

IN THE SENATE OF THE UNITED STATES.

MARCH 6, 1856.—Referred to the Committee on Claims.

DECEMBER 18, 1857.—Referred to the Court of Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States :

LOUIS G. THOMAS AND OTHERS *vs.* THE UNITED STATES.

The following papers in this case (no briefs filed) are respectfully submitted :

1. Petition of the claimants.
2. Letter from the State Department (copy.)
3. Opinion of the Court.

By order of the Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Washington, on the day and year above
[L. S.] written.

COURT OF CLAIMS,
Washington, March 5, 1856.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

THE UNITED STATES COURT OF CLAIMS.

DISTRICT OF COLUMBIA, }
Washington County. }

To the honorable the Judges of the Court of Claims :

The petition of Louis G. Thomas, Edward K. Thomas, and Joseph Shermer, guardian of the children of Samuel W. Thomas, deceased, the legal representatives of Hartshorn R. Thomas, deceased, respectfully sheweth unto your honors that the government of the United States is justly indebted to them in the sum of \$11,732 44, in this :

The said Hartshorn R. Thomas, for a valuable consideration, did on or about the 16th day of January, 1822, purchase of one Jonathan Jenks a certain claim he held against the government of Spain, arising under the following facts, to wit: In the month of June, in the year 1812, the said Jonathan Jenks was the sole owner of the brig called the Jane, of Philadelphia, commanded by Peter Fosse, which vessel sailed from the port of Philadelphia on the 14th day of March, 1812, with a cargo composed of provisions and one hundred kegs of gunpowder, bound to Laguayra, where she arrived in safety on the 14th day of April following, and, from the distressed state of the country, her unlading was not completed until the 13th of July, same year. But in the meantime she had reloaded in part, and on the 21st of July the vessel was cleared out at the custom-house of Laguayra for Philadelphia. She was prevented from sailing by reason of an embargo laid by General Miranda, and on the first day of August the royal troops entered the said port.

Captain Fosse soon after received orders to send his sails on shore; and on the 19th of August he received further orders to proceed with the said brig to Puerto Cabello, where she was to stand a trial, and which said orders the said master was obliged to comply with; and on the 23d of September the said vessel and cargo were condemned (as well as several other American vessels in said port) by persons styling themselves judges of a court of admiralty of his Catholic Majesty.

From the said sentence Captain Fosse entered an appeal, and *obtained a decree for the restitution of said vessel and cargo*; but on proceeding to take possession of the brig, found her completely stripped, and the hull converted into a hulk, or prison-ship, and subject, on delivery to him, to very heavy costs. He then petitioned the commandant of marine to have her valued; and after a survey by competent persons, consisting of two master ship-carpenters and the boatswain of the squadron, she was pronounced (including her sails and rigging, which had been taken away) to be worth the sum of two thousand nine hundred and fifty-seven dollars, for which sum he petitioned payment, or the restoration of his vessel, as decreed, in the same state she was when condemned.

In answer to his said petition, the military commandant gave him orders to apply for payment to the marine commandant, who rejected the payment; and after repeated petitions, and being bandied about by the two said military commandants, he was at length obliged to abandon the vessel, and desist from further attempt to obtain payment or redress for said brig.

The part of the cargo belonging to the said Jonathan Jenk was found, on restitution, so deteriorated as to render an immediate sale indispensable, and was sold at a very heavy loss.

Captain Fosse, after expending a large sum of money in obtaining the best counsel, and his own expenses and that of his mate and crew during so long a period, and despairing of all success in obtaining justice, on the 15th July, 1813, came to the determination of returning to the United States, and place all the documents in relation to the vessel and cargo in the hands of his owner.

Your petitioners beg leave to submit the following statement of their claim :

Amount of vessel, as valued at Puerto Cabello, as per document marked B.....	\$2,957 00
Demurrage awarded by the American consul at Laguayra the same as in the case of the brig Cumberland, which vessel was also seized on the 1st August by the royal army.....	2,802 00
Amount of cost of coffee, on account of your memorialist, as per document marked C.....	1,230 90
Proportion of expenses in obtaining restitution of coffee, per said document C.....	18 75
	<hr/>
	7,008 65
Deduct amount of sales of said coffee in its deteriorated state, per same document marked C.....	481 25
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	6,527 40
Expenses of appeal, &c., endeavoring to recover the brig Jane, per document marked D.....	956 62
	<hr/>
	7,484 02
Interest from 21st July, 1812, (date of clearance of the brig Jane at Laguayra,) to the 7th January, 1822, is 9 years 5 months and 16 days, at 6 per cent. per annum..	4,248 42
	<hr/>
	11,732 44
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The said Jonathan Jenks was sole owner of the said vessel, and a citizen of the United States of America, as more fully appears by the register deposited in the custom-house for the district of Pennsylvania, in consequence of her not returning to the United States.

On the 8th day of January, 1822, Jonathan Jenks filed his memorial before the commissioners for adjudicating the claims of our citizens against Spain for spoliations, &c., appointed by virtue of the treaty of February 22, 1819, between the United States and Spain, demanding indemnity for the losses sustained by him in consequence of the seizure, detention, and final loss of his vessel and injury to her cargo by the Spanish authorities at Laguayra and Puerto Cabello. By the said treaty and commission the government of the United States fully released and discharged the government of Spain from any and all liability on account of this claim, which had been recognized as just by the government authorities at Laguayra, and by so doing the United States became liable to pay the same, and assumed the liability with the promise to pay.

On the 22d day of January, 1822, Jonathan Jenks filed a supplemental memorial, stating, among other things, that he had disposed of his claim for indemnity in the matter of the Jane and her cargo to Hartshorn R. Thomas, and that the right to the said claim was then vested in Mary Thomas, his widow, and her children.

The board of commissioners before which these memorials were filed

examined them and the testimony adduced in support of the claim on the 18th November, 1823, and came to the conclusion, and so ordered, that the said claim *be allowed as valid against Spain* for the value of the vessel, for the necessary expenses incurred in defending the property, and for the loss sustained upon the cargo; but on the 1st of May, 1824, the said commissioners rescinded their previous decision, on the plea that the evidence was "not sufficient to establish the claim under the treaty."

Your petitioners allege that the commissioners clearly erred in not allowing the said claim, and that, too, without fault on the part of the claimant or claimants, whereby the government of the United States became liable to claimants in the said sum of \$11,732 44, which said sum is now due, and unjustly detained from your petitioners.

Your petitioners would represent that on the 19th day of April, 1852, they memorialized the Congress of the United States for relief, and on the 26th day of January, 1854, the Committee on Claims in the House of Representatives made the report which is hereto annexed, and prayed to be taken as a part of this petition, accompanied by the following bill:

A BILL for the relief of Sarah K. Jenks and the legal representatives of Hartshorn R. Thomas, in the matter of the brig Jane.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and required to pay, out of any moneys in the treasury not otherwise appropriated, the sum of two thousand five hundred and three dollars to Sarah K. Jenks, the widow of Jonathan Jenks, deceased, and the sum of two thousand one hundred and seventy-nine dollars, in equal parts, share and share alike, to the legal representatives of Hartshorn R. Thomas, deceased, namely: the sum of seven hundred and twenty-six dollars and thirty-four cents to Louis G. Thomas; the like sum of seven hundred and twenty-six dollars and thirty-three cents to Edward K. Thomas, and the like sum of seven hundred and twenty-six dollars and thirty-three cents to Joseph Shermer, guardian of the children of Samuel W. Thomas, deceased, amounting, in all, to the sum of four thousand six hundred and eighty-two dollars, the said payments to be a discharge in full for all liability of the United States for the loss of the brig Jane and her cargo, seized and destroyed by the Spanish authorities at Laguayra in the year eighteen hundred and twelve.

On the 22d day of July the said bill was debated and laid upon the table.

Your petitioners represent that they are the sole legal representatives of the said Hartshorn R. Thomas and Mary Thomas, both deceased, and as such are the sole owners of the said claim.

After due investigation and consideration in the premises, your petitioners pray your honorable Court to frame and report to Congress a bill for their relief, appropriating to petitioners the said sum of \$11,732 44. And, as in duty bound, your petitioners will ever pray.

SNETHEN & EVANS,

Attorneys for Claimants.

I, Louis G. Thomas, do solemnly swear that the facts as set forth in the foregoing petition are just and true, to the best of my knowledge and belief, so help me God.

LOUIS G. THOMAS.

Sworn to and subscribed before me, the undersigned authority, on this 18th day of July, 1855.

THOS. DONOHO, *J. P.*

COURT OF CLAIMS.

LOUIS G. THOMAS AND OTHERS *vs.* THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the Court, which is as follows :

This claim is founded on an alleged illegal seizure at Laguayra, by the Spanish authorities, in 1812, of the brig *Jane*, and on the treaty of 1819, between the United States and Spain.

The Court considering the decision of the board of commissioners mentioned in the petition to be a very important feature in the case, made a request to the Secretary of State for information on the subject. The information furnished by the department relative to the decision of the board will be hereinafter noticed.

The only question in this case which we have found it necessary to examine is, whether the final decision of the board of commissioners (which decision is described in the petition) is a bar to the claim ?

Previously to the treaty of the 22d of February, 1819, between the United States and Spain, which we shall presently notice more particularly, this claim for redress for the alleged illegal seizure and condemnation of the said brig by the Spanish authorities in South America could only have been preferred against the nation that had committed the injury, which nation was Spain, not the United States. Accordingly, we find that, in 1813 and 1814, the captain of the brig endeavored, at Laguayra, to obtain satisfaction from the Spanish authorities. But his endeavors being unsuccessful, he abandoned the pursuit, and returned to the United States. Nothing further appears to have been done as to the claim until after said treaty of 1819 between the United States and Spain, for the cession of the Floridas. By the 9th article of that treaty, all such claims of citizens of the United States against Spain as the claim described in the petition before us were renounced by the United States. The 11th article of said treaty, so far as it need be stated, is as follows : "The United States, exonerating Spain from all demands in future on account of the claims of their citizens, to which the renunciations herein contained extend, and considering them entirely cancelled, undertake to make satisfaction for the same to an amount not exceeding five millions of dollars. To ascertain the full amount and validity of those claims a commission, to consist of three commissioners, citizens of the United States, shall be appointed by the President, by and with the advice and consent of the Senate,

which commission shall meet at the city of Washington, and within the space of three 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 descriptions 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 discharge of their duties ; and, in case of the death, sickness, or necessary absence of any such commissioner, his place may be supplied by the appointment as aforesaid, or by the President of the United States, during the recess of the Senate, of another commissioner in his stead. The said commissioners shall be authorized to hear and examine, on oath, every question relative to the said claims, and to receive all suitable authentic testimony concerning the same. And the Spanish government shall furnish all such documents and elucidations as may be in their possession, for the adjustment of the said claims according to the principles of justice, the laws of nations, and the stipulations of the treaty between the two parties, of 27th October, 1795 ; the said documents to be specified, when demanded, at the instance of the said commissioners."—(8 Stat. at Large, 260.)

The commissioners, whose appointment was thus provided for, were afterwards appointed in conformity with the treaty ; and in June, 1821, the board was organized in the city of Washington. In January, 1822, according to the petition, the said Jonathan Jenks, the original owner of the claim, filed his memorial before said commissioners, demanding indemnity for the losses sustained by him in consequence of the seizure, detention, and final loss of his vessel, and injury to her cargo, by the Spanish authorities at Laguayra and Puerto Cabello. The petition further states that the board of commissioners before which these memorials were filed "examined them, and the testimony adduced in support of the claim, on the 18th of November, 1823, and came to the conclusion, and so ordered, that the said claim be allowed as valid against Spain for the value of the vessel, for the necessary expenses incurred in defending the property, and for the loss sustained upon the cargo ; but on the first of May, 1824, the said commissioners rescinded their previous decision, on the plea that the evidence was not sufficient to establish the claim under the treaty." That is the language of the petition relative to the decision of the commissioners. The statement on the subject, to which we have referred, received from the State Department, is as follows : "The record of the proceedings of the commissioners under the convention with Spain of 1819 has been examined, and it appears that the claim of Jonathan Jenks, growing out of the capture of the brig *Jane*, was duly presented to the board of commissioners, and was disallowed." This statement from the department, after mentioning a decision of the board in another case, and also the decision of another board, says : "The evidence of these decisions is derived from the minutes on the dockets of the several boards of commissioners ; but no document can be found, in either case, stating the principle on which the decision was made."

The objection of the petitioners to said decision of the board of commissioners against the claim is set out in the petition, and is as follows :

"Your petitioners allege that the commissioners clearly erred in not allowing the said claim, and that, too, without fault on the part of the claimant or claimants, whereby the government of the United States became liable to the claimants in the said sum of \$11,782 44, which sum is now due and unjustly detained from the petitioners."

The ground thus taken to avoid the decision of the board of commissioners is not tenable. The question whether the board erred or not, in their judgment in the case, is not for this Court, or any other court, to determine. The decision of the board must be taken to be correct. The circumstance stated in the petition, that the board had, in the first instance, made an order in favor of the claim, is unimportant. The case remained, after that order, under the control of the board, to be finally disposed of as, upon further reflection or information, they might think proper.

The final decision of the board against the claim was rendered by a tribunal specially provided for by the treaty for the adjudication of such claims, to which tribunal the original claimant had submitted the case for decision, and from which decision there is no appeal given to any other tribunal. The judgment of the board stands upon the same ground with the judgment of any judicial tribunal of exclusive jurisdiction.

The nature and effect of a judgment of this same board of commissioners, under the same treaty with Spain of 1819, have been examined and settled by the Supreme Court of the United States. Judge Story, in delivering the opinion of the court, uses the following language: "The object of the treaty was to invest the commissioners with full power and authority to receive, examine, and decide upon the *amount*, and *validity* of the asserted claims upon Spain for damages and injuries. Their decision, within the scope of this authority, is conclusive and final. If they pronounce the claim valid or invalid, if they ascertain the amount, their award in the premises is not re-examinable. The parties must abide by it, as the decree of a competent tribunal of exclusive jurisdiction. A rejected claim cannot be brought again under review in any judicial tribunal; an amount once fixed is a final ascertainment of the damages or injury. This is the obvious purport of the language of the treaty."—(*Comegys vs. Vasse*, 1 Peters' Rep., 193, 212.)

We are of opinion, for the reasons above given, and upon the authority cited, that said final decision of the board of commissioners, disallowing the claim now before us, is a complete bar to the present demand.

