

REPORT

Of the Committee on the Judiciary on the petition of Alonzo B. Munoz.

MAY 4, 1822.

Read, and ordered to lie upon the table.

The Committee on the Judiciary, to whom was referred the petition of Alonzo B. Munoz, have had the same under consideration, and have agreed to submit the following

REPORT:

The petitioner, who states himself to be a subject of his Catholic Majesty, residing in the island of Cuba, and lately sole owner of the ship *Amiable Isabella*, sets forth in his petition, that the ship sailed from Havanna, bound to Hamburg, on or about the 14th Nov. 1813, "laden with a valuable cargo, belonging to the petitioner, *but even if it had belonged to other persons, he conceives that, under the provisions of existing treaties, the property in the said cargo was a question concerning which the courts of the U. States had no right to inquire, inasmuch as the property of the ship was conclusive to protect it from American capture.*" That the vessel was captured on her passage by the *Roger Quarles*, American cruiser, and carried into the port of Wilmington, North Carolina, where vessel and cargo were libelled and acquitted; but, on appeal to the circuit court, the sentence was reversed, and ship and cargo condemned to the captors; a decision which the petitioner states he is ready to shew "was founded on a mistake of the honorable judge, and which he has himself been made sensible of, and acknowledged." From this decision he appealed to the supreme court of the United States, and at February term, 1820, the case was laboriously argued and discussed, and a decision finally made in the petitioner's favor, and ordered to be reported;" and he hopes to be able to prove that a written opinion was accordingly made out, submitted, agreed to, and ordered to be delivered, and was taken into court to be delivered, when, upon the table of the supreme court, at the hour of the court's convening, were found a letter from Mr. Wirt, attorney general, to the President; a letter from the President to Mr. Wirt; and one from Mr. Wirt to the chief justice; which asked for another argument upon a single point in the case, in which the United States were interested, as involving the construction of an important clause in the

treaty with Spain: that a new argument took place, and the property was finally condemned, which the petitioner complains of as wrong. He also insinuates very strongly that the Attorney General was not moved in this course by a sense of official duty, but by the interest he felt in the case as counsel of the captors, with a large contingent fee depending on the event; and he seems to think that an undue influence was some how exercised to his prejudice, by which, as he says, "a property to the value of one hundred thousand dollars was snatched from his grasp, at the very moment when he was about to be restored to as just a claim as ever was set up by man." He finally insists that the construction of the treaty contended for by his counsel was the right one, and was most agreeable to the interests of the United States, as well as to his own; and upon these grounds, more particularly stated in his petition, he asks for an indemnity for the loss he has sustained.

The petition is without the support of any evidence, and is not vouched even by the oath of the petitioner; and, though there are assertions in the petition, that he is prepared to prove some of his allegations, yet the committee cannot help thinking that, before he approached the House with such a claim, he ought to have had his evidence prepared to accompany the statement of facts it contains. He could not reasonably suppose that insinuations so injurious as those he has put forward would be suffered to remain without examination until it might suit his convenience or his pleasure to endeavor to maintain his allegations.

How it has happened that the petitioner, or his agents, have been able to intrude upon the consultations of the judges, and ascertain the results of their private deliberations before they were judicially pronounced, or how the petitioner can speak with so much confidence of the motives of the Attorney General, are matters which the committee have not now the means of inquiring into. Having duly considered the contents of the petition, compared with the records of the case, and with the accompanying communication from the Attorney General, they are fully satisfied that nothing has occurred in the progress of the business which can reasonably be complained of, and that the final issue of the cause was just and right.

There appear to have been two questions in the case. The first was a question of proprietary interest, that is to say: whether Munoz, the claimant, was the real owner of the property, or whether it belonged to British subjects, enemies of the United States, and was fraudulently covered by him to protect it from American capture. If he was an owner, and had conducted himself as a neutral ought to do, he was entitled to an acquittal. If, on the other hand, he was lending his name to cover belligerent property, then condemnation would be the just and legitimate consequence. Upon this point the decisions that have been rendered are now to be accepted as conclusive. Indeed, the petitioner asserts his ownership so faintly, and relies so little upon it throughout, that he seems to acquiesce in the justice of his fate, as far as this point is concerned. There is no reason to doubt that the proprietary interest was not in Munoz; and, if so, the

fact of its being fraudulently covered was incontrovertible evidence to justify its condemnation.

The remaining question was, whether a certain paper found on board the ship, and alleged to be a Spanish passport, was of itself sufficient to shield the vessel and cargo, and bar an inquiry into the real character of the property, that is, in effect, to secure its acquittal, though clearly proved to belong to enemies of the United States. In the course of the argument, a clause in the treaty with Spain was strongly relied upon by the counsel for the claimant, as giving to the paper called a passport, a power to protect enemies' property, fraudulently covered. This construction, if established, would have been universal, applicable to all other cases, and the question was of course deeply interesting to the United States. If such a paper, however obtained, was to preclude all investigation, there was an end, in time of war, to the right of capture, and the United States would have been entirely stripped of the means of maritime warfare, an unarmed and defenceless victim of any foe, however contemptible: for the argument, it will be seen, must probably have gone the whole length of contending, that, even where the Spanish authorities were themselves imposed upon, the passport would nevertheless be conclusive.

Upon the discovery that this question was involved in the case, Mr. Wirt, who was one of the counsel of the captors, thought it his duty (sincerely, the committee are confident,) to disclose its pendency to the Executive. In so doing, he was right, whatever may have been his motive; he would have neglected his duty, if he had omitted to make the disclosure. The President, with a becoming regard to his high duty, directed him to apply to the court for another argument upon the single point in which the United States were interested. He made the application accordingly, and it was entertained by the court. The committee believe it is not unusual, and they are sure it is quite right, where there is an interest in a cause not represented by the parties before the court, to give it an opportunity of being distinctly heard, upon a suitable application. A court of equity will not decide till all the parties are brought in. It was therefore the right of the United States to be heard, upon a question affecting their interests, *if they desired to be heard*; and such desire could no otherwise be manifested, than as it was manifested, by an application from the President, charged with the care of the public concerns, through the law officer of the government. In ordinary cases, it is presumed the Attorney General would not have thought it necessary to communicate his correspondence to the court, nor could it add any thing to the weight of the application; but, having been counsel in the cause, it was fit and proper for him to exhibit the grounds of his application more fully than in ordinary cases. He acted in this respect with singular delicacy, as well as with perfect candor, disclosing the fact, that the interposition of the Executive had been upon his suggestion, and what that suggestion was, thereby giving to the claimant an opportunity to consider, and the court to decide, how far it was cor-

rect. If the petitioner, who is a foreigner, supposes that the President, in performing a duty, which by our constitution it belonged to him and to him alone to perform, of asking to be heard, brought any undue influence to bear upon the final decision of the cause, it is because he knows nothing of the nature of our judicial tribunals, nor of their perfect independence of all such influence. And if he, or any of his advisers, suppose that the rights of the United States were to be neglected, through the fear of awakening the suspicions of an interested party, he claims for a false and pernicious delicacy, much more than any impartial man, with a tolerably well balanced mind, would deem at all admissible. It might suit his purposes well, but it would not conduce to the purposes of justice, nor be worthy of one intrusted with the high charge of taking care of the public welfare.

The cause was re-argued upon the single point, by counsel on both sides, and after a long advisement the court decided against the claimant, one judge dissenting.

It belongs not to the committee, nor to the House, to entertain an appeal from that decision. The cause was fully, and fairly, and openly discussed, and, the committee have no doubt, determined, upon its real merits, and, if they might be permitted to express an opinion, was rightly determined. Nothing occurred in its progress, calculated unjustly to affect its decision, or to warrant the insinuations in the petition.

But, in addition to what has now been stated, the committee deem it fit to remark, that, after what has appeared in regard to the question of proprietary interest, they think it at least very doubtful, whether the present claimant can entitle himself to come before this House with the question about the passport. If he did not own the property, but was only covering it for others, he has sustained no injury by the decision upon the treaty. He has no interest; and would be practising upon the House the same imposition which he sought to practice upon the cruizers and courts of the United States. The passport will not avail *him* here. The committee therefore submit the following resolution:

Resolved, That the petitioner has no title to relief.

