

DON JUAN MADRAZO.

FEBRUARY 22, 1837.

Read, and laid upon the table.

Mr. E. WHITTLESEY, from the Committee of Claims, made the following

REPORT :

*The Committee of Claims, instructed by the House of Representatives to inquire into the expediency of providing by law for the liquidation and settlement of the claim of Don Juan Madrazo, for loss occasioned by the capture and illegal detention of his property by the officers of the United States, report :*

That this case was before the committee at the last session of Congress, and the House, on a recommendation of the committee, on the 6th of May, 1836, passed the following resolutions :

*Resolved*, That the Committee of Claims be discharged from the further consideration of the claim of Don Juan Madrazo ; and that the papers in this case be referred to the President of the United States, with the request that he obtain the opinion of the Attorney General as to the liability of the United States to pay the said Don Juan Madrazo (admitting his statement to be correct) under the law of nations, for any of the slaves mentioned.

*Resolved*, That if the President shall consider that statement in any particular erroneous, and that the interests or honor of the United States will thereby be compromised, then the President is requested to cause such further testimony to be taken as shall disclose all the facts ; and on the case thus made out, to obtain the opinion of the Attorney General whether the United States are liable to the claimant.

*Resolved*, That the President be requested to communicate said opinion to the House of Representatives, when given, if, in his judgment, the same is compatible with the interests of the United States."

The foregoing resolutions were read, and agreed to by the House of Representatives.

On the 18th of May, the President, through the Secretary of State, transmitted the papers to Mr. Butler, the Attorney General, "for the purpose of obtaining his opinion as to the liability of the United States."

On the 28th of June, the Attorney General notified Mr. Forsyth he declined to give his opinion to the President, and he took exceptions to the mode adopted to obtain it.

This determination was communicated by Mr. Forsyth to the President on the 29th of June, and on the 30th of June the President communicated the correspondence to the House of Representatives.

The House adjourned on Monday the 4th of July.

It will be seen the committee had no time, within the short period that remained of the session, to examine the reasons assigned by the Attorney General for not complying with the President's request, even if it had been proper for the committee to have reported on the subject.

The office of the Attorney General is created by the 35th section of the act entitled "An act to establish the judicial courts of the United States," passed on the 24th of September, 1789; and so far as his duty is defined as applicable to this case, it is to give his advice and opinion upon questions of law, when required by the President.

Such opinion was requested, and the Attorney General declined to give it, and presented an elaborate argument to satisfy the President he had no right to request him to give his opinion, because the President had asked him to give it by the request of the House of Representatives.

The President sent to the House the correspondence between the Secretary of State, as his organ, and the Attorney General, without expressing his own views as to the refusal.

If the President is content that the Attorney General shall examine the reasons why he asks his opinion on matters of law and of great national concernment, it is not to be remedied by legislation. The committee attached to their former report the libel filed by the claimant, Don Juan Madrazo, against the State of Georgia, on the 28th of February, 1833, which furnished the facts as he supposed they existed; and they will here present them as they were stated by the Supreme Court of the United States, in cases decided at the January term, 1828, wherein the Governor of Georgia was appellant *versus* sundry African slaves, Juan Madrazo claimant, and sundry African slaves. The Governor of Georgia claimant appellant *versus* Juan Madrazo.

These cases were brought before this court from the circuit court of the United States for the district of Georgia, under the following circumstances:

The schooner *Isabelita*, a Spanish vessel, owned by Juan Madrazo, a native Spanish subject, domiciliated at Havana, was despatched by him with a cargo, his own property, in the year 1817, on a voyage to the coast of Africa, where she took in a cargo of slaves. On her return voyage she was captured by a cruiser called the *Successor*, under the piratical flag of Commodore Aury. The said cruiser being then commanded by one Moore, an American citizen; and having been fitted out in the port of Baltimore, and manned and armed in the River Severn, within the waters and jurisdiction of the United States, the *Isabelita*, and the slaves on board, were carried to Fernandina in Amelia Island, and there condemned by a pretended court of admiralty exercising jurisdiction under Commodore Aury, and sold under its authority by the prize agent, Louis Segalles, to one William Bowen; the negroes so purchased by Bowen were conveyed into the Creek nation, in consequence, as it was alleged, of the disturbed state of East Florida, the insecurity of property there, and with a view to their settlement in West Florida, then a province of the Spanish monarchy. Being found within the limits of the State of Georgia, they were seized by an officer of the customs of the United States, and delivered to an agent appointed by the Governor of Georgia under the authority of the act of the Legislature of that State, passed in conformity to the provisions of the act of Congress of March, 1807, prohibiting the importation of slaves into the United

States ; the negroes having been so brought into the United States in violation of that act.

Some of the negroes were sold by an order of the Governor, without any process of law, and the proceeds paid over to the Treasurer of Georgia : the residue of the negroes are in possession of an agent appointed by the Governor of Georgia.

The *Isabelita* was fitted out as a cruiser at Fernandina ; taken by Moore to Georgetown, South Carolina ; seized there by the United States ; sent round to Charleston ; libelled in the district court of South Carolina ; and, by a decree of that court, restored to Madrazo, the claimant.

The Governor of Georgia filed an information in the district court of the United States for the district of Georgia, praying that a part of these Africans, which remained specifically on his hands, might be declared forfeited, and may be sold. A claim was given in in this case by William Bowen : Juan Madrazo, the libellant in the other case, did not claim.

The decree of the district court dismissed the claim of William Bowen ; and adjudged the negroes to be delivered to the Governor of Georgia, to be disposed of according to law. William Bowen appealed to the circuit court, by which court his claim was dismissed ; and from the decree of that court, dismissing his claim, he has not appealed.

Juan Madrazo filed his libel in the district court of Georgia, alleging that a Spanish vessel, called the *Isabelita*, having on board a cargo of negroes, was piratically captured on the high seas ; carried into the port of Fernandina ; there condemned by some pretended tribunal, and sold ; that the negroes were conveyed by the purchaser into the Creek nation, where they were seized by an officer of the United States, and by him delivered to the Government of the State of Georgia, pursuant to an act of the General Assembly of the State of Georgia, carrying into effect an act of Congress of the United States ; that a part of the said slaves were sold, as permitted by said act of Congress, and as directed by said act of the General Assembly of the said State, and the proceeds thereof deposited in the treasury of said State ; that part of the said slaves remain undisposed of, under the control of the Governor of the said State or his agents ; and prays restitution of said slaves and proceeds. Claims were given in by the Governor of Georgia, and by William Bowen. The district court dismissed the libel, and the claim of William Bowen. From this decree Juan Madrazo appealed to the circuit court.

The circuit court dismissed the libel and claim of the Governor of Georgia, and directed restitution to the libellant ; and from this decree, appeals have been taken by the State of Georgia, and by William Bowen. A warrant of arrest was issued by the district court, but was never served. A monition also issued, and was served on the Governor and Treasurer of the State of Georgia.

Under this statement of facts, the claimant asks the United States to remunerate his loss, by paying for the slaves so taken and disposed of.

The same claim was prosecuted against Georgia for several years, without any pretence that the United States were bound to the claimant.

The ground for prosecuting Georgia, so far as the slaves had been sold, was, that the State had the avails of the claimant's property in her treasury ; and, so far as the slaves remained unsold, that they were his ; and that the Governor of Georgia, having them as Executive of said State in his possession, was holding them illegally, and ought to surrender them.

What act has the United States done, that subjects them to make the payment ?

The claimant has not called the attention of the committee to any specific act creating the liability.

A part of the 9th section of the 1st article of the constitution of the United States is as follows: "The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight."

The period of this prohibition being about to expire, Congress, on the 2d of March, 1807, passed an act entitled "An act to prohibit the importation of slaves into any port or place within the jurisdiction of the United States, from and after the first day of January, one thousand eight hundred and eight."

The 1st section of the act is as follows: "That from and after the first of January, one thousand eight hundred and eight, it shall not be lawful to import or bring into the United States, or the Territories thereof, from any foreign kingdom, place, or country, any negro, mulatto, or person of color, with intent to hold, sell, or dispose of such negro, mulatto, or person of color, as a slave, or to be held to service or labor."

The latter part of the 4th section is as follows: "And neither the importer, nor any person or persons claiming from or under him, shall hold any right or title whatsoever to any negro, mulatto, or person of color, nor to the service or labor thereof, who may be imported or brought within the United States or Territories thereof in violation of this law; but the same shall remain subject to any regulation not contravening the provision of this act which the Legislatures of the several States or Territories, at any time hereafter, may make for disposing of any such negro, mulatto, or person of color."

The claimant, in his libel against the State of Georgia, among other things, alleged that the slaves were carried by Bowen into the Creek nation for safety, with the intention to remove them to West Florida, a colony of Spain; and it is understood that this, with the illegal seizure and sale of the negroes before they were brought into the United States, are facts stated to show that the law of the United States was not operative on the rights of the claimant. In the opinion of the committee, the 1st section of the act cited was violated, admitting that Bowen was illegally possessed of the negroes; and being violated, the negroes became subject to the laws of Georgia made to carry into effect the act of Congress of March 2, 1807.

On the 19th of December, 1817, Georgia passed an act "for disposing of any such negro, mulatto, or person of color, who has been, or may hereafter be, imported or brought into this State in violation of an act of the United States entitled 'An act to prohibit the importation of slaves into any port or place within the jurisdiction of the United States from and after the 1st of January, 1808.'" The first section of this act authorizes the Governor of the State to appoint some fit and proper person to proceed to all such ports and places within this State as have, or may have, or may hereafter hold, any such negro, &c. as may have been, or hereafter may be, seized or condemned under the above recited act of Congress, or who may be subject to the control of this State; and the person so appointed shall have full power and authority to ask, demand, &c., all such negroes, &c., and to convey the

same to Milledgeville, and place them under the immediate control of the Executive of this State.

The 2d section of the act authorizes the Governor to make sale of such negroes, &c. in such manner as he may think best calculated for the interest of the State.

These acts were reviewed by Mr. Wirt, as Attorney General of the United States, on the 21st of January, 1821, in an opinion the President of the United States required him to give, in relation to the sale of these slaves.

His opinion was reported to the Senate at the 1st session of the 17th Congress, and is contained in vol. 2 Senate Papers, Doc. No. 93. That part of his opinion which related to these acts is as follows:

“ This act of the Legislature of Georgia has been objected to, in its application to this case, on several grounds :

“ 1st. That the negroes, in the case under consideration, had been imported before the passage of the act.

“ The answer is, that the act expressly embraces previous importations.

“ 2d. This feature of the act is objected to as *ex post facto*.

“ Answer. If the act inflicted any new penalty on the importer in a past case, or divested a previously vested right, the objection would be valid ; but it inflicts no new penalty, and, indeed, no penalty whatever ; it divests no previously vested right, because the act of Congress of 1807 had already declared that neither the importer, nor any one claiming under him, should hold any right or title whatsoever to negroes thus imported, nor to the service of them.

“ It is further objected, that the act of Georgia is inconsistent with the policy of the act of Congress.

“ The first answer to the objection is, that Congress, by the act of 1807, left it to the Legislatures of the States to make any regulations for disposing of any such negro, &c. not contravening the provisions of the act of Congress. Now, the act of Congress makes no provision as to the state or condition, whether of freedom or slavery, in which such negro should be left. It stops with divesting the importer, and those claiming under him, of all title ; but the mode of disposing of the negroes, &c. is left, and properly left, to the absolute control of the State into whose bosom they have been illicitly imported ; for it must have been considered that the State immediately affected by the importation was most capable of judging in what way the mischief could be best counteracted. Nor do I perceive that the act of Georgia can be justly charged with being inconsistent with the policy, any more than with the express provisions, of the act of Congress.

“ The policy of the latter act was, to prohibit the future importation of slaves. The means which it adopts for this purpose are, the infliction of heavy penalties on the importer, and stripping him, and all claiming under him, of all title to the persons thus imported as slaves.

“ If the State law was in conflict with either of these provisions, or instituted others calculated to encourage the importation, it would certainly be inconsistent both with the policy and provisions of the act of Congress.

“ But the question as to the manner in which the negroes are to be disposed of, after they have been actually imported, in violation of the law of Congress, is a question of self-defence, of self-preservation, which Congress submits entirely to the discretion of the States affected by it.

“ In further reply to the objections, it may be asked, what could the State

do, better than it has done, should it have provided by law for exporting the persons thus introduced out of the United States and the Territories thereof? Whither were they to be exported? There was, then, no place provided to which the State could send them.

"I do not perceive that the act of Georgia is fairly liable to either of the objections which have been taken to it; nor do I perceive that the State could have adopted a better or a more liberal course (in relation to the slaves themselves) than the alternative regulations proposed by this act.

"If the Colonization Society would undertake to carry them out of the country, to Africa or any foreign place, the negroes were to be delivered to them for that purpose, and the Governor was required to aid in the execution of this benevolent purpose; if that society should not apply, it remained for the State to look to its own safety, by placing them in that condition in which they would be the least likely to do mischief; and the State has done so, according to their judgment; to which alone they are remitted by act of Congress of 1807."

The United States had an undoubted right to prohibit the slave trade, and to pass such laws as would most effectually accomplish that object.

Penalties, in the nature of fine or imprisonment, against the owner or possessor of the slaves, would have been abortive. It was necessary, to prevent evasion, that the law should act on the slaves, whoever their master might be.

By leaving it to the State, within whose bounds the slaves might be, to dispose of them, was not in violation of the constitution.

Whenever the slaves were landed in the United States, the owner's right ceased; he cannot, therefore, legally, take any exceptions to the proceedings of Georgia, nor of the United States.

The committee think he has no valid claim, and they submit the following resolution:

*Resolved,* That the claimant is not entitled to relief.