

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

IN COMPLIANCE

With a resolution of the Senate, in relation to the seizure and detention of the brigs Enterprise, Encomium, and Comet.

FEBRUARY 14, 1839.

Read, and ordered to be printed.

WASHINGTON, D. C., February 13, 1839.

I herewith transmit to the Senate a report from the Secretary of State, with accompanying documents, in answer to their resolution of the 1st instant.

M. VAN BUREN.

To the SENATE of the United States:

DEPARTMENT OF STATE,

Washington, February 12, 1839.

The Secretary of State, to whom has been referred the resolution of the Senate, dated the 1st instant, requesting the President of the United States to communicate to that body "whether the Government of Great Britain has made compensation in the cases of the brigs Enterprise, Encomium, and Comet; the first of which was forced by stress of weather into Port Hamilton, Bermuda island, and the other two wrecked on the keys of the Bahamas, and the slaves on board forcibly seized and detained by the local authorities; and if no compensation has been made, the reasons why it has not been made; with a copy of the correspondence between the two Governments, which has taken place since the answer to a former call on the same subject by the Senate," has the honor to report to the President the accompanying papers, embracing the information and correspondence called for.

Respectfully submitted,
JOHN FORSYTH.

To the PRESIDENT of the United States.

LIST OF ACCOMPANYING PAPERS

INSTRUCTIONS.

Mr. Forsyth to Mr. Stevenson, September 14, 1836. Extract.
 Same to same, March 27, 1837. Copy.
 Same to same, August 4, 1837. Extract.
 Same to same, March 12, 1838. Copy.
 Same to same, June 6, 1838. Copy.
 Same to same, November 28, 1838. Extract.

DESPATCHES.

Mr. Stevenson to Mr. Forsyth, (with enclosures,) January 22, 1837.
 Extracts.
 Same to same, (with enclosure,) May 13, 1837. Extract.
 Same to same, (with enclosure,) June 13, 1837. Extract.
 Same to same, (with enclosures,) December 27, 1837. Extract.
 Same to same, (with enclosure,) April 21, 1838. Extracts.
 Same to same, (with enclosure,) May 5, 1838. Extract.
 Same to same, (with enclosures,) May 28, 1838. Extract.
 Same to same, July 4, 1838. Copy.
 Same to same, (with enclosure,) July 21, 1838. Extract.
 Same to same, (with enclosures,) November 5, 1838. Extracts.
 Same to same, (with enclosures,) November 5, 1838. Extract.
 Same to same, (with enclosure,) December 12, 1838. Extract.

Mr. Forsyth to Mr. Stevenson.—(Extract.)

DEPARTMENT OF STATE,
Washington, September 14, 1836.

There is another point in your letter which, if any discussion follows on the merits of the several claimants, must not be forgotten. You argue the question of the claimants as if it were possible to apply to them the rules or principles of the recent British legislation for the West Indies. You say correctly that they do not impair the right to redress; but two of the cases occurred before the emancipation law was of force, and the British Government cannot attempt to apply the provisions of that law to the property of our citizens without gross injustice, and the glaring inconsistency of applying to it a rule which could not have been applied to the property of British subjects. It will, however, be fortunate, if a favorable decision should be made on the supposition that the new law is applicable to the present claims, as in that event the decision being made on the broad ground, will cover all future cases of a similar character.

DEPARTMENT OF STATE,
Washington, March 27, 1837.

SIR: Your despatch of the 22d of January last was received on the 5th instant, communicating the note of Lord Palmerston of the 7th of January, in which he announces the determination of his Government respecting the claims preferred by the United States to compensation for the slaves who were on board the vessels called the "Comet" and "Encomium," wrecked in the years 1831 and 1834, on the Bahama Islands, and those on board the "Enterprise," which, in the year 1835, was compelled to enter a port of the Island of Bermuda, by stress of weather and want of provisions.

The readiness expressed by his Majesty's Government to render the justice which is due to the owners for the slaves cast away upon the British shores in the "Comet" and "Encomium," and liberated by the colonial authorities, is acknowledged; but the principles asserted in the note communicating this decision, and on which the rejection of the claim preferred on behalf of the owners of the slaves in the "Enterprise" is founded, are regarded by the President as inconsistent with the respect due from all foreign powers to the institutions of a friendly nation, and with the rights of the citizens of the United States. The rule laid down by Lord Palmerston for the decision of these claims is, "that those claimants must be considered entitled to compensation, who were lawfully in possession of their slaves within the British territory, and who were disturbed in their legal possession of those slaves by functionaries of the British Government." He then proceeds to state that the owners of the slaves on board the "Enterprise" never were lawfully in possession of those slaves within the British territory, slavery having before her arrival in Bermuda, been abolished throughout the British Empire; and he asserts the doctrine that, when men who have been held in slavery are brought into a country where the condition of slavery is unknown and forbidden, they are necessarily, and by the very nature of things, placed at once in the situation of aliens, *who have at all times from their birth been free*. In the conclusion of his note, he de-

clares that slavery being now abolished throughout the British Empire, there can be no well founded claim for compensation in respect to slaves who, *under any circumstances*, may come into the British colonies, any more than there would be in respect to slaves who might be sent into the United Kingdom. His lordship, at the same time, admits, that if a ship containing irrational animals or inanimate things, were driven by stress of weather into a foreign port, the owner of that cargo could not be justly deprived of his property by the operation of any particular law which might be in existence in that port; and he allows that it would be highly unjust that the owner should be stripped of what belongs to him, through the forcible application of the municipal law of a State *to which he had not voluntarily submitted himself*. To reconcile these apparently conflicting doctrines, his lordship is understood to maintain, that since the passage of the act of Parliament of 1833, entitled "An act for the abolition of slavery throughout the British colonies," &c., there can be no property in slaves, *under any circumstances*, within the British dominions; and that, as a necessary consequence, whenever slaves are brought into them, however compulsory and unavoidable the causes which carry them there, all antecedent property in them, be it ever so solemnly guaranteed by the laws of the country to which the owner belongs, is forthwith divested, and the slave entitled to his liberty. It is further alleged, that the law which draws after it this result, is in entire harmony with the law of nations. It would be impossible to look back on the history of nations without feeling surprise at the positions laid down by Lord Palmerston, were they even assumed by a country, if such an one could be found, in which slavery has never existed. But how much more extraordinary they must appear when it is considered that they are advanced by a nation, during whose dominion over these States the existing institution of domestic slavery in some of them had its origin; within whose dominions slavery has, for nearly three centuries, been allowed and protected by law, and in a portion of whose territories a species of servitude still exists, which, though limited in its duration, and regulated by laws to guard against abuses, is not to be distinguished from slavery itself, although designated by the milder name of apprenticeship.

The Government of the United States does not deny that the municipal laws of any country, not involving a violation of the laws of nations, may rightfully control the persons and property of the natives of other States, who, by voluntarily entering within the limits of such country, place themselves under its jurisdiction; but it maintains that when an important and vital change of municipal law has been adopted, it would be inequitable and unjust to apply it to those who come, without notice of that change, into the country, on the faith of the former laws. Liberal justice requires that the foreigner, in that case, should be permitted to withdraw himself and property, unmolested, from the operation of the new law. But that municipal laws have controlling authority over aliens who are *forced* within their reach, when such laws conflict, in any respect, with those higher obligations which govern the intercourse of nations with each other, is not alleged by Lord Palmerston, and cannot be admitted by any independent power.

It is understood to be conceded by his Majesty's Government, that all the persons who were on board the "Comet," "Encomium," and "Enterprise," were forced within the British jurisdiction, and that, as a consequence, none of them could be deprived of their *property* by the operation of any

municipal law. If the injustice and consequent illegality, under the law of nations, of depriving a native of a foreign State of his property by a municipal law of the territory into which he has been driven by necessity, depend, as Lord Palmerston admits that they do, upon his never having voluntarily submitted himself to such law, it necessarily follows that the question of property is not to be, and cannot, from the reason and nature of things, be, decided by this same municipal law, to which the claimant has never yielded submission. The question of property must, therefore, be determined by some other test than the municipal law, to which he has never voluntarily submitted himself. It can only be justly determined with reference to a period antecedent to his entry within the foreign jurisdiction, and, under the law of nations, by the laws of the country to which he belongs, and where he acquired his right of property.

It is not denied that a municipal law, which abolishes slavery, is in conformity with the laws of nations; but it is also true, as his Majesty's Government must admit, that the municipal laws of an independent State, by which it is authorized, are equally so. For it certainly will not be contended that the unbroken series of Legislative acts running through several centuries to the present time, by which the existence of slavery in the British colonies was sanctioned, the rights of property in slaves secured, and the transfer of them from subject to subject, by inheritance or contract, regulated, were infractions of the laws of nations. Great Britain is, therefore, as much bound to admit the existence of property in slaves for life within the territories of the United States, as the United States are bound to admit a qualified property in slaves for years in the British West Indian colonies, and the prospective abolition of slavery in the dominions of Great Britain. At the moment, then, when the holders of the slaves on board the "Enterprise" were driven within the British colonial territory, they had, according to the laws of their own country, a property in these slaves recognised by the law of nations; and, if it was subsequently taken away, they were deprived of it by a municipal law to which they had never voluntarily submitted themselves, and which could not take away property, as Lord Palmerston admits, without great injustice. To sustain the distinction drawn by his lordship between laws bearing upon the personal liberty of man, and those bearing upon property, which may be claimed in irrational animals and inanimate things, and to justify the doctrine which he has suspended upon it, it is necessary to show, not merely that *slavery for life* has been abolished within the British dominions, but that human beings cannot be the subject of property *anywhere* or to *any extent*. This position cannot, will not, be maintained by a Government whose statute laws and judicial decisions have established the reverse. The act of Parliament itself, for the abolition of slavery, is founded on the previous right of property in the slaves for life. Compensation is awarded for it to the owners; a part of this compensation is a grant or reservation to the owners of property in the services of the slaves, for years to come, without the consent of the slaves, and without remuneration to them; the right to these services is expressly made transferable by bargain and sale; is subject to the forced payment of debts due by the owner; and is levied upon like any other property, for that purpose. But the reference to these statutory provisions would seem to be useless, since the existence of such property, previously to the act of Parliament of 1833, is made the basis of the allowance of the claims of the owners of the slaves on board the "Comet" and "En-

comium." An attempt to discriminate between the right to the services of the man, and the right to the legal possession of the man, will scarcely be made. If it should be, it would be at once exposed by the inquiry, how the owner is to have the services without control of the servitor? How the owner or sheriff, in the event of a sale by private contract, or in market overt, could give to the purchaser the benefit of the services without delivering up into legal possession the person who was to perform them? The slaves on board the "Enterprise" could not have been liberated but on the ground that the claimants could have no right to their services even for a day. The extent, as to time, of the right of service, could not justly form an element in the decision of the question of legal possession. That legal possession being established, its duration, provided it were long enough to enable the owner to remove the object of it from British jurisdiction, could not be disturbed without manifest injustice, according to the principles of Lord Palmerston's admission. Were it then established, that the laws of the United States could give no right which the British authorities could recognise to the services of slaves for life without their consent, it must be conceded that those laws could confer a *temporary* right to their services, such as exists in the British colonies themselves, which would protect the owners in the legal possession of their persons, and which is entirely inconsistent with their being regarded and treated "as aliens who have, at all times, from their birth, been free." The apprenticed laborers or slaves for years, into which the former slaves for life have been transformed by act of Parliament, are not to be carried from one colony to another; yet if, in the lawful translation of these laborers from one place to another in the same colony, by sea, they should be cast upon the shores of another colony, it is not conceivable that they would be treated as having, at all times, from their birth, been free; or that those entitled to their services would be denied the possession of them for the purpose of carrying them back to the place where their services were lawfully due. Does the British Government intend that the right to the services of men, and the right to the legal possession of the servitor, shall be yielded to British subjects, and in the same place, under the same laws and institutions, denied to American citizens forced into their sphere of action, as a thing which cannot exist? To make more glaringly manifest the absence of all justification for such distinction, his Majesty's Government must be reminded that there are, in many of the States of the Union, colored persons who are, without essential differences, in the condition of the apprentices to labor in the British West Indian colonies. In the abolition of slavery in many of the States who have found it possible to legislate for that purpose, the first step was, as in the British colonies, the substitution of slavery for years for slavery for life. It never occurred, however, to American legislators, that any benefit was to result from the application of a new name not descriptive of their condition to the persons who were the objects of their laws, and they are every where known as slaves bound to service for a term of years. Like the apprentices to labor of the British colonies, they are inheritable property, transferable by legal process for the payment of judgments recovered against their owners, and by bargain and sale. In the very probable event of the shipwreck of such slaves for years on the British West Indian shores, would his Majesty's Government attempt to discriminate between the condition of the American owners of their slaves for years, and the British owner in the colonies of the apprentices to labor; wresting the property from the one, and maintain-

ing the right of property in the other, on the ground that one was according to the municipal law of England, and the other forbidden by, or inconsistent with it? His Majesty's Government will no doubt be shocked by the supposition that it could be suspected capable of such inconsistency and injustice towards the citizens of a friendly nation forced within the range of British hospitality. Such, however, is the result to which Lord Palmerston's doctrine inevitably leads. On the other hand, if no discrimination is to be made between British and American holders of slaves for years, in the British colonies, it is because Great Britain, in its inquiries into the legality of the possession of the slaves, looks back to the time before they came within the jurisdiction of Great Britain, and takes upon itself to decide a question no independent nation suffers other powers to decide for it: how far its power extends in relation to the property and persons subject to its dominion, and to admit or deny the right of property in man according to the duration of the involuntary services required from him; making the standard of justice the municipal law of England, which the Government did not feel itself authorized to enact without the payment of money for the slaves for life to the colonial owners. But Lord Palmerston, in order to support what this Government considers a most untenable distinction, so far as foreign nations are concerned, between slaves and other articles of property, assumes that when a ship is driven into a foreign port by distress, containing men over whose personal liberty another man claims to have an acquired right, there are three parties to the transaction: the owner of the cargo, the local authority, and the alleged slave; and that the third party is no less entitled than the first to appeal to the local authority for such protection as the local law may afford; and that the alleged slave, if given up to the former master, would be aggrieved, and would be entitled to sue for damages. Before examining into the correctness of this assumption, it is proper to remark that its application to the slaves on board the "Enterprise" is only to be accounted for by the supposition that his lordship had an incorrect understanding of the facts connected with their liberation. Whatever might have been the duties or obligations of the local authorities of Bermuda, had the slaves applied for the protection of the law before those authorities interfered, or had they escaped from their owners, and the latter applied to the colonial officers to aid in arresting and delivering up the fugitives, it is known to this Government that neither of those circumstances occurred; on the contrary, the intermeddling of the colonial authorities was unsolicited and officious, and on that account, and on that account alone, if on no other, as it led to the loss of the slaves to the owners, a fair and sufficient ground for a claim to compensation was afforded. Immediately on the arrival of the vessel, before complaint was made by the slaves or their owners, she was seized by the custom-house officers, for the avowed reason that she had slaves on board, who were, by these self-constituted judges, declared to be free. After the lapse of a day or two, this outrageous seizure was acknowledged to have been illegal, and the vessel was re-delivered to the master, the officers stating that they had nothing more to do with her or her cargo; and that as soon as the necessary repairs were made to fit her for sea, they would deliver up her papers, which had been, according to law, deposited at the custom-house. When the vessel was ready to sail, the master called for his papers, which the officers refused to give up, under what is believed to have been a pretext, that they were instructed to withhold them until the Governor of the island

should signify his pleasure respecting the slaves. While thus detained by the connivance or contrivance of the colonial officers, the slaves never having been out of the custody of the master of the vessel, a writ of *habeas corpus* was issued by the chief justice of the island, under which they were all brought before him, and declared to be free. This interference of the chief justice, like that of the custom-house officers, so far as we know, was not called for by any of the slaves; a portion of them, indeed, voluntarily returned in the vessel to the United States, refusing to accept the freedom thus endeavored to be forced upon them. The owners could not have applied to the authorities of the island for their interposition, as, having been constantly in the possession of the slaves until they were forcibly taken away, there was no motive to require it. It is not, therefore, perceived how it is possible any liability could have been incurred by the Colonial Government, or its officers, had the slaves been carried out of the island in the vessel which brought them into it; and there was no room for the application of the principle which is stated to have had so important an influence on the decision made by his Majesty's Government on this claim. But the soundness of the principle is explicitly denied, and the serious consequences with which, in the judgment of the President, it is fraught, to the property and tranquillity of our citizens, call imperatively upon him to announce to his Majesty's Government, immediately and solemnly, that its application to them never can be acquiesced in by the Government of the United States. Every Government has an undoubted right to extend the benefit of its local laws to aliens, however they may come into its territory, provided this extension does not interfere with the rights of others, which that Government is bound to acknowledge and respect; but no nation has a right to confer benefits by its municipal laws, necessarily implying a deprivation of the vested property of others not subject to their jurisdiction. Before the slaves in question could appeal for protection against their owners, or sue for damages if surrendered to them, it must be assumed that the municipal laws of Great Britain could be applied to the prejudice of those who were forced within their reach, and take away property vested by the laws of another nation, which that nation had an acknowledged right to enact. How long is it since such an application of local law was deemed in Great Britain consistent with the unchanging laws of nations? Are the principles of the international code affected by the enactments of particular States? Yesterday a foreigner was protected in his acknowledged property in slaves in the British West Indies; to-day his property in slaves is denied, and they are wrested from him. The law of nations is the same, but Great Britain has changed its domestic code. In the year 1725, when Spain possessed Florida, and Great Britain the Carolinas, the retention and liberation of slaves who fled from the British into the Spanish territory was complained of by the Governor of South Carolina, acting as the special commissioner of the King, as "a breach of national honor and faith" on the part of Spain, notwithstanding that in all such cases compensation was promised by a decree of the King of Spain, to the owner, for the property he had lost. At the present day, Great Britain wrests slaves from their masters, when driven into her ports by stress of weather, denies all compensation, and declares that no claim for slaves will be entertained, who come, under any circumstances, into British territory. Can his Majesty's Government repose securely upon a principle which gives birth to such practical inconsistency and contradiction? But the President is at a loss to

comprehend the distinction taken by Lord Palmerston between the property and the persons of a shipwrecked vessels within British territory. The first is admitted to be beyond the reach of local law; the shield of distress is thrown over the property; it is safe from the laws of revenue and confiscation. However forbidden in other vessel, articles prohibited under penalty of confiscation of vessel and cargo, and fine and imprisonment of all on board, are taken as a sacred charge into the keeping, as it were, of the Government itself. Yet the persons on board are held to be subject to local laws, and the relations between them are to be ascertained by reference to the English rules alone, independent of the laws of their own country, by which those relations were, before their entrance into British territory, defined and regulated. This position is considered the more extraordinary when it is remembered that the persons on board a foreign vessel entering voluntarily for commercial objects, or for convenience, into an English port, are not subject to the same extent to the control of the local law as the property on board, and that whenever questions arise as to previously existing obligations, between such persons, they are decided by the laws of their own country, and not by the English code. The same principle which renders it unjust that the right of property of a foreigner in inanimate things acquired in his own country, should be interfered with by the municipal law of a State within whose territorial limits he had entered not of his own free will, but from necessity, applies with greater force to his right to the services of his fellow men, acquired in the same manner. These services are a species of property, whether due by contract or by law. It may be safely left to an English jurist to determine whether an apprentice, regularly bound to service according to the laws of a foreign country, on board a vessel with his master, and forced by distress of weather into a British port, would be released from his obligations because his indentures were not according to the forms required by British laws to render such indentures valid; whether when a tempest-tost vessel finds refuge in an English port, the sailors who constitute the crew, whether bound by their own contract or that of their master, supposing them to be slaves for life or years, would be absolved from their liability to serve, because the articles under which they were shipped might not conform in all respects to the statutory regulations of Great Britain; whether the soldiers of a friendly power, who might chance to be on board of her, would be discharged, because forced into service by conscription, or because the terms of their enlistment might be such as were forbidden by English law. Would the laws of Great Britain deny to the master possession of the apprentice or sailor, for the purpose of enforcing the fulfilment of the obligation to which he was bound? Would they deny to the officer of the foreign Government the custody of the conscript or enlisted soldier? If there should be hesitation in answering these inquiries, the reply will be found in the history of English jurisprudence.

The President, entertaining a thorough conviction of the unsoundness of the views of the British Government, as disclosed in the note of Lord Palmerston, has been particularly affected by the declaration that no claim for slaves coming into the British dominions, *under any circumstances*, will be entertained by his Majesty's Government. Although the President well knows that such is not the intention of his Majesty's Government, yet this declaration, if not regarded as an invitation, will be the strongest inducement to the flight, or abduction, of slaves, by fraud or force, from

their masters; and if adhered to, cannot fail to be considered, especially by the sufferers from its influence, as an evidence of a spirit hostile to the repose and security of the United States. The principles upon which it is founded bearing strongly and directly upon the interests and sensibilities of the citizens of this country, can never receive the sanction of their Government, while it is evident from recent experience as well as from the proximity of territory of the two countries, that occurrences will frequently bring them into controversy. Repeated agitations of a question involving, in an eminent degree, the interests, the pride, and even the religious sensibilities of the parties concerned, must engender feelings at variance with that spirit of mutual friendship and hospitality which it is doubtless the desire, as it is the policy, of both nations to cherish and extend. Irritated by discussion without agreement, discussion will be abandoned for retaliation or retortion; and, sooner or later, the cordial good-will at present so happily existing between the two countries, will be converted into bitter hostility—the forerunner of incalculable injuries to both. If it should, therefore, be found impracticable for the two Governments to agree on principle, neither of them can fail to perceive the necessity of some immediate conventional arrangement, by which the practical evils which will arise from their difference of opinion on the subject may be, as far as possible, prevented. The President hopes, however, that his views, communicated to you in this despatch, and which you may, if you think proper, lay *in extenso* before his Majesty's Principal Secretary of State for Foreign Affairs, will obviate the necessity of a resort to a convention, by leading to the abandonment of grounds which cannot but be considered as alike inconsistent with public law, and with that high-sense of justice which belongs to the British nation.

The compensation offered for the loss of the slaves in the "Comet" and "Encomium" cannot be rejected without injustice to the individual claimants. You will, therefore, inform his Majesty's Government, that, with an explicit understanding that the objectionable principles advanced in Lord Palmerston's note are in no respect admitted, you have been directed to accept the tender of satisfaction which has been made for those claims, and that you will be ready to enter upon an adjustment of the amount of indemnity whenever you shall receive the necessary proofs. The parties interested will be immediately called upon to furnish the requisite evidence, which will be transmitted to you with suitable instructions, without unnecessary delay.

I am, sir, your obedient servant,

JOHN FORSYTH.

ANDREW STEVENSON, Esq., &c., &c., &c.

Mr. Forsyth to Mr. Stevenson.—(Extract.)

DEPARTMENT OF STATE,

Washington, August 4, 1837.

SIR: I transmit to you, herewith, all the evidence filed in this department in support of the claims of the owners of the slaves belonging to the "Comet" and "Encomium," liberated by the colonial authorities of the British West India islands. It will be found sufficient for the general pur-

pose to which it is now proposed to be applied, although additional proof may be required, in a few instances, upon a settlement between this Government and the several claimants.

Mr. Forsyth to Mr. Stevenson.

DEPARTMENT OF STATE,
Washington, March 12, 1838.

SIR: Your despatch of the 27th December last (No. 40) has been received and laid before the President, who directs me to express to you his approbation of the manner in which you have replied to the last note of her Britannic Majesty's Government, respecting the American slaves that were shipwrecked near the Bahama islands, in the year 1831 and 1834, and seized by the colonial authorities. The principles set up in the first note of Lord Palmerston and now reiterated, are so entirely at variance with the ideas entertained by this Government of natural justice and of national law, and are asserted with so much positiveness by his lordship, that it is deemed unnecessary for you to prolong the discussion. Unless, therefore, her Majesty's Minister should address you again upon the matter, or should show a disposition to recede from the grounds assumed in his recent communication, it is the wish of the President that you should cease to agitate the question upon its merits, and that you should call upon the British Government, under your former instructions, to say whether they are prepared, at once, to enter upon the negotiation of a convention for regulating the disposition of slaves belonging to the United States, that may be carried by force into their colonies, lying contiguous to our territory, or driven in by stress of weather, with a view to the prevention of the ill effects to be apprehended from future collisions upon a subject so liable to produce, in the people of the respective countries, a high degree of excitement and irritation. In the mean time, the President, anxious to avoid every thing that might tend, in the least degree, to disturb the amicable relations subsisting between the two countries, will abstain from taking those steps for the security of the rights and property of our citizens, which the recent decision of her Majesty's Government, in the absence of any agreement upon the subject, would render necessary, until an opportunity is afforded for receiving the answer of her Majesty's Government to the application which you are directed to make. You will press for an immediate decision with all the earnestness consistent with the respect and courtesy due to each other by friendly nations in their diplomatic intercourse.

I am, sir, your obedient servant,

JOHN FORSYTH.

ANDREW STEVENSON, Esq., &c., &c., &c.

Mr. Forsyth to Mr. Stevenson.

DEPARTMENT OF STATE,
Washington, June 6, 1838.

SIR: With reference to your despatch of the 21st of April, (No. 47,) the last received at this department from the legation of the United States in

London, in which you request to be informed more particularly of the President's opinions in regard to the conventional arrangement which this Government proposes to Great Britain on the subject of slaves belonging to citizens of this country, forced by stress of weather, or other unavoidable contingencies, into the British West Indian Islands or Bermuda, it is at present only necessary to state, that the views of the President would be partially realized by an agreement wherein the Government of her Britannic Majesty should stipulate to refrain from forcing liberty upon American slaves thus driven into her colonial ports. This object, it is believed, might easily be effected without any collision with existing British laws, supposed to be applicable to the subject, by restricting their operation entirely to terra firma, and by inhibiting the landing of foreign slaves at any port or place within the jurisdiction of the civil authorities of those islands. In cases of imperious necessity, however, the negroes might be placed in a fortification or other place under military command, for temporary safe keeping, until their owners could provide the means for their reshipment without unnecessary delay. If, upon inquiry, it be found that her Majesty's Government will entertain the proposition for a convention, such as that contemplated, by virtue of which the local authorities of the British islands near this continent would be prevented from improperly interfering with this species of American property when driven into their waters, you will immediately advise the department of the fact, and the proper instructions will be forthwith forwarded to you to enable you to enter upon and to conclude the negotiation of such an arrangement.

I am, sir, your obedient servant,

JOHN FORSYTH.

ANDREW STEVENSON, Esq., &c., &c., &c.

Mr. Forsyth to Mr. Stevenson.—(Extract.)

DEPARTMENT OF STATE,
Washington, November 28, 1838.

SIR: I am instructed by the President to express to you his regret that no further advance has been made towards the final settlement of the indemnification conceded to be due to the claimants by her Majesty's Government, for the slaves of the Comet's and Encomium's cargoes, seized and liberated by British colonial authorities. It is the President's wish that you would take an early opportunity to see Lord Palmerston on this subject, and endeavor to arrange with him, without needless delay, the amount justly due to the proprietors of the property in question, and press upon his lordship, in respectful but positive language, the necessity of immediately presenting the whole matter to Parliament, with a view to obtain an appropriation to satisfy this claim.

ANDREW STEVENSON, Esq., &c., &c., &c.

Mr. Stevenson to Mr. Forsyth.—(Extracts.)

LEGATION OF THE UNITED STATES,
London, January 22, 1837.

SIR: I have the honor herewith to transmit to you the copy of a note from Lord Palmerston, received on my return to London last week, communicating the final decision of his Majesty's Government, of the claims of our citizens for their slaves shipwrecked on the Bahamas; and which were seized and liberated by the colonial authorities of Great Britain.

I accordingly addressed to Lord Palmerston a note to this effect, a copy of which is herewith transmitted, marked B. To this no answer has yet been received.

Lord Palmerston to Mr. Stevenson.

FOREIGN OFFICE, *January 7, 1837.*

The undersigned, his Majesty's Principal Secretary of State for Foreign Affairs, has had the honor to receive the notes which have been addressed to him by Mr. Stevenson, Envoy Extraordinary and Minister Plenipotentiary from the United States, respecting the claims preferred by the Government of the United States of America, for compensation to the owners of certain slaves who were on board the "Comet" and "Encomium," wrecked on the Bahama islands, and on board the "Enterprise," driven by stress of weather into the port of Hamilton, in the Island of Bermuda.

The great importance of the questions which are involved in these claims has rendered it necessary to give them the fullest and most deliberate consideration.

His Majesty's Government has no means of satisfying claims of this nature, if found to be just, but by applying to Parliament for a vote of money for such purpose, and it is therefore the duty of his Majesty's Government fully to investigate the justice of a claim, before submitting such claim to the consideration of Parliament.

Moreover, the claims now in question bring into discussion matters of peculiar delicacy and importance: the authority of the laws which have been passed in this country for the suppression of the slave trade, and for the abolition of slavery; the applicability of these laws to natives of foreign States, who may come within the dominions of the Crown; the unrestricted right of every individual who finds himself within British jurisdiction to claim the full protection of the laws of the land. All these questions are necessarily raised by the claims now under discussion, and Mr. Stevenson will at once understand the gravity of a decision which was not merely to determine the existence or extent of a pecuniary liability, but which was incidentally to carry with it important interpretations of the law.

Mr. Stevenson, therefore, and the Government of the United States, will not be surprised, that the British Government should have been unable to give an earlier answer to the applications which have been made to it on this subject.

The undersigned has now to inform Mr. Stevenson, that his Majesty's

Government, having considered these cases with an anxiety and care proportioned to their difficulty and importance, has come to the conclusion that the claim preferred with respect to the "*Enterprise*" is not well founded, but that the claims preferred on account of the "*Comet*" and "*Encomium*" are well founded.

His Majesty's Government is of opinion that the rule by which these claims should be decided is, that those claimants must be considered entitled to compensation who were lawfully in possession of their slaves within the British territory, and who were disturbed in their legal possession of those slaves by functionaries of the British Government.

Now, the owners of the slaves on board the "*Enterprise*" never were lawfully in possession of those slaves within the British territory.

Before the time when the "*Enterprise*" arrived at Bermuda slavery had been abolished throughout the British Empire; and, consequently, the negroes on board the "*Enterprise*" had, by entering within British jurisdiction, acquired rights which the local courts were bound to recognise, and were obliged to protect. And here the undersigned must beg to point out a distinction between laws bearing upon the personal liberty of man, and laws bearing upon the property which man may claim in irrational animals or in inanimate things.

If a ship containing such animals or things were driven, by stress of weather, into a foreign port, the owner of the cargo could not be justly deprived of his property by the operation of any particular law which might be in existence in that port; because, in such case, there would be but two parties interested in the transaction—the foreign owner and the local authority; and it would be highly unjust that the former should be stripped of what belongs to him through the forcible application of the municipal law of a State to which he had not voluntarily submitted himself.

But in a case in which a ship so driven into a foreign port by stress of weather contains men over whose personal liberty another man claims to have an acquired right, there are three parties to the transaction: the owner of the cargo, the local authority, and the alleged slave; and the third party is no less entitled than the first to appeal to the local authority for such protection as the law of the land may afford him. But if men who have been held in slavery are brought into a country where the condition of slavery is unknown and forbidden, they are necessarily, and by the very nature of things, placed at once in the situation of aliens who have, at all times from their birth, been free. Such persons can in no shape be restrained of their liberty by their former master, any more than by any other person. If they were given up to such former master they would be aggrieved, and would be entitled to sue for damages. But it would be absurd to say that when a State has prohibited slavery within its territory, this condition of things must arise, namely: that as often as a slave ship shall take refuge in one of the ports of that State, liability must necessarily be incurred, either to the former owner of the slaves, if the slaves be liberated, or to the slaves themselves, if they are delivered up to their former owner.

If, indeed, a municipal law be made which violates the law of nations, a question of another kind may arise. But the municipal law which forbids slavery is no violation of the law of nations. It is, on the contrary, in strict harmony with the law of nature; and, therefore, when slaves are liberated, according to such municipal law, there is no wrong done, and there can be no compensation granted.

His Majesty's Government, therefore, consider the claim respecting the slaves of the "*Enterprise*" to be finally disposed of, by the principles thus laid down, and it follows, likewise, from thence, that no claim of that kind can ever be entertained. But, applying the foregoing rule to the case of the "*Comet*," compensation seems to be demandable.

In January, 1831, the state of slavery was permitted in the Bahamas, and as the law acknowledged the rights of property which British subjects, there residing, might acquire in slaves, a foreigner might also lawfully have been in possession of slaves in these islands, if he did not infringe any of the laws by which slavery was there regulated. Therefore, the relation of owner and slave was not necessarily dissolved by the arrival of slaves, at that time, in that colony. The slaves in question appear, moreover, to have been actually in the possession of their owner, within British territory, at the moment when they were illegally seized by a functionary of the British Government. Had it not been for this interference, there can be little doubt that the slaves would have been re-shipped in the vessel prepared to receive them, and would have reached the port to which they were destined.

The undersigned has further to state that the case of the "*Encomium*" does not appear, to his Majesty's Government, to differ substantially from that of the "*Comet*." When the shipwreck of the "*Encomium*" happened, slavery was still allowed in the Bahamas; the slaves on board the "*Encomium*" had never been freed from the control of the owner, and being virtually in his possession, they also were set at large by a functionary of the English Government.

It is undoubtedly true that, even if there had been no interference on the part of the British authorities, it might still have been possible that the owners might not, in the case of either of these vessels, have been able to re-ship the slaves; yet, as the seizure was wrongful and prejudicial, some compensation is equitably due.

His Majesty's Government, therefore, on being furnished with specific information as to the value of such of the slaves on board the "*Comet*" and "*Encomium*" as remained at the Bahamas, and were not removed from thence by their former owners, will be prepared to take into consideration the amount of compensation which it may be reasonable to allow for any injury the owners may be presumed to have sustained from the interference of the British functionaries in landing the slaves at the Bahamas.

The undersigned has accordingly to request that Mr. Stevenson will have the goodness to furnish him with such information respecting the pecuniary value of the slaves as will enable his Majesty's Government to form an opinion as to the amount of compensation which the owners may be entitled to receive, in consideration of the circumstances under which the services of their slaves have been lost to them.

The undersigned in conclusion has to repeat, that, slavery being now abolished throughout the British empire, there can be no well-founded claim for compensation in respect of slaves who, under any circumstances, may come into the British colonies, any more than there would be with respect to slaves who might be brought into the United Kingdom.

The undersigned avails himself of this opportunity to renew to Mr. Stevenson the assurances of his distinguished consideration.

PALMERSTON.

A. STEVENSON, Esq., &c., &c.

Mr. Stevenson to Lord Palmerston:

No. 23, PORTLAND PLACE, *January 14, 1837.*

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States, has the honor to acknowledge the receipt of the official note addressed to him by Lord Palmerston, his Majesty's Principal Secretary of State for Foreign Affairs, under date of the 7th instant, communicating the final decision, by his Majesty's Government, of the claims of certain citizens of the United States, for indemnity for a number of slaves shipwrecked near the Bahama and Bermuda islands, and which were seized and liberated by the colonial authorities thereof:

The undersigned regrets that he has been prevented, by severe indisposition, from acknowledging sooner the receipt of his lordship's note, which he now hastens to do; and to assure him that he will lose no time in transmitting it to his Government; and invoking for it the early and respectful attention its high importance merits.

What course the Government of the United States will feel itself justified in taking, in relation to this subject, and the important questions involved in it, the undersigned does not feel himself at liberty to anticipate; but, that the decision which has been made by his Majesty's Government, and the principles on which it is attempted to be justified, will be received with painful surprise and regret by his Government, and the deepest sensibility by the whole Union, the undersigned cannot doubt. Having heretofore discussed at large the merits of these claims, as well as the important principles involved in them, and placed his Majesty's Government in possession of the views and opinions of his own, upon the subject, the undersigned will forbear to open again the discussion of these claims, or enter into an examination of the delicate and important questions presented in Lord Palmerston's communication. Such a course at this stage of the negotiation, and in the absence of instructions from his Government, would be neither beneficial nor respectful. In abstaining, however, from doing so, and expressing the sincere regret which he feels at the essential difference of opinion which is likely to arise between the two Governments, as to the principles on which these claims ought to be adjusted, the undersigned feels that he should but imperfectly fulfil his duty, as the representative of his country, if he did not seize the present occasion as a fit one to protest, in the most solemn manner, as he now begs leave respectfully to do, against the principles and doctrines asserted by Lord Palmerston, in behalf of his Majesty's Government, as the basis of its decision in relation to these claims, and especially in the case of the Enterprise; principles and doctrines which in the opinion of the undersigned are calculated to reach not only far beyond the value of the individual claims in discussion, but to matters of higher and deeper importance, connected with the national interest and institutions of his whole country, and difficult to be reconciled with the friendly relations subsisting between the two countries.

That such will be the view which his Government, in all probability, will feel itself justified in taking of this important and delicate subject, the undersigned cannot for a moment doubt. Under this view he deems it his duty respectfully to decline taking any definitive step for the adjustment of these claims, under the decision of his Majesty's Government, until he shall have had an opportunity of communicating with his Government, and ascertaining its wishes and instructions in relation to the whole subject.

The undersigned is happy to avail himself of the occasion to renew to Lord Palmerston assurances of his distinguished consideration.

A. STEVENSON.

Lord PALMERSTON, &c., &c.

Mr. Stevenson to Mr. Forsyth.—(Extract.)

LEGATION OF THE UNITED STATES,

London, May 13, 1837.

SIR: I have the honor to transmit to you a copy of my note to Lord Palmerston, upon the subject of the shipwrecked slaves.

Mr. Stevenson to Lord Palmerston.

No. 23, PORTLAND PLACE, May 12, 1837.

The undersigned, Minister Plenipotentiary from the United States, has the honor again to invite the attention of Lord Palmerston, his Majesty's principal Secretary of State for Foreign Affairs, to the claim preferred by the Government of the United States, in behalf of the owners of certain slaves who were shipwrecked near the Bahama islands, and liberated by the colonial authorities of his Majesty's Government.

Having lost no time in transmitting, for the consideration of his Government, the note which Lord Palmerston did him the honor to address to him on the 7th of January, announcing the determination of his Majesty's Government respecting these claims, the undersigned has been instructed to seize the earliest moment of assuring his lordship that, whilst the readiness expressed by his Majesty's Government to render justice to the owners of the slaves in the cases of the "Comet" and the "Encomium" is acknowledged by the President, the principles asserted in justification of the rejection of the claim in the case of the "Enterprise," are regarded by him as not only inconsistent with public law and the rights of the citizens of the United States, but with that respect due from all foreign powers to the institutions of an independent and friendly nation.

In presenting the subject of these claims again to the notice of his Majesty's Government, it is not intended to open the general discussion of them, or repeat the arguments which have been heretofore urged in their support. The undersigned will, therefore, best fulfil his instructions by submitting a brief examination of the principles assumed by Lord Palmerston's note, as the basis of the decision of his Majesty's Government. The rule laid down by his lordship, for the decision of these claims, is, "that those claimants must be considered entitled to compensation who were lawfully in possession of their slaves within the British territory, and who were disturbed in their legal possession of those slaves by functionaries of the British Government." Lord Palmerston then proceeds to state, that the owners of the slaves on board the "Enterprise" never were lawfully in possession of these slaves within the British territories, slavery having, before the arrival of the vessel in Bermuda, been abolished throughout the British Empire; and his lordship asserts the doctrine, that, when those who have been held in slavery are brought in a country where the condition of slavery is unknown and forbidden, they are necessarily, and by the

very nature of things, placed at once in the situation of aliens who have at all times from their birth been free. And in the conclusion of his lordship's note, he declares that, slavery being now abolished throughout the British Empire, there can be no well-founded claim for compensation in respect to slaves who, *under any circumstances*, may come into the British colonies, any more than there would be in respect to slaves who might be sent into the United Kingdom.

His lordship, however, at the same time admits that, if a ship containing irrational animals or inanimate things were driven by stress of weather into a foreign port; the owner of that cargo could not be justly deprived of his property by the operation of any particular law which might be in existence in that port; and he allows that it would be highly unjust that the owner should be stripped of what belongs to him through the forcible application of the municipal law of a State *to which he had not voluntarily submitted himself*. To reconcile these apparently conflicting doctrines, Lord Palmerston is understood to maintain that, since the passage of the act of Parliament of 1834, entitled "An act for the abolition of slavery throughout the British colonies," &c., there can be no property in slaves, under any circumstances, within the British dominions; and that, as a necessary consequence, whenever slaves are brought into them, however compulsory and unavoidable the causes which carry them there, all antecedent property in them, be it ever so solemnly guaranteed by the laws of the country to which the owner belongs, is forthwith divested, and the slave entitled to his liberty. It is further alleged, that the law which draws after it this result, is entirely in harmony with the law of nations. It would be impossible to look back on the history of nations without feeling surprise at these positions thus laid down by Lord Palmerston, were they even assumed by a country, if such an one could be found, in which slavery has never existed. How much more extraordinary, then, must they appear, when they are advanced by a nation, during whose dominion over these States the existing institutions of domestic slavery in some of them had its origin; within whose dominions slavery has, for nearly three centuries, been allowed and protected by law, and in a portion of whose territories a species of servitude still exists, which, though limited in its duration, and regulated by laws to guard against abuses, is not to be distinguished from slavery itself, although designated by the milder name of apprenticeship. The Government of the United States does not deny that the municipal laws of any country, not involving a violation of the laws of nations, may rightfully control the persons and property of the natives of other States, who, by voluntarily entering within the limits of such country, place themselves under its jurisdiction; but it does maintain that, when an important and vital change of municipal laws has been adopted, it would be inequitable and unjust to apply it to those who come, without notice of that change, into the country, on the faith of former laws. Liberal justice requires that the foreigner in that case should be permitted to withdraw himself and property unmolested from the operation of the new law. But that municipal laws have controlling authority over aliens who are forced within their reach, when such laws conflict in any respect with those higher obligations which govern the intercourse of nations with each other, is not alleged by Lord Palmerston; and cannot be admitted by any independent power.

It is understood to be conceded by his Majesty's Government, that all

the persons who were on board the "Comet," "Encomium," and "Enterprise" were forced within the British jurisdiction, and that, as a consequence, none of them could be deprived of their property by the operation of any municipal law. If the injustice and consequent illegality, under the law of nations, of depriving a native of a foreign State of his property, by a municipal law of the territory into which he has been driven by necessity, depend, as Lord Palmerston admits that they do, upon his never having voluntarily submitted himself to such law, it necessarily follows that the question of property is not to be, and cannot, from the reason and nature of things, be decided by the same municipal law, to which the claimant has never yielded submission. The question of property must therefore be determined by some other test than the municipal law, to which he has never voluntarily submitted himself. It can only be justly determined with a reference to a period antecedent to his entry within the foreign jurisdiction, and under the law of nations, by the laws of the country to which he belongs, and where he acquires his right of property.

It is not denied that a municipal law which abolishes slavery is in conformity with the laws of nations; but it is also true, as his Majesty's Government must admit, that the municipal laws of an independent State, by which it is authorized, are equally so. For it certainly will not be contended that the unbroken series of legislative acts running through so many centuries to the present time, by which the existence of slavery in the British colonies was sanctioned, the right of property in slaves secured, and the transfer of them from subject to subject, by inheritance or contract, regulated, were infractions of the laws of nations. Great Britain is therefore as much bound to admit the existence of property in slaves for life within the territories of the United States, as the United States are bound to admit a qualified property in slaves for years in the British West India colonies, and the prospective abolition of slavery in the dominions of the British empire. At the moment, then, when the holders of the slaves on board the "Enterprise" were driven within the British colonial territory, they had, according to the laws of their own country, a property in these slaves, recognised by the laws of nations; and if it was subsequently taken away, they were deprived of it by a municipal law to which they had never voluntarily submitted themselves, and which could not take away property, as Lord Palmerston admits, without great injustice. To sustain the distinction drawn by his lordship between laws bearing upon the personal liberty of man, and those bearing upon property which may be claimed in irrational animals and inanimate things, and to justify the doctrine which he has suspended upon it, it is necessary to show, not merely that *slavery for life* has been abolished within the British dominions, but that human beings cannot be the subject of property, *any where, or to any extent*. This position cannot, will not, be maintained by a Government whose statute laws and judicial decisions establish the reverse. The act of Parliament itself, for the abolition of slavery, is founded on the previous right of property in the slaves for life. Compensation is awarded for it to the owners; a part of this compensation is a grant or reservation to the owners of property in the services of the slaves for years to come, without the consent of the slaves, and without remuneration to them; the right to these services is expressly made transferable by bargain and sale, is subject to the forced payment of debts due by the owner, and is levied upon like any other property for that purpose. Indeed, after the passage of

the West India act, it was expressly declared, in the instructions given by his Majesty's Government to the Governors of her West India colonies, that the servile character of the slave was rather locally suspended than abolished, and that the relation between his owner and himself was capable of being revived. But the reference to these statutory provisions would seem to be useless, since the existence of such property, previously to the act of Parliament of 1834, is made the basis of the allowance of the claims of the owners of the slaves who were on board the "Comet" and "Encornium." An attempt to discriminate between the right to the services of the man, and the right to the legal possession of the man, will scarcely be made. If it should be, it would at once be exposed by the inquiry, how the owner is to have the services without the control of the servitor? How the owner or sheriff, in the event of a sale by private contract or in market overt, could give the purchaser the benefit of the services, without delivering up into legal possession the person who was to perform them? The slaves on board the "Enterprise" could not have been liberated, but on the ground that the claimants could have no right to their services, even for a day. The extent as to time of the right of service, could not justly form an element in the decision of the question of legal possession. That legal possession being established, its duration, provided it was long enough to enable the owner to remove the object of it from British jurisdiction, could not be disturbed without manifest injustice, according to the principles of Lord Palmerston's admission. Were it then established that the laws of the United States could give no right which the British authorities could recognise, to the services of slaves for life, without their consent, it must be conceded that those laws could confer a temporary right to their services, such as exists in the British colonies themselves, which would protect the owners in the legal possession of their persons, and which is entirely inconsistent with their being regarded and treated "as aliens who have at all times from their birth been free." The apprenticed laborers, or slaves for years, into which the former slaves for life have been transformed by act of Parliament, are not to be carried from one colony to another; yet, if in the lawful translation of these laborers from one place to another, in the same colony, by sea, they should be cast upon the shores of another colony, it is not conceivable that they would be treated as having at all times from their birth been free, or that those entitled to their services would be denied the possession of them for the purpose of carrying them back to the place where their services were lawfully due. Does the British Government intend that the right to the services of men, and the right to the legal possession of the servitor, shall be yielded to British subjects; and in the same place, under the same laws and institutions, denied to American citizens forced into their sphere of action, as a thing which cannot exist? To make more glaringly manifest the absence of all justification for such distinction, it is proper that his Majesty's Government should be informed that there are, in many parts of the Union, colored persons who are, without essential differences, in the condition of the apprentices to labor in the British West India colonies; and that, on the abolition of slavery in many of the States, (who found it possible to legislate for that purpose,) the first step was, as in the British colonies, the substitution of *slavery for years* for *slavery for life*. It never occurred, however, to American legislators that any benefit was to result from the application of a new name, not descriptive of their condition, to the persons

who were the objects of these laws; and they are accordingly every where known as slaves bound to service for a term of years. Like the apprentices to labor of the British colonies, they are inheritable property, transferable by legal process for the payment of judgments recovered against their owners, and by bargain and sale. In the very probable event of the shipwreck of such slaves for years on the British West India shores, would his Majesty's Government attempt to discriminate between the condition of the American owners of their slaves for years, and the British owners in the colonies of the apprentices to labor, wresting the property from the one, and maintaining the right of property in the other, on the ground that one was according to the municipal law of England, and the other forbidden by, or inconsistent with it? It would not be compatible with the respect due to his Majesty's Government to suppose it capable of such inconsistency and injustice towards the citizens of a friendly-nation forced within the range of British hospitality. Yet such is the result to which Lord Palmerston's doctrine inevitably leads. On the other hand, if no discrimination is to be made between British and American holders of slaves for years, in the British colonies, it is because Great Britain, in its inquiries into the legality of the possession of the slaves, looks back to the time before they came within the jurisdiction of Great Britain, and takes upon itself to decide a question no independent nation suffers other powers to decide for it—how far its power extends in relation to the property and persons subject to its dominion; and to admit or deny the right of property in man, according to the duration of the involuntary service required from him; making the standard of justice the municipal law of England, which the Government did not feel itself authorized to enact without the payment of money for the slaves for life to their colonial owners. But Lord Palmerston, in order to support what the Government of the United States considers a most untenable distinction, so far as foreign nations are concerned, between slaves and other articles of property, assumes that, when a ship is driven into a foreign port by distress, containing men, over whose personal liberty another man claims to have an acquired right, there are three parties to the transaction—the owner of the cargo, the local authority, and the alleged slave; and that the third party is no less entitled than the first to appeal to the local authority for such protection as the local law may afford; and that the alleged slave, if given up to the former master, would be aggrieved and would be entitled to sue for damages. Now, before proceeding to examine into the correctness of this assumption, it may be proper to remark, that its application to the slaves on board the "Enterprise" is only to be accounted for by the supposition that his lordship had an incorrect understanding of the facts connected with their liberation. Whatever might have been the duties or obligations of the local authorities of Bermuda, had the slaves applied for the protection of the law, before those authorities interfered, or had they escaped from their owners, and the latter applied to the colonial officers to aid in arresting and delivering up the fugitives, it is in proof and known to the Government that neither of those circumstances occurred. On the contrary, the intermeddling of the colonial authorities was unsolicited and officious, and on that account, and on that account alone, if on no other, as it led to the loss of the slaves to the owners, a fair and sufficient ground for a claim to compensation was afforded. Immediately on the arrival of the vessel, before complaint made by the slaves or their owners, she was seized by the custom house officers for the avowed reason that she had

slaves on board, who were by those self constituted judges declared to be free. After the lapse of a few days, this outrageous seizure was acknowledged to have been illegal, and the vessel was re-delivered to the master; the officers stating that they had nothing more to do with her or her cargo, and that as soon as the necessary repairs were made to fit her for sea, they would deliver up her papers, which had been, according to law, deposited at the custom-house. When the vessel was ready to sail the master applied for his papers, which the officers refused to give up, under what is believed to be a pretext, that they were instructed to withhold them until the Governor of the island should signify his pleasure respecting the slaves. While thus detained by the connivance or contrivance of the colonial officers, the slaves never having been out of the custody of the master of the vessel, a writ of *habeas corpus* was issued by the chief justice of the island, under which they were all brought before him and declared to be free. This interference of the chief justice, like that of the custom-house officers, so far as is known, was not called for by any of the slaves, a portion of whom indeed voluntarily returned in the vessel to the United States, refusing to accept the freedom thus endeavored to be forced upon them. The owners certainly could not have applied to the authorities of the island for their interposition, inasmuch as they had been constantly in possession of the slaves until they were forcibly taken away. There was, consequently, no motive to require it. It is not, therefore, perceived how it is possible any liability could have been incurred by the Colonial Government or its officers, had the slaves been carried out of the island in the vessel which brought them into it; and there was no room for the application of the principle which is stated to have had so important an influence on the decision made by his Majesty's Government on this claim. But if this were not so, the soundness of the principle is explicitly denied, and the serious consequences with which, in the judgment of the President, it is fraught to the property and tranquillity of the citizens of the United States, make it the duty of the undersigned to announce to his Majesty's Government, immediately and solemnly, that its application to them can never be acquiesced in by the Government of the United States.

Every Government has undoubted right to extend the benefit of its local laws to aliens, however they may come into its territory, provided this extension does not interfere with the rights of others, which that Government is bound to acknowledge and respect; but no nation has a right to confer benefits by its municipal laws, necessarily implying a deprivation of the vested property of others, not subject to their jurisdiction. Before the slaves in question, therefore, could appeal for protection against their owners, or sue for damages if surrendered to them, it must be assumed that the municipal laws of Great Britain could be applied to the prejudice of those who were forced within their reach, and take away property vested by the laws of another nation, which that nation had an undoubted right to enact. How long is it since such an application of local law was deemed in Great Britain consistent with the unchanging law of nations? Are the principles of the international code to be affected by the enactments of particular States? Yesterday, a foreigner was protected in his acknowledged property in slaves in the British West Indies; to day, his property in slaves is denied, and they are wrested from him. The law of nations is the same, but Great Britain has changed its domestic code.

In the year 1725, when Spain possessed Florida, and Great Britain the

Carolinas, the retention and liberation of slaves, who fled from the British into the Spanish territory, was complained of by the Governor of South Carolina, acting as the special commissioner of the King, as "a breach of national honor and faith" on the part of Spain, notwithstanding that in all such cases compensation was promised by a decree of the King of Spain to the owner for the property he had lost. At the present day, Great Britain wrests slaves from their masters when driven into her ports by stress of weather; denies all compensation; and declares that no claim for slaves will be entertained who come, under any circumstances, into British territory. Can his Majesty's Government repose securely upon a principle which gives birth to such practical inconsistency and contradiction? But the Government of the United States is at a loss to comprehend the distinction taken by Lord Palmerston between the property and the persons of a shipwrecked vessel within British territory. The first is admitted to be beyond the reach of local law. The shield of distress is thrown over the property; it is safe from the laws of revenue and confiscation; however forbidden in other vessels, articles under penalty of confiscation of vessel and cargo, and fine and imprisonment of all on board, are taken, as a sacred charge, into the keeping, as it were, of the Government itself. Yet the persons on board are held to be subject to local laws, and the relations between them are to be ascertained by reference to the English rules alone, independent of the laws of their own country, by which these relations were, before their entrance into British territory, defined and regulated. This position is considered the more extraordinary when it is remembered that the persons on board a foreign vessel, entering voluntarily for commercial objects or convenience, into an English port, are not subject, to the same extent, to the control of the local law, as the property on board, and that whenever questions arise as to previously existing obligations between such persons, they are decided by the laws of their own country, and not by the English code. The same principle which renders it unjust that the right of property of a foreigner in inanimate things, acquired in his own country, should be interfered with by the municipal law of a State within whose territorial limits he had entered not of his own free will, but from necessity, applies with greater force to his right to the services of his fellow men, acquired in the same manner. These services are a species of property, whether due by contract or by law.

It may be safely left to an English jurist to determine whether an apprentice regularly bound to service according to the laws of a free country, on board a vessel, with his master, and forced by distress of weather into a British port, would be released from his obligations because his indentures were not according to the forms required by British laws to render such indentures valid; whether, when a tempest-tost vessel finds refuge in an English port, the sailors who constitute the crew, whether bound by their own contract or that of their master, supposing them to be slaves for life or years, would be absolved from their liability to serve, because the articles under which they were shipped might not conform, in all respects, to the statutory regulations of Great Britain; whether the soldiers of a friendly power, who might chance to be on board of her, would be discharged because forced into service by conscription, or because the terms of their enlistment might be such as were forbidden by English law. Would the laws of Great Britain deny to the master possession of the apprentice or sailor, for the purpose of enforcing the fulfilment of the obligation to which

he was bound? Would they deny to the officer of the foreign Government the custody of the conscript or enlisted soldier, or of the seaman, serving under marine conscription? If there be hesitation in answering these inquiries, the reply will be found in the history of English jurisprudence. The undersigned, therefore, has been instructed to say to Lord Palmerston that the President, entertaining, as he does, a thorough conviction of the unsoundness of the views of the British Government, as disclosed in his Lordship's note, has been particularly affected by the declaration that no claim for slaves coming into the British dominions, *under any circumstances*, will be entertained by his Majesty's Government. Although the President well knows that such is not the intention of his Majesty's Government, yet this declaration, if not regarded as an invitation, will be the strongest inducement to the flight or abduction of slaves, by fraud or force, from their masters; and, if adhered to, cannot fail to be considered, especially by the sufferers from its influence, as an evidence of a spirit hostile to the repose and security of the United States. The principles upon which it is founded, bearing strongly and directly upon the interests and sensibilities of the citizens of the United States, can never receive the sanction of their Government; whilst it is evident from recent experience, as well as from the proximity of territory of the two countries, that occurrences will frequently bring them into controversy. Repeated agitations of a question involving, in an eminent degree, the interests, the pride, and even the religious sensibilities of the parties concerned, must engender feelings at variance with that spirit of mutual friendship and hospitality, which it is doubtless the desire, as it is the policy, of both nations to cherish and extend. Irritated by discussion without agreement, discussion will be abandoned for retaliation or retortion, and sooner or later the cordial good will, at present so happily subsisting between the two countries, will be converted into bitter hostility—the forerunner of incalculable injuries to both.

These are the views which the undersigned has been instructed to present to Lord Palmerston's consideration. They are offered in the confident hope that they may induce his Majesty's Government not only to review its decision, and do justice to the claimants, as well in the case of the "Enterprise," as those of the "Comet" and "Encomium," but lead to the abandonment of grounds which cannot but be considered as alike inconsistent with public law, and that high sense of justice which belongs to the British nation.

Upon the subject of the compensation offered for the loss of the slaves in the "Comet" and "Encomium," the undersigned has been instructed to inform Lord Palmerston, (with an explicit understanding, however, that the objectionable principles advanced in his lordship's note are in no respect admitted;) that he is authorized to accept the tender of compensation which has been made, and that he will be ready to enter upon an adjustment of the amount of indemnity, as soon as he shall be put in possession of the necessary proofs for that purpose, and which the claimants interested have been called upon without delay to furnish.

The undersigned begs leave to renew to Lord Palmerston assurances of his distinguished consideration.

A. STEVENSON.

To the Rt. Hon. Lord Vt. PALMERSTON, &c., &c., &c.

Mr. Stevenson to Mr. Forsyth.—(Extract.)

LEGATION OF THE UNITED STATES,
London, June 13, 1837.

SIR: I herewith transmit to you the copy of a note from Lord Palmerston, dated the 30th ultimo, acknowledging the receipt of the one from me, which accompanied my despatch No. 24, on the subject of the shipwrecked slaves.

Lord Palmerston to Mr. Stevenson.

FOREIGN OFFICE, May 30, 1837.

The undersigned, his Majesty's Principal Secretary of State for Foreign Affairs, has the honor to acknowledge the receipt of the note which was addressed to him on the 12th instant, by Mr. Stevenson, Minister Plenipotentiary of the United States of America, on the subject of the claim preferred by the Government of the United States in behalf of the owners of certain slaves landed from the American vessel "Enterprise," and set at liberty by the British colonial authorities at the Bahamas. The undersigned begs to assure Mr. Stevenson that his note shall receive the fullest consideration from his Majesty's Government.

The undersigned avails himself of this occasion to renew to Mr. Stevenson the assurances of his high consideration.

PALMERSTON.

A. STEVENSON, Esq., &c., &c., &c.

Mr. Stevenson to Mr. Forsyth.—(Extract.)

LEGATION OF THE UNITED STATES,
London, December 27, 1837.

SIR: I received last week, from Lord Palmerston, an answer to my note of the 11th of May, upon the subject of the slaves shipwrecked near the Bahama islands, from the three American vessels, the "Comet," "Encommium," and "Enterprise," a copy of which, with my answer, I have now the honor of transmitting to you.

Lord Palmerston to Mr. Stevenson.

FOREIGN OFFICE, December 11, 1837.

The undersigned, her Majesty's Principal Secretary of State for Foreign Affairs, has given the most attentive consideration to the representations contained in the note which he had the honor to receive, on the 12th of May last, from Mr. Stevenson, Envoy Extraordinary and Minister Plenipotentiary from the United States of America, relative to the claims preferred by the Government of the United States on behalf of the owners of cer-

tain slaves landed from the American vessels *Comet*, *Encomium*, and *Enterprise*, at the Bahamas, and emancipated by the colonial authorities at those islands.

The undersigned regrets that the Government of the United States, while it does justice to the readiness with which her Majesty's Government has admitted the claims on account of the slaves landed from the ships *Comet* and *Encomium*, is nevertheless disposed to think that the principles upon which her Majesty's Government has felt obliged to reject the claim on account of the slaves landed from the *Enterprise*, are not consistent with public law, or with the respect due to the institutions of an independent and friendly nation.

But, after a careful examination of the arguments advanced by Mr. Stevenson in his note of the 12th of May, in support of this view of the matter, the undersigned has to state that her Majesty's Government is still of opinion that the claim in the case of the *Enterprise* is inadmissible, inasmuch as it is founded upon the assumption that, by the law of nations, an independent State is not entitled to enact a law declaring that the condition of slavery shall under no circumstances be recognised within its own territories; and such a doctrine her Majesty's Government can never admit. Mr. Stevenson, however, contends that the condition of slavery has not been entirely abolished in the British colonies; and that the temporary apprenticeships, to which the negroes in those colonies are still subject, are a species of qualified slavery: but the undersigned cannot admit the character which Mr. Stevenson ascribes to these apprenticeships.

These apprenticeships only give to the master, and for a limited time, with respect to the individual who was once his slave, the same rights which a master in England has by law over his indentured apprentice.

The law of the mother country is indeed now, in all respects, the law of the colonies also; and it would be impossible for her Majesty's Government to yield to the present demand for compensation, unless it were prepared to admit that the law of England is, on this point, contrary to the law of nations; and that, consequently, compensation ought also to be made for all slaves who, from time to time, may be brought into a port of the United Kingdom, and may there be liberated by a writ of habeas corpus. For Mr. Stevenson must be aware that all slaves so arriving, whatever might be the circumstances under which they might come within the jurisdiction of the courts of the United Kingdom, would be immediately liberated, and would, moreover, be entitled to claim damages against any persons who might restrain them of their liberty, or who, after their liberation, might again restore them to their former masters.

But the British Government cannot admit that Great Britain is under any obligation to make compensation to the former masters of slaves so liberated, either in the United Kingdom or in the colonies; for, the only ground upon which compensation could be claimed, would be the assumption that, by the liberation of such slaves, Great Britain had wronged those masters.

Now it cannot indeed be denied that the masters of slaves so liberated have suffered a loss; but it is a loss without a wrong: and they stand in this respect in the same situation as if their property had been destroyed by shipwreck, or by any other accident. For, if the slaves so liberated become justly and of right entitled to their freedom upon arriving within British jurisdiction, it cannot be contended that the British authorities who shall have respected this right, have thereby done to the masters a wrong, or

which those masters, having no ground for a suit in a court of justice, are entitled to claim compensation from the Government of Great Britain.

The laws of those countries in which slavery is not permitted, and where the maxim is that whoever breathes the air of heaven is free, make no exception against slaves passing *in transitu*, or driven within the territories of the State by stress of weather in the course of a voyage; and even at the time when slavery was recognised in the British colonies the dominion of the foreign master was not admitted over fugitive slaves, or over slaves who, being shipwrecked in the course of a voyage, came voluntarily into British territories. And the argument on which the claim now advanced by the American Government depends would, if assented to, lead, in its consequent application, to liabilities which have never hitherto been even asserted.

The undersigned does not, indeed, deny the justice of Mr. Stevenson's observation, that whenever questions as to previously existing obligations arise between persons who may find themselves on board a foreign vessel which has entered a British port, such questions are generally decided according to the laws of the country to which such persons belong, and not according to the law of England. In conformity with this principle, her Majesty's Government would give effect in this country to a contract entered into in a foreign country, and would construe that contract according to the laws of the country in which it was made. But it is to be remarked, that the claim now under consideration arises, not out of a contract between the two parties concerned, namely: the former master and the former slave, but out of the assertion which one man makes of a right of property to be by him exercised over his fellow man. And the answer to such a claim is, that a law now in force throughout the whole of the British dominions solemnly declares, that within those dominions no such right of property can exist.

The undersigned, therefore, cannot admit the position laid down by Mr. Stevenson, that the same principle which renders it unjust that a foreigner's right of property in inanimate things should be interfered with by the municipal law of a State within whose territories necessity may oblige such foreigner to enter, applies to a right claimed by one man to the services of his fellow-man in the capacity of a slave.

It is not denied by the British Government that the Governments of other countries have a right to continue, by their laws, the state of slavery within their own territories as long as to them may seem fit. The British Government, moreover, does not assert that the conveyance of slaves from one portion to another of the territory of a State in which slavery legally exists is contrary to the law of nations. But the British Government must maintain, that no country has a right to prevent another country from making a law to the effect that within its own territories slavery shall, under no circumstances, and in no shape whatever, be tolerated, and that every person, whatever his former condition may have been, shall, while within such territories, be entitled to all the privileges of a free man.

But the execution of a rightful law cannot be a wrong; and where no wrong is done no compensation can be due.

This being the view of the case taken by her Majesty's Government, it only remains for the undersigned to express his regret that her Majesty's Government is unable to meet the wishes of the Government of the United States in regard to the claim for the slaves landed from the "Enterprise."

And the undersigned must repeat the declaration contained in his note of the 7th of January, 1837, to Mr. Stevenson, that, slavery being now abolished throughout the British Empire, there can be no well founded claim on the part of any foreigner, in respect of slaves who, under any circumstances whatever, may come into the British colonies, any more than there would be in respect to slaves who might come into the United Kingdom.

The undersigned avails himself of this occasion to renew to Mr. Stevenson the assurances of his high consideration.

PALMERSTON.

A. STEVENSON, Esq.; &c., &c., &c.

Mr. Stevenson to Lord Palmerston.

No. 23, PORTLAND PLACE, December 23, 1837.

The undersigned, Envoy Extraordinary and Minister Plenipotentiary from the United States, has the honor to acknowledge the receipt of the note addressed to him by Lord Palmerston, her Majesty's Principal Secretary of State for Foreign Affairs, of the 11th instant, in answer to the note of the undersigned of the 12th of May last, relative to the claims of the owners of the slaves shipwrecked in the American vessels, the "Comet," the "Encomium," and the "Enterprise," near the Bahamas, and liberated by the authorities of those islands.

It is with deep regret that the undersigned now learns from the note of his lordship, that it is the intention of her Majesty's Government to adhere to its determination of not only refusing all compensation to the owners of the slaves on board the "Enterprise," but for any other slaves belonging to citizens of the United States who may hereafter, under any circumstances whatever, be brought within the dominions and jurisdiction of the British Crown.

That the Government of the United States, led as well by justice to its citizens, as by respect for its own rights of sovereignty, will regard this repeated decision of her Majesty's Government, and the principles reasserted in Lord Palmerston's note, with increased sensibility, and as affording additional grounds for painful dissatisfaction and complaint, the undersigned cannot doubt. He will, however, take an early opportunity of transmitting the note of his lordship to his Government, from whom it will doubtless receive the attention its high importance merits.

In the mean time, the undersigned deems it proper to submit to Lord Palmerston's consideration some observations which his lordship's note has rendered necessary, and which the undersigned feels it his duty to make.

Having in his previous communications exhibited fully the grounds upon which these claims rest, and discussed the important principles involved in them, the undersigned would now abstain from any comment on his lordship's note, but that it might be inferred from his silence, that the principles which have been again re-asserted by her Majesty's Government as the basis of its decision, could either be admitted or acquiesced in by that of the United States.

This course, too, becomes the more necessary in consequence of the misapprehensions under which his lordship labors, as to some of the opinions and principles, supposed to have been advanced by the undersigned, in the

previous correspondence, and which it is due as well to himself as his Government, to take an early opportunity of correcting.

Lord Palmerston, in his note, is pleased to say that the grounds upon which the claim for indemnity in the case of the "Enterprise" has been placed, are inadmissible, inasmuch as they are founded upon the assumption that, by the laws of nations, an independent State is not entitled to enact a law, declaring that the condition of slavery shall under no circumstances continue to exist within its dominions. Now, with due submission, the undersigned begs to say, that this assumption by his lordship is entirely unjust, and springs from a total misinterpretation of the doctrines asserted by the Government of the United States in support of these claims of its citizens.

The Government of the United States have not maintained, nor has the undersigned for it, that by the laws of nations one independent State had not the right abolishing by its laws slavery within its dominions, nor does any such consequence flow from the grounds upon which the present claim rests. On the contrary, as an abstract and general proposition, the right of passing such laws has never been denied by the United States.

The right was freely admitted, as undeniable, in the last note which the undersigned had the honor of addressing to Lord Palmerston; as was the principle asserted by his lordship that the municipal laws of an independent State might rightfully control the persons or property of the citizens or subjects of other States, who, by voluntarily coming within the limits of such State, placed themselves under its jurisdiction; provided they did not violate any of the principles of the public law, or the rights of any other State. It was also admitted, that municipal laws, either abolishing or permitting slavery, were in conformity with the law of nations. The Government of the United States, therefore, could have had no pretext of right to object to any law of her Majesty's Government on the subject of slavery, operating within its dominions, and not in violation of the rights of other nations. So far, therefore, from maintaining the principle supposed by his lordship, the reverse was the fact.

The question, then, is not whether Great Britain had the right of abolishing slavery by her laws, but whether the present case was one to which those laws could rightfully be extended, consistently with public law, and the right of the United States. Now it is conceded by Lord Palmerston, that whenever questions as to previously existing contracts arise between persons who may be on board foreign vessels entering British ports, they are to be decided according to the laws of the country to which such parties belong, and not according to the British laws; and that in conformity with this principle, her Majesty's Government would give effect within her dominions to any contract so entered into in a foreign country; being bound to construe the contract according to the laws of the country in which it was made; but his lordship goes on to say, that as the present claim did not arise out of a contract between the parties concerned, namely, the former master and slave, but out of the assertion which one man makes of a right of property in his fellow man, such right cannot be admitted, inasmuch as the laws of Great Britain have declared that no such claim of property shall be recognised or enforced within any part of the British dominions. It must also be borne in mind that his lordship at the same time admits that if a vessel driven by shipwreck or distress into a British port, containing irrational animals or inanimate things, the owner could not justly

be deprived of his property under the operation of a municipal law, to which he had not voluntarily submitted himself.

The whole controversy, then, turns upon the principle thus broadly asserted by her Majesty's Government, that persons cannot be made subjects of property; and that as slavery has ceased to exist in every form within her Majesty's dominions, all slaves brought therein under any circumstances, are to be regarded as free; and that in seizing and liberating them, her Majesty's Government perpetrates no wrong, and consequently can make no compensation. Upon the soundness of this principle, and the fact of the total abolition of slavery in the West Indies, her Majesty's Government rests its decision; and, in addition to the arguments which the undersigned had the honor heretofore of presenting to his lordship's consideration on these two points, he will now add some others of a general character.

And first, as to the question of property :

From whence is it that her Majesty's Government derives the doctrine, that man, under no circumstances, can become the subject of property? If it be true, as the undersigned believes it is, that property is emphatically the creature of law, of municipal law, and that that only is property which the law makes so, does it not follow that each State must alone possess the right to decide the question for itself; and that the consequence is, that property varies in different countries? Now, in all countries, ancient or modern, where slavery has existed, was it ever heard that those who were slaves were not to be regarded as property; or that any distinction was recognised under the laws of nations, between property in persons, and property in things? On the contrary, has not the right of property in slaves been acknowledged by most of the civilized nations of the globe, and secured by all the protections of law? If this be not so, and slaves are not property, what are they? When, it may be asked, since the time of the Roman law, which has justly been regarded as the *code rationis scripte*, has it ever been doubted that the slave was property? Do the laws of nations, in treating on the subject of property, make an exception in favor of the right of discriminating between persons and things? The question, then, is, not what the laws of Great Britain may be as to property in slaves, but what are the laws of the countries in which the slave and the owner reside?

The right of one nation to decide for another, what is property, is of modern date, and has been asserted, it is believed, by no other nation than that of Great Britain. Does she expect that any independent power will submit to a doctrine involving the extravagant supposition of yielding to any one nation the right not only to decide for itself, but for others, the question of what is, or what is not property? When, or where, has such a doctrine ever before been asserted? In what written or received authority will it be found? When was it, since the days of Queen Elizabeth down, that such a claim by any other nation, would not have been regarded by Great Britain as subversive of the principles of international law, and a direct violation of her own rights of sovereignty? The answer will be found in her own history. Is she then justified in asserting a doctrine which, besides being against the established principles of public law, and the rights of other nations, is so obnoxious to all those principles, recognised and practised by her in her intercourse with other nations, for more than two centuries, without opposition or censure, and by universal consent? Is it (as the undersigned has heretofore taken occasion to ask) for that nation, within whose dominions slavery has existed for centuries, and

during whose dominion over the United States the existing institutions of domestic slavery had their origin, is it for that nation, who has been the greatest slaveholder on earth, and from whose laws and practices (in the language of one of its former ministers) "slavery itself has sprung," that the doctrine is now to be maintained that there can be no right of property in persons?

The question of property in slaves is one which no nation has the right of determining for another. It is one, certainly, which the United States will never consider even open for discussion, much less for the decision of a foreign Government.

Whatever, therefore, the laws of her Majesty's Government on the subject of slavery may be, and whether it has been abolished and ceased to exist throughout Great Britain, (which, however, is not admitted as to her West India colonies,) they can have no influence in the decision of the present question. The slaves on board the "Enterprise" were the property of citizens of the United States; and in the possession of their owners when seized and liberated. They were as much under the protection of the flag of the United States when forced by distress and shipwreck into the waters and jurisdiction of Great Britain, as if they had been upon the ocean, or within the limits of the United States. They lost, therefore, none of their rights, while in a foreign jurisdiction; and their seizure from the custody of their owners, and subsequent liberation, was a violation of the rights and sovereignty of the United States; the principles of public law, and all the principles which regulate the intercourse between independent and friendly nations.

The inquiry then arises upon what ground has the claim in the case of the "Enterprise" been rejected, and those of the "Comet" and "Encomium" admitted to be well founded. It is conceded by his lordship that they rest upon what is assumed to have been the state of slavery in the colonies at the time of the arrival of those vessels in the Bahamas. In the first two cases, of the "Comet" and "Encomium," compensation was allowed because the West India act of emancipation had not passed; and the relation between owner and slave had not been dissolved; and as the law acknowledged the rights of British subjects in their slaves in the colonies, it would have been unjust to deny to a foreigner in possession of his slaves the same rights. Compensation was, therefore, decreed. But in the case of the "Enterprise," it is refused because she arrived after the passage of the law of 1833, by which it is asserted that slavery, in every form, being abolished in the colonies, the slaves became at once entitled to freedom, and the rights of the owner ceased. And hence his lordship, dissenting from the opinion expressed by the undersigned, in a former note, as to the character and condition of the negro apprentices in the West Indies, under the act of 1833, again asserts that slavery was wholly abolished by this act, and that on this foundation alone the decision of her Majesty's Government must be justified. Now protesting, as the undersigned does, against the right of deciding this claim under the municipal laws of Great Britain, or applying any system which she may adopt for the amelioration or abolition of slavery within her dominions to the citizens of the United States, or their property under circumstances like these, he will yet, for purposes of argument and illustration, proceed to show that the grounds which have been assumed as the basis of the present decision are illusory and unfounded. With due submission, then, to his lordship, the undersigned must again repeat, that so

far from slavery having been abolished in the West Indies, it exists in an essential and vital form in the present system of negro apprenticeship. The grounds upon which this opinion is expressed are matters of history. They are to be found not only in the objects and provisions of the act itself, but in the history of the proceedings and discussions which took place in Parliament at the time of its passage, on the part both of the friends and opponents of the law; to a brief review of which the undersigned now asks the attention of his lordship, and that of her Majesty's Government.

In the first place, it was not intended by the act to change immediately the state of slavery in the West India colonies. The leading and avowed object of the friends of the law was not, as Lord Palmerston has supposed, that of immediate and unqualified abolition, but the adoption of a scheme of gradual and progressive amelioration and emancipation. It was with this view that the measure was not only proposed and supported by the Government, but finally passed. In both houses of Parliament the friends and supporters of the law declared that the slaves of the colonies could not be suddenly liberated and raised from a state of slavery to one of freedom; that the experience of all ages and nations furnished examples of the imminent dangers which attended all attempts to change at once the political condition of the laboring classes of a great community; that the principle of a protracted period was essential to the welfare of the slaves, and that they could not safely be placed immediately in the situation of free men; that it was necessary, therefore, that the whole number of slaves should be divided into classes, and, continuing in the custody of their owners, be bound to serve as apprentices for a given number of years; and that the termination of their bondage was to be gradual; that when these apprenticeships ceased, and not till then, would those who had been held as slaves be in full possession of the rights and privileges enjoyed by other classes of her Majesty's subjects in the colonies; that it was in this way alone that they could guard the colonies and the negroes themselves, against the dangers of blood-shed and strife, consequent upon sudden changes from a state of slavery to one of freedom.

In the House of Lords, the then Premier, (Lord Grey,) in support of the scheme, declared "that he could not contemplate, without an increased degree of apprehension, the possible danger which might arise from setting the slaves free at once, and it was therefore believed by his Majesty's Government, that such a progressive freedom, combining a preparatory state of restricted labor with a certain degree of free labor, to end in ultimate manumission, was the proper course to be pursued; that this was the plan upon which the system of apprenticeship was proposed by his Majesty's Government; that the slaves would be allowed a part of the day to labor for themselves, and at the expiration of a certain number of years become completely emancipated; that this was the only plan effectually to secure the ultimate object of complete freedom, and the abolition of slavery in all the possessions of his Majesty's Government."

These were the views of the enlightened statesman at the head of the Government, who brought forward the measure which finally passed, and which was supported in both houses upon these grounds.

The opponents of the bill and the strong friends of emancipation opposed it, however, upon the ground that any measure for the amelioration of slavery, short of entire abolition, was open to innumerable objections; that it was a scheme to prolong *slavery* under the specious title of *apprentice*

ship, and was little else than mockery and insult. Among the most uncompromising opponents of the bill was one of the present members of her Majesty's Government, who then held a high appointment in Lord Grey's cabinet; and it is not a little remarkable in the history of this proceeding, that the decision of the Government, not to make the abolition immediate, but to adopt the system of apprenticeship, as it now exists in the colonies, not only induced that distinguished nobleman to vote against the bill, but actually drove him from office. The very able speech which he delivered against the bill was afterwards republished in a corrected form by himself, and in the preface, apologizing for the republication, the following remarkable declaration was made:

"It was a conviction which had been gradually forced upon me, that any measure short of the entire abolition of slavery was open to insuperable objections; and finding that a different view was adopted by his Majesty's Government, I thought it necessary to resign the office I held in the Colonial Department some days before the arrangement took place, by which the seals of the department were transferred to Mr. Stanley."—*Speech of Lord Howick, published by Ridgway & Sons, 1833: Picadilly.*

In this speech his lordship, in substance, declared that, by the proposed plan the negro was to be apprenticed to a master not of his own choice, and compelled to enter into a contract, the basis of which he was not at liberty to alter or reject; that if it were asked in what these apprenticed negroes differed from the English laborer who was under contract with his master, the answer was, that in the one case it was voluntary, in the other not; in the one, the laborer had the whole of his labor, in the other, only a trifling proportion. What the advantages were which it was supposed would arise from this apprenticeship of the negroes he did not know; but this he maintained, "that the system of apprenticeship was nothing more or less than the continuance of the whole system of slavery, whatever it was in name."

Another distinguished emancipator, and member of the present Parliament, said that he objected strongly to the scheme of apprenticeship. It was *slavery under another name*; and he trusted the clause respecting the apprenticeship would be completely changed: whilst another member declared that the scheme was to prolong slavery for years under the specious name of *apprenticeship*, and was mere mockery and insult. (Hansard's Parliamentary Debates, new series, session of 1833.) Is this the system thus avowed at the time of its adoption by the ministers of the Crown and the friends of the Government, not to be one of immediate abolition, but continual bondage—a system denounced by the advocates of emancipation as one of continued and essential slavery, which is now proclaimed on the part of her Majesty's Government as one of total and unqualified freedom, and intended to place the negro apprentice of the West Indies, upon the footing of the free laborer and apprentice of England? Is this the system which, it is asserted in Lord Palmerston's note, gives to the master (and that for a limited time, over the apprentice, once his slave) only the same rights which a master in England has, by the laws, over his indentured apprentice or free laborer? The answer to these questions is to be found in the historical details already given, and in the provisions of the act itself. It is to these that the undersigned looks for the justification of the opinion heretofore expressed, and now repeated, as to the true character of the

system of apprenticeship under the act of 1833; and if he has erred, as his lordship has supposed; as regarding that system as one of essential, though qualified, slavery, instead of entire abolition, he has the satisfaction at least of knowing that he has done so, not only with the Government who passed the law, but with all the distinguished advocates and opposers of it, who, it is fair to presume, understood what was intended by it, and whose opinions, on such a subject, are entitled to respect.

Nor can the undersigned concur in the correctness of the opinion expressed by his lordship, as to the rights of these negro apprentices when brought within the United Kingdom. In his last note, his lordship is understood to maintain that the law of the mother country was now, in all respects, the law of the colonies; and that negro apprentices brought, under any circumstances, into the United Kingdom, would not only be entitled to their freedom, but to damages against all those who might attempt to restrain them of their liberty, or restore them to their former masters. Can this be so? Is it not, on the contrary, directly otherwise; and if apprentices, during the period of their apprenticeship, were to be brought within the United Kingdom without the express consent of their masters, would they not be liable to be seized and restored to their masters?

By the third section of the West India act it is expressly declared, "*That all slaves who may at any time from the passing of this act, have been brought with the consent of their possessors, and all apprenticed laborers, who may hereafter, with like consent, be brought into any part of the United Kingdom of Great Britain and Ireland, shall, from the passing of the act, be absolutely and entirely free to all intents and purposes whatsoever.*"

Here the express provision of the act makes the bringing, with the actual knowledge and consent of the masters, the only foundation of the claim to freedom of the apprentices, and before such freedom could be established in the United Kingdom, the consent and privity of the owner must first be clearly and conclusively established. It is not perceived, then, upon what authority it can be affirmed that the laws of the mother country are in all respects those of the colonies, or how negro apprentices, or slaves coming within the United Kingdom without the consent of their masters or possessors (as in cases of shipwreck or distress) can be said to be free, or placed beyond the control of their owners. The grounds, then, upon which the rejection of the claim in the case of the "Enterprise" has been placed totally fail; and upon the principles admitted to govern the decision in the cases of the "Comet" and "Encomium," the claimants of the "Enterprise" are entitled to demand the like indemnity from her Majesty's Government.

Upon the subject of the laws of her Majesty's Government for the amelioration or abolition of slavery within the British dominions, it does not belong to the undersigned here to speak. With all such laws foreign Governments can have nothing to do, when not affecting their own rights of sovereignty. Humane and enlightened as such laws may be regarded by her Majesty's Government or subjects, they cannot be permitted to seek their gratification at the expense of the rights of other nations, or the confiscation of the property of their citizens or subjects. If the property for which indemnity is now asked had been lost by the accidents of commercial enterprise, or the acts of God, the loss would have been borne by the claimants without repining. But as the injuries of which they complain have been perpetrated under the authority of her Majesty's Colonial Gov-

ernment, in defiance of the clearest right, and all those principles which have heretofore been held sacred in the intercourse between nations, it becomes the duty of the Government of the United States to interpose and seek redress.

The undersigned must, therefore, again repeat the declaration contained in his note of the 12th of May, that this decision of her Majesty's Government, and the doctrines by which it is defended, are alike inconsistent with the principles of the public law ; with the rights of sovereignty of a friendly nation, and with that high sense of justice which belongs to the British nation ;—and to assure Lord Palmerston, in the most respectful, though frank manner, that whilst the claim for reparation for those injuries cannot be relinquished by the Government of the United States, it is yet to be hoped that reparation will not always be withheld.

The undersigned avails himself of the occasion to renew to Lord Palmerston the assurances of his high consideration.

A STEVENSON.

Lord Viscount PALMERSTON.

Mr. Stevenson to Mr. Forsyth.—(Extracts.)

LEGATION OF THE UNITED STATES,

London, April 21, 1838.

SIR: I have now the honor to enclose to you a copy of my note to Lord Palmerston, submitting, as directed in your despatch of the 12th of March, a direct proposition for a conventional arrangement with Great Britain on the subject of our slaves who may hereafter be carried by force, or driven by shipwreck, into the British colonies contiguous to the United States.

* * * * *

As I am uninformed in relation to the peculiar character of the arrangement which our Government would be willing to adopt, I desire to know what the President's opinions on the subject are, and what I am to say, if asked, as I shall no doubt be, to state the basis of the convention we propose.

Mr. Stevenson to Lord Palmerston.

No. 23, PORTLAND PLACE, April 17, 1838.

Under recent instructions from his Government, it again becomes the duty of the undersigned, Minister Plenipotentiary from the United States, to address Lord Palmerston, her Majesty's Principal Secretary of State for Foreign Affairs, upon the subject of the American slaves shipwrecked near the Bahama Islands, in the years 1831 and 1834, and liberated by the colonial authorities.

Having lost no time in transmitting to his Government the last note of his lordship on this subject, under date of the 11th of December last, with the reply thereto, the undersigned has been directed to take an early opportunity of expressing the regret with which the President perceives

the determination, on the part of her Majesty's Government to adhere to the principles asserted in Lord Palmerston's first note, and reaffirmed in the last, and to repeat the assurances heretofore given, that such principles can be regarded in no other light than as entirely at variance with the opinions entertained by the Government of the United States of natural justice and national law.

The undersigned has likewise been instructed to say, that from the positive and marked manner in which these principles have been reiterated in his lordship's last note, it is not deemed by the President either expedient or necessary to prolong the discussion upon the merits of the question.

Whilst, however, it may be impracticable for the two Governments to agree in principle, it must yet be apparent that a strong necessity exists on the part of both to adopt measures by which the evils that are likely to arise from such difference in opinion may, if practicable, be prevented.

The President, therefore, unwilling to abandon the hope that some arrangement may be made between the two Governments likely to prove adequate to that object, has instructed the undersigned to ascertain if it will meet the wishes of her Majesty's Government to enter upon the negotiation of a conventional arrangement, providing for the disposition of all slaves belonging to the United States who may hereafter be carried by force, or be driven by stress of weather, within the British colonies proximate to the territory of the United States. With this view, the undersigned begs leave to submit to Lord Palmerston a proposition for this desirable object, and to express the earnest desire, on the part of his own Government, for its early and favorable consideration by that of her Majesty's.

In the mean time, it is proper to say that the President of the United States, anxious to avoid any thing that might tend in the slightest degree to disturb the amicable relations between the two countries, and adhering to the moderation by which the American Government have uniformly been guided, will abstain from taking any measures for the security of the rights and property of its citizens, which the recent decision of her Majesty's Government, and the absence of any arrangement on the subject, might render proper, until an opportunity shall be afforded of ascertaining the views of her Majesty's Government, in relation to the proposition which the undersigned has been authorized to make, and which he now has the honor of submitting.

The undersigned persuades himself that Lord Palmerston will see in this proposition, not only a disposition, on the part of the President, to adjust this matter in the most amicable manner, but a willingness and desire to meet her Majesty's Government on some ground of accommodation consistent with the true interests and honor of both nations.

In the confident expectation of being favored with an early decision of her Majesty's Government on this subject, the undersigned seizes the occasion of renewing to Lord Palmerston assurances his distinguished consideration.

A. STEVENSON.

The Right Hon. Lord Viscount PALMERSTON, &c.

Mr. Stevenson to Mr. Forsyth.—(Extract.)

LEGATION OF THE UNITED STATES,
London, May 5, 1838.

I also enclose his lordship's answer to the proposition contained in my note of the 17th of April in relation to a conventional arrangement between the two Government on the subject of our slaves.

Lord Palmerston to Mr. Stevenson.

FOREIGN OFFICE, April 28, 1838.

The undersigned, her Majesty's Principal Secretary of State for Foreign Affairs, has the honor to acknowledge the receipt of the note which was addressed to him on the 17th instant by Mr. Stevenson, Envoy Extraordinary and Minister Plenipotentiary from the United States of America, upon the subject of a proposal for like negotiation of a conventional arrangement to provide for the disposal of all slaves belonging to the United States, who may hereafter be carried by force or be driven by stress of weather within the British colonies in the neighborhood of the coasts of the United States; and the undersigned loses no time in assuring Mr. Stevenson that this proposal shall be brought without delay under the consideration of her Majesty's Government.

The undersigned avails himself of this occasion to renew to Mr. Stevenson the assurance of his distinguished consideration.

PALMERSTON.

A STEVENSON, Esq., &c., &c., &c.

Mr. Stevenson to Mr. Forsyth.—(Extract.)

LEGATION OF THE UNITED STATES,
London, May 28, 1838.

SIR: In my despatch of the 5th instant, number 48, I forwarded to you Lord Palmerston's first note on the subject of the slave convention; since which, I have received from him a second note, a copy of which, with my answer, I have now the honor of communicating.

Lord Palmerston to Mr. Stevenson.

FOREIGN OFFICE, May 19, 1838.

The undersigned, his Majesty's Principal Secretary of State for Foreign Affairs, has to state to Mr. Stevenson, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, that her Majesty's Government have had under consideration the note which was addressed to the undersigned by Mr. Stevenson on the 17th of April, 1838, with the view of ascertaining whether it will meet the wishes of her Majesty's Government to enter on the negotiation of a conventional arrangement, providing for the disposal of slaves belonging to the United States, who

may hereafter be carried by force or driven by stress of weather within the British colonies, which are near to the Territory of the United States.

Her Majesty's Government do not, at present, see how any conventional arrangement could be formed for the purpose contemplated in Mr. Stevenson's note; but they feel that it would be premature to pronounce any opinion on that question until Mr. Stevenson shall have had the goodness to give a more definite explanation of the nature of the proposal which he is prepared to make.

The undersigned avails himself of this occasion to renew to Mr. Stevenson the assurance of his distinguished consideration.

PALMERSTON.

A. STEVENSON, Esq., &c., &c., &c.

Mr. Stevenson to Lord Palmerston.

No. 23, PORTLAND PLACE, May 22, 1838.

The undersigned, Minister Plenipotentiary from the United States, has the honor to acknowledge the receipt of the note addressed to him by Lord Palmerston, her Majesty's Principal Secretary of State for Foreign Affairs, under date of the 19th instant, in answer to one from the undersigned of the 17th April last, in relation to a conventional arrangement between Great Britain and the United States, on the subject of shipwrecked slaves in her Majesty's colonies.

The undersigned will not fail to communicate to his Government a copy his lordship's note, and to take immediate steps to place her Majesty's Government in possession of the views of the United States in relation to the character of the anticipated convention.

The undersigned renews to Lord Palmerston assurances of his distinguished consideration.

A. STEVENSON.

LORD VISCOUNT PALMERSTON, &c., &c., &c.

Mr. Stevenson to Mr. Forsyth.

LEGATION OF THE UNITED STATES,
London, July 4, 1838.

SIR: I received last week your despatch (No. 43) communicating the President's views in relation to the proposed conventional arrangement with Great Britain, on the subject of such American slaves as may hereafter be forced by stress of weather or other unavoidable contingencies within British colonial ports. I shall lose no time in bringing the subject to the view of her Majesty's Government, and ascertaining how far they are disposed to negotiate a convention in conformity with the views and wishes of the President.

I am, sir, very respectfully, your obedient servant,

A. STEVENSON.

JOHN FORSYTH, Esq.,
Secretary of State, Washington.

Mr. Stevenson to Mr. Forsyth. (Extract.)

LEGATION OF THE UNITED STATES,
London, July 21, 1838.

SIR: I have now the honor to communicate to you a copy of a note addressed to Lord Palmerston, in pursuance of instructions contained in your despatch No. 43, on the subject of the proposed arrangement for the disposal of American slaves in British colonies. To this note no answer has yet been received, nor do I expect one, until after the adjournment of Parliament, which will take place about the middle of August.

Mr. Stevenson to Lord Palmerston.

No. 23, PORTLAND PLACE, July 10, 1838.

The undersigned, Envoy Extraordinary and Minister Plenipotentiary from the United States, has the honor of acquainting Lord Viscount Palmerston, her Majesty's Principal Secretary of State for Foreign Affairs, that since the receipt of his lordship's note of the 29th of May, on the subject of a conventional arrangement, providing for the disposal of American slaves in British colonies, he has received instructions from his Government, which enable him to give the information desired by her Majesty's Government, as to the nature and character of the proposed convention on the part of the United States.

The undersigned, accordingly, has the honor of informing Lord Palmerston that the views of the Government of the United States on this subject would be partially realized by an agreement on the part of her Majesty's Government to refrain from forcing liberty upon such American slaves as may hereafter be forced by stress of weather, or other unavoidable contingency, within British colonial ports near the United States.

This object, it is believed, might be effected, without any collision with the British laws, supposed to be applicable to the subject, by restricting their operations entirely to *terra firma*, and inhibiting the landing of foreign slaves at any port or place within the jurisdiction of the colonial authorities of those islands.

In cases of imperious necessity, where a landing was unavoidable, the negroes might be placed in a fortification or other place, under military command, for temporary safe-keeping, until the owner could provide the means of their re-shipment, without unnecessary delay.

The undersigned begs leave, therefore, to inform Lord Palmerston, that should her Majesty's Government be disposed to entertain the proposition for a convention on this basis, or any other, by which the local authorities of the British islands near the American continent would be prevented from improperly interfering with this species of property belonging to citizens of the United States, he will be prepared to negotiate and conclude such an arrangement between the two countries.

The undersigned prays Lord Palmerston to accept renewed assurances of his distinguished consideration.

A. STEVENSON.

The Rt. Hon. Lord Viscount PALMERSTON, &c.

Mr. Stevenson to Mr. Forsyth.—(Extracts.)

LEGATION OF THE UNITED STATES,
London, November 5, 1838.

* * * * *

My preceding despatches will have informed you of the steps taken to adjust the cases of the "Comet" and "Encomium." My last note, furnishing the information and statements called for by the Lords of the Treasury, was in February, and during my absence Lord Palmerston's reply was received. A copy of it I have now the honor to transmit.

* * * * *

I immediately acknowledged the receipt of Lord Palmerston's note, and informed him that I should take an early opportunity of replying to it.

Lord Palmerston to Mr. Stevenson.

FOREIGN OFFICE, September 13, 1838.

The undersigned, her Majesty's Principal Secretary of State for Foreign Affairs, has the honor to acquaint Mr. Stevenson, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, that he has referred to the Lords Commissioners of her Majesty's Treasury the note which Mr. Stevenson addressed to him on the 8th of February last; together with the statement therein contained, of the number and value of the slaves landed from the American vessels "Comet" and "Encomium," shipwrecked near the Bahama islands, and liberated by the British colonial authorities there.

Their lordships having duly considered these papers, it becomes the duty of the undersigned to communicate to Mr. Stevenson the view which her Majesty's Government have taken of the claim preferred by the American Government for compensation to the owners of the negroes in question.

Mr. Stevenson, in his note of the 8th of February, remarks, that "besides the value of the slaves at the port of destination, damages or interest from the time of their seizure will constitute a part of the compensation claimed, upon the principle that a just indemnity in such cases must include not only the return of the property lost, (if to be had,) or its value, (if not,) but compensation for the detention, in the shape of damages or interest;" that since, however, damages cannot be ascertained in cases like the present, "interest will be received in lieu thereof, as a part of the indemnity agreed to be made; and that it will therefore be expected that to the value of the slaves at the port of destination, the interest will be added from the time of the seizure of the slaves to that of payment, together with the actual expenses incurred and paid by the owners and their agents at Nassau, in consequence of the proceedings of her Majesty's colonial authorities."

From the statements enclosed in Mr. Stevenson's note, it appears that the whole number of slaves shipwrecked in the "Comet" was 165, and that their average value at the port of New Orleans, to which the vessel was destined, was computed at 600 Spanish dollars each; and that the whole number of slaves wrecked on board the "Encomium" was 45, the aggregate value of whom is computed at 34,575 Spanish dollars. On this valua-

tion, interest at 6 per cent. per annum is claimed, on the principle advanced by Mr. Stevenson, from the time of seizure to that of payment, with the amount of expenses incurred by the owners of these negroes and their agents, in consequence of the seizure.

Upon this representation, the undersigned has, in the first place, to observe, that the number of slaves for whom compensation is claimed is naturally taken by Mr. Stevenson from the accounts which he has received of the number embarked on board the vessels, and afterwards shipwrecked at the Bahamas. But it would appear by the official reports received by her Majesty's Government from the colony, at the time the transaction occurred, that eleven of the slaves, wrecked in the "Comet," escaped from the vessel which brought them to Nassau, and got away from the custody of their owners, before the others were seized by the officers of customs; and that one of the slaves from the "Comet" and ten of those from the "Encomium" returned to America with their respective owners.

The undersigned cannot doubt but that Mr. Stevenson will at once admit that these 22 slaves should be excluded from the number for which compensation is claimed; the eleven first mentioned, because being at large as fugitive slaves, they were not included in the seizure, and cannot, therefore, be the objects of a claim arising out of the alleged undue interference of the British functionaries on that occasion, and the remaining twelve, because their owners can obviously have no claim on account of slaves, of whom they actually retained possession.

The number of slaves, therefore, for whom compensation can, in the opinion of her Majesty's Government, be claimed, is 153 in the case of the "Comet" and 35 in the case of the "Encomium."

With regard to the principle on which Mr. Stevenson is of opinion that the amount of the indemnification should be calculated, the undersigned has to observe, that the loss to the owners is estimated by Mr. Stevenson with reference not to the actual value of the slaves at the time of shipwreck, but to the probable price which might have been obtained for them if they had arrived in due course, and in a healthy state, at New Orleans, ded destination of both these vessels; and that the claim, therefore, includes all the anticipated profits of the adventurers.

Her Majesty's Government cannot acquiesce in the reasonableness of this proposition. It has been indeed admitted, that the owners of these negroes have a claim for compensation to the extent of the injury they have sustained by the erroneous proceedings of the officers of her Majesty's customs at the Bahamas; but if those officers had not so interfered, the owners would still have had considerable difficulties to contend with; and even if they had succeeded in transferring their slaves to another vessel, and in removing them from the port of Nassau, they would still have been liable to all the further risks and expenses of the voyage to New Orleans.

Her Majesty's Government are not, therefore, prepared to admit that the estimated value of the slaves, had they arrived at New Orleans, can be taken as the actual loss of the owners, which ought rather to be calculated according to the value of the slaves at the places from which they were originally shipped; and this, in the opinion of her Majesty's Government, is the only criterion by which the amount of compensation due for the injury can be fairly ascertained.

In the next place, her Majesty's Government cannot acquiesce in the specific demand made by Mr. Stevenson for interest at six per cent. for pay-

ment of the expenses incurred by the owners or their agents in prosecuting their applications for the recovery of the slaves who had been placed, by the accident of shipwreck, in a position to act as free agents, under the protection of British laws.

Her Majesty's Government, however, in arranging the amount of compensation, will be ready to take into their consideration the delay which has occurred in the settlement of these claims, and they will not object to allow the ordinary note of interest from the 7th of January, 1837, the date at which the claim for some compensation in respect to the slaves of the "Comet" and "Encomium" was first admitted.

Although no reference is made by Mr. Stevenson to any evidence respecting the value of the slaves at the ports from which they were embarked, her Majesty's Government presume that the documents in his possession may afford some information on this head; and entertaining an anxious wish to meet the views of the Government of the United States by coming to an early agreement on the subject of these claims, they have directed Mr. Rothery to inspect and examine the documents and evidence in Mr. Stevenson's possession.

The undersigned begs, therefore, to acquaint Mr. Stevenson that Mr. Rothery will be instructed to attend to such arrangement in regard to the time and mode of executing this duty as Mr. Stevenson may think proper to notify to the undersigned.

The undersigned avails himself of this occasion to renew to Mr. Stevenson the assurances of his distinguished consideration.

PALMERSTON.

A. STEVENSON, Esq., &c., &c., &c.

Mr. Stevenson to Lord Palmerston.

No. 23, PORTLAND PLACE, October 30, 1838.

The undersigned, Minister Plenipotentiary from the United States, had the honor, on his return to London, to receive the note addressed to him by Lord Viscount Palmerston, her Majesty's Principal Secretary of State for Foreign Affairs, under date of the 13th ultimo, on the subject of the claims for American slaves shipwrecked on the Bahamas, in the "Comet" and "Encomium," and liberated by the authorities thereof.

It is with not less surprise than regret, that the undersigned now learns from Lord Palmerston's note the grounds upon which her Majesty's Government seem disposed to adjust these claims. As he cannot acquiesce either in the correctness or justice of the principles assumed by the Lords Commissioners of her Majesty's Treasury in relation to the number or value of the slaves liberated, or the period of time from which the interest ought to commence, and more especially as the decision has been made without an examination of the body of evidence taken on the part of the claimants, and which was proffered as far back as February last, the undersigned begs to acquaint Lord Palmerston that he will deem it proper to avail himself of the earliest opportunity to reply to his lordship's note, and place the grounds upon which the claims for indemnity rest fairly before her Majesty's Government.

The undersigned has the honor to renew to Lord Palmerston assurances of his high consideration.

A. STEVENSON.

The Right Hon. Lord Viscount PALMERSTON, &c., &c., &c.

Mr. Stevenson to Mr. Forsyth.—(Extract.)

LEGATION OF THE UNITED STATES,
London, November 5, 1838.

I found, also, on my return, an answer from Lord Palmerston to my note of the 10th of July, on the subject of the conventional arrangement I was authorized to submit, for the disposal of our shipwrecked slaves in British colonies. A copy of his lordship's note is enclosed, with my reply. You will see their refusal to negotiate on the subject announced, in the most unqualified manner.

Lord Palmerston to Mr. Stevenson.

FOREIGN OFFICE, September 10, 1838.

The undersigned, her Majesty's Principal Secretary of State for Foreign Affairs, has the honor to acquaint Mr. Stevenson, Envoy Extraordinary and Minister Plenipotentiary from the United States of America, that her Majesty's Government have had under their consideration the note which Mr. Stevenson addressed to the undersigned on the 10th of July last, on the subject of the convention which Mr. Stevenson has been instructed to propose on the part of the United States, in order to provide for the disposal of slaves who, belonging to citizens of the United States, may be driven by stress of weather within the British colonies.

Mr. Stevenson says in that note that the views of the Government of the United States on this subject would be partially realized by an agreement on the part of her Majesty's Government to refrain from forcing liberty upon such American slaves as may hereafter be driven by stress of weather, or by other unavoidable contingency, within the British colonial ports near the United States; and Mr. Stevenson thinks that this object might probably be accomplished without any collision with the British laws, by restricting the operation of those laws, as bearing upon this matter, to the terra firma; and by prohibiting the landing of foreign slaves at any place within the jurisdiction of the local authorities of such colonies.

Mr. Stevenson further suggests, that when, in any case of absolute necessity, such slaves may have been landed, they might be placed under a military guard for safe custody, until their owners should be able to provide means for their re-shipment.

The undersigned has the honor to state, in reply to these suggestions, in the first place, that it is difficult to suppose that any slave who is brought into a situation in which the choice of freedom is placed within his reach can require the employment of force to induce him to avail himself of that choice, and to emancipate himself from bondage; and that, consequently, an engagement on the part of Great Britain not to force liberty upon Amer-

ican slaves, would appear to assume a preference to slavery on the part of such persons, which is scarcely consistent with the known principles of human nature. But the undersigned has further to observe, that, even on such an assumption, an engagement of this kind is wholly unnecessary, because there is nothing in the British law which forces a slave to quit a master with whom he is desirous of remaining.

The British law secures to every man the free exercise of his own will, with respect to the disposal of his own self; but it imposes no force in that respect. The law gives to a slave his freedom; but if the slave thus set free should of his own accord prefer to return to another country with his master, and there to resume his condition of slavery, there is nothing in the law of England to prevent him from doing so. For the law is protective and not compulsory.

But it would be impossible to propose to Parliament a law for the purpose of taking away from American slaves, who have come within the British dominions, the right of suing out a writ of habeas corpus; or for the purpose of prohibiting a British court from issuing such a writ in favor of such a slave, or from ordering the discharge of such slave, if his detention should appear to be illegal.

Such a law would be so entirely at variance with every principle of the British constitution, that no Government could venture to propose it to Parliament, and no Parliament would agree to adopt it.

With respect to the second suggestion of Mr. Stevenson, the undersigned has the honor to state, that to confine the operation of British laws to the terra firma and to declare that such laws should not extend to the harbors of British colonial seaports, would be to depart not merely from the law of England, but from the general law of nations; and would involve consequences so extensive in their possible operation, that her Majesty's Government would on that ground alone, independently of all other considerations, feel themselves precluded from acceding to such a proposition.

The law of nations draws no distinction between the land of a country and the waters within its jurisdiction; and the principle, upon which those waters are assimilated in this respect with the land, is too important to be lightly abandoned.

With regard to Mr. Stevenson's third suggestion, that American slaves, landed by unavoidable necessity within a British colony, should be placed for temporary safe custody under a military guard, the undersigned has also to express his regret that such an arrangement would be liable to insurmountable objections.

In the first place, a duty of that kind would be so repugnant to every feeling of the officers and men of the British army, that her Majesty's Government would, in any case, be extremely unwilling to call upon her Majesty's troops to perform it; and, in the next place, it is doubtful whether the troops could be so employed consistently with the law now in force for the abolition of the slave trade; and her Majesty's Government could not propose to Parliament the repeal of that law.

These are the difficulties which stand in the way of such a convention as Mr. Stevenson has been instructed to suggest; but, in addition to the foregoing observations, the undersigned would beg to remark, that if Great Britain were to conclude such an arrangement with the United States, she could assign no good reason for refusing to make a similar one with France, with Spain, with Portugal, with Denmark, and with Sweden;

and the British Government, whose great aim for a long course of years has been to put an end to the slave trade, and to set an example of the abolition of slavery, would thus be led into a series of compacts of a directly opposite tendency; would seem, on a sudden, to have changed her course; and after having, by an exertion unparalleled in the history of the world, abolished the condition of slavery within her own dominions, she would be found abrogating fundamental principles of law, national and international, for the purpose of upholding in other countries the very system which she has herself made such sacrifices to destroy within the territories of the British Crown.

The undersigned avails himself of this occasion to renew to Mr. Stevenson the assurance of his distinguished consideration.

PALMERSTON.

A. STEVENSON, Esq.

Mr. Stevenson to Lord Palmerston.

No. 23, PORTLAND PLACE, October 30, 1838.

The undersigned, Minister Plenipotentiary from the United States, has the honor to acknowledge the receipt of the note of Lord Viscount Palmerston, her Majesty's Principal Secretary of State for Foreign Affairs, under date of the 10th ultimo, in answer to the one from the undersigned of the 10th of July, upon the subject of the convention which he had been authorized to propose to her Majesty's Government, providing for the disposal of such American slaves as might be driven by stress of weather into British colonies.

The explicit and unqualified manner in which her Majesty's Government have announced its unwillingness to enter into any conventional arrangement on this subject with that of the United States, renders it inexpedient that the undersigned should press the discussion at this time any further. He has, therefore, the honor to acquaint Lord Palmerston that he will immediately communicate his lordship's note to his Government, from whom it will doubtless receive the consideration which its importance merits.

The undersigned avails himself of the occasion to renew to Lord Palmerston assurances of his high consideration.

A. STEVENSON.

The Rt. Hon. Lord Vt. PALMERSTON, &c., &c.

Mr. Stevenson to Mr. Forsyth.—(Extract.)

LEGATION OF THE UNITED STATES,
London, December 12, 1838.

* * * * *

I now transmit a copy of my reply to Lord Palmerston's last note in the cases of the "Comet" and "Encomium," which was forwarded in my despatch of the 5th of November.

Mr. Stevenson to Lord Palmerston.

NO. 23, PORTLAND PLACE, December 4, 1838.

The undersigned, Envoy Extraordinary and Minister Plenipotentiary from the United States, having considered, with the attention which their importance merit, the objections contained in the last note of Lord Viscount Palmerston, her Majesty's Principal Secretary of State for Foreign Affairs, relative to the claims for indemnity in the cases of the "Comet" and "Encomium," has now the honor of communicating to his lordship the observations to which his note has given rise.

Before proceeding to do this, however, it may not be unimportant that the undersigned should briefly advert to the previous proceedings which have taken place in relation to these claims; the more especially, since it appears that a decision has been made on all of the important points affecting the rights of the claimants without an examination of the evidence called for by the officers of her Majesty's Treasury, and which the undersigned was not only prepared but desirous to have submitted.

By these proceedings it will appear that, as far back as the 6th of November, 1837, a note was addressed by the undersigned to Lord Palmerston, informing him that he had received the evidence as to the number and value of the slaves on board the "Comet" and "Encomium," and was prepared to enter upon the adjustment of the claims under the limitations contained in his note of the 12th of May preceding. This note was acknowledged by one from his lordship of the 23d of November, 1837, in which the undersigned was informed that the subject had been referred to the Lords of the Treasury, whose decision as to the course to be pursued for final settlement should be communicated as soon as it was received.

On the 27th of January, 1838, a second note was received from Lord Palmerston, (referring to the one to the undersigned of the 23d of November,) stating that the Lords Commissioners of the Treasury were desirous of examining the evidence in possession of the undersigned, as to the number and value of the slaves for which indemnity was claimed. That their lordships had also expressed a wish to be furnished with an abstract, showing the *number, description, and value* of the slaves, together with a memorandum containing the evidence in support thereof; and further, that their lordships proposed, on receiving these two papers, to depute competent persons to inspect the documents, and report the evidence which they afforded in corroboration of the value, and other particulars comprised in the statement. The undersigned was accordingly requested to furnish the statement and note desired by the Lords of the Treasury, which he did accordingly on the 8th of February succeeding. He was authorized, therefore, in expecting that suitable persons would have been deputed for the purpose of performing this duty; and with a view to hasten its accomplishment, he made repeated applications in person, through the Chancellor of the Exchequer, urging the importance of immediate action by the Treasury Department, and the increased injury from delay to the claimants. The undersigned felt, moreover, the importance of an early adjustment of the amount of compensation to be fixed, in order that suitable appropriations to meet it might be asked from Parliament before its adjournment.

In this state of the negotiation, it was not without some degree of surprise and regret that the undersigned received the information contained in his lordship's last note, that a decision had been made by her Majesty's Gov-

ernment, without any examination of the evidence which had been called for, and which he was prepared and desirous to have submitted whenever an opportunity should have been afforded for the purpose. It appears, moreover, that this decision has been made upon reports received by her Majesty's Government from its colonial functionaries, of what is alleged took place in the colony at the time of the shipwreck; and with the existence of which the undersigned has now, for the first time, been made acquainted. That a decision affecting so deeply the rights of the claimants should have been made under such circumstances, was certainly not to have been anticipated. With these preliminary observations, the undersigned will now proceed to examine the grounds upon which this decision has been made, and the objections contained in his lordship's note.

They are of a threefold character :

First. As to the number of the slaves for whom indemnity is claimed.

Secondly. Their valuation; and

Thirdly. The question of interest on the amount of compensation to be made.

And first, as to the number of slaves seized and liberated :

It is objected to compensation being made for *twenty-two* of these slaves, upon the ground that *eleven* of those who were on board the "Comet" escaped from the vessel and the custody of their owners before the remainder were seized by the officers of the customs, and were, of course, to be regarded as fugitives not under the control of the colonial officers; and that *ten* of those from the "Encomium," with one other from the "Comet," did not remain at the Bahamas, but returned to the United States with their respective owners. Hence it is maintained, that these *twenty-two* ought to be excluded from the number for whom compensation has been claimed. It further appears that this statement is made, first, upon the authority of the report of the colonial functionaries, and, secondly, upon the presumption that the number has been taken from the reports of those originally shipped from the United States and not from the evidence of the actual number that were seized and liberated. Now it is proper to say, that her Majesty's Government are mistaken in supposing that these claims rest upon any such foundation. Far from it. They are made upon undoubted evidence, not only of the number of slaves originally embarked in the United States, but of those who were actually seized and liberated and lost to their owners. It was this evidence which was offered to her Majesty's Government, and is now in the possession of the undersigned; to the more important parts of which he begs leave briefly to advert.

First. From the original protest of the captain of the Comet, taken under oath in Nassau on the 20th of January, 1831, it is in proof that all the slaves of the Comet, *one hundred and sixty five* in number, were, in fact, in the custody and under the control of the colonial authorities. That, although *eleven* of the slaves escaped from the vessel to the shore before the seizure was made of those who remained on board, yet these eleven were afterwards taken possession of, placed under the orders of the Government, and finally liberated.

Second. In the Royal Gazette of the 12th of January, 1831, the circumstances of the shipwreck, and the manner in which the slaves were brought into Nassau, are fully detailed. In the same paper of the 15th, it is also stated that eleven escaped to the shore on the first and second night after the vessel was in port, and afterwards found their way to the Government

house, from whence they were sent to the police office, and subsequently committed to the workhouse; "*the whole being under the consideration and detention of the custom-house officers.*"

Third. The Colonial Government, in their application to Lord Goderich, speak of the authorities of Nassau having seized the cargo of slaves without any reservation; and it is not presumable, that in an official despatch they would have omitted to mention the *eleven*, if they had not been included in the original seizure.

Fourth. The report of the committee of the House of Assembly on the subject of these slaves, sets forth the circumstances of their shipwreck, and the number that were seized, and expressly states that the eleven who made their escape to the shore were afterwards taken into custody by the proper authorities, and lodged in the Nassau workhouse.

Fifth. In an official copy of the proceedings of the instance court of Vice Admiralty, it is expressly admitted that the 165 slaves were in the custody of the officers of the colony, and subject to their orders.

Sixth. But if there could be any doubt on the subject, it would at once be dissipated by the official statement of the Lieutenant Governor of the colony, as late as March, 1831, in which he expressly states, that the whole of the one hundred and sixty-five slaves, the cargo of the "*Comet*," (with the exception of two or three,) were then in the colony gaining their livelihood. The report will be found referred to in Lord Howick's letter to E. J. Lock, of the 15th of June, 1831, a copy of which is among the documents in the possession of the undersigned.

So much for the fugitive slaves from the "*Comet*."

Let us now see what the facts are in relation to the *eleven* who, it is alleged, returned with their owners to the United States.

The captain and passengers of the "*Encomium*," in their depositions taken in Nassau, expressly prove that the slaves were all seized in the name of her Majesty's Government, liberated, and told to go about their business. Their statement is corroborated by the testimony of the American consul, who speaks particularly of the landing and examination, and says nothing of any having returned to the United States.

The evidence, then, in relation to the *twenty two* slaves, is so clear and conclusive that it is unnecessary in the argument to do more than refer to it. The result of its examination can be none other than a complete conviction, that of the twenty-two slaves for which a deduction is claimed, three only can be so claimed, and as to these even, some doubts may be entertained. It becomes important, then, to ascertain upon what grounds the statement has been made to her Majesty's Government, that eleven were fugitives, not under the control and direction of the colonial authorities; or that *eleven* others returned to the United States. If her Majesty's Government are in possession of evidence to impeach that of the claimants on these points, and sustain the objection, it is respectfully asked that it may be exhibited, and until this shall be done, the proofs on the part of the claimants must be regarded as conclusive.

Upon the second point, relative to the valuation of the slaves, and the place at which it shall be fixed, greater difficulty may be admitted to exist.

It is true that the undersigned, in his note of the 8th of February, 1838, suggested the propriety of fixing the valuation at the city of New Orleans, (the port of destination,) instead of that of original embarkation or seizure. This rule was adopted by him as one not only reasonable in itself, but, under

the peculiar circumstances, highly equitable and just. Indeed, if that rule had been assented to by her Majesty's Government, and the value of the slaves at New Orleans adopted, it would not have been a just compensation to the owners for the loss of their property.

These individuals, it should be remarked, are not dealers in slaves, but cotton and sugar planters, removing their slaves for the purpose of using their labor upon valuable estates in the fertile regions of the Mississippi. By the seizure and liberation of their slaves, they were not only deprived of the reasonable profits and fruits which they had a just right to expect from the labor of those slaves, but some of the owners were forced to incur very heavy pecuniary losses, in consequence of existing contracts which they had entered into, and which they were deprived of the means of fulfilling by the seizure and loss of their property.

The fair value, then, of the slaves in New Orleans would have fallen far short of the actual loss and injury which they sustained by the improper and illegal interference of the British authorities. The undersigned was, therefore, justified in suggesting *the port of destination* as the place for fixing the valuation. Such, it is believed, might still be maintained, not only upon principles of justice, but under the sanction of the decisions of British courts, sitting under the law of nations.

Should her Majesty's Government, however, determine to adhere to its decision on this point, the undersigned will not permit it to stand in the way of an adjustment, but will be prepared to agree to a fair valuation of the slaves at the time of their seizure and liberation, as the only other alternative which he is at liberty to adopt.

Thirdly. The last and remaining question, is that of interest on the estimated value of the slaves, and the time from whence it should accrue. That the claimants have the same right to interest on the value of these slaves that they have to the value of the slaves themselves, and that, too, from the period of their seizure and detention, is a proposition which the undersigned would not have deemed it either necessary or proper to discuss, if he did not understand the decision of her Majesty's Government, communicated in Lord Palmerston's note, as asserting directly the contrary doctrine. Regarding such a decision upon principle as of much higher importance than even the pecuniary interests which it involves, the undersigned feels it incumbent on him, in dissenting wholly from the grounds taken by her Majesty's Government, to give the subject a more particular examination than he should otherwise have felt it needful to do. He begs leave, therefore, to submit to Lord Palmerston's consideration the following arguments, which he has endeavored to make as concise as he flatters himself they will be found to be conclusive and satisfactory.

In the first place, it becomes important to ascertain the general principles which ought rightfully to govern the decision of this question, and on which it must rest. The following are assumed by the undersigned as incontrovertible:

1. That whenever the payment of money is the first and direct duty to be performed, either by individuals or States, interest follows as the necessary consequence of the non-performance of the duty, it being regarded by all nations as the safest and best rule to ascertain the requisite indemnity to the sufferer for not receiving the benefit which the performance of the duty of paying the principal would have bestowed upon him.

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

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

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

5. That, although under the laws of Great Britain and the United States, it is admitted that in transactions between individuals, interest *eo nomine* would not be due on *unliquidated* demands of a nature *purely and exclusively pecuniary*, except from the period of their liquidation, yet it is equally true that by those laws, when reparation is sought for the loss of property, (in cases like the present,) the nature of the property, together with an equivalent for the use of it, from the commencement of an illegal detention, is always allowed. And even in contracts purely pecuniary, it is not necessary to stipulate for the payment of interest, which is receivable in all cases of liquidated debt from the time of default in the stipulated payment.

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

Grotius, in his *Treatise on the Rights of War and Peace*, treating on the subject of damages occasioned by injuries, and the obligation to repair them, holds the following language :

“The loss or diminution of any ones possessions is not confined to injuries done to the *substance* alone of the property, but includes everything, affecting the produce of it, whether it has been gathered or not. If the owner himself had reaped it, the necessary expense of reaping, or of improving the property to raise a produce, must also be taken into the account of his loss, and form part of the damages. These damages are to be computed, too, not according to any actual gain, but according to the reasonable expectation of it.” (Campbell’s *Grotius*, 2 vol. 195–6.)

So again : “The person to whom any thing is ceded by a treaty is entitled to the produce and fruits of it, from the time the cession ought to have been made.” (Vid. 360.)

And again : “If things are to be restored by virtue of peace, the *profits* should also be restored from the day of cession.” (Vol. 6, s. 1224.)

Such, too, is the rule of the civil law. “If he who has borrowed money fails to pay it at the term, he will be bound to pay interest from the time that a legal demand has been made of it, that the creditor may be indemnified for the loss he has sustained by the delay. And if he has borrowed other things than money, and does not repay them at the term, or does not

give them back as they ought to be, he shall pay the value of them." (Domat. B. 1. Tit. 6. s. 314.)

"And if he who owes these kind of things, and does not pay them at the term, or their value, he will be liable for the interest on the foot of their estimation, reckoning from the time the creditor made the legal demand." (Ibid. s. 7.) "So whoever owes money, on the score of loan, or on any other account, owes for all manner of damages, if he does not pay it, only the interest that is settled by law." (Ibid. vol. 1. B. 3. s. 5.)

In all cases, therefore, where fruits or profits would be allowed, together with the subject or property producing them, if money be given as the compensation or equivalent, interest followed of course *vicem fructuum sustinere*, and fruits or profits were awarded in every case of wrongful detainer.

Hence the Roman law, and the codes derived from it, provided, "That in case a vendee was evicted of his property, he should have the right to demand :

"1st. The restoration or its value; 2d. fruits or profits; and 3d. damages and interest with all expenses incurred." (Pothier, No. 118, 123, 125, 330. Code Napoleon, Liv. 3. s. 6. article 1630.)

The British courts of common law have likewise uniformly professed to give compensation for injuries, whether arising "*ex contractu*" or "*ex delicto*," although the remedy is often insufficient to repair fully the injury sustained, by the failure to place the party in the same situation he was in before the breach of contract. Blackstone therefore declares, "that since it is a maxim that '*lex neminem cogit ad vane seu impossibilia*,' it contents itself with returning not the thing itself, but a pecuniary equivalent to the party injured by giving him satisfaction in damages."

So Lord Thurton (in 1st Vezey, s. 62) says: "It is the constant practice at Guildhall (I do not speak from my own experience, but from conversations I have had with the judges on the subject) either by the contract or in damages to give interest upon any debt detained," and in that particular case, the decree was made in conformity with that principle. And in another case the same eminent judge declared, "that all contracts to pay, undoubtedly give a right to interest from the time the principal ought to be paid." (2 Brown's C. C. 3.)

It may, however, be objected that, as the amount of the compensation in these cases was never liquidated so as to enable her Majesty's Government, by paying the value, to absolve itself from the charge of interest, therefore such interest ought not to be allowed, except from the period when the claim was admitted. There might probably be some force in such an objection when applied to accounts current and other transactions purely pecuniary in their character, and where the amount to be paid was uncertain, and could not readily be ascertained, though even such cases we have the authority of Lord Thurton in saying that it was the constant practice in England to allow it, and such is also the practice in the United States. But at no period, and in no civilized country of modern times, has interest ever been refused, even in accounts current and unliquidated, where the delay of payment has been long, or under oppressive circumstances. It has, moreover, never been refused in claims like the present, where a money equivalent has been substituted as a compensation for property wrongfully withheld, and for which the party had agreed to make reparation. If these slaves had not been seized, and the colonial officers

had performed their duty, these claims would never have arisen. Because these officers have mistaken their duty, shall their mistake be allowed to operate to weaken or destroy the claimants' just right to indemnity? If, then, her Majesty's Government had, in January, 1837, returned to their owners the slaves so long detained, instead of their value, would it not also have been bound, upon every principle of justice and equity, to have returned their fruits and profits for the seven years' detention? and by agreeing to accept an equivalent in money for the slaves, is not the money to stand in the place of the slaves, and interest on it to be given instead of the fruits or profits of the slaves? Nor can the uncertainty and delay which have taken place, as to the amount of the compensation to be paid, be allowed to operate to the injury of claimants. By whom has it been caused? Certainly not by the claimants. It was the reluctance or inability on the part of her Majesty's Government to return the slaves which they were bound to restore, which induced the Government of the United States to agree to the uncertain compensation proposed, in lieu of the slaves themselves. Great Britain cannot, therefore, justly urge this uncertainty, produced by her own act, or that of her functionaries, in diminution of the demands of the claimants for indemnification for wrongs admitted to have been done in violation of their just rights of property. Interest then is demandable not only in cases where it is an incident to debt, but for injuries done to the creditor by the debtor.

Let us now see how far these principles have been enforced and illustrated by the authority of precedents, and more especially by British courts sitting under the law of nations.

Under the 6th and 7th articles of the treaty concluded at London in November, 1794, between Great Britain and the United States, interest was allowed to the claimants by the board of commissioners which was constituted under the provisions of that treaty. It is true that the sixth article provided for *debts of a pecuniary character, to which interest attached as an ordinary incident*; but the 7th article provided for a class altogether similar to the present claims. It was intended to afford indemnification to citizens of the United States, for property taken in violation of the laws of nations by the vessels of Great Britain; and likewise to subjects of Britain for like injuries committed on the part of the United States. But there was in fact no just discrimination between the two articles. The principle was the same in both, and simply this: that he who is entitled to the thing, is entitled to the use of it, and that an injury done to the one right, as clearly and justly establishes a claim to indemnity as in the case of the other. And if interest be an incident usually attendant on the delay of the payment of debts, damages are equally an incident attending the withholding an article of property, and when reduced in the shape of damages they are always given with a liberal hand. It is, then, a mitigation of the usual incident of damages for the detention of property, to establish a fixed and equitable rule of interest as the equivalent. If there could be a doubt as to the principles upon which the board of commissioners acted under this treaty, it will at once be removed by the declaration of the British commissioner, Sir John Nicoll, who composed part of the board under the seventh article of the treaty of 1794. His words are: "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 for losses, costs, and damages occasioned by illegal captures."

Such, likewise, was the opinion of Sir William Scott in the case of the *Acteon*, on a full review of the whole doctrine. That was the case of an American ship captured and burnt by a British vessel of war at sea, and the question was, what was the due measure of restitution to the party making out a claim to property destroyed by captors? In that case the judge said: "This question arises on the act of destruction of a valuable ship and cargo by one of his Majesty's cruisers. On the part of the claimants restitution has been demanded, and there can be no doubt they are entitled to receive it. Indeed, I understand that it is not now opposed by the captor himself, but it remains to be settled how far it is to be carried. The natural rule is that if a party be unjustly deprived of his property, he ought, as nearly as possible, to be placed in the same state that he was before the deprivation took place. Technically speaking he is entitled to *restitution with costs and damages*. Neither does it make any difference whether the party inflicting the injury has acted from improper motives or otherwise. If the captor has been guilty of no improper conduct, but has acted from error and mistake, the suffering party is, nevertheless, entitled to full compensation, provided he has not, by his own conduct, contributed to the loss. The destruction of the property by the captors may have been a meritorious act towards their own Government, but still the person to whom the property belonged may be a sufferer. As to him, it is an injury for which he is entitled to redress from the party who inflicted it; and if the captor has, by the destruction, conferred a benefit upon the public, he must look to his Government for indemnity. The loss must not be permitted to fall on the sufferer." He further said: "I beg it to be understood that I do not mean to throw any imputation upon the conduct and character of Captain Capell, (the captor,) but merely for the purpose of giving a due measure of restitution to the claimants."

Now this case and the one under consideration are entirely analagous. In the one, the property which was the subject of deprivation was a *ship*; in the other, *slaves*; a difference which can make no change in the resulting judgment, if that judgment be rightly formed. If these slaves had been captured at sea and liberated, we see that a British court of admiralty would have pronounced at least all to be *due to the claimants* that is now demanded. Surely, then, it will not be contended that, because the wrong was committed under circumstances of misfortune and shipwreck, within British jurisdiction and hospitality, it became less a wrong, or is entitled to less consideration and favor.

The general doctrine, then, is this: that he who withholds what he ought to return, does an injury for which he is bound to indemnify the sufferer; that the proper measure of indemnification is the thing which is withheld, together with its reasonable fruits or profits accruing during the period that it is so withheld; that if restitution of the property, however, cannot be had, justice finds its compensation or its value as an equivalent, and interest on it is resorted to as the best standard by which to ascertain the reasonable profits of money.

Let these principles be applied to the present claims.

The facts as to the shipwreck and seizure are undisputed. It is admitted that it was done in the name of her Majesty's Government, and by its colonial functionaries, and that, in consequence of their illegal interference, the

slaves were wholly lost to their owners. Hence arose a perfect obligation on the part of her Majesty's Government to restore the slaves, with just indemnity for the loss of their services whilst detained; or if, from moral or physical causes, restitution should be impossible, then their full value in money, with interest from the time of seizure until that of adjustment.

Such is believed to be the fair interpretation of the first decision, as to the liberty of her Majesty's Government to indemnify the claimants.

In Lord Palmerston's note under date of the 7th of January, 1837, communicating this decision, it is admitted that the claims in the cases of the "Comet" and "Encomium" "were well founded," and that the rule which had been adopted for their adjustment was, "that those claimants should be considered as entitled to compensation, who were lawfully in possession of their slaves within the British territory, and who were disturbed in the legal possession of them by the functionaries of the British Government." And in his lordship's second note he declares :

"That her Majesty's Government will make compensation for any injury the owners of these slaves might be proved to have sustained from the interference on the part of the colonial authorities." It will be remarked that *compensation* or *indemnification* is to be made for the injuries which the claimants may have actually sustained.

Now what do the words *compensation* and *indemnification* mean? They are technical terms of the civil law, and frequently occur therein. Like all other of its terms, they have been defined by jurists, and their true signification in English, is just the same with that used in the public law.

Grotius, speaking of the subject of compensation, observes: "By the right of compensation, when instead of a thing which belongs or is due to us, but which we cannot specifically have, we take another which is worth as much from him who will not return us our property, or pay what he owes us." And he adds: "As rigorous justice cannot always obtain precisely what we have a right to demand, it seeks for an equivalent, which, according to moral estimation, is considered as the same thing." And Felice, in his Code de L'Humanité, speaking of indemnity, says: "Indemnity signifies, in general, that which is rendered to any one to prevent his sustaining any damage."

All English lexicographers concur in bestowing upon these terms similar signification. They can, therefore, only mean, as well according to their etymology as their legal sense, security against loss, and just recompense; and this is strictly in accord with the principles and analogies of justice, when taken in reference to injuries, which always imply just indemnification.

What, then, it may respectfully be asked, is *just indemnification* for such a wrong as that which is admitted to have been perpetrated in the name and by the authority of her Majesty's Government, upon these innocent claimants? Is it the reparation of one-half of the wrong? Can it be any thing less than reparation for the whole wrong? Would the meagre return of the value of these slaves at the time of their seizure and liberation with interest on that value, seven or eight years afterwards, be considered a just indemnification?

If, indeed, an injury can be said to be justly redressed, which is only half redressed, then would such a decision be right; but if an injury is only redressed when the redress is commensurate with the whole extent of the injury, it must be wrong. Such, at least, seems to have been the opinio

of Sir William Scott and Sir John Nicoll, when they declared "*that the full value of the property seized, and all the expenses actually incurred, together with interest on the value from the time the injury was committed to that of adjustment, could alone be considered as just and equitable compensation.*"

Nor would full interest on the value of the slaves during the whole period of their detention be an adequate equivalent for the loss of their services to their owners. Indeed, it cannot be supposed for a moment that any rate of interest, however high or however compounded, would be an equivalent for the value of such slaves as those are proved to have been, employed in productive agriculture, or in the cultivation of sugar and cotton, for which they were almost exclusively intended, in one of the finest and richest soils in the world. This consideration alone is calculated to enforce and illustrate the fact of how unjust and inadequate any compensation must be which should profess only to give the value of the slaves without an equivalent for the fruits or profits of their services for the whole period of their detention, and which, the undersigned must again repeat, would, as money, have more than doubled the original value of the slaves.

Unless, then, it can be shown that one nation or individual can deprive another of the use of property for a given time, and although returned uninjured, not be bound to compensate for the loss of its use, it cannot be maintained that interest does not follow the principal, and that in cases like the one under consideration, the claimants are not only entitled to demand the full value of their slaves, but interest on that value from the time of its detention to that of payment. There may be cases, and this is one, in which, as the undersigned has shown, a just indemnification would require even more than full interest, to be added to equivalent value of the property, but it is believed there is not one in which justice and equity would be satisfied with less. To expect less from her Majesty's Government in the present case would be entirely inconsistent with that character of justice and liberality which it has so long and so well established.

The undersigned prays Lord Palmerston to accept assurances of his high consideration and respect.

A. STEVENSON.

Lord PALMERSTON, &c.