

DON JUAN MADRAZO.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

IN REPLY TO

A resolution of the House of Representatives, of the 6th of May last, in relation to the claim of Don Juan Madrazo.

JUNE 30, 1836.

Referred to the Committee of Claims.

WASHINGTON, *June 30, 1836.*

I return to the House of Representatives the papers which accompanied their resolution of the 6th of May last, relative to the claim of Don Juan Madrazo, together with a report of the Secretary of State, and copies of a correspondence between him and the Attorney General, showing the grounds upon which that officer declines giving the opinion requested by the resolution.

ANDREW JACKSON,

DEPARTMENT OF STATE,

June 29, 1836.

The Secretary of State, to whom was referred a resolution of the House of Representatives of the 6th of May, 1836, with the accompanying papers, requesting the President to obtain the opinion of the Attorney General as to the liability of the United States to Don Juan Madrazo, and to communicate the same to the House, if compatible with the public interest, has the honor to report, that, in compliance with the President's directions, the said resolution and papers were transmitted to the Attorney General, who has this day returned them, with a letter stating the reasons which induce him to decline giving his opinion. The Secretary of State now lays before the President copies of the correspondence with the Attorney General, and the papers which were transmitted from the House of Representatives.

JOHN FORSYTH.

To the PRESIDENT of the United States.

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DEPARTMENT OF STATE,
Washington, May 18, 1836.

SIR: By the President's directions, I have the honor to transmit the accompanying papers, relating to a claim of Juan Madrazo, which have been referred to the President, by the House of Representatives, for the purpose of obtaining your opinion as the liability of the United States.

If you should think that further testimony ought to be taken, to enable you to form an opinion, and will signify to this Department, the particular points to which it should be directed, instructions will be given for obtaining it.

I am, sir,
Your obedient servant,
JOHN FORSYTH.

HON. B. F. BUTLER,
Attorney General, U. S.

ATTORNEY GENERAL'S OFFICE, June 28, 1836.

SIR: I have had the honor to receive your letter of the 18th ultimo, transmitting to me, by the President's directions, certain papers relating to a claim against the United States, recently presented by Don Juan Madrazo, to the consideration of Congress.

It appears from your letter, and from the documents accompanying it, that the memorial of the claimant was referred, in the House of Representatives, to the Committee of Claims of that House; that the committee, after a partial examination of the case, reported to the House, that the matter involved questions of great importance, on which they thought it expedient that the opinion of the Attorney General of the United States should be taken; but as the House of Representatives was not empowered to obtain that opinion, the committee reported a resolution, which was subsequently adopted by the House, referring the papers to the President, with the request that he obtain the opinion of the Attorney General as to the liability of the United States, on the statement made by the claimant: and that in compliance with such resolution, and for no other cause, the papers have now been transmitted for my opinion.

After mature reflection upon the laws which prescribe the duties of the Attorney General of the United States, and on the course hitherto pursued by my predecessors, and myself, in analogous cases, I have come to the conclusion, that the present reference is not within any legal provision now in force; and that any opinion I might give upon the case, as now submitted to me, would not only be gratuitous and unofficial, but an improper enlargement of the sphere of my office.

The only acts of Congress which require, or authorize, the Attorney General to give official opinions, are those of the 24th of September, 1789, and the 29th of May, 1830; the first of which makes it his duty "to give his advice and opinions upon questions of law, when required by the President of the United States, or when requested by the heads of any of the Departments, touching any matters that may concern their Departments; and the last of which requires him to advise with, and direct the Solicitor of the Treasury, in the execution of his duties. Since the communication

made to the Speaker of the House of Representatives, under date of the 3d of February, 1820, by Attorney General Wirt, in which that officer declined complying with the order of the House, referring to him for his opinion, the petition of Joseph Wheaton, it seems to have been admitted, that under the existing laws, the Attorney General has no power to give an official opinion on the call of either House of Congress.

This incapacity, and the consequent want of authority in the House of Representatives to call for such an opinion, are expressly recognised in the report of the committee now before me; and the reference to the President, and through him to this office, seems to have been suggested and adopted, under the impression that the President, at the request of the House, might lawfully require, in its behalf, and for its use, that which it is conceded the House had not itself the authority to demand. The case, however, in my opinion, is not varied by the course which has been pursued. The authority of the President to require the advice and opinion of the Attorney General is necessarily restricted, by the nature and reason of the thing, to cases in which such advice, and opinion are wanted by the President, for the purpose of aiding him in the execution of his own functions and duties. The matter referred to me, in the present instance, is not of that character; it has arisen in the course of legislation, and belongs, as yet, exclusively to the House of Representatives; and the call for my opinion, though nominally coming from the President, has evidently been made by him, not for the purpose of obtaining advice, touching the performance of any Executive function, but simply as the organ of the House, and in compliance with its request. Seeing all this on the face of the reference, I think I am bound to regard it in precisely the same light, as if it had been made to me directly by the House of Representatives. In that case, it is plain, that any reply I might have made to it, would have been entirely unofficial, and unauthorized by law; and it would seem to be equally clear, that the indirect and circuitous mode, which has been taken, can make no difference in the real character of the reference. What the House asks through another, must be regarded, in sense, and in law, as demanded by itself; and in both cases the legal answer must therefore be the same.

In accordance with these views, I have heretofore declined giving opinions on cases referred to me, under similar circumstances, by heads of Departments; and I doubt not the President will perceive the necessity which compels me, on the present occasion, to take the like course.

The papers received from you, are accordingly herewith returned.

I beg leave to add, that should Congress deem it important to a just disposition of the claim of the memorialist, that it be examined by the Attorney General, a direction to that effect by law, or by a joint resolution approved by the Executive, will, so far as regards myself, be cheerfully complied with.

I am, sir, with high respect,
Your obedient servant,
B. F. BUTLER.

To the Hon. JOHN FORSYTH,
Secretary of State.

IN THE HOUSE OF REPRESENTATIVES, U. S.

May 6, 1836.

Mr. E. WHITTLESEY, submitted the following report, viz :

The Committee of Claims, instructed by a resolution of 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 losses occasioned by the capture and illegal detention of his property, by the officers of the United States, report :

That a statement of the case, as the claimant says the facts exist, is contained in a libel verified by the oath of the libellant, the said Don Juan Madrazo, which he presented to the judges holding the Supreme Court of the United States, on the 28th of February, 1833, praying process against the State of Georgia, to make the said State a party defendant in said court, at the suit of the said Don Juan Madrazo.

A more condensed statement is found in the opinion of the court, on the presentation of said libel, to which the committee refer, and make the same a part of this report.

The court denied process in the case, because it was not competent for the libellant to institute a suit against a sovereign State. The claim had its origin as early as 1817.

The claimant was a Spanish subject, residing at Cuba, and sent a ship to Africa, and obtained 112 slaves. He says the ship and slaves were captured by a vessel fitted out at Baltimore, under the flag and commission of Aury, and commanded by an American officer. The ship and cargo were taken to Amelia island, then belonging to Spain, but in a state of revolt, and were condemned in an admiralty court, and the slaves were sold under its decree, and purchased by William Bowen.

The claimant says this court, constituted in a revolting province, had no jurisdiction of the case, and that its judgment, decree, and order, were void, and could convey no valid title to the purchaser. The slaves were taken to the Creek agency, in the State of Georgia. Such proceedings were thereafter had by the authorities of Georgia, that a part of the slaves were sold, to the value of \$40,000, under an act passed by the Legislature of Georgia, on the 19th of December, 1817, and the proceeds were paid into the treasury of that State.

General David B. Mitchell was agent of the United States at the Creek Agency, when these slaves were taken there, and his connection with the purchase of the slaves, and their being brought to said agency, was investigated by the Attorney General of the United States, under the orders of the President, and a report of his proceedings was made on the 21st of January, 1821.

This report was called for by the Senate, by a resolution passed the 26th of April, 1822, and was communicated on the 6th of May, following. It is printed in the Senate papers, 1st session, 17th Congress, vol. 2, Doc. 93, to which the committee refer.

The disclosures made in that investigation are probably more full and minute than could be made at the present day, so far as any of the agents, or officers of the United States, are concerned in the transaction. The rights of the claimant were not then the subject of examination. He says he is entitled to the money paid into the Treasury of Georgia, and also to the value of the slaves not sold.

From being a subject of the King of Spain, he asks a remuneration of his losses from the Government of the United States.

There were proceedings before the district and circuit courts of the United States, for the district of Georgia, which being referred to in the statement of the case, preceding the decision of the Supreme Court of the United States, on the motion to file a libel against the State of Georgia, the committee do not consider it necessary to notice, inasmuch as the transaction involves questions of great importance, and as the claimant contends that, according to the principles of national law, and good faith, he is entitled to relief, the committee think it is expedient that the opinion of the Attorney General of the United States should be taken on the statement made by the claimant, in his libel mentioned.

It is to be presumed he would state the case as strongly in his favor as the facts would justify; and if the law is against him on that statement, he should be satisfied he has no claim on the United States.

The committee propose that the opinion of the Attorney General be taken on the statement of the claimant.

As the House of Representatives is not empowered to obtain it, a resolution will be herewith submitted, referring the subject 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, on the statement made by the claimant.

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 committee propose, that the President cause such further testimony to be taken, as shall disclose all the facts; and on the case thus made out, that he obtain the opinion of the Attorney General, whether the United States are liable to the claimant, and that the President communicate such opinion to the House of Representatives when given.

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.

Attest:

W. S. FRANKLIN, *Clk Ho. Reps.*

Statement referred to in the foregoing report, and made part thereof.

JUAN MADRAZO vs. the STATE OF GEORGIA.

Mr. White presented a libel in the admiralty against the State of Georgia, claiming relief by the aid of the court in favor of the libellant, a subject of his Catholic majesty the King of Spain, domicilled in the city of Havana.

The right of the libellant to maintain this proceeding against the State of Georgia, Mr. White stated, depended on the construction the court would give to the eleventh amendment of the constitution of the United States, which declares that "the judicial power of the United States shall not be construed to extend to *any suit in law or in equity* commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state."

If the court should be of opinion that, notwithstanding this amendment, jurisdiction could be entertained in a suit in the admiralty against a State, he asked that a citation, in the nature of admiralty process, or such other proceedings in the case as the court should deem proper, should be awarded against the State of Georgia, returnable to the next term of this court.

The libel stated that the libellant, Juan Madrazo, was a subject of the King of Spain; that about the second of July, 1817, a vessel called the *Isabeleta*, owned by him, with all the documents on board to show her ownership and character, cleared out from the city of Havana for the coast of Africa, with a cargo of merchandise, his property, to trade there exclusively on Spanish account for a cargo of slaves, to be conveyed to the said city, there to be disposed of for his sole account, property and risk. On the coast of Africa the vessel took on board, purchased with the said merchandise, one hundred and twelve slaves; and on her return voyage to Havana, about the 1st of October, 1817, she was captured by a piratical or insurgent cruiser, under the commission of one Aury, or some other revolutionary flag of the revolted colonies of Spain, not then recognised as an independent government, or in any manner authorized to act as a belligerent power by the laws or consent of nations.

The capturing vessel was called "The Successor," commanded by one Moore, an American citizen, and was fitted out of Baltimore, and in the river Severn, in the State of Maryland, for the purpose of carrying on hostilities against the property and subjects of the King of Spain, with whom the United States then were and still are at peace; wherefore the said capture of the vessel was illegal, piratical, and felonious.

The *Isabeleta* and her cargo were carried by the Successor into the port of Fernandina, in the island of Amelia, at that time a colony of Spain, but usurped by the pretended patriots, or revolutionists, affecting the rights of sovereignty, and a separate station as a revolted independent government, but in truth composed of a band of adventurers, chiefly American citizens, united principally by the hope of plunder, and not acknowledged as an organized independent government for any civil or national purpose. There the *Isabeleta* and her cargo were condemned as lawful prize to the illegally commissioned piratical vessel, the Successor, by a tribunal pretending to exercise admiralty jurisdiction, under the usurped and assumed government of the place.

The vessel was afterwards restored to the libellant by a decree of the district court of the United States for the district of South Carolina, exer-

cising jurisdiction as a court of admiralty, upon a libel filed for restitution on behalf of the libellant. The proceedings in that case are invoked and referred to. The slaves, the cargo of the *Isabeleta*, were sold under the illegal decree pronounced at Fernandina, and by one William Bowen, the purchaser, were conveyed to the Creek nation, where, at a place called "the United States Agency," within the limits of the said nation, they were, to the number of ninety-five, seized and taken possession of by an officer of the United States, and brought within the limits of the district of Georgia. These ninety-five slaves were subsequently delivered over to the Government of the State of Georgia, on pretence that they had been illegally imported or introduced into the United States contrary to an act of Congress, and in compliance with an act of the Assembly of the State of Georgia to carry the same into effect.

A part of the said slaves were sold by the Government of Georgia, or its officers or agents, without any form of trial or judgment, as directed by the said act of assembly, and the proceeds thereof, to the amount of \$40,000, paid into the treasury of the State of Georgia. The residue of the slaves, 27 or 30 in number, remain in the possession of the State or its officers, or have been converted to or disposed of by the State for its own use, or wrongfully delivered to some persons not entitled to the same, and contrary to the will of the libellant.

The slaves, or the proceeds of those sold, could not rightfully become the property of the State of Georgia by virtue of the piratical capture, seizure, or condemnation, or by the unlawful acts of the pretended purchaser of the same; but the same remain the property of the libellant.

The libel further states, that the Governor of the State of Georgia, on the 20th of May, 1820, on the pretence that the said negroes had been illegally transported to the Creek nation, and unlawfully imported into the United States from some foreign place with intent to hold them to service and labor, filed a libel in the district court of the United States for the District of Georgia, alleging the unlawful importation, and that a demand of them had been made by the society for the colonization of free people of color, which the Governor alleged he was desirous of complying with, if authorized to do so by a decree of this court. No specification is made of the number of slaves, and no mention is made of the illegal seizure and sale of the slaves, in the information; or of the payment of the \$40,000 into the treasury of the State of Georgia.

The libel further states that William Bowen, who had purchased the slaves, the cargo of the *Isabeleta*, put in a claim for the whole of the said slaves on the 7th of November, 1820, alleging that they were his property, and were not intended to be introduced into the United States, but had been carried into the Creek nation for safety, with the intention to remove them to West Florida, a colony of Spain, the truth of which allegation the libellant admits. The libellant, hearing of the proceedings in the district court of Georgia, filed a libel claiming the slaves, and the district court dismissed the claims of William Bowen and of the libellant, and decreed in favor of the Governor of Georgia.

This decree, on appeal to the circuit court of the United States, was reversed. The claims of the State of Georgia and of William Bowen were dismissed, and that court decreed that the said slaves should be restored to the libellant, Juan Madrazo, together with the proceeds of those sold and paid into the treasury of the State of Georgia.

From that decree the Governor of Georgia, in behalf of the State, appealed to this court.

From the district court of the United States of Georgia, a warrant of arrest upon the libel of this libellant was issued, but the execution being prevented or evaded by the Government and officers of the State of Georgia, the same was never served.

A monition was also served on the Governor and treasurer of the State of Georgia.

The libel proceeds to state the proceedings in the circuit court of the sixth circuit, in which it was ordered that it should be held a sufficient execution of the warrant if the Governor of Georgia should sign an acknowledgement that the slaves were held by him subject to the jurisdiction of the court; upon which, on the 15th of May, 1823, John Clark, the Governor of Georgia, signed a paper, filed in the court on the 24th of December, 1823, by which he acknowledged that the Governor of Georgia held the negroes levied on by virtue of sundry executions by the sheriff of Baldwin county, "subject to the order of the circuit court of the United States for the district of Georgia, after the claim of the said sheriff, or prior thereunto, if the claim in the circuit court shall be adjudged to have priority of the proceeding in the State court."

The libel states that the executions referred to had been levied on the slaves as the property of William Bowen, and the proceedings in the case showed that the same did not belong to him: that the libellant relied on the stipulation entered into by the Governor of Georgia, by which the jurisdiction of the circuit court of the United States was admitted, and he proceeded to prosecute his appeal in the circuit court, in which no exception to its jurisdiction in the case was suggested or made.

In the circuit court the rights of the libellant were established; the illegal outfit of the Successor was fully proved, and every other matter shown to entitle him, as a Spanish subject, to the restitution of his plundered property.

From the decree of the circuit court appeals were entered to the Supreme Court of the United States.

The libel then states the proceedings in the cases in the Supreme Court at January term, 1828, as the same are reported in 1st Peters's Supreme Court Reports, 110, &c. and complains that the jurisdiction of the Supreme Court in the case was denied by the Governor of Georgia, on behalf of the State, in direct violation of the stipulation entered into by him, consenting to, and acknowledging the said jurisdiction, by which the said court was prevented proceeding to give a decree or judgment in the case. That by reason of the proceedings aforesaid, and of other acts of the State of Georgia, her officers and agents, which the libel alleges to have been tortuous, and by the sale and dispersion of the slaves, the libellant is prevented seizing and identifying his property, he is without remedy or redress, unless this court will cause the State of Georgia to do him right in the premises.

Wherefore the libellant prays the court to award admiralty process against the State of Georgia, to be issued and served as the court may direct, citing the said State of Georgia, as well as all others concerned, to show cause why the proceeds of the said slaves paid into the treasury of the said State should not be paid over to the libellant; the slaves remaining in the possession of the State restored to him; a just and reasonable compensation decreed to him for the slaves converted to her own use, or otherwise

taken by the State, and such other damages awarded to him, as the owner of the slaves, as the court might think proper against the State of Georgia, &c.

Mr. Chief Justice Marshall delivered the opinion of the Court.

EX PARTE MADRAZO.—*February 2d, 1833.*

Mr. Chief Justice Marshall: The case is not a case where the property is in custody of a court of admiralty, or brought within its jurisdiction, and in the possession of any private person. It is not, therefore, one for the exercise of that jurisdiction.

It is a mere personal suit against a State to recover proceeds in its possession, and in such a case no private person has a right to commence an original suit in this court against a State.