36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 259

FRENCH SPOLIATIONS.

[To accompany Bill H. R. No. 510.]

MARCH 23, 1860.

Mr. ROYCE, from the Committee on Foreign Affairs, made the following

REPORT.

The Committee on Foreign Affairs, to whow was referred a bill to provide for the ascertainment and satisfaction of claims of American citizens for spoliations committed by the French prior to the thirty-first day of July, one thousand eight hundred and one, respectfully report:

That they have had the subject under consideration. The committee, in order to make a fair presentation of the whole subject embraced in the reference, have adopted as theirs the report of Mr. Crittenden made to the Senate the 4th of February, 1858, on the same subject.

The committee are satisfied that the claims presented are just; that their payment has been too long delayed, and recommend the passage of the bill referred to them.

[Report adopted by Committee on Foreign Affairs to accompany the bill reported by them.]

The select committee to whom was referred the bill "to provide for the ascertainment and satisfaction of claims of American citizens for spoliations committed by the French prior to the thirty-first day of July, one thousand eight hundred and one," have had the same under consideration, and respectfully report:

That this subject has been often before the Senate, and has heretofore received the most thorough investigation and discussion. Sixteen reports in favor of the claims have been made by committees of the Senate, and seventeen like favorable reports were made by committees of the House of Representatives. That the Senate has always sanctioned those claims, and as often as six times passed bills for their ascertainment and satisfaction; that on two occasions both houses of Congress have passed such bills, and they were prevented from becoming laws by the veto of the President: the first, by President Polk,

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on the bill for five million of dollars, payable in land scrip, his objections to which were, chiefly, a doubt of their validity, and that the treasury, then very low, and the duration of the existing war uncertain, would require all the revenue that the public lands could furnish; and the second, by President Pierce, on the bill for the like sum of five millions of dollars, payable in five per cent. stock, redeemable at the pleasure of the government, chiefly on the ground that these claims were provided for by the conventions with France of 1803 and 1831; whereas it seems to the committee that neither of said conventions contained any provision for them, and that France was released definitively from all liability for them at a much earlier period, to wit, by the convention of the 30th of September, 1800.

That the committee, to avoid multiplying the numerous and voluminous reports heretofore made, and to which they can add nothing, have determined to adopt as part of this the reports in favor of these claims made by the Hon. Mr. Livingston and the Hon. Mr. Morehead, respectively, chairmen of the committees of the Senate to whom the subject was referred—the first on the 14th of January, 1831, and the other on the 10th February, 1847. The committee also refer to, and make parts of this report, the messages that accompanied the Presidential vetoes, before alluded to, and the minority reports following, namely: by the Hon. Mr. Forsyth, on the 25th of March, 1824, and by the Hon. Mr. Cambreleng, on the 21st of February, 1835, in the House of Representatives.

The committee believe that in this mode they will most fully and fairly present the whole subject to the consideration of the Senate.

They believe that said claims are just, and that provision ought to be made for their satisfaction, and they recommend the passage of the bill referred to them.

IN THE SENATE OF THE UNITED STATES, *February* 10, 1847.

Mr. MOREHEAD made the following report.

[To accompany Bill S. No. 156.]

The select committee to whom was referred the memorials and petitions from citizens of the United States, residing in all sections of the Union, who suffered by French spoliations on their property prior to the ratification of the convention with France of the 30*th of September*, 1800, *report:*

These claims are of great magnitude in amount, and are set forth by the petitioners as constituting a valid obligation on the United States to satisfy them, on the ground that they have been taken to the public use; and they invoke the constitutional provision in their favor, "nor shall private property be taken for public use without just compensation."

The claims are for nearly two thousand vessels, with more or less valuable cargoes, belonging to our citizens, which, while engaged in

lawful commerce, were captured by the French, in violation of existing treaties and of international law; and they date from the year 1791 up to the ratification of the convention of 1800, to wit, the 31st of July, 1801, embracing the whole period of the French revolution.

The subject has, from early in 1802, been before Congress—first on the petition of the original claimants, who have since, with very few exceptions, departed this life; and then by their successors, in the character of executors, administrators, widows, heirs, &c.; and the favorable consideration of their case has also been freely urged upon Congress by the legislatures of many of the States, viz: Maine, Massachusetts, Connecticut, Rhode Island, Pennsylvania, Delaware, Maryland, Alabama.

The representations of the claimants have been uniform and constant, and have given rise to twenty-eight reports of committees, including the present; whereof twenty-two were favorable, two were divided, and three were adverse to the petitioners. These numerous reports cover the whole ground on which the claims rest, and also the objections to them. They are all printed among the congressional documents, and may be readily referred to, aided by the following descriptive list:

Statement of reports of committees on French spoliations prior to July 31, 1801.

No. 1. In the House, by Mr. Giles, from a select committee, April 22, 1802; favorable statement of facts without coming to any conclusion.

No. 2. House, Mr. Marion, select committee, February 18, 1807, including and adopting Mr. Giles' report of April 22, 1802; favorable.

No. 3. Senate, Mr. Roberts, Committee of Claims, March 3, 1818; adverse.

No. 4. House, Mr. Russell, Foreign Affairs, January 31, 1822; adverse.

No. 5. House, Mr. Forsyth, Foreign Affairs, March 25, 1824; adverse.

No. 6. Senate, Mr. Holmes, select committee, February 8, 1827; favorable.

No. 7. House, Mr. Edward Everett, Foreign Affairs, May 21, 1828; favorable.

No. 8. Senate, Mr. Chambers, select committee, May 24, 1828; favorable.

No. 9. Senate, Mr. Chambers, select committee, February 11, 1829; favorable; bill.

No. 10. House, Mr. Edward Everett, Foreign Affairs, February 16, 1829; favorable.

No. 11. Senate, Mr. Edward Livingston, select committee, February 22, 1830; favorable; bill.

No. 12. Senate, Mr. Edward Livingston, select committee, December 21 1830; favorable; bill.

No . Senate, Mr. Edward Livingston, select committee, (by b nuary 14, 1831; favorable; bill.

No. 14. Senate, Mr. Wilkins, select committee, (by bill,) December 20, 1831; favorable; bill.

No. 15. Senate, Mr. Webster, select committee, (by bill,) December 10, 1834; favorable; bill. And said bill was voted February 3, 1835: yeas 25, nays 20.

No. 16. House, Mr. Edward Everett, Foreign Affairs, February 21, 1835; favorable statement.

No. 16. House, Mr. Cambreleng, Foreign Affairs, (minority,) February 21, 1835; adverse statement.

No. 17. House, Mr. Howard, Foreign Affairs, January 20, 1838; favorable; bill.

No. 18. House, Mr. Cushing, (individual, by consent of the House,) March 31, 1838; favorable.

No. 19. House, Mr. Cushing, Foreign Affairs, April 4, 1840; favorable; bill.

No. 19. House, Mr. Pickens, Foreign Affairs, (minority,) April 4, 1840; adverse statement.

No. 20. House, Mr. Cushing, Foreign Affairs, December 29, 1841; favorable; bill.

No. 21. Senate, Mr. Choate, Foreign Relations, (by bill,) January 28, 1842; favorable; bill.

No. 22. Senate, Mr. Choate, Foreign Relations, (by bill,) January 13, 1843; favorable; bill.

No. 23. House, Mr. C. J. Ingersoll, Foreign Affairs, (by bill,) April 17, 1844; favorable; bill.

No. 24. Senate, Mr. Choate, Foreign Relations, (by bill,) May 29, 1844; favorable; bill.

No. 25. Senate, Mr. Choate, Foreign Relations, (by bill,) December 23, 1844; favorable; bill. And said bill was ordered to be engrossed and read a third time on the 10th February, 1845; yeas 26, nays 15.

No. 26. Senate, Mr. J. M. Clayton, select committee, (by bill,) February 2, 1846; favorable; bill. This bill was voted by the Senate on the 9th June, 1846, and passed: yeas 27, nays 23.

No. 27. House, Mr. Truman Smith, Committee on Foreign Affairs, (by bill,) March, 1846. This bill was voted by the House on the 4th August, 1846, and passed: yeas 94, nays 87.

And the following reports, since made:

No. 28. Senate, Mr. Morehead, in detail, bill.

No. 29. House, Mr. Seaman, by bill.

No. 30. House, Mr. Truman Smith, by bill.

No. 31. Senate, Mr. Truman Smith, in detail, bill.

No. 32. House, Mr. Buel, in detail, bill.

No. 33. Senate, Mr. Truman Smith, by bill.

No. 34. Senate, Mr. Bradbury, in detail, bill.

No. 35. House, Mr. Tuck, by bill.

No. 36. Senate, Mr. Hamlin, by bill.

No. 37. House, Mr. Bayly, by bill.

No. 38. House, Mr. Pennington, by bill.

No. 39. House, Mr. Clingman, by bill.

No. 40. Senate, Mr. Crittenden, in detail, bill.

In all the discussions between the two governments in relation to these claims, which terminated with the exchange of ratifications of the convention, (and was never afterwards resumed,) they were considered on all sides as valid claims against France, and the obligation on her part to satisfy them was often and freely acknowledged, and in no instance denied. Although the two governments agreed perfectly that the obligation to satisfy them rested upon France, and was no longer a subject of controversy between them, there were, however, other subjects, of a *national* character, of the deepest importance to both, which, in the progress of events, were placed beyond the power of either to reconcile with the friendly disposition and good faith which each professed for the other.

The political relations between the United States and France at that period, and the events that disturbed them even to a point which threatened a conflict, have been fully developed in the luminous reports referred to. The committee, at this time, need only glance at them.

By the treaties with France of February 6, 1778, we had guaranteed to her the integrity of her West India possessions *forever;* and we had also secured in her favor the *exclusive* use of our ports and harbors to her ships of war, her privateers and prizes, in all her future wars. The considerations which she gave for these important privileges were most ample. When the war of 1793 between Great Britain and France broke out, not only that fact, but the motives leading to it, sensibly affected the relations between the United States and France, from the absolute necessity of deciding upon the relative rights and duties flowing from the guarantee and privileges just mentioned. Whether that war was offensive or defensive on the part of France, was early made a question here ; but it was soon abandoned, and the instructions to our envoys to France, (Messrs. Pinkney, Marshall, and Gerry,) of July 15, 1797, (5th volume Senate Documents, 1st session 19th Congress, Doc. 307, page 453,) in reference to it, shows that it was properly abandoned. "It is known to you," say the instructions, "that this affection [for the people of France] rose to enthusiasm when the war was kindled between France and the powers of Europe, *which were combined against her for the avowed purpose of restoring the monarchy.*" Under these circumstances, France could not have been the aggressor in the war ; and, accordingly, we freely permitted the use of our ports for her vessels of war and their prizes. Against this use the British government remonstrated long and earnestly, but in vain; for our Secretary of State, (Mr. Jefferson,) in his letter of September 7, 1793, (*ib.*, 133, page 219,) to the British minister, declared, "though the admission of the prizes and privateers of France is exclusive, yet it is the effect of treaty, made long ago for valuable considerations—not with a view to the present circumstances, nor against any nation in particular, but all in general—and may therefore be faithfully observed without offence to any ; and we mean faithfully to observe it." Thereupon the British remonstrances were quieted, and France continued to enjoy this right freely, with our entire assent, up to the ratification of Mr. Jay's treaty with Great Britain, of November 19, 1794, the ratification of which took place on the 6th of May,

1796. Our first act under this treaty, by our own construction of its import, brought us into direct conflict with France with respect to the long use of our ports for her vessels of war and their prizes. The French minister complained to the President of this construction, who required from the Secretary of State a report thereon, which was made on the 15th of July, 1796, (*ib.*, Doc. 225, page 345,) and contains the following: "Mr. Adet asks whether the President has caused orders to be given to prevent the sale of prizes conducted into the ports of the United States by vessels of the republic, or privateers armed under its authority. On this, I have the honor to inform you, that the 24th article of the British treaty having explicitly forbidden the arming of privateers, and the selling of their prizes, in the ports of the United States, the Secretary of the Treasury prepared, as a matter of course, circular letters to the collectors to conform to the restrictions contained in that article, as the law of the land. This was the more necessary, as formerly the collectors had been instructed to admit to an entry and sale the prizes brought into our ports" To that unfortunate construction are very probably ascribable the difficulties which subsequently embarrassed our relations and negotiations with France up to the conclusion of the convention of 1800, an illustration of which will be found in the report of our envoys (Messrs. Ellsworth, Davie, and Murray) to our Secretary of State, dated October 4, 1800, (*ib.*, Doc. 390, page 641.) They say: "The claim of indemnities [for the spoliation claims now under consideration,] brought forward by them was, early in the negotiation, connected by the French ministers with that of a restoration of treaties, for the infractions of which the indemnities were principally claimed. To obviate this embarrassment, which it had not been difficult to foresee, the American ministers urged, in the spirit of their instructions, that those treaties having been violated by one party, and renounced by the other, a priority had attached in favor of the treaty with *Great Britain, who had thereby acquired an exclusive right for the introduction of prizes; wherefore, that right could not be restored to France.*"

It is thus shown that the interdict of this exclusive right to France, as asserted by the Secretary of State, was founded on the British treaty of 1794, while our envoys assert that it was founded upon our act of Congress of July 7, 1798, which declared our treaties with France void; neither of which positions, it is respectfully submitted, is either tenable or plausible.

At the period when this interdict was enforced, (in 1796,) France was in single-handed conflict with nearly all Europe combined, who threatened to starve the French nation. There had been an entire failure of her crops; she was afflicted with a civil war; her colonies had fallen under the arms of Great Britain, without any effort on our part to save them under the guarantee, or even to remonstrate for their protection. It was in this state of things, and in the frenzied excitement which attended them, that France judged of our motives and conduct with regard to the British treaty. Her conclusions were strongly vindictive. She charged our government with perfidy, and secretly ordered the ocean to be swept of our vessels, as had indeed been done with but little less rigor for years before, and prescribed

arbitrary and illegal rules for her privateers and courts to secure the capture and condemnation of every American vessel that could be found—even those innocently bound to her own ports, in total ignorance of such an order. Our government was sensibly alive to the indignities and gross injustice thus wantonly heaped upon it; our moderation was wholly ineffectual, and we were driven to defensive measures, looking to an eventual open rupture. We created the nucleus of a standing army and augmented our navy; we authorized the capture of French armed vessels, and we declared the treaties with France no longer obligatory on our government or people. We captured several of her national vessels, and about eighty of her privateers; but war did not take place. Negotiation followed, and the convention of 1800 was the result. In the instructions to our envoys who negotiated that convention, (Messrs. Ellsworth, Davie, and Murray,) dated October 22, 1799, (*ib.*, Doc. 346, page 561,) after referring to the wrongs and indignities which we had suffered from France, it is said: "This conduct of the French republic would well have justified an immediate declaration of war on the part of the United States; but desirous of maintaining peace, and still willing to leave open the door of reconciliation with France, the United States contented themselves with preparations for defence, and measures calculated to protect their commerce." Such was the view of our government of the relations with France. The French government no less clearly exhibited its view of relations with the United States. A report made to the *tribunal* of France* upon the motives leading to the conclusion of said convention, dated December 4, 1801, runs thus:

"In consequence of this bill, (act of Congress of July 7, 1798, declaring the treaties with France null,) the American government suspended the commercial relations of the United States with France, and gave to privateers permission to attack the armed vessels of the republic. The national frigates were ordered to seek them and to fight them. A French frigate and sloop-of-war, successively and unexpectedly attacked by the Americans, were obliged to yield to force; and the French flag—strange versatility of human affairs—was dragged, humiliated, before the same people who, a little while ago with eager shouts, had applauded its triumph. It was getting past recovery; war would have broken out between America and France if the directory, changing its system and following the counsels of prudence, had not opposed moderation to the unmeasured conduct of the President of the United States. * * * I have already, tribunes, told you that the United States had declared the consular convention and the treaties of 1778 as null and void, and believed themselves freed from the obligations which they imposed upon them. The government of the republic, in spite of this act of Congress, did not regard the treaties as annulled, thinking that a treaty could only be abolished by the mutual consent of the two contracting parties, or by a declaration of war. Commissions granted by the President to attack the armed vessels of France does not suffice to put America in a state of war; it requires a positive declaration of Congress to this

* See "Code Diplomatique," July, 1802.

effect. None has ever existed. The republic was therefore justified in claiming the enjoyment of the stipulations comprehended in the old treaties, and indemnity for the non-execution of these stipulations."

Having thus diposed of matters relating especially to the *national* claims, it will be well to recur to the spoliation claims under consideration. The early captures of our merchant vessels resulted solely from necessity, and for these, and for all others then existing, the French government manifested every disposition to do us justice. Many of them were indemnified, in part or the whole, with some degree of promptitude, while others had special *arrêtés* or decrees passed for their relief, which still remain unexecuted on the French statute-book; and all of them, up to the year 1795, had direct assurance of indemnity from the French government. The French minister of foreign affairs, in a letter of October 14, 1793, addressed to Mr. Monroe, our minister at Paris, (*ib.*, Doc., 35, p. 70,) says: "We hope that the government of the United States will attribute to their true cause the abuses of which you complain, as well as other violations of which our cruisers may render themselves guilty in the course of the present war. It must perceive how difficult it is to contain within just limits the indignation of our mariners, and, in general, of all the French patriots, against a people who speak the same language and having the same habits as the free Americans. The difficulty of distinguishing our allies from our enemies has often been the cause of offences committed on board your vessels. All that the administration could do is to order indemnification to those who have suffered, and to punish the guilty." And the President of the United States, in a confidential message to Congress, on the 28th February, 1795, after referring to the claims of our citizens against France, said: "It affords me the highest pleasure to inform Congress that perfect harmony reigns between the two republics, and that those claims are in a train of being discussed with candor, and of being amicably adjusted."—(1 Ex. Journal, 175.)

On the 8th November, 1797, the French government submitted to our envoys, Messrs. Pinckney, Marshall, and Gerry, the following propositions, (*ib.* Doc. 311, p. 467:) "2d. There shall be named a commission of five members, agreeably to a form to be established, for the purpose of deciding upon the reclamations of the Americans relative to the prizes made on them by the French privateers. 3d. The American envoys will engage that their government shall pay the indemnifications or the amount of the sums already decreed to the American creditors of the French republic, and those which shall be adjudged to the claimants by the commissioners. This payment shall be made under the name of an advance to the French government, who will repay it in a time and manner to be agreed on." This overture was declined by the American envoys, on the ground that England would regard it as a covert aid to France in the pending war between them.

The instructions to Messrs. Pinckney, Marshall, and Gerry, of July 15, 1797, (*ib.* Doc. 307, p. 458,) enjoin on them to press France with earnestness to satisfy these claims, and not to renounce them.

They are also authorized, in lieu of general succors under the guarantee, to stipulate for an annual war subsidy to France, not exceeding $200,000 per annum.

The instructions to Messrs. Ellsworth, Davie, and Murray, of October 22, 1799, (*ib.* Doc. 346, p. 562,) contain the following emphatic injunction in relation to these claims: "1st. At the opening of the negotiation you will inform the French ministers that the United States expects from France, as an indispensable condition to the treaty, a stipulation to make to the citizens of the United States full compensation for all losses and damages which they have sustained by reason of irregular or illegal captures or condemnations of their vessels and other property, under color of authority or commissions from the French republic or its agents." "The following [7] points are to be considered as *ultimata:* 1st. That an article be inserted for establishing a board, with suitable powers, to hear and determine the claims of our citizens for the causes hereinbefore expressed, and binding France to pay or secure payment of the sums which shall be awarded."

In compliance with these instructions our envoys did, at the *first* opening of the negotiation, demand satisfaction for these claims.

Various propositions followed from both sides, all of which placed a provision for the full satisfaction of these claims in the foreground; so that the parties fully agreed that ample provision should be made for them, and on that point there was no difficulty. But our envoys having been instructed, as *ultimata*, not to recognize or renew the old treaties with France of 1778, in consequence of the act of Congress of July 7, 1798, which had declared them annulled, while, on the other hand, the French ministers insisted absolutely on their continuous obligation, and that an act of Congress could not annul a treaty, there was found in these opposing positions, relative to *national* claims, a serious impediment to any further proceedings. To overcome this impediment, our envoys endeavored to purchase, with large sums of money, the onerous stipulations of the treaty of 1778, as a condition of their recognition; but the French ministers were inflexible in their demand of full and absolute recognition, to which our ministers yielded, and then pressed such modifications of the onerous articles for a money consideration as would relieve the United States from their more oppressive and dangerous original features. They offered, in lieu of the general guarantee of the French West Indies, an annual war subsidy of one million of livres, reserving the option to extinguish that article (guarantee) on the payment of a capital of five millions of livres; and they offered, further, three millions of livres for the reduction of the right to our ports and harbors for their ships-of-war, privateers, and prizes, from *exclusive* to that of *the most favored nations.*

The French ministers assented to the proposition relating to the guarantee article, provided the consideration be enlarged to double the sums which our ministers had offered; to which proviso our ministers agreed: but they refused peremptorily and definitely to *any* modification or consideration that could be named for the reduction of the use of our ports for their privateers and prizes during war, and

especially during the war then existing between France and Great Britain; because, as they alleged, the cessation of the exclusive right by France would at once give that exclusive right to her, (England,) in virtue of Mr. Jay's treaty of November 19, 1794, which would be in effect a surrender of her flag to her enemy. This no pecuniary or other consideration would justify; and hence they would resign their commissions rather than entertain such proposition, if even so ordered by their government, which was impossible.

Our envoys finding their efforts to obtain a modification of their treaties of 1778 of no avail, and that the continuance of the *quasi* war with France was exceedingly dangerous, proposed that the claims and rights of both parties should be recognized and referred to a subsequent negotiation, and that the future relations between the two governments should be defined in a new treaty. This was acceded to, and the respective rights and claims were consigned, by the 2d article of the convention of September 30, 1800, to future negotiation in the following words:

"ART. 2. The ministers plenipotentiary of the two parties not being able to agree, at present, respecting the treaty of alliance of 6th of February, 1778, the treaty of amity and commerce of the same date, and the convention of 14th of November, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time; and until they may have agreed upon these points, the said treaties and convention shall have no operation, and the relations of the two countries shall be regulated as follows."

The convention was ratified forthwith by the first consul of the French republic; and on being laid before the Senate of the United States, they advised the ratification, with the exception of the second article, which they struck out, and added a limitation of eight years.

The convention, so altered, was returned to the first consul, and he added to his ratification the following condition: "The government of the United States having added to its ratification that the convention shall be in force for the space of eight years, and having omitted the second article, the government of the French republic consents to accept, ratify, and confirm the above convention, with the addition importing that the convention shall be in force for the space of eight years, and with the retrenchment of the second article, provided that by this retrenchment the two States renounce the respective pretensions which are the object of the said article." And on that conditional ratification being laid before the Senate of the United States, they "resolved that they considered the said convention as fully ratified, and returned the same to the President for the usual promulgation."

A mutual set-off, or a mutual relinquishment of claims, is not an abandonment by either, but a payment by each to the other; and it cannot be pretended that claims of our citizens, which were admitted by both governments to be just and valid, could, by *any* act of policy and expediency to themselves, deprive such claims of their intrinsic justice and validity, or their proprietors to the just indemnification which both had freely and fully acknowledged to be their right. The United States might properly use the claims of its citizens tempora-

rily for public purposes; but, in doing so, the government would necessarily stand in the room of France, the original obligor, and would, of course, come under the obligation imposed by the provision of the Constitution of the United States. These claims, in chief, had little or no connexion with the ancient treaties with France, from which we were so desirous to be relased, because they were sustained by the *law of nations.* They would have been valid claims against France if such treaties had never been made. It cannot be disguised that the object in connecting them with the negotiations for the exoneration of our government from the onerous stipulations of those treaties was, not to save the claims, for they were saved and acknowledged by both parties already, but to provide a valuable counter claim against France, to be used, as it *was* most effectually used, to induce France to release our government from those treaties, and to furnish a valuable consideration for them, and for the large and various responsibilities under them, by purchase. Referring to the ratification of the convention of 1800 by our Secretary of State, (Mr. Clay,) in his report to the President of 20th May, 1826, (Senate Docs , 1st session 19th Cong., vol. 5, p. 7,) he says: "The two contracting parties thus agreed, by the retrenchment of the second article, mutually to renounce the respective pretensions which were the object of that article. The pretensions of the United States, to which allusion is thus made, arose out of the spoilations, under color of French authority, in contravention to law and existing treaties. Those of France sprung from the treaty of alliance of the 6th February, 1778, the treaty of amity and commerce of the same date, and the convention of the 14th of November, 1788. Whatever obligations or indemnities from those sources either party had a right to demand, were respectively waived and abandoned; and the consideration which induced one party to renounce his pretensions was that of the renunciation by the other party of his pretensions. What was the value of the obligations and indemnities so reciprocally renounced can only be matter of speculation. The amount of the indemnities due to citizens of the United States was very large; and, on the other hand, the obligation was great (to specify no other French pretensions) under which the United States were placed in the 11th article of the treaty of alliance of 6th February, 1778, by which they were bound forever to guarantee from that time the then possession of the crown of France in America, as well as those which it might acquire by the future treaty of peace with Great Britain; all these possessions having been, it is believed, conquered, at or not long after the exchange of the ratifications of the convention of September, 1800, by the arms of Great Britian, from France.

"The fifth article of the amendments to the Constitution provides, 'nor shall private property be taken for public use without just compensation.' If the indemnities to which the citizens of the United States were entitled for French spoliations prior to the 30th September, 1800, have been appropriated to absolve the United States from the fulfilment of an obligation which they had contracted, or from the payment of indemnities which they were bound to make to France, the Senate is most competent to determine how far such appropriation

is a public use of private property within the spirit of the Constitution, and whether equitable considerations do not require some compensation to be made to the claimants."

By every known rule of law or justice, the spoliation claims were of equal value to the benefits which their application produced to the United States. No one will contend that France is not released from these claims by the act of the government of the United States. No one will contend that the government has failed to accomplish its object by their application to its use, and is not now in the full enjoyment of the invaluable public benefits thus obtained. No one will contend that any consideration other than these claims, produced such benefits. No one will contend that the suffering memorialists have ever received a dollar for this immense sacrifice of their property; and no one will deny, it is believed, if these things are true, that they ought to be compensated.

Although no ground remains for doubt of the high obligation on the United States to satisfy these claims upon the proof already adduced, justice requires some reference to a novel and imposing feature in the case which is not found in any other known class of claims, A circular letter from Mr. Jefferson, Secretary of State, dated August 27, 1793, addressed to the merchants of the United States, and neither recalled nor modified up to this day, contains the following—(*ib.*, Doc. 130, p. 217:)

"I have it in charge from the President (Washington) to assure the merchants of the United States concerned in foreign commerce and navigation that due attention will be paid to any injuries they may suffer on the high seas, or in foreign countries, contrary to the law of nations, or to existing treaties; and that, on their forwarding hither well authenticated evidence of the same, proper proceedings will be adopted for their relief."

This pledge and overture were received and adopted by the claimants without reserve. They hastened their proofs of loss to the Department of State, which still holds the possession; and the faith of the government remains to be fulfilled by some adequate remuneration.

IN SENATE OF THE UNITED STATES, *December* 21, 1830.

Mr. LIVINGSTON, from the select committee appointed on the subject, made the following report:

The committee to whom was referred the petition of George F. Laroche and others, report:

That, referring to the report made at the last session of the Senate, for the statement of the case of the petitioners, they are of opinion that the relief pointed out for them in that report be granted to them, and for that purpose they beg leave to bring in a bill.

FEBRUARY 22, 1830.

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

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

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

One of our first objects, after the Declaration of Independence, was to strengthen our yet untried force by some foreign aid. The great and almost perpetual enemy of England naturally presented itself to our statesmen as the power with which our object could be most probably and most effectually obtained, and an agent was almost immediately appointed to discover the disposition of the French court towards us; and on finding it favorable, commissioners were sent with full power to negotiate, with instructions "that, should the proposals already made be insufficient to produce the proposed declaration of war, and the commissioners are convinced that it cannot be otherwise accomplished, they assure his Most Christian Majesty that such of the British West India islands as, in the course of the war, shall be reduced by the united force of France and the United States, shall be yielded in absolute property to his Most Christian Majesty; and the United States engage, on timely notice, to furnish at their expense, and deliver at some convenient port or ports in the United States, provisions for carrying on expeditions against the said islands, to the amount of two millions of dollars, and six frigates, mounting not less than twenty-four guns each, manned and fitted for sea; and to render any other assistence which may be in their power, as becomes good allies."

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

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

On the same day a treaty of amity and commerce was signed between the two nations, the articles of which here necessary to notice are the 6th, 7th, 13th, 17th, 19th, 22d, 23d, 24th, 25th, 27th, and 28th. By them it was mutually stipulated that vessels-of-war belonging to the one power shall give convoy to, and defend and protect the merchantmen of the other, going the same route, in the same manner as they ought to defend and protect their own; that free ships shall

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

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

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

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

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

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

They complained of the President's proclamation (of neutrality) of the 22d of April, 1793, which they consider "*insidious;*" that we had restored to the British owners sundry prizes made by certain French privateers, and excluded said privateers from the use of the ports of the United States; that shelter was given to English vessels-of-war in our ports, while they (the French) were not permitted to sell their prizes; that supplies of provisions, and other supplies for the West Indies, which we had agreed to guarantee, were refused; that the consular convention was not carried into effect; that our seamen were captured or impressed by British vessels-of-war, and used in great numbers as auxiliaries in the reduction of the French colonies. In all these complaints neither of the parties seemed desirous of pressing the other for a strict performance of the treaty—both, perhaps, from a consciousness that they were themselves not inclined to perform all its stipulations; we, on our part, were cautious about asking indemnity for the breach of the articles which stipulated that free ships should make free goods, in the hope that the French would be equally accommodating on the subject of the guarantee; and it is curious to observe the embarrassment which this subject produced in the negotiations between the parties. In the instructions to Mr. Monroe he is directed to state that *we are unable to give her aid of men and money*, evidently alluding to the guarantee. A plea of inability could only flow from a consciousness of obligation, and must be regarded as an acknowledgment of liability on the part of the nation that makes it. And that minister, in one of his letters to the Secretary of State, says: "I felt extremely embarrassed how to touch again their infringement

of the treaty of commerce; whether to call on them to execute it, or leave that question on the ground on which I first placed it." And afterwards, in a conference with once of the French ministers, the question is directly put: "Do you insist on our executing the treaty?" This, Mr. Monroe, for the moment, evades; but it was afterwards peremptorily again urged: "Do you insist upon or demand it?" And Mr. Monroe answers "that he was not instructed by the President to insist upon it, nor did he insist upon it;" and he avows that one of his motives was, "lest it might excite a disposition *to press us upon other points, on which it were better to avoid any discussion.*" On the part of the French government, although the execution of the guarantee seems to have been incidentally demanded by their agents in the United States, yet it was rather in the shape of a request of aid in money, provisions, and arms; and the reference made to the guarantee was to show that we might comply with their requisitions under the previous treaty without departing from our neutrality.

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

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

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

There is, indeed, some evidence that Mr. Genet, during his ministry, was instructed to make, and did make, a formal demand of the performance of the guarantee; for, on the 14th of November, 1794, he writes thus to Mr. Jefferson: "I beg of you to lay upon the President the *decree and the enclosed note*, and to obtain from him the earliest

decision, either as to the *guarantee I have claimed the fulfilment of for our colonies*, or upon the mode of negotiation of the new treaty I was charged to propose to the United States, and which would make of the two nations but one family." Yet, as a few days after this, on the 2d December, the Secretary of State writes to Mr. Monroe, that France had *omitted* to demand the fulfilment of the guarantee, we must suppose that Mr. Genet's demand was not considered in that light by our government.

In this state things remained—each party fearful of pressing, lest it should in its turn be pressed by the other; and mutual forbearance produced the effect which moderation and prudence led to, in public as well as private affairs. The language of recrimination had nearly ceased, and everything seemed to promise a speedy and satisfactory accommodation. After some difficulty, Mr. Monroe, on the 10th November, 1794, obtained from the French government an arrêté, ordering an adjustment of the accounts of American citizens for the embargo at Bordeaux, for the supplies rendered to the government of St. Domingo, by which all the embarrassments of our direct commerce with France, and with other countries, so far as they had been created by that power, were done away. "In short," says Mr. Monroe, "all the objects to which my note of the 3d of September extended, were yielded, except that of allowing our vessels to protect enemies' goods," which last point was yielded on the 3d January, 1795. And in a message to Congress of the 20th February following, the President says "it affords me the highest pleasure to inform Congress that perfect harmony reigns between the two republics, (France and the United States,) and that those claims (of the American citizens) are in a train of being discussed with candor, and amicably adjusted."

During these discussions, which produced these prospects of amicable arrangement, the treaty between the United States and Great Britain had been negotiating. As was natural, it produced some jealousies and suspicions. But the solemn assurances which Mr. Monroe was instructed to make, that "the motives of Mr. Jay's mission were to obtain immediate compensation for our plundered property, and the restitution of the posts;" and that "he was positively forbidden to weaken the engagements between this country and France;" and the instruction he received, to "repel with firmness any imputation of the most distant intention to sacrifice our connexion with France to any connexion with England." All these contributed to produce the effect which has been described. When the terms of that treaty came to be known, the face of affairs was immediately changed. France complained that her interests were sacrificed by stipulations with her enemy, inconsistent with those we have made with her, in relation to the shelter to be given to ships-of-war; that we had enlarged, to her prejudice, the list of contraband, and even admitted that provisions might be such, at a time when her enemy was endeavoring to starve her. These and other complaints were urged with great acrimony. On our part, we asserted that the rights of France were reserved by an express article, and that, having done this, she had no right to complain of any treaty which, as an independent nation, we had a right to make. The construction which

Great Britain put on the treaty, by capturing all our vessels she could find carying provisions to France, increased the irritation, while the payment, in case of capture, which we had stipulated for, gave it, in their minds, the appearance of a collusive contract to their prejudice. France also complained, and more seriously, of the new rules to which she was subjected in relation to her privateers and prizes, and which had their authority only in the British treaty of 1794.

From the following extract from a report made to the President by the Secretary of State, on the 15th of July, 1796, it appears that the restrictions we had laid upon French privateers and their prizes were not the result of demand on the part of Great Britain, but our own voluntary construction of the stipulation made with her. "Mr. Adet asks whether the President has caused orders to be given to prevent the sale of prizes conducted into the ports of the United States by vessels of the republic, or by privateers armed under its authority." On this I have the honor to inform you that the 24th article of the British treaty having explicitly forbidden the arming of privateers and the selling of their prizes in the ports of the United States, the Secretary of the Treasury prepared, as a matter of course, circular letters to the collectors to conform to the restrictions contained in that article. This was the more necessary, as formerly the collectors had been instructed to "admit to an entry and sale of the prizes brought into our ports." This exclusion from our ports was the more severe against France, as it amounted to nearly an entire exclusion from the western hemisphere, since the French colonies had generally fallen into the possession of England.

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

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

1. From the capture and detention of about fifty vessels.
2. The detention for a year of eighty other vessels under the Bordeaux embargo.
3. The non-payment of supplies to the West India islands and to continental France.
4. For depredations committed on our commerce in the West Indies.

These last seem to have begun a short time prior to that date.

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

In the same year the agents of the French government in the West Indies issued decrees authorizing the capture of American vessels bound to, and coming from, an English port, under which, in practice, all Americans, wherever bound, were indiscriminately captured or plundered; and these proceedings are thus characterized by our Secretary of State in a letter to Mr. Pinckney: "The spoliations on our commerce by French privateers are daily increasing in a manner to set every just principle at defiance." In the following year (March 2, 1797) another decree of the executive directory was passed, enlarging the list of contraband, declaring Americans in the service of England pirates, and authorizing the capture of all vessels of the United States unprovided with a document called the *role d'equipage*, which it was well known no American vessel ever carried. This decree was made to have immediate operation, evidently to take us by surprise, and its effect was so truly calculated that the ocean was swept of several hundreds of American vessels before intelligence of the enactment of the decrees had reached the United States. In the month of January, 1798, all vessels having on board goods the production of England or any of its colonies were declared good prize. These decrees, and others of a similar character, readily and promptly executed, and even exceeded by the cupidity of the French cruisers, produced a state of things which could not long be submitted to. The United States at first attempted to put an end to it by negotiation. This was rendered nugatory, first by the refusal to receive Mr. Pinckney as the successor to Mr. Monroe, and afterwards by the same refusal, accompanied by

very insulting circumstances, to the extraordinary mission composed of Messrs. Pinckney, Marshall, and Gerry. From this time affairs took a more serious turn. A number of legislative acts were passed evincive of the indignant feeling which the course of conduct pursued by the French government had produced, and showing a determination to resist them by force. Of these, the committee deem it necessary to the present investigation to notice only the following:

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

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

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

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

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

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

These several acts are here referred to merely as facts necessary to be considered in the history of the transactions between the two countries; their particular character and bearing upon the claim of the petitioners will be hereafter more properly considered. Their effect seems to have been important in bringing the government of France to more moderate and pacific counsels, some symptoms of which were tardily shown by a previous attempt to open a negotiation with Mr. Gerry. Advances were made, through our minister at the Hague, which ended in a second mission, composed of Messrs. Ellsworth,

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

Davy, and Murray, who arrived in Paris on the 2d of March, 1800, and immediately began a negotiation which ended in the convention of September 30, 1800. The second and fifth articles only of this convention have a direct bearing on the claims of the petitioners. They are in the following words: "The ministers plenipotentiary of the two parties, not being able to agree, at present, respecting the treaty of alliance of February 6, 1778, the treaty of amity and commerce of the same date, and the convention of November 14, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time; and *until they* may have agreed on these points the said treaties and convention shall have no operation, and the relations of the two countries shall be regulated as follows:

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

The 2d article was a temporary expedient to restore the two countries to a state of mutual intercourse, from the interruption of which both had experienced great inconvenience. By it the claims of both countries were acknowledged, and the governments respectively bound to negotiate further upon them at a future period—ours for indemnity to our citizens for depredations on their commerce and injury to their persons, theirs for the non-execution of the treaties of alliance and commerce and the breach of the consular convention. This treaty, soon after its date, was ratified by the First Consul; but the further negotiation provided for by the 2d article on these important points was defeated by a subsequent occurrence. The convention, duly ratified by the French government, was transmitted to the President, and by him submitted to the Senate, who advised its ratification with the exception of the 2d article, and a limitation of its duration to the term of eight years. With these alterations the treaty was returned and again submitted to the French government, which, after some delay and much deliberation, ratified the convention, with these alterations, adding on their part this proviso: "*Provided, that, by this retrenchment, the two states renounce the respective pretensions which are the subject of the said article.*" The convention, with this modification, was again submitted to the Senate, who, on the 19th of December, 1801, resolved, two-thirds concurring, that they consider the said convention as fully ratified; and they returned the same to the President for promulgation, who proclaimed it in the usual form.

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

As citizens of the United States we had rights which France, as a friendly power, was bound by the law of nations to respect. We had other rights which were secured to us by a positive compact between France and the United States. These rights, of both descriptions, having been violated by the former power greatly to our pecuniary

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

Although your committee cannot but feel the full force of this appeal to the justice of the country, yet, as it has frequently been made in vain, they deem it a duty briefly to examine the reasons which, at different times, have been urged against the allowance of the claim. Among these, they do not recollect that the justice of the claim against France has ever been denied. Should a doubt, however, on that ground, suggest itself to any member of the Senate, it will be removed by the slightest attention to the acts of our government, legislative, executive, and diplomatic. The laws which have before been referred to; the orders given by the President to carry them into effect; and at earlier as well as subsequent periods, the instructions to our ministers, and their correspondence, all prove that the wrongs inflicted on the petitioners were of the most grievous kind. A single reference will be sufficient on this point. It is to a report made by the Secretary of State, respecting depredations on the commerce of the United States, dated June 21, 1797, and published, page 407 of the documents sent to Congress on the 20th May, 1826. After enumerating the several injurious decrees passed by the French government, he says: "Besides these several decrees, and others, which, being more

limited, the former have superseded; the old marine ordinances of France have been revived and enforced with severity, both in Europe and the West Indies. The want of, or informality in, a bill of lading; the want of a certified list of the passengers and crew; the supercargo being by birth a foreigner, although a naturalized citizen of the United States; the destruction of a paper of any kind soever, and the want of a sea letter, have been deemed sufficient to warrant a condemnation of American property, although the proofs of the property were indubitable. The West Indies, as before remarked, have exhibited the most lamentable scenes of depredation, &c. The persons of our citizens have been beaten, insulted, and cruelly imprisoned. American property going to, or coming from, neutral or even French ports, has been seized; it has even been forcibly taken when in their own ports, without any other excuse than that they wanted it." To deny the justice of claims for indemnity for such excesses, would be the assertion of a right, on the part of France, to indiscriminate plunder of neutral property. The claim then existed against France, whether acknowledged by that power or not, cannot, in the view the committee take of the case, be material; if founded on justice, we are bound to suppose that, at some time or other, it would be allowed. Nations must not, in their intercourse with each other, be supposed capable of flagrant injustice. Such a principle would soon break all those ties by which modern civilization has united them. If the French government at that period had denied the justice of these claims, and asserted a right to make the depredation, it would not have lessened the justice and validity of the claimants' rights against the successors in power of those who were so regardless of the laws of nations and the faith of treaties; and, at this moment, but for the act of their own government, they might appeal from the wrongs inflicted by republican France, to the justice and magnanimity of its monarchical ruler. But the justice of the claim was not denied; and the necessity of providing indemnity was expressly acknowledged. Of this there is the fullest evidence. By an arrêté of the 18th November, 1794, the commissioner of the marine is ordered to adjust the accounts of American citizens for the embargo at Bordeaux; and the injustice of all the preceding decrees against our commerce is virtually acknowledged by their unconditional repeal. Under this decree, indemnity was made for sundry American claims arising out of the Bordeaux embargo, contracts, &c.; and the residue of claims of that description were, with some exceptions, compensated out of the fund provided by the convention of April 30, 1803, between the United States and France. Even when Messrs. Pinckney, Marshall, and Gerry, were in Paris, in the informal negotiations carrried on there, the justice of the claims was admitted, and a commission proposed to be established to liquidate the amount to be paid by the United States as a loan to France.—(See exhibit A, in the despatch of the envoys of November 8, 1797.) In all the subsequent negotiations, these claims for spoliations were admitted to be valid; and, finally, in the 2d article of the convention, are spoken of as *indemnities due.* We have also the authority of our government for this assertion. Mr. Madison, in a letter to Mr. Pinckney, dated February 6, 1804, says

expressly: "The claims from which France was released were *admitted by France;*" so that the claims rest, not only on their intrinsic justice, but on the express admission of it by the party concerned.

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

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

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

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

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

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

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

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

Suggestions also have been made invalidating these claims on the ground that they were not made the equivalent for the release of the obligations incurred by the United States under the treaties with France, all of these obligations being already destroyed by the act of Congress of 7th July, 1798, and one of them for the guarantee of the islands never having been incurred, because the war on the part of

France was an offensive, not a defensive war, and that, therefore, the *casus fœderis* had never occurred.

On the first ground, it will be sufficient to observe that a treaty being an agreement between two or more parties, no one of them can exonerate himself from its obligations by his own act. On the second, that the fact is for the argument worse than doubtful; and that, if it were well established, the public law is by no means clear; and that one or all of these reasons operated on our envoys to propose a sum of money as a consideration for exonerating us from the obligation of their treaties, thus supposed by the argument to be annulled.

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

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

The only remaining inquiry is the amount, and on this point the

committee have had some difficulty. Two modes of measuring the compensation suggested themselves:

1. The actual loss sustained by the petitioners;

2. The value of the advantages received as the consideration by the United States.

The first is the one demanded by strict justice, and is the only one that satisfies the word used by the Constitution, which requires "just compensation," which cannot be said to have been made when anything less than the full value is given. But there were difficulties which appeared insurmountable to the adoption of this rule at the present day, arising from the multiplicity of the claims, the nature of the depredations which occasioned them, the loss of documents, either by the lapse of time or the wilful destruction of them by the depredators. The committee, therefore, could not undertake to provide a specific relief for each of the petitioners. But they have recommended the institution of a board to enter into the investigation and apportion a sum which the committee have recommended to be appropriated, *pro rata*, among the several claimants.

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

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

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

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That satisfaction shall be made, to an amount not exceeding five millions of dollars, to such

citizens of the United States, or to their legal representatives, as had valid claims to indemnity upon the French government, arising out of illegal captures, detentions, forcible seizures, and confiscations, made or committed before the thirtieth day of September, eighteen hundred: *Provided*, That the provisions of this act shall not be extended to such claims as are described in the convention concluded at Paris on the thirtieth day of April, eighteen hundred and three, between the United States and the First Consul of the French republic, nor to such claims as are described in the treaty between the United States and Spain, concluded at Washington on the twenty-second day of February, eighteen hundred and nineteen, and for the liquidation and payment whereof provision is made in the said convention, or in said treaty.

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

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

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

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

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

To each commissioner, at the rate, by the year, of

To the secretary of the board, at the rate, by the year, of

To the clerk, at the rate, by the year, of

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

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

FRENCH SPOLIATIONS.

The following is President Polk's veto on the French spoliation bill:

To the Senate of the United States:

I return to the Senate, in which it originated, the bill entitled "An act to provide for the ascertainment and satisfaction of claims of American citizens for spoliations committed by the French prior to the 31st day of July, 1801," which was presented to me on the 6th inst., with my objections to its becoming a law.

In attempting to give the bill the careful examination it requires, difficulties presented themselves in the outset from the remoteness of the period to which the claims belong, the complicated nature of the transactions in which they originated, and the protracted negotiations to which they led between France and the United States. The short time intervening between the passage of the bill by Congress and the approaching close of their session, as well as the pressure of other official duties, have not permitted me to extend my examination of the subject into its minute details. But in the consideration which I have been able to give to it, I find objections of a grave character to its provisions.

For the satisfaction of the claims provided for by the bill, it is proposed to appropriate five millions of dollars. I can perceive no legal or equitable ground upon which this large appropriation can rest. A portion of the claims has been more than half a century before the government, in its executive or legislative departments, and all of them had their origin in events which occurred prior to the year 1800. Since 1802 they have been from time to time before Congress. No greater necessity or propriety exists for providing for these claims at this time than has existed for near half a century; during all which this questionable measure has never until now received the favorable consideration of Congress. It is scarcely probable, if the claim had

been regarded as obligatory upon the government, or constituting an equitable demand upon the treasury, that those who were contemporaneous with the events which gave rise to it, should not long since have done justice to the claimants. The treasury has often been in a condition to enable the government to do so without inconvenience, if these claims had been considered just. Mr. Jefferson, who was fully cognizant of the early dissensions between the governments of the United States and France, out of which the claims arose, in his annual message in 1808, adverted to the large surplus then in the treasury, and its "probable accumulation," and inquired whether it should lie "unproductive in the public vaults;" and yet these claims, though then before Congress, were not recognized or paid. Since that, the public debt of the revolution, and of the war of 1812, has been extinguished, and at several periods since, the treasury has been in possession of large surpluses over the demands upon it. In 1836, the surplus amounted to many millions of dollars, and for want of proper objects to which to apply it, it was directed by Congrees to be deposited with the States.

During this extended course of time, embracing periods eminently favorable for satisfying all just demands upon the government, the claims embraced in this bill met with no favor in Congress, beyond reports of committees, in one or the other branch. These circumstances alone are calculated to raise strong doubts in respect to these claims, especially as all the information necessary to a correct judgment concerning them, has been long before the public. These doubts are strengthened in my mind by the examination I have been enabled to give to the transactions in which they originated.

The bill assumes that the United States have become liable in these ancient transactions to make reparation to the claimants for injuries committed by France. Nothing was obtained for the claimants by negotiation; and the bill assumes that the government has become responsible to them for the aggressions of France. The limited time allotted me, before your adjournment, precludes the possibility of reiterating the facts and arguments by which, in preceding Congresses, these claims have been successfully resisted. The present is a period peculiarly unfavorable for the satisfaction of claims of so large an amount, and, to say the least of them, of so doubtful a character. There is no surplus in the treasury. A public debt of several millions of dollars has been created with the last few years. We are engaged in a foreign war, uncertain in its duration, and involving heavy expenditures; to prosecute which Congress has, at its present session, authorized a further loan. So that in effect the government, should this bill become a law, borrows money and increases the public debt to pay these claims. It is true, that by the provisions of the bill payment is directed to be made in land scrip instead of money, but the effect upon the treasury will be the same. The public lands constitute one of the sources of public revenue, and if these claims be paid in land scrip, it will, from the date of its issue, to a great extent, cut off from the treasury the annual income from the sales of the public lands; because payments for the lands sold by the government may be expected to be made in scrip until it is all redeemed. If these claims be just they

ought to be paid in money, and not in anything made less valuable. The bill provides that they shall be paid in land scrip, whereby they are in effect to be a mortgage upon the public lands in the new States, a mortgage, too, held in great part, if not wholly, by non-residents of the States in which the lands lie, who may secure these lands to the amount of several millions of acres, and then demand for them exorbitant prices from the citizens of the States who may desire to purchase them for settlement, or they may keep them out of the market, and thus retard the prosperity and growth of the States in which they are situated. Why this unusual mode of satisfying demands on the treasury has been resorted to, does not appear. It is not consistent with a sound public policy. If it be done in this case, it may be done in all others. It would form a precedent for the satisfaction of all other stale and questionable claims in the same manner, and would undoubtedly be resorted to by all claimants, who, after successive trials, shall fail to have their claims recognized and paid in money by Congress.

This bill proposes to appropriate five millions of dollars, to be paid in land scrip, and provides "that no claim or memorial shall be received by the commissioners" authorized by the act, "unless accompanied by a release or discharge of the United States from all other and further compensation than the claimant may be entitled to receive under the provisions of this act." These claims are estimated to amount to a much larger sum than five millions of dollars; and yet the claimant is required to release to the government all other compensation, and to accept his share of a fund which is known to be inadequate.

If these claims be well founded, it would be unjust to the claimants to repudiate any portion of them, and the payment of the remaining sum could not be hereafter resisted. This bill proposes to pay these claims, not in the currency known to the Constitution, and not to their full amount.

Passed, as this bill has been, near the close of the session, and when many measures of importance necessarily claim the attention of Congress, and possibly without that full and deliberate consideration which the large sum it appropriates, and the existing condition of the treasury and of the country demand, I deem it to be my duty to withhold my approval, that it may hereafter undergo the revision of Congress. I have come to this conclusion with regret. In interposing my objections to its becoming a law, I am truly sensible that it should be an extreme case which would make it the duty of the Executive to withhold his approval of any bill passed by Congress upon the ground of its inexpediency alone. Such a case I consider this to be.

JAMES K. POLK.

WASHINGTON, *August* 8, 1846.

Special message of President Pierce to the House of Representatives of the United States, transmitting his objections to the bill to provide for the ascertainment and satisfaction of claims of American citizens for spoliations committed by the French prior to the thirty-first day of July, one thousand eight hundred and one. February 17, 1855.

To the House of Representatives:

I have received and carefully considered the bill entitled "An act to provide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the thirty-first of July, one thousand eight hundred and one," and in the discharge of a duty imperatively enjoined on me by the Constitution, I return the same, with my objections, to the House of Representatives, in which it originated.

In the organization of the government of the United States, the legislative and executive functions were separated, and placed in distinct hands. Although the President is required, from time to time, to recommend to the consideration of Congress such measures as he shall judge necessary and expedient, his participation in the formal business of legislation is limited to the single duty, in a certain contingency, of demanding for a bill a particular form of vote, prescribed by the Constitution, before it can become a law. He is not invested with power to defeat legislation by an absolute veto, but only to restrain it, and is charged with the duty, in case he disapproves a measure, of invoking a second and a more deliberate and solemn consideration of it on the part of Congress. It is not incumbent on the President to sign a bill as a matter of course, and thus merely to authenticate the action of Congress, for he must exercise intelligent judgment or be faithless to the trust reposed in him. If he approve a bill he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, for such further action as the Constitution demands, which is its enactment, if at all, not by a bare numerical majority, as in the first instance, but by a constitutional majority of two-thirds of both houses.

While the Constitution thus confers on the legislative bodies the complete power of legislation in all cases, it proceeds, in the spirit of justice, to provide for the protection of the responsibility of the President. It does not compel him to affix the signature of approval to any bill unless it actually have his approbation; for, while it requires him to sign if he approve, it, in my judgment, imposes upon him the duty of withholding his signature if he do not approve. In the execution of his official duty in this respect he is not to perform a mere mechanical part, but is to decide and act according to conscientious convictions of the rightfulness or wrongfulness of the proposed law. In a matter as to which he is doubtful in his own mind he may well defer to the majority of the two houses. Individual members of the respective houses, owing to the nature, variety, and amount of business pending, must necessarily rely, for their guidance in many, perhaps most cases, when the matters involved are not of popular interest, upon the investigation of appropriate committees, or, it may be, that

of a single member, whose attention has been particularly directed to the subject. For similar reasons, but even to a greater extent, from the number and variety of subjects daily urged upon his attention, the President naturally relies much upon the investigation had and the results arrived at by the two houses; and hence those results, in large classes of cases, constitute the basis upon which his approval rests. The President's responsibility is to the whole people of the United States, as that of a senator is to the people of a particular State, that of a representative to the people of a State or district; and it may be safely assumed that he will not resort to the clearly-defined and limited power of arresting legislation, and calling for reconsideration of any measure, except in obedience to requirements of duty. When, however, he entertains a decisive and fixed conclusion, not merely of the unconstitutionality but of the impropriety or injustice in other respects of any measure, if he declares that he approves it he is false to his oath, and he deliberately disregards his constitutional obligations.

I cheerfully recognize the weight of authority which attaches to the action of a majority of the two houses. But in this case, as in some others, the framers of our Constitution, for wise considerations of public good, provided that nothing less than a two-thirds vote of one or both of the houses of Congress shall become effective to bind the coordinate departments of the government, the people, and the several States. If there be anything of seeming invidiousness in the official right thus conferred on the President, it is in appearance only, for the same right of approving or disapproving a bill, according to each one's own judgment, is conferred on every member of the Senate and of the House of Representatives.

It is apparent, therefore, that the circumstances must be extraordinary which would induce the President to withhold approval from a bill involving no violation of the Constitution. The amount of the claims proposed to be discharged by the bill before me, the nature of the transactions in which those claims are alleged to have originated, the length of time during which they have occupied the attention of Congress and the country, present such an exigency. Their history renders it impossible that a President, who has participated to any considerable degree in public affairs, could have failed to form respecting them a decided opinion upon what he would deem satisfactory grounds. Nevertheless, instead of resting on former opinions, it has seemed to me proper to review and more carefully examine the whole subject, so as satisfactorily to determine the nature and extent of my obligations in the premises.

I feel called upon at the threshold to notice an assertion, often repeated, that the refusal of the United States to satisfy these claims in the manner provided by the present bill rests as a stain on the justice of our country. If it be so, the imputation on the public honor is aggravated by the consideration that the claims are coeval with the present century, and it has been a persistent wrong during that whole period of time. The allegation is, that private property has been taken for public use without just compensation, in violation of express provision of the Constitution, and that reparation has been withheld

and justice denied until the injured parties have for the most part descended to the grave. But it is not to be forgotten or overlooked that those who represented the people, in different capacities, at the time when the alleged obligations were incurred, and to whom the charge of injustice attaches in the first instance, have also passed away, and borne with them the special information which controlled their decision, and, it may be well presumed, constituted the justification of their acts.

If, however, the charge in question be well founded, although its admission would inscribe on our history a page which we might desire most of all to obliterate, and although, if true, it must painfully disturb our confidence in the justice and the high sense of moral and political responsibility of those whose memories we have been taught to cherish with so much reverence and respect, still we have only one course of action left us, and that is to make the most prompt and ample reparation in our power, and consign the wrong, as far as may be, to forgetfulness.

But no such heavy sentence of condemnation should be lightly passed upon the sagacious and patriotic men who participated in the transactions out of which these claims are supposed to have arisen, and who, from their ample means of knowledge of the general subject in its minute details, and from their official position, are peculiarly responsible for whatever there is of wrong or injustice in the decisions of their government.

Their justification consists in that which constitutes the objection to the present bill, namely, the absence of any indebtedness on the part of the United States. The charge of denial of justice in this case, and consequent stain upon our national character, has not yet been endorsed by the American people. But if it were otherwise, this bill, so far from relieving the past, would only stamp on the present a more deep and indelible stigma. It admits the justice of the claims, concedes that payment has been wrongfully withheld for fifty years, and then proposes not to pay them, but to compound with the public creditors, by providing that, whether the claims shall be presented or not, whether the sum appropriated shall pay much or little of what shall be found due, the law itself shall constitute a perpetual bar to all future demands. This is not, in my judgment, the way to atone for wrongs, if they exist, nor to meet subsisting obligations.

If new facts, not known or not accessible during the administration of Mr. Jefferson, Mr. Madison, or Mr. Monroe, had since been brought to light, or new sources of information discovered, this would greatly relieve the subject of embarrassment. But nothing of this nature has occurred.

That those eminent statesmen had the best means of arriving at a correct conclusion no one will deny. That they never recognized the alleged obligation on the part of the government is shown by the history of their respective administrations. Indeed, it stands, not as a matter of controlling authority, but as a fact of history, that these claims have never, since our existence as a nation, been deemed by any President worthy of recommendation to Congress.

Claims to payment can only rest on the plea of indebtedness on the part of the government. This requires that it should be shown that the United States have incurred liability to the claimants, either by such acts as deprived them of their property, or by having actually taken it for public use without making just compensation for it.

The first branch of the proposition, that on which an equitable claim to be indemnified by the United States for losses sustained might rest, requires at least a cursory examination of the history of the transactions on which the claims depend. The first link which in the chain of events arrests attention is the treaties of alliance and of amity and commerce between the United States and France, negotiated in 1778. By those treaties peculiar privileges were secured to the armed vessels of each of the contracting parties in the ports of the other; the freedom of trade was greatly enlarged; and mutual obligations were incurred by each to guarantee to the other their territorial possessions in America.

In 1792–'3, when war broke out between France and Great Britain, the former claimed privileges in American ports which our government did not admit as deducible from the treaties of 1778, and which it was held were in conflict with obligations to the other belligerent powers. The liberal principle of one of the treaties referred to—that free ships make free goods, and that subsistence and supplies were not contraband of war unless destined to a blockaded port—was found, in a commercial view, to operate disadvantageously to France as compared with her enemy, Great Britain, the latter asserting under the law of nations the right to capture, as contraband, supplies when bound for an enemy's port.

Induced mainly, it is believed, by these considerations, the government of France decreed on the 9th of May, 1793, the first year of the war, that "the French people are no longer permitted to fulfil towards the neutral powers in general the vows they have so often manifested, and which they constantly make for the full and entire liberty of commerce and navigation;" and, as a counter measure to the course of Great Britain, authorized the seizure of neutral vessels bound to an enemy's port, in like manner as that was done by her great maritime rival. This decree was made to act retrospectively, and to continue until the enemies of France should desist from depredations on the neutral vessels bound to the ports of France. Then followed the embargo by which our vessels were detained in Bordeaux; the seizure of British goods on board of our ships, and of the property of American citizens, under the pretence that it belonged to English subjects, and the imprisonment of American citizens captured on the high seas.

Against these infractions of existing treaties and violations of our rights as a neutral power we complained and remonstrated. For the property of our injured citizens we demanded that due compensation should be made, and from 1793 to 1797 used every means, ordinary and extraordinary, to obtain redress by negotiation. In the last-mentioned year these efforts were met by a refusal to receive a minister sent by our government with special instructions to represent the amicable disposition of the government and people of the United States,

and their desire to remove jealousies and to restore confidence by showing that the complaints against them were groundless. Failing in this, another attempt to adjust all differences between the two republics was made in the form of an extraordinary mission, composed of three distinguished citizens, but the refusal to receive was offensively repeated; and thus terminated this last effort to preserve peace and restore kind relations with our early friend and ally, to whom a debt of gratitude was due which the American people have never been willing to depreciate or to forget. Years of negotiation had not only failed to secure indemnity for our citizens and exemption from further depredation, but these long-continued efforts had brought upon the government the suspension of diplomatic intercourse with France, and such indignities as to induce President Adams, in his message of May 16, 1797, to Congress, convened in special session, to present it as the particular matter for their consideration, and to speak of it in terms of the highest indignation. Thenceforward the action of our government assumed a character which clearly indicates that hope was no longer entertained from the amicable feeling or justice of the government of France, and hence the subsequent measures were those of force.

On the 28th of May, 1798, an act was passed for the employment of the navy of the United States against "armed vessels of the republic of France," and authorized their capture if "found hovering on the coast of the United States for the purpose of committing depredations on the vessels belonging to the citizens thereof." On the 18th of June, 1798, an act was passed prohibiting commercial intercourse with France, under the penalty of the forfeiture of the vessels so employed. On the 25th of June, same year, an act to arm the merchant marine to oppose searches, capture aggressors, and recapture American vessels taken by the French. On the 28th of June, same year, an act for the condemnation and sale of French vessels captured by authority of the act of 28th of May preceding. On the 27th of July, same year, an act abrogating the treaties and the convention which had been concluded between the United States and France, and declaring "that the same shall not henceforth be regarded as legally obligatory on the government or citizens of the United States." On the 9th of the same month an act was passed which enlarged the limits of the hostilities then existing, by authorizing our public vessels to capture armed vessels of France wherever found upon the high seas, and conferred power on the President to issue commissions to private armed vessels to engage in like service.

These acts, though short of a declaration of war, which would put all the citizens of each country in hostility with those of the other, were nevertheless actual war, partial in its application, maritime in its character, but which required the expenditure of much of our public treasure, and much of the blood of our patriotic citizens, who, in vessels but little suited to the purposes of war, went forth to battle on the high seas for the rights and security of their fellow-citizens, and to repel indignities offered to the national honor.

It is not, then, because of any failure to use all available means, diplomatic and military, to obtain reparation, that liability for private

claims can have been incurred by the United States; and if there is any pretence for such liability, it must flow from the action, not from the neglect, of the United States. The first complaint on the part of France was against the proclamation of President Washington, of April 22, 1793. At that early period in the war, which involved Austria, Prussia, Sardinia, the United Netherlands, and Great Britain, on the one part, and France on the other, the great and wise man who was the Chief Executive, as he was and had been the guardian of our then infant republic, proclaimed that "the duty and interest of the United States require that they should, with sincerity and good faith, adopt and pursue a conduct friendly and impartial towards the belligerent powers." This attitude of neutrality, it was pretended, was in disregard of the obligations of alliance between the United States and France. And this, together with the often-renewed complaint that the stipulations of the treaties of 1778 had not been observed and executed by the United States, formed the pretext for the series of outrages upon our government and its citizens, which finally drove us to seek redress and safety by an appeal to force. The treaties of 1778, so long the subject of French complaints, are now understood to be the foundation upon which are laid these claims of indemnity from the United States for spoliations committed by the French prior to 1800. The act of our government which abrogated not only the treaties of 1778, but also the subsequent consular convention of 1788, has already been referred to, and it may be well here to inquire what the course of France was in relation thereto. By the decrees of 9th of May, 1793, 7th of July, 1796, and 2d of March, 1797, the stipulations which were then and subsequently most important to the United States were rendered wholly inoperative. The highly injurious effects which these decrees are known to have produced show how vital were the provisions of treaty which they violated, and make manifest the incontrovertible right of the United States to declare, as the consequence of these acts of the other contracting party, the treaties at an end.

The next step in this inquiry is, whether the act declaring the treaties null and void was ever repealed, or whether by any other means the treaties were ever revived so as to be either the subject or the source of national obligation. The war which has been described, was terminated by the treaty of Paris of 1800, and to that instrument it is necessary to turn to find how much of pre-existing obligations between the two governments outlived the hostilities in which they had been engaged. By the 2d article of the treaty of 1800, it was declared that the ministers plenipotentiary of the two parties, not being able to agree respecting the treaties of alliance, amity, and commerce of 1778, and the convention of 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time, and until they shall have agreed upon these points the said treaties and convention shall have no operation.

When the treaty was submitted to the Senate of the United States, the second article was disagreed to, and the treaty amended by striking it out, and inserting a provision that the convention then made should continue in force eight years from the date of ratification, which con-

vention thus amended was accepted by the First Consul of France, with the addition of a note explanatory of his construction of the convention, to the effect that by the retrenchment of the second article, the two States renounce the respective pretensions which were the object of the said article.

It will be perceived by the language of the second article, as originally framed by the negotiators, that they had found themselves unable to adjust the controversies on which years of diplomacy and of hostilities had been expended; and that they were at last compelled to postpone the discussions of those questions to that most indefinite period, a "convenient time." All, then, of these subjects which was revived by the convention was the right to renew, when it should be convenient to the parties, a discussion, which had already exhausted negotiation, involved the two countries in a maritime war, and on which the parties had approached no nearer to concurrence than they were when the controversy began.

The obligations of the treaties of 1778, and the convention of 1788, were mutual, and estimated to be equal. But however onerous they may have been to the United States, they had been abrogated, and were not revived by the convention of 1800, but expressly spoken of as suspended until an event which could only occur by the pleasure of the United States. It seems clear, then, that the United States were relieved of no obligation to France by the retrenchment of the second article of the convention; and if thereby France was relieved of any valid claims against her, the United States received no consideration in return; and that if private property was taken by the United States from their own citizens, it was not for public use. But it is here proper to inquire whether the United States did relieve France from valid claims against her on the part of citizens of the United States, and did thus deprive them of their property.

The complaints and counter-complaints of the two governments had been that treaties were violated, and that both public and individual rights and interests had been sacrificed. The correspondence of our ministers engaged in negotiations, both before and after the convention of 1800, sufficiently proves how hopeless was the effort to obtain full indemnity from France for injuries inflicted on our commerce from 1793 to 1800, unless it should be by an account in which the rival pretensions of the two governments should each be acknowledged, and the balance struck between them.

It is supposable, and may be inferred from the contemporaneous history as probable, that had the United States agreed in 1800 to revive the treaties of 1778 and 1788 with the construction which France had placed upon them, that the latter government would, on the other hand, have agreed to make indemnity for those spoliations which were committed under the pretext that the United States were faithless to the obligations of the alliance between the two countries.

Hence the conclusion that the United States did not sacrifice private rights or property to get rid of public obligations, but only refused to reassume public obligations for the purpose of obtaining the recognition of the claims of American citizens on the part of France.

All those claims which the French government was willing to admit were carefully provided for elsewhere in the convention, and the declaration of the First Consul, which was appended in his additional note, had no other application than to the claims which had been mutually made by the governments, but on which they had never approximated to an adjustment. In confirmation of the fact that our government did not intend to cease from the prosecution of the just claims of our citizens against France, reference is here made to the annual message of President Jefferson of December 8, 1801, which opens with expressions of his gratification at the restoration of peace among sister nations; and after speaking of the assurances received from all nations with whom we had principal relations, and of the confidence thus inspired that our peace with them would not have been disturbed if they had continued at war with each other, he proceeds to say:

"But a cessation of irregularities which had afflicted the commerce of neutral nations, and of the irritations and injuries produced by them, cannot but add to this confidence, and strengthen at the same time the hope that wrongs committed on unoffending friends, under a pressure of circumstances, will now be reviewed with candor, and will be considered as founding just claims of retribution for the past and new assurances for the future."

The zeal and diligence with which the claims of our citizens against France were prosecuted appear in the diplomatic correspondence of the three years next succeeding the convention of 1800, and the effect of these efforts is made manifest in the convention of 1803, in which provision was made for payment of a class of cases, the consideration of which France had at all previous periods refused to entertain, and which are of that very class which it has been often assumed were released by striking out the second article of the convention of 1800. This is shown by reference to the preamble and to the fourth and fifth articles of the convention of 1803, by which were admitted among the debts due by France to citizens of the United States the amounts chargeable for "prizes made at sea in which the appeal has been properly lodged within the time mentioned in the said convention of the 30th of September, 1800;" and this class was further defined to be only "captures of which the council of prizes shall have ordered restitution, it being well understood that the claimant cannot have recourse to the United States, otherwise than that he might have had to the French republic, and only in case of the insufficiency of the captors."

If, as was affirmed on all hands, the convention of 1803 was intended to close all questions between the governments of France and the United States, and twenty millions of francs were set apart as a sum which might exceed, but could not fall short of, the debts due by France to the citizens of the United States, how are we to reconcile the claim now presented with the estimates made by those who were of the time and immediately connected with the events, and whose intelligence and integrity have in no small degree contributed to the character and prosperity of the country in which we live? Is it rational to assume that the claimants who now present themselves for

indemnity by the United States represent debts which would have been admitted and paid by France but for the intervention of the United States? And is it possible to escape from the effect of the voluminous evidence tending to establish the fact that France resisted all these claims, that it was only after long and skilful negotiation that the agents of the United States obtained the recognition of such of the claims as were provided for in the conventions of 1800 and 1803? And is it not conclusive against any pretensions of possible success on the part of the claimants, if left unaided to make their applications to France that the only debts due to American citizens which have been paid by France, are those which were assumed by the United States as part of the consideration in the purchase of Louisiana?

There is little which is creditable either to the judgment or patriotism of those of our fellow-citizens who at this day arraign the justice, the fidelity, or love of country, of the men who founded the republic, in representing them as having bartered away the property of individuals to escape from public obligations, and then to have withheld from them just compensation. It has been gratifying to me, in tracing the history of these claims, to find that ample evidence exists to refute an accusation which would impeach the purity, the justice, and the magnanimity of the illustrious men who guided and controlled the early destinies of the republic.

I pass from this review of the history of the subject, and, omitting many substantial objections to these claims, proceed to examine somewhat more closely the only grounds upon which they can by possibility be maintained.

Before entering on this, it may be proper to state distinctly certain propositions which, it is admitted on all hands, are essential to prove the obligations of the government.

First. That at the date of the treaty of September 30, 1800, these claims were valid and subsisting as against France.

Second. That they were released or extinguished by the United States in that treaty, and by the manner of its ratification.

Third. That they were so released or extinguished for a consideration valuable to the government, but in which the claimants had no more interest than any other citizens.

The convention between the French republic and the United States of America signed at Paris on the 30th day of September, 1800, purports in the preamble to be founded on the equal desire of the First Consul (Napoleon Bonaparte) and the President of the United States to terminate the differences which have risen between the two states. It declares, in the first place, that there shall be firm, inviolable, and universal peace and a true and sincere friendship between the French republic and the United States. Next it proceeds, in the second, third, fourth, and fifth articles, to make provision in sundry respects, having reference to past differences and the transition from the state of war between the two countries to that of general and permanent peace. Finally, in the residue of the twenty-seventh article, it stipulates anew the conditions of amity and intercourse, commercial and political, thereafter to exist, and, of course, to be substituted in place

of the previous conditions of the treaties of alliance and of commerce, and the consular convention, which are thus tacitly but unequivocally recognized as no longer in force, but in effect abrogated, either by the state of war or by the political action of the two republics.

Except in so far as the whole convention goes to establish the fact that the previous treaties were admitted on both sides to be at an end, none of the articles are directly material to the present question save the following:

ART. 2. "The ministers plenipotentiary of the two parties not being able to agree at present respecting the treaty of alliance of 6th February, 1778, the treaty of amity and commerce of the same date, and the convention of the 14th November, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time; and until they may have agreed upon these points the said treaties and convention shall have no operation, and the relations of the two countries shall be regulated as follows:

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

On this convention being submitted to the Senate of the United States, they consented and advised to its ratification with the following proviso:

"*Provided*, That the second article be expunged, and that the following article be added or inserted: It is agreed that the present convention shall be in force for the term of eight years from the time of the exchange of ratifications."

The spirit and purpose of this change are apparent and unmistakable. The convention, as signed by the respective plenipotentiaries, did not adjust all the points of controversy. Both nations, however, desired the restoration of peace. Accordingly, as to those matters in the relations of the two countries concerning which they could agree they did agree for the time being; and as to the rest, concerning which they could not agree, they suspended and postponed further negotiation.

They abandoned no pretensions, they relinquished no right on either side, but simply adjourned the question until a "convenient time." Meanwhile, and until the arrival of such convenient time, the relations of the two countries were to be regulated by the stipulations of the convention.

Of course the convention was on its face a temporary and provisional one, but in the worst possible form of prospective termination. It was to cease at a convenient time. But how should that convenient time be ascertained? It is plain that such a stipulation, while professedly not disposing of the present controversy, had within itself the germ of a fresh one; for the two governments might at any moment fall into dispute on the question whether that convenient time had or had not arrived. The Senate of the United States anticipated and

prevented this question by the only possible expedient, that is, the designation of a precise date. This being done, the remaining parts of the second article became superfluous and useless; for, as all the provisions of the convention would expire in eight years, it would necessarily follow that negotiations must be renewed within that period; more especially as the operation of the amendment which covered the whole convention was, that even the stipulation of peace in the first article became temporary and expired in eight years; whereas that article, and that article alone, was permanent according to the original tenor of the convention.

The convention thus amended being submitted to the First Consul, was ratified by him, his act of acceptance being accompanied with the following declaratory note:

"The government of the United States having added in its ratification that the convention should be in force for the space of eight years, and having omitted the second article, the government of the French republic consents to accept, ratify, and confirm the above convention, with the addition importing that the convention shall be in force for the space of eight years, and with the retrenchment of the second article: provided that by this retrenchment the two States renounce the respective pretensions which are the object of the said article."

The convention, as thus ratified by the First Consul, having been again submitted to the Senate of the United States, that body resolved that "they considered the convention as fully ratified," and returned the same to the President for promulgation, and it was accordingly promulgated in the usual form by President Jefferson.

Now, it is clear that in simply resolving that "they considered the convention as fully ratified," the Senate did in fact abstain from any express declaration of dissent or assent to the construction put by the First Consul on the retrenchment of the second article. If any inference beyond this can be drawn from their resolution, it is that they regarded the proviso annexed by the First Consul to his declaration of acceptance as foreign to the subject, as nugatory, or as without consequence or effect. Notwithstanding this proviso they considered the ratification as full. If the new proviso made any change in the previous import of the convention, then it was not full. And in considering it a full ratification they in substance deny that the proviso did in any respect change the tenor of the convention.

By the second article, as it originally stood, neither republic had relinquished its existing rights or pretensions, either as to the other previous treaties or the indemnities mutually due or claimed, but only deferred the consideration of them to a convenient time. By the amendment of the Senate of the United States that convenient time, instead of being left indefinite, was fixed at eight years; but no right or pretension of either party was surrendered or abandoned.

If the Senate erred in assuming that the proviso added by the First Consul did not affect the question, then the transaction would amount to nothing more than to have raised a new question to be disposed of on resuming the negotiations, namely, the question whether the proviso of the First Consul did or not modify or impair the effect of the convention as it had been ratified by the Senate.

That such, and such only, was the true meaning and effect of the transaction; that it was not, and was not intended to be, a relinquishment by the United States of any existing claim on France; and especially that it was not an abandonment of any claims of individual citizens, nor the set-off of these against any conceded national obligations to France, is shown by the fact that President Jefferson did at once resume and prosecute to successful conclusion negotiations to obtain from France indemnification for the claims of citizens of the United States existing at the date of that convention; for, on the 30th of April, 1803, three treaties were concluded at Paris between the United States of America and the French republic, one of which embraced the cession of Louisiana; another stipulated for the payment of sixty millions of francs by the United States to France; and a third provided that for the satisfaction of sums due by France to citizens of the United States at the conclusion of the convention of September 30, 1800, and in express compliance with the second and fifth articles thereof, a further sum of twenty millions of francs should be appropriated and paid by the United States. In the preamble to the first of these treaties, which ceded Louisiana, it is set forth that—

"The President of the United States of America and the First Consul of the French republic, in the name of the French people, desiring to remove all source of misunderstanding relative to objects of discussion mentioned in the second and fifth articles of the convention of the 8th Vendémaire, an. 9, (30th September, 1800,) relative to the rights claimed by the United States in virtue of the treaty concluded at Madrid the 27th of October, 1795, between his Catholic Majesty and the said United States, and willing to strengthen the union and friendship which at the time of the said convention was happily re-established between the two nations, have respectively named their plenipotentiaries," "who have agreed to the following articles."

Here is the most distinct and categorical declaration of the two governments that the matters of claim in the second article of the convention of 1800 had not been ceded away, relinquished, or set off, but they were still subsisting subjects of demand against France. The same declaration appears in equally emphatic language in the third of these treaties, bearing the same date, the preamble of which recites that—

"The President of the United States of America and the First Consul of the French republic, in the name of the French people, having by a treaty of this date terminated all difficulties relative to Louisiana, and established on a solid foundation the friendship which unites the two nations, and being desirous, in compliance with the second and fifth articles of the convention of the 8th Vendémaire, ninth year of the French republic, (30th September, 1800,) to secure the payment of the sums due by France to the citizens of the United States," and "have appointed plenipotentiaries," who agreed to the following among other articles:

"ART. I. The debts due by France to citizens of the United States, contracted before the 8th of Vendémaire, ninth year of the French republic, (30th September, 1800,) shall be paid according to the following regulations, with interest at six per cent., to commence

from the periods when the accounts and vouchers were presented to the French government.

"ART. II. The debts provided for by the preceding article are those whose result is comprised in the conjectural note annexed to the present convention, and which, with the interest, cannot exceed the sum of twenty millions of francs. The claims comprised in the said note which fall within the exceptions of the following articles shall not be admitted to the benefit of this provision.

"ART. IV. It is expressly agreed that the preceding articles shall comprehend no debts but such as are due to citizens of the United States, who have been and are yet creditors of France, for supplies, for embargoes, and prizes made at sea, in which the appeal has been properly lodged within the time mentioned in the said convention, 8th Vendémaire, ninth year, (30th September, 1800.)

"ART. V. The preceding articles shall apply only—1st, to captures of which the council of prizes shall have ordered restitution, it being well understood that the claimant cannot have recourse to the United States, otherwise than he might have had to the government of the French republic, and only in case of insufficiency of the captors; 2d, the debts mentioned in the said fifth article of the convention, contracted before the 8th Vendémaire, an. 9, (30th September, 1800,) the payment of which has been heretofore claimed of the actual government of France, and for which the creditors have a right to the protection of the United States: the said fifth article does not comprehend prizes whose condemnation has been or shall be confirmed. It is the express intention of the contracting parties not to extend the benefit of the present convention to reclamations of American citizens who shall have established houses of commerce in France, England, or other countries than the United States, in partnership with foreigners, and who by that reason, and the nature of their commerce, ought to be regarded as domiciliated in the places where such houses exist. All agreements and bargains concerning merchandise which shall not be the property of American citizens are equally excepted from the benefit of the said convention, saving, however, to such persons their claims in like manner as if this treaty had not been made.

"ART. XII. In case of claims for debts contracted by the government of France with citizens of the United States since the 8th Vendémaire, ninth year, (30th September, 1800,) not being comprised in this convention, may be pursued, and the payment demanded in the same manner as if it had not been made."

Other articles of the treaty provide for the appointment of agents to liquidate the claims intended to be secured, and for the payment of them, as allowed, at the treasury of the United States. The following is the concluding clause of the tenth article:

"The rejection of any claim shall have no other effect than to exempt the United States from the payment of it, the French government reserving to itself the right to decide definitely on such claim so far as it concerns itself."

Now, from the provisions of the treaties thus collated, the following deductions undeniably follow, namely:

First. Neither the second article of the convention of 1800, as it

originally stood, nor the retrenchment of that article, nor the proviso in the ratification by the First Consul, nor the action of the Senate of the United States thereon, was regarded by either France or the United States as the renouncement of any claims of American citizens against France.

Second. On the contrary, in the treaties of 1803 the two governments took up the question precisely where it was left on the day of the signature of that of 1800, without suggestion, on the part of France, that the claims of our citizens were excluded by the retrenchment of the second article or the note of the First Consul, and proceeded to make ample provision for such as France could be induced to admit were justly due, and they were accordingly discharged in full, with interest, by the United States in the stead and behalf of France.

Third. The United States, not having admitted in the convention of 1800 that they were under any obligations to France by reason of the abrogation of the treaties of 1778 and 1788, persevered in this view of the question by the tenor of the treaties of 1803, and therefore had no such national obligation to discharge, and did not, either in purpose or in fact, at any time undertake to discharge themselves from any such obligation at the expense and with the property of individual citizens of the United States.

Fourth. By the treaties of 1803, the United States obtained from France the acknowledgment and payment, as part of the indemnity for the cession of Louisiana, of claims of citizens of the United States for spoliations so far as France would admit her liability in the premises; but even then the United States did not relinquish any claim of American citizens not provided for by those treaties; so far from it, to the honor of France be it remembered, she expressly reserved to herself the right to reconsider any rejected claims of citizens of the United States.

Fifth. As to claims of citizens of the United States against France, which had been the subject of controversy between the two countries prior to the signature of the convention of 1800, and the further consideration of which was reserved for a more convenient time by the second article of that convention; for these claims, and these only, provision was made in the treaties of 1803, all other claims being expressly excluded by them from their scope and purview.

It is not to be overlooked, though not necessary to the conclusion, that by the convention between France and the United States of the 4th of July, 1831, complete provision was made for the liquidation, discharge, and payment, on both sides, of all claims of citizens of either against the other for unlawful seizures, captures, sequestrations, or destructions of the vessels, cargoes, or other property, without any limitation of time, so as in terms to run back to the date of the last preceding settlement, at least to that of 1803, if not to the commencement of our national relations with France.

This review of the successive treaties between France and the United States has brought my mind to the undoubting conviction that while the United States have, in the most ample and complete manner, discharged their duty toward such of their citizens as may have been at any time aggrieved by acts of the French government, so, also,

France has honorably discharged herself of all obligations in the premises toward the United States. To concede what this bill assumes would be to impute undeserved reproach both to France and to the United States.

I am, of course, aware that the bill proposes only to provide indemnification for such valid claims of citizens of the United States against France as shall not have been stipulated for and embraced in any of the treaties enumerated. But, in excluding all such claims, it excludes all in fact for which, during the negotiations, France could be persuaded to agree that she was in anywise liable to the United States or our citizens. What remains? And for what is five millions appropriated? In view of what has been said, there would seem to be no ground on which to raise a liability of the United States, unless it be the assumption that the United States are to be considered the insurer and the guarantor of all claims, of whatever nature, which any individual citizen may have against a foreign nation.

FRANKLIN PIERCE.

WASHINGTON, *February* 17, 1855.

Report of the Committee of Foreign Relations respecting French spoliation from 1793 *to* 1800.

IN THE HOUSE OF REPRESENTATIVES, *March* 25, 1824.

Mr. FORSYTH made the following report:

On the petitions of Hadrianus Van Norden, William and Nathaniel Hooper, Daniel Henshaw, several merchants and underwriters of Salem, several merchants of Gloucester, several merchants and underwriters of Alexandria, District of Columbia, several merchants of Washington, North Carolina, Henry Clark and others, of Kennebunk, and several others, merchants, in Maine, referred to the Committee of Foreign Relations, they report:

That no evidence accompanies either of the petitions, all of which, except the first, are literally the same, having been apparently prepared by concert among the claimants to be presented to Congress. To discriminate between them is not practicable, if it were desirable. The committee are compelled to present, in general terms, the nature of these claims, as set forth by the parties interested, and to examine, as briefly as possible, the grounds upon which relief is asked from the government of the United States. The claims are founded upon spoliations committed by the private and public armed vessels of France between the years 1793 and 1800.

The petitioners allege that the French government, to the date of the ratification of the treaty of 1800, always considered the recognition of their claims as due to its honor, and attached them as a charge upon its national character.

That the government of the United States, which had volunteered

its agency for the recovery of them from France, exercised its power and authority to prevent the petitioners from obtaining indemnity; that the government of the United States received from France a full and fair equivalent for these claims, in the discharge from its liabilities under the treaties with France, and the abrogation of these treaties.

Similar applications, if not by the same persons, have been frequently made to Congress, and reports upon them are to be found in the records of the House of Representatives and of the Senate. None of these applications have been successful. Without attempting even to enumerate the failures to obtain a sanction to their statements, and to their claims, the committee refer the House to a detailed report of the various acts of the government of the United States, and of France, from 1793 to 1800, made by a select committee, on the 22d of April, 1802, to which applications like the present were referred. Governed by that report, the Committee on Foreign Relations are not satisfied that the French government ever admitted the justice of the claims of the petitioners, or ever intended to pay them; that the government of the United States used every effort, even to war itself, to rescue the property of American merchants from the lawless violence of France; that its efforts to procure payment for the spoliations committed by the French cruisers were not discontinued until it was obvious that there was no hope of success; that this government *never* received from France any equivalent for the claims of Americans upon France. The war of aggression was commenced by France, and every act of the United States was a just retaliation for previous injury. The treaties with France were annulled by an act of Congress in 1798, in consequence of the utter disregard of the stipulations of them by that power.

In short, to justify their claims upon the United States, the petitioners assume that France was right, and their own government wrong; that France was prepared to make a just reparation for the outrages committed under her own laws, until released from her obligations by the United States, who were faithless to their trust in the first instance, and have been regardless of the obligations of justice ever since—assumptions not consistent with truth, nor creditable to the patriotism of those who make them. The committee recommend to the House to adopt the following resolution:

Resolved, That petitions of the several persons who ask indemnity for spoliation committed by French cruisers on their property between the years 1793 and 1800 be rejected.

IN THE HOUSE OF REPRESENTATIVES, *February* 21, 1835.

STATEMENT OF MR. CAMBRELENG,

On French Spoliations.

FRENCH SPOLIATIONS PRIOR TO 1800.

Statements submitted in the Committee on Foreign Affairs, relative to the bill making provision for the satisfaction of claims for French spoliations prior to 1800.

[*Note.*—Owing to the late period at which this subject was presented to the committee, a majority of the committee declined adopting either of the following statements as the report of the committee. They directed their chairman to submit a motion that the bill be laid on the table, and authorized a resolution that the two following statements *should be printed*, which was ordered accordingly.]

The claims in question are represented to be for spoliations committed by the public and private armed vessels of France on the commerce of the United States, prior to the date of the treaty between the two nations of the 30th of September, 1800. It is alleged, that by expunging the second article of that treaty, and subsequently renouncing our pretensions to indemnity for these spoliations, we have deprived our citizens of their right to prosecute their claims on France, released that nation from her obligations, and thereby made the United States responsible for them. It is also alleged that the claims were sacrificed to obtain from France the renunciation of ancient and embarrassing national stipulations, and that the claimants have thereby become entitled to indemnity for private property taken for public use.

Without conceding that an unoffending and aggrieved nation can be made responsible for the outrages committed by another power, by any provisions inserted in a treaty, in violation of instructions, or by any stipulation, short of a positive character assuming the obligation to indemnify the parties injured, the question will be discussed upon the grounds assumed by those who have heretofore advocated these claims.

It is stated, that when France, in 1800, renounced her pretensions to the exclusive privileges and guarantee acquired by the treaties of amity and commerce, and of alliance of the 6th of February, 1778, it relieved the United States from very embarrassing and perpetual obligations. By the commercial treaty, each nation was to enjoy exclusive privileges as to privateers and prizes; free trade was mutually allowed with belligerent countries, and the flag of each nation was to protect the cargo. Both treaties were made under the expectation that Great Britain would declare war against France, and were designed for the mutual benefit of both countries, should such an event occur. The preamble to the treaty of alliance, referring to the commercial treaty then just made, declares that the two powers "have thought it necessary to take into consideration the means of strengthening those [commercial and friendly] engagements, and of

rendering them useful to the safety and tranquillity of the two parties; *particularly in case Great Britain, in resentment of that connexion, and of the good correspondence which is the object of the said treaty, should break the peace with France*, either by direct hostilities, or by hindering her commerce and navigation in a manner contrary to the rights of nations, and the peace subsisting between the two crowns; and his Majesty and the said United States *having resolved in that case to join their councils and efforts against the enterprises of their common enemy*, the respective plenipotentiaries empowered to concert the clauses and conditions proper to fulfil the said intentions, have, after most mature deliberation, concluded and determined on the following articles."

The following is the second article of the treaty:

"The *essential and direct end of the present defensive alliance* is to maintain effectually the liberty, sovereignty, and independence, absolute and unlimited, of the said United States, as well in matters of government as of commerce."

The British possessions in North America or the Bermudas, if reduced, were to belong to the United States. Islands in or near the Gulf of Mexico, if conquered, to appertain to France. By the 9th article—

"The contracting parties declare that, being resolved to fulfil, each on its own part, the clauses and conditions of the present treaty of alliance, according to its own power and circumstances, there shall be no after claim of compensation on one side or the other, *whatever may be the event of the war.*

By the 11th article, the United States guarantees to France her possessions in America; and France, on the other hand, guarantees the liberty, sovereignty, and independence of the United States.

Both these treaties were made during our revolutionary war, and both contained stipulations incompatible with the laws of nations and the rights of belligerents. In 1792 France declared war against England; that war not being of the character contemplated or described in our treaty of alliance, we proclaimed our neutrality in 1793, and against that proclamation France never remonstrated or protested until long afterwards, when it became necessary to resist our claims for spoliations by setting up pretensions to indemnity. She soon discovered that it was not for her interest to permit us to enjoy free trade with her enemy, or to suffer our flag to protect belligerent property, as stipulated in the commercial treaty. On the 9th of May, 1793, she issued her first decree, in violation of our treaty of 1778, declaring that "the French people are no longer permitted to fulfil, towards the neutral powers in general, the vows they have so often manifested," and making "its operation retrospective to the date of the declaration of war, and prospective to the period when the enemies of France should cease the depredations of which it complained." This was immediately followed by the embargo of our vessels; the refusal to pay for supplies taken; the capture of our property under various pretences, and the imprisonment of our citizens taken on the high seas. Our ports were treated by France as colonial, for the condemnation and disposal of her prizes, and our neutrality was insolently violated. An accumulation of wrongs, in-

sults and injuries, finally authorized and compelled Congress solemnly to declare, on the 7th of July, 1798, "that the United States are of right freed and exonerated from the stipulations of the treaties and of the consular convention heretofore concluded between the United States and France; and that the same shall not henceforth be regarded as legally obligatory on the government or citizens of the United States."

The violations of the treaties by France were palpable, and our right to renounce them was in strict conformity to the law of nations. But, however that right may have been disputed by the French commissioners, to obtain advantages in the negotiation, the validity of the act of 1798 never can be questioned in any case between the United States and her own citizens. From the 7th July, in that year, our treaties with France were annulled, never to be revived. Our commissioners had no authority to stipulate for the payment of any sum for the mutual right to abrogate the treaties, nor to promise any compromise further than to waive discussion of national indemnities, "if the French government should desire it," although the Secretary of State was of opinion that our claims for national injuries growing out of the violation of treaties "would exceed" those of France. The second article of the treaty of 1800, though merely postponing the discussion of these treaties, so far recognized them; and the Senate struck it out of the treaty, if for no other reason, because it was inserted in violation of instructions, and was wholly inconsistent with the declaratory act of 1798. It will be seen, moreover, that towards the close of the negotiation the French ministers admitted that war existed. If the treaties with France were, from either cause, not in existence on the 30th of September, 1800, the United States had no motive to sacrifice the interests of its citizens merely to induce that government to renounce a nullity.

The next inquiry is, were the claims alluded to in the second article, whether national or individual, valid claims on France, and such as this government had a national right to prosecute? It is conceded that if war existed the claims were extinguished. It is true that negotiation was conducted by the ministers of both countries on the basis of peace; but it is also true that before the close of the negotiation the French ministers, discovering that it was in vain longer to contend for the existence of the ancient treaties, abandoned their pacific ground. The journal of our commissioners, of the 12th September, 1800, states that the president of the French commission declared that "if the government should think proper to instruct them to make a treaty on the basis of indemnities, and a modified renewal of the old treaties, he would resign sooner than sign such a treaty; adding, that if the question could be determined by an indifferent nation, he was satisfied such a tribunal would say that the present state of things was *war* on the side of America, and that no indemnities could be claimed. The two other commissioners made similar declarations. And after the treaty was signed our own commissioners assumed the same ground; in their letter to the Secretary of State of the 4th October, 1800, they say: "nor is it conceived that the treaties between the United States and France have undergone a more nullifying operation than the condition of war necessarily imposes. Doubtless the congressional act authorizing the reduction of French cruisers by force, was an authoriza-

tion of war, limited, indeed, in its extent, but not in its nature. Clearly, also, their subsequent act, declaring that the treaties had ceased to be obligatory, however proper it might be for the removal of doubts, was but declaratory of the actual state of things; and, certainly, it was only from an exercise of the constitutional prerogative *of declaring war*, that either of them derived validity." To corroborate these opinions, it is only necessary to advert to some of the measures authorized by our government. From May, 1798, to March, 1799, inclusive, various measures were adopted, which, taken together, made the war general and sanguinary. We renounced our treaties; authorized our merchantmen to arm; ordered the capture, by our public and private armed vessels, and the condemnation, of all armed French vessels, which included all afloat, for it was during the war between France and England; loans, appropriations, and taxes, for the purposes of war, amounting to more than twelve millions; ordered six seventy-fours and six sloops-of-war to be built; the raising of thirty-six regiments and two battalions; and, in case of invasion, the President was authorized to call into the field an army of seventy-five thousand men. We captured eighty of the armed vessels of France, provided for the exchange of prisoners, and authorized retaliation on them by punishment, imprisonment, or death. If this was not making war upon France, it is difficult to conceive what constitutes war. The rights and duties of nations are not to be controlled or regulated by technical construction. War actually existed; the claims, not the treaties, were the cause of it, and the French commissioners had a right to resist those which were excluded upon that ground. If it suited the ministers of both countries to insist on the basis of peace to obtain particular advantages in the progress of the negotiation, their negotiations closed with opposite declarations, and, however it might have been negotiated, the treaty was, by striking out the second article, ratified by both governments on the basis of war.

In defence of these claims much has been said about the various proposals made by our ministers to effect a compromise. It would be sufficient to say, so far as the responsibility of this government is involved in the question, that the unauthorized acts of its ministers, never ratified, nor even perfected, cannot render it liable to pay either for the spoliations committed by another power, or for the renunciation of treaties, which it had solemnly declared void. But it is evident, from the history of the negotiation, that the ministers of the United States were determined never to admit the existence of these treaties, and that the ministers of France were equally resolved never to pay for the spoliations in question. On one side it was contended that there had been no war, for the purpose of enlarging the amount of our individual indemnities; on the other the same ground was assumed, to sustain the existence of the ancient treaties. The French ministers required a preliminary "discussion, in which the meaning of ancient treaties shall be determined, the principles of the laws of nations unfolded, and the application of these principles to the claims brought forward, whether national or individual, clearly shown." The American ministers, in reply, propose the project of a treaty for mutual indemnities. The expediency of providing suitable indemnities is concurred in; but, say the French ministers, "an indemnity cannot result except from

an admitted contravention of an acknowledged obligation." On one side the treaties of 1778 and 1788 were considered "as the sole basis of their negotiations;" on the other they could not be regarded "as the basis of the present negotiation for any other purpose" than as it respected claims prior to the 7th July, 1798, when the United States, "by a solemn public act, declared that they were freed and exonerated from them;" and, as our ministers add, "that declaration cannot be recalled." They at the same time (8th May, 1800) transmit the remainder of the project of a treaty. The correspondence was continued until August 15, 1800, when they write to the Secretary of State that "the negotiation must be abandoned or our instructions deviated from." It was on the 20th August, 1800, not for the sake of the claims now in question, nor for the value of treaties which had been annulled, but for the purpose of putting an end to the war, saving property not condemned, and our commerce from future spoliations, and under the impression that the French ministers were really desirous of providing for these spoliations, and sincerely estimated the ancient treaties at some value, that our ministers offered the following articles:

1st. "Let it be declared that the former treaties are renewed and confirmed, and shall have the same effect as if no misunderstanding between the two powers had intervened, except so far as they are derogated by from the present treaty.

2d. "It shall be optional with either party to pay to the other, within seven years, three millions of francs in money or securities which may be issued for indemnities, and thereby to reduce the rights of the other as to privateers and prizes to those of the most favored nation. And during the said term allowed for option the right of both parties shall be limited by the time of the most favored nation.

3d. "The mutual guarantee in the treaty of alliance shall be so specified and limited that its future obligation shall be, on the part of France, when the United States shall be attacked, to furnish and deliver at her own ports military stores to the amount of one million of francs; and on the part of the United States, when the French possessions in America, in any future war, shall be attacked, to furnish and deliver at their own ports a like amount in provisions. It shall, moreover, be optional for either party to exonerate itself wholly of its obligation, by paying to the other, within seven years, a gross sum of five millions of francs in money, or such securities as may be issued for indemnities.

4th. "The articles of commerce and navigation, except the 17th article of the treaty, shall admit of modifications, reserving for their principle the rights of the most favored nation, where it shall not be otherwise agreed, and be limited in their duration to twelve years.

5th. "There shall be a reciprocal stipulation for indemnities, and these indemnities shall be limited to the claims of individuals, and adjusted agreeably to the principles and manner proposed by the American ministers in their project of a treaty heretofore delivered, except where it shall be otherwise agreed. Public ships taken on either side shall be restored or paid for.

6th. "All property seized by either party and not yet definitely condemned, or which may be seized before the exchange of the ratifi-

cations of the present treaty, shall be restored on reasonable (though it may be informal) proof of its belonging to the other, except contraband goods of the United States destined to an enemy's port. This provision to take effect from the signature of the treaty; and if any condemnations should take place contrary to the intent of this stipulation, before knowledge of the same shall be obtained, the property so condemned shall be paid for without delay."

Every stipulation in these propositions of a national character was reciprocal, whether relating to obligations or releases. These articles formed the basis of a very useless negotiation. The French ministers made a proposition in lieu of them, by which, to use the language of our ministers, "the indemnities may be sacrificed and the treaties remain recognized and confirmed." Much negotiation took place till, as the journal of the proceedings of the 12th September, 1800, states, the French ministers "openly avowed that their real object was to avoid, by every means, any engagement to pay indemnities, giving as one reason the utter inability of France to pay, in the situation in which she would be left by the present war." It was on that occasion that the president of the French commission made the declaration before alluded to, that, if the government should "instruct them to make a treaty on the basis of indemnities, and a modified renewal of the old treaties, he would resign sooner than sign such a treaty;" "that *the present state of things was war on the side of America, and that no indemnities could be claimed.*" The other commissioners made similar declarations. The American ministers tell us that they abandoned "all hope of obtaining idemnities with any modification of the treaties;" and that they determined, by a "temporary arrangement, to extricate the United States *from the war*, or that peculiar state of hostility in which they are at present involved, save the immense property of our citizens now depending before the council of prizes, and secure, as far as possible, our commerce against the abuses of captures during *the present war.*" Had they directly and expressly renounced forever the whole of the indemnities which were excluded by the basis of war, they would have exercised no other right than that which necessarily belongs to every government, and which involves no liability for such renounced spoliations. They had prosecuted the negotiation with more than ordinary success. France commenced with claims for national indemnities, which she ultimately effectually abandoned, by the second article. She proposed a new treaty, on terms of national equality, on the condition of "an *entire silence* on the subject of *indemnities;*" yet she made a new treaty, embracing indemnities, not only for involuntary wrongs suffered by our citizens, but for her voluntary contracts with them; which class of claims we had no national right to enforce, nor was France bound to admit them. Our ministers had prosecuted these rejected claims till they had ascertained that France would not recognize them without our acknowledging the existence of treaties which had been extinguished by our solemn declaration and by war; and that, even if it had been possible or practicable to comply with their proposition, our claimants were to be put off with a promise—absolutely worth nothing—to pay at a remote and indefinite period, made by a government declaring that its real object was to avoid indemnities. They deter-

mined (and justly determined) that we were under no national obligation to prosecute a class of claims, at least of doubtful validity, according to the law of nations, by sacrificing other classes for indemnities acknowledged to be due our citizens, amounting to millions, and by continuing the war between the two countries. But let our ministers speak for themselves. In their letter of the 4th of October, 1800, transmitting the convention, they say: "That it was indispensable to the granting of indemnities, not only that the treaties should have an unqualified recognition, but that their future operation should not be varied in any particular, for *any coasideration or compensation whatever.* In short, they thought proper to add, *what was quite unnecessary, that their real object was to avoid indemnities, and that it was not in the power of France to pay them.*"

"No time was requisite for the American ministers to intimate that it had become useless to pursue the negotiation any further."

"It accorded as little with their views as with their instructions to subject their country perpetually to the mischievous effects of those treaties, in order to obtain a promise of indemnity at a remote period—a promise which might as easily prove delusive as it would reluctantly be made, especially as, under the guarantee of the treaty of alliance, the United States might be immediately called upon for succors, which, if not furnished, would of itself be a sufficient pretext to render abortive the hope of indemnity."

"It only remained for the undersigned to quit France, leaving the United States involved in a contest, and, according to appearances, soon alone in a contest, which it might be as difficult for them to relinquish with honor as to pursue with a prospect of advantage; or else to propose a temporary arrangement, reserving for a definite adjustment points which could not then be satisfactorily settled, and providing in the meantime against a state of things of which neither party could profit. They elected the latter, and the result has been the signature of a convention."

Such were the convictions of our ministers as to the value of these claims, and such the high considerations which induced them to put an end to the war. It is against these explicit declarations, made after the treaty was signed, when our ministers had no motive to set up pretensions, whether well or ill founded, and against the plain language of the second article, which, even as it stood before it was expunged, effectually abandoned all pretensions, that the advocates of these claims quote the arguments of our ministers when they were urging them upon France in behalf of the claimants, and the declaration of Mr. Madison, in his letter to Mr. Pinckney, when urging our claims on Spain, that the claims from which France was released were *admitted* by France, and were relinquished for a valuable consideration. They were never admitted by France, except on the basis of the existence of treaties which were annulled; and they were abandoned only when it was discovered that France would not pay them, and then not to get rid of national obligations, but to prevent the sacrifice of millions due to our own citizens, and to put an end to the war.

It is not necessary to waste time in discussing the grave questions which have arisen about the great value which has been given to the

second article of the treaty of 1800, by merely expunging it, when, if it had remained, it was utterly without value. The following is the article alluded to:

"The ministers plenipotentiary of the two parties not being able to agree at present respecting the treaty of alliance of the 6th of February, 1778, the treaty of amity and commerce of the same date, and the convention of 14th of November, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time; and until they may have agreed upon these points the said treaties and convention shall have no operation, and the relations of the two countries shall be regulated as follows."

The Senate ratified the treaty, "provided the second article be expunged, and that the following article be added or inserted: 'It is agreed that the present convention shall be in force for the term of eight years from the time of the exchange of ratifications.'" Bonaparte returned it with another provision, "that, by this retrenchment, the two States renounce the respective pretensions which are the object of the said article." Of this provision Mr. Madison says: "I am authorized to say that the President does not regard the declaratory clause as more than a legitimate inference from the rejection by the Senate of the second article." The Senate did not, on our part, formally renounce our pretensions, but merely resolve that they considered "the said convention as fully ratified."

It is contended that our government made itself liable by the act of the Senate in expunging the article from the treaty, and that valuable private property was thereby taken for public use. It is difficult to conceive how the act of the Senate could give value to claims, even the discussion of which had been indefinitely postponed by the article as it originally stood, and which discussion depended on the voluntary and exclusive decision of a government which had declared it never would pay them, because they had been extinguished by war. The second article, whether in relation to the claims or to the treaties, was absolutely worth nothing to either of the parties or to their citizens. Mr. Murray, the minister who exchanged the ratifications, says: "If the Senate meant, as I hope, to consider indemnities as worth nothing, the business, I presume, is closed." Mr. Talleyrand states, as the declaration of Mr. Murray, among other things, and in the propriety of which he concurs, that the second article was renounced "as susceptible of producing disquiets in future, by promising nothing but an ulterior and discordant negotiation." But whether these claims were indefinitely postponed by the treaty, as it was signed, or abandoned, as it was ratified by the Senate, or renounced, as it was ratified by Bonaparte—in either form they had no value. Indeed, if it is admitted, as it ought to be in truth and justice, that war actually existed, they never had any value as claims on France. Our government had done all it could do for our citizens, and more than it had a right to do according to the strict rules of public law. It had discharged more than its obligations to the claimants, by continuing the negotiation to obtain them from April to September, 1800, while the country was involved in war; and the claims were never abandoned until they were ascertained to be hopeless.

But the treaty of the 30th September, 1800, though promptly car-

ried into effect by the United States, was never executed by France. The claimants who were provided for by that treaty were but little better off than those now petitioning for relief; for, although that treaty was ratified, and France had solemnly engaged to indemnify our citizens, these promises remained unperformed till the date of the treaty of 1803. Instead of indemnity, we enjoyed nothing but the privilege of a vexatious and protracted negotiation; and our citizens, judging from subsequent experience, would have remained urging their claims to this day, but for the accidental purchase of Louisiana, which country France, in a moment of alarm, transferred to the United States to prevent that vast territory from falling a conquest to the arms of Great Britain. Instead of indemnity, we had only the dissatisfaction of learning, from the ministers of that government, that whenever we should be paid, according to their construction of the treaty of 1800, large classes of our claims would be excluded. As late as March, 1802, in reply to the French minister, Mr. Livingston complains: "Nor is," says he, "the most distant hope, as yet, afforded them [the claimants] by your note of when or how they will be paid." Indeed, as late as April, 1802, they were still disputing about the provisions of the treaty of 1800, and denying that "indemnities for embargoes" were included in it. Mr. Livingston, as late as the 24th of January, 1803, in his letter to the minister of foreign affairs, says: "I am told the gentleman at the head of the department considers the treaty as applying to debts contracted only under the present government." And on the 8th of March, 1804, nearly a year after the treaty of 1803, the French minister of the public treasury writes the minister of foreign affairs:

"The principal object of this convention [of 1803] was to give satisfaction to the citizens of the United States and to the American government, by procuring the execution of the treaty of September 30, 1800. *The stipulations of it had remained until then without being executed*, and gave rise to pressing solicitations by Mr. Livingston."

Such was the hopeless prospect for our acknowledged claims, when, in March, 1803, it was proposed to purchase a small portion of that immense territory which we acquired in the subsequent negotiation. In Mr. Madison's instruction to Messrs. Livingston and Monroe, on the 2d of March, 1803, he evidently contemplates a treaty on a different basis from that of 1800; he says:

"They [the United States] shall assume, in *such order of priority as the government of the United States may approve*, the payment of claims which have been, or *may be*, acknowledged by the French republic to be due to American citizens, or so much thereof as, with the payment to be made on the exchange of ratifications, will not exceed the sum of ———.

"It is apprehended that the French government will feel no repugnance to our designating the classes of claims and debts, which, embracing more equitable considerations than the rest, we may believe entitled to a priority of payment.

"We think the following classification such as ought to be adopted by ourselves:

"1st. Claims under the 4th article of the convention of September, 1800.

"2d. Forced contracts or sales imposed upon our citizens by French authorities.

"3d. Voluntary contracts which have been suffered to remain unfulfilled by them."

This was nothing more nor less than a proposition for a new treaty on the basis of public law, which he further explains, viz:

"Where our citizens have become creditors of the French government, in consequence of agencies or appointments derived from it, the United States are under *no particular obligations to patronize their claims*, and therefore *no sacrifice of any sort in their behalf* ought to be made in the arrangement." When the negotiation took a wider range, embracing the whole of Louisiana, and twenty millions were set apart for the payment of American claims, it was undoubtedly the intention of the ministers of both nations, whatever construction the commissioners may have subsequently given to the provisions of the treaty of 1803, to have given that treaty the most liberal and comprehensive effect. France had then no motive for excluding any class of claims; for the amount to pay the whole had been not only agreed upon, but was believed by both parties to be more than sufficient to meet every just and valid demand; and the United States could have been governed by no consideration but that of doing justice to our own citizens, in the order in which their claims would stand, according to the rules of public law. Mr. Skipwith thought, as late as the 30th July, 1803, that "the American debt would fall much within the twenty millions for which we had engaged, and that *all the fair creditors would be fully satisfied.*" Mr. Livingston, in January, 1804, states that the nominal amount of the claims had been augmented by the presentation of many either without foundation, without vouchers, which did not come within the treaty, or which had been paid. Difficulties having arisen about the true construction of the treaty of 1803, and apprehensions existing that the amount would not be sufficient to cover all the equitable claims, Mr. Madison says, in his letter to Mr. Livingston of January 31, 1804:

"It is clear that the patronage of the government of the United States is due, on prior considerations, to some classes of the claimants than to others; to those, for example, *whose property was wrongfully taken on the high seas by force*, than to those who, by *voluntary contracts*, placed a confidence in the French government, which was disappointed. It seems requisite, nevertheless, that some effort should be made in behalf of those whose claims were embraced by the convention of September 30, 1800, and not provided for by that of April 30, 1803." Mr. Madison proposes various provisions for avoiding the effect of misconstruction of the treaty of 1803, and cautions Mr. Livingston "that no waiver be made which may either still further weaken the claims against France, or give color for turning them over against the United States." Mr. Livingston, in his letter of the 24th February, 1804, to the minister of foreign affairs, says, "the preamble of the convention expressly asserts that its object was to secure the payment of the sums due to the citizens of the United States, in compliance with the *second* and fifth articles of the convention of the 30th September, 1800." He protests against the treaty's being limited to the claims embraced in the explanatory note as an "in-

accurate list," and says, "I do not hesitate to declare that it was the intention of the American plenipotentiaries to render the treaty as extensive as the preamble indicates, and to include all debts provided for by the convention of 1800, as far as the twenty millions would go, with some checks to prevent frauds by persons not truly American citizens, or the covering of foreign property under American names." Mr. Skipwith, 25th February, 1804, complains to Mr. Livingston that "a conjectural note rendered by a subordinate bureau of this government, without even a signature being attached to it, was exclusively consecrated by the second article of the convention of 1803." Mr. Marbois and Mr. Livingston both concurred that claims not included in the conjectural note "might be paid in virtue of the convention." The commissioners say, on the 22d March, 1804, that they had on no occasion said that they "should limit their examination to the claims founded upon the conjectural note, provided they did not exceed the twenty millions of livres," There was no disposition on the part of France to put any but the most liberal construction upon the treaty, and to make it as comprehensive as possible. Mr. Livingston says, in his letter of 25th July, 1804, "It is certain that France will take care, if there are any claims due under the convention of 1800, unsatisfied by the narrow construction of our agents, to extend the last convention to all such claims.

"In settling the sums due for embargoes, the French government have, contrary to all expectations, granted more even than was asked in many cases.

"The Emperor has taken up the idea that the twenty millions was to cover the whole demand under the convention, and, for this reason, he will make it embrace as many objects as possible."

It is evident that the French government, from a manifest motive of interest, was disposed to include every claim possible in the treaty of 1803, because, as it will be seen on examining that treaty, France had exonerated the United States, reserving to herself the responsibility for all that might be rejected by the board of commissioners. It was undoubtedly the intention of those who framed the treaty of 1803, that it should comprehend the claims designed to be paid by the treaty of 1800. The two treaties, however, vary materially; and the board of commissioners, being obliged to be governed by the last treaty, were under the necessity of excluding some claims which were designed to be provided for by the treaty of 1800, and of admitting others which were not stipulaled for in that treaty. By comparing the provisions of the two, the difference between them will be made manifest. The treaty of September 30, 1800, provides in the

3d Article, for the restoration of captured public ships;

4th Article, for captured property not finally condemned to be restored, and also that which may be captured before the exchange of ratifications;

5th Article, for the debts due from each nation to the citizens of the other; but not to extend to indemnities claimed on account of captures or confiscations;

The treaty of April 30, 1803, states, in the preamble, that, "the two nations, being desirous, in compliance with the *second* and fifth articles of the convention of 30th September, 1800, to secure the pay-

ment of the sum due by France to the citizens of the United States, have," &c. Notwithstanding this unqualified recognition of the second article of the treaty of 1800, it was not intended by the plenipotentiaries of the two powers to provide for claims not included in that treaty, but for all comprehended in it according to the American construction. The treaty of 1803, however, provides:

1st Article, for debts due by France to ciztiens of the United States before the 30th September, 1800, to be paid with interest from the time the accounts and vouchers were presented.

2d Article, debts provided for by the preceding article are those whose result is comprised in the *conjectural note* annexed to the present convention. There was no such note attached to the convention of 1800.

3d Article, the mode and time of paying the debts.

4th Article, the preceding articles to comprehend no debts but such as are due to citizens of the United States who have been, and are yet, creditors of France, for *supplies*, for *embargoes*, and *prizes made at sea*, in which the appeal has been properly lodged within the time mentioned in said convention of 30th September, 1800. There are, in the convention of 1800, no such specifications, no reference to appeals, and no time fixed within which they shall be made.

5th Arcticle, the preceding articles shall apply only—

1st. To captures of which the council of prizes shall have ordered restitution, it being *well understood that the claimant cannot have recourse to the United States otherwise than he might have had to the government of the French republic*, and only in case of the insufficiency (insolvency) of the captors.

2d. The debts, mentioned in the said fifth article of the convention, contracted before the 30th September, 1800, the payment of which has been heretofore claimed by the actual government of France, and for which the creditors have a right to the protection of the government of the United States.

The said fifth article does not comprehend prizes whose condemnation has been or shall be confirmed, nor reclamations of American citizens who shall have established houses of commerce in France, England, or other countries than the United States, in partnership with foreigners, and who, by that reason and the nature of their commerce, ought to be regard as domiciliated in the places where such houses exist.

Contracts concerning merchandise, not the property of American citizens, equally excepted.

Whatever may have been the design of the ministers of both nations, this was essentially a new treaty, varying in some of its provisions from, and inconsistent with, other stipulations of the treaty of 1800. By referring to the conjectural note, as it will be seen, they recognized claims not provided for in the treaty of 1800; by specifying indemnities for embargoes, they abandoned the French construction of the treaty of 1800; by the reference to appeals to the council of prizes, there is an inconsistency with the treaty of 1800; and, on the other hand, the more definite exclusions in the treaty of 1803, set aside some claims which were probably designed to be provided for in the treaty of 1800. But, under the provisions of the former, notwithstanding

the rejection of claims by the commissioners, there can be no doubt that, by specifying particularly embargoes and prizes made at sea, and by recognizing the conjectural note, a much larger amount was included than would ever have been allowed under the treaty of 1800, as it was construed, previous to 1803, by the French government. The commissioners were naturally embarrassed by the conflicting provisions of the two treaties, but were bound to be governed by that of 1803.

In examining the "conjectural note," specially recognized and placed in the first class of claims, they found some which were embraced in the second article of the treaty of 1800. Of the claims found on the note, sixty-eight were rejected, all of which occurred in 1793, 1794, 1795, 1796, 1797, and 1798; and of these six and twenty cases were rejected, not because they did not come within the provisions of the treaty of 1803, for captures, but because they were "never before the council of prizes." Whether any, or how many, of these claims were allowed cannot be ascertained, as no list of claims admitted was published. There were claims for "indemnities" on every list; and, besides those found on the conjectural note, two hundred and six cases were admitted by the board, and among those, in this class, which were rejected, are to be found some of the largest captures made by France, and not included in the treaty of 1800. Cases of capture were admitted and examined, which were made, not only before the renunciation of the treaties in 1798, but after the war had begun. Claims of every description, under the denomination of captures, seizures, indemnities, freight, supplies, condemnations, bills, money deposited in the treasury at Guadaloupe, goods plundered, detention, balances, requisition, embargoes, specie captured, contracts, demurrage, ordinance, bills from the Isle of France, &c., &c. In short, it seems that every claim which ever existed against France, no matter of what date or character that could be, was presented. The conjectural note embraced—

Credits recognized by the ex-commission, about.....	3,500,000	livres.
Claims to be liquidated, about.....	5,000,000	"
Claims not yet examined, about.....	2,500,000	"
Claims of a nature unknown, about.....	5,500,000	"
Claims under the embargo of 1793, about.....	3,300,000	"
	19,800,000	"

If there were any claims on France not presented to the board of commissioners under the treaty of 1803, it must have been those still pending before the council of prizes. In January, 1805, Mr. Skipwith applied to Mr. Armstrong for money "to enable him to institute judicial proceeding on thirty-five cases of capture, or depredation on American vessels;" and Mr. Delagrange says, in January, 1806, there are sixteen cases before the council of prizes; all of them but one "are for captures posterior to the convention of 1800, and even some have been made after that of 1803; no doubt, therefore, that a favorable issue may be expected for the whole of them." How could these have been included in the treaty of 1800? Mr. Skipwith says,

in his application to the council of prizes, complaining of delay, that some of the captures were made "by privateers out of the French Antilles, having set sail either from St. Domingo, Guadaloupe, or from other possessions of the republic." It was to the claims before the council of prizes to which the commissioners referred, in saying that "such claims as come in late, among which, we fear, will be found most of the prize causes, must remain undecided." There had been rejected by the board of commissioners in 1804, according to a full statement of its proceedings published by a member of the board, (from which these various statements are taken,) one hundred and seventy-four cases, amounting to more than nineteen millions of livers.

The claims which were not before the board of commissioners under the treaty of 1803, appear to have been those which had not been decided upon by the council of prizes; others, in which no appeal had been taken; and some, perhaps, which, from various causes, had not been presented at all. There is no doubt that most of the claims for captures prior to 30th September, 1800, now existing, are those where the parties had neglected to appeal, and, in the language of the treaty of 1800, the property had not been "definitively condemned," or, according to the provisions of the treaty of 1803, they had not been before the council of prizes. For none of these could the United States be liable, because France was not so, by either of the treaties of 1800 and 1803. It was optional with the parties to present their claims, and neither government can be made liable in cases which were not prosecuted to final judgment, either for want of the means to do so, or from neglecting to appeal; nor can either government be bound to indemnify those who never presented them at all to the board of commissioners. The recognition of the conjectural note in the treaty of 1803, authorized every claimant having claims similar to those in the various classes in that note, to present them to the board, and that note embraced spoliations from the commencement of French depredations in 1793.

Of the rejected claims, amounting to more than nineteen millions, it is difficult to perceive how they can escape one of the clauses in the treaty of 1803, which is entirely new, and not to be found in the treaty of 1800. The last clause of the 10th article of that treaty provides, that "the rejection *of any claim* shall have no other effect than *to exempt the United States from the payment of it*, the *French government reserving to itself* the right to *decide, definitively* on such claim, so *far as it concerns itself*."

If, in deciding this question between the United States and its citizens, we are to abandon the rules which should regulate the conduct of governments, and place limitations upon their paramount right to put an end to war, be the sacrifice of claims, national or individual, what it may; and if we are to adopt the narrow rules of technical construction in defining war, as the advocates of the claimants have done; then is every claim for French spoliations, according to such rules, extinguished by the treaty of 1803, so far as the United States are concerned. If, as is pretended, "these claims for spoliations were *admitted to be valid* by France on the 30th September, 1800," and were "finally, in the second article of the convention, [of that date,] spoken of as indemnities due;" then would they have been admitted

under the treaty of 1803, and allowed. If, on the other hand, they were not admitted to be valid by France on the 30th September, 1800, as is the fact, there can then be no valid claim on the United States, because there was none on France. But, whether they were valid or not on the 30th September, 1800, they were extinguished by the treaty of 1803, which was, whatever may have been the intention of its framers, a new treaty, binding on both nations, and on all the claimants for French spoliations, and the only treaty between France and the United States on the subject of indemnities which has ever been faithfully executed by the former power.

The rights of the United States cannot be affected in any manner by the pretensions which ministers may set up on one side or the other pending a negotiation. If claims upon this government are to be founded on such grounds, and the histories of all our negotiations are to be searched for pretentions and admissions to enforce claims for spoliations which have been renounced for public considerations, many may be found where we have sacrificed the property of our citizens for considerations far more valuable than the revolutionary treaties of 1778, violated by one party, renounced by the other, and in their origin, contrary to the laws of nations. If a commission is to be opened for these five millions, in this ancient case, then necessarily follow similar commissions in every case, for all the claims we have abandoned since the adoption of the Constitution. For the valuable consideration of peace with Great Britain, we abandoned our claims for lawless outrages upon our commerce, under her orders in council; and, for the same valuable consideration, we surrendered our claims upon the Barbary Powers, for their piracies; even those who have claims rejected under the treaty of 4th of July, 1831, ratified by both nations, may come forward and plead the value of the empty pretensions set up by France, about her perpetual and exclusive commercial privileges secured forever by the 8th article of the Louisiana treaty. This perpetual obligation might be valued, perhaps, at the present price of that rich and immense country; for even that estimate would not be more extravagant than the value of the treaties of 1778, as contended for by some of the advocates of these spoliations.

Whatever may have been the sufferings and wrongs of our citizens from the lawless depredations committed on our commerce by France, it will be contrary to every rule of justice to transfer the responsibility of making indemnity to the people of the United States. Those who advocate the claims tell us of these wrongs, of captures and condemnations, seizures and confiscations; they establish these claims upon the foundation of violated treaties, and, at the same time, with singular inconsistency, deny our unquestionable right to renouuce them. They ask their own government to repeal its solemn declaration of 1798, and to acknowledge to the world that they had no right to renounce our treaties of alliance and commerce; and that the United States, and not France, had violated their national obligations. They are driven to the necessity, in endeavoring to make their own government responsible, of repeating the unfounded accusations of France against the United States, of having been faithless to their pledges, and of renouncing, without cause, the solemn guarantees of a treaty. In the last sxtremity, in seeking an argument to support these claims,

one of their ablest advocates tells us in a report made in 1830: "Our government not only failed in making that firm and vigorous demand of justice that, under other circumstances, they would have made, but bartered the indemnity that was due to us for their own exonertion from dangerous and inconvenient engagements."

The history of our negotiations, and wars, and treaties, affords a most satisfactory answer to this extraordinary charge against our government. The government of the United States has a high duty to discharge to all its citizens; and that duty should be fulfilled with perfect justice. In our external relations, involving us in restrictions and wars, and exposing a portion of our citizens to lawless depredations, we are bound to interpose and obtain redress, if we have the power; but justice to the nation requires that our right should be unlimited, to determine how far we shall go, when we shall stop, and on what terms we shall terminate the contest, whether of restrictions or war. If, in terminating any such contest for all the claims of our citizens, we are obliged, no matter on what conditions, to sacrifice a part of them, those who suffer can have no claims upon a people who have volunteered their aid, submitted to taxation, and engaged in war to redress their wrongs. The claims of our citizens are urged in the order in which they may be classed according to the rules of public law; and those sacrificed are generally such as are the last provided for by the usages of nations. These must be set down among the losses incidental to war, and the depredations which precede it. All such fall ruinously upon many portions of the nation, both at home and abroad, and without, in our internal calamnities, the remotest chance of indemnity.

In the present instance, so far from not having made a "firm and vigorous demand of justice," we have discharged all, and more than all, our obligations to every claimant for French spoliations. We engaged, in the infancy of our resources, with a powerful and warlike nation, in a contest which cost millions; we negotiated the treaty of 1800, and abandoned no claims but those which were precluded by the law of nations. France was faithless to her engagements; we negotiated another treaty in 1803, and fortunately embraced an opportunity to assume the payment, by which twenty millions of livres were recovered to satisfy our claimants—a sum which was deemed by the ministers of both nations amply sufficient to indemnify our citizens for every valid claim on France, existing in September, 1800, and depending on the rules of public law. We not only provided for claims for depredations committed in violation of the laws of nations, but for indemnities arising under voluntary contracts; in which cases the parties had no right to demand our interference.

Our government has never been more persevering in its efforts; it has never negotiated with any nation a treaty embracing so great a variety of claims; and it has never been, in any instance, so successful in recovering them. We have made war; raised armies; submitted to taxes and loans; suffered all the calamnities of war at home and abroad; and we are now told that we have not "made a firm and vigorous demand of justice;" and that those who have paid the expenses of a voluntary war must indemnify others, to redress whose wrongs the war was made.