ments upon the subject, and that it ought properly to have been determined, on general principles, in accordance with the views of Mr. Wirt, Sir John Copley, and Sir C. Wetherell, it is plain that these views rested upon the simple and ordinary ground, that property of ascertained value, which Great Britain had in her actual possession at the time of the ratification of the Treaty of Ghent, and which, by that Treaty, she had expressly contracted and engaged to deliver up to the United States, had been wrongfully and permanently detained in violation of that engagement. The case, in these respects, was precisely similar to that under the latter clause of the VIIth Article of the Treaty of 1794.

25. Before parting entirely with this precedent, it does not seem out of place to refer to some other forcible observations, made by Sir Christopher Robinson, in an earlier opinion given to the British Government on the same subject, on March 18, 1825.

"The subject of interest presents a question of considerable importance and delicacy, and to which it will be difficult to apply the analogy of rules derived from legal proceedings, independent of the political considerations, which may have regulated the conduct of the Power making compensation in the particular case. In that view, it seems to be a reasonable distinction which is raised, that Sovereign Powers do not usually pay interest, unless they stipulate so to do. The obligations of Governments for civil injuries are matters of rare occurrence, and depend, in form and substance, as much on liberal concessions, or on reciprocal engagements, as on the intrinsic justice or equity of the claim. They are usually compensations (compromises?) made on questions in doubt, after considerable intervals of time, by which interest is much enhanced. They are also compensations for the acts of others; for the consequences of error or misunderstanding, rather than of intentional injury; and for cases in which no profit or advantage has accrued to the party, by whom such compensation is made. Considerations of this kind seem to require that, if interest is to be paid as part of the compensation by Treaty, it should be matter of special arrangement as to amount and particulars; and the reasonableness of that expectation supports the distinction suggested, that, where no such stipulation is made between Sovereign Powers, interest shall not be considered as due."

26. These are the words of a jurist (the reporter of the celebrated judgments of Sir William Scott, Lord Stowell), who was particularly conversant with questions of Public and International Law. Of the numerous examples of the allowance of interest between nations, without special agreement, which are supposed by the Counsel of the United States to exist, he was evidently not aware. Instances may, indeed, be found (some before, and some later than 1825), in which claims of individuals for interest, as a legal incident of liquidated debts and obligations, have been held proper to be considered, and to be allowed if found just. There are also other instances, in which a State, acknowledging itself to have made default in the payment of its own liquidated pecuniary debts and obligations to the citizens of another State, or acknowledging itself to be responsible for the wrongful appropriation and detention, by its officers or people, of property belonging to the citizens of another State, has expressly contracted to make payments or restitution, with interest at an agreed rate. But Her Britannic Majesty's Counsel, after careful inquiry from the best sources of information, has failed to become acquainted with any instance in which interest has yet been allowed as an element of damages beween nation and nation in the settlement of unliquidated claims (to recur to the words of Sir C. Robinson), "for the acts of others, for the consequences of error or misunderstanding, rather than of intentional injury; and for cases in which no profit or advantage has accrued to the party, by whom compensation is made."

27. The third and latest precedent, cited by the United States, is that of the recent award of Sir E. Thornton between Brazil and the United States, in the case of the ship Canada.

In the year 1857 the Minister of the United States at Rio demanded compensation from the Government of Brazil for "an outrage committed on the high seas, near the Brazilian coast, by a body of Brazilian soldiers, upon a whale-ship called the Canada, sailing under the flag, and belonging to citizens, of the United States."* The matter continued pending for some years, and, eventually, on the 14th March, 1870, a Convention was concluded between Brazil and the United States, by which this question was referred to the arbitration of Sir Edward Thornton, then and now Her Britannic Majesty's Minister at Washington.

Under this reference Sir Edward Thornton made his award, dated the 11th July, 1870, by which he found the following facts to be established by the evidence laid before him; viz., that, on the 27th November, 1856, the Canada grounded upon a reef of rocks within Brazilian jurisdiction; that, during the four following days, proper means were used by her captain and crew, with every prospect of success, to get her off; but that, on the

* Despatch of Mr. Fish to Mr. Blow, communicated to Baron Cotegipe on the 28th December, 1869.