

"Whereas it is alleged by divers British merchants and others, His Majesty's subjects, that *debts to a considerable amount, which were bond fide contracted before the peace, still remain owing to them by citizens or inhabitants of the United States*; and that, by the operation of various lawful impediments since the peace, *not only the full recovery of the said debts has been delayed, but also the value and security thereof have been in several instances impaired and lessened, so that, by the ordinary course of judicial proceedings, the British creditors cannot now obtain, and actually have and receive, full and adequate compensation for the losses and damages which they have thereby sustained*: it is agreed that, in all such cases where full compensation for such losses and damages cannot, for whatever reasons, be actually obtained, had, and received by the creditors, in the ordinary course of justice, *the United States will make full and complete compensation for the same to the said creditors*; but it is distinctly understood that this provision is to extend to such losses only as have been occasioned by the lawful impediments aforesaid, and is not to extend to losses occasioned by such insolvency of the debtors or other causes as would equally have operated to produce such loss if the said impediments had not existed; nor to such losses or damages as have been occasioned by the manifest delay or negligence, or wilful omission of the claimant."

This Article, having relation to *debts, actually and bond fide due and payable* by American to British subjects, and of which the payment had been delayed and prevented by legal impediments opposed to the recovery of such debts by the policy and legislation of the Government of the United States, it is apparent, not only that the claims, being liquidated, admitted of the computation of interest upon them in the most proper sense of that word, but also that they were such as entitled the claimants to interest upon the strictest principles of private jurisprudence, which here necessarily furnished the rule; the responsibility for these private debts being expressly assumed, on grounds of public policy, by the Government of the United States. The British Commissioners, under this Article (being a majority), accordingly decided, in the case of Messrs. Cunningham and Co. (18th of December, 1798), that interest ought to be awarded "for the detention and delay of payment of these debts, during the war, as well as in time of peace, according to the nature and import, express or implied, of the several contracts on which the claims were founded." From this decision the American Commissioners, Messrs. Fitzsimons and Sitgreaves, on the 21st December, 1798, recorded their dissent, their objections being most strongly urged with reference to the allowance of interest during the time of war; and, on the 11th January, 1799, they followed up this dissent, and another protest made by them in a different case, by withdrawing from the Board, and altogether suspending the proceedings of the Commissioners on that description of claims.

22. The VIIth Article of the same Treaty provided for the settlement by Commissioners of two other classes of claims. The first class consisted of claims by citizens of the United States:—

"Whereas complaints have been made by divers merchants and others, citizens of the United States, that, during the course of the war in which His Majesty is now engaged, they have sustained considerable losses and damage, *by reason of irregular or illegal captures or condemnations of their vessels and other property, under colour of authority or commissions from His Majesty*; and that, from various circumstances belonging to the said cases, adequate compensation for the losses and damages sustained cannot now be actually obtained, had, and received, by the ordinary course of judicial proceedings: it is agreed that, in all such cases where adequate compensation cannot, for whatever reason, be now actually obtained, had, and received by the said merchants and others in the ordinary course of justice, full and complete compensation for the same will be made by the British Government to the said complainants. But it is distinctly understood that this provision is not to extend to such losses or damages as have been occasioned by the manifest delay or negligence, or wilful omission of the claimants."

The Commissioners appointed "for the purpose of ascertaining the amount of any such losses and damages" were to "decide the claims in question according to the merits of the several cases, and to justice, equity, and the laws of nations." Sir John Nicholl was one of those Commissioners, and he concurred (on the grounds stated in the Argument of the United States) in awarding interest on the ascertained amount of "the original cost of the property of the claimants," and "all the expenses which they had actually incurred." This, again, was a case of the award of interest on a principal value, actually ascertained and proved to be recoverable by appropriate evidence, in respect of property, belonging to citizens of the United States, which had been seized and appropriated, and unjustly detained, and (in some cases) sold or otherwise disposed of for their own benefit, by persons acting under the public authority of the Crown of Great Britain. In both these essential points this precedent of 1794 stands in direct opposition and contrast to the claims now before the present Tribunal.

23. The second class of claims, under the VIIth Article of the Treaty of 1794, consisted of claims of British subjects who complained "that, in the course of the war, they had sustained loss and damage *by reason of the capture of their vessels and merchandize*