the *Constitution.* Had he not acted in this friendly manner towards us it is very probable we should have been several days without provision, as the enemy were occupied and exasperated.

I have, sir, detailed to you generally the services rendered to the officers and crew of the Philadelphia, at Tripoli, by Nicholas C. Nissen, esq. but it is impossible for me to convey a just sense of them. Nothing but a perfect acquaintance with our situation, and the aid we received, can truly estimate the services rendered.

I have the honor to be, sir,
With the greatest respect,
Your most obedient servant,
(Signed,)
WM. BAINBRIDGE.

Hon. Robt. Smith,
Secretary Navy.

REPORT.

The committee of commerce and manufactures, to whom was referred the petition of the merchants of Newburyport in the state of Massachusetts, submit their

REPORT,

The petitioners state the great inconvenience in navigating their vessels, by reason of the rocks and shoals, to which they are exposed in the river Merrimack, notwithstanding buoys have been placed on several of the most dangerous of them, and supported at the expence of the U. S. The rapidity of the current, and numerous accidents arising from vessels and bodies of ice running against them, having worn away the chains by which they were fastened, the petitioners felt themselves justified in building two piers as a substitute for the buoys. The piers were erected in the summer of 1804, at the expence of one thousand three hundred and eighty-five dollars and sixty cents, which sum was raised by subscription among themselves. They now ask for a reimbursement of the money expended in erecting the piers. They did not make application to government to defray this expense in the first instance, as it was doubted by many persons whether the piers could be so constructed as to withstand the force of the ice, which runs in the Merrimack with great rapidity, but they were willing to make the experiment at their own hazard, and are now fully satisfied that they will answer the purpose contemplated; for, since they were erected, very large and heavy bodies of ice have passed down the river, without doing them any injury.

Newburyport is a place of considerable trade, and their navigation has already increased to upwards of twenty-eight thousand tons. There can be no doubt of the utility of piers in all great rivers, especially where they are placed as marks to avoid dangerous shoals, or to afford protection to vessels within them, as in the case of the piers in the river Delaware, for which an appropriation of 30,000 dollars, was made by an act of the 6th of April, 1802. At Newburyport they were much wanted; but it does not appear that the petitioners were warranted in substituting piers for the buoys, which had been placed there and supported by the government of the U.S. If they had applied to Congress in the first instance, it is reasonable to suppose an appropriation would have passed, either for repairing the buoys, or building permanent piers, but having omitted to make this application prior to erecting the piers, the committee are of the opinion that the U. S. ought not to pay the expence. The money has not been expended under the direction of any agent appointed on behalf of the U. S. and although it has certainly been applied to a useful object, yet the committee conceive it would be an imprudent departure from established usage, to assume the payment of a debt contracted as this has been. The committee therefore submit the following resolution:

Resolved, That the petitioners have leave to withdraw their petition, and the documents accompanying the same.

REPORT

Of the committee on public lands, to whom were referred on the 29th of January last, the petitions of the mayor, aldermen and assistants of the city of Natchez; of the board of trustees of Jefferson college, in the Mississippi territory, and of William Dunbar, in the said territory.

REPORT—

THE above petitions relate to the conflicting claims of the corporation of the city of Natchez, of the trustees of Jefferson college, and of Wm. Dunbar, to a certain piece or parcel of land lying within the limits of the city aforesaid, between the buildings thereof and the bluff of the Mississippi river; and also to the conflicting claims of the aforementioned corporation and trustees to two town lots, occupying a central situation in the city abovementioned.

For three successive sessions this subject has been before Congress, the history of which is as follows:

In the 12th section of the act, entitled "An act regulating the grants of land & providing for the disposal of the lands of the U. S. of the state of Tennessee," a reservation is made of "such town lots, not exceeding two, in the town of Natchez, and of such an out lot adjoining the same, not exceeding thirty acres, as may be the property of the U. S. to be located by the government of the Mississippi territory, for the use of Jefferson college."

After this reservation was known to the corporation of Natchez, they, apprehending that the lands and lots beforementioned, which had been in the possession and use of the town, and to which they conceived it entitled in justice, might be located for the use of the college, petitioned Congress to confirm their claim to the said land and lots, and to grant them such other vacant lands as might be found within the limits of the city.

The committee, to whom this petition was referred, made a report favorable to so much of it, as relates to the land in front of the town, and the two town lots claimed by the corporation. A short time after, a petition was received from Wm. Dunbar, claiming the land in front of the town, as already described. This petition and that of the corporation were then referred to a new committee, who, just as they were about to report in favor of the latter, received information that the two town lots had been located by the governor, and the land in front of the town by the secretary of the territory, for the use of the college. Upon the receipt of this information the committee recommended a resolution (which was afterwards agreed to) for suspending all further proceedings relative to this subject, until the end of the last session of Congress.

Early in the last session a memorial was received from the trustees of the college, claiming the land and lots in question, as the property of that institution. About the same time, another memorial was received from Wm. Dunbar, in support of his claim to the land in front of the town, and requesting that the consideration of all petitions relative thereto might be postponed, and that time might be allowed him to prepare further representations on the subject.

The select committee, to whom all these conflicting claims were referred, like the preceding committees on the same subject, reported in favor of the claim of the corporation. But the report was not acted upon by the House during the session.

By an official act of gov. Williams, bearing date the 18th of November last, the locations in favor of the college have been withdrawn; and the question, of consequence, is again placed on fair, equitable ground, and rendered susceptible of such legislative decision as may be dictated by justice and expediency.

The principles of the question should next be considered.

The claim of Wm. Dunbar to the land in front of the town, is founded, as appears by documents, upon a grant from the Spanish governor, Gayoso, subsequent to the treaty of limits and navigation with Spain, in consideration of services rendered by this memorialist to the Spanish government. The claim of the corporation to the land just mentioned, is founded, as appears by several depositions, upon a previous reservation made by the same governor, when the town was laid off, for the preservation of health and other useful purposes. The foundation of the claim of the trustees has been already stated.

In comparing the respective merits of these claims, your committee have no difficulty in forming an opinion. On the ground of equity they conceive, that as the people of the town of Natchez setsled and made improvements there, under an impression that the reservation of this land, made by the competent authority, would be continued for their common convenience; & as it was continued as long as that authority existed, they ought not to be deprived of the benefits of that reservation, either by the government which had ceased, or that which succeeded.

On the ground of expediency, your committee observe a very obvious and important difference between the claim of the corporation and the claims of the two other parties. It is apparent that the latter are asserted, from a consideration of the pecuniary value of the land in question, whilst the former is defended with a view of averting those evils, which are considered as inevitable, should either of the other claims be finally established. Your committee are assured that no part of this land was ever contemplated as a site for the college. The object of the trustees, therefore, as well as of the individual claimant, must be, if successful, to make the most advantageous disposition of the land by laying it out into lots for the erection of buildings, without entering into the physical reasonings of which the subject seems to be peculiarly susceptible. In support of the claim of the corporation, your committee would suggest as their opinion, that it ought to be left to those who are immediately interested, to devise and use such means as to them may appear necessary, for the preservation of health. It is with a view to this great end that the people of Natchez wish to ventilate the town by keeping the reserved space on the bluff of the river unoccupied with buildings. To say nothing of other local objects of minor consideration, to which this reservation seems necessary, your committee conceive that the one above mentioned is of sufficient importance to authorise the experiment, whether it be considered in relation to the town of Natchez alone, or to other towns that may be hereafter established.

It seems by a letter of the 19th of November last, from the governor of the territory, who is president of the board of trustees, and who also is authorised to locate the out lot for the college, that a more advantageous location of other land may be made for that institution. Your committee, therefore, can see no well founded reason why the right of the U. S. to the land in question, should not be vested in the corporation of the city.

On the two town lots, or on one of them which had been located for the use of the college, stands an old building, which under the Spanish government, was appropriated to the use of the clergy, but is at present used for the threefold purpose of holding the mayor's court, the meetings of the common council, and the performing divine service. Except these two town lots, there are no others within the knowledge of your committee, claimed by the town on which buildings may be erected for the above mentioned, or any other public purposes. From this consideration, & from the additional one, of the great expense which the inhabitants of the town of Natchez have to sustain from its peculiar circumstances, your committee should not hesitate to recommend a grant of those lots to the corporation, did they know that the grant of town lots to the college could be satisfied by another location. But possessing no certain knowledge on this part of the subject, they abstain from recommending any legislative measure relative thereto, presuming that such a salutary exercise of discretion may be expected from the governor of the territory, as may be best calculated to do justice, and to obviate as far as practicable every cause of local contention.

With respect to granting to the corporation all the lands that may be found vacant within the limits of the city, your committee conceive that it would be proper to ascertain what lands are vacant, before any decision is had on this part of the prayer of their petition.

From the foregoing facts and considerations, your committee are induced to recommend the following resolution:

Resolved, That the right of the U. States to the land lying between the front street of the city of Natchez and the Mississippi river ought to be vested in the corporation of said city, so as not to interfere with the legal claims of any individuals, if any there be, nor with the lands annexed to the old fort adjacent thereto: *Provided,* That the said land be neither cultivated, nor occupied with buildings, but be planted with trees, and preserved as a common for the use, comfort and health of the inhabitants of the city aforesaid.

REPORT.

The Committee, to whom was referred the petition and memorial of the president and directors of the Chesapeake and Delaware canal company, respectfully

REPORT:

That it appears a company has been incorporated by the respective states of Pennsylvania, Maryland and Delaware, for the purpose of forming a navigable canal over the isthmus, which separates the bays of Chesapeake and Delaware: that in pursuance of the several acts of incorporation, passed by the said states, respectively, a large number of subscriptions were made by divers citizens of the United States, and a board of president and directors were duly elected for carrying the project into effect.

That the said president and directors, in pursuance of their appointment, have procured skilful engineers, to explore and survey the ground across the aforesaid isthmus, and have fixed on a route or position for the canal, calculated, as they conceive, in every respect, to secure the great and important purpose of an uninterrupted navigation, and have made considerable progress in the work. They find, however, that to accomplish it, a greater portion of fortitude and perseverance, and more ample resources will be necessary, than the individuals who are embarked in it, can be supposed to possess. The importance of the undertaking and the immense national advantages which may ultimately result from it, they hope will be sufficient inducements, to prevail on congress to grant them such assistance as will enable them to complete the business agreeably to their original plan.

The committee cannot hesitate a moment in deciding on the importance and extensive utility of connecting the waters of the Chesapeake and Delaware, by a navigable canal. To adopt a phrase familiarized by use, they consider the project as an opening wedge for an extensive inland navigation, which would at all times be of an immense advantage to the commercial, as well as to the agricultural and manufacturing part of the community. But in the event of a war, its advantages would be incalculable. The reasoning of the petitioners is conclusive on this point. If arguments are necessary, their petition furnishes an ample supply to prove, that no system of internal improvement which has yet been proposed in this country, holds out the prospect of such important national advantages, as will naturally result from a successful termination of their undertaking.

Did the finances of the country admit of it, the committee would feel a perfect freedom in recommending to the House, the propriety, in their opinion, of extending to the petitioners such aid as the difficulty and importance of their enterprise, would be thought to justify. But it is a question, whether, at this moment, the state of the treasury would admit of any pecuniary assistance being granted. The amount of the public debt, yet to be extinguished, the embarrassed state of our commerce, and the critical situation of the country in relation to foreign governments, might perhaps be considered as insurmountable objections against applying any public money to internal improvements, at this particular time. Under an impression arising from these circumstances, the committee recommend the following resolution:

Resolved, That it would not be expedient, at this time, to grant any pecuniary assistance to the president and directors of the Chesapeake and Delaware canal company.

Nassau, (N. P.) Jan. 31.

COURT OF VICE ADMIRALTY.

Nov. 12. 1806.

Before his honor Henry Moreton Dyer, esq. sole Judge & commissary.

SAMPSON, PHIPPEN, master.

[CONCLUDED]

This petition and its rejection have been much commented upon, and it has been intimated that the correctness of that refusal may be questioned together with the whole case, before a higher tribunal. The document itself and the proceeding upon it, being entered on the minutes of the court, the wish of the claimants will for that purpose, be fully attained. What opinion may be formed upon it in that more enlightened court, it would be presumptuous in me to conjecture. I will only say for the party himself, *valet quantum valere potest.* As to the court, whose duty it is to apply its decisions in the first instance, I trust it will at least have the effect of shewing that the humble individual who presides here, does not sleep upon his post, and would not hastily permit so fatal a departure from the regular forms of proceeding.

Mr. Delaunay's deposition has been justified by the argument of his counsel, on the ground that he answered to what he himself thought was necessary, and that he was not bound to reply to every question which he did not deem material. But it is the law I conceive, and not the individual, which is to prescribe what information is or is not necessary. He who undertakes to satisfy the enquiries of justice, must do so entirely and unfeignedly, if he would avoid the palpable suspicion of interested suppression; still less can I comprehend how he, who has sworn to depose all that he knows, can feel himself justified in withholding a part. Any further observation however, must be unnecessary upon an argument which is so wholly rebutted by every rational and received rule of evidence.

Again, it has been urged that Mr. Delaunay is a man unacquainted with judicial proceedings, and that some irregularities on his part in matters of this sort may be overlooked. Setting aside all that his oath required, passing over the solemn warning of the officer who administered that oath, and supposing that a defect of form is the utmost fault which can be imputed to him, I must at least observe that he is a man of the most *methodical irregularity* I ever knew: because it so happens, that he withholds his information precisely upon those points which were most material. He is ready enough to speak of the voyage from Philadelphia to Havanna; but as to any thing which happened prior to the last departure from Philadelphia, which was the important point to be ascertained, he refused to depose. Where a consciencious witness has erred upon matter of form, the court would never be disposed to press a mere omission of irregularity against him; but it must be perfectly obvious how little this gentleman has entitled himself to such excuse.

What then, upon the whole, is the effect of Mr. Delaunay's testimony? I have no hesitation in pronouncing, that it is completely confirmatory of the history made out by the testimony of the two preceding witnesses, and *with this serious addition*—that the penalties of the transaction were well known to the parties concerned in it, and that this gentleman was from beginning to end employed by them to avoid those penalties, by means of fraud and concealment; to his own as well as their advantage.

It has been argued for Mr. Delaunay, that if he had answered those interrogatories fully, he could not have stated any thing to the prejudice of the claim. When we reflect upon what we have heard from the other witnesses, and upon what even Mr. Delaunay himself has admitted upon those interrogatories which he did please to answer, I should not claim much credit for penetration, if I were to form a conjecture as to what his answers would have amounted to, if they had been explicit;—but I forbear to enter upon an enquiry which is, in no degree, imposed upon the court. This gentleman by his improper conduct, compels me to presume every thing against him, and has deprived himself of the benefit of those lenient constructions, (even if any lenity of construction could be strained to serve him) which it is the practice and the pleasure of the court to apply to persons of ingenuous conduct. I must rather observe as to him, what was eloquently said upon another occasion, that "a pertinacious refusal to submit to fair enquiry must infer all the penalties of convicted guilt."

Having drawn this result from the examinations, the documentary evidence becomes of less moment. In a case of this nature, it could scarcely be expected but that some color of fairness should be given to the formal documents. And yet even among those there is nothing contradictory to the oral testimony.

As to the ship, there are the formal papers in proof the property of Mr. Mann; but they are of a most recent date, being in fact no older than the present voyage from Philadelphia. This circumstance combined with the testimony, as to the commencement of the transaction, the change of name, and of captain and crew, the landing and reshipment, leads to no other conclusion than that this change of property was effected for some colorable purpose; and it is equally evident that this purpose was to suppress the former history of the vessel, and to stamp her with new credentials for the present occasion.

As to the cargo, there are bills of lading and invoices in proof of the property of Messrs. Foussatt and Mann, & Mr. Delaunay—but the articles themselves which they enumerate, bespeak French produce or manufacture, as we have before learned was the fact from some of the witnesses. That the articles in Mr. Delaunay's invoice came from France, is further evident from the calculation of prices in francs, which is an ideal denomination of money familiar in French mercantile computation. This is not indeed the case with Mr. Foussat's invoice—but in that many articles are of a similar nature, and the marks almost indiscriminately the same with Mr. Delaunay's. The articles too, of both invoices are wholly included in the certificate for obtaining the drawback, a paper which, it was justly observed, bespoke a mere entry at Philadelphia for exportation. I cannot but conclude, from all these circumstances, that the whole of these articles came from France, and in this vessel.

A question has been made how far the misconduct of Mr. Delaunay, even if penal as to himself, could affect the property of other persons committed to his charge. I cannot but agree with the captor's advocate in holding this gentleman to be no ordinary supercargo—but one in whom the most unbounded confidence and power have been placed. His employers must therefore be bound by that very general rule of admiralty law, which holds the principal to be affected by the acts of his agents. There are cases indeed, of wilful and unauthorised conduct in the agent, where that rule may seem to be harsh; but no such argument arises in the present case—where the whole plot appears to have been projected by, and known to the employers themselves, as well as their deputed agents.

I beg to be understood as applying these observations, more especially to Messrs Foussatt and Mann, who are the owners of the ship, and the former, together with Mr. Delaunay, the principal proprietor of the cargo.

There are, however, three smaller shipments claimed on behalf of Mr. Dabadie, Mr. Duval and Messrs. Warder and Sons—to which considerations of a different nature may be applicable.

The chief article in the shipments of both Dabadie and Duval, are ribbons and satins—articles which are most probably of French produce and manufacture, but that circumstance alone is not enough to affect them. It is not improbable but that they had been previously imported *bona fide,* into America. Certain it is that they were not included in the certificate of drawback; so that there is no evidence *prima facie* of their having been entered for exportation. There is no evidence that they were brought from France in this ship, and it appears by the depositions that articles were on board, besides those which were brought from Marseilles.

If these articles were of that description, and these persons had no connection with Mr. Delaunay previous to the voyage from Philadelphia, I should hold it rather too severe an application of the rule of responsibility by a principal for the acts of his agent, to call them *participes criminis* with Mr. Delaunay in respect of his concerns throughout the whole of this transaction. On the other hand, considering the general conduct of Mr. Delaunay, I think it would be too much to decree immediate restitution of property committed to his charge as to which any possibility of doubt can exist. But I shall allow these gentlemen an opportunity of shewing, if they can, by further proof, that they have not been implicated in any of the improper and illegal conduct, which I have found it necessary to animadvert upon, in respect to the ship and general cargo.

The only remaining shipment is that of Messrs. John Warder and Sons, which stands entirely free of all objection. The sole article in their invoice, is lard, amounting in value to about 3000 dollars. This is an article which bespeaks itself to be of American origin. It is consigned to a merchant at Havanna, having nothing to do with the other parties to this transaction, and the shipper himself is equally free from any such connection. This shipment, therefore, becomes a very fit subject for immediate restitution. But the ship, together with the property of Mr. Delaunay and his employers, I feel that it is my duty at once to condemn.

IRON WORKS
ON POTOMAC.

The Subscriber has for Sale

or Rent, a good seat for a Furnace upon the North Branch of Potomac in Hampshire county, with plenty of ore already investigated at considerable expence and found to be good, a constant and sufficient stream with upwards of 30 feet fall, and the wood of more than 9000 acres of well timbered land; enough of which is arrable to form a complete establishment. Connected with this may also be rented the forge built by Mr. John Potts at the Great Falls of Potomac, now the property of the subscriber. It is conceived that these two seats are particularly worthy of the notice of Iron Masters of capital; as they are fully adequate to the supply of iron, in its various forms, to an extensive country, having great demand for that article, both above and below the Blue ridge. The Hampshire property is free from every incumbrance, and the payment of a very few thousand dollars due to the proprietor of the fee simple at the Great Falls (my lease of which is for upwards of 900 years at a low rent) for rents in arrears prior to my purchase, will render this property clear; and afford a complete establishment for all the various manufactures of Iron, as well as for mills, with a convenient farm, &c. &c.

I have seats equally eligible (if not superior) for furnace and forge upon the river Shanandoah in this county, with ore, wood, and water, all convenient and abundant: which may be rented for a long term of years, with rich farming land attached thereto.

FERDINANDO FAIRFAX.

Charles town, Jefferson Co. Virg.
November 26—wtf