

THE SLAVE INDEMNITY OF THE  
TREATY OF GHENT

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## CHAPTER I.

INTRODUCTION.

The American negroes were in a peculiar position during both the War of 1812 and the Revolution. In both wars they played an honorable part as soldiers and in both wars those held as slaves, and carried away by the enemy's forces became the subject of involved negotiations. Some of the negroes were freemen fighting for the independence of America and the rights of "life, liberty and the pursuit of happiness", while others were slaves considered in all negotiations of the United States as property. This double position of the negro seemed to be an advantage to the British, as they well knew the longing of the slaves for freedom and promised it in order to lure them from their owners.<sup>1</sup>

It is estimated that in 1810 there were 1,377,810 negroes in the United States of whom 186,448 were free.<sup>2</sup> Commanders, who used the free blacks as soldiers, appealed to their patriotism and love of their native land in the same words as would be used to white soldiers. General Jackson in an address to his troops, December 18, 1814, praised their valor in fighting in the Louisiana campaign and around Mobile. "Soldiers - From the shores of Mobile I collected

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1. Writings of George Washington, Ed. by Worthington Chauncey Ford. (10 vols. New York, 1891), IX, p. 392.

2. J. T. Wilson. The Black Phalanx (Hartford, 1888), pp. 77-80.

you to arms . . . I invited you to share in the perils and to divide the glory of your white countrymen . . . . I knew that you loved the land of your nativity, and, like ourselves, you had to defend all that is most dear to man. I have found in you that noble enthusiasm that impels to great deeds. . . ."3 General Jackson used two battalions, or some 500 free negroes, in his Louisiana campaign and after the war they were given the same rights as whites in bounty and government land.<sup>4</sup>

Negroes were in Perry's forces on Lake Erie in a ratio of about 1 - 10 and with McDonough on the *Guerriere* at the ratio of about 1 - 6. There was probably a larger number in river, harbor and sea fighting than on land as there was less prejudice among sailors. The State of New York had two battalions of free negro soldiers and the State of Pennsylvania about 2,400 such soldiers.<sup>5</sup> The negroes were recorded as taking part in many engagements of the war of 1812, as in the attacks on Washington and Baltimore, Louisiana, and in engagements.<sup>6</sup>

Both the British and Americans enlisted negroes as soldiers during the Revolution. In 1779 Sir Henry Clinton proclaimed that any negro who should desert the Rebel standard should have full

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3. The Weekly Register, Ed. by H. Niles (75 vols., Baltimore, 1815), VII, p. 346.  
 4. Wilson, The Black Phalanx, pp. 80-87.  
 5. John Wesley Cromwell, The Negro in American History (Washington, 1914), pp. 51-53.  
 6. Laura E. Wilkes, Missing Pages in American History (Washington, 1919), pp. 62-82; Cromwell, The Negro in American History, pp. 51-53.

security in the British lines. It is computed that between 1775-1783 the state of South Carolina lost 25,000 negroes to the British forces, while in the state of Georgia it was believed to have been much greater. As a result the Americans in order to counteract this call allowed negroes to be enlisted as soldiers in the American army<sup>7</sup>. General Washington held a conference with Sir Guy Carleton, May 6, 1783, as to the question of settling for the negroes and other property of the Americans in possession of the British forces. Carleton would not restore negroes on the ground that doing so would be a breach of faith to the negroes on the part of the British government.<sup>8</sup> The question came up during the negotiations at Paris and Article 7 of the treaty of 1783 provided for a settlement for the slaves carried away during the war. In construing the provision of the treaty, England held to the opinion that negroes in their lines before the signing of the treaty of 1783 were not to be returned. "Since Congress was manifestly unable to carry out the treaty an excuse was furnished to England for declining to fulfill some of its provisions."<sup>9</sup>

Congress was powerless to enforce the provisions in regard to the protection of loyalists. States also made laws obstructing the collection of British private debts. They used as

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7. W. B. Hartgrove, "The Negro Soldier in the American Revolution", in the Journal of Negro History (7 vols. Washington, 1918), pp. 116-117.
  8. Writings of George Washington, Ed. by Worthington Chauncey Ford (10 vols. New York, 1891), X, pp. 241-4.
  9. John Fiske, The Critical Period of American History (Boston, 1888), p. 130.

their excuse for such action the fact that the British refused to return the negroes that had sought refuge within their lines, or those that had been kidnapped by them.<sup>10</sup>

Nothing was done by the British in the way of redress and we find Washington writing Gouverneur Morris in London, October 13, 1789. ". . . Remind them of the article by which it was agreed, that negroes belonging to our citizens should not be carried away; and of the reasonableness of making compensation for them."<sup>11</sup> The Duke of Leeds in answer to Washington's letter said that England delayed fulfilling parts of the treaty of 1783 as the United States had left parts unfulfilled, referring especially to the fact that states were putting barriers in the way of collecting debts. Morris replied that the money to be received as indemnity for the slaves carried away was what they intended to use in payment of such debts.<sup>12</sup>

The matter dragged on until it came up for discussion in 1794 during the negotiations of the Jay treaty. The British Commissioner said that Great Britain understood the stipulation contained in Article 7 of the treaty of 1783, "as an engagement not to cause any destruction, nor to carry away any negro or other property of the American inhabitants . . . that every slave, like every horse, which escaped or strayed from within the American lines, and came into

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10. Fiske, Critical Period, p. 130.

11. American State Papers of Foreign Relations (6 vols. Washington, 1832-1859), I, p. 122.

12. Ibid., I, p. 123.

possession of the British army, became by the laws and rights of war, British property; and therefore, ceasing to be American property, the exportation thereof was not prohibited by the stipulation in question; that to extend it to the negroes, who, under the faith of proclamations, had come into them, of whom they thereby acquired and to whom according to promise liberty had been given. . ." were to give the article greater latitude than warranted and could not be supported by laws governing treaties.<sup>13</sup> "One rule which was recognized by foremost nations of the world was to the effect that a slave escaping in time of war becomes free."<sup>14</sup> So it would seem that England had much on her side of the argument.

Jay, as one of the treaty commissioners, gave it as his opinion that the British Commissioner was quite right, but he thought that where loss of slaves could be proved, Great Britain was bound to make compensation to the owners. The matter was wrangled over for several years, in the state legislatures, in town and county meetings, at dinner tables and in bar-room, with the general result that until such compensation should be made the statutes hindering the collection of debts would not be repealed." In retaliation England refused to withdraw her troops from the frontiers.<sup>15</sup> No definite decision was reached before the War of 1812 so no payments were made.<sup>16</sup>

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13. American State Papers of For. Rel., I, p. 485.

14. H. W. Halleck, Elements of International Law and Laws of War (Philadelphia, 1878), pp. 358-9.

15. Fiske, Critical Period, p. 132.

16. American State Papers of For. Rel., VI, p. 353.

Great Britain held that the War of 1812 terminated the treaties of 1783 and 1794.<sup>17</sup> In this opinion she is supported by J. B. Moore who says, "The general rule of National Law is that war terminates all subsisting treaties between the belligerent powers . . . . Perhaps the only exception to this rule, if such it may be styled, is that of a treaty recognizing certain sovereign rights as belonging to a nation which had previously existed independently of any treaty arrangements."<sup>18</sup>

This left the matter of slaves carried away during the Revolution unsettled with the coming of the War of 1812. The bitterness against the British was great as the feeling persisted that the government never intended to carry out the provisions of the treaty of 1783. When the same question arose after the War of 1812, the feeling was strong that Great Britain would again try to avoid paying claims for indemnity for American slaves that her forces carried away.<sup>19</sup> This proved to be the case and lead to negotiations covering a period of over twelve years.

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17. John Bassett Moore, Digest of International Law (8 vols. Washington, 1906), V, p. 372.

18. Ibid., V, p. 375.

19. American State Papers of For. Rel., VI, p. 347.

## CHAPTER II.

THE TREATY OF GHENT.

The Czar of Russia offered to act as mediator between the United States and Great Britain, September 2, 1812, so the United States sent Albert Gallatin and James Bayard to join John Quincy Adams at St. Petersburg as commissioners to carry on such negotiations.<sup>1</sup> When the two latter members of the commission reached Europe they found that England had rejected the Czar's offer.<sup>2</sup> But on July 13, 1813 Castlereagh offered to negotiate directly with the United States and after a considerable delay and discussion as to when and where to carry on such negotiations, Ghent was finally decided upon as the place of meeting.<sup>3</sup> Here the commissioners of the United States and Great Britain finally met August 6, 1814 and terminated negotiations December 24, 1814.<sup>4</sup> The British plenipotentiaries were Admiral Lord Gambier, Henry Goulbourn and William Adams. The American plenipotentiaries were John Q. Adams, James A. Bayard, Henry Clay, Jonathan Russel and Albert Gallatin.<sup>5</sup> There were many points of controversy between the two countries and it seemed from time to time

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1. Carl Russel Fish, American Diplomacy (New York, 1916), pp. 178-9.
  2. The Diary of James Gallatin, Pub. by Count Albert Gallatin (New York, 1914), p. 4.
  3. Writings of John Q. Adams, Ed. by Worthington Chauncey Ford (7 vols.,
  4. Memoirs of John Q. Adams, Ed. by Charles F. Adams (12 vols., Philadelphia, 1874), III, p. 6.
  5. Edward Pelhom Brenton. Naval History of Great Britain (2 vols., London, 1837), II, p. 539.

that the negotiations would break off with nothing accomplished. The question of the indemnity, for slaves carried away, was relatively a minor point and it was due largely to the persistence of Adams that it was kept before the envoys, and that the wording in the final treaty was such that it could be construed to our advantage.<sup>6</sup>

During the War of 1812, the British occupied many of the numerous bays and rivers along the coast and established many ports. Some of these were near large slave plantations. Many slaves fled to these British posts, many others were seized in marauding expeditions, and some were seduced to join the British.<sup>7</sup>

Mr. Monroe, Secretary of State, in his dispatch to the American plenipotentiaries at Gottenburgh on January 28, 1814, suggested that each nation should pay indemnity for destruction of unfortified towns and other property, contrary to the usages of war, and added "It is equally proper, that the negroes taken from the southern states should be returned to their owners or paid for at full value. It is known that a shameful traffic has been carried on in the West Indies by the sale of these persons there, by those who professed to be their deliverers." Of this fact he assured the plenipotentiaries that proof would be furnished to Great Britain. "If these slaves are considered as non-combatants, they ought to be restored; if as property, they ought to be paid for."<sup>8</sup> This message of Monroe's

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6. Memoirs of J. Q. Adams, III, p. 77.

7. John Bassett Moore. A History and Digest of International Arbitrations (6 vols., Washington, 1898), I, p. 350.

8. Parliamentary Debates, Published under the superintendency of T. C. Honsard (33 vols., London, 1820-30), XXIX, pp. 370-1.

caused bitter comment in Parliament where it was discussed in open debate, November 21, 1814. The Marquis of Lansdowne spoke of it as follows, "A charge of greater infamy was never made against a civilized government, and particularly a government which professed utter detestation of that traffic." He did not believe the accusations, and that was the attitude taken by the English government throughout the negotiations. The Earl of Liverpool also said he disbelieved the accusations, but added that an immediate inquiry should be instituted and if it was found that there was the slightest ground for such accusations of so criminal a nature, measures should be immediately adopted to bring the offenders to justice.<sup>9</sup>

Mr. Monroe sent to the American Commissioners proofs of such traffic, a copy of which was turned over to Congress October, 1814, upon request.<sup>10</sup> It was the publication of this correspondence with the other parts of the proceedings of the negotiations that aroused the bitter attack in Parliament referred to above, as the British held that it was contrary to practices of government to publish negotiations before completion.<sup>11</sup>

The evidence sent by Monroe to the American Commissioners was made up of affidavits taken by people who had knowledge of the traffic referred to. A certain Captain Williams who had been a prisoner of the British in the Bahama Islands testified that while

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9. Parliamentary Debates, XXIX, p. 386.

10. Annals of Congress, 13th Congress, 3rd Session (3 vols., Washington, 1815), III, p. 33.

11. Parliamentary Debates, XXIX, p. 370.

there he witnessed the sale of negroes taken from the vicinity of Norfolk and Hampton.<sup>12</sup> The fact that this affidavit was taken, was corroborated by several men. Joseph C. Cabell of Richmond, Virginia, said that he recollected distinctly all circumstances in regard to Williams' affidavit, and added that he was in Williamsburg at the time Major Thomas Griffin of New York went on board the British squadron in Lynshaven Bay, for the purpose of endeavoring to recover his negroes, who had gone off to the enemy. He said the destination of the negroes had been a subject of curiosity when a sea faring man, Williams, recently arrived in Hampton, went with Major Griffin before a magistrate and made the affidavit referred to above. Williams had testified that he saw one carpenter from Virginia sold in the West Indies for \$1000. Cabell said the entire narrative seemed true.<sup>13</sup> As part of the evidence, Mr. Monroe enclosed a list of property taken by the British as copied from the Savannah Republican. The following parts give an idea of the slaves taken.

Major Butler - 200 negroes.

John Cooper - 80 negroes, 48 of them prime fellows  
and some of them tradesmen.

Dr. Grant - 1 negro woman.

A. C. Wylly - 47 of his primest negroes.

J. C. Geckoe - 11 negroes.

W. McIntosh - 5 negroes.

J. Hamilton - 182 negroes.

E. Matthews - 26 negroes.

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12. Annals of Congress, 13th Cong., 3 Sess., III, p. 33.

13. Ibid., 13th Cong., 3 Sess., III, p. 289.

The original copies of the above testimony were in the hands of our commissioners at Ghent.<sup>14</sup>

An authentic document that proved that the British forces lured the negroes to join them was the proclamation issued by Admiral Alexander Cochrane, Commander of the British Navy on the North American Coast, April 2, 1814. "Whereas it has been represented to me, that many persons now resident in the United States have expressed a desire to withdraw therefrom, with a view of entering into his majesty's service, or of being received as free settlers into some of his majesty's colonies, this is therefore to give notice, that all those who may be disposed to emigrate from the United States will, with their families, be received on board his majesty's ships or vessels of war, or at the military posts that may be established upon or near the coasts of the United States, when they will have their choice of either entering into his Majesty's sea or land forces, or of being sent as Free settlers, to the British possessions in North America or the West Indies, where they will meet with all due encouragement.<sup>15</sup>

The above proclamation came up for debate in Parliament during which Lord Castlereagh was asked whether a proclamation of Admiral Cochrane's, encouraging the negroes to revolt, had been authorized by the government to which Castlereagh answered that no such proclamation had been authorized.<sup>16</sup> In a discussion which arose at

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14. Annals of Congress, 13th Cong., 3 Sess., III, pp. 290-1.

15. Niles Weekly Register, VI, p. 242.

16. Memoirs of J. Q. Adams, III, p. 26.

Ghent, September 1, between J. Q. Adams and Mr. Goulbourn, Mr. Adams spoke of the disavowal of Admiral Cochrane's proclamation by the British government, to which Goulbourn replied that the government had not disavowed such proclamation. Adams quoted the written report of the House of Commons in which Lord Castlereagh said Admiral Cochrane's proclamation had not been authorized by the government. Goulbourn answered that the proclamation was not disavowed as it gave no encouragement for negroes to revolt as there was not a word about negroes in it. It merely offered employment or settlement in British colonies of such persons who might be disposed to leave the United States. Adams asked him the import of the word, Free, used in the proclamation. Goulbourn, after some hesitation, admitted that it might be understood as having reference to slaves. To which Adams replied that it could have reference only to them. Moreover it was known that naval officers had taken away blacks and sold them in the West Indies. This angered Goulbourn who stated that such an act would be a felony on the part of English officers under the laws of Great Britain, besides the humanity and generosity of British Naval officers had never been contested. He said Adams' accusations were unfounded. Adams promised that the facts would be presented for consideration before the commissioners.<sup>17</sup> Adams realized that it would be difficult to get the facts as to the sale of the blacks, as he said that in reflecting upon his conversation with Goulbourn he was impressed by, first, "The avowal of Cochrane's proclamation to the negroes,

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17. Writings of John Q. Adams, Ford, V, pp. 113-114;  
Moore, History and Digest of Int. Arb., I, p. 350-1.

and the explanation of Lord Castlereagh's disavowal . . ." second, "The inability of the statement of facts relative to the sale of the blacks enticed away. . . ."18

Admiral Cochrane, upon taking command of the fleet on the coast of North America, commanded Rear Admiral Cockburn to get possession of some island in the Chesapeake which would serve as a place where they might deposit prizes, and to be used as a supply station. The Tangier Island was the spot selected in the Chesapeake for their rendezvous. Brenton writes, "The Albion of 74 guns was anchored within pistol shot of the shore, the Rear Admiral took possession of the island . . . , hoisted the British flag, to which the negroes flocked in considerable number; about 1,700 were collected, and instructed in their duty by the officers of the marines and soon became very useful to us."19 In another account of this taking of slaves he says that on December 18, 1814, Cochrane's squadron left the Chesapeake for Cumberland Island. Captain Barrie of the Dragon, had charge of the troop ships and transports, on board of which were embarked the regiment of refugee American negroes. The black troops were landed on Chesapeake Island.20

One can readily see that it was a matter of common knowledge to both nations that many negroes were joining the British. It was not, as I have shown above, as easy to prove what was done with

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18. Memoirs of J. Q. Adams, III, p. 30.

19. Brenton, Naval History, II, p. 520.

20. Ibid., II, p. 527.

them after they joined the British forces.

On November 30th, Adams proposed sending the British Commissioners the deposition which had been sent to the American Commissioners by Secretary Monroe, respecting the sale by British officers in the West Indies of negroes seduced from their masters in Southern states by promise of liberty. As the British had pledged themselves to make strict inquiry into it, Adams thought this proof might be useful to them. It would also draw public attention to the practice and thus prevent its continuation. Clay and Gallatin objected as they feared it would merely irritate the British commissioners, and there were questions up for consideration which they deemed more important.<sup>21</sup> The next day (December 1, 1814) the plenipotentiaries had a conference and the big points of the treaty were taken up for discussion but nothing was mentioned in regard to the sale of slaves.<sup>22</sup>

December 2, 1814, Lord Bathurst sent an order to the British commissioners at Ghent instructing them to demand proofs from the American commissioners in regard to their statements that the British officers had taken negroes from the American coasts and sold them as slaves in the West Indies.<sup>23</sup> On December 7th the American plenipotentiaries received a note to that effect from the British representatives at Ghent. Adams was in favor of turning over the

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21. Memoirs of J. Q. Adams, III, p. 77.

22. Ibid., III, pp. 80-6.

23. Letters and Dispatches of Lord Castlereagh, Ed. by Marquess of Londonderry (12 vols. London, 1852), X, p. 213.

depositions sent to them by Mr. Monroe, as proof of seduction, but thought Great Britain should follow up the proofs of selling.

The British note assured the Americans that any British officer found guilty of seducing slaves away from southern states and selling them in the West Indies, would be punished, if the Americans furnished proof of such seduction and selling. Mr. Gallatin and Mr. Russell were adverse to requiring the British Government to disavow and punish the seduction, as they feared the British Government would not only refuse to do so, but all opponents of slave trade would approve and justify Great Britain. After further discussion the American Commissioners agreed to postpone their answer to the note of December 7th.<sup>24</sup>

The negotiations moved on to a close and the final treaty was signed December 24, 1814. It was ratified in the United States February 5, 1815.<sup>25</sup> Not a word was said about indemnities, but the parts of the treaty under which indemnity was gained for slaves carried away were, Article I, "All territory, places and possessions whatsoever, taken by either party from the other during the war, or which may be taken after the signing of the treaty, . . . shall be restored without delay, and without causing any destruction or carrying away any of the artillery or other public property originally captured in said forts or places, and which shall remain therein upon the exchange of

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24. Memoirs of J. Q. Adams, III, p. 92.

25. K. C. Babcock. The Rise of American Nationality (New York, 1908), p. 185.

the ratifications of this treaty, or any slaves or other private property."<sup>26</sup> Also under Article IV, which provided that conflicting claims of the two countries should be left to commissioners, one to be appointed by Great Britain and one by the United States. In case these commissioners could not agree, the matter in dispute was to be referred to some friendly sovereign or state to be considered and decided.<sup>27</sup>

Henry Adams says, "Perhaps at the time the Americans were the chief losers; but they gained their greatest triumph in referring all their disputes to be settled by time, the final negotiator, whose decision they could safely trust."<sup>28</sup> In the following chapters I will show this to be true in the case of indemnity for slaves.

J. Q. Adams still persisted in his idea of putting the affidavits, furnished by Monroe, before the British Commissioners and as late as December 27th he proposed that Gallatin draft a note to be sent to the British Commissioners, respecting the negroes taken from the southern states, and include the dispositions furnished by Monroe. Mr. Clay objected, and undertook to draft a note referring to the United States the power to give or withhold the proof requested. The matter dropped at that point.<sup>29</sup>

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27. Parliamentary Debates, XXX, p. 211.

28. Henry Adams. History of the United States (9 vols, New York, 1909), IX, p. 53.

29. Memoirs of J. Q. Adams, III, p. 129.

## CHAPTER III.

DELAY IN CARRYING OUT ARTICLE I AND REFERENCE TO THE  
CZAR OF RUSSIA.

Soon after the treaty of Ghent was ratified, the United States appointed commissioners to receive and make necessary arrangements in regard to the American public and private property which was in the possession of the British forces.<sup>1</sup> They soon found that the British commanders put a totally different construction on Article I. This was especially true in regard to the restoration of slaves.<sup>2</sup> I will show by several illustrations how the representatives of the two nations disagreed.

Captain John Clavelle, Commander of the British forces in the Chesapeake, in reply to the note of the American commissioners to deliver up slaves and other private property, replied February 23, 1815, that ". . . . As none of the slaves now in Tangier were captured there, I cannot feel myself at liberty to deliver them up; far less can I give up those now serving on board his Britannic Majesty's ships, as by entering into the service they made themselves free men."<sup>3</sup> He said he understood the first article of the treaty relative to pri-

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1. American State Papers of For. Rel., IV, pp. 108, 111;  
American State Papers, Claims, IX, p. 531.
  2. Moore, History and Digest of Int. Arb., I, p. 351.
  3. American State Papers of For. Rel., IV, p. 108.

vate and public property thus, "All territory, places and possessions whatsoever taken from either party by the other during the war, or which may have been taken after the signing of this treaty, . . . shall be restored without delay and without causing any destruction or carrying away any of the artillery or other public stores, or any slaves, or other private property originally captured in the said forts or places which shall remain therein upon the exchange of the ratification of this treaty."<sup>4</sup> Clavelle, thus applied to private property the same limitations as was imposed on the obligation to restore public property. It is clear that Article I limits the obligation as to the artillery or other public property to such as was originally captured in the fort or place to be restored and still remained therein. Clavelle also argued that only the slaves and other private property should be restored as were, "originally captured", in the forts and places to be restored and should still, "remain therein upon the exchange of the ratifications of the treaty."<sup>5</sup> The American commissioners in answer to Clavelle asked him, as he put a different construction on Article I of the treaty than they did, to assist in getting an inventory of all slaves now held by British or in British ships on the Chesapeake Bay or on the shores. This list was to be used as a basis of future negotiation between the countries. Clavelle agreed to cooperate in taking such an inventory.<sup>6</sup> April 15,

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4. Moore, History and Digest of Int. Arb., 1, p. 352.

5. Ibid., 1, p. 352.

6. American State Papers of For. Rel., IV, p. 109.

1815, Clavelle in replying to Mr. Bayly, of the American commission on the Chesapeake, adhered to his determination, . . . "not to restore any slaves, private or public property, captured before the exchange of ratification of the treaty of peace. . . , agreeably to my instructions from Rear Admiral Cockburn on that head."<sup>7</sup>

Clavelle's construction of the treaty worked out in this way, for example, Tangier Island was taken by the British during the war; at the end of the war the British forces refused to restore the slaves in their possession, as they were not captured on Tangier Island. They applied the same rule in Louisiana, Georgia and elsewhere. They would not give up the negroes on British men of war as they said such negroes could not be said to remain in forts or places where they were originally captured, but by entering British service had made themselves free. They were willing, they maintained, to deliver up such slaves as were still remaining at the time of the ratification in the place where they were originally taken.<sup>8</sup>

Another case which represents the British point of view and illustrates their action in regard to Article I is the correspondence carried on by American commissioners with Admiral Cockburn and Rear Admiral Griffith. Thomas M. Newell, Captain of sea-fencibles, and Thomas Spalding, as representatives of the United States interests, demanded of Admiral Cockburn all the slaves and private property of

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7. American State Papers of For. Rel., IV, p. 109.

8. Moore, History and Digest of Int. Arb., 1, p. 357.

every description, taken or received at Cumberland, St. Mary's or St. Simons' Islands, or which were then on ships contiguous to the same. Admiral Cochrane replied, "That the property and slaves taken at Cumberland and remaining there at the ratification would be restored, but what were taken or received from other places, although on the Cumberland, or in the ships in the river or sound would not."<sup>9</sup> Cochrane allowed claimants to go on board British vessels to secure the return of their slaves but the petty officers interfered to such an extent that few slaves were secured. Cochrane restored with Cumberland Island, 27 negroes, 22 bales of cotton, a number of horses, mules and cattle.<sup>10</sup> Captain Newell and Mr. Spalding state that, "Five or six hundred negroes, brought from St. Simons as late as February 15th, were at Cumberland long after the ratification, and many of them were sent off in the night of the day of our arrival." Cochrane admitted that Mr. Kinsman of the West Indies Marines continued to enter fugitive slaves after notice of ratification.<sup>11</sup>

Brenton, in his Naval History, states that official intelligence of the treaty of peace reached Rear-Admiral Cochrane, who held Cumberland Island, March 2, but that he had had intimations of the treaty earlier. "He then embarked all his military stores and prize goods which he had taken; to this last step General Pickney objected and remonstrated as being contrary to the treaty; but the

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9. American State Papers of For. Rel., IV, p. 111.

10. Ibid., IV, p. 112.

11. Ibid., IV, p. 111.

objections were overruled, and on the 18th of March the Rear-Admiral sailed for Bermuda, and shortly afterwards arrived in England."<sup>12</sup>

May 22, 1815 Mr. Spalding wrote to Rear-Admiral Griffith, Commander of the British fleet in North America, who was then at Bermuda. After reviewing the evidence in regard to the negroes carried away from Cumberland, he stated that certain British ships withdrew to East Florida coast at the time of the ratification, with the idea that the slaves they had on board would not come under the return clause of Article I of the Treaty of Ghent. He stated that about 700 out of 730 negroes on Cumberland Island or in ships adjoining were so taken. He stated that the first negroes left the night of March 6th after he (Spalding) had demanded them of Admiral Cockburn. Griffith refused his request and added that there was no authority in the West Indies competent ". . . . to deliver up persons, who during the late war, placed themselves under the protection of the British flag." He was of the opinion that the question was one to be settled by the United States and Great Britain.<sup>13</sup>

The public sentiment in Great Britain is shown by recounting the following incident, taken from nautical anecdotes and selections published in the Naval Chronicle. "An extraordinary transaction, which is stated to have taken place off the coast of Georgia, in the month of April last, is become the subject of general animadversion.

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12. Brenton, Naval History, II, p. 539.

13. American State Papers of For. Rel., IV, pp. 114-115.

It is said that about 150 negroes, who had joined our army in consequence of Sir Alexander Cochrane's proclamation, were restored by an officer to their original owners, contrary to the faith of that Proclamation. Several British officers present strongly remonstrated against the restoration, which they regarded not only as a breach of national faith, but as the result of undue partiality. While the poor blacks themselves, among whom were several females, deprecated the act with the most piteous lamentations, especially as to the fate that awaited them from the resentment of the owners whom they had been induced to desert, as well as from the experience of harsh treatment as from natural reliance upon the pledge of a British Admiral. That resentment these unhappy beings have no doubt severely felt. But the whole of the transaction is of such a nature as to call loudly for inquiry. It certainly appeals with peculiar force to the benevolent advocates for the abolition of slave trade, by some of whom it will, we trust, be brought under the consideration of Parliament."<sup>14</sup> It is evident that the British officers by restoring negroes to their masters aroused in England as much indignation as they aroused in the United States by their refusal to restore slaves.

The attitude of the United States Government is brought out in the correspondence between the Secretary of State, Monroe, and Mr. Baker, Charge'd'Affaires for Great Britain in the United States. Mr. Monroe in a communication to Mr. Baker April 1, 1815, pointed out

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14. The Naval Chronicle, XXXIV, p. 213.

that a very obvious distinction existed between public and private property as in time of war it was sometimes advantageous to destroy public property as forts and cannon. He believed that no example could be found of a stipulation to seize or destroy private property, especially slaves. "Equally strange would be a stipulation not to destroy them." His idea was that Article I of the treaty preserved a distinction between public and private property in a guarded manner. The putting of the words "slaves and other property" at the end of the sentence excluded them from the provision, "originally captured in the said forts or places, and which shall remain therein on the exchange of ratification of this treaty". If slaves were put on the basis of artillery all would be carried away, as few if any remained in the place where the troops first took them. He said, "From every view which I have been able to take of this subject, I am of the opinion that the United States are entitled to all the slaves and other private property which were in the possession of the British forces, within the limits of the United States, on the exchange of the ratification of the treaty, whether they were in forts or British ships of war."<sup>15</sup>

Mr. Baker in his reply to Mr. Monroe, April 3, 1815, regrets the view taken by the Americans and gives as his opinion that the treaty does not sanction the Americans claiming negroes who were on board British ships of war which happened to be within the limits of the United States at the time of the ratification of the treaty.

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15. American State Papers of For. Rel., IV, pp. 106-107.

He believed that at the time the article was formed it was meant to prohibit the carrying away of slaves in connection with the restoration of territory and places. If the British Plenipotentiaries at Ghent, he thought, had considered the article susceptible of the construction Mr. Monroe gave it the insertion of the article would have been decidedly objected to.<sup>16</sup>

On March 13, 1815, Monroe sent instructions to J. Q. Adams, who had just become American Minister to Great Britain, in which he informed him of the position taken by the British Commanders. He remarked on the absurdity of such a construction, which he considered too evident to admit of the presumption that it would be countenanced by the British Government, since it would be impossible under such a construction to recover any negroes. The very act of the taking of the slaves removed them from the place where they were captured, as the British then held, on the Tangier Islands and various stations in the Bay, many negroes that were taken from estates along the shore, none of whom could be recovered under the British construction of Article I.<sup>17</sup>

Adams replied on June 23rd, that he had laid the matter before Lord Castlereagh and had asked him to refer to Article I of the treaty and specially note the alterations made by the American commissioners in the final treaty from the project originally brought up by the British. Lord Castlereagh advised that the whole matter be

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16. American State Papers of For. Rel., IV, pp. 107-108.

17. Writings of J. Q. Adams, Ford, V, pp. 287-8.

referred to the Commission on Commerce of which the American members were Adams, Clay and Gallatin.<sup>18</sup>

In continuation of the discussion, Adams laid before Lord Castlereagh on August 9, 1815 the original American project of the article in question with the alterations by the British commissioners and the final wording submitted by the American commissioners which was agreed to by the British. He claimed that the history of the stipulations as disclosed, originally proposed by the British plenipotentiaries, was by the treaty confined to public property, and that the obligation to restore slaves and other private property was unaffected by it.<sup>19</sup>

The original project read, "All territory, places and possessions, without exception, taken by either party from the other during the war, or which may be taken after the signing of this treaty, shall be restored without delay, and without causing any destruction, or carrying away any artillery or other public property; or any slaves or other private property." The British plenipotentiaries altered this article to read, "All territory, places and possessions, without exception, belonging to either party, and taken by the other during the war, or which may be taken after the signing of this treaty, shall be restored without delay, and without causing any destruction, or carrying away of any of the artillery or other public property, originally

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18. Writings of J. Q. Adams, Ford, VII, p. 322.

19. Moore, History and Digest of Int. Arb., I, p. 354.

captured in said forts or places and which shall remain therein upon the exchange of the ratification of the treaty." The American commissioners at Ghent suggested that they, "Transpose alterations consisting of the words originally captured in the said forts or places, and which shall remain therein upon the exchange of the ratification of this treaty, after the words public property." It was agreed to by the British commissioners.<sup>20</sup>

Mr. Goulbourn (who helped make the treaty) said ". . . . he had considered them only as promising not to carry away slaves from the places which were occupied by their forces and which they were to evacuate." He thought there were few or no slaves in their possession in the places then occupied by them. He understood that they did not promise to send back to the masters, negroes who had come into the British lines for various reasons.<sup>21</sup> Adams replied that the British plenipotentiaries did not at Ghent ask the reason for the Americans transposing the words of Article I, but that the Americans did it candidly to prevent any carrying away of slaves, as that was property which ought not to have been taken by the British. Slaves were private property in the words of the treaty. Adams said he was not arguing the right of slavery but by the treaty Great Britain was obligated to restore them or indemnify the owners.<sup>22</sup>

August 9th and again September 5th Adams sent letters to

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20. American State Papers of For. Rel. IV, p. 116.

21. Ibid., IV, p. 117.

22. Ibid., IV, p. 117.

Castlereagh stating that he was authorized by the Government of the United States to claim restoration of 702 slaves taken from the state of Georgia under Admiral Cockburn's forces. If they were not restored, United States claimed indemnity for the same. These notes were not answered, so October 7th Adams sent a letter to Lord Bathurst, claiming restitution of or indemnity for slaves taken contrary to Article I of the treaty, which slaves he claimed were taken in violation of the flag of truce. Lord Bathurst replied October 9th and promised immediate inquiry. Later he refuted the charge of violation of the flag of truce by Captain Barrie.<sup>23</sup> He said the words "carrying away" grammatically governed both public and private property. If the construction which the United States put on the Article were allowed there would be no limitation as to the place where the private property was originally captured nor as to the place whence it was to be carried away. He believed the United States could have no claim to private property which previous to ratification had been removed on ship board, as under such a construction Great Britain would have to return all property taken during the whole war. The transposing of the wording he held was a mere "verbal altercation", and the British representatives at Ghent never had any intention that the restoration of property would apply to negroes who had taken refuge on the British ships.<sup>24</sup>

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23. American State Papers of For. Rel., IV, p. 125.

24. Ibid., IV, pp. 119-121.

The negotiations dragged on until April 10, 1816 when Castlereagh, in a letter to Adams, agreed that Great Britain would pay indemnity for private property or slaves which can be proved to have been in places directed to be restored by the Treaty of Ghent, and carried away subsequent to peace between the two countries, but for no others. What had been previously removed could not be, he argued, subject to prohibition, for not being in the place to be restored, could not be carried away.<sup>25</sup>

Adams in his reply, May 14, 1816, enumerated cases as evidence of the British traffic in American slaves during the war. He sent depositions of eleven different cases, and asked Castlereagh to peruse them carefully. One was an affidavit that certain British officers told the deponent that negroes and tobacco were considered as private emoluments of the officers, that likely negroes brought from \$900 to \$1000 in the West Indies and that was the object of taking them, but the British government was to know nothing about it. As to the statement that negroes put themselves under British protection and so by solemn promise they could not return them, Adams replied that some negroes were coaxed away and some taken by force. Under those conditions it became a question of whether the British were to treat the former as freemen whom they were protecting and the latter as prizes of war.<sup>26</sup>

He discussed further the case of violation of the flag of

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25. American State Papers of For. Rel., IV, p. 125.

26. Writings of J. Q. Adams, Ford, VI, pp. 26-8.

truce and said as Admiral Cockburn and Captain Barrie disclaimed any knowledge of it this was further fact that slaves were transported without the commanders knowing it. He also cited the case of the ship Wilhemina which paid the British Government a complete penalty under the law for transporting slaves, in which case the slaves were not freed by the Crown, according to the Act of Parliament bearing on such cases, but left with the ship owner to be sold. Castle-reagh wished to discredit all this testimony on the ground that such actions would be felony under the British law and his Majesty's officers would not be guilty of felony.<sup>27</sup>

As these accusations and counter-accusations lead to no results, Monroe in a letter to Adams, May 21, 1816, suggested that, if the British government persisted in its attitude, it would be well to propose to Great Britain that the matter should be referred to arbitration by some friendly power. Adams did so September 17th, and Castle-reagh replied that due to the absence of several ministers he could not take up the subject then.<sup>28</sup> No answer was given later and probably none contemplated. Adams returned to the United States to become Secretary of State under Monroe.

The United States Senate later agitated the matter, and a report of the negotiations was sent to them in December. The American minister was again instructed to invite the attention of Great Britain to the question.<sup>29</sup>

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27. Writings of J. Q. Adams, Ford, VI, pp. 29-35.

28. American State Papers of For. Rel., IV, p. 126.

29. State Papers and Public Documents of the United States, published by Thos. B. Wait (12 vols., Boston, 1819), XI, pp. 388-9.

An agreement was finally reached through Mr. Gallatin and Mr. Bush who were envoys to England to adjust several points in regard to commerce. Great Britain accepted a proposal to refer the question of indemnity to a commission as provided for by Article IV, of the Treaty of Ghent. The commission agreed to refer the question of construction of the article to the Czar of Russia. Their final agreement forms Article V of the convention concluded at London, October 20, 1818.<sup>30</sup> ". . . the restitution of, or full compensation for all slaves who at the date of exchange of the ratification of the said treaty were in any territory, places or possessions whatsoever directed by said treaty to be restored to the United States, but then still occupied by the British forces, whether such slaves were at the date aforesaid on shore or on board any British vessel lying in waters within the territory of jurisdiction of the United States," the article provided that the differences which had arisen as to whether the United States were, "by the true intent and meaning of the aforesaid article of the Treaty of Ghent . . . entitled to the restitution of, or full compensation for all or any slaves as above described", should be referred, "to some friendly sovereign or state to be named for that purpose", whose decision should be "final and conclusive on all matters referred."<sup>31</sup>

The question was referred to the Czar of Russia. Adams in commenting on this says it is rather amusing that two countries

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30. Writings of J. Q. Adams, Ford, IV, pp. 334-5.

31. Moore, History and Digest of Int. Arb., 1, pp. 358-9.

speaking the same language must refer a subject of the meaning of English to "the Slavonian Czar of Muscovy". He was pleased to have the matter referred to the Czar as, he said, "It gives us more chance of justice".<sup>32</sup>

Professor Fish in commenting on these negotiations writes, ". . . . the statesmen of the rising generation, conscious of our steadily growing power and not confronted by the pressing necessity of the confederation and early constitutional period, were usually ready to let issues drop, confidently believing that time was working with them."<sup>33</sup>

After the question was submitted to the Czar, it was argued by means of memorials presented by Mr. Henry Middleton and Sir Charles Bagot, the American and British plenipotentiaries, respectively, at St. Petersburg, through Count Nesselrode, the Imperial Minister of Foreign Affairs. Both countries laid all their evidence before their plenipotentiaries.<sup>34</sup>

The emperor's decision was announced April 22, 1822. He based his decision upon the grammatical construction of the first article of the Treaty of Ghent as both the British and American plenipotentiaries insisted on the grammatical sense. "Originally captured and carried away, etc." form an incidental phrase, he said, and can have respect grammatically, only to the substantives or subjects which precede. It prohibits the carrying away of private property. He

32. Memoirs of J. Q. Adams, p. 190.

33. Fish, American Diplomacy, p. 190.

34. Moore, History and Digest of Int. Arb., I, pp. 359-360.

said that the United States was entitled to indemnification for all slaves carried away from territory, if the territory was restored by the treaty, no matter where the slaves were at the time of the ratifications of the treaty. If some were carried away from territory and that territory was not restored the United States was not entitled to indemnification for such negroes. By this award it appeared that the point of difference was decided in favor of the United States. The Emperor held that the restitution of public property bore no relation to private property, "that the United States was entitled to consider as having been so carried away all slaves which had been transported from those territories, and who, for that reason, had not been restored, but not slaves which were carried away from territories of which the Treaty of Ghent did not stipulate the restitution." The Czar offered to mediate in the negotiations which must ensue.<sup>35</sup>

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35. Moore, History and Digest of Int. Arb., I, pp. 360-363.

## CHAPTER IV.

THE MIXED COMMISSION.

The offer of the Czar to act as mediator in the negotiations which must follow the award, was accepted by both parties to the arbitration. A convention was concluded and signed at St. Petersburg, June 30, 1822.<sup>1</sup> By that convention it was agreed that a mixed commission, composed of one commissioner and one arbitrator from each country, was to be constituted to settle the just indemnification which the Czar awarded to be due the citizens of the United States for the slaves and property deported. The personnel of the mixed commission was made up by the following men. Langdon Cheves, Commissioner for the United States, Henry Seawell, Arbitrator for the United States, George Jackson, Commissioner for Great Britain, John McTavish, Arbitrator for Great Britain. These were to meet and hold their sittings in Washington, where they did convene for the first time August 25, 1823.<sup>2</sup>

The execution of the award was to be accomplished by two processes. First, the ascertainment of an average value to be allowed as compensation for each slave for which indemnification might be due. Second, the examination of individual claims, in order to determine the number of slaves and the amount of other property for

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1. Moore, History and Digest of Int. Arb., I, p. 363.

2. American State Papers of For. Rel., IV, p. 339.

which compensation should be paid. According to the fifth article of the convention of St. Petersburg, it was stipulated that "In event of the two commissioners not agreeing in any particular case under examination, or of the disagreement upon any question which may result from the stipulations of the convention, then and in that case, they shall draw by lot one of the two arbitrators, who, after having given due consideration to the matter, shall consult with the commissioners, and a final decision shall be given conformably to the opinion of the majority of the two commissioners and of the arbitrator so drawn by lot."<sup>3</sup>

The commission agreed to restrict the consideration of claims to the "definitive list" which was to be furnished by the Secretary of State of the United States. This list was made up during the time that the question of the construction of Article I of the Treaty of Ghent was before the Emperor of Russia. The claims were secured by sending instructions to the governors of states from which slaves were taken notifying claimants to send their depositions to the Secretary of State. All claims were to be supported by authentic proof. The name, age, sex and value of each individual slave lost was to be listed. This list was received by the mixed commission December 13, 1824.<sup>4</sup> A few claims were by accident omitted at the time so the American commissioner requested that they be added. To this the British commissioner naturally objected. Mr. Cheves then

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3. American State Papers of For. Rel., VI, p. 339.

4. Moore, History and Digest of Int.Arb., I, pp. 370-1.

suggested that the matter be decided by drawing the name of one of the arbitrators. To this Mr. Jackson also objected so the claims to be heard were limited strictly to the "definitive list".<sup>5</sup>

The mixed commission came to an agreement on the question of valuation September 11, 1824. The amount of compensation to be allowed for each slave for whom indemnity might be claimed was fixed as follows:<sup>6</sup>

Slaves taken from Louisiana . . . . .	\$580 each.
"      "      " Alabama, Georgia or South Carolina . . . .	\$390 "
"      "      " Virginia, Maryland or other States . . . . .	\$280 "

In the next step in executing the award the commission could come to no agreement. Mr. Cheves held that interest should be paid under a "just indemnification", for the time elapsing since the ratification of the Treaty of Ghent, as indemnification was due from that date. To this the British commissioner decidedly objected. His opinion was that the value of the slaves was the compensation to be made under the award of the Emperor. He said the payment did not rest on any wrong conceded by Great Britain, but on the decision of the Emperor of Russia, so he did not consider it on the grounds of justice and equity as a payment for a wrong done. He said the negroes came to them for protection, and the British made no profit from them.<sup>7</sup>

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5. Moore, History and Digest of Int. Arb., I, p. 371.

6. American State Papers of For. Rel., VI, pp. 342-3.

7. Moore, History and Digest of Int. Arb., I, pp. 375-6.

He claimed that the question of interest was not one left with them to decide. Mr. Cheves wished the matter referred to the arbitrator but Mr. Jackson refused such reference. Such refusal on the part of Mr. Jackson was considered by the American Attorney General, William Wirt, as unwarranted by the convention.<sup>8</sup>

The British commissioner refused to admit claims of indemnity for negroes taken from Dauphin Island, on the grounds that that island was a part of West Florida at the time of the ratification of the Treaty of Ghent and so belonged to Spain, not to the United States, so claims from that island would not come under the award of the Czar. Mr. Cheves refused to discuss the matter of the right of the United States to West Florida as gained by the Louisiana purchase, but offered to refer the matter as provided for in Article V, but Mr. Jackson declined.<sup>9</sup>

In the case of taking evidence in the court, Mr. Jackson demanded a different method of authenticating evidence than was used in American courts. This caused further delay. Another point of disagreement was that <sup>by</sup> the Convention of 1822, Great Britain engaged, "to cause to be produced before the commission, as material towards ascertaining facts, all the evidence of which his Majesty's government may be in possession, by returns from his Majesty's officers or otherwise of the number of slaves carried away." Mr. Canning forwarded this evidence to Mr. Jackson, but the latter allowed only a limited

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8. American State Papers of For. Rel., VI, p. 950.

9. Moore, History and Digest of Int. Arb., I, p. 377.

consultation of said evidence. He didn't wish to give proof of any more cases than necessary as it would make more for England to pay for. Mr. Jackson wished to refer this matter of evidence to the arbitrator, but Mr. Cheves declined as he said it was settled by the convention of 1822.<sup>10</sup> The whole method of conducting cases was a matter of continual irritation between the men. As it seemed impossible for the commission to do business they adjourned April 27, 1825 to meet the following December.<sup>11</sup>

Following this adjournment Henry Clay, Secretary of State, communicated with Rufus King, the American Minister to Great Britain, to take up the question of settling the whole matter with Great Britain for a fixed sum. In this message he stated the American position fully. He charged that the proceedings of the board had been arrested by the refusal of Mr. Jackson to execute the 5th article of the Convention and so nothing could be accomplished without the interposition of the British Government. He said the form of the commission, as developed by experience, had proven very inconvenient. In case of contingency all minor points were to be referred to arbitration so that it might happen and most likely would happen that the claim of one individual would be rejected under precisely the same circumstances that another might be allowed. He said that the only way that the commission could get along was by a spirit of mutual concession between the members. He didn't think Mr. Jackson showed such a spirit.

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10. American State Papers of For. Rel., VI, pp. 339-341.

11. Ibid., VI, p. 341.

Furthermore, he thought claimants were at a great disadvantage under the mixed commission. The British government, being the party from which large indemnities were expected, passed on the evidence of the claimants. Under such circumstances, if when the commission were divided in opinion, Great Britain refused reference to the 5th Article it would be tantamount to a decision in her favor. As no benefit was likely to come from a commission so constituted, Clay suggested that Mr. King make an arrangement with Great Britain to pay a lump sum. He suggested the following figures to be used in such negotiations: Total number of slaves on the "definitive list" - 3,601. They were valued at \$1,183,200. Add to that ten years' interest of \$709,000 and the total would be \$1,893,000. To that sum add the amount for other private property claims and the grand total would be \$2,693,120.

He thought, as many of the cases on the "definitive list" could not be proven the actual sum could be much less, so he advised Mr. King to compromise on \$1,417,000.<sup>12</sup>

Mr. King took up the matter with Mr. Canning and named \$2,000,000 as a compromise sum. Mr. Canning declined the offer on the grounds that it was too large. He would fix no sum which he considered a "just indemnification", but advised King that the matter be left with the mixed commission. He declined to enter further into the merits of the case. Mr. King, in a letter to Mr. Clay, said

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12. American State Papers of For. Rel., VI, pp. 342-3.

Great Britain was wounded in her pride of influence by the Russian award and he believed would embarrass as much as possible its final execution.<sup>13</sup>

Great Britain transferred the negotiations to Washington by sending Mr. Vaughan as a special envoy to take up the matter. At about the same time Albert Gallatin was commissioned as envoy to England to succeed King. Discussions proceeded in Washington and London simultaneously. Mr. Vaughan, in taking up the matter with Clay said it was absolutely impossible to accept the offer made by King (in London) as the British government would not consent to allow the demand for interest. He upheld Jackson's position on the Dauphin Island claims and said that during the war, Dauphin Island was taken by the British not as a part of the United States, but because it was occupied by United States troops. By so doing, he maintained, Great Britain had not made war on Spain, a neutral country. He said many of the inhabitants of the Island had gone to Pensacola and had demanded payment for slaves as they considered themselves residents of neutral territory believing that the Island belonged to Spain. Such claims would not then come under Article I. He professed that the British Government was ready to carry into effect all stipulations of the treaty, but considered that the points proposed by the American Government did not fall within the provisions of the convention for reference. The question of interest on indemnity, he said, was not specified in the con-

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13. Life and Correspondence of Rufus King, Ed. by Charles King (6 vols. New York, 1898), V, pp. 667-9.

vention or essentially a part of its stipulations. It was a new claim and not in the minds of the powers of the convention of 1822, so was not under the jurisdiction of the commissioners.<sup>14</sup>

When Mr. Gallatin became envoy to London, Clay in his instructions to him (June 21, 1826) said, as England had rejected Mr. King's suggestion that the countries compromise on a lump sum, not to offer that again, but suggest to Mr. Canning that the questions of interest and Dauphin Island claims be referred to the Emperor of Russia to decide whether those two questions, according to the convention of 1822, should not be arbitrated as provided in Article V. He advised him to use as a precedent the arguments of the British in reference to the treaty of 1794 when, due to the lack of agreement between England and America, America paid the lump sum of 600,000 pounds. In the case of the Dauphin Island he advised Gallatin to assume that Great Britain made a mistake in saying our claim to the Island came from the treaty of 1819 rather than 1803, as this would give Great Britain a chance to withdraw from an untenable ground. He argued that the fact of possession and the reduction of it by the British forces, was sufficient to entitle the United States to its restoration and to indemnity for the slaves carried away.<sup>15</sup>

Gallatin took up the matter with Canning immediately upon his arrival in London. He confined himself strictly to the question of reference to arbitration and alluded only to the ultimate appeal to

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14. American State Papers of For. Rel., VI, p. 750.

15. Ibid., VI, p. 346.

Russia. Canning asked for a postponement of the question of interest, but Gallatin objected on the ground that that would give up the American contention of the right to reference.<sup>16</sup>

After much discussion it was finally agreed that Great Britain was to pay the United States \$1,204,960 as the sum covering the principal and interest of the claims for indemnification. Interest was to be computed from May 1, 1815 for twelve years. The sum was to be paid in two instalments so as to make it equal to all being paid May 1, 1827. It was further agreed that the British government was to have no further concern or liability on the subject. This was insisted upon by Great Britain in order to prevent an appeal to her for additional sums from persons not satisfied with the amounts which might be awarded them by the American Commission.<sup>17</sup> It also provided for the dissolution of the commission under the convention of 1822, which adjourned sine die on February 27, 1827. All the documents and papers in their possession, relating to claims, were directed to be handed over to the commission which the United States was to appoint to distribute the sum paid by Great Britain. This agreement was reached in London November 13, 1826 and was ratified by both countries and made public by March 19, 1827.<sup>18</sup>

This was a victory for the United States. The final amount received was the minimum which Clay instructed Gallatin to accept as a compromise. Gallatin handled the matter ably and with as

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16. American State Papers of For. Rel., VI, p. 349.

17. Ibid., VI, pp. 353-4.

18. Ibid., VI, pp. 637-8; Parliamentary Debates, XII, p. 726.

little friction as possible. It is interesting to note that the Chancellor of the Exchequer in a speech to the House of Lords, as early as February 28, 1825, in explaining the miscellaneous charges in the Budget, says it is increased by 250,000 pounds as the amount to be paid to the United States for certain negroes who had left their masters and attached themselves to the British during the war.<sup>19</sup> When Gallatin first arrived in London he heard of this and worked on the basis that Great Britain would be willing to compromise on that sum.<sup>20</sup>

One of the arguments which Gallatin thought had force with Canning was the fact that Great Britain failed to carry out her pledge of 1783 in regard to the payment for slaves. He also thought Canning disliked very much the idea of again referring the subject to the Czar of Russia as he felt England would gain nothing in so doing.<sup>21</sup>

England paid the sum stipulated and the whole matter was then in the hands of the United States Government to adjust among the claimants in such a manner as Congress saw fit.<sup>22</sup>

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19. Parliamentary Debates, XII, p. 726.

20. American State Papers of For. Rel., VI, p. 352.

21. Ibid., VI, pp. 347 and 353.

22. Ibid., VI, p. 638.

## CHAPTER V.

THE AMERICAN BOARD OF COMMISSIONERS.

In compliance with the agreement reached in the convention of London, 1826, Congress passed a law to carry into effect the distribution of the sum, paid by Great Britain, to the persons entitled to indemnification. The president was authorized, with the advice and consent of the Senate, to appoint three commissioners and one clerk to handle the sum. In order that this commission should not be hampered for lack of evidence, it was ordered that all records, documents, and papers which were in the possession of the mixed commission be turned over to them.<sup>1</sup>

This commission was directed to convene at Washington, July 10, 1827 and proceed to examine the claims for indemnification and distribute the fund among the claimants according to their respective rights. The examination of claims was to be confined to the "definitive list" plus those which had been deposited with the Department of State and by mistake omitted from such list. In order that all claimants might have full knowledge of this meeting, the Secretary of State was directed to have a notice published in all states from which claimants of property had registered their claims.

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1. Statutes at Large, 1789-1845, Ed. by Richard Peters (41 vols., Boston, 1848), IV, p. 219.

They were to make all needful rules and regulations for themselves, so they were not to be hampered or bound in any way as to their methods of procedure. The fund was deposited in the United States Treasury and awards were paid through it.

It was also provided by the Act of Congress that as claims were admitted and adjusted by the commission, 75% of the sum of each claim should be paid, but this total was not to exceed \$1,204,960. After all claims had been examined and decided upon, if there was any of the fund left over, it was to be divided among the claimants respectively, according to the sum originally awarded. The commission was to terminate with the close of the next session of congress.<sup>2</sup>

The president appointed as commissioners, Langdon Cheves of South Carolina, Henry Seawell of North Carolina and James Pleasants of Virginia.<sup>3</sup> The first two men had served on the mixed commission so were naturally familiar with the claims. The first, seemed to be representative of the extreme southern interests while the latter two appeared to watch out for the interests of the northern slave states.

Now, that the matter was entirely in the hands of an American commission it might seem that everything would run smoothly. This however was not the case as there was about as much contention between rival claimants to get the lion's share of the fund as there had been between the two countries to arrive at the final settlement of the

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2. Statutes at Large, IV, pp. 220-221.

3. American State Papers of For. Rel., VI, p. 855.

amount of indemnification.

Claimants who were not in the "definitive list" immediately began to petition Congress to have their claims added. They sent in very persuasive memorials, but in every case congress refused to allow the petitions.<sup>4</sup> If congress had taken contrary action there would have been no limit to the number of petitioners.

The original number of claims on the "definitive list" were 3,601; those had been cut down to about 1,600 according to Henry Clay's letter to Rufus King, May 10, 1825.<sup>5</sup> By the time the American commission met there were 1,100 cases still on the list, these were almost exclusively claims for slaves.<sup>6</sup>

This commission, according to the convention of 1826, was to take the value of slaves which was fixed by the mixed commission. The southern claims were taken up first and decided upon. These included those of Dauphin Island, Cumberland Island and others from Georgia, Alabama, Louisiana, Florida, and South Carolina.

There was much doubt in the Dauphin Island claims on account of the question of ownership of the Island, and in the Cumberland claims as to whether the British ships which lay off the Island were within the jurisdiction of the United States at the time of the ratification of the treaty of Ghent. The evidence sent by Great Britain did not make the latter case clear. The commission decided to al-

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4. American State Papers of For. Rel., VI, pp. 821 and 858;  
American State Papers, Claims, IX, p. 531.

5. American State Papers of For. Rel., VI, pp. 342-3.

6. Ibid., VI, pp. 362-3.

low these claims. Where there was a question as to which valuation was to be given to slaves the larger sum was allowed.<sup>7</sup>

After these southern claims had been allowed, claimants from Louisiana and Georgia began to work to disprove the evidence of claimants from Virginia and Maryland, in order that after the 75% was paid as stipulated in the Act of Congress, March 2, 1827, there would be a larger amount left over to be divided among them. A bill passed the Senate to extend the time of the commission so as to have time for more evidence to be put before it. When the matter came up before the House Committee, the opinion of the commissioners was asked.

The opinion of the commissioners was that the object of such a bill was manifestly to allow evidence to be secured from abroad to defeat claims of certain Virginia and Maryland people, called the Chesapeake claimants, so more of the fund would go to the claimants whose cases were already passed upon.

Langdon Cheves discussed the claims under two heads:

1. Those which have been allowed and have received 75% of the claim.
2. Those now under consideration for slaves taken between June 1813 and December 1814. In these latter cases proofs for the taking by the enemy have been given.

The people of Class 2, now contend that the burden of proving that the slaves were actually carried out of the territory of the

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7. American State Papers of For. Rel., VI, pp. 855-6.

United States, before the ratification of the treaty rests on those opposing the claim. Also, on the proof coming up the presumption is and the circumstantial evidence points to the fact that all slaves thus taken remained in the United States territory or waters until after the ratification. They also held that the Halifax list ( a list turned over to the commission by the British) was proof that the slaves were taken away after the ratification.

The people of the first class resisted the first proposition of the claimants of the second class as unfounded in principle and the second and third as unsustained by the evidence relied on. They alleged that they could disprove the claims if they were given time to procure certain testimony, much of which they would have to get from abroad.<sup>8</sup>

The House committee, after considering the opinions of the commissioners, reported to Congress, March 22, that they deemed it inexpedient to extend the time of the Board of Commissioners.<sup>9</sup>

This did not close the matter as the Louisiana and Georgia claimants on April 12, again petitioned the House of Representatives to pass the bill, already passed by the Senate, to continue the Board of Commissioners until more evidence could be got in disproving the Chesapeake claims. They accused the commission of using new rulings in order to grant the claims of class 2. They argued that the negroes taken from Chesapeake were out of the country before the ratification

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8. American State Papers of For. Rel., VI, pp. 862-3.

9. Ibid., VI, p. 864.

of the Treaty of Ghent so the claims did not come under the provisions of Article I. They also accused the commissioners of using hear say testimony.<sup>10</sup> It is a fact that these Chesapeake claimants could produce very little evidence of the exact place of their slaves, at the time of the return of peace. They could show proof of their having been carried away.

The opinions of the Board of Commissioners were again requested by the House Committee and each one sent a separate communication. In these opinions Mr. Cheves favored the contention of Louisiana and Georgia petitioners while Mr. Pleasants and Mr. Seawell were on the side of the Virginia and Maryland claimants.

Mr. Cheves took up in his communication each of the Chesapeake cases and recited the evidence given. He showed that the testimony of the white sailors was merely hearsay and not authentic. In his opinion the testimony of the negroes was not admissible as it would not be accepted by the courts of the states from whence the claims were made. As to the Board using their discretionary powers, he said that in the wisest and purest hands this kind of testimony would be dangerous, and that none of it was admissible as it violated all rules and precedents. As to the argument that the commissioners were not bound by court rules and precedents, he said they should conform to the well known customs of evidence and that their decisions would be taken as precedents by commissioners in the future, so they should make

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10. American State Papers of For. Rel., VI, p. 883.

no decisions that were legally questionable.<sup>11</sup>

Mr. Seawell, in his opinion to the House Committee, said that the Board in taking testimony was not bound by the niceties of laws of judicial courts nor by previous conventions; but they were to decide claims according to their respective merits. As they were a special court, sitting for a special purpose, they were not bound by the technicalities of the common law courts. He said if he was satisfied that certain slaves were carried away after ratification he would decide in favor of the claimant. As to the taking of slave testimony, he argued that the negroes would have no interest in telling an untruth, and who would know better than they when they left Tangier. Mr. Pleasants later stated that negro testimony was accepted to a limited extent from the states whence these claims came.

In reference to the matter of hearsay testimony, Mr. Cheves maintained that Great Britain gave us the award largely on hearsay testimony and testimony of slaves. The British lists, as the Bailey and Halifax lists, were largely hearsay testimony, but as they were accepted as evidence by the Mixed Commission they were to be taken as authentic by the American Board of Commissioners.

Furthermore the depositions of Georgia and Louisiana in their claims were no more admissible than in the Chesapeake cases, and as such testimony was accepted in those claims and awards given, he saw no grounds on which it could be excluded in the Chesapeake cases.<sup>12</sup>

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11. American State Papers of For. Rel., VI, pp. 883-4.

12. Ibid., VI, pp. 886-7.

Mr. Pleasants concurred in his opinion with Mr. Seawell and quoted authorities to prove that negro testimony could be admitted and used as circumstantial evidence and allowed what weight it was entitled to.<sup>13</sup> It was finally settled that the commission was to be allowed to continue until the first of September to complete the work then before them but not to receive new testimony.<sup>14</sup> The Chesapeake claims evidence was admitted and claims allowed. The last meeting of the commission was held August 31, 1828.<sup>15</sup>

After all the claims were allowed on the basis of 75%, \$753,782 was left over which was distributed among all claimants to whom awards had been made, in proportion to the first amount allowed to each.<sup>16</sup>

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13. American State Papers of For. Rel., VI, p. 888.

14. Ibid., VI, p. 962.

15. Statutes at Large, IV, p. 269.

16. Moore, History and Digest of Int. Arb., I, p. 382.

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