

APPENDIX.

NOTE I.

Documents relating to the Slave-trade, referred to in the case of
THE ANTELOPE.

Report of the Committee to whom was referred so much of the President's Message, of the 7th of December last, as relates to the suppression of the Slave-trade.

February 16, 1825. Read, and committed to the committee of the whole House on the state of the Union.

The committee on the suppression of the slave-trade, to whom was referred so much of the president's message, of the 7th December last, as relates to that subject, have according to order, had the same under consideration, and respectfully report : That pursuant to the almost unanimous request of the house of representatives, expressed by their resolution of 28th February 1823, the president of the United States concluded a convention with Great Britain, on the 13th of March, in the following year, by which the African slave-trade was denounced to be piracy, under the laws of both countries; the United States having so declared it, by their antecedent act of the 15th of May 1820, and it being understood between* the contracting parties, as a preliminary to the ratification of the convention by the United States, that Great Britain should, by an act of her parliament, concur in a similar declaration. With great promptitude, and in accordance with this agreement, such an act was passed, declaring the African slave-trade to be piracy, and annexing to it the penalty denounced against this crime by the common law of nations. A copy of this act was transmitted, by the British government, to the executive of the United States, and the convention submitted, by the president, to the senate, for their advice and consent. The convention was approved by the senate, with certain qualifications, to all of which, except one, Great Britain, *sub modo*, acceded : her government having instructed its minister in Washington to tender to the acceptance of the United States, a treaty, agreeing, in every particular except one, with the terms approved by the senate. This exception, the message of the president to the house of representatives presumes "not to be of sufficient magnitude to defeat an object so near to the heart of both nations," as the abolition of the African slave-trade, "and so desirable to the friends of humanity throughout the world." But the president further adds, "that as objections to the principle recommended by the house of representatives, or at least, to the consequences inseparable from it, and which are understood to apply to the law, have been raised, which may deserve a reconsideration of the whole subject, he has thought proper to suspend the conclusion of a new convention, until the definitive sentiments of congress can be ascertained." Your committee are, therefore, required to review the grounds of the law of 1820, and the resolution of 1823, to which the rejected, or, as they rather

Slave Trade.

hope, the suspended convention, referred. The former was the joint act of both branches of congress, approved by the president; the latter, although adopted with extraordinary unanimity, was the single act of the house of representatives.

Upon the principle or intention of the act of congress of 1820, making the slave-trade punishable as piracy, the history of the act may reflect some light. A bill from the senate, entitled "an act to continue in force the act to protect the commerce of the United States, and punish the crime of piracy, and also to make further provision to punish the crime of piracy," came to the house of representatives on the 27th of April 1820, and was, on the same day, referred to a committee of the whole, to which had been referred a bill of similar purport and title, that had originated in the house

*5] of representatives. Upon the 8th of May following, the committee on the suppression of the slave-trade reported an amendment of two additional sections to the senate's bill; also, a bill to incorporate the American Society for colonizing the free people of color of the United States, and three joint resolutions, two of which related to the objects of that society; but the first of which, in behalf of both houses of congress, requested the president "to consult and negotiate with all the governments where ministers of the United States are, or shall be, accredited, on the means of effecting an entire and immediate abolition of the African slave-trade." The amendatory sections denounced the guilt and penalty of piracy against any citizen of the United States, of the crew or company of any foreign vessel, and any person, whatever of the crew or company of any American vessel, who should be engaged in this traffic. The amendments, bill and resolutions, along with the explanatory report which accompanied them, were referred to the committee of the whole above mentioned; and on the 11th of the same month, the house proceeded to consider them. After a discussion in the committee, the piracy bill and its amendments having been adopted, were reported, and both were concurred in by the house. The following day, the bill, as amended, being then on its passage, a motion was debated and negatived, to recommit the bill to a select committee, with an instruction to strike out the last section of the amendment. The bill then passed, and was ordered to be returned, as amended, to the senate.

On the same day, a motion prevailed to discharge the committee of the whole from the further consideration of the bill, and the resolutions which accompanied the report; and the particular resolution, already recited, being under consideration, to try the sense of the house on its merits, it was moved to lay it on the table. The yeas and nays having been ordered on this motion, it was rejected by a majority of 78 to 35 members. It having been again proposed to postpone the resolution, till the ensuing or second sessions of the same congress, and this proposal being also determined in the negative, the resolution was engrossed, read the third time, passed, and ordered to be transmitted to the senate on the same day with the piracy bill. The amendments of this bill underwent like scrutiny and debate in the senate, and were finally concurred in, the day after they were received from the house of representatives, without any division apparent on the journal of that house.

The resolution which had been received by the senate, at a different hour of the same day, was read a second time, on the 15th of May, was *further taken up *6] and considered, as in committee of the whole, reported to the house without amendment, and ordered, after debate, to pass to a third reading. But this being the last day of the session of congress, and a single member objecting "that it was against one of the rules of the senate, to read it the third time, on the same day, without unanimous consent," it remained on the table of that body, on its final adjournment, after an ineffectual effort to suspend one of their rules, against which many of the friends of the resolution felt themselves compelled, by their invariable usage, to vote in union with its enemies.

One of the objections to the resolution in the senate, was founded upon the peculiar relation of that branch of the national legislature to the executive, in the ratification of treaties; which seemed, in the opinion of those who urged this argument, to interdict their concurrence in a request of the president to institute any negotiation whatever.

A contemporary exposition of the object of the amendments of the piracy bill, and

Slave Trade.

the resolution which the house of representatives adopted, by so large a majority, will be found in the report, which accompanied them, from the committee on the suppression of the slave-trade, and which is hereto annexed. (A.) Those objects, it will be seen, were in perfect accordance with each other. They were designed to introduce, by treaty, into the code of international law, a principle, deemed by the committee essential to the abolition of the African slave-trade, that it should be denounced and treated as piracy by the civilized world.

The resolution being joint, and having failed in the senate, for the reason already stated, the subject of it was revived in the house of representatives, at a very early period of the succeeding session of congress, by a call for information from the executive, which, being received, was referred to a committee of the same title with the last. Their report, after reviewing all the antecedent measures of the United States for the suppression of the slave-trade, urgently recommended the co-operation of the American and British navy against this traffic, under the guarded provisions of a common treaty, authorizing the practice of a qualified and reciprocal right of search. This report, which is also annexed, closed with a resolution, requesting "the president of the United States to enter into such arrangements as he might deem suitable and proper, with one or more of the maritime powers of Europe, for the effectual abolition of the African slave-trade." (B.)

The United States had, by the treaty of Ghent, entered into a formal stipulation with Great Britain, "that both the contracting parties *shall use their best [*7 endeavors to accomplish the entire abolition of this traffic." The failure of the only joint attempt which had been made by England and America, at the date of this report, to give effect to this provision, being ascribable, in part, to a jealousy of the views of the former, corroborated by the language and conduct of one of the principal maritime powers of Europe, in relation to the same topic, the committee referred to the decision of Sir WILLIAM SCOTT, in the case of the French ship *Le Louis*, to demonstrate that Great Britain claimed no right of search, in peace, but such as the consent of other nations should accord to her by treaty; and sought it, by a fair exchange, in this tranquil mode, for the beneficent purpose of an enlarged humanity.

Certain facts, disclosed by the diplomatic correspondence of France and England, during the pendency of that case in the British court of admiralty, were calculated to guard the sympathies of America from being misguided by the language of the former power. The painful truth was elicited, that France had evaded the execution of her promise at Vienna, to Europe and mankind. That she had, long after the date of that promise, tolerated, if she had not cherished, several branches of a traffic, which she had concurred in denouncing to be the opprobrium of Christendom, and which she had subsequently bound herself, by the higher obligations of a solemn treaty, to abolish, as inconsistent with the laws of God and nature. Succeeding events in the councils of the French nation, have not impaired the force of this testimony. What authority can be accorded to the moral influence of a government which insults the humanity of a generous and gallant people, by pleading, in apology for the breach of its plighted faith, that its subjects required the indulgence of this guilty traffic! The Emperor Napoleon, who re-established this commerce on the ruins of the French republic, also abolished it again, when he sought to conciliate the people of France, during that transient reign, which immediately preceded his final overthrow.

Congress adjourned without acting on this report. By an instruction to the committee on the suppression of the slave-trade, of the 15th of January 1822, the same subject was a third time brought directly before the house of representatives. The instruction called the attention of the committee to the present condition of the African slave-trade; to the defects of any of the existing laws for its suppression, and to their appropriate remedies. In the report, made in obedience *to this instruction, on the 12th of April 1823, the committee state, after having consulted all the [*8 evidence within their reach, they are brought to the mournful conclusion, that the traffic prevailed to a greater extent than ever, and with increased malignity; that its total suppression, or even sensible diminution, cannot be expected from the separate

Slave Trade.

and disunited efforts of one or more states, so long as a single flag remains to cover it from detection and punishment. They renew, therefore, as the only practicable and efficient remedy, the concurrence of the United States with the maritime powers of Europe, in a modified and reciprocal exercise of the right of search. In closing their report, the committee add, in effect, that they "cannot doubt that the people of America have the intelligence to distinguish between the right of searching a neutral on the high seas, in time of war, claimed by some belligerents, and that mutual, restricted and peaceful concession, by treaty, suggested by the committee, and which is demanded in the name of suffering humanity." The committee had before intimated, that the remedy which they recommended to the house of representatives, pre-supposed the exercise of the authority of another department of the government; and that objections to the exercise of this authority, in the mode which they had presumed to suggest, had hitherto existed in that department. Their report, also annexed, closed with a resolution differing in no other respect from that of the preceding session, than that it did not require the concurrence of the senate, for the reason already suggested. (C.) The report and resolution were referred to a committee of the whole, and never further considered.

After a delay till the 20th of the succeeding February, a resolution was submitted to the house, which was evidently a part of the same system of measures for the suppression of the slave-trade, which had been begun by the act of the 3d of March 1819, and followed up by the connected series of reports and resolutions, which the committee have reviewed, and which breathe the same spirit. This resolution, in proposing to make the slave-trade piracy, by the consent of mankind, sought to supplant, by a measure of greater rigor, the qualified international exchange of the right of search for the apprehension of the African slave-dealer, and the British system of mixed tribunals, created for his trial and punishment: a system of which experience, and the recent extension of the traffic that it sought to limit, had disclosed the entire inefficacy. The

*9] United States had already established the true denomination and *grade of this offence, by a municipal law. The resolution contemplated, as did the report which accompanied and expounded that law, the extension of its principle, by negotiation, to the code of all nations. It denounced the authors of this stupendous iniquity, as the enemies of the human race, and armed all men with authority to detect, pursue, arrest and punish them. Such a measure, to succeed to its fullest extent, must have a beginning somewhere. Commencing with the consent of any two states, to regard it as binding on themselves only, it would, by the gradual accession of others, enlarge the sphere of its operation, until it embraced, as the resolution contemplated, all the maritime powers of the civilized world. While it involved, of necessity, the visit and search of piratical vessels, as belligerent rights against the common enemies of man, it avoided all complexity, difficulty and delay, in the seizure, condemnation and punishment of the pirate himself. It made no distinction in favor of those pirates who prey upon the property, against those who seize, torture and kill, or consign to interminable and hereditary slavery, the persons of their enemies. Your committee are at a loss for the foundation of any such discrimination. It is believed, that the most ancient piracies consisted in converting innocent captives into slaves; and those were not attended with the destruction of one-third of their victims, by loathsome confinement and mortal disease.

While the modern, therefore, accords with the ancient denomination of this crime, its punishment is not disproportionate to its guilt. It has robbery and murder for its mere accessories, and moisten one continent with blood and tears, in order to curse another, by slow consuming ruin, physical and moral. One high consolation attends upon the new remedy for this frightful and prolific evil. If once successful, it will for ever remain so, until, being unexerted, its very application will be found in history alone. Can it be doubted, that if ever legitimate commerce shall supplant the source of this evil in Africa, and a reliance on other supplies of labor, its use elsewhere, a revival of slave-trade will be as impracticable as a reversion to barbarism?—that, after the lapse of a century from its extinction, except where the consequences of

Slave Trade.

the crime shall survive, the stories of the African slave-trade will become as improbable among the unlearned, as the expeditions of the heroes of Homer? The principle of the law of 1820, making the slave-trade a statutory piracy, and of the resolution of the house of representatives, of May *1823, which sought to render this denunciation of that offence universal, cannot, therefore, be misunderstood. It [*10 was not misconceived by the house of representatives, when ratified with almost unprecedented unanimity.

An unfounded suggestion has been heard, that the abortive attempt to amend the resolution, indicated that it was not considered as involving the right of search. The opposite conclusion is the more rational, if not, indeed, irresistible; that having, by the denomination of the crime, provided for the detection, trial and punishment of the criminal, an amendment designing to add what was already included in the main proposition, would be superfluous, if not absurd. But no such amendment *was* rejected. The house of representatives, very near the close of the session of 1823, desirous of economizing time, threatened to be consumed by a protracted debate, entertained the previous question, while an amendment, the only one offered to the resolution, was depending. The effect of the previous question was, to bring on an immediate decision upon the resolution itself, which was adopted by a vote of 131 members to 9. It is alike untrue, that the resolution was regarded with indifference. The house had been prepared to pass it without debate, by a series of measures, having their origin in 1819, and steadily advancing to maturity. Before the resolution did pass, two motions had been submitted, to lay it on the table, and to postpone it to a future day. The former was resisted by an ascertained majority of 105 to 25; the latter, without a division. Is the house now ready to retrace its steps? The committee believe not. Neither the people of America, nor their representatives, will sully the glory they have earned by their early labor, and steady perseverance, in sustaining, by their federal and state governments, the cause of humanity at home and abroad.

The calamity inflicted upon them by the introduction of slavery, in a form, and to an extent forbidding its hasty alleviation by intemperate zeal, is imputable to a foreign cause, for which the past is responsible to the present age. They will not deny to themselves, and to mankind, a generous co-operation in the only efficient measure of retributive justice, to an insulted and afflicted continent, and to an injured and degraded race. In the independence of Spanish and Portuguese America, the committee *behold a speedy termination of the few remaining obstacles to the extension of the policy of the resolution of May 1823. Brazil cannot in- [*11 tend to resist the voice of the residue of the continent of America; and Portugal, deprived of her great market for slaves, will no longer have a motive to resist the common feelings of Europe. And yet, while from the Rio del la Plata to the Amazon, and through the American archipelago, the importation of slaves covertly continues, if it be not openly countenanced, the impolicy is obvious, of denying to the American shore the protective vigilance of the only adequate check upon this traffic.

Your committee forbear to enter upon an investigation of the particular provisions of a depending negotiation, nor do they consider the message referred to them as inviting any such inquiry. They will not regard a negotiation to be dissolved, which has approached so near consummation, nor a convention as absolutely void, which has been executed by one party, and which the United States, having first tendered, should be the last to reject.

Slave Trade.

(A.)

Report of the committee to whom was referred, at the commencement of the present session of congress, so much of the President's Message as relates to the slave-trade, accompanied with a bill to incorporate the American Society for colonizing the free people of color of the United States.

May 8, 1820. Read twice, and, with the bill, committed to the Committee of the whole house on the bill from the senate, to continue in force an act to protect the commerce of the United States, and punish the crime of piracy, &c.

The committee on the slave-trade, to whom was referred the memorial of the president and board of managers of the American Society for colonizing the free people of color of the United States, have, according to order, had under consideration the several subjects therein embraced, and report:—That the American Society was instituted in the city of Washington, on the 28th of December 1816, for the benevolent purpose of affording to the free people of color of the United States the means of establishing one or more independent colonies on the western coast of Africa. After ascertaining, by a mission to that continent, and other preliminary inquiries, that their object is practicable, the society requests of the congress of the United States a charter of incorporation, and such other legislative aid as their enterprise may be thought to merit and require. The memorialists anticipate from its success consequences the most beneficial to the free people of color themselves, to the several states in which they at present reside, and to that continent which is to be the seat of their future establishment. Passing by the foundation of these anticipations, which will be seen in the annual reports of the society and their former memorials, the attention of the committee has been particularly drawn to the connection which the memorialists have traced between their purpose and the policy of the more effectual abolition of the African slave-trade.

Experience has demonstrated, that this detestable traffic can be nowhere so successfully assailed, as on the coast upon which it originates. Not only does the collection and embarkation of its unnatural cargoes consume more time than their subsequent distribution and sale in the market for which they are destined, but the African coast, frequented by the slave-ships, is indented with so few commodious or accessible harbors, that, notwithstanding its great extent, it could be guarded by the vigilance of a few active cruisers. If to these be added, colonies of civilized blacks, planted in commanding situations along that coast, no slave-ship could possibly escape detection; and thus the security, as well as the enhanced profit which now cherishes this illicit trade, would be effectually counteracted. Such colonies, by diffusing a taste for legitimate commerce among the native tribes of that fruitful continent, would gradually destroy among them also the only incentive of a traffic which has hitherto rendered all African labor insecure, and spread desolation over one of the most beautiful regions of the globe. The colonies, and the armed vessels employed in watching the African coast, while they co-operated alike in the cause of humanity, would afford to each other mutual succor.

There is a single consideration, however, added to the preceding view of this subject, which appears to your committee, of itself, conclusive of the tendency of the views of the memorialists to further the operation of the act of the 3d of March 1819. That act not only revokes the authority antecedently given to the several state and territorial* governments, to dispose, as they pleased, of those African captives, who might be liberated by the tribunals of the United States, but authorizes and requires the president to restore them to their native country. The unavoidable consequence of this just and humane provision, is, to require some preparation to be made for their temporary succor, on being re-landed upon the African shore. And no preparation can prove so congenial to its own object, or so economical, as regards

Slave Trade.

the government charged with this charitable duty, as that which would be found in a colony of the free people of color of the United States. Sustained by the recommendations of numerous societies in every part of the United States, and the approving voice of the legislative assemblies of several states, without inquiring into any other tendency of the object of the memorialists, your committee do not hesitate to pronounce it deserving of the countenance and support of the general government. The extent to which these shall be carried, is a question not so easily determined. The memorialists do not ask the government to assume the jurisdiction of the territory, or to become, in any degree whatever, responsible for the future safety or tranquillity of the contemplated colony. They have prudently thought, that its external peace and security would be most effectually guarded, by an appeal in its behalf to philanthropy of the civilized world; and to that sentiment of retributive justice, with which all Christendom is at present animated towards a much injured continent. Of the constitutional power of the general government to grant the limited aid contemplated by the accompanying bill and resolutions, your committee presume, there can exist no shadow of doubt; and they leave it to a period of greater national prosperity to determine how far the authority of congress, the resources of national government, and the welfare and happiness of the United States, will want or require its extension.

Your committee are solemnly enjoined by the peculiar object of their trust, and invited by the suggestion of the memorialists, to inquire into the defects of the existing laws against the African slave-trade. So long as it is in the power of the United States to provide additional restraints upon this odious traffic, they cannot be withheld, consistently with justice and the honor of the nation. Congress have heretofore marked, with decided reprobation, the authors and abettors of his iniquitous commerce, in every form which it assumes; from the inception of its unrighteous purpose in America, *through all the subsequent stages of its progress, to its final consummation; the outward voyage; the cruel seizure and forcible ab- [*14
duction of the unfortunate African from his native home, and the fraudulent transfer of the property thus acquired. It may, however, be questioned, if a proper discrimination of their relative guilt has entered into the measure of punishment annexed to these criminal acts. Your committee cannot perceive wherein the offence of kidnapping an unoffending inhabitant of a foreign country; of chaining him down for a series of days, weeks and months, amidst the dying and the dead, to the pestilential hold of a slave-ship; of consigning him, if he chance to live out the voyage, to perpetual slavery in a remote and unknown land, differs in malignity from piracy, or why a milder punishment should follow the one, than the other crime. On the other hand, the purchase of the unfortunate African, after his enlargement from the floating dungeon which wafts him to the foreign market, however criminal in itself, and yet more in tendency to encourage this abominable traffic, yields in atrocity to the violent seizure of his person, his sudden and unprepared separation from his family, his kindred, his friends and his country, followed by all the horrors of the middle passage. Are there not united in this offence all that is most iniquitous in theft, most daring in robbery, and cruel in murder? Its consequences to the victim, if he survives; to the country which receives him, and to that from which he is torn, are alike disastrous. If the internal wars of Africa, and their desolating effect, may be imputed to the slave-trade, and that the greater part of them must now, cannot be questioned, this crime, considered in its remote, as well as its proximate consequences, is the very darkest in the whole catalogue of human iniquities; and its authors should be regarded as *hostes humani generis*.

In proposing to the house of representatives to make such part of this offence as occurs upon the ocean, piracy, your committee are animated, not by the desire of manifesting to the world the horror with which it is viewed by the American people; but by the confident expectation of promoting, by this example, its more certain punishment by all nations, and its absolute and final extinction. May it not be believed, that when the whole civilized world shall have denounced the slave-trade

Slave Trade.

as piracy, it will become as unfrequent as any other species of that offence against the law of nations? Is it unreasonable to suppose, that negotiation will, with greater facility, introduce into that law such a provision as is here proposed, when it shall have been already incorporated into the separate code of each state?

*15] The maritime powers of the Christian world have, at length, concurred in pronouncing sentence of condemnation against this traffic. The United States, having led the way in forming this decree, owe it to themselves, not to follow the rest of mankind in promoting its vigorous execution. If it should be objected, that the legislation of congress would be partial, and its benefit, for a time at least, local, it may be replied, that the constitutional power of the government has already been exercised in defining the crime of piracy, in accordance with similar analogies, to that which the committee have sought to trace between this general offence against the peace of nations and the slave-trade. In some of the foreign treaties, as well as in the laws of the United States, examples are to be found of piracies, which are not cognisable, as such, by the tribunals of all nations. Such is the unavoidable consequence of any exercise of the authority of congress, to define and punish this crime. The definition and the punishment can bind the United States alone.

A bill from the senate, making further provision for the exercise of this constitutional power, being now before the house of representatives, your committee beg leave to offer such an amendment of its provisions, as shall attain the last object which they have presumed to recommend.

(B.)

Report of the Committee to which was referred so much of the President's Message as relates to the Slave-Trade.

February 9, 1821. Read, and ordered to lie upon the table.

The committee to which is referred so much of the president's message as relates to the slave-trade, and to which are referred the two messages of the president, transmitting, in pursuance of the resolution of the house of representatives, of the 4th of December, a report of the secretary of state, and inclosed documents, relating to the negotiation for the suppression of the slave-trade, report :—That the committee have

*16] deemed it advisable, previous to entering into a consideration of the proposed co-operation to exterminate the slave-trade, to take a summary review of the constitution and laws of the United States relating to this subject. It will disclose the earnestness and zeal with which this nation has been actuated, and the laudable ambition that has animated her councils to take a lead in the reformation of a disgraceful practice, and one which is productive of so much human misery; it will, by displaying the constant anxiety of this nation to suppress the African slave-trade, afford ample testimony that she will be the last to persevere in measures wisely digested, to effectuate this great and most desirable object, whenever such measures can be adopted in consistency with the leading principles of her local institutions.

In consequence of the existence of slavery in many of the states, when British colonies, the habits and means of carrying on industry, could not be suddenly changed; and the constitution of the United States yielded to the provision, that the migration or importation of such persons, as any of the states now existing shall think proper to admit, shall not be prohibited by the congress, prior to the year 1808. But long antecedent to this period, congress legislated on the subject wherever its power extended, and endeavored, by a system of rigorous penalties, to suppress this unnatural trade.

The act of congress of the 22d of March 1794, contains provisions that no citizen or citizens of the United States, or foreigner, or any other person coming into, or residing within the same, shall, for himself, or any other person whatsoever, either as master, factor or owner, build, fit, equip, load, or otherwise prepare, any ship or vessel, within any port or place of the United States, nor shall cause any ship or vessel to sail from any port or place within the same, for the purpose of carrying on any trade

Slave Trade.

or traffic in slaves to any foreign country ; or for the purpose of procuring from any foreign kingdom, place or country, the inhabitants of such kingdom, place or country, to be transported to any foreign country, port or place whatever, to be sold or disposed of as slaves, under the penalty of the forfeiture of any such vessel, and of the payment of large sums of money by the persons offending against the directions of the act. By an act of the 3d of April 1798, in relation to the Mississippi territory, to which the constitutional provision did not extend, the introduction of slaves, under severe penalties, was forbidden, and every slave imported contrary to the act, was to be entitled to freedom.

By an act of the 10th of May 1800, the citizens or residents of this country were prohibited from holding any right or property in vessels *employed in transporting slaves from one foreign country to another, on pain of forfeiting their [*17 right of property, and also double the value of that right in money, and double the value of their interest in the slaves ; nor were they allowed to serve on board of vessels of the United States, employed in the transportation of slaves from one country to another, under the punishment of fine and imprisonment ; nor were they permitted to serve on board foreign ships employed in the slave-trade. By this act also, the commissioned vessels of the United States were authorized to seize vessels and crews employed contrary to the act. By an act of the 28th of February 1803, masters of vessels were not allowed to bring into any port (where the laws of the state prohibited the importation), any negro, mulatto or other person of color, not being a native, a citizen, or registered seaman of the United States, under severe penalties ; and no vessel, having on board persons of the above description, was to be admitted to an entry ; and if any such person should be landed from on board of any vessel, the same was to be forfeited.

By an act of the 2d of March 1807, the importation of slaves into any port of the United States was to be prohibited, after the first of January 1808, the time prescribed by the constitutional provision. This act contains many severe provisions against any interference or participation in the slave-trade, such as heavy fines, long imprisonments, and the forfeiture of vessels. The president was also authorized to employ armed vessels to cruise on any part of the coast where he might judge attempts would be made to violate the act, and to instruct the commanders of armed vessels to seize and bring in vessels found on the high seas, contravening the provisions of the law. By an act of the 20th of April 1818, the laws, in prohibition of the slave-trade, were further improved ; this act is characterized with a peculiarity of legislative precaution, especially, in the eighth section, which throws the labor of proof upon the defendant, that the colored persons brought into the United States by him had not been brought in contrary to the laws. By an act of the 3d of March 1819, the power is continued in the president, to employ the armed ships of the United States to seize and bring into port any vessel engaged in the slave-trade by citizens or residents of the United States ; and such vessels, together with the goods and effects on board, are to be forfeited and sold, and the proceeds to be distributed, in like manner as is provided by law for the distribution of prizes taken from an enemy ; and the officers and crew are to undergo *the punishments inflicted by previous acts. The president, [*18 by this act, is authorized to make such regulations and arrangements as he may deem expedient, for the safe-keeping, support and removal beyond the limits of the United States, of all such negroes, mulattoes or persons of color, as may have been brought within its jurisdiction, and to appoint a proper person or persons, residing on the coast of Africa, as agent or agents for receiving the negroes, mulattoes or persons of color, delivered from on board of vessels seized in the prosecution of the slave-trade.

And in addition to all the aforesaid laws, the present congress, on the 15th of May 1820, believing that the then existing provisions would not be sufficiently available, enacted, that if any citizen of the United States, being of the crew or ship's company of any foreign ship or vessel engaged in the slave-trade, or any person whatever, being of the crew or ship's company or any ship or vessel, owned in the whole or in part, or navigated for, or in behalf of, any citizen or citizens of the United States, shall land

Slave Trade.

from any such ship or vessel, and on foreign shore, seize any negro or mulatto, nor held to service or labor, by the laws of either of the states or territories of the United States, with intent to make such negro or mulatto a slave, or shall decoy, or forcibly bring or carry, or shall receive such negro or mulatto on board any such ship or vessel, with intent as aforesaid, such citizen or person shall be adjudged a pirate, and on conviction shall suffer death.

The immoral and the pernicious practice of slave-trade has attracted much public attention in Europe, within the last few years, and in a congress at Vienna, on the 8th of February 1815, five of the principal powers made a solemn engagement, in the face of mankind, that this traffic should be made to cease; in pursuance of which, these powers have enacted municipal laws to suppress the trade. Spain, although not a party to the original engagement, did, soon after, in her treaty with England, stipulate for the immediate abolition of the Spanish slave-trade, to the north of the equator, and for its final and universal abolition, on the 30th of May 1820. Portugal, likewise, in her treaty in 1817, stipulated that the Portuguese slave-trade on the coast of Africa should entirely cease to the northward of the equator, and engaged that it should be unlawful for her subjects to purchase or trade in slaves, except to the southward of the line; the precise period at which the entire abolition is to take place in Portugal does not appear to be finally fixed; but the Portuguese ambassador, in the presence of the congress at Vienna, declared,

*19] that Portugal, faithful to her principles, would not refuse to adopt the term of eight years, which term will expire in the year 1823.

At this time, among the European states, there is not a flag which can legally cover this inhuman traffic to the north of the line: nevertheless, experience has proved the inefficacy of the various and rigorous laws which have been made in Europe and in this country; it being a lamentable fact, that the disgraceful practice is even now carried on to a surprising extent. During the last year, Captain Trenchard, the commander of the United States sloop of war, the *Cyane*, found that part of the coast of Africa which he visited, lined with vessels, engaged, as it is presumed, in this forbidden traffic; of these, he examined many: and five, which appeared to be fitted out on American account, he sent into the jurisdiction of the United States for adjudication; each of them, it is believed, has been condemned, and the commanders of two of them have been sentenced to the punishment prescribed by the laws of the United States. The testimony recently published, with the opinion of the presiding judge of the United States court of the southern district in the state of New York, in the case of schooner *Plattsburg*, lays open a scene of the grossest fraud that could be practised to deceive the officers of government, and conceal the unlawful transaction.

The extension of the trade for the last 25 or 30 years must, in a degree, be conjectured; but the best information that can be obtained on the subject, furnishes good foundation to believe, that, during that period, the number of slaves withdrawn from western Africa amounts upwards of 1,500,000; the annual average would be a mean somewhere between 50,000 and 80,000. The trade appears to be lucrative in proportion to its heinousness, and, as it is generally inhibited, the unfeeling slave-dealers, in order to elude the laws, increase its horrors; the innocent Africans, who are mercilessly forced from their native homes in irons, are crowded in vessels and situations, which are not adapted for the transportation of human beings; and this cruelty is frequently succeeded, during the voyage to their destination, with dreadful mortality. Further information on this subject will appear in a letter from the secretary of the navy, inclosing two other letters, marked 1 and 2, and also by the extract of a letter from an officer of the *Cyane*, dated April 10th 1820, which are annexed to this report. While the slave-trade exists, there can be no prospect of civilization in Africa.

However well-disposed the European powers may be to effect a practical

*20] abolition of the trade, it seems generally acknowledged, that, for the attainment of this object, it is necessary to agree upon some concerted plan of co-operation;

Slave Trade.

but, unhappily, no arrangement has as yet obtained universal consent. England had recently engaged in treaties with Spain, Portugal and the Netherlands, in which the mutual right of visitation and search is exchanged. This right is of a special and limited character, as well in relation to the number and description of vessels, as to space; and to avoid possible inconveniences, no suspicious circumstances are to warrant the detention of a vessel; this right is restricted to the simple fact of slaves being on board. These treaties contemplate the establishment of mixed courts, formed of an equal number of individuals of the two contracting nations, the one to reside in a possession belonging to his Britannic Majesty; the other within the territory of the other respective power. When a vessel is visited and detained, it is to be taken to the nearest court, and if condemned, the vessel is to be declared a lawful prize as well as the cargo, and are to be sold for the profit of the two nations; the slaves are to receive a certificate of emancipation, and to be delivered over to the government on whose territory the court is which passes sentence, to be employed as servants or free laborers. Each of the governments binds itself to guaranty the liberty of such portion of these individuals as may be respectively assigned to it. Particular provisions are made for remuneration, in case vessels are not condemned after trial, and special instructions are stipulated to be furnished to commanders of vessels possessing the qualified right of visitation and search. These powers entertain the opinion, that nothing short of the concession of a qualified right of visitation and search can practically suppress the slave-trade. An association of armed ships is contemplated, to form a species of naval police, to be stationed principally in the African seas, where the commanders of the ships will be enabled to co-operate in harmony and concert.

The United States have been earnestly invited, by the principal secretary of state for foreign affairs of the British government, to join in the same or similar arrangements; and this invitation has been sanctioned and enforced, by a unanimous vote of the house of lords and commons, in a manner that precludes all doubts as to the sincerity and benevolence of their design. In answer to this invitation, the president of the United States has expressed his regret, that the stipulations in the treaties communicated, *are of a character to which the peculiar situations and institutions of the United States do not permit them to accede. The objections [*21 made are contained in an extract of a letter from the secretary of state, under date of the 2d November 1818; in which it is observed, that, "in examining the provisions of the treaties communicated by Lord Castlereagh, all the essential articles appear to be of a character not adaptable to the institutions, or to the circumstances of the United States. The powers agreed to be reciprocally given to the officers of the ship of war of either party, to enter, search, capture and carry into port for adjudication, the merchant vessels, of the other, however qualified and restricted, is most essentially connected with the institution, by each treaty, of two mixed courts, one of which is to reside in the external or colonial possession of each of the two parties respectively. This part of the system is indispensable to give it that character of reciprocity, without which the right granted to the armed ships of one nation, to search the merchant vessels of another, would be rather a mark of vassalage than of independence. But to this part of the system, the United States, having no colonies either on the coast of Africa, or in the West Indies, cannot give effect. That by the constitution of the United States, it is provided that the judicial power of the United States shall be vested in a supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish. It provides, that judges of these courts shall hold their offices during good behavior; and that they shall be removable by impeachment, or conviction of crimes and misdemeanors. There may be doubts, whether the power of the government of the United States is competent to institute a court for carrying into execution their penal statutes beyond the territories of the United States—a court consisting partly of foreign judges, not amenable to impeachment for corruption, and deciding upon statutes of the United States, without appeal

Slave Trade.

"That the disposal of the negroes found on board of the slave-trading vessels, which might be condemned by the sentence of these mixed courts, cannot be carried into effect by the United States; for, if the slaves of vessels condemned by the mixed courts should be delivered over to the government of the United States as freemen, they could not, but by their own consent, be employed as servants or free laborers. The condition of the blacks being, in this Union, regulated by municipal laws of the separate states, the government of the United States can neither guaranty their liberty in the states where they could only be received as slaves, nor control them in the states where they would *be recognised as free. That the admission of a
 *22] right in the officers of foreign ships of war, to enter and search the vessels of the United States, in time of peace, under any circumstances whatever, would meet with universal repugnance in the public opinion of this country; and that there would be no prospect of a ratification, by advice and consent of the senate, to any stipulation of that nature. That the search by foreign officers, even in time of war, is so obnoxious to the feelings and recollections of this country, that nothing could reconcile them to the extension of it, however qualified or restricted, to a time of peace; and that it would be viewed in a still more aggravated light, if, as in the treaty with the Netherlands, connected with a formal admission, that even vessels under convoy of ships of war of their own nation, should be liable to search by the ships of war of another."

The committee will observe, in the first instance, that a mutual right of search appears to be indispensable to the great object of abolition; for while flags remain as a cover for this traffic, against the right of search by any vessels except of the same nation, the chance of detection will be much less than it would be, if the right of search was extended to vessels of other powers; and as soon as any one nation should cease to be vigilant in the discovery of infractions practised on its own code, the slave-dealers would avail themselves of a system of obtaining fraudulent papers, and concealing the real ownership under the cover of such flags, which would be carried on with such address, as to render it easy for the citizens or subjects of one state to evade their own municipal laws; but if a concerted system existed, and a qualified right or mutual search was granted, the apprehension of these piratical offenders would be reduced to a much greater certainty; and the very knowledge of the existence of an active and vigorous system of co-operation, would divert many from this practice, as the unlawful trade would become too hazardous for profitable speculation. In relation to any inconveniences that might result from such an arrangement, the commerce of the United States is so limited on the African coast, that it could not be much affected by it; and as it regards economy, the expense of stationing a few vessels on that coast would not be much greater than to maintain them at any other place.

The committee have briefly noticed the practical results of a reciprocal right of search, as it bears on the slave-trade; but the objection as to the propriety of ceding this right remains. It is with deference, that the committee undertake to make any remarks upon it. They bear in recollection the opinions entertained in this country on the practice of searching *neutral vessels in time of war; but they cannot
 *23] perceive that the right under discussion is in principle, allied, in any degree, to the general question of search; it can involve no commitment, nor is it susceptible of any unfavorable inference on that subject; and even if there were any affinity between the cases, the necessity of a special agreement would be inconsistent with the idea of existing rights: the proposal itself, in the manner made, is a total abandonment, on the part of England, of any claim to visit and search vessels in time of peace, and this question has been unequivocally decided in the negative in her admiralty courts. Although it is not among the objections; that the desired arrangement would give any color to a claim or right of search in time of peace, yet, lest the case in this respect may be prejudiced in the minds of any, the committee will observe, that the right of search, in time of peace, is one that is not claimed by any power, as a part of the law of nations; no nation pretends that it can exercise the right of

Slave Trade.

visitation and search, upon the common and unappropriated parts of the sea, except upon the belligerent claim. A recent decision in the British admiralty court, in the case of the French slave-ship *Le Louis*, is clear and decisive on this point. The case is annexed to this report. In regard, then, to the reciprocal right wished to be ceded, it is reduced to the simply inquiry, whether, in practice, it will be beneficial to the two contracting nations. Its exercise, so far as it relates to the detention of vessels, as it is confined to the fact of slaves being actually on board, precludes almost the possibility of accident or much inconvenience.

In relation also to the disposal of the vessels and slaves detained, an arrangement, perhaps, could be effected, so as to deliver them up to the vessels of the nation to which the detained vessel should belong. Under such an understanding, the vessels and slaves delivered to the jurisdiction of the United States, might be disposed of, in conformity with the provisions of our own act of the 3d of March 1819; and an arrangement of this kind would be free from any of the other objections.

An exchange of the right of search, limited in duration, or to continue at pleasure, for the sake of experiment, might, it is anxiously hoped, be so restricted to vessels and seas, and with such civil and harmonious stipulations, as not to be unacceptable. The feelings of this country on the general question of search, have often been roused to a degree of excitement that evince their unchangeable character; but the American people will readily see the distinction between the cases; the one, in its exercise to the extent claimed, will ever produce irritation, and excite a patriotic spirit of resistance; the other is amicable and charitable; the justness and [*24 nobleness of the undertaking, are worthy of the combined concern of Christian nations.

The detestable crime of kidnapping the unoffending inhabitants of one country, and chaining them to slavery in another, is marked with all the atrociousness of piracy; and as such it is stigmatized and punishable by our own laws.

To efface this reproachful stain from the character of civilized mankind, would be the proudest triumph that could be achieved in the cause of humanity. On this subject, the United States, having led the way, owe it to themselves to give their influence and cordial co-operation to any measure that will accomplish the great and good purpose; but this happy result, experience has demonstrated cannot be realized by any system, except a concession by the maritime powers to each other's ships of war, of a qualified right of search; if this object was generally attained, it is confidently believed, that the active exertions of even a few nations would be sufficient entirely to suppress the slave-trade. The slave-dealers could be successfully assailed on the coast upon which the trade originates, as they must necessarily consume more time in the collection and embarkation of their cargoes, than in the subsequent distribution in the markets for which they are destined; this renders that coast the most advantageous position for their apprehension; and besides, the African coast, frequented by the slave-ships, is indented with so few commodious or accessible harbors, that, notwithstanding its greater extent, it could be guarded by the vigilance of a small number of cruisers. But if the slave-ships are permitted to escape from the African coast, and to be dispersed to different parts of the world, their capture would be rendered uncertain and hopeless. The committee, after much reflection, offer the following resolution:

Resolved, by the senate and house of representatives of the United States of America, in congress assembled, that the president of the United States be requested to enter into such arrangements as he may deem suitable and proper, with one or more of the maritime powers of Europe, for the effectual abolition of the African slave-trade.

Slave Trade.

*Case of the French slave ship *Le Louis*, extracted from the 12th annual report of the African Institution, printed in 1818.

This vessel sailed from Martinique, on the 30th of January 1816, on a slave-trading voyage to the coast of Africa, and was captured, near Cape Mesurado, by the Sierra Leone colonial vessel of war, the *Queen Charlotte*, after a severe engagement, which followed an attempt to escape, in which eight men were killed and twelve wounded of the British; and proceedings having been instituted against *Le Louis* in the vice-admiralty court of Sierra Leone, as belonging to French subjects, and as fitted out manned and navigated, for the purpose or carrying on the slave-trade, after the trade had been abolished both by the internal laws of France, and by the treaty between that country and Great Britain, the ship and cargo were condemned as forfeited to his majesty. From this sentence an appeal having been made to the high court of admiralty, the cause came on for hearing, when the court reversed the judgment of the inferior court, and ordered the restitution of the property to the claimants.

This judgment of Sir WILLIAM SCOTT was given at great length. The directors will advert to such points of it as are immediately connected with their present subject. "No doubt," he said, "could exist that this was a French ship, intentionally engaged in the slave-trade." But as these were facts which were ascertained in consequence of its seizure, before the seizer could avail himself of this discovery, it was necessary to inquire, whether he possessed any right of visitation and search; because, if the discovery was unlawfully produced, he could not be allowed to take advantage of the consequences of his own wrong. The learned judge then discussed, at considerable length, the question, whether the right of search exists in time of peace. And he decided it, without hesitation, in the negative. "I can find," he says, "no authority that gives the right of interruption to the navigation of states in amity, upon the high seas, excepting that which the rights of war give to both belligerents against neutrals. No nation can exercise a right of visitation and search upon the common and unappropriated parts of the sea, save only on the belligerent claim." He admits, indeed, and with just concern, that if this right be not conceded in time of peace, it will be extremely difficult to suppress the traffic in slaves. "The great object, therefore, ought to be, to obtain the concurrence of other nations, by application, by remonstrance, by example, by every peaceable instrument which men can employ to attract the consent of *men. But a nation is not justified in assuming rights that do not belong to her, merely because she means to apply them to a laudable purpose." "If this right," he adds, "is imported into a state of peace, it must be done by convention; and it will then be for the prudence of states to regulate, by such convention, the exercise of the right, with all the softenings of which it is susceptible."

The judgment of Sir WILLIAM SCOTT would have been equally conclusive against the legality of this seizure, even if it could have been established in evidence, that France had previously prohibited the slave-trade by her municipal laws. For the sake of argument, however, he assumes that the view he has taken of the subject might, in such a case, be controverted. He proceeds, therefore, to inquire how far the French law had actually abolished the slave-trade, at the time of this adventure. The actual state of the matter, as collected from the documents before the court, he observes, is this:

"On the 27th of July 1815, the British minister at Paris writes a note to Prince Talleyrand, then minister to the King of France, expressing a desire on the part of his court to be informed, whether, under the law of France as it then stood, it was prohibited to French subjects to carry on the slave-trade. The French minister informs him, in answer, on the 30th of July, that the law of the usurper on that subject was null and void (as were all his decrees), but that his Most Christian Majesty had issued directions, that, on the part of France, 'the traffic should cease, from the present time, everywhere, and for ever.' In what form these directions were issued, or to whom addressed, does not appear; but, upon such authority, it must be presumed that they were actually issued. It is, however, no violation of the respect due

Slave Trade.

to that authority, to inquire, what was the result or effect of those directions so given; what followed in obedience to them, in any public and binding form. And I fear, I am compelled to say, that nothing of the kind followed, and that the directions must have slept in the portfolio of the office to which they were addressed; for it is, I think, impossible, that if any public and authoritative ordinance had followed, it could have escaped the sleepless attention of many persons in our own country, to all public foreign proceedings upon this interesting subject. Still less would it have escaped the notice of the British resident minister, who, at the distance of a year and a half, is compelled, on the part of his own court, to express a curiosity to know what laws, ordinances, instructions and other public and ostensible acts, had passed, for the abolition of the slave-trade.

*“On the 30th of November, in the same year (1815), the additional article of the definitive treaty, a very solemn instrument, most undoubtedly, is formally and publicly executed, and it is in these terms: ‘The high contracting parties, sincerely desiring to give effect to the measures on which they deliberated at the congress of Vienna, for the complete and universal abolition of the slave-trade; and having each, in their respective dominions, prohibited, without restriction, their colonies and subjects from taking any part whatever in this traffic, engage to renew, conjointly, their efforts, with a view to insure final success to the principle which they proclaimed in the declaration of the 8th of February 1815, and to concert, without loss of time, by their ministers at the court of London, the most effectual measures for the entire and definitive abolition of the traffic, so odious and so highly reprobated by the laws of religion and nature.’ Now, what are the effects of this treaty? According to the view I take of it, they are two, and two only; one declaratory of a fact, the other promissory of future measures. It is to be observed, that the treaty itself does not abolish the slave-trade; it does not inform the subjects that that trade is hereby abolished, and that, by virtue of the prohibitions therein contained, its subjects shall not, in future, carry on the trade; but the contracting parties mutually inform each other of the fact, that they have, in their respective dominions, abolished the slave-trade, without stating at all the mode in which that abolition had taken place. [27]

“It next engages to take future measures for the universal abolition. That, with respect to both the declaratory and promissory parts, Great Britain has acted with the *optima fides*, is known to the whole world, which has witnessed its domestic laws, as well as its foreign negotiations. I am very far from intimating that the government of this country did not act with perfect propriety, in accepting the assurance that the French government had actually abolished the slave-trade, as a sufficient proof of the fact; but the fact is now denied, by a person who has a right to deny it; for, though a French subject, he is not bound to acknowledge the existence of any law which has not publicly appeared; and the other party having taken upon himself the burden of proving it, in the course of a legal inquiry, the court is compelled to demand and expect the ordinary evidence of such a disputed fact. It was not till the 15th of January, in the present year (1817), that the British resident minister applies for the communication I have described, of all laws, instructions, ordinances and so on; he receives in return what is delivered by the French minister as the ordinance, bearing date only one week before the requested communication, namely, the 8th of January. It has been asserted, in argument, that no such ordinance has yet, up to this very hour, even appeared in any printed or public form, however much it might import both French subjects, and the subjects of foreign states, so to receive it. [28]

“How the fact may be, I cannot say; but I observe, it appears before me in a manuscript form; and by inquiry at the secretary of state’s office, I find it exists there in no other plight or condition. In transmitting this to the British government, the British minister observes, it is not the document he had reason to expect; and certainly, with much propriety; for how does the document answer his requisition? His requisition is for all laws, ordinances, instructions, and so forth. How does this, a simple ordinance, professing to have passed only a week before, realize the assurance given on the 30th of July 1815, that the traffic should cease, from the present time,

Slave Trade.

every where, and for ever ?" or how does this realize the promise made in November, that measures should be taken, without loss of time, to prohibit not only French colonists, but French subjects likewise, from taking any part whatever in this traffic ? What is this regulation, in substance ? Why, it is a mere prospective colonial regulation, prohibiting the importation of slaves into the French colonies from the 8th of January 1817. Consistently with this declaration, even if it does exist, in the form and with the force of a law, French subjects may be yet the common carriers of slaves to any foreign settlement that will admit them, and may devote their capital and their industry, unmolested by law, to the supply of any such markets.

"Supposing, however, the regulations to contain the fullest and most entire fulfilment of the engagement of France, both in time and in substance, what possible application can a prospective regulation of January 1817 have to a transaction of March 1816 ? Nobody is now to be told, that a modern edict which does not appear cannot be presumed ; and that no penal law of any state can bind the conduct of its subjects, unless it is conveyed to their attention, in a way which excludes the possibility of honest ignorance. The very production of a law professing to be enacted in the beginning of 1817, is a satisfactory proof that no such law existed in 1816, the year of this transaction. In short, the seizer has entirely failed in the task he has undertaken, in proving the existence of a prohibitory law, enacted by the legal government of France, which can be applied to the present transaction."

*29]

*(C.)

Report of the Committee on the suppression of the Slave-trade; made in the House of Representatives, April 12, 1822.

The Committee on the suppression of the Slave-trade, to whom was referred a resolution of the House of Representatives, of the 15th of January last, instructing them to inquire whether the laws of the United States prohibiting that traffic have been duly executed ; also, into the general operation thereof ; and, if any defects exist in those laws, to suggest adequate remedies therefor ; and, to whom many memorials have been referred touching the same subject ; have, according to order, had the said resolution and memorials under consideration, and beg leave to report:—That, under the just and liberal construction put by the executive on the act of congress of March 3d, 1819, and that of the 15th of May 1820, inflicting the punishment of piracy on the African slave-trade, a foundation has been laid for the most systematic and vigorous application of the power of the United States, to the suppression of that iniquitous traffic. Its unhappy subjects, when captured, are restored to their country, agents are there appointed to receive them, and a colony, the offspring of private charity, is rising on its shores, in which such as cannot reach their native tribes, will find the means of alleviating the calamities they may have endured before their liberation. When these humane provision are contrasted with the system which they supersede, there can be but one sentiment in favor of a steady adherence to their support. The document accompanying this report, and marked (A), states the number of Africans seized or taken within or without the limits of the United States, and brought there, and their present condition.

It does not appear to your committee, that such part of the naval force of the country as has been hitherto employed in the execution of the laws against this traffic, could have been more effectually used for the interest and honor of the nation. The document marked (B), is a statement of the names of the vessels, and their commanders, ordered upon this service, with the dates of their departure, &c. The first vessel destined for this service, arrived upon the coast of Africa in March 1820, *and
30*] in the few weeks she remained there, sent in for adjudication four American vessels, all of which were condemned. The four which have been since employed in this service, have made five visits, (the Alligator having made two cruises in the

Slave Trade.

past summer), the whole of which have amounted to a service of about ten months by a single vessel, within a period of two years; and since the middle of last November, the commencement of the healthy season on that coast, no vessel has been, nor, as your committee is informed, is under orders for that service. The committee are thus particular on this branch of their inquiry, because unfounded rumors have been in circulation, that other branches of the public service have suffered from the destination given to the inconsiderable force above stated, which, small as it has been, has, in every instance, been directed, both in its outward and homeward voyage, to cruise in the West India seas.

Before they quit this part of their inquiry, your committee feel it their duty to state, that the loss of several of the prizes made in this service, is imputable to the size of the ships engaged in it. The efficacy of this force, as well as the health and discipline of the officers and crews, conspire to recommend the employment of no smaller vessel than a corvette or a sloop of war, to which it would be expedient to allow the largest possible complement of men; and, if possible, she should be accompanied by a tender, or vessel drawing less water. The vessels engaged in this service should be frequently relieved, but the coast should at no time be left without a vessel to watch and protect its shores.

Your committee find it impossible to measure with precision the effect produced upon the American branch of the slave-trade, by the laws above mentioned, and the seizures under them. They are unable to state, whether those American merchants, the American capital and seamen, which heretofore aided in this traffic, have abandoned it altogether, or have sought shelter under the flags of other nations. It is ascertained, however, that the American flag, which heretofore covered so large a portion of the slave-trade, has wholly disappeared from the coasts of Africa. The trade, notwithstanding, increases annually, under the flags of other nations. France has incurred the reproach of being the greatest adventurer in this traffic, prohibited by her laws; but it is to be presumed, that this results not so much from the avidity of her subjects for this iniquitous gain, as from the safety which, in the absence of all hazard of capture, her flag affords to the greedy and unprincipled adventurers of all nations. It is neither candid nor just, to impute to a gallant and high-minded people, the exclusive commission of crimes, which the abandoned [*31] nations are alike capable of perpetrating, with the additional wrong to France herself, of using her flag to cover and protect them. If the vigor of the American navy has saved its banner from like reproach, it has done much to preserve, unsullied, its high reputation, and amply repaid the expense charged upon the public revenue by a system of laws to which it has given such honorable effect.

But the conclusion to which your committee has arrived, after consulting all the evidence within their reach, is, that the African slave-trade now prevails to a great extent, and that its total suppression can never be effected by the separate and disunited efforts of one or more state; and as the resolution to which this report refers, requires the suggestion of some remedy for the defects, if any exist, in the system of laws for the suppression of this traffic, your committee beg leave to call the attention of the house to the report and accompanying documents submitted to the last congress, by the committee on the slave-trade, and to make the same a part of this report. That report proposes, as a remedy for the existing evils of the system, the concurrence of the United States with one or all the maritime powers of Europe, in a modified and reciprocal right of search, on the African coast, with a view to the total suppression of the slave-trade. It is with great delicacy that the committee have approached this subject; because they are aware that the remedy which they have presumed to recommend to the consideration of the house, requires the exercise of the power of another department of this government, and that objections to the exercise of this power, in the mode here proposed, have hitherto existed in that department.

Your committee are confident, however, that these objections apply rather to a particular proposition for the exchange of the right of search, than to that modification

Slave Trade.

of it which presents itself to your committee. They contemplate the trial and condemnation of such American citizens as may be found engaged in this forbidden trade, not by mixed tribunals, sitting in a foreign country, but by existing courts of competent jurisdiction, in the United States. They propose the same disposition of the captured Africans, now authorized by law ; and, least of all, their detention in America. They contemplate an exchange of this right, which shall be in all respects reciprocal ; an exchange which, deriving its sole authority from treaty, would exclude the pretension, which no nation, however, has presumed to set up, that this right can be derived from the law of nations ; and further, they have limited it, in their conception

*32] of its application, *not only to certain latitudes, and to a certain distance from the coast of Africa, but to a small number of vessels to be employed by each power, and to be previously designated. The visit and search, thus restricted, it is believed, would insure the co-operation of one great maritime power, in the proposed exchange, and guard it from the danger of abuse.

Your committee cannot doubt that the people of America have the intelligence to distinguish between the right of searching a neutral on the high seas, in time of war, claimed by some belligerents, and that mutual, restricted, and peaceful concession by treaty, suggested by your committee, and which is demanded in the name of suffering humanity. In closing this report, they recommend to the House the adoption of the following resolution, viz :

Resolved, That the president of the United States be requested to enter into such arrangements as he may deem suitable and proper, with one or more of the maritime powers of Europe, for the effectual abolition of the slave-trade.

The following resolution was submitted to the House of Representatives, on the 10th of February 1823, and adopted the 28th of the same month :

Resolved, That the president of the United States be requested to enter upon, and to prosecute, from time to time, such negotiations with the several maritime powers of Europe and America, as he may deem expedient, for the effectual abolition of the African slave-trade, and its ultimate denunciation, as piracy, under the law of nations, by the consent of the civilized world.

SPANISH DECREE.

"The introduction of negro slaves into America was one of the first measures which my predecessors dictated for the support and prosperity of those vast regions, soon after their discovery. The impossibility of inducing the Indians to engage in dif-

*33] ferent useful though painful labors, *arising from their complete ignorance of the conveniences of life, and the very small progress they had made in the arts of social existence, required that the working of the mines, and the cultivation of the soil, should be committed to hands more robust and active than theirs. This measure, which did not create slavery, but only took advantage of that which existed through the barbarity of the Africans, by saving from death their prisoners, and alleviating their sad condition, far from being prejudicial to the negroes transported to America, conferred upon them not only the incomparable blessing of being instructed in the knowledge of the true God, and of the only religion in which the Supreme Being desires to be adored by his creatures, but likewise all the advantages which accompany civilization, without subjecting them, in their state of servitude, to a harder condition than that which they endured in freedom, when free in their native country. Nevertheless, the novelty of this system demanded prudence in its execution ; and thus it happened, that the introduction of negro slaves into America depended always on particular licenses, which my predecessors granted according to circumstances of places and times, till the era when untrained slaves were generally permitted to be imported, both in national and foreign vessels, by the royal proclamations of the 28th of September 1789, the 12th of April 1798, and the 22d of April 1804 ; in each of which the different places for their introduction were determined. All this clearly

Slave Trade.

evinced, that the Christian wisdom of my predecessors considered always these provisions as exceptions to the law, and dependent on variable conditions. Although the license granted the 22d of April 1804, had not expired, when Divine Providence restored me to the throne to which it had destined me, and of which an unjust usurper had perfidiously attempted to deprive me, the disturbances and dissensions excited in my American dominions, during my absence, immediately fixed my sovereign attention; and meditating incessantly on the most appropriate means of re-establishing good order in these remote possessions, and giving them all the encouragement of which they are capable, I was not slow in perceiving, that the circumstances which had induced my predecessors to permit the traffic in slaves on the coast of Africa, and their introduction into both Americas, had entirely changed. In these provinces, the number of indigenous negroes has increased prodigiously, and even that of free negroes, under the fostering care of a mild government, and the Christian humanity of the Spanish proprietors; the number of the white inhabitants has likewise been much augmented, and the climate is not now so prejudicial to the latter, as it was before the *soil was cleared of wood, and subjected of cultivation. The advantage, likewise, which resulted to the inhabitants of Africa from their transportation to a [*34] civilized country, is not now so urgent or exclusive, since an enlightened nation has undertaken the glorious task of civilizing them in their own land. At the same time, the general progress of improvement in Europe, and the spirit of humanity which directed its late transactions, in restoring the political edifice, which the wickedness of a usurped government had shaken to its foundation, have excited among European sovereigns a desire to see this traffic abolished; and at the congress of Vienna, agreeing on the necessity of the abolition, they occupied themselves in facilitating its execution, by the most amicable negotiations with those powers which had colonies, meeting in me that disposition which became so laudable an undertaking. Those considerations moved my royal mind to inform itself from enlightened persons, zealous for the prosperity of my states, as to the effects which the abolition of the traffic would produce on them. Having seen their reports, and being desirous to attain certainty in a matter of so grave importance, I transmitted them to my Council of the Indies, with my royal order, of the 14th of June 1815, that it might communicate to me its opinion and advice. Having collected all these copious materials, and having examined the proposition which the same supreme tribunal laid before me in its deliberation of the 15th of February 1816; answering to the confidence which I repose in it, and coinciding with its opinion respecting the abolition of the traffic in slaves; and co-operating with the King of Great Britain by a solemn treaty, embracing all the points of reciprocal interest involved in this important transaction; and determining that the time for the abolition was arrived, the interest of my American states being duly reconciled with the sentiments of my royal mind, and the wishes of all the sovereigns, my friends and allies; I have decreed as follows :

“ Art. I. From this day forward, I prohibit all my subjects, both in the Peninsula and in America, from going to buy negroes on the coasts of Africa, north of the line. The negroes who may be bought on the said coasts shall be declared free in the first port of my dominions at which the ship in which they are transported shall arrive. The ship itself, together with the remainder of its cargo, shall be confiscated to the royal treasury, and the purchaser, the captain, the master and pilot, shall be irrevocably condemned to ten years’ transportation to the Philippines.

“ Art. II. The above punishment does not attach to the trader, the *captain, the master and pilot of the vessels which sail from any port of my dominions, [*35] for the coasts of Africa, north of the line, before the 22d of November of the present year; to which period I grant, besides, an extension of six months, counting from the above date, to complete their voyages.

“ Art. III. From the 30th of May 1820, I equally prohibit all my subjects, as well in the Peninsula as in America, from going to purchase negroes along those parts of the coast of Africa which are to the south of the line, under the same penalties imposed in the first article of this decree; allowing, likewise, the space of

Slave Trade.

five months from the above date, to complete the voyages that may be undertaken before the above mentioned 39th of May, in which the traffic in slaves shall cease in all my dominions, as well in Spain as in America.

"Art. IV. Those who, using the permission which I grant till the 30th of May 1820, shall purchase slaves on that part of the coast of Africa which lies south of the line, shall not be allowed to carry more slaves than five to two tons of tonnage of their vessel; and any persons contravening this enactment shall be subjected to the penalty of losing all the slaves on board, who shall be declared free at the port of my dominions in which the ship arrives.

"Art. V. This computation is made without a reference to those who may be born during the voyage, or to those who may be serving on board as sailors or servants.

"Art. VI. Foreign vessels, which may import negroes into any port of my dominions, shall be subjected to the regulations prescribed in this decree; and in case of contravening them, shall be subjected to the penalties contained in it.

"And my royal pleasure being that the above decree should circulate in my dominions of America and Asia, for its punctual observance, I communicated it to my Supreme Council of the Indies, signed with my own hand, under date of the 22d of September last past; and on its being published in that tribunal, the 1st instant, a resolution passed, that steps should be taken to enforce it, and that the said tribunal should, for such purpose, circulate this my royal *cedula*, by which I direct all my viceroys, presidents, courts of judicature, commandants-general, governors and intendants of the Indies, of the adjacent, and of the Philippine islands, to keep, fulfil and execute, and cause to be kept, fulfilled and executed, all that has been enjoined in this my sovereign determination, without transgressing or contravening, or permitting to be transgressed or contravened, its contents in any way; causing, it

*36] for that purpose, to be published as an order, not only in the capital cities but also in the chief towns of jurisdiction of their respective districts, and communicating it likewise, each in his territory, to the tribunals, justices, authorities and persons who in any way may be bound to observe it. And this my royal *cedula* shall be attended to by the accountants' general offices of my said council. Dated, Madrid, the — December 1817.

"Your majesty prohibits for ever all your subjects of the Peninsula, as well as of America, from purchasing negroes on the coasts of Africa, enacting, that voyages for that purpose may not be undertaken to the coasts north of the equator, after the 22d of November, nor to those south of the equator, after the 30th of May 1820, under the penalties specified."

Portuguese Edict.

"I, the King, make known to those to whom the present Alvará, having the force and effect of a law, shall come, that as the abolition of the slave-trade in the ports of the coast of Africa, north of the equator, established by the ratification of the treaty, dated the 22d of January 1815, and of the additional convention, dated the 28th of July 1817, requires the adoption of fresh measures, which, fixing just and adequate penalties that shall attach to offenders, may afford to judges, and other persons charged with the execution of those measures, a standard for deciding upon such cases as shall occur relative to this object, think proper to ordain as follows:

"Art. I. All persons, of whatsoever quality or condition, who shall proceed to fit out or prepare vessels for the traffic in slaves, in any part of the coast of Africa lying north of the equator, shall incur the penalty of the loss of the slaves, who shall be declared free, with a destination herein afterwards mentioned. The vessels engaged in the traffic shall be confiscated, with all their tackle and appurtenances, together with the cargo, of what ever it may consist, which shall be on board on

Slave Trade.

account, *of the owners or freighters of such vessel, and of the owners of such slaves. The officers of such vessels to wit, the captain or master, the pilot, and supercargo shall be banished for five years to Mosambique, and each shall pay a fine equivalent to the pay or other profits which he was to gain by the adventure. Policies of insurance cannot be made on such vessels or their cargoes; and if they are made, the assurers who shall knowingly make them shall be condemned in triple the amount of the stipulated premium.

"Art. II. All persons, of whatever rank or condition, who shall import slaves into Brazil, in foreign vessels, shall incur the same penalty of the loss of the slaves, who who shall become freedmen, and be provided for as hereinafter directed.

"Art. III. Information shall be received relative to all the above cases. And if the vessel and her cargo have been confiscated, half of the whole proceeds of the property, sold at public auction, as well as half of the fines, shall be given to the informer, and the other half shall be paid into my royal treasury, to which the whole produce shall belong, if there be no informer. In case, however, of a vessel having been captured by a ship of war, such vessel and her cargo shall be subject to the provisions specified in the seventh article of the regulations concerning the mixed commission, annexed, under number 3, to the above convention of July the 28th, 1817. But in case the ship should be captured or confiscated, it shall not be lawful to commence an action for the recovery of such ship and cargo, except within a term not exceeding three years, to reckon from the date of the ship's entrance into the port where she has unloaded; after the expiration of which period, the said action shall be inadmissible and void.

"Art. IV. Informations, and all proceedings inclusive of the final sentence and its execution, shall be brought before the judges appointed to try causes respecting contraband goods and embezzlement, in any place or district, whither the slaves have been carried, or before any other magistrate or judge competent to decide on those matters, to whom I deem proper to commit this jurisdiction, as well as the authority requisite for carrying into execution the sentences passed by the mixed commission, in cases cognisable by the latter, and for trying and determining other cases that may occur, as also those accruing from them, allowing the party to bring an appeal conformably to the ordinance. It shall, however, be lawful for either of the parties to apply to the mixed commission, for them to determine whether or not the case have reference to the abolition; in which event, the proceedings upon it shall be delivered *up to the commission in the state in which they are; and [*38 whatever the commission may decide, shall be carried into effect.

"Art. V. The slaves made over to my royal treasury in the manner specified in the above seventh article of the regulations concerning the mixed commissions, and those declared free by the above article (as it would be unjust to abandon them without support), shall be delivered into the office of the judge of the district, or, where there is none, into that of the judge charged to watch over the rights of the Indians, whose powers I enlarge with that jurisdiction, to serve as freedman for fourteen years, in any public service of the navy, the fortresses, agriculture or manual trades, as may be thought most convenient, being for that purpose enrolled in the respective stations; or shall be hired out to individuals of known property and probity, who shall be bound to support, clothe and instruct them, teaching them some handicraft or labor, that may be agreed upon, during stipulated period; the terms and the conditions of which shall be renewed as often as necessary, till the fourteen years are expired; the time of servitude may be shortened by two or more years, according as the good conduct of these persons may entitle them to the enjoyment of full freedom. In case these freedmen are destined for the public service, the officer who shall have authority in the respective stations to which they are assigned, shall nominate a proper person to fix the period as above mentioned, who shall be responsible for their education and treatment. They shall have as curator a person of known probity, who shall be nominated every three years by the judge, and approved by the judicial council or governor, and captain-general of the

Slave Trade.

province. To him it shall belong, to provide everything which may contribute to their well-being, to testify abuses that may affect them, to procure them release after their proper term of service, and enforce generally, for their benefit, the observance of the laws prescribed for the protection of orphans, in as far as those laws are applicable to them, to the end that whatever is ordered concerning them may be strictly executed.

"Art. VI. In the ports to the south of the equator, where the traffic in slaves is still permitted, the regulations passed in the law of the 24th of November 1813, shall be observed, with the following modifications: The distinction between vessels which shall exceed or shall not exceed 201 tons shall be abolished, and the number of slaves shall be regulated according to the tonnage of the vessel, in the proportion of five to every two tons, according to the ancient measure. The prohibition respecting marks made with iron on the body of the slaves, shall not extend *39] to *marks imprinted with silver *carimbo*s, which, being excepted, shall be permitted. It shall be allowed to the persons who own or freight slave vessels, to use, indiscriminately, iron or copper kettles, provided the latter, every voyage, be tinned anew, which shall be ascertained by proper officers visiting those vessels. If surgeons do not sail on board such vessels, on account of the impossibility of procuring them, or for some other reason equally conclusive, the owners shall be obliged to carry with them black *sangradores*, experienced in the treatment of the diseases with which the slaves are commonly afflicted, and in the remedies proper for curing them; because, in regard to all these objects, experience has evinced the necessity of specifying the provisions set forth in this *alvará*, which, under the above modifications, shall be observed in all its details.

"Art VII. Whereas, the alteration effected in the slave-trade by the restrictions contained in the above treaty and additional convention, requires considerable modifications in the provisions of the former laws enacted on this subject, independent of the last change, which will tend to render many of them void, I think proper to order that it shall be permitted to import into the ports of Brazil, slaves from any ports where this traffic is not prohibited, and that the freight shall continue to be settled by the parties.

"The present injunctions shall be strictly complied with; wherefore, I direct the tribunal of the Privy Council, of Conscience and of Orders; the president of my Royal Exchequer; the council of my Royal Treasury; the chief justice of the supreme court of appeal in Brazil; the president of the tribunal of Bahia; the Governors and Captains-General; and the other Governors of Brazil, and of my dominions beyond sea; also all the ministers of justice, and other persons whom the preset *alvara* may concern, to comply with and observe the same, notwithstanding any decision that may be at variance with it, and which I rescind for this end only; and it shall have the force and effect of a letter issued by the chancellery, though it be not actually issued by the same, and though its validity extend beyond a year, notwithstanding the law to the contrary. Given at the palace of Rio de Janeiro, the 26th of January 1818."

*Cases referred to in the argument of The Antelope.

The AMEDIE, 1 Acton 240.

This was an American vessel, captured by a British cruiser, in the latter part of the year 1807, on her way from Bonny, on the coast of Africa, to Matanzas, in the island of Cuba, with 105 slaves on board. She was libelled in the vice-admiralty court of Tortola, and condemned as engaged in an illegal trade. From this sentence an appeal was prosecuted to the high court of appeals. The first reason assigned by the captors for the condemnation of this vessel was, that "this ship was proceeding from Africa, with a cargo there laden, to Matanzas, in the island of Cuba, being a part of a colony then belonging to his majesty's enemies, contrary to the prohibitions of the order of his majesty in council, of the 11th day of November 1807." The second reason assigned was, that "the voyage was contrary to the prohibitory laws

Slave Trade.

of the United States of America, made for abolishing the slave-trade, which had been officially notified to the Lords of Appeal by the act of the American government in the case of the *The Chance*, Brown, master; and although such laws of a foreign state may not amount to a direct or substantive ground of condemnation in a court of prize, yet they may and ought to exclude an American claimant from the benefit of those relaxations of the law of war which, in favor of neutral states, have been introduced by his majesty's instructions, in regard to their commerce with the colonies of his majesty's enemies; a privilege which can only be understood to be granted to neutral governments as a branch of their national commerce, and not as an invitation to lawless individuals to engage in a trade which the neutral state itself has prohibited, and desires to discourage." The third ground of condemnation assigned by the captors was, "that Scott, the supercargo and lader of the slaves, is admitted to have an interest therein, which is liable to confiscation, he being a British subject, by the statute of 46 Geo. III., cap. 52."

JUDGMENT. Sir William Grant.—In the case of *The Amedie*, it must be considered, on the evidence produced to the court, and from the situation *of this vessel at the time of capture, that she was employed in carrying slaves from the coast of [*41 Africa to a Spanish colony. We are of opinion, this appears to have been the original design and purpose of the voyage, notwithstanding the pretence set up to veil the real intention of the proprietor. The American claimant, however, complains of the injury and interruption he has sustained in carrying on his usual and lawful trade, that of importing slaves for the purpose of sale, and calls upon the prize court to redress the grievance, and repair the damage he has sustained by the capture and unjust detention of this vessel.

On the different occasions when cases of this description formerly came before the court, the slave-trade was liable to considerations very different from those which now belong to it. So far as respected the transportation of slaves to the colonies of foreign nations, this trade had been prohibited by the laws of America only; this country had taken no notice of that prohibition; our law sanctioned the trade, which it was the policy of the American law first to restrict, and finally to abolish. It appeared to us, therefore, difficult to consider the prohibitory law of America in any other light than as one of those municipal regulations of a foreign state, of which this court could not take any cognisance, and of course, could not be called upon to enforce; nor could it possibly bar a party in a court of prize. But by the alteration which has since taken place in our law, the question stands now upon very different grounds. We do now, and did, at the time of this capture, take an interest in preventing that traffic in which this ship was engaged. The slave-trade has since been totally abolished in this country, and our legislature has declared the African slave-trade is contrary to the principles of justice and humanity. Whatever opinions, as private individuals, we before might have entertained upon the nature of this trade, no court of justice could with propriety have assumed such a position as the basis of any of its decisions, whilst it was permitted by our own laws; but we do now lay down as a principle, that this is a trade which cannot, abstractedly speaking, be said to have a legitimate existence; I say, abstractedly speaking, because we cannot legislate for other countries; nor has this country a right to control any foreign legislature that may think proper to dissent from this doctrine, and give permission to its subjects to prosecute this trade. We cannot, certainly, compel the subjects of other nations to observe any other than the first and generally-received principles of universal law. But thus far we are now entitled to act, according to our law, and to hold that, *primâ facie*, the trade is altogether illegal, and thus to throw on a claimant the whole burden of proof, *in order to show, that by the particular law of his own country he is entitled [*42 to carry on this traffic. As the case now stands, we think that no claimant can be heard in an application to a court of prize, for the restoration of the human beings he carried unjustly to another country, for the purpose of disposing of them as slaves. The consequence of making such proof is not now necessary to determine; but where it cannot

Slave Trade.

be made, the party must be considered to have failed in establishing his asserted right. We are of opinion, upon the whole, that persons engaged in such a trade cannot, upon principles of universal law, have a right to be heard upon a claim of this nature in any court. In the present case, the claimant does not bring himself within the protection of the law of his own country; he appears to have been acting in direct violation of that law, which admits of no right of property such as he claims; ours is express and satisfactory upon the subject.

Where, therefore, there is no right established to carry on this trade, no claim to restitution of this property can be admitted. We are hence of opinion, the sentence of the court below was valid, and ought to be affirmed.

The FORTUNA, 1 Dodson 81.

This was the case of a vessel bearing the Portuguese flag, captured by a British cruiser, in October 1810, and sent into Plymouth as prize. It appeared in evidence, that she sailed from New York, under American colors, in the month of July 1810; and ostensibly owned by an American citizen; that she went to Madeira, landed a part of her cargo, and about a week before her departure from thence, a bill of sale of the ship was executed to a native of Madeira, a Portuguese subject; and in consequence of this sale, Portuguese papers obtained, and the Portuguese flag assumed. It appeared, from an inspection of the vessel, and other evidence in the case, that the object of the voyage was to procure a cargo of slaves on the coast of Africa.

JUDGMENT. Sir William Scott.—“An American ship, *qua* American, is entitled, upon proof, to immediate restitution; but she may forfeit, as other neutral ships may, that title, by various acts of misconduct, by violation of belligerent rights most clearly and universally. But though this prize law looks primarily to violations of belligerent rights, as grounds of confiscation, in vessels not actually belonging to the enemy, it has extended itself a good deal beyond consideration of that description *43] *only. It has been established, by recent decisions of the supreme court, that the court of prize, though properly a court purely of the law of nations, has a right to notice the municipal law of this country, in the case of a British vessel, which in the course of a prize proceeding, appears to have been trading in violation of that law, and to reject a claim for her on that account. That principle has been incorporated into the prize law of this country, within the last twenty years, and seems now fully incorporated. A late decision, in the case of *The Amedie*, seems to have gone the length of establishing a principle, that any trade contrary to the general law of nations, although not tending to, or accompanied with, any infraction of the belligerent rights of that country, whose tribunals are called upon to consider it, may subject the vessel employed in that trade to confiscation. *The Amedie* was an American ship, employed in carrying on the slave-trade; a trade which this country, since its own abandonment of it, has deemed repugnant to the law of nations, to justice and humanity, though without presuming so, to consider and treat it where it occurs in the practice of the subjects of a state which continues to tolerate and protect it by its own municipal regulations; but it puts upon the parties who are found in the occupation of that trade, the burden of showing that it was so tolerated and protected; and on failure of producing such proof, proceeds to condemnation, as it did in the case of that vessel. How far that judgment has been universally concurred in and approved, is not for me to inquire. If there be those who disapprove it, I am certainly not at liberty to include myself in that number, because the decisions of that court bind authoritatively the judicial conscience of this; its decisions must be conformed to, and its principles practically adopted. The principle laid down in that case appears to be, that the slave-trade, carried on by a vessel belonging to a subject of the United States, is a trade which, being unprotected by the domestic regulations of their legislature and government, subjects the vessel engaged in it to a sentence of condemnation. If the ship should, therefore, turn out to be an American, actually so employed; and it matters not, in my opinion, in what stage of the employment

Slave Trade.

whether in the inception or the consummation of it; the case of *The Amedie* will bind the conscience of this court to the effect of compelling it to pronounce a sentence of confiscation. I can have no rational doubt of her (*The Fortuna's*) real character; and under the authority of the case of *The Amedie*, I condemn her and her cargo."

*The *DONNA MARIANNA*, 1 Dodson 91.

[*44

This was the case of a vessel seized as she was proceeding to Cape Coast for a cargo of slaves, under the Portuguese flag. It appeared in evidence, that she was originally an American vessel, had been *bonâ fide* sold to a British subject, and was now claimed as Portuguese property, on the ground that she had been since conveyed to a Portuguese merchant. The court condemned the ship, as being a British vessel engaged in the slave-trade.

Sir William Scott.—"It would be a monstrous thing, where a ship, admitted to have been at one time British property, is found engaging in this traffic, to say, that, however imperfect the documentary evidence of the asserted transfer may be and however startling the other circumstances of the case, no inquiry shall be made into the real ownership. Here are on board this vessel only papers of mere form, and which are in contradiction with each other, leaving the whole transaction of the transfer in great doubt and obscurity; and if the court were to be prohibited, under such circumstances, from inquiry into the reality of the Portuguese title, one sees how easily the provisions of the legislature would be defeated. I can have no doubt that this court is bound judicially to consider this as a British vessel, and that this Portuguese disguise has been assumed for the mere purpose of protecting the property of British merchants in a traffic which it was not lawful for them to engage in."

The *DIANA*, 1 Dodson 95.

This was the case of a vessel, under Swedish colors, seized at Cape Mount, on the coast of Africa, on the 10th of September 1810, by a British cruiser, and carried to Sierra Leone, where proceedings were instituted against the vessel and cargo. At the time of the seizure, she had exchanged her outward cargo for 120 slaves, part of which she had received on board. An information was filed on the part of the captors, and a claim made for the ship and cargo, as the property of a subject of the King of Sweden. The vessel and cargo were condemned in the vice-admiralty court at Sierra Leone, from which an appeal was prosecuted to the high court of admiralty.

The condemnation also took place on a principle which this court cannot in any manner recognise, inasmuch as the sentence affirms, *"that the slave-trade, from motives of humanity, hath been abolished by most civilized nations, and is not at the present time legally authorized by any." This appears to me to be an assertion by no means sustainable. This court is disposed to go as far in discountenancing this odious traffic, as the law of nations, and the principles recognised by English tribunals, will warrant it in doing, but beyond these principles, it does not feel itself at liberty to travel. It cannot proceed, on a sweeping anathema of this kind against property belonging to the subjects of foreign independent states. The position laid down in the sentence of the court below, that the slave-trade is not authorized by any civilized state, is, unfortunately, by no means correct, the contrary being notoriously the fact, that it is tolerated by some of them. This trade was at one time, we know, universally allowed by the different nations of Europe, and carried on by them to a greater or less extent, according to their respective necessities. Sweden, having but small colonial possessions, did not engage very deeply in the traffic, but she entered into it so far as her convenience required for the supply of her own colonies. The trade, which was generally allowed, has been since abol-

Slave Trade.

ished by some particular countries; but I am yet to learn that Sweden^(a) has prohibited its subjects from engaging in the traffic, or that she has abstained from it either in act or declaration. Our own country, it is true, has taken a more correct view of the subject, and has decreed the abolition of the slave-trade, so far as British subjects are concerned; but it claims no right of enforcing its prohibition against the subjects of those states which have not adopted the same opinion with respect to the injustice and immorality of the trade.

The principle which has been extracted by the judge of the court below, from the case of *The Amedie*, is the reverse of the real principle there laid down by the superior court, which was, that where the municipal laws of the country to which the parties belong have prohibited the trade, the tribunals of this country will hold it *46] to be illegal, upon the general *principles of justice and humanity, and refuse restitution of the property; but on the other hand, though they consider the trade to be generally contrary to the principles of justice and humanity, where not tolerated by the laws of the country, they will respect the property of persons engaged in it, under the sanction of the laws of their own country. The lords of appeal did not mean to set themselves up as legislators for the whole world, or presume in any manner to interfere with the commercial regulations of other states, or to lay down general principles that were to overthrow their legislative provisions with respect to the conduct of their own subjects. It is highly fit, that the judge of the court below should be corrected in the view which he has taken of this matter, since the doctrine laid down by him in this sentence is inconsistent with the peace of this country and the rights of other states.

The proceedings in this court, as of appeal, have been commenced and carried on by both parties in the manner in which instance causes are usually conducted. A libel has been brought on the one side, to which a negative issue has been given on the other. Objections, however have been taken to the jurisdiction, upon two grounds. In the first place, it has been said, that the sentence of the court below, condemning the property to the crown, was a prize sentence, and, consequently, that the appeal ought to have been made to the privy council, and not to the instance court of admiralty, which is a mere municipal tribunal. It has likewise been said, that, supposing this court to be possessed of an appellate jurisdiction, still it has no jurisdiction over the question itself, which depends altogether upon the *jus gentium*. But I think the proceedings of the parties have sufficiently founded the jurisdiction in the cause; and I am by no means clear, that a court of civil jurisdiction might not otherwise have adjudicated on a question of this kind, and have excluded a claim asserted to be founded on principles contrary to general justice. The general injustice of a claim may be the subject of cognisance in a municipal court; a claim founded on piracy, or any other act which, in the general estimation of mankind, is held to be illegal and immoral, might, I presume, be rejected in any court, upon that ground alone. I am of opinion, therefore, that neither of the objections which have been taken are founded. After issue has been given here by the captors, as in an instance court, they cannot object to the competency of the court to entertain the question; and I am by no means willing to put the parties to the expense and inconvenience of commencing proceedings *de novo* before another tribunal.

(a) The treaty of concert and subsidy between his majesty and the King of Sweden, which was signed at Stockholm on the 3d of March 1813, has been made public since the date of this judgment. By an article of this treaty, the King of Sweden engages "to forbid and prohibit, at the period of the cession of Guadaloupe, the introduction of slaves from Africa into the said island, and the other possessions in the

West Indies of his Swedish majesty, and not to permit Swedish subjects to engage in the slave-trade; an engagement which, (it is said) his Swedish majesty is the more willing to contract, as this traffic has never been authorized by him," though it had never been prohibited, and therefore, had been tolerated in practice, upon the principles then generally received.

Slave Trade.

On the part of the appellants it is, I think, sufficiently established in *evidence, that the ship and cargo are Swedish property; whilst, on the other side, there is nothing but a general suggestion that they may belong to American citizens. It may, perhaps, be true, that persons of that country have dishonestly engaged themselves in this traffic, under color of the Swedish flag, and the island of St. Bartholomew may be a convenient resort for such an illegal purpose; but there is nothing in this particular case which can lead to a grave suspicion, much less to legal conclusion, that this ship is not *bonâ fide* the property of Swedish subjects.

The question, then, is whether the slave-trade is permitted by the law of Sweden? I have before stated, that this trade was, till of late years, generally allowed by the states of Europe, when, from motives of humanity, some of them were induced to abolish it, so far as their own subjects were concerned. It does not appear, that anything has been done by Sweden, in the way of abjuring it, much less that she has issued any positive declaration to that effect. The court is certainly inclined to hold that it lies on the individual making the claim to show that the law of this country countenances the trade; but in this particular instance, that demand appears to be satisfied sufficiently, at least, to throw on the other party the *onus* of proving that it is not allowed. The indorsement upon the pass, signed by the Swedish governor, that the vessel was "bound to the coast of Guinea, for slaves," raises a presumption of the legality of the trade, and shifts the burden of proof from the claimant to the captor. It is not necessary that there should be an immediate act of the Swedish government itself on board, declaring what the precise state of the law may be; the court is bound to accept the declaration and authority of the governor, as it appears upon the pass, if not contradicted. I do not find that the authenticity of this pass at all denied by the judge of the court below: he goes on the broad and sweeping ground, that all dealing in slaves is unlawful, because the trade is not authorized by any civilized state, which is certainly an incorrect erroneous statement. If the captors had it in their power to prove that Sweden had abolished this trade, they should now have produced that proof; for they must have been aware, that the sentence of the judge could never be supported on the principles stated by him in his judgment. The sanction of the colonial governor has been produced by the claimants; and I am clearly of opinion, under this authority standing before me, and standing uncontradicted, that Sweden has not abolished the slave-trade.

*The King's Advocate.—From private information, I understand that Sweden never, at any time, engaged in this trade. [*48]

Court.—Have you any documents to produce by which that fact can be made to appear? Can I presume, that the Swedish governor, who granted this pass, was acting contrary to the laws of his own country? It is impossible, for me, upon mere private information, to say that such was the fact. If anything can be produced in the way of evidence, it must be offered to the court before which this case may be carried on appeal. With every disposition to sustain the disinclination which has of late been justly shown to the slave-trade, I feel myself under a necessity of reversing this sentence, which appears to be founded on a false and dangerous principle, inconsistent with the rights of independent states, and, consequently, with the peace and safety of this country.

The only remaining point is, respecting these few Portuguese slaves which were found on board the ship. It appears, that they belong to the master of a Portuguese schooner, which had been lying at Cape Mount, but was driven to sea by stress of weather, whilst he was on shore, and that himself and his slaves had been taken on board this ship out of charity. In the absence of all proof, I shall not presume that he had been acting in opposition to the laws of his own country, and the treaty relative to the slave-trade between Great Britain and Portugal.

Sentence reversed.

MADRAZO v. WILLES, 5 Barn. & Ald. 353.

A foreigner, who is not prohibited from carrying on the slave-trade, by the laws of his own country, may, in a British court of justice, recover damages sustained by him in respect of the wrongful seizure, by a British subject, of a cargo of slaves on board of a ship then employed by him in carrying on the African slave-trade.

The declaration stated, that the plaintiff was a subject of the King of Spain, and that on the 12th of July 1817, at Havana, in the island of Cuba, he was lawfully possessed of a certain brig, called, &c., and continued so possessed, until the committing of the trespasses after mentioned, to wit, at, &c.; and that the said brig was, to wit, on, &c., lawfully cleared out for a certain voyage in the slave-trade, to wit, from Havana to the coast of Africa and back; and that, on the 16th of January 1818, on the high seas, to wit, off Cape St. Paul's, on the coast of Africa, defendant, with force and arms, seized the said brig, together with her stores, &c., and 300 slaves, and also divers goods, &c., on board of the said brig, and kept and detained them for a long time, *and converted and disposed of the slaves, goods, &c., to his own use; *49] by means whereof, the said brig was prevented from further prosecuting the said voyage, and the plaintiff deprived of great gains, which would have accrued from the slaves and goods, and from taking on board other slaves and other goods, and from carrying them to the island of Cuba: plea not guilty. At the trial, at the last London sittings after Michaelmas term, it appeared, that the defendant, who was a captain in the royal navy, had, on the 16th of January 1818, off Cape St. Paul's, unlawfully taken possession of the ship of the plaintiff, a Spanish merchant, which was engaged in the slave-trade on the coast of Africa. The only question which arose, was as to the amount of damages. It occurred to the Lord Chief Justice at the trial, that the plaintiff was not entitled to recover the value of the slaves in an English court of justice; and accordingly, he desired the jury to find their verdict separately for each part of the damage, giving to the defendant liberty to move to reduce the verdict to the smaller sum, in case the court should agree with him on the point. The jury found a verdict for the plaintiff, damages 21,180*l.*; being for the deterioration of the ship's stores and goods, 3000*l.*, and for the supposed profit of the cargo of slaves, 18,180*l.* And now—

Jervis moved for a rule *nisi* to reduce the damages to 3000 pounds. By the 47 Geo. III., c. 36, the slave-trade, and all dealings connected with it, were declared unlawful. It follows, therefore, as a consequence, that no one can be allowed to recover damages in respect of a cargo of slaves. And the 51 Geo. III., c. 23, goes still further; for it declares that trade to be contrary to the principles of justice, humanity and sound policy. Now, it being the duty of English courts of justice to be guided by those principles, no one, whether he be a foreigner or an Englishman, can be permitted there to claim any compensation in respect of such a traffic. The 58 Geo. III., c. 36, is, indeed, relied on by the other side; but that act, which was passed with a view of carrying into effect a treaty with Spain on this subject, ought not to affect the present question. Indeed, the fourth article of the treaty is strongly in favor of the defendant; for it provides, that the British government shall make compensation, out of a sum provided by parliament to Spanish merchants, for the seizure of their ships, which would seem to prove that, independently of that, such merchants had no other remedy.

ABBOTT, C. J.—On further consideration, it appears to me that there is no sufficient ground for reducing this verdict to the smallest sum found by the jury. Considering the very extensive language used in the two *acts of parliament to *50] which we have been referred, I had at first thought that it was not competent, even for a foreigner, to come into an English court of justice, and there to recover damages for a loss sustained by him in the prosecution of a trade declared by the British legislature, in such strong language, to be unlawful. It was with that view that I directed the jury to separate the damages in this case; for it occurred to me,

Slave Trade.

that though the plaintiff might not be entitled to recover for the slaves, still, inasmuch as, at all events, the defendant ought to have taken away the slaves promptly, if at all, the subsequent detention of the ship was an injury, for which the plaintiff was entitled to compensation. But I am now satisfied, that the words used by the legislature, although large and extensive, can only be taken to be applicable to British subjects. By the 58 Geo. III., c. 36, it appears, that a treaty had been made with Spain, for the prohibition of an important branch of the trade; and that, with regard to the remainder, special provisions had been made, and a special court constituted, for the purpose of settling the disputes which might occur. Now, that shows most strongly, that but for such a treaty, the trade would have been perfectly legal in a Spaniard; and the 10th section of that act, by which a certain sum is provided, as a full compensation for all losses sustained in consequence of the seizure of vessels, previously to the ratification of that treaty, seems to me to corroborate most strongly this view of the subject; for it enables the parties sued to plead that clause in bar of the action, which would obviously have been unnecessary, if, under the previous acts, no action could have been maintained at all. This clause, therefore, seems to me to be a legislative recognition of a foreigner's right of suit. And by the 11th and 12th sections it is provided, that all suits commenced in the courts of admiralty shall proceed, if commenced; and that the damages, &c., when recovered, shall be paid to the government of this country. All these clauses, taken together, appear to me to show, that what occurred to me at *nisi prius*, was not a sound exposition of the law. I am, therefore, of opinion, that the verdict for the larger sum found by the jury is right, and that we ought to refuse this rule.

BAYLEY, J.—I do not think that there is sufficient doubt in this case, to induce us to grant a rule. A British court of justice is always open to the subjects of all countries in amity with us, and they are entitled to compensation for any wrongful act done by a British subject to them. It is no answer to the present action to say, that it would not be maintainable by a British subject; for the only questions are, whether the act of the defendant be wrongful, and what injury the plaintiff has sustained *from it? Although the language used by the legislature in the statute referred [*51 to, is undoubtedly very strong, yet it can only apply to British subjects, and can only render the slave-trade unlawful, if carried on by them; it cannot apply, in any way, to a foreigner. It is true, that if this were a trade contrary to the law of nations, a foreigner could not maintain this action. But it is not; and as a Spaniard cannot be considered as bound by the acts of the British legislature prohibiting this trade, it would be unjust to deprive him of a remedy for the wrong which he has sustained. He had a legal property in the slaves, of which he has, by the defendant's act, been deprived. The 58 Geo. III., c. 36, proceeds on this principle; and the provisions referred to by my Lord Chief Justice, seem to me to be conclusive on the subject. I think, therefore, that we ought not to disturb this verdict.

HOLROYD, J.—However much I may regret that any damages can be recoverable for such a subject as this, yet I think we are bound to say, that this plaintiff is entitled to them. I agree with the construction which has been put on the 58 Geo. III., c. 36; and I think, that even independently of that act, the action would have been maintainable for the loss of the slaves.

BEST, J.—The statutes which have been referred to, speak in just terms of indignation of the horrible traffic in human beings; but they speak only in the name of the British nation. The declaration of the British legislature, that the slave-trade is contrary to justice and humanity, cannot affect the subjects of other countries, or prevent them from carrying on this trade, out of the limits of the British dominions. The assertion of a right to control the subjects of other states in this respect, would be inconsistent with that independence which we acknowledge that every foreign government possesses. If a ship be acting contrary to the general law of nations, she is thereby

Slave Trade.

subject to confiscation; but it is impossible to say, that the slave-trade is contrary to what may be called the common law of nations. It was, until lately, carried on by all the nations of all Europe. A practice so sanctioned can only be rendered illegal, by the consent of all the powers. Most of the states of Christendom have now consented to the abolition of the slave-trade, and concurred with us in declaring it to be unjust and inhuman. The subjects of any of these states could not, I think, maintain an action in the courts of this country for any injury happening to them in the prosecution of this trade; but Spain has reserved to herself the right of carrying *it on in that part of the world where this transaction occurred. Her subjects could not legally be interrupted in buying slaves in that part of the globe, and have a right to appeal to the justice of this country for any injury sustained by them from such an interruption. These principles are confirmed by the decisions of the court of Admiralty, and also by a judgment of Sir William Grant, pronounced at the Cockpit. The cases to which I allude, are, *The Fortuna*, *The Donna Marianna*, and *The Diana*, in the admiralty court; and *The Amedie*, before the privy council. (1 Dodson 81, 91, 95.) These cases establish this rule, that ships which belong to countries that have prohibited the slave-trade, are liable to capture and condemnation, if found employed in such trade; but that the subjects of countries which permit the prosecution of this trade, cannot be interrupted, while carrying it on. It is clear, from these authorities, that the slave-trade is not condemned by the general law of nations. The subjects of Spain have only to look to the municipal laws of their own country, and cannot be affected by any laws made by our government. The rule for reducing the damages, in this case, must, therefore, be refused.

Rule refused.