

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

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of the first article of the Treaty of Ghent of 24 December 1814**

Award of the Emperor of Russia of 22 April 1822

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22 April 1822

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PART I

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DISPUTE BETWEEN THE UNITED STATES OF AMERICA AND
GREAT BRITAIN ABOUT THE INTERPRETATION OF THE FIRST
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DIFFÉREND ENTRE LES ÉTATS-UNIS D'AMÉRIQUE ET LA
GRANDE-BRETAGNE CONCERNANT L'INTERPRÉTATION DE
L'ARTICLE PREMIER DU TRAITÉ DE GAND DU 24 DÉCEMBRE 1814

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Treaty interpretation—literal and grammatical interpretation requested by the Parties—general principles of law and of maritime law used only as subsidiary means of interpretation.

Indemnification—just indemnification limited to private property originating from territories and places the restitution of which was stipulated by the treaty, including slaves carried away from said territories and places.

Implementation of award—offer of the arbitrator to serve as mediator in the negotiations required by the implementation of the award.

Interprétation des traités—interprétation littérale et grammaticale requise par les Parties—utilisation des principes généraux de droit et du droit maritime comme moyens d'interprétation subsidiaires uniquement.

Indemnisation—juste indemnisation limitée à la propriété privée émanant des territoires et des lieux dont la restitution est conventionnellement prévue, y compris les esclaves emportés desdits territoires et lieux.

Mise en œuvre de la sentence—proposition de l'arbitre de servir de médiateur dans les négociations requises par la mise en œuvre de la sentence.

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* Reprinted as translated in John Bassett Moore (ed.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. I, Washington, 1898, Government Printing Office, p. 359.

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Count Nesselrode to Mr. Middleton

[*Translation*]

The undersigned, Secretary of State, directing the Imperial Administration of Foreign Affairs, has the honor to communicate to Mr. Middleton, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, the opinion which the Emperor, his master, has thought it his duty to express upon the subject of the differences which have arisen between the United States and Great Britain, relative to the interpretation of the first article of the treaty of Ghent.

Mr. Middleton is requested to consider this opinion as the award required of the Emperor by the two Powers.

He will doubtless recollect that he, as well as the Plenipotentiary of His Britannic Majesty in all his memorials, has principally insisted on the grammatical sense of the first article of the treaty of Ghent, and that, even in his note of the 4th (16th) November, 1821, he has formally declared that it was on the *signification of the words in the text of the article as it now is* that the decision of His Imperial Majesty should be founded.

The same declaration being made in the note of the British Plenipotentiary dated 8th (20th) October, 1821, the Emperor had only to conform to the wishes expressed by the two parties, by devoting all his attention to the examination of the grammatical question.

The above-mentioned opinion will show the manner in which His Imperial Majesty judges of this question; and in order that the Cabinet of Washington may also know the motives upon which the Emperor's judgment is founded, the undersigned has hereto subjoined an extract of some observations upon the literal sense of the first article of the Treaty of Ghent.

In this respect the Emperor has confined himself to following the rules found in the words employed in drawing up the act, by which the two Powers have required his arbitration, and defined the object of their difference.

His Imperial Majesty has thought it his duty, exclusively, to obey the authority of these rules, and his opinion could not but be the rigorous and necessary consequence thereof.

The undersigned eagerly embraces this occasion to renew to Mr. Middleton the assurances of his most distinguished consideration.

NESSELRODE

St. Petersburg, 22d April, 1822

His Imperial Majesty's Award

[*Translation*]

Invited by the United States of America and by Great Britain to give an opinion, as Arbitrator, in the differences which have arisen between these two

Powers, on the subject of the interpretation of the first article of the treaty which they concluded at Ghent, on the 24th December, 1814, the Emperor has taken cognizance of all the acts, memorials, and notes in which the respective Plenipotentiaries have set forth to his administration of foreign affairs the arguments upon which each of the litigant parties depends in support of the interpretation given by it to the said article.

After having maturely weighed the observations exhibited on both sides:

Considering that the American Plenipotentiary and the Plenipotentiary of Britain have desired that the discussion should be closed;

Considering that the former, in his note of the 4th (16th) November, 1821, and the latter, in his note of the 8th (20th) October, of the same year, have declared that it is *upon the construction of the text of the article as it stands*, that the Arbitrator's decision should be founded, and that both have appealed, only as a subsidiary means, to the general principles of the law of nations and of maritime law;

The Emperor is of opinion "that the question can only be decided according to the literal and grammatical sense of the first article of the Treaty of Ghent."

As to the literal and grammatical sense of the first article of the Treaty of Ghent:

Considering that the stipulation upon the signification of which doubts have arisen, is expressed as follows:

All territory, places, and possessions whatsoever, taken by either party from the other during the war, or which may be taken after the signing of this treaty, excepting only the islands hereinafter mentioned, shall be restored without delay, and without causing any destruction or carrying away any of the artillery or other public property *originally captured in the said forts or places, and which shall remain therein upon the exchange of the ratifications of this treaty*, or any slaves, or other private property; and all archives, records, deeds, and papers, either of a public nature, or belonging to private persons, which, in the course of the war, may have fallen into the hands of the officers of either party, shall be, as far as may be practicable, forthwith restored and delivered to the proper authorities and persons to whom they respectively belong.

Considering that, in this stipulation, the words *originally captured, and which shall remain therein upon the exchange of ratifications*, form an incidental phrase, which can have respect, *grammatically*, only to the substantives or subjects which precede;

That the first article of the Treaty of Ghent thus prohibits the contracting parties from carrying away from the places of which it stipulates the restitution, only the public property *which might have been originally captured there, and which should remain therein upon the exchange of the ratifications*, but that it prohibits the carrying away from these same places *any private property* whatever;

That, on the other hand, these two prohibitions are solely applicable to the places of which the article stipulates the restitution;

The Emperor is of opinion:

“That the United States of America are entitled to a just indemnification, from Great Britain, for all private property carried away by the British forces; and as the question regards slaves more especially, for all such slaves as were carried away by the British forces, from the places and territories of which the restitution was stipulated by the treaty, in quitting the said places and territories;

“That the United States are entitled to consider, as having been so carried away, all such slaves as may have been transported from the above-mentioned territories on board of the British vessels within the waters of said territories, and who, for this reason, have not been restored;

“But that, if there should be any American slaves who were carried away from the territories of which the first article of the Treaty of Ghent has not stipulated the restitution to the United States, the United States are not to claim an indemnification for the said slaves.”

The Emperor declares, besides, that he is ready to exercise the office of mediator, which has been conferred on him beforehand by the two states, in the negotiations which must ensue between them in consequence of the award which they have demanded.

Done at St. Petersburg 22d April, 1822

Count Nesselrode to Mr. Middleton

[Translation]

The undersigned, Secretary of State, directing the Imperial Administration of Foreign Affairs, has, without delay, laid before the Emperor, his master, the explanations into which the Ambassador of His Britannic Majesty has entered with the Imperial Ministry, in consequence of the preceding confidential communication which was made to Mr. Middleton, as well as to Sir Charles Bagot, of the opinion expressed by the Emperor upon the true sense of the 1st article of the Treaty of Ghent.

Sir Charles Bagot understands that, in virtue of the decision of His Imperial Majesty, “His Britannic Majesty is not bound to indemnify the United States for any slaves who, coming from places which have never been occupied by his troops, voluntarily joined the British forces, either in consequence of the encouragement which His Majesty’s officers had offered them, or to free themselves from the power of their master—these slaves not having been carried away from places or territories captured by His Britannic Majesty during the war, and, consequently, not having been carried away from places of which the article stipulates the restitution.”

In answer to this observation, the undersigned is charged by His Imperial Majesty to communicate what follows to the Minister of the United States of America:

The Emperor having, by the mutual consent of the two Plenipotentiaries, given an opinion founded solely upon the sense which results *from the text of the article* in dispute, does not think himself called upon to decide here any question relative to what the laws of war permit or forbid to the belligerents; but, always faithful to the grammatical interpretation of the 1st article of the Treaty of Ghent, His Imperial Majesty declares, a second time, that it appears to him according to this interpretation:

“That, in quitting the places and territories of which the Treaty of Ghent stipulates the restitution to the United States, His Britannic Majesty’s forces had no right to carry away from these same places and territories, absolutely, any slave, by whatever means he had fallen or come into their power.

“But that if, during the war, American slaves had been carried away by the English forces, from other places than those of which the Treaty of Ghent stipulates the restitution, upon the territory, or on board British vessels, Great Britain should not be bound to indemnify the United States for the loss of these slaves, by whatever means they might have fallen or come into the power of her officers.”

Although convinced, by the previous explanations above mentioned, that such is also the sense which Sir Charles Bagot attaches to his observation, the undersigned has nevertheless received from His Imperial Majesty orders to address the present note to the respective Plenipotentiaries, which will prove to them, that, in order the better to justify the confidence of the two Governments, the Emperor has been unwilling that the slightest doubt should arise regarding the consequences of his opinion.

The undersigned eagerly embraces this occasion of repeating to Mr. Middleton the assurance of his most distinguished consideration.

NESSELRODE
St. Petersburg, 22d April, 1822