

**THE FRENCH SPOILIATION CLAIMS:
WITH SPECIAL REFERENCE TO
INSURANCE COMPANIES; ON
HOUSE BILL 22534, 61ST
CONGRESS, 2D SESSION**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649588640

The French Spoliation Claims: With Special Reference to Insurance Companies; On House Bill 22534, 61st Congress, 2d Session by J. Henry Scattergood & Bayard Henry

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Cover @ 2017

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U. S. Congress, House, Committee
on Claims.

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THE FRENCH SPOILIATION CLAIMS

WITH SPECIAL REFERENCE TO
INSURANCE COMPANIES

STATEMENTS AND PAPERS BEFORE THE COMMITTEE ON
CLAIMS OF THE HOUSE OF REPRESENTATIVES

ON HOUSE BILL 22534

61st CONGRESS, 2d SESSION

MARCH 30, 1910

Statements of

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President of the Insurance Company of the State of Pennsylvania

BAYARD HENRY

Attorney for directors of the Insurance Company of North America,
Philadelphia

COMMITTEE ON CLAIMS, HOUSE OF REPRESENTATIVES, UNITED STATES

SIXTY-FIRST CONGRESS, SECOND SESSION

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WASHINGTON

GOVERNMENT PRINTING OFFICE

1910

FRENCH SPOILIATION CLAIMS.

COMMITTEE ON CLAIMS, *Wednesday, March 30, 1910.*

**STATEMENT OF MR. J. HENRY SCATTERGOOD, PRESIDENT OF
THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,
300 WALNUT STREET, PHILADELPHIA, PA.**

Mr. SCATTERGOOD. Mr. Chairman and gentlemen, I have prepared a statement upon the whole subject of the French spoliation claims, and have it here, which statement includes the early history of the claims. In view of the fact that you are probably all familiar with that history, to a large extent, I hardly believe it would be wise to take up the time of the committee in going over it all at this time, unless you wish I should do so. I, however, would be glad to answer any questions in connection with it.

I may say, first, by way of introduction, that these French spoliation claims have engaged the attention of both the Senate and House ever since 1902, and I will file as an appendix to my statement the report of Charles Sumner on the subject made in 1864; that of Mr. Mansur, from his committee of the House of Representatives, made in 1890; the report of Mr. Bunn, from this committee, made in 1894, etc., the opinions of the Court of Claims on the subject, together with the 306 cases before the Court of Claims. Those cover the ground fully.

Now I will make only a brief mention of the history. The United States made certain treaties in 1778 with France, under the terms of which France agreed to help us in the war of the Revolution provided we would make an offensive and defensive alliance with her. France kept her part of the treaty by spending \$280,000,000 in our behalf, and furnishing 20,000 troops and 36 war vessels to help us in our war of independence. The United States secured this independence probably a good deal through the help of France; at least that help was of material aid in bringing about the freedom which we secured. Shortly after that, in 1792, a great European war began, and neutral ships, of which ours were the largest number, were seized, and France, England, Holland, Denmark, Naples, and Spain all preyed upon our neutral commerce, so that the merchants of the United States were greatly disturbed and were unable to conduct their ordinary commerce.

Sumner says (p. 7):

As the intelligence of these spoliations reached the United States our whole commerce was flustered. Merchants hesitated to expose ships and cargoes to such cruel hazards. It was necessary that something should be done to enlist

again their activity. At this stage the National Government came forward voluntarily with assurance of protection and redress. This was in a circular letter dated 27th of August, 1793, when Jefferson, the Secretary of State, in the name of the President used the following language:

"I have it in charge from the President to assure the merchants of the United States concerned in foreign commerce or navigation that due attention will be paid to any injuries they may suffer on the high seas or in foreign countries contrary to the law of nations and existing treaties, and that on their forwarding hither well authenticated evidence of the same proper proceedings will be adopted for their relief." (Fr. Spol. Ex. Doc. 102, p. 217.)

Also in the message of President Washington, following that in 1793, reference is made to some seizures and the promise of protection on the part of the Government for the merchants who continued navigation. Shortly after that it became, as we all know, necessary for the United States to declare itself neutral, and there followed the proclamation of Washington of 1794. That was followed by the Jay treaty with England, under the terms of which we practically gave to England the same power previously held. The result was that France felt tremendously aggrieved and said that we had broken the treaties; and of course, at that time anyhow, we should have lived up to the guarantee of the old 1778 treaty that we would help her to preserve her West Indian colonies, which we never did. And the result was that strained relations took place with France, and it is not necessary for me to enlarge upon that. The result was, after prior attempts at reconciliation, the famous Ellsworth Commission, which brought out the treaty or convention of 1800, under the terms of which both sides agreed to call quits; on the one hand the United States agreed to release France under the claims of citizens for the illegal spoliation, and on the other hand France agreed to release us from all binding obligations under the old treaty of 1778. The result of it was the famous offset of the private claims of our citizens against the national claims of France.

Now, I want to make a hasty reference to the history of those matters immediately after 1800:

As the spoliations which occurred after 1801 have sometimes been confused with those which we have already considered, it may be well to recount briefly what took place after 1801, and thus make complete the history of all the spoliations of this period.

Reference has already been made to the early spoliations of Great Britain upon our neutral commerce and that settlement for same took place under the provisions of the Jay treaty, by which the citizens of the United States recovered the sum of \$11,650,000.

The European war was resumed after a short interval, following the peace of Amiens in 1802, and in the bitter struggle, that lasted until the fall of the French Empire, the belligerent powers (in spite of their treaties) renewed their aggressions on neutral commerce.

The illegal seizures of Great Britain at this period and the impressment of American seamen finally led to the war of 1812.

France, under the conquering Napoleon, issued the famous decrees of Berlin November 21, 1806, and Milan, December 17, 1807, under which, together with other less important decrees, many neutral vessels were seized and condemned. The United States, as in the spoliations prior to 1801, was the great sufferer, and the losses to merchants again ran into the millions. After long years of strenu-

ous negotiations these spoliations of the French after 1801 were finally acknowledged, and under the treaty with France of July 4, 1831, France agreed to pay 25,000,000 francs in full settlement of the claims of American citizens for indemnity, while the United States agreed to pay to France 1,500,000 francs to satisfy certain claims of the French. This sum of 25,000,000 francs, or \$5,000,000, was distributed pro rata among the claimants, citizens of the United States, who proved their losses before the commission—the total recovery being only 59 per cent of the amounts proved. (See S. Ex. Doc. 74, 49th Cong., 1st sess., pp. 41 and 153.)

In addition to that there were spoliations that had been committed by Naples, Holland, Denmark, and by Spain, all of which were settled for at various times through the energetic action of our State Department; recoveries were secured and the money was distributed among our citizens. The total amount set forth here is \$28,225,000 recovered from all of these other countries for this general period under consideration.

Now, in regard to the actual conclusion of this treaty of 1800, under the terms of which, as I said before, the private claims of citizens were used as a quid pro quo for the national claims of France, the Court of Claims has this final opinion:

It seems to us that this "bargain" (again using Madison's word), by which the present peace and quiet of the United States as well as their future prosperity and greatness were largely secured, and which was brought about by the sacrifice of the interest of individual citizens, falls within the intent and meaning of the Constitution, which prohibits use without just compensation.

The following is the form in which the court renders judgment in cases established according to the rules of evidence, as will appear by reference to the reports made by it to Congress:

CONCLUSIONS OF LAW.

The court decided as conclusions of law that said seizure and condemnation were illegal and the owners and insurers had valid claims of indemnity therefor upon the French Government prior to the ratification of the convention between the United States and the French Republic concluded September 30, 1800; that said claim was relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States; and that the claimant is entitled to the following sum from the United States.

Now, the opinions of contemporaries are very largely quoted, both French and American, in the report which I have submitted, so it is unnecessary to perhaps more than mention the names. Madison, Pickering, John Marshall, Henry Clay, Napoleon Bonaparte, Edward Everett, Daniel Webster, Charles Sumner, Rufus Choate, and Presidents Harrison, McKinley, Roosevelt, and Senators Hoar, Hale, Lodge, Higgins, Teller, Warren, and many others of the most distinguished statesmen known to American history. They all held the same view about these claims, that they were valid obligations upon the Government.

I wish now to proceed to mention simply one of the objections. I have all of the objections that have ever been brought up here, but unless some member of the committee wants them I shall not take the time to read them now.

The CHAIRMAN. You might read one.

Mr. SCATTERGOOD. I will read a list of the objections that have been brought up against these claims:

1. That they are old and stale.
2. That the amount involved was unknown, but variously estimated at enormous amounts—even up to \$30,000,000 or \$40,000,000.
3. That the financial condition of the country would not admit of their payment.
4. That at the time they arose there was between the United States and France a state of war, and that these claims were, therefore, not recoverable against France.
5. That they were embraced in the Louisiana convention of 1803.
6. That they were embraced in the Convention of 1831 with France.
7. That Congress annulled the French treaties and that thus the claims are affected.
8. That they never were recoverable against France, and hence were desperate.

The CHAIRMAN. Following those objections that have been made, has Congress acted favorably upon this?

Mr. SCATTERGOOD. Yes, sir.

The CHAIRMAN. And as a result of that action, has money been paid?

Mr. SCATTERGOOD. Yes, sir; nearly \$4,000,000 has already been paid. Since the full agitation of these claims there have been more than 150 pages of debate in the Congressional Record covering the years of the late eighties and early nineties, chiefly at the time when the policy of Congress in regard to them was established.

Mr. ADAIR. What is the amount of the claims unpaid?

Mr. SCATTERGOOD. The total amount I will give in detail later, but the amount still unpaid, I will say, is about \$2,200,000, the United States having paid about \$4,000,000. And the total sum of money involved in this entire subject, instead of being thirty or forty millions of dollars, as has been repeatedly said, will not amount to more than six and one-half millions of dollars when the whole thing is wiped out. The Court of Claims has almost finished with all of the cases, and the vast percentage of the claims that come along now are negative claims.

I want to file with the committee a complete list of the congressional reports which have been made, both from the House and from the Senate, from 1802 up to the present time. There have been 69 different committee reports on this subject.

Mr. HAWLEY. You will submit them so that they may be printed?

Mr. SCATTERGOOD. Yes, sir. I think they will be of interest, because they contain not only the matter relating to the reports themselves, but also the actions by Congress. There has been no such table as this prepared within the last fifteen years. I might call especial attention to the fact that the two earliest reports followed each other closely, one of them being written within six months from the time of the first. Memorials by the thousand have been submitted to Congress by the state legislatures begging Congress to pay these claims. The subject has been alive from the very beginning, and it has been continually pressed before Congress, so that they are not stale, as Senator Sumner so eloquently stated in his report.

Now, I want to call the attention of the committee to the synopsis of these reports:

There have been 69 reports in all, of which 38 have been made in the Senate and 31 in the House. Of these reports, 64 are favorable to the claims and 5 are adverse. Of the latter, 3 were before 1826, when, for the first time, Congress had before it all of the evidence in regard to these claims, gathered from the correspondence and documents in the State Department which led up to the treaty of 1800; 1 was a voluntary adverse statement by 9 members of the Fiftieth Congress Appropriations Committee, to which the matter had never been referred except under an order of the House to place the claims on the general deficiency bill; 1 was an adverse report of the Appropriations Committee of the Fifty-first Congress, accompanied by an able minority report by 6 members strongly in favor of the claims. All of the adverse reports were before the policy of Congress to pay these claims was finally established by the act of March 3, 1891, and since that time there have been no adverse, or even minority, reports.

Bills making appropriations to pay these claims have passed the Senate no fewer than 16 times, in the following years: 1835, 1846, 1851, 1855, 1859, 1889, 1890, 1891, 1892, 1893, 1894, 1896, 1898, 1902, 1905, and 1909, and of these 7 have passed the House, in the following years: 1846, 1855, 1891, 1896, 1899, 1902, and 1905. In addition to this, the act referring these claims to the Court of Claims was passed by both Houses and approved by the President in 1885.

The bill of 1835 appropriating \$5,000,000 (the first that passed the Senate and which was the occasion of the famous speech of Daniel Webster in favor of the claims) failed to pass the House for lack of time.

The bill of 1846, which passed both Houses, carrying an appropriation of \$5,000,000 to be divided pro rata among the claimants and payable in land scrip, was vetoed by President Polk, as he stated, on the ground of expediency.

The bill of 1855, also appropriating \$5,000,000, which passed both Houses, was vetoed by President Pierce.

The bill of 1885, referring the whole subject to the Court of Claims for judicial findings as to facts and law, was signed by President Arthur.

The first act making appropriations for French spoliations since the reference of the subject to the Court of Claims, was the general deficiency bill of 1891, which was signed by President Harrison, and which carried an appropriation for French spoliations of \$1,304,095.37.

In 1896 the general deficiency bill passed both Houses, carrying an appropriation for French spoliations of \$1,027,315.29, but was vetoed by President Cleveland.

The first omnibus claims bill was passed in 1899 and was approved by President McKinley, carrying an appropriation for French spoliations amounting to \$1,055,473.04.

I am very glad indeed to be able to say that Mr. Henry, who himself is here to-day, had a talk with President Cleveland, together with Mr. Sims, of Baltimore, about the time he made this veto, and I would like to have the committee ask Mr. Henry as to the nature of that conversation. Mr. Cleveland considered it one of the great

mistakes of his administration. I might say, in passing, that his veto had no bearing whatever upon the general discussion, but it was simply passed over to Congress, and there was no change of policy because of the veto.

The second and third omnibus claims bills passed both Houses in 1902 and 1905, respectively, and were both approved by President Roosevelt, carrying appropriations for French spoliations of \$798,631.27 and \$752,660.93, respectively.

Now, I would like to turn to the action of the Court of Claims with reference to this subject.

The Committee on Foreign Affairs of the Forty-eighth Congress (48th Cong., 1st sess., H. Rept. 1094) reported that, in the opinion of the committee, "the gravity of the case and the ends of justice alike demand a settlement of this vexed question where it can be dispassionately heard and impartially considered." Whereupon, by a vote of 181 to 71, in a Congress consisting of 167 Democrats and 153 Republicans, on January 20, 1885, an act was passed referring these claims to the United States Court of Claims for examination as to not only the amount due, but also the "validity of said claims according to the rules of law, municipal and international, and the treaties of the United States applicable to the same, and shall report all such conclusions of fact and law as in their judgment may effect the liability of the United States therefor." The Attorney-General of the United States was also required to appear on behalf of the Government, and resist the claims by all proper legal defense.

In March, 1886, the matter was elaborately argued before the court by counsel for claimants and the Government. Nearly three weeks were consumed in the presentation of the case in every possible view which the most laborious investigation could suggest. The court, after careful deliberation, on May 17, 1886, filed a unanimous opinion in favor of the claimants. (*Gray v. U. S., schooner Sally*, 21 C. Cls., p. 340). In the same year the Solicitor-General of the United States applied for a reargument of the question in all its bearings. Leave was granted. New counsel were retained by the Government, by whom the whole subject was again carefully investigated. Two weeks were again consumed in argument and the court, after careful consideration, a second time filed a unanimous opinion in favor of the claimants. (*Cushing v. U. S., schooner Industry*, 22 C. Cls., p. 1.) A number of individual cases then came up for trial, to which the Government presented substantially the same defenses. The questions were once more elaborately argued, and again the court, on November 14, 1887, rendered another unanimous opinion in favor of the claimants. (*Hooper v. U. S., schooner John*, 22 C. Cls., p. 408.)

There never has been a matter which has been submitted to more severe and critical judicial scrutiny, nor has there ever been one in which the contention of the claimants has been more clearly and triumphantly established.

The Court of Claims having just decided the general question on its merits, then entered critically upon the examination of each particular case submitted to it. In every case it has carefully inspected and weighed the documents produced in support of each claim. Many of these documents came from the executors or descendants of the original sufferers, who had preserved them through all the inter-