ROBERT HARRISON AND OTHERS.

[To accompany Bill H. R. 904.]

March 3, 1859.—Ordered to be printed.

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

REPORT.

The Committee of Claims, to whom were referred the petition of Robert Harrison and the adverse report from the Court of Claims, No. 127, *have had the same under consideration and beg leave to report:*

By the 9th article of the treaty of 1819 between Spain and the United States, our government entered into the following undertaking:

"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."

"Y los Estados Unidos satisfarán los perjuicios, si los hubiese habido, que los habitantes y officiales Espanoles justifiquen legalmente haber sufrido por las operaciones del Exercito Americano en ellas."

To carry into effect this provision of the treaty, Congress, in 1823, passed the following act:

"That the judges of the superior courts established at St. Augustine and Pensacola, in the Territory of Florida, respectively, shall be, and they are hereby, authorized and directed to receive and adjust all claims, arising within their respective jurisdictions, of the inhabitants of said Territory or their representatives, agreeably to the provisions of the 9th article of the treaty with Spain by which the said Territory was ceded to the United States.

"Section 2. *And be it further enacted*, That in all cases in which the said judges shall decide in favor of the claimants, the decisions, with the evidence on which they are founded, shall be by the said judges reported to the Secretary of the Treasury, who, on being satisfied that the same is just and equitable, within the provisions of the said treaty, shall pay the amount thereof to the person or persons in whose favor the same is adjudged, out of any money in the treasury not otherwise appropriated."—(3 Stat. at Large, 768.) And in 1834 the following act:

"That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the treasury not otherwise appropriated, the amount awarded by the judge of superior court at St. Augustine in the Territory of Florida, under the authority of the 35th chapter of the acts of the 17th Congress, approved 3d March

1823, for losses occasioned in east Florida by troops in the service of the United States, in the years 1812 and 1813, in all cases where the decision of the said judge shall be deemed by the Secretary of the Treasury to be just: *Provided,* That no award be paid except in case of those who, at the time of suffering the loss, were actual subjects of the Spanish government. And *provided* also, that no award be paid for depredations committed in East Florida previous to the entrance into that province of the agent or troops of the United States.

"SECTION 2. *And be it further enacted,* That the judge of the superior court at St. Augustine, be and he is hereby authorized to receive, examine and adjudge all cases of claims for losses occasioned by the troops aforesaid in 1812 and 1813, not heretofore presented to the said judge, or in which the evidence was withheld in consequence of the decision of the Secretary of the Treasury, that such claims were not provided for by the treaty of February 22, 1819, between the governments of the United States and Spain: *Provided,* That such claims be presented to the said judge in the space of one year from the passage of this act: *Provided also,* That the authority herein given shall be subject to the restrictions created by the provisos of the preceding section."—(See Stat. at Large, vol 6, p. 569.)

Under these acts, the judges of the district courts of Florida proceeded to investigate the claims for injuries committed, and allowed such as they thought well founded, and within the provisions of the treaty; adopting as the measure of damages, the value of the property destroyed, with interest at the rate of five per centum per annum from the time of its destruction, and gave decrees accordingly. On being referred to the Secretary of the Treasury, that officer paid that portion of them which consisted of the value of the property, but refused the item of interest allowed by the judges, on the ground of departmental usage not to pay interest. An attempt was made to appeal to the Supreme Court, but that tribunal decided that under the acts of Congress it had been clothed with no jurisdiction. The Court of Claims made a similar decision, repelling the applicants.

Assuming that the action of these several tribunals is right and in conformity with the statutes, we recur to the treaty; that being in its two-fold nature a contract between nations, and a law of each, is of a dignity higher than the mere legislation of either, and must be carried into effect, if need be, by supplemental legislation.

The obligations of the treaty in question it is conceived are too obvious to require much comment. By the terms of the article already cited, this government undertakes that it "will cause satisfaction to be made" (in the Spanish draft, "satisfarán") "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," &c., (in the Spanish "los perjuicios si los hubiese habido que los habitantes y officiales espanoles justifiquen legalmente haber sufrido," &c.)

It is too clear for argument that by "satisfaction" the parties both intended legal satisfaction, or the remedy which the law gives for injuries of a similar character. The measure of damages for the injury occasioned by the destruction of personal property is the value of the property at the time of its destruction, with interest thereon to the day of the judgment. This principle, as a rule of both municipal and

international law, it is conceived, is too well known to require in its support citations from the unbroken current of authorities. It is elementary—almost axiomatic. If there is a liability fixed for the value of the property, the interest follows as a necessary corollary.

The government has already admitted its liability for the value of property destroyed within the purview of this treaty, and has foreclosed the question of interest. It is forever estopped to deny it. Interest should be paid as a matter of course, and as a necessary legal consequence of the admitted liability to pay the value of the destroyed property. It is as much a portion of the legal damages as the value of the property itself.

This is not a question between the government and its own citizens, where considerations of policy and expediency are supposed to be admissible. It is between our own country and another; and our proverbial good faith as a nation, in the fulfilment of our treaty stipulations, in the opinion of your committee, forbid that we should refuse or hesitate in our obligations to Spain; and especially just as we are on the eve of further negotiations of the highest moment with that ancient power; *fides servanda est.*

The attention of your committee has been called to the action of the Committee of Claims in the Senate, and they adopt and incorporate with their own, the report submitted to that body at the last session of this Congress, and recommend to the House the passage of a similar bill, general in its character, and disposing of this whole class of claims. Such a bill they herewith report.

IN THE SENATE OF THE UNITED STATES, *May* 17, 1858.

Mr. CLARK made the following report, to accompany Bill S. 373:

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

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

The cases referred to belong to a class, all depending on the same principles and considerations, arising under the last clause of the 9th article of the Florida treaty of 1819.

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

In 1811, relations of peace and amity existed between the United States and Spain, under the treaty of 1795; but the relations between the United States and Great Britain, and between the latter power and Spain, were of such a character as to create apprehensions on the

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

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

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

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

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

During the war between the United States and Great Britain, in 1814, West Florida was entered by General Jackson, and the army under his command, to expel the British and their Indian allies from Pensacola ; and in 1818, the same officer again entered West Florida,

in pursuit of the Indians. and St. Mark's and Pensacola were taken, and subsequently restored.

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

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

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

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

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

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

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

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

After the passage of the said act, the judges proceeded to adjust "claims arising within their respective jurisdictions," upon sworn petitions of the claimants and proofs taken, as in chancery or admiralty cases. The judge of West Florida made decisions or awards for injuries suffered from the invasion of 1814 in that province ; and the judge of East Florida, in like manner, proceeded to receive and adjudge claims for the injuries resulting from the invasion of 1812 and 1813 in that province.

Mr. Secretary Crawford, however, decided that the injuries of 1814 in West Florida were not embraced by the treaty—either from the supposed import of the word "late" in the English original, (but not

in the Spanish,) and which was construed to be synonymous with *latest* or *last*, and therefore only applicable to the invasion of 1818, or because the invasion of West Florida in 1814, during our war with Great Britain, to expel the British forces and their Indian allies from neutral territory used to originate operations against the United States, was justified by the law of nations, and therefore was no injury, within the true meaning of the treaty of 1819. Both these reasons were urged against those claims.

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

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

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

"SECTION 2. *And be it further enacted*, That the judge of the superior court of St. Augustine be, and he hereby is, authorized to *receive, examine, and adjudge* all cases of claims for losses occasioned by the troops aforesaid, in 1812 and 1813, not heretofore presented to the said judge, or in which the evidence was withheld, *in consequence of the decision of the Secretary of the Treasury that such claims were not provided for by the treaty of February* 22, 1819, *between the governments of the United States and Spain: Provided*, That such claims be presented to the said judge in the space of one year from the passage of this act: *And provided also,* That the authority herein given shall be subject to the restrictions created by the provisos to the preceding section."—(6 Statutes at Large, p. 569.)

At the time of the passage of this act, claims for injuries in East Florida, in 1812 and 1813, amounting to $214,676, had been presented to the judge of East Florida, and decrees in favor of the claim-

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

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

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

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

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

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

After the passage of the act of June 26, 1834, recognizing the injuries of 1812 and 1813 to be within the provisions of the treaty, and requiring the judge of the superior court of St. Augustine to "receive, examine, and adjudge" the same, the Hon. Robert Raymond Reid, then the judge of the said court, proceeded to adjudicate the said claims, and to report his decisions to the Secretary of the Treasury, according to the provisions of the act of March 3, 1823,

passed to carry the said treaty into effect. After he retired from office, the same duties continued to be performed by his successor, the Hon. Isaac H. Bronson, until Florida was admitted into the Union as a State, when Judge Bronson, having been appointed United States judge for the northern district of Florida, continued and closed the said duties. The mode of proceeding in these cases, prescribed by the judge, and sanctioned by the Treasury Department, was as follows:

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

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

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

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

"I am required by the statute to receive, examine, and *adjudge* these claims for losses. In performing this duty, I have allowed, because it seemed just and equitable to allow it, *interest* upon the amount or value of the property ascertained to have been lost. The rate of interest existing in the province at that time (1812 and 1813) was five per cent., and this is the sum allowed in all cases. I am sensible that this allowance will swell considerably the amount to be paid to the claimants, but I do not perceive how it could be avoided. If we lose sight of the national character of one of the parties, and

suppose two private persons engaged in a dispute about an injury to property, the tribunal to which resort is had, in adjusting the damages due by the one to the other, will consider the value of the property destroyed, in connexion with the time for which the owner has been deprived of the use and enjoyment of his property. The first being ascertained in money, a compensation for the last may best be regulated by reverting to the rate of interest allowed by the law of the country where the wrong was done."—(Report of Court of Claims in Robert Harrison's case, p. 78.)

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

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

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

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

Secretaries Ewing, Forward, and Bibb, who acted on these claims after Mr. Woodbury, and followed his precedent in rejecting the part of the damages or satisfaction decreed by the judges under the name of interest, have all certified that they did so under the mere *usage* of the Treasury Department, and without any reference to the treaty or law of nations, and without any inquiry whether the payment of that part of the award of the judges was necessary to make the "satisfaction" stipulated by the treaty, and they all express the opinion that such payment is necessary to fulfil the stipulation of the treaty.—(See Report of the Court of Claims in Harrison's case, pp. 100 to 114; also the report of Judge Bibb, assistant Attorney General to the Attorney General, from p. 81 to p. 109 of the same document; also the state-

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

ment of Mr. McClintock Young, late chief clerk of the Treasury Department, from pages 34 to 37 of the same document.)

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

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

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

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

The question as to what constitutes satisfaction in a case like the present is not a new one. It has often been decided, and was long since settled. The "satisfaction" to be made by the United States, in pursuance of the stipulation of the 9th article of the treaty of 1819, is a satisfaction for "injuries" suffered by the Spanish inhabitants of Florida from the acts of our army in 1812 and 1813. The term "satisfaction," when used to measure the compensation to be made for injuries to property in violation of the law of nations, embraces the fullest measure of redress enjoined by the great international code designed to regulate the intercourse and settle the controversies of nations.—(See Wheaton on International Law, pp. 340, 341, 342, and 576; 1 vol. Kent's Com., p. 61; Vattel, book 2, ch. 18, sec. 324; Ib., book 3, ch. 11, sec. 185; Campbell's Grotius, vol. 2, book 2, ch. 17, p. 192.)

Satisfaction, when used in the sense of redress for injuries to property consists in the value of the property taken or destroyed, and

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

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

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

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

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

The rule by which damages, in the name of interest, are allowed in cases like the present is supported by an unbroken current of authorities, derived as well from writers on the law of nations as from the decisions of the highest courts in Great Britain and the United States; and the authorities and precedents drawn from these sources have been invariably insisted on by the government of the United States, when seeking redress from other nations for injuries which our citizens have sustained at their hands. Our government has demanded, and uniformly obtained, the fullest measure of indemnity, interest as well as principal being on all occasions exacted. In these cases the United States are solemnly bound by the treaty to Spain that satisfaction should be made for the injuries suffered by her subjects from the operations of our army. What was meant by the term

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

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

The United States, in the construction of their treaties, and in all their intercourse with other nations, have uniformly insisted upon and sanctioned the measure of redress decreed by the Florida judges in these cases, as affording the lowest measure of satisfaction for property taken or destroyed in violation of treaties, or of the laws and usages of nations.—(Vide opinion of Mr. Wirt, Attorney General, printed Opinions, pp. 568, 569, 570, 571; letter of Mr. Clay, Secretary of State, to Mr. Vaughan, British minister, of the 15th April, 1826; Wheaton's Life of Wm. Pinckney, pp. 196, 198, 265, (note,) 371; American State Papers, Foreign Relations, vol. 2, pp. 119, 120, 387, 388, 283; Ex. Doc. No. 32, 1st sess. 25th Congress, Ho. Reps., p. 249; Ex. Doc. Ho. Reps., 2d session 27th Congress, vol. 5, doc. 291, p. 50; American State Papers, Foreign Relations, vol. 4, p. 639; Elliott's Diplomatic Code, vol. 2, pp. 625, 605.)

These citations will show that interest, in addition to the value of the property illegally taken, was claimed and allowed under the 7th article of the treaty of 1794 with Great Britain, (8th Statutes at Large, p. 119;) under the word "losses," simply, in the 21st article of the treaty of 1795, with Spain, (8th Statutes at Large, p. 150;) under

the words "just indemnification for private property carried away," in the convention of 1818, between the United States and Great Britain, (8th Statutes at Large, p. 249;) under the law of nations, by Brazil, without any treaty stipulations; under the words "injuries to property," the same words employed in the 9th article of the Florida treaty, in the convention of the 11th April, 1839, between the United States and Mexico, (8th Statutes at Large, p. 526;) under the 14th article of the treaty of 2d February, 1848, between the United States and Mexico, (records of the board of commissioners, on file in the State Department.) The indemnity in this case was paid by the United States to their own citizens in behalf of Mexico, in consideration of the cession of California and new Mexico.

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

Under the treaty of Ghent, between the United States and Great Britain, a difference arose, which was referred to the arbitrament of the Emperor of Russia, who decided that the United States were entitled "to a just indemnification from Great Britain for all private property carried away by the British forces." The members of the joint commission, Messrs. Langdon Cheeves and Jackson, differed as to the measure of damages. Mr. Cheeves insisted on interest from the time of taking the property, in addition to its value, as the measure of damages. He said the claim was not for interest, *eo nomine*, but adopted as a mitigated rule of damages or compensation, founded on the pecuniary value of the property withheld; and that in such cases the common law and civil law both allowed reparation or compensation for *the loss of the use* of the property withheld from the commencement of the tortious detention. The rule of the public law, he said, was the same; and, that if the property captured and taken away in February, 1815, were returned now uninjured, it would not repair the loss sustained by the taking away and detention. The claimant would still be without indemnity for the *loss of the use* of his property for ten years, which was nearly equivalent to the original value of the principal thing. Mr. Wirt sustained the rule as stated by Mr. Cheeves.—(Opinions of Attorney General, vol. 1, p. 499, of May 17, 1826.) Mr. Clay, in a letter dated April 15, 1826, to the British minister, Mr. Vaughan, declared "that interest was a just component part of the indemnification which the convention stipulated." This rule was finally recognized by the British government, though the amount paid in gross was something less than the interest would have been if computed at the ordinary rate.

In the negotiations between the United States and Great Britain, in relation to the cases of the "Encomium" and "Comet," Mr. Stevenson, the American minister, under the instructions of the State

Department, laid down the following propositions, which were fully admitted by Lord Palmerston. These propositions, it will be seen, relate to the measure of damages proper to be allowed for the taking and detention or destruction of property, in several distinct points of view.

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

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

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

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

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

Mr. Stevenson then cites Grotius, as cited in support of the Florida claims; also, 2d vol. Campbell's Grotius, p. 360; vol. 6, sec. 1224. Cites Domat, to show that fruits and profits were allowed by the civil law, as cited by Judge Bronson. Cites Pothier, Code Napoleon, Blackstone, Vesey's R., 2 Brown's C. C., and says:

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

Mr. Stevenson then shows that interest was allowed under the 6th and 7th articles of Jay's treaty in 1794, and refers to the opinion of Sir John Nicoll, one of the British commissioners under the 7th article of said treaty; also to the decision of Sir William Scott, in the case of the "Acteon," cited by Judge Bronson, and proceeds to say that "the general doctrine, then, is, that he who withholds what he ought to return does an injury for which he is bound to indemnify the sufferer; that the proper measure of indemnification is the thing

which is withheld, together with its reasonable fruits or profits accruing during the period that it is withheld; that if, however, restitution of the property cannot be had, justice finds its compensation or its value as an equivalent, and interest on it is resorted to as the best standard to ascertain the reasonable profits of money."

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

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

That a treaty, being a contract between two independent nations, is to be controlled in its construction, not by the local usages of either, but by the universal rules of the international code, is too clear for argument. The committee believe that Mr. Woodbury would have taken this view of his duty in the premises if it had been presented to his attention. While the decision of Mr. Woodbury has not been reversed, the right of these claimants under the treaty to the payment of the awards of damage, under the name of interest, has not been denied by any Secretary of the Treasury who has acted upon the awards of the judges, or any Attorney General, since Mr. Woodbury's time, but has been expressly admitted by Secretaries Spencer, Bibb, Corwin, and Forward, and by Attorneys General Crittenden and Cushing.

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

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

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

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

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

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

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

35th Congress, 2d Session. } HOUSE OF REPRESENTATIVES. { Report No. 216.

ROBERT HARRISON AND OTHERS.

March 3, 1859.—Ordered to be printed.

Mr. Moore, from the Committee on Claims, made the following

MINORITY REPORT.

The undersigned, not concurring in the report of the majority of the Committee on Claims in the cases of Letitia Humphreys, administratrix of Andrew Atkinson, deceased, and of Robert Harrison, beg leave to submit very briefly the reasons which have constrained them to dissent therefrom.

In the treaty of 1819, between Spain and the United States, (9th article,) is the following stipulation:

"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."

These claims, it is alleged, arise under the 9th article of said treaty. In order to establish their validity these facts must be shown—

1st. That these claims were embraced within the provisions of said treaty.

2d. That the United States had hitherto failed to discharge its duty by making provision for their payment, although solemnly bound, by treaty stipulation with Spain, to pay them.

The undersigned are of opinion that neither of these propositions can be sustained.

There were injuries committed by the American forces on the Spanish inhabitants of Florida in 1812 and 1813, and also in 1818. Now, the question arises, was it intended by the treaty of cession of 1819 to provide for the payment of all the injuries which had at any time been committed by the American forces on the Spanish inhabitants of Florida, or only those which had been committed the year before by the army under General Jackson? If there had been no terms of limitation employed, it might well be urged that it was intended to embrace all the injuries suffered by these inhabitants of Florida prior thereto. But, as if to prevent any such construction, the treaty provides for the satisfaction only of those claims arising from injuries caused "*by the late operations of the American army in Florida.*"

This language is too plain to admit of any doubt as to its construction, but it has been pretended that in the Spanish version of this treaty no word answering to *late* is to be found. But this is answered by the simple statement, that both the English and Spanish versions of the treaty were originals, as it was signed in both of these languages, and both were equally binding upon the contracting parties. This was the decision of the Committee on Foreign Affairs of the House of Representatives in 1826; the chairman of said committee, the Hon. John Forsyth, having presented an able report adverse to the allowance of these claims, which was concurred in by the House, and in which he demonstrated with his usual clearness and ability that these claims for losses sustained in 1812 and 1813 were not embraced within the treaty; and he also showed conclusively that there was, in fact, no difference in the Spanish and English versions, but that both referred to the *late operations* of the American army. The undersigned begs to refer to the able report of Mr. Forsyth, to be found in vol. 1, Reports of Com., 1st sess. 19th Congress, (Report No. 112.)

This construction, too, was uniformly given to the 9th article of said treaty by all the Secretaries of the Treasury, from 1823, when an act of Congress was first passed to carry out the provisions of this treaty, down to 1834. During all that period every claim was disallowed by the Secretaries of the Treasury, save those which arose from injuries done by the American army in 1818.

In 1834, however, an act was passed, authorizing the Secretary of the Treasury to pay such claims as had been allowed by the judges of Florida, (acting as commissioners under the act of 1823,) for losses occasioned by the troops of the United States in the years 1812 and 1813. In pursuance of this act of 1834, proof was taken to establish the claims now under consideration, and numerous others. The whole amount of the principal sum allowed has been paid and satisfied, and these claims are presented for interest alone.

It does not follow that these claims were embraced within the meaning of the treaty, because the act of Congress of 1834 authorized the Secretary of the Treasury to pay them. That construction was binding, it is true, upon the latter officer, but it certainly is not upon any subsequent Congress. It is a fact not deemed unworthy of being mentioned, that in 1834, before the passage of the act authorizing the Secretary of the Treasury to pay such claims as had been allowed by the judges in Florida for their losses sustained in 1812 and 1813, and which *he might deem just*, the delegate of Florida, the Hon. Mr. White, was asked by the Hon. Mr. McCay, chairman of the Committee of Ways and Means of the House, what would be the amount of these claims, and he replied not exceeding $40,000.—(Vide Cong. Globe, 23d Cong.) While, in fact, more than one million of dollars have since been paid therefor; and these claims for interest alone now exceed one million and a half of dollars.

Even if these claims were originally embraced within the terms of that treaty, the undersigned entertain not the shadow of a doubt that the claimants have been fully paid. But without going into all the details which tend to fasten that conviction upon their minds, the undersigned desire to address themselves briefly to the second proposition,

which, as before stated, the claimants must establish affirmatively, before their claim can be sustained.

Has the United States failed to perform its treaty stipulations with Spain? The majority of the committee seem to think that the good faith of the nation requires the payment of these claims. We think our government has fully discharged every obligation which it assumed. An act was passed in 1823, authorizing the judges of the Territory of Florida to adjust all claims arising under that treaty. They were required to "*report to the Secretary of the Treasury, who, on being satisfied that the same were just and equitable within the provisions of said treaty, should pay the amounts thereof,*" &c. The Secretaries paid the principal in every instance, but refused to pay the interest.

What was the extent of power conferred on these judges? This has been judicially decided by the Supreme Court of the United States in the case of The United States *vs.* Ferriera, (13 Howard's Reports,) arising under this 9th clause of the treaty with Spain.

The Chief Justice, in delivering the opinion of the Court, says: "*The law of* 1823, *therefore, and not the stipulations of the treaty, furnishes the rule for the proceeding of the territorial judges*, and determines their character." * * * * * * *

"It is to be *a debt from the United States upon the decision of the Secretary*, but not upon that of the *judge*. It is too evident for argument on the subject that such a tribunal is not a *judicial* one, and that the act of Congress did not intend to make it one. The authority conferred on the respective judges was nothing more than that of *commissioners* to adjust certain claims against the United States. * * The decision is not the judgment of a court of justice. It is the award of a commissioner. The act of 1834 calls it an award."

What, then, let us here inquire, are the powers of a commissioner appointed under a treaty like this of 1819 between Spain and the United States? It has been decided by the Supreme Court of the United States that the decisions of such commissioners are conclusive—that is, the decision of the judges in Florida, when approved by the Secretary of the Treasury. The opinion of the Supreme Court, in the case before referred to, is so decisive of this case that the undersigned desire to call attention to an additional extract:

"Nor can we see any ground for objection to the power of revision and control given to the *Secretary of the Treasury*. When the United States consent to submit the adjustment of claims against them to any tribunal they have a right to prescribe the conditions on which they will pay; and they had a right, therefore, to make *the approval of the award by the Secretary of the Treasury one of the conditions upon which they would agree to be liable. No claim therefore is due from the United States until it is sanctioned by him*, and his decision against the claimant for the whole or a part of a claim, as allowed by the judge, is *final* and *conclusive*. It cannot afterwards be disturbed by an appeal to this or any other court, or in any other way, without the authority of an act of Congress. It is said, however, on the part of the claimant that the treaty requires that the injured parties should have an opportunity of establishing their claims by a process of law; that process of law means a judicial proceeding in a court of justice, and

that the right of supervision given to the Secretary over the decision of the district judge is therefore in violation of the treaty. The Court think differently; and that the government of this country is not liable to the reproach of having broken its faith with Spain. The tribunals established are substantially the same with those usually created when one nation agrees by treaty to pay debts or damages which may be found to be due to the citizens of another country. This treaty meant nothing more than the tribunal and mode of proceeding ordinarily established on such occasions, and well known and well understood when treaty obligations of this description are undertaken."

This decision of the Supreme Court of the United States is based upon and construes this 9th clause of the Florida treaty; it covers the whole ground assumed by the advocates of these claimants; it stands unreversed, and while it stands as the authoritative interpretation of this treaty, by no sophistry or ingenuity can it ever be shown that the United States have failed to perform the stipulations of this treaty in good faith, and in every particular. It seems to the undersigned that it would be a far easier task to prove that our government has exhibited an excess of liberality in its construction of this treaty, and that vast sums of money have already been paid to these and other claimants under that treaty which the government was never legally bound to pay. But waiving this and other considerations for the present, the undersigned beg to refer to the able argument of Senator Butler, in the Senate of the United States, upon these identical claims, in which he said: "I have never known a claim with less justice, or one which, in my opinion, has less in it to commend it to us."

And again he says: "Mr. White, the Florida delegate, insisted with great vehemence and earnestness that the claims were within the treaty, his chief ground being alleged error in translation; but he was overruled.

"I do not care who are concerned in it; the claim that they were in the treaty was an impudent pretension. They were not within the treaty. The act was a gratuity, an indulgence, a kindness, a liberal donation—nothing more."

(*Vide* also the debate in the House of Representatives upon these claims, in the Congressional Globe, 2d session 33d Congress, and particularly the speech of the Hon. Mr. Orr, of South Carolina, against them, on pages 734 and 735.)

The majority of the committee, both of the House and of the Senate, seems to *assume as indisputable* that these claims were embraced by the treaty with Spain, and that they were just, equitable, and still unsatisfied; and with this assumption, they confine themselves mainly to the discussion of the question: What is the true measure of damages for injuries or losses sustained by the Spanish inhabitants of Florida? And the conclusion to which they arrive is, that this is "the value of the property taken, with interest from the time of the taking," &c. The view taken of these claims by the undersigned renders it wholly unnecessary that they should enter at large upon the discussion of this question. For even if was conceded that the above constituted the general rule, still it cannot be invoked in favor of these claims, which, as we believe, have no merit in themselves—were never em-

braced by the treaty, and to pay the principal, even, which has been paid, no obligation was ever imposed upon our government.

But it may be said that our government is estopped from denying the validity of these claims, by having paid the principal sums claimed. We do not concur in this opinion. So far from acknowledging their obligation to pay these claims, this government has again and again, and *through all its departments, executive, legislative, and judicial,* utterly denied them and rejected them. To show this we need but refer briefly to the following facts:

1. These claims were uniformly rejected, both as to principal and interest, by each Secretary of the Treasury from 1823 to 1834.

2. These claims (now presented for *interest only*) have been uniformly rejected by every Secretary of the Treasury from 1836 down to the present time, commencing with that eminent statesman and jurist, Judge Woodbury.

These decisions of the Secretaries of the Treasury were in accordance with the advice and opinions of the Attorneys General of the United States.—(Vide opinion of Attorney General C. Cushing, Ex. Doc. 82, and also of Attorneys General Crittenden, Legare and Nelson, p. 333, vol. 5.—Opinions of Attorneys General by Hall, Congress 2, do. pp. 1392, 1420.)

So much for these branches of the *executive* departments.

In the legislative departments they have hitherto fared no better.

At the first session of the 19th Congress the Committee of Claims of the House, to whom these claims had been referred, reported adversely thereon. That report was laid on the table without any objection being made, and was therefore concurred in by the House. This was in December, 1825.

At the same session of Congress, these claims were again referred to another committee of the House, that of Foreign Affairs, and that committee, on the 10th of March, 1826, also reported adversely to these claims, through their chairman, the Hon. John Forsyth, to which reference has been before made; and that report was also laid on the table, and therefore concurred in by the House.

Without calling attention to all of the different times on which these claims have been considered by committees, and by the two Houses of Congress, we desire to call attention to the discussion which took place in the House of Representatives at ——— session of the 33d Congress, and the action of the House on a bill providing for the payment of these claims; when, after a *full and free discussion,* that bill was rejected. So much for the legislative action on these claims.

Now as to the action of the judicial department of the government.

And first, we again refer to the decision of the Supreme Court in the case of the United States *vs.* Ferreira, 13 How.

2d. After a full hearing, the case being *argued* and *re-argued* by able counsel, the Court of Claims have also since decided adversely to these claims. The lucid opinion of Judge Blackford concludes as follows:

"The remaining question is, whether the decision of the Secretary of the Treasury against the claim for interest is not final and conclusive. It appears to us to be very clear that the Secretary's decision against the claimant puts an end to the demand. This judgment is

sustained by the opinion of the Supreme Court of the United States in Ferreira's case, before cited. The decision of the Secretary, as to the law and the facts, must be considered as the decision of a competent tribunal of exclusive jurisdiction. It stands upon the same ground with the decision of a board of commissioners appointed by or under a treaty to determine upon the amount and validity of such claims as the one before us. That the decision of such a board is conclusive has been settled by the Supreme Court of the United States in the case of Comegys *vs*. Vasse.—(1 Peters, 212.) The same point is decided by this Court in the case of Thomas *vs*. The United States, and Roberts *vs*. the same.

"Considering, as we do, the decision of the Secretary against the claim for interest as final, we have not found it necessary to extend our inquiry on the subject of interest beyond that decision. It is the opinion of the Court, for the foregoing reasons, and upon the authorities cited, that the claimant has shown no ground for relief."

After all this array of authority adverse to these claims, (and more might be produced if time and opportunity admitted), certainly it cannot be pretended that this government is now estopped from denying the justice or the validity of these claims. On the other hand, it does seem to the undersigned that these claimants ought to be estopped from still further urging their unfounded claims upon this government. But it seems that no matter how often a claim against the government may have been rejected, yet it never dies. Defeat at one session but stimulates to greater exertion at the next. Neither the decisions of courts, nor of committees, nor of Congresses, if adverse to them, seem to be considered as final and conclusive. The principle of *stare decisis* might well be applied to claims like these, which have been so often acted upon and so repeatedly rejected. *Interest reipublicæ ut sit finis litium.*

The undersigned have deemed it to be their duty to present to the House the grounds of their objection to the bill proposed by the majority of the committee for the payment of these claims; they only regret that want of time (it being now near the close of the session) has prevented the presentation of their views in a more compact and forcible manner.

SYDENHAM MOORE.
S. S. MARSHALL.