REPORT

Of the Committee of Claims in the case of Caze and Richaud.

FEBRUARY 22, 1822.

Read, and ordered to lie on the Table.

MARCH 6, 1822.

Committed to a committee of the whole House to-morrow.

DECEMBER 12, 1822.

Re-printed by order of the House of Representatives.

The Committee of Claims, to whom was referred the petition of Caze and Richaud, of the city of New York,

REPORT:

The Committee fully investigated this claim, and made thereon a detailed report, on the 13th January, 1819. To that report, and the documents accompanying it, the Committee refer the House at the present session. The Committee see no reason to change the opinion heretofore expressed in this case, and therefore submit the following resolution:

Resolved, That the prayer of the petitioners ought not to be granted.

Report of the Committee—made at the Fifteenth Congress.

The Committee of Claims, to whom was referred the petition of James Caze and John Richaud, of the city of New York,

REPORT:

This claim appearing to the Committee to involve legal principles, of some importance, they directed its reference to the Attorney General, with a request that he would give them his opinion thereon. To the opinion of the Attorney General the Committee beg leave to invite the attention of the House.

The following resolution is recommended to the House:

Resolved, That the prayer of the petitioners ought not to be granted.

OFFICE OF THE ATTORNEY GENERAL U. S.
January 8, 1819.

SIR: I regret that my official duties have not permitted me to attend sooner to the claim of Messrs. Caze and Richaud, on which you have asked my opinion. The case I understand to be this: When the British invaded Castine, in the autumn of 1814, Captain Morris, commander of the United States' ship Adams, then lying in that port, burnt her, in order to prevent her from falling into the hands of the enemy. The fire was communicated from the ship to a neighboring warehouse, in which the petitioners had valuable property stored, which was thus destroyed, and for the value of the property the present claim is advanced. The question you ask is this: "Suppose the burning to have been necessary to effect a legitimate national object, can the liability for the consequential damages to an individual be avoided at law?"

It is extremely difficult to bring a question like this to any known legal standard. All the cases of consequential damages furnished by the books have been cases involving none but *individual interests*, on the one hand or the other, and never complicated with any great considerations of public war, or national defence. Were it possible to regard this as a question *purely individual*, there would be no difficulty in deciding it; for, among individuals, it has been long since settled:

1st. Though a man do a lawful thing, yet, if any damage thereby befal another, he shall answer, *if he could have avoided it*, and that this principle holds in all civil cases. See Sir Thos. Raymond's Reports, 422, 423, and 467, 468.

2d. That to bring a man within the protection of inability to avoid the damage, it must appear that the lawful act which produced it was not of a nature to have threatened the consequential damage so imminently but that it might have been avoided by proper care on the part of the defendant. Thus, it is a necessary part of husbandry in some countries to have fire in the grounds, and it is perfectly lawful to have it; but the husbandman must, at his peril, take care that the fire so made shall not, through his neglect, injure his neighbor; for, if it do, he shall answer. *If, however, a sudden and violent tempest arise, after the fire shall have been kindled, and, in spite of the husbandman's resistance, carry the fire into his neighbor's lands, this shall excuse him.* 1 Lord Raymond, 264. 1 Salk. 13, and 12 Mod. Rep. 151.

3d. If a man cannot use his property in any given way, without inevitable injury to that of his neighbor, it is not lawful in him to make that use of it; and if he do he shall answer the damage, because, being the inevitable consequence of his act, he will be considered as having intended it, and therefore as being responsible for it. This proceeds on the well known maxim of the law, *sic utere tuo ut alienum non lædas.* The obstruction of ancient lights, the diversion of ancient water courses, &c. are illustrations of this maxim.

Whether these principles would, if suffered to apply, decide an action brought by the petitioners against Captain Morris, would depend on the particular circumstances of the case, which are not detailed by the petition. For example: 1. Could Captain Morris have avoided this damage by proper care on his part? 2d. Was the ship Adams fired when she was at a safe distance from the warehouse, and was she carried thither by an unexpected storm, or wind, which could not have been resisted? 3d. Or was

the ship so near the warehouse, when fired, that the communication of the fire to the warehouse was an inevitable consequence of that measure? If the facts of the case would answer the first and last of these questions affirmatively, Captain Morris would be condemned to answer the damages, by the principles which have been stated. If, on the other hand, the facts would answer those questions negatively, or the second question affirmatively, he would be discharged.

These principles, however, are made for peace: in war there is another maxim, which silences every other: *salus populi suprema lex.* If, therefore, the measure was one which the interests of the whole community called for, the officer who performed it could not, I think, be condemned to answer the individual damage, unless his neglect in performing it was *gross indeed.*

How far the people, for whose benefit the ship was fired, ought to feel themselves bound to answer for this consequential damage. is a question which our law books do not enable us to answer. It is, indeed, a fundamental principle of the social compact, that individual property shall not be taken for the public good, without compensation to the individual from whom it is taken; but this proceeds upon the consideration that the public have derived an advantage from the use of the property, which it ought to requite; or, in other words, that all the members of the community are bound only to contribute *equally* to the public good, and that he who has been compelled to contribute more than his fair proportion shall be restored to the footing of equality by reimbursement. This is the basis of the writ of *ad quod damnum,* where, in time of peace, individual property is condemned for the public good. It is the basis, too, of those laws which, at the close of the late war, provided a compensation to individuals for property lost, captured, or destroyed, by the enemy, *while in the military service of the United States.* The claim of Messrs. Caze and Richaud seems to go a step beyond these principles: their property was not in the military service of the United States; it was not taken for the public service; the public derived no benefit from the use of it; they had no use of it. Its destruction seems to me to have been one of those casualties of war, which place them on no higher ground than the hundred, perhaps thousands, of individuals along the shores of our bays and rivers, who, (like the warehouse and sails in the present case,) were ruined by the mere circumstance of their greater exposure to the calamities of war.

I have the honor to be, Sir, very respectfully, your obedient servant,

WM. WIRT.

Hon. LEWIS WILLIAMS,
Chairman of the Committee of Claims, H. R.