

WOODBURY AND FOSTER.

JUNE 10, 1854.—Laid upon the table, and ordered to be printed.

MR. J. G. MILLER, from the Committee of Claims, made the following

REPORT.

*The Committee of Claims, to whom was referred the petition of Elliott Woodbury and Ezra Foster, report :*

That it appears that the claimants, in the year 1846, were the owners of the brig "Casket," of Beverly, Massachusetts. That in the month of August of that year, and while the "Casket" was lying at anchor on the coast of Africa, she was seized by Captain Lewis E. Simonds, of the United States sloop-of-war "Marion," upon the charge that she was engaged in the slave trade. After her seizure, she was sent to the United States and delivered over to the marshal at Boston, when a libel was filed against her by Captain Simonds, in order to procure her condemnation and forfeiture.

On the trial of the libel at the December term following, it was dismissed, and the "Casket" restored to her owners.

After these proceedings were had, the owners filed their libel in the United States district court for the district of Rhode Island, in admiralty, against Capt. Simonds, in which they sought to recover damages against him for the illegal seizure of their vessel. The respondent filed his answer, and, upon the hearing, a decree was made by the court dismissing the libel without costs.

The owners of the "Casket" now ask Congress to compensate them for the losses sustained by them by reason of the seizure of their vessel. To determine the justice of their claim, the committee will very briefly refer to the facts and circumstances attending the seizure of the vessel, as disclosed upon the trial of the libel instituted by the claimants against Capt. Simonds. An appeal having been taken from the decree of the district court dismissing the libel filed by the claimants, and the opinion of Judge Woodbury having been filed with the papers presented by the claimants to Congress, in which the facts of the case, as presented in evidence, are set forth, the committee will quote such part of that opinion as will present the facts upon which the case was decided. "The vessel," (the Casket,) says Judge Woodbury, "is admitted to have been chartered at Rio, one great centre from which operations are carried on in the slave trade; also at a very high freight, as if to cover some extraordinary risk, with a crew and passengers on board who were notorious as slave dealers, and said to be consigned to

another such dealer. She was likewise bound on a voyage to that part of the African coast distinguished in the slave trade, with a cargo usual in such enterprises, and an unusual quantity of rice and farina, unless for more persons than her crew and passengers; the master with a power from the owners to sell the vessel, and a Portuguese captain on board among the passengers; a cook engaged at very high wages; rumors existing that handcuffs were in some of the boxes that had been landed; accounts given by her officers in some degree contradictory, explanations apparently withheld on some points; landing the slave dealers and the above boxes near a slave factory; and then remaining an unusual time on the coast, and with an avowed purpose, if not of selling the vessel, to carry back the passengers who came out in her."

When the seizure was made, Captain Simonds was acting as a naval officer in his public capacity, under orders from the commodore of the African squadron. He was acting under the orders of the President and Navy Department in their efforts to enforce the laws for the suppression of the slave trade upon the coast of Africa, and in the discharge of treaty stipulations with England, under which this government had obligated itself to keep a squadron of at least eighty guns upon that coast and in those seas. The instructions to Commodore Skinner from the Navy Department, required him to make an examination of all American vessels suspected to be engaged in the slave trade. And the instructions of Commodore Skinner to Capt. Simonds required that, "should he fall in with vessels, wearing the flag of the United States, under such circumstances as to admit of no doubt on his mind that they were engaged in the prohibited traffic of slaves, to send them in, with their crew and proofs of their guilt, to the United States for adjudication." The committee concur in the opinion expressed by Judge Woodbury, in which he says: "It is manifest that such orders cannot take away from a citizen, engaged in lawful business, any private rights of property or trade; yet, when it becomes proper to issue such orders, and a public officer is employed in carrying them into effect in remote seas, it may be indispensable, with a view to insure their due execution, that if he exercise his power in a reasonable manner, and with probable cause, or, in other words, with good grounds of suspicion of the guilt of a vessel, he must, under the laws, be excused for seizing her for trial for the supposed offence." He further says: "This modification of the common law cannot justly be complained of by the owner, when he and his agents are so conducting as to excite well-grounded suspicion of their being employed in the commission of a crime." The court further declared: "It is doubtful to say, on all the evidence, that reasonable ground of suspicion did not exist." "It is unfortunate for the owners, after being shown to be innocent of any crime by the sentence of the district judge in Massachusetts, that their vessel shall have been taken from them and so long detained, and their charter party lost." "But either they or their agents exposed their property to this suit knowingly. They went in bad company to a bad place, with their eyes open, under the temptation of earning large freight, or selling their vessel at a high price, and under other strong penal laws against the slave trade, and with a squadron on

the African coast to suppress it; and aware, or presumed to be aware, of the right and usage to seize vessels there under suspicious circumstances, it certainly would have been provident to have shunned such exposures, and, not shunning them, it will be indispensable for them to abide by the legal consequences." In accordance with this opinion, the libel was dismissed without costs, and the owners of the "Casket" apply to Congress for relief.

The committee are not prepared to say that these petitioners present such a claim as commends it to the favorable consideration of Congress. They appealed for relief to the judicial tribunals of the country against an officer of the government acting under the laws of the country and the orders of his government; and, upon the hearing of his suit, those tribunals decided against the claimants, and declared that their losses resulted from their own conduct.

It frequently occurs in the judicial tribunals of the country, that suits are instituted for the recovery of damages for malicious prosecutions; and, although it may appear that the party prosecuting such suit may have been wholly innocent of the crime imputed to him, and been acquitted of it, and although he may have suffered great pecuniary loss in the defence of the prosecution of his suit, and his moral character may have been injured, yet if, upon the trial of the civil suit for such prosecution, it appear that there was reasonable or probable cause for such prosecution, the party suing cannot recover. So in the case under consideration—the claimants having, by their own conduct, subjected their property to seizure and consequent losses, they cannot, with propriety, ask that the government should make compensation for such losses.

The committee, therefore, report that the claim of the petitioners ought not to be allowed, and ask to be discharged from its further consideration.