or narrow sense. And in an especial manner appropriations have been made to aid internal improvements of various sorts, in our roads, our navigation, our streams, and other objects of a national character and importance. In some cases, not silently but upon discussion, Congress has gone the length of making appropriations to aid destitute foreigners and cities laboring under severe calamities, as in the relief of the St. Domingo refugees in 1794, and the citizens of Venezuela, who suffered from an earthquake in 1812." So also in the case of three cities in Columbia—Washington, Georgetown, and Alexandria—Congress assumed the debt which these cities had incurred, and for the liquidation of which their public faith had been pledged; and the Secretary of the Treasury was ordered to pay it.

It is a misapprehension of the power of Congress to suppose that it was bound to admit the Territory of Florida to the Union without any discretion as to the terms upon which the admission was to take place. The time and mode of admission were entirely for Congress to determine. Mr. Justice Story, in his "Commentaries," sec. 1321, shows that precedents and judicial decisions "have established the rightful authority of Congress to impose restrictions upon the admission of new States." But, without citing authorities, it is obvious that Congress cannot be regarded as having merely administrative functions on such admission, to record the event without control over it. It

would be powerless to discharge the most important of its functions as the guardian of the national interests, if it were bound to admit every new State, with any constitution its inhabitants might think fit to propose for themselves, however inconsistent it might be with the general welfare of the Union, with private morality, or with public honor.

It will not be necessary to examine the history of the "Pensacola Bank" and the "Southern Life Assurance Company," whose obligations were also guarantied by the territorial government. As against that government, the claim of the holders of the Pensacola Bank bonds is strengthened by the circumstance that that company gave the territorial government very considerable security on real and personal property against the liability which was incurred by pledging the public faith. The claim, however, as against the United States government, is the same in each case.

I am of opinion, therefore, upon these facts, that the United States government is bound to pay to the British subjects hereunder enumerated the principal of the bonds of which they are the holders, when the same shall become due, and to pay to them forthwith the arrears of interest on such bonds, with interest at five per cent. on such arrears, up to the 14th September, 1854, amounting in the whole to the sum set opposite their names.

BATES, Umpire:

This claim has been brought before the commissioners by the holders of bonds issued by the "Territory of Florida," while it was under a territorial government, and before Florida was admitted into the Union as one of the States of the United States.

At the time of the issue of the bonds in question, the Territory was governed by a legislative council chosen by the people, the governor being appointed by the President of the United States. All the acts or laws of the legislative council were required, by the law of the United States, to be laid before Congress, and if not disapproved of, they became law in Florida.

For one portion of these bonds, the claimants contended that, by the right which Congress claimed to reject or veto any law passed by the legislative council of Florida, the United States government rendered itself liable to pay the interest and principal of these bonds, should Florida fail to do so.

For another portion of the bonds, the claim on this ground was abandoned, and their claim was based on the fact, that the United States had, in the session of Congress of 1843–'44, admitted Florida into the Union with a constitution having the following clause in it: "No greater amount of tax or revenue shall at any time be levied than may be required for the necessary expenses of government."—(*Article* 8 *of Florida constitution.*)

The first ground of claim need hardly be treated seriously; it might as well be contended that the British government is responsible for all the Canada debentures, because all the acts passed by the Canadian parliament require the sanction of the home government before they became laws. It will be seen, however, that at the time these bonds were bought it was never imagined by the buyers that the United States were in any way liable.

With regard to the second ground of claim—that the United States, by having admitted Florida into the Union as a State, with the article in her constitution above referred to, were rendered liable to pay the debts of Florida—it may be remarked, that Congress could not justly refuse to admit Florida into the Union with such a constitution; there was nothing in it contrary or in violation of the Constitution of the United States; Congress had only the power to fix the time of

admission, and reject any constitution that was contrary to the Constitution of the United States; nor does it appear that the bondholders are in any way damaged by this article in the constitution of Florida.

If the people of Florida refused to pay or neglected to pay, as a Territory, would they be more likely to pay as a State? There would be the same people to deal with; the members of the convention that formed the constitution were chosen by the people; and the legislature, chosen by the people, would not be likely to be very different from the convention. It is by no means clear that the eighth article of the constitution forbids any taxes for liquidating the liabilities of the State; and if that be so, there is no difficulty in amending the constitution. Most of the States have amended their constitutions from time to time. The bondholders have the same remedy against the State as they had against the Territory; they have a just claim. But they are under the well known disadvantage in both cases—they could not sue the Territory, they cannot sue the State.

It has been urged that there is no way of getting at a State government except through the government of the United States; this is a mistake. There is no difficulty in the way of individuals dealing with the separate States in any matters that concern the State alone; nearly all the States have public works and contract loans with individuals, American and foreign, and any person aggrieved may petition the governor or legislature for relief. A State cannot deal with a foreign government; the intercourse with foreign nations belongs to the general government.

To show that the Florida bondholders never supposed the United States in any way responsible, attention is called to the prospectus issued by the agents for the sale of the bonds created for the "Union Bank;" it is as follows:

'*Florida six per cent. sterling bonds—Interest and principal payable at the house of Messrs. Palmers, MacKillop, Dent, & Co.*

"These are the bonds of the Territory of Florida, payable to the order of the Union Bank of Florida, and endorsed by the bank. They are in sums of one thousand dollars each, bearing interest at the rate of six per cent. per annum, payable half yearly; the interest and principal payable in London, at the rate of 4*s.* 6*d.* sterling per dollar. The bonds are payable on the 1st of January, 1862, 1864, 1866, and

1868. The proceeds of the sale of the bonds form an addition to the active capital of the Union Bank. The bank commenced business on the 16th of January, 1835, with a capital of one million of dollars, with a privilege of increasing it to three millions; and it is to complete that increase of capital that these bonds are to be sold. The profits of the bank, after paying interest of bonds and expenses of management, are retained to accumulate as a sinking fund, until that fund shall be equal in amount to the bonds issued.

"On the 1st January, 1839, upon a bank capital of one million of dollars, the amount of the sinking fund exceeded three hundred thousand dollars. Owing to peculiar circumstances the profits of the past year have been very large; but previous experience has proved that, in ordinary years, (after paying the interest of its capital and the expense of management,) the annual surplus profits of the bank (which will be added to the sinking fund) will exceed four per cent.; which annuity, compounded at the bank interest at $8\frac{2}{3}$ per cent., will cause the sinking fund to effect its object in fourteen years. Indeed, the present amount of that fund, compounded at the bank interest, would pay off the whole $3,000,000 of bonds in twenty-eight years, without any aid from the future annual profits of the bank—the average maturity of the bonds being twenty-six years.

"The capital of the bank, equal in amount to the bonds and the sinking fund, are to be retained and held as security for the repayment of the bonds. Another ample security for their payment is provided by a mortgage of the property of the stockholders of the bank, to the extent of three millions of dollars. The value of the property mortgaged for that object was first ascertained by the appraisement, upon oath, of five commissioners in each county, appointed for that purpose by the governor and legislature of the Territory; and these appraisements were again subjected to the revision of a board of twelve directors, of whom five are appointed by the governor and legislature. So great has been the rise in value of every kind of property in Forida, that the property mortgaged to the bank would, even now, sell for thrice the amount of the bonds, and each succeeding year necessarily enhances its value; the holders of the bonds have therefore a fourfold security for their payment, viz:

"1. The capital of the bank, equal in amount to the bonds.

"2. The sinking fund, which will effect its object in fourteen years.

"3. The property of the stockholders, originally appraised at three millions, with its increased value.

"4. The faith and credit of the Territory and State of Florida.

"By the direction of an act of Congress a convention is now in session for the purpose of framing a constitution for Florida, and she will probably become a State this year.

"In extent of territory she will be the sixth State in the Union. Her soil and climate are adapted to the profitable productions of Sea Island and short staple cottons, sugar, rice, Cuba tobacco, indigo, cochineal, corn, and all the other agricultural staples of the southern States, as well as many of the productions of the West Indies. She is rapidly increasing in numbers and wealth.

"Her export of cotton in the past year has exceeded 110,000 bags; and, with her growth, is greatly extending. She possesses the only good harbors on a coast of near two thousand miles in the Gulf of Florida, which, with the contiguity of the West Indies, gives her great commercial advantages, and will insure her becoming a great commercial State."

The securities enumerated in this document are four, and they were ample if honestly administered; but not the slightest allusion is made to any liability of the United States, nor is there discoverable the smallest claim of the bondholders before this commission, which is constituted for the purpose of settling the claims of British subjects against the government of the United States, or of the citizens of the United States against the British government. The bondholders have a just claim on the State of Florida; they have lent their money at a fair rate of interest, and the State is bound by every principle of honor to pay interest and principal; and it is to be hoped that sooner or later the people of Florida will discover that honesty is the best policy; and that no State can be called respectable that does not honorably fulfil its engagements.

GODFREY, PATTISON & CO.

The second article of the treaty of commerce of July 3, 1815, between the United States and Great Britain, provides "that no higher or other duties shall be imposed on the importation into the United States of any articles, the growth, produce, or manufacture of his Britannic Majesty's territories in Europe, than are, or shall be, payable on the like articles, being the growth, produce, or manufacture of any other foreign country."

The act of Congress, passed August 30, 1842, changed and modified the laws imposing duties on imports, so that the duties on cotton goods were nearly double those taxed by the prior statute. This act took effect two days after its passage, but provided, "that nothing in the act should apply to goods shipped in vessels bound to any port of the United States having actually left her last port of lading eastward of the Cape of Good Hope, or beyond Cape Horn, prior to the 1st of September, 1842."

Held that the provision as to equality of duties on importations applied to the time of arrival of such goods for entry in the country, without reference to the time of shipment, and that so long as goods shipped from ports eastward of the Cape of Good Hope were received in this country at the former prescribed rate of duty, goods shipped from ports of other countries, arriving within the same time, were entitled to enter at the same rate of duty.

Where duties on goods were paid under protest, on the ground that a higher rate of duty was demanded than was authorized by the treaty of commerce between the United States and Great Britain, the act itself having expressly provided "that nothing contained in it should conflict with that treaty;" and immediate demand of repayment having been made through the minister of Great Britain at Washington, *held* that interest should be allowed on the amount wrongfully collected from the time of payment.

The facts in the case will be found sufficiently set forth in the opinion delivered.

HANNEN, agent and counsel for Great Britain.

THOMAS, agent and counsel for the United States.

The opinion of the board was delivered by

UPHAM, United States Commissioner:

This is a claim to recover back the amount of duties paid on certain cotton goods imported into New York and Boston, by the claimants, merchants of Glasgow, between the 29th of August, 1842, and the 13th of May, 1843, on the ground that the duties thus paid were assessed in violation of certain provisions in the treaty of commerce between the United States and Great Britain, of the 3d of July, 1815, and which has been subsequently renewed and continued in force to the present time.

By the second article of that convention, it is provided "that no higher or other duties shall be imposed on the importation into the United States of any articles, the growth, produce, or manufacture of his Britannic Majesty's territories in Europe, than are or shall be payable on the like articles, being the growth, produce, or manufacture of any other foreign country."—(*Laws of the United States, vol.* 8, *p.* 229, *Peters's ed.*)

It is contended that this provision of the treaty has been violated by the 25th section of the act of Congress, of the 30th of August, 1842, changing and modifying the laws imposing duties on imports.

By that act, the duties on many articles were essentially changed, and those on cotton goods were very nearly doubled. It took effect, also, two days after its passage, so as to give no previous notice to those merchants who had shipments on the way, or had ordered goods for this purpose. It exempted, however, from its operation a certain class of shipments from remote places, apparently from the hardship of the case, without taking into consideration that it was equally impossible to communicate with Liverpool within the short space prior to the act taking effect, as with the remote countries named.

The 25th section of the act provided "that nothing in the act should apply to goods shipped in vessels bound to any port of the United States, having actually left her last port of lading, eastward of the Cape of Good Hope, or beyond Cape Horn, prior to the 1st day of September, 1842."

Objection was taken at once to the inequality created by this provision. It was contended that shipments made from Liverpool and other British ports were entitled to the same exemption. The increased rate of duty was, however, demanded on importations from those ports, and payment was made under protest.

Claims arising from such payment were early presented to the notice of the United States government, and were made a subject of correspondence. Such claims were adjusted, in part, so far as regarded shipments conceded to have been actually made prior to September 1, 1842. Other claims, where some controversy existed as to what constituted shipment prior to such time, were left undecided, and are now presented for consideration. A further claim is also presented for repayment of the excess of duties assessed on British cottons, to May 13, 1843, up to which time, it is alleged, vessels continued to arrive from ports eastward of the Cape of Good Hope with cotton goods, which were admitted, subject to the rate of duty prescribed under the prior statute.

Under the first claim, which is now presented for consideration, evidence was offered that shipments were made from Glasgow, prior to September 1, to be forwarded from Liverpool. It appears that the vessel in which they were imported did not leave Liverpool until the 3d or 4th of September. It is contended, however, that the shipment should date from Glasgow, where the goods were manufactured, and from whence they were forwarded; and cases were cited where such a construction was allowed in reference to goods shipped from ports eastward of the Cape of Good Hope, under similar circumstances, where the prior rate of duty was charged. The evidence offered goes far to show that the shipment should date from the time contended for.

It is unnecessary, however, to determine that question as, under the views we now entertain, the allowance of this claim will be included in the further claim for repayment of excess of duties on importations up to May 13, 1843.

This claim is based on the provision in the convention of 1815, that the same duties shall be assessed on imports from Great Britain into the United States, as on like articles from any other country, and so long as goods continued to be received, from any other country, from any other cause whatsoever, under the reduced tariff, so long it is contended British goods should be received on like terms.

It has been argued that an importation of goods may apply to the whole period of transit, commencing from the time of leaving a foreign country; and that if the rule of equality was established from such time, the provision of the treaty would be justly complied with. The commissioners, however, are not prepared to assent to such a construction. Goods cannot be said to be imported until the term of transit

is completed, and they have actually arrived at their destination; and we are of opinion that as long as goods were received from the East Indies at the reduced rate of duty prescribed in the prior statute, they were entitled to be received from Great Britain charged at the same rate of duty. This is the only interpretation which it seems to us conforms to the just intent of the treaty.

A construction, at least as favorable as that adopted by us, was given to this clause of the treaty by the British government on a claim in behalf of American citizens for re-payment of the duty charged on rough rice. That claim was for a long time under consideration, and was settled by directing the excess of duties exacted to be repaid, as long as African rough rice had been allowed by law to be imported into England at a lower duty than was charged on American rice.

The commissioners are of opinion that the precedent established in that case was based on sound principle, and they direct that the excess of duties exacted on cotton goods imported by the claimants prior to May 13, 1843, shall be refunded.

A question of payment of interest has also been raised. It appears that at the time the duties were demanded the claimants formally protested to the collectors of New York and Boston against the rate of duty assessed, as contrary to treaty stipulations. They also claimed protection from Mr. Fox, her Majesty's minister, at Washington. The United States government was, therefore, from the first, informed that the payment of the duty would be resisted.

The act itself, also, of the 30th of August, 1842, should have placed them on their guard, as it expressly provides "that nothing contained in it shall be construed or permitted to operate so as to interfere with subsisting treaties with foreign countries."

Under these circumstances, we are of opinion interest should be allowed on the claim from the time of payment.

DUTY ON WOOLEN GOODS—C. BARRY, AGENT.

KING AND GRACIE.

This was a claim for a return of the excess of duty charged by Great Britain against citizens of the United States, on woolen goods exported to that country, over and above those charged on the same description of goods exported to other countries.

This excess of duty was alleged to be in violation of reciprocal provisions entered into between the two countries, by the treaty of commerce of July 3, 1815, by which the exports and imports to and from either country to the other were placed on the basis of those of the most favored countries.

The particular grounds of this description of claims, and the various proceedings had in reference to them, are fully set forth in the opinion of the commissioners, with the reasons of the delay of their adjustment to the present time.

This claim is presented with a view to some general decision and order in reference to the large class of cases of the same character pending before the commission.

THOMAS, agent and counsel for the United States.

HANNEN, agent and counsel for Great Britain.

The opinion of the commission was delivered by

UPHAM, United States Commissioner:

By the treaty of commerce entered into between the United States and Great Britain, on the third day of July, 1815, it is provided, in article second, that "no other or higher duties shall be imposed on the *exportation* of any articles from the one country to the territory or dominions of the other than such as are, or may be, payable upon the exportation of the like articles to any other foreign country."

A similar provision is made as to *importations:* "That no higher duty on importations shall be imposed on articles being the growth, produce, or manufacture of either country than is imposed on like articles from any other foreign country." It is further provided that there shall be no prohibition of the importation of any article from either of the governments into the other which shall not equally extend to all other nations.—(*Laws of the United States, vol.* 8, *p.* 228, *Peters's ed.*)

These provisions are essentially the same as those introduced into the treaty of amity and commerce between the two countries on the 19th of November, 1794, at least, as regards importations. The treaty of 1815 was to continue but four years. It has been, however, renewed from time to time, and is still continued as the existing treaty of commerce between the two countries. Similar stipulations are now uniformly introduced by the United States into her treaties with all governments, and the principle thus adopted has become a settled usage and common law among nations.

Treaties containing similar provisions were subsequently made by Great Britain with the united provinces of Rio de la Plata and with Columbia and Mexico.

It would naturally be supposed that articles of such importance, and dictated by such just grounds of intercourse between nations, would have been scrupulously maintained. They have been violated, however, in some instances, through inadvertence, by careless and hasty legislation, and, at other times, seemingly from ignorance of the existence of such provisions.

The first case that attracted attention, as a ground of complaint under these treaties, arose from an unequal assessment of duties on the exportation of British manufactured woolens to foreign countries.

On the exportation of these goods to the United States, and some other countries, an *ad valorem* duty of ten shillings *per cent.* was assessed, extending back to the date of the treaty, and was continued to May 6, 1830; while, during a large portion of that time, the same description of goods were exported free of such duty to China, Java, Manilla, Valparaiso, Lima, California, &c.

American ships had commenced loading for these countries with cargoes consisting principally of woolen goods; and, finding they were allowed to be shipped free of duty, on the 27th of December, 1825, application was made to the board of customs to permit the shipment of woolen goods to the United States with the same exemption. This privilege was refused.

Afterwards, on the 20th of January, 1826, it was ordered by the commissioners of customs that the shipment of woolens should be made to the United States upon a deposit equal to the amount of duty claimed, until such time as the decision of the British government upon the subject could be had. Exceptions were at this time taken by British merchants engaged in trade with the provinces of Rio de la Plata and Columbia, on account of a similar inequality of duties on goods shipped to those countries, and the excess of duties charged was directed to be refunded, by orders issued from the treasury in April and May, 1826.

No measures having been taken in reference to the shipment of woolen goods to the United States, the attention of the privy council for trade was again called to the subject, and claim was made that such sums as had been levied on these goods contrary to the stipulations of the treaty should be refunded.

On the 20th of August following, an order of the committee of the privy council was issued in reply to the memorials stating the opinion "that, as the duty in question was not payable upon woolens exported to foreign places within the limits of the East India company's charter, the parties were entitled, under the terms of the treaty with the United States, to a like exemption, and requesting the commissioners of his Majesty's customs to discontinue levying that duty on woolens exported to the United States, and to other countries with which treaties containing a similar right of exemption had been concluded; and that on due application from the parties, by whom such export duty had been paid, the same should be returned to them."

The board of commissioners, notwithstanding the order, refused to refund the amount of duties paid, and procured an act of limitation, passed after the memorialist's application, that duties thus assessed should not be refunded for a time extending back beyond a term of three years.

In the application for repayment of duties on woolens shipped to South America, an attempt had been made to apply the statute of limitations in bar of a portion of the claims. It was, however, settled by the legal advisers of the crown that it was not the practice to apply the statute of limitations to claims under treaties with foreign States.

The memorialists at length succeeded, through various orders issued in 1830, 1831, and 1832, in obtaining a return of duties for about fourteen months—from March, 1829, to May, 1830.

Owing to the various difficulties interposed against the allowance of this claim, and in regard to the proper vouchers to be filed to sustain it, application was made to the American government in 1843; and in September of that year, Mr. Everett, then American minister at London, addressed a letter to the British government, urging payment of the claim, and some modifications as to the requirements that had been made of the evidence to sustain it. The grounds on which the payment of the claim was demanded were admitted to be unanswerable. No action was had, however, in reference to the payment of the claim until December 3, 1845, when a further order was issued from the commissioners, requiring a repayment to *the shippers* of the duties assessed on woolens, running back to a period of three years prior to the 26th of January, 1826, at which time the practice had commenced of making payment of duties under protest or deposit.

Within such period, the ordinary evidence, as practiced in previous cases, was to be admitted. The claims were to be allowed and paid *in the name of the shippers;* but beyond that period it was ordered that return was to be made only to *the actual owner or proprietor of the goods at the time of shipment*, or to the shipper, or consignee of the goods, on behalf of the owner or proprietor abroad, on production of a power of attorney, or other legal authority from such owner or proprietor, accompanied by affidavit that he had authorized the shippers to apply for the return of the money.

Under this order, the duties illegally assessed were ultimately refunded, extending back to January 26, 1823. The claim for excess

of duties charged still remains unadjusted from July 3, 1815, to January 26, 1823, and the present application is made before us in order to obtain from the commission such order and direction thereon as may be applicable to these cases as a class.

The first question arising for the consideration of the commission is, whether any legal bar on account of lapse of time exists against sustaining the claim for a return of duties.

This seems now hardly to be contended for, where a treaty is made between two independent powers; its stipulations cannot be deferred, modified, or impaired by the action of one party without the assent of the other. If the parties, by their joint act, have established no barrier in point of time to the prosecution of any claims under a treaty made by them, then neither country can interpose such limit. The case admits of no other judicial construction. The legal advisers of the crown concur in this view, and the commissioners have no doubt on the point.

It is conceded, as a matter of fact, that an inequality in duties existed in violation of the provisions of the treaty; and, there being no bar to the recovery of the claim from lapse of time, such duties should be refunded. We have only to determine, then, what evidence shall be required to sustain claims of this character before this commission.

No persons can prosecute claims here but citizens of either country against the government of the other. Claims cannot be allowed to the shippers, as has heretofore been done, but to citizens of the United States, who are the actual owners and proprietors of the goods exported, and evidence must be had from the custom-house records, or from the shippers, of the amount of duties paid by them on account of such persons, and the awards sustained must be made up in their names, with such claims of interest thereon, if any shall be allowed, as the commissioners may direct.

With these instructions, as to the views of the commissioners, the case will stand continued to such time as may be convenient for the parties to appear before us with evidence in conformity to the opinion here expressed.

NOTE.—The British shippers were in the habit of entering in their own name goods, in the gross, for the payment of duty, which were forwarded by any one vessel to their correspondents abroad. They

then charged the amount severally paid in their own books. The requisite evidence of the precise duty paid by the American importers, therefore, could not be had from the custom-house records in the shape that was necessary.

The claims for the return of duty extended from July 3, 1815, to January 26, 1823, and owing to the length of time which had elapsed, and the deaths and changes in firms, great delay and difficulty was incurred in obtaining from the books of the shippers the proper evidence of the amounts severally paid by the American owners of the goods exported.

The claims amounted to a large sum due to numerous importers. To obviate the many difficulties in sustaining these claims, Mr. Barry, the agent of the claimants, entered into an arrangement with the British government by which the shipper's accounts should be taken, waiving any claim to the allowance of interest on the same, and that time should be had to make the requisite apportionment to the several importers. The amount paid was to be placed to the order of the United States government, and paid out on the papers being filed.

The following notice from Mr. Barry, the agent of the claimants, giving notice of this adjustment, was sent to the commission, which was ordered to be entered upon the docket, and the claims were withdrawn.

LONDON, *January* 15, 1855.

To the mixed Commission under the Convention concluded between Great Britain and the United States of America.

GENTLEMEN: Having in the months of March and June, last year, as agent, submitted to the mixed commission the claims of the parties for the return of the export duty of ten shillings per cent. *ad valorem*, still remaining due upon the shipment of woolens from this country to the United States, I now beg to state that, upon further consideration, being of opinion that, under the circumstances of the case, it would be advisable to adjust, if possible, a settlement thereof, without having recourse to the adjudication of your board, I have succeeded in effecting the same, and consequently beg to withdraw all such claims.

I have the honor to be, gentlemen, your most obedient servant,

CHARLES BARRY.

DUTY ON COTTON GOODS, C. WIRGMAN, AGENT.

By the treaty of commerce between the United States and Great Britain, of July 3, 1815, no other or higher duties were to be charged on the imports from either country than on like articles from any other nation.

The act of May 22, 1824, imposed an increased duty of five cents per square yard on cotton goods, but provided that it should not take effect as to goods from ports beyond the Cape of Good Hope or Cape Horn, until six months after it went into operation, on goods imported from Europe and other countries.

Held that the treaty required an equality of tariff at the time of entry, and that, so long as goods were received from beyond the Cape of Good Hope or Cape Horn, at the rate established by the previous tariff, like goods, from other ports were entitled to be received at the same rate of duty.

In this case it appeared that the duty was paid without complaint many years since, and that the claim was not brought to the notice of the government, and no demand was made for repayment, until quite recently; *held* that, under such circumstances, interest should not be allowed.

The facts in the case will appear in the opinion delivered.

HANNEN, agent and counsel for Great Britain.

THOMAS, agent and counsel for the United States.

The opinion of the board was delivered by

UPHAM, United States Commissioner:

The class of cases now before us furnishes another instance of claims for excess of duties charged in violation of the reciprocal provision entered into between the United States and Great Britain, in the convention of July 3, 1815, for the adoption of tariff rates with each other as favorably as those established with any other nation.

By that treaty the charges on goods imported into the United States or Great Britain, from either country, were to be no higher than on a like description of goods imported from any other country.

Complaint is made of a violation of this provision by an act of the United States for imposing duties on imports, passed May 22, 1824. By that act an increase of five cents per square yard on cottons was made to take effect from June 30, 1824, with the proviso, "that it should not apply to or be enforced against importations of goods from ports or places eastward of the Cape of Good Hope, or beyond Cape Horn, before the first of January next ensuing."

It does not appear that attention was called by British citizens to the unequal operation of this provision, until after complaint was made as to an act passed August 30, 1842, containing a provision of a character similar to the one under consideration.

The discussion which took place in reference to that act undoubtedly drew public attention to the prior act regulating duties passed in 1824. Long delay has occurred since the grievance complained of, but we have already holden, in the case of King & Gracie, Barry, agent, relative to repayment of duty on woolen goods, that no statute of limitations can be pleaded in bar of claims arising under treaties.

The violation of the provisions of the convention of 1815 by that act is much more explicit and direct than that of the act of 1842, with regard to which we have already expressed our opinion. The act then provided merely that all goods which were shipped from ports beyond the Cape of Good Hope, *prior to the act taking effect*, should not be subject to the operation of the statute. In this case it is provided that the act itself should not take effect on goods coming from beyond the Cape for the term of six months after it had been in operation as to goods imported from other countries.

The commissioners regard this as a clear and palpable discrimina-

tion in favor of those countries in violation of the treaty of 1815, and allow claims for the return of any excess of duties beyond those paid by those countries during the period within which the exception operated.

On the question of interest which has been presented to our consideration, it appears that the duties were originally paid without complaint, and that the claim has been permitted to slumber, until very recently, without being brought to the notice of the United States; and we are of opinion that no interest should be allowed.

ALEXANDER McLEOD.

Where a citizen of Canada was arrested in the State of New York, for a criminal offence against the laws of the State, arising from his being engaged in the destruction of the steamer Caroline, in New York, with a party from Canada, during an insurrection in that province, and Great Britain demanded his release on the ground that the acts complained of were done by the orders of that government, and that the nation was responsible and not the individual; and where the difficulties arising from these causes were afterwards adjusted between the two governments, *held* that such adjustment barred all claims of citizens of either country against the other for individual damage sustained, and that such cases were not within the provisions for the settlement "of outstanding claims," under the convention of February 8, 1853.

Where a citizen of another government was arrested in this country for a criminal offence, and claimed his discharge on the ground that the acts complained of were done under the authority of his government, it does not necessarily entitle him to a release. Time must be had for the action of the proper tribunals on such plea, and the ultimate decision of a court in the last resort, where the same becomes necessary.

Neither does any claim for damage arise where the means provided by law for the adjustment of such questions are less speedy than would be desirable, and may require amendment, or error has arisen, in courts of subordinate jurisdiction, from which appeal might have been taken or correction had.

Alexander McLeod, a British subject resident in Canada, was arrested in Lewistown, in the State of New York, in November, 1840, on a charge of being concerned in the seizure and destruction of the steamer Caroline, attended with loss of life, in the State of New York, on the 29th of December, 1837.

During the pendency of the prosecution, Great Britain notified the government of the United States that the seizure of the Caroline was made under the authority of Great Britain, and claimed the discharge of McLeod on that ground.

He was not discharged, but was tried and acquitted, and now brings his claim before this commission for damages and expenses arising from his detention and trial.

The facts in the case are more fully set forth in the opinion of the commissioner, together with the correspondence on this subject between the two governments relating to the settlement of the same, so far as it has a bearing on the jurisdiction of the commissioners over the claim.

The case was fully argued. On behalf of the claimant,

McLEOD appeared *per se,* and by

HANNEN, agent and counsel for Great Britain.

THOMAS, agent and counsel for the United States.

HORNBY, Commissioner of Great Britain:

Considered the adjustment made between the two governments as a settlement merely of the international points of controversy arising in the case, and that any private claims of damage on the part of McLeod remained an open question among outstanding claims existing at the date of the convention.

He was of opinion that McLeod was entitled to immediate release on the assumption by the British government of his acts, and the communication of proper notice of this fact to the American authorities. It then became a national controversy and ought not to have been further prosecuted against an individual.

He held further, that the detention was longer than was necessary in any event, and was rendered unduly severe on account of public excitement, which it was the duty of the government to have repressed, and that from this cause the claimant was exposed to hardship and much expense, for which he was justly entitled to compensation.*

* In this case, and some others which were disposed of at a late day during the sitting of the convention, a full report of the decisiens of the commissioner was not drawn up at the time, but was to have been subsequently forwarded, and placed on file. It is much to be regretted that they have not yet been received, and therefore .. brief note only of these opinions can be furnished.

UPHAM, United States Commissioner:

The claim of Alexander McLeod, which has been presented for our consideration, renders it necessary to recite briefly the details of border collisions between the United States and the Canadas, which occurred some seventeen years since, and which are set forth in the documents presented in this case.

On the 29th of December, 1837, the steamer Caroline, belonging to a citizen of the United States, was lying in the Niagara river, along side the wharf at Schlosser, in the State of New York, having on board a number of American citizens.

A civil commotion at the time prevailed in upper Canada, and it was alleged that the Caroline had been used to carry arms, and munitions of war, from the shores of the State of New York to an insurrectionary party on Navy Island, then in arms against the government of that province.

While the Caroline was thus within the jurisdiction of the State of New York, a party of her Britannic Majesty's subjects left the shore of Canada, came within the limits of the State of New York, seized the Caroline, and destroyed her. During the collision, arising from the seizure, Amos Durfee, a citizen of the United States, was killed, and was found dead on the wharf; and it was supposed the lives of other citizens were lost on board the steamer.

Complaint was early made to Great Britain of the public wrong done to the United States by this invasion and violation of her rights of territory, and the injuries there committed, but no satisfaction or apology had been made for such wrong for a period of three years after the event, when, in November, 1840, Alexander McLeod, who was a citizen of Great Britain and a resident of Upper Canada, came to Lewiston, in the State of New York, and was there arrested on the charge of having been concerned in the seizure of the steamer Caroline, and the wrongs connected with it. On examination, he was committed to the jail in Niagara county; and in February, 1841, the grand jury of that county found a bill of indictment against him for the murder of Durfee. The case was removed to the supreme court for trial, and was afterwards transferred to another county to avoid the local excitement existing on the Niagara border.

The arrest of McLeod revived at once the consideration of the whole

subject of the border difficulties. In March, 1841, Mr. Fox, then minister of Great Britain to the United States, demanded, formally, in the name of the British government, the immediate release of McLeod, and set forth the grounds upon which this demand was made, alleging "that the transaction, on account of which McLeod was arrested, was a transaction of a public character, planned and executed by persons duly empowered by her Majesty's colonial authorities to take any steps and to do any acts which might be necessary for the defence of her Majesty's subjects, and that they were not personally and individually answerable to the laws and tribunals of any foreign country." It was thus contended that all liability of McLeod for the acts charged against him was merged in the national character given to the transaction by the British government.

Mr. Webster, in reply, on the 24th of April, 1841, stated "that the communication of the act being formally made that the destruction of the Caroline was an act of public force by the British authorities, the case had assumed a decided aspect," and measures would be taken accordingly.

The United States government accepted at once the issue tendered in this form, and insisted on satisfaction or apology for the violation of its rights of territory in the seizure of the Caroline; at the same time the government took immediate measures to communicate, in a proper manner to the judicial authorities, the evidence of the international defence thus set up by the British government, that it might avail to the benefit of McLeod.

The counsel for McLeod sued out a writ of *habeas corpus*, returnable before the supreme court of *New York*, and claimed his discharge on the ground thus interposed. It was holden by the court, however, as is stated by Mr. Webster in his letter to Lord Ashburton of August 6, 1842, "that, on this application, embarrassed as it would appear by technical difficulties, McLeod could not be released." Further hearing was proposed on this subject, by a transfer of the case to the United States court for the determination of this question, but McLeod objected to the delay necessarily attendant on such a proceeding, and requested, in writing, a trial by jury; a copy of which request was communicated to the British government. Shortly afterwards the discharge of McLeod was effected by the decision of a jury, and "the further prosecution of the legal question," as Mr. Webster says, "was then rendered unnecessary."

Had the verdict of the jury been otherwise, McLeod had reserved to himself the right to a reconsideration of the decision of the supreme court of New York, on the international defence interposed by him.

Mr. Spencer, the attorney of McLeod, states in his argument before the jury: "I have taken the precaution to *secure the right* which will enable me to review the decision of the supreme court elsewhere, so that, in the event of McLeod's conviction, if the supreme court have been mistaken, if that decision should not be in accordance with the law of the land, it may be reversed, and that established which I believe to be the law of the land, namely: that where there was such a war being carried on between the British government and those who waged it on our side of the waters, the British government might properly exert its powers to put down that war, and those who acted in obedience to the orders of that government discharged their duty as faithful subjects and citizens, and are not murderers.—(*Gould's trial of McLeod, p.* 251.)

Such is a brief recital of the facts relative to this matter, and of the respective issues raised by the two governments on the subject.

The difficulties thus existing were early made the subject of further correspondence, and a final adjustment in regard to them was had between the governments. It becomes necessary, then, to examine the character of this adjustment, and to determine the effect of such settlement on the claim before us.

Two questions arise in the case:

I. Whether the settlement made by the governments precludes our jurisdiction over the claim now presented.

II. Whether, independently of such exception, the facts show a ground of claim against the United States.

The convention provides that we are to pass upon the unsettled claims of citizens or subjects of either government against the other, and we are to pass "only on such claims as shall be presented by the governments," and are to be confined "to such evidence and information as shall be furnished by or on their behalf." No claims can be sustained before us except those which the governments can rightly prefer for our consideration. With matters settled and adjusted between them, we have nothing to do.

A settlement by the governments of the ground of international

controversy between them, *ipso facto* settles any claims of individuals arising under such controversies against the government of the other country, unless they are specially excepted; as each government by so doing assumes, as principal, the adjustment of the claims of its own citizens, and becomes, itself, solely responsible for them.

The controversies to which I have referred consisted of two grounds of complaint: the delay in the liberation of McLeod, on the one hand; and the violation of the American rights of territory in the seizure of the Caroline, on the other. These questions passed under the full consideration and revision of the two governments, in 1842, represented by Lord Ashburton, ambassador extraordinary and minister plenipotentiary, on the part of Great Britain, and Mr. Webster, then Secretary of State, on the part of the United States.

The result of their conference I regard as a full and final settlement of these matters in controversy. In the closing letter of Lord Ashburton on this subject, he says: "After looking through the voluminous correspondence concerning these transactions," (that is, the difficulty with McLeod,) "I am bound to admit there appears no indisposition with any of the authorities of the federal government, under its several administrations, to do justice in this respect in as far as their means and powers would allow."

He makes no complaint of want of diligence or promptness on the part of the United States government, but says: "Owing to a conflict of laws, difficulties have intervened, much to the regret of the American authorities, in giving practical effect to the principles avowed by them; and for these difficulties some remedy has been by all desired." He then says: "I trust you will excuse my addressing to you the inquiry, whether the government of the United States is now in a condition to secure, in effect and in practice, the principle, which has never been denied in argument, that individuals, acting under legitimate authority, are not personally responsible for executing the orders of their government? That the power, when it exists, will be used on every fit occasion, I am well assured."

Lord Ashburton thus rested his claim, and in the same letter and spirit tendered an apology for the violation of the United States right of territory in the seizure of the Caroline, "which transactions," he says, "are connected with each other."

His lordship then does not wait for the reply of Mr. Webster as to

the adoption of a provision for more prompt means of redress, in cases like McLeod's, but, reposing confidence in advance in the proper action of the American government, closes his letter by saying, in reference to both these subjects of controversy: "I trust, sir, I may now be permitted to hope that all feelings of resentment and ill will resulting from these truly unfortunate events may be *buried in oblivion*, and that they may be succeeded by those of harmony and friendship, which it is certainly the interest, and I also believe the inclination, of all to promote."

Mr. Webster, in his reply to the subjects of this letter, adverting to the matter of McLeod, stated the reasons why delay had occurred in his case, and that "in regular constitutional governments persons arrested on charges of high crimes can only be discharged by some judicial proceeding. It is so in England. It is so in the colonies and provinces of England." He further says: "It was a subject of regret that McLeod's release had been so long deferred;" and, in answer to the question proposed to him by Lord Ashburton, stated "it was for the Congress of the United States, whose attention has been called to the subject, to say what further provision ought to be made to expedite proceedings in such cases, and that the government of the United States holds itself not only fully disposed, but fully competent, to carry into practice every principle which it avows or acknowledges, and to fulfil every duty and obligation which it owes to foreign governments, their citizens or subjects."

During the same month, on the 29th of August, 1842, Congress passed a law by which immediate transfer of jurisdiction might be made to the courts of the United States of all cases where any persons, citizens, or subjects of a foreign State, and domiciled therein, should be held in custody on account of any act done under the commission, order, or sanction of any foreign State or sovereignty.

The delay, therefore, attendant on the previous means of removal of such cases to the jurisdiction of the United States courts for their decision, which was the only ground of complaint, was thus provided against, and every suggestion which had been made on the subject was thus fully met and answered.

In reference to the other grounds of complaint—the violation of the rights of territory of the United States in the seizure of the Caroline—Mr. Webster, in reply to the declarations of Lord Ashburton, thus

disposes of the matter in the same letter: "Seeing, he says, that the transaction is not recent; seeing that your lordship, in the name of your government, solemnly declares that no slight or disrespect was intended to the sovereign authority of the United States; seeing it is acknowledged that, whether justifiable or not, there was yet a violation of the territory of the United States, and that you are instructed to say that your government considers that as a most serious occurrence; seeing, finally, that it is now admitted that an explanation and apology for this violation was due at the time, the President is content to receive these acknowledgments and assurances in the conciliatory spirit which marks your lordship's letter, and will make this subject, as a complaint of violation of territory, the topic of no further discussion between the two governments."

These subjects of difficulty and controversy between the two countries were thus fully and finally adjusted, so that the able and patriotic statesmen by whom this settlement was effected trusted, in the words of Lord Ashburton, "that these truly unfortunate events might thenceforth *be buried in oblivion.*"

The question then arises, what was the effect of this settlement on the private claims of any citizen of either country against the other? It is quite clear that this settlement was not made, leaving the private wrongs of the owners of the Caroline to be pressed against the British government for adjustment by an American agent; nor were the claims of McLeod to indemnity for injuries he may have received for supposed participation in these transactions to be set up through an agent of the British government against the United States.

Such a construction of the adjustment made between Mr. Webster and Lord Ashburton would be a violation of the whole tenor of the correspondence between the two governments, and of the international ground on which they both concurred in, placing the collisions between the two countries. In my view the entire controversy, with all its incidents, was then ended; and if the citizens of either government had grievances to complain of, they could have redress only on their own governments, who had acted as their principals, and taken the responsibility of making the whole matter an international affair, and had adjusted it on this basis.

I regret to say that my associate does not view the matter in this light. He does not regard the grounds of complaint between the two

countries as settled, or, if so, he holds that the settlement does not bar the prosecution of the individual claim of McLeod for redress against the United States.

He is further of opinion the merits of McLeod's claim have been sustained, and that he is entitled to compensation. On this, which was the second point raised for discussion, I have also the misfortune to disagree with my colleague.

McLeod, under similar circumstances in Great Britain, would have been liable to both civil and criminal process on complaint made by any citizen. In a civil process neither government could interfere further than to aid in presenting the international ground of defence for judicial consideration and action. If the defence interposed was sound, his discharge by the courts would necessarily follow, with all the incidents usually attending the recovering party in a court of law.

McLeod was not entitled to immediate discharge from criminal process, because Great Britain had avowed his act. Her avowal of a deed done, as her act does not necessarily make it an international defence. She might avow the acts of a private incendiary or murder, but it would not exculpate him from trial and condemnation. It is for the government to determine through its proper tribunals whether the act done is of that character, and has been committed under such circumstances, as, *on principles of international law*, ought rightly to shield the individual from guilt. The judicial authority, when the case is rightly before it, or the executive power, when it is fully within its control, is to determine this question by itself, and is to take time to determine it properly. This is the only course to be taken on a demand for the release of an individual arrested as McLeod was for a capital offence.

The United States government adopted this cause at once. It did not admit the justification set up by Great Britain for her acts, and took issue with her upon it; but, at the same time, it put in action every agency the nature of the case admitted of to interpose this defence for the benefit of McLeod, at the court before which he was arraigned.

This is fully conceded by Lord Ashburton. All rightful demands, therefore, either of the British government or McLeod, were complied with. The proceeding against him originated before a local tribunal not of the highest resort in matters of international law. It was sub-

ject to control, however, both before and after trial, by a revision of any decision it might erroneously make on such a point, by a transfer to courts of the last resort. Delays might arise from this cause, but neither Great Britain nor McLeod had any proper ground of complaint against the United States arising from the arrangement of our judicial tribunals. Any American litigant in British courts might equally well make it a ground of complaint, that the cost or delay of those tribunals operated in any given case as a denial of justice, and claim compensation for it as an international wrong. No such principle of international law exists.

Lord Ashburton stated that this delay was a matter of mutual regret, and expressed the hope that provision might be made to obviate its occurrence in the case of others engaged in the same transaction who were liable to be arrested at any time on their crossing the border. This suggestion was promptly met, and a remedy was provided for the immediate transfer of these cases to a court of the last resort, where such defence might be more readily made available. It is clear, therefore, that there is no legal or equitable international claim or grounds of complaint, except such complaint as must always exist in all free constitutional governments that persons must be holden amenable to process of law, duly and legally instituted, until such time as proper adjudication can be on any plea interposed for their defence.

Considerable stress in this case has been laid on a statement of Mr. Webster, in a speech in the United States Senate, that the owners of the steamer Caroline had violated the laws of the United States, and were not entitled to compensation. From this admission it has been argued that no person could be held liable for the destruction of the steamer Caroline, and that there was no ground of complaint for the invasion of the United States territory to effect its destruction. But neither of these results follow from such an admission.

If it be admitted that the Caroline was aiding and abetting the rebellion on Navy Island, in violation of law, it does not follow that it was justifiable to seize and burn her in the United States territory, and take the life of a citizen who was casually present on the wharf. It is not a question of property, but of sovereignty. Such an act might at the time have caused the loss of many lives, and desolated the entire frontier. It was, therefore, exceedingly hazardous and dangerous in its consequences, and was an act that, in the words of

Mr. Webster, and of every constitutional writer, would be justifiable only in case of self-defence, impelled by absolute necessity—"a necessity instant and overwhelming, leaving no choice of means or moment for deliberation."

The justification never came up to anything like this. Indeed, it was attempted to be palliated on other and different grounds. It was said, when the expedition started, it was supposed the Caroline was at Navy Island, and that it was an after-thought and sudden movement merely that induced them to proceed across the river, and seize her there, and was not a deliberately planned invasion of the United States territory. Some of the aggravating circumstances attending the burning of the Caroline, and sending her adrift over the falls were attempted to be explained away by saying that they could not take her across the river. It was also said that Durfee's life was taken by a chance shot from some one on the wharf.

These allegations and mitigating circumstances were pleaded in extenuation of the wrong done. They furnished no justification of the act. Great excitement arose from it, enough to show that if it had been [illegible]ly more calamitous its consequences might have been truly deplorable. It was fortunate that it was attended with no worse results.

All these matters alleged were duly considered. The statesmen of both countries regarded the outbreak and collision as sudden and unpremeditated, while neither party really designed wrong to the other; and looking on the occurrences from this high and honorable international view, the whole matter was fully adjusted by such action on the part of the United States government, in reference to McLeod, as I have named, which was all the case admitted of; and by such apology on the part of Great Britain, in reference to the violation of the United States territory as, in the words of Mr. Webster, "a high and honorable nation only could give, and a high and honorable nation receive."

For these reasons, I am of opinion that neither on its merits, nor as an open ground of controversy, can the claim before us be allowed. It appears from the testimony in the case, that McLeod had been sheriff for some years in the county adjoining the Niagara frontier, and took an active and efficient part as a civil officer in suppressing the rising within his district. McLeod attributes to these efforts the erroneous impression that he was engaged in the seizure of the

Caroline, or it may have caused, as he thinks, a conspiracy to persecute and oppress him, instigated by persons concerned in the rebellion, who had fled to the United States. If this be so, it might, perhaps, form a consideration for some allowance to him by his own country. Beyond this, there is no ground on which he may claim damage of any government, other than the general claim of any citizen who may have suffered under erroneous prosecution.

It may excite some surprise that this case should be submitted to us by the British government. It doubtless arises from the fact that the agents of the governments have adopted the course to present all claims found on file since the peace of 1814, and this has been presented through inadvertence and should not be persisted in. I cannot believe that his lordship, the secretary for foreign affairs, or the ministry with which he is associated, can have forgotten the final adjustment of this controversy many years since, or that they can give a construction to the correspondence on this subject different from what I have affixed to it. For this reason, I especially regret that it has become the ground of a difference of opinion before this commission, and thus assumes the character of a claim presented in violation of this adjustment, and of the good faith the people of both countries have affixed to the acts of eminent negotiators now passed away.

NOTE.—The opinion of Mr. HORNBY, the British commissioner, in this and some other cases, delivered near the close of the commission, was to have been forwarded to be placed on file. It is much to be regretted that they have not been received.

BATES, Umpire:

The commissioners under the convention having been unable to agree upon the decision to be given with reference to the claim of Alexander McLeod, of Upper Canada, against the government of the United States, I have carefully examined and considered the papers and evidence produced on the hearing of the said claim.

This case arose out of the burning and destruction of the American steamboat Caroline, at Schlosser, in the State of New York, on the Niagara river, by an armed force from Canada, in the year 1837, for which the British government appears to have delayed formally answering the claims of the United States, until 1840, when the claimant was arrested by the authorities of the State of New York on a charge of murder and arson, as having been one of the party which destroyed the "Caroline." The British government then assumed the responsibility of the act, as done by order of the government authorities in Canada, and pleaded justification on the ground of urgent necessity.

From this time the case of the claimant became a political question between the two governments, and the United States used every means in their power to insure the safety of the claimant, and to procure his discharge, which was effected after considerable delay.

It appears by the diplomatic correspondence that the affair of the "Caroline," the death of Durfee, who was killed in the affray, and the arrest of the claimant, were all amicably and finally settled by the diplomatic agents of the two governments in 1841 and 1842.

The question, in my judgment, having been so settled, ought not now to be brought before this commission as a private claim. I therefore reject it.

GREAT WESTERN STEAMSHIP COMPANY.

Where coal was imported and stored, and was afterwards consumed at sea, in outward bound steamers, *held* that such consumption was not an exportation, within the meaning of the act of March 2, 1799, to regulate the collection of duties on imports and tonnage, so as to entitle the owners to a drawback for duties paid upon it.

Held that the act of March 3, 1853, making appropriations for the civil and diplomatic expenses of the government, by which the Secretary of the Treasury was authorized to cancel any outstanding debenture bonds given prior to July 1, 1850, on the importation of foreign coal, entitled the owners also to drawback for the duties paid on such coal.

Interest was allowed by the umpire on said drawback from July 1, 1850.

In 1835 a steamer of the Great Western Steamship Company arrived at New York, and was required by the collector of the port to land the surplus coal remaining on board at the end of the voyage, and pay duties upon it.

This was esteemed a hardship, so far as regarded a reasonable surplus of coal remaining on hand, because it was contended a steamer should take on board enough, not only for a voyage of the ordinary duration, but to provide for the contingencies and delays that are constantly liable to arise, and that so long as they have a supply, merely to this extent, a duty should not be charged upon it as freight.

Application was made to Congress for a change of the law to this effect, and an act was passed exempting such amount of coals from duty.

The steamship company, however, desired further relief and commenced shipping coal to New York in other vessels. They landed the coal, paid the duties upon it, and stored it in warehouses. They then supplied their steamers from the coal thus deposited, and consumed it on their outward voyage, and under the act of March 2, 1799, to regulate the collection of duties on imports and tonnage, claimed a

drawback on the coal thus consumed, on the ground that it was an exportation within the meaning of the act.

The officers of customs, however, denied that such consumption of coal was an exportation within the meaning of the act of 1799, and declined allowing a drawback for the duty.

The steamboat company then memorialized Congress in 1840, praying the enactment of a law "to enable them to cancel their bonds previously given on the importation of coal, and authorizing them thereafter to take the benefit of drawback on producing proof either of the consumption of such coal on the outward voyage, or of the landing it in a foreign country."

The memorial was referred to a committee of the Senate of the United States. Instead, however, of complying with the request of the memorialists, a majority of the committee reported that, having examined the law of debenture certificates and drawback, they were of opinion that the eighty-first section of the act of 1799 was complied with, if the coal was consumed on the voyage, and that the comptroller had ample authority under the act to cancel the bonds. They held this construction to be in strict harmony with the policy of the act and in conformity to its meaning.

This report, on being made, caused immediate opposition in the Senate. Some debate occurred, when it was postponed for further consideration to the next day, and was further postponed to the 3d of March, 1840. The Senate then proceeded to consider the resolution reported by the committee, and, after full debate, it was voted that the resolution lie on the table by a vote of twenty-six to sixteen. The report of the committee was, therefore, disavowed by the Senate.

Subsequently, however, this report of the committee of the Senate was cited as an authority with the collectors of the customs to obtain a drawback, and in some instances a drawback was allowed.

Application from Boston was submitted to Mr. Forward, then Secretary of the Treasury, on the 29th of July, 1841, and he provisionally allowed the drawback in a special case. This decision was acted upon for a short period both at Boston and New York. On the 12th of September, 1842, however, Mr. Forward addressed a letter to the collector at New York, referring to his decision in the case at Boston, and stating "that owing to the decided expression of opinion by Congress in the tariff act then before them, against allowing debenture on

coal consumed on outward voyages, no debenture on coals would be allowed after the 29th of August, 1842."

On the 26th of August, 1842, he sent a copy of this letter to the collector of Boston for his instruction.

It is alleged that at Boston, from 1843 to 1846, the Cunard company had their duties returned and bonds cancelled. Subsequent to this the claim as to drawback remained in controversy until, by the seventh section of the act of March 3, 1853, making appropriations for the civil and diplomatic expenses of the government, it was enacted, "that the Secretary of the Treasury should be authorized to cancel any outstanding debenture bonds given prior to July 1, 1850, upon the importation of foreign coals, provided the said coals have been exported to a foreign port, or consumed upon the outward voyage, and shall not have been consumed in the United States."

This section provided merely that outstanding debenture bonds should be cancelled, but did not, in terms, require a repayment of the duties assessed. The company, however, claimed to give it that construction. They contended that the provision for cancelling the bonds had no meaning or effect unless it implied that the duties were to be repaid.

Mr. Secretary Guthrie, however, declined to give this interpretation to the act. In a letter of April 1853, to the collector of New York, he says in reference to the seventh section of the civil and diplomatic appropriation bill, "that on a careful consideration of its provisions, he thinks the only authority given is to direct the cancelling the bonds on proof of consumption of the coals, and that he does not feel at liberty to go beyond the express authority granted in the law, and authorize a restoration of duties in the form of debenture or otherwise, where duties have been paid. Such further relief can only be by express legislation."

HANNEN, agent and counsel for Great Britain.

THOMAS, agent and counsel for the United States.

UPHAM, United States Commissioner:

Such is a brief recital of the various acts, and the constructions placed upon them, in reference to debentures on coal consumed on outward voyages.

The first question which arises in the case, is whether the construction of the act of 1799, as contended for by the officers of the customs, is correct. On that point I have no doubt. A consumption of coal on an outward voyage is not, as I believe, an exportation of coal within the meaning of the statute.

The exportation there contemplated is an exportation of articles to another country, in the ordinary course of trade, as freight. This is apparent from express provisions in the act.

The 81st section of the act provides, "that in order to entitle the owner of merchandise to a drawback on goods exported, he shall file a bond with condition that such goods shall not be relanded in any port or place within the limits of the United States, and if the certificates and other proofs required by law of the delivery of the same at the port to which the vessel is consigned, or at some other port or place without the limits of the United States shall be produced at the collector's office within a certain specified time, then the obligation shall be null and void, otherwise it shall remain in full force."—(*Laws of the United States, vol.* 3, *p.* 214, *ed.* 1815.)

The statute further prescribes what shall constitute evidence of such exportation. The ordinary evidence of exportation is the certificate of the consignee specifying the landing of the merchandise in a foreign country, verified by the consul; or, in case there is no consul, by two merchants, under oath, and by the master of the vessel.

It further provides, however, that in case *of loss at sea, or other unavoidable accident*, or where, *from the nature of the trade*, such proofs cannot be produced, the exporter shall be allowed to produce "such other proofs as he may have, and as the nature of the case will admit;" and if the comptoller be satisfied of their truth he may direct the bonds to be cancelled and refund the duties.

In this case no evidence has been or can be given of the landing of the coal in any other port or place without the limits of the United States, and there is no loss at sea or other unavoidable accident complained of. There is nothing, therefore, to exempt the claimants

from the ordinary evidence of exportation, unless the case can be brought within the exception, that "the nature of the trade" is such that the usual proof required cannot be obtained.

This renders it necessary to inquire to what class of trade this expression refers? It undoubtedly refers to the trade or commerce then carried on with various uncivilized sections of the globe—such as the northwest coast of Africa, the East India islands, and other places where the evidence of consuls and merchants could not be obtained.

It is a forced construction to contend that by the act of 1799 consumption of coal, on an outward voyage, is included in the term exportation within the meaning of the act.

The coal was imported *for use* by the Great Western Steamship Company, on board their vessels on their outward voyages, and should be subject to a charge for such use, as much as if consumed on shore. A drawback on goods exported is granted on the ground that they are in transit for *a market*, but where they have once found a market so as to be appropriated to use, and are not further placed *in transitu, as an article of commerce*, the ordinary duty claimed on the article rightfully attaches, whether it be consumed at sea or on land.

I do not regard the claimants, therefore, as entitled to a drawback by the act of 1799.

It becomes then necessary to inquire into the effect of the recent act of March 3, 1853, to determine whether a drawback is allowed by that act. In the opinion of Secretary Guthrie, it authorizes merely the cancelling of the bonds given, and does not provide for a restoration of the duties in the form of debenture or otherwise.

There are reasons, however, that might hold him to a rigid construction of the act, that do not necessarily operate upon us. The act of April, 1853, does not expressly provide that a drawback shall be paid. An administrative officer might insist on some specific authority in the act, or some judicial construction of it to this effect before assuming the responsibility of the repayment of money.

The act, however, admits of the construction contended for by the claimants, and its passage was undoubtedly obtained through their agency, with a view to effect the purpose now claimed for it. The repeated attempts at prior legislation for this end might well affix on Congress the knowledge of such an intent by the clause presented, and imply their acquiescence in it.

The different constructions also put at different periods on the prior act relative to drawbacks, is a reason why the officers of the government and claimants should both wish some final legislation. I am inclined, therefore, to give it the interpretation placed on it by the claimants. The act, by any other construction, would be almost nominal in its character, and can hardly be supposed to have been made the object of special legislation, under the circumstances, for such a purpose.

I therefore allow the sum of eleven thousand four hundred and thirty-seven dollars and twenty-five cents for the drawback on duties claimed by the company prior to 1846. There is, in my mind, no legal right to drawback until the act of 1853 was passed, and a claim to interest ought not to go behind that date.

My colleague places the ground of allowance of the claim on a different construction of the acts in question, and computes interest from the payment of the duty. The question of interest was submitted to the umpire, and was allowed from July 1, 1850.

NEW YORK CUSTOM-HOUSE CASES.

CHARLES KENWORTHY.

Where a British subject, who was domiciled in New York, and engaged in mercantile business there, was sued for fraudulent invoices of goods imported by him, which suit he adjusted with the government by payment of a portion of the sum demanded, *held* that he was bound by such adjustment from any revision of the suit before this commission.

A domiciled merchant of the United States or Great Britain, resident in the country of the other, has no right to the action of this commission in matters of current business embraced within the ordinary jurisdiction of the courts of the country where he resides. By treaty of July 3, 1815, such persons "are entitled to protection and security, but are to be subject always to the laws and statutes of the two countries respectively."

Evidence that fears were entertained lest other suits might be instituted, or seizures might be made unless a suit was adjusted, or a general prejudice to business might arise from controversy with the government, does not constitute such evidence of duress as to avoid a settlement.

In 1839 the claimant, who was a British subject, resided in the city of New York, and had been engaged there for some years in the importation and sale of goods.

From February 13 to July 19, 1839, certain goods were imported by him. They were duly examined, the duties were paid on them, and they were removed for sale to Philadelphia. They were there seized as having been entered at a reduced rate of invoice and fraudulent valuation.

The goods consisted of 397 pieces, included in nine invoices, the total value of which was over £2,000. One hundred and two of these pieces were seized at Philadelphia. An adjustment was had of this suit by which 74 pieces were retained by government, and 28 pieces were restored to the claimant.

Claim is now made against the United States to recover back the value of the property seized, on the ground that the seizure was a fraudulent act of the collector of the city of New York, and that any adjustment made was obtained by duress and extortion.

HANNEN, agent and counsel for Great Britain.

THOMAS, agent and counsel for the United States.

The opinion of the board was delivered by

UPHAM, United States Commissioner:

This is one of a class of cases in all involving claims to the amount of between two and three hundred thousand dollars. They originate from seizures made in 1839 by Jesse Hoyt, collector of the port of New York, on complaint that, for some years previous, a series of importations on false invoices had been made at that port by merchants having partners or houses connected with them in Yorkshire, England, by which the revenue had been defrauded of large sums.

Many of the goods were sold at public auction in New York; other sales were made at Philadelphia and in Massachusetts. Some of the importers were arrested, and one or more fled the country. A portion of the cases were not sustained on trial, or were dismissed, as was alleged, owing to the difficulty of obtaining evidence from abroad; and others were prosecuted to judgment, or were settled by the parties.

A considerable amount was collected from these suits, and paid into the public treasury, and large sums were received by the collector and the prosecuting officers of the government for fees and charges. A portion of these charges were said to be illegal and exorbitant. Complaints were also made as to the mode in which the prosecutions were conducted, and a committee was appointed by the United States Senate, of which Mr. Poindexter was chairman, to investigate the subject.

A voluminous report was drawn up by the committee, and submitted to the Senate, in which a portion of the proceedings were severely commented upon, but no definite action was had on the report.

In all the cases of this class which have been presented for our decision the same general facts exist—that legal process was instituted, and the suits were either prosecuted to judgment, or were adjusted by agreement between the parties complained of and the government.

Attempts were made to prove that these adjustments were obtained by duress. But the evidence does not sustain the charge.

It consists merely of vague statements of the injury arising from custom-house suits, and evidence of apprehensions that, unless adjustments were effected, other suits might be instituted or seizures made. Considerable stress was also laid on the fact that the prosecuting officers were largely interested in the proceeds of such suits,

but there was nothing to establish the charge that the suits were brought for fraudulent purposes, or that an honest importer should have feared their result.

In some of these cases large sums were paid to obtain an adjustment; and it seems to have been overlooked that, unless such adjustment is explained, it tends at least as much to show an acknowledgement of fraud or mistake on the part of the importer as it is evidence of duress on the part of the officers of government.

The suits should have been prosecuted to final judgment, if a valid defence existed. The parties were resident in the United States, and were availing themselves of the protection of the government in the transaction of their business; and they should not have adjusted claims then pending against them in courts of competent jurisdiction, and come here after a lapse of some fourteen years expecting their reconsideration.

It was not designed that this commission should take cognizance of such cases. The respective governments had already provided by treaty for the settlement of all transactions arising out of the ordinary business of commerce by persons domiciled in the government of the other.

The convention of July 3, 1815, to regulate commerce between the Territories of the United States and of Great Britain, provides, in article first, "that the inhabitants of the two countries, respectively, shall have liberty to remain and reside in any part of the territories of the other, where other foreigners are permitted to come; also to hire and occupy houses and warehouses, for the purposes of their commerce; and generally, that the merchants of each nation, respectively, shall enjoy the most complete protection and security for their commerce, but *subject always to the laws and statutes of the two countries, respectively.*"—(*United States Statutes at Large, vol.* 8, *p.* 228.)

It was manifestly contemplated in this provision that citizens or subjects of either government, resident in the country of the other, engaged in commerce, should be subject to the laws of the country where they reside, in all ordinary matters pertaining to such commerce. The adjudication of suits arising out of the collection of the revenue is certainly a matter of local jurisdiction by the courts of the country, and there can be no appeal from them to this tribunal.

We have been able to see no ground, in any of this class of cases which have been presented to us, that entitle them to recovery under this commission.

The cases of PLATT & DUNCAN; executors of WILLIAM BOTTOMLEY; WILLIAM BROADBENT; executors of JOHN TAYLOR and SAMUEL BRADBURY; and GEORGE and SAMUEL SHAW, for whom Mr. HANNEN, assisted by Mr. BUTT, Queen's counsel, Mr. SPINKS, and others, appeared as counsel, were holden to come under the principles of this decision, and were disposed of accordingly.

McCALMONT, GREAVES & COMPANY.

The claimants ordered goods to be shipped from England for the Mexican market at Vera Cruz; but war having arisen between the United States and Mexico, the goods were shipped to Havana, and remained there until after the conquest of Vera Cruz by the American forces, and the opening of that port to foreign trade by General Worth, who was placed in command of the place, and who established a temporary tariff of rates on importations until such time as he should receive instructions from Washington. On the establishment of this tariff, the claimants ordered their goods to be forwarded, but they did not arrive until a new tariff had been established by the department at Washington, considerably higher than that of General Worth.

This tariff, in some particulars, operated seriously to the prejudice of the claimants, and a portion of their goods was placed in the public store-house till application could be made at Washington for instructions in regard to them. On such application, the tariff was modified, but was directed to be applied prospectively only, and the claimants paid the full duty. The tariff, in the matter complained of, was higher than the Mexican tariff, but was, in other respects, lower. The claim was allowed by the umpire for the amount paid beyond the tariff last established.

The claimants are British merchants, carrying on business at Vera Cruz. They ordered shipments of goods to Mexico from their correspondents in England. On account of the blockade of the Mexican ports by the United States, these goods were first sent to Havana.

After the capture of Vera Cruz by the United States forces, General Worth established a temporary tariff, bearing date March 31, 1847, establishing the same tariff on goods received into Mexican ports, as on imports into the United States, with an additional charge of ten per cent. *ad valorem*, until such time as instructions should be received from Washington. On the opening of the ports, and establishment of this tariff, the claimants ordered their goods from Havana. Before their arrival, however, a new tariff was received from Washington, by which the duties were increased.

On the arrival of the goods, complaint was made of the increase, and the goods remained on deposit until further instructions could be

received from Washington. On the 10th of June, instructions were received, making modifications, in some respects, as to importations, to take effect *subsequent to that date.*

Applications were made from other importers, for reduction, to Mr. Marcy, Secretary of State, but were rejected, except in conformity to the above order, as appears from Mr. Marcy's despatch to Mr. Crampton, of the 8th of January, 1848.

The duties on cotton goods imported were, with the exception of a particular description of goods, far lower than the former Mexican tariff. On the woolen goods a higher tariff was imposed.

HANNEN, agent and counsel for Great Britain.

THOMAS, agent and counsel for the United States.

UPHAM, United States Commissioner:

This case presents the common complaint of hardship that always arises whenever an advance of tariff is made contrary to the expectations of the importer.

It involves two difficulties for our consideration. In the first place, this commission has no power to alter and control the clear and explicit effect of a tariff established by either government, in order to grant lighter terms than such law had established.

It is an exercise of legislative power not confided to us, or of a dispensing power which is equally unauthorized.

In the second place, the application now addressed to our discretion has been already addressed to the government at Washington, and has been denied, under an immediate knowledge at the time of all the circumstances of the case. A modification of the tariff was made as requested in reference to woolens and one description of cotton goods, but was directed to take effect *prospectively*, for the reason that the duties, under the prior tariff, had been paid on various importations, and it was not supposed the case was such as to require a retroactive effect.

This decision was afterwards adhered to on the application of some German merchants; notice of which was communicated to the British minister, by letter of Mr. Marcy, Secretary of State, on the 8th of January, 1848.

Were the case in our control, the same reasons that operated on the department, in making this decision, should operate on us at this time, but there is no right of appeal to us from their decision. We may give a construction in matters of strict law to an established tariff different from that given by the officers of the government; but their decision on matters confided by law to their discretion is final. We cannot go behind the tariff to overrule it.

Some confusion exists in the statements as to the tariff complained of. My colleague, in speaking of the application of the German merchants, says that the tariff of the 30th of March, though higher than General Worth's tariff, was "much *lower* than the Mexican tariff." In another portion of his opinion, speaking of the same tariff, in reference to this claim, he says "the duties were much *higher* than the Mexican tariff." These diversities are accounted for by the fact

that the remarks apply to different portions of the tariff. On cotton goods, with the exception of a particular article of that description, the duties were much lower, while, on woolens, they were much higher than under the Mexican tariff.

The importation of the claimants in this case consisted both of cotton and woolen goods, in large quantities of each. My impression is that, on the whole importation, they were gainers by the change of governments, at least that their loss was of but small amount. If so, it would obviate any appeal on account of the general hardship complained of, and the case resolves itself into a mere question as to what extent the claimants should profit by the American occupation of Mexico. It is certain that the damage is much less than would appear from the operation of the tariff on one class of goods alone.

The views of my colleague that "if we find the claim to be a just one, and deserving of relief, we are bound, by the terms of the convention, to grant it, wholly irrespective of the question whether any officer of either government could, or could not do so, under any particular statute," and that we can grant relief "in any case where Congress could have given it, if on examination it was found to be a case in which the parties were equitably entitled to it," I cannot consent to.

For the reasons given, I am of opinion no proper ground is presented for the exercise of our authority within the powers assigned to us.

HORNBY, British Commissioner:

This claim is in the nature of an appeal to the sense of equity of the United States government; and it being, as I conceive, the intention of the contracting parties to the convention of 1853, under which we act, that the commissioners should decide upon all claims duly submitted to them according to justice and equity, I am of opinion that it is properly brought under our notice.

From the investigation which has already taken place into the circumstances, and from the correspondence between the two governments, it appears that the claimants are British merchants, carrying on business at Vera Cruz. In the early part of 1847 they, in the ordinary course of their business, prepared extensive shipments of goods from England, nearly the whole of which were suited only for the markets of Mexico. In consequence of the blockade of the Mexican ports, which was declared by the United States on the 20th of May, 1847, the claimants' correspondents despatched the vessels conveying the goods to Havana, there to await the orders of the owners.* The claimants directed them to remain there until the ports of Mexico should be opened.

On the capture of Vera Cruz by the United States forces, General Worth (who was in command of the troops occupying that place) published, on the 5th of April, a tariff bearing date "Vera Cruz, the 31st March, 1847," by which the port was opened to foreign commerce, and the same duties were imposed as in the United States, with 10*s.* per cent., *ad valorem*, additional.

This tariff appearing objectionable in several particulars, the British and foreign merchants, resident at Vera Cruz, on the 6th of April memorialized General Worth on the subject, and he, in consequence of their remonstrances, made some modifications in the tariff. On the faith of this tariff thus modified, the claimants transmitted orders to their correspondents in Havana to send on their goods to Vera Cruz, and they accordingly arrived in the "Susan" and "George W. Randall," on the 20th and 27th of May.

In the interval between the sending of the directions by the claimants to their correspondents to forward the goods and their arrival, namely,

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*Arrived at Havana during the months of July and August, 1846,

on the 7th of May, a new tariff, which had been published at Washington on the 31st of March, came into operation at Vera Cruz. Foreseeing the losses they would sustain if all the provisions of this tariff were enforced on the goods they were daily expecting, the claimants, in conjunction with other British merchants, submitted to the United States government a statement of the hardships they had to complain of.

On the arrival of the goods, Messrs. McCalmont, Greaves & Company, noted protests before the collector of customs (through her Majesty's consul) against the application of the Washington tariff to their case, because, in several instances, the duties would be more than the value of the goods in the market, and because they had been ordered to be sent on on the faith of General Worth's tariff continuing in force.

The collector of customs agreed that the goods should remain in deposit until replies should be received to the representations which the claimants had transmitted to Washington.

The goods accordingly remained in deposit until the arrival of an order from Washington, dated the 10th of June, by which the tariff was again altered, and the evils which had formed the subject of the British merchants' representations almost entirely removed. Upon the receipt of this order the claimants proposed to pay the duties imposed by it on the goods which had arrived by the "Susan" and "George W. Randall," and had since remained in deposit; but were informed that the modifications which had formed the object of their previous representations, and for which they had waited, were not to be applied to their goods; and on the 22d November the claimants were compelled to pay for duties:

On the goods by the "Susan" - - -	$84,952 43
On goods by the "G. W. Randall" - - -	12,316 82
	97,269 25

being $18,877 87 more than they would have had to pay under the order of the 10th of June, for which they had waited, and which they had exerted themselves to obtain on account of those very goods, and *under which their rivals in business were then importing similar articles, being also far more than they would have had to pay either under the Mexican tariff or under that published by General Worth.*

In short, they were unable to compete either with those traders who imported *previous* to the arrival of the "Susan" and "G. W. Randall," or *after* their arrival.

The amount of excess is made out in the following manner:

On 54 bales of woolen and worsted fabrics per invoice, $7,813 35, the claimants had to pay for duties $11,106 58.

By the order from Washington the duties of these goods would be only $2,344. Under the Mexican tariff they would have been $3,776 97, showing an excess of $8,762.

The duties in this case are equal to 142 per cent. on the original value, and exceed the market value. On cotton fabrics the claimants had to pay more than they would have had to pay under the new tariff by $7,154 29; to which must be added $2,961 in respect of abatement on damage which the claimants would have been entitled to under the new tariff—making a gross total of excess duties paid, $18,877.

The United States government have hitherto resisted this claim on two grounds*—the first being that a similar application, made by Baron Gerolt, the Prussian minister, on behalf of certain German merchants, had been refused; the second, that the act was not retrospective, and that the Secretary of the Treasury could not remit the duties. With respect to the first ground, it will be found, as appears by Mr. Marcy's dispatch of June 26, 1847, to Baron Gerolt, that the application of the German merchants was, in fact, very different, although he supposed it to be "similar," from that made by the present claimants. Those merchants (the Germans) shipped their goods from Germany with reference to the Mexican tariff. Immediately, and at the time, however, of their actual arrival, General Worth's tariff was in force, which had reduced the duties very considerably; but before their goods were fully entered, the tariff of the 30th March, raising the duties levied under General Worth's tariff, *but still placing them much below the Mexican tariff*, came into operation; and it was from paying the duties under this last tariff that they sought relief. The United States government, however, very properly conceived that the merchants, having actually shipped those goods on the faith of the heavy Mexican tariff, could not complain of having to pay the comparatively light tariff of March 30, although a still lighter one,

* See Mr. Marcy's dispatch to Mr. Crampton of January 8, 1848.

namely, that established by General Worth, might have intervened and actually did intervene, between the two. But this is *not* the case of the claimants; their agents at Vera Cruz ordered on the cargoes from Havana on the faith of General Worth's tariff; and it is from the mistakes which had inadvertently crept into the Washington tariff, and which, as soon as pointed out, were corrected, that they seek relief; they having themselves pointed out the mistake, and deposited their goods to abide the correction; that correction, however when made, being declared not retrospective in its effects. The precedent of the German merchants is then inapplicable to the present case, and cannot be considered as binding on the United States government so as to prevent them granting the relief now prayed.

With regard to the second ground of objection, it may be that the act of Congress was not retrospective; but this fact does not lessen the right of the claimants to equitable relief; on the contrary, it is this fact which renders the present claim necessary. Neither is it an answer to the claim to say that relief could not be granted under the act of March 3, 1849, which only enables the Secretary of the Treasury, without application to Congress, to grant relief to merchants in respect of duties "improperly levied or imposed." The duties, however, in this case, IN STRICT LAW, were "properly levied and imposed," because there was in existence a tariff imposing them sufficient in itself to warrant the levying; but this imposition was founded on a mistake, and when the mistake was corrected, which it was immediately on being pointed out, (the goods in the meantime being kept in bond,) both justice and equity seem to me to point to the relief of the claimants. Nor in granting this relief would any advantage be given to them over other merchants, for all they wanted was to be allowed to introduce their goods into the market, paying the same duties that goods introduced at the same time were paying; and, this being denied to them, the claim arises.

It is clear to me that Mr. Walker's opinion ONLY went to the practicability of granting relief under the congressional act of March 30, 1849. The commissioners, however, have nothing to do with that act, which is applicable only to the Secretary of the Treasury. If we find the claim to be a fair and equitable one, we are bound to admit it, leaving in the case of the United States to Congress, and in that of

Great Britain to Parliament, the provision of the means of paying what we award.

Looking, then, at the fact that those goods were ordered on to Vera Cruz on the faith of one tariff;

That on arriving there they were met by a tariff which imposed duties that amounted to a complete confiscation of their goods;

That the goods were deposited, or in other words allowed to remain, in bond under the seals of the collector;

That they were afterwards compelled to pay these duties, and to introduce the goods into the market, at the same that goods paying the modified duties were introduced;

That in the opinion of Mr. Dimond, the collector of Vera Cruz, who knew all the circumstances, the claimants' case "was fairly stated, and well entitled to the considerate attention of the government;" and that the professed object of the government, as stated by Mr. Walker in his preamble to the tariff of March 30, (in which the mistake was made,) was to "substitute a moderate duty when compared with that imposed by Mexico," but which, in fact, through the mistake made and afterwards corrected, "substituted an exorbitant duty when compared with that imposed by Mexico," the claimants are, on every principle of equity, entitled to the benefit of the correction, and to have their goods placed on the same footing as similar goods introduced at the same time in the same market.

A doubt has been raised by my colleague as to whether, Mr. Walker having stated his inability to remit the excess duties, we are able to go behind his authority, and do that which he could not do. In this doubt I confess I do not participate. It is clear to my mind that, finding a claim to be a just one, and deserving of relief, we are by the terms of the convention bound to admit it, *wholly irrespective of whether or not any officer of either government could or could not, under any particular statute, have given the relief prayed for.*

It is clear that Congress itself could have given the relief if, on examination, it was found to be a case in which the parties were equitably entitled to it; and I hold that Congress through the Executive of the United States, and Parliament through the Executive of Great Britain, have delegated to us the task of inquiring into all claims properly presented under the first and third sections of the convention

of 1853, and of deciding upon their merits whether they are entitled to redress or not; and if to redress, to what amount.

To hold otherwise might have had the effect of frustrating the whole object of the convention, for it is not to be assumed that either government knew particularly what were the exact nature and extent of the powers of individual officers of State under the respective constitutions of the two countries.

I award, therefore, the sum of $18,877 87, with interest from the 22d November, 1847, to the 15th January, 1855.

BATES, Umpire:

This claim arises out of the following circumstances: Messrs. McCalmont, Greaves & Co., being engaged in the trade to Mexico in the year 1846, prepared a large amount of goods for that market; but hearing of the declaration of war and blockade of the Mexican ports by the forces of the United States, they shipped their goods to Havana, there to wait the removal of the blockade and the order of their Vera Cruz partner.

These goods were prepared for the Mexican market under the supposition that they would have to pay duties according to the Mexican tariff. Vera Cruz was captured by the American forces in March, 1847, and General Worth opened the trade, and issued, on the 31st March, a *temporary* tariff, to remain in force until further orders from the United States government at Washington.

This *temporary* tariff established generally the same duties as were payable in the United States, with ten per cent. *ad valorem* in addition. Representations were made to General Worth, and he, in consequence, made some alterations in his *temporary* tariff. After these modifications, the claimants' partner at Vera Cruz sent orders to Havana for their goods to be sent forward. They were shipped per Susan and per George W. Randall, and were daily expected to arrive, when the new tariff (dated 31st March) was received from Washington. The provisions of this tariff were very injurious to the interests of the claimants, who remonstrated, and sent immediately to Washington, praying for modifications.

The Susan and George W. Randall arrived on the 27th May. The collector of the customs at Vera Cruz permitted the goods to remain in deposit until an answer came from Washington to the representations of the claimants. On the 10th June an order came from Washington, altering the tariff, and left nothing to be desired.

The claimants then proceeded to the custom-house to pay their duties, according to the improved tariff. The collector refused to receive such duties; but demanded the duties of the unmodified tariff of the United States, (of the 31st March,) which the claimants were compelled to pay, viz:

On 54 bales woollen and worsted goods, amount paid -	$11,106 58
Would have paid, under the modified tariff, 30 per cent.	2,344 00
Excess - - - - - -	8,762 58
The claimants demand an abatement of duty, in consequence of damage on their whole importation, of -	2,961 00
In all - - - - - -	11,733 58

It cannot be said that these duties were not levied according to law; nevertheless, as the modifications in the tariff were made at the suggestion of the claimants, it seems a hard case that they should be the only parties not allowed the benefit of the alteration. The documents appear to be in order, and certified by F. M. Dimond, collector.

It is pretty certain that the authorities at Washington did not quite understand the case, or I think they would have allowed the claimants the benefit of the provisions of the modified tariff. I therefore award to Messrs. McCalmont, Greaves & Co., or their legal representatives, the sum of eleven thousand seven hundred and thirty-three dollars and fifty-eight cents, on the 15th January, 1855.

The claim for $7,154 29, for over charge of duties on cotton goods, I reject, believing it not right to select a particular kind of cotton goods from a large invoice on which to make a claim, when the duties on the other portion must have been far lower than they would have paid under the Mexican tariff.

These duties, as before stated, were levied in conformity with the law; and it is only the peculiar circumstances and hardships in the case of the woolens that could justify this commission in granting any portion of the claim.

KERFORD & JENKIN.

The claimants were British merchants residing in Mexico, and, prior to the war between the United States and that country, had ordered goods, designed for the Mexican market, to be transmitted by the over-land route to Santa Fé, and thence to the interior of Mexico, with a right of drawback of duty, as provided by the laws of the United States.

On the arrival of the goods at Philadelphia, war existed between the United States and Mexico, and application was made to the government for liberty to proceed with the goods, with right of drawback as before, stating the great hardship of a refusal. Special permission was given "under the peculiar circumstances involved, and without giving rise to any inferences as regards the condition of Santa Fé."

Held that such a permission was a mere license of transmission of goods to the border, with full notice of the risks arising from a state of war, and, that a subsequent necessary detention of a caravan conveying the goods into the interior of Mexico, by an armed force invading the country, until after the success of such force was secured, was justifiable.

The claimants are British merchants resident in Zacatecas, in Mexico, and had been many years engaged in trade in that country.

By a law of Congress, of March 3, 1845, merchandize was authorized to be exported over land to Canada, and to Mexico, via Santa Fé, with the benefit of drawback on duties.

In 1846, the claimants had purchased a quantity of goods in England, designed for the Mexican trade, and adapted especially for that market. These goods they had ordered to be shipped to Philadelphia, designing to take them by the over-land route to Santa Fé, and from thence transport them to the interior of Mexico. They had arranged to have mules and wagons in readiness in Mexico, to take on the goods on their arrival.

The goods arrived in Philadelphia, in June, 1846, at which time war existed between the United States and Mexico, and commercial intercourse between the two countries was stopped. The claimants, however, made earnest application to the government to be permitted to proceed with their goods, with the accustomed allowance of draw-

back; and representations were made of the great loss which would accrue to them if this indulgence was not granted. The request was acceded to in a special order, in which the Secretary of the Treasury stated that it was granted "under the peculiar circumstances involved, and without giving rise to any inferences as regards the condition of Santa Fé, or to act as a precedent in other cases."

The goods were forwarded from Philadelphia early in July, 1846, and arrived at Santa Fé, where a certificate was issued for the return of the duties, October 7, 1846. Before reaching Santa Fé, the caravan transporting the goods was overtaken by a military detachment under Colonel Price, and detained by him ten days. They were also delayed by a military force under Captain Walton. On the arrival of the caravan at Santa Fé, General Kearney was in command, and he permitted it to proceed on its way to Chihuahua; and afterwards it was detained by Colonel Doniphan, who had command of the forces then proceeding to the capture of the city and province of Chihuahua.

The caravan was kept with the troops, as is alleged, some six or eight months, at great expense arising from loss of mules, consumption of provisions, damage of goods, and other injuries. At length a general battle was fought with the Spanish forces of the province, near Chihuahua, who were defeated, and the city and province were taken; after which the claimants received no further molestation.

It was contended that the detention of the claimants was justifiable because they were proceeding directly to the enemy's country with a full knowledge of the numbers and design of the American forces. They had also merchandise which would be a valuable assistance to the Mexicans, and on which the duties to be paid would amount to a large sum.

The duties paid in the United States, for which they received a drawback, were $53,108. The duties in Mexico would be a much larger amount.

It appears that, notwithstanding all the detention, the goods sold so that the claimants realized a large profit, though much less than they would have done had there been no delay.

HANNEN, agent and counsel for Great Britain.

THOMAS, agent and counsel for the United States.

THOMAS, Counsel and Agent for the United States:

This is a claim of Messrs. Kerford & Jenkin, merchants, of Zacatecas, Mexico, who were domiciled in that city and carried on trade there, during the war between the United States and Mexico. The claim is for $300,000, damages alleged to have been experienced by the claimants in consequence of the detention of their caravan of goods by Colonel Doniphan, between Santa Fé and Chihuahua, in 1846.

The declaration or memorial of the claimants states that they are British-born subjects, but that they have resided and been merchants at Zacatecas during the last eighteen years.

I shall oppose the allowance of this claim on two grounds:

1st. The commission has no jurisdiction of the case, inasmuch as the claimants were domiciled in Mexico during the war, and by the law of nations were subjects of that country: and

2d. If they had the right to appear here as claimants against the United States, they have no just or legal ground of complaint.

Every person domiciled in the enemy's country is regarded by the law of nations as a subject of that country. Kerford & Jenkin being domiciled in Mexico during the war, were not "British subjects" in the sense in which these terms are used in the convention, and hence have no right to appear before this commission.

International law does not enter within a State to ascertain who enjoys the municipal rights in a higher or lower degree, but it is outside of all nations, and regards every person as a member of that society in which he is found.

This is the rule for the intercourse of nations in peace as well as in war.

The question now before you is, however, one which arose in time of war, and we shall, therefore, only be concerned with the law in regard to belligerents.

On this point Chancellor Kent says: "If a person has a settlement in a hostile country by the maintenance of a commercial establishment there, he will be considered a hostile character, and a subject of the enemy's country in regard to his commercial transactions connected with that establishment. The position is a clear one, that if a person goes into a foreign country and engages in trade, he is, by

the law of nations, to be considered a merchant of that country, and a subject to all civil purposes, whether that country be hostile or neutral, and he cannot be permitted to retain the privileges of a neutral character during his residence and occupation in an enemy's country."

Great Britain was neutral; these claimants were living in Mexico, then at war with the United States; and, according to the authority of Kent, they took the national character of Mexicans, and after peace is made they cannot divest themselves of that character and come here and claim a right to that which a neutral alone could be entitled. If it be to the advantage of any one to adopt the country of the belligerent, he must take also the disadvantages of the hostile character. Chancellor Kent adds: "The principle that for all commercial purposes the domicil of the party, without reference to the place of birth, becomes the test of national character, has been repeatedly and explicitly admitted in the courts of the United States." I have, in another case, by citations from the admiralty courts, shown to this commission that the same doctrine has been held in England without even a single departure from it, and yet her Majesty's agent refuses to acknowledge the applicability or authority of these decisions. I had supposed that Americans were here regarded as almost the only insubordinate people, but in conservative England I find there are even members of the bar quite as much so as we are in America. The counsel for her Majesty's government does not abide by the decision of his own courts; and he even denies the authority of hissuperior, Lord Clarendon, Secretary of Foreign Affairs, who has recently announced the law of nations on this very point.

Having been asked by her Majesty's consul at Riga, what would be the condition of British subjects domiciled in Russia in the event of war, Lord Clarendon says: "By the law and practice of nations, a belligerent has a right to consider as enemies all persons who reside in a hostile country, or who maintain commercial establishments therein, whether these people be by birth neutral, allies, enemies, or fellow-subjects." This is the whole doctrine for which I contend, and in conformity with it an American citizen domiciled in Russia during this war is an enemy of Great Britain, and would be so regarded by any court in England. If, however, these claimants are to be considered as British subjects, you will practically declare that Americans, domiciled in Russia, will not have their claims settled by the peace

which may be made. The American may bring forward hereafter a claim for injuries done to him and his property in Russia by Great Britain; and when some future commission shall be organized to adjudicate claims between the United States and Great Britain, this man, who was in Russia during the war, giving his money, his spirit, and his industry, to maintain the war against Great Britain, may present himself before that commission and say, "when you made peace with Russia you did not settle my claims, you settled the claims of Russian subjects against England, but *I* am an American citizen, and I claim indemnity for injuries done to me and my property."

To admit the claim of Kerford & Jenkin, would establish the principle that would embrace the case I have stated, and I should think her Majesty's government would be the last to assent to it. In a previous discussion of this principle, in the case of the Laurents, I cited several cases on this point from Lord Stowell; and, though it may not be necessary, I would now refer to what he says in the case of the Embden, 1st Robinson's Reports. In speaking of a foreign merchant who had carried on trade in Holland, he observes that "a Prussian born subject, by engaging in trade for ten years in Amsterdam, had become a perfect Dutchman." These claimants were engaged in trade during eighteen years in Mexico, and the law of nations must have wrought a like change in their national character. This view of the law of nations is fully sustained by the decisions that are now almost daily transpiring at Doctors' Commons.

The present war between the allies and Russia has already given rise to several cases which determine anew this question. I find the judgment of Dr. Lushington, in the case of the Abo, directly to this point. The learned doctor says: "A claim has been set up on behalf of a gentleman stating himself to be a British subject, resident at Cadiz; but, as far as every rule of law can be applied, this gentleman holds a Spanish national character, and not that of a British subject, because it is a very just principle that in time of war a person is considered as belonging to that nation where he is resident and where he carries on his trade."

But in the case of the Aina, which will be found reported in the Jurist of the 5th of August, this distinguished admiralty judge is even more emphatic and clear in presenting this view of the law. On the question as to the national character of the claimant, whether he is

to be considered as an enemy or a neutral, Dr. Lushington observes: "It is stated that he is a citizen of the Hanse Town of Lubeck, and consul of his Majesty the King of the Netherlands at Helsingfors, Finland, in the empire of Russia. Upon this I can put but one construction—that he is a resident in Finland, and carrying on his business there. *I take it to be a point without controversy, that when a neutral, after the commencement of war, continues to reside in the enemy's country for the purposes of trade, he is considered as adhering to the enemy, and as disqualified from claiming as a neutral altogether.*" If his character of neutral is destroyed, if he is a belligerent, the authorities declare that he must take the disadvantages as well as the advantages of the country of his adoption. There never could be a termination to a war and its consequences, if the various individuals of foreign origin who in this migrating age choose to take up their domicil in the enemy's country could from time to time bring forward claims that arose during the war, long after peace was made and all claims settled by the belligerent governments.

The agent for her Majesty's government has observed that these, and other cases which I have heretofore cited from the admiralty courts, relate to questions of property, and that no direct adjudication has been made upon the national character of the parties. In this assertion her Majesty's agent, I venture to say, is greatly in error. The right of property has, no doubt, been the cause of the litigation; but, in order to determine that right, it has been necessary to fix the national character of the parties claiming it, and this has uniformly been settled by the court of admiralty before determining the right of property.

The identical construction of the words "British subject," for which I contend, was settled by the privy council in Drummond's case, reported in 2d Knapp; and that decision is corroborated by the Supreme Court in the case of the Pizarro.

This court was called upon to say what was meant by the term "subjects of his Catholic Majesty," used in a treaty between the United States and Spain; and the doctrine held in Drummond's case by the admiralty court, and by every British publicist, was fully sustained. It was held that these words must be interpreted by the law of nations. In delivering the opinion of the court, Judge Story said,

emphatically, "that a person domiciled in a country, and enjoying the protection of its sovereign, is deemed a subject of that country."

The British agent has called my attention to Genesse's case, and desires me to reconcile that judgment with the construction I have put on the other decision of the privy council. That will not be a difficult matter; before entering upon the subject, however, I must express my regret that the British commissioner, in delivering his opinion on this principle in the Laurents case, should have adopted, as he must have done without examination, the view which her Majesty's agent thought proper to take of Genesse's case; for it appears to me impossible that an unprejudiced mind can fail to admit that it is in entire harmony with the cases I have heretofore cited.

Genesse's case is this:

In 1793 Genesse was the chief clerk of Boyd and Kerr, British bankers established in Paris. They owned certain *rentes viagères*, (life annuities,) which stood in the name of Genesse. The books and papers of this house were seized, and Genesse with them. The French government confiscated the property, and executed Genesse. Boyd and Kerr claimed compensation under the treaty granting indemnity to British subjects for private property seized and appropriated, and it was allowed by the privy council on the ground that they had returned to London, and were living under the rule and government of Great Britain at the time of the confiscation.

In proof of the correctness of this decision, the very decree which pronounced sentence of death on Genesse gives, as a reason for his condemnation, that he was associated with these persons, Boyd and Kerr, who were, it was alleged, *then in London*. It says he was condemned for being a member of that "execrable conspiracy, directed and plotted by Boyd and Kerr, English bankers, who are enjoying in London impunity for their crimes." The British agent and the commissioner have both assumed that those persons were domiciled in France; whereas this decree itself proves the contrary. They had left Paris, and had resumed their allegiance to Great Britain, before the confiscation took place. Sir William Scott, in the cases of the Indian Chief and President, held, that the moment a citizen even turns his face toward home, *animo revertandi*, his domicil reverts. Boyd and Kerr were, therefore, redintegrated subjects of Great Britain when their property was confiscated, actually rendering allegiance,

and came within the provisions of the treaty. It is manifest that this case is perfectly consistent with the other cases cited; and it is therefore of no authority to support the pretension of Kerford and Jenkin to be regarded here as British subjects.

But it is contended that the claimants had a license, and upon this much stress has been laid. Supposing them to have had a license, and that its provisions had not been complied with by the authorities of the United States—if the doctrine which I have maintained be correct, they cannot come here to redress any wrong done under that license. If any government could complain, it would be Mexico; but the treaty of peace settled all the claims of her subjects upon the United States, and if this was not included it is the fault of Mexico, and to that government the claimants must resort for redress. Although I have raised this objection to the jurisdiction, it will appear in the course of the argument that I have not done so to avoid any just or legal demand against my government, as there is a perfect defence to this claim upon the merits; and to this I shall now proceed as my second point.

In 1843 the United States passed a law authorizing the exportation of goods across the country to Mexico and to Canada, with the benefit of drawback; and under that law this *permission*, dignified with the name of a license, was granted. In June, 1846, application was made to the Treasury Department, by the agent of these claimants in Philadelphia, to be allowed to export from Independence to Santa Fé, with benefit of drawback, nine hundred and eighty-six packages of goods, ordered and shipped prior to the declaration of war. The Secretary of the Treasury directed the collector at Philadelphia to grant the application, by giving to the parties, as their authority, a copy of the Secretary's letter of the 10th of June of the same year to the collector of New York, in answer to a like request. That letter from the department was in these words: "Sir: Upon recommendation of the application made by Messrs. P. Harmony, Nephews & Co., referred to in your letter of the 1st instant, to be allowed to export, in pursuance of the act of the 3d March, 1843, with benefit of drawback, to Santa Fé, certain goods, specially imported and exclusively designed for said trade, the department has concluded to allow such exportation under the peculiar circumstances involved, and *without giving rise to any inference as regards the condition of Santa Fé, or to act as a precedent in other cases.*"

This is in no proper sense a license, but a mere permission to export goods, and a relaxation of the rigors of war by the government, because it believed the goods had been purchased under the inducement held out by the law of 1843.

The agent for her Majesty's government contends that the term "Santa Fé trade," used in the claimants' application, meant the carrying of goods from Independence via Santa Fé to Chihuahua. This may be true, but the Secretary of the Treasury did not use those terms; he limited his permission "*to Santa Fé*," and he moreover warned the parties, at the close of the permission, by saying in effect that he could give no guaranty as to what the parties might expect on reaching that place. It afterwards appeared that General Kearny was then raising an expedition to invade Mexico by way of Santa Fé. The government was under no obligation to proclaim to the world, nor to these claimants, that this expedition was being organized, but they were put on their guard by the Secretary of the Treasury; he said "he gave no assurance as to what might be the condition of Santa Fé."

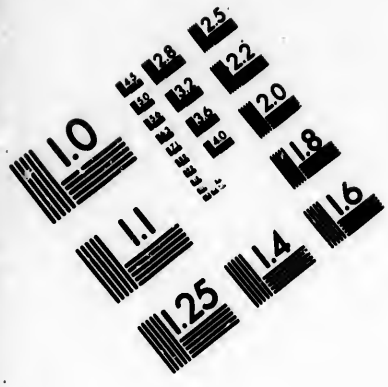
When the claimants' caravan reached that place, the United States forces had taken possession of the town. General Kearney was in command, and the claimants allege that he told them: "You wish to go on to Chihuahua, the road is open;" "you are now in Mexico, and we have no further concern with you." Shortly after this, General Kearney left Santa Fé and proceeded on his march to California. In a few days Colonel Doniphan arrived at Santa Fé with his forces, and very soon thereafter started on his expedition to Chihuahua, whither the caravan had already gone. This caravan was going directly to the city upon which the army was moving. It was, in fact, a blockaded route, and to contend that this caravan had any right whatever to precede the army, would be to contend that the usual traders have the right to enter an invested city. There were eighty men in the caravan, any one of whom might have acted as a spy; and they were conducting to the enemy a large quantity of goods and provisions, and the pretension is set up that they should be allowed to go on, because the government had permitted them to export goods to Santa Fé! Colonel Doniphan's expedition, composed of not more than a thousand effective men, had to traverse a wilderness of a thousand miles in extent, throughout which there was no wood, little water, and nothing to sustain either animals or men.

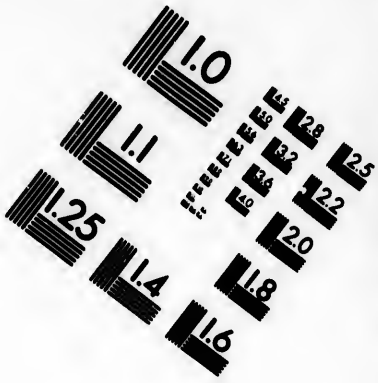
The circumstances demanded the greatest caution to prevent the loss of the army, and yet these claimants demanded, as a right, the liberty to go on and furnish the enemy with the means and information requisite to insure his destruction. No British commander would tolerate such a pretension, and it is amazing to me that it should find an advocate in any profession. We may easily conceive an illustration, in the present war, which will show the unreasonableness of the claimants' demand. Let us suppose that England bordered upon the empire of Russia, and that there existed "the Odessa trade," which had been heretofore carried on by American citizens domiciled in Sebastopol, and that the British government had granted them a permit to export goods across the country to Odessa. When the parties arrived at Odessa, they found General Kearney in command of that city, and he says, "you are now in the Russian territory, the road to Sebastopol is open to you." But before they reach that place Lord Raglan arrives in the Crimea, and on his way to Sebastopol overtakes the caravan. He is marching on that place and going to besiege it. According to the principle contended for by her Majesty's agent, Lord Raglan must send on this caravan into Sebastopol, and let the enemy be notified that he is coming, the nature of his forces, and everything the Russians may desire to know about the invading expedition. There is, I maintain, no principle that has ever been acted upon by any commander of an army that would require Lord Raglan to take such a course as that, and yet this is the very case before this commission. The agent for her Majesty's government has, in his argument, contended, in effect, that under such circumstances the caravan ought to be sent into Sebastopol. I repeat that neither the laws of war nor any of the rules which regulate the intercourse of nations call for any such proceeding on the part of the commander of the British or the American expedition.

The case of Harmony *vs.* Mitchell has been relied on as being similar to the present one. In that case the plaintiff had received the same permission to export goods, and had followed the army without molestation into Chihuahua, but the country was then under complete subjection, and all danger had passed. It was, in fact, in the possession of the United States. The seizure and confiscation of the plaintiff's goods by Colonel Mitchell was therefore declared by the Supreme Court to have been illegal, because there was no longer any danger of

his carrying supplies or information to the enemy; and Chief Justice Taney, in delivering the opinion of the court, pointed out the difference between the two cases. In the case before the commissioners there was no confiscation of the claimants' property; it was a detention merely which took place before the country was conquered and while the danger was imminent, and which was demanded by the necessities of the war and authorized by the rules which regulate the conduct of armies. But if the cases were the same in principle, as has been alleged, why did not the claimants seek the same remedy? They might have sued the commander of that expedition in the courts of the United States. The Constitution has expressly given jurisdiction in the case of an alien suing a citizen, and the claimants could have had the judgment of the same court. The omission to avail themselves of this remedy is very strong evidence that they did not think the cases the same in principle.

It has been asserted by the British agent that licenses are to be construed with the utmost liberality. This is a new doctrine, and I venture to say he can produce no authority in support of it. Sir William Scott entertained an entirely different opinion, and so expressed himself in the case of the Cosmopolite: "Licenses," he says, "being high acts of sovereignty, they are necessarily *stricti juris*, and must not be carried further than the intention of the great authority which grants them may be supposed to extend. It is absolutely essential that *that* only shall be done which the grantor intended to permit; whatever he did not mean to permit is absolutely interdicted, and the party who uses the license engages not only for fair intentions but for an accurate interpretation and execution." It cannot be said that the United States government intended, by its permission, to give the claimants protection in the enemy's country. It was designed to permit them to carry their goods to Santa Fé, *and nothing more.* During war the law of nations prohibits all trade with the enemy; and the permit to the claimants to export their goods was an assumption of a state of peace to that extent, an exception to the rule of law, and must be construed strictly. And, as has been usual in a state of peace, when the goods reached Santa Fé the claimants received a certificate of exportation, and upon that, in less than a month afterwards, the duty was returned to their agent at Philadelphia by the collector of that port. Here the transaction was closed, the





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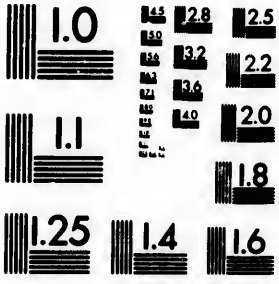

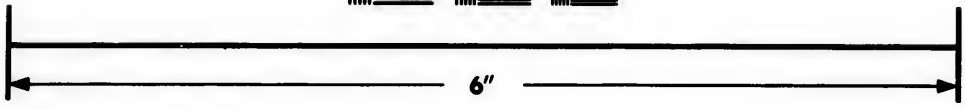

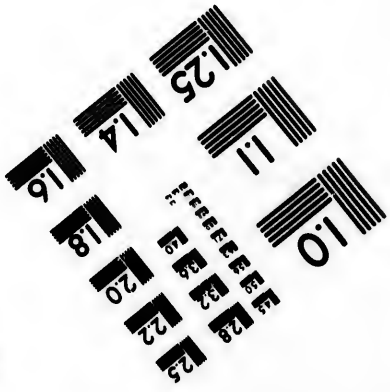

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obligation of the United States ceased, and the property then became mixed with that of the enemy.

In conclusion, I would observe that it is irregular in the proceedings of judicial tribunals to consider the merits of a case before determining whether that tribunal has authority to decide it. I am not unwilling, however, that the umpire shall look at the merits of the claim, for even if it be regarded within the jurisdiction of the commission, I conceive that I have shown that it is unsupported by law, and has no foundation in justice.

UPHAM, United States Commissioner:

The abstract of the case drawn up presents fully all the particulars necessary for its consideration. There is no doubt that the detention of the caravan, caused by the military forces, which were also proceeding to the same point in the enemy's country, was a serious damage to the claimants. There is good reason to believe the damage would have been far greater, however, had no permission been granted to proceed with the goods beyond Philadelphia, as they were ordered especially for the Mexican market.

The permission given was designed for the relief of the claimants on account of the particular circumstances of the case, and was so received. Injustice has been done to the government by representing it as a pledge or guaranty that the caravan should proceed unmolested by the war existing between the two countries; but the exact reverse of this is the fact. The goods were allowed to proceed, with the benefit of a drawback for the return of duties, but they were to incur all the risks dependent on the condition of the two countries on their arrival at Santa Fé, on the frontier, and in their further progress to the interior of Mexico.

It was specially stated in the permit that it was granted on account of "the peculiar circumstances of the case, and *without giving rise to any inferences as regards the condition of Santa Fé*, or to act as a precedent in other cases."

Its evident purport, as I have stated it, could not have been misunderstood.

The sole question, then, which arises in the case is, whether the subjection of these parties to the incidents attending a state of war in Mexico constitutes a just ground of claim against the United States. It is not denied, I believe, that their detention was eminently demanded as a precautionary measure for the security of the American troops. The American forces were then proceeding on a very desperate adventure into the heart of the enemy's country, against a force far greater than their own, and for the capture of an extensive province, having a large population.

Their sole security depended on the want of knowledge, on the part of the Mexicans, of the number and condition of the men sent against them. The claimants were also taking to the very forces arrayed

against the Americans merchandise of immediate use to those forces, and upon which the enemy would receive at once a large amount of material aid in the duties to be levied upon the goods.

The detention of the claimants' caravan, under these circumstances, was evidently a military necessity.

The claimants voluntarily incurred the risk of this liability with the permission to do so, as a special favor from the American government, and with full warning as to the contingencies to which they might be subjected.

The claim, then, which is made in this case comes with a bad grace from these parties. Had the goods been confiscated after they were permitted to proceed with them to the frontier, or had they been unnecessarily detained, or had there been any wilful harshness in the mode of carrying into effect the measures adopted, a claim might, perhaps, have been sustained; but there is no evidence of this character on either of the points named.

The learned counsel for the British government has cited the case of *Harmony* v. *Mitchell*, 13 *Howard Rep.*, 115, as in point, and, in other respects, has argued the case with his usual eminent ability. In the case cited, however, a large portion of the goods, then on their way to the Mexican market, under circumstances similar to the present case, were *seized and converted to the public use*, and the remainder were abandoned.

The jury also found that the seizure was not caused by urgent or immediate necessity. The case, therefore, is wholly diverse from the present.

There are serious doubts whether the finding of the jury in that case was warranted by the evidence as reported, but, with the facts thus found by them, the judgment of court follows, of course.

In the case before us, there is no reason to doubt that the *detention* of the caravan was dictated by imperious necessity, and was an exercise of power clearly within the acknowledged and just right of the commander of the American forces. The claimants stood in no relation to the United States government that relieved them from such a necessity. Their venture was, moreover, a successful one, though their profits would have been much larger had no detention occurred. I see, therefore, no just ground to sustain this claim on any principle of law or equity.

HORNBY, British Commissioner:

In considering the case, stated that he came to a different result from his colleague; he regarded the right given to the claimants to embark in the trade with Mexico as extending not merely to the Mexican frontier, but that in justice and equity it extended to the entire destination of the goods, and that the risk of detention, if any occurred, should rest on the government who had held out encouragement to proceed, and not on the claimants.

He held that the burden of proof, showing the necessity of detention, was on the government, and should not have been left as a mere matter of inference from general facts in the case, but direct evidence should have been given on the point; and that substantially the same evidence existed in this case as in the case of *Harmony* v. *Mitchell*, cited by counsel, where the jury found for the plaintiffs.

A serious injury has resulted. It may have been caused by the necessity of war; but he considered the claimants as having in substance a license to trade with the enemy, and that it should not be revoked or prejudiced without compensation for the damage.

BATES, Umpire:

This claim is put in on behalf of Messrs. Kerford & Jenkin, who have been established in Zacatecas, as merchants, for eighteen years; and have been engaged in trade with Santa Fé, Chihuahua, and other places in the adjoining districts.

The facts and circumstances alleged are as follows: In the year 1843, the Congress of the United States passed an act authorizing the export of merchandise overland to Canada, and to Mexico, via Santa Fé, with the benefit of a drawback of duties, and the claimants had, in 1846, prepared in England, a quantity of goods suited to the Santa Fe trade, and apparently not suited to any other market.

The goods arrived in Philadelphia, by the ship "Saranac," in June, 1846; the customs entry is dated 19th June, 1846; at which time war existed between the United States and Mexico, and all commercial intercourse was stopped.

The agents of the claimants, on 18th June, 1846, petitioned the government of the United States, stating that these goods had been prepared expressly for the Santa Fé trade, and, being suited to no other market, immense loss would be sustained if they were not permitted to carry out their views; and that they had five hundred mules, forty wagons, and forty-five men waiting at Fort Independence for the goods, at the charge of Mr. Kerford and partners; they, therefore, prayed permission to send their goods forward, with benefit of drawback.

The United States government granted the application "under the peculiar circumstances involved, and without giving rise to any inferences as regards the condition of Santa Fé, or to act as a precedent in other cases."

The export entry was dated June 29, 1846, for 986 packages goods to Santa Fé and Chihuahua, by the route of the Missouri river; and the invoice value, exclusively of charges, was £14,210 16*s.* 11*d.*

The goods arrived at Fort Independence, in transitu for Santa Fé in New Mexico. The inspector's certificate is dated the 30th July, 1846. The caravan, consisting, according to Mr. Kerford's statement, of 45 wagons, 600 mules, 250 oxen, and about forty horses, valued at about $80,000; but, according to Mr. Gentry's statement, of 46 wagons, 500 mules, 350 oxen, and 20 horses, valued at about $68,150, started

from Fort Independence, under the care of 80 armed men, in the month of August. The precise day is not stated, but it was late in the season, the month of May being the best month to start in.

After six weeks' march, without interruption, they were overtaken by a detachment of Missouri volunteers, under Colonel Price; to whom Mr. Kerford exhibited the permit, and other papers received from the custom-house at Philadelphia, and represented that he was a British subject. Colonel Price examined every wagon, and detained the caravan ten days, and then suffered it to proceed, and they arrived at Santa Fé, according to Mr. Kerford, on or about the end of October, but the consular certificate for the return of the duties was dated Santa Fé, October 7, 1846.

On their arrival at Santa Fé, Mr. Kerford waited on General Kearney, the United States commander of the district, and complained to him of the treatment he had received from Colonel Price. General Kearney assured him that the road was open to Chihuahua, and that he might proceed with his caravan without risk of further interruption, upon which they proceeded for several days, and had arrived in a wild country, where no supplies or provisions could be obtained, when they were stopped by another body of American volunteers, under the command of Captain Walton, who, on being informed that the goods were British property, allowed them to proceed; but, at the end of two days, sent a body of 200 men after them, who commanded them to halt, and mounted guard around the wagons, with orders to shoot the first man who should attempt to move. They thought it best to submit, although capable of forcing a passage, as the men were all accustomed to the use of fire-arms.

About a month afterwards, Colonel Doniphan took the command of the forces. It appeared to be the duty of the claimant to submit, and he, with the caravan, was detained for two months, according to Mr. Kerford, but according to Mr. Gentry for six weeks, during which the men were exposed to the inclemency of a severe winter, and were reduced to extreme want, and many of the mules and oxen perished.

The claimant applied to the commissary for relief, but none was afforded, as the troops were on half rations. During the whole of this detention, the claimant made repeated applications to be released, which were refused on the ground that the introduction of so much valuable property, though it did not include any munitions of

war, would be a great advantage to the enemy from the duties accruing upon it.

At length Colonel Doniphan moved forward to attack Chihuahua, the caravan being ordered to travel in the rear, until a battle took place, in which the Americans were successful. Even then the caravan was not allowed to proceed, but was detained for several weeks, (six weeks, according to Mr. Gentry,) when the vigilance of the guard having been relaxed, they prosecuted the journey and reached Chihuahua the latter end of February, 1847, having been detained three and a half months beyond the time usually required for the journey.

In consequence of this delay, the goods were sold at nearly thirty per cent. below what they would have realized from them at an earlier period.

To show how little reliance can be placed on the only evidence in support of this claim, the following notes from depositions on oath of Mr. Kerford, and Mr. Reuben Gentry, are placed in juxta-position, remarks thereon being made in italics:

Mr. Kerford's statement.	*Reuben Gentry's statement.*
Messrs. Kerford & Jenkin were established in trade at Zacatecas, for eighteen years.	Reuben Gentry was general manager of the caravan in 1846.
Imported 986 packages of goods by the "Saranac," and obtained leave, on petition, to export the same under drawback.	There were 986 packages of goods.
The goods were forwarded to Fort Independence. The caravan consisted of 45 wagons, about 600 mules, 250 oxen, and about 40 horses, valued at about $80,000, under an escort of 80 men. The caravan started from Fort Independence in *August*, 1846.	The caravan, consisting of 46 wagons, 500 mules, 350 oxen, and 20 horses, valued at $68,150, under conduct of 80 men, started from Fort Independence early in *July*, 1846. (*This is clearly incorrect; the goods were not there at this time.*)
They proceeded six weeks without interruption, when they were overtaken by Colonel Price, who examined all the wagons, &c.,	Proceeded without interruption as far as Council Grove, Missouri, and were then overtaken by two companies of volunteers, under

and forcibly detained the caravan ten days. They were then permitted to proceed.

The caravan arrived at Santa Fé on or about the end of October.

(*The consular certificate for return of duties was dated October* 7, 1846.)

At Santa Fé, Mr. Kerford waited on General Kearney, and was assured that the road was open, &c.

After leaving Santa Fé, proceeded several days till they arrived in a wild country, &c.; were stopped by another body of American volunteers under Captain Walton; allowed to proceed, but, after two days, Captain Walton sent 200 men, who forcibly detained them. About a month afterwards, Colonel Doniphan took the command.

Captains McMillan and Horan, who overhauled the caravan and detained them one day. They went on for three days, and were overtaken by volunteers under a subaltern, who detained them, by order of Colonel Price, for ten days, at Cotton Creek, when Colonel Price came up, and examined all the wagons, &c.

In consequence of this delay, they did not reach the watering place that day. At night, many of the oxen broke loose, and while the men were looking for them, the Indians came and carried away 35 mules; they lost, also, 15 oxen.

The result of the detention was that three weeks were consumed beyond the usual period in reaching Santa Fé. Mr. Kerford had to go forward into New Mexico, and buy mules at exorbitant prices.

Proceeded towards Chihuahua, and reached Val Verde early in November; were then stopped by Captain Walton and forcibly detained *six weeks*, after which Colonel Doniphan took the command. Permission to proceed refused, although repeatedly applied for, to Captain Walton, and Colonel Doniphan.

Found it necessary to submit, and were detained *two months* during inclement weather, in which they suffered most severely, and lost many of the mules and oxen.

Supplies were refused by the United States commander, and repeated applications for permission to depart were refused on the plea that the duties on the goods would aid the enemy.

On the 14th of December sent a formal protest.

At length, Colonel Doniphan came up with reinforcements, and they marched forward, the caravan following in the rear. Followed till a battle was fought, in which the Americans were successful. Even then were not allowed to proceed, and again detained several weeks.

(*That part of Gentry's narrative by which the great loss of mules, &c., is to be accounted for, appears to be assigned to an earlier period and a different locality in Mr. Kerford's statement.*)

The vigilance of the guard having relaxed, went on, and reached Chihuahua in the latter end of February, 1847.

(*In Mr. Kerford's statement of the claim, they are said to have arrived (Query.—Was it six weeks, or two months? Which is correct?*)

On the 14th of December, sent a formal protest.

The troops under Colonel Doniphan proceeded towards El Paso; caravan followed in the rear; reached El Paso about the end of December. During this march the cattle were subject to great privations; there was no grass and little water, and many of the oxen, mules, and horses died; detained there fully six weeks, the cattle being nearly all starved with cold and want of food, many oxen and mules died, and almost all the horses. Permission to proceed still refused, which Mr. Gentry attributes to undue influence of other traders, fearing the large supply would surfeit the market.

After six weeks escaped the vigilance of the American forces, and reached Chihuahua towards the end of February, 1847—they ought to have arrived by the 1st of November, 1846.

in April, 1847. *He makes a charge of interest to the* middle of April.)

(*This would not allow three months for the journey.*)

Expended fully $40,000 in the purchase of food, &c.

(*Mr. Kerford claims* $60,000 *for losses by forced sales in procuring food, &c.*)

Believes Colonel Doniphan had no orders to go beyond Santa Fé. General Kearney told them they might go on to Chihuahua, and many traders did so.

Marked value of goods depreciated 30 per cent.; goods sold nearly 30 per cent. below what they would have done at an earlier period.

Prices of the goods had fallen 25 to 30 per cent.; can speak with certainty to the fact, having been engaged in this business in Chihuahua during the year 1845 and most of 1846. Large sales were also forced, to buy food, &c.

(*Mr. Gentry was absent during the period in question, and cannot therefore speak from his own knowledge.*)

To add to their losses, the United States army imposed an export duty on specie of 6 per cent.

(*This cannot have affected Mr. Kerford's interests, as Mr. Gentry proves that the goods would, in the regular course, if no detention had occurred, have been disposed of by the end* of March, 1847; *and Mr. Kerford, in his account, shows that the above duty was levied subsequent to January*, 1847.)

Having gone fully into the calculation, believes the loss, from fall in price of goods and forced sales, to be - - - - $95,000
Mules, oxen, &c., lost - 17,750
Additional wages to men and to Mr. Gentry - 13,000

125,750

and is fully persuaded that the loss in consequence of detention is not less than $180,000, with interest from the end of March, 1847, when the sale of goods would have been completed.

(*Mr. Kerford estimates the loss, by depreciation in price and forced sales, at* $125,000, *or* $30,000 *more than Mr. Gentry's estimate.*)

(*But Mr. Gentry must have been absent from Chihuahua the most of* 1846, *and could have no personal knowledge of the state of trade during the time in question.*)

Has been in the Santa Fé trade from 1839 to 1848. 500 to 700 wagon loads of goods go annually by this route, of which only 100 to 150 are consumed in Santa Fé and the adjoining districts. The term "Santa Fé trade," is used in a wide sense. Certificates for obtaining drawback were sent from Santa Fé, although almost all the goods went on to Chihuahua.

Periods of detention stated by Mr. Kerford:

10 days, several days, 2 months, several weeks—total, three months and a half.

Periods of detention stated by Mr. Gentry:

11 days, 6 weeks, 6 weeks—total, three and a half to four months.

On a review of the whole circumstances, the claimants' interests appear to have been affected as follows:

The value of the 986 packages of goods sent from England was, as per invoice, exclusive of charges, £14,210 16*s.* 11*d.*, or about $70,000. The Santa Fé trade was stopped when the goods arrived; and, as the owners would have been exposed to immense loss thereby, they petitioned the United States Treasury to permit, in this instance, a deviation from the circular of 11th June, 1846, prohibiting the export in the way desired.

The treasury accordingly permitted the export, with benefit of drawback, "without giving rise to any inferences as regards the condition of Santa Fé, or to act as a precedent in other cases;" and on receipt of the consular certificate of the arrival of the goods at Santa Fé, the drawback, amounting to $53,108 94, was repaid to the claimants.

After various delays the goods (or rather the greater part of them, a portion having been sold, as is alleged, to purchase supplies and

food,) arrived at Chihuahua, in February, 1847, where they were sold for $260,000, a sum which, after the most liberal allowance for expenses, must have left a handsome profit on the enterprise. So that by this act of grace and courtesy on the part of the United States government, the claimants were saved immense loss, and enabled to prosecute their adventure to a successful issue. They received back a sum of $53,108 94, for duties, and the mules, oxen, &c., provided, were rendered available, which otherwise would have been but little value. The claim, therefore, is not for actual loss sustained, but for alleged diminution of profits arising out of the detention of the caravan in the course of the journey.

Much stress has been laid, on the part of the claimants, on the permission to export under drawback, which has been incorrectly and improperly termed a license. But there is no ground for the belief that anything more was intended than a permission to the claimants to undertake an adventure which was at the time legally prohibited. It cannot be imagined that the United States government had the slightest intention to confer a privilege which might interfere materially with their operations against the enemy. Indeed, the reservation expressly made in granting the petition was evidently intended to exonerate the United States government from all responsibility, and to intimate to the petitioners that they must take their chance in pursuing the adventure.

They knew that war was being carried on, and must also have been prepared for difficulties and hindrances, incident to a disturbed state of affairs. The permission was not a privilege granted to them as British subjects, but was equally granted to other traders, citizens of the United States, who were placed in similar circumstances. It was a mere matter of favor on the part of the United States government to allow the trade to be carried on at all by claimants and other traders, and they embarked in it with a knowledge of the disturbed state of the country to which the adventurers were bound.

Much reliance has been placed on the case of *Harmony* v. *Mitchell*, 1 *Black. Rep.*, 549, as affording a precedent in support of this claim; but the two cases differ essentially, and the opinion of the court, delivered by Mr. Chief Justice Taney, is clearly adverse to Messrs. Kerford & Jenkin.

Harmony and Mitchell's case.

1. The jury found for Harmony on the grounds that he was not trading with the enemy, that his goods and property were seized and part of them converted to the public use, without the plea of urgent or immediate necessity, and that Harmony never resumed possession after the seizure.

2. The property of Harmony was left in Chihuahua when the place was evacuated by the Americans, (the goods having been unsalable during their occupation,) and were confiscated by the Mexicans on their return, and wholly lost to Harmony.

3. The seizure in this case took place at San Eleasario, in the province of Chihuahua, at which place Harmony (having determined to proceed no further) was compelled by Colonel Mitchell to remain with and accompany the troops.

Kerford and Jenkin's case.

1. In the case of Messrs. Kerford & Jenkins there was no seizure, nor has any been alleged; their avowed object was to go forward for the purpose of trading with the enemy, and they continued all along in the possession of their goods.

2. The property of Messrs. Kerford & Jenkin was safely conducted to Chihuahua, and realized a very large sum, $260,000, by claimants' statement.

3. The complaint of Messrs. Kerford & Jenkin, is not that they were not allowed to leave the army and proceed no further, but that they were not allowed to precede the army of the United States to the place which they were going to attack.

The question, therefore, in this case resolves itself into one of detention. The commander of the United States forces had undertaken an expedition against the city to which Messrs. Kerford & Jenkin's caravan was bound. The arrival of the caravan would certainly have put the inhabitants of Chihuahua in a more favorable position for frustrating the expedition; indeed, it is admitted in the plea put in on behalf of the claimants, that the arrival of the caravan was anxiously expected, on account of the duties payable to the governor of the place. The enemy would have derived a further advantage in ob-

taining information respecting the strength and resources of the invading force, and part of the men employed to conduct the caravan were Mexicans.

These circumstances are surely a sufficient justification of the control exercised by Colonel Doniphan over the movements of Messrs. Kerford's caravan. Similar control was exercised over other traders, citizens of the United States, without complaint on their part.

It is contended that, as neutrals, Messrs. Kerford stood in a better position, and could not properly be impeded in carrying on their trade; but, admitting, for argument sake that they were neutrals, this does not alter the case. It must be remembered that the trade in question had been stopped, and was only allowed under special circumstances, and with a special reserve. It was not an open road on which a friendly power had a right to travel freely and without question.

The case of *Harmony* v. *Mitchell*, has been relied on as a precedent, but the following passage from the "opinion of the court," delivered by Mr. Chief Justice Taney, is conclusive in favor of the right of detention, for he says that, "*up to the period at which the trespass is alleged to have been committed at San Eleasario, in the province of Chihuahua, it is conceded that no control was exercised over the property of the plaintiff, that is not perfectly justifiable in a state of war.*"

This seizure took place on 10th February, 1847, at which time Harmony's property must have been detained for a longer period than that of Messrs. Kerford & Jenkin. On the whole review of the case it appears:

1. That no engagement was entered into by the United States government, which can be construed into a license to trade with the enemy, or to pursue a course calculated to interfere with the military operations of the United States forces.

2. That the detention by which the alleged losses were occasioned arose out of the state of war, and was a contingency incident to any trading adventure undertaken under such circumstances; and that there is, therefore, no fair claim for compensation against the government of the United States.

THE ALBION.

A British vessel was seized for cutting timber and trading with the Indians in the Oregon Territory without license. Application was made to the government at Washington, requesting, as a measure of clemency, that the vessel might be released. Answer was sent that she might be released, if there had been no legal condemnation of the vessel; the answer did not arrive seasonably, and the vessel was condemned and sold. Allowance was made to place the claimant in a situation as favorable as if the instructions of the government had been seasonably received.

The Albion left London with a cargo of merchandise for trade with the Indians on the northwest coast of America, designing to return with a load of spars for the British navy. She had a license from the British government to engage in trade with the Indians, provided she did not deal in furs; and to cut timber within the British territories on that coast.

She had also a license from the Hudson's Bay Company to cut timber, on certain specified terms, on Vancouver's Island; and the master of the vessel was authorized to arrange for and cut timber on the American side of the straits, opposite the island, if he could obtain authority for this purpose.

The vessel arrived out in 1850 at Vancouver's Island; and, not being able to obtain timber conveniently by arrangement with the Hudson's Bay Company, proceeded to the American coast in Oregon Territory; and, finding no person to contract with, commenced trade with the Indians, and the cutting and felling of timber there.

Information was communicated to Astoria of her proceedings, and Mr. Adair, the collector of that port, ordered her seizure for entering the United States territory, felling timber, and trading with the Indians in violation of law.

She was seized in April, 1850, at Dungeness, having cut forty-two spars, from sixty to ninety-six feet in length, and from eighteen to

twenty-six inches square at the but, part of which were on board the vessel, and the others were lying by her side.

The officers report that she had some clothing, hardware, blankets, &c., on board, but the larger portion of her cargo had been sold to Indians or settlers. The vessel was libelled and condemned, and was sold in the fall of 1850.

After the seizure, application was made at Washington, beseeching the clemency of the United States government, so far as it might be extended; and, on January 11, 1851, Mr. Corwin, the Secretary of the Treasury, gave conditional instructions to the prosecuting officer of the government, "to release the Albion in case there had been no legal condemnation of the vessel at the date on which he should receive the instructions of the department, and on payment of the costs attending the seizure."

The vessel had been condemned and sold some two months prior to the date of these instructions, so that they could not be carried out.

HANNEN, agent and counsel of Great Britain.

THOMAS, agent and counsel of United States.

UPHAM, United States Commissioner:

The facts in this case have been briefly, but fully, recited; and the question arises how far, if at all, this commission can interpose the clemency of the government to relieve the claimant from the loss sustained by him.

It should be borne in mind that we have but one side of the case. Since the filing of the claim before us, it has been impossible to obtain evidence from officers in Oregon on the subject; and the case has been submitted, both at Washington and here, solely on the memorial of the claimant and such evidence as he has furnished.

It appears that the Albion left England fully instructed as to the necessity of obtaining licenses to trade with the Indians, and to cut timber within the British possessions, or within those of the Hudson's Bay Company. This would seem to indicate to the owner and master of the vessel, pretty clearly, that similar authority would be required to do such acts within the American Territory of Oregon, where we had then a duly organized government.

The timber obtained was felled on the coast opposite the Island of Vancouver. The master of the vessel was probably induced to go there, because he could obtain timber on the coast, of as good quality as in Vancouver's Island, free of expense; while it appears, from the papers in the case, it could not be had from Vancouver's Island without the payment of compensation to the agents of the Hudson's Bay Company, who had a trading post and establishment there. He could also carry on trade with the Indians within the American territories without any restriction as to dealing in furs.

The timber was cut at a point on the coast 180 miles by land from Astoria, the capital of Oregon, but a much further distance from it by water. Intelligence was received at Astoria of this trespass upon the territory of the United States and violation of its laws, and the vessel was ordered to be seized, and the proceedings were had which have caused the hardship complained of.

When the officers of the government heard of this encroachment on the Territory, what was to be done? It was probably not the first trespass of the kind, nor likely to be the last, unless prompt measures were taken for redress. It would hardly have answered to have warned off the Albion, and permitted the matter to pass in this manner; and

there seemed to be no other course to pursue than to seize the vessel, and follow the requirements of law. This was done. It is unfortunate that the consequences fell so heavily on the owner of the vessel, but it was not without the clearest fault on his part.

His excuse is that the country was remote and unsettled, and the government had been but newly established there, and was but little known. He regards the wrong done also as slight, and the punishment heavy.

It is further urged that the government designed to extend clemency to the claimant, but unfortunately their instructions were not issued seasonably for this purpose. These circumstances address themselves to us with some force. At the same time, in considering any measure of redress the case may demand, we should inquire how far the government has derived any benefit from the property seized; it should not be amerced in a penalty for enforcing necessary and important laws, which were palpably violated.

There are, also, some circumstances that might throw light on the case, which are unexplained. It does not appear but some security might have been given, and the vessel released without being subject to sale. The seizure was near the headquarters of the Hudsons' Bay Company, who had full ability to aid the owners by bond or otherwise.

Further it does not appear who purchased the vessel, or what became of her. It may have gone back into the hands of the owners at a very reduced rate. There is a deficiency in the evidence in these respects, which might throw important light on the question of damage.

I am willing, however, on the case submitted, to comply with the spirit of the instructions issued by the department, and return to the owners the amount received from the sale of the vessel, and anything appertaining to her, and remit all damage for trespass on land and timber.

There is no reason why the government, that has committed no wrong, should do more than this to a wrong-doer, and pay the owners of the Albion a large sum of money, which they now ask, to compensate them for the loss of the probable profits of the voyage, and for consequences necessarily arising from acknowledged illegal acts.

HORNBY, British Commissioner:

Concurred, in the main, with the views presented. He regarded the measure of redress as harsh compared with the wrong committed. The government had been but newly established; the acts complained of occurred in a remote and unsettled country; they were not of serious damage, and the master of the vessel could have had no just expectation that the consequences would be so severely visited upon him.

It also seemed to him, it would have been wise and expedient for the government officers, before proceeding to the condemnation of the vessel, to have obtained specific instructions from Washington; or, at least, have allowed sufficient time before proceeding to extremities, to have learnt the answer made to the application which had been transmitted, if the fact of such application was known to them.

He considered the commission bound to carry out, at least, the measure of clemency awarded by the government, and was of opinion a sum in damages should be allowed, that should place the owner in as favorable a position as though the instructions of the Secretary had been received at Astoria, before the sale of the vessel, and was willing to submit this amount to the consideration of the umpire.

BATES, Umpire:

On consideration of the question of damage, awarded twenty thousand dollars on account of the hardship of the case, and for the reason that the remoteness of the Territory was such as to prevent the clemency intended by the government seasonably reaching them.

TEXAS BONDS.—EXECUTORS OF JAMES HOLFORD.

In 1839, bonds were issued by the republic of Texas for advances of money made to the government by the claimants. These bonds were secured by a pledge of the faith and revenues of Texas.

In 1845, Texas was received under the general government of the United States, retaining all her public lands, and with a provision between the two governments that these lands were to be applied to the payment of the debts of Texas, and that such debts were, in no event, to be a charge on the United States.

In 1850, the United States purchased large tracts of land of Texas, and provided that five million dollars of the purchase money should be reserved by the United States to be applied in payment of debts for which duties on imports had been specially pledged. This and other acts have been pending between the two governments to the present time relative to the adjustment of these debts. During this period the British government has never received or recognized the claims of any owner of these bonds, as a subject for international interposition against the United States. *Held*, under these circumstances, that such claims were not included in the unsettled claims referred to the commissioners by the convention of February 8, 1853, and that the commissioners had no jurisdiction over them.

A pledge of the revenues of the government is in the nature of a lien to the creditor, and is binding on its transfer to another nation; but *quere*, whether such lien can justly extend to an amount clearly beyond the value of any such revenues, so as to operate as a bar to international union.

Also, where a nation is not fully merged in union with another, but retains independent powers and jurisdictions, whether an equitable apportionment of its liabilities may not be made between the two governments as a preliminary to such union, without a just ground of complaint on the part of creditors.

On the 24th of October, 1838, a contract was entered into between James Holford, of London, now deceased, and Messrs. Williams and Burnley, commissioners of Texas, who were authorized to negotiate a loan, under the provisions of an act of the Congress of Texas of May 16, 1838. By this contract Holford was to purchase for the republic of Texas a steamer, then lying at Philadelphia, and provision and deliver her at Galveston, in Texas.

The contract was complied with, and was afterwards approved by an act of the Congress of Texas on the 10th of January, 1839, and bonds were issued to said Holford dated July 1, 1839, for the payment of which the faith and revenues of the republic were solemnly pledged by acts of Congress of November 18, 1836, and May 15, 1838. Provision was also made, by act of January 22, 1839, that a certain portion of the sales of the public lands should be annually reserved, as a permanent and sinking fund for the payment of this debt, until the whole loan should be paid off.

It is alleged that payment has not been made of either principal or interest on these bonds.

In 1845 Texas was admitted into the Union as one of the United States.

By the Constitution of the United States the general government has power "to regulate commerce, and to lay and collect taxes, duties, imposts, and excises," and no State has power, "without consent of Congress, to lay any imposts, or duties on imports or exports, or enter into any treaty, alliance, or confederation with any other State."—(*United States Constitution, secs. 8th and 10th.*)

According to the terms agreed upon between the United States and the republic of Texas, whereby that republic became one of the United States of America, the vacant and unappropriated lands within its limits were to be retained by her, and "applied to the payment of the debts and liabilities of the republic of Texas; and the residue of the lands, after discharging the debts and liabilities, were to be disposed of as the State might direct, but in no event were said debts and liabilities to become a charge upon the government of the United States."—(*United States Statutes at Large, vol. 5, p. 798.*)

Subsequently, in modifying the boundary of Texas, the United States, in 1850, on condition of the cession by Texas of certain large tracts of lands to the United States, agreed to pay Texas ten millions of dollars, but stipulated that "five millions of the same should remain unpaid until the creditors of the State holding bonds and other certificates of stock of Texas, for which duties on imports were specially pledged, should first file at the Treasury of the United States releases of all claims against the United States for or on account of such bonds

or certificates, in the form prescribed by the Secretary of the Treasury, and approved by the President of the United States."

Owing to various difficulties between Texas and the United States in reference to the manner of appropriating this sum, it has not, up to this time, been paid; and new provisions, in reference to the same, are now pending before the Congress of the United States.

THOMAS, agent and counsel for the United States:

Filed a protest against the commissioners assuming jurisdiction of this claim, or of any other arising out of bonds or other evidences of debt issued by the republic of Texas as a claim against the United States, for the following reasons:

I. Because it is in no proper sense a claim on the government of the United States, embraced or contemplated by the convention of February 8, 1853, for the settlement of outstanding claims.

II. Because the second of the resolutions for the admission of the republic of Texas into the Union as a State, among other things, declares that "in no event are the debts and liabilities of Texas to become a charge upon the government of the United States."

III. Because the people of the said republic of Texas, by deputies in convention assembled, with the consent of the existing government, and by their authority, did ordain and declare that they assented to and accepted the proposals, conditions, and guaranties contained in the resolutions above referred to, and thereupon she was admitted into the Union as a State.

IV. Because it is not true, as is asserted in the statement of the claim presented to the commissioners, that Texas is incorporated into and subjected to the dominion of the United States government, so as to destroy her responsibility for debts contracted while an independent republic, or her ability to meet them; but, on the contrary, she is for the purpose of fulfilling these obligations as clearly responsible for their payment by the law of nations, by her separate and distinct organization, and by her solemn agreement with the United States, as she ever was, and is fully able to discharge them; and this commission is not authorized to interfere to shift any such obligation from Texas upon the United States.

V. Because this commission has nothing to do with any law or act of the United States addressed to the government or people of Texas, designed or tending to induce that State to perform her obligations entered into while an independent republic; and hence, to take jurisdiction of this claim would be a palpable and unwarrantable violation of the spirit and intention of the convention establishing this commission, to which the United States would have a just and perfect

right to take exception, as much so as if this commission were to pass laws for the government of the United States, or do any other thing wholly without the limits of its authority.

HANNEN, agent and counsel of Great Britain, assisted by Mr. CAIRNS, of London, argued the case at length in reply to the protest of the agent of the United States, and generally on the merits of the question.

On the application of one of the claimants, this case was re-argued before the commissioners and the umpire. For her Majesty's government, Mr. REVERDY JOHNSON, late Attorney General of the United States, assisted by Mr. HANNEN, counsel and agent for the British government; Mr. THOMAS for the United States.

THOMAS, counsel and agent for the United States:

Frederick Dawson, of Baltimore, presents a claim against the United States for the payment of a debt contracted with him by Texas, whilst that State was an independent republic.

It is hardly necessary to remind the commissioners that before the commencement of the learned counsel's argument, to which I am about to reply, I took objection to the jurisdiction of the commission, and insisted that this could not be a case proper for its decision. In that I was so far overruled as that the counsel was allowed to proceed in order to show the jurisdiction. He, however, first delivered his argument in support of the claim, and afterwards discussed the question of jurisdiction. I shall take the more usual course of addressing myself first to the jurisdiction, and then submit some observations designed to show the non-liability of the United States for these debts.

But I will first briefly state the manner in which this claim arises.

It is alleged that in the year 1838 Frederick Dawson contracted to furnish the republic of Texas with a navy, to consist of one ship, two brigs, and three schooners. These vessels were built and delivered to the republic of Texas, and in payment therefor that government issued to the claimant its bonds, dated December 1, 1839, for the sum of $280,000, payable in five years, and bearing an interest of ten per cent. per annum. It is also alleged, that Texas having failed to pay the interest or principle of these bonds, and the United States having received Texas into the Union, and at the same time taken possession of the revenues arising from imports, which, under the term "revenues" used in the bonds, were pledged for the payment of both the principal and interest, that, therefore, the United States government is bound to pay this claim.

This case had been so elaborately argued by the special and distinguished counsel, Mr. Cairns, who appeared for her Majesty's government, that I did not suppose a re-argument, before the commissioners, would be demanded. In this, however, I have been mistaken; but it is, I hope, now understood that the presence of the umpire will supersede the necessity of discussing the subject again before him, in case of disagreement by the commissioners. I have made no objection to the rehearing. I do this the more cheerfully, as renewed interest has

been given to the subject by the distinguished ex-Attorney General of the United States, (Mr. Reverdy Johnson,) who has argued the case before you to-day, on behalf of her Majesty's government.

The declaration or memorial which sets forth the case, addressed to the commissioners by the counsel of Frederick Dawson, states that he became a naturalized citizen of the United States in June, 1824, and renounced all allegiance to the British crown. According to the terms of the convention under which this commission is organized, the claims of "*British subjects*" only can be entertained against the United States; and I submit that the claimant having formally taken upon himself the obligations of a citizen of the United States, cannot here maintain a claim against the country of his adoption. In apparent anticipation of this objection, he alleges, in his memorial, that although a naturalized citizen of the United States, yet he was born in England, and hence he argues that by a well established rule of British law he is a British subject, and entitled to all the rights as such. This ground, the learned American counsel observes, is taken by Dawson's assignee, and gives me to understand that *he* places the right to make the claim on other grounds.

Whatever may be the ground assumed now, this was taken by the counsel who signed the declaration, and whether assignee or not, he was authorized to act for the claimant, and in the previous argument of this case the counsel for her Majesty's government endeavored to sustain the jurisdiction upon this basis. But now, it is said, this ground is abandoned, and the American counsel, who has argued the case, says he never dreamed of contending that an English subject, by birth, who had become a naturalized citizen of the United States, was not to be considered an American citizen in the meaning of this convention.

In that view it seemed to me impossible that this claimant had a right to invoke the authority of this commission; but, after hearing the argument of the counsel, I find that the ground originally taken is only ostensibly surrendered. It will be borne in mind that Fredrick Dawson made the original contract with Texas, and that he conveyed to his brother Phil p, his partner in trade, in Baltimore, an interest in these bonds; the whole of which became the property of the firm. They both took the benefit of the bankrupt act, and their property went into the hands of an assignee; and it is con-

tended that, inasmuch as Philip Dawson was never naturalized, their assignee can come forward and make a claim which could not have been made if it had stood in the name of Frederick, the original contractor with Texas. That is to say, Frederick Dawson, a naturalized citizen, may violate the well known principle of law, and do that indirectly which he cannot do directly. This is too plainly an artifice on the part of the learned counsel not to be perceived by the commissioners. This claim could acquire no new character by being transferred by Frederick to Philip Dawson, and then coming back to Frederick or to their assignee. Frederick, who made the contract with Texas, never had the right to claim payment of this debt before this commission; and Philip could therefore possess no greater right in this respect than belonged to the original contractor, from whom he derived his title. If the mere transfer of a claim from an American citizen to a British-born subject could give this commission jurisdiction of it, then every claim against the United States that exists anywhere, in the hands of the subjects of whatever nation, might be brought here by a simple transfer like that which took place between Frederick and Philip Dawson. For example, the claims of citizens of the United States against Mexico, which, by treaty, the former government agreed to assume, could be brought here for settlement by their simple transfer to a British subject.

If we are not to look beyond the present representative of the claim, nor to investigate the manner in which he derived his title, all the claims that the Spanish, French, or the subjects of any other country may have against the United States might be acted upon here by adopting this principle. Illustration cannot be required to prove that no such doctrine is recognized by the rules of international law, which law ought to furnish the rule of decision for this commission.

Frederick Dawson is a citizen of the United States, entitled to the rights and liable to perform the obligations which that relation imposes. But, in answer to this, it has been contended that he owes like duties to the government of Great Britain; and, in consequence of having been born within her jurisdiction, his duties to this government are paramount. There is, then, a direct conflict between the municipal laws of the two countries; but no collision can arise from this apparent conflict of laws if the commissioners should take the public instead of municipal law for their guide.

This is an international tribunal sitting here under a convention, which all the authorities concede is to be interpreted by the law of nations, and not according to the municipal laws of either country. The claimant resided in Baltimore and carried on business there; and, by the well known rule of international law, he is to be regarded as a citizen of that country where he had his domicil, whether he be naturalized or not. But, besides having his domicil there, he had become a citizen; and on both grounds Frederick Dawson is debarred from presenting his claim before this commission. Nevertheless, it is asserted thatPhilip is not so debarred because he was never naturalized. I do not admit that Philip Dawson could have any claim at all before this commission, even if he had been domiciled in England, because he derived his title to these bonds wholly through his brother, who is a citizen of the United States.

Yet, notwithstanding this is, in fact, the claim of a citizen of the United States against his own government, the American counsel for her Majesty has argued in favor of it, and has referred to and attempted to answer that part of my argument in the Laurents' case in regard to the right of domiciled citizens in time of peace; and, although I have already discussed this question before the commission, I must beg indulgence while I briefly answer the learned counsel's observations.

Suppose, then, that Philip Dawson—who was a merchant in Baltimore at the time these transactions took place, and had been for the twenty-five years previous—had made this contract with Texas, could he have maintained a claim before this commission? If he is not a "British subject," within the meaning of these terms as used in the convention, he clearly could not. The American counsel for her Majesty insists that he is a British subject in the sense of the convention.

The rule laid down by him for the interpretation of the term "British subject" was not a little novel to be addressed to a tribunal sitting for the administration of international law. He said "this commission is bound to declare that whoever is by the law of England or the United States subject or citizen, is to be considered, under this treaty, as subject or citizen." On examination, this dictum will not, I apprehend, be found in accordance with the law of nations, and cannot, therefore, furnish a rule of decision for this commission. He refers to no authority to support it, for the reason that none can be produced. Neither

the prize courts nor the publicists of any country have ever pretended that the municipal laws of either of the parties to a treaty could give the rule for its interpretation. On this point the true rule of international law was declared by Sir John, now Lord Chief Justice, Campbell, in Drummond's case before the privy council. He says that "treaties are to be interpreted according to the law of nations, which requires words to be taken in their ordinary meaning, not in the artificial sense which may have been imposed upon them by the particular statutes of a particular nation. When, therefore, a treaty speaks of the subjects of any nation, it must mean those who are actually and effectually under its rule and government."

Was Philip Dawson living under the actual rule and government of Great Britain when he became possessed of his interest in these bonds? It is not pretended that he was. He was residing in Baltimore, in the United States, and had been for many years previous, and so continued till his death; and all the publicists and the decisions of the prize courts regard him as a citizen of that country. Dr. Phillimore, who is considered as authority, especially in England, holds this doctrine in his work on domicil. He says expressly, that "every person is viewed by the law of nations as a member of that society in which he is found."

If Dr. Phillimore stood alone in this view of the law, there might be, in some minds, hesitation in assenting to it, but this declaration is supported by the British admiralty decisions for half a century. Sir William Scott has repeatedly confirmed it in his judgments, and held this to be the correct interpretation of the law of nations. He so decided in the case of the Matchless, which arose in time of peace, and which is a case in point; I had occasion to refer to it fully in the argument in the Laurents' case, and will not now further allude to it. It has been also held, by Lord Kenyon, that persons residing in England must, for the purposes of trade, be considered as belonging to this country. And in the case of Wilson *vs.* Maryatt, on the construction of a treaty giving the citizens of the United States the right to trade to the British possessions in the East Indies, and denying this privilege to British subjects, it was then decided, that a British born subject residing in the United States could, by virtue of this treaty, carry on trade to those possessions, while a British subject could not. This seems to me conclusive on the question before the commission.

It is an authoritative declaration, that a person living in the United States and carrying on trade there, as was the claimant, Philip Dawson, is not a British subject, in view of the law of nations, but a citizen of the United States.

Having shown, therefore, that the convention, under which this commission is sitting, must be interpreted according to this law, it follows that the claimant is not a British subject in the sense in which these words are used in that instrument, and he cannot present a claim here against the United States.

Wherever the point has arisen in the British courts, the decision has been invariably to the same effect. I should regret to fatigue the commissioners by citing authorities on this point; as I might well do, for they are all in support of my position. I will, however, request them to refer to 3 Rob. Ad. Rep., p. 8 of the Appendix, where it will be found that the court of appeals, after a very full hearing, were of opinion that, "by the general law, all foreigners resident within the British dominions incurred all the obligations of British subjects." If, then, by the public law which regulates the intercourse of nations, a foreigner domiciled in Great Britain thereby becomes a British subject, the claimant, Philip Dawson, being domiciled in the United States, became, by this same law, a citizen of that country.

The conclusion from this authority is legitimate and inevitable, and I apprehend it must have escaped the learned counsel's attention. I cannot, however, make the same excuse for him in regard to the decisions of the Supreme Court, before which he has so long practiced with distinguished success. That court, in the case of the Pizarro, reported in 2d Wheaton, said, with remarkable emphasis, that in the language of the law of nations, which is always to be consulted in the interpretation of treaties, that "a person domiciled in a country and enjoying the protection of its sovereign is deemed a subject of that country."

According to both the British and American authorities, Philip Dawson was a citizen of the United States when he became possessed of his interest in this alleged claim, and so continued till his death; and no one can, therefore, appear before this commission in his behalf. He enjoyed the privileges of other citizens living under the government of that country, and it would be neither in conformity with law or equity to give him greater advantages. If he has a claim against

the United States he ought to be required to seek the same mode of redress as other citizens. As a mode of testing this question, the learned counsel asks whether, if Philip Dawson had gone to Mexico and received an injury from that government, he could, with success, have appealed to the United States for redress. Probably not; that would depend entirely on the character of the injury complained of. Complaint may be, and often is made, when the municipal laws of the country where it is inflicted furnish redress, and in that case interposition by any nation is unjustifiable. In order to justify the interposition in favor of a citizen, the person must have been deprived of some right secured to him by the law of nations or by treaty. But where the intervention is on behalf of one who is not a citizen, the law of nations alone must have been infringed. That law is under the guardianship of all civilized nations; and whenever its obligations are disregarded, it is the duty of each to cause proper reparation to be made. There is a sentiment in the human heart that makes every one look to the land of his birth or adoption for protection when wronged in a foreign country, and it has been usual for nations to hearken to this appeal from their own people more readily than from others not standing in the same relation; yet, if in the supposed case, of a British-born subject having been wronged in Mexico, the injury done to the law of nations had been of a serious character, then the United States would have interposed.

Suppose that England and Russia, now at war, should commence to put their prisoners to death, to use poisoned weapons, or to poison the wells and springs of water; that would be a violation of international law which would demand not only the interference of the United States, but of the whole family of nations. No matter where the persons injured might have been born, or to what country they might have sworn allegiance, the interposition would, nevertheless, be obligatory. So that the rule of national law, making every person a citizen of that country where he is found, does not prevent the interposition of his native country, or any other nation, in his behalf, whenever the rights to which I have referred have been seriously invaded.

The fact of interposition is by no means conclusive evidence that the persons in whose behalf the government has acted are its subjects. The British government interposed in favor of the Amistad negroes, yet it will hardly be contended that they were British subjects! The

appeal to another government, then, in favor of a person that is supposed to have been injured, proves nothing in regard to his citizenship.

It has been intimated that if Frederick Dawson, a naturalized citizen of the United States, had returned to England and regained his domicil, and had presented a claim to this commission as a British subject, I would have held up his naturalization papers, and would have said he is estopped from presenting his claim on account of his having become a citizen of the United States. In this supposition the counsel is in error. I would have taken no such ground, provided the claimant had in good faith and at the proper time changed his allegiance, and had presented a claim over which this commission's jurisdiction extends. I hold to the American doctrine, proclaimed by the American Secretary of State in reply to the Austrian demand for the surrender of Koszta, and to which I cannot too often refer: "The citizen or subject having faithfully performed the past and present duties resulting from his relation to the sovereign power, may at any time release himself from the obligations of allegiance, freely quit the land of his birth or adoption, seek through all countries a home, and select anywhere that which offers him the fairest prospect of happiness for himself and his posterity."

The counsel has relied on the provision in the Constitution of the United States which authorizes the subjects of a foreign country to sue in the courts of the federal government to show that Philip Dawson was a "British subject." That provision extends the judicial power to controversies between citizens or subjects of foreign states and citizens of the United States, and by virtue of it the claimant might have availed himself of this privilege of an alien to sue a citizen in the United States court; but that does not at all affect the question at issue. We are discussing the question whether a person domiciled in the United States is, *by the law of nations*, regarded as a citizen of that country. The municipal law cannot determine that question. The fact that he enjoys there the privilege of suing a citizen in the United States courts does not prove him to be a British subject. The same privilege is possessed by all aliens, whether they be born in Great Britain or elsewhere; and if the counsel's conclusion be correct, that the enjoyment of this privilege proves the claimant to be a British subject, it would also follow that all aliens are British subjects. The question does not depend upon the number of privi-

leges conferred by the municipal law upon the foreigner domiciled in the country. These privileges may be great or small, and the enjoyment of no particular right can give the recipient of it a higher or different consideration in the view of the public law. All aliens possess the right of suing in the courts of England; it is a common law right, and existed also in the States of the Union at the time of the adoption of the federal Constitution. In the new government that was established, as there was no common law of the United States, the alien might not have had free access to the national courts without that provision in the Constitution; and, as the government of the Union was charged with the foreign relations, it was necessary that it should have the administration of justice in respect to the subjects of other countries. But the Constitution could no more determine who were to be considered citizens of the country, in the view of the law of nations, than it could determine the requisites for a subject of Great Britain.

The learned counsel's mistake arises from his considering the laws of the country where the person resides as the rule of international law. By this law the claimant is a citizen of the United States, and there can therefore be no legal presentation of this claim by Frederick Dawson, nor by the assignee or representative of Philip, and the commission ought therefore to refuse to consider it altogether.

The next point to which I desire to call the attention of the commissioners, and which is also an objection to the jurisdiction, is this:

Neither Dawson's claim nor any other claim against the republic of Texas was committed to this commission, and it would be an unwarrantable assumption of power to take jurisdiction of any such claims.

In support of this point, I would first call the attention of the commissioners to the statement made here by the learned American counsel for her majesty's government. He has recently arrived from the United States, and knows what has been done there concerning these claims. He has informed you that the Senate of the United States took up this subject during the last session of Congress, and in the month of July of this year passed a bill for the settlement of the debts of Texas, and that this bill did not pass the House of Representatives because it was not reached in the ordinary course of proceeding.

It appears, therefore, that the very Senate which ratified the con-

vention under which this commission is organized, took up and, so far as it could, disposed of the whole subject in which all these claims are embraced.

Does any one believe that such proceeding would have taken place in the Senate, if that body had already provided a tribunal charged with the adjustment of the claims? Does not this statement alone prove that these claims were never contemplated when this convention was before the Senate for approval? And as the British commissioner has held that the convention must be interpreted according to the intention of the parties, I appeal to him to say whether, with a knowledge of this action of the American Senate, and the fact that these claims have never been presented to the United States by the British government, he believes it was designed to give the commission jurisdiction of them. If the proposition to present the debts of Texas as claims against the United States had been made while the negotiation of the convention was pending, I venture to say that it never would have received the assent of the United States with that understanding of its provisions.

These debts are the obligations of Texas, contracted while an independent republic, and in determining their validity and extent she has a right to be heard; and I shall hereafter show that, in view of all the circumstances, it is little short of an insult to the intelligence of this commission to ask it to entertain jurisdiction of such claims. If, however, the commissioners shall undertake to do so, they would do well to consider the responsibility which they assume. The decisions of this commission are to be binding on the governments of our respective countries; but it was understood that it should keep within the limits assigned to it. The judgments of no tribunal are binding when it transcends the bounds of its authority; and if this commission should exceed its power, its acts would not probably be an exception to this rule. Suppose, for example, that this commission should decide in favor of the claim of an American citizen to be the lawful heir of the throne of England. Such a decision would hardly be regarded as coming within its assigned duties; yet a judgment like this, in regard to the sovereign of this kingdom, would not strike the government of Great Britain with more surprise than would that create in the minds of the American people which you are urged to render against the United States. Both cases are equally foreign to the duty and

authority of this commission, and would alike provoke the indignation and disregard of the British and American governments.

I am unwilling to believe that the commission will so wantonly step beyond the limits laid down for its guidance into a wilderness of power; and I think I might safely leave the subject without further observation. But it will not be difficult to show that, whatever may be the obligation of Texas to pay these claims, there is none on the part of the United States; and to that I propose now to direct your attention.

The second of the resolutions of Congress for the annexation of Texas to the Union contains this provision: "Said State, when admitted into the Union, after ceding to the United States all public edifices, fortifications, barracks, forts and harbors, navy and navy yards, docks, magazines, arms, armaments, and all other property and means pertaining to the public defence belonging to the said republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind which may belong to or be due or owing to the said republic; and shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of the said republic of Texas, and the residue of said lands, after discharging the said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the government of the United States."

These were the conditions on which Texas was admitted into the Union. She agreed to pay her own debts, and retained ample means for that purpose.

In the year 1850, the United States purchased from Texas her unappropriated lands for the sum of ten millions of dollars. The title of the act of Congress by which this purchase was authorized is important, as showing the intention of the parties. It is entitled "An act proposing to the State of Texas the establishment of her northern and western boundaries, the relinquishment by the said State of all territory claimed by her exterior to said boundaries, and all her claims upon the United States, and to establish a territorial government for New Mexico." One of the declared purposes of the act is the relinquishment of all claims against the government of the United States, and in pursuance of this purpose the first section begins by stating certain propositions to be submitted to the State of Texas, which, when agreed to by the said State in an act passed by the general assembly thereof, should be binding upon the United States. One of

these propositions was to pay Texas ten millions of dollars for her public lands, with the proviso that the United States should retain half that amount till the creditors of Texas, to whom the revenues were pledged, should file releases of any and all claims that they might have against the United States with the Secretary of the Treasury.

The general assembly of that State accepted these propositions. The President proclaimed that Texas had adopted them, and henceforth they became a contract between the United States and Texas.

The proviso leaving the five millions in the Treasury of the United States was a voluntary concession of Texas in favor of her creditors, which gave assurance that she would deal fairly by them; but it was in no manner an assumption by the United States of any obligation to pay these debts.

The third section of this same act precludes any such construction as that. By it the State relinquishes all claim upon the United States to pay the debts of Texas, and surrenders to the United States her ships, custom-houses, revenues, and other public property.

It would be extraordinary if Congress, after having made in the resolutions of annexation this special exception of the United States from any liability for the debts of Texas, as one of the conditions on which she should come into the Union, and repeated this condition in the act of 1850, should in the same act bind the United States to pay these identical debts. That State has set up no such pretension nor made any claim against the United States under this law, and I apprehend she will make none.

It is a historical fact, admitted here by the counsel for her Majesty, that Texas at the time of her admission into the Union was an independent republic, and so acknowledged by all the leading powers of the world. In the exercise of her right of sovereignty, she accepted the conditions proposed by the United States for her entry into the Union as a State; one of which was that she should surrender her revenues arising from imports and pay her debts from her other resources. But it is, nevertheless, alleged in reply to this, by the British counsel, that Texas had no power to make this surrender to the United States. The argument to sustain this allegation is, that, having pledged the revenues of the republic for the payment of its bonds, the imposts were thereby specially pledged, and Texas could not assume the responsibility of paying these debts from any other source,

and thus relieve this branch of the revenue from liability. Both the American counsel for her Majesty and Mr. Corwin, the Secretary of the Treasury, argue, that if imposts are not specially pledged under the term revenues used in the bonds, then the same principle must apply to all the other sources of revenue; and hence the conclusion would follow that the pledging of all the revenues is not the pledging of anything. The fallacy of this reasoning is to be found in the assumption that if imposts are not specially pledged they are not pledged at all.

Texas never contended that the revenue from imposts was not pledged, but she maintained that it was not so specially pledged that she could not appropriate this revenue, dispose of it, or cause it to cease altogether. The very contracting of a debt by a government is a pledging of the faith and revenues of the nation; and if there be no remaining power to change the tax on articles from which revenues are collected, or to dispose of any one branch of its revenues, neither can there remain the power to charge it with the payment of any new debt, for that would be a disposition of a part of the revenue which, according to the argument, is mortgaged for the payment of the first debt. The revenues of England are pledged for the payment of the interest on her debt, and yet she assumes to change at will the sources from which they are collected. Modifications have taken place in her tariff, and articles which were once taxed are now free.

If England may take the impost off one article, she may take it off the whole, and then the source of revenue would be destroyed. Texas was as independent, and possessed the same rights, as England, when this transaction took place; and she did nothing more than England claims the authority to do.

It is not the practice of nations to consider the contracting of one debt as precluding them from contracting another, without infringing the rights of their first creditors; and nowhere ought this to be better understood than in England. The general rule undoubtedly is, that a nation possesses the liberty of satisfying its debts from any part of its revenues; and when any portion of them is sold or disposed of, it assumes the responsibility of paying the debt in some other mode, and the purchaser takes the part so conveyed free of incumbrance. Suppose that Belgium had pledged her revenues for the payment of a debt, and that she had united herself to Eng-

land, retaining her separate government, and giving to England the power to carry on the foreign relations of both, and Belgium should, for a consideration, transfer also her duties on imports, and say we can pay our debts from another source of revenue, would any one deny Belgium this right? But it is alleged we cannot impair the security on which the loan was granted. I have already shown that the nations of Europe do not stop at one or two loans, but regard the power of the nation as complete to make a third as if they had not made any. If the power exists, as I have said, to charge the revenue with new loans, I do not perceive why it may not also exist to diminish the security of the first takers of a loan by selling a branch of the revenues. There might, however, be a failure to pay by this diminution, and so there might be by an augmentation of the amount of the debt to be paid. The failure in either case would be a gross breach of faith, and the remedy would be the same in both instances—remonstrance to the government whose obligations had not been fulfilled, and proclaiming its inevitable disgrace before the civilized world.

The counsel for her Majesty's government, Mr. Cairns, who first argued this case, said that by taking Texas into the Union the claimants had been deprived of their remedy. This, I apprehend, is not so. They may go to the government of Texas and make any representation now that they could have made when that State was an independent republic.

Mr. Corwin, the Secretary of the Treasury, in his report on the construction of the act of Congress ceding the public lands to the United States, attempts to maintain that the incorporation of Texas into the Union rendered the United States liable for a portion of her debts—namely, that for which the revenues were especially pledged. He says: "When an independent power contracts obligations, and is afterward, by act of another power jointly with herself, incorporated into and subjected to the dominion of the latter, whereby the national responsibility of the former is destroyed, and the means of fulfilling her obligations, to the extent at least of the means thus transferred, attach with all their force to the nation to whom such means have been so transferred."

This argument is taken from European writers on international law, and refers to States or provinces that have been consolidated under one government—such as the union of Scotland and England

under the same Parliament. But these principles do not apply to the peaceful union formed by the United States with the republic of Texas, nor define the resulting obligations of either. A parallel case to the one adopted by Mr. Corwin from the European publicists would xist, if England and France should unite and form one government, having a single crown and legislature. Then the obligations which previously rested upon each would bind the whole, but it would not be the case if each retained its separate government, and England only surrendered to France the power to conduct the foreign relations of both. This is the case before the commission. The society of Texas is not merged in that of the United States. It retains its distinct government, with full power to meet all its obligations; and the law of nations declares that when this is so, and the organ of communication is only changed, the rights and duties of the society continue the same. The States of the Union, as is well understood, all have the power to borrow money and severally to contract debts, and possess ample resources for paying them; and it is altogether a new idea, having no foundation, except in the minds of the creditors of Texas, that this debt is transferred to the United States, because their government is the organ of communication with foreign nations for all the States.

In the previous argument of this case her Majesty's counsel contended that, whatever might have been the agreement with Texas when she entered the Union, this claim was in the nature of a mortgage upon the revenues entire; and if any part of them was transferred to the United States, they were taken subject to this lien. The American counsel for her Majesty has taken the same ground, and they both rely in support of this position upon the report of Senator Pearce made upon this subject. Mr. Pearce's argument is the same as that of Mr. Corwin, to which I have heretofore referred, and which I will state in his own language. He says: "The publicists maintain that when a province is conquered, and the conquest is consummated by cession, it ceases to be a part of the State from which it was wrested, and becomes a stranger to its obligations. But in that case the conqueror acquires no rights but those of the State with which he is at war, and takes subject to all absolute or qualified alienations previously made. Thus the King of Prussia, when he had acquired Silesia by conquest and cession, bound himself by treaty to pay the

debts for which that province had been mortgaged to British subjects. But without such express stipulation Silesia would have still remained subject to the mortgage, for he could conquer no rights but such as were vested in the enemy."

This may be true in regard to a province possessing no separate government, and yet have no application to the admission of Texas into the Union. Let us see, however, the manner in which Mr. Pearce and the learned counsel for her Majesty apply the argument. The report continues: "If this doctrine be true, it will hardly be denied that the peaceful annexation by legislative compact of one nation to another, by which the pledged revenues of the one have been transferred to the other, must work a like result, and that the power which takes such pledged revenues must take them "*cum onere.*" No analogy can be traced between the annexation of Texas and the transfer of Silesia to Prussia. That province was absolutely merged in the kingdom of Prussia, and had no separate and distinct government after or while it belonged to Austria, and consequently no means of paying a debt.

This same report contains, in another part of it, the answer to its own argument, and that I shall present as my reply to the report itself.

The memorialists, in their appeal to the Senate, alleged, as their first ground of claim against the United States, the principle that "when one nation is merged in another, the supereminent power which represents the individual and united sovereignty of both becomes responsible for the debts of the State." This principle, Mr. Pearce, in his report, admits, is not fairly applicable to the case, for the obvious reason that Texas is not merged in the United States, but "retains her sovereignty and independent existence, with full power and right to manage her own separate affairs; still liable for her debts, to the payment of which, according to the terms of the contract, she has pledged her faith, her revenues, and her honor, with full capacity to contract new liabilities, with ample resources to pay all her debts, and every inducement of plighted faith, of public character, of justice, and honor, to redeem those obligations." This reasoning is the production of those who would now make use of this commission to shift the obligation of these debts from Texas upon the government of the United States. That State has not surrendered her separate government, nor parted with the power of taxation. In

the case of Silesia, no separate government existed, and there was absolutely no mode of paying a debt; yet the report of Mr. Pearce, and the learned counsel who have adopted it, lose sight of this distinction. There is, in fact, no similarity between the two cases. Silesia was, previously to the transfer to Prussia, under the government of the Emperor of Austria, and was a mere province of that empire, possessing no independent government. Its revenues were collected by the emperor's officers, as the revenues of any county in England are collected by the officers of the crown; and, consequently, it was as powerless to pay debts as the wild lands which an individual might sell to his neighbor. The emperor of Austria, in the year 1735, made a contract with certain Englishmen for a loan to him. By the contract, he bound himself, his heirs, and posterity, to repay the principal with interest, and, as a specific security, he mortgaged his revenues arising from Upper and Lower Silesia. These provinces were ceded to Prussia in 1743, and the king bound himself by treaty with the government of Austria that the contract in regard to these revenues should be faithfully carried out. In consequence of the seizure and confiscation of certain ships belonging to Prussia, by Great Britain, Prussia confiscated the debts and revenues to its own use, which it had solemnly guarantied by treaty should be paid over to British subjects; and the question was, whether Prussia had the right thus to appropriate these revenues. This case, therefore, was resolved into the simple question, whether a nation could repudiate a debt which she had agreed to pay by express treaty stipulation. No such agreement can be said to exist between Texas and the United States.

I can conceive that a case similar to that of Silesia might have arisen in settling the northeastern boundary between the United States and the British provinces. If, for example, the territory ceded to Maine, by England, had been, by treaty, charged with a debt, and the United States, in accepting the territory from Great Britain, had, by treaty, agreed to pay these revenues over, this would be the case of the Silesian loan, and the United States would be in the position of Prussia in 1753, when the controversy took place in regard to the Silesian loan. But it must be evident to every one, who has any knowledge of the manner in which Texas came into the Union, that no such transaction took place; and the supposed obligations do not, therefore, devolve upon the United States.

UPHAM, United States Commissioner:

This case has been very fully and ably argued. We have refrained from limiting the discussion to the question of jurisdiction, as we preferred the case should be submitted to us for consideration in all its bearings.

To the general position taken by the counsel for the claimants, I do not feel called upon to object. There are limitations, however, to the broad ground on which they have placed the case that should not be overlooked; and there are also matters of fact relative to the position of Texas under the United States government, and the dealings between the two governments in reference to the indebtedness of Texas, that should be more fully considered than they have been by them in arriving at the true measure of justice and equity involved in the claim presented.

A portion of these facts also have an important bearing on the question, whether the class of claims now submitted to us were designed to be included for adjustment under the convention from which our powers are derived.

It may be conceded that the claim presented is substantiated as a just debt against Texas. Some suggestion has been made as tending to throw discredit upon it, on the ground that a large bonus was given for the loan in this and other cases. It is undoubtedly true that, during the struggle for the independence of Texas, her necessities, and the uncertain nature of the controversy in which she was engaged, urged her to the contraction of loans at a great pecuniary sacrifice, and at high rates of interest. The inducements held out to obtain such loans were, however, no greater than the risk of compliance with them seemed to demand. This fact furnishes no bar to the claim in any manner, and should not limit in any considerable degree the strong grounds of equity urged for its payment.

There are other and distinct considerations, however, bearing upon the claim, *as against the United States.*

It is contended that the United States is rendered liable, on the ground that this debt was secured by a pledge of the faith and revenues of Texas, and, when the general sovereignty of Texas as a nation was transferred to the United States, (involving, as of course, power

over the revenues of Texas,) the United States necessarily assumed her debts, and became bound in full for their payment.

The analogy is urged that a private creditor has a right to receive payment out of the property of his debtor pledged to him, and may follow it, wherever it is transferred; and that a pledge of this or that source of revenue, where made by a government to secure its indebtedness, constitutes an incumbrance or lien upon it in like manner. Such revenue, it is contended, "cannot be alienated without transferring with it the incumbrance of the debt; and cannot be abolished or lessened till the debt is destroyed."

This analogy exists, and yet it is defective in important respects. In a case of the pledge of private property, the creditor can claim and assume the possession of it, as against others, and avail himself of it at once, for what it is worth. Between individuals, this transfer of ownership and control of property may be in accordance with the highest public policy. But in such cases it should be borne in mind that the creditor does not receive his debt, he only gets the property pledged, which may be a very different matter.

In the case of a pledge of the public revenues of a State, the individual has no power to assume control over them; it would be subverting the sovereignty of the people by a claim of money. Another government may properly receive such sovereignty and revenues, and make them a part of its own. By so doing, however, it might subject itself to a claim for the full amount of the indebtedness of such State, and yet equity would seem to bind such nation only to the fair value of the revenues pledged; and it may well be questioned whether the rights of the creditor would extend beyond such value.

It is a well settled maxim, that whoever asks equity must do equity, and if the creditor receives the full worth of a pledge, which, from the necessity of the case, he cannot appropriate to himself, can he justly complain? It is by no means clear that any just end of private right or public good would justify a bar to international union, except on full liquidation of all such indebtedness.

Further, this case has been argued as though here was an entire absorption of one nation and its revenues by another. This is a wholly inaccurate view of the fact. Texas is still a sovereign State, with all the rights and capacities of government, except that her international relations are controlled by the United States, and she has transferred to the United States her right of duties on imports.

The revenue of a country is defined by Webster to be "the annual produce of taxes, excise, customs, duties, rents, &c., which a nation or State collects and receives into the treasury for public use. All these powers still remain to Texas, with the sole exception of the levying of duties on imports. There is no merging of one government within the other, except to a very limited extent. It is a very different case, therefore, from the union of Ireland and Scotland with England, and other similar instances of the union of governments to which it has been likened; and is subject to a very different rule of liability, both in equity and justice.

It will hardly do to contend that a pledge of imposts, under such circumstances, ought, rightfully to subject one nation to the entire debts of another, whatever that indebtedness might be, or that independent nations, while contemplating a union limited as this is, may not make the subject of indebtedness a matter of such arrangement between them as shall properly apportion this liability. If such an arrangement be made, as the creditors ought clearly, in justice and equity, to accept, it may be doubted whether a just interpretation of international law, which is based on the highest equity, would impose a greater measure of obligation.

International law must conform, in some degree, to the necessities of nations, in the same manner as the rules of private law conform to the misfortunes and necessities of individuals. I do not make these remarks as indicating a rule of adjustment that should be established between the United States and Texas, in settling these claims; nor do I mean to intimate, in any manner, a doubt as to the full ability of either of these governments to fulfil any claims against them, which is a matter of very important consideration in the discussion of this subject. I merely suggest doubts whether the doctrine of the rights of the pledgor and pledgee, as maintained by the counsel in this case, can be followed out, in all cases of international union, without limitations and restrictions applicable in some degree to the various States and conditions of the nations to be united.

The matter of the indebtedness of Texas was a distinct subject of agreement by the terms of the Union. According to those terms the vacant and unappropriated lands, within the limits of Texas, were to be retained by her, "and applied to the payment of the debts and liabilities of the republic of Texas, and the residue of the lands, after

discharging these debts and liabilities, was to be disposed of as the State might direct; but in no event, were the debts and liabilities to become a charge upon the government of the United States."—(*United States Statutes at Large, vol.* 5, *p.* 798.)

The lands of Texas were thus specifically set apart for the payment of the debts of Texas, *by agreement of the two governments*, in addition to any separate pledge Texas had previously made of this class of property, for the payment of her debts.

The United States subsequently, by act of Congress, on the 9th of September, 1850, on condition of the cession of large tracts of these lands, agreed to pay Texas ten millions of dollars, but stipulated "that five millions of dollars of this amount should be retained in the United States treasury until the creditors, holding bonds, for which duties on imports were specifically pledged, should file releases of all claims against the United States."—(*United States Statutes at Large, vol.* 9, *ch.* 49, *p.* 446.)

It thus appears that the United States has acted, from the outset, in concert with Texas, in causing express provision to be made for the payment of these debts.

A difficulty early arose in carrying the law above cited into effect, for the reason that the pledge of payment of the debts of Texas was made generally upon her revenues, and was not specific "on imposts," *eo nomine;* and for the further reason that doubts arose whether any portion of the debts could be paid, under this contract, unless the whole could be discharged.

These questions have been considered at much length by the advising officers of government, and reports have been made on the subject by Mr. Corwin, the Secretary of the Treasury, and more recently by Mr. Cushing, Attorney General, on the 26th of September, 1853, and a bill is now pending before Congress for the better adjustment of the matters in controversy.*

The reports of these officers are confined to the proper construction of acts of Congress, assented to by Texas, in reference to their lands and debts. It did not become necessary to discuss the question of the liability of the United States for the payment of the debts, and such

* By act of Congress, passed February 28, 1855, $7,750,000 was appropriated, subject to certain arrangements, since acceded to by Texas, for the payment of Texan claims.—(*U. S. Statutes at Large, vol.* 10, *p.* 617

discussion was expressly waived by them in considering the subject. The tendency of Mr. Cushing's opinion, so far as his views can be gathered, is to establish the liability of the United States for these debts in part. He says, however, that it "by no means follows, from the action of the United States, in providing for the payment of a portion of the debts of Texas from the proceeds of the lands, the government have *assumed* any liability thereby, or impliedly recognized any liability on their part; or that any less readiness will be shown by Texas to fulfil the engagement, in regard to her debts, contained in the compact of her admission to the Union."

I have thus recited at length the facts relating to the indebtedness of Texas by these bonds; the compact between the two governments, in relation to this indebtedness, on the admission of Texas into the Union, and the act of Congress, and measures since had and now pending, upon the subject, in order to show the position in which these claims have been regarded.

It appears, then, that at the time of the Union of these governments, and from that time to the present, including the period of the session of this commission, the subject of these claims has been considered solely as a matter of adjustment between the United States and Texas.

The indebtedness of Texas, some years since, was conceded to be rising ten millions of dollars. Whether the United States should be liable for this indebtedness, I do not feel called upon to decide. It is clear Texas is not exonerated from the debt, and the United States has manifested a strong disposition to bring about its adjustment.

My difficulty in this case is, that nothing has been shown to us bringing it within our jurisdiction, under the convention of 1853.

There has been no evidence that claim has been made on the United States, through the agency of the British government, for the payment of this class of debts. Moreover, it has not been the policy of the ministers of either government to interfere in behalf of their citizens, in the case of deferred payment of loans to other governments; *certainly* not as between Great Britain and the United States.

This question had not been brought to the notice of either government, or been made a matter of correspondence and difficulty between them; neither was it included in any list of unsettled claims *at the date of the convention*.

It is clear, therefore, to my mind, for these reasons, and from the

contemporaneous proceedings between the United States government and Texas, as to these claims, that they had not been considered matters of international controversy with Great Britain, and were not, within the intent of either contracting party, embraced among the outstanding claims to be acted upon by this commission.

Evidence is shown that the claim has been presented at the foreign office, in London, since our session here, and it has been transmitted from that office to the agent of the British government for presentment. This could hardly be refused, if requested, under the rule the agents have adopted. At the same time, though it may thus be said to be brought within the letter of a clause in the convention, it does not show it to be of the class of cases which had been acted upon, as requiring international adjudication.

We have already had before us a claim, presented in like manner, coming within the letter of the convention, which, on full argument, we held was not within the class of cases designed to be submitted to us. I refer to the case of *William Cook and others*, citizens of the United States, who claimed to recover against the British government a large sum in their custody realized from the sale of the effects of Mrs. Frances M. Shard, of whom they alleged they were the sole heirs. This was persisted in as a claim of citizens of the United States against the British government.

It was a claim, however, of a character such as had never been adopted, and acted upon as a matter of international consideration, and was rejected by us as not embraced within the intent of the convention.—(*See ante, page* 56.)

The agent of Great Britain filed a protest in that case, which will be found in the appendix, setting forth fully the reasons why jurisdiction should not be entertained by us, many of the general grounds of which will apply to this case.

The circumstances of the two cases are different, but the decision is in point that *mere form* does not bring a claim within the jurisdiction of the commissioners.

In my opinion, the Texas claims were not designed to be included in the commission, but, on the other hand, would have been expressly excluded had there been any belief such an idea would have been entertained.

With such views, I must disclaim jurisdiction of the case.

HORNBY, British Commissioner:

This claim of the executors of the late Mr. Holford, a subject of her Britannic Majesty, and formerly resident in London, upon the government of the United States, in respect of certain bonds issued to him by the republic of Texas, prior to its annexation, arises under the following circumstances:

In the year 1838 the republic of Texas, which had only recently separated itself from Mexico, was still engaged in carrying on the war with that country. The independence of Texas had not at that time been acknowledged by any government but that of the United States. The resources of the young republic were slight, and the result of the war was doubtful. In this state of things it became of the utmost importance to the Texan government to obtain funds to establish an efficient naval force, to prevent its ports from being blockaded and to operate upon the enemy's coast. Two commissioners, Mr. Samuel M. Williams and Mr. A. T. Burnley, were therefore sent to New York in October, 1838, with authority to negotiate a loan for the republic of Texas.

These gentlemen, it appears, found considerable difficulty in executing their mission, until General Hamilton, of South Carolina, who had taken a very active part in the war, introduced them to the late Mr. Holford, who, at the request of the commissioners and General Hamilton, agreed to advance a sum of money for the purchase of a steam vessel, then lying in the port of Philadelphia, called the "Charleston," to have her brought round to New York to be there altered and armed as a vessel of war, and furnished with necessary stores, and then to send her at his own risk to Galveston, to be offered to the Texan government.

The terms upon which Mr. Holford consented to render this important service to the republic were embodied in the following agreement:

"Articles of agreement* entered into in the city and State of New York, this 24th day of October, 1838, between General James Hamilton, of South Carolina, as the authorized agent of James Holford, of London, of the first part, and A. T. Burnley and Samuel M. Williams, as commissioners authorized by the republic of Texas to negotiate a loan of money for the said republic, under the provisions of

* Agreement, October 24, 1838.

an act passed by the congress of Texas, the 16th of May, 1838, of the second part, witnesseth:

"That the said party of the first part binds and obliges himself to purchase the steamer 'Charleston,' now lying at Philadelphia, (in the name of the said Hamilton,) provided the said boat can be purchased for a sum not to exceed thirty thousand dollars.

"The party of the first part further binds himself to have the said boat repaired, fitted out, provisioned, &c., under the management and direction of Samuel M. Williams, naval agent of Texas, and to deliver her, with all convenient dispatch, at Galveston, in Texas; the whole expense of which, including all charges and expenses up to the time of her delivery at Galveston, not to exceed seventy thousand dollars. And when delivered in Texas, the said boat, her provisions, munitions, &c., to be offered to the government of Texas for their bond for double the amount of the cost of the boat and expenses incurred up to the time of her delivery at Galveston, payable *in five years* from date at the Bank of the United States, in Philadelphia, or in London, at such agency as Texas may engage in that city. The said bond to bear an interest of ten per cent., payable semi-annually.

"But inasmuch as the commissioners to negotiate a loan of money have no authority to contract for the purchase of a steamboat, although they believe the government of Texas would be much pleased to purchase the steamboat 'Charleston,' when fitted out as contemplated on the terms herein mentioned, and will do all they can to induce the government to make the said purchase; yet as the government will not be *bound* to do so, and may *not* do so, therefore, if they do not, as a compensation for the risk which the party of the first part is compelled to run of having the said boat, her provisions, munitions, &c., left on his hands, when he does not desire to hold such property, the parties of the second part bind themselves, as they have authority to do, to issue two bonds of the republic of Texas to James Hamilton or order, *payable in five years* from date in the Bank of the United States in Philadelphia, bearing an interest of ten per cent., payable annually, the two together to be for a sum double the amount of the cost and expenses of said boat when delivered at Galveston; which bonds shall be forthwith executed in blank, and deposited with N. Biddle, esq., president of the United States Bank at Philadelphia, who shall be directed and requested to fill up the date and amount as he may here-

after be directed by the joint written request of William Brancker, of New York, and either of the aforesaid commissioners, after they shall have ascertained the cost and expenses of the boat up to the time of her delivery at Galveston, and that the government declines to take the said boat; which said bonds, when so filled up, Mr. Biddle shall be directed to deliver to General James Hamilton or his order (at any time before the 1st day of March next) whenever he shall deposit in the Bank of the United States at Philadelphia, to the credit of the government of Texas, half the amount of the face of the said two bonds.

"The parties of the second part further bind themselves, if applied to before the 1st of March next, to substitute in place of the two bonds mentioned above, two such sterling bonds, with the necessary coupons, as we may be authorized to issue under the laws of Texas, and for similar amounts.

"In testimony of all which the parties of the first and second parts have hereunto subscribed their names and affixed their seals at the date first above written.

"J. HAMILTON, [L. S.]
Authorized Agent of James Holford.
A. T. BURNLEY. [L. S.]
SAMUEL M. WILLIAMS. [L. S.]"

The stipulations of this agreement were completely fulfilled by Mr. Holford. The "Charleston" was purchased, fully equipped, and sent to Galveston, to be accepted on the terms of the contract by the Texan government, if it should think fit to do so.

As was anticipated by the commissioners, the acquisition of the "Charleston" on these terms was deemed highly advantageous by the Texan government. A receipt for the vessel and her appurtenances was given under date of the 23d of March, 1839; and an act of Congress was passed on 10th January, 1839, for the special purpose of confirming the contract which the commissioners had entered into.

In recognition also of the value of Mr. Holford's assistance, it was further "resolved by the Senate of the republic of Texas in Congress assembled, that, as a manifestation of the sense entertained by this body of the very liberal and friendly conduct of Mr. James Holford, of Great Britain, in the advance of funds for the purchase of the steamer "Charleston," that the thanks of Congress be, and are

hereby, tendered to Mr. James Holford, and also that the honorable Secretary of the Navy be requested, should Mr. Holford visit this country, to extend towards him on his arrival a cordial welcome to our shores."

Nothing then remained to be done but to ascertain the amount to which Mr. Holford was entitled under the contract; and accordingly two persons were appointed by the Texan government to audit the accounts relating to the purchase of the "Charleston."

These persons, on the 24th of June, 1839, reported that the total amount of the actual cost and expenses paid by Mr. Holford, in respect of the "Charleston," was $90,014 84.

According to the terms of the agreement, therefore, coupled with the instructions of the 20th of March, 1839, Mr. Holford became entitled to receive a bond from the government of Texas for the sum of $180,028, payable in five years, with ten per cent. interest. The government, however, did not strictly comply with the conditions of the contract as to the mode of payment, but gave Mr. Holford 226 bonds, each for £100, equal to £22,600; and 31 bonds, each for £250, equal to £7,550; all of them dated the 1st July, 1839.

These bonds were in the following form:

"REPUBLIC OF TEXAS, NORTH AMERICA.

"*Ten per cent. loan for five millions of dollars, with an annual accumulating sinking fund of* $300,000.

"The republic of Texas hereby promises to pay to the bearer the sum of two hundred and fifty pounds sterling, bearing an interest of ten per cent., per annum, payable semi-annually, on the first days of January and July, at ———, on the delivery of the proper dividend warrants in the margin hereof. *The faith and revenues of the republic are solemnly pledged* for the payment of the interest and principal of this loan, according to the several acts of the congress of Texas, passed the 18th of November, 1836, and the 15th of May, 1838. And there is moreover specially pledged for the same purpose, by an act of congress passed the 22d of January, 1839, the sum of three hundred thousand dollars, to be reserved annually out of the sales of the public lands as a permanent and accumulating sinking fund, until the whole loan has been paid off. And, in case this bond has not been previously

redeemed with the consent of the holder by the operation of the said sinking fund, the republic of Texas undertakes and promises that it shall be finally paid, together with the interest due thereon, at the expiration of thirty years from this date at the above.

"The holder of this bond is moreover entitled to the privilege at any time of transferring the same, with the interest due thereon, at the land office of the republic of Texas, in payment of such government lands as may be purchased by him or his assignee at public or private sale, at the minimum government price.

"In testimony whereof, the president of Texas has, by his commissioners, signed these presents, and the minister of the republic of Texas to the United States, at Washington, has countersigned the same, after the seal of the republic has been hereunto affixed, at Philadelphia, this 1st day of July, 1839.

"M. B. LAMAR,
President of the Republic of Texas.
By J. HAMILTON,
A. T. BURNLEY,
Commissioners.

R. G. DUNLAP,
Minister of the Republic of Texas
to the United States, at Washington."

No interest, it is alleged, has been paid on any of these bonds, and Mr. Holford has never received payment of any portion of the debt thus due to him from the Texan government.

I pause here for a moment to consider the position of Mr. Holford, with reference to the independent republic of Texas, at this stage of the case. He had advanced his money on the faith of an agreement entered into with the authorized agents of the Texan government, under the provisions of an act of the republic of the 16th of May, 1838, which stipulates that all the revenues of Texas should be pledged for the purpose of liquidating any loan or contract they should make—which agreement was subsequently ratified by an act of the 10th of January, 1839—and, in accordance with the stipulation referred to, he received bonds, specifically pledging the revenues and faith of Texas for their faithful redemption; so that, beyond the guaranty and general obligation to pay contained in the agreement, and the laws of the 16th

of May, 1838, and the 10th of January, 1839, Mr. Holford had the revenues of the republic solemnly pledged to him, by way of mortgage for the payment of the debt created in the manner I have already detailed. The legal liability of Texas, immediately preceding its admission as a State of the Union, to pay the debt incurred to Mr. Holford, was complete. I do not understand that it is denied. But an argument has been preferred, with the view of showing that, so long as *any* source of revenue, or any means of satisfying the obligations thus entered into, remained to Texas, the United States government are not, under any circumstances, liable. To this I shall have occasion to refer hereafter.

In 1845, Texas ceased to be an independent republic, and was admitted to the Union as one of the United States; and the whole of the revenues of Texas, arising from duties on imports, together with the navy, &c., were transferred, in accordance with the provisions of the Constitution of the United States, to the federal government.

By a subsequent act of Congress, (September 9, 1850,) which, as between the United States and Texas, after she had become one of the States of the Union, settled her boundaries, in consideration of certain concessions of large portions of the public lands by the State of Texas, and other things, it is provided "that the United States should pay to the State of Texas the sum of ten millions of dollars, or a stock bearing five per cent. interest." In this act, however, there was inserted a proviso to the following effect: "That no more than five millions of the said stock should be issued until the creditors of the State, holding bonds and other certificates of the stock of Texas, *for which duties or imports were specially pledged*, should first file at the Treasury of the United States releases of all claims against the United States, for or on account of said bonds or certificates, in such form as should be prescribed by the Secretary of the Treasury, and approved by the President of the United States."

Thus it appears that five millions of the money to be paid to Texas was actually retained and attached in the hands of the President, to meet the acknowledged liability which the government of the United States had incurred by admitting the new State into the Union, and taking from it the principal fund (viz., the import duties) out of which the debts were to be satisfied.

Notwithstanding, however, the evident object of this proviso, and

the meaning which the United States have attached to it, as evidenced by the withholding of the five million dollars, an argument has been advanced to the effect that, inasmuch as the special pledge is of *all* the revenues of the Territory, the duty on imports thus transferred to the United States (although one of them, and indeed the most important and profitable) was not specially pledged for the payment of this debt, so as to bring it within the proviso. Thus Texas argued, when it sought to induce the government of the United States to abandon its lien on and to pay out the five millions retained to meet the creditors having a special pledge of the duties on imports. In answer to this argument, however, the Executive of the United States very properly showed that a *special* pledge of *all* the revenues necessarily included every one of them, and operated as a special pledge of each particular branch, the same as if each by name had been specially appropriated. Mr. Secretary Corwin, in his official report, explains the true meaning of the proviso. "It seems perfectly clear," says he, "that a pledge of 'all the revenue' of a government, whose organic form admitted the power to raise revenue by 'duties on imports,' is a special pledge of duties on imports as well as all the other sources of taxation known to such government. If, instead of a pledge of the 'revenues'—a term comprehending every item of the revenue—another form of expression had been adopted, which had enumerated each item, including duties on imports, then no one would doubt that the law contained a special pledge of the duties on imports."

"If, then, the pledge of all 'revenue,' without enumeration of items or classes, does not include duty on imports, neither does it, for the same reason, include any other species of revenue; and thus it would follow, that nothing was pledged by the act in question—an absurdity too flagrant for consideration. Such a construction would admit the possibility of an intention by the Congress of Texas to hold out to the world a delusive promise, seeming to be substantial, and yet, in fact, offering no real security. The section referred to, therefore, must be considered as pledging specially the duties on imports, as any other species of revenue possible under the government then existing. If these views are correct, all loans negotiated by Texas prior to the 14th January, 1840, and under that act, are secured by a special pledge of the duties on imports."

A similar opinion appears to have been expressed by Mr. Cushing,

the present Attorney General of the United States, upon the same point being referred to him by the Executive. He says, "it has been suggested that the pledge of 'all the revenues' does not come up to the condition of the act of Congress, for which duties on imports were specially pledged. I feel constrained, however, to agree fully with the reasoning of Mr. Corwin as to this point. *Omne majus in se minus continet:* the whole includes all the parts. *If a pledge of all revenues be not a pledge of duties on imports, then it is no pledge of anything; for you may strike out* from its province each and every species comprehended in the genus 'revenue,' by force of the same reasoning which strikes out duties on imports, and the effect would be to annul and altogether defeat the whole purpose of the lawgiver."

After these opinions, assented to as they have been by the Executive of the United States, it surely does not now lie in the mouth of the latter to urge, in support of its non-liability to pay the bondholders, the same argument which they combated and disallowed when advanced to induce them to pay over the remaining five millions due to Texas, but specially retained to answer these very claims. I refuse, therefore, to believe that this suggestion, with reference to this general pledge of all the revenues not being within the scope of the proviso of the act of Congress of the 9th of September, 1850, if seriously made, is made with the sanction or support of the government of the United States.

On the contrary, I find that this liability *has never been denied by the government of the United States.* So far as I have had the means afforded me of knowing anything about the proceedings of the Executive of the United States in reference to this claim, the non-obligation to pay this debt is *now, for the first time,* asserted by the learned agent of the United States on behalf of his government. Before entering upon the consideration of the arguments which he has thought it within the sphere of his duty to address to the commissioners, I must express my regret that I have not been favored by my colleague with the reasons which weigh upon his mind, and induce him to differ in opinion with me on the justice of this claim; but as he has not expressed dissent from the arguments advanced by the learned agent, I am constrained against my will to consider that *he also* attaches weight to them, and it thus becomes my duty to give

them that consideration to which, under other circumstances, I frankly confess I should not conceive them to be entitled. These arguments are put in the form of a protest against the commissioners assuming jurisdiction of any claim made on the United States, arising out of bonds issued by the republic of Texas. The first paragraph in that protest asserts that this claim is in no sense "embraced or contemplated by the convention of the 8th of February, 1853." Why or wherefore, however, I am utterly at a loss to imagine; and the learned agent has not offered us any arguments to show how these claims can be excluded from our consideration.

It is perfectly clear, from the languge of the first section of the convention under which this commission is constituted, *that we are bound* to entertain it. It is the claim, as appears by the memorial, of a subject of her Britannic Majesty upon the government of the United States. It has been presented to the government of her Britannic Majesty, for its interposition with the government of the United States, and it has also been presented within the time specified by the third article. This is all that is requisite to give us jurisdiction; and, having jurisdiction, we cannot allow the apprehension of "surprise" or possible but highly improbable "excitement," which the American agent fears will be excited in the United States, to deter us from entering upon its consideration, and deciding it "according to justice and equity, and without fear, favor, or affection to either country."

So much then for the first reason. I come now to the second and third, which are stated with equal confidence, and have reference to certain resolutions passed by Congress, and assented to by Texas on the admission of the latter into the Union as a State, and which declare that "in no event are the debts and liabilities of Texas to become a charge upon the government of the United States." It is impossible, however, not to see, that, however binding as between Texas and the United States this resolution may be, and however much it may give a right to the United States to insist upon Texas ultimately indemnifying her for any debts which Texas had contracted and for which the United States might be liable, and, being liable, might be called upon to pay, it cannot in the least affect the rights of any creditor of Texas to follow his pledge, and attach it wherever he can find it, no matter to whom it may have been conveyed or under what conditions. That this is beyond all doubt, a very little consideration of

the position of all mortgagees will sufficiently show; and Mr. Holford stands precisely in the relation of a mortgagee to the revenues pledged to him. The rule of law is of the most elementary kind, that when once any property—as, for instance, a piece of land, a house, or a fund—is charged with the payment of a debt, anybody purchasing or otherwise coming into possession of the thing so charged takes it *cum onere*, that is, with the burden upon it, or subject to the obligation of paying the debt out of it.

Mr. Cushing, the United States Attorney General, to whose opinion I have already referred, thus clearly and concisely expresses himself on this point: "A public creditor," says he, "like a private creditor, has a general right to receive payment out of the property of his debtor. A special pledge of this or that source of revenue, of this or that direct tax or indirect tax, when made by a government, renders such source of revenue like a mortgage, or deed of trust given by a private individual to his creditors; a specific lien or fixed incumbrance, which the government ought not, in justice to the creditors, to abolish, lessen, or alienate, until the debt has been satisfied. But a public debt, like a private one, even as to debts secured by hypothecation of specific property or other express lien, ought not to deprive himself of the means of payment, as the two governments, that of Texas and of the United States, abundantly indicated, as well by the compact of annexation as by that for the change of boundaries." If the United States, as between itself and Texas, without reference to the creditor, enter into an agreement by which the latter transfers from herself her right to collect these duties, and vests the right exclusively in the United States, can it be said that the United States are justified in holding the fund so pledged, or in refusing to pay the creditor who trusted Texas on the faith of the security antecedently pledged to him? It is precisely the case of mortgage of real or personal property. The mortgagor contracts debts afterwards, and mortgages again, or transfers by sale or otherwise, the property mortgaged to a person, with or without notice. In such a case, it is clear that the second mortgagee could not hold the fund discharged from the incumbrance upon, nor could the subsequent creditor claim, to be paid out of the fund irrespective of the first mortgage. If there were, therefore, nothing else except the mere existence of the contract, followed by the subsequent appropriation by the United States, under

the subsequent contract between herself and Texas, of the fund pledged, the United States would be responsible for the entire value of the pledged property and for the value of the entire debt.

It is so obvious that no agreement entered into by a debtor with a third person, that that third person should take a property, the subject of a specific charge, free from all liability to the person having the charge, can be binding on, or in any way affect the rights of the individual to whom the property is pledged, that further argument to prove so elementary a proposition would be useless. It is evident, therefore, that the resolution assented to by Texas, declaring that the United States shall not be answerable for the debts of Texas, can in no way legally or morally affect the claim of Mr. Holford on the United States.

I pass on to the fourth objection against the entertainment of this claim by the commissioners, which is thus stated:

"IV. Because it is not true, as asserted in the statement of the claim presented to the commissioners, that Texas is incorporated into and subjected to the dominion of the United States government, so as to destroy her responsibility for her debts contracted while an independent republic, or her ability to meet them; but, on the contrary, she is, for the purpose of fulfilling these obligations, as clearly responsible by the law of nations, by her separate and distinct society, and by her solemn agreement with the United States, as she ever was, and fully able to discharge them; and this commission is not authorized to interfere, to shift any such obligation from Texas upon the United States."

It is difficult to see how the objection bears upon, or what connexion the reasoning involved in it has to the facts of the claim before the commissioners. The obligation of Texas to pay her debts is not in dispute, nor has it been argued that the mere act of her annexation to the United States has transferred her liabilities to the federal government; though certainly, as regards foreign governments, the United States is now bound to see that the obligations of Texas are fulfilled. It is the transfer of the integral revenues of Texas to the federal government, that is relied on as creating the new liability. The shifting of the obligation, which the learned agent of the United States warns the commissioners they have no authority to effect, is *in fact* already effected by the United States itself.

Again, I will have recourse to the language of the United States Secretary of the Treasury, adopted by the President himself, as the best expression of the proposition which the United States agent now thinks himself justified in protesting against.

"It is obvious," writes Mr. Corwin, "from the most careless perusal of the law, that *Congress considered the United States as liable to pay all that portion of the debt of Texas for the redemption of which 'duties on imports' had been pledged by the law of Texas.*"

Upon no other hypothesis is there any justifiable motive for requiring releases to the United States to be filed for such claims before Texas should receive the last five millions of the stock to be paid her. In other words, Congress admitted the liability of the general government to pay all that portion of the public debt of Texas, and laid its hands upon five millions of the stock provided for as a security that Texas should pay that portion of her debt; or, in her failure to do so, the five millions thus withheld should be a fund out of which that class of the creditors of both Texas and the United States should be paid in whole or in part, as the relative amount of such debt and the fund reserved should determine.

The history of the debt contracted by Texas while she was yet an independent power, and her subsequent incorporation into the Union as a State of the republic of the United States, it is believed, makes the United States liable for this portion of the Texas debt.

The laws of nations which govern the subject are well understood, and of easy application to the present question. These laws all proceed upon the idea that the moral obligations of independent States are binding when once they attach to compacts between States or between States and individuals, and that they never cease except by the voluntary agreement of the parties interested, or by their fulfilment and complete discharge. Hence, where an independent power contracts obligations, and is afterwards, by the act of another power jointly with herself, incorporated into and subjected to the dominion of the latter, whereby the national responsibility of the former is destroyed, and the means of fulfilling her obligations transferred to the latter, all such obligations, to the extent at least of the means thus transferred, attach with all their force to the nation to whom such means have been so transferred.

It will be found that all writers on public law, having any

authority, are agreed upon this point, from the time of Grotius to the present. Indeed, the proposition thus asserted is so obviously just, that it is not possible for a nation in modern times to controvert it without forfeiting that character for justice and probity which, happily for mankind, has become indispensable for sovereign States. It was this view of the subject which doubtless dictated that provision of the law which I am now considering.

It was known to Congress that Texas had contracted debts to a large amount to individuals while she was an independent power. It was equally well known that revenue arising from "duties on imports" was amongst all nations in modern times one resource, if not the principal one, for the payment of the debts of nations. It was known also by the framers of this act that by the annexation of Texas to the United States the power to levy duties on imports within the ports or territories of Texas was taken away from the latter, and transferred to the United States. It was, therefore, assumed that the United States should pay, if Texas did not, all that portion of the debt of Texas for which duties on imports had been pledged, for the obvious reason that these duties thus pledged were taken from Texas and transferred to the United States, and to that extent the creditors of Texas, by a plain principle of justice, had become the creditors of the United States.

But this clear and indisputable obligation of the United States, to discharge a liability which she has voluntarily taken upon herself, has not only been thus duly acknowledged by the Executive of the United States, but on three different occasions—the first in 1847, the two others in 1848—the United States Senate Committee of Claims reported in favor of the payment by the United States of this debt, and upon the express ground that the transfer of the right to levy imports which Texas had, as a sovereign republic, at the time of her annexation to the United States, and which antecedently she had appropriated expressly to the payment of this debt, bound the United States to do one of two things—either to pay the debt or surrender the pledge; and not being able constitutionally to do the latter, it follows, as a matter of irresistible consequence, that she is both morally and legally bound to do the former. And since this commission was appointed a bill has been actually reported by the Senate for payment of such creditors of Texas as are comprehended in the act of

Congress of September, 1850, in which category Mr. Holford holds a prominent place.

Strange to say, this last fact has been made use of on this occasion in order to prove that this commission has no right to enter upon a consideration of the case. It is said, that because Congress has taken up the subject, this commission is ousted of its jurisdiction. If this were to be held sufficient, however, the entire jurisdiction of the commissioners might have been ousted, and the whole object of the convention frustrated, by each government taking an initiatory step with respect to each important claim the mere introduction by one section of the legislature of a bill being considered tantamount, as against the claimants, to a final settlement of their claims.

The fifth assertion, which is the last in the protest made by the learned agent against the commissioners assuming jurisdiction over the claim, is as follows:

"Because this commission has nothing to do with any law or act of the United States addressed to the government or people of Texas, designed or tending to induce that State to perform her obligations entered into while an independent republic; and hence to take jurisdiction of this claim would be a palpable and unwarrantable violation of the spirit and intention of the convention, to which the United States would have a just and perfect right to take exception, as much so as if this commission were to pass laws for the government of the United States, or do any other thing wholly without the bounds of its authority."

I suppose, for it is not very clearly stated, that it is intended to assert that the commissioners have no right to take notice of or draw any inference from the first proviso in the fifth clause of the first section of the act of Congress of the 9th of September, 1850, which says that no more than five millions of said stock shall be issued to Texas until the creditors of Texas, having a pledge on the duties on imports, shall file releases against the United States—which, of course, they would not be likely to do until they had been paid what was due to them by some one. This proviso the learned agent regards as merely an inducement addressed by Congress to the government of Texas to perform her obligations; but I have yet to learn that the refusal of a debtor to pay what he owes his creditor, until that creditor shall have discharged all the debts which he owes to other people, is to be con-

sidered simply as an "inducement" to the creditor to do his duty. I cannot suppose that Congress withheld five millions on such pretext, because, if I did, I must necessarily consider that Congress, in enacting that proviso, intended to act dishonestly as regards Texas.

Certainly the "inducement" was not likely to have this effect; for it is not probable that Texas, on the assumption that she needed such inducement, would pay twelve millions of dollars, (the amount of her debts for which her imports were mortgaged,) in order to receive five millions from the United States.

It is clear to me, however, looking merely at the language of the proviso, and remembering the occasion of it, that Congress designed to save the United States harmless from ultimate liability, as also to protect the creditors from loss, and that this anxiety sprang from a settled conviction that the United States, having appropriated the security of the creditors, was liable to them in respect of it; and that, being so liable, Congress was justified in providing means to indemnify the United States from loss. So far, then, from thinking that the commissioners have nothing to do with this act, I consider it is incumbent upon us to consider it carefully. To my mind, it furnishes authoritative evidence, of the most conclusive description, of the very proper mode in which the Congress of the United States have considered the position of the creditors of Texas, not only with respect to the specific pledge to them of the duties on imports, but also of their position and their rights as against the United States, consequent on and subsequent to the appropriation of those duties to themselves by the United States. It follows, therefore, in my judgment, that this fifth, as also all the preceding assertions of the United States agent, ought not to be sustained, and that this commission have full jurisdiction over the claim.

Looking also at the fact that the moneys advanced by Mr. Holford for the purposes mentioned in the agreement of October 24, 1848, were secured by the terms of the law of May 16, 1838, by a pledge of all the revenues of Texas; that the bonds so given, as a further security for the performance by Texas of that agreement, were also secured by the solemn pledge of all the revenues and public faith of Texas; that this solemn pledge of all the revenues has always been interpreted to mean, and necessarily does include, a specific pledge of the revenues derivable from imports; that this branch of revenue has passed into

the possession of the United States in consequence of the admission of Texas into the Union, and is still in law and equity subject to the obligation antecedently imposed on it, notwithstanding the terms of any agreement entered into by Texas with the United States with reference to the debts of the former, I have no hesitation in saying that my opinion is in perfect accordance with that uniformly expressed by the Executive and legislature of the United States, to the effect that the United States, having become possessed of the public revenues of Texas, pledged for the payment of the debt due to Mr. Holford under the agreement of October 24, 1838, and secured by the bonds of July 1, 1849, are properly responsible for the discharge of those obligations.

In conclusion, I must say that this claim appears to me entirely unanswered and unanswerable; and I am, therefore, of opinion that the United States government is responsible for the payment of the bonds of Texas now held by the executors of Mr. Holford, and the arrears of interest now due thereon.

BATES, Umpire:

Held that cases of this description were not included among the unsettled claims that had received the cognizance of the governments, or were designed to be embraced within the provisions of the convention, and were, therefore, not within the jurisdiction of the commission.

SCHOONER JOHN.

In a treaty of peace, where it was stipulated that, within certain limits, peace should take effect in twelve days, and in others at different periods, ranging from thirty to forty, sixty, and ninety days, *held* that such an agreement was to be construed as an acknowledgment by the parties that, with due diligence, notice might be given, in those limits, within the times named, and the parties bound themselves thereby to accept such term as constructive notice of such peace.

Where it was provided that vessels and their effects taken within such limits, after the time stipulated when peace should exist, "should be restored," *held* it was no excuse if such vessel was afterwards cast away and lost, and therefore could not be returned to the owners, but that compensation must be made.

The party in such case must be held as a wrong doer from the outset, and bound to make full restitution.

In the early part of the year 1815, the American schooner "John" sailed from the port of Matanzas, in the island of Cuba, with a cargo of molasses, coffee, &c., for the port of Portsmouth, in the State of New Hampshire.

On the 5th day of March, in the same year, when in latitude 31° 40′ north, and longitude 78° 10′ west from the meridian of Greenwich, she fell in with the British ship-of-war "Talbot," Lieutenant Maudesley, acting commander, and was captured and taken possession of as a prize of war.

She was then put in charge of a prize master and crew from the "Talbot," and taken in tow by that vessel for Jamaica. On the 11th of March, while the two vessels were yet in company, they made land, which the officers commanding erroneously supposed to be "Atwood's Key." On the 12th, they made what they supposed to be the "French Keys," and subsequently, what they took to be the place called the "Hogsties," and shaped and continued their course as if these suppositions were correct, although assured of their mistake by Beck, the deposed master of the "John."

In a few hours the schooner was ashore at a place called "Point Mulas," in the island of Cuba, and the "Talbot" was saved from the same fate only by hastily putting about, and standing out to sea. The next day the crew were taken from the wreck, which was abandoned, and totally lost.

On arriving at Jamaica, the master and crew were detained as prisoners of war. On the 29th of March, news of the ratification of the treaty of peace having been received, they were released. Captain Beck, the master, thereupon addressed a letter to Lieutenant Maudesley, demanding his papers, and was by that officer referred to the vice admiralty court at Kingston; but, upon application there, he was informed that neither the log-book nor the papers of the "John" had been lodged there. Whereupon he, with others of the crew, made protest, at Kingston, upon the foregoing state of facts.

On returning to the United States a more specific and detailed protest was made, and subsequently the owners of the schooner commenced a suit in admiralty against Lieutenant Maudesley for the value of the vessel and cargo, which was finally decided against them by Sir William Scott, on December 18, 1818, on the ground that the commander of a vessel of war, when notice has not reached him of the conclusion of peace, is not personally liable for such a capture.

The owners had incurred heavy expenses in the prosecution of this suit, and, owing to this circumstance and various adverse events personal to them, delayed for many years making application to the United States government, as they should originally have done. Application was at length made, and the claim was earnestly urged on the attention of the British government by Mr. Lawrence, while minister at London.

It is as yet unsettled; and is now presented for the consideration and final action of this commission.

THOMAS, agent and counsel for the United States, and CLARK, HAYES, and TUCK, cited authorities to the following points:

A treaty of peace or a truce binds the contracting parties from the time of the signature, or from its ratification, where a ratification is necessary. Hostilities are to cease from that time, or at the expiration of such other periods as may be provided in the treaty, in various districts and latitudes.—(1 *Kent's Com.*, 159; 2 *Wheaton*, 291; 1 *Wildman's Institutes of International Law*, 158.)

The right of capture depends on the fact of war. When the war ceases, the right ceases.

Ignorance of the peace can confer no right of capture in time of peace. The right, being wholly dependent on the fact of war, is necessarily independent of the knowledge of the captor.—(1 *Wildman's Institutes*, 150.)

In case of capture when peace exists, restitution and compensation is to be made.—(*Puffendorf*, *lib.* 8, *chap.* 7, *sec.* 9; *Grotius*, *lib.* 3, *chap.* 21, *sec.* 5; 1 *Rob. Rep.*, 181, *The Mentor.*)

Kent and Wheaton cite Grotius as saying, in the section referred to, that "where acts of hostility are committed after peace is made, but not notified, the contracting parties are not amenable in damage; but it is the duty of the government to restore what has been captured but not destroyed." It will be found, however, on referring to the section, that Grotius states merely that the parties "will not be liable to punishment, but must make good the damage;" and such seems to be the sound authority on this point.—(1 *Wildman's Institutes*, 159; 1 *Kent's Com.*, 169; 2 *Wheaton*, 291; *Vattel*, *lib.* 3, *chap.* 16.)

It was further contended, that the rule as laid down by Chitty was applicable to this case, that "where a party, by his own contract, absolutely engages to do an act, it is to be held as his own fault and folly that he did not expressly provide against contingencies, and exempt himself from responsibility in certain events;" and that, "where a contract is general and absolute, the performance is not excused by an inevitable accident, or other contingency, although not foreseen by or within the control of the party."—(*Chitty on Contracts*, *p.* 735.)

HANNEN, agent and counsel for Great Britain, cited "*The John,*" 2 *Dodson*, 336, where, in this case, Sir William Scott held, that in a suit brought against the captor he was not liable, except on notice; and intimates, further, his opinion that, in case of loss of the vessel, the government would not be liable.

He cited, also, to the same point, 1 *Kent's Com.*, 159, *and* 2 *Wheaton*, 291; *and Vattel, lib.* 3, *chap.* 16.

UPHAM, United States Commissioner:

In the able argument addressed to us by her Majesty's counsel, the British agent, some stress has been laid on the decision of Sir William Scott, (2 *Dodson,* 336,) on a suit brought against the commander of the Talbot for the capture of the John; and that authority is considered as conclusive of this claim.

But, in that case, the learned judge expressly declined determining whether or not the claimant had a remedy elsewhere; he only decided, for reasons which he gives at length, that the captor should be personally exonerated.

In determining this question, he says: "I certainly go no further than the expressions used by me warrant, that this individual captor is not liable to this individual sufferer."

"That does not exclude a liability elsewhere, if it exists. Whether there be such a liability in the government is a question I am not called upon to examine; I have neither the proper parties nor the evidence before me. It is sufficient to observe, upon that matter, that there may be such a liability; there doubtless would be, if the government had not made due diligence in advertising the cessation of hostilities, in the quarters and at the periods stipulated, if that were practicable."

"Where property, captured after peace has taken effect, is lost by mere chance, without any fault on the part of the captor, whether an obligation is incurred to restore in value what has been taken away by mere misfortune, the terms of the contract have not specifically provided for; and just principle seems to point another way; that, however, is not the question before me for my decision."—(*Schooner John, Beck, master,* 2 *Dodson, p.* 336.)

This case conflicts with the opinion of the same learned judge in the *Mentor,* 1 *Robinson, p.* 183. He there says, "that the seizure of a vessel is a belligerent right which is not exercisable in time of peace. When there is peace, a seizure, *jure belli,* is a wrongful act, and the injured party is entitled to restitution and compensation." He further says, "it is not so clear that the captor is liable to costs and damages, where peace has not been notified. The better opinion seems to be, that the captor is liable to costs and damages, and entitled to indem-

nification from his government, whose duty it was to have given notice."

Both these cases sustain this point, that, when there is a want of due diligence, in advertising the cessation of hostilities, the injured party is clearly entitled to indemnification; and Vattel says, also, "that those who shall, through their own fault, *remain ignorant of the publication of the truce*, would be bound to repair any damage they may have caused contrary to its tenor."—(*Vattel, book* 3, *ch.* 16.)

There seems to be no doubt that the principle, thus laid down, is correct. But what constitutes due diligence, under such circumstances, is a question at times of difficult determination. It is, therefore, exceedingly desirable that it should be settled by the parties in advance. Vattel says, in the same section, "in order as far as possible to avoid any difficulty," on this point, "it is usual with sovereigns, in their truces, as well as treaties of peace, to assign different periods for the cessation of hostilities according to the situation and distance of places."

The question then arises, whether this assignment of different periods for the cessation of hostilities, according to the situation and distance of places, *was not designed by the parties to establish the time to be holden as reasonable notice within such limits.* Such clearly is the ground assigned by Vattel for such provisions in treaties. What would be reasonable, can be determined just as well before the treaty as after, and the whole tenor of the treaty, in this case, goes to show that the contracting parties had this question in view, in establishing the various periods within which peace should take place in different localities.

The treaty provides that, "immediately after the ratification, orders shall be sent to the armies, squadrons, officers, subjects, and citizens of the two powers, to cease from all hostilities; and, to prevent all causes of complaint which may arise on account of prizes, which may be taken at sea after said ratification, it is reciprocally agreed, *that all vessels and effects*, which may be taken after the space of twelve days from the said ratification, upon all parts of the coast of north America, from the latitude of 23° north, to the latitude of 50° north, and as far eastward in the Atlantic ocean as the 36° of west longitude from the meridian of Greenwich, *shall be restored on each side;* that the time shall be thirty days in all other parts of the Atlantic ocean,

north of the equator, and the same time for the British and Irish channels, for the Gulf of Mexico, and all parts of the West Indies; forty days for the North Seas, for the Baltic, and for all parts of the Mediterranean; sixty days for the Atlantic ocean, south of the equator, as far as the latitude of the Cape of Good Hope; ninety days for every part of the world south of the equator, and one hundred and twenty days for all the other parts of the world without exception."—(*United States Statutes at Large, vol.* 8, *p.* 219.)

These several periods were undoubtedly agreed upon as equivalent to notice that peace existed within the prescribed limits. It cannot be supposed that the contending parties designed to append to these periods a further indefinite, uncertain time, as to what should constitute due diligence in giving notice, or to restrain or limit the fact in its consequences, that peace *should exist at the times named.*

After the periods thus agreed upon, the obligation to cease from hostilities was imperative.

Such being the case, we have the true starting-point from which to consider the question of the respective rights of the parties. It is manifest that collisions might then occur without the imputation of any wilful wrong in the violation of the compact entered into. The injury would, however, exist, and the actual loss sustained should, on every principle of equity and justice, as well as of compact, be fully met.

The stipulation was, therefore, entered into by the parties, that "all vessels and effects" that should be taken after the several times specified "should be restored." The question then arises, what interpretation we shall place on this provision? Does it mean that vessels and effects captured shall be returned *in specie*, or that the identical property merely, shall be returned, and where this has become impracticable that no restitution or satisfaction shall be had? I cannot believe that such was the intent of the parties.

They acknowledge themselves bound by a constructive notice of the peace, and it was their own fault that they did not take time enough, or did not use diligence enough to give *actual notice* of the peace "to their armies, squadrons, officers, subjects, and citizens," as was specially provided should be done by the treaty.

Under such circumstances, the doctrine of Vattel, adopted by Sir

William Scott, applies, "that those who through their own fault remain ignorant of the publication of the truce are bound to repair any damage they may have caused contrary to its tenor."

The party injured is in the same situation as a neutral whose vessel has been seized and destroyed as the property of a hostile power, where it is holden the neutral can only be justified by a full restitution in value.—(1 *Wildman, vol.* 2. *p.* 175.)

There is no other measure of damage that justly meets the requirements of the case. The treaty provides not only that "all vessels," but also "their effects," which may be taken, after a certain specified number of days, within certain described limits, shall be *restored* on either side. But if the effects of a vessel, consisting of provisions or other articles, are taken and consumed, or are otherwise disposed of, so they cannot be restored specifically, it will hardly be contended that no remuneration is to be made.

If this be so, the rule would equally follow in relation to the vessel. Restoration and restitution are synonymous. One meaning of the word "*restore*," as laid down by Webster is, "to make restitution or satisfaction for a thing taken, by returning something else, or something of different value," and this is the meaning which should be rightfulty attached to the word in the treaty.

I do not understand that this is, in reality, denied; but the position is taken by Great Britain in this case, that she is relieved from restoring the vessel, for the reason that it was subsequently cast away and lost by the act of God, and no one is accountable.

If the case can be brought within this principle the excuse might avail, but there are circumstances connected with it that preclude such defence. No one can plead the destruction of property as the act of God, who is wrongfully in the use and control of such property. He is a wrong doer from the outset; he has converted the property from the instant of possession, and the subsequent calamity which may happen, however inevitable it may be, is no excuse for its loss.

The John was in the rightful pursuit of a lawful voyage, at a time and place when peace existed by the express stipulations of the parties, after taking such period for notice as they held that the case required.

She had pursued her course northwardly some four or five hundred miles out from harbor, on her way to her destined port. She was

there seized, placed under the charge of new men, and her course was directly reversed, until she was taken back to the West Indies, and through mismanagement, or misadventure, was run on shore and lost.

It may have been the ordinary accident of the seas, or may not; but, in any event, she was taken there without right, and subjected to risks to which she was not legally and justly liable. The plea that she was lost by the act of God is not, under such circumstances, admissible. The vessel itself cannot be restored, but such compensation and restitution should be made as the nature of the case admits of.

In the argument, considerable stress has been laid on a quotation in Kent and Wheaton, said to be founded on Grotius, that where collisions arise, after peace exists, the governments "are not amenable in damages, but it is their duty to restore what has been captured, *but not destroyed.*" The citation from Grotius is, however, erroneous. He merely says, in the section referred to, that if any acts be done, in violation of the truce, before notice can be given, "the government will not be liable to punishment, but the contracting parties will be bound *to make good the damage.*"—(*Whewell's Grotius, liber* 3, *chap.* 21, *sec.* 5.)

What shall be the precise effect, as a matter of notice, where different periods of time are stipulated in which peace shall take place, does not seem to have been fully considered and settled. If it shall be held as an acknowledgment of notice, then every subsequent act of violation of it is the act of a wrong-doer, and full compensation follows of necessity.

I can see no possible mode of avoiding the justness or soundness of the construction at which we have arrived, but think it should prevail on every ground of public policy and right interpretation of international compacts of this character.

I am happy to say that my colleague, though he hesitates somewhat as to the views presented, waives his objection to the allowance of the claim, except on the score of interest, and this question is to be submitted to the umpire.

Interest was allowed.

CHARLES UHDE AND COMPANY.

British merchants who continued residents in Mexico, engaged in trade, after war had broken out between that country and the United States, held as alien enemies, and not entitled to recovery under this convention, as already holden in Laurents' case.

Where, after the capture of a Mexican port, it was opened to trade of residents and others, subject to the payment of certain duties, *held*, under such license, the character of alien enemies ceased, and where the United States had taken cognizance of the claims of such residents, as of British subjects, prior to the convention, these claims might be rightfully embraced within it.

License to a vessel to enter and discharge a cargo does not free her from the claim of payment of duties.

Where order was issued for payment of duties as a discharge from seizure, but, through misfortune or misunderstanding, was not carried into effect, *held* that compensation be made.

Charles Uhde & Co. were British subjects who had been resident merchants in Matamoras, in Mexico, since the year 1842, and continued to reside there after the commencement of the war between that government and the United States, in 1846. In June of that year, Matamoras was captured by the United States troops, and a circular was issued, opening the port to American vessels free of duty, or other vessels freighted with American goods or produce, or with foreign goods that had paid an import duty in the United States.

The Messrs. Uhde chartered the American schooner Star, at New Orleans, for a voyage to Havana, designing to import from there a a cargo of merchandise for Matamoras. The Star arrived, on the 6th of November, at Brazos, at the mouth of the Rio Grande; and the master of the vessel went on shore, and inquired of a Mr. Cook, who claimed to be a deputy collector, if his vessel might enter. He gave him a permit to enter, as follows:

BRAZOS ST. IAGO, *November*, 1846.

The master of the schooner Star is authorized to discharge her cargo at Barita or Matamoras.

G. S. COOK, *Deputy Collector.*

CHARLES UHDE & Co.

Cook charged $7 50 for his fees.

The vessel passed up the river and landed her goods at Matamoras, and the claimants placed them in their own storehouses. Two days afterwards the goods were seized by Colonel Clark, the commanding military officer of the station. Appeal was made to Washington, and a full hearing had, on the examination of the parties, before Mr. Walker, the Secretary of the Treasury, who decided that the seizure was lawful, but issued an order that the goods might be returned by paying the duty according to the tariff of 1842, with charges for warehouse rent and interest from the time of the seizure.

These terms were not complied with, and the goods were taken to Galveston, in Texas, and condemned and sold, in a damaged state, at much loss.

The claimants say that no person came to Matamoras to carry that order into effect. The officers of the government were there, however, claiming control of the property, and there is no evidence showing any tender of payment, or offer of compliance with the order.

Mr. HANNEN, agent and counsel for Great Britain, contended that after the capture of Matamoras, and the opening of the port, the exception taken to the jurisdiction would not hold good as to commerce subsequently allowed.

It had been expressly waived also by the United States government prior to the convention, and could not now be urged.

He contended that, under the license of entry, no duties should have been demanded, and that after the claim of duties was insisted on, sale was made without fault of the claimant, and compensation should be allowed.

THOMAS, Agent for the United States.

It appears from the papers in this case that the claimant was, in the month of November, 1846, a resident merchant of Matamoras, Mexico. War existed between the United States and that country at the time the transaction took place of which the complaint is made, and the United States army was in possession of Matamoras.

The American schooner "Star," Captain Merrill, master, arrived at the mouth of the Rio Grande November 6, 1846. On his arrival there, it is alleged that the captain made application to G. S. Cook, the deputy collector at Brazos Santiago, for a permit to discharge the cargo of his vessel at Burita or Matamoras. Both these places were without the revenue district of Mr. Cook, and his permit, even if honestly obtained, could give no right to land the goods at either Burita or Matamoras, because he had no authority in either place. Besides, both were under military government, and an officer of the army at each place was acting as collector of the port.

Under the authority of this permit, it is stated that the cargo of the "Star" was transferred to a steamboat and landed at Matamoras, and the goods placed in the warehouse of the claimant. A few days thereafter they were seized, on the ground that they had been introduced by a fraudulent evasion of the custom-house regulations of the place.

It is not pretended that any duty had been paid on these goods, and the right to sell them without such payment was asserted by the claimant, because the civil authority of the United States had not yet been extended over that possession. The commanding officer refused to allow him this privilege, and he now claims, in consequence of the proceedings of the military commander, twelve thousand pounds sterling damages, from the government of the United States.

In the first place, I must object to the jurisdiction of the commission in this case. The convention under which it is organized gives jurisdiction of the claims of "*British subjects*" upon the government of the United States. The claimant was domiciled in the enemy's country when the transaction took place of which he complains, and by a well settled principle of international law, he is to be regarded as a Mexican, and not a British subject; and whatever claim he may have had against the United States was disposed of by the treaty of

peace. This is not the tribunal before which to make his complaint, as I have fully shown in the argument I had the honor to submit to the commissioners, in the case of the Messrs. Laurent, and to which I would now beg to refer them.

Upon the simple statement of this case, it seems to me the commissioners must reject the claim entirely. A merchant, living in the enemy's country, ventures to ship goods to a military port, recently fallen into the hands of a victorious army, and he finds that the revenue laws of the conqueror's country have not yet been proclaimed there by the Executive, and he hence claims the right to disregard the regulations which the military commandant has established, and to say that because the revenue laws have not been extended over this place by the civil authority, that he will exercise the right to sell his goods in that market without the payment of duties. I can see nothing in this pretension likely to deserve the attention of the commissioner, unless it be its effrontery.

The civil authority at Matamoras was merged in the military. The commander of the place was supreme. He dictated all the laws for its government, and it cannot be disputed that he had, by the laws of war, the right to impose any law or regulation which he deemed proper for the landing of goods, or to prescribe the conditions on which they might be sold within his command. It is not unusual for the conqueror to regard the laws found existing as in force till it may become expedient to change them. There was, previous to the taking of the place by the army, a law of Mexico requiring the payment of duties, and the claimant should have expected to become subject to this law, if no other had been established. The commander, however, chose not to enforce this law, but to adopt that which was prescribed for the admission and sale of the same kind of goods in the United States, which he had clearly a right to do. It is, however, impossible, in any view of the case, that this cargo could be rightfully entered and sold in that port without the payment of duty. When Matamoras was taken by the army, there was no cessation of law or government. When the authority of Mexico terminated, that of the United States commenced; and there was consequently no interregnum during which the claimant could come in unaffected by law.

It is alleged, however, that the claimant had a permit to land the goods. In my statement of the case, I have already shown that the per-

mit was wholly illegal and gave no protection or authority whatever. Besides, there is much reason to believe that, valueless as it was, from being granted by a custom-house officer possessing no jurisdiction over the district of Matamoras, there was fraud in procuring it. The deputy collector made a written statement, it is said, that the captain of the schooner "Star" made oath before him that the duties had been paid, and the said deputy collector exhibited what purported to be a copy of this oath, subscribed by the captain of the Star, to Lieutenant Chase, quartermaster of the army and collector of the port. These circumstances go to show that the permit, so much relied upon, was fraudulently obtained.

This case was fully and carefully investigated by the Secretary of the Treasury, and Uhde, the claimant, was heard before him by counsel, and the result was that the Secretary decided the duties must be paid, and in case that was not done, the goods should be sold at auction, and the duties and expenses being deducted the balance should be turned over to the claimant. This order was carried into effect in a manner the least exceptionable to the claimant. The goods were transported to Galveston and there sold under a decree of the district court, and the sum of $8,715 36 was left at the disposal of the claimant.

It appears, therefore, that he had a hearing before the Secretary of the Treasury, and the further privilege of a trial by the district court, which in the United States is the court of admiralty jurisdiction, and the proper tribunal to determine a question of this kind; and that court ordered the goods to be sold and the duty and expenses paid. The trial took place at Galveston, in Texas, the nearest place that could have been selected and the most convenient to the claimant. It is difficult to conceive how the United States could have acted with greater fairness or with more regard for his just rights. The commissioners ought to give due consideration to the fact that this case has been decided by the proper executive officer charged with the administration of this particular branch of the government, and that the decision has been confirmed by the judgment of a competent court. Universal law and international comity demand that these proceedings should be everywhere respected, and, most of all, by a joint commission, sitting under the authority of England and the United States.

Dr. PHILLIMORE, for the claimants:

It cannot be disputed that *prima facie* Mr. Uhde is entitled under the terms of the convention—namely, "subjects of her Britannic Majesty"—to have his claim entertained by the commissioners.

I agree, however, that a treaty or convention is to be construed, and particular expressions in it interpreted, agreeably to the rules of international law.

I do not know upon what principle of law, or what authority among jurists, a restrictive *interpretation* could be affixed upon these words of the convention, unless, indeed, (as I understand the American counsel to argue,) they happened to have received such restrictive interpretation from a uniform current of decisions of acknowledged international authority.

I do not see that the authority of any jurist is referred to by Mr. Thomas, and the cases which he cites* are far from satisfying me that the commissioners could legally adopt any such exceptional construction of the terms as is contended for. They are taken from the prize courts, from the privy council, from the common law, and from the equity courts.

A misunderstanding of the cases in the prize courts appears to me to be at the root of Mr. Thomas's argument.

It is quite true that *flagrante bello* merchants residing in the enemy's country are considered, with reference to the belligerent right of maritime prize, as subjects of that country, without reference to the country of their origin or allegiance, and without much reference to the length of their residence.

Their domicil, *for this particular purpose*, is said to be sufficient to found the right of the maritime captor; but it would be stretching the principle of those decisions to an extent which was never intended to say that they were not British subjects in the sense of this convention; for instance, and the example alone is sufficient to answer the whole question, is there any jurist who would say that an injury offered to a British merchant residing at Mexico would not, all other means of redress being exhausted, justify the issue of reprisals on the part of Great Britain?

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* This is designed as an answer to Mr. Thomas's argument in Laurents' case, page 136.

The case of McConnell *vs.* Hector, decided in 1802, (3 Bos. and Puller, p. 314,) that persons who had incorporated themselves with the commerce of the enemy, *flagrante bello*, may not sue in this country.

The case of Albretch *vs.* Susman (2d Vesey and Beames, p. 326) decided that the *quasi diplomatic character* of consuls made no difference as to the law on this point.

The Countess of Conway's case, (2d Knapp's Privy Council Reports, p. 367,) when examined, appears to be adverse to Mr. Thomas's argument, for Mr. Baron Parke decided, in that case, that the party must show "that she was a British subject in some sense," and that "one of these two things must be shown, either that the countess was a natural-born British subject, or that having been born abroad she was domiciled in England, and in that character entitled to the protection of a British subject at the time of the confiscation." Now, Mr. Uhde is a natural-born subject of Great Britain, and his native character, by a particular regulation of the Mexican State, is most carefully preserved.

I am of opinion that the principles of international law do not warrant the restrictive interpretation sought to be put upon the plain words of the convention, and that Mr. Uhde is not disentitled to have his claim entertained by the commissioners.

ROBERT PHILLIMORE.

Doctors' Commons, *October* 14, 1854.

REPLY OF MR. THOMAS, AGENT OF THE UNITED STATES, TO THE ARGUMENT OF DR. PHILLIMORE, M. P., ADVOCATE TO HER MAJESTY IN HER OFFICE OF ADMIRALTY, &c.

The learned advocate, Dr. Phillimore, has, in his opinion, reviewed and attempted to answer my argument in the case of the Messrs. Laurent. He admits that "a treaty or convention is to be construed, and particular expressions in it interpreted, agreeably to the rules of international law;" but he says that I do not cite any jurist in support of the meaning I give to the term "British subjects," as this is used in the convention.

It is important, in the outset, to observe that the learned advocate has admitted that we are not to look into the British statutes for the meaning of the term "British subject," but that we are to seek for its interpretation in the law of nations. The jurists and writers on international law to whom he refers do not make the law; they collect the decisions of the courts that determine what the law is, and it must be quite as authoritative to quote from the decisions as to cite the jurist who has merely collated and made comments upon them. However, it will not be difficult to cite both the jurists and the courts in support of the construction for which I contend.

Chancellor Kent is a jurist of acknowledged authority everywhere, in England and America, and he says "the position is a clear one, that if a person goes into a foreign country and engages in trade there, he is, by the law of nations, to be considered a merchant of that country, and a subject for all civil purposes, whether the country be hostile or neutral."

The claimants were engaged in trade in Mexico, while that country was at war with the United States, and hence Chancellor Kent's doctrine applies in the strongest manner. They are to be considered subjects of that country and, of course, enemies of the United States. If they were subjects of that country, they could not be at the same time British subjects, in the sense of the treaty, because Dr. Phillimore admits that its words are to be interpreted by international law, and that law looks only to see who are rendering practical allegiance, who are absolutely under the control and government of a country, in order to determine who are its subjects.—(One allegiance; see Phillimore, Int. Law, p. 347.)

In support of my view of the law on this point, I would cite Dr. Phillimore's own work on Domicil, page 133, where he quotes entire, and with approbation, the case of the ship Ann. This vessel was seized in the river Thames in 1812. The master was a British-born subject, and his family still resided in Scotland, but he was residing in America; an order in council decreed that all vessels under the flag of the United States, *bona fide the property of his Majesty's subjects*, purchased before the war, should be restored, and the question was, whether the master of the Ann was a British subject? Sir William Scott, whose decision Dr. Phillimore approves, said "he cannot take advantage of both characters at the same time. He has been sailing out of American ports. It is quite impossible he can be protected under the order in council, which applies only to those who are clearly and habitually British subjects, having no intermixture of foreign commercial character." Here is, from Dr. Phillimore himself, the exact interpretation of the words "British subject," for which I am contending. But he says again, at page 146 of the same work: "*Every man is viewed by the law of nations as a member of the society in which he is found.*" "Residence is prima facie evidence of national character, susceptible, however, at all times, of explanation. If it be for a special purpose, and transient in its nature, it shall not destroy the original or prior national character · but if it be taken up *animo manendi*, (with the intention of remaining,) then it becomes a domicil, superadding to the original or prior character the rights and privileges, as well as the *disabilities and penalties of a citizen, a subject of the country in which the residence is established.*"

According to this rule of Dr. Phillimore, the claimants being found in Mexico were, by the law of nations, members of that society and subjects of that country; they are not, therefore, included within the provisions of a treaty to settle claims of "British subjects" upon the government of the United States.

Dr. Phillimore admits that persons residing in the enemy's country are considered as subjects of that country, in reference to their property on the high seas. If this is true of their property on the ocean, why is it not equally so of this same property when it is located in the country itself. It is then much more hostile, and clothes the owner who is with it more especially with the enemy character. Suppose an American citizen should now be residing in Sebastopol, his pro-

perty on the ocean would be liable to seizure and confiscation, for his domicil being there, he would be invested with the national character of a Russian subject, and what he might have within that fortress would, if possible, render his Russian character even more complete. Will it be contended that, if his property there should be injured or destroyed, the British government must settle with him upon a different principle from that of the native-born Russian found in Sebastopol? According to Dr. Phillimore's argument in favor of British-born subjects domiciled in Mexico during the war, he is entitled to be considered as a neutral, and, if hereafter there should be a convention to settle the claims of American citizens upon Great Britain, he may claim compensation for injury done to him or his property in Sebastopol. I apprehend the British government will never adopt any such rule.

Dr. Phillimore, to show that I have stretched the principle of the admiralty decisions too far, supposes an injury offered to a British merchant residing in Mexico, and all other means of redress being exhausted, asks "would not any jurist say the English government would be justified in making reprisals?" I will answer this by asking whether the United States would be justified in making reprisals for an injury that may be done to one of her citizens that may be found in Sebastopol? Every man found there (by the law of nations) is an enemy of Great Britain, and will be treated as a subject of the Emperor of Russia. When peace is made, the American citizen so situated will not be permitted to say that he is not bound by it, but that England has yet to make a separate settlement of his claims for property seized or destroyed. A treaty of peace binds every person in the country and settles all their claims; and upon this principle the treaty of peace between the United States and Mexico disposed of the claim of every man in that country upon the United States.

It is not true, then, to say that the English government would be justified by the law of nations in making reprisals for an injury done to a British-born subject residing in Mexico during the war between the United States and that country. She could no more interpose, as a matter of right, in behalf of a British-born than she could in favor of a Mexican-born subject, if they were both there engaged in business.

What Dr. Phillimore says of the case of McConnell *vs.* Hector (3d Bosanquet and Puller, p. 114) is true, but he makes no reference to

the essential point in that case on which I relied. He says: "This case decided that persons who had incorporated themselves with the commerce of the enemy during war cannot sue in this country." Yet if he stops there, the impression is left that this is all that was declared to be law by that case. Lord Alvanley did not arrive at that conclusion without having first laid down the doctrine that "while an Englishman resides in the hostile country he is a subject of that country." It is clear, on this authority alone, that the claimants cannot be regarded as British subjects in their Mexican transactions. He says the case of Albrecht *vs.* Susman (2 Vesey and Beames Rep., p. 323) decided that the quasi diplomatic character of consuls made no difference as to the law on this point. It also decided, however, that the consul was a subject of the enemy's country if he continued to reside there during war, and for a still stronger reason must the subject, holding no official position, and remaining in the enemy's country, be so regarded.

Conway's case (in 2d Knapp's Privy Council Reports) fully sustains the doctrine that a foreigner domiciled in a country is considered by the law of nations a subject of that country.

Dr. Phillimore's opinion, that the term "British subjects," used in the convention, embraces British-born subjects domiciled in Mexico, or engaged there in trade, and hence parties to the war between the United States and that country, is not therefore sustained by any of the cases he has cited, nor by his own authority.

JNO. A. THOMAS.

LONDON, *October* 26, 1854.

UPHAM, Commissioner of the United States:

In this case the Messrs. Uhde & Company had been for many years resident merchants in Matamoras, in Mexico. They remained there during the Mexican war and subsequent to its capture. The port was then opened for the introduction of merchandise, under regulations similar to those imposed on merchandise imported into the United States. The Star, belonging to the claimants, had been previously chartered at New Orleans for the Havana, and, from there, was to take a cargo of merchandise to Matamoras. On arrival, application was made to know if the vessel might enter the port, and she received a permit from G. S. Cook, at the mouth of the Rio Grande, that the vessel might enter to discharge her cargo at Barita or Matamoras.

The vessel proceeded to Matamoras, landed her cargo without further license, or rendering any account for duties, and they were seized by the commandant of the station. Application was made at Washington, and, on a full hearing there had of the claimants, the seizure was sustained by Secretary Walker as legal, and the goods were ordered to be discharged on the payment of duties according to the tariff of 1842, and charges and expenses of warehouse rent, and interest on the duties from the time of seizure until the payment was made.

This decision was communicated to the parties. Subsequent to this period, there is no evidence showing any offer of payment of these duties, or any attempt to comply with the order of the Secretary of the Treasury; and the goods were ultimately proceeded against in the United States district of Galveston, and the goods were sold.

The case has been argued mainly on the point, whether cognizance could be taken of the Messrs. Uhdes' claim before this commission; they having been resident merchants at Matamoras, during the war between Great Britain and the United States. That point has been already fully considered and settled in the case of the Messrs. Laurent, and if it came within the principles of that decision, we should have no hesitation in its re-affirmance. But the proceedings here all arise after Matamoras had been captured, and it had become an American possession, with its ports opened to commerce, both to resident citizens and subjects of all other nations. The Messrs. Uhdes then, were not to be regarded as alien enemies, and might perhaps rightfully be con-

sidered as coming within their original character as British subjects. The Secretary of the Treasury, in considering their case, took no exceptions on this ground, and it is a case which, under these circumstances, may well be holden as within the jurisdiction of this commission.

The claim for damages has been placed on two grounds: 1. It has been contended that the permission to enter the river for a discharge of goods at Barita, or Matamoras, was an allowance to enter free of duty. It seems to me, that this is a wholly groundless pretence. The purport of the permit indicates nothing to this effect on its face, and, moreover, it is in every respect manifestly an unjust evasion of the whole spirit and tenor of the orders, the design of which was to place imports on the same basis as those into the United States.

It was argued that an offer of payment of duties was made to the commandant before application was forwarded to Washington for relief. I am not satisfied from the testimony before us, that any such offer was made. A full and elaborate hearing was, at the time, had before the Secretary of the Treasury, and the witnesses of the claimants were examined under interrogatories in writing. I have seen no reason to doubt the justness of his award, and if it be just, it shows a wrongful attempt at evasion of duty in a clear case, and renders it incumbent on him, after such judgment, to show a tender of readiness and willingness on his part to comply with the decision made.

The claimants have offered no evidence of any measures having been taken by them to meet such decision, by demand of the goods from the commandant of the place, and a tender of the duties and expenses required, or of any other effort on their part to reclaim their property, subject to the lien of the government.

This was clearly imperative on them. There seems to have been no design to comply with the order of the government, and we can account for it only from carelessness or inability, or indisposition to conform to it. They should, at least, exonorate themselves from any such charge. They have not done this, or attempted to do it. The goods remained for a long time undisposed of, and were finally libelled and sold. This result was inevitable, unless prevented by the action of the claimants, and I can see no just ground in such case for the allowance of any remuneration on account of the sale.

HORNBY, Commissioner of Great Britain:

Held to the views entertained by him in the Laurent case, that the Messrs. Uhde & Company were British subjects, within the meaning and intent of the present convention, and that the case was fully within the jurisdiction of the commissioners.

He also was further of opinion, that subsequent to the capture of Matamoras, and the opening of the trade of that port to residents and other persons, any objection arising from the position of the claimants as alien enemies was done away, and that from that time they were to be regarded as clearly entitled to the protection of British subjects. They had been so treated by the United States, prior to this convention, and the position then taken could not now be changed.

He viewed the right of entry given to the vessel as sustaining the claim, and that the government could not go behind it, and the seizure should have been holden illegal; also, that the claimants did all that was incumbent upon them, after the decision of the Secretary of the Treasury, for the reclaiming their property.

BATES, Umpire:

Messrs. Uhde and Company were merchants of Matamoras, where they had resided from the year 1842, carrying on trade there, having a house of business and a home in that city. They continued to reside there after the declaration of war by the United States against Mexico in 1846, and until 1851. According to the interpretation of the law of nations, by the highest courts in Great Britain, it is a point settled, "beyond controversy, that where a neutral, after the commencement of hostilities, continues to reside in the enemy's country for the purposes of trade he is considered as adhering to the enemy, and as disqualified from claiming as a neutral altogether."—(See Doctor Lushington's judgment in the case of the "Aina," reported in the Jurist of July, 1855.) However good the claim of Messrs. Uhde and Company, as conquered Mexicans, against the United States, by the interpretation of the law of nations as given by the decisions of the courts of Great Britain may be, the claim ought to be excluded from this commission. The government of the United States have, however, entertained the claim in the correspondence between the diplomatic agents of the two countries, and for this reason we hold it should be considered aud settled without further delay.

I shall proceed, therefore, to examine and decide the case on its merits. The case is as follows: On war being declared by the United States against Mexico in 1846, the ports of Mexico were declared in a state of blockade; but several ports (amongst them the port of Matamoras, on the Rio Grande,) having fallen into the possession of the United States forces, the government, on the 30th of June of that year, issued a circular, addressed to the collectors and other officers of the customs in the United States in regard to Matamoras, to the following effect, viz:

"In case of application of vessels for clearances for the port of Matamoras, you will issue them under the following circumstances:

"1st. To American vessels only.

"2d. To such vessels carrying only articles of the growth, produce, or manufacture of the United States, or of *imports from foreign countries to our own, upon which duties have been fully paid.* Upon all such goods, whether of our own or of foreign countries, no duties will be chargeable at Matamoras, so long as it is in the possession of the

United States forces. *Foreign imports*, which may be re-exported in our vessels to Matamoras, will not be entitled to any drawback of duty; for if this were permitted, they would be carried from that port to the United States, and thus avoid payment of all duties."

Of this circular, which was published in the newspapers at the time, Messrs. Uhde & Co. must have been aware. They, however, sent to New Orleans and chartered the American schooner "Star," for a voyage to Havana, to load a cargo of merchandise for Matamoras, if open, and if not open, she was to proceed to New Orleans to discharge. The circular indicates that no foreign goods could be shipped from the United States to that port until the duties had been fully paid. Messrs. Uhde & Co. could not, therefore, when chartering the "Star," have supposed that a cargo of foreign goods, from a foreign port, could enter without paying duty, when foreign goods from the United States were *chargeable with full duty* in the United States in order to their admission free at Matamoras.

It is stated that it was known at Havana, when the "Star" sailed, that the port of Matamoras was blockaded; but it is very extraordinary that a vessel should proceed to a port known to be blockaded to inquire whether it is so or not. The "Star" arrived at Brazos the 6th November, 1846, which is on the Texan bank of the Rio Grande. The captain went on shore to inquire if he might enter his vessel, and Mr. G. S. Cook, who was or assumed to be deputy collector, informed him that he might, and charged him $7 50 for fees. Captain Merrill, of the "Star," exhibited his manifest, &c., and received a permit to discharge his cargo in the following words:

"The master of the schooner 'Star,' from Havana, is authorized to discharge her cargo at Barita or at Matamoras.

G. S. COOK,

Deputy Collector, Brazos St. Jago, November 7, 1846."

The schooner was then brought into the river, and the goods were landed in open day by Messrs. Uhde & Co., and placed in their own warehouses, and were, two days afterwards, seized by the military commander of the place on the charge of being fraudulently introduced.

The whole defence of Messrs. Uhde for their landing the goods rests on the value and force they attach to the permit given to Captain Merrell to discharge his cargo. It is very well known to every one

conversant with foreign trade, that it is the duty of every shipmaster, on arrival at a foreign port, to proceed to the custom-house, enter his vessel, and pay light and port dues; until he has done so, he is not allowed to commence discharging his cargo. But this is very different from a consignee's permit to land the goods which are entered and bonded, or the duties paid by the consignees when a permit is granted to land the same. The seizure was, therefore, justifiable, as no inquiry was made by Messrs. Uhde & Co. if any duties were payable.

After the seizure, it is stated that the claimants offered to pay the duties of the American tariff *which was to go into operation on the 1st December next.* This was refused by Colonel Clark, the commanding military officer, who seemed determined to wait orders from a higher quarter.

The claimants then made application to the British minister at Washington, who applied to the then Secretary of State, the Hon. James Buchanan, the case was referred to the Secretary of the Treasury, the Hon. R. J. Walker, who examined the master of the Star, brought to Washington by the claimants, and other evidence, and a final decision was come to that the seizure was sustained; but an order was made, directed to the collector of the customs at Galveston, that the claimants might have their goods on payment of duty according to the tariff of 1842, and charges and expense of warehouse rent, and interest on the duties from the date of the seizure until paid.

From some cause the settlement was never carried into effect. The claimants allege that no person ever came to Matamoras as directed by the Secretary of the Treasury, and that the goods were taken to Galveston, condemned, and sold in a damaged state for about $8,800.

My belief is that, had the arrangement made by the Secretary of the United States Treasury been carried into effect, the result would have been that the claimants would have realized near the cost value of their goods. I therefore award to Messrs. Charles Uhde & Co., or their legal representatives, in full of said claim, the sum of twenty-five thousand dollars, this 15th January, 1855.

APPENDIX.

Letter from the Commissioners to Mr. Van Buren, communicating his appointment as Umpire.

LONDON, *October* 13, 1853.

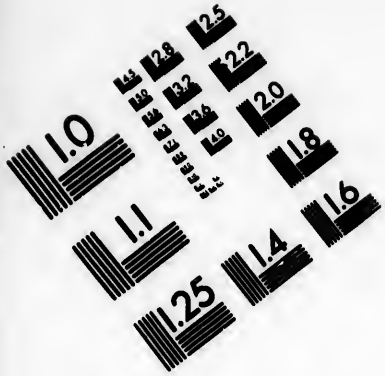
SIR: Enclosed you will find a copy of the convention for the adjustment of certain claims between Great Britain and the United States.

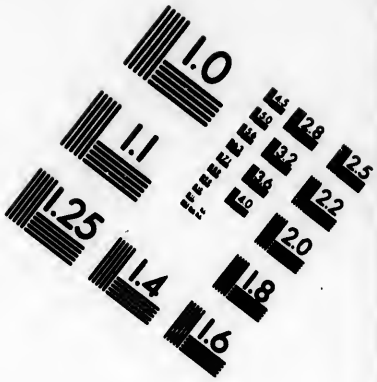
The undersigned have been appointed commissioners on the part of the two governments to carry the provisions of the convention into effect, and the first meeting was holden by them on the fifteenth of September ultimo. Since that time they have been occupied in various conferences in reference to the appointment of an umpire, required to be made by the terms of the convention, to act in case of any disagreement between the commissioners. In endeavoring, however, to fix upon an individual who should unite in himself the requisites of high character, exalted position, and strict impartiality, they have experienced the greatest difficulty; nevertheless, they are happy to say they have been able to unite cordially in agreeing upon yourself, and believe your appointment will be highly acceptable to their respective peoples and governments.

The object of this letter is to apprise you of this selection, and to express the hope of the undersigned that your acceptance of the post may be consistent with your engagements.

You will perceive that an umpire will be called upon to act only in cases of disagreement between the commissioners, which, it is to be hoped, may not arise, but which, at the same time, is not wholly unlikely to be the case.

By the provisions of the convention, it is possible that claims may not be presented until within three months of the period limited for its termination, after which time hearing may be had before the commissioners, and in case of disagreement as to such claims, they could not be submitted to the umpire until near the close of the commission. It will be desirable, therefore, for the umpire to be in a situation to act as such, should he be called upon, until the termination of the commission, which will be on the fifteenth of September next. It is desirable, also, in case the commissioners should disagree upon any claims which might be early presented to them, that the umpire should be able to attend their hearing in London, if requisite, as promptly as may be desired by the parties; although an adjournment might, in some cases, be arranged, or the umpire may, under some circumstances, be communicated with abroad. The undersigned think





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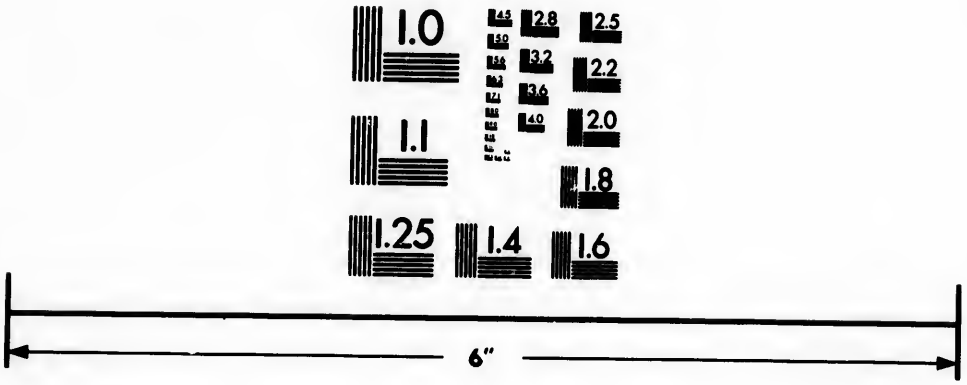

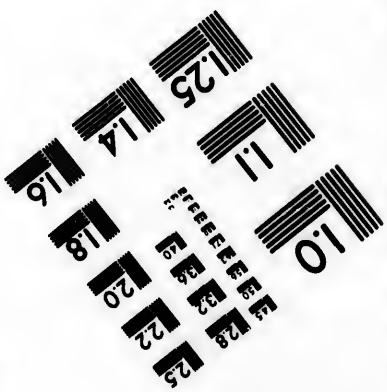

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it due to you, and right, to mention the services which may devolve on the office of umpire, but they sincerely and anxiously trust that it may be consistent with your engagements to attend to its duties, and they would be most happy, and conceive themselves fortunate, to hear from you to that effect.

In conclusion, the undersigned would observe that as the time during which the commission is to sit is limited, they should esteem your early answer a personal favor, inasmuch as in the event of your refusal, a contingency which they trust will not arise, a new appointment, or the adoption of the alternative pointed out in the convention—in itself highly undesirable in every respect—will become necessary.

The undersigned are, with the highest consideration of respect, your very obedient servants,

N. G. UPHAM,
American Commissioner.

EDMUND HORNBY,
Her Majesty's Commissioner.

Mr. VAN BUREN.

Letter from Mr. Van Buren to the Commissioners, declining the appointment of Umpire.

FLORENCE, *October* 22, 1853.

GENTLEMEN: I have had the honor to receive your letter enclosing a copy of a convention for the adjustment of certain claims between Great Britain and the United States, and informing me that you had agreed upon me as the umpire, required to be appointed by the terms of the convention, to decide finally in case of disagreement between the commissioners.

The high character of the parties to the submission, the different relations in which I stand towards them, with the importance of the interests to be adjusted, and the cordiality with which your choice appears to have been made, give to the compliment it conveys a value of which I am by no means insensible. No one can appreciate more highly than I do the importance, not to themselves only, but to the world, of the maintenance of friendly relations between our respective countries; and a satisfactory execution of this convention cannot fail to exert a most salutary influence in that direction. In view of motives so impressive, I do most sincerely regret to find myself constrained, by considerations which I dare not disregard, to decline the appointment you have done me the honor to make. After spending the principal part of my life in the public service, I have for several years withdrawn myself not only from all personal participation in public affairs, but from attention to business of every description, save only what has been indispensable to the management of my private affairs. By adhering to this course I have secured to myself a degree of repose suitable to my age and condition, and eminently conducive

to my happiness, and nothing could be more repugnant to my feelings than to depart from it now.

Still, if the matters in contestation consisted of a single question, which I could dispose of by one decision, in case of difference between the commissioners, I would not, under the circumstances, feel myself at liberty to decline the responsibility of the umpirage.

But my knowledge of the character of joint commissions like the present, and their almost invariable tendency to be kept on foot long after the expiration of the time first agreed upon for their conclusion, satisfies me that I ought not at my time of life to accept a trust which, besides exposing me to serious inconvenience, must control my personal movements for a considerable length of time, and may postpone my return to the United States to a period far beyond that which would be at present anticipated.

Allowing myself to hope that the considerations to which I have adverted will satisfy you that I estimate, as I ought, the honor which has been conferred upon me, and have not declined its acceptance on inadequate grounds,

I am, gentlemen, with great respect, your obedient servant,

M. VAN BUREN.

EDMUND HORNBY and N. G. UPHAM, Esqrs.,
Commissioners, &c., &c.

Letter of the honorable N. G. Upham to the British commissioner, proposing the appointment of Joshua Bates, Esq., as umpire.

LONDON, *October* 31, 1853.

SIR: Your letter of the 11th ultimo, signifying your readiness to agree on Mr. Van Buren, required no reply, as the appointment was at once made in conformity to it. The information from him, however, which has just been received, renders it necessary that further proceedings be had on the subject; and now I renew the proposition verbally made to you some days since, that, on the contingency of his declining, I should propose Joshua Bates, esq., of London, of the firm of Baring, Brothers & Co., as umpire.

Mr. Bates is an American-born citizen, who in early life gained such reputation for intelligence, energy, honorable character, and business acquirements, as to cause a demand for his services in the leading banking house of this country and the world. His long residence in England in that position and his great success has established him here permanently as his adopted home, and has given him a standing and character that should impart full confidence to the claimants of both countries, as well as to the governments themselves, in the intelligence, integrity, and impartiality of his decisions.

I hope you will concur with me in the fitness and propriety of the selection of Mr. Bates, and, with the commission thus organized, I shall have the fullest confidence in the prospect of a just and satis-

factory adjustment of all outstanding claims of the citizens of either government against our respective countries.

I am, with the highest respect, your obedient servant,

N. G. UPHAM.

EDMUND HORNBY, Esq.,
Commissioner of Claims.

Letter from Edmund Hornby, Esq., to the American Commissioner, concurring in the appointment of Joshua Bates, Esq., as Umpire.

LONDON, *November* 1, 1853.

SIR: I have to acknowledge the receipt of your communication of the 31st ultimo, in which, after stating that Mr. Van Buren's refusal to accept the appointment of umpire under the mixed commission, had rendered the consideration of some other individuals fitted for the office necessary, you propose to me the name of Joshua Bates, esq., of the firm of Baring Brothers & Company.

In reply, I beg to say that I am quite willing to concur in the nomination of that gentleman, having every confidence in his integrity and unblemished reputation.

I am, sir, with the highest respect, your very obedient servant,

EDMUND HORNBY.

N. G. UPHAM, Esq.,
Commissioner of Claims, &c.

Letter from the Commissioners to Joshua Bates, Esq., communicating his appointment as Umpire.

9 LANCASTER PLACE, STRAND,
November 1, 1853.

SIR: Enclosed you will find a copy of the convention for the adjustment of certain claims between Great Britain and the United States.

The undersigned have been appointed commissioners on the part of the two governments to carry the provisions of the convention into effect, and the first meeting was holden by them on the 15th of September ultimo; since that time they have had frequent conferences in reference to the appointment of an umpire, and have at length been able to unite cordially in the nomination of yourself, as a gentleman possessing in a high degree the essential qualities of an umpire, namely, high character, and freedom from all personal and national bias.

They believe, moreover, that your acceptance of the office would be highly acceptable to their respective peoples and governments, and they therefore venture to express the hope, in apprising you of this selection, that it may be consistent with your engagements to act in the capacity indicated.

In conclusion, the undersigned would observe that, as the time during which the commission is to sit is limited, they should esteem your early answer a personal favor, inasmuch as, in the event of your refusal, (a contingency which they trust will not arise,) a new appointment, or the adoption of the alternative pointed out in the convention, for many obvious reasons highly undesirable in itself, will become necessary.

The undersigned are, with the highest consideration and respect, your obedient servants,

N. G. UPHAM,
American Commissioner.

EDMUND HORNBY,
Her Majesty's Commissioner.

JOSHUA BATES, Esq.

Letter from Joshua Bates, Esq., to the commissioners, accepting the appointment of Umpire.

LONDON, 8 BISHOPSGATE STREET WITHIN,
November 2, 1853.

GENTLEMEN: I have received the letter which you have done me the honor to address to me, under yesterday's date, by which, in virtue of the power conveyed by the convention between Great Britain and the United States, signed at London, the 8th of February, 1853, you have appointed me to act as arbitrator or umpire in case you should not be able to agree in the settlement of any claim or claims embraced in that convention or treaty; and I have the honor to inform you that I accept the appointment, and am ready to make the required declaration whenever it may suit you to appoint a day for that purpose.

I have the honor to be, gentlemen, your obedient servant,

JOSHUA BATES.

N. G. UPHAM,
Commissioner of the United States.

EDMUND HORNBY,
Commissioner of Great Britain,
No. 9 Lancaster Place, Strand.

Letter from the commissioners to his excellency James Buchanan, United States minister to Great Britain, proposing an extension of the term of the commission; a counterpart of which letter was also addressed to the Earl of Clarendon, her Majesty's Secretary of State for Foreign Affairs.

OFFICE OF THE COMMISSION OF CLAIMS,
Lancaster Place, June 9, 1854.

SIR: As commissioners under the convention of February, 1853, for settling outstanding claims between Great Britain and the United States, we have the honor to address your excellency in reference to the duration of the commission.

By that convention the commissioners are bound to "examine and decide upon every claim that may be preferred or laid before them within one year from the day of their first meeting," and it is further stipulated that the claimants shall have six months, and under some circumstances nine months, from that day, within which to present their claims.

The commissioners met on the 15th of September last, and the effect of the time granted by the convention to the claimants, within which to present their claims, has been practically, in a great majority of cases, to postpone such presentment to the last moment; and in some cases the claimants have been unable as yet to complete and present their testimony. Under these circumstances, the year within which the commissioners are to decide upon the claims is practically reduced to a few months, and as it may be necessary to call in the assistance of the umpire in some of the cases, (a necessity which the commissioners trust will not often arise,) they feel that it will be impossible for the umpire to devote the necessary time to such referred claims prior to the close of the commission.

By the provisions of the convention all claims arising since 1814, not presented to the commissioners and allowed by them, are to be finally barred. For this reason, the agents for the governments have adopted the course of presenting all claims on the files of either government since that time; and though very many of these claims are of a character that have not been urged by either government, and will be disallowed, yet they all require an examination and decision, while some of the claims in controversy involve principles requiring much labor and investigation. One hundred and twenty cases have been already presented, and amongst them are several claims made on behalf of a great number of individuals; so that, in fact, that number will be the least which the commissioners will be called upon to decide.

In view, therefore, of the uncertainty of being able to complete the business of the commission within the time limited, and having regard in such case to the necessity of the contracting parties entering into a new treaty for the purpose of continuing the commission—a proceeding which will require the ratification of the Senate of the United States before the close of its present session—the commissioners respectfully

submit to your consideration the expediency of extending the time for the close of the commission for some brief period; and would express their belief that an extension for the term of four months, from the 15th of September next, would be sufficient for this purpose.

With this view, and in order more fully to express their meaning, the commissioners enclose a draft of such a convention as, in their judgment, would effect the object proposed; and they have forwarded a copy of the same to the Earl of Clarendon, her Majesty's secretary of state for foreign affairs, with a counterpart of this letter to your excellency, with an expression of a hope that it may be made, at an early day, a matter of conference between the two governments.

With sentiments of the highest consideration and respect, we are your obedient servants,

N. G. UPHAM,
United States Commissioner.

EDMUND HORNBY,
British Commissioner.

To his Excellency JAMES BUCHANAN,
United States Minister to Great Britain, &c., &c., &c.

In pursuance of the foregoing recommendation, a convention was entered into between the two governments for an extension of the term of the commission, agreeably to the draft proposed, which was signed at Washington, July 17, 1854, and ratifications were exchanged at London, August 18, 1854, of which due notice was communicated to the commissioners.

A copy of said convention will be found in the journal of the commissioners, page 37.

COPY OF MR. HANNEN'S PROTEST IN THE CLAIM OF WILLIAM COOK AND OTHERS.

To the honorable the Commissioners under the Convention of February 8, 1853, *between her Britannic Majesty and the United States of America, for the settlement of outstanding claims:*

GENTLEMEN: A claim has been presented in behalf of William Cook and others, natives of the United States, asserting themselves to be the next of kin of one Frances Mary Shard, widow, who died intestate in 1819, and of whose effects administration was afterwards granted to George Maule, esq., as nominee of the crown.

The claim is presented to the commissioners, under the convention of February 8, 1853, on the assumption that the proceeds of the effects of the intestate are "now in the custody of her Majesty's government," and that, therefore, this is a claim "by citizens of the United States, upon the government of her Britannic Majesty," within the meaning of the convention.

I have the honor to submit, in behalf of her Majesty's government,

that the claim of William Cook and others is not one of the class for the settlement of which the convention was entered into, and that it is not within the jurisdiction of the honorable commissioners appointed under that convention.

It is believed that the following brief statement of the law of this country, on the subject of the administration of the effects of intestates, whose next of kin cannot be discovered, will fully establish the foregoing propositions.

Upon the death of a person intestate, administration of his personal effects is granted by the ordinary to the next of kin, in whom, upon such appointment, the property in the effects is completely vested.

If no next of kin can be discovered, administration is granted to a nominee of the crown as *ultimus hæres*, and in such nominee the property of the intestate is vested in the same way as in an ordinary administrator.

The crown would, through its nominee, be at liberty to dispose of the intestate's property for its own private purposes, and in some cases does so, but in general the effects of the intestate are, with the exception of a small per centage, distributed amongst such persons as show, to the satisfaction of the crown, that they had some claim upon the deceased person, and would probably have been objects of his bounty had he made a will. Bonds are, however, taken from these persons to restore the amounts received by them, should the letters of administration granted to the nominee of the crown be afterwards revoked, by reason of the discovery of the next of kin. In the event of such a discovery being made, the course pointed out by law for the person claiming to be next of kin to pursue, is by citation in the ecclesiastical court, to procure the letters of administration already granted to be revoked, and fresh letters to be granted to the person establishing his claim as next of kin.

In illustration of this statement, the case of *Rutherford* vs. *Maule*, *Haggard's Ecclesiastical Reports*, may be referred to, in which the administration of this intestate's effects was the subject of litigation—Rutherford asserting himself to be the next of kin of Mrs. Shard, and seeking the revocation of the letters granted to the nominee of the crown.

Under these circumstances, I submit that the claim of William Cook and others is not a claim "by citizens of the United States upon the government of her Britannic Majesty," within the meaning of the first article of the convention, since the government has no control over or interest in the subject-matter of dispute. The claim is between the alleged next of kin and the nominee of the crown, representing the sovereign in his personal capacity, and is as much a private litigation as if the letters of administration sought to be revoked had been granted to a private individual.

It is also to be observed, that the ecclesiastical courts are the tribunals which have jurisdiction in such matters, to the exclusion of all other courts in this country; that they have a system of practice adapted to this subject, and means of obtaining evidence, which the commissioners appointed under the convention do not possess.

The object of the convention appears to have been to erect a tribunal

to determine disputes, for the decision of which no competent court existed. It cannot have been intended to oust the ordinary courts of law of either country of their jurisdiction, and to transfer cases peculiarly within their province to a court of exceptional character, and provided with very limited means of investigation.

For these reasons I submit, that the claim of William Cook and others is not within the jurisdiction of the honorable commissioners, and should not be entertained by them.

I have thought it right at once to present these observations, in order that the parties interested may be informed as soon as possible of the objection which exists to the prosecution of their claim before the commission, that they may be enabled to take such other proceedings as they may be advised.

In the event of the claim being persisted in, I shall crave leave to address some further observations in support of the view I now have the honor of submitting to your attention.

I am, gentlemen, your obedient servant,

JAMES HANNEN.

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