36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 93.

# IN THE SENATE OF THE UNITED STATES.

FEBRUARY 28, 1860.—Ordered to be printed.

Mr. FOOTE made the following

# REPORT.

[To accompany Bill S. 230.]

The Committee on Claims, to whom were referred the cases of Letitia Humphreys and of Robert Harrison and other claimants, under the treaty of 1819 with Spain, together with voluminous documents in relation to said claims, have had the same under consideration, and, after a careful and patient reëxamination of the whole subject, have reached the same conclusion at which this committee arrived the first session of the last Congress, and adopt the report then made by this committee through the honorable Mr. Clarke, of New Hampshire, then a member of the committee, as presenting a succinct and fair view of the origin and nature of these claims, and which report is in the following words:

A.

*The Committee on Claims, to whom were referred the reports of the Court of Claims, in the cases of Letitia Humphreys, administratrix of Andrew Atkinson, deceased, and of Robert Harrison; and also the memorial of the said Harrison to Congress, praying, in behalf of himself and other claimants, the full and faithful execution of the 9th article of the treaty of 1819 with Spain, by the payment of the residue of the decrees made by the United States judges in their favor, report:*

That they have examined the facts and principles of law connected with these cases, with the care and mature deliberation which the importance of the principles and the magnitude of the aggregate amount involved seemed to require.

The cases referred belong to a class, all depending on the same principles and considerations arising under the last clause of the ninth article of the Florida treaty of 1819.

In order that the Senate may fully understand the decision of the Court of Claims on the cases reported, and the merits of the class of claims to which the cases referred belong, the committee deem it proper to give a succinct statement of their nature and origin.

In 1811, relations of peace and amity existed between the United States and Spain, under the treaty of 1795; but the relations between

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the United States and Great Britain, and between the latter power and Spain, were of such a character as to create apprehensions on the part of the United States that Great Britain would seize the provinces of East and West Florida, then a dependency of the crown of Spain; and the United States having long looked to a cession of those provinces as an indemnity for her just claims upon Spain, and being unwilling, from their geographical position, that any other power should possess them, and especially Great Britain, with whom we were then on the eve of war, Congress, on the 15th day of January, 1811, passed an act and joint resolution, by the former of which the President was authorized to take possession of the Floridas, "in case any arrangement has been, or shall be, made with the local authority of said territory for delivering up the possession of the same, or any part thereof, to the United States; *or* in the event of any attempt to occupy the said territory, or any part thereof, by any foreign government." (3 Stats. at Large, pp. 471, 472.) And for that purpose, the President was authorized by that act to employ any part of the naval and military forces of the United States; and $100,000 was appropriated for that object.

General George Matthews and Colonel John McKee were appointed military agents or commissioners of the United States, by the President, with secret instructions "to repair to that quarter with all possible expedition," for the purpose of carrying out the intention of the act of Congress, with authority, if necessary, to call to their aid the naval and military forces of the United States in that quarter of the Union, the commanders of which had been instructed to obey their orders. (American State Papers, vol. 3, Foreign Relations, p. 571.)

No surrender of that province was made by the governor, and the agent of the United States proceeded to take possession of the whole inhabited portion of East Florida, except the city of Saint Augustine, including Amelia island and the neutral port of Fernandina; and this possession, thus acquired, was forcibly maintained until about the middle of May, 1813, when the United States troops were withdrawn by command of General Pinckney.

As this occupation of East Florida by the American forces was strenuously and forcibly resisted by the Spanish authorities thereof, a feeling of great bitterness on the part of the invading forces was excited against the loyal Spanish inhabitants and officers; and an occupation of the province, which was only intended by Congress, in the condition of things found to exist, to be peaceful on the part of the United States, and voluntary on the part of Spain, was converted into a forcible occupation by the agent of the United States.

These injuries of 1812 and 1813, which were protested against by Spain, were in open violation of the law of nations and of the treaty of peace then existing between the two governments, and were so admitted to be by the United States; and their commissioner, General Matthews, was punished by dismission. (Am. State Papers, above cited.)

During the war between the United States and Great Britain, in 1814, West Florida was entered by General Jackson and the army

under his command, to expel the British and their Indian allies from Pensacola; and in 1818, the same officer again entered West Florida, in pursuit of the Indians, and St. Mark's and Pensacola were taken, and subsequently restored.

Both these last-named invasions of General Jackson and his army were also complained of by Spain as violations of her neutrality; but were justified, or sought to be excused, by the United States, on the ground of necessity; while no such ground was ever urged in justification of the invasion of East Florida, in 1812 and 1813.

It appears, from the correspondence between Mr. Adams and Mr. Onis, which led to the treaty of 1819, that *mutual indemnities* for all injuries were fully agreed upon *before General Jackson entered Florida in* 1818.—(American State Papers, Foreign Relations, vol. 4, pp. 465, 467, 475.)

For all these injuries, Spain earnestly demanded satisfaction; and when the treaty of 1819 was concluded, the followiug provision was inserted, and constitutes the last clause of the 9th article of that instrument, viz:

"The United States will cause *satisfaction* to be made for the injuries, if any, which, *by process of law*, shall be established to have been suffered by the Spanish officers and individual Spanish inhabitants by the late operations of the American army in Florida."—(Statutes at Large, volume 8, p. 260.)

"To carry into effect" this provision of the treaty, Congress passed the act of March 3, 1823, which is as follows:

"AN ACT to carry into effect the ninth article of the treaty concluded between the United States and Spain the twenty-second day of February, one thousand eight hundred and nineteen.

"SEC. 1. That the judges of the superior courts established at St. Augustine and Pensacola, in the Territory of Florida, respectively, shall be, and they are hereby, authorized and directed to receive and adjust all claims arising within their respective jurisdictions, of the inhabitants of said territory or their representatives, agreeably to the provisions of the ninth article of the treaty with Spain, by which the said Territory was ceded to the United States.

"SEC. 2. That in all cases in which said judge shall decide in favor of the claimants, the decisions, with the evidence on which they are founded, shall be, by the said judges, reported to the Secretary of the Treasury, who, on being satisfied that the same is just and equitable, within the provisions of the said treaty, shall pay the amount thereof to the person or persons in whose favor the same is adjudged, out of any money in the treasury not otherwise appropriated. Approved, March 3, 1823."—(3 Statutes at Large, p. 768.)

After the passage of the said act, the judges proceeded to adjust "claims arising within their respective jurisdictions," upon sworn petitions of the claimants and proofs taken, as in chancery or admiralty cases. The judge of West Florida made decisions or awards for injuries suffered from the invasion of 1814 in that province; and the judge of East Florida, in like manner, proceeded to receive and adjudge

claims for the injuries resulting from the invasion of 1812 and 1813 in that province.

Mr. Secretary Crawford, however, decided that the injuries of 1814 in West Florida were not embraced by the treaty—either from the supposed import of the word "late" in the English original, (but not in the Spanish,) and which was construed to be synonymous with *latest* or *last*, and therefore only applicable to the invasion of 1818, or because the invasion of West Florida in 1814, during our war with Great Britain, to expel the British forces and their Indian allies from neutral territory used to originate operations against the United States, was justified by the law of nations, and therefore was no injury, within the true meaning of the treaty of 1819. Both these reasons were urged against those claims.

When the decisions of the judge of East Florida, in favor of the claimants, for injuries resulting from the invasions of 1812 and 1813, were reported to the Treasury, Mr. Secretary Rush, the successor of Mr. Crawford, applied Mr. Crawford's decision to those claims, though the United States had never attempted to justify that invasion as authorized by the law of nations, as they did the invasions of 1814 and 1818 in West Florida, by rejecting them. The claimants for injuries in 1812 and 1813, therefore, petitioned Congress for relief against this erroneous construction of the treaty; and Congress, by the act of 26th June, 1834, overruled the decision of Mr. Secretary Rush, that the injuries of 1812 and 1813 were not within the provisions of the treaty of 1819, by the passage of the act of the 26th June, 1834, which is as follows:

"AN ACT for the relief of certain inhabitants of East Florida.

"*Be it enacted, &c.*, That the Secretary of the Treasury be, and he hereby is, authorized and directed to pay, out of any money in the treasury not otherwise appropriated, the amount awarded by the judge of the superior court at St. Augustine, in the Territory of Florida, under the authority of the 161st chapter of the acts of the 17th Congress, approved March 3, 1823, for losses occasioned in East Florida by the troops in the service of the United States, in the years 1812 and 1813, in all cases where the decision of the said judge shall be deemed by the Secretary of the Treasury to be just: *Provided,* That no award be paid except in the case of those who, at the time of suffering the loss, were actual subjects of the Spanish government: *And provided also,* That no award be paid for depredations committed in East Florida previous to the entrance into that province of the agent or troops of the United States.

"SEC. 2. *And be it further enacted,* That the judge of the superior court of St. Augustine be, and he hereby is, authorized to *receive, examine, and adjudge* all cases of claims for losses occasioned by the troops aforesaid, in 1812 and 1813, not heretofore presented to the said judge, or in which the evidence was withheld, *in consequence of the decision of the Secretary of the Treasury that such claims were not provided for by the treaty of February* 22, 1819, *between the governments of the United States and Spain: Provided,* That such claims be presented to

the said judge in the space of one year from the passage of this act: *And provided also,* That the authority herein given shall be subject to the restrictions created by the provisos to the preceding section."—(6 Statutes at Large, p. 569.)

At the time of the passage this act, claims for injuries in East Florida, in 1812 and 1813, amounting to $214,676, had been presented to the judge of East Florida, and decrees in favor of the claimants had been made for the sum of $44,338. The first section of this act made an appropriation for the payment of the awards which were made previous to its passage, accompanied by provisions prohibiting payment unless the "claimants were actual subjects of the Spanish government," and unless the depredations were committed after "the entrance into that province (East Florida) of the agent or troops of the United States," upon the ground that such claims would not be within the provisions of the treaty.

*This act made no other appropriation,* and no claim is now made under any of the awards provided for by the first section thereof, as no award of damages under the name of interest had been made before its passage.

The claims provided for by the second section of this act being claims not then presented to the judge, or, if presented, being cases in which proceedings had been suspended, "in consequence of the decision of the Secretary of the Treasury that such claims were not provided for by the treaty," were left to be paid out of the general appropriation made by the second section of the act of 3d March, 1823, passed to carry the treaty into effect, and have been so paid, as far as payments have been made.

Whenever the term of office of the judge of the superior court for the district of East Florida expired by death, resignation, or removal, the duty of adjudicating these claims was, with full sanction of the Secretary of the Treasury, performed by his judicial successor; and when Florida was admitted into the Union as a State, and the federal jurisdiction of the territorial judges was transferred to the United States judge, the duty of abjudicating such of these claims as yet remained to be decided was devolved upon the judge of the district court of the United States for the northern district of Florida by the act of 22d February, 1847.—(9 Statutes at Large, p. 130.)

A number of the claimants having failed to present their claims to the judge within the time limited by the 2d section of the act of 26th June, 1834, aforesaid, Congress, by an act approved on the 3d March, 1849, directed the United States judge for the northern district of Florida to "receive and adjudicate" their claims, and directed that they should be "settled," not adjudicated at the treasury, as other claims under the act of 26th June, 1834, with the following provisos:

"*Provided, however,* That the *petition* for the allowance of such claim shall be presented to said judge by the proper parties entitled to prefer the same within one year from the passage of this act: *And provided also,* That said parties shall, respectively, allege in such *petition,* and prove to said judge reasonable cause for such *petition* not having been presented within the time prescribed and enacted by said act of June 26, 1834."—(9 Statutes at Large, p. 788.)

After the passage of the act of June 26, 1834, recognizing the injuries of 1812 and 1813 to be within the provisions of the treaty, and requiring the judge of the superior court of St. Augustine to "receive, examine, and adjudge" the same, the Hon. Robert Raymond Reid, then the judge of the said court, proceeded to adjudicate the said claims, and to report his decisions to the Secretary of the Treasury, according to the provisions of the act of 3d March, 1823, passed to carry the said treaty into effect. After he retired from office, the same duties continued to be performed by his successor, the Hon. Isaac H. Bronson, until Florida was admitted into the Union as a State, when judge Bronson, having been appointed United States judge for the northern district of Florida, continued and closed the said duties. The mode of proceeding in these cases, prescribed by the judge, and sanctioned by the Treasury Department, was as follows:

"Each claimant presented his claim by petition, verified by oath, and alleging, as required by the rules prescribed by the court, the nature and extent of his losses, and the facts necessary to show that the claim was within the provisions of the treaty. The judge examined the witnesses when personally brought before him, and when their testimony was taken by deposition, he selected and instructed the commissioners, and propounded cross-interrogatories to the witnesses, as is shown by the report of the Court of Claims in the case of Humphreys, and by the records remaining on file in the Treasury Department.

"All the evidence was recorded, and a copy of it, and of the decree of the judge, when '*in favor of the claimants*,' was reported to the department for payment, as required by the act of 1823.

"In making up his awards or decrees, the judge allowed, as the just and proper measure of damages under the law of nations necessary to fulfil the stipulations of the treaty, the proved value of the property at the time of the injury or loss; and, by way of satisfaction for the further loss of the use, fruits, or profits of the property, whilst wrongfully deprived of them, and of the just satisfaction for them which the law of nations required; and, during the period that no provision of law existed for the presentation and payment of said claim, he added five per cent. interest, by way of damages, and as an equitable measure of damages, to the original value of the property, (being the legal rate of the country,) and made a formal decree that the United States pay the same to the claimants. The decrees thus made *in favor of the claimants* were, as before stated, reported to the Secretary of the Treasury for payment; when *against them*, they were deemed *final*, and were never reported to the Secretary. The report of the Secretary of the Treasury to the Senate shows that more than half the amount of the claims presented were thus finally disposed of by the judges—thus making the decision of the judges *against* claimants final and conclusive, whatever may have been the effect of decisions *in their favor*."

Judge Reid's reasons for allowing interest by way of damages, as reported to the Secretary of the Treasury, are as follows:

"I am required by the statute to receive, examine, and *adjudge* these claims for losses. In performing this duty, I have allowed, be-

cause it seemed just and equitable to allow it, *interest* upon the amount or value of the property ascertained to have been lost. The rate of interest existing in the province at that time (1812 and 1813) was five per cent., and this is the sum allowed in all cases. I am sensible that this allowance will swell considerably the amount to be paid to the claimants, but I do not perceive how it could be avoided. If we lose sight of the national character of one of the parties, and suppose two private persons engaged in a dispute about an injury to property, the tribunal to which resort is had, in adjusting the damages due by the one to the other, will consider the value of the property destroyed, in connection with the time for which the owner has been deprived of the use and enjoyment of his property. The first being ascertained in money, a compensation for the last may best be regulated by reverting to the rate of interest allowed by the law of the country where the wrong was done.—(Report of Court of Claims in Robert Harrison's case, p. 78.)

When these claims reached the treasury, they were subjected to the same scrutiny as claims which had never been adjudicated.* The Secretaries claimed the right to go fully into the merits of the claims upon the evidence reported, and called upon the judge for further evidence whenever they entertained a doubt. In regard to the damages decreed for the loss of the use and fruits of the property, it was rejected, in all instances, under the mere *usage* of the Treasury Department in reference to domestic pecuniary demands, without any reference to the treaty or the law of nations.

Secretary Woodbury's first decision, disallowing the damages decreed under the name of interest, was made on the 20th December, 1836, in the case of John Gianopoli, in which, in allowing the claim, he added the words, "with the exception of interest, which it is believed has not been allowed in claims similarly situated."—(1 *vol. Judicial Records, Treasury Department, folio* 145. *Letter of William L. Hodge, Acting Secretary of the Treasury, to Hon. Wm. A. Graham, dated June* 9, 1851. *Ex. Doc. No.* 68, 2*d sess.* 24*th Cong.*, *H. R ; Ex, Doc. No.* 98, 3*d sess.* 25*th Cong.*, *H. R.*)

Mr. Secretary Guthrie, in a letter to the Attorney General in relation to these claims, dated the 4th November, 1854, says:

"This latter part of these claims (the interest) awarded by the judges was first rejected by Mr. Secretary Woodbury, under '*the usage of the Treasury Department*,' in the case of the heirs of John Gianopoli, the sum allowed as the value of the property on which was paid on the 5th June, 1837, as shown by the accompanying papers; and the decision thus made *has continued to govern in these cases to the present time.*"—(*Report of the Court of Claims in Harrison's case, p.* 81.)

Secretaries Ewing, Forward, and Bibb, who acted on these claims after Mr. Woodbury, and followed his precedent in rejecting the part of the damages or satisfaction decreed by the judges under the name of interest, have all certified that they did so under the mere *usage* of

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*Report of Court of Claims in Robert Harrison's case, pp. 34, 35, 36, and 37.

the Treasury Department, and without any reference to the treaty or law of nations, and without any inquiry whether the payment of that part of the award of the judges was necessary to make the "satisfaction" stipulated by the treaty, and they all express the opinion that such payment is necessary to fulfil the stipulation of the treaty.—(See Report of the Court of Claims in Harrison's case, pp. 100 to 114; also the report of Judge Bibb, assistant Attorney General, to the Attorney General, from p. 81 to p. 109 of the same document; also the statement of Mr. McClintock Young, late chief clerk of the Treasury Department, from pages 34 to 37 of the same document.)

Mr. Secretary Walker referred the question of the claimants' right, under the treaty and law of nations, to this part of the damages decreed by the judges, to the Attorney General in 1849. An opinion was given in 1851 affirming that right, and declaring the inapplicability of *departmental usage* to *treaty cases*, but advising the Secretary to adhere to Mr. Woodbury's precedent, which had been followed by his successors in these cases, and leave the claimants to seek redress in Congress.

A similar reference was made by Mr. Secretary Guthrie, and a similar answer from the Attorney General given, with a recommendation that the whole class of claims be referred by the department to Congress.

In 1851, after the opinion of the Attorney General was given, recognizing the right of the claimants, under the treaty and law of nations, to the damages decreed under the name of interest, but advising an adherence to Mr. Woodbury's precedent of rejecting it under the usage of the department, and leave the claimants to seek relief in Congress, one of the claimants petitioned Congress for such further legislation as might be necessary to the full execution of the treaty, by the payment of that portion of the damages allowed by the judge under the name of interest, and rejected by the Secretary of the Treasury under the usage of his department. The memorial was referred to the Judiciary Committee of the Senate, and that committee reported that the acts already passed were intended, and were sufficient, to carry the treaty into full effect, and that "no additional legislation was necessary;" and this report was unanimously concurred in by the Senate.—(*Report of the Court of Claims in Harrison's case, pp.* 118, 119, 120.)

Having shown that the claims of the memorialists are within the treaty, and so declared by Congress, the next duty of the committee is to ascertain the extent of the "satisfaction" which the United States stipulate in the treaty shall be made for the injuries suffered by the Spanish inhabitants of Florida during the invasion by the American army.

The question as to what constitutes satisfaction in a case like the present is not a new one. It has often been decided, and was long since settled. The "satisfaction" to be made by the United States, in pursuance of the stipulation of the ninth article of the treaty of 1819, is a satisfaction for "injuries" suffered by the Spanish inhabitants of Florida from the acts of our army in 1812 and 1813. The term "satisfaction," when used to measure the compensation to be made for

injuries to property in violation of the law of nations, embraces the fullest measure of redress enjoined by the great international code designed to regulate the intercourse and settle the controversies of nations.—(See Wheaton on International Law, pp. 340, 341, 342, and 576; 1 vol. Kent's Com., p. 61; Vattel, book 2, ch. 18, sec. 324; Ib., book 3, ch. 11, sec. 185; Campbell's Grotius, vol. 2, book 2, ch. 17, p. 192.)

Satisfaction, when used in the sense of redress for injuries to property, consists in the value of the property taken or destroyed, and damages for its detention or the loss of its use until the time of payment. In the case of the Pacific Insurance Company *vs.* Conrad, 1 Baldwin, C. C. R., p. 138, Judge Baldwin says: "The value of the property taken, with interest, from the time of the taking down, to the time of the trial, is generally considered as the extent of the damages sustained." Rutherford, book 1, ch. 17, sec. 5, pp. 390, 391, lays down the rule in the following words: "In estimating the damage which any one has sustained when such things as he has a perfect right to are taken from him, or withholden, or intercepted, we are to consider not only the value of the thing itself, but the value likewise of the fruits or profits that might have arisen from it. He who is the owner of a thing, is likewise the owner of such fruits or profits; so that it is as properly a damage to be deprived of them, as to be deprived of the thing itself."

In the case of the Amiable Nancy, 3 Wheaton, 560, the Supreme Court of the United States says: "It was, after strict consideration, held, that the prime cost or value of the property lost, at the time of the loss, and, in case of injury, the diminution in value by reason of the injury, with *interest* upon such value, afforded the true measure of assessing the damages." In the case of the Lively, 1 Gallison, R. 315, Judge Story says: "The proper measure of damages, in cases of illegal capture, is the prime value, and interest to the day of the judgment."

The rule as to the measure of satisfaction is the same in the prize courts of Great Britain.—(Case of the Acteon, 2 Dodson, p. 84.)

Prize courts are governed by the laws and usages of nations, (1 Kent's Com., pp. 19, 68, 69, 70; Wheat. Int. Law, p. 47; Adeline and Cargo, 9 Cranch, p. 191, also 242.) Wheaton on International Law, p. 341, says: "If a nation has taken possession of what belongs to another, if it refuses to pay a debt, or repair an injury, or to give adequate satisfaction for it, the latter may seize something of the former, and apply it to its own advantage until it obtains payment of what is due, together *with interest and damages.*"

The civil and common law are governed by the same rule in measuring damages in cases of conversion or trespass. The value of the property with interest, *by way of damages,* from the time of the trespass or conversion, is the rule of both.—(Sedgwick on Measure of Damages, pp. 549, 550, 551; 7 Wend., 354.) For the rule of the civil law, see Domat., vol. 1, Lib. 3, Tit. 5.

The rule by which damages, in the name of interest, are allowed in cases like the present is supported by an unbroken current of authorities, derived as well from writers on the law of nations as from

the decisions of the highest courts in Great Britain and the United States; and the authorities and precedents drawn from these sources have been invariably insisted on by the government of the United States, when seeking redress from other nations for injuries which our citizens have sustained at their hands. Our government has demanded, and uniformly obtained, the fullest measure of indemnity, interest as well as principal being on all occasions exacted. In these cases the United States are solemnly bound by the treaty to Spain that satisfaction should be made for the injuries suffered by her subjects from the operations of our army. What was meant by the term satisfaction, taken in connection with the rule of the law of nations known and understood by both parties, and always acted upon by the United States in seeking indemnity for injuries due to their own citizens at the hands of others? Did it mean that those who suffered injuries should be indemnified; that they should be paid the amount of the losses they had sustained? Or did it mean that they should be paid a part of them—the principal value of the things lost, without compensation for the deprivation of the use? Would such part payment make a man whole? Would it be a satisfaction? Would a man who had been injured by the destruction of his cattle, or the burning of his house, be satisfied or indemnified by receiving, twenty years afterwards, the mere value of his property at the time it was destroyed? Was it no loss to be deprived of the use of his cattle during twenty years? Was there no damage in being deprived of the shelter of his house during the same period? To satisfy or make a man whole, under such circumstances, he must be paid immediately on the happening of the injury, so that, by using the money thus received, he can at once replace his cattle or rebuild his house; or, otherwise, he must be allowed damages for being deprived of the use of his cattle or the shelter of his house; and such damages are generally ascertained by computing interest, at the usual rate, on the value of the property from the time of the injury until payment is made to the owner. This, as has been stated already, is the rule of the law of nations; it is also the rule of the Supreme Court of the United States, and of the courts, as the committee believe, of every State in the Union. In support of this position, a host of authorities might be cited; but it is deemed unnecessary to multiply cases to sustain a usage believed to be nearly, if not quite, universal in reference to cases like the present.

It may be proper, however, to refer to the practice of our own government, and point out some of the cases in which interest, in addition to the value of the property injured or destroyed, has been claimed and allowed in behalf of our own citizens.

The United States, in the construction of their treaties, and in all their intercourse with other nations, have uniformly insisted upon and sanctioned the measure of redress decreed by the Florida judges in these cases, as affording the lowest measure of satisfaction for property taken or destroyed in violation of treaties, or of the laws and usages of nations.—(Vide opinion of Mr. Wirt, Attorney General, printed Opinions, pp. 568, 569, 570, 571; letter of Mr. Clay, Secretary of State, to Mr. Vaughan, British minister, of the 15th April, 1826; Wheaton's

Life of Wm. Pinckney, pp. 196, 198, 265, (note,) 371 ; American State Papers, foreign relations, vol. 2, pp. 119, 120, 377, 388, 283 ; Ex. Doc. No. 32, 1st sess. 25th Congress, Ho. Reps., p. 249 ; Ex. Doc. Ho. Reps., 2d session 27th Congress, vol. 5, doc. 291, p. 50 ; American State Papers, foreign relations, vol. 4, p. 639 ; Elliott's Diplomatic Code, vol. 2, pp. 625, 605.)

These citations will show that interest, in addition to the value of the property illegally taken, was claimed and allowed under the 7th article of the treaty of 1794 with Great Rritain, (8th Statutes at Large, p. 119;) under the word "losses," simply, in the 21st article of the treaty of 1795, with Spain, (8th Statutes at Large, p. 150 ;) under the words "just indemnification for private property carried away," in the convention of 1818, between the United States and Great Britain, (8th Statutes at Large, p. 249 ;) under the law of nations, by Brazil, without any treaty stipulations ; under the words "injuries to property," the same words employed in the 9th article of the Florida treaty, in the convention of the 11th April, 1839, between the United States and Mexico, (8th Statutes at Large, p. 526;) under the 14th article of the treaty of 2d February, 1848, between the United States and Mexico, (records of the board of commissioners, on file in the State Department.) The indemnity in this case was paid by the United States to their own citizens in behalf of Mexico, in consideration of the cession of California and New Mexico.

These authorities also show that the United States, in their negotiations with other nations, have recognized no other rule of satisfaction for injury to property, in violation of the laws of nations, than that decreed by the Florida judges in these cases; and that whenever they have been able to obtain a treaty stipulation for "indemnification," for satisfaction for "losses," for satisfaction for "injury to property," or in any form of language implying compensation or satisfaction for injury to property in violation of treaty stipulations or of the laws of nations, they have uniformly claimed and received, or paid out of their own treasury, the same measure of satisfaction.

Under the treaty of Ghent, between the United States and Great Britain, a difference arose, which was referred to the arbitrament of the Emperor of Russia, who decided that the United States were entitled "to a just indemnification from Great Britain for all private property carried away by the British forces." The members of the joint commission, Messrs. Langdon Cheves and Jackson, differed as to the measure of damages. Mr. Cheves insisted on interest from the time of taking the property, in addition to its value, as the measure of damages. He said the claim was not for interest, *eo nomine*, but adopted as a mitigated rule of damages or compensation, founded on the pecuniary value of the property withheld ; and that in such cases the common law and civil law both allowed reparation or compensation for *the loss of the use* of the property withheld from the commencement of the tortious detention. The rule of the public law, he said, was the same; and that, if the property captured and taken away in February, 1815, were returned now uninjured, it would not repair the loss sustained by the taking away and detention. The claimant would still be without indemnity for the *loss of the use* of his property for ten

years, which was nearly equivalent to the original value of the principal thing. Mr. Wirt sustained the rule as stated by Mr. Cheves. (Opinions of Attorney General, vol. 1, p. 499, of May 17, 1826.) Mr. Clay, in a letter dated April 15, 1826, to the British minister, Mr. Vaughan, declared "that interest was a just component part of the indemnification which the convention stipulated." This rule was finally recognized by the British government, though the amount paid in gross was something less than the interest would have been if computed at the ordinary rate.

In the negotiations between the United States and Great Britain, in relation to the cases of the "Encomium" and "Comet," Mr. Stevenson, the American minister, under the instructions of the State Department, laid down the following propositions, which were fully admitted by Lord Palmerston. These propositions, it will be seen, relate to the measure of damages proper to be allowed for the taking and detention, or destruction of property, in several distinct points of view.

1. "That if a duty to be performed be not the payment of money, but the performance of some collateral act, that is the restitution of property, (other than money,) then, in lieu of interest, damages are awarded, and these damages, together with the property to be returned, are to constitute the indemnity of the sufferer for the loss he may have sustained by reason of the non-performance of this duty."

2. "That the measure of these damages will be the probable fruits or profits which might have been derived from the property or thing detained, during the period that the duty of restoring it was not performed."

3. "That if restitution of the property cannot be made, by reason of its loss, or from any other cause, then its value may be estimated in money, and this equivalent will stand in the place of the thing itself; and when reduced to a pecuniary standard, interest upon the equivalent is allowed in lieu of the fruits and profits, and flows, as in other cases of money not paid, as the necessary consequence of the non-performance of the duty of restitution."

4. "That, although under the laws of Great Britain and the United States, it is admitted that, in transactions between individuals, interest *eo nomine* would not be due on unliquidated demands of a nature purely and exclusively pecuniary, except from the period of their liquidation; yet it is equally true that, by those laws, when reparation is sought for loss of property, (in cases like the present,) the value of the property, together with an equivalent for the use of it, from the commencement of an illegal detention, *is always allowed.*"

5. "That these are principles sanctioned as well by the law of nations as those of the civil and common law, by the authority of precedents between Great Britain and the United States, a few leading references will satisfactorily show. To these the undersigned begs leave to refer Lord Palmerston."

Mr. Stevenson then cites Grotius, as cited in support of the Florida claims. Also, 2d vol. Campbell's Grotius, p. 360; vol. 6, sec. 1244. Cites Domat, to show that fruits and profits were allowed by the civil

law as cited by Judge Bronson. Cites Pothier, Code Napoleon, Blackstone, Vesey's R., 2 Brown's C.C., and says:

"It (interest) has, moreover, *never been refused* in claims like the present, where a money equivalent has been substituted as a compensation for property wrongfully withheld, and for which the party had agreed to make reparation."

Mr. Stevenson then shows that interest was allowed under the 6th and 7th articles of Jay's treaty in 1794, and refers to the opinion of Sir John Nicoll, one of the British commissioners, under the 7th article of said treaty; also, to the decision of Sir William Scott, in the case of the "Acteon," cited by Judge Bronson, and proceeds to say that "the general doctrine, then, is, that he who withholds what he ought to return, does an injury for which he is bound to indemnify the sufferer; that the proper measure of indemnification is the thing which is withheld, together with its reasonable fruits or profits accruing during the period that it is withheld; that if, however, restitution of the property cannot be had, justice finds its compensation, or its value as an equivalent, and interest on it is resorted to as the best standard to ascertain the reasonable profits of money."

Having thus shown that the "satisfaction" stipulated in the treaty required that damages or interest for the detention of the property, or loss of its use, should be added to its original value, as well by the constant and uniform practice of our own government, as by the rules of the law of nations, and of the common and civil law, it follows as a necessary and unavoidable consequence, that it was the duty of the Secretary of the Treasury to pay the amounts awarded to the memorialists, and other claimants of the same class, by the Florida judges, in full, original value and interest. The memorialists, and all other claimants of the same class, had as just a right to the damages awarded by the judges for the loss of the use of the property which had been destroyed or carried away by our troops, as to the original value of the said property; and the injustice of refusing to pay the latter would have been in no respect greater than was the injustice of refusing to pay the former; and that damages for the injury done to the claimants by the loss of the use and enjoyment of the property, during the many years that elapsed before its original value was repaid, are, under the law and usages of nations, as well as by the rules of common and civil law, as much a part of the satisfaction contemplated by the treaty, as was the value of the property destroyed.

The sums due to these claimants, and awarded to them, as damages for the deprivation of the use of their property, have not been paid, solely in consequence of a decision of Mr. Woodbury, Secretary of the Treasury, made under a departmental usage in reference to domestic pecuniary demands.

That a treaty, being a contract between two independent nations, is to be controlled in its construction, not by the local usages of either, but by the universal rules of the international code, is too clear for argument. The committee believe that Mr. Woodbury would have taken this view of his duty in the premises, if it had been presented to his attention. While the decision of Mr. Woodbury has not been reversed, the right of these claimants under the treaty to the pay-

ment of the awards of damage, under the name of interest, has not been denied by any Secretary of the Treasury who has acted upon the awards of the judges, or any Attorney General, since Mr. Woodbury's time, but has been expressly admitted by Secretaries Spencer, Bibb, Corwin, and Forward, and by Attorneys General Crittenden and Cushing.

The Court of Claims, in deciding upon the cases of the claimants, also seem to admit their rights under the treaty, although regarding them as without remedy under the acts of Congress passed to give effect to the treaty, construed as those acts are by the Court of Claims, so as to give the Secretary of the Treasury an unlimited power to revise and reduce awards made in favor of individuals by the Florida judges. And that there is no appeal from the Secretary of the Treasury to any judicial tribunal, is settled by the opinion of the Supreme Court of the United States.

The claimants are now, therefore, before the tribunal of Congress, which is uncontrolled by departmental usages or decisions, or by prior legislation, and which is now called upon to do justice, and cause the stipulations of the treaty of 1819 to be carried into effect.

If that treaty requires that the claimants should be indemnified for the loss of the use of their property, as well as for the loss of the original value of their property, the duty of this government to make such indemnification is not impaired by the erroneous and inadvertent decision of one of its executive officers. This government can never set up against the reclamations of Spain an adjudication by the Treasury Department, manifestly in violation of the law of nations. In the case of the United States *vs.* The Schooner Peggy, 1 Cranch. 103, Chief Justice Marshall, in confirmation of this principle, said: "Whatever the decision of the court may be, *the claim upon the nation, if unsatisfied, may still be asserted.*"

It has been much controverted, in the history of these cases, whether the decisions of the Florida judges were judicial and final; and if not, to what extent a revising power was intended to be conferred upon the Secretary of the Treasury, by the acts of Congress relating to the subject. The committee have not regarded it as necessary to enter into these controversies. It is sufficient that the original value of the property belonging to the claimants, for the destruction of which they are entitled to indemnity, has been settled by tribunals to which that duty was assigned by this government; that that original value has been admitted and paid at the treasury, after a careful revisal, with a deduction so slight that the substantial correctness of the decisions in Florida is not impeached, and that the only question which now remains relates to the duty of indemnifying the claimants for the loss of the use of their property. This duty, independently of the decisions of the Florida judges, your committee, for the reasons hereinbefore given, regard as entirely clear.

The amount to be paid, if the views of the committee are correct, is large; but this cannot alter their substantial justice nor discharge the duty. If it is unjust, and in violation of the national faith, to withhold the payment, the magnitude and evil consequences of this injustice and violation of national faith, and the hardships which result

from them to individuals, are augmented in precise proportion to the amount withheld.

It is the interest of the United States, as a commercial nation, with property exposed to violence in every part of the world, to resist any change or relaxation of the rule of public law, which prescribes, as the measure of indemnification for injuries to property, the restoration of its original value, together with compensation for the loss of its use. This government, which has always heretofore insisted upon this rule, cannot insist upon it hereafter, as against others, if it shall finally decline to act upon the rule in these cases.

The committee, therefore, report a bill, requiring the payment of that portion of the damages awarded by the judges, under the name of interest, so far as the original value awarded by the said judges has been approved at the Treasury Department, and recommend its passage.

The committee also append the argument of Mr. Webster in relation to the validity of these claims for interest, under the treaty of 1819, and the acts of Congress of 1823 and of 1834.

B.

*Opinion of the Hon. Daniel Webster on the Florida claims arising under the ninth article of the treaty of* 1819, *between the United States and Spain.*

The questions propounded by Mr. Secretary Walker, upon which the following opinion of Mr. Webster was given, are as follows:

1. "Whether the provisions of the treaty require the losses or injuries for which satisfaction is provided, to be established judicially? And if so, whether decrees of the judges as to the amount or extent of said losses or injuries—as to cases within the provisions of the treaty—are final?

2. "Whether the measure or rate of satisfaction adopted and applied by the judges in these cases, namely, to add to the value of the property, at the time of its loss, interest as a compensation for the loss or deprivation of its use, is or is not in accordance with the laws and usages of nations, as the proper rule of redress for such injuries, and can be allowed and paid by this Department under the acts of Congress applicable to this subject?"

OPINION.

It appears to me that great misconception has prevailed respecting the true construction of the ninth article of the treaty with Spain of 1819, and of the two acts of Congress passed for the purpose of carrying the provisions of that article into effect.

Before the date of the treaty, and while Florida yet belonged to Spain, that is to say, in the years 1812, 1813, and 1818, inroads were made in Florida by certain troops of the United States, and injuries and excesses committed on the inhabitants.

Although Spain was now about to cede the whole territory to the United States, yet her Government felt it to be its duty to cause a stipulation to be contained in the treaty of cession providing satisfaction for these injuries, and full indemnification for the sufferers.

Instead of a joint commission, or mutual arbitration, to ascertain these injuries, and adjudge the proper compensation, the contracting parties agreed that this duty should be performed by a judicial tribunal. There was good reason for this. The injuries were local. They were committed on the property, real and personal, of the inhabitants. The parties were all in Florida, and the proofs all in Florida. Judicial courts were now about to be established in Florida, under the authority of the United States; and nothing could be more just or expedient, than that to these courts, sitting in the Territory, should be assigned the duty of inquiring into these cases, and establishing the right and the amount of indemnification where such right was proved. The ninth article of the treaty provided, therefore, that "The United States will cause satisfaction to be made for the injuries, if any, which, by process of law, shall be established to have been suffered by the Spanish officers, and individual Spanish inhabitants, by the late operations of the American army in Florida."

At the commencement of any discussion of the questions arising in this case, some propositions must be received and admitted as undoubted truths.

I. The first is, that a treaty is the supreme law of the land. It can neither be limited, nor restrained, nor modified, nor altered. It stands on the ground of national contract, and is declared by the Constitution to be the supreme law of the land; and this gives it a character higher than any act of ordinary legislation. It enjoys an immunity from the operation and effects of all such legislation.

From this acknowledged truth, there results a rule of construction, of very great importance, and which is to be applied to all laws passed for the professed purpose of carrying treaty stipulations into effect; and that is, that such laws must be so construed as to conform to the provisions of the treaty, and give them full effect, and not so as to thwart those provisions and embarrass their operation and application by imposing new limitations or conditions, or by any other means. The advantages secured by a treaty stipulation to those for whose benefit it was entered into, cannot be abridged or curtailed by any law passed for executing the treaty. The treaty and the law must be made to stand together, where they can and so far as they can; and if, after all, there be found an irreconcilable inconsistency, the law must give way to the treaty.

II. A second general proposition, equally certain and well established, is, that the terms and the language used in a treaty, are always to be interpreted according to the laws of nations, and not according to any municipal code. This rule is of universal application. When two nations speak to each other, they use the language of nations. Their intercourse is regulated, and their mutual agreements and obligations are to be interpreted by that code only, which we usually denominate the public law of the world. This public law is not one thing at Rome, another at London, and a third at Wash-

ington. It is the same in all civilized States; everywhere speaking with the same voice and the same authority.

Guided by these elementary rules, let us examine the treaty and the laws.

The words of the treaty are plain: "The United States will cause satisfaction to be made for the injuries, if any, which, by process of law, shall be established to have been suffered by the Spanish officers, and individual Spanish inhabitants, by the late operations of the American army in Florida."

The terms "process of law" are the terms usually employed to describe judicial proceedings. They are exactly equivalent to the phrase "due course of law," or judgment of law.

They imply parties, a case, a hearing, a trial, and a judgment, or decision. This is their interpretation in every book of authority from Magna Charta down; and it is precisely the sense in which the words are used in the fifth article of the amendments to the Constitution of the United States. In that article it is declared that "no person shall be deprived of life, liberty, or property without due process of law." That is, without hearing, trial, and regular judgment.

"Process of law," as the words are used in the treaty, mean any kind of judicial proceedings, suited to the case. It may be common law process, equity process, or admiralty process, as the case may require. But whatever be the particular form of the proceeding, it must be a judicial proceeding; a proceeding which involves a hearing, a trial, and a judgment.

The treaty acknowledges that there are, or may be, persons who have suffered injuries, by the operations of the American army in Florida; and it promises satisfaction, to all such persons, when those injuries shall have been established by process of law.

To establish an injury by process of law, is to prove that injury before some competent judicial tribunal; to cause its character, and its amount, to be ascertained and fixed, and judgment thereon pronounced and declared. And this judgment, supposing it always to be rendered by a judicial tribunal acting within its jurisdiction, cannot be vacated, annulled, reversed, or altered, except by some higher appellate power, itself proceeding, also, by due process of law.

Two consequences follow from these premises:

I. No one can claim any compensation, or satisfaction, under this clause of the treaty, who cannot establish the fact of an injury, and fix its amount, by regular judicial proceeding and judgment.

II. Any one who has established the fact of an injury, and the just measure of satisfaction, by regular legal proceedings and judgment, cannot be deprived of that satisfaction, or any part of it, by the superinduced authority of a mere executive officer, or political functionary.

That would be in the very teeth of the treaty. It might just as well be said, that under this clause, an executive officer, or a political functionary, might be authorized to decide on the case of an alleged injury, and the satisfaction justly due, if any, originally, and in the first instance, without any reference whatever to a hearing, trial, or judgment by process of law. For if that which the treaty says shall be "established by process of law" may be enlarged, diminished,

changed, or altered by the mere discretion of an individual, then it is evident, this particular provision of the treaty becomes a dead letter; and the whole clause means no more, than that satisfaction shall be made for injuries, in any way that the government may see fit to provide; and that all cases may be disposed of, by executive agents or officers, without hearing, trial, or judgment, if they so see fit; in other words, without "process of law."

The mode of ascertaining and establishing the injury is as much a part of the treaty as the obligation to make satisfaction for it. It is an important, essential, substantial part of the stipulation. It would be no more a violation of good faith, on the part of the Government of the United States, to refuse to make any satisfaction at all, than it would to refuse that particular satisfaction which it has promised by the treaty. The parties in interest, have a right to demand, that they shall have an opportunity of establishing the injuries done them, and seeking satisfaction for those injuries, in the mode expressly stipulated in the treaty; and to reject that mode, and to adopt another, without their consent, would be a flagrant injustice, and an outrage on public faith. All this appears to me to be too plain to require further discussion.

If any authority be required to show the settled meaning of the terms "process of law," reference may be had to 3d Story's Commentaries on the Constitution, sections 1782–83, pages 660, 661. 2d Kent's Commentaries, 6th edition, pages 12, 13, note b. Baldwin's Views, page 137. Tucker's Blackstone, vol. 1, part 1, appendix, p. 203. Taylor *vs.* Porter and Ford, 4 Hill's New York Reps. p. 140. 19 Wendall's Rep. p. 676.

We come next to consider the acts which have been passed by Congress for carrying this part of the treaty into effect.

The first act was passed on the 3d day of March, 1823. The second on the 26th of June, 1834.

These acts, with their titles, are set forth and recited in the case.

These acts, or laws, were enacted in *pari materia;* the latter refers to the former, and extends its provisions. They are, therefore, to be considered together, and such a construction if practicable, given to them, as shall produce a harmonious result. And, I have already said, that they must be so construed as to carry the treaty, in its plain and just sense, into full and complete operation; not so as to modify or alter it; not so as to embarrass and hamper its provisions; not so as to deprive the parties interested in its provisions of any of the advantages or benefits intended for them.

The principal difficulty arises from the second section of the first act; the words of which, are:

"That, in all cases in which said judges shall decide in favor of the claimants, the decisions, with the evidence on which they are founded, shall be by the said judges, reported to the Secretary of the Treasury, who, on being satisfied that the same is (are) just and equitable, within the provisions of the said treaty, shall pay the amount thereof, to the person or persons in whose favor the same is adjudged, out of any money in the Treasury not otherwise appropriated."

According to the case stated, it would appear that, under the supposed authority of this section, the Secretary assumed and exercised a

full appellate power over the judgments and decrees of the courts, reëxamining the decrees on their general merits, and on the whole evidence, and reducing and altering them at his own unlimited discretion; and, especially, that he struck out interest in all cases in which the courts had allowed it, as being no just part of the satisfaction intended by the treaty.

Such a construction of this section as would confer this power on the Secretary of the Treasury cannot be received and enforced, in my judgment, without overturning the plainest principles of constitutional and public law. If the section cannot be made to bear another construction, then it must be wholly rejected as being inconsistent with the treaty; and, therefore, repugnant to the Constitution of the United States.

By the treaty, the injury of the suffering party is to be *established* by process of law. It is absurd to say that this provision would be satisfied by a decision of the Secretary of the Treasury. Such a decision is no process of law.

But there is a construction which may be given to this second section, without violence, which will make it sensible, proper, and quite consistent with that clause of the treaty which it was the object of the whole act to carry into effect.

The courts before whom these claims were brought were courts of limited jurisdiction. They were courts, they were judicial tribunals; their proceedings were by process of law. Nevertheless, they were tribunals of a specific and limited, and not of a general jurisdiction.

The act of Congress declared, in the first section:

"That the judges of the superior courts, established at St. Augustine and Pensacola, in the Territory of Florida, respectively, shall be, and they are hereby, authorized and directed to receive and *adjust* all claims arising within their respective jurisdictions, of the inhabitants of said territory, or their representatives, agreeably to the provisions of the ninth article of the treaty with Spain, by which the said territory was ceded to the United States."

I may remark, in passing, that the word "adjust" in this section is either a clerical error for "adjudge," or, if the word were really "adjust," the meaning evidently was the same as "adjudge;" because, in the following section, the act says that the Secretary of the Treasury, on being satisfied, &c., shall pay the amount thereof to the person or persons in whose favor the same is "*adjudged.*"

I may remark, further, that it is quite frivolous to contend that the treaty required a judicial trial only for the purpose of proving the fact of injury, and that the amount of satisfaction may still be left to be fixed by an executive officer. To establish an injury or wrong, done by one party and suffered by another, by process of law, is to ascertain and fix the amount of the injury, as well as the fact of its having been committed. No other sense can be given to the word; and so Congress understood it, for the law provides that the courts shall receive and adjust (adjudge) the claims, and decide thereon, and that the *amount* by them *adjudged*, the Secretary of the Treasury being satisfied, &c., shall be paid out of any money in the treasury not otherwise appropriated; so that the whole question comes again to this: What is the

extent of authority which the second section of the act gave, or could give, to the Secretary of the Treasury over the decrees or judgments of the courts?

These courts, as I have said, were courts of limited jurisdiction; but, like other such courts, they must judge for themselves, in the first instance, of the extent of their own jurisdiction. When a case is brought before them, they must decide whether it is a case to which their authority extends; and, as they decide this necessarily preliminary question, so they will, or will not, proceed to hear and decide the cause.

But their decision on the extent of their own jurisdiction may be inquired into and examined: First, by a court of appellate jurisdiction, if any such be established by law. Second, by any party called to act on the case, and whose duty it is to carry all lawful decisions of the court into execution. In such a case it is evident that the party acts at his peril, and he can judge of nothing but the very question of jurisdiction.

If a sheriff be called on to serve process, he may, for his own safety, inquire whether the court from which the process issued had jurisdiction in the case, so as that he will be justified in obeying its orders; but he cannot inquire into the correctness of the judgment on which the process issued. So, if an officer be required to collect a tax, he must first know, or be able to see, whether the tax has been levied or assessed by competent authority.

If a disbursing officer be required to pay money, he must, in like manner, take care to be satisfied that the authority requiring the payment was competent to make the requisition; but he cannot judge of the merits or demerits of the claim on which the allowance was made, and payment demanded, if it be the case of a private claim, nor of the propriety or impropriety of the decision, if the case be of a public nature. It is enough for him to see that the command comes from lawful authority, and he needs to look no further.

Now this, I suppose, is the whole authority which the act of Congress intended to give, as it is most clearly all that it could give, to the Secretary of the Treasury in regard to the judgments of these courts. The phraseology, it is true, is not very accurate. The words are, that the Secretary of the Treasury, on being satisfied that the decision of the court is "just and equitable, within the provisions of the treaty," shall pay the amount thereof.

This I understand to mean no more than if the words had been, that the Secretary of the Treasury, on being satisfied that the decision is justly and equitably within the treaty, shall pay the amount.

To be "justly and equitably" within the treaty, is to be within the treaty. And if the Secretary of the Treasury finds, on looking at the proceedings, that the case was one within the treaty; that is, that it was the case of an injury committed in Florida, on Spanish officers or individual Spanish inhabitants, by the army of the United States, then he is to pay the amount adjudged.

This, in my opinion, is the entire extent of his authority of supervision. He has no right whatever to open the judgment, examine the merits of the case, weigh the evidence, and reform the judicial decision. It is preposterous to say that, when the Secretary of the

Treasury exercises this supposed power, and reverses the judgment of the courts, the injury of the party complaining has been "*established*" by "process of law," according to the solemn stipulations of the treaty.

I see nothing in the second act materially affecting the remarks which I have made on the first. That act had two objects, connected with one subject.

The court in East Florida had allowed certain claims for depredations committed as early as in the years 1812 and 1813, and other claims of the same description were known to exist. The Secretary of the Treasury had rejected or reversed all judgments founded on such claims, they not being, in his opinion, within the treaty.

The act of 1834, provides that the amount of the judgments in these cases, already rendered, should be paid as judgments in other cases; and that claims of this class, not as yet decided and adjudged, should be received, examined, and adjudged in like manner as the cases arising in 1818, and subject to provisos which confirm, strongly, the view I have taken of the first act.

The evident object, and all the object, of the act of 1834, was to place claims for injuries in 1812 and 1813 on the same footing with those for like injuries in 1818.

This act was passed, not as making any new or independent provision for claims, but simply for the purpose of declaring the sense of Congress, that the injuries committed in the years 1812 and 1813 are within the treaty, confirming thus, the opinion of the court, and reversing that of the Secretary of the Treasury. This point is therefore now settled.

It appears that the Secretary of the Treasury, in the exercise of his supposed or assumed appellate power, struck out interest in all cases in which it formed a part of the amount adjudged by the court. If the opinions already expressed be well founded, the Secretary could lawfully exercise no such power. The courts adopted, and had a right to adopt, their own rule for assessing damages and awarding amounts in the cases before them. If they saw fit to allow interest, it was an exercise of their judicial power with which the Secretary could not interfere.

In such a case, the claim for interest was *established by process of law*, as much as the claim for the original injury. It was *res judica*. It had become a judgment of a competent, and the only competent, tribunal; and the Secretary could not disturb it, by rejecting any part, any more than by overthrowing the whole. But as this is an important question, I propose to consider it on principle, and independent of the judicial decision in a particular case.

A vague notion has been prevalent, and the expression of it has often been repeated, that the government of the United States never pays interest. This is not at all correct, in point of fact. Interest has been allowed to claimants by the acts of Congress in almost innumerable instances.

But if such a rule did exist, it would not effect this case in the slightest degree. Nothing more can be understood from any such rule, than that in matters of account, or on deferred debts, claims, or

demands, the Treasury Department does not allow interest. This proceeds on the presumption that accounts will be promptly rendered, and all claims and debts presented and paid when due.

But in cases, such as I am now considering, interest is allowed, not as interest in its ordinary sense, that is to say, as augmentation, running and growing on a fixed sum. It is regarded merely as a part or element in the loss or injury, or as a just mode of fixing the amount of damages.

An individual has suffered a wrong, a loss and injury inflicted on his property, for which the government is liable, and for which it feels bound to provide him redress. But that redress cannot, in many cases, be instantaneous or immediate. Before it can be possibly obtained in the appointed course, much time is consumed, much personal attention demanded, and often heavy expenses incurred. These are all direct and immediate consequences of the original loss or injury; they form a part of it, and in all justice and equity enhance the just claim for indemnity.

Different tribunals deal with these portions of the loss and injury, in different ways, all of them being reasonable in themselves. One thinks it just to make specific allowances for the loss of use of capital, and for time, expenses, and charges; another, as a simple mode, makes one allowance to cover them all, under the name of interest, and adds this to the amount of the original loss, as proved; a third combines all parts of the compensation together, forms one aggregate, and awards a round sum, or sum in gross for the whole. It is in the discretion of any tribunal, called on to make satisfaction for a loss or an injury, to adopt either of these modes.

But the importance of this question calls on me to go further; and I maintain that it was the bounden duty of the courts to add interest, in these cases, to the original amount of loss proved. They could not escape from this duty, without a manifest departure from principle.

We are now construing a treaty, a solemn compact between nations. This compact between nations, this treaty, is to be construed and interpreted throughout its whole length and breadth, in its general provisions, and in all its details, in every phrase, sentence, word, and syllable in it, by the settled rules of the law of nations. No municipal code can touch it, no local municipal law affect it, no practice of an administrative department come near it. Over all its terms, over all its doubts, over all its ambiguities, if it have any, the law of nations "sits arbitress."

The treaty, in this 9th clause, speaks of satisfaction to be made for injuries; and injuries which had been committed by violence, by armed men, acting without right, and without authority. And I maintain that there is, in the code of national law, a fixed and settled rule, founded in reason, and established by the highest authorities, by which satisfaction for such injuries is to be ascertained and adjudged.

This rule is laid down by Rutherforth, in these terms:

"In estimating the damages which any one has sustained, when such things as he has a perfect right to, are unjustly taken from him, or withholden, or intercepted, we are to consider not only the value of the thing itself, but the value likewise of the fruits or profits that

might have arisen from it. He who is the owner of the thing, is likewise the owner of such fruits or profits. So that it is as properly a damage to be deprived of them, as it is to be deprived of the thing itself."—Lib. 1, chap. 17, sec. 5.

The language of Grotius is:

"The loss or diminution of any one's possessions is not confined to injuries done the substance alone of the property, but includes everything affecting the produce of it, whether it has been gathered or not. If the owner himself had reaped it, the necessary expense of reaping, or of improving the property to raise a produce, must also be taken into the account of the loss, and form part of the damages."—Campbell's Grotius, vol. 2, pages 195, 196. Lib. 2, chap. 17, sec. 4.

In laying down the rule *for the satisfaction of injuries,* in the case of reprisals, in making which the strictest caution is enjoined not to transcend the clearest rules of justice, Mr. Wheaton, in his book on national law, says:

"If a nation has taken possession of what belongs to another, if it refuses to pay a debt, to repair an injury, or to give adequate satisfaction for it, the latter may seize something of the former, and apply it to its own advantage, till it obtains payment of what is due, together WITH INTEREST AND DAMAGES."—Wheaton on International Law, page 341.

Mr. Wheaton, in the above passage, has copied, and hardly varied the text of Vattel.—Lib. 2, chap. 18, sec. 342.

To avoid trouble and detail in ascertaining the actual amount of damages or injury, resulting from the loss of the fruit, or profit of the thing lost, or destroyed, the modern practice of nations, when making compensation for losses and injuries by joint commissions, as well as the daily practice of courts sitting under the law of nations, is to allow interest, at the legal rate, as a compensation for the loss of fruits and profits, as a substitution for an actual and detailed account of such fruits and profits.

[That the prize courts are governed by the laws of nations, see Kent's Com., 5th edition, pages 68, 69, 70; 9 Cranch, 191, 244.]

The Supreme Court of the United States uniformly holds the same doctrine:

"The prime cost or value of the property lost, and, in cases of injury, the diminution in value by reason of the injury, *with interest thereon,* affords the true rule for estimating damages in such cases."—3 Wheaton, page 546—The Amiable Nancy.

See, also, 1 Gallison's, 315, to the same point, case of the Lively.

The rule is exactly the same in the English courts, sitting under the law of nations.—2 Dobson, page 84.

It now only remains to be added, that the government of the United States, in its intercourse with foreign nations, and in demanding at their hands reparation for injuries, has not only recognized the principle, and the rule, as above stated, but has affirmed them, with emphasis, and insisted on their application in all cases. It will hardly be thought necessary to go through our whole history, to collect cases to this point. I content myself with calling attention to one of the most conspicuous, and which it is quite impossible to distinguish, in

point of principle, from the cases provided for in the 9th clause of the treaty of 1819, which I am now considering.

A question arose, under the convention of St. Petersburg, between the United States and Great Britain, respecting property alleged to have been carried away by the British forces, at the close of the last war with England, in contravention of the stipulations contained in the treaty of Ghent. Great Britain admitted the carrying away, but denied that it was any infraction of the treaty. The question in difference was submitted to the arbitration of the Emperor of Russia, and he made an award in these terms:

"The United States of America are entitled to a just indemnification from Great Britain for all private property carried away by the British forces."

For the purpose of carrying this award into effect, a joint commission was instituted to sit at Washington, the American commissioner being Mr. Langdon Cheves, and the British commission, Mr. George Jackson. They differed on the question of interest. In the end, the matter was compromised, by the payment, on the part of Great Britain, of a gross sum, which was distributed by the government of the United States, first, in paying off the principal of each claim, and secondly, for paying interest on the several claims, so far as the residue of the sum received would extend.

The claim of the government of the United States was clearly and ably set forth by the American commissioner, Mr. Cheves; and to avoid length, and repetition, I append to this opinion extracts from his remarks.—(See Appendix.)

The treaty between the United States and Mexico, of the 11th of April, 1839, provided for the institution of a joint commission for ascertaining and determining the claims arising from injuries to the persons and property of the citizens of the United States by Mexican authorities.

The 1st and 5th articles of the treaty provided as follows:

"Article 1. That all claims of citizens of the United States should be referred to a joint board of commissioners, who should be sworn impartially to examine and decide upon said claims."

"Article 5. That the said commissioners shall, by a report under their hands and seals, decide upon the justice of the said claims, and the amount of compensation, if any, due from the Mexican government in each case."

These articles contain all the provisions of the treaty, respecting the duties and powers of the commissioners.

The act of Congress of 12th June, 1840, "to carry into effect" said treaty, provided for the appointment of two commissioners on the part of the United States, who, with two others on the part of Mexico, "shall form a board, whose duty it shall be to receive and examine all claims provided for by the convention, and to decide thereon according to the provisions of the said convention and the principles of justice, equity, and the laws of nations."

The American commissioners, Mr. Marcy and Mr. Rowan, (and afterwards Mr. Marcy and Mr. Breckenridge,) allowed interest (at the same rate as was allowed by the Florida judges in their decrees) in all

cases of injuries arising from loss or destruction of property; and the umpire, Baron Roenne, allowed the interest, in all cases. Indeed, it is not understood that the Mexican commissioners objected to such allowance.

I append to this opinion one other paper, which contains an opinion of the Attorney General of the United States on a private claim. It is the case of Mrs. O'Sullivan, and may be found at page 1115 of the opinions of the Attorneys General.

The rule of damages, adopted by the courts in Florida, was laid down by Judge Reid, in the first decision awarding interest, in these words, viz:

"I am required by the statute to receive, examine, and *adjudge* these claims for losses. In performing this duty I have allowed, because it seemed to me just and equitable to allow it, *interest* upon the amount or value of property ascertained to have been lost. The rate of interest existing in the province at that time (1812 and 1813) was five per cent., and this is the sum allowed in all cases. I am sensible that this allowance will swell considerably the amount to be paid to the claimants, but I do not perceive how it could be avoided. If we lose sight of the national character of one of the parties, and suppose two private persons engaged in a dispute about an injury to property, the tribunal to which resort is had, in adjusting the damages due by the one to the other, will consider the value of the property destroyed, in connection with the time for which the owner has been deprived of the use and enjoyment of his property. The first being ascertained in money, a compensation for the last may best be regulated by reverting to the rate of interest allowed by the law of the country where the wrong was done."

If the opinions which I have expressed, and attempted to support, are sound and well founded, then this rule, adopted by the courts, is exactly the rule which they were bound to adopt, and the only rule which they could adopt, without manifest disregard of the principles of public law.

It may, probably, be thought, that some of the opinions which I have expressed in this paper are more or less in conflict with opinions which have been given, in these cases, by recent Attorneys General of the United States, Mr. Crittenden, Mr. Legaré, and Mr. Nelson. Perhaps, however, the differences may be rather apparent than real, as the questions appear to have been submitted, and their opinions given, without particular reference to the terms of the treaty, or those authorities of public law which, in my judgment, rule the case. On the whole, I am prepared to answer the questions proposed to me; and my opinion clearly is:

I. That the provisions of the treaty require the losses or injuries for which satisfaction is provided, to be established judicially; and that the decrees of the judges as to the amount or extent of said losses or injuries, as to cases within the treaty, are final.

II. That the measure or rule of satisfaction adopted and applied by the judges in these cases, namely, to add to the value of the property at the time of its loss, interest, as a compensation for the loss or deprivation of its use, or as covering the necessary and immediate conse-

quences of the original injury, is in accordance with the laws and usages of nations, and ought, undoubtedly, to be allowed and paid by the Secretary of the Treasury, under the acts of Congress already cited.

DANIEL WEBSTER.

APRIL 6, 1849.

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APPENDIX.

*Extracts from the remarks of the American Commissioner, Mr. Langdon Cheves, referred to on page* 24, *of the foregoing.*

In his opening paper, under date of February 25, 1825, he states the rule of indemnification or satisfaction for injuries suffered thus:

"The property of which he (the claimant) claims the equivalent, belonged to him. It has been decided that it ought not to have been taken from him; it has been proved that it was taken from him as far back as the 17th February, 1815, and it has been agreed that he is to be compensated for the injury he sustained.

"The injury is the cause and the measure of his compensation. The only inquiry then is, the extent of that injury. The extent of the injury is equivalent to the pecuniary value of the property *at the time he was deprived of it*, and the value of the sum of money of which he was deprived during the period of its detention."

Again, he says: "Indemnification means a reimbursement of a loss sustained. If the property taken away on the 17th February, 1815, were returned now, uninjured, it would not reimburse the loss sustained by the taking away and consequent detention—it would not be an indemnification. The claimant would still be unindemnified for the loss *of the use* of his property for the ten years, which, considered as money, is nearly equivalent to the original value of the principal thing. So, in substituting a pecuniary value for the thing, unless interest is allowed for the use of the money, the claimant will remain unindemnified."

Again, in the same paper: "He who deprives another of the *use* of his property does him as great an injustice, in principal if not in degree, as he who deprives him finally and forever of it, and justice equally requires that he should indemnify him for the loss of its *use* as for the loss of the principal thing. Unless it can be truly averred that one may deprive another of the *use* of his property for a given time, and if he finally return it uninjured in its indentity, not be bound in justice to compensate him for the loss of its *use*, it is conceived it cannot be truly asserted that interest does not follow the principal."

Again: "If interest be an incident usually attendant on the delay of payment of debts, damages are equally an incident attending on the withholding an article of property; and where they are rendered in the shape of damages, they are usually given with a liberal and sometimes an unsparing hand. It is, then, a *mitigation* of the usual incident of

damages for the detention of property, to establish a fixed and equitable rate of interest as the equivalent."

"There is no doubt that this is the leading reason why boards of commissioners, sitting as the representatives of nations, have so generally made interest the rule of damages, instead of a capricious discretion, which would, perhaps, often become an unjust and vindictive assessment of them."

Again: "The claim is not of interest *eo nomine*. It is adopted as a *mitigated* rule of damages, compensation, or indemnification, founded on the estimated pecuniary value of the article withheld. In that case, the common law and the civil law are both clear in allowing reparation of the loss of the *use* of the thing withheld, from the commencement of the tortious detention. The rule of the *public law* is the same."

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*Case of Mrs. O'Sullivan, and opinion of Attorney General, referred to on page* 25, *of the foregoing.*

This was a claim growing out of the seizure of a ship and cargo by a political agent of the United States.

Congress passed an act providing "that the Secretary of the Treasury be, and he is hereby, authorized and directed to cause the claim of Mary O'Sullivan, widow and executrix of John O'Sullivan, deceased, to be examined by the accounting officers of the treasury; and that there be allowed and paid to the said Mary O'Sullivan, out of any money, &c., the amount of the actual loss which may be shown, to the satisfaction of the Secretary of the Treasury, to have been sustained by the said John O'Sullivan, in consequence of the act of the late John M. Forbes, commercial and political agent of the United States of America, at Buenos Ayres, in detaining the vessel of the said John O'Sullivan, in the year 1823, and causing her to be sent to the United States."

This act required payment of the amount of the "actual loss" as shown to the satisfaction of the Secretary of the Treasury. The case was referred to the Attorney General Butler, as to the proper rules to be adopted in ascertaining "the actual loss," and whether the claimant "was entitled, within the terms and intention of the act, to compensation for the *deprivation of the use* of the vessel during her detention?" And, "whether that was not a constructive and consequential, and not an *actual loss?*"

Mr. Butler, after an elaborate examination of the authorities, deduced a rule from the decisions of the federal courts, where *interest* upon the original value, by way of damages for the loss of the *use*, in addition to such original value, had been allowed as the measure of the actual loss; in every one of which cases he says, "Congress passed acts indemnifying the officer to the full extent of the recovery against him," citing "Laws U. S., 4 vol. p. 91; 3 vol. 369; 6 vol. 282; 7 vol. 259."

"The adjudged cases," he says, "in which recoveries have been had against officers acting in good faith, and in which Congress afterwards

made provision for indemnifying the officer, may, therefore, with great propriety, be referred to, for the purpose of ascertaining the manner in which the rule is carried into effect."

He further says: "I cannot agree that the loss of the *use* of the vessel was merely a *consequential loss;* still less than it was constructive and not actual. It appears to me, that the loss of the beneficial *use* of the vessel, was the direct and immediate effect of the interference of Mr. Forbes. But even if this is to be regarded as a *consequential loss*, it will not, therefore, follow that it is not an actual loss, in strict propriety of language, and within the meaning of the law. A loss may be actual, positive, and real, and may be traced with certainty to a particular cause. The distinction between *immediate* and *consequential* damages is a familiar one in commercial law; it is the foundation of the distinction between the action of trespass, and that of trespass on the case; the former of these actions being brought where the damage is immediate, and the latter where it is only consequential.

"In each case, however, *actual* damage is the subject of the suit, and must be proved to sustain it."

Mr. Butler concludes that, "it is obvious that the difference in the *value* of the vessel is not the whole loss sustained; the beneficial *use* of the vessel is also lost to the party during the whole period of the detention; and for this loss, interest on the prime value is but the *lowest rate* of indemnification."