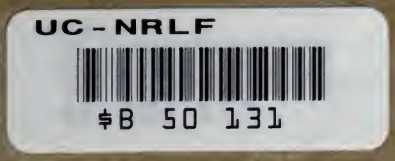

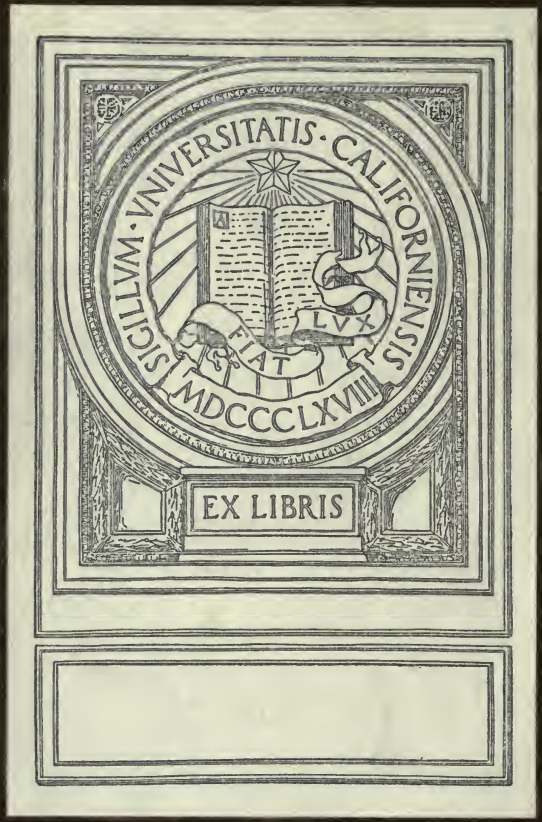
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SPEECH

OF

MR. TRUMAN SMITH, OF CONN.

ON THE

FRENCH SPOLIATION CLAIMS.

DELIVERED IN THE SENATE OF THE UNITED STATES, JANUARY 16 & 17, 1851.

WASHINGTON:
PRINTED BY JNO. T. TOWERS.
1851.

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DELIVERED IN THE SENATE OF THE UNITED STATES, JANUARY 16 & 17, 1851.

The bill "to provide for the ascertainment and satisfaction of claims of American citizens for Spoliations committed by the French prior to the 31st July, 1801," being under consideration;

Mr. SMITH addressed the Senate as follows:

The question comprised in this bill is, whether this Government is not under an equitable obligation to make some indemnity to those of our citizens who suffered by the spoilation of the French anterior to the ratification of the Convention of 30th September, 1800. If I were to consult my own feelings, I should be prepared to refer this question to the judgment and vote of the Senate, without a single remark on my part. The subject has been so long before Congress, has been so often and so thoroughly examined in reports submitted from time to time in the Senate and House of Representatives, and has also been so frequently and so ably discussed on this floor and in the other wing of the Capitol, that it would be presumptuous for me to expect that I could add much of fact or argument to what has already been offered on the subject. But, as there are some honorable members of this body who have not hitherto participated in the deliberations of either branch of Congress on the question before us, and as the essential facts of the case may not be fresh in the recollection of other honorable members, a re-presentation of the more important features of the case may not be without its use, and will, perhaps, be expected at my hands.

The Senate can hardly fail to be struck with the unexampled procrastination which has occurred in making a disposition of this subject. It was first introduced to the notice and consideration of Congress, by Mr. Giles, of Virginia, on the 5th of February, 1802, when he presented a memorial in the House from merchants of the city of Baltimore, praying indemnity, for the cause and reason specified in this bill. From that day to this, they having been appealing to the National Legislature for redress; but they have hitherto appealed in vain. It has, therefore, been pending here nearly half a century, and furnishes by far the most striking illustration which has occurred in the history of the country, of the truth of the maxim, that "that delay is a denial of justice."

During the first part of this long period, the subject seems not to have been well understood in Congress. Many of the papers material to its elucidation remained in the public archives, unpublished and unknown. On the 5th day of March, 1824, the Senate passed a resolution requesting the President to lay all these papers before that body. On the 26th day of March, 1826, Mr. Clay, then Secretary of State, made a report in conformity with the resolution, which contained many papers that had not before appeared, and which threw a flood of light on the subject. Mr. Clay's report was printed, and constitutes Doc. 102, 1st session 19th Congress, being an octavo volume of 840 pages.

This collection of papers produced a decisive effect in favor of the claimants. Every committee, whether of the Senate or House, who have examined the subject since they were published, have came unhesitatingly to the conclusion that the claims are valid, and the obligation of the Government full and complete.

The following is a list of the reports made to the Senate since the 1st session of the 19th Congress:

1.—2d session 19th Congress, by Mr. Holmes, Select Committee.
2.—1st do. 20th do. do. Chambers, do.
3.—2d do. 20th do. do. do. do.
4.—1st do. 21st do. do. Livingston, do.
5.—2d do. 21st do. do. do. do.
6.—1st do. 22d do. do. Wilkins, do.
7.—2d do. 22d do. do. do. do.
8.—2d do. 23d do. do. Webster, do.
9.—2d do. 27th do. do. Choate, Com. For. Relations.
10.—3d do. 27th do. do. Archer, do.
11.—1st do. 28th do. do. do. do.
12.—2d do. 28th do. do. do. do.
13.—1st do. 29th do. do. Clayton, Select Committee.
14.—2d do. 29th do. do. Morehead, do.

Thus it appears that no less than fourteen reports, affirming the validity of these claims, have been submitted to this body since 1826, without including the one which I had the honor to make from the Select Committee raised at the last session, for which I claim no particular authority with the Senate.

In the House, ten reports have been made from the same date, exclusive of the one of the last session, and all the same way, as follows:

1.—1st	session	20th	Congress,	by	Mr. E. Everett,	Com. For. Affairs.
2.—2d	do.	20th	do.	do.	do.	do.
3.—2d	do.	23d	do.	do.	do.	do.
4.—2d	do.	26th	do.	do	Howard,	do.
5.—1st	do.	26th	do.	do.	Cushing,	do.
6.—2d	do.	27th	do.	do.	do.	do.
7 —3d	do.	27th	do.	do.	do.	do.
8.—1st	do.	28th	do.	do	C. J. Ingersoll,	do.
9.—1st	do.	29th	do.	do.	T. Smith,	do.
10.—1st	do.	30th	do.	do.	do.	do.

If, to the reports thus submitted to the Senate and House, we add the reports made to both at the last session, we have no less than twenty six reports, (since the date already mentioned,) all concurring in the same views and arriving at the same result. Many of these are exceedingly full and elaborate, and some are distinguished by great learning and ability. That of Edward Livingston, was presented to the Senate on the 22d February, 1830, (1st session 21st Congress,) and may be referred to as conclusive on the question before us. No man, either as a statesman, publicist, or lawyer, could be more competent to form an opinion on this interesting subject, than Mr. L.; and a perusal of his report by honorable members, would render all further argument superfluous. This wonderful unanimity of so many committees, composed in several instances of some of the ablest men who have ever occupied seats in the two Houses of Congress, should, it is believed, have great weight with the Senate.

The suggestion contained in the minority report of the last session, that the uniform concurrence of committees for so long a period, is not entitled to much consideration on account of the parliamentary rule of courtesy, is unfounded. The honorable Senator (Mr. HUNTER) in that report says "it is a parliamentary rule to refer a subject to a committee that is favorable to it, and it is too much to ask that the claimants should have not only the benefit of this rule, but also acquire from this very indulgence, a presumption in favor of their demands. If this parliamentary rule be preserved, and the reports of committees so constituted, are to be considered as presumption of title on the part of claimants, they must certainly succeed, if they will only persevere long enough. Under this system, the older the claims, the stronger would be the presumption in their favor"

This is certainly a compendious way of getting rid of the authority of such names as Livingston, Holmes, Chambers, Wilkins, Webster, Choate, and Morehead! No such rule of courtesy is, or has been, for a long time, observed in the two Houses of Congress. The object of the Senate in organizing its committees, whether standing or select, is to insure a full, fair, and impartial investigation of all subjects of legislation, and particularly of private claims. Who ever before decried the well considered opinions of committees of this body on this practice of courtesy? Are the opinions of such a man as Edward Livingston, to be set aside on any such grounds? Besides, in the House, the subject has, since the first session of the 19th Congress, been uniformly referred to the appropriate Standing Committee—that of Foreign Affairs. And it is a little too much to claim now, that this important committee has been for the last quarter of a century, uniformly organized with a view to favor these claims. It is true, they have, in the Senate, been more generally referred to Select Committees; and if the Senator will have it that such committees have been predisposed in their favor, it has been because the Senate itself has been long convinced that they should be allowed and paid; and in that view, the appointment of every Select Committee would involve the expression of an opinion by this body favorable to their validity.

In addition to all this, we know that whenever the Houses have permitted themselves to act on the subject, they have always declared in favor of the equity and justice of the claims. In 1835, (2d session, 23d Congress,) a bill for the relief of the claimants passed the Senate by a vote of twenty five in the affirmative to twenty in the negative, and was sent to the House, but was not taken up by that body. In 1844, (2d Session, 28th Congress,) a similar bill passed to a third reading in the Senate, by a vote of twenty six yeas to fifteen nays, but was not ultimately acted on or passed, for want of time. In 1846, (1st Session, 29th Congress,) a like bill passed the Senate by a vote of twenty-seven yeas to twenty-three nays, and being sent to the House, passed that body at the same session, by a vote of ninety-four yeas to eighty-seven nays, and was sent to the Executive, by whom it was vetoed for the following reasons:

1. The short time intervening between the passage of the bill and the adjournment of Congress, did not allow him to give the subject a sufficient examination.

2. It was passed near the close of the session, when many measures of importance claimed the attention of Congress, and might not have received that "full and deliberate consideration which the large sum it appropriated, and the then existing condition of the treasury and the country demanded;" and therefore, he deemed it to be his duty to return it to the Senate, where it originated, that it might thereafter undergo the revision of Congress.

3. Antiquity of the claims.—All of them had their origin in events which had occurred prior to 1800, and they had been since 1802, from time to time, before Congress, "no greater necessity or propriety existed for providing for these claims at that time, than had existed for near half a century."

4. "The treasury has often been in a condition to enable the Government" to satisfy these claims, and it is to be presumed they would have done so had they deemed them valid.

5. "Nothing was obtained for the claimants by negotiation," not able to satisfy himself that the Government had become in any way responsible.

6. The period "peculiarly unfavorable for the satisfaction of claims of so large an amount." * * * "There is no surplus in the treasury. A public debt of several millions of dollars had been created within the last few years, we were engaged in a foreign war, uncertain in its duration, involving heavy expenditures, to prosecute which, Congress had at its then session authorized a further loan."

7. "The bill provides that they" (the claimants,) "shall be paid in land scrip, whereby they are made in effect a mortgage on the public lands in the New States," which he suggested would be contrary to the interests of that section and of the whole country.

8. "These claims are estimated to amount to a much larger sum than five millions of dollars, and yet the claimant is required to release to the Government all other compensation, and accept his share of the fund, which is known to be inadequate."

If I were to speak with no more than a proper freedom of the incongruous reasons thus put forward for vetoing such a bill, on the ground (as the late President himself admitted,) of "inexpediency alone," I fear I might be thought to be wanting in respect for his memory, and therefore, I shall content myself with remarking that this paper must be regarded by every candid mind, as much less satisfactory than any other which emanated from his pen while he filled the Presidential office. In this view the Senate must have concurred, for on the return of the bill the vote on the question, whether it should pass, nothwithstanding the veto, stood twenty-seven in the affirmative to fifteen in the negative, requiring a change of only one vote to overrule the objections of the President, by the constitutional majority of two-thirds. The majority in favor of the bill, originally, was only four, but on the final vote it was no less than twelve! And this must be regarded as alike a rebuke of Executive interposition, to defeat a bill of this character, and a strong expression of the body in favor of the equity and justice of the claims themselves. We have, then, the subject again presented for our consideration, under circumstances of a deeply interesting import, which can hardly fail to arrest the attention of this body. If these were claims of an ordinary amount only, could there be any doubt as to the disposition which they would receive at the hands of Congress? If there was pending here a claim for $100,000, or even a half million of dollars, and we were told that the subject had been favorably entertained by no less than fifteen committees of the Senate and eleven of the House; that, in no instance had a committee of either body reported adversely for a quarter of a century; that the Senate had expressed its sense in its favor on four different occasions, and the House on one, who would hesitate a moment to vote for it? Would debate be necessary? Would it even be tolerated?

Having thus shown what has been the action of Congress on the subject, I shall proceed at once to consider the entire case on its merits. And here I would observe, that every one conversant with the history of the country, must be aware that our citizens had received, at the commencement of the present century, extensive injuries at the hands of France; partly by the nonfulfillment of her engagements, and partly by aggression on our flag and commerce, alike violative of the obligations of existing treaties, and of the laws of nations. These injuries, and particularly those of a tortious character, our Government for a long time anterior to the 30th of September, 1800, exerted itself to repress, and to obtain indemnity at the hands of France. The whole diplomacy of the two countries was for several years occupied with the discussion and examination of the various pretensions and claims which were advanced on the one side or the other. Much irritation and acrimony were manifested by both Governments, and the two nations came very near being involved in a desolating war, which was only prevented by the Convention of the 30th of Sept. 1800. It will be found, on examination of the correspondence, that the claims made by the United States in behalf of our citizens against France, were as follows, viz:

1. Contract cases or debts due from France for supplies furnished by our citizens to her West India Islands and to the Home Government or Continental France.

2. Embargo cases, being claims for damages occasioned by an embargo laid by France for her own purposes, in 1793-4, on a large number of American vessels lying in the harbor of Bordeaux.

3. Vessels and their cargoes which had been illegally seized or captured, but which had not been definitively condemned at the date of the Convention of the 30th September, 1800.

4. Cases wherein the wrong had been fully consummated, or where France had, by a final condemnation, appropriated American property to her own use.

This last class was much more numerous, extensive, and important than all the other classes together. It comprised depredations extending over more than seven years, which were substantially of a piratical character, sweeping millions of American commerce from the ocean, and consigning thousands of our citizens to penury and want. To the end that the Senate may be enabled to form a just appreciation of those enormities, I invite attention to the principal arretes or decrees under or by virtue of which the captures and confiscations were made.

1. Decree of the National Convention of the 9th of May, 1793.

The Convention, after considering that "the flag of neutral powers was not respected by the enemies of France," and that the French people were no longer permitted to fulfil towards the neutral powers in general the vows they have so often manifested, and which they would constantly make for the full and entire security of commerce and navigation," proceeded to decree as follows:

"ART. 1. The French ships of war and privateers may arrest, and bring into the ports of the Republic, the neutral vessels which shall be laden wholly, or in part, either with articles of provisions, belonging to neutral nations, and destined for an enemy's port, or with merchandises belonging to an enemy.

"ART. 2. The merchandises belonging to an enemy shall be declared good prize, and confiscated to the profit of the captors. The articles of provisions belonging to neutral nations, and laden for an enemy's port, shall be paid for according to their value, in the place to which they were destined.

"ART. 3. In all cases, the neutral vessels shall be released, as soon as the unlading of the articles of provision arrested, or of the merchandise seized, shall have been effected. The freight thereof shall be paid at the rate which shall have been stipulated by the persons who shipped them. A just indemnification shall be allowed in proportion to their detention, by the tribunals who are to have cognizance of the validity of the prizes.

"ART. 4. These tribunals shall be bound to transmit, three days after their decision, a copy of the inventory of the said articles of provision or merchandise, to the Minister of Marine, and another to the Minister for Foreign Affairs.

"ART. 5. The present law, applicable to all the prizes which have been made since the declaration of war, shall cease to have effect, as soon as the enemy Powers shall have declared free and not seizable, although destined for the ports of the Republic, the articles of provision belonging to neutral nations, and the merchandises laden in neutral vessels, and belonging to the Government or citizens of France.—Vide Doc, 102, 1st sess. 19th Cong., p. 43.

2. Decree of the Executive Directory of the 2d July, 1796.

"The Executive Directory, considering that, if it becomes the faith of the French nation to respect treaties or conventions which secure to the flags of some neutral or friendly Powers, commercial advantages, the result of which is to be common to the contracting Powers, those same advantages if they should turn to the benefit of our enemies, either through the weakness of our allies, or of neutrals, or through fear, through interested views, or through whatever motives, would in fact, warrant the inexecution of the articles in which they were stipulated—decrees as follows:

"All neutral or allied Powers shall, without delay, be notified, that the flag of the French Republic will treat neutral vessels, either as to confiscation, as to searches, or capture, in the same manner as they shall suffer the English to treat them.—Vide Doc, 102, p. 149.

3. Decree of the Executive Directory of the 2d March, 1797.

"In conformity to the law of the 14th February, 1793, the regulations of the 21st October, 1794, and of the 26th July, 1778, as to the manner of proving the right of property in neutral ships and merchandise, shall be executed according to their form and tenor.

"In consequence, every American vessel shall be a good prize which has not on board a list of the crew (role d'equipage) in proper form, such as is prescribed by the model annexed to the treaty of the 6th February, 1778, a compliance with which is ordered by the 25th and 27th articles of the same treaty."—Vide Doc. 102, p. 163.

4. Decree of the Council of Ancients and of the Council of Five Hundred of the 18th of January, 1798:

"ART. 1. The character of vessels, relative to their quality of neuter or enemy, shall be determined by their cargo; in consequence, every vessel found at sea, loaded in whole or in part with merchandise the production of England or of her possessions, shall be declared good prize, whoever the owner of these goods or merchandise may be.

"ART. 2. Every foreign vessel which, in the course of her voyage, shall have entered into an English port, shall not be admitted into a port of the French Republic, except in cases of necessity; in which case she shall be bound to depart from the said port as soon as the causes of her entry shall have ceased.—Doc. 102, p. 377.

The atrocity of these decrees will appear, in comparing them with the stipulations of the treaty of amity and commerce between the United States and France of the 6th of February, 1778, and particularly with the 6th, 12th, 13th, 14th, 15th, 23d, 24th, 25th, 26th, 27th, and 28th articles of that treaty, which guaranty to the United States, in case France should be involved in a war with any any other power, the most entire and perfect freedom of the seas. I will only recur to the most material of these articles, which is the 23d, and is as follows:

"ART. 23. It shall be lawful for all citizens, and singular the subjects of the most Christian King, and the citizens, people, and inhabitants of the said United States, to sail with their ships with all manner of liberty and security, no distinction being made, who are the proprietors of the merchandizes laden thereon, from any port to the places of those who now are or hereafter shall be at enmity with the most Christian King, or the United States. It shall likewise be lawful for the subjects and inhabitants aforesaid, to sail with the ships and merchandizes aforementioned, and to trade with the same liberty and security from the places, ports, and havens of those who are enemies of both or either party, without any opposition or disturbance whatsoever, not only directly from the places aforementioned to neutral places, but also from one place belonging to an enemy to another place belonging to an enemy, whether they be under the jurisdiction of the same Prince or under several. And it is hereby stipulated, that free ships shall also give a freedom to goods, and that everything shall be deemed to be free and exempt which shall be found on board the ships belonging to the subjects of either of the confederates, although the whole lading, or any part thereof, should appertain to the enemies of either, contraband goods being always excepted. It is also agreed in like manner, that the same liberty be extended to persons who are on board a free ship, with this effect, that although they be enemies to both or either party, they are not to be taken out of that free ship unless they are soldiers and in actual service of the enemies."

The proceedings of France, under the decrees already quoted, were not only a violation of the treaty of amity and commerce, but were equally an infraction of the laws of nations, and laid a just foundation for the most serious reclimations by the United States in behalf of her citizens, and imposed on our Government the grave duty of pursuing the subject until ample indemnities were obtained at the hands of the aggressor. And here I would present the views taken by the American Executive of the character of the decrees already quoted, and of the proceedings of France under the same, from which it will be easy to deduce a proper estimate of the rights of our citizens, and of the obligations which the circumstances imposed on the United States. These views will sufficiently appear, from the following extracts from some of the most material of the papers that have been so long before the Senate and the country.

1. Extract from the report of the Secretary of State, dated June 21, 1797, respecting depredations committed on the commerce of the United States.

"Besides these several decrees, and others, which, being more limited, the former have superseded, the old marine ordinances of France have been revived, and enforced with severity, both in Europe and the West Indies. The want of, or informality in, a bill of lading; the want of a certified list of the passengers and crew, the supercargo being by birth a foreigner, although a naturalized citizen of the United States; the destruction of a paper of any kind soever; and the want of a sea-letter, have been deemed sufficient to warrant a condemnation of American property, although the proofs of the property were indubitable.

"The West Indies, as before remarked, have exhibited the most lamentable scenes of depredation. Indeed, the conduct of the public agents and of the commissioned cruisers there, has surpassed all former examples. The American vessels have not only been captured under the decrees before mentioned, but, when brought to trial in the French tribunals, the vessels and cargoes have been condemned, without admitting the owners or their agents to make any defence.

"This seems to be done systematically, and for the obvious purpose of ensuring condemnation. By this monstrous abuse in judicial proceedings, frauds and falsehoods, as well as flimsy and shameless pretexts, pass unexamined and uncontradicted, and are made the foundation of sentences of condemnation.

"The persons, also, of our citizens have been beaten, insulted, and cruelly imprisoned, and in the forms used towards prisoners of war, they have been exchanged with the British for Frenchmen. American property going to, or coming from neutral or even French ports, has been seized; it has

even been forcibly taken when *in their own ports*, without any pretence, or no other than that they wanted it. At the same time, their cruizers are guilty of wanton and barbarous exeesses, by detaining, plundering, firing at, burning and distressing American vessels."—Doc. 102, p. 407.

2. Extract from the report of the Secretary of State, on the transactions relating to the United States and France, since the last communication to Congress on that subject, dated January 18, 1849:

"But what has been more notorious than French depredations on neutral, and, especially, on American commerce, in violation of treaties and the law of nations? These have been coeval with the existing war in Europe; but were multiplied under the loose decree of the Executive Directory, passed the 2d of July, 1796, declaring that 'the flag of the French Republic will treat neutral vessels, either as to confiscation, to searches, or to capture, in the same manner as they *shall* suffer the English to treat them.'

"This decree committed the whole commerce of neutrals, in the first instance, to the rapacity of the French privateers, and then to the discretion of their agents, consuls, and tribunals. These had only to say, truly or falsely, that the English treated neutrals in any given way, and then they were to treat them in the same manner. Accordingly, we have seen Santhonax and Raimond, Commissioners of the French Government in St. Domingo, in their adjudication of an American vessel, on the 10th of January, 1797, declare: 'that the resolution (or decree) passed by the Executive Directory, on the 2d of July, 1796, prescribes to all the armed vessels of the Republic, and the armed vessels belonging to individuals, to treat neutral vessels in the same manner as they suffer the English to treat them;' and 'that it is in consequence of the above resolution of the Executive Directory, and in consequence of the manner in which the English Government, in the Antilles, *treats* neutral vessels, that the commission passed their resolution of the 7th of January, by which they declare all neutral vessels, bound to or from English ports, to be legal prize.' From these facts, and the tenor of the decree itself, we can form but one conclusion, *that it was framed in such indefinite terms on purpose to give scope for arbitrary constructions, and, consequently, for unlimited oppression and vexation.*

"But, without waiting for this decree, the Commissioners of the French Government, at St. Domingo, began their piracies on the commerce of the United States; and, in February, 1797, wrote to the Minister of Marine, (and the extract of the letter appeared in the official journal of the Executive Directory, of the 5th of June,) 'That, having found no resource in finance, and knowing the unfriendly disposition of the Americans, and to avoid perishing in distress, they had armed for cruising; and that, already, eighty seven cruisers were at sea; and that, for three months preceding, the administration had subsisted, and individuals been enriched, with the products of those prizes.' 'That the decree of the 2d of July was not known by them until five months afterwards. But (say they) the shocking conduct of the Americans, and the *indirect* knowledge of the *intentions* of our Government, made it our duty to order reprisals, even before we had received the official notice of the decree.' 'They felicitate themselves that American vessels were daily taken; and declare that they had learnt, by divers persons from the continent, that the Americans were perfidious, corrupt, the friends of England, and that, therefore, their vessels no longer entered the French ports, unless carried in by force.'

"After this recital before the Council of Five Hundred, Pastoret makes the following remarkable reflections:

"On reading this letter, we shou'd think that we had been dreaming; that we had been transported into a savage country, where men, still ignorant of the empire of morals and of laws, commit crimes without shame and without remorse, and applaud themselves for their robberies as Paulus Æmilius or Cato would have praised themselves for an eminent service rendered to their country. Cruisers armed against a friendly nation! Reprisals, when it is we ourselves who attack! Reprisals against a nation that has not taken a single vessel of ours! Riches acquired by the confiscation of the ships of a People to whom we are united by treaties, and whom no declaration of war had separated from us! The whole discourse of the agents may be reduced to these few words:

"Having nothing wherewith to buy, I seize; I make myself amends for the property which I want, by the piracy which enriches me; and then I slander those whom I have pillaged." "This is robbery justified by selfishness and calumny." Yet *Santhonax*, one of these "robbers," and the chief of those directorial agents, continued in office, and going a few months afterwards from St. Domingo to France, was received as a member into one of the legislative councils.

Pastoret also adverts to a letter from *Merlin*, then Minister of Justice, and now a member of the Executive Directory, to Mr. Skipwith, Consul General of the United States, which also appeared in the Journal of the Directory; and quotes the following passage: 'Let your Government break the inconceivable treaty which is concluded on the 19th of November, 1794, with our most implacable enemies; and immediately the French Republic will cease to apply in its own favor, the regulations in that treaty, which favor England to the injury of France; and I warrant you that we shall not see an appeal to those regulations, in any tribunal to support *unjust pretensions.*'

"Have I (says Pastoret) read this rightly? *Unjust pretensions?* Could it be possible, that they should thus have been characterized by the Minister who is himself their agent and defender?"—Doc. 102, p. 434.

4. Extract from the instructions to Messrs. Ellsworth, Davie and Murray, Envoys Extraordinary and Ministers Plenipotentiary of the United States to the French Republic, dated October 22, 1799.

"The second proposition, respecting the *role d'equipage*, as well as the first should be insisted on. Until the decree of the Directory of March 2d, 1797, was passed, and we had felt its fatal effects, we had no idea of the meaning which the French applied to the phrase, role d'equipage. In the Consular Convention between the United States and France, article ninth, which relates to deserters from vessels, the document is described in the French by the words 'des registers du batiment ou *role d'equipage*,' and in the English part of the Convention by the words 'the registers of the vessel or *ship's roll*." And this paper was to be produced to the proper judge to prove a deserter to belong to the vessel in question. The law or usage of each nation was incontestibly to direct what was proper for its own vessels in this respect. If an American master claimed from a Judge in France his warrant to arrest a deserter, he must have produced his 'ships roll,' or what in the United States is called his *shipping paper*; which is a contract signed by all the persons composing a vessel's crew.

"The propriety and necessity of a *ship's roll*, was in the year 1770, sanctioned and enforced by an act of Congress.

"And without such a written contract, the master, besides being subjected to other disadvantages, could not claim his men when they deserted. This ship's roll, every American master, bound on a foreign voyage, takes on board his vessel; and unquestionably every American vessel captured and condemned by the French for the want of a role d'equipage, has nevertheless been possessed of the ship's roll, just described; and it is the only *list of the ship's crew*, which could ever have been contemplated by the United States, as necessary for American vessels. There never was, indeed, any intimation on the part of France, from 1778, when the treaty of amity and commerce was made, until the passing of the decree of the Directory in March 1797, that a *role d'equipage*, other than the *ship's roll* or *shipping paper*, would be required. It was then suddenly demanded; and the decree (like the law of January 1795, respecting articles of the produce or manufacture of Great Britain,) was instantly enforced, and became a snare to the multitudes of American vessels, which, for want of previous notice, would not have on board the document in question; if their Government should permit them to receive a document which they were under no obligation to produce. For, it cannot, with any semblance of justice, be pretended that the vessels of one nation are bound to furnish themselves with papers in forms prescribed by the laws of another. And if we resort to the treaty of 1778, or to the sea-letter, or passport annexed to it, on which letter the Directory pretended to found their decree concerning the "role d'equipage," we shall see that these words are not to be found in either."—Doc. 102, p. 563.

No language which I can use would give to the Senate a more vivid conception of the enormities committed by France on the property and persons of American citizens—injuries which it was the solemn duty of our government to redress at any and every hazard. To protect the subject from the aggressions of foreign powers is one of the first duties of every Government, and is one of the returns which the supreme power of the State is ever bound to make for the allegiance of its citizens. But in this case there was not only this general obligation, but a very special one resulting from the faith of the Government expressly pledged, as will appear from the following extract from the circular of Mr. Jefferson, addressed to the merchants of the United States, dated August 27, 1793:

"Complaint having been made to the Government of the United States, of some instances of unjustifiable vexation and spoliation, committed on our merchant vessels by the privateers of the powers at war, and it being possible that other instances may have happened, of which no information has been given to the Government, I have it in charge from the President to assure the merchants of the United States, concerned in foreign commerce or navigation, that due attention will be paid to any injuries they may suffer on the high seas, or in foreign countries, contrary to the law of nations, or to existing treaties; and that, on their forwarding hither well authenticated evidence of the same, proper proceedings will be adopted for their relief."—Doc. 102, p. 216.

The obligations, both general and special, thus imposed, were greatly enhanced by the vast interests at stake. There exists no where in our public archives an authentic statement of the number of vessels seized by the French, nor of the amount of the losses sustained by our citizens. To the report submitted by Mr. Holmes to the Senate, (2d Sess., 19th Cong.,) there is appended a letter from Mr. Clay, then Secretary of State, transmitting a list of 444 vessels captured between 1793 and 1800, of which he observes that it is believed to be "essentially deficient as to the number of existing claims for the period which it comprehends." No doubt it is so. I have seen a list of such vessels prepared by a gentleman residing in this city, intimately acquainted with the whole subject, specifying in most cases the names of the vessel, master, and claimants, and the port to which she belonged, according to which the whole number was two thousand two hundred

and thirty-two vessels! from which deductions should be made as follows: (1.) Vessels paid for under special arretes, (soon after the aggressions commenced,) of which there were 14; (2) vessels for which payment was made under the Convention of 1803, usually called the Louisiana Convention, viz: embargo cases 103, captures 14, and contract vessels 293; and (3.) vessels accounted for by Spain under the Florida treaty, 173, and this will leave a balance of 1735 vessels and their cargoes wholly unprovided for. The 14 cases of captures compensated by the Louisiana Convention, were those of vessels not definitively condemned at the date of the Convention of the 30th September, 1800, which France bound herself to restore; but the 1735 vessels just specified, belonged to the fourth class already adverted to, or in other words, they were vessels which had been definitively condemned at the date of the Convention of the 30th of September, and they remain uncompensated to this day. It is believed that the aggregate of property lost by the condemnation of these vessels and their cargoes, could have amounted to little less than $10,000,000, and how far this immense sum will be augmented by the unknown cases, which will only appear on the organization of a commission, is uncertain. We may rest assured, however, that the amount proposed by the bill will fall far short of making full compensation to the claimants.

It is a remarkable fact that our Government has not made the slightest effort to obtain indemnity at the hands of France for this class of cases since the Convention of the 30th of September. And here I would observe, that this dereliction on the part of the United States is not to be attributed to any want of a proper sense of the atrocities committed by France, as will appear from the extracts already submitted from the reports of the Secretary of State, of the 21st June, 1797, and 18th of January, 1799, and from the instructions to Messrs. Ellsworth, Davie and Murray, of the 22d of October, 1799—nor to any indisposition felt by the American authorities to prosecute the just claims of our citizens, for injuries received at the hands of foreign governments, to a full and complete indemnity. No Government on earth has been more resolute and vigilant than ours has been in asserting the rights of our citizens in this regard. Since the date of the Convention of the 30th of September, 1800, the United States have negotiated no less than sixteen treaties and conventions with foreign powers, having this object in view—the last being with the Government of Portugal—and have obtained indemnities to the amount of many millions of dollars. We have entered since that date into two conventions of that character with France—the first, the Convention of the 30th of April, 1803, and the second, of the 4th July, 1831, the former being usually called the Louisiana, and the latter Mr. Rives' Convention—by the first we obtained indemnities to the amount of 20,000,000 of francs, and by the second to the amount of 25,000,000; and both failed to make any provision for class No. 4. Nay, the Convention of the 30th of April, 1803, stipulates in express terms that no part of the indemnity therein provided, should be applied in satisfaction of the fourth class, or captures which had been prosecuted to final condemnation at the date of the Convention of the 30th of September, 1800. Here I invite attention to the following articles of the Convention of 1803:

ART. 1. "The debts due by France to citizens of the United States, contracted before the 8th of Vindemiere, 9th year of the French Republic, (30th September, 1800,) shall be paid according to the following regulations, with interest at six per cent. to commence from the period when the amounts and vouchers were presented to the French Government."

ART. 2. "The debts provided for by the preceding article are those whose result is comprised in the conjectural note annexed to the present convention, and which, with the interest, cannot exceed the sum of twenty millions of francs. The claims comprised in the said note which fall within the exceptions of the following articles, shall not be admitted to the benefit of this provision."

ART. 3. "The principal and interest of the said debts shall be discharged by the United States, by orders drawn by their minister plenpotentiary on their treasury; these orders shall be payable sixty days after the exchange of ratifications of the treaty, and the conventions signed this day, and after possession shall be given of Louisiana by the commissaries of France to those of the United States."

ART. 4. "It is expressly agreed, that the preceding articles shall comprehend no debts but such as are due to citizens of the United States, who have been and are yet creditors of France, for supplies, for embargoes, and prizes made at sea, in which the appeal has been properly lodged within the time mentioned in the said convention, 8th Vendemiere, ninth year, (30th September, 1800.")

ART. 5. "The preceding articles shall apply only, 1st. to captures of which the council of prizes shall have ordered restitution, it being well understood that the claimant cannot have recourse to the United States, otherwise than he might have had to the Government of the French Republic, and only in case of insufficiency of the captors. 2d. The debts mentioned in the said fifth article of the Convention, contracted before the 8th Vendermiere, Art. 9, (30 Sept. 1800,) the payment of which has been heretofore claimed of the actual Government of France, and for which the creditors have a right to the protection of the United States; the said fifth article does not comprehend prizes whose condemnation has been or shall be confirmed." * * * * *

The 20,000,000 of francs to be paid by the United States, was part of the purchase money for Louisiana, and the payment of the debts or claims mentioned, therefore, were in effect made by France. The words of exclusion contained in the 4th article were intended to embrace the 4th

class already named, or captures definitively condemned on the 30th of September, 1800, and this exclusion is reiterated by equivalent language, in the 5th article. The utter abandonment of this class of claims by our Government since 1800, and the great pains taken to cut them off from all participation in the fund provided by the Convention of 1803, would, considering the palpable character of the wrongs committed by France, and the unquestionable right of our citizens to redress, be inexplicable, were not the difficulty susceptible of an easy solution by a recurrence to the stipulations of the Convention of the 30th of September, 1800. To this end it will be material to refer only to the following articles:

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

ART. 3. "The public ships which have been taken on one part and the other, or which may be taken before the exchange of ratifications, shall be restored.

ART. 4. "Property captured, and not yet definitively condemned, or which may be captured before the exchange of ratifications, (contraband goods destined to an enemy's port excepted,) shall be mutually restored. * * * * * * * * * * * This article shall take effect from the date of the signature of the present invention. And if, from the date of the said signature, any property shall be condemned contrary to the intent of the said Convention, before the knowledge of this stipulation shall be obtained, the property so condemned shall, without delay, be restored or paid for."

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

It appears from the 2d article of this Convention that there were certain subjects of difference then pending between the two countries in regard to which their Ministers could not agree, and therefore, the parties postponed a final arrangement in respect to them, until a more "convenient time." It is well known that the pretensions advanced on the part of France, consisted in asserting the validity, and the (then) binding force of the treaties of alliance, and of amity and commerce of the 6th of February, 1778, and of the Consular Convention of the 14th of November, 1788; and in claiming certain rights, privileges, and immunities, which were thereby, originally secured to France, and which her ministers insisted still remained, and the pretensions made on the part of the United States, consisted in maintaining (as our Ministers did most strenuously) the right of our citizens to a full indemnity for injuries, comprised in class, No. 4. The claims of France were national in their character—those of the United States, private—both were pending at the same time, and the parties not being able to agree, the whole subject was adjourned over to a future day. In this state of the case, the Convention was ratified by the French Executive, and was transmitted to the President, who laid it before the Senate, (in conformity with our Constitution,) for its advice. That body took up the subject, and in the first place proposed a new article limiting the Convention to the period of eight years, and being desirous of putting an end to all existing differences, expunged the 2d article, and advised its ratification in its amended form, which was accordingly done. This made it necessary to return the Convention to France; her Government seems to have hesitated long, but finally ratified the amended Convention with this significant declaration, "that by this retrenchment," (that of the 2d article,) "the two States renounce the respective pretensions which are the object of the said article." Thus Bonaparte, then first Consul, gave a construction to the act of the Senate in expunging the 2d article. He declared it was to be understood that the parties by such retrenchment intended a mutual exoneration of claims, and by off setting the one against the other, to extinguish them forever. This brought the Convention back to the United States for the consideration of our Executive, (Mr. JEFFERSON,) and he (admitting Bonaparte was right,) deemed it to be his duty to take the sense of the Senate on the subject; and that body by declaring the Convention already ratified, concurred in the views of the French Government as expressed in the act of ratification. Even before the final action of the body, the President (Mr. JEFFERSON) had no difficulty in coming to the same result; for Mr. Madison, then Secretary of State, under date of 18th of December, 1801, wrote to Mr. Livingston, our Minister at France, as follows:

"I am authorised to say, that the President does not regard the declaratory clause as more than a legitimate inference from the rejection by the Senate of the 2d article; and that he is disposed to go on with the measures due under the compact to the French Republic."

In this novel and peculiar way, the bargain was consummated, and France was released forever from these spoliation claims, in consideration of the release which the United States obtained from

the national claims of France. Thus we learn why it was that so much particularity was used to exclude the 4th class of claims from participating in the fund created by the Convention of 1803, and why our Government has not sought indemnity therefor, at the hands of France, since the 30th of September, 1800.

That the two Governments really intended an extinguishment of their respective claims (the release of the one being the consideration of the release of the other) may be proved by an abundance of authority from both sides of the Atlantic.

FRENCH AUTHORITY.

1. Soon after the Convention of the 30th of September was finally ratified, it became necessary for the French Executive to bring the subject to the notice of the Legislature, to one branch of which, called the "Corps Legislatif," citizen Roderer (one of the Ministers on the part of France who negotiated the Convention of 1800) made, on the 26th of November, 1801, full explanations of the views and motives of the French Government in negotiating that Convention, when he remarked (on the point now under consideration) as follows:

"The reservation of opening ulterior negotiations relative to the treaties and the indemnities has been consigned in the second article, of which it has been the sole object. But the fear of awakening lively discussions, and of viewing any alteration in the good harmony which ought to be the happy result of the other stipulations, has caused this second article to be suppressed in the acts of ratification. *This suppression is a prudent and amicable renunciation of the respective pretensions which were expressed in the article.*"

2. Buonaparte, while at St. Helena, is reported by Mr. Gourgand, in his Memoirs, vol. 2, p. 95, to have adverted to the same subject, remarking:

"The suppression of this article" (the 2d) "at once put an end to the privileges which France had by the treaties of 1778, and annulled the just claims which America might have made for injuries done in time of peace."

AMERICAN AUTHORITY.

1. Extract from a letter, dated April 17, 1803, from Mr. Livingston, American Minister at Paris, to M. Talleyrand, Minister of Exterior Relations of the French Republic:

"It will, sir, be well recollected by the distinguished characters who had the management of the negotiation, that the payment for illegal captures, with damages and indemnities, was demanded on one side, and the renewal of the treaty of 1788 on the other, that *they were considered as of equivalent value*, and that they only formed the subject of the 2d article."—Doc. 102, 1 sess. 19 Cong. p. 717.

2. Extract from a letter, dated February 6, 1804, from Mr. Madison, Secretary of State, to Mr. Charles Pinckney, American Minister to Spain:

"The claims, again, from which France was released" (meaning by the suppression of the 2d article) "were admitted by France, and *the release was for a valuable consideration in a correspondent release of the United States from certain claims on them.* The claims we make on Spain were never admitted by France, nor made on France by the United States; they made no part of the bargain with her, and could not be included in the release."—Doc. 102, 1 sess. 19 Cong. p, 795.

Thus it appears that our Government, by the suppression of the 2d article, taken in connexion with the declaration of the French Executive, (contained in the act of ratification,) to the effect that the two States were to be understood to renounce thereby "the respective pretensions which were the object of the 2d article," *made a bargain with France, releasing her from these spoliation claims*, (according to Mr. Madison,) *for* A VALUABLE CONSIDERATION, *in a correspondent release of the United States from certain claims on them*," which claims, on the one side and the other, were (as Mr Livingston observed) "considered of equivalent value," making their renunciation (as Mr. Roderer suggested) "prudent and amicable;" and this "at once" (as Bonaparte declared) "put an end to the privileges which France had by the treaties of 1778, and annulled the just claims which America might have made for injuries done in time of peace."

The view then taken by Bonaparte, Roderer, Madison, and Livingston, of the object and effect of the suppression of the 2d article, is fully sustained by Mr. Clay, in his report of the 20th of May, 1826, from which I submit an extract, as follows:

"The two contracting parties thus agreed, by the retrenchment of the second article, mutually to renounce the respective pretensions which were the object of that article. The *pretensions* of the United States, to which allusion is thus made, arose out of the spoliations, under color of French authority, in contravention to law and existing treaties. Those of France sprung from

the treaty of alliance of the 6th of February, 1778, the treaty of amity and commerce of the same date, and the convention of the 14th of November, 1788. Whatever obligations or indemnities from those sources either party had a right to demand, were respectively waived and abandoned, and the consideration which induced one party to renounce his pretensions, was that of the renunciation by the other party of his pretensions. What was the value of the obligations and indemnities so reciprocally renounced, can only be matter of speculation. The amount of the indemnities due to the citizens of the United States was very large, and, on the other hand, the obligation was great (to specify no other French pretensions) under which the United States were placed, in the 11th article of the treaty of alliance of 6th of February, 1778, by which they were bound forever to guarantee from that time, the then possessions of the crown of France in America, as well as those which it might acquire by the future treaty of peace with Great Britain; all these possessions having been, it is believed, conquered at, or not long after, the exchange of the ratifications of the Convention of September, 1800, by the arms of Great Britain, from France."

But in order to a just and accurate appreciation of the entire subject it is necessary for me to bring before the Senate the pretentions advanced by the French Government in opposition to the claims of our own, and to show what were their character and extent, and then to trace the negotiation between the American Envoys, Ellsworth, Davie, and Murray, and the French Ministers, Joseph Bonaparte, Fleurieu, and Roderer, step by step to the consummation of the 30th September, 1800; from all of which I shall deduce the correctness of the assertion of Mr. Madison, that we obtained from France "a valuable consideration" for releasing her from the claims now before the Senate.

FRENCH CLAIMS OR PRETENSIONS.

To present these claims properly, it is necessary to recur to the 11th article of the treaty of alliance, the 17th and 22d articles of the treaty of amity and commerce, and to the 12th article of the Consular Convention of the 18th of November, 1788, by which it will appear that France acquired, in consideration of her engagements to co-operate with all her forces to assert the independence and sovereignty of the United States, and the liberties of the people of this country, certain rights and privileges to the exclusion of all other nations, and particularly Great Britain, her hereditary enemy, of the utmost importance to her, and in no small degree onerous and embarrassing to us.

(*The 11th Article of the Treaty of Alliance.*)

"The two parties guarantee mutually from the present time, and forever against all other powers, to wit: The United States to his Most Christian Majesty, the present possessions of the crown of France in America, as well as those which it may acquire by the future treaty of peace: And his most Christian Majesty guaranties on his part to the United States, their liberty, sovereignty, and independence, absolute and unlimited, as well in matters of government as commerce, and also their possessions, and the additions or conquests that their confederation may obtain during the war from any of the dominions now or heretofore possessed by Great Britain in North America, conformable to the 5th and 6th articles above written, the whole as their possessions shall be fixed and assured to the said States at the moment of the cessation of their present war with England."

(*17th Article of the Treaty of Amity and Commerce.*)

"It shall be lawful for ships of war of either party, and privateers, freely to carry whithersoever they please the ships and goods taken from their enemies, without being obliged to pay any duty to the officers of the admiralty or any other judges; nor shall such prizes be arrested or seized when they come to and enter the ports of either party; nor shall the searchers or other officers of those places search the same, or make examination concerning the lawfulness of such prizes; but they may hoist sail at any time, and depart and carry their prizes to the places expressed in their commissions, which the commanders of such ships-of war shall be obliged to show; on the contrary, no shelter or refuge shall be given in their ports to such as shall have made prize of the subjects, people, or property of either of the parties; but if such shall come in, being forced by stress of weather, or the dangers of the sea, all proper means shall be vigorously used, that they go out and retire from thence as soon as possible."

22d Article of the same Treaty.

"It shall not be lawful for any foreign privateers, not belonging to subjects of the Most Christian King, nor citizens of the said United States, who have commissions from any other Prince or State in enmity with either nation, to fit their ships in the ports of either the one or the other of the aforesaid parties, to sell what they have taken, or in any other manner whatsoever to exchange their ships, merchandizes, or any other lading; neither shall they be allowed even to pur-

chase victuals, except such as shall be necessary for their going to the next port of that Prince or State from which they have commissions."

12th Article of the Consular Convention.

"All differences and suits between the subjects of the Most Christian King, in the United States, or between the citizens of the United States within the dominion of the Most Christian King, and particularly all disputes relative to the wages and terms of engagement of the crews of the respective vessels, and all differences of whatever nature they be which may arise between the privates of the said crews, or between any of them and their captains, or between the captains of different vessels of their nation, shall be determined by the respective consuls and vice consuls, either by a reference to arbitrators or by a summary judgment, without costs. No officer of the country, either civil or military, shall interfere therein, or take any part whatever in the matter; and the appeals from the said consular sentences shall be carried before the tribunals of France or of the United States, to whom it may appertain to take cognizance thereof."

By the 11th article of the treaty of alliance, France, by guaranteeing to the United States "their liberty, sovereignty, and independence, absolute and unlimited, as well as in matters of government as commerce," and also their possessions, together with the additions and conquests that their confederation might obtain during the war, assumed very grave obligations, which she fufilled in the most noble and generous manner, by sending a powerful fleet on to our coast, and by landing a large army on our shores, which zealously and effectually co-operated with our own forces, and enabled us to assert and maintain the memorable declaration of the 4th of July, 1776. On the other hand, we guarantied to her forever, her then possessions in America, as well as those which she might acquire by the future treaty of peace. This was what is called a perpetual guaranty, and imposed an obligation to maintain for France, her possessions, to the end of time; we bound ourselves to extend to her in any future war in which she might be engaged, all such succors as the exigencies of the case might require—exigencies which would be likely to become exceedingly urgent, as her enemy would certainly be Great Britain, who, by means of her maritime strength, would be quite likely to assail those possessions with effect. This placed us in an exceedingly critical condition, and so mixed up and blended the United States with the relations and affairs of France, that it would be quite difficult to escape any war in which she might be involved with Great Britain These hazards would have been greatly enhanced had the guarty remained, by the ascendancy which the British Navy ultimately obtained on the seas. At the era of the treaty of alliance, France was an important maritime power, and very nearly, if not quite a match for Great Britain; but the exploits of Nelson and of other able leaders of the British Navy, soon turned the scale against her, and swept her flag from the ocean, and put the French possessions in America at the mercy of her enemy. It will be recollected that the French possessions protected by our guaranty, were considerable. They consisted of Cayenne, (on the continent,) the Islands of St. Domingo, Martinique, Gaudaloupe, St. Lucia, St. Vincent, Tobago, Deseada, and Marie Galante, in the West Indies, and of the Islands of St Pierre and Miquelon, in the Gulf of St. Lawrence. These possessions were mostly captured long before the 30th of September, 1800; were restored, if I mistake not, by the treaty of Amiens, and re-captured by Great Britain at early periods after the war was resumed. Indeed I cannot see how we could have fulfilled the guaranty without entering ourselves into the contest; and it is certain we should have been obliged to afford from time to time, large and costly succors, which would have been alike a burden on our treasury and hazardous to our peace. And what is more, had we not extricated ourselves by the Convention of 1800, from these entanglements, the guaranty would have remained to this day, and we should be liable to be called on now, or at any time hereafter, to fufill its obligations.

Besides, by the 17th and 22d articles of the treaty of amity and commerce, we made our connexion with France still more intimate and embarrassing. We bound ourselves to pursue a course of marked partiality in her favor, in the event of her being engaged in any future war with a third power. It is true, reciprocal rights or privileges, were secured to the United States; but they were comparatively of little importance, as both the position and interest of the United States, would lead them to the cultivation of peaceful relations with all the world. There was every probability at the date of the treaty of amity and commerce, that Great Britain and France would be the parties to be involved in future wars, while the United States would occupy the position of neutrals. The stipulations, therefore, of the 17th and 22d articles, though nominally mutual, were mainly in favor of France, and were of inestimable value to her. By these articles we agreed that France should have an exclusive right of asylum in our ports, and be entitled to a free admission of her ships of war and privateers with their prizes, and that we would exclude substantially those of her enemy. The advantage which this would afford to France in the event of a war with Great Britain, can be seen at a glance. She could not only take refuge with us with her armed ships, to avoid her enemy, or to escape storms; and she could not only remain *ad libitum*, to repair, refit, and revictual, but she had a right to convert the ports along our extensive coast into so many stations, from which she could sally forth with her armanent to defend her

own possessions, or to assail the possessions or commerce of her enemy. In short, the stipulations of the 17th and 22d articles of the treaty of amity and commerce, converted our Atlantic frontier, in case of a war between France and Great Britain, substantially into a French coast, and rendered our ports nearly as useful to her in such a contest, as if she had been their absolute owner.

The 11th article, therefore, of the first named treaty, and the 17th and 22d of the last, constituted what has sometimes been called "an entangling alliance," against which Washington so emphatically warned the country in his farewell address. "The great rule of conduct for us" (he says) "in regard to foreign nations is, in extending our commercial relations, to have with them as little political connexion as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. Here let us stop. Europe has a set of primary interests which, to us, have none or a very remote relation. Hence she must be engaged in frequent controversies—the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics, in the ordinary combinations and alliances of her friendship or enmities."

* * * * * * "Why, by interweaving our destinies with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalship, interest, humor, or caprice?"

The history of the country proves that Washington spoke from bitter experience. It is true, that during the peace which ensued after the close of our Revolutionary war, (covering a period of about ten years,) we experienced no particular inconvenience from these treaties; but soon after the war of the French Revolution broke out, and particularly after Great Britain became a party to it, they were found to be complete magazines of evil to the country. Very soon a great variety of questions arose between France and the United States under the treaties and conventions already referred to. Both parties complained of infractions of those treaties, and of serious injuries. The United States, of the spoliations of their commerce, contrary both to the treaties and the laws of nations, and France, of a deprivation of the rights and privileges secured to her by the 17th and 22d articles of the treaty of amity and Commerce, and the 12th article of the Consular Convention. The reclimations on the one side and the other became exceedingly animated—the passions of the two nations were aroused—the discussions (continued through several years) were characterised by profound discontent and much irritation, and frequently became, particularly on the side of France, acrimonious, and the relations of the two countries were kept in turmoil and confusion through most of Washington's administration, and until near the close of that of the elder Adams.

I should trespass far too much on the time and attention of the Senate if I were to submit an exposition of the various pretensions advanced by France. It is sufficient for me to say, in general terms, that they consisted in maintaining that the rights and privileges secured to her by the treaties, or some of them, were denied to her; or that their exercise had been, in some degree, impaired or obstructed; or that indulgencies had been accorded to Great Britain, inconsistent with their true intent and meaning. It is unnecessary now to consider to what extent France had just grounds for her complaints, though I am free to admit that many of them, if not most, seem to have little solid foundation to rest upon. But however this may have been, it is certain that the disputes between the two Governments began to subside early in 1795. France seems at that period to have arrested her career of robbery and violence, and had begun to manifest a disposition to do our much injured citizens something like justice—a state of things to which Washington referred, with evident satisfaction, in his message of February 28, 1795, from which I produce an extract:

"Our Minister near the French Republic has urged compensation for the injuries which our commerce sustained from captures by French cruisers, from the non-fulfilment of the contracts of the agents of that Republic, and from the embargo at Bordeaux. He has also pressed an allowance for the money voted by Congress for relieving the inhabitants of St. Domingo. *It affords me the highest pleasure to inform Congress that* PERFECT HARMONY REIGNS BETWEEN THE TWO REPUBLICS, *and that these claims are in a train of being discussed with candor, and of being* AMICABLY ADJUSTED"

But all the hopes of Washington were blighted by the promulgation of the treaty of "AMITY, COMMERCE, AND NAVIGATION" between the United States and Great Britain, usually called Jay's treaty, dated November 19, 1794, but not ratified until October 28, 1795. The effect of that treaty (which had been kept a profound secret) was, when it became known in France early in 1796, to blow that country into a flame. It was believed to manifest a strong partiality on the part of our Government for Great Britain, and it was insisted that, in place of remaining the ally of France, as we were bound to do by the treaties of our Revolutionary war, we had, in fact, made ourselves the ally of her most powerful enemy. She complained particularly of the 18th, 24th, and 25th articles of Mr. Jay's treaty. By the 18th article we had materially enlarged the list of contraband, as contained in the 24th article of our treaty of amity and commerce with France, and had accorded to Great Britain the privilege of seizing our provision ships on the con-

dition of indemnifying the owners. This undoubtedly gave Great Britain a great advantage over France in the then pending war, and was hardly consistent with the spirit of the treaties of 1798, and with the obligations of gratitude due to France, on account of the sacrifices made and services rendered by her, in asserting, by the most essential aids, "the liberty, sovereignty, and independence of the United States, as well in matters of government as commerce." I shall have occasion directly to bring the 24th and 25th articles of the same treaty before the Senate for another purpose, and therefore I will not dwell on them here. It is sufficient to say, that soon after Mr. Jay's treaty became known at Paris, France resumed her course of aggression on the United States. Her Government issued the arretes or decrees of July 2d, 1796, March 2d, 1797, and January 18th, 1798, ingeniously contrived to confer on her cruisers an unrestrained license to plunder American commerce, of which they availed themselves every where, and to the greatest extent ruining thousands of our citizens, and materially impairing our national prosperity. To arrest these enormities the United States sent to Paris successively, Minister C. C. Pinkney, and Envoys Marshall, Pinkney, and Gerry, but France would not deign to receive either the one or the other. At length Congress became convinced that it was indispensable to take a stronger and much more significant position in opposition to France, and they accordingly passed the act of the 7th of July, 1798, declaring "the treaties heretofore concluded with France no longer obligatory on the United States," and resorted to certain defensive measures, of which I shall have occasion to speak more particularly hereafter.

To enable us to understand the relations of the two countries at this era, it is necessary to recur to the 24th and 25th articles of Mr. Jay's treaty already referred to, which were as follows:

"ART. 24. It shall not be lawful for any foreign privateers, (not being subjects or citizens of either of the said parties) who have commissions from any other Prince or State in enmity with either nation, to arm their ships in the ports of either of the said parties, nor to sell what they have taken, nor in any other manner to exchange the same; nor shall they be allowed to purchase more provisions than shall be necessary for their going to the nearest port of that Prince or State from whom they obtoined their commissions."

"ART. 25. It shall be lawful for the ships of war and privateers belonging to the said parties respectively, to carry whithersoever they please, the ships and goods taken from their enemies, without being obliged to pay any fee to the officers of the admiralty, or to any judges whatever; nor shall the said prizes when they arrive at and enter the ports of the said parties, be detained or seized, neither shall the searchers or other officers of those places visit such prizes, (except for the purpose of preventing the carrying of any part of the cargo thereof on shore in any manner contrary to the established laws of revenue, navigation, or commerce,) nor shall such officers take cognizance of the validity of such prizes, but they shall be at liberty to hoist sail and depart as speedily as may be, and carry their said prizes to the place mentioned in their commissions or patents, which the commanders of the said ships of war or privateers shall be obliged to show. No shelter or refuge shall be given in their ports to such as have made a prize upon the subjects or citizens of either of the said parties; but if forced by stress of weather, or the dangers of the sea, to enter therein, particular care shall be taken to hasten their departure, and to cause them to retire as soon as possible. *Nothing in this treaty contained shall, however, be construed or operate contrary to former and existing public treaties with other Sovereigns or States.* But the two parties agree, that while they continue in amity neither of them will in future make any treaty that shall be inconsistent with this or the preceding article.

"Neither of the said parties shall permit the ships or goods belonging to the subjects or citizens of the other, to be taken within cannon shot of the coast, nor in any bays, ports, or rivers of their territories, by ships of war, or others having commission from any Prince, Republic, or State whatever; but in case it should happen, the party whose territorial rights shall thus have been violated, shall use his utmost endeavors to obtain from the offending party full and ample satisfaction for the vessel or vessels so taken, whether the same be vessels of war or merchant vessels."

It will be seen that the 24th article above recited is almost identical in words, and is exactly so in effect, with the 22d article of the treaty of amity and commerce of 1778, and the 24th article of the British treaty with the 17th article of the last named French treaty. So that we bound ourselves to accord to Great Britain the same exclusive right of asylum for her ships of war and privateers with their respective prizes, which we had granted to France by the treaty of 1778, as some, though a very inadequate, return for her co-operation and assistance in the fearful struggle of our Revolutionary war. These articles would doubtless have constituted an infraction of the treaty of amity and commerce with France, had it not been for the reservation contained in the 24th, of "former and existing treaties with other sovereigns and States." But the passage of the act of annulment of 7th July, 1798, removed out of the way the obstacles created in favor of France by the treaties of 1778, and let Great Britain into the enjoyment, by virtue of Mr. Jay's treaty, of the same exclusive right of asylum in our ports which had been, to that date, the right of France, and converted our coast into a British coast as it had been theretofore a French coast. This constituted another "entangling alliance," which ultimately became so distasteful to Wash-

ington—a policy which has been entirely eschewed by American diplomatists and statesmen from that day to this. No doubt Mr. Jay's treaty, taken in connection with the act of Congress annulling the French treaties, greatly complicated and embarrassed our relations with France, and rendered an adjustment of pending controversies almost impossible. Nor can it be matter of surprise, that this state of things should have occasioned the utmost discontent and irritation in the French Government and people, as history teaches us that Mr. Jay's treaty, and the proceedings of our Government consequent thereto, were received with great disapprobation by a large body if not a majority of our citizens, and were resisted both in and out of Congress to the uttermost. The appropriations to execute the British treaty were carried in the House of Representatives, after a struggle of unexampled vehemence and intensity, by a majority of only two, and that solely, as is understood, by the surpassing eloquence of Fisher Ames.

I have thus placed the Senate in a position to appreciate the embarrassments in which our envoys, Ellsworth, Davie, and Murray, found themselves involved on opening negotiations at Paris in the spring of 1800, and I am also enabled to trace their progress intelligibly to the completion of the Convention of the 30th of September, 1800, showing the use which they attempted to make in various forms of these spoliation claims to extinguish the national claims set up by France under the treaties, and throwing much light on the views, purposes, and objects, of the parties in the arrangement ultimately effected in ratifying the same convention.

The first step taken by the Ministers was, to come to an explicit understanding that indemnities should be made by each nation to the citizens of the other. There were some indemnities due from the United States to the citizens of France, but these were comparatively insignificant. On the other hand, there were very large indemnities due from France to citizens of the United States, comprehending the four classes of cases already named, and an admission on the part of France of an obligation to make them stands out in front of all the subsequent proceedings. This will appear from extracts from the correspondence which I now propose to submit to the Senate.

1. Extract from a letter dated April 7th, 1800, from the American Envoy to the French Minister:

"To satisfy the demands of justice, and render a reconciliation cordial and permanent, they propose an arrangement, such as shall be compatible with national honor and existing circumstances, to ascertain and discharge the equitable claims of the citizens of either nation upon the other, whether founded on contract, treaty, or the law of nations."—Doc. 102, p. 581.

2. Extract from a letter dated 19th Germinal year 8, from the French Minister to the American Envoy, (in reply:)

"The Minister of the French Republic * * * thinks that the first object of the negotiation ought to be the determination of the regulations and the steps to be followed for the estimation and indemnification of injuries for which either nation may make claim *for itself*, or *for* any of its citizens.

"And that the second object is to assure the execution of treaties of friendship and commerce made between the two nations, and the accomplishment of the views of reciprocal advantage which suggested them."—Doc. 102, p. 581.

3. Extract from a letter dated April 11th, 1800, from the American Envoy to the French Minister, (in reply to the last:)

"The undersigned have seen with pleasure in your note, which they had the honor to receive yesterday, an acquiescence in the principle of compensating equitable claims of citizens on both sides, though you have proposed to include, also, claims which either nation might make for herself.

"This description of claims was omitted in the proposition of the undersigned, not from the apprehension of an unfavorable balance, but because, in their nature, they were difficult to define and limit; because their discussion might be unpleasant and dilatory; and because, also, to insist on pecuniary compensation for themselves, would be incompatible with that magnanimity which it was presumed both nations would prefer, in an act of accommodation so auspicious to their future prosperity. If, however, after considering these objections, and others which will suggest themselves, the Ministers of the French Republic shall deem it necessary to provide pecuniary compensation for such claims, the undersigned will be ready further to consider the question at a convenient stage of the negotiation, which they apprehend will be after it shall be seen what arrangement would be acceptable for the claims of citizens.

"The expectation of the undersigned, with regard to commerce, is not to renew or amend the former treaty, but to propose a new one, which shall have fewer difficulties of construction and execution, shall more extend the provisions for intercourse, and better adapt them to the existing state of things; and they trust, when the existing shall have sufficiently progressed to take up this branch of it more particularly, their expectation will be shown to be reasonable."—Doc. 102, p. 582.

4. Extract from a letter dated 23d Germinal year 8, from the French Ministers to the American Envoys, in reply to their letter of April 11th:

"The Ministers Plenipotentiary of the French Republic, see no obstacle to prevent the Envoys Extraordinary and Ministers Plenipotentiary of the United States, from unfolding the considerations, at which they have stopped, on the subject of the arrangements to be made concerning the individual claims of one nation against the other.

"These claims cannot be appreciated on one side or the other, but, by the discussion of the principles of the law of nations, and the dispositions of treaties, the national claims will for the most part, be implicitly appreciated when those of individuals shall be.

"The national stipulations will be but the ulterior consequences of the same principles."—Doc. 102, p. 583.

Thus, an admission by France of her liability to make full indemnity for the injuries done our citizens, constituted the basis on which the negotiation opened; and this liability she did not controvert or deny during the subsequent proceedings. Here, also, we find conclusive proof of the truth or correctness of the allegation of Mr. Madison, in his letter to our Minister to Spain, of the 6th of February, 1804, that "the claims from which France was released," (by the Convention of the 30th of September, 1800,) "were admitted by France;" and much other proof of the same character could be adduced from the same correspondence.

This would certainly seem to be very satisfactory progress; but our Envoys soon discovered that the anticipations of the French Ministers, that "the national claim would for the most part, be implicitly appreciated when those of individuals should be," must be realized, or in other words, that it was quite impossible to adjust the claims of our citizens on France, without coming to some understanding in respect to the obligations of the United States, and the rights, privileges, and immunities of France under the treaties of 1778, and the Convention of 1788.

In the first instance, our Envoys sought indemnity for our citizens, and a new commercial treaty; but France insisted on the validity of the old treaties, and maintained that if she made reparation for any supposed infraction of them, she was entitled to be re-instated in her former position. "The French think it hard," say our Envoys, in a letter to Mr. Pickering, Secretary of State, under date of May 17, 1800, "to indemnify for violating engagements, unless they can be thereby restored to the benefit of them." "The French Ministers," say the same gentlemen in their journal, under date of May 23d, 1800, "had frequently mentioned in conversation, the insuperable repugnance of their Government to yield its claim to the anteriority assured to it in the treaty of amity and commerce of 1778: urging the equivalent alleged to be accorded by France for this stipulation the meritorious ground on which they generally represented the treaty stood; denying strenuously the power of the American Government to annul the treaties by a simple legistive act; and always concluding that it was perfectly incompatible with the honor and dignity of France to assent to the extinction of a right in favor of an enemy, and much more so to appear to acquiesce in the establishment of that right in favor of Great Britain. The priority with respect to the right of asylum for privateers and prizes, was the only point in the old treaty on which they had anxiously insisted, and which they agreed, could not be as well provided for by a new stipulation."

At this juncture our Envoys began to experience the inconvenience which our act of the 7th of July, 1798, annulling the treaties, was adcpted to produce. The effect of that act on the relations of France and the United States, and of the latter and Great Britain, they explained verbally to the French Minister, and thus repeated in their letter of the 23d July, 1800.—Doc. 102, p. 162.

"As to the proposition of placing France, with respect to an asylum for privateers and prizes, upon the footing of equality with Great Britain:

"It was remarked that the right which had accrued to Great Britain in that respect was that of an asylum for her own privateers and prizes, to the exclusion of her enemies; wherefore, it was physically impossible that her enemies should at the same time have a similar right.

"With regard to the observation that by the terms of the British Treaty, the rights of France were reserved, and therefore the rights of Great Britain existed with such limitation as would admit of both nations being placed on a footing which should be equal.

"It was observed by the Envoys of the United States that the saving in the British treaty was only of the rights of France resulting from her then existing treaty; and that that treaty having ceased to exist, the saving necessarily ceased also, and the rights which before that event were only contingent, immediately attached, and became operative."

To this the French Minister, under date of July 27, 1800, replied as follows:—Doc. 102, p. 614.

"Relative to the first object, the French Ministers are obliged to repeat, that their instructions being grounded on the perfect acknowledgment of ancient treaties, it is impossible to subscribe to the annihilation of a privilege assured by the treaty of 1778, to the privateers of each of the two nations in the ports of the other, and above all to the establishment of this privilege, in the mutual relations of the United States and Great Britain.

"But, convinced that the true interest of France is strictly connected with the prosperity of the United States, and the prosperity of the United States with their perfect independence; convinced that the exclusive right granted by one nation to the privateers of another, to bring their prizes into their ports; is of a nature to compromit its tranquility, and by that its independence, either because in a number of cases, it will give just cause of complaint, or at least of umbrage, to the Powers upon whom such prizes are made, they hasten to repeat, at the same time, to the American Ministers. that, in case of a reconciliation, they will make it a duty to insist with their Government, upon the proposition which they have already made, to abolish all exclusive right of entry in their respective ports, for the privateers of the two nations with their prizes, and to reduce themselves. for them, to the right of bringing in their prizes in concurrence with the most favored nation. They believe that the French Government would be honored by the sacrifice of a privilege which can be prejudicial to its ally; but that it would be disgraced in depriving itself of it, to the advantage of its enemy, and without advantage to the American Independence."

Indeed, at an earlier date, (7th of July,) our Envoys had been informed by the French Minister, that the First Consul "would never consent to make a treaty which would surrender the exclusive rights of France in effect in favor of an enemy, or in any event make a treaty with the United States which would not place France on a footing of equality with Great Britain."—Doc. 102, p. 619.

This led to a succession of propositions by the American Envoys, ingeniously devised with a view to surmount the difficulties of the case, which I will produce here, as having a material bearing on the question before us.

Proposition No. 1., *submitted by the American Envoys, July* 15, 1800.

"Indemnities to be ascertained and secured, in the manner proposed in our project of a treaty, but not to be paid until the United States shall have offered to France an article, stipulating free admission, in the ports of each, for the privateers and prizes of the other, and the exclusion of those of their enemies; nor unless the article be offered within seven years; such article to have the same effect in point of priority, as a similar provision had in the treaty of '78."—Doc. 102, p. 620.

Proposition No. 2, *submitted by the same, August* 20, 1800.

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

2d. It shall be optional with either party to pay to the other, within seven years, 3,000,000 of francs, in money, or securities which may be issued for indemnities, and thereby to reduce the rights of the other as to privateers and prizes to those of the most favored nation. And during the said term allowed for option, the right of both parties shall be limited by the line of the most favored nation.

3d The mutual guarantee in the treaty of alliance shall be so specified and limited, that its future obligation shall be, on the part of France, when the United States shall be attacked, to furnish and deliver at her own ports, military stores to the amount of 1,000,000 of francs, and on the part of the United States, when the French possessions in America in any future war shall be attacked, to furnish and deliver at their own ports a like amount in provisions.

It shall moreover be optional for either party to exonerate itself wholly of its obligation, by paying to the other within seven years a gross sum of 5,000,000 of francs, in money, or such securities as may be issued for indemnities.

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

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

6th. All property seized by either party, and not yet definitively condemned, or which may be seized before the exchange of the ratifications of the present treaty, shall be restored on reasonable, though it should be informal proof of its belonging to the other, except contraband goods of the United States, destined to an enemy's port. This provision to take effect from the signature of the treaty; and if any condemnation should take place contary to the intent of this stipulation before knowledge of the same shall be obtained, the property so condemned shall be paid for without delay.—Doc. 102, p. 625.

Proposition No. 3, *submitted by the same, August* 29, 1800.

If the United States shall at any time within seven years from the exchange of the ratifications of the present treaty, offer to the French Republic an article of the tenor following, viz:

"It is agreed that the United States shall pay to the French Republic, within seven years, from the day of exchanging the ratifications of the treaty of , , eight millions of francs in money, or such securities as have been, or may be issued to citizens of the United States for indemnities under the said treaty, together with interest hereafter at the rate of per centum, per annum, until the principal shall be discharged. And that, as a consideration of such engagements, the United States shall forever be exonerated of the obligation, on their part, to furnish succors or aid under the mutual guarantee of the 11th article of the treaty of alliance, of the 6th of February, 1778; and the rights of the French Republic, under the 17th and 22d articles of the treaty of amity and commerce, of the same date, shall be forever limited to such as the most favored nation shall in these respects enjoy."

The French Republic will accept the same; or if the French Republic shall at any time within that term, offer such an article, the United States will accept the same. And in either case, the article so offered shall become part of the present treaty:

"To such a stipulation, in connection with the first, fourth, fifth, and sixth propositions offered by the American Envoys, in their note of the 20th of the present month, they would agree, so great is their desire to terminate without further loss the present negotiation."—Doc. 102, p. 629.

Proposition No. 4, submitted by the same, September 5, 1800.

1st. The former treaties shall be renewed and confirmed.

2d. The obligations of the guarantee shall be specified and limited, as in the first paragraph of their 3d proposition of the 20th of August.

3d. There shall be mutual indemnities, and a mutual restoration of captured property not yet definitively condemned, according to their 5th and 6th propositions of that date.

4th. If, at the exchange of ratifications, the United States shall propose a mutual relinquishment of indemnities, the French Republic will agree to the same; and in such case, the former treaties shall not be deemed obligatory, except that under the 17th and 22d articles of that of commerce, the parties shall continue forever to have for their public ships of war, privateers, and prizes, such privileges in the ports of each other, as the most favored nation shall enjoy.—Doc. 102, p. 631.

Proposition No. 5, submitted by the same, September 13, 1800.

The discussion of former treaties, and of indemnities, being for the present closed, it must, of course, be postponed till it can be resumed with fewer embarrassments.

It remains only to consider the expediency of a temporary arrangement. Should such an arrangement comport with the views of France, the following principles are offered as the basis of it.

1st. The Ministers Plenipotentiary of the respective parties, not being able at present to agree respecting the former treaties and indemnities, the parties will, in due and convenient time, further treat on those subjects; and until they shall have agreed respecting the same, the said treaties shall have no operation. In the mean time,

2d. The parties shall abstain from all unfriendly acts; their commercial intercourse shall be free, and debts shall be recoverable in the same manner as if no misunderstanding had intervened.

3d. Property captured, and not yet definitively condemned, or which may be captured before the exchange of ratifications shall be mutually restored. Proofs of ownership to be specified in the convention.

4th. Some provisional regulations shall be made to prevent abuses and disputes, that may arise out of future cases of capture.—Doc. 102, p. 635.

The propositions were successfully rejected by the French Ministers until they came to the last, which, after considerable hesitation, was accepted and constituted the basis of the arrangements ultimately made. The rejection, I suppose, was based mainly on the idea that they would directly or indirectly leave Great Britain at least temporarily in possession of the exclusive rights which had become vested by the 24th and 25th articles of the treaty of 19th of November, 1794, as the same were made effective by the act of the 7th of July, 1798, annulling the treaties of 1778.

In reply to the propositions submitted by our Envoys, the French Ministers made offers on the part of their Government, to none of which is it material to refer, except that of the 4th of September, 1800, which was as follows:

"1. We shall have a right to take our prizes into the ports of America.

"2. A commissioner shall regulate the indemnities which either of the two nations may owe to the citizens of the other.

"3. The indemnities that shall be due by France to the citizens of the United States, shall be paid for by the United States; and in return for which, France yields the exclusive privilege re-

sulting from the 17th and 22d articles of the treaty of commerce, and from the rights of guarantee of the 11th article of the treaty of alliance."—Doc. 102, p. 630.

It is believed that an examination of these proposition will sufficiently elucidate the views and object of the parties in entering into the arrangement which was ultimately effected, and will show what are the obligations of our Government under that arrangement.

And here I would observe that proposition No. 1 contains the following elements:

1. Indemnities to be ascertained.
2. Payment to be postponed for a period not exeeding seven years.
3. The United States to have the option at any time within that period, either to accept the indemnities and renew the treaties, or to take an exoneration from the latter and give up the former.

The reason why seven years was proposed may be found in the fact, that at the end of that period the British treaty was to expire by its own limitation, and the United States would be in a situation to renew their former engagements with France without a breach of faith towards Great Britain. Now suppose a treaty to have been made on this basis, would not the United States have been immediately liable to the claimants? Might they not have said, you have no right even to postpone our claims for purposes of your own. But at any rate, if the United States had elected to sacrifice the indemnities rather than renew the treaties, it would have been a clear case of liability. They could then have urged with great effect, that the claims had been liquidated, that France stood ready to pay them, but that you proposed to surrender them for a great public object, viz., exoneration from obligations of an exceedingly embarrassing and injurious character.

The second proposition contemplated a renewal of the old treaties, and the ascertainment and payment of the indemnities, with an option on the United States, within seven years, to purchase out the exclusive rights of France for the consideration named; those rights to be limited during the period named, by the line of the most favored nation.

The third proposition does not differ essentially from the second, except in making the consideration for both the 11th article of the treaty of alliance, and the 17th and 22d articles of the treaty of amity and commerce, the gross sum of eight millions of francs, and in omitting a present reduction of the rights of France to those of the most favored nation.

But by far the most interesting of these propositions is the fourth, which in fact comprises the essential elements which entered into the final arrangement. Here our Envoys suggest:

1. A renewal of the old treaties.
2. The guaranty to be limited, as per proposition of the 20th of August.
3. Indemnities to be made, and property not definitively condemned to be restored.
4. The United States to have an option, at the exchange of ratifications, to renounce indemnities, and take therefor a reduction of the rights of France to those of the most favored nation.

Now, suppose this had been put in the form of a treaty, and that the United States had, on exchange of ratifications, elected to give up the indemnities to get rid of the exclusive rights of France under the treaties, could there have been any doubt as to their liability? And yet this is precisely what the parties did in effect, though not in form It is manifest that our Envoys had in their minds the idea that the President and Senate might, when they came to revise the treaty, deem (to use the language of Mr. Livingston,) the indemnities and treaties as of "equivalent value," and might be disposed to bargain away the former to purchase an exoneration from the latter. No doubt this same fourth proposition suggested to the Senate the course, which it ultimately took, and constituted the basis of its action. The suppression of the second article was in fact a renewal to France of this same proposition, which she accepted contrary to her first decision, and thus France was released from these spoliation claims for "a valuable consideration," (vide Mr. Madison's letter to Mr. Pinckney, Doc. 102, p. 795,) "in a correspondent release of the United States" from the claims of France on them. It is apparent that France deemed it impossible for us thus to sacrifice the rights of our citizens, and to take "private property for public use," without making them a "just compensation," for her Ministers in their counter proposition of the 4th of September, 1800, proposed to release her claims on the United States, in consideration of payment by them of the indemnities due by France to our own citizens. We were to enter into an express covenant to pay and satisfy these claims, and France being thus discharged from these individual or private claims, she was in consideration thereof, to hold us exonerated from her public or national claims. But the ultimate intentions of the parties having been executed in an exceedingly informal or irregular way, and that which was intended in fact, not having been put in the form of an express stipulation, the claimants have had nothing but the substance of the matter to rely on, and that, I hope, will be deemed by this enlightened body as binding in equity and good conscience as any formalities whatsoever. I trust that I have thus redeemed fully the assurance which I gave the Senate, that I would, by examining the negotiation which terminated in the Convention of 1800, deduce the correctness of the statement of Mr. Madison, (Doc. 102, p. 795,) to the effect that the United States bartered away their private claims in exchange for the national claims of France, and thus obtained for them a full and a valuable consideration.

It only remains for me to examine the objections which have been heretofore urged in opposition to this measure, and will doubtless be reiterated on the present occasion. They are set forth in due form in the minority report submitted by the honorable Senator from Virginia at the last session of Congress from the Select Committee, of which I have the honor to be chairman. As we have reason to expect that my honorable friend will address us before this bill is disposed of, I shall, by replying to the objections stated in that report, give a sufficient answer to any remarks which he may make, as, from the nature of the case, they can be little more than an amplification and reiteration of the report itself. I observe, then, that opposition has been, and will continue to be, made to this bill on the ground of

THE ANTIQUITY OF THESE CLAIMS.

In the minority report this objection is stated, and expressed at considerable length as follows:

"But how come these claims here, after a lapse of fifty years, and how can we ever decide the question so as to get rid of it? If these claims upon our Government were ever good, is it possible for us to pay them so as to do justice to the parties? How are we to discriminate between the good and the bad claims, so as to secure the Government against mistakes and frauds? After the lapse of fifty years, most of the evidence is gone which would be necessary for a full and fair examination of their justice. Those who are interested preserve most of what is to be found, as time rolls on, weaker and weaker evidence becomes the best of which the nature of the case is susceptible, until mere presumptions will suffice to charge the Government, and scarce any protection will be left against frauds To whom are we to pay these debts if they be due? There are heirs, creditors, assignees. To whom shall the money be paid, and how are their several relations to the claimant to be ascertained. The chances for mistake as to the parties entitled are very great. Shall we pay to the administrator, who will probably be the agent of the claim, and leave him to settle the rights of the parties? How easy would it be for him to retain the money on a claim, established perhaps upon imperfect evidence, and keep it all to himself. Between the conflicting claims of heirs, assignees, and creditors, the chances are that the person really entitled would not often obtain the money. There certainly ought to be some limitation as to time, beyond which such claims should not be presented. It is easy to show, upon the mere calculation of chances, that any claim must succeed if presented year after year, without limitation as to time. If it is rejected nine hundred and ninety nine times, the claim is not defeated; but if it passes on the thousandth trial, it is paid. Where governments are concerned, it is especially important to establish some limitation as to time. There are few or none who feel a deep interest in defending the Government against unjust claims. No effort is made *to* preserve evidence to protect it, whilst private interest induces claimants to preserve what is in their favor. Evidence often contradicted at first, whilst contemporaries of the event are alive, becomes sufficient merely because that which contradicted it has perished. Not only is it impossible to defend the Government in such cases, but it becomes impracticable to do real justice between the parties entitled. The true relations between the parties and their several titles to the claim, it would be very difficult to establish. The creditors, who are often the persons really entitled, would generally get nothing in such cases. The evidence of their claims would have been lost Hopeless originally as to the claim, and equally hopeless as to the ultimate solvency of their debtor, in most cases the evidences of their title would be lost. Indeed, the debts themselves would be barred by the statutes of limitations existing in the States Twenty years would create a presumption of payment of a bond; other contracts would be barred in less time. Even a judgment, if not renewed, would be presumed at common law to have been satisfied after a period of twenty years, unless there were positive evidence to control such a presumption. But the claim against Government is good forever, and the heirs, not of the creditor, who was really entitled, but of the original claimant, would get it."

To the objections thus stated I answer:

1. There would be some propriety in assuming this ground, if this were the first appeal made by these parties to the justice and equity of Congress, but the fact is far otherwise. The claimants have been incessantly petitioning Congress for redress for nearly half a century. They commenced at the very first session after the ratification of the Convention of the 30th of September, 1800, and have continued their solicitations to this day. The claimants have not only used due diligence, but all possible diligence; this is an appeal to the public conscience—to that sense of justice which must be presumed to be ever present with the authorities of a civilized and christian nation. If the honorable Senator could prove that Congress has delayed so long and so wantonly that the public conscience has become "seared as with a hot iron," that would be no reason why justice should not probe it to the quick. The claimants in this case are obliged to address themselves to the party in interest; the party which is to pay is the party to judge. The public is judge in its own case; and when this many-headed tribunal, called *the public*, has procrastinated for near half a century, all the while refusing to act definitively on the subject, can it turn round and plead the

statute of limitations—set up its own dereliction of duty as a defence? But here the case is much stronger. Whatever action there has been vindicates and asserts the equity of these demands. Committees almost without number declare in favor of their validity; the Senate frequently asserts the public liability, while the House remains mute; but at the end of forty or fifty years both concur, and then the Executive dissents, so that nothing is concluded. Now it is discovered that the bar of time has taken full effect. Were not the parties entitled to a yea or nay within a reasonable time? To procrastinate in the manner Congress has done in this case is a great wrong, and the public, no more than individuals, can take advantage of its own wrong. The minority report assumes that this is a case of repudiated claims—a case rejected over and over again by Congress.

"It is easy to show" (says the Senator) "upon the mere calculation of chances, that any claim must succeed, if presented year after year, without limitation as to time. If it is rejected nine hundred and ninety-nine times the claim is not defeated, but if it passes on the thousandth trial, it is paid."

Very sensible! but the remarks have no application to the case before us. The truth is, the equities of the case have been strengthened and increased by the delay. An equivalent for the indemnity proposed by Mr. Livingston in 1830, would now require an appropriation of $11,300,000, or, in other words, less than $2,500,000 in 1830 would have been better for the claimants than $5,000,000 now. An equivalent for the $5,000,000 voted by the two Houses in 1846, would at this time be $6,300,000. Congress, by its inattention and neglect, has not only done a great wrong to these parties, but has occasioned no inconsiderable pecuniary advantage to the public. We have had the use of a large sum of money for many years, to the prejudice of our own citizens, and now we are told that the cold indifference and heartless procrastination of those whose duty it was to act, blighting the hopes of thousands, and carrying most of them in penury to the grave, have all at once become a defence under the head of *lapse of time!*

2. But this objection can have no application to the general equities of the case. These can be just as well appreciated now as they could have been at the day and hour of the transactions out of which they arose. They depend on facts and considerations which are matters of record. They are deduced from the solemn acts of the two Governments, in the form of decrees, laws, and treaties, and are illustrated or proved by an extensive diplomatic correspondence, accessible to us and the whole country. They are now before us precisely as they have existed in the public archives for a half century, and can be just as well understood and judged of now as they could have been by any of our predecessors, recent or remote.

3. In respect to any difficulty which may result from lapse of time, in appreciating the justice or validity of particular claims, it is sufficient to say that they are all to be referred to a Board of Commissioners, who will judge of their merits. On the trial, each claimant will take on himself the burden of proof, and if he has lost his evidence, in whole or in part, so that he cannot make full proof, it will be his misfortune; he will lose his claim. It is not to be assumed that the Commissioners will allow claims, except such as are satisfactorily proved. The question is, whether we shall pay those claims which can be proved. If this class do not amount to $5,000,000 then the money will remain in the treasury. Besides, this objection is hardly consistent with another taken in the minority report, to wit: that the amount due will much exceed the sum provided by this bill, and that a balance will remain, which we must ultimately pay. But it is believed that little difficulty will be experienced in making out the equities of the cases individually, for the reason that the proofs were collected in the day and time of these transactions, and were put into the hands of our Government in conformity with the suggestions of Mr. Jefferson's circular of 1793, and they are now to be found in the archives either of the United States or France.

3. But the minority report not only deals with the general equities of the subject and with the equities of the claims individually, but travels off into the equities which might by possibility arise between the claimants or some of them and third persons. Some claimants may have been insolvent; and if the Government had responded promptly to its obligations, the money would have inured to the benefit of the creditors of such claimant; but now (runs the argument) the debts due such creditors, may be barred by the lapse of time, and that bar shall protect the United States—the public shall have the benefit of this remote equity. But, the Senator in his anxiety to hunt down these claims, should at least spare those who have ever met their engagements, and especially creditors of the original claimants who hold them, either for payment or security. This class is believed to be large, and I commend their case to the particular sympathy of my honorable friend. This objection is too far fetched, and is too artificial, to be worthy of further notice.

The release of France from these claims was, it is said, without consideration. The United States obtained no equivalent or benefit, direct, or collateral, and therefore we are not liable. France had no right to a continuance or renewal of treaties. They were abrogated for just cause, in 1798, and never renewed, and therefore, no consideration can be found in the surrendry of them for the claims now before the Senate.

This is substantially the ground taken by the honorable Senator (Mr. H.) in his minority report, and which he will doubtless re-assume on the present occasion. In this, of course, the honorable Senator will be obliged to place himself in opposition to both Livingston and Madison—the former declaring, that the claims on the one hand and the treaties on the other, "were considered as of equivalent value;" and the latter, that the release of the one was "a valuable consideration" for the release of the other. He will also find himself confronted by the opinion of Mr. Murray, one of the Envoys who negotiated the Convention of 1800, and was commissioned to exchange the ratifications of that Convention with France after the suppression of the 2d article by the Senate. It is well known that the French Government experienced some difficulty in accepting the Convention in its amended form, and that considerable discussion ensued on the return of it to France. While the question was pending, Mr. Murray, under date of July 1st, 1801, wrote to Mr. Madison as follows:

"To you, sir, I can say, I wish I had been authorized to subscribe to a joint abandonment of treaties and indemnities. As claims, they will always be set off against each other by them; and *and I consider the cessation of their claims to treaties, as valuable.*"—Doc. 102, p. 675.

But notwithstanding all that Madison, Livingston, and Murray, have said, the honorable Senator will have it that *such cessation was not valuable.* Here it becomes proper to look a little more narrowly into this objection. And here I observe—

1. It implies an admission that the United States in fact discharged the claims, and insists that such discharge was without any sufficient motive, object, or consideration. It makes the act of our Government a wanton act, and involves a grave reproach against the authorities of 1800.

2. The United States had undertaken and was bound to undertake the prosecution of these claims. There was both a general and a special obligation; the former resulted from the relation of the State to its citizens, protection being due from the one in return for the allegiance which is incumbent on the other, and the latter from the engagements of Mr. Jefferson's circular in 1793, publicly given and confidingly accepted. The United States held in their hands an important trust, which it was their duty to execute with all possible fidelity. In this state of the case we discharge and exonerate the opposite party, as is now said, without obtaining anything either for ourselves or the claimants. We place them in such a position that they can have no recourse to France. How can it be said that they could not, in any event, have obtained redress at her hands? Mr. Livingston, in his report (p. 11,) says: "Nations must not in their intercourse with each other, be supposed capable of flagrant injustice. Such a principle would soon break all those ties by which modern civilization has united them. If the French Government at that period had denied the justice of those claims, and asserted a right to make the depredations, it would not have lessened the justice and validity of the claimant's right against the successors in power of those who were so regardless of the laws of nations, and the faith of treaties; and at this moment, but for the act of their own Government, they might appeal from the wrongs inflicted by Republican France to the justice and magnanimity of its monarchial rulers." Such an appeal was, in fact, successfully made by the United States from imperial to regal France; and we obtained in 1831, by Mr. Rives' Convention, indemnities to the amount of 25,000,000 of francs at the hands of the latter, for the lawless depredations of the former under the celebrated Berlin and Milan decrees.

The language of that Convention is broad enough to comprehend these spoliation claims. Some of them were presented to the Board of Commissioners sitting under that Convention, but they decided that these parties were not entitled to participate in the fund to be distributed, for the reason that the United States had released and discharged France therefrom by the Convention of 1800. They were not claims against France at the date of the Convention of 1831. I make this statement on the authority of the Honorable Secretary of State, (Mr. Webster.) Under such circumstances, it is not competent for the United States to say, we made a bad bargain—we gave up the claims for nothing. They, by the act of discharge, placed themselves in the shoes of France, and recourse can be had to them now as recourse could have been had originally to France.

3. Whether the pretensions of France were or were not strictly valid is a question which cannot now be made. It is enough to say she seriously advanced such pretentions, and that these were opposing claims. The release of the one, under such circumstances, was a sufficient consideration for the release of the others. You cannot overhaul and re-examine the validity of such claims to break up a compromise or settlement on the principle of set-off; you cannot thus show a want of consideration. This could not be done, as between the United States and France, to hold the latter liable for the claims. You are bound by the adjustment, (France would say,) and who could deny it. May not these claimants say the same thing to the United States, with like effect.

4. The United States regarded the pretensions of France to be of a character to constitute a valuable consideration, for our Envoys offered to purchase or buy them off, for no less than eight

millions of francs. We deem (said the United States) your claims under the treaties invalid. You think otherwise; therefore, being anxious for an adjustment, we will pay the eight millions for them. No! responds France. Then (says the United States) we will purchase out your pretensions by a surrendry of these spoliation claims. Will you take the one in exchange for the other? Yes! replies France, after much doubt and hesitation. It is now too late for the United States to claim that the discharge or release of France was without consideration. Any great public object or benefit is a sufficient motive or consideration, and the extrication of the country from the toils of the French alliance, even though the misconduct of France had been such as to justify us in discarding it, constituted such an object or benefit.

5. Nations have just as good right to purchase their peace as individuals, and in that object alone there is a sufficient consideration. From the adjustment of 1800, our Government anticipated great advantages, and those were abundantly realized. This will appear from the following extract from a letter dated April 23, 1801, from Mr. Lincoln, Acting Secretary of State, to Mr. Murray:

"The beneficial effects of ratifying the Convention with France is extensively felt and generally acknowledged. On our part it is carried into execution. Our ships of war are called into port. Our trade is passing through channels which have been obstructed, and spreading on seas which have been infested. Our shipping and produce are in quick demand, our former intercourse with France is restored, and it is to be hoped, you have already obtained her confirmation of the treaty which has in part produced these advantages."—Doc. 102, p. 696.

6. In this case the United States secured by the 4th and 5th articles, certain collateral advantages, which in themselves constitute a sufficient reason or motive for releasing the claims. By the 4th we obtained a restoration of all the vessels then in the hands of France, with their cargoes, not definitively condemned, and by the 5th, payment and satisfaction for all the supply and embargo cases under the name of debts. The supply cases were, in fact, mere contract cases; and it is a well settled principle of our Government, that protection is not due to such cases. The reason is, if we were to undertake to assert the rights of our citizens under any contract or contracts which they may choose to make with foreign States, it would be in their power to involve us in a war at any time, or, at least, to expose us to the danger of it. Hence, if they will make such contracts they do so at their own hazard, and must act on their own responsibility. It is only claims for torts or lawless violence which our Government will prosecute. It is a remarkable fact that we by the Convention of 1800, asserted claims to which our protection was not due, by sacrificing another class of claims to which it was clearly due!

7. But I, by no means, admit that France had violated both the treaties of 1778. Whatever there was exceptionable in her course, constituted an infraction of the treaty of amity and commerce only. The treaty of alliance she had fulfilled to the letter. She stipulated therein, to make common cause with us against Great Britain, and to aid us with her good offices, counsels, and powers, so as to maintain effectually, the liberty, sovereignty, and independence, absolute and unlimited, of the United States; that she would make all the efforts in her power, against the common enemy to attain the end proposed; that she would concur in all our enterprizes, so far as circumstances would permit, and would not make either peace or truce with the British Crown, without our consent, nor lay down her arms until the independence of the United States had been formally or tacitly assured by the treaty or treaties which should terminate the war. All this she agreed to do without any compensation whatever, and with what a noble generosity and magnanimity, and with what immense sacrifices of blood and treasure, she fulfilled them, let the history of our Revolution tell. There is not the slightest pretence for saying that France violated the treaty of alliance. The act of annulment (7 July, '98,) does not specify any particular treaty. It speaks in the preamble, in general terms, of "treaties repeatedly violated" by France; and then enacts that "the stipulation of the treaties and of the Consular Convention, * * * shall not, henceforth, be regarded as legally obligatory on the Government or citizens of the United States." It may well be doubted whether it was really intended to comprise the treaty of alliance in the act of 7th July, '98. But certain it is, that its annulment, if intended, can be regarded as little less than a wanton act of perfidy on the part of the United States. If there be several treaties between the same parties, a violation of one treaty does not justify the annulment of the others. Our Envoys advert to this subject in their letter to the French Minister, of July 23d 1800.—Doc. 102, p. 613.

"To the still further suggestion that the laws of nations admitted of a disrolution of treaties only by mutual consent or war, it was remarked by the undersigned that their conviction was clearly otherwise, and that Vattel in particular, the best approved of modern writers, not only held that a treaty violation by one party might, for that reason, be renounced by the other; but that where there were two treaties between the same parties, one might be rendered void in that way, and the other remain in force, whereas when war declares it dissolves all treateis between the parties at the time."

From these considerations it must be apparent that France had at the execution of the Convention of 1800, very serious claims against the United States, under and by virtue of the 11th article of the treaty of alliance, commonly called the article of guaranty, the surrendry of which constituted a sufficient consideration or benefit to our country for the release of these spoliation claims.

8. But it is quite apparent that these claims must be deemed to have purchased an exoneration from the treaties, irrespective of the mutual discharges of the Convention of 1800. It was the seizure and confiscation of the property of these claimants, that constituted the infractions of the treaty of amity and commerce of which our Government complained, and made the basis of the renunciation of the 7th of July, 1798. In this way the United States derived a great public benefit from the wrongs of France—they got rid of that exceedingly embarrassing and inconvenient treaty, and is it not just that they should make the sufferers some remuneration? If the renunciation of both the treaties and the convention was rightful, then the sacrifice of the property in question procured our exoneration from all, or rather laid the foundation for such exoneration. France was anxious to be reinstated on the principle of full indemnity—this was frequently offered by them, and ever rejected by us. Even after the convention was returned to Paris amended, it was seriously apprehended that she would discard it, so that she might make indemnity, and reinstate herself in the enjoyment of the rights and immunities of the treaties. In a letter from Mr. Livingston to Mr. Madison, under date of September 16, 1801, (Doc. 102, p. 700,) he says:

"France is greatly interested in our guarantee of their Islands, particularly since the changes that have taken place in the West Indies, and those which they may have still reason to apprehend there. I do not therefore wonder at the delay of the ratification, nor shall I be surprised if she consents to purchase it by the restoration of our captured vessels."

But the apprehensions of Mr. Livingston were not realized. France ratified the convention as amended, declaring that the retrenchment of the 2d article should operate as a release or renunciation of the respective claims of the parties. So that we, in the first place, took benefit of the wrongs of France, to throw off the treaties and convention, and then discharged France from all claim on account of those wrongs in consideration of her releasing us from any possible right which she might have to the treaties and convention. Our discharge of France sanctified her acts, and effectually appropriated private property to a great public object. On every ground, the objection now before us must fail, and the obligation to indemnify the sufferer, at least to some extent, must be deemed complete, unless some other reason can be assigned than of want of consideration for the release of France.*

But it will be said that the relations of the two countries became belligerent, or that the war in part, existed, and that the United States, having closed it without obtaining satisfaction, is not now liable to the claimants. It may be admitted, that if we had in reality declared war against France, to obtain redress, had prosecuted it with proper vigor, and had failed to obtain justice for the claimants, our Government could not be justly held liable. No nation is bound to prosecute a war for an indefinite or unreasonable period, to redress the wrongs of its citizens. But in case of a war *de jure et de facto*, if the Government use or appropriate claims such as these, to secure to itself or other citizens, collateral advantages in a treaty of peace, then it is bound to make indemnity.

But was there war? If so, it was a maritime war, so that the belligerents would have been found engaged in capturing each other's ships, both public and private, armed and unarmed, as opportunity presented. It is well known that the United States did not authorize their cruisers to capture the merchant vessels of France. No such right or authority was conferred on American privateers; nor were such captures made in fact. This would constitute a singular maritime war.

It will not be pretended that the United States either declared war against France, or recognized a war as existing with that power, and the same remark is true of France. But it will be said that certain acts of force were authorized by our Government, which were tantamount to war. On the other hand, I insist that these measures were strictly defensive in their character—did not authorize indiscriminate hostilities—stopped far short of war—and that neither party supposed war existed, and never thought of making, and did not make a treaty of peace. I will in the first place, advert to the measures authorized by Congress. Were they defensive or otherwise? They were as follows:

1. An act more effectually to protect the commerce and coast of the United States, approved May 28, 1798, vide Laws of the United States, vol. 3, p. 54.

This act only authorized the public armed vessels of the United States to seize, take, and bring into our ports, the armed vessels of France which had committed, or which were found hovering

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* NOTE. I am indebted to one of my colleagues of the Select Committee, (Hon. Mr. BRADBURY,) for the leading idea here developed. He was prepared to address the Senate in support of the bill, and no doubt would have done so to good purpose, had he not waived the privileges of the floor on account of the evident desire of the body to take the question.

on our coast, for the purpose of committing depredations on the vessels of our citizens, or to retake any American ship or vessel which had been captured by any such armed vessel.

2. An act to suspend commercial intercourse between the United States and France and the dependencies thereof, approved June 13, 1798, vide Laws of the United States, vol. 3, p. 59.

The object of this act and many of its details, are utterly inconsistent with the idea of an existing war between the two countries. Could our Congress be so absurd as to suspend commercial intercourse in the midst of a flagrant war?

3. An act to authorize the defence of the merchant vessels of the United States, against French depredations, approved June 25, 1798, vide Laws of the United States, vol. 3, p. 68.

The scope and object of this act is sufficiently explained by its title.

4. An act to declare the treaties heretofore concluded with France, no longer obligatory on the United States, approved July 7, 1798, vide Laws of the United States, vol. 3, p. 76.

Why declare treaties no longer binding, if war existed, which every one knows, dissolves or annuls all treaties. This is a plain and familiar axiom of the laws of nations.

5. An act further to protect the commerce of the United States, approved July 9, 1798, vide Law of the United States, vol. 3, p. 76.

This act only authorizes the capture of French armed vessels by the public and private armed vessels of the United States, and the recapture of American vessels which had been or should be taken by the French In all other respects, the French flag could traverse the ocean with impunity. No reprisals were authorized. French merchant vessels were not to be assailed any where.

6. An act further to suspend the commercial intercourse between the United States and France, and the dependencies thereof. (Approved Feb. 9, 1799,) vide Laws of the U. S., vol. 3, p. 118.

This is an extension of the act of June 13, 1798, then about to expire by its own limitation, and excludes war down to its date.

7. An act giving eventual authority to the President of the United States to augment the army. (Approved March 2, 1799, vide Laws of the U. S., vol. 3, p. 261.)

This act authorizes the President, "in case *war shall break out between the United States and a foreign European power*, or in case imminent danger of invasion of territory by any such power shall, in his opinion, be discovered to exist," to organize and cause to be raised a certain force therein specified. Every one knows that the "European Power" referred to was France. All causes of difference between us and Great Britain had been settled by Mr. Jay's treaty in 1794, and the controversy with France was, at the date of this act, at its height. Here, then, we have a legislative recognition of the fact that no rupture had occurred between the two countries up to the 2d of March, 1799.

8. An act to suspend in part an act entitled "an act to augment the army of the United States, and for other purposes."

"*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That all further enlistments under the 2d section of an act entitled 'an act to augment the army of the United States, and for other purposes,' shall be suspended until the further order of Congress, unless, in the recess of Congress, and during the continuance of the existing differences between the United States and the French Republic, *war shall break out between the United States and the French Republic*, or imminent danger of invasion of their territory by the said Republic, shall, in the opinion of the President of the United States, be discovered to exist" (Approved Feb. 20, 1800, vide Laws of the U. S., vol. 3, p. 305.)

It requires some degree of intrepidity for any man to claim that war existed at the date of this act, in face of the explicit language therein contained to the contrary, and yet it did exist then, if at all, and had been raging more than eighteen months! The collisions which occurred between the armed vessels of the two Republics, took place before the passage of the act of the 20th of February, but such collisions were not regarded as war by either Government. They resulted from measures authorized by Congress, on the principle of defence merely, and the United States did not intend to transgress that line, and France well knew that this was the American policy.

Such were the measures adopted by the United States. In the meantime what did France do? I have already said she did not declare war, nor did she ever authorize the capture of the armed vessels of the United States. On the contrary, the moment we assumed a firm and resolute attitude she changed her policy, and began sedulously to cultivate peaceful relations with the United States.

On the 31st of July, 1798, the French Directory issued a decree, in which, after reciting that "information recently received from the French Colonies and the Continent of America,

leave no room to doubt that French cruisers, or such as call themselves French, have infringed the laws of the Republic relative to cruising and prizes; that foreigners and pirates have abused the latitude allowed, at Cayenne, and in the West Indian Islands, to vessels fitted out for cruising or for war and commerce, in order to cover with the French flag their extortions, and the violation of the respect due to the law of nations, and to the persons and property of allies and neutrals," they proceed to lay down and establish a variety of rules and regulations to put down the atrocities, of which we had so long complained.—Doc. 102, p. 379. That this decree was intended for the relief of American commerce, we know from a letter addressed by M. Talleyrand to Mr. Gerry, dated August 3d, 1798, in which he communicated the foregoing decree to that gentleman, and then added, "it depends on the United States, in particular, to cause every misunderstanding to disappear between them and the French Republic."

On the 6th of the same month, M. Talleyrand wrote to Mr. Shipwiuth, our Consul General at Paris, inviting attention to the same decree, and then observes, "You will see, beyond a doubt, in the intentions and acts of the Directory, a motive to effect the commercial security of your fellow-citizens as long as it shall be kept within just limits." So that clearly the object of the decree was to conciliate the United States, and that, too, after we had adopted several of the very measures which it is now said placed us at war with France.

The next step taken by the French Government was, to direct the discharge of the crews of American embargoed vessels, by a circular addressed by the Minister of Marine, to the agents of Marine, at the ports of the Republic, dated August 13, 1798. In this circular I find the following:

"I remark, citizen, by the correspondence of the greater part of the Governors of the ports, that the embargo laid recently upon American vessels, has produced the detention of their crews. The intentions of Government have been ill understood, by the adoption of a measure, that, in the first place, compromits the safety of those vessels, and in the second, seems to place us in a hostile attitude against the United States; when, on the contrary, the acts of Government evince the desire to maintain a good understanding between the two Republics."—Doc. 102, p. 548.

So that France had no idea of being involved in a war with the United States at that date.

On the 18th of the same month, the same Minister addressed a circular to the principal officers, civil and military, of the ports, conceived in the same kind and friendly spirit; in which he says:

"Our political situation, with regard to the United States, citizen, not having undergone, up to this day, any change that might have an influence upon the attentions due to neutral nations, I think it unnecessary to bring to your recollection, that no attempt should be made against the security and liberty of persons, composing the (Etats Majors) officers and (equipages) crews of every American vessel, that is found regular, and that the same course should be observed towards all passengers and other citizens of the United States, furnished with passports or necessary protections. You will use the strictest vigilance, that the intentions of Government, in this respect, be followed by all persons under your command, and if any of them have failed in the due execution thereof, you will do justice to the demand which will be addressed to you, as soon as you shall have ascertained their validity."—Doc. 102, p. 548.

On the 20th, M. Talleyrand communicated these circulars to our consul general, and remarked, that "their contents will prove to you the intention of the Government to remedy the abuses committed against its intentions."—Doc. 102, p. 549.

But a step much more important was taken by France on the 16th of August, when the Directory, by a decree, raised the embargo which had been laid on American vessels. This decree expresses so fully what was the real policy France had decided to pursue towards the United States, that I deem it material to produce it entire. It was as follows:

"The Executive Directory considering, that nothwithstanding the hostile manifestations of the Government of the United States, which have occasioned a momentary embargo upon their vessels, it must be believed, that, unless abandoned to the passions of the British cabinet, that Government, faithful to the interests of the American nation, will take measures conformable to the pacific dispositions of the French Republic, after it shall receive a confirmation of them

"And wishing to pursue the friendly and fraternal habits of France towards a People whose liberty it defended, decrees as follows·

ART. 1. "The embargo laid upon American vessels shall be immediately raised.

ART. 2. "The Minister of Marine and of the Colonies is charged with the execution of the present decree, which shall not be printed."

France was then pursuing a pacific line of policy towards the United States, on the 16th of August, 1798. The war existed at that very time, according to the authority of those who want to get rid of these spoliation claims.

But more conclusive evidence on this point will be found in a truly able and highly interesting letter from M. Talleyrand to the Minister of Justice, dated as late as the 13th of December, 1799,

in which he discussed at considerable length the validity of the celebrated decree of the role d'equipage, which had proved so destructive to American commerce, and indicates a strong opinion against it. In speaking of the decree, he inquires, "is it not a manifest intention to find infringers every where?" and then adds:

"A *role d'equipage* on board has been demanded of the Americans: where was that obligation taken? In the regulations: then they must have opened those regulations and conformed themselves to them, in order to escape the confiscation. So they did, and now-a days they would be condemned for so having done.

"They would be condemned for not having done the thing according to formalities, whose obligat on appeared dubious, and which afterwards was confessed not to exist:"

He concludes his letter with the following significant remarks:

"This is, dear colleague, the manner in which I consider the question. I shall add, that it is not in the moment when the Directory is to gather, the fruits of the conciliatory measures they have taken to prevent hostile combinations between England and America, it would be politic to support the new difficulty raised up by our privateers, which if consecrated (and it could not be but by authority, and by no means after the spirit nor the meaning of the laws or treaties) would occasion numbers of new confiscations, and revive in the United States the general discontent, hitherto the greatest, and I could say, the only force of the American Government against us."—Doc. 102, p. 553-4-5.

Here we have a perfect key to the entire policy of France towards the United States, while the defensive measures authorized by Congress were in full operation. It will be recollected, that the letter was written more than eighteen months after the annulment of the treaties, and after Congress had authorized the public vessels of the United States to attack and capture the armed vessels of France. During that period, says M. Talleyrand, in effect, we have been pursuing a conciliatory policy towards the United States "to prevent hostile combinations" between them and England; and then he adds, it is not at the moment when the Directory are expecting to reap the fruits of that policy that it would be politic to support the pretensions of our privateers under the decree of the role d'equipage, contrary to the spirit of the laws and treaties, which would occasion numbers of new confiscations and revive in the United States a general discontent. Does this look like war, or anything approaching it?

In the letter of the French Ministers to the American Envoys, Ellsworth, Davie, and Murray, under date of August 11, 1800, I find the following passage pertinent to the question I am now discussing:

"In the first place, they will insist upon the principle already laid down in their former note, viz: that the treaties which united France and the United States are not broken: that even war could not have broken them: but that the state of misunderstanding, which has existed for some time between France and the United States, by the act of some agents, rather than by the will of the respective Governments, has not been a state of war, at least on the side of France."—Doc. 102, p. 616.

In a subsequent part of the same letter they use language in some degree conflicting with this, to which the minority report refers, to prove that in the opinion of the French Government, war did exist; I understand those remarks to apply only to a hypothetical case; but if otherwise, the two parts are utterly inconsistent. The latter end of the letter "forgot the beginning."

But that the views of the French Government, as to the relations of the two countries, were in reality such as I represent, can be shown conclusively from the report of Mr. Roderer to the Corps Legislatif, dated November 26, 1801, already referred to, in which he says:

"The commercial agents of the Republic gave rise to and excited some irritation; the commerce of the United States was disturbed by French privateers; several captures, to their injury, followed; the American Congress then believed itself at liberty to declare the United States *exonerated from the treaties which united them to France;* they broke off their relations with her; they granted letters of marque against her armed vessels in the colonies; and the encounters at sea between the vessels of the two nations soon announced that the reconciliation should be hastened if it was desired that it should not become very difficult."

"Such was the state of things when three American negotiators arrived at Paris, led thither by the desire and the hope of preventing a signal rupture."

Then the American negotiators went to Paris to prevent a war, not to close one which had been raging near two years!

To the same end I produce the report of Mr. Adit to the tribunat, dated December 4, 1801, in which he says: "In consequence of this bill" (referring to the act of the 7th July, 1798, annulling the treaties) "the American Government suspended the commercial relations of the United States with France, and gave to privateers permission to attack the armed vessels of the

Republic. The national frigates were ordered to seek them and to fight them. A French frigate and sloop of war, successively and unexpectedly attacked by the Americans, were obliged to yield to force; and the French flag, strange versatility of human affairs, was dragged, humiliated, before the same people, who, a little while ago, with eager shouts, had applauded its triumph.

"'Twas getting past recovery; war would have broken out between America and France, if the Directory, changing its system, and following the counsels of prudence, had not opposed moderation to the unmeasured conduct of the President of the United States."

From this it appears that the French Government did not regard the defensive meesures adopted by the United States as being war, though they resulted in the capture of two of their public armed ships. "'Twas getting past recovery," (says M. Adit.) "War would have broken out between *America* and *France* had it not been for the prudence and moderation of the Directory.

The Senate will not forget in this connection, the remark (already quoted,) of Napoleon, at St. Helena, as reported by Mr. Gourgand, that the Convention of 1800, not only put an end to the treaties, but "*annulled the just claims which America had for injuries done in* time of peace." Comment is unnecessary!

I will now turn from the views of the French Government, to those of the United States. We have seen what Congress thought of our relations, but what did our Executive think?

1. Extract from the instructions to Messrs. Ellsworth, Davie, and Murray, Envoys and Ministers to the French Republic, dated October 22d, 1799:

"This conduct of the French Republic would well have justified an immediate declaration of war on the part of the United States; but desirous of maintaining peace, and still willing to leave open the door of reconciliation with France, the United States contented themselves with preparations for defence, and measures calculated to protect their commerce."—Doc. 102, p. 561.

2. Extract from a letter dated April 11, 1800, from our Envoys to the French Ministers:

"With respect to the acts of Congress of the United States, which the hard alternative of abandoning their commerce to ruin imposed, and which, far from contemplating a co-operation with the enemies of the Republic, did not even authorize reprisals upon her merchantmen, but were restricted solely to the giving of safety to their own, till a moment should arrive when their sufferings could be heard and redressed.—Doc. 102, p. 583.

3. Extract from a letter dated August 20, 1800, from our Envoys, to the French Ministers:

"Nor could America ever conceive that protecting from depredations her property which remains, had impaired a claim for that of which she has been despoiled. More difficult still of comprehension would it be, that she had aggressed by declaring the truth; for doubtless declaring that the treaties ceased to bind her, which the other party had long and greatly infracted, was no more. If, however, that declaration, as necessary for judicial purposes as it was conformable to truth, had amounted to a cause of war; yet, as the wisdom of France reconciled it to peace, its application on the principle of war to the extinguishment of claims, would be inexplicable.—Doc. 102, p 623.

Extract from the message of President Jefferson, to Congress, December 8, 1801.

"It is a circumstance of sincere gratification to me, that on meeting the great council of the nation, I am able to announce to them, on grounds of reasonable certainty, that the wars and troubles which have for so many years afflicted our sister nations, have at length come to an end. Whilst we devoutly return thanks to the beneficent Being who has been pleased to breathe into them the spirit of conciliation and forgiveness, we are bound with peculiar gratitude, to be thankful to Him that our own peace has been preserved throughout so perilous a season, and ourselves permitted quietly to cultivate the earth, and to practice and improve those arts which tend to improve our comforts, &c"—5 Wait's State Papers, v. 4, p. 325-6.

No doubt can be entertained, with these papers before us, of the entire concurrence of the American Executive with that of France, in viewing the relations of the two countries as pacific. The measures of the United States were defensive, those of France conciliatory, and both sought a return to their ancient relations of friendship and good understanding—the United States, because their policy was peace, and France, because she dreaded a hostile combination between them and Great Britain. At length they remove what they often characterised as a mere "transient misunderstanding," by the Convention of 1800, limited, however, to eight years. They made no treaty of peace, and who ever heard of a Convention of Peace! and that, too, limited to eight years!—a mere truce! Why did not the war break out again at the end of the period limited, and why have the relations of the two countries been peaceful to this day? Whatever war there was must have been latent, of which the parties knew nothing! Whoever looks into the

subject will find much less of war between the two Republics, than there is of aggression by those who set up this pretence, on the truth of history.

It only remains for me to notice one objection more. It has and will be said, that these claims amount to much more than the sum stipulated in this bill; that if any thing is due, the whole is due; and that if it is our duty to pay any thing, we are bound to pay in full. Notwithstanding the provisions in this bill, that the amounts to be received shall completely exonerate the Government, it is urged there will remain for the balance an irresistable equity which Congress will be constrained sooner or later to liquidate. The answer to this is obvious. We are not obliged to pay the full amount, principal and interest. It is our duty to indemnify the parties; that is to say, to make up to them the damages they have sustained; and in estimating these, the value of the claims as against France, is an important element. They are not, in considering what would be a fair equivalent, to be deemed as so much cash in hand, but as demands on a foreign Government in a hazardous situation, which, if realized at all, might not be in full, and could only in part after much delay, trouble and expense. In this view, the amount proposed, may be regarded as fair and reasonable. But the sum named in the bill, is offered to the parties on the condition that it shall be in full, and if any claimant takes his share, he agrees to the condition. It will then be the case of a compromise, offered and accepted, which must end the whole matter. The objection comes with an ill grace from those who stoutly deny all liability. Their consciencies, if there should remain a balance unpaid, will be untouched; and we who entertain quite opposite opinions, proffer our co-operation to protect the treasury.

I have thus, I trust, shown conclusively, that the United States are bound to make some indemnity to these claimants. In view of the facts and considerations developed, can there be a doubt as to what the result would be, were it competent for the parties to file a bill in equity against the Goverenment? Indeed, our national responsibility in this regard, has already been pronounced by the highest juridical authority, and I produce here the record:

COLUMBIA, *January* 29, 1844.

SIR: I have this moment received your letter of the 24th instant, inquiring of me concerning Judge Marshall's opinion on the claims for French spoliations anterior to 1800.

When that subject was under discussion in the Senate some years since, as a member of the committee to which it had been given in charge, I bestowed no little pains in the investigation of it, and, as I believe it will happen to every one that does so, I became thoroughly satisfied of the justness of the claims.

While they were under discussion in the Sonate, they happened to be the subject of conversation between Mr. Leigh, Mr. Calhoun, and myself, one evening in our mess parlor, when Judge Marshall steped in, and, having overheard or being informed of the subject of conversation, asked to share in it, saying that, having been connected with the events of that period, and conversant with the circumstances under which the claims arose, he was, from his own knowledge, satisfied that there was the strongest obligation on the Government to compensate the sufferers by the French spoliations. He gave a succinct statement of the leading facts, and the principles of law applicable to them, in so precise and lucid a way, that it seemed to me a termination of the argument by a judicial decision. It was apparent from his manner that he felt an interest in the inculcation of his opinion, arising from deep conviction of its truth.

I most heartily desire that the long delayed and very inadequate justice now proposed to these unfortunate claimants will be made this session.

I am, dear sir, your obedient servant.

WILLIAM C. PRESTON.

JAMES H. CAUSTEN, Esq., *Washington.*

[Vide Appendix to Mr. Clayton's speech, delivered in the Senate April 23d and 24th, 1846.]

The obligation then being perfect, why should it not be met at once. These claimants have long been looking to us for redress—most of the original parties have gone down to the grave, and with respect to the remnant, they years since realized the well known truth, that "hope deferred maketh the heart sick." I find in one of the city papers of this morning the subjoined striking and painful incident; it should arrest the attention of the Senate:

SINGULAR COINCIDENCE.—The newspapers yesterday announced the death of Col. Kenderton Smith, a public-spirited citizen, whose life was usefully employed, and who was generally esteemed by his friends and acquaintances. It was only a week or two back that Col. Smith, who was interested in Congress passing the bill of indemnity for French spoliations previous to 1800, in a conversation in this office, remarked, at that time appearing in good health, that the measure ought to have been passed years ago. "We have been waiting," he said, "for years for justice, and Congress ought either to pass the bill or reject it. All of us who have claims *will be dead* before it will ever be passed." There is something almost prophetic in these words. Yesterday the death of Col. Smith was announced, and Congress yesterday was to take up the bill alluded to, though the proceedings do not mention whether they did any thing with the bill or not.—*Philad. Ledger.*

Many of the claimants besides Col. Smith have recently been required to submit to the inexorable law of our nature. I can recollect several with whom I had the honor to correspond when I had charge of the subject in the House in 1846, among them Leman Stone, Esq., of Derby, Connecticut, who shortly after died at the advanced age of ninety. I regret I have mislaid his letter, otherwise I would produce it; I am sure it would make a deep impression on the Senate. This morning I met in this chamber an aged gentleman, formerly a citizen of Alexandria, who was a sufferer to the amount of $50,000, and who addressed me almost in the accents of despair—he feared, with Col. Smith, that he and other original claimants would "all be dead" before Congress would pass the bill. He could not doubt the justice of the Senate—this body had done its duty; but he was obviously apprehensive that non-action elsewhere as heretofore might blight his hopes. But I must believe that the hour for procrastination has gone by, until the event proves me to be wrong.

If, however, contrary to every appeal and every effort, this subject shall be thrown over to another Congress, shall we not be in danger of incurring all the infamy of repudiation? Indeed, I consider the infidelity of some of our States to their engagements, which has given occasion to so much remark, as nothing in comparison with the injustice and perfidy which these transactions disclose. To deny all relief, or even to postpone it, I shall deem an ineffaceable blot on our national escutcheon, and a crying reproach to the American name and character.