

IN SENATE OF THE UNITED STATES,

FEBRUARY 22, 1830.

Mr. LIVINGSTON, from the Select Committee appointed on the 22d December last, made the following

REPORT:

The Committee to whom was referred the petition of Francis R. Glavery and others, sufferers by French spoliations, prior to the 30th September, 1800, report:

That the claims of this class of petitioners have so frequently been before Congress and the public, as to render the details of this case in a great manner unnecessary. But the committee do not think that the duty assigned to them by the Senate would be properly performed by a mere reference to the several instructive reports that have been made on the subject, for the information of either branch of the Legislature. They have thought that something further was expected by the reference; and, as the collection of documents had been previously made, by former committees, that it would be required from them, to place, in a condensed view before the Senate, as well the history as the merits of the claim, and the reasoning by which the committee arrive at the conclusion to which they have come: that it is one founded in justice, and consequently, that those who make it, are, according to true policy, entitled to relief.

The history of this claim runs back to the earliest period of our political existence as a nation; it grows out of the first act of our intercourse with foreign Powers; and is interwoven with some of the most interesting events of our contest for Independence, and the scarcely less arduous struggle to maintain our peace and neutrality, during the destructive warfare in which all Europe was soon after involved—a war in which principles, before held sacred among civilized nations, were alternately disregarded by both the great parties to the contest.

One of our first objects, after the Declaration of Independence, was to strengthen our yet untried force by some foreign aid. The great, and almost perpetual enemy of England, naturally presented itself to our statesmen as the Power with which our object could be most probably and most effectually obtained, and an agent was almost immediately appointed to discover the disposition of the French Court towards us; and, on finding it favorable, Commissioners were sent with full power to negotiate; with instructions “that, should the proposals already made be insufficient to produce the proposed declaration of war, and the Commissioners are convinced that it cannot be otherwise accomplished, they assure his Most Christian Majesty

that such of the British West India Islands as, in the course of the war, shall be reduced by the united force of France and the United States, shall be yielded in absolute property to His Most Christian Majesty; and the United States engage, on timely notice, to furnish, at their expense, and deliver at some convenient port or ports in the said United States, provisions for carrying on expeditions against the said islands, to the amount of two millions of dollars, and six frigates, mounting not less than twenty-four guns each, manned and fitted for sea; and to render any other assistance which may be in their power, as becomes good allies."

The result is matter of history too well known to be enlarged upon. The treaties of alliance and commerce were entered into in the year 1778, and were followed by the consular convention, first planned by Congress, in the year 1782, and sent out to Dr. Franklin, to be proposed to the French Government—agreed to, and signed, in the year 1784; refused to be ratified by Congress, and re-modeled in the year 1788; and finally ratified by the President, with the advice and consent of the Senate, in July 1789. But some of the articles of these compacts belong to the subject before us, and must therefore claim particular attention. The powerful aid of France could not reasonably be expected without some equivalent. The basis of the treaty of alliance, then, was not only a stipulation for mutual aid and exertion in the war which that treaty rendered inevitable between France and England, and which stipulations are contained in the first ten articles of the instrument; but, by the 11th article, the United States gauranty FOREVER against all other Powers, to France, as well all the possessions it then had in America, as those it might acquire by the treaty of peace. France guaranties to the United States their LIBERTY, SOVEREIGNTY, and INDEPENDENCE, absolute and unlimited, as well in matters of government as commerce, and all their possessions, as well as those they might acquire by the war. And the *casus fœderis*, as explained in the 12th article, is made to depend, not upon the character of future war as to offensive or defensive, but "*in case of a rupture between France and England.*" And such a rupture was as confidently calculated would take place by France, as desired by the United States.

The rights and obligations of the two parties under this article, need no explanations to elucidate them; and if the aid of France was considered necessary for the preservation of that which she guarantied to us, our stipulation (supposing our power equally necessary to France) bore no proportion in importance, to hers. Liberty, sovereignty, independence, political and commercial, all our vast possessions, in the one scale; the West India colonies in the other. If the relative importance to the respective parties to the contract of the objects guarantied, was greatly disproportioned, the means of performing the engagement were not less so. On the one hand, the fleets, armies, and resources, of a powerful, long established kingdom; on the other, a people whose very political existence was yet a problem—without regular armies, without revenue, with an inefficient government, newly and rudely organized, and with a few privateers for a fleet. There was also this essential difference in the value of the stipulations, that France could never expect any thing from ours, until she had completely performed hers. These features in the treaty of alliance are necessarily adverted to—they have a forcible bearing on the case.

On the same day, a treaty of amity and commerce was signed between the two nations; the articles of which, here necessary to notice, are the 6th, 7th, 13th, 17th, 19th, 22d, 23d, 24th, 25th, 27th, and 28th. By them, it

was mutually stipulated, that vessels of war belonging to the one Power, shall give convoy to, and defend and protect, the merchantmen of the other going the same route, in the same manner as they ought to defend and protect their own; that free ships shall make free goods; that there shall be perfect liberty of commerce with an enemy's port, with all articles excepting contraband; that articles of contraband shall be restricted to the list contained in the treaty; that the right of search shall consist only in an inspection of the ship's papers, the tenor of which is set forth in the treaty; that, even in case of contraband articles being found, their forfeiture shall not affect the ship, or the rest of the cargo; that such articles are not to be taken out before condemnation, without consent. Ships of war and privateers of the one Power, with their prizes, are to be received in the ports of the other, and allowed to depart without paying any duties. But no shelter is to be given to vessels of the enemy, having made prize of the property of such Power; who shall be forced, if they come in by stress of weather, to depart as soon as possible. A ship or privateer of an enemy of one Power shall not be permitted to refit in the ports of the other, nor to sell their prizes; and shall not even be permitted to take provisions, except what may be necessary to carry them to the next port of their own nation. By this treaty it is also provided, that the functions of consuls shall be regulated by a particular agreement. This last stipulation was carried into effect, by the consular convention above referred to, by which, in addition to the usual functions belonging to the consular office, exclusive jurisdiction was vested in the consuls over the vessels and crews of their nation, in the United States, and the arrangements were made on that subject, which were found in practice to be extremely embarrassing.

With the mutual rights and obligations resulting from these stipulations, the parties to them were found, on the breaking out of the war of the French Revolution. The most important of them, the guarantee of our liberty, sovereignty, and independence, had been fulfilled in a manner that called forth, on numerous occasions, the warmest expressions of gratitude from the Government of the United States; and that rendered the obligation to support them in future, entirely nugatory. No occasion had yet presented itself to ask for the performance of our engagements, or to call upon France for a compliance with those which could only be required in a beligerent state on her part, and a neutral one on ours.

The occasion and the time had now arrived, when the good faith of the two nations was to be put to the test. France became engaged in a war, waged against her on extraordinary principles, and conducted, in some respects, in a manner subversive of those by which civilized nations, in modern times, had considered themselves bound, both towards their enemies and others. The United States was no party to that war; they were entitled to expect the strict performance of the engagement which had been made in anticipation of such a state of things, and which their neutral position gave them, according to the laws of nations, a right to demand. But they had had obligations to fulfil as well as rights to assert. The *casus fœderis* had arrived; the French American islands were threatened, and we had guaranteed their possession to France. The good faith, and even enthusiastic zeal with which, when our situations were reversed; when the independence which France had guaranteed to us was in danger; her part of the compact had been performed, rendered the duty more obligatory upon us. The stipulations we had made for the admission of French public and private

vessels of war into our ports, and for the exclusion of those of enemies, were also a cause of great and constantly recurring embarrassment. With the very first operations of the war, began the mutual complaints of the two parties, for the neglect of their duties and the infraction of their rights. One of our first complaints arose out of a decree passed by the French Government, on the 9th of May, 1793; which authorized the seizure of neutral vessels bound to enemy's ports, &c. with a promise of indemnity. The preamble of this decree declares, that its character is to be attributed to the enemies of France, who, having captured neutral vessels bound to her ports, "the French people are no longer permitted to fulfil, towards the neutral Powers in general, the vows they have so often manifested, and which they constantly make, for the full and entire liberty of commerce and navigation."

By the 5th article of this decree, its operation was made retrospective to the date of the declaration of war, and prospective to the period when the enemies of France should cease the depredations of which it complained.

Early in the year 1794, we complained of an embargo, by which our vessels were detained at Bordeaux; of refusals to pay bills drawn for supplies; of British goods taken from our ships, in violation of the treaty; of American property taken under pretext of its belonging to the English; of the imprisonment of American citizens taken on the high seas.

They complained of the President's proclamation (of neutrality) of the 22d of April, 1793, which they consider "*insidious*;" that we had restored to the British owners sundry prizes made by certain French privateers, and excluded said privateers from the use of the ports of the United States; that shelter was given to English vessels of war in our ports, while they (the French) were not permitted to sell their prizes; that supplies of provisions, and other supplies for the West Indies, which we had agreed to guarantee, were refused; that the consular convention was not carried into effect; and that our seamen were captured or impressed by British vessels of war, and used in great numbers as auxiliaries in the reduction of the French colonies. In all these complaints, neither of the parties seemed desirous of pressing the other for a strict performance of the treaty—both perhaps, from a consciousness that they were, themselves, not inclined to perform all its stipulations; we, on our part, were cautious about asking indemnity for the breach of the articles which stipulated that free ships should make free goods, in the hope that the French would be equally accommodating on the subject of the guarantee; and it is curious to observe the embarrassment which this subject produced in the negotiations between the parties. In the instructions to Mr. Monroe, he is directed to state that *we are unable to give her aid of men and money*, evidently alluding to the guarantee. A plea of inability could only flow from a consciousness of obligation, and must be regarded as an acknowledgment of liability on the part of the nation that makes it. And that minister, in one of his letters to the Secretary of State, says, "I felt extremely embarrassed how to touch again their infringement of the treaty of commerce; whether to call on them to execute it, or leave that question on the ground on which I had first placed it." And afterwards, in a conference with one of the French ministers, the question is directly put: "Do you insist on our executing the treaty?" This, Mr. Monroe, for the moment, evades, but it was afterwards peremptorily again urged, "Do you insist upon, or demand it?" And Mr. Monroe answers, "that he was not instructed by the President to insist upon it, nor did he insist upon it;" and he avows that one of his motives was, "lest it might excite a disposition to press us

upon other points on which it were better to avoid any discussion." On the part of the French Government, although the execution of the guarantee seems to have been incidentally demanded by their agents in the United States, yet it was rather in the shape of a request of aid in money, provisions, and arms; and the reference made to the guarantee, to show that we might comply with their requisitions under the previous treaty, without departing from our neutrality.

The mildness with which we were approached on this subject, however, resulted from the many and intentional indications given out by the Executive, of our unwillingness to do any act which should make us subject to become parties to the war. And, referring to this circumstance, the biographer of the then Chief Magistrate says, "Washington's Proclamation of Neutrality was a novelty in the political world. It was, however, the wisest measure, as adapted to the circumstances, that history records. It accomplished the purpose for which it was intended, and that purpose was one of the best and most salutary of which any nation had ever experienced the benefit. It was intended to prevent the French Minister from demanding the performance of the guarantee contained in the treaty of alliance, and it was admirably calculated to prepare the minds of the people for approving of the refusal which, if he made the demand, Washington was resolved to give him."

Soon after this proclamation was issued, the French Minister proposed to renew the treaties, and unite still closer the two nations in their stipulations of alliance; and he did not hesitate to make known, as part of his instructions, that the saving of the guarantee article, in any new treaty to be made with the United States, was an indispensable condition.

It was of the more importance to her, as she could direct her whole force to her European wars, and leave the United States at all times to protect her Islands, or pay for them, if we failed to save them. It was in this view of the subject that the President of the United States subsequently, July 15, 1797, instructed his Envoys to France, Messrs. Pinckney, Marshall, and Gerry, to stipulate with the French Government to pay them an annual war subsidy of \$200,000, in lieu of the guarantee article—the engagement to be prospective from the date of the proposed stipulation.

There is, indeed, some evidence that Mr. Genet, during his ministry, was instructed to make, and did make, a formal demand of the performance of the guarantee: for, on the 14th November, 1794, he writes thus to Mr. Jefferson: "I beg you to lay upon the President the *decree and the enclosed note*, and to obtain from him the earliest decision either as to the *guarantee I have claimed the fulfilment of for our Colonies*, or upon the mode of negotiation of the new treaty I was charged to propose to the United States, and which would make of the two nations but one family." Yet, as a few days after this, on the 2d December, the Secretary of State writes to Mr. Monroe, that France had *omitted to demand the fulfilment of the guarantee*, we must suppose that Mr. Genet's demand was not considered in that light by our Government.

In this state things remained, each party fearful of pressing, lest it should, in its turn, be pursued by the other; and mutual forbearance produced the effect which moderation and prudence lead to, in public as well as private affairs. The language of recrimination had nearly ceased, and every thing seemed to promise a speedy and satisfactory accommodation. After some difficulty, Mr. Monroe, on the 10th November, 1794, obtained from the

French Government an *arreté*, ordering an adjustment of the accounts of American citizens, for the embargo at Bordeaux, for the supplies rendered to the Government of St. Domingo, by which all the embarrassments of our direct commerce with France, and with other countries, so far as they had been created by that Power, were done away. "In short," says Mr. Monroe, "all the objects to which my note of the 3d of September extended, were yielded, except that of allowing our vessels to protect enemies' goods;" which last point was yielded on the 3d January, 1795. And in a message to Congress of the 20th February following, the President says, "It affords me the highest pleasure to inform Congress, that perfect harmony reigns between the two republics, (France and the United States) and that those claims (of the American citizens) are in a train of being discussed with candor, and amicably adjusted."

During these discussions, which produced these prospects of amicable arrangement, the treaty between the United States and Great Britain had been negotiating. As was natural, it produced some jealousies and suspicions. But the solemn assurances which Mr. Monroe was instructed to make, that "the motives of Mr. Jay's mission was to obtain immediate compensation for our plundered property, and the restitution of the posts;" and that "he was positively forbidden to weaken the engagements between this country and France;" and the instruction he received, to "repel with firmness any imputation of the most distant intention to sacrifice our connexion with France, to any connection with England"—all these contributed to produce the effect which has been described. When the terms of that treaty came to be known, the face of affairs was immediately changed. France complained that her interests were sacrificed by stipulations with her enemy, inconsistent with those we had made with her, in relation to the shelter to be given to ships of war; that we had enlarged, to her prejudice, the list of contraband, and even admitted that provisions might be such, at a time when her enemy was endeavoring to starve her. These, and other complaints, were urged with great acrimony. On our part, we asserted that the rights of France were reserved by an express article, and that, having done this, she had no right to complain of any treaty, which, as an independent nation, we had a right to make. The construction which Great Britain put on the treaty, by capturing all our vessels she could find carrying provisions to France, increased the irritation, while the payment, in case of capture, which we had stipulated for, gave it, in their minds, the appearance of a collusive contract to their prejudice. France also complained, and more seriously, of the new rules to which she was subjected in relation to her privateers and prizes, and which had their authority only in the British treaty of 1794.

From the following extract from a report made to the President, by the Secretary of State, on the 15th of July, 1796, it appears that the restrictions we had laid upon French privateers and their prizes, was not the result of demand on the part of Great Britain, but our own voluntary construction of the stipulation made with her. "Mr. Adet asks, whether the President has caused orders to be given, to prevent the sale of prizes conducted into the ports of the United States, by vessels of the Republic, or by privateers armed under its authority." On this, I have the honor to inform you, that the 24th article of the British treaty, having explicitly forbidden the arming of privateers, and the selling of their prizes in the ports of the United States, the Secretary of the Treasury prepared, as a matter of course, circular let-

ters to the collectors, to conform to the restrictions contained in that article. This was the more necessary, as, formerly, the collectors had been instructed to admit to an entry and sale, the prizes brought into our ports." This exclusion from our ports was the more severe against France, as it amounted to nearly an entire exclusion from the Western hemisphere, since the French colonies had generally fallen into the possession of England.

It was alleged by France, that, while it was very important to her to secure ports of refuge and security for her ships of war, privateers, and prizes, on or near the continent of America, principally for the protection of her sugar islands, yet, being anxious to throw her whole force into the scale of the United States, to obtain and secure their independence, she made their cause her sole object; but, neither in this act, nor in the renunciation in favor of the United States, of the Bermuda Islands, and the Northern possessions of America, (should they be conquered) did she lose sight of the protection of her valuable West India possessions. She had stipulated with the United States, in the treaty of commerce of 1778, for the use of their ports, for which they received an equivalent, in the undivided aid of the French forces, and in the renunciations referred to. These charges produced recrimination, and a new era began in the political situation of the two countries, from which may be dated a large part of the claims on which the committee are directed to report.

At this period of the controversy, Mr. Monroe states, that the demands of the United States arose :

1. From the capture and detention of about fifty vessels.
 2. The detention, for a year, of eighty other vessels, under the Bordeaux embargo.
 3. The non-payment of supplies to the West India Islands, and to continental France.
 4. For depredations committed on our commerce, in the West Indies.
- These last, seem to have begun a short time prior to that date.

The same moderation in language that had preceded it, was no longer to be found in the diplomatic intercourse between the nations. France complained loudly, that British ships of war, which had made prize of their vessels, were not only received in our ports, but that they made them a place of rendezvous, whence to destroy their commerce, in direct violation of our treaty. They added to this cause of complaint, the repetition of others, to which the committee have before alluded; and reinforced them by new allegations, perhaps not so well founded; and, at length, their minister, Mr. Adet, on the 15th of November, 1796, announces the order of his Government to suspend his functions in the United States, and made a formal claim of the guarantee, in the following terms: "The undersigned minister plenipotentiary of the French Republic, now fulfils to the Secretary of State of the United States, a painful but sacred duty. He claims, in the name of American honor, in the name of the faith of treaties, the execution of that contract, which assured to the United States their existence, and which France regarded as the pledge of the most sacred union between two people, the freest on earth." Nor was this dissatisfaction confined to complaints and remonstrances. On the 7th July, 1796, the Directory decreed, that "the flag of the French Republic will treat all neutrals, either as to confiscation, as to searches or capture, in the same manner as they shall suffer the English to treat them. This was followed by a notification, "that the Directory consider the stipulations of the treaty of 1778, which

concern the neutrality of the flags, as altered and suspended in their most essential points, by this act, (the treaty with Great Britain.)

In the same year, the agents of the French Government in the West Indies, issued decrees authorizing the capture of American vessels bound to, and coming from, an English port, under which practice, all Americans, wherever bound, were indiscriminately captured or plundered; and these proceedings are thus characterized by our Secretary of State in a letter to Mr. Pinckney. "The spoliations on our commerce by French privateers are daily increasing, in a manner to set every just principle at defiance." In the following year, 2d March, 1797, another decree of the Executive Directory was passed, enlarging the list of contraband, declaring Americans in the service of England pirates; and authorizing the capture of all vessels of the United States unprovided with a document called a *role d'équipage*, which it was well known no American vessel ever carried. This decree was made to have immediate operation, evidently to take us by surprise; and its effect was so truly calculated, that the Ocean was swept of several hundreds of American vessels, before intelligence of the enactment of the decree had reached the United States. In the month of January, 1798, all vessels having on board goods the production of England or any of its colonies, were declared good prize. These decrees, and others of a similar character, readily and promptly executed, and even exceeded by the cupidity of the French cruisers, produced a state of things which could not long be submitted to. The United States, at first, attempted to put an end to it by negotiation: this was rendered nugatory: First, by the refusal to receive Mr. Pinckney as the successor to Mr. Monroe; and afterwards by the same refusal, accompanied by very insulting circumstances, to the extraordinary mission, composed of Messrs. Pinckney, Marshall, and Gerry. From this time, affairs took a more serious turn. A number of legislative acts were passed, evincive of the indignant feeling which the course of conduct pursued by the French Government, had produced, and showing a determination to resist them by force. Of these, the committee deem it necessary to the present investigation, to notice only the following:

Act of 28th May, 1798, authorizing the capture, by public vessels of the United States, of all "armed vessels of the Republic of France which have committed, or shall be found hovering on the coasts of the United States for the purpose of committing, depredations on the vessels belonging to the citizens thereof."

Act of 18th June, 1798, suspending intercourse with France, under penalty of the forfeiture of vessels carrying on such intercourse.

Act of 25th June, same year; authorizing American merchant vessels to oppose searches, &c. made by French vessels; to capture the aggressors; and to re-capture American vessels taken by the French: but with proviso that, "whenever the Government of France, and all persons acting by or under their authority, shall disavow, and shall cause the commanders and crews of all French armed vessels to refrain from the lawless depredations and outrages hitherto encouraged and authorized by that Government, against the merchant vessels of the United States, and shall cause the laws of nations to be observed by the said French armed vessels, the President of the United States is hereby authorized to instruct the commanders and crews of the merchant vessels of the United States to submit to any regular search by the commanders or crews of French vessels, and to refrain from any force or capture to be exercised by virtue hereof."

The act of 28th June, 1798, declaring, the condemnation and sale of French vessels, taken in pursuance of the act of 28th May.

The act of 7th July, 1798, declaring for the reasons* recited in the preamble, "That the United States are of right freed and exonerated from the stipulations of the treaties, and of the convention, heretofore concluded between the United States and France; and that the same shall not hence forth be regarded as legally obligatory on the Government, or the citizens, of the United States."

The act of the 9th July, in the same year, authorizing the public vessels of the United States to capture all armed vessels of the Republic of France, on the high seas; and giving authority to the President to issue commissions for the like purpose to private armed vessels.

These several acts are here referred to, merely as facts necessary to be considered in the history of the transactions between the two countries; their particular character and bearing upon the claim of the petitioners will be hereafter more properly considered. Their effect seems to have been important in bringing the Government of France to more moderate and pacific counsels; some symptoms of which were tardily shown by a previous attempt to open a negotiation with Mr. Gerry. Advances were made, through our Minister at the Hague, which ended in a second mission, composed of Messrs. Ellsworth, Davy, and Murray, who arrived in Paris on the 2d March, 1800, and immediately began a negotiation, which ended in the convention of 30th September, 1800. The second and fifth articles of this convention are the only ones that have a direct bearing on the claims of the petitioners. They are in the following words: "The Ministers Plenipotentiary of the two parties, not being able to agree, at present, respecting the treaty of alliance of the 6th February, 1778, the treaty of amity and commerce of the same date, and the convention of the 14th November, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time; and, *until they* may have agreed on these points, the said treaties and convention shall have no operation, and the relations of the two countries shall be regulated as follows:

"Article 5. The debts contracted by one of the two nations with individuals of the other, or by the individuals of one with the individuals of the other, shall be paid, or the payment may be prosecuted in the same manner as if there had been no misunderstanding between the two States. But this clause shall not extend to indemnities claimed on account of captures or confiscations."

The 2d. article was a temporary expedient to restore the two countries to a state of mutual intercourse, from the interruption of which, both had experienced great inconvenience. By it, the claims of both countries were acknowledged, and the Governments respectively bound to negotiate further upon them at a future period; ours for indemnity to our citizens, for depredations on their commerce, and injury to their persons; theirs for the non-execution of the treaties of alliance and commerce, and the breach of the consular convention. This treaty, soon after its date, was ratified by the First Consul; but the further negotiation provided for by the 2d article on these important points, was defeated by a subsequent occurrence. The convention, duly ratified by the French Government, was transmitted to the President, and by him submitted to the Senate, who advised its ratification, with the exception of the 2d article, and a limitation of its duration to

* None of these reasons is, that there is a state of war.

the term of eight years. With these alterations, the treaty was returned, and again submitted to the French Government, which, after some delay, and much deliberation, ratified the convention, with these alterations, adding, on their part, this proviso: "*Provided, that, by this retrenchment, the two States renounce the respective pretensions which are the subject of the said article.*" The convention, with this modification, was again submitted to the Senate, who, on the 19th of December, 1801, resolved, two-thirds concurring, that they consider the said convention as fully ratified, and they returned the same to the President for promulgation, who proclaimed it in the usual form.

It is on these proceedings that the petitioners found their claim: their reasoning is this, and it seems to bring the merits of their case within a very narrow compass.

As citizens of the United States, we had rights, which France, as a friendly Power, was bound by the law of nations to respect. We had other rights which were secured to us by a positive compact between France and the United States. These rights, of both descriptions, having been violated by the former Power, greatly to our pecuniary injury, our first application was to the justice of the aggressors. Finding this unavailing, we complained to our natural and sworn protectors, the Government of the United States, who promptly volunteered its agency for the recovery of indemnification: the claimants were notified, by a circular letter from the Secretary of State, dated August 27, 1793, "that due attention will be paid to any injuries they may sustain on the high seas, or in foreign countries, contrary to the law of nations, or to existing treaties; and that, on their forwarding hither well authenticated evidence of the same, proper proceedings will be adopted for their relief;" and, in pursuance of said invitation, the sufferers generally forwarded evidences of their losses to the Department of State. The United States urged the justice of our claims, which was not denied by France. But that Government had counter claims—not against us, the injured claimants, either collectively or individually, but against the whole nation, of which we are a part—counter claims, not urged as representing French citizens for individual injuries, but national claims of indemnity for alleged breaches of national engagements, and involving a right to call for the future performance of onerous engagements. Pressed by the fears of being called on for the execution of those engagements, and for the losses incurred by France by reason of their past inexecution, our Government not only failed in making that firm and vigorous demand of justice, that, under other circumstances, they would have made, but bartered the indemnity that was due to us for their own exoneration, from dangerous and inconvenient engagements. As our attorneys, they gave a release of our private claims, in consideration of a similar release of their national stipulations; they purchased a great public advantage at our expense. We are not disposed to contest the right which has been exercised; but we invoke the eternal principles of justice, enforced as they are by a constitutional provision, when we allege that private property shall not be taken for public use without full indemnity.

Although your committee cannot but feel the full force of this appeal to the justice of the country, yet, as it has frequently been made in vain, they deem it a duty briefly to examine the reasons which, at different times, have been urged against the allowance of the claim. Among these, they do not recollect that the justice of the claims against France has ever been denied. Should a doubt, however, on that ground, suggest itself to any member of

the Senate, it will be removed by the slightest attention to the acts of our Government, legislative, executive, and diplomatic. The laws, which have before been referred to; the orders given by the President to carry them into effect; and, at earlier as well as subsequent periods, the instructions to our ministers, and their correspondence; all prove that the wrongs inflicted on the petitioners were of the most grievous kind. A single reference will be sufficient on this point. It is to a report made by the Secretary of State, respecting depredations on the commerce of the United States, dated 21st June, 1797, and published, page 407, of the document sent to Congress on the 20th May, 1826. After enumerating the several injurious decrees passed by the French Government, he says: "Besides these several decrees, and others, which, being more limited, the former have superseded, the old marine ordinances of France have been revived, and enforced with severity both in Europe and the West Indies. The want of, or informality in, a bill of lading; the want of a certified list of the passengers and crew; the supercargo being by birth a foreigner, although a naturalized citizen of the United States; the destruction of a paper of any kind soever; and the want of a sea letter; have been deemed sufficient to warrant a condemnation of American property, although the proofs of the property were indubitable. The West Indies, as before remarked, have exhibited the most lamentable scenes of depredation, &c. The persons of our citizens have been beaten, insulted, and cruelly imprisoned. American property, going to, or coming from, neutral or even French ports, has been seized; it has even been forcibly taken when in their own ports, without any other excuse than that they wanted it." To deny the justice of claims for indemnity for such excuses, would be the assertion of a right, on the part of France, to indiscriminate plunder of neutral property. The claim then existed against France; whether acknowledged by that Power or not, cannot, in the view the committee take of the case, be material; if founded on justice, we are bound to suppose that, at some time or other, it would be allowed. Nations must not, in their intercourse with each other, be supposed capable of flagrant injustice. Such a principle would soon break all those ties by which modern civilization has united them. If the French Government, at that period, had denied the justice of these claims, and asserted a right to make the depredation, it would not have lessened the justice and validity of the claimants' right against the successors in power, of those who were so regardless of the laws of nations and the faith of treaties; and, at this moment, but for the act of their own Government, they might appeal from the wrongs inflicted by republican France, to the justice and magnanimity of its monarchical ruler. But the justice of the claim was not denied; and the necessity of providing indemnity was expressly acknowledged. Of this there is the fullest evidence. By an *arrêté* of the 18th November, 1794, the Commission of the Marine is ordered to adjust the accounts of American citizens for the embargo at Bordeaux; and the injustice of all the preceding decrees against our commerce is virtually acknowledged by their unconditional repeal. Under this decree, indemnity was made for sundry American claims arising out of the Bordeaux embargo, contracts, &c.; and the residue of claims of that description were, with some exceptions, compensated out of the fund provided by the convention of April 30, 1803, between the United States and France. Even when Messrs. Pinckney, Marshall, and Gerry, were in Paris, in the informal negotiations carried on there, the justice of the claims was admitted, and a commission proposed to be established to liquidate the amount to be paid

by the United States as a loan to France. See Exhibit A, in the Despatch of the Envoys of November 8, 1797. In all the subsequent negotiations, these claims for spoliations were admitted to be valid; and, finally, in the 2d article of the Convention, are spoken of as *indemnities due*. We have also the authority of our Government for this assertion. Mr. Madison, in a letter to Mr. Pinckney, dated February 6, 1804, says expressly: "The claims from which France was released, were *admitted by France*;" so that the claims rest not only on their intrinsic justice, but on the express admission of it by the party concerned.

How far the obligation of a government to enforce the just claims of its citizens against a foreign Power extends, has, it is understood, been sometimes discussed, in considering the case of these petitioners; but it is believed that there is no connexion between that principle and this case. The demand for indemnity does not rest on any failure on the part of the Government to assert the rights of the claimants, but on its appropriation of them to its own use.

The objection most frequently urged, and which, therefore, received the greatest attention from the committee, is, that the depredations on which the claims are founded were the cause of a war with the nation which had committed them; and that this last argument of nations, having failed to produce its effect, the treaty, which put an end to the war, also cancelled the claims which were the cause of it.

Admitting the two positions, that a nation is not obliged to go to war to enforce the claims of its citizens against a foreign Power; and that, if it should resort to that measure, a treaty of peace, not containing any provision for the allowance of such claims, would not give to the individuals a right to claim indemnity from their own Government:—admitting both these positions, the committee cannot see how either of them bear upon the case.

National claims for indemnity may be reasonably supposed to be abandoned by a treaty of peace which makes no provision for them, because such treaty is considered as an adjustment of all national difference; and where a refusal to compensate injuries to individuals is the ostensible cause of the war, it is made a national claim, and would, in like manner, be extinguished by a peace; and no right would result to the injured party against his own Government for indemnity. But if, in an uncontroverted case of war, by the treaty of peace, the Government which had offered the injury should acknowledge the right of the individual to an indemnity, and his own Government should release it in consideration of some advantage given to it in the treaty, surely there could be no doubt that the individual whose rights were thus bartered, would be entitled to compensation.

But this was not a case of war, and the stipulations which reconciled the two nations, was not a treaty of peace; it was a convention for putting an end to certain differences, &c. The proof of these assertions will be evident to any one who pays the slightest attention to the history of the transaction.

The first public expression of the light in which our Government considered the measures which have been detailed, is in the instructions given to Messrs. Ellsworth, Davy, and Murray; in which the Envoys are told, after an enumeration of the wrongs sustained by the acts of the French Government, "This conduct of the French republic would well have justified an immediate *declaration of war* on the part of the United States. But, desirous of *maintaining peace*, and still willing to leave open the door of reconciliation with France, the United States contented themselves with

preparing for defence, and *measures calculated to defend her commerce.*" Now all the measures which have been considered as equivalent to a state of war, had been taken previous to the date of these instructions. Our Government then did not think the two nations in a state of war; and, in conformity with these instructions, the ministers in one of their first communications in the negotiation, thus characterize the measures taken by the United States: "With respect to the acts of the Congress of the United States, which the hard alternative of abandoning their commerce to ruin imposed, and which, far from contemplating a co-operation with the enemies of the republic, *did not even authorize reprisals* on their merchantmen, but were *restricted solely to the giving safety to their own*, till a moment should arrive when their sufferings could be heard and redressed."

The same character is impressed on the whole negotiation; the settlement of indemnities for mutual injuries, and the modification of the ancient treaties to suit existing circumstances. No where the slightest expression, on either side, that a state of war existed, which would exonerate either party from the obligation of making those indemnities to the other. On the contrary, when it became necessary to urge that those treaties were no longer obligatory on the United States, the Ministers rely not on a state of war, which would have put an end to them without any dispute; but, on the act of Congress, of the 7th July, 1798, annulling the treaties—an act which they themselves did not think, in a subsequent part of the negotiation, any bar to a recognition of the treaties, so as to limit the operation of an intermediate one made with England. The convention which was the result of these negotiations, is not only, in its form, different from a treaty of peace; but it contains stipulations which would be disgraceful to our country on the supposition that it terminated a state of war—the restoration of prizes, and payment for vessels destroyed. Neither party considered then that they were in a state of war. Were they so in effect? War, from its nature, is indiscriminate hostility between the subjects of the belligerent Powers. Hence it is universally acknowledged, that the granting of letters of marque and reprisal does not produce a state of war because it is limited. Here recourse was not even had to this measure; the right of capture was limited to that of armed vessels which were dangerous to our commerce—looking to security for the future, but not to indemnity for the past. Besides, the convention was not a treaty of peace, because such a treaty is without limitation; while the convention, being limited to eight years, would, if we had been at war, have been a truce only for that period, at the expiration of which war must have been resumed, as of course, or been followed by a regular treaty of peace. The committee will not swell their report by references to authorities which support these principles, which they hold to be generally acknowledged.

Suggestions also have been made, invalidating these claims, on the ground that they were not made the equivalent for the release of the obligations incurred by the United States under the treaties with France; all of these obligations being already destroyed by the act of Congress, of 7th July, 1798, and one of them for the guarantee of the islands never having been incurred, because the war on the part of France was an offensive, not a defensive war, and that therefore the *casus fœderis* had never occurred.

On the first ground, it will be sufficient to observe, that a treaty being an agreement between two or more parties, no one of them can exonerate himself from its obligation by his own act. On the second, that the fact is for the

argument worse than doubtful, and that, if it were well established, the public law is by no means clear; and that one or all of these reasons operated on our Envoys to propose a sum of money as a consideration for exonerating us from the obligation of their treaties thus supposed, by the argument, to be annulled.

Those who urge such objections overlook the essential fact, not only that nearly all the claims originated prior to the date of the annulling act of Congress of the 7th July, 1798, but that they were generally valid claims against France under the general provisions of international law, and therefore derived little or no aid from treaty stipulations. It was for this reason that the French Government refused to ratify the convention of 1800, with our unconditional omission of the second article; since they would thereby have lost their claims to treaties, and left themselves still responsible for the claims under consideration, in virtue of international law.

That the final result of the negotiation was the abandonment of the private claims, as a consideration for exonerating the United States from the national obligations imposed by the treaties and conventions with France, is abundantly obvious. These were the only objects of the second article. These had been, from the beginning to the end of the negotiation, the two objects of counter claim. The difficulty of adjusting them led to the expedient provided by that article, of adjourning the discussion. It was declared by one party, and solemnly acknowledged by the other, that they were mutually released; and, finally, it has been repeatedly stated by the agents of our Government, that the one was given up as an equivalent for the other. Mr. Madison, in his letter to Mr. Pinckney, before referred to, says, expressly, "The claims from which France was released were admitted by France, and the release was for a valuable consideration, in a correspondent release of the United States from certain claims on them;" and, before the convention was ratified, Mr. Livingston, our Minister in France, writes, "France is greatly interested in our guarantee of their islands, particularly since the changes that have taken place there. I do not, therefore, wonder at the delay of the ratification; nor should I be surprised if she consents to purchase it by the restoration of the captured vessels." These proofs might be greatly multiplied; but the committee think it is sufficiently shown that the claim for indemnities was surrendered as an equivalent for the discharge of the United States from its heavy national obligations, and for the damages that were due for their preceding non-performance of them. If so, can there be a doubt, independent of the constitutional provision, that the sufferers are entitled to indemnity? Under that provision, is not this right converted into one that we are under the most solemn obligation to satisfy?

The only remaining inquiry is the amount; and on this point the committee have had some difficulty. Two modes of measuring the compensation suggested themselves:

1. The actual loss sustained by the petitioners;
2. The value of the advantages received, as the consideration, by the United States.

The first is the one demanded by strict justice; and is the only one that satisfies the word, used by the Constitution, which requires "just compensation," which cannot be said to have been made, when any thing less than the full value is given. But there were difficulties which appeared insurmountable to the adoption of this rule at the present day, arising from the multiplicity of the claims; the nature of the depredations which occa-

sioned them; the loss of documents, either by the lapse of time, or the wilful destruction of them by the depredators. The committee, therefore, could not undertake to provide a specific relief for each of the petitioners. But they have recommended the institution of a Board, to enter into the investigation, and apportion a sum which the committee have recommended to be appropriated, *pro rata*, among the several claimants.

The committee could not believe that the amount of compensation to the sufferers should be calculated by the advantages secured to the United States, because it was not, according to their ideas, the true measure. If the property of an individual be taken for public use, and the Government miscalculate, and find that the object to which they have applied it has been injurious rather than beneficial, the value of the property is still due to the owner, who ought not to suffer for the false speculations which have been made. A turnpike or canal may be very unproductive; but the owner of the land which has been taken for its construction, is not the less entitled to its value. On the other hand, he can have no manner of right to more than the value of his property, be the object, to which it has been applied, ever so beneficial. In the present case, the committee are of opinion that it would drain the Treasury, were they to give the petitioners the value of obligations which the sacrifice of their property purchased.

The committee are led to believe, that a less appropriation than five millions of dollars would be doing very inadequate justice to the claimants; they therefore recommend the insertion of that sum, in the bill which they pray leave to bring in for the relief of the petitioners.

To lessen the public expenditure is a great legislative duty; to lessen it at the expense of justice, public faith, and constitutional right, would be a crime. Conceiving that all these require that relief should be granted to the petitioners, they pray leave to bring in a bill for that purpose.



A BILL

To provide for the satisfaction of claims due to certain American citizens, for spoiliations committed on their commerce, prior to the year eighteen hundred.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That satisfaction shall be made, to an amount not exceeding five millions of dollars, to such citizens of the United States, or to their legal representatives, as had valid claims to indemnity upon the French Government, arising out of illegal captures, detentions, forcible seizures, and confiscations, made or committed before the thirtieth day of September, eighteen hundred: *Provided,* That the provisions of this act shall not be extended to such claims as are described in the convention concluded at Paris, on the thirtieth day of April, eighteen hundred and three, between the United States and the first Consul of the French Republic, nor to such claims as are described in the treaty between the United States and Spain, concluded at Washington, on the twenty-second day of February, eighteen hundred and nineteen, and for the liquidation and payment whereof, provision is made in the said convention, or in said treaty.

SEC. 2. *And be it further enacted*, That, for the purpose of carrying into effect the provisions of this act, and to ascertain the full amount and validity of said claims, three Commissioners shall be appointed by the President, by and with the advice and consent of the Senate, who shall meet at the City of Washington, and, within the space of _____ years from the time of their first meeting, shall receive, examine, and decide upon, the amount and validity of all the claims included within the description above mentioned. The said Commissioners shall take an oath or affirmation, to be entered on the record of their proceedings, for the faithful and diligent performance of their duties; and in case of the death, sickness, or necessary absence of any such Commissioner, his place may be supplied by appointment as aforesaid, or by the President, during the recess of the Senate, of another Commissioner, in his stead. The said Commissioners shall be authorized to hear, and examine, on oath or affirmation, every question relative to the said claim, and to receive all suitable authentic testimony concerning the same; and the rules for the decision of said Commissioners shall be the principle of justice, the law of nations, and the former treaties between the United States and France, to wit: the treaty of amity and commerce of the sixth of February, seventeen hundred and seventy-eight, the treaty of alliance of the same date, and the consular convention of the fourteenth of November, seventeen hundred and eighty-eight.

SEC. 3. *And be it further enacted*, That the payment of such claims as may be admitted and adjusted by the said Commissioners, to an amount not exceeding five millions of dollars; shall be made *pro rata*, in such manner as the President of the United States shall prescribe.

SEC. 4. *And be it further enacted*, That the records of the proceedings of said Commissioners, and the documents produced before them, shall, after the Commission is closed, be deposited in the Department of State.

SEC. 5. *And be it further enacted*, That the President of the United States is hereby authorized to take any measure which he may deem expedient, for organizing the said Board of Commissioners, and for this purpose appoint a Secretary, well versed in the French and Spanish languages, and a Clerk; which appointments, if made during the recess of the Senate, shall, at the next meeting of that body, be subject to nomination, for their advice and consent.

SEC. 6. *And be it further enacted*, That the compensation of the respective officers, for whose appointment provision is made by this act, shall not exceed the following sums :

To each Commissioner, at the rate, by the year, of _____
 To the Secretary of the Board, at the rate, by the year, of _____
 To the Clerk, at the rate, by the year, of _____

SEC. 7. *And be it further enacted*, That, during the continuance of said Commission, all documents and communications, having relation to said claims, which shall be addressed to or from the said Secretary, shall be free from postage.

SEC. 8. *And be it further enacted*, That, for carrying this act into execution, the sum of _____ dollars be, and hereby is, appropriated, to be taken from any money in the Treasury, not otherwise appropriated.