

IN SENATE OF THE UNITED STATES.

JANUARY 22, 1835.

Read, and ordered to be printed.

Mr. KING, of Georgia, made the following

REPORT:

The Committee on Foreign Relations, to whom was referred the memorial of Somerville Pinckney, administrator of James Williams, deceased, praying indemnity for spoliations by Spain under the Florida Treaty, report:

That it appears from the documents accompanying the memorial, that James Williams, in his lifetime, in the month of December, 1799, shipped on board a schooner called the Brothers a cargo of merchandise destined to the Havanna. That in the same month and year the said schooner Brothers, with her cargo, were captured by an armed privateer under French colors called the Maria, and carried into the port of Matanzas, in the island of Cuba, where, by the connivance of the Spanish authorities, the vessel and cargo were converted by the captors to their own use. That application was made, by the commander of the schooner, to the commandant of the post at Matanzas, but no satisfaction was received, and the vessel and cargo was thereupon abandoned to the Spanish Government, and a representation of the loss shortly thereafter made to the Government of the United States.

The committee also learn from the evidence, that the vessel was worth \$3,000; and the cargo, at invoice prices, was worth \$5,843 63 cents; which, with 8 per cent. premium of insurance and the customary 2½ per cent., gave to the owner an insurable interest in the cargo of \$6,529 19. That the vessel was without insurance, and the cargo partially insured for \$4,000 by the Baltimore Insurance Company, which was paid to the insured.

It appears further to the committee by the record of the commission, that in April, 1822, the then representatives of the estate of James Williams filed their memorial before the commissioners appointed and acting under the Florida treaty, praying indemnity for the loss of the said vessel and the part of the cargo uninsured; the claim of the Baltimore Insurance Company for their portion of the loss on the same adventure having been previously filed in the month of February in the same year. The committee find also from the documents submitted to them, that the Board of Commissioners, at an early period of its session, adopted a rule "that

all claims on the same vessel, voyage, and capture, will be decided together." That the claim of the underwriters, and the claim in question were, in pursuance of the above rule, examined together on the 20th November, 1823, and rejected. That the Baltimore Insurance Company petitioned for and obtained a rehearing of their claim, which, on the 24th of April, 1824, was allowed. No petition for a rehearing of the claim in question having been filed before the commissioners, the first decision of the board by which the claim was rejected remained in full operation, and the estate which the memorialist represents has been denied any benefit from the fund provided for the indemnity of citizens of the United States under the Florida treaty.

Under the foregoing view of the facts, the committee have considered the claims of the memorialist to relief. They have not thought it important to examine the correctness of the ultimate decision of the board by which the claims of the underwriters were allowed. The passive acquiescence of the Spanish authorities at Matanzas may or may *not* have justified the board in the decision that the loss of the schooner and cargo was a loss to be remunerated by the provisions of the treaty. *Such was the decision* by the only tribunal having authority to decide; and hence it appears to the committee that by the application of an adjudicated principle to an admitted state of facts, the estate of James Williams was clearly entitled to indemnity with other claimants admitted by the board to indemnity under the treaty in question.

But although the committee are thus disposed to admit the *original* rights of the estate of James Williams to participate in the fund provided by the treaty, they are not prepared to indemnify the claimant at the expense of the nation. The memorialist excuses the omission to apply for a reconsideration, by stating the belief of the representatives of the estate, that the claim would be considered in a final adjudication, together with the claim of the Baltimore Insurance Company. The excuse is reasonable, and the statement most probably true. But the claims were presented in separate memorials by different parties in interest; were never consolidated on the record of the commission, and were only considered together by a time-saving rule of the board when both cases were properly before it. The committee cannot therefore consider the United States liable for an omission on the part of the commissioners, occasioned by a want of that strict attention by the party in interest which was usual with other claimants, however he may have been disappointed in his reasonable expectations.

This objection, as well as the force of it, seems to have been anticipated by the memorialist; and he represents in his memorial that there is a balance of the stipulated indemnity remaining unclaimed in the Treasury to which he asserts a superior claim. And the committee, on inquiry, find that there are dividends awarded by the commissioners, and unclaimed by those entitled to them, to the amount of \$8,867 03.

The committee, however, have not thought proper to recommend a change at present in the disposition of this fund. It is already appropriated, and belongs to those to whom it has been awarded by the commissioners; and the committee do not consider the delay in applying for it as an abandonment of right. It is certainly true as stated in behalf of the memorialist, that "in reference to the sum appropriated by the treaty of Florida to the payment of the debts of Spain the United States is a trustee." But this the committee conceive only renders the delay the less inconsistent

with the rights of those entitled to the subject of the trust; it being a rule of equity, founded on reasons equally applicable in political and private relations, that no limitation runs in favor of the trustee against the claims of those entitled to the beneficiary interest.

The committee would suggest that an act of limitation, to operate on this surplus fund, imposing reasonable conditions on the claimants, may be worthy the consideration of Congress; but for the present ask the adoption of the following resolution:

Resolved, That the committee be discharged from the further consideration of the subject.

