

of faith on the part of the Government, or from a failure to fulfil its constitutional obligations, or from the commission of unconstitutional acts. Congress has not the power to pay for it, or to make an appropriation to the State to do the same thing, using the State as her agent. The language of the Constitution itself would seem to answer the question. It says: "Nor shall private property be taken for public use, without just compensation." Whether or not the property has been taken, strictly speaking, for public uses, I leave the Government to decide. It *has been taken* by the General Government, or what remains has been rendered *nearly valueless* from the insecurity of the tenure. The obligation to pay, therefore, results from the very language of the Constitution: "Nor shall private property be taken for public use, without just compensation." After the Government has taken private property, it cannot escape from the obligation to pay for it, by denying that it was taken for public use. The Government, by the act of taking, estops itself from denying that it was for public use, and there results immediately the obligation of compensation. To quote once more from Mr. Clay, whose patriotic language I recommend gentlemen to ponder over, in these days, when men are so ready to escape from their obligations, he says: "There is a clause, an amendment of the Constitution of the United States, which provides that no property—no private property—shall be taken for public use without just compensation to the owners of such property. Well, I think, that in a just and liberal interpretation of that clause, we are restrained from taking the property of the people of the District of Columbia in slaves, in consideration of any public policy, without full and complete compensation." Again: "By a liberal interpretation of the clause, it seems to me, however, that slave property, would be so far regarded—that it ought to be so far regarded—as taken for public use, as to entitle the owners of the slaves so taken to a compensation, under and by virtue of the clause itself, to the full extent of the value of the slaves liberated."

The United States, to a certain extent, has sovereign powers, or is a limited sovereignty. As such the Government cannot be sued, but sovereignty is not thereby released from all obligations arising from its conduct to the citizen. In *Tiernan vs. Rescaivire* 10, G. and J. 225, and *Plater vs. Scott,*

8 G. and J. 116, this sound principle of the ethics of sovereignties is announced. "Sovereign States are considered always ready to do justice as to claims against them, which are coercible by judicial process between citizen and citizen." Suppose a citizen had thus dealt with the slave property of any other citizen, or any other species of property, would he not have been liable to be sued in some form of action, according to the nature of the wrong done, either in trespass, cause, trover or detinue? If the wrong had been committed in reference to his slave property, the remedy would very probably have been trover. Who would deny that the injured party could recover his damages? And no proposition to my mind is clearer than that the same liability attaches to the Government as would attach to any individual under similar circumstances. And further, that this property having been rendered *insecure*, having been *taken away*, having been *depreciated* in value by the direct action of the Federal Government, or from its failure to discharge and enforce its constitutional duties, there results necessarily a moral duty, obligation, and liability on the part of the Federal Government to pay the *damages*, or *loss* consequent to the owner.

Where no compensation is provided for or made to the owner for the injury sustained, he is entitled to recover damages, which damages are the *monied* value, and the compensation must be made irrespective of any speculative advantages which may accrue.

As to the measure of damages, Mr. President, any lawyer will tell you "that the principle which measures damages at common law, is that of giving compensation for the injury sustained—a compensation which shall put the party injured in the same position in which he would have stood had he not been injured." And that in *trover* the measure of damages is the value of the property at the time when the wrong or inimical action was committed, or at the time of *conversion*, to speak more legally. Where negroes are taken and employed without the owners' consent, the measure of damages is not only the value, but the injury resulting to the plaintiff from the employment. Tested by these principles, have I over-estimated our claims? The measure of damages is not the value of the property *now*, after it has been taken away or rendered depreciated, but the value of the property so taken away or destroyed at