27th Congress, 2d Session. Rep. No. 668. Ho. of Reps.

DEPREDATIONS IN FLORIDA, BY U. S. ARMY, IN 1814.

[To accompany bill H. R. No. 398]

APRIL 20, 1842.

Mr. DEAN, from the Committee on the Territories, made the following

REPORT:

The Committee on the Territories, to whom was referred the petition of sundry citizens of West Florida, praying that a law may pass to authorize the adjustment and payment of losses sustained in 1814, *by the operation of the United States troops in Florida, report:*

That this claim was before Congress at the 2d session 26th Congress, when a report was made by the Committee on Territories favorable to the prayer of the petitioners; which report is added hereto, and adopted as the report of this committee.

FEBRUARY 12, 1841.

Mr. MORGAN, from the Committee on the Territories, to whom was referred the petition of sundry citizens of West Florida, praying that a law may pass to authorize the adjustment and payment for losses sustained in 1814, by the operations of the United States troops, in Florida, reported:

That, in 1819, the United States entered into a treaty with Spain for the cession of the Floridas. The citizens of the United States and the subjects of Spain had mutual claims against each other, for reciprocal injuries through a long series of years. The aggressions on the commerce of the United States, and on the property of its citizens, commenced in 1795, and were consummated in 1802, by the suspension of the right of deposite at the port of New Orleans. The aggressions on Florida, a province of Spain, by the troops of the United States, were committed chiefly at three distinct periods. The first of these aggressions was in 1812, when Congress, by a secret act, approved January, 1811, authorized the President of the United States, to take possession of the Floridas, "in case an arrangement could be made with the local authorities of the said provinces for delivering up the possession of the same, or any part thereof, to the United States." In pursuance of this power, the President appointed, as commissioners, General George Matthews and Colonel George McKee. The letter of instructions transmitted for their guidance, bearing date the 26th January, 1811, has these words: "Should you discover an

inclination on the part of the Governor of East Florida, or in the existing local authorities, to surrender that province into the possession of the United States, you are to accept it on the part of the United States," &c. General Matthews, so far from finding "the Governor of East Florida," or "the local authorities" of the province, inclined to deliver the country amicably to the United States, found all the Spanish authorities in arms against him. He could not move without an army of United States troops. Then it was that it was thought necessary to commence a revolution, and to create local authorities who would deliver up the country "amicably" to the army of the United States. General John H. McIntosh, of Georgia, was chosen "director of the freemen of East Florida" (such is the title assumed) for the express purpose of bringing about the contingency required by the act of January, 1811, on the happening of which alone, the President was authorized to seize and to hold the country. In a letter dated July 30, 1812, the "director of the freemen of Florida" thus writes to the President of the United States: "It was in consequence of the assurances of Commissioner Matthews, that our conduct would be sanctioned by his Government, that we were induced to take up arms against our tyrants, and to constitute a local authority or government, under which to cede to the United States all the country around St. Augustine." Thus, as the act required that the country should be "amicably delivered by the local authorities" before the President would be justified in taking possession of it, the commissioner of the United States induces the people of Georgia (McIntosh was one) and the malcontents of East Florida to take up arms, and to make local authorities, who would make the "amicable delivery." For this object, the whole country was laid waste.

The next invasion of Florida was by General Jackson, in 1814, when he followed the refugee Creeks to West Florida, and took possession of Pensacola, and the forts around it. During this expedition, there was no wanton waste or destruction of property. The troops, it is alleged, were subsisted by him on the Spaniards, without wanton or further injury.

In 1818 General Jackson again followed the flying Indians into West Florida, pursuing them to the old Fort of St. Mark's, in the neighborhood of the present seat of government of the Floridas.

Thus it remained until the treaty of 1819. In the negotiation which preceded that treaty, we demanded of Spain satisfaction for all injuries done since 1795. She demanded satisfaction of us for the damages committed by our armies upon their subjects in Florida, in the years 1812, 1813, 1814, and 1818. To settle forever all these conflicting claims, the Floridas were ceded by Spain for $5,000,000, with a stipulation that, as the people of Florida were now citizens of the United States, the United States should pay them for the losses they had sustained, by the operations of our armies, whilst Spanish subjects. The 9th article of the treaty contains these words: "And the high contracting parties respectively renounce all claim to indemnities for any of the recent events or transactions of their respective commanders and officers in the Floridas."

The last paragraph of the 9th article more particularly governs this subject: "The United States will cause satisfaction to be made for the injuries, if any, which, by process of law, shall be established to have been suffered by the Spanish officers and individual Spanish inhabitants, by the late operations of the American army." It will be seen that the

treaty required that the extent of these injuries, if any, should be ascertained by "process of law." To execute this portion of the treaty, it was necessary to create a tribunal, before which the subjects could be investigated, and the injuries ascertained "by due course of law." Accordingly, on the 3d of March, 1823, an act was passed giving authority to, and directing, the judges of Pensacola and St. Augustine "to receive and to adjust all claims, arising within their respective jurisdictions, of the inhabitants of said Territory, or their representatives, agreeably to the provisions of the 9th article of the treaty with Spain." The two gentlemen who then held the offices of district judges at Pensacola and St. Augustine were distinguished for their ability as jurists, and proceeded at once in the discharge of the duties assigned them. They then received and decided all claims presented to them, of the three classes before mentioned. They believed that all were alike included in the provisions of the 9th article of the treaty with Spain. But the second section of the law of 1823 directs that the awards of the judges, with the evidence on which those awards were made, should be forwarded to the Secretary of the Treasury, whose duty it is made to pay the amount of the award, "on being satisfied that the same is just and equitable, and *within the provisions of the treaty.*" The Secretary, to whom these cases were forwarded, accordingly paid the losses occasioned by the operations of the troops in 1818, and refused to pay those of 1812-'13, in East Florida, and of 1814, in West Florida, "as not embraced by the treaty." The reason assigned is a very short one. It is simply this: that the word "late" in the treaty refers only to the year 1818, as being the latest or last; and therefore excluded, by a constructive statute of limitations, those of the previous years. In 1834, those who had suffered in the previous years of 1812, 1813, and 1814, again appealed to Congress; and the Committee on the Judiciary reported a bill for the relief of all, except of those who had suffered in 1814 in West Florida, who had lost their property by the acts and invasion of General Jackson. The Committee, in that report, (which will be found, with many important documents attached thereto, among the documents of the 1st session of the 22d Congress, No. 223,) adopt the construction of the Secretary of the Treasury, and consider the word "late" in the treaty as restricting the relief contemplated to those who had suffered in 1818. "Under the operations of this act," says the report, page 3, "the claims which grew out of the operations of the army in Florida, in the year 1818, were allowed and settled at the Treasury. Those, the origin of which has been referred to, resulting from the transactions of the years 1812, 1813, and 1814, have been rejected, as not embraced by the treaty—the awards for 1814, during the administratoin of Mr. Monroe; the awards of 1812-'13, during the last administration. An attempt has been made by the delegate from Florida, before the committee, at the present, as in a former year, to show that the construction assumed at the Treasury was erroneous, and that the cases under review are comprehended in the provision for relief stipulated by the treaty. The committee, without going into the discussion of this opinion, esteem it only necessary to express their dissent from it, concurring in that which has been adopted at the Treasury." The committee, having thus briefly disposed of the question and the argument, proceed to draw a distinction between the merits of the two remaining classes of claims, and to decide, that although the treaty provided for neither, yet those in East Florida had an especial claim on the considera-

tion of Congress, for reasons not existing in those claims of West Florida. The reasons urged by the committee are briefly these: 1. "The United States, at that period, (1812,) were at peace with Spain;" 2. "Neither of the contingencies contemplated by the law of January, 1811, had happened," &c. A law was therefore passed in June, 1834, to settle and pay the losses of 1812-'13; but those of 1814 were deliberately excluded from its benefits. "They," (the committee,) says the report, "do not extend this opinion, however, to the cases growing out of the transactions of 1814 in West Florida, placed, as they conceive, in a very different predicament. The ground on which the cases of 1812-'13, just referred to, may claim indemnity, is the want of authority for the intrusion of the American forces into the province, in which the injuries from their operations were sustained. It was this characteristic of the invasion, putting the Government in the attitude of a wrong-doer, which subjects it to responsibility. But this the committee do not regard to have been the character of the invasion of 1814. A discomfited enemy, on the most unquestioned principles of public law, may be pursued into the territory of a neutral Power omitting to repel them from their refuge. The right, though not of more unquestionable validity, is of more essential character, to enter a neutral territory for the chastisement of a hostile force, rendering it subservient to purposes of annoyance, either from the connivance or imbecility of its sovereign. The American army was sustained by both these principles, in its invasion of Florida in the fall of 1814; their application of the first of them was, moreover, reinforced by the express stipulation of the fifth article of the treaty between Spain and the United States, of 1795. That article provides that "the two high contracting parties shall, by all the means in their power, maintain peace and harmony among the several Indian nations who inhabit the country adjacent to the lines and rivers, which, by the preceding articles, form the boundaries of the two Floridas. And the better to obtain this effect, both parties oblige themselves expressly to restrain, by force, all hostilities on the part of the Indian nations living within their boundaries, &c.; that Spain will not suffer her Indians to attack the citizens of the United States, nor the Indians inhabiting their territory; nor will the United States permit these last-mentioned Indians to commence hostilities against the subjects of his Catholic majesty, or his Indians, in any manner whatever."

Your committee confess that they do not see the strength of this reasoning. The invasion of East Florida, in 1812, by General Matthews, was sanctioned, at least, by color and pretext of the act of January of the preceding year. Mr. Monroe was authorized to take possession of the country, if the local authorities would deliver it; and Matthews did create local authorities, or, in the language of the highest of those as above quoted, induced the insurgents "to constitute a local authority or government, under which to cede to the United States all the country around St. Augustine." The committee are induced to believe that the distinction does not exist so much in the law of nations as in the actors of those invasions. The same text in Vattel which would justify General Jackson for the invasion of West Florida, might be made to condemn General Matthews for an invasion of the East, although the latter was somewhat sustained by an act of Congress and instructions from the President. But this committee, without intending or meaning to censure General Jackson, and admitting that the intrusion of General Jackson was proper and justifiable,

would remark that it does not follow that the private, unoffending inhabitants of Florida, having no influence over the despotic Government under which they lived, should be made to suffer in their property, and to support the army of their invaders, then, as in the preceding years, in a state of profound peace with their Government; nor do they see any just reasons why those who sustained losses in 1814 should be excepted from the benefits of the law of June, 1834.

Your committee, however, deem it their duty to go back behind the law of 1834, and to declare at once their total dissent from the position assumed by the Secretary of the Treasury, and the report of the committee heretofore referred to. They believe that the losses of 1812, 1813, 1814, were as much embraced by the treaty, and intended by it to be provided for, as those of 1818. We know that the contracting parties to that treaty were settling amicably the disputes and difficulties which had existed since the treaty of 1795; they were passing an act of oblivion for the past, and assuming to pay all demands of their citizens and subjects, for injuries and destruction of their property. They declare their object to be, amongst other things, "to put an end to all the differences which existed between them." 1st. The renunciation of the United States is declared to extend to all the injuries mentioned in the convention of 1802. 2d. To all claims on account of prizes made by French privateers, &c. 3d. To all claims of indemnity on account of the suspension of the right of deposite at New Orleans in 1802, &c. The renunciation of his Catholic majesty extends:

1st. To injuries mentioned in the convention of 1802;

2d. To advances to Captain Pike, &c.;

3d. To injuries caused by Miranda's expedition;

4th. For unlawful seizures at sea; and then proceeds to say:

"And the high contracting parties respectively renounce all claim to indemnities for any of the recent events or transactions of their respective commanders and officers in the Floridas.

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

It should be remembered that the renunciations on both sides, in the preceding part of the ninth article of the treaty, extend to all expenses before and after the convention of 1802; and the renunciation here is made mutually to extend to "all claims to indemnities *for any of the recent events* or transactions" of their armies in Florida. It appears, therefore, that the use of the phrase, "any of the recent events," presupposes a knowledge of more than one recent transaction, and a renunciation on account of all. The United States, therefore, promise to make satisfaction, to the extent of these renunciations, for injuries which have been suffered by the late operations. Your committee do not consider that, under any circumstances, the word "late" means only the latest or last. The treaty was made in 1819; the operations of the American armies in 1812, 1813, and 1814, were then recent—were then the "late" transactions in Florida. They had been made the subject of reclamation in a prolonged correspondence between the Governments, and cannot be fairly considered as excluded because the transactions of 1818 were later still. Much less can we think that the indemnity promised to the citizens of Florida was thus intended, by the word "late," or in any other man-

ner, to be restricted to 1818, or to any period short of the mutual renunciations, extending back to the last century. It would be bad faith so to construe the treaty as to compel the Spanish Government to indemnify our citizens for injuries sustained by them for twenty-five years back, and to limit the correlative obligation on our part to the year preceding. For injuries to us, they are made to pay back to 1795; for injuries to them, we consent to pay no further back than 1818. The claims and reclamations and renunciations, on both sides, were still more antiquated—*still less late*—going back as far as the grievances mentioned in the convention of 1802, on the complaints growing out of the suspension of the right of deposite at New Orleans, in the same year. The promise on the part of the United States should be considered commensurate with the renunciation, which immediately precedes it, and which, as we have seen, extends to all claims for any of the "*recent* events," &c.

The committee are still more confirmed in their opinion, by a further view of this matter. The whole argument, be it remembered, upon which the Secretary and the Committee on the Judiciary based their decision, is, that the word "late," in the treaty, shows the object of the high contracting parties to be, to provide only for the losses of 1818, as the latest; those of the preceding years not being "late," in the contemplation of the treaty. We have given already the reasons by which we are compelled to dissent from this construction. But, when we come to look at the Spanish side of the treaty, (vol 6. Laws U. S. 622,)—and both versions are original—we find that the word equivalent to the word "late" in English is totally omitted; and, if translated from the Spanish, it would read thus: "The United States will cause satisfaction to be made for the injuries, if any, which, by process of law, shall be established to have been suffered by the Spanish officers, or individual Spanish inhabitants, by the operations of the American army in Florida;" thus taking from the Secretary his sole ground of objection, and leaving not a doubt behind, that all the operations, &c., in the Floridas were alike intended to be provided for. It has been cogently reasoned by Colonel White, the former Delegate from Florida, that the Spanish version should prevail, because it contains an express promise of satisfaction to Spain for wrongs done her, and that we are bound by that phraseology, by which Spain was satisfied; and he quotes high authority to show that "the obligation of promises depends on the expectations which we knowingly excite." The truth is, as your committee believe, that the American negotiator was too astute, too able, for Don Onis.

But, since the decision of the Secretary and the report of the Committee of the Judiciary, this question, arising under another section of the treaty, has been brought directly before the Supreme Court of the United States, whose constitutional duty and privilege it is to decide all questions arising under the construction of a treaty.

In the case of Arredondo and others, (6 Peters, 691,) in a case for lands in Florida, arising under the eighth article of the treaty, a variance was found to exist (a variance much more slight than this) between the Spanish and the English version of the treaty; and the court decided in favor of the Spanish. That was a grant of land—a promise on the part of the United States to try their validity by due course of law; this is a grant of indemnity for losses—a promise on the part of the United States to ascertain them by like due course of law, and to pay them when

ascertained. That was a change in the tense or declension of a verb; here is a total omission of the important word itself.

For all these reasons, your committee beg leave to report a bill, conferring on the claimants in Florida all the benefits of the law of June, 1834, for losses sustained by the operations of the American troops in 1814.