UNITED STATES OF AMERICA
OFFICE OF THE SECRETARY OF THE SENATE

IN SENATE OF THE UNITED STATES,

FEBRUARY 17, 1826.

Mr. SMITH, from the Committee on Finance, to which was referred the petition of Otway Burns,

REPORTED:

That it appears from the petition, and the vouchers submitted in its support, that, on the 14th of August, 1818, a brig, bearing the name of "Fortuna," entered the port of Beaufort, North Carolina, laden with sugar, molasses, cotton, and hides, and was regularly admitted to entry by the Collector of the port. That the master, who called himself Murphy, applied to the petitioner to become security for the duties on the said cargo: that, from the conversation of Capt. Murphey and the crew, and the appearance of the brig, he, the petitioner, was satisfied that she was engaged in fair trade, and being assured by counsel, learned in the law, that, as the cargo had been regularly entered in the custom house, he could run no risque in purchasing the same, he did purchase a part thereof, to the amount of about $11,000, which fully secured him (as he then thought) for the amount of the bonds given; and further, he agreed to carry, on freight, the balance of the cargo, for its owner, in his vessels, to New York. It further appears, from the deposition of G. Rumley, clerk of the petitioner, that about 24 or 30 barrels of sugar were sold in Beaufort; that a part was shipped to Philadelphia, as is proved by the manifests of the schooners Ann and Jane, the proceeds whereof were paid to him; and the residue of the cargo he landed, to be transported to New York, where it was seized by the collector, on the ground that the papers accompanying the goods were not regular; which seizure he relinquished on the receipt of the certificate of the collector of Beaufort. That, in the mean time, the Portuguese Consul at New York, libelled the sugar, &c. as Portuguese property, which, being proved, was, after near five years of contest, decreed to be the property of a subject of Portugal, by which decree the petitioner lost the amount he had paid on his purchase, the freight of his vessel, and was held bound for the duties for which he had given bonds at Beaufort. Those bonds, amounting to $8,334 22, had

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been put in suit, March, 1819, and judgment had, as of course, been obtained: the execution was suspended by order of the Treasury Department. In February, 1823, the Marshal of New York paid into the Treasury the sum of $4,180 54, being for duties on the goods that had been libelled and sold by him. It further appears, that the petitioner paid to the collector, in 1823 and 1824, the sum of $907 05, being the presumed amount of duties on that part of the cargo sold in Beaufort and Philadelphia, leaving a balance still due on the aforesaid bonds of $3,246 23, from the payment of which, and the interest thereon, the petitioner prays to be released.

The deposition of Mr. Arundle, the collector who admitted the Fortuna to entry, states, "that he has seen a statement of the sales of that part of the cargo which had been sold at Philadelphia, and that the duties thereon did not amount to more than five or six hundred dollars, and that he knew of but a small part of the goods sold in Beaufort." From which it does appear to your Committee, that the duties collected at New York, on the articles libelled and sold there, ought in justice and fairness to have been to an amount equal to the balance due on the bonds of the petitioner, after the payment of the $907 05, for the presumed amount of the duties payable on the part which had been sold at Beaufort and Philadelphia; and such appears to have been the opinion of Mr. Anderson, Comptroller of the Treasury, who, in his letter to the Hon. N. Macon, dated 5th January, 1825, says, "If the goods were adjudged to be the property of Portuguese subjects, and were directed to be restored to them, I am of opinion that Mr. Burns is not legally liable to the duties, and, in such case, relief could be afforded him by this Department, if judgment had not been obtained on the bonds given by him, in consequence of which, the case is no longer considered within the competency of the Treasury."

The Committee are at a loss to account for the difference between the amount of duties recovered in New York, and those bonded for by the petitioner, at Beaufort. There might have been a loss in the weight of the sugar, arising from its frequent removals from one warehouse to another, from the loss of weight which naturally arises in sugar by its drying and the molasses draining from it. The extent, however, can only be accounted for, from the belief that the duty at New York was levied on the articles not being of that quality which was charged at Beaufort at $4\frac{4}{10}$ cents per pound, but on the quality which, agreeably to law, is chargeable at $3\frac{3}{10}$ cents per pound, which the petitioner has verbally informed the chairman he believed was the case. There is, however, no proof before the Committee to substantiate that fact.

The Committee have ample proof submitted to them, of the fair and honest character of the petitioner, signed by gentlemen of the first respectability, and are of opinion that the prayer of the petitioner ought to be granted, and ask leave to submit a bill for his relief.