Report No. 724.

[To accompany bill H. R. No. 565.]

HOUSE OF REPRESENTATIVES.

LEGAL REPRESENTATIVES OF JAMES C. WATSON.

JUNE 23, 1848.

Mr. DANIEL, from the Committee of Claims, made the following

REPORT:

The Committee of Claims, to whom was referred the petition of James C. Watson's representatives, beg leave to report:

That they believe the report from the Committee of Claims of this House of the 27th Congress, dated the 12th April, 1842, contains a correct statement of the material facts in this case. The committee concur also in the conclusions of said report, except as to the amount, which, upon principles of justice and good faith, ought to be paid to the representatives of Mr. Watson. Believing the advancement ($14,600) made by Mr. Watson to the agent of the Creek Indians was made under circumstances calculated to produce a confident belief that the government would cause the slaves then in its possession for safe keeping, to be delievered up to the Creeks, or their properly authorized agent or agents, in accordance with the agreement entered into between General Jesup and the Creek warriors; and ratified, as the committee conceive, by the government, and which was probably the main inducement for the Creeks to take part against the Seminoles, but which, from high considerations, humanity, and policy, was not done, and Mr. Watson and his representatives having been in no default, they recommend an indemnity equal to the amount advanced by Mr. Watson, with six per centum per annum interest from the 8th of May, 1838, till paid; and report a bill to that effect.

The report of 1842, which has been repeatedly sanctioned by other committees, is hereunto annexed.

The committee annex also a reference to different portions of the evidence contained in House document 225, of the 25th Congress, marked A.

House of Representatives.—April 12, 1842.

The Committee on Indian Affairs, to whom was referred the petition of General James C. Watson, have had the same under consideration, and beg leave to report, as follows:

In the year 1836, General Jesup, then in command of the troops of the United States in Florida, agreed with certain Creek warriors, whose services he thus engaged against the hostile Seminoles, that they should be entitled to all the slaves and other property of the enemy they might capture. The said warriors, in pursuance of this engagement, entered into the service of the United States, and among other things captured a large number of negroes, about one hundred and three of whom were slaves of the Seminoles, and became, under said contract, the property of the Creek warriors. General Jesup recognized their right, but sent the slaves to Fort Pike, near New Orleans, to be kept safely, subject to future orders. He proposed to pay the Creeks $8,000, and make some other disposition of the negroes, and, under the conviction that they would accept it, directed the payment of the money, and advised the War Department that the arrangement was made. But the warriors refused to receive that amount, and insisted on their claim to the negroes. For the purpose of asserting their rights, they sent on a delegation to Washington, in the spring of 1838, with full power to arrange and settle the matter. Their right was in no way disputed, but the department was disinclined to send the negro slaves to the new settlement of the Creeks, because it was feared that, from their proximity to the Seminoles, some difficulties might arise between the two tribes on that account, which would endanger their peaceful relations. Under these circumstances, with the approbation of the authorities of this government, through the agent of the Creeks, Major Armstrong, then at the capital, a sale was made by the Creek chiefs of all the said negroes to General James C. Watson, at $14,600. A bill of sale was made on the 8th of May, 1838, and the money paid over to Major Armstrong, to be delivered to the venders at their residence west of the Mississippi. This was done on the 4th of July of the same year. The delegation of Creek chiefs, in pursuance of said contract, made a power of attorney to Mr. Collins, to receive from the officers of the United States all said negroes, and deliver them over to General Watson. The War Department gave its sanction to this arrangement, and issued orders for the delivery of said slaves to General Watson or his agent. This order was presented by Mr. Collins to the officer in command at Fort Pike, who declined complying with it. Lieutenant Reynolds, who had charge of the emigrating Seminoles, also refused to separate said negroes from the party of Seminoles, who were then reunited with their former slaves, and claimed them on the ground that General Jesup had promised them their property if they would emigrate. Mr. Collins continued with them until they reached Arkansas, under an assurance by Lieutenant Reynolds that he would apply to General Arbuckle,

who was in command of the United States troops in that quarter, for a military force sufficient to coerce the delivery, and compel acquiescence on the part of the Seminoles. But General Arbuckle likewise refused to comply with the direction of the department in surrendering the negroes, but permitted them to go on with the Seminoles to their new home.

Mr. Poinsett, when Secretary of War, under the advice of General Arbuckle and Major Armstrong, after fully ascertaining that the forcible separation of said negroes from their Indian owners would produce great dissatisfaction, and seriously interfere with the policy of the government in relation to the Indians, relinquished the idea of delivering them up, and recommended an appropriation to be made by Congress for the indemnification of General Watson.

On the 23d of March, 1841, Mr. Secretary Bell issued an order to the agent, Major Armstrong, for the delivery of the same negroes to the agent of Watson, and, on the 24th, qualified the same with this among other conditions: that it would not produce "any hazard of serious and permanent dissatisfaction among the Seminoles west." He further remarked: "It is highly important to the peace of the frontier, and especially in regard to this tribe of Indians, connected as they are with the Indians in arms in Florida, that the utmost circumspection should be exercised in the discharge of the delicate duty confided to you."

The agents of General Watson proceeded to the frontier, with these orders, for the purpose of getting possession of the negroes. But the Secretary of War, becoming satisfied of the great danger of disturbing the peace and quiet of the Indians that had emigrated west, and perhaps frustrating the schemes of the government for the speedy termination of the Florida war, by the general emigration of the remaining Seminoles, issued a countermanding order on the 29th of April, 1841. So the newly opened prospect to General Watson of obtaining his property was again defeated by the officers of the government. This statement of facts is abundantly sustained by depositions and documentary evidence on file. The officers and agents of the United States, in every part of this transaction, have been actuated by praise-worthy motives and prudential considerations; and, although great injustice has been inflicted upon the rights of General Watson, the best interest of the country has doubtless been promoted, and possibly the shedding of blood prevented, by the course pursued. It will be readily perceived that a report, thrown back by the emigrated Seminoles to their hostile brethren in Florida, that their property had been forcibly wrested from them after arriving at their new home, contrary to the assurances of the officer to whom they surrendered, would have aggravated their hostile feelings, and greatly increased the difficulties of overcoming their obstinate resistance to the policy of the government.

The committee, upon this view of the case, can come to no other conclusion than that General Watson has been deprived of the benefit of his contract, and the enjoyment of his property, by the

conduct of the officers of the United States, fully sanctioned and approved by the government, on the ground that the best policy and true interest of the country were promoted by their course.

They are therefore clearly of opinion that every consideration of good faith and justice requires that the claim of the petitioner to compensation should be granted, and that the only matter of consideration is, as to the amount he should be allowed.

He claims the value of the negroes in the market at the time they should have been delivered to him, upon the ground that he was entitled to the benefit of his bargain; and that, as he was deprived of the enjoyment of his property by the conduct of the government agents, the true measure of his damages is the fair value of the negroes. Upon this rule, the amount would probably be about $60,000. But the committtee are not prepared to adopt this criterion of damages, although they admit there is much plausibility in it. They reject it, however, upon the ground that the very inconsiderable price at which the property was purchased (not quite one-fourth of its real value, according to the petitioner's own showing) proves that it was entered into by him as a speculation, and that the hazards were calculated and entered into the contract. As he would have made a very large profit if the chances had all turned out favorably, he should share the evils of a failure. The committee are, however, of opinion that he is entitled to the consideration paid by him, ($14,600,) with interest on the same from the time it was paid over to Major Armstrong (say, 15th of May, 1838) to the time it is refunded. They are also of opinion that he should be paid the amount fairly expended by him in endeavoring to obtain possession of said slaves from the officers and agents of the government under the authority of the War Department.

The account for expenses of three several agents, and the wages paid to them, amounts to near $6,000. The committee consider this extravagant and unreasonable, and propose to reduce it to $3,500. The consideration money paid, with interest for four years, would be $18,104, making in all $21,604.

The committee report, herewith, a bill appropriating to the petitioner the said amount of $21,604.

A.

Twenty-fifth Congress, Document 225, page 3.—The greater part of them (the negroes) having been captured by the friendly Creek Indians on their property.—General Jesup's orders, 2d June, 1837, No. 116.

Page 4.—All Indian property captured from this date will belong to the corps or detachment making the capture.—General Jesup's order, No. 160.

Page 15.—In the treaty of Paine's landing, the sum of $7,000, agreed to be paid for spoliations theretofore made by the Seminoles; the property therefore which they had plundered or stolen pre-

vious to that treaty became theirs by the act of the government.—General Jesup to E. B. Gould, esq.

Page 18.—I seized and sent to New Orleans about 90 Indian negroes, and I have here 17.—General Jesup to Colonel Gadsden, June 14, 1837.

Page 19.—Their *negroes*, &c., will belong to the corps by which they may be captured.—General Jesup to Colonel Warren, July 7, 1837.

Page 20.—Their negroes, horses, and cattle, and they are rich in that description of property, will be given to the captors.—General Jesup to Captain Armstrong, September 17, 1837.

Page 21.—And those Indians are rich in cattle, horses, and negroes.—General Jesup to Captain Bonneville.

Page 21.—The Creek Indians were entitled to all the Indian property they captured.—General Jesup to C. A. Harris.

Page 28.—See C. A. Harris's letter to Captain Cooper, acting Secretary of War.

Page 43.—See letter of C. A. Harris to S. Cooper, acting Secretary of War.

Page 44.—See letter of Commissioner of Indian Affairs to Captain Armstrong, dated May 2, 1838.

Page 45.—See letter from Commissioner of Indian Affairs to Secretary of War, dated May 9, 1838.

Page 46.—See letter of C. A. Harris to N. F. Collins.

Page 49.—See letter of Commissioner of Indian Affairs to Lieutenant Reynolds.

Page 50.—See letter from same to same.

Page 66.—See list of negroes captured, owned by Indians.

Page 74.—See list of Seminole negroes.

Page 90.—See letter of Captain Armstrong.

Page 91.—Letter of Creek chiefs to W. Armstrong and C. A. Harris.

Page 31 and 92.—Decision of the court in New Orleans, that the negroes are subject to attachment as the property of Indians.

Page 100.—Letter of Lieutenant Reynolds.

Page 102.—See letter of governor of Arkansas to Lieutenant Reynolds.

Page 114.—See letter of General Arbuckle to Secretary of War, August 27, 1838.

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An examination of the papers above referred to will establish the facts:

1st. That the Seminoles had a great many slaves belonging to them when the war commenced.

2d. That by an order of General Jesup, confirmed by the War Department, such of these slaves as were captured became the property of their captors.

3d. That with a full knowledge of all the facts, General Jesup treated these negroes as slaves, freeing some of them, and attempt-

ing to bargain with the Creek captors for the purchase of the others.

4th. That the Creeks, declining to take the price offered by General Jesup, demanded the slaves, which the department ordered to be given up to them.

5th. That the government, fearing that difficulties would arise between the Creeks and Seminoles if these negroes were carried to the Creek country west of the Arkansas, encouraged and authorized the sale of them by the Creeks.

MINORITY REPORT.

The minority of the Committee of Claims, to whom was referred the memorial of James C. Watson, submit the following report:

The facts upon which the memorialist rests his title to relief are substantially these: In the year 1836, General Jesup, under the authority and with the approval of the Secretary of War, organized a regiment of Creek warriors, to act in conjunction with the military forces of the United States in the prosecution of the Seminole war in Florida.

He was at the time the officer in command of our forces in Florida, and succeeded, in the language of the memorialist, by the offer of large remuneration—such remuneration only as would satisfy the well known rapacity of the savage for plunder and for gain—in persuading a band of Creek warriors to embark in the enterprise. Among the terms and conditions upon which the Creek Indians agreed to join the forces of the United States in the Florida service, was the positive stipulation that they should be entitled to all Indian negroes, and other Indian property captured by them.

Upon the completion of the arrangements with General Jesup, which were approved, as they had been previously authorized, by the Secretary of War, the Creek warriors proceeded to Florida to join the forces of the United States, and act in concert with them against the Seminoles.

During the service of the Creek warriors in Florida, one hundred and three negroes, besides runaway and stolen negroes, owned by citizens of the United States, and other property in possession of the hostile Seminoles, were taken prisoners and delivered for safe keeping to the military authority of the United States.

These are the negroes which the memorialist claims to have purchased of the Creek delegation in Washington the 8th of May, A. D. 1838.

The Commissioner of Indian Affairs, Mr. C. A. Harris, in communicating a list of these negroes to Nathaniel F. Collins, May 9th, A. D. 1838, says: "Herewith you will receive a copy of the list of negroes captured by General Jesup, which, it is believed, embraces the negroes to which the Creeks are entitled. But as this is not certain, much caution should be used in identifying them." The captured negroes were removed by the commanding general to Fort Pike, a military station near New Orleans, where they remained as prisoners till the Seminoles emigrated to the west.

By the terms of the 5th article of capitulation of the Seminole Indians and their allies, entered into with General Jesup, com-

manding the United States forces in Florida, the 6th of March, A. D. 1837, it was stipulated, among other things, that the Seminoles and their allies, who came in and emigrated to the west, shall be secure in their lives and property; that their negroes, their *bona fide* property, shall accompany them to the west. In pursuance of this agreement the negroes accompanied the Seminoles to their new homes in the west, where, if living, it is presumed they may still be found.

The bill of sale to the memorialist bears date May 8th, A. D. 1838, in which the Creek delegation, clothed with full power to bind the nation, covenant and agree that "the right and title to the said negroes we do hereby, for ourselves and our warriors, warrant and defend to the said Isaac C. Watson, his heirs and assigns, against the claim or demand of all and every person or persons whatsoever."

The memorialist represents that he was largely interested in contracts for the removal of Creek Indians west, in the years 1836 and 1837, and was at Washington city, giving his personal attention to the final settlement of his accounts, when he made the purchase of the Creek delegation. He was, therefore, intimately acquainted with all the facts and circumstances connected with the employment of the Creek regiment in the war against the Seminoles in Florida, and the conditions and stipulations of the treaty that terminated it.

The purchase of the negroes from the Creek delegation was made by the memorialist, with the knowledge and approval of the Commissioner of Indian Affairs, and other officers of government, at Washington; and directions were given to the officer in command at Fort Pike, having the custody of the negroes, to deliver them to Nathaniel F. Collins, the mutual agent of the Creek Indians and the memorialist. These directions or orders were disregarded by Lieutenant Reynolds, at Fort Pike, and the negroes were permitted, according to the terms of the capitulation, to accompany the emigrating Seminoles west of the Mississippi. Collins followed them to Arkansas, and applied to General Arbuckle, at Fort Gibson, to surrender them up to him, but he declined; whereby the memorialist declares the orders of the government officers, at Washington, "were shamefully neglected and disregarded."

Collins's failure to obtain possession of the negroes is ascribed in the memorial to the "extraordinary and unwarrantable conduct" of the officers of the United States.

The right of the memorialist to the indemnity which he seeks of the government springs from the contract between General Jesup and the Creek warriors. The purchase of the interest which the Creek Indians claimed to have in the negroes appears to have been an adventure—a mere speculation. It is apparent that the transaction was viewed as a very hazardous one by the memorialist, and the risk of ultimate failure in reducing the negroes to possession was considered by him as very great, and was not, therefore, overlooked in fixing the price to be paid.

If these captured negroes could be considered and treated as

property—as legitimate subjects of bargain and sale, they were worth not less than sixty thousand dollars; whereas the memorialist does not represent that he paid for them but fourteen thousand and six hundred dollars.

The first question presented for consideration is, whether the contract or agreement made with the Creek warriors upon entering the service and sanctioned by the War Department, is obligatory and ought to be countenanced or approved by the legislative department of the government.

This is a grave inquiry, and the subscribers not being able to agree with the majority of the committee, will briefly state the grounds of their disagreement.

No officer of government, at this time, and according to existing usages of civilized States, has any right to stipulate that soldiers may take the private property of the enemy and appropriate it to their own use, as a reward of bravery, or in payment of the stipulated price for their services.

Such, however, was not the case formerly. According to the maxims of the ancients, there was no limitation to the career of violence and outrage in time of war. A state of hostilities was considered as a dissolution of all moral ties, and a license for every species of disorder and crime. An enemy was esteemed as a criminal and an outlaw, whose rights were forfeited, and whose life, liberty and property were at the mercy of the conqueror. Everything done, therefore, against an enemy, to injure and annoy him, was considered lawful; and, though unarmed and defenceless, he might be destroyed, and all kinds of fraud and force might be employed to effect his destruction.

But the influence of christianity and the progress of civilization have mitigated the evils of war, and checked its barbarous rights; and any attempt to restore them, at this time, and by the action of the American Congress, ought to be frowned upon, and earnestly resisted.

The use of poisoned arms against an enemy, the employment of assassins, inflicting violence upon women and the dead, and *making slaves of prisoners*, are some of the enormities practised in time of war, in ages past, and among nations that have perished; but they are all prohibited by the dictates of common humanity and the modern law of nations.

Such practises are abhorrent to the cultivated reason and enlightened judgment of modern times, as well as to the precepts of the Christian religion.

It should be observed, however, in this connexion, that there is a marked distinction in the rights of war carried on by land and at sea, and for very plain and obvious reasons.

The destruction of the enemy's commerce and navigation, in order to weaken or destroy the foundation of his naval power, is the end and object of maritime war. And the destruction of private property being necessary to this end, it is allowed by the law of nations in war upon the ocean.

In relation to the obligation of contracts, the government stands

upon the same ground with individuals. It is viewed as a moral agent, and subject to the same rules and restraints that control and regulate the citizen.

A contract that is obligatory upon the citizen, is also binding upon the government; and one that cannot be enforced against the citizen, by reason of legal impediments, cannot be enforced against the government.

If the consideration of the contract through which the memorialist deduces his title to the negroes, which he claims to have purchased of the Creek Indians, is repugnant to the usages of civilized nations, to sound policy, good morals and the laws of humanity, the contract is invalid, and cannot be enforced.

The claim grows out of an illegal transaction, and is vitiated by it, and cannot, therefore, be recovered. This objection is allowed to be made, not for the sake of the guilty party who raises it, and who may seek to take advantage of it, but it is grounded upon great and general principles of morality and public policy. And the courts of the United States, as well as those of Great Britain and other countries, are constantly governed by this rule in the administration of justice; and it is too salutary to be departed from, and too firmly established to be shaken. It is interwoven with the first principles of our jurisprudence, is sanctioned by the purest morality, and is equally binding upon nations as upon individuals.

If these views are correct, and they are in the judgment of the subscribers, the claim in this case ought to be rejected.

But, in the second place, the Seminole Indians and negroes were prisoners, captured in the Florida war fighting side by side, and could not therefore be treated as merchandise, and made the subject of bargain and sale. It was not in the power of the government agents, either with or without the sanction of the executive department, to transform prisoners of war into slaves, whether these prisoners belonged to the aboriginal, American, or African race, and then, for a stipulated price, to consign them to perpetual bondage. Such practices may have existed and been tolerated in arbitrary governments in remote and barbarous times, but they are viewed at this time with abhorrence in all free and enlightened communities, with very few exceptions.

The rules of modern warfare, and the existing code of international law, forbid the enslaving of prisoners of war, and a regular system of exchange is now established, it is believed, throughout the civilized world.

The memorial refers to Document 225, 25th Congress, 3d session, as containing evidence pertinent to this claim. Copies of several letters to be found in this document are on the files in this case, but others, quite necessary to illustrate its true character, are omitted.

From an examination of the document, it is plain that one of the principal objects of the Florida war, to aid in the prosecution of which the Creek warriors were enlisted, was to reclaim runaway slaves, who had fled from the lash of the overseer to the everglades of Florida as an asylum. Another was to subdue the Semi-

nole Indians, and compel them to remove west of the Mississippi, or exterminate them upon the soil which contained the graves of their fathers. Another was to destroy the asylum for runaway slaves. In the prosecution of this war, a large number of slaves were recovered and restored to their masters; but many of the negroes who were taken prisoners with the Seminoles could not be identified as the property of the whites; and in some of the correspondence they are called the property or slaves of the Indians.

These are the negroes whom the memorialist represents that he purchased of the Creek Indians, and who were, it is said, the *slaves* of the Seminoles at the time they were captured. It might be difficult to determine, from the testimony before the committee, whether the institution of slavery existed at all among the Indians, or not.

And if this difficulty were removed, another equally embarrassing would present itself; and that is, whether the negroes were the slaves of the Indians, or the Indians the slaves of the negroes. They lived together apparently on terms of equality; were much attached to each other, and so assimilated that they were unwilling to be separated; and it is expressly stipulated in one of the articles of capitulation, entered into by the Seminole nation of Indians and their allies with General Jesup, March 6, A. D. 1837, at the termination of the war, that the Seminoles and their allies, who come in and emigrate to the west, shall be secure in their lives and property, and that their *negroes shall accompany* them. And in another article, it is further agreed that the chiefs, warriors, and their families *and negroes*, shall be subsisted from the time they assemble in camp, near Tampa Bay, until they arrive at their homes west of the Mississippi, and twelve months thereafter, at the expense of the United States.

And in a letter addressed by General Jesup to Governor Call, of Florida, under date of April 18, 1837, he says: "If the citizens of the territory be prudent, the war may be considered at an end; but any attempt to *interfere with Indian negroes*, or to arrest any of the chiefs or warriors, either as criminals or debtors, would cause an immediate resort to hostilities. The *negroes control their masters*, and they have heard of the act of your legislative council; thirty or more of the Indian negro men were at and near my camp on the Withlacoochie late in March; but the arrival of two or three citizens of Florida, said to be in search of negroes, caused them to disperse, and I doubt whether they will come in again. At all events, the emigration will be delayed a month, I apprehend, in consequence of the alarm of the negroes." The document, before referred to, supplies other evidence of a similar kind; but it is not necessary to multiply citations on this head. Whatever the relation might be which existed between them, whether that of master and servant, or as equals, it is plain they were captured when fighting together, and were treated as prisoners of war, and they had a right to claim such treatment.

And in the legal proceedings commenced against General Gaines by the heirs of Love, in one of the courts of the State of Louis-

iana, claiming a part of the negroes embraced in the purchase of the memorialist, it was contended, successfully, by the defence, that the negroes claimed by the plaintiff were found in the service of the Indians, speaking the same language, and like the inhabitants of all savage nations, aiding and assisting in the war. "They were captured, and taken by the United States forces as prisoners of war," &c.

In communicating to General Jones, of Washington, the first decision of the court, which was in favor of the plaintiffs, but which was afterwards changed in favor of defendant, General Gaines says: "Accompanying this, I send you, for the information of the proper authorities, a copy of a judgment of one of the superior courts of this State, with a copy of my objections thereto, in the case of the heirs of Love, against me; exhibiting an effort, which I am convinced is fraudulent, to arrest, and take from the custody of Lieutenant Reynolds, sixty-seven of the *black prisoners of war* brought from East Florida with the *Seminole prisoners of war*.

Such being the character of these negroes, the government had no more right to treat them as slaves, or as property, than it had the Seminole Indians, and the attempt to make merchandise of prisoners of war, and sell them into slavery, is opposed to the usages of modern warfare, and would be condemned by the united and indignant voice of all christendom."

A third objection to the allowance of the claim, and one equally fatal with the foregoing, is, that the purchase of the negroes, by the memorialist, was a mere speculation—an adventure—as before remarked, and the government, not being a guarantor that the speculation should be profitable, is not bound to make it so, or to indemnify the speculator. The evidence to establish this fact is full and convincing.

In the first place, the price paid was only fourteen thousand and six hundred dollars, for one hundred and three negroes; being less than one-fourth of their estimated value, if they are to be treated as slaves. And in the second place, the purchase was made by the memorialist with a full knowledge of all the facts. As the emigrating agent for the Creek Indians, he was in the employment of the government, and in that character, probably enjoyed their confidence, and must have possessed great influence over them, and was, no doubt, able to drive a more advantageous bargain with them than a stranger. Conclusive proof of this is to be found in the bill of sale, which he exacted of the chiefs, head men, and delegates of the Creek Indians, when he made the purchase. These chiefs were obliged to covenant and agree with the memorialist, in the following terms, to wit: "The right and title to the said negroes we do hereby, for ourselves and our warriors, warrant and defend to the said James C. Watson, his heirs and assigns, against the claim or demand of all and every person or persons whatsoever." And it must be borne in mind that this bill of sale was executed, and this covenant exacted, more than a year after the faith of the government was pledged to the Seminole Indians, in the articles of capitulation, that their negroes, who lived with

them, spoke their language, and *controlled their masters*, should not be separated from them, but should accompany them to their new homes west of the Mississippi. This covenant, while it fixes the liability of the Creek Indians to make good the title to the memorialist, provided the consideration does not render the contract invalid, demonstrates, at the same time, that the government is not liable, and was not considered liable at the time the contract was made. It is true, the agents of the government at Washington gave permission, and, perhaps, directions, to deliver the negroes to Collins, the reputed agent of both parties to the contract, and it is also true that these directions were wholly disregarded by the government officers at Fort Pike, and elsewhere. The adventure proved unsuccessful; but it is difficult to perceive on what principle the government is to be made responsible for its failure, and be compelled to indemnify the memorialist for his bad luck, and want of success in the speculation.

Another, and a fourth ground of opposition to the claim is, that the negroes were not pressed into the public service; and if the memorialist failed to obtain possession of them, it was for other and different reasons.

Private property may be taken for public uses, and this is a right incident to sovereignty; but this right of eminent domain can be resorted to only in cases of great emergency, when the public good, which is paramount to private rights, demands its exercise. In the present case, however, there was no exercise of this right, and there does not appear to have been any occasion for it. But it is intimated, nevertheless, in the report of the majority, that such was the case, and that, therefore, good faith and justice require the claim to be paid by the government. This intimation, however, is directly opposed to the representations in the memorial, and the testimony in the case.

It is represented in the memorial that Collins's failure to obtain possession of the negroes was owing to the extraordinary and unwarrantable conduct of the officers of the United States, who had the custody of them, and their disobedience of the orders of the War Department. And Collins states, in his deposition on file in this case, that, "in the various conversations with Lieutenant Reynolds, he uniformly manifested the most violent opposition to the course pursued by the Secretary of War, and contended that the Seminoles should be permitted to retain their negroes, &c., and with these declarations repeatedly made, and the uniform opposition from every officer in charge of the business, from Lieutenant Reynolds to General Arbuckle, the deponent was convinced there was a settled and preconcerted determination, by shifting the responsibility, equivocation, or any other pretext, to thwart the views of the department." John H. Watson accompanied Collins to Fort Pike, and found the negroes in possession, and under the control of the officers of the United States army, and says, General Gaines declined delivering them to deponent, but ordered them to proceed to Arkansas with a party of Seminole Indians; that they were taken and conducted up the Mississippi by Lieutenant

Reynolds; deponent and Collins followed in pursuit, and overtook them at Vicksburg, and presented the order of the War Department for their delivery to Lieutenant Reynolds, who declined to deliver them, that they were transported to Fort Gibson, when possession was again demanded, and finally, General Arbuckle refused to deliver them either to Collins, or to the agent of the purchaser.

It is true Lieutenant Reynolds and Major Clark discredit the testimony of Collins, and the latter remarks, in a letter to the former, what is very discreditable to Collins as a witness in this case, "it is very evident to me that Mr. Collins, if not sole owner of the claim, is very deeply interested in it." The testimony of Collins, however, may be cited to show, in view of the relation in which he stands to the transaction, that the memorialist has no just claim upon the government. It is only referred to for that purpose.

If the speculation failed, and the purchaser was defeated in reducing the negroes to possession by the misconduct of the government officers, as he has represented and proved, he is not, of course, without remedy, provided the transaction is lawful. Officers, both civil and military, are the agents of government, and are subject to the law that controls and regulates this relation in all other cases.

The principal is bound by the acts of the agent, while the agent confines himself within the scope of his authority. If he exceeds it, his principal is not bound. In this case, if the government officers by disobedience of orders, and other acts of misconduct, injured the memorialist, they are liable in their individual capacity for such injury, and he has an ample remedy against them by suit in court. The government is responsible for the conduct of its agents only while they obey instructions, and act within the prescribed limits of their delegated powers. If they transcend them, their official character ceases to be a protection, and for their wrongful acts they are amenable, like a private citizen, to the injured party.

But in the fifth place, assuming the negroes in question to be laves, instead of prisoners of war, and that in a case of great emergency they were pressed into the public service, whereby they were lost to the memorialist, still the government would not be liable for the loss as personal property. The difficulties already enumerated to the recovery of the claim against the government, appear to the subscribers to be insurmountable, but as this involves a question of deep and pervading interest, and presents an unanswerable objection to it, the subscribers have given it a careful examination, and will briefly state the reasons which have conducted their minds to this conclusion. This application for relief is made upon the hypothesis that it is within the constitutional power of Congress to treat and recognize slaves as property, and as such to pay for their loss or injury when pressed into public service. This is a mistake, as will presently be seen.

The uniform practice of Congress, under the constitution, has

been opposed to the allowance of such claims, as a brief reference to the record will demonstrate. Numerous applications have been made to Congress for the payment of such claims, at different times, but they have been invariably rejected.

The volume of American State Papers (Class 9, Claims) contains several reports of this committee on such applications, and all of them adverse to their allowance.

And it is believed that no instance can be found where a slave, injured or killed in the public service, during the revolutionary war, has been paid for by the government.

The first claim of this kind presented after the late war with Great Britain, was that of Lieutenant Montgomery, whose slave was killed or captured by the Indians at the battle of Fort Mims.

The committee, in commenting on the application, observe that, "where an officer took a slave into the service, the United States ought not to be liable for the value of the slave if it should be killed, or by other accident be lost to the owner." This was during the first session of the fourteenth Congress. At the same session, Dr. Lawrence claimed compensation for his slave that died of a contagious disease, contracted in the hospital while taking care of the sick at Bogue Chitto, in the State of Louisiana.

The circumstances under which this claim arose commended it very strongly to the favorable consideration of the committee. Dr. Lawrence was a surgeon in the army, and, on the return of the Tennessee militia from the south, was required to remain and take care of the soldiers confined in the hospital with a contagious disease. Dr. Lawrence was obliged to put his slave into the hospital as a nurse, for the reason that nurses could not be obtained from the line of the army or the inhabitants.

The slave was literally pressed into the public service, and, in consequence, perished, and was lost to the owner. But the claim was rejected for the reason that the government was not liable to pay for slaves.

At the first session of the fifteenth Congress, Mr. Shaw, assistant adjutant general, sought compensation for his slave, who was killed by a cannon shot on the morning of the 8th of January, 1815, while attending to his duty in the public service. The Committee of Claims remark that they are decidedly of opinion that Congress is under no obligation whatever to remunerate the petitioner.

No principle of legislation is, perhaps, better settled than this, that for such losses government cannot be liable. A similar report was made at the same session upon the claim of Robert Evans. And at the first session of the sixteenth Congress, and also at the first session of the seventeenth Congress, claims of this description were, for the same reason, rejected. These repeated decisions of the Committee of Claims, confirmed, as they have been, by the uniform action of Congress, are considered as of binding authority, and ought, therefore, in the judgment of the subscribers, to be held conclusive upon the question.

Stability and uniformity in the action of the legislative depart-

ment of the government, upon claims presented for adjudication, are as indispensible as in courts of justice. And if the weak or wicked judicial functionaries of the present day, to gratify passions and prejudices, are at liberty to disregard precedents and trample under foot the uniform course of decisions of courts of justice, what security has the citizen for his property, his life, or his liberty? None at all. And the same is applicable to the legislative department of the government, so far as it exercises judicial functions.

When the act of Congress, approved the 9th of April, A. D. 1816, containing such liberal provisions for the payment of property lost, captured, or destroyed by the enemy, while in the military service of the United States, was under consideration in the House Mr. Mayrant, of South Carolina, moved to amend the third section, which provided for the payment of wagons, boats, carts, horses, mules, and oxen, when lost or damaged in the military service of the United States, so as to include *all other property lost in the service*, meaning thereby to embrace slaves. He particularly called the attention of the House to the cases of slaves used as drivers of wagons, as sailors, laborers, &c., employed or pressed into the service of the United States, and lost, captured, or destroyed by the enemy.

This proposition to amend was opposed by Mr. Yancey, and, after discussion, was rejected. Here the question was directly presented to the House of Representatives, and its determination ought to be considered authoritative and binding.

When the bill authorizing further payment to sufferers during the late war with Great Britain was under consideration, in January, A. D. 1825, Mr. Forsyth moved to amend it, so as to provide payment for slaves lost in the public service; but the motion was decided in the negative by a large majority, and the House thereby affirmed its former judgment. Other cases of a more recent date might be cited, but it is needless to multiply cases to establish the principle, when the course of decision has been uniformly and invariably the same.

If Congress possessed the legislative omnipotence of the British parliament, and no limits could be set to its power, it would be unnecessary to pursue this inquiry. But such is not the case; and hence it becomes necessary and proper to ascertain the extent of its legislative powers, by an examination of the constitution. In this instrument, the legislative powers of Congress are specifically pointed out, and accurately defined, and beyond the limits here set it has no power to act.

The term *slave* or *slavery* does not defile that instrument; it is not mentioned in the constitution. The existence of slavery is so repugnant to republican institutions, the declaration of independence, and the natural and inalienable rights of man, that the framers of the constitution carefully avoided any expression that might be tortured into an approval or justification of it. It is at war with human rights, and every principle of republican liberty.

Without extending our inquiries into the origin of slavery, or

discussing the cruel and barbarous customs from which it sprung, for it has no more honorable parentage than war and piracy, it is sufficient for present purposes to observe that it existed in the colonies before the revolution, and has continued in some of the States to the present time. It was imposed upon the colonies by the mother country, for the purpose, among other things, of the more easily holding them in subjection; and when the convention met that framed the constitution, it was the only remaining badge of colonial vassalage which the storm of the revolution and the struggle for independence had not swept away.

To the convention, it was an embarrassing question. To reconcile its existence, in any way, with republican principles, and the love of liberty of a people whose social and political fabric rested on the great truth that "all men are created free and equal," and who had just emerged from a war of seven years' duration, prosecuted at great sacrifice of blood and treasure, to vindicate and sustain their principles, was a troublesome and difficult undertaking.

It gave rise to long and animated discussions, and the result of the deliberations of that body was, that slaves should be treated as *persons*, and not as *property*, in the constitution of the United States. In some of the States they were considered as property; but in others, where slavery did not exist, they were treated as persons; and the result was that their condition, under the federal constitution, was looked upon as somewhat anomalous; but when referred to or spoken of, as they are in the second and ninth sections of the first article, and the second section of the fourth article, of the constitution, they are called *persons*, and not *property*. It may be useful to our present purpose to understand what was said in debate by the eminent men who framed the constitution, on this subject.

When the second section of the first article was under discussion, Mr. King, being much opposed to fixing numbers as the rule of representation, said he was particularly so on account of the blacks. He thought the admission of them along with the whites at all would excite great discontent among the States having no slaves.—Madison papers, p. 300.

Mr. Wilson did not well see on what principle the admission of blacks, in the proportion of three-fifths, could be explained. Are they admitted as citizens? Then, why are they not admitted on an equality with white citizens? Are they admitted as property? Then, why is not other property admitted into the computation? These were difficulties, however, which he thought must be overruled by the necessity of compromise. He had some apprehensions, also, from the tendency of the blending of the blacks with the whites, to give disgust to the people of Pennsylvania, as had been intimated by his colleague, Mr. G. Morris.

Mr. G. Morris was compelled to declare himself reduced to the dilemma of doing injustice to the southern States, or to human nature, and he must, therefore, do it to the former; for he could never agree to give such encouragement to the slave trade as would be given by allowing them a representation for their negroes; and he

did not believe those States would ever confederate on terms that would deprive them of that trade.—Ibid 301.

Mr. King, remarking on the admission of slaves into the rule of representation, said he could not reconcile his mind to the article, if it was to prevent objections to the latter part of it. The admission of slaves was a most grating circumstance to his mind, and he believed would be so to a great part of the people of America.—Ibid 391.

Mr. G. Morris moved to insert "free" before the word inhabitants. Much, he said, would depend on this point. He never would concúr in upholding domestic slavery; it was a nefarious institution. It was the curse of heaven on the States where it prevailed. Compare the free regions of the middle States, where a rich and noble cultivation marks the prosperity and happiness of the people, with the misery and poverty that overspread the barren wastes of Virginia, Maryland and other States having slaves.

Travel through the whole continent and you behold the prospect continually varying with the appearance and disappearance of slavery.

And again he asks, upon what principle is it that the slaves shall be computed in the representation? Are they men? Then make them citizens, and let them vote. Are they property? Why, then, is no other property included? The houses in this city (Philadelphia) are worth more than all the wretched slaves who cover the rice swamps of South Carolina. The admission of slaves into the representation, when fairly explained, comes to this: that the inhabitant of Georgia and South Carolina who goes to the coast of Africa, and, in defiance of the most sacred laws of humanity, tears away his fellow creatures from their dearest connexions, and dooms them to the most cruel bondage, shall have more votes in a government instituted for the protection of the rights of mankind, than the citizen of Pennsylvania or New Jersey who views with a laudable horror so nefarious a practice.—Ibid 392, 393.

Mr. L. Martin proposed to vary article 7, section 4, so as to allow a prohibition or tax on the importation of slaves. In the first place, as five slaves are to be counted as three freemen in the apportionment of representatives, such a clause would leave an encouragement to this traffic. In the second place, slaves weakened one part of the Union which the other part was bound to protect; the privilege of importing them was, therefore, unreasonable. And, in the third place, it was inconsistent with the principles of the revolution, and dishonorable to the American character, to have such a feature in the constitution.—Ibid 457.

The same subject being under discussion the next day, Colonel Mason remarked: This infernal traffic originated in the avarice of British merchants. The British government constantly checked the attempts of Virginia to put a stop to it. The present question concerns not the importing States alone, but the whole Union. The evil of having slaves was experienced during the late war. Had slaves been treated as they might have been by the enemy,

they would have proved dangerous instruments in their hands. But their folly dealt by the slaves as it did by the tories.

He mentioned the dangerous insurrections of the slaves in Greece and Sicily; and the instructions given by Cromwell, to commissioners sent to Virginia, to arm the servants and slaves, in case other means of obtaining its submission should fail.

Slavery discourages arts and manufactures. The poor despise labor when performed by slaves. They prevent the emigration of whites, who really enrich and strengthen a country. They produce the most pernicious effect on manners. Every master of slaves, is born a petty tyrant. They bring the judgment of heaven on a country. As nations cannot be rewarded or punished in the next world, they must be in this. By an inevitable chain of causes and effects, Providence punishes national sins by national calamities.—Ibid 457, 458.

Mr. Sherman said, among other things, that he was opposed to a tax on slaves imported, as making the matter worse, because it implied they were *property*.—Ibid 461.

When the same subject was under consideration on a subsequent occasion, Mr. Gorham thought that Mr. Sherman should consider the duty, not as implying that slaves are property, but as a discouragement to the importation of them.

Mr. Madison thought it wrong to admit in the constitution the *idea that there could be property in men*.—Ibid 478.

These are the views of some of the framers of the constitution, and they are impressed upon that instrument. The great object seemed to be, to exclude from the constitution the idea that there could be property in men. Whenever slaves are referred to, they are called *persons*, with the intention, as is plain from the debates from which the foregoing extracts are taken, that they should be regarded in the constitution as persons, and not as *property*. Congress, therefore, whose legislative functions are wholly derived from the constitution, cannot regard them in any other light. It has no power, in fact, to legislate upon the subject of slavery at all, with the single exception, that it may provide, under the second section of the fourth article, for the arrest of fugitives.

Slavery is a State institution, with which the general government has no right to interfere, either to abolish or sustain it.

It exists in violation of natural and inalienable rights, and by force of the local laws or positive legislative enactments of the States which tolerate it. It is the creature of municipal or local law.

Whatever of good or evil flows from the institution belongs to the slave States. The citizens of the free States have the right, under the constitution, to claim exemption from any participation in its burdens or its benefits. Upon these terms the Union of the States was formed and the constitution was adopted, and a successful effort to prostitute the legislative power of Congress, in any way to interfere with, to uphold, or overthrow the institution, would be a palpable violation of the compact, and just cause of

alarm and apprehension. These views are illustrated and enforced by a variety of judicial decisions in the State and federal courts.

In the fifty-fourth number of the Federalist, Mr. Madison, after stating and answering several objections urged to the ratio of representation established in the second section of the first article of the constitution, observes: "It may be replied, perhaps, that slaves are not included in the estimate of representatives of any of the States possessing them. They neither vote themselves, nor increase the vote of their masters. Upon what principle, then, ought they to be taken into the federal estimate of representation? In rejecting them altogether, the constitution would, in this respect, have followed the very laws which have been appealed to, as the proper guide.

"This objection is repelled by a single observation. It is a fundamental principle of the proposed constitution, that as the aggregate number of representatives allotted to the several States is to be determined by a federal rule, founded on the aggregate number of inhabitants; so, the right of choosing this allotted number in each State, is to be exercised by such part of the inhabitants as the State itself may designate.

"The qualifications on which the right of suffrage depend, are not perhaps the same in any two States. In some of the States, the difference is very material. In every State, a certain proportion of inhabitants are deprived of this right, by the constitution of the State, who will be included in the census by which the federal constitution apportions the representation.

"In this point of view, the Southern States might retort the compliment, by insisting that the principle laid down by the convention, required that no regard should be had to the policy of particular States towards their own inhabitants; and, consequently, that the slaves, as inhabitants, should have been admitted into the census according to their full number, in like manner with other inhabitants, who, by the policy of other States, are not admitted to all the rights of citizens. A rigorous adherence, however, to this principle, is waived by those who would be gainers by it. All they ask is, that equal moderation be shown on the other side. Let the case of the slaves be considered, as it is, in truth a peculiar one. Let the compromising expedient of the constitution be mutually adopted, which regards them as inhabitants, as debased by servitude below the equal level of free inhabitants, which regards the *slave* as divested of two-fifths of the *man*."

These views of Mr. Madison present, perhaps, as candid and impartial a view of the condition of slaves under the constitution, as can anywhere be found.

They were considered as *persons*, and not as *property*, as *inhabitants*, but debased by servitude, as persons having a fixed and permanent residence, and not as goods and chattels, or articles of merchandise, subject to the regulation of Congress. This point was decided by the Supreme Court in the case of Groves, et al., *vs.* Slaughter, 15 Peters's Rep., 452.—The constitution of Mississippi prohibited the introduction of slaves into that State after the 1st of May, 1833, as merchandise, or for sale. But Slaughter, in

violation of the constitution, introduced and sold slaves in the year 1835, or 1836, in payment for which he received notes, on which the suit was brought. The plaintiff maintained that the above prohibition was not binding and operative, because the constitution of the United States gives to Congress the power "to regulate commerce with foreign nations, among the several States, and with the Indian tribes," and as slaves were merchandise, they could not be excluded by the State of Mississippi. The defendant contended that it was not a regulation of commerce, but of police, and therefore that the State possessed the power to exclude such persons as it might deem injurious to its peace and prosperity, and so the court decided.

Justice McLean observes, "the necessity of a uniform commercial regulation, more than any other consideration, led to the adoption of the federal constitution. And, unless the power be not only paramount, but exclusive, the constitution must fail to attain one of the principal objects of its formation."

It is enough to say that the commercial power, as it regards foreign commerce, and commerce among the several States, has been decided by this court to be exclusively vested in Congress.—Gibbons *vs.* Ogden, 9 Wheaton's Rep., 186.

"By the laws of certain States, slaves are treated as property, and the constitution of Mississippi prohibits their being brought into that State by citizens of other States for sale, or as merchandise."

"Merchandise is a comprehensive term, and may include every article of traffic, whether foreign or domestic, which is properly embraced by a commercial regulation. But if slaves are considered in some of the States as merchandise, that cannot divest them of the leading and controlling quality of persons by which they are designated in the constitution.

"The character of property is given them by the local law. This law is respected, and all rights under it are protected by federal authorities, but the constitution acts upon slaves as persons, and not as property."—Ibid 507.

It will thus be seen that the judicial construction of the constitution corresponds with the intention of its framers, and the question whether slaves are to be considered as persons, or as property, is no longer an open one. It is settled by the solemn judgment of the Supreme Court, and Congress is bound by its decision.

These are some of the objections which have occurred to the minds of the subscribers for rejecting the claim of the memorialist, and they are believed to be unanswerable.

They recommend, therefore, the adoption of the following resolution:

Resolved, That the claim of the memorialist be not allowed.

JOHN CROWELL,
J. A. ROCKWELL,
WILLIAM NELSON,
DAVID WILMOT.

NOTE.—The letters and other papers referred to in

report of the minority of the committee, and not on the files in this case, will be found in House document No. 225, Executive Document, 25th Congress, 3d session, vol. 5, 1838–'9.