4-21-1884

Message from the President of the United States, transmitting, in answer to Senate resolution of December 5, 1883, report of the Secretary of State respecting the execution of the Treaty of 1819 with Spain.

48TH CONGRESS, 1st Session. } SENATE. { Ex. Doc. No. 158.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING,

In answer to Senate resolution of December 5, 1883, report of the Secretary of State respecting the execution of the treaty of 1819 with Spain.

APRIL 21, 1884.—Read and referred to the Committee on Foreign Relations and ordered to be printed.

To the Senate of the United States:

In response to the resolution of the Senate of the 5th of December last, respecting the execution by the United States of the ninth article of the treaty of 1819 with Spain, I transmit herewith a report of the Secretary of State and its accompanying papers.

CHESTER A. ARTHUR.

EXECUTIVE MANSION,
Washington, April 18, 1884.

To the President:

The Secretary of State, to whom has been referred the resolution of the Senate of the 5th December, requesting the President to inform that body, if not incompatible with the public service, first, "whether or not, in his opinion, the ninth article of the treaty of 1819 between the United States and Spain has been fully executed by the United States"; second, "if it has not been fully executed, then whether the impediment to its execution arises out of unsettled questions of fact or undetermined questions of law, and what, if any, are such unsettled questions of fact and undetermined questions of law," has the honor to report that, supposing, as is contended by Spain, the article of the treaty adverted to has not been fully executed by the United States, this Department is not aware of any unsettled questions of fact which have retarded a close of the controversy.

The principal and perhaps the only question of law involved is whether the United States are bound to pay interest on the amount awarded to claimants by the Florida judges pursuant to the acts of Congress for carrying the treaty into effect. Those acts, however, conferred upon the Secretary of the Treasury an appellate power from the decisions of those judges, and every such officer to whom application for interest on the awards has been made has, by virtue of the discretion vested in him, decided that interest was not justly payable. The same decision has been rendered by the several Attorneys-General of the United States to whom the subject has been referred. Deeming it possible, however, that the present Attorney-General might entertain a different

opinion, a letter was some time since addressed to him upon the subject, a copy of which, together with the reply of that officer, is hereunto annexed. In addition to those papers, a letter addressed by the Secretary of State to the chairman of the Committee on Foreign Affairs of the House of Representatives, dated April 10, 1882, transmitting a note from Mr. Barca, the Spanish minister, and a statement showing the several amounts allowed and paid as principal on the several claims which the courts returned as interest-bearing, is likewise subjoined.

FRED'K T. FRELINGHUYSEN.

DEPARTMENT OF STATE,
Washington, April 17, 1884.

Mr. Frelinghuysen to Mr. Brewster.

DEPARTMENT OF STATE,
Washington, June 26, 1883.

SIR: The records of the Department of Justice will show that several of your predecessors have sanctioned the decision of Mr. Levi Woodbury as Secretary of the Treasury against the accountability of this Government for interest on the awards of the Florida judges in cases of claims of Spanish subjects, under the ninth article of the treaty with Spain of 1819. The proceedings of those judges and of the Secretary of the Treasury were authorized by the acts of Congress of 1823 and 1834.

It seems obvious from the tenor of those acts that the purpose of Congress in passing them was to create a commission for examining the complaints of Spanish subjects for losses resulting from the operations of American troops in Florida. The only protection provided for this Government against errors in the decisions of the Florida judges was the right of appeal to the Secretary of the Treasury, who, by the acts referred to, was vested with unlimited discretion as to his allowances. This he exercised by rejecting the awards in some cases, diminishing them in others, and refusing to allow a claim for interest in any. It is understood that there is no record of any objection by Spain to the provision of the acts referred to by which this Government proposed to make the awards stipulated for in behalf of Spanish subjects, and it was not until December, 1849, that she officially objected to a rejection of the claim for interest, which was done in a note of Mr. Calderon, then minister here, to this Department of the 30th of that month.

I inclose a printed copy of letters of 10th and 11th of April, 1882, upon the subject, addressed by the Department to the Hon. C. G. Williams, chairman of the Committee on Foreign Affairs of the House of Representatives. At the close of the former letter three different suggestions were made.

That session closed without any proceedings in regard to the matter, and the last session also. The Spanish minister here is very anxious for a conclusive answer upon the subject.

I will consequently thank you for your opinion as to the liability of the United States under the treaty for the interest claimed, notwithstanding the absence of any express stipulation to that effect, and the silence, also, of the acts of Congress for carrying the treaty into effect.

My impression is that, under the circumstances, ample justice has already been done by this Government to the aggrieved parties.

I have, &c.,

FRED'K T. FRELINGHUYSEN.

DEPARTMENT OF STATE,
Washington, April 11, 1882.

SIR: Referring to my letter of yesterday's date on the subject of the claim of the Spanish Government for payment of the withheld interest on the East Florida claims, I have to request that the letter and its accompaniments be printed, as of utility in connection with any further discussion of the matter.

I have the honor to be, sir, your obedient servant,

FRED'K T. FRELINGHUYSEN.

Hon. C. G. WILLIAMS,
Chairman of the Committee on Foreign Affairs,
House of Representatives.

DEPARTMENT OF STATE,
Washington, April 10, 1882.

SIR: I have the honor to acknowledge the receipt of Mr. Benjamin Wilson's letter of the 2d ultimo, asking, on behalf of the Committee on Foreign Affairs, information as to the portions of the award made under the treaty of 1819 with Spain which is claimed to be unpaid.

In reply to the request of the committee, I have the honor to lay before them the history of this claim as made, and also a tabular statement showing the amount of the claims.

In the ninth article of the treaty with Spain, concluded on the 22d of February, 1819, the United States agreed—

"To cause satisfaction to be made for the injuries, if any, which by process of law shall be established to have been suffered by the Spanish officers and individual Spanish inhabitants by the late operations of the American Army in Florida." (8 Stat. at L., 260.)

In 1823 Congress enacted:

"That the judges of the superior courts established at Saint Augustine and Pensacola, * * * Territory of Florida, respectively, are hereby authorized and directed to receive and adjust all claims arising within their respective jurisdictions of the inhabitants of said Territory, or their representatives, agreeably to the 9th article of the treaty with Spain, by which the said Territory was ceded to the United States; * * * that in all cases in which said judges shall decide in favor of the claimants, the decisions, with the evidence on which they are founded, shall be by said judges reported to the Secretary of the Treasury, who, on being satisfied that the same is just and equitable, within the provisions of the said treaty, shall pay the amount thereof to the person or persons in whose favor the same is adjudged." (3 Stat. at L., 768.)

Under this act the courts, both in East and West Florida, took jurisdiction of claims. A question early arose as to the extent of their jurisdiction and the meaning of the word "*late*" in the act. A decision of Secretary Crawford as to the West Florida claims, and a subsequent decision of Secretary Rush as to the East Florida claims, caused the passage of an act in 1834 enlarging the jurisdiction of the courts, as construed by the Secretaries of the Treasury. By this act Congress authorized the judge of the superior court of Saint Augustine to receive, examine, and adjudge all cases of claims for such losses not theretofore presented to said judge, or in which the evidence was withheld in consequence of the decision of the Secretary of the Treasury that such claims were not provided for by the treaty, provided the claims should be presented within one year from the passage of the act; and the Secretary of the Treasury was directed to pay the amount awarded by the judge in all cases where his decision should be deemed by the Secretary to be just. (6 Stat. at L., 569.)

In an act passed April 12, 1847, after the admission of Florida, it was enacted that the unfinished business then pending before the judge of the superior court at Saint Augustine be transferred to the judge of the district court of Florida, and the district judge was empowered to proceed to determine and finish all such business. (9 Stat. at L., 130.)

In the exercise of the discretion reposed in them by Congress, the Secretaries of the Treasury revised various judgments of the courts upon the claims submitted to them in three respects: (1) Some of them they rejected entirely as not coming within the treaty. (2) Some of them, on examination of the documentary proof, they reduced in amount, either in consequence of finding valuations excessive or in consequence of finding items included in judgments which did not properly come within the treaty. (3) By rejecting interest upon all claims on which interest is allowed.

The grounds for rejecting or modifying the claims in the first and second of these classes are stated in Secretary Woodbury's letter of January 3, 1837, to the Speaker of the House of Representatives (H. Ex. Doc. 67, Twenty-fourth Congress, second session). They are, in brief, (1) That some were claims for slaves who had left their masters before the invasion of 1818 and joined the hostile Indians. (2) That some

were for damage and losses occasioned or done by Indians hostile to the United States. (3) That some were for property of Spanish subjects who were acting with the enemies of Spain, which had been destroyed by Spanish troops.

The amounts and dates of the several judgments rendered by the courts, together with the amounts allowed on the same by the Secretaries of the Treasury, and the several payments made on the same, with the dates thereof, are shown in detail in the tables accompanying and forming part of S. Ex. Doc. 82, first session Thirty-third Congress.

It is presumed, however, that in the present state of the controversy it will not be found necessary to furnish these data any further than their results appear in the tables accompanying this letter.

The first decision rejecting interest was made by Secretary Woodbury on the 20th December, 1836. In the case of John Gianopoli he allowed the claim as adjudged "with the exception of interest, which it is believed has not been allowed in claims similarly situated."

The claimants very early took exception to the rejection of the interest, but nevertheless the Treasury continued to follow the precedent of Mr. Woodbury's decision.

In 1841 Secretary Ewing took the opinion of Attorney-General Crittenden on the question. He answered that, without determining whether in justice interest ought or ought not to be allowed, the terms of the acts of 1823 and 1834 did not authorize the courts to allow it. (3 Opinions Attorneys-General, 638, 639.)

In 1843 the Secretary of the Treasury again took the opinion of the law officer of the Government. Attorney-General Nelson replied that he did not regard it as an open question; that Mr. Crittenden had already decided it, and, further, that he could see no reason to question the soundness of Mr. Crittenden's opinion. (4 Opinions, 292, 293.)

In 1849 Secretary Walker again consulted the Attorney-General. Mr. Crittenden, who had again become Attorney-General, gave an elaborate opinion, from which I extract the following:

"Of the claims provided for by the treaty and by the acts of Congress before mentioned, it appears that during the last twenty-five or twenty-six years more than two hundred have been from time to time adjudicated by the Florida judges and presented to the Treasury Department for revision and payment by the Treasury; that in the great majority of cases interest was allowed by those judges in their decrees and awards, and that in every such instance, during the whole period of time, the claim for interest has been decided against and rejected by every Secretary of the Treasury. These Secretaries were by law made special judges in this matter, with *final* jurisdiction. Their decisions must be presumed to have been made with deliberation and upon due consideration of the before-mentioned acts of Congress, and of the treaty, so far as it was by reference made a part of them.

"The opinions of several Attorneys-General, who were officially called on for their advice, have sanctioned those decisions without the dissent of any one of them, so far as I am informed. Some years ago Mr. Attorney-General Nelson, in an opinion given by him on this very subject, declares this question of interest *not open* for discussion. He considered it then as settled by previous decisions and practice that no interest was to be allowed. In that opinion I concur." (5 Opinions Attorneys-General, 352, 353.)

In December, 1849, Mr. Calderon, the Spanish minister at Washington, opened the question diplomatically in a note to Secretary Clayton, in which he stated that he believed the judgments of the courts to be in conformity with the express stipulations of the treaty and the public law which controls such decisions. (S. Ex. Doc. 205, Forty-sixth Congress, second session, page 6.)

Secretary Corwin, in 1851, referred all these cases to the Solicitor of the Treasury. The Solicitor was of opinion that the United States were bound to pay the full amount of the decrees of the Florida judges, and the cases were sent back to the judge of the district court of the United States for the northern district of Florida, under the act of 1847.

The court, after examination, entered decrees sustaining the original decisions of the Territorial district courts as to interest. An appeal was taken to the Supreme Court, which was dismissed for want of jurisdiction. Chief Justice Taney, in the opinion of the court, said of the tribunal provided by law for adjusting the claims:

"It is too evident for argument on the subject that such a tribunal is not a judicial one, and that the act of Congress did not intend to make it one." (13 Howard, 47.)

Not being a judicial tribunal, the Supreme Court would not entertain appellate jurisdiction over it.

In 1853, Secretary Guthrie referred the same cases again to Attorney-General Cushing. In an elaborate opinion that officer said:

"The conviction is forced on me that there is not in the history of the Government a clearer case than this of *res judicata*, both as opinion and as action. If four concurrent opinions of Attorneys-General, at different times, without any contradictory or

dissentient opinion, and the unvarying action of successive Secretaries of the Treasury for twenty years, either affirmatively in expressly refusing, or negatively in not allowing, interest, do not constitute a decision of the question of the official duty of the Secretary of the Treasury in the premises, then it is not easy to see how there is to be any decision of a matter of law involved in the action of the Executive Department." (6 Opinions Attorneys-General, 541, 542.)

In 1857, after the Court of Claims had been organized as a commission to hear and report to Congress, but before authority had been conferred upon it to render judgment against the United States, these cases were referred to it. After hearing, a majority of the judges reported that, inasmuch as the rights of claimants must depend upon the construction of the acts of Congress and not upon the stipulations of the treaty, the claimants had no legal cause of action.

In 1869, Mr. Roberts, the then Spanish minister at Washington, called the attention of Mr. Fish, then Secretary of State, to these claims.

In 1870, Mr. Roberts again called Mr. Fish's attention to the subject. On March 8, 1871, Mr. Fish replied:

"As early as December, 1836, a claim identical in principle with those you have presented was submitted to the then Secretary of the Treasury and was disallowed by him. I will not enter into the question whether that decision was correct or erroneous, for the precedent has been so often and so long permitted to control the disposition of other claims under the ninth article of the treaty of 1819, as to preclude the Executive branch of this Government from disregarding or reversing it. The judicial branch has declared itself incompetent to deal with the subject. It has thus become a practical necessity of administration to await further legislation by Congress before taking any fresh action in relation to these claims."

Mr. Roberts on June 13, 1871, asked a review of this decision; and Mr. Fish on the 15th of June replied that he was obliged to adhere to the opinion already expressed.

On February 15, 1872, Mr. Roberts asked Mr. Fish to seek the desired legislation of Congress; and Mr. Fish on March 6, 1872, informed Mr. Roberts that the matter had been submitted to Congress through the chairman of the Committee on Foreign Affairs of the House of Representatives.

Congress did nothing, and on the 9th January, 1874, Admiral Polo de Bernabé, Spanish minister at Washington, again invited Mr. Fish's attention to the subject. Mr. Fish answered on the 10th January, 1874, that the correspondence already submitted to Congress showed that further legislation was deemed indispensable; that if Congress should pass the requisite law it would be promptly and faithfully carried into effect; but that, under all the circumstances, the proper functions of the Department were believed to be limited to making known to Congress all the facts which might be desirable as a basis for legislation. (S. Ex. Doc. 205, second session Forty-sixth Congress, pp. 31, 32.)

In 1878, Mr. Mantilla, the Spanish minister at Washington, renewed the discussion in a note to Mr. Evarts. (Ib., page 32.) On the 3d June, 1879, Mr. Mendez de Vigo, the successor to Mr. Mantilla, called Mr. Evarts's attention to the fact "that a year had elapsed and the note still remained unanswered." (Ib., page 38.)

On the 28th of the same June Mr. Seward replied that—

"During a long series of years and with every disposition on its part to do justice, not only to the merits of the individual claims, but also to the advocacy of those claims, with more or less insistance by the Government which you represent, the complex and correlated factions of the executive, legislative, and judicial branches of this Government, and the almost complete unanimity with which one after the other of those co-ordinate branches has been constrained to regard the action heretofore had in respect to those claims as *res judicata*, have repeatedly barred the termination of the matter by the direct process advocated by Señor Mantilla's note. It is not to be supposed that a stumbling block of such magnitude, which has stood in the way of an adjustment for a third of a century in spite of all constitutional efforts to remove it, is to be lightly brushed aside by the mere executive will of any one office of the administration, independently of judicial or legislative co-operation." (Ib., page 39.)

On the 13th October, 1879, Mr. Mendez de Vigo replied to this note. (Ib., page 45.) This brought a rejoinder from Mr. Hay on the 1st March, 1880, in which he said:

"Upon due consideration the President has thought proper to submit the whole matter to the decision of the Congress of the United States." (Ib., page 51.)

It is not known at this Department that Congress took any action on this message. On the 8th day of December last, Mr. Francisco Barca, the present minister of Spain at Washington, transmitted to my predecessor a note, of which I inclose a copy, it being the only important paper in the recent correspondence on this subject which has not already been submitted to one or the other branch of Congress.

The sole question raised between the two Governments is as to the non-payment of interest on the amount awarded. I inclose in this letter a table which shows the several amounts allowed and paid as principal on the several claims which the courts returned as interest-bearing. This represents the only principal fund which can feed a

claim for interest. This table also shows the amount of interest in each case at the rate (5 per cent.) and for the period allowed by the court. When the principal was determined and in due course paid, the fund to feed the claim for interest ceased.

The actual amount in dispute, therefore, according to the understanding of this Department, is $1,199,668.58.

It thus appears that the claim for interest is a stale claim, the same having been rejected forty-six years ago.

This rejection, it is true, has not been acquiesced in, but while the claim for interest has been persistently insisted upon, it has, nevertheless, been persistently rejected, as appears by the rulings of the Secretaries of the Treasury, having special jurisdiction of the question, and by the opinions of successive Attorneys-General, and by that of the Court of Claims. It would seem that this question is *res judicata*. Were the question a new one, without giving an opinion as to what would be the rule of international law, I may call your attention to the fact that this Government has not usually paid interest to its creditors; and to the fact that the rule with this Government is that when a creditor of the United States accepts the money awarded him by a commission or special tribunal he is held to be concluded by that acceptance. He is not permitted to accept the award as a payment on account. This rule is manifest and approved by the following adjudications of the Supreme Court of the United States:

In the case of the United States *vs.* Justice (14 Wall., p. 535), it was held that—

"Where a contractor with the United States and the United States disagree as to what is justly due to the contractor, and the question is referred to a commission constituted by proper authority to audit such claims as that of the contractor, and the commission finds a certain sum as justly due, and the contractor receives that sum, he cannot sustain a claim in the Court of Claims for a further sum, even though he has given no receipt in full."

And in the United States *vs.* Adams (7 Wallace, p. 463), referring to claims arising out of contract, and heard by a special commission appointed for the purpose, it was held that—

"If the claimant voluntarily come before a board thus appointed and present his claim, and the board investigate it, and Congress afterward enact that all claims allowed by such board shall be deemed to be due and payable and be paid upon presentation of a voucher with the commissioner's certificate thereon, and the petitioner do present his voucher and receive payment of the sum so allowed by the board, he cannot afterwards recover in the Court of Claims a balance which would remain, on an assumption of the validity of his original contract."

And in the case of the United States *vs.* Child & Co. (12 Wal., 232), the doctrine of the case of the United States *vs.* Adams (7 Wal., 463) was affirmed.

It may be claimed that this rule would not apply when the question is one not between an individual and the United States, but is one of an international character.

In closing, I take leave to express the earnest wish of this Department that Congress may find time to make some positive expression of its wishes. I also take leave to indicate some ways in which this may be done:

I. Congress may be of opinion that the Government of Spain has no just claim upon the Government of the United States in respect of this deferred interest. In that case I hope it will be willing to express its opinion by a positive resolution to that effect which shall terminate this controversy.

II. Congress may be of opinion that there is a just claim. In that event I presume it will make the requisite appropriation for extinguishing the claim.

III. Congress may be in doubt whether the claim should or should not be allowed, and in that case I suggest that it be again referred to the Attorney-General for his opinion, and it may then be determined whether the claim should be referred to the Court of Claims for decision.

I have the honor to be, your obedient servant,

FRED'K T. FRELINGHUYSEN.

Hon. C. G. WILLIAMS,
Chairman Committee on Foreign Affairs, House of Representatives.

[Inclosures.]

1. Mr. Barca to Mr. Blaine, Washington, December 8, 1881.
2. Statement of deferred interest on the East Florida Claims.

No. 1.

Mr. Barca to Mr. Blaine.

LEGATION OF SPAIN AT WASHINGTON,
Washington, December 8, 1881.

The undersigned, envoy extraordinary and minister plenipotentiary of His Catholic Majesty, has received instructions from his Government to call the attention of the honorable Secretary of State of the United States to the old matter of the Florida

claims, and particularly to the note addressed to this legation by the Department of State on the 7th day of April, 1881.

Under date of March 1, 1880, the Assistant Secretary of State wrote to this legation as follows:

"After a careful examination, the President has decided that the whole question should be submitted to the Congress of the United States, to which body I have this day sent the message of which a copy is herewith inclosed."

My immediate predecessor in this legation, to whom the note referred to was addressed, regarded the decision and act of the President as a manifestation of that officer's desire to remove the obstacles which lay in the way of the complete execution, on the part of the United States, of the treaty of 1819; yet Mr. Mendez de Vigo was, at the same time, compelled to express to the Department of State his regret that the President's message to the Senate contained no indication with regard to the justice of the claim preferred by Spain.

It appears that, together with the message of the President, all the correspondence was transmitted that has passed between this legation and the Department of State since 1849 in relation to the Florida claims, and likewise the reports made upon the same by certain American judicial officers. The whole of the diplomatic correspondence thus transmitted to the Senate, with its accompaniments, was referred by that body to the Committee on Foreign Relations on the 13th day of May, 1880, and ordered printed.

On the 1st of March, 1881, the committee to whom the President's message and all the documents bearing upon the case had been referred, presented a carefully prepared report, after hearing which the Senate ordered it printed and excused the committee from giving any further attention to the subject.

The honorable Senate committee which has charge of the foreign affairs of the United States commenced its report by stating that nothing remained to be said with regard to the question of the Florida claims, and that it was time for a final decision to be made that should put an end to the controversy.

The committee added the following important declaration:

"In the opinion of your committee the President is the only officer of the United States Government who has a constitutional right to carry on a discussion with Spain, through the medium of a diplomatic agent, on the subject of these claims."

It added elsewhere:

"It would evidently be out of place, nay, improper, for Congress to declare, in advance of a decison by the Executive, or by that branch of the Government in which the treaty-making power resides, that Spain's interpretation of Article IX of the treaty of 1819 is correct or incorrect."

The question which has been so long pending between Spain and the United States was declared by the committee to be "not merely a *domestic*, but an international question."

Finally, it seems to the undersigned that the aforesaid committee very clearly and distinctly hints that it is the constitutional duty of the President to declare whether a just and equitable interpretation of the treaty of 1819 did not require, and does not still continue to require, the Government of the United States to pay the full amount awarded to the claimants by the courts, according to the treaty, with *five per cent. interest* as an indemnity for the loss of the use of the property taken, from the time when the damage was done until the date of the payment, which, notwithstanding the award, was not made to the claimants by Mr. Woodbury, who was, at that time, Secretary of the Treasury.

Although this opinion with regard to the respective duties of the President and Congress in this question, according to the internal regulations of the United States Government, emanates from but one of the two honorable bodies of which Congress is composed, it nevertheless expresses the opinion of that one of the two bodies which has most to do with the foreign affairs of the nation, since in it resides the treaty-making power, according to the Constitution.

The undersigned has devoted special attention to the report of the Senate Committee on Foreign Relations, because in its hands are the treaties negotiated by the President with foreign powers. The decision of the Senate in the report in question is, in the opinion of the undersigned, of capital importance, from the fact that in that honorable body resides a part of the treaty-making power of the Washington Government.

Another report on the same subject was submitted on the 14th day of February, 1881, by the House Committee on Foreign Relations, together with a bill ordering the immediate payment of the claims by the Executive.

This report was in many respects even stronger [than] that of the Senate committee, and must be accepted, in the judgment of the undersigned, as a declaration by the popular branch of the American Congress in favor of all that is claimed by Spain in this matter.

The facts, the justice, and the logic of that report of the House committee are, in

the opinion of the minister of Spain, wholly unanswerable, while the legal acumen displayed in its preparation is very great.

In the view of the undersigned, the United States Senate appears, by its decision of March 1, 1881, manifestly to have dissented from the opinion expressed by the Department of State to this legation under date of March 8, 1871, according to which "it had become a practical necessity of administration to await further legislation by Congress before taking any fresh action in relation to these claims."

On the 10th of January, 1871 [a pretty careful search fails to show that any such letter was sent to the Spanish legation by the Department on the date stated], the Department of State again informed the legation of Spain that, upon mature consideration, it was believed that the action which it was proper for the Department to take consisted simply in laying all the antecedents that might be desirable as a basis of legislation before Congress.

Very nearly the same thing was stated by the Department under date of June 28, 1879, in reply to the notes addressed to the honorable Secretary of State by the Marquis of Villa Mantilla on the 30th of May, 1878, and by Don Filipe Mendez de Vigo, on the 3d of June, 1879. That is to say, that during the ten years which elapsed between 1871 and 1881, the Spanish Government has always encountered the same excuse at the Department of State, viz, that neither the President of the United States nor any member of the executive branch of the Government of the Republic had any legal power to correct the decision in pursuance of which Mr. Woodbury, who, in 1834, was Secretary of the Treasury, refused payment of a part of the amount awarded by way of indemnity, whether the President did or did not consider this as a violation of the treaty of 1819, and that that obstacle could be removed by Congressional legislation only.

Now, did not the Senate of the United States, by its resolution of March 1, 1881, put an end to the validity of this oft-repeated excuse, inasmuch as it therein explicitly stated that it was the duty of the President previously to declare whether, in his opinion, the decision of the Secretary of the Treasury was a just one and in reasonable accord with the treaty of 1819?

What Spain now asks is that the President (to use the words of the Senate Committee on Foreign Relations) *shall "use his full and untrammeled privileges and rights of discussion and negotiation, in the effort to reach a satisfactory understanding" with regard to* "the two constructions of the treaty of 1819."

The committee was very right when it stated that, in the opinion of Spain, the matter of the Florida claims involved an international, and not merely a domestic question. And what is that question? It is, in brief, as follows:

In 1819, during the reign of Don Fernando VII, the grandfather of my august sovereign, a treaty was concluded between Spain and the United States, in virtue of which not only were all the reciprocal private claims of both Governments liquidated, but the acquisition of both Floridas was insured to the American Union, together with the security of its frontiers in the region of the Gulf of Mexico.

The immense value and importance of these concessions of Spain to the United States cannot, even in our day, be duly appreciated. Among the comparatively meager concessions contained in the treaty for the exclusive benefit of the subjects of Spain is the following:

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

Is there the slightest obscurity or ambiguity in the terms of the promise thus made by the United States?

Although the foregoing clause of the ninth article of the treaty does not state what tribunal is to be created, as the eleventh article does, it cannot be doubted that the clause has reference to a competent, impartial, and conscientious tribunal, according to what, in 1819, was accepted as the recognized law of nations.

The members of the tribunal were to be skilled, upright, and diligent men. Before them was to be laid, in support of the claims, such evidence as should be recognized as being authentic and credible according to the public law which governs such transactions. Whether the witnesses could or should testify under oath or not, and what kind of witnesses should be deemed sufficient, were questions that were left to the decision of the tribunal, which was to settle them in accordance with the principles of universal justice and the law of nations.

It was neither the American nor the Spanish law that was to serve as a guide for the tribunal, but the generally recognized principles of public law. The clause constituted a solemn contract between two sovereign powers.

The damages for which indemnity was provided were those which had been suffered by Spaniards "by the operations of the American Army in Florida." Every phrase, every sentence, every word of the stipulation was to be interpreted according to the public law which was in force at the time when the treaty was made. No American

law, no Spanish law, no practice of American or Spanish courts was to govern the action of the tribunal, if such law or practice was not in harmony with the rule or practice of international law. The measure, the course, and the rules laid down in the treaty were not a measure or a course in conformity with local usage, but with international principles. For the legal interpretation of the words "cause satisfaction to be made," "injuries," and "by process of law shall be established," and of every other word in the stipulation, recourse was to be had to the maxims of what was, at that time, considered by nations as being international law. It thus belonged to international law to settle any doubts or ambiguities that might arise.

The United States could not, according to the treaty, pass any domestic law for the government of the tribunal that should be in violation of international justice and jurisprudence. Neither could the United States insist upon the observance of any of its local laws or practices, if they were not in consonance with public law and universal justice.

The obligations of every nation in a case like the present have recently been defined by an American author of high standing. I refer to Mr. Dana, who, in his notes to Wheaton's works, uses the following language:

"If a treaty requires payment of money, or any special act which cannot be done without legislation, the treaty is still binding on the nation, and it is the duty of the nation to pass the necessary laws.

"If that duty is not performed, the result is a breach of the treaty by the nation, just as much as if the breach had been an affirmative act by any other department of the Government. Each nation is responsible for the right working of the internal system by which it distributes its sovereign functions; and, as foreign nations dealing with it cannot be permitted to interfere with or control these, so they are not to be affected or concluded (*sic*) by them to their own injury."*

Spain made no objection to the laws of the American Congress which were promulgated in 1823, 1834, and 1849, for the execution of the stipulations of the treaty of 1819, but Spain did, and now does, object to the decision of the American Secretary of the Treasury, whereby that officer refused to pay the amount awarded by the judges as interest or indemnity for the loss of the use of the property from the time when the injury was done until the award was made.

This legation thinks that that decision was a violation of the clause of the treaty, because it is a violation of public law. The United States have not denied that the injuries were committed, nor that it is rendered obligatory upon them by the treaty to cause satisfaction to be made for those injuries, and yet the Secretary of the Treasury refused to make the full satisfaction provided for by the treaty, which requires, according to the principles of justice and the law of nations, that the United States should pay the amount awarded by the judges as interest. Spain insists that the treaty requires the payment of that interest, because it is required by the fundamental principles of justice, and by every precept of public law. The amount awarded by way of indemnity under the name of interest was "established by process of law" to be due in the full sense of those words according to the law of nations.

This is not the proper time for the undersigned to enter into a discussion as to whether the Secretary of the Treasury was or was not competent, according to the laws of the United States in 1823 or 1834, to refuse payment of that portion of the award which had reference to the claim for interest, or whether the United States are or are not accustomed to pay interest in their domestic transactions; or, finally, whether the erroneous decision of a Secretary may be rectified by one of his successors or by the President of the United States.

All that the undersigned desires to say is that, in the opinion of Spain, the clause of the treaty of 1819 to which he refers has not been fully executed by the United States because of the refusal of the aforesaid Secretary of the Treasury to pay the sums awarded as interest by the judges who examined and settled the claims presented for redress of the injuries done to the claimants.

In the note addressed by the honorable Mr. Seward to my predecessor, Mr. Mendez de Vigo, on the 28th of June, 1879, are found the following words:

* * * "The Secretary rejected the amounts allowed as interest by the Florida judges, which rejected items now form the basis of the claim under consideration."

Here, then, is an evident identification of the amounts whose payment was refused in their character as interest at the rate of five per centum on the value of the property at the time of its destruction, computed from that time up to the date of the judicial award of indemnity; and from this identification arises, naturally and spontaneously, the only question pending so far as Spain is concerned, that is to say, whether the treaty of 1819 required or permitted the addition of said interest, or whether such addition was therein understood, by way of compensation for the delay in the payment, and for the loss of the use of the property from the time when the injuries were committed until the award was made.

* See *ante*, § 268, and note 139 Kent, i, 165–6. Heffter, § 84. Vattel, Droit des Gens liv. IV, ch. 2, § 14. Halleck, 854.

After a careful and mature examination of the documents transmitted by the President of the United States to the Senate on the 13th of May, 1880, the undersigned has been forced to the conclusion that the honorable Secretary of the Treasury, Mr. Woodbury, when he examined the decisions of the Florida judges, did not examine whether the allowance of interest was just and equitable within the provisions of the treaty, but that he simply inquired whether the allowance of interest was or was not an established practice in the ordinary transactions of the Treasury Department.

The law of 1823 very distinctly ordered the judges to receive and adjust the claims "according to the provisions of Article IX of the treaty with Spain." It likewise ordered the Secretary of the Treasury "to pay the said amounts to the persons to whom they had been awarded," provided that "he be satisfied that the same are just and equitable within the provisions of the treaty." Thus, then, the law of 1823 made the treaty the *norm* and *rule* whereby both the judges and the Secretary of the Treasury were to be guided.

The subsequent law of 1834 is, however, somewhat different in its provisions. The passage of this law was due to the uncalled-for refusal of the Secretary of the Treasury to pay certain indemnities awarded for losses in the years 1812 and 1813. The law of 1834 ordered the Secretary of the Treasury to pay these indemnities "in all cases in which the decision of said judge shall be considered just by the Secretary of the Treasury." This law, therefore, made no special reference to the treaty.

In the decision adopted by Secretary Woodbury in respect to the claim of Gianopoli, he refused to pay interest in virtue of the powers conferred upon him by the aforesaid law of 1834, but without considering the previous law of 1823. The undersigned, with all the more reason, is inclined to think that Mr. Woodbury, when he refused to pay a part of what the judges had awarded, considered neither the laws nor the international usage with respect to the allowance of interest, inasmuch as the undersigned finds that the United States have always maintained, from the beginning of their history, in their relations with foreign powers, that the principles of strict justice and of public law require that interest should in all cases be paid, as was decided by the Florida judges.

The United States demanded interest of Spain three-quarters of a century ago, under circumstances similar to those of the Florida claims, and Spain paid that interest. The undersigned refers to the claims against Spain which grew out of Article XXI of the treaty with the United States of October 27, 1795, according to which the tribunal appointed for its execution awarded interest as an integral part of the indemnity.

The United States at this very time are demanding and obtaining interest by way of compensation for damages, and it is daily awarded by the Spanish-American Commission now in session at Washington.

The United States likewise insisted upon the payment of interest in execution of the treaty of Ghent. The Emperor of Russia decided that the United States, according to that treaty, should be indemnified by Great Britain for the total amount of the private property that had been seized and carried off by the British forces. A mixed commission was appointed to settle the claims declared payable by the decision of the Emperor of Russia, and at the very outset of its proceedings the question was raised whether the payment of interest did or did not form part of the just indemnity referred to by the imperial decision. The American commissioners insisted that interest should be allowed, and they finally gained their point, Great Britain paying the United States the sum of $418,000 as interest only.

The treaty of 1794 between the United States and Great Britain contained a clause whereby Great Britain pledged herself to pay to the United States full indemnity for the illegal seizure of American vessels by the British cruisers.

In execution of that treaty a mixed commission met at London, and, as has been said, in each of the cases decided, the commission allowed interest as an integral part of the indemnity. Nay, one of the American commissioners, even declared the true doctrine with regard to the payment of interest to be the following:

"To reimburse the claimants the original cost of their property and all the expenses they have actually incurred, together with interest on the whole amount, would, I think, be a just and adequate compensation.

"This, I believe, is the measure of compensation usually made by all belligerent nations, and accepted by all neutral nations, for losses, cost, and damages occasioned by illegal captures."

The undersigned has information from trustworthy sources that every one of the international or mixed commissions that have decided claims between the United States and other Governments have always allowed interest as a part of the indemnity, under circumstances similar to those under which it was awarded by the Florida judges, and that such interest has been paid by those Governments to the United States.

As lately as July, 1870, in the case of a claim of the American Government against

the Government of Brazil, Sir Edward Thornton, who was the umpire, declared as follows:

"The undersigned cannot, however, admit the validity of any argument which would exempt the imperial Government from the payment of interest. If the claim in itself can be sustained, of which the umpire has no doubt, the claimants are entitled to interest."

Finally, it is a well-known fact that the United States insisted, before the Geneva tribunal, that, according to international law, Great Britain was under obligations to pay interest on the value of the property destroyed by the hostile cruisers up to the date of the award of the indemnity.

In the third subdivision of Chapter XII of the American argument with regard to the Alabama claims, which was submitted to the Geneva tribunal by Mr. Waite, now Chief Justice of the United States, Mr. Evarts, late Secretary of State of the United States, and Mr. Cushing, not many years since minister of the United States at Madrid, the undersigned finds the following words with reference to the payment of interest:

"The counsel assume that interest will be awarded by the tribunal as an element of damage. We conceive this to be conformable to public law, and to be required by paramount considerations of equity and justice."

Interest was awarded by the tribunal and paid to the United States by Great Britain.

This declaration of the American Government, which proclaims that public law requires the allowance of interest as an element of the indemnity called for by the Alabama treaty, excludes, in the opinion of the minister plenipotentiary of His Catholic Majesty, even the possibility of the American Government's now alleging that the same public law did not call for the allowance of interest as an element of the indemnity provided for by the treaty of 1819.

The undersigned will, in conclusion, be very brief, in order no longer to weary the attention of the honorable Secretary of State.

In a note addressed to this legation, under date of October 1, 1879, and signed by Mr. Assistant Secretary Seward, in relation to the Florida claims, are found the following words:

"If the Government of His Majesty, the King of Spain, should see fit to instruct its minister at this capital so to present the matter as not to bar the path to a proper and discreet settlement, honorable alike to both nations, whereby the executive and legislative powers may work in concert, with constitutional freedom, and in consonance with international law, it may rest assured that proper heed will be given to its representations, and that the search for and attainment of a satisfactory international adjustment of this long-pending question will be both the pleasure and the duty of the Government of the United States."

The Government of His Catholic Majesty has sent the undersigned its instructions to lay before the honorable Secretary of State this question relative to the interest growing out of the treaty of 1819; thus, in accordance with international law, all his efforts have been sincerely directed to that end. Spain desires nothing in this matter save "a proper and discreet settlement, honorable alike to both nations," and in consonance with public law.

The Government of His Catholic Majesty will gladly accept any plan for the international settlement of this question which has been so long pending that may be proposed by the Government of the United States and that may be in accord with the judicial decisions which have been transmitted to the Secretary of the Treasury.

The undersigned begs, &c., &c.,

FRAN'CO BARCA.

No. 2.

Statement showing the several amounts allowed and paid as principal on the several claims which the courts returned as interest-bearing.

Registered number in Treasury Department.	Name of claimant.	Date of injury, or date from which interest was allowed.	Date of the judges' awards.	Time during which interest is computed.			Amount awarded by judges' report.	Amount of principal allowed by Treasury.	Interest computed on amount allowed.
				Yrs.	*mos.*	*days.*			
82483	Acosta, Domingo and Sarah	May 10, 1813	Feb. 6, 1841	27	8	27	$366 00	$364 00	$504 90
87746	Acosta, Margarita	do	Sept. 26, 1838	25	4	16	3,410 00	3,203 00	4,064 25
81962	Andrea, Juan	do	Feb. 20, 1838	24	9	10	62 00	65 00	80 54
100475	Andrew, Antonio, administrator of	do	Sept. 12, 1839	26	4	2	486 00	486 00	640 04
100476	Andrew, Antonio	do	Nov. 15, 1839	26	6	5	260 60	260 00	344 68
75187	Andrew, John (Maria Andrew, administratrix)	do	Aug. 20, 1837	24	3	10	1,340 00	1,185 00	1,438 46
83229	Andrew, Robert	do	June 26, 1835	22	1	16	7,800 00	2,310 00	2,555 76
94397	Andrew, Robert, deceased	do	do	22	1	16	7,800 00	5,490 00	6,074 07
78699	Andrew, Thomas J	do	Aug. 23, 1839	26	3	13	3,110 00	3,110 00	4,087 49
72689	Arnon, Estevan	do	Jan. 22, 1837	23	8	12	1,020 00	1,020 00	1,208 70
76105	Arnon, James	do	June 25, 1837	24	1	15	638 00	638 00	769 59
85040	Arredondo, Fernando de la Maza, and Antonio Huertas	do	June 26, 1835	22	1	16	8,325 00	8,325 00	9,210 69
86282	Arredondo, Fernando de la Maza, jr	do	do	22	1	16	3,500 00	3,500 00	3,872 36
76339	Ashton, John	do	Aug. 3, 1838	25	2	24	856 00	856 00	1,079 99
104775	Ashley, Lodowick	do	June 26, 1835	22	1	16	5,640 00	4,980 00	5,509 81
78295	Atkinson, Andrew	do	Aug. 13, 1839	26	3	3	3,800 00	3,800 00	4,989 08
90794	Atkinson, George	do	June 26, 1835	22	1	16	10,480 00	9,480 00	10,488 56
77718	Atkinson, Jane	do	Sept. 30, 1838	25	4	20	4,500 00	4,500 00	5,712 50
94419	Bacchus, Isaac	do	June 26, 1835	22	1	16	772 00	772 00	854 13
75008	Baker, Catharine (C. Taylor, administrator)	do	May 30, 1838	25	0	20	26,150 00	26,150 00	32,760 14
79367	Berrie, William	do	Nov. 21, 1838	25	6	11	9,210 00	6,410 00	8,182 54
73008	Bethune, Farquhar	do	Jan. 14, 1837	23	8	4	6,020 00	6,020 00	7,127 01
91018	Black, James and Dorcas	do	June 26, 1835	22	1	16	370 00	370 00	409 36
87748	Black, John	do	do	22	1	16	350 00	350 00	387 24
75878	Borgos, José Passo de (P. de B. Papy, administrator)	do	Aug. 15, 1838	25	3	5	5,921 00	5,921 00	7,479 47
77839	Bowden, John M	do	Jan. 4, 1836	22	7	25	645 00	645 00	730 55
72686	Boyd, Joseph	do	Jan. 22, 1837	23	8	12	1,028 75	1,028 75	1,219 06
76521	Braddock, John D	do	Dec. 11, 1838	25	7	1	5,600 00	2,194 00	2,807 85
79230	Braddock, William	do	Apr. 12, 1839	25	11	2	2,922 00	2,922 00	3,733 28
88833	Broward, Charles	do	June 26, 1835	22	1	16	570 00	570 00	730 64
84638	Bunch, John	do	Oct. 8, 1839	26	4	29	12,000 00	12,000 00	15,848 86
73621	Canovas, Antonio (John Canovas, executor)	do	July 9, 1837	24	1	29	1,300 00	1,300 00	1,570 65

83784	Canovas, Bartolo	....do	Aug. 12, 1838	25	3	2	370 00	370 00	467 23
103431	Capella, Peter, administrator of	....do	July 12, 1849	36	2	2	220 00	220 00	397 89
102832	Capo, John, administrator of John Capo	....do	Oct. 12, 1849	36	5	2	698 00	698 00	1,271 14
83988	Capo, Peter	....do	Nov. 30, 1840	27	6	20	1,040 00	793 00	1,092 58
82920 93326	Cashen, James	....do	May 16, 1838	25	0	6	12,068 00	12,068 00	15,095 11
98538	Cashen, James (by S. Murphey, administratrix)	Oct. 1, 1818	Mar. 3, 1824	5	5	2	5,150 00	5,150 00	1,396 22
83311	Cercopoly, Peter	May 10, 1813	June 26, 1835	22	1	16	250 00	250 00	276 60
85341	Christopher, Samuel S. (S. L. Braddock, administrator)	....do	....do	22	1	16	4,040 00	4,040 00	4,469 81
84647	Christopher, Spicer (P. C. Braddock, administrator)	....do	Oct. 8, 1839	26	4	29	12,000 00	12,000 00	15,846 64
94415	Clarke, Charles W	....do	June 25, 1835	22	1	15	3,155 00	3,155 00	3,490 22
83177	Clarke, G. J. F	....do	June 26, 1835	22	1	16	13,320 00	12,928 00	14,303 41
83763	Clarke & Garvin	....do	June 25, 1835	22	1	15	9,375 00	9,375 00	10,371 09
81371	Cocifatio, Pedro	....do	....do	22	1	15	10,288 00	4,890 00	5,409 56
89182	Cook, George	....do	....do	22	1	15	11,590 00	11,590 00	12,821 44
73800	Crichton, John	....do	Oct. 6, 1837	24	4	27	4,120 00	4,120 00	5,028 12
82248	Dell, James	....do	June 26, 1835	22	1	16	2,595 00	2,595 00	2,871 08
83832	Dell, William	....do	....do	22	1	16	1,909 50	1,909 50	2,112 65
87900	Dewees, Mary	....do	July 3, 1837	24	1	24	400 00	400 00	483 00
80150	Dewees, Philip	....do	June 26, 1835	22	1	16	5,720 00	5,720 00	6,328 54
86318	Dewees, William	....do	June 17, 1839	26	1	7	3,178 00	1,403 00	1,831 11
82632	Dioca, Montes Juan Gonzales	....do	June 26, 1835	22	1	16	2,023 00	1,865 00	2,063 42
92279	Dixon, John	....do	....do	22	1	16	1,900 00	1,900 00	2,103 35
108486	Dominguez, Manuel	July 1, 1818	July 1, 1824	*6	0	0	1,600 00	870 00	261 00
86844	Edinboro, Philip	May 10, 1815	Aug. 8, 1838	25	2	28	1,624 00	1,624 00	2,049 85
75016	Espinora, Sebastian (Raymore Sanchez, administrator)	....do	May 26, 1838	25	0	16	979 00	870 00	1,089 43
76455	Fatio, Francis P., sr. (L. Engle & Dunham, esqrs.)	....do	July 15, 1838	25	2	5	20,934 00	20,934 00	26,356 46
94405	Fatio, Francis P., jr	....do	June 26, 1835	22	1	16	5,835 00	2,085 00	2,306 82
77832	Ferrer, Barldom de Costier T	....do	Sept. 2, 1839	26	3	19	12,545 50	12,324 50	16,208 44
89469	Ferriera, John B	....do	June 26, 1835	22	1	16	1,680 00	1,680 00	1,850 15
96003	Fitzgerald, Lucy	....do	....do	22	1	16	20,573 00	20,573 00	22,761 77
89454	Fleming, George	....do	May 10, 1838	*25	0	0	6,379 00	6,379 00	7,973 75
99008	Fleming, Scipio	....do	June 26, 1835	22	1	16	196 00	196 00	216 85
76603	Floyd, Joseph	....do	Aug. 19, 1838	25	3	9	3,941 00	3,591 00	4,538 13
73915	Forbes, John, administrator (William Travis)	....do	Sept. 30, 1837	24	4	20	19,780 00	19,780 00	24,120 63
79074	Fousha, Peter	....do	Nov. 15, 1838	25	6	5	957 00	957 00	1,220 84
85766	Frazer, John	....do	June 26, 1835	22	1	16	157,046 00	157,046 00	173,753 75
99158	Fulany, Fernando	....do	....do	22	1	16	1,149 24	1,149 00	1,271 24
73801	Garvin, William	....do	July 23, 1837	24	2	13	2,700 00	2,100 00	2,541 29
72384	Gianopoli, John, heirs of	....do	Aug. 31, 1836	23	3	21	991 25	991 25	1,155 22
73052	Gianopoli, George and Ann, and A. Monteria	....do	Jan. 18, 1837	23	8	8	150 00	150 00	177 67
89416	Gilbert, Robert, sr	....do	June 26, 1835	22	1	16	1,400 00	1,400 00	1,548 94
94402	Gilbert, Robert	....do	....do	22	1	16	415 00	415 00	459 15
106617	Graves, Henry (H. N. Graves, administrator)	Jan. 1, 1819	Mar. 23, 1824	5	2	22	1,835 00	1,835 00	479 65
94401	Griffith, Cornelius	May 10, 1813	June 26, 1835	22	1	16	1,005 00	1,005 00	1,111 92
72942	Hall, James, and wife	....do	Dec. 28, 1836	23	7	18	1,105 00	1,105 00	1,305 74
73350	Harrison, Robert	....do	Sept. 3, 1836	23	3	23	9,214 00	9,214 00	10,740 84
79403	Harrison, Samuel	....do	May 25, 1839	26	0	15	24,630 00	23,180 00	30,182 32
77890	Hart, William	....do	July 11, 1838	25	2	1	2,192 00	2,192 00	2,758 57

*Time estimated; exact date of judges' report not given.

Statement showing the several amounts allowed and paid as principal, &c.—Continued.

Registered number in Treasury Department.	Name of claimant.	Date of injury, or date from which interest was allowed.	Date of the judges' awards.	Time during which interest is computed.			Amount awarded by judges' report.	Amount of principal allowed by Treasury.	Interest computed on amount allowed.
				Yrs.	*mos.*	*days.*			
90228	Hartley, Frederick	May 10, 1813	June 26, 1835	22	1	16	$308 00	$308 00	$340 77
83761	Hartley, Henry	do	Sept. 6, 1837	24	3	26	455 00	380 00	462 12
73629	Hernandez, José (Cardona)	do	Dec. 28, 1836	23	7	18	88 75	88 75	104 87
73631	Hernandez, Maria M.	do	June 26, 1835	22	1	16	88 75	88 75	98 19
74759	Herreira, Toby	do	Apr. 27, 1838	24	9	17	1,409 50	1,409 50	2,249 85
87923 89650	Hibberson & Gouge	do	June 26, 1835	22	1	16	18,430 00	18,430 00	20,373 75
89199	Higgenbottom, David	do	do	22	1	16	400 00	400 00	442 56
88504	Higgenbottom, Elijah	do	do	22	1	16	1,410 00	1,400 00	1,548 94
82989	Higgenbottom, Joseph	do	do	22	1	16	2,003 00	1,586 00	1,757 59
97990	Hill, Charles	do	do	22	1	16	465 00	465 00	514 47
82629	Hindsman, Antony	do	do	22	1	16	1,857 00	1,857 00	2,054 57
108206	Hodges, Willoughby	do	do	22	1	16	600 00	600 00	663 83
87382	Hooans, Ruben	do	do	22	1	16	2,920 00	2,920 00	3,230 66
82339	Houston, John	Oct. 10, 1818	Mar. 4, 1823	4	4	25	5,585 00	4,090 00	900 37
89455	Howley, John	May 10, 1813	June 26, 1835	22	1	16	701 00	701 00	775 58
	Hudnele, Ezekiel	do	do	22	1	16	500 00	500 00	553 19
85236	Huertas, Antonio*								
75887	Hughes, Joseph	May 10, 1813	Feb. 17, 1838	24	9	7	5,000 00	4,190 00	5,189 20
108172	Hulbert, Daniel	do	June 26, 1955	22	1	16	2,780 43	1,320 00	1,460 44
94416	Hutchinson, Robert, sr	do	do	22	1	16	1,140 00	1,140 00	1,261 29
73358	Kerr, Francis	do	Sept. 16, 1837	24	4	6	9,737 00	8,653 35	9,735 45
88415 89072	Kingaley, Zephaniah	do	June 26, 1835	22	1	16	77,322 00	77,322 00	85,589 60
80172	Knight, Britton	do	May 2, 1838	24	11	23	1,012 00	1,012 00	1,264 02
99331	Lane, Jane, estate of, Jesse Wilson, administrator	do	June 26, 1835	22	1	16	645 00	645 00	713 62
108207	Lanier, Harden	do	do	22	1	16	400 00	400 00	442 56
82542	Laurence, John	do	Sept. 8, 1837	24	3	28	531 00	531 00	645 95
78259	Ledwith, L. and M., heirs of	do	Apr. 17, 1839	25	11	7	1,770 00	1,370 00	1,776 44
74788	Leonaidi, Bartolomi	do	May 26, 1838	25	0	16	575 00	575 00	720 03
79073	Leonaidi, Juan	do	do	25	0	16	565 00	480 00	601 07
81194	Leonardi, Roque	do	June 6, 1888	25	0	26	1,090 00	1,099 00	1,366 44
73111	Lobton, John, administrator of	do	Jan. 14, 1837	28	8	4	560 00	560 00	662 98
108171	Long, Matthew	do	June 26, 1835	22	1	16	251 74	200 00	221 28

81961	Lopez, Andres	....do	Aug. 12, 1838	25	8	2	205 00	205 00	258 87
82538	Lopez, Christopher	....do	June 6, 1838	25	0	26	334 00	334 00	418 71
90713	Lopez, Justo	....do	June 26, 1835	22	1	16	2,675 00	2,675 00	2,959 59
89707	Lourcy, Joseph	Jan. 1, 1819	Mar. 3, 1824	5	2	2	410 00	400 00	103 44
88510	Lowe, Horatio	May 10, 1813	June 26, 1835	22	1	16	800 00	800 00	885 11
73359	Lowe, John I	....do	Jan. 30, 1837	23	8	20	1,190 00	1,190 00	1,411 47
74385	Maestre, Peter, jr. (J. and P. Masters, executors)	....do	Oct. 7, 1837	24	4	28	925 00	925 00	1,129 02
88044	Mas, Juan P., John Mas, heir of	....do	June 26, 1835	22	1	16	459 00	459 00	507 83
79022	Mattair, Lewis	.... do	July 26, 1839	26	2	16	2,106 00	2,106 00	2,760 03
89730	Maxy, P. B. and H. W	....do	June 26, 1835	22	1	16	1,880 00	1,880 00	2,080 01
73315	McDonald, Fernando D., and James Pelot	Jan. 1, 1814	Sept. 17, 1836	22	8	16	15,557 50	15,557 50	17,666 44
85371	McIntosh, John H	May 10, 1813	June 26, 1835	22	1	16	68,934 00	68,934 00	75,607 80
85048	McQueen, Abm	....do	....do	22	1	16	1,587 00	1,211 00	1,339 84
82782	Miller, David S. R	....do	... do	22	1	16	8,450 00	8,450 00	9,348 99
89063	Mills, Wm. J., Wm. J. Mills, executor	....do	July 1, 1839	26	1	22	6,770 00	6,770 00	8,849 89
94421	Morrell, John	....do	June 26 1835	22	1	16	844 00	844 00	933 75
87381	Nelson, William	....do	....do	22	1	16	395 00	395 00	437 02
82467 94399	O'Neill, Ebenezer T	....do	....do	22	1	16	3,450 00	3,450 00	3,817 04
82466 94398	O'Neill, Mary	....do	....do	22	1	16	1,640 00	1,640 00	1,814 48
83762	O'Neill, William	....do	... do	22	1	16	1,375 00	1,016 67	1,124 83
73637	Ormond, James and Emanuel, C. Lawton, administrator	....do	Nov. 19, 1837	24	6	9	14,400 00	12,193 00	14,951 68
76340	Ortega, Lazara	....do	June 26, 1838	25	1	16	619 00	519 00	652 07
89739	Pacetti, Andrew	....do	Aug. 27, 1837	24	3	17	750 00	750 00	911 15
75082	Papy, Gaspac	....do	July 18, 1837	24	2	8	1,800 00	1,800 00	2,177 00
75214	Pellicer, Francis	....do	Feb. 18, 1838	24	9	8	12,000 00	8,393 75	10,396 62
94423	Pellicer, Francis	....do	... do	24	9	8	12,000 00	2,500 00	3,096 53
77132	Perpall, Gabriel	....do	Feb. 23, 1839	25	9	13	5,280 00	5,280 00	6,807 54
88490	Petty, George	....do	Jan. 26, 1835	22	1	16	800 00	800 00	885 11
84671	Plummer, Prudence	....do	Mar. 19, 1837	23	10	9	2,555 00	2,555 00	3,047 90
73630	Pomar, Martina	....do	Dec. 26, 1836	23	7	16	88 75	88 75	104 85
81963	Ponce, John	....do	Feb. 1, 1838	24	8	19	259 00	259 00	320 12
73347	Pons, Francis D. and P	....do	July 14, 1837	24	2	4	2,000 00	2,000 00	2,417 78
87747	Pons, Matias	....do	July 5, 1837	24	1	26	499 00	499 00	602 68
82301	Priest, Gabriel	....do	July 11, 1838	25	2	1	1,575 00	†1,290 00	1,623 43
84941	Primus, Tony	....do	Sept. 4, 1837	24	3	24	102 00	102 00	124 02
104644	Ramero, Manuel	....do	June 26, 1835	22	1	16	10,032 00	2,075 00	2,295 75
83831	Reed, Rebecca E	....do	....do	22	1	16	817 00	817 00	903 92
81651	Richard, Francis, jr	....do	Apr. 18, 1829	15	11	8	2,066 00	2,066 00	1,646 49
83129	Richard, Francis, sr	....do	June 26, 1835	22	1	16	10,110 00	10,110 00	11,185 58
55016	Rocho, Abraham	... do	... do	22	1	16	‡651 50	651 50	720 81
81942	Rogers, Albert	....do	Aug. 12, 1838	25	3	2	260 00	260 00	328 32
74377	Rosy, Gasper	....do	July 3, 1837	24	1	24	400 00	400 00	483 00
93040	Russell, Samuel	....do	June 26, 1835	22	1	16	1,120 00	1,120 00	1,239 16
85093	Sabate, Pablo	....do	... do	22	1	16	5,823 00	4,931 00	5,455 58
80681	Sanchez, Benancio	....do	Sept. 24, 1839	26	4	14	5,248 00	4,661 00	6,069 00
87060	Sanchez, F. R	....do	June 26, 1835	22	1	16	1,245 00	1,245 00	1,377 45

*See Arredondo.

†$1,200 amount given in Senate document No. 82.

‡$551.50 amount given in Senate document No. 82.

Statement showing the several amounts allowed and paid as principal, &c.—Continued.

Registered number in Treasury Department.	Name of claimant.	Date of injury, or date from which interest was allowed.	Date of the judges' awards.	Time during which interest is computed.			Amount awarded by judges' report.	Amount of principal allowed by Treasury.	Interest computed on amount allowed.
				Yrs.	mos.	days.			
74969	Sanchez, Francis X	May 10, 1813	Feb. 13, 1838	24	9	3	$29,650 00	$29,650 00	$36,704 25
75115	Sanchez, Raymond and Nicholas	do	May 10, 1838	24	0	0	5,113 00	4,821 00	5,785 20
82543	Santana, Margarita Bevis	do	Jan. 31, 1837	23	8	21	437 00	437 00	518 39
98529	Sauls, Samuel	do	June 26, 1835	22	1	16	980 00	980 00	1,084 26
86124	Saunders, E. Mary	do	*June 26, 1835	22	1	16	3,950 00	3,950 00	4,370 25
76528	Scofield, Lewis and Margaret (James A. Lambie, administrator)	do	†May 10, 1837	24	0	0	1,840 00	1,840 00	2,208 00
76004	Segui, Bennet	do	May 26, 1838	25	0	16	720 00	720 00	901 60
75880	Segui, John (P. Segui, administrator)	do	Aug. 5, 1838	25	2	26	554 00	554 00	699 12
82775	Segui, John	do	Sept. 25, 1839	26	4	15	950 00	950 00	1,252 81
78184	Smith, James	do	Aug. 14, 1839	26	3	4	3,322 00	3,322 00	4,361 99
73063	Solano, Filipe	do	June 16, 1837	24	1	6	2,145 00	2,145 00	2,587 70
77118	Solano, Lorenzo, Mary Magdaline, widow	do	Jan. 27, 1838	25	1	17	900 00	900 00	1,130 88
73340	Solano, Manuel	do	Sept. 17, 1836	23	4	7	12,700 00	12,700 00	14,829 00
78509	Sterret, Margaret	do	Sept. 4, 1839	26	3	24	1,920 00	1,920 00	2,526 40
77822	Suayes, Antonio	do	July 24, 1839	26	2	14	3,413 50	3,413 50	4,472 64
95167	Summerall, Joseph	do	June 26, 1846	33	1	16	800 00	800 00	1,325 11
78399	Swearengen, Samuel	do	May 28, 1839	26	0	18	1,175 00	1,110 00	1,445 76
79613	Tate, John E	do	Apr. 21, 1836	22	11	11	345 00	345 00	395 84
87751	Triay, Francis, sr	do	June 26, 1835	22	1	16	970 00	1,327 50	1,468 73
87750	Triay, John	do	Sept. 13, 1837	24	4	3	1,017 00	1,017 00	1,237 78
87753	Trope, Peter	do	May 24, 1836	23	0	14	150 00	150 00	172 79
80683	Tucker, A	do	July 25, 1840	27	2	15	5,025 00	4,875 00	6,631 93
87918	Tucker, Hezekiah	do	July 13, 1843	30	2	3	240 00	240 00	362 10
92475	Turner, David	do	Oct. 16, 1845	32	5	6	1,048 00	948 00	1,537 34
92474	Turner, E	do	Oct. 17, 1845	32	5	7	1,825 00	1,825 00	2,959 76
81759 82548	Underwood, Jehu	do	Dec. 22, 1840	27	7	12	24,250 00	24,250 00	33,485 26
83383	Uptegrove, John	do	Feb. 12, 1842	28	9	2	1,870 00	1,870 00	2,688 64
83057	Vanzandt, Stephen	do	June 26, 1835	22	1	16	11,150 00	11,150 00	12,916 70
77094	Vaughan, John D	do	May 9, 1839	26	0	0	6,900 00	6,750 00	8,775 00
80361	Wanton, Edward W	do	Oct. 5, 1839	26	4	26	3,575 00	2,650 00	3,498 74
77524	Waterman, Eleazer, administrator of	do	May 7, 1839	25	11	28	14,327 00	14,205 00	18,462 54
75881	Weedman, Philip	do	Aug. 8, 1838	24	2	29	980 00	980 00	1,164 11
75215	Weeks, Isaac	do	Jan. 18, 1837	28	8	8	450 00	450 00	538 00
84719	Wild, Nathaniel	do	June 26, 1835	22	1	16	2,300 00	2,026 67	2,242 29

76042	Williams, Samuel	do	Jan. 8, 1839	25	7	29	25,820 00	25,820 00	33,132 09
82576	Wingate, Jeremiah	do	June 26, 1835	22	1	16	503 00	503 00	556 51
75783	Wingate, John	do	June 26, 1835	22	1	16	825 50	523 50	579 19
89601	Worlay, Jacob	do	June 26, 1835	22	1	16	794 00	794 00	878 47
73632	Yanobar, Antonio P	do	June 26, 1835	22	1	16	88 75	88 75	98 19
86235	Yonge, Henry	do	Nov. 18, 1838	25	6	8	16,230 00	16,230 00	20,711 28
77834	Yonge, Philip R	do	Sept. 27, 1837	24	4	17	2,900 00	2,900 00	3,535 18
	Totals						1,089,747 91	1,024,741 44	1,199,668 58

* Date not given in judges' report.

† Date not given in judges' report. Interest computed for even number of years.

Mr. Brewster to Mr. Frelinghuysen.

DEPARTMENT OF JUSTICE,
Washington, D. C., April 11, 1884. (Received April 15.)

SIR: In a letter dated June 26, 1883, you proposed for my consideration the question as to the liability of the United States under the treaty with Spain of 1819 for interest as allowed by the Florida judges in their decisions upon the claims of Spanish subjects presented under the ninth article of that treaty.

Subsequently, by a resolution of the Senate, passed December 6, 1883, the President was requested to inform that body, if not incompatible with the public service, (1) whether or not, in his opinion, the said article has been fully executed by the United States; (2) if not, then, "Whether the impediment to its execution arises out of unsettled questions of fact or undetermined questions of law, and what, if any, are such unsettled questions of fact and undetermined questions of law."

These inquiries involve an examination of said article and of the provision made by Congress for executing the same, and also of the result and effect of the proceedings had under such provision.

By the said article it is stipulated:

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

In execution of the same article the act of March 3, 1823, chapter 35, was enacted. By the first section of that act the judges of the superior courts established at Saint Augustine and Pensacola, respectively, are authorized to receive and adjust all claims arising within their respective jurisdictions, agreeably to the provisions of said article; and by the second section it is provided:

"That in all cases in which said judges shall decide in favor of the claimants, the decisions, with the evidence on which they are founded, shall be by the said judges reported to the Secretary of the Treasury, who, on being satisfied that the same is just and equitable within the provisions of the said treaty, shall pay the amount thereof to the person or persons in whose favor the same is adjudged," &c.

That act was construed by the Secretary of the Treasury to not extend to injuries suffered in 1812 and 1813 from the causes mentioned in the treaty, but to apply only to those of a subsequent period. In consequence of this construction the act of June 26, 1834, chapter 87, was passed, enlarging the authority of the judge of the superior court at Saint Augustine, and of the Secretary of the Treasury, so as to include claims for injuries suffered in 1812 and 1813, but limiting the time for presenting the claims to one year from the passage of the act.

Such was the provision made by Congress for executing said articles, and that the tribunals thereby created, viz, the judges and the Secretary of the Treasury, for adjusting claims for damages, were, in that regard, a sufficient compliance with the treaty, is affirmed in the opinion of the Supreme Court in the case of United States *vs.* Ferreira (13 How., 47, 48).

"The tribunals established," remarks the court there, "are substantially the same with those usually created, where one nation agrees by treaty to pay debts or damages which may be found to be due to the citizens of another country. This treaty meant nothing more than the

tribunal and mode of proceeding ordinarily established on such occasions, and well known and well understood when treaty obligations of this description are undertaken."

Under that provision the judges were authorized to receive and adjust claims which originated within their respective jurisdictions, but a power of revision over awards made by them in favor of claimants was given the Secretary of the Treasury. "No claim, therefore," says the court in the case above cited, "is due from the United States until it is sanctioned by him; and his decision against the claimant for the whole or a part of the claim as allowed by the judge, is final and conclusive."

The court further observes in the same case:

"All that the judge is required to do is to receive the claim when the party presents it, and to adjust it upon such evidence as he may have before him or be able himself to obtain. But neither the evidence nor his award are to be filed in the court in which he presides, nor recorded there; but he is required to transmit both the decision and the evidence upon which he decided to the Secretary of the Treasury; and the claim is to be paid if the Secretary thinks it just and equitable, but not otherwise. It is to be a debt from the United States upon the decision of the Secretary, and not upon that of the judge."

Pursuant to the authority thus conferred, the judges received and acted upon claims presented to them, and where they decided in favor of claimants, their decisions, with the evidence upon which the same rested, were reported to the Secretary of the Treasury for his action. In nearly every case in which they so decided, they added to the amount of actual damage found to have been sustained by the claimant interest thereon at a certain rate for a certain period; but the interest so added was, on revision of the awards by the Secretary of the Treasury, uniformly rejected by him, and the claimant paid without any allowance for interest being included in the payments.

All claims cognizable by the judges under the provision above referred to have long since been passed upon by them, and the amounts finally allowed thereon, upon revision by the Secretary of the Treasury, have all been paid to the parties entitled.

Thus, as matter of fact, it appears—

(1) That adequate tribunals (composed of the judges and the Secretary of the Treasury) for adjusting the claims were created by Congress, and that, in this respect, all that is contemplated or required by the treaty has been performed.

(2) That in the adjustment of the claims the mode of proceeding prescribed by the law creating such tribunals (viz, examination and decision in the first instance by the judge, revision and final decision thereupon by the Secretary) has been followed throughout.

(3) That the amounts thereby ascertained to be due from the United States to claimants have all been paid, and that there remain unadjudicated no claims cognizable by such tribunals.

From the foregoing I deduce the following conclusion: That the Government of the United States has already done all that it was bound to do under the article of the treaty hereinbefore mentioned; in other words, has fully executed the said article; and, consequently, that no liability whatever, arising under the treaty, now rests upon it. In regard to the interest allowed by the judges in the first instance, and afterwards, on revision, disallowed by the Secretary of the Treasury, *that* stands rejected by the *ultimate decision* of the tribunal created in conformity with the requirements of the treaty for the purpose of adjusting claims preferred thereunder. And as no appeal from such de-

cision is provided for, it must be deemed to be conclusive upon the claimants with respect to the subject-matter thereof. No obligation on the part of the United States exists, by virtue of the treaty, to "cause satisfaction to be made" to them for any damage over and above that which, *according to the final decision of said tribunal*, they have sustained.

I am, sir, very respectfully,

BENJAMIN HARRIS BREWSTER,
Attorney-General.