32d Congress, 1st Session. [SENATE.] Rep. Com. No. 158.

IN THE SENATE OF THE UNITED STATES.

March 29, 1852.
Ordered to be printed.

Mr. Mason made the following

REPORT:

[To accompany bill S. No. 323.]

The Committee on Foreign Relations, to whom was referred the resolution of the Senate, instructing them "to inquire into the propriety and justice of providing by law, pursuant to the recommendation of former Presidents of the United States, and last by President Polk, in his message of the 7th December, 1847, for the payment of the claim there mentioned as arising to certain Spanish subjects, in the case of the Schooner 'Amistad,'" have had the same under consideration, and submit the following report:

It appears that, on the 26th of August, 1839, the Spanish schooner called the "Amistad" was taken possession of by Captain Gedney, an officer of the navy of the United States, then in command of one of our public vessels. The "Amistad" was found at anchor on the coast off Long Island, New York, about three-fourths of a mile from the shore. This seizure was made at the request of two Spanish subjects, named, respectively, Ruiz and Montez, residents of the island of Cuba, then on board the vessel; and she, with her entire cargo, was carried, with all on board, into the port of New London, in Connecticut.

In the course of judicial proceedings which were there instituted before the district court of the United States, and which commenced in a claim for salvage on the part of the officer making the seizure, the following facts were elicited: That the "Amistad" was a Spanish coasting vessel, owned by her captain, a Spanish subject and resident of Cuba; that, on the 27th June, 1839, she cleared, in due and regular form, at the port of Havana, in that island, for Puerto Principe, in the same island. There were then on board, besides the captain and owner, a slave named "Antonio," the property of the master, and the two passengers, subjects of Spain, residing in Cuba, named Ruiz and Montez. The cargo, in addition to various merchandise, owned in part by said Ruiz and Montez, and in part by merchants in Cuba, consisted of fifty-three negroes, certified, in passports signed by the Captain General of Cuba, to be slaves, the property of said Ruiz and Montez. That, on the voyage, these negroes revolted, killed the captain and cook, severely wounded one of said passengers, and succeeded in taking possession of the vessel. That two of the sailors were sent adrift in a boat belonging to the schooner; and the negroes compelled the said Ruiz

and Montez to navigate the vessel, directing them to steer for the coast of Africa. That the vessel continued at sea, in possession of the negroes, (the passengers availing themselves of all opportunity to direct her course towards the coast of the United States,) until land was made, where, being short of provisions and water, they anchored, as above stated, for the purpose of procuring those supplies. When discovered, a party of the negroes were on shore. These were captured by the naval officer and returned to the vessel, when the whole were taken by him, as stated above, into New London. The judicial proceedings terminated in a decree for salvage, under which the vessel and cargo, the negroes excepted, were sold. The fifty-three negroes were declared to be free, and were never restored to those claiming them. The boy "Antonio," claimed as the property of the murdered captain by the Spanish consul, and admitted as such throughout, was detained in custody during these proceedings, and then secreted and sent away to New York—by whom, it does not appear. But the consul made diligent search for him in that city, but never recovered him. And to crown the whole, the two gentlemen on board the vessel, Ruiz and Montez, were imprisoned for months, on various pretexts, pending the judicial trials, and then suffered to depart, stripped of all the valuable property they had with them on board the vessel when seized by an officer of this government.

Pending the judicial proceedings, the district attorney of the United States filed a suggestion before the district court, setting forth that a claim for the said vessel and cargo had been made to the government of the United States by the Spanish minister at Washington, claiming that the same was the property of Spanish subjects, and should be restored to them, as required by treaty between the two governments.

The vice-consul of Spain for the State of Connecticut filed a libel, claiming the boy Antonio as the property of the deceased master of the vessel. And the negroes, (with the exception of Antonio,) in answer to the claim for salvage, denied that they were slaves—alleging that they were natives of Africa, then recently brought to Havana in violation of the laws of Spain prohibiting the slave trade, and under which laws they were free.

It appears that, immediately after this capture—that is to say, in September, 1839—the minister of Spain accredited to this government made a formal demand of the Secretary of State for the restoration of the vessel and cargo entire, under the treaty, which was followed in October by a further demand from the successor of that minister for the release of Ruiz and Montez, then imprisoned in the common jail at New York. (See Ex. Doc. No. 185, 1st session 26th Congress.)

In February, 1842, this claim was made the subject of a special message to the House of Representatives by President Tyler, communicating a further correspondence between the minister of Spain and the Secretary of State during the year 1841, in which the demand was strenuously urged on this government. (See Ex. Doc., H. R., No. 191, 3d session 27th Congress.)

In January, 1844, President Tyler communicated to the House of Representatives a further correspondence with the Spanish minister, reiterating and pressing his former demand. (See Ex. Doc., H. R., No. 83, 1st session 28th Congress.)

President Polk again brought the subject before Congress, as recited in

the resolution of the Senate, strongly recommending that the claim should be paid; and from the correspondence communicated by the Secretary of State at the last session, under a call from the Senate, it appears that this claim continues to be strenously urged on the part of Spain before the Executive in terms of the strongest and most just remonstrance. The foregoing narrative is given to show that Spain has been in nowise remiss in urging this demand—making it, in the opinion of the committee, the more incumbent on Congress to pass finally on the subject.

The courts of the country having taken cognizance of, and made a final disposition of the subject, so far as the jurisdiction assumed by them is concerned, it remains only to be determined whether the United States are under treaty obligation, nevertheless, to indemnify these claimants.

For the due and proper observance of treaty stipulations, nations look only to the contracting power—that is to say, to the government. If the treaty with Spain required that this vessel and cargo should have been delivered up to the Spanish claimants, the obligation so to do rested upon this government, so far as Spain was concerned. And it is no answer to Spain, neither can the government exonerate itself towards her, or in the eyes of other nations, by saying that the judiciary of the country assumed jurisdiction of the subject, and thus withdrew it from the control of the government which made the treaty, and which became responsible for its observance.

By the constitution of the United States the judiciary is constituted an independent department of the government, and its jurisdiction clearly defined; and it nowhere appears that in controversies between the United States and foreign nations arising under treaties between the respective powers, the determinations of the judiciary are to bind the contracting parties. The judiciary is a passive department: it acts only through prescribed forms, and when its authority is invoked by parties designated in the constitution, for causes stated in the constitution: its judgments are binding only upon parties to the cause, and the privies of such parties. This is the universal law of the judiciary, and furnishes in itself a full answer to any objection that the decision of the judiciary is the law of the treaty, on questions arising between the contracting parties. Neither Spain nor the United States were parties, or could have been made parties (*se invito*) to the controversy before the courts, arising out of the seizure of the Amistad. It is a wise and sound rule of the judiciary, in expounding a treaty in a cause, and between parties properly before it, to adopt such construction, if any, as may have been given to it by the legislative and executive departments--those departments which represent the government in its relations with foreign nations—and this subordination would seem due, to preserve the harmony of such relations. But it has never been considered that the converse is true—that the executive and legislative departments, in conducting the intercourse or adjusting the relations of the government with foreign states under existing treaties, acts in subordination to the decisions of the judiciary. It is no answer to Spain, therefore, to say that this subject has been determined by the judiciary of the country adversely to this claim of Spain; and it becomes necessary, in consequence, for the executive and legislative departments of the government, in replying to the demand of Spain, to construe the treaty originally, and to decide the obligations that may arise under it. The eighth, ninth, and tenth articles of this treaty are as follows:

"ART. 8. In case the subjects and inhabitants of either party, with their shipping, whether public and of war, or private and of merchants, be forced, through stress of weather, pursuit of pirates or enemies, or any other urgent necessity for seeking of shelter and harbor, to retreat and enter into any of the rivers, bays, roads, or ports, belonging to the other party, they shall be received *and treated with all humanity, and enjoy all favor, protection, and help;* and they shall be permitted to refresh and provide themselves, at reasonable rates, with victuals and all things needful for the subsistence of their persons, or reparation of their ships, and prosecution of their voyage; and *they shall noways be hindered from returning out of the said ports or roads, but may remove and depart when and whither they please, without any let or hindrance.*

"ART. 9. All ships *and merchandise, of what nature soever*, which shall be *rescued out of the hands of any pirates or robbers on the high seas*, shall be brought into some port of either State, *and shall be delivered to the custody of the officers of that port, in order to be taken care of, and restored entire to the true proprietor*, as soon as due and sufficient proof shall be made concerning the property thereof.

"ART. 10. When any vessel of either party shall be wrecked, foundered, or otherwise damaged, on the coasts or within the dominion of the other, their respective subjects or citizens shall receive, as well for themselves as for their vessels and effects, the same assistance which would be due to the inhabitants of the country where the damage happens, and shall pay the same charges and dues only as the said inhabitants would be subject to pay in a like case; and, if the operations of repair should require that the whole or any part of the cargo be unladen, they shall pay no duties, charges, or fees, on the part which they shall relade and carry away."

In view of the true intent and spirit of these articles in the treaty, construed together, it might well be taken that the case would come within the true and fair meaning of the eighth; for here it is very clear that the Spanish schooner, under the guidance of Ruiz and Montez, Spanish subjects, and under a most "urgent necessity," did seek "shelter and harbor" on the coast of the United States, and within its maritime jurisdiction, though, from duress, they were unable actually to enter any "bay, river, road, or port."

But it is the ninth article, in the consideration of the committee, on which this claim properly rests; because, in their judgment, this vessel and cargo, being "rescued out of the hands of pirates and robbers on the high seas," and carried into a port of the United States, should have been there, pursuant to the terms of the treaty, "delivered into the custody of the officers of that port, in order to be taken care of, and restored *entire* to the true proprietor, as soon as due and sufficient proof should be made concerning the property thereof."

The committee understand that "a ship or vessel on the high seas, in time of peace, engaged in a lawful voyage, is, according to the laws of nations, under the exclusive jurisdiction of the State to which her flag belongs, as much so as if constituting a part of its own domain;" and that, according to the same laws, the ship's papers, exemplified in proper form according to the laws of the nation to which she belongs, are held as, between independent nations, conclusive of the character of her voyage and of her cargo.

Upon the question how far each government is bound to give full faith

and credit to the public official acts of other governments, performed in due course of law by such governments, and certified under the forms pertaining to such governments, and upon the consequences that would ensue by refusing such faith and credit, the committee can add nothing to the views contained in the opinion of the Attorney General of the United States on the "Amistad case," dated in October, 1839, and communicated to Congress, with other documents, by President Van Buren, in his message of the 15th April, 1840, (see Executive document No. 185, H. R., 1st session 26th Congress,) from which is the following extract:

Extract from the opinion of the Attorney General.

"In the intercourse and transactions between nations, it has been found indispensable that due faith and credit should be given by each to the official acts of the public functionaries of others. Hence the sentences of prize courts under the laws of nations, or admiralty, and exchequer, or other revenue courts, under the municipal law, are considered as conclusive as to the proprietary interest in, and title to, the thing in question; nor can the same be examined into in the judicial tribunals of another country. Nor is this confined to judicial proceedings. The acts of other officers of a foreign nation, in the discharge of their ordinary duties, are entitled to the like respect. And the principle seems to be universally admitted, that, whenever power or jurisdiction is delegated to any public officer or tribunal, and its exercise is confided to his or their discretion, the acts done in the exercise of that discretion, and within the authority conferred, are binding as to the subject-matter; and this is true whether the officer or tribunal be legislative, executive, judicial, or special. (Wheaton's Elements of International Law, page 121; 6 Peters, page 729.)

"Were this otherwise, all confidence and comity would cease to exist among nations, and that code of international law which now contributes so much to the peace, prosperity, and harmony of the world would no longer regulate and control the conduct of nations. Besides, in this case, were the government of the United States to permit itself to go behind the papers of the schooner Amistad, it would place itself in the embarrassing condition of judging upon the Spanish laws, their force, effect, and their application to the case under consideration.

"This embarrassment and inconvenience ought not to be incurred. Nor is it believed a foreign nation would look with composure upon such a proceeding, where the interests of its own subjects or citizens were deeply concerned. In addition to this, the United States would necessarily place itself in the position of judging and deciding upon the meaning and effect of a treaty between Spain and Great Britain, to which the United States is not a party. It is true, by the treaty between Great Britain and Spain, the slave trade is prohibited to the subjects of each; but the parties to this treaty or agreement are the proper judges of any infraction of it, and they have created special tribunals to decide questions arising under the treaty: nor does it belong to any other nation to adjudicate upon it, or to enforce it. As, then, this vessel cleared out from one Spanish port to another Spanish port, with papers regularly authenticated by the proper officers at Havana, evidencing that these negroes were slaves, and that the destination of the vessel was to another Spanish port, I cannot see any legal principle upon which the government of the United States would be authorized to go into an investigation for the purpose of ascertaining whether the facts stated in those papers by the Spanish officers are true or not."

With the same executive document, No. 185, are communicated copies of this vessel's papers, all of which are admitted to be regular and complete, and exemplified in proper form. Among them are manifests or passports signed by the Captain General of Cuba, attesting that these negroes were slaves, and were the property of said Ruiz and Montez, respectively, with a license to transport them from Havana (the port whence the vessel sailed) to Puerto Principe, in the same island of Cuba.

The committee hold that in questions between this government and Spain, arising under the treaty, these documents are conclusive upon the United States, both as to the condition of the subject—that is to say, the slavery of the negroes—and as to the property of the claimants. On being remanded to the jurisdiction of Spain, as contemplated and provided for by the treaty, any inquiries into the validity of the evidence they imported may

have been proper for her tribunals on questions either as to the slavery of the negroes or the rights of property of the claimants *inter se*.

But again: were it competent to the United States to look into evidence to contradict these documents certifying the condition of these negroes, the committee concur entirely in the opinion of the same Attorney General, that the United States could not rightfully undertake to decide questions arising under treaty stipulations made between Spain and other nations, to which this government is no party. The institution of slavery exists in the island of Cuba, a Spanish dependence, and is protected there by the laws of Spain. It appears that in the year 1819, Spain contracted by treaty with England to abolish and prohibit the African slave trade within her dominions, and it is alleged that these negroes were imported into Cuba subsequent to that treaty. If this be so, it may follow that if done with the connivance of Spain, it is in violation of that treaty; or if by her subjects, without authority, that, by proceedings in the proper tribunals constituted by that treaty, the negroes would have been declared free, and the offenders punished; or if either, that England would have had cause of complaint against Spain, and have been entitled to redress. But in no aspect can it be admitted that the United States could undertake to decide upon the effect and operation of treaties between foreign powers exclusively, not affecting the rights of citizens of the United States.

Upon the whole, the case, as fully shown by the documents above referred to, is nakedly this:

A Spanish vessel and cargo, owned by subjects of Spain, is found on the high seas, near the coast of the United States, in possession of lawless negroes, who had obtained such possession by murder and rapine.

Two of the passengers in the vessel, also subjects of Spain, who are the principal owners of the cargo, and the only survivors of the white men who set out on the voyage, were found on board, held in duress and in imminent peril of their lives by the negroes; and at their urgent solicitation, for the safety of their lives and property, the vessel and cargo were seized by a public vessel of the United States and brought into a port of the United States.

The vessel was on a lawful voyage, under the flag of Spain, and with regular and complete sea-papers.

On these facts, the committee unhesitatingly pronounce that, independent of positive treaty stipulations, decent courtesy or the ordinary hospitality of civilized countries would have required, in the language of the eighth article of the treaty with Spain, that these helpless foreigners, thus cast upon our shores, should have been "treated with all humanity, and have enjoyed all favor, protection, and help." But if not so, the terms of the ninth article of the treaty are too clear to admit of doubt, and, in the opinion of the committee, the case of the Amistad and cargo comes fully within it.

It was incumbent on the United States, on the arrival of the Amistad at the port of New London, to have seen that she was "delivered to the custody of the officers of that port;" that by them she was "taken care of;" and, finally, that the vessel and cargo were "restored *entire* to the true proprietor"—such being the plain language of the treaty.

That such was the obligation of the treaty, the government of the United States was fully advised by the Attorney General, in the opinion cited above; and the committee add, as appearing from the correspondence com-

municated with document No. 185, before referred to, that President Van Buren, in whose administration the case occurred, had caused one of our public vessels to await, off the port of New London, the decision of the district court of the United States while the case was depending, with orders, upon the release of the negroes from custody of the court, to receive them on board, and to convey them to Havana, there to be restored to the authorities of Spain.

As to the slave "Antonio," there is no justification for the failure to restore him, except that he was in some mysterious manner lost or stolen after the trial was over, and thus the government was unable to comply with its treaty obligation as to him.

In estimating the allowance that should be made for the whole claim, the committee find that the actual value of the property at Havana, when there shipped, with the reasonable expenses of said Ruiz and Montez while detained in this country in their effort to reclaim it, with interest thereon, will exceed the sum of fifty thousand dollars; and they report a bill for payment of that sum accordingly.