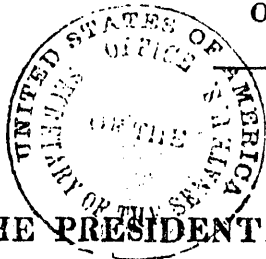


SEARCH OR SEIZURE OF AMERICAN VESSELS ON COAST
OF AFRICA, &c.



MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

TRANSMITTING

*A report from the Secretary of State, in relation to seizures or search of
American vessels, &c.*

MARCH 3, 1841.

Read, and laid upon the table.

To the House of Representatives :

I transmit to the House of Representatives, in compliance with their resolution of the 30th of January last, a report from the Secretary of State, with accompanying documents.

M. VAN BUREN.

WASHINGTON, *March 3, 1841.*

To the President of the United States :

The Secretary of State, to whom has been referred the resolution of the House of Representatives of the 30th of January last, requesting the President to communicate to that House, if not incompatible with the public interest, "any information or correspondence he may have in relation to recent seizures or search of any of our vessels upon the coast of Africa, or elsewhere, by British cruisers or authorities, and the cause of such search or seizure, and the authority under which they have been made; and, also, copies of all correspondence between the Governments of the United States and of Great Britain, relating to the African slave-trade, since the 3d of March, 1837, and of all despatches from Nathaniel [Nicholas] P. Trist, consul of the United States at the Havana, to the Department of State, relating in any manner to the said African slave-trade:" has the honor to report to the President the accompanying papers, in answer to that resolution.

JOHN FORSYTH.

WASHINGTON, *March 3, 1841.*

LIST OF PAPERS TRANSMITTED.

Correspondence with the Legation of the United States in London.

- Mr. Stevenson to Mr. Forsyth, (with enclosures,) Dec. 22, 1836.—Extract.
 Mr. Forsyth to Mr. Stevenson, April 17, 1837.—Extract.
 Same to same, (with enclosures,) July 17, 1839.
 Mr. Stevenson to Mr. Forsyth, (with enclosures,) Sept. 14, 1839.—Extract.
 Mr. Forsyth to Mr. Stevenson, (with enclosure,) January 3, 1840.
 Mr. Stevenson to Mr. Forsyth, (with enclosures,) Jan. 22, 1840.—Extracts.
 Mr. Forsyth to Mr. Stevenson, January 25, 1840.
 Mr. Stevenson to Mr. Forsyth, (with enclosures,) Feb. 18, 1840.—Extract.
 Same to same, (with enclosures,) February 25, 1840.
 Same to same, (with enclosure,) February 29, 1840.—Extract.
 Same to same, (with enclosure,) March 6, 1840.—Extract.
 Mr. Forsyth to Mr. Stevenson, March 18, 1840.
 Mr. Stevenson to Mr. Forsyth, (with enclosure,) April 13, 1840.—Extract.
 Same to same, (with enclosure,) April 14, 1840.
 Same to same, (with enclosures,) April 28, 1840.—Extract.
 Same to same, (with enclosure,) June 3, 1840.—Extract.
 Mr. Forsyth to Mr. Stevenson, July 8, 1840.
 Mr. Stevenson to Mr. Forsyth, (with enclosures,) July 24, 1840.—Extract.
 Same to same, (with enclosures,) August 4, 1840.
 Same to same, (with enclosures,) August 12, 1840.—Extract.
 Same to same, (with enclosures,) August 19, 1840.
 Same to same, (with enclosures,) August 26, 1840.
 Mr. Forsyth to Mr. Stevenson, August 28, 1840.
 Mr. Stevenson to Mr. Forsyth, (with enclosures,) Nov. 6, 1840.—Extract.
 Same to same, (with enclosures,) December 1, 1840.—Extract.
 Mr. Forsyth to Mr. Stevenson, (with enclosures,) December 3, 1840.
 Mr. Stevenson to Mr. Forsyth, (with enclosure,) December 12, 1840.
 Mr. Forsyth to Mr. Stevenson, December 26, 1840.
 Same to same, (with enclosures,) January 6, 1841.
 Same to same, March 1, 1841.

Correspondence with the British Legation at Washington.

- Mr. Fox to the acting Secretary of State, (with enclosures,) June 18, 1839.
 Acting Secretary to Mr. Fox, June 20, 1839.
 Mr. Fox to the acting Secretary, (with enclosure,) July 5, 1839.
 Mr. Forsyth to Mr. Fox, July 16, 1839.
 Acting Secretary to same, (with enclosure,) August 14, 1839.
 Same to same, (with enclosure,) August 19, 1839.
 Mr. Fox to Mr. Forsyth, (with enclosures,) October 30, 1839.
 Mr. Forsyth to Mr. Fox, February 12, 1840.
 Mr. Fox to Mr. Forsyth, (with enclosures,) March 30, 1840.
 Mr. Forsyth to Mr. Fox, April 1, 1840.
 Mr. Fox to Mr. Forsyth, (with enclosures,) August 15, 1840.
 Same to same, (with enclosures,) August 16, 1840.
 Same to same, (with enclosures,) August 18, 1840.

Same to same, (with enclosures,) August 19, 1840.
 Same to same, (with enclosure,) August 20, 1840,
 Same to same, (with enclosures,) August 21, 1840.
 Same to same, (with enclosures,) February 1, 1841.
 Same to same, (with enclosures,) February 4, 1841.
 Same to same, February 5, 1841.
 Mr. Forsyth to Mr. Fox, February 11, 1841.
 Same to same, (with enclosure,) February 13, 1841.
 Same to same, (with enclosures,) March 1, 1841.

Correspondence with the United States Consulate at Havana.

Mr. Trist to Mr. Forsyth, February 12, 1836.—Extract.
 Same to same, (with enclosures,) November 29, 1836.—Extract.
 Same to same, May 22, 1838.—Extracts.
 Same to same, (with enclosures,) December 18, 1838.—Extracts.
 Same to same, (with enclosures,) January 12, 1839.—Extract.
 Same to same, (with enclosure,) January 20, 1839.—Extracts.
 Same to same, (with enclosures,) January 22, 1839.—Extract.
 Same to same, (with enclosures,) January 25, 1839.—Extracts.
 Same to same, May 4, 1839.
 Same to same, (with enclosure,) May 4, 1839.—Extract.
 Same to same, September 7, 1839.—Extracts.
 Same to same, (with enclosures,) December 17, 1839.
 Same to same, (with enclosures,) December 18, 1839.
 Same to same, (with enclosures,) January 23, 1840.
 Same to same, (with enclosures,) February 29, 1840.
 Same to same, (with enclosures,) March 10, 1840.—Extract.
 Same to same, (with enclosure,) March 10, 1840.—Extract.
 Same to same, (with enclosures,) March 11, 1840.
 Same to same, (with enclosures,) August 21, 1840.
 Same to same, (with enclosure,) August 22, 1840.
 Same to same, (with enclosures,) September 28, 1840.—Extracts.
 Same to same, (with enclosure,) November, 28 1840.

Mr. Everett to Mr. Forsyth, July 21, 1840.
 Mr. Forsyth to Mr. Trist, February 10, 1841.
 Mr. Trist to Mr. Forsyth, February 13, 1841.
 Same to same, (with enclosure,) February 18, 1841.
 Same to same, (with enclosure,) February 21, 1841.
 Same to same, (with enclosure,) February 27, 1841.

Mr. Stevenson to Mr. Forsyth.—Extract.

[No. 14.]

LEGATION OF THE UNITED STATES,
London, December 22, 1836.

SIR : I have the honor to transmit to you the copy of a communication, with the accompanying documents, which I received on the 17th instant from Lord Palmerston, in relation to the alleged employment of vessels under the flag of the United States, to assist Spanish subjects in carrying on the slave-trade.

Not feeling authorized to express any opinion on the subject, either on the part of my Government or myself, I answered the note, simply acknowledging the receipt of the papers, with an assurance that the Government of the United States would omit nothing which was proper to be done for preventing the improper use of the flag of the Union in protecting the slave-trade. A copy of my note is herewith transmitted.

[Enclosure No. 1.]

Lord Palmerston to Mr. Stevenson.

FOREIGN OFFICE, December 17, 1836.

The undersigned, his Majesty's principal Secretary of State for Foreign Affairs, has the honor to transmit to Mr. Stevenson, envoy extraordinary and minister plenipotentiary from the United States, the enclosed extract of a despatch from his Majesty's commissioners at the Havana, together with a copy of a representation made by the commissioners to the consul of the United States in Cuba, relative to the alleged employment of vessels under the flag of the Union, to assist Spanish subjects in carrying on the slave-trade.

His Majesty's Government cannot entertain a doubt that the Government of the United States, upon receiving this information, will feel anxious to take prompt and effectual measures for preventing the flag of the Union from being used for the protection of a traffic which has been denounced as a capital crime by the laws of the United States.

The undersigned avails himself of this occasion to renew to Mr. Stevenson the assurances of his high consideration.

PALMERSTON.

A. STEVENSON, Esq., &c., &c., &c.

[Sub-enclosure.—Extract.]

HAVANA, October 25, 1836.

During the months of August and September, there arrived here, for sale, from the United States, several new schooners, some of which were already expressly fitted for the slave trade.

Amongst them we have been able to ascertain the names of four, viz : " Emanuel," " Dolores," " Anaconda," and " Viper." They vary in size from 50 to 150 tons. Their construction is of the slightest possible description ; their rig, that of the New York pilot boats, and such as is very much

in use by the coasting traders of the ports of this island. They are furnished with 30 sweeps, are unarmed, of very light draught of water, and certainly a class of vessels admirably adapted for escaping from and deceiving his Majesty's cruisers.

The "Emanuel" and "Dolores" were purchased, and have since left the port (we believe with other names) on slaving expeditions, under the Spanish flag.

But, to our astonishment and regret, we have ascertained that the two latter vessels, (the "Anaconda" and "Viper,") the one on the 6th, the other on the 10th instant, cleared out and sailed from hence for the Cape de Verd islands, under the American flag.

These two vessels arrived in the Havana fitted, in every particular, for the slave-trade, and took on board a cargo, which would at once have condemned as a slaver any vessels belonging to the nations that are parties to the equipment article.

It is unnecessary for us to occupy your lordship's time with a recital of the various evils which will arise, should a continuance of this scandalous and open abuse of the American flag be countenanced by that Government.

It is, nevertheless, our duty to state that the slave dealers have conceived great hopes of being able to cover their nefarious speculations in this way, founded upon the definitive determination of the President not to make the United States a party to any convention on the subject of the slave-trade; and, judging from the observable impetus which their view of the above declaration has given to the slave-trade, we fear that, before any representation can reach Washington, many similar enterprises will have been embarked in.

Thus, my lord, so far as we are informed, or able to draw an inference from these distressing details, the expression of the above determination by the head of a free Government, upon a subject represented as being an object in which every branch of the Government and the whole people of the United States feel a deep solicitude, has been the means of inducing American citizens to build and fit in their own ports vessels, only calculated for piracy or the slave-trade, to enter this harbor, and, in concert with the Havana slave-traders, take on board a prohibited cargo, manacles, &c., and proceed openly to that most notorious depôt for this iniquitous traffic, the Cape de Verd islands, under the shelter of their national flag. As a further exemplification of the mistake which we consider that Government to have made in withholding its consent to the recent conventions, we may add, that, while these American slavers were making their final arrangements for departure, the Havana was visited, more than once, by American ships of war.

His Majesty's commissioners, therefore, are not without a hope that a recital of the above facts, and the return thus made by some of the citizens of the United States to their Government, for the jealous care with which it has sought to preserve their rights and dignity, in refusing to accede to the only efficacious measures yet put into operation for the suppression of the slave-trade, (viz: the mutual right of search and the equipment articles,) that Government will be induced to reconsider the consequences thus likely to ensue should it permit the present facilities to exist.

It is true that the mockery of a sale or transfer to a Portuguese subject is to be enacted when these vessels reach their present destination; but such an excuse, if offered, can never be admitted in extenuation of the crime, which we hold all concerned in the expedition to be guilty of.

We also addressed a letter to the American consul, of which we beg leave to enclose a copy, together with the reply made by the American vice-consul, (the consul being absent from his post, but expected to return in a few days.)

Since writing this despatch, we are enabled to add the names of two more American vessels (the "Fanny Butler," and the "Rosanna") as having proceeded to the Cape de Verd islands and the coast of Africa, under the flag of that nation, upon the same inhuman speculation.

The subjoined list gives the date of clearance, and the names of the masters, from the books of the American consulate :

Schooner Anaconda, W. Knight master, cleared on 4th instant.

Schooner Viper, H. Galt master, cleared on 8th instant.

Schooner Fanny Butler, A. Richard master, cleared on 22d instant.

Ship (barque) Rosanna, Geo. Chason master, cleared on 22d instant.

[Sub-enclosure.]

HAVANA, October 17, 1836.

SIR: We have the honor to acquaint you with the following circumstances, as being intimately connected with your consulate and the flag of your nation, which it will be our painful duty to report to his Majesty's Government.

During the month of September there arrived in this port, for sale, from the United States, four new schooners—we believe two from New York, and two from Baltimore; all, however, built at the latter place—viz: the "Anaconda," "Viper," "Emanuel," and "Dolores," expressly constructed and peculiarly fitted for carrying on the slave-trade. The two former of these vessels having received on board, from the French house of Forcade & Co., a cargo, which, by the treaty of the 28th June, 1835, would have condemned as a slaver any vessel bearing Spanish colors, cleared out and sailed under the American flag—the "Anaconda" on the 6th, the "Viper" on the 10th instant, for the Cape de Verd islands; there to be transferred to a Portuguese subject, and to proceed with the flag of that nation to the coast of Africa, upon a slaving enterprise.

The protection which the schooners will receive from the American colors, both as regards their fitting and cargo, will effectually secure them against capture by his Majesty's cruisers, until they arrive at the scene of their depredations.

The "Emanuel" has, we believe, left the port under the Spanish flag; but we have also to inform you that, some short time since, the brig Martha of Portland, which arrived here from Matanzas, took on board, in this harbor, a cargo which would equally have confiscated as a slaver any Spanish vessel, and sailed direct for the coast of Africa, to deliver it at some of the numerous factories or dens of infamy established there, in connexion with the slave-traders of Havana.

The facilities thus afforded by the flag of the United States for carrying on this inhuman traffic, could never, we feel convinced, have been contemplated by your enlightened Government—especially as, during the period when these schooners were taking in their cargoes, the harbor was visited

by American men-of-war; which, had any convention existed between the two Governments, such as has been acceded to by almost every other maritime power, a seizure of the most important nature, as regards these iniquitous expeditions, must have been effected. However, we do not entertain the least doubt but that a knowledge of the above circumstances will instantly produce measures calculated to remedy so deplorable and flagrant a profanation of the American colors.

We have, &c.,

E. W. H. SCHENLEY,
R. R. MADDEN.

N. P. TRIST, Esq.,
Consul of the United States at Havana.

[Sub-enclosure.]

CONSULATE OF THE UNITED STATES,
Havana, October 19, 1836.

GENTLEMEN: I have the honor to acknowledge the receipt of your communication under date of the 17th instant, addressed to N. P. Trist, Esq., consul of the United States.

Mr. Trist is now absent on a visit to the United States, and is expected to return here early the next month. I shall, on his arrival here, lay your communication before him.

I have, &c.,

J. A. SMITH, *Vice-Consul.*

H. B. M. COMMISSIONERS,
&c., &c., &c., Havana.

[Enclosure No. 2.]

Mr. Stevenson to Lord Palmerston.

23 PORTLAND PLACE, *December 19, 1836.*

The undersigned, envoy extraordinary and minister plenipotentiary from the United States, begs leave to inform Lord Palmerston, his Majesty's principal Secretary of State for Foreign Affairs, that he had the honor to receive, on the 17th instant, his lordship's note of that day, transmitting to the undersigned, for communication to his Government, an extract of a despatch from his Majesty's commissioners at Havana, together with a copy of a representation made by the commissioners to the consul of the United States at Cuba, relative to the alleged employment of vessels, under the flag of the Union, to assist Spanish subjects in carrying on the slave-trade.

The undersigned has the honor to acquaint Lord Palmerston that he will take great pleasure in communicating, without delay, for the information of his Government, his lordship's note and the accompanying papers; not doubting but that his Government will omit nothing which may be proper to be done, for preventing the flag of the United States from being used for the protection of a traffic, which has been denounced as piracy by

its laws, and for the abolition of which the united efforts of both countries have been sincerely and honestly directed.

The undersigned avails himself of the occasion to tender to Lord Palmerston assurances of his high consideration and respect.

A. STEVENSON.

Mr. Forsyth to Mr. Stevenson.—Extract.

[No. 19.]

DEPARTMENT OF STATE,
Washington, April 17, 1837.

Your communications, to No. 19, inclusively, have been duly received; that dated the 22d of December last, with accompanying documents relative to the alleged use of the American flag to cover the slave-trade, ought, perhaps, to have been sooner acknowledged. The information comprised in those papers had, however, long since been in possession of this Government, through the agency of our consul at Havana.

Mr. Forsyth to Mr. Stevenson.

[No. 57.]

DEPARTMENT OF STATE,
Washington, July 17, 1839.

SIR: You will receive, herewith, copies of a letter from collector Bancroft, dated on the 2d instant, and of a communication from several other respectable residents of Boston, bearing date the 20th of May last, together with an authenticated extract from the log-book of the ship "Susan," of Boston, Thomson master, detailing the particulars of an outrage committed upon that vessel, on the 10th of April last, near Cape Frio light, by the commander of, and by a boarding officer sent from, her Majesty's armed brig Grecian. You will take an early occasion to make a representation of this case to her Majesty's principal Secretary of State for Foreign Affairs, as a violation of the respect due to the flag of the United States from friendly powers; and request that an inquiry may be instituted into the whole matter, and the allegations against the commander and the boarding officer of the Grecian be carefully examined; in order that, if they are well founded, conduct and language so unwarrantable, and disreputable to her Majesty's service, may meet the reprehension they merit, and will doubtless receive, from her Majesty's Government.

I am, sir, your obedient servant,

JOHN FORSYTH.

ANDREW STEVENSON, Esq.,
S^rc. S^rc. S^rc.

BOSTON, May 20, 1839.

SIR: We annex an extract from the log-book of the ship Susan, Captain Thomson, from Rio de Janeiro, on board of which vessel we came

passengers, and confirm the same as a true statement. Feeling indignant, as citizens of the United States, at an outrage to our flag of this nature, we wish that you should be informed of it; and, for our information, to respectfully ask of you how far the rights of foreign men-of-war extend to our merchant vessels? whether, upon satisfying the boarding officer we were a merchant vessel of the United States in a legal trade, the captain could not have ordered him and his force to leave the ship; and, upon refusal, whether the ship could not have been abandoned to him? whether he had the right to take the captain or passengers on board the man-of-war? and, again, whether we were bound to wait for orders from a foreign man-of-war to proceed on our course, after satisfying him of the character of our ship? The statement does not in the least exaggerate the piratical manner in which we were boarded, and the insolent conduct of the officer. The fact of one of us knowing the Grecian and the boarding officer, relieved our minds from the fear we were taken by a pirate.

We have the honor to be, most respectfully, your obedient servants,

DAN. P. AUSTIN,
THEODORE D. PARKER,
JAS. H. BREWER.

*Extract from the log-book of the ship "Susan" of Boston, April 10, 1839—
Cape Frio light in sight.*

At 7h. 15 min. P. M., saw a vessel on the starboard bow steering to the southward; and, when on our quarter, she bore up to us, and fired a gun—the wad striking just under our stern. We *immediately* hove the maintopsail to the mast; and, while lying in that situation, hove to for her to come up with us; she fired a shot, which was seen and heard to hiss through the air within a few feet of the ship, and struck abreast of the starboard fore-rigging. In a few minutes she was alongside—hailed us to know who we were; answered, Susan, from Rio de Janeiro. He was then asked: "What brig is that?" and replied, the Grecian; and was then asked: "What do you mean by firing a shot into us?" His answer was, "If you don't heave to, I'll fire into you;" and was replied to, that the ship was, and had been, hove to some time. She then sent a boat, with an officer and four men, who boarded us in a piratical manner—they being armed with cutlasses and muskets; and the first words the officer said upon reaching the deck were, "Who is the captain?" of whom he immediately demanded to know by what right he hailed her Majesty's brig Grecian to know why he fired, &c., &c. The captain replied, by repeating the same question; to which he, (the officer,) in a very impertinent manner, said he would send Captain Thomson on board the Grecian. Here the passengers interfered, and said, "*No, you don't unless you use force*"; to which he replied, he would use force, and take the passengers also; who replied, "*do it, if you dare.*" He then asked to see the papers, and was told he could see the register only; and, at the same time, ordered a man and a loaded musket on deck from his boat, and took possession of the ship, saying he would make a signal, and order more force. In the height of his impertinence, he was requested to perform his duty, and go about his business; to which he replied, "I shall take my own time, and shan't hurry, and want none of your *cheek*;" that, if he was to do his duty properly, he should send us all on board the Grecian, as he had the force, and it was

in his power to do so; and was again told he had better quickly do his duty, as we did not wish to be detained by him all night. After asking the usual questions, *without* looking at the register, he ordered the captain not to fill away until he received permission from the Grecian; and then left the ship without *offering* to put into execution any of his *violent* and *impertinent* threats of taking the captain and passengers on board the *Grecian*. As soon as the boat reached the brig, they hailed us with "you can go;" filled away, and left us; and we proceeded on our course.

CUSTOM-HOUSE, *Boston*, June 27, 1839,

I do hereby certify that the foregoing extract from the log-book of the ship *Susan*, now in this office, has been carefully examined with the original entry in said log-book, and found correct in all its parts.

Given under my hand and seal of office the day and year above written.
[L. S.] GEORGE BANCROFT,
Collector.

HON JOHN FORSYTH,
Secretary of State, Washington.

Mr. Stevenson to Mr. Forsyth.—Extract.

[No. 78.]

LEGATION OF THE UNITED STATES,
London, September 14, 1839.

SIR: I received, on the 20th ultimo, by the "*Roscius*," your despatch of the 27th of July, (No. 57,) in relation to the outrage committed by the British armed brig the "*Grecian*," upon the "*Susan*," of Boston, off Cape Frio light, on the coast of Brazil. I lost no time in presenting the case to Lord Palmerston's consideration; and have now the honor of forwarding a copy of my note, with his lordship's answer.

[Enclosure No. 1.]

Mr. Stevenson to Lord Palmerston.

23 PORTLAND PLACE, *August 26*, 1839.

The undersigned, envoy extraordinary and minister plenipotentiary from the United States, has the honor, pursuant to instructions received from his Government, to communicate to Viscount Palmerston, her Majesty's principal Secretary of State for Foreign Affairs, the accompanying papers, detailing the particulars of an outrage committed in April last upon an American ship (the "*Susan*," of Boston, Thomson master,) near Cape Frio light, by the commander of, and by a boarding officer from, her Majesty's armed brig "*Grecian*;" and to invite the early attention of his lordship to the complaint therein contained.

In presenting to the notice of her Majesty's Government a case so manifestly violating the respect due from one friendly nation to the flag of another, the undersigned has the honor to request that an inquiry may be instituted into the whole matter, and the allegations against the officers of

the "Grecian" carefully examined, in order, should they turn out to be well founded, that conduct and language so unwarrantable, and disreputable to her Majesty's naval service, may meet the reprehension and punishment they merit, and which they will doubtless receive from her Majesty's Government.

The undersigned takes the occasion to renew to Lord Palmerston assurances of his high respect.

A. STEVENSON.

[Enclosure No. 2.]

Lord Palmerston to Mr. Stevenson.

FOREIGN OFFICE, *September 9, 1839.*

The undersigned, her Majesty's principal Secretary of State for Foreign Affairs, has the honor to acknowledge the receipt of the note of the 26th ultimo, from Mr. Stevenson, envoy extraordinary and minister plenipotentiary from the Government of the United States, complaining of the conduct of the commanding officer, and of one of the subordinate officers, of her Majesty's brig "Grecian" towards the American vessel "Susan," near Cape Frio.

The undersigned has the honor to acquaint Mr. Stevenson that an inquiry has been instituted into the circumstances complained of; and that he will not fail to communicate to Mr. Stevenson the result of that inquiry.

The undersigned has the honor to renew to Mr. Stevenson the expression of his high consideration.

PALMERSTON.

Mr. Forsyth to Mr. Stevenson.

[No. 64.]

DEPARTMENT OF STATE,
Washington, January 3, 1840.

SIR: I transmit to you, herewith, the copy of a despatch (No. 22) addressed to this department on the 16th of October last, by the consul of the United States at Rio de Janeiro. Transcripts are also sent of the enclosures therein referred to. These papers set forth the circumstances attending a gross violation of the flag of our country, by the commander of her Britannic Majesty's sloop "Columbine," on the 22d of July last, off Ambrise, on the coast of Africa, in boarding and taking possession of an American merchant vessel, the brig "Edwin," of New York, while prosecuting a lawful commerce; compelling her master, by acts of violence, and with contumelious language, to quit his vessel; forcibly taking possession of his log-book and other papers; carrying him on board the British sloop, and there detaining him a prisoner, under guard, until the hatches of his vessel had been opened, a part of the cargo removed, and a strict search made for proofs of his having been engaged in the slave-trade. Under pretext of such a suspicion, which nothing appears to have authorized, the commander of the "Columbine" assumed to perpetrate the offences charged in the dep-

osition of Captain Dayley ; the truth of which is corroborated by the officers and seamen who sailed with him.

It is the wish of the President that the attention of the British Government should be forthwith called to this case. You are accordingly directed to address a representation of it to Lord Palmerston, exhibiting the facts as set forth in the accompanying documents ; expressing the dissatisfaction it has occasioned this Government ; asking for such explanations of the transaction as her Majesty's Government may have to offer ; and demanding that the very vexatious and reprehensible conduct of Commander Elliot on this occasion be adequately punished.

I am, sir, your obedient servant,

JOHN FORSYTH.

ANDREW STEVENSON, Esq., &c., &c., &c.

[Enclosure.]

Mr. Slacum to Mr. Forsyth.

[No. 22]

CONSULATE OF THE UNITED STATES OF AMERICA,
Rio de Janeiro, October 16, 1839.

SIR : I have the honor to transmit, herewith, depositions of the master and crew of the brig Edwin, of New York, lately arrived at this port from the coast of Africa. The Edwin is owned by Messrs. Farnham & Fry, of Salem, Massachusetts ; but sails from New York, where these gentlemen are engaged in commerce, under the firm of P. J. Farnham & Co. It appears, from the verbal statement of the master, that Messrs. Farnham & Co. have had a factory, or store-house, for some years past, on the coast, at a place called Ambrise, about sixty miles north of Angola, and have had vessels engaged in trading there. I am further informed that the present master of the Edwin had been in charge of the factory for several months, and was relieved by the one who went from the United States in her.

The object pursued by these gentlemen I believe to be trade with the natives for the produce of that country—say ivory, wax, &c., &c., in exchange for cloths, handkerchiefs, beads, and other trinkets suited to their wants or tastes. Ambrise is becoming quite a commercial place—the English having many factories there, like that of Messrs. Farnham & Co. The Edwin will sail in a few days for Richmond, where the master may be found, should his presence at Washington be deemed necessary.

I have the honor to be, sir, your most obedient servant,

GEO. W. SLACUM, *Consul U. S. A.*

HON. JOHN FORSYTH,

Secretary of State, Washington.

This is to certify that the brig Edwin, of New York, was boarded by her Britannic Majesty's sloop Columbine, on the 22d July, 1839, off Ambrise : that the person then in charge of her I believe to be named James Dayley, as stated in the instructions on board the vessel ; but I have reasons to suppose that the vessel is engaged in the slave traffic. I have further to certify, that my reasons for boarding the said Edwin were, that I had

the strongest suspicion she was not an American ; and the master of her was extremely insolent and unruly.

GEO. ELLIOT, *Commander*.

H. B. M. "COLUMBINE,"

July 22, 1839. *At sea.*

CONSULATE OF THE UNITED STATES OF AMERICA,
Rio de Janeiro.

These are to certify, that the foregoing is a true and faithful copy of an original endorsement which appears on the back of the shipping articles of the brig Edwin, of New York, and that the same has been carefully collated.

[L. S.] Given under my hand and seal of office, at the city of Rio de Janeiro, this seventh day of October, A. D. 1839.

GEO. W. SLACUM, *Consul U. S. A.*

CONSULATE OF THE UNITED STATES OF AMERICA,
Rio de Janeiro.

Personally appeared before the undersigned, consul of the United States of America at the city of Rio de Janeiro, James Dayley, master of the brig Edwin, of New York ; and who, being duly sworn, deposed as follows : That on the 22d day of July last past, he sailed from the port of Ambrise, coast of Africa, in capacity aforesaid, with part of a cargo on board, taken from the factory of Messrs. P. J. Farnham & Co., of New York, owners of the said brig Edwin : that, on proceeding up the coast to another port, to take in cargo for same account, and being still in sight of the place of his departure, he was fired at from H. B. M. brig Columbine, George Elliot, Esq., commander, and ordered to heave to ; which having done, an officer and six armed men boarded and took possession of the vessel, while the American flag was flying. And deponent further said, that the English officer, immediately on gaining the deck of the Edwin, demanded to know if he (deponent) commanded the vessel ; when, upon being answered in the affirmative, he ordered him into the boat of the Columbine, to be carried on board that vessel : that he (deponent) hesitated to obey the order, and asked why he was to leave his ship ; whereupon the English officer repeated the order, and said to the men, " if he refuses, put him into the boat by force : " that the men then approached deponent with drawn swords, and in this manner forced him out of his vessel. And deponent further said, that no demand for his papers was made ; but that, as he was getting over the side of his ship, his log-book and tin case, containing his public and private papers, were taken from him, as he held them under his arm. And deponent further declared, that he was taken on board H. B. M. brig Columbine, placed a prisoner between two guns, under a guard of marines, and thus detained more than two hours : that he (deponent) in passing from his own ship to the Columbine, was accompanied by an English lieutenant, whom he recognised while in the boat, and reminded him of his having received and hospitably entertained him at the factory of Messrs. P. J. Farnham & Co. about a month before ; and brought to his recollection the fact of his having told him (the officer) that

he expected a vessel from New York. Notwithstanding all this, and the assurance given that the Edwin was an American vessel, engaged in lawful trade, he (deponent) was not released, and put in command of his ship, till the hatches had been opened, the cargo removed, and a strict search made. And further deponent said not; referring to the depositions of the mates and crew for the particulars of the outrage committed on board the Edwin, while he was detained a prisoner on board the Columbine.

JAMES DAYLEY.

Sworn before me, this 12th day of October, A. D. 1839.

GEO. W. SLACUM, *Consul U. S. A.*

CONSULATE OF THE UNITED STATES OF AMERICA,
Rio de Janeiro.

These are to certify, that the foregoing is a true and faithful copy of the original deposition on record in this consulate, and that the same has been carefully collated.

[L. S.] Given under my hand and seal of office, at the city of Rio de Janeiro, this sixteenth day of October, A. D. 1839.

GEO. W. SLACUM, *Consul U. S. A.*

CONSULATE OF THE UNITED STATES OF AMERICA,
Rio de Janeiro.

Personally appeared before the undersigned, consul of the United States of America at the city of Rio de Janeiro, Richard Darling, chief mate; John Albertson, second mate; John Thomson, J. Welling, and Frederick Beeman, seamen—all of the brig Edwin, of New York; and who, being duly sworn, deposed as follows: That they sailed from Ambrise, coast of Africa, on board the brig Edwin, of New York, James Dayley master, having on board part of a cargo taken in at the factory of Messrs. P. J. Farnham & Co., of the city aforesaid: that when about two leagues from the land, and in sight of their port of departure, they were fired at, and brought to, by H. B. M. brig Columbine, George Elliot, Esq. commander, while the American flag was flying on board the Edwin.

That an officer and six armed men boarded the Edwin, and took possession of her. And deponents further declared, that as soon as the Edwin was taken possession of, the master was ordered on board the Columbine; and when he refused to go, and desired to know why he was to leave his vessel, the British officer said, "If you don't go, I will force you;" at the same time calling his men, who ran aft where Captain Dayley stood, with their swords drawn, and forced him to get into the boat; in the act of doing which, his log-book, and tin case containing his papers, were taken from him.

And deponents further said, that after Captain Dayley had left the Edwin, the British officer in charge questioned them as to where the vessel was owned, the names of the owners, captain's name, of what the cargo consisted, &c., &c.; all of which questions were answered. He then said he must search the cabin, and requested deponent (Richard Darling) to go with him into the cabin; on returning from the cabin, he ordered the

hatches fore and aft to be taken off, and the hold examined and searched, removing part of the cargo. After this examination, the British officer observed, "You have one thing on board that will condemn you;" and when deponent (Richard Darling) asked what it was, he replied, "the lumber." And deponents further said, that during the absence of Captain Dayley, another boat came from the Columbine with two midshipmen, leaving one in charge of the Edwin, and returning with the officer first left in charge. And further deponents said not.

RICHARD DARLING,
JOHN ALBERTSON,
JOHN THOMSON,
J. WELLING,
FREDERICK C. BEEMAN.

Sworn before me, this 12th day of October, A. D. 1839.

GEO. W. SLACUM, *Consul U. S. A.*

CONSULATE OF THE UNITED STATES OF AMERICA,
Rio de Janeiro.

These are to certify that the foregoing is a true and faithful copy of the original deposition on record in this consulate, and that the same has been carefully collated.

[L. S.] Given under my hand and seal of office, at the city of Rio de Janeiro, this seventeenth day of October, A. D. 1839.

GEO. W. SLACUM, *Consul U. S. A.*

Mr. Stevenson to Mr. Forsyth.—Extracts.

[No. 84.]

LEGATION OF THE UNITED STATES,
London, January 22, 1840.

* * * * *
A short time since, I received a despatch from Lord Palmerston, communicating sundry documents relative to the slave-trade, which had been received by this Government from their commissioners established at the Havana, under the treaties between Great Britain and Spain for the suppression of that trade. * * * * *

I have therefore the honor to transmit to you copies of all these papers, and shall await the President's instructions on the subject.

[Enclosure No. 1.]

Lord Palmerston to Mr. Stevenson.

FOREIGN OFFICE, *December 31, 1839.*

The undersigned, her Majesty's principal Secretary of State for Foreign Affairs, is desirous of communicating to Mr. Stevenson, envoy extraordinary and minister plenipotentiary of the United States of America, the accompanying despatch and its enclosures, which have recently been received

by the undersigned from her Majesty's commissioners established at the Havana, under the treaties between Great Britain and Spain for the suppression of the slave-trade.

These papers relate to a previous correspondence between the commissioners and Mr. Trist, the United States consul at the Havana; a portion of which was contained in the papers upon the slave-trade laid before Parliament, by her Majesty's command, during the last session, and of which the undersigned encloses a copy.

And the undersigned encloses also a copy of that portion of the correspondence between the commissioners and Mr. Trist which was not laid before Parliament.

The undersigned thinks it right to submit to some authority connected with the Government of the United States the letter from Mr. Trist, which forms one of the enclosures in the despatch of the 27th of October, 1839, from her Majesty's commissioners; but the gentlemen on the establishment of the Foreign Office have so much pressing business at this time to perform, that Mr. Trist's long letter could not be copied without delay and injury to the public service; and the undersigned is, therefore, obliged to send these papers to Mr. Stevenson in original, and he requests that Mr. Stevenson will have the goodness to return them to him when Mr. Stevenson shall have read them.

The undersigned avails himself of this occasion to renew to Mr. Stevenson the assurances of his distinguished consideration.

PALMERSTON.

[Sub-enclosure.]

[No. 35.]

HAVANA, *October 27, 1839.*

MY LORD: In our despatch No. 22 of 1839, dated 15th July last, we informed your lordship of our having written a letter to Mr. Trist, the United States consul at this place, in obedience to your lordship's directions, as given in the despatch No. 3 of 1839, dated the 16th April last. A copy of that letter we then enclosed, and stated that, in answer to it, we had not received any reply.

On the 30th August, however, a reply was delivered, of which we have now to transmit a copy, not having been able to have it made in time for the previous packet, on account of its exceeding, as your lordship will perceive, two hundred and sixty closely written pages. Of this extraordinary production we can scarcely trust ourselves to express an opinion; but are glad to think our so doing of less consideration, inasmuch as the most cursory glance at it must make your lordship aware of its character better than any opinion we could convey. We must, however, be allowed to make a few remarks, and in the outset to observe, that, offensive as Mr. Trist evidently desires to be to us personally, (MS. pp. 31, 99,) we have the less reason to complain, as he undistinguishingly inveighs against the conduct of our predecessors in the commission as much as against what he imputes to us also, (page 40;) but that, with regard to our motives of action and mode of carrying them into effect, we trust we may lay claim to at least as much right feeling, honesty of purpose, and courtesy of demeanor, as he can put forward for himself.

Mr. Trist's claim to be considered a person entitled to pass judgment on

us, or indeed on any question relating to slavery or the slave-trade, we must at once and unhesitatingly dispute. Born, as he himself informs us, amidst black domestics, (page 250,) and brought up among slaves, the native of a slaveholding State, himself somewhat of a slaveholder, (ibid,) and having most of his connexions of that character, he cannot be supposed to have that freedom from improper bias on any such subject which alone could make his judgment and opinions deserving of consideration. But when we find his public conduct in this place only the natural, though lamentable, consequence to be expected of such an origin, we must declare him the most unfit to be taken for our guide and instructor in opinion or practice. Preferring, as we do, facts to professions, we will put the latter for the present out of consideration, and give, as evidence of our assertions, the following circumstances.

The office of Portuguese consul has been vacant now nearly two years; during which time, we have not heard of any respectable person being a candidate for it; nor do we believe any respectable person would accept it, or we may be sure the Portuguese Government would have long since made the appointment. During this time, then, when no such person was found ready to undertake the disgrace of sharing its associations with the slave-trade; when the only occupation and advantage it could give proceeded from the slave-dealers; proportioned, too, as the office-holder screened and aided them in their iniquities—the one person, above all others, they could find ready to become their instrument and assistant, was the American consul; and as if the office of itself, on account of its only existing duties, had not been sufficiently disgraceful, he thus added the indecency of associating with it the compromising the flag and national character of his republic; the laws of which declare the severest penalties against the slave-trade, while its citizens were openly and with impunity furnishing it vessels, and giving it every assistance their ingenuity could devise.

Mr. Trist might, perhaps, say that he undertook the office with a view to put down those abuses. This would be scarcely consistent with his duty to the Portuguese flag, or nation; but, supposing it were so, how has he effected, or attempted, this object? Not a vessel has gone to the coast of Africa, under the American flag, but he must have been aware of the purpose for which it was despatched; and yet we have not heard of any denunciations he has made, or steps he has taken, to defeat or punish the offenders, except in one solitary instance; to which we shall have immediately to call attention.

Meanwhile, as evidences of the contrary intention on his part, namely, to assist the slave-dealers, we find the following facts alleged:

1. The proconsul at the Cape de Verds charges him with "having granted, (we presume allowed, or authenticated,) to his knowledge, more than ten false bills of sale of vessels and papers to these islands."—Parliamentary papers respecting slave-trade, 1839, class B, further series, p. 110.

2. We find him giving vessels, which he must have known were intended for the slave-trade, irregular assistance, in furnishing them with blank forms, to be filled up at their convenience.—Parliamentary papers, *ibid*, class D, further series, p. 25.

3. We find him giving such vessels certificates, irregularly signed; as in two cases, the day before the documents they purported to authenticate, (Parliamentary papers, *ibid*, class A, further series, pp. 58, 59,) and those in relation to a remarkable vessel, found, when taken, to have twenty-one

long guns on board, eighteen-pounders, with a corresponding number and quantity of muskets, cutlasses, and ammunition stowed about the decks, and prepared for action!

The character of this piratical vessel could not have escaped his observation when he passed her papers; and, as sailing in breach of the laws of all nations, it was his duty to denounce her at least to the local Government whose laws more particularly she was setting at defiance; but, instead of so doing, he appears to have even gone out of his regular course to facilitate her progress.

In one case, however, he did detain a vessel, as stated above, suspected of being engaged in the slave trade—the American brig “Thomas;” of which fact, in our ignorance of his character and conduct, we made honorable mention at the time, (see despatch No. 52 of 1838, dated the 24th December.) In the missive before us he refers to it, and shows that, unflinching advocate as he professes to be for national independence, the vessel was taken, by his direction, in this harbor, by an armed force from the American sloop-of-war “Ontario.” Had an English vessel of war been committing such an act in a foreign port, we might perhaps have been fairly liable to all those charges here made against us for a trampling upon, and contempt of, the rights of a powerless nation; but the American consul holds himself privileged to outrage those rights, and to commit an act which we may justly declare to have been perfectly wanton, because it was totally unnecessary. As an American vessel, the “Thomas” could not sail out of the harbor without the American consul’s special permission; and, in fact, it was only taken to be delivered up to the Captain General of the island, who would, unquestionably, as a matter of course, have ordered the vessel to be detained, upon an official demand from Mr. Trist, had he been pleased to make it. But this regular mode of proceeding did not comport with his temper or views. Without charging him with a vainglorious desire to make an exhibition of his power, or doubting his desire to defeat a slave-trading expedition, we must point out the fact confessed—that the captain of the “Thomas,” who was also the owner, and acknowledged “a man of very good connexions,” had, unfortunately, upon some former occasion, had a quarrel with Mr. Trist, at whose “demand” he had been for some weeks in prison, and had thus become “a most distinguished and sympathy-exciting victim of consular persecution.”—(See MSS., p. 87.)

The force of this sneer, your lordship will best understand by perusing the proceedings at different meetings held at Boston and New York, for petitioning the United States Government to remove Mr. Trist from his office, for various acts of capricious tyranny and neglect of duty. Of one of these meetings, we enclose an account; and your lordship will perceive from it that Mr. Trist’s own countrymen have just as much cause as we have to condemn him for those perverted feelings and overweening notions of importance which persons of weak minds are so apt to fall into when filling appointments (no matter what) beyond their capability or merit.

Had the case against the “Thomas” been undeniably a clear one, the step of so forcibly taking possession of her in a foreign port, unnecessarily, would still have been most unjustifiable; much more, then, when it was so doubtful that, upon investigation by the local authorities, (of which he makes no mention,) they at once ordered her release, censured the detention, and awarded the master damages, which he is now seeking to recover, we understand, from the captain of the “Ontario.”

From all these facts, we think it evident that Mr. Trist's vaunted affection for national independence, and hatred of slavery, cannot be very deeply rooted, when he is found, by his writings, to be such an apologist for the slave-trade, such an abettor of slave-dealers, and so ready to violate the dearest provisions of respect for the rights of foreign nations, unnecessarily, and manifestly only to gratify his own petty resentments. Such a person should be the last to accuse others of unworthy actions or dishonorable motives; and certainly, in this case, the maxim seems as if it might be relied on, to estimate the solidity of a man's principles, and the truth of his professions, inversely to the intensity of the loudness with which they are so unnecessarily paraded.

Holding the very lucrative office of American consul, we cannot suppose that the few dollars Mr. Trist may further gain as Portuguese consul can be to him of any consideration. But surely it little becomes him to taunt us with being paid from the labors of the factory girl, (pp. 133-143,) when he is himself so ready to partake of the blood-money of the slave.

We write thus decidedly, because, as Mr. Trist has penned his invectives in that ridiculously inflated and theatrical style so appropriate for his extravagant and delirious ideas of personal and national importance, with the evident expectation that they will be presented, and printed, among the papers laid before the House of Commons next session, we should feel unwilling, in case your lordship please to indulge him, that his own conduct should be left unexposed, or the indignities offered us unrepelled.

Those indignities we had but one way of meeting, with regard to himself personally; and, accordingly, in our acknowledgment of his papers, we expressed the fact of their being received, in the shortest terms of official courtesy.—(Enclosure No. 2.) We feel assured that, in so doing, we shall receive your lordship's sanction, considering it all that was due to such an unbusinesslike collection of extravagancies as that which Mr. Trist has here been so self-deluded as to put forth for arguments, opinions, and specimens of eloquence. That acknowledgment, however, in accordance with an intimation given in his voluminous letter, (p. 134,) Mr. Trist sent back unopened, (as, we suppose, purposing an insult,) through the post office, in a large and thick envelope, so as to put us to the most expense of postage.

We ought, perhaps, to explain, with respect to his cavilling about the terms in which we communicated your lordship's message, that they were written with reference to a paragraph in our former letter, which, for conciseness' sake, had been afterwards struck out; and that we wrote the last, knowing the wild lengths which Mr. Trist is so apt to go, in terms expressly not to give him the opportunity of taking your lordship for a correspondent instead of ourselves.

We have the honor to be, with the greatest respect, my lord, your lordship's most obedient, humble servants,

J. KENNEDY.

CAMPBELL J. DALRYMPLE.

Right Hon. VISCOUNT PALMERSTON, *G. C. B.*,

&c., &c., &c.

[Sub-enclosure.]

[No. 22.]

HAVANA, July 15, 1839.

MY LORD: We have the honor to acknowledge having received your lordship's despatch (No. 3, of 1839,) dated the 16th April, on the subject of the correspondence we had in January last with Mr. Trist, the United States consul at this place, respecting the slave-ship "Venus."

In obedience to your lordship's directions, we addressed a letter to Mr. Trist, informing him "that her Majesty's Government would feel most sincerely obliged by his furnishing us, at any time, with any information in his power which might enable her Majesty's Government to enforce the penalties of the law against British subjects concerned in slave-trade."

We also duly communicated your lordship's sentiments on the obligation arising from the engagements entered into between the two countries, by the treaty of Ghent, for the entire abolition of the slave-trade, "that the agents of each Government should furnish to the agents of the other Government any information calculated to enable that other Government more effectually to accomplish the common purpose."

We beg to refer your lordship to the copy of the letter enclosed, to which we have not received any reply.

We have the honor to be, with the greatest respect, my lord, your lordship's most obedient, humble servants,

J. KENNEDY.

CAMPBELL J. DALRYMPLE.

Right Hon. Viscount PALMERSTON,

G. C. B., &c., &c., &c.

[Sub-enclosure.]

Her Majesty's Commissioners to Viscount Palmerston.—Extract.

HAVANA, January 19, 1839.

In the despatch dated the 22d August last, from her Majesty's commissioners at this place, your lordship was informed of the arrival here of the American ship "Venus," built at Baltimore expressly for the slave-trade, and of her departure shortly after for the coast of Africa. The "Venus" sailed hence under the American flag, with several American citizens on board; but in the ship's articles, (of which a glance, in bravado, was afforded her Majesty's commissary judge,) it was expressly stipulated that she was to be taken to Bahia, there to be transferred to the Portuguese flag. This, however, appears not to have been done; for in the almost incredibly short period of four months the ship has returned, and, in the beginning of this month, landed on the coast the extraordinary cargo of not fewer than 860 slaves. At this time the name was changed to the "Duquesa de Braganza," and she bore the Portuguese flag; but it was a matter of doubt whether a valid, if any, transfer of her had taken place; and it was currently believed that the American subjects who had sailed in her from this port had been present at the time when the slaves were taken on board. Indeed, it was reported from the parties themselves, that they had been visited on the coast of Africa, when bearing the American flag, by the officers of a British

cruiser ; and upon being asked what they were doing there, answered the inquiries by saying it was no business of theirs, and that they were Americans."

They boasted, also, that though one of the cruisers watched, and saw them take part of their cargo on board, and attempted afterwards to follow them, yet the chase was made in vain ; and, undoubtedly, the wonderfully short time in which this unprecedentedly successful voyage has been made, fully warrants the character which the ship brought here with her, for her fast-sailing qualities.

Under these circumstances we felt it our duty to call the attention of the American consul, who is also acting as Portuguese consul, to so gross a violation of the laws, as well as of the flag of the United States.

To this communication of ours the answer was returned, of which we enclose your lordship a copy, stating at very considerable length the opinions which had actuated him (the consul) on the occasion just referred to, as well as his views in the present instance. The answer is worthy of consideration, as an evidence of the feelings held by certain classes of the American community with regard to the slave-trade, and the part taken by the British Government to suppress it. In our reply, we confined ourselves to a general assertion of our duties, and of the grounds on which we exercised them. As we hear the correspondence has been sent to the Government of the United States, we trust your lordship will consider the terms in which we addressed the consul, as well as those in which we answered his reply, to be deserving the support of her Majesty's Government.

With regard to the ship "Venus," otherwise the "Duquesa de Braganza," we should state that the original cost, we understand, was 30,000 dollars ; and that the fitting out, and expenses of every description for the voyage, including the value for the return cargo, was estimated at \$60,000 more—say altogether 100,000 dollars. The number of negroes brought back, as has been before stated, was 860 ; and they are said to have been sold at 340 dollars per head, producing the sum of nearly 300,000 dollars ; of which, therefore, two-thirds was net profit. So long as such returns can be effected, we fear that no efforts whatever will be effectual in suppressing the traffic ; and certainly not, while the dealers have only to meet such a system of corruption as pervades every department of the government of the island.

We have only further to add, that the ship "Duquesa de Braganza" is principally owned by the slave-dealer Mazorra, whom we have so often had occasion to name, and a Frenchman named Gautier ; and that she is preparing again for another voyage.

[Sub-enclosure.]

Viscount Palmerston to her Majesty's Commissioners.

FOREIGN OFFICE, April 16, 1839.

GENTLEMEN : I have received your despatch of the 19th of January 1839, containing copies of a correspondence which had taken place between yourselves and Mr. Trist, the United States consul at the Havana, on the occasion of your having communicated to that gentleman information respecting the vessel, the "Venus," which had sailed from the Havana for

Africa, under the flag of the Union, with several American citizens on board, and had returned within four months, with a cargo of 860 slaves, from Africa.

With reference to that part of Mr. Trist's letter to you, which relates to British fabrics made expressly for Africa, and to shackles of British manufacture intended for slave-trade, exported from England, and imported into Cuba, I have to desire that you will state to Mr. Trist, that if he can at any time furnish her Majesty's Government, through you, with any information which may, directly or indirectly, enable her Majesty's Government to enforce the penalties of the law against British subjects who may be concerned in slave-trade, her Majesty's Government will feel most sincerely obliged to him.

You will observe to Mr. Trist, that the two Governments having, by the 10th article of the treaty of Ghent, mutually engaged to each other that they would "use their utmost endeavors to promote the entire abolition of the slave-trade," it seems to be perfectly consistent with the respect which the agents of each country must feel for the other country, that they should not only themselves act in strict accordance with the spirit of the engagement which their own Government has contracted, but that they should furnish to the agents of the other Government any information which may be calculated to enable that other Government more effectually to accomplish the common purpose.

I am, &c.,

PALMERSTON.

Her Majesty's COMMISSIONERS, &c., &c., &c.

[Enclosure No. 2.]

Mr. Stevenson to Lord Palmerston.

32 UPPER GROSVENOR STREET, *January 18, 1840.*

The undersigned, minister plenipotentiary from the United States, had the honor to receive, on the 2d instant, the note of Lord Palmerston, her Majesty's principal Secretary of State for Foreign Affairs, under date of the 31st of December, with the accompanying despatch and its enclosures, received by her Majesty's Government from its commissioners established at the Havana, under the treaties between Spain and Great Britain for the suppression of the slave trade.

The undersigned will take the earliest opportunity of communicating to his Government copies of Lord Palmerston's note, with the papers accompanying it, including the letter of Mr. Trist, the American consul at the Havana; the original of which, having been sent to the undersigned for the reasons stated in Lord Palmerston's communication, he has now the honor of returning to his lordship, together with the other documents of like character. This would have been done some days ago, but for the great length of Mr. Trist's letter, a copy of which the undersigned was desirous of placing in possession of his Government. As the subject to which these papers relate is one of great delicacy and interest, involving, as it does, the conduct of one of its public functionaries, it will rest alone with the Presi-

gent of the United States to decide upon the measures which it may be proper, under the circumstances, finally to adopt.

The undersigned has the honor to offer to Lord Palmerston reiterated assurances of his distinguished consideration.

A. STEVENSON.

Mr. Forsyth to Mr. Stevenson.

[No. 65]

DEPARTMENT OF STATE,
Washington, January 25, 1840.

SIR : A note, received some time ago at this department, from the British legation here, relating to a supposed abuse of the American flag by subjects of other Powers, to cover the illegal traffic in African slaves, contains, incidentally, a representation against the consul of the United States at Havana, who, it is stated, has, upon certain occasions, while acting for Portuguese subjects in the absence of a consul of that nation, given to the owners or commanders of slave vessels, for them to fill up at pleasure, printed blank forms, to which his signature was affixed ; a practice which her Majesty's Government supposes has contributed in affording material assistance to the masters of such vessels in the detested traffic.

The grave charge above alluded to, having attracted the attention of Mr. Trist in the public journals, some time during the last summer, (7th September,) he addressed a note to this department, (extracts from which are now transmitted to you, in confidence,) requesting that a formal application might be made to the British Government for one or more specimens of the blank forms in question, and for all other specific information that it could furnish relative to the subject ; but, as Mr. Fox, in a conversation with me soon after the receipt of Mr. Trist's letter, intimated that he was about to make a communication to this Government regarding the abuse of its flag, connected with a complaint against the American consul at Havana, it was presumed that one of these blank forms, or at least a transcript of one of them, would probably accompany his letter, and render unnecessary a demand on his Government. In this expectation, I have, however, been disappointed. Mr. Fox's promised communication has been made, without enclosing the paper desired.

It is alike due to the source of these representations, and to the character of Mr. Trist, that a close inquiry should be instituted into his official conduct ; but, before a full investigation of the truth of this charge against him can take place, it will be necessary that this department should be informed of the precise character of the signed blanks referred to, and, if to be had, be possessed of one of them for examination. For this purpose, the President directs that you apply to the British Government, without delay, to communicate to you one or more of the blank forms in question bearing the signature of Mr. Trist, which, so soon as received, you will transmit to me.

I am, sir, your obedient servant,

JOHN FORSYTH.

ANDREW STEVENSON, Esq., &c., &c., &c.

Mr. Stevenson to Mr. Forsyth.—Extract.

[No. 86.]

LEGATION OF THE UNITED STATES,
London, February 18, 1840.

SIR: I received, on the 4th instant, your despatch No. 64, transmitting the papers in relation to the late outrage committed by Lieutenant Elliot, of the British navy, upon the American brig "Edwin," of New York, off the coast of Africa. I immediately addressed an official note to Lord Palmerston on the subject, setting forth the prominent facts of the case, and expressing the expectation of our Government that suitable measures would be taken for inquiry and redress. On the 16th I received his answer, a copy of which, with my two notes, I now enclose.

[Enclosure No. 1.]

Mr. Stevenson to Lord Palmerston.

32 UPPER GROSVENOR STREET, *February 5, 1840.*

The undersigned, envoy extraordinary and minister plenipotentiary from the United States, has been specially charged by his Government to make the following representation to Lord Viscount Palmerston, her Majesty's principal Secretary of State for Foreign Affairs, respecting an alleged violation of the flag of the United States by the commandant of the British sloop of war the "Columbine," in July last, on the coast of Africa. From the affidavits (regularly taken before the American consul at Rio de Janeiro) of James Dayley master, Richard Darling chief mate, John Albertson second mate, and three seamen, of the American brig "Edwin," of New York, which the undersigned has now the honor of transmitting to Lord Palmerston, together with a copy of an official letter from the consul at Rio to the Secretary of State, it appears that, on the 22d of July last, off Ambrise, near the African coast, George Elliot, the commandant of her Majesty's sloop the "Columbine," boarded and took possession of the "Edwin" while at sea prosecuting a lawful trade, and under the protection of the flag of the United States; that, immediately after boarding, Captain Dayley was compelled, by acts of violence, and in the most insulting manner, to quit his vessel; his log book and other papers were forcibly taken from his possession, and he carried on board the British sloop, and there detained as a prisoner, under guard, until the hatches of his vessel were opened, a part of the cargo removed, and a strict search made, to ascertain whether there were any slaves on board. These are the important facts of the case, as they appear conspicuous in the papers now transmitted for the consideration of her Majesty's Government. The grounds alleged by Captain Elliot for this proceeding were, that this brig was engaged in the slave-trade. Now, the affidavits of the captain and the two mates and seamen show that there was no just foundation for any such supposition, and nothing to excuse or extenuate so gross an outrage upon the flag of an independent nation, and the rights of its citizens. On the contrary, the whole proceeding appears to have been one of an aggravated and unwarrantable character.

Upon the subject of the right of British officers to search the vessels of the United States, under pretence of their being engaged in the slave-trade,

it may be proper again distinctly to state to Lord Palmerston, that the Government of the United States can never acquiesce. The undersigned has heretofore taken occasion to announce to her Majesty's Government the determination of that of the United States that her flag is to be the safeguard of all who sail under it, either in peace or war; and, consequently, that no just exception can be allowed in favor of a right of search connected with the slave-trade, or the fulfilment of treaties between Great Britain and other nations for its abolition, to which the United States are not a party. Whilst the United States, therefore, have omitted nothing which was proper to be done for preventing its flag from being used for the protection of a traffic which they were the first to denounce as piracy by their laws, and for the abolition of which their efforts have been as sincerely and cordially directed as those of Great Britain, they cannot acquiesce in the practice of having their vessels and citizens interrupted and detained whilst engaged in commercial pursuits, by British officers, under any pretence such as that exercised by Captain Elliot. The undersigned has therefore been instructed to present this case to the consideration of her Majesty's Government, and to ask for such explanations of the transaction as it may be able to give; and, likewise, to express the just expectation of his Government that, should the complaint be such as it has been represented, her Majesty's Government will not only take pleasure in disavowing the proceeding, but will see fit to mark its disapprobation of such vexatious and reprehensible conduct by a suitable and signal punishment of the individual by whom it has been perpetrated.

The undersigned prays Lord Palmerston to accept renewed assurances of his distinguished consideration.

A. STEVENSON.

[Enclosure No. 2.]

Lord Palmerston to Mr. Stevenson.

FOREIGN OFFICE, *February 15, 1840.*

The undersigned, her Majesty's principal Secretary of State for Foreign Affairs, has received the note which was addressed to him under date of the 5th instant, by Mr. Stevenson, envoy extraordinary and minister plenipotentiary from the United States Government, complaining of the conduct of Lieutenant Elliot, of her Majesty's navy, in examining the papers of the United States vessel "Edwin." The undersigned has desired that inquiry may be immediately instituted into the facts of the case, and will lose no time in making Mr. Stevenson acquainted with the result of his inquiry. The undersigned, in the mean time, begs to inform Mr. Stevenson that strict orders have been given to her Majesty's cruisers employed for the suppression of the slave-trade not to interfere with vessels belonging to countries with which Great Britain has no treaty conceding mutually a right of search. But the undersigned cannot refrain from availing himself of this opportunity of requesting Mr. Stevenson to draw the attention of the President of the United States to the progressively increasing extent to which the citizens and vessels of the Union are engaged in the slave-trade; for, not only do vessels which are not the property of citizens of the United States fraudu-

lently assume the United States flag, in order to cover their criminal undertakings, but, in contempt and violation of the laws of the Union, vessels are built for slave-trade in the ports of the United States, and United States citizens engage more and more in that traffic. Her Majesty's Government, therefore, earnestly hope that the President will take effective means for putting down this evil, by enforcing in the ports of the Union the law against slave-trade, and by sending an adequate number of cruisers to the coast of Africa, to prevent the abuse which is now made of the flag of the Union.

The undersigned avails himself of this occasion to renew to Mr. Stevenson the assurance of his distinguished consideration.

PALMERSTON.

[Enclosure No. 3.]

Mr. Stevenson to Lord Palmerston.

32 UPPER GROSVENOR STREET, *February 17, 1840.*

The undersigned, envoy extraordinary and minister plenipotentiary from the United States, has the honor to acknowledge the receipt of the note of Lord Palmerston, her Majesty's principal Secretary of State for Foreign Affairs, under date of the 15th instant, in answer to that of the undersigned of the 5th, in relation to the conduct of Lieutenant Elliot, of her Majesty's navy, towards the brig "Edwin," of New York, on the coast of Africa. The undersigned will take the earliest opportunity of transmitting a copy of Lord Palmerston's note for the information of his Government, from whom it will doubtless receive the consideration it merits. In the mean time, it may be proper to correct a misapprehension into which his lordship appears to have fallen as to the character of this proceeding. The complaint which the undersigned had the honor of submitting to her Majesty's Government, was not, as Lord Palmerston states, in consequence of Lieutenant Elliot's *examination of the papers of the American brig*, but for an outrage of a marked character upon the flag of the United States and the rights of its citizens. By reference to the note of the undersigned, and the papers which accompanied it, his lordship will perceive that Lieutenant Elliot was charged with having not only boarded and searched the "Edwin," and forcibly taken possession of her log-book and papers, but with having, in a very insulting manner, forced the captain on board the British ship, and there detained him as a prisoner, under guard, until the hatches of his vessel were opened, the cargo removed, and strict search made in every part of it for slaves. It was for such conduct that the Government of the United States directed the case to be brought to the notice of her Majesty's Government, as one which must strike with peculiar force, and offer a favorable opportunity of marking with disapprobation and punishment such unwarrantable proceedings on the part of her Majesty's naval officers towards the vessels and citizens of a friendly nation.

Of the extent to which the citizens and vessels of the United States are now engaged in the slave-trade, the undersigned is wholly uninformed. Upon that subject, he can only repeat the assurances which he has already had the honor of giving Lord Palmerston, that nothing has been omitted on the part of the Government of the United States, within its constitutional

powers, to enforce its laws and regulations for the suppression of the slave-trade, and the solicitude which it feels for its entire abolition. Indeed, the same just and benevolent motives which produced the interdiction now in force against this odious traffic, will, no doubt, continue to be felt by the American Government in giving the fullest efficacy to their own laws and regulations for the suppression of this great evil. This, however, can give no right to the naval officers of those countries who have treaties on the subject of the slave-trade to board and search the vessels of the United States, and harass their commerce, however qualified or restricted the right claimed may be, or under whatever pretence done; and that, consequently, the conduct of Lieutenant Elliot, in the present instance, can be regarded in no other light than as an insult to the flag of the United States, and an outrage upon the rights of its citizens.

The undersigned renews to Lord Palmerston assurances of his distinguished consideration.

A. STEVENSON.

Mr. Stevenson to Mr. Forsyth.

[No. 87.]

LEGATION OF THE UNITED STATES,
London, February 25, 1840.

SIR: I have the honor to transmit, enclosed, copies of a note received yesterday from Lord Palmerston, with the paper which accompanied it, in relation to three vessels lately captured on the coast of Africa by one of her Majesty's naval officers, and engaged in the slave-trade, under cover of the American flag.

One of these vessels appears to have been the *Constituição*, referred to by Mr. Trist in the extract from his letter of the 7th of September last, which accompanied your despatch No. 65, received yesterday by the "South America," and to which my earliest attention shall be given.

As Lord Palmerston's note required only the common answer, I gave the reply, of which a copy is now transmitted.

I am, sir, very respectfully, your obedient servant,

A. STEVENSON.

JOHN FORSYTH, Esq.,
Secretary of State.

[Enclosure No. 1.]

Lord Palmerston to Mr. Stevenson.

FOREIGN OFFICE, *February 24, 1840.*

The undersigned, her Majesty's principal Secretary of State for Foreign Affairs, with reference to recent communications between Mr. Stevenson, envoy extraordinary and minister plenipotentiary from the Government of the United States, and himself, upon the subject of slave trade attempted to be carried on in vessels which profess to belong to citizens of the United States of America, and which bear the flag of the Union, begs to transmit to Mr. Stevenson the accompanying extract of a letter just received from

Lieutenant Matson, commanding her Majesty's brig *Waterwitch*, reporting the proceedings of that vessel while employed under treaties between Great Britain and foreign Powers, for the prevention of illegal traffic in slaves.

The paper in question contains an account of three vessels which Lieut. Matson had recently met with carrying on the slave-trade on the coast of Africa, under cover of the United States flag.

The undersigned requests that Mr. Stevenson will have the goodness to transmit to the United States Government the information contained in that paper.

The undersigned avails himself of this opportunity to renew to Mr. Stevenson the assurances of his distinguished consideration.

PALMERSTON.

[Sub-enclosure.]

Extract of a letter from Lieutenant Matson, of her Majesty's brig "Waterwitch," dated off Prince's island.

OCTOBER 9, 1839.

"On the 8th of July, after a chase of five hours, I captured the Portuguese schooner 'Constiçaõ,' (which vessel I had seen on the evening of the 6th standing out from Lagos, and followed in her supposed track,) having on board 344 slaves. This vessel was sailing under American colors, and by the name of *Dolphin*, until the day she embarked her slaves. She arrived at Sierra Leone under the charge of Mr. Clarence Taylor, mate, on the 20th of July, with the loss of two slaves on the passage.

"On the 3d of August I boarded the American schooner 'Hound,' completely equipped for the slave-trade. She was direct from Havana, where she was fitted so as to enable her to take slaves on board at an hour's notice. Her master, two mates, and one seaman, were Americans; the rest, Spaniards and Portuguese. This vessel sailed shortly after, with slaves, under Portuguese colors; at which time I was absent from Lagos in search of the 'Lynx' and *Dolphin*, and to meet the senior officer.

"On the 27th of September I captured, after a chase of four hours and a half, the Portuguese schooner 'Zete de Abril,' having on board 427 slaves, and despatched her to Sierra Leone, under the charge of Mr. Wilcox, mate. I had several times boarded this vessel during the last three months; at which times she was sailing under American colors, and by the name of 'Mary Cushing;' was not then equipped for slave-trade, though with every appearance of being intended for it. It is quite evident that this, as well as all slavers hoisting the American flag, are sailing with false colors and papers. The papers of the 'Zete de Abril' are dated in October, 1838; whereas she was sailing so late as the 15th of September, 1839, with American colors and papers. The American who formerly acted as master being on board at the time of capture, I have considered it my duty to detain him for the disposal of the senior naval officer, to whom I have specially reported the case."

To Rear Admiral the Hon. G. ELLIOT, C. R.

§c., §c., §c.

[Enclosure No. 2.]

Mr. Stevenson to Lord Palmerston.

32 UPPER GROSVENOR STREET,
February 25, 1840.

MY LORD: I beg to acknowledge the receipt of the note which your lordship did me the honor to address to me yesterday, communicating extracts from a letter of Lieutenant Matson, commanding her Majesty's brig "Waterwitch," in relation to the capture of three vessels on the coast of Africa, engaged in the slave-trade under cover of the flag of the United States.

I will take great pleasure in transmitting, by the earliest opportunity, copies of these papers for the information of my Government; and have the honor to be, with high consideration and respect, your lordship's obedient servant,

A. STEVENSON.

Mr. Stevenson to Mr. Forsyth.—Extract.

[No. 88.]

LEGATION OF THE UNITED STATES,
London, February 29, 1840.

SIR: I acknowledged, on the 25th instant, the receipt of your despatch No. 65, with the accompanying extract from Mr. Trist's letter. I immediately asked an interview with Lord Palmerston, for the purpose of fulfilling the President's wishes; which took place the ensuing day, at the Foreign Office. After explaining the nature and object of the request which I had been instructed to make, Lord Palmerston at once said that he was not quite certain that any of the *printed forms* to which I had referred had ever been in possession of the Government; but that if they had, and could be found, they should be furnished with great pleasure. He moreover said that he would cause an immediate examination to be made; and if it should turn out that these papers had not been forwarded to the department, orders should be sent out to the Havana to have them forwarded through their minister (Mr. Fox) in Washington. As Lord Palmerston was in the act of going down to the House of Commons when I arrived, and our conversation, of course, very brief, I deemed it best, on getting home, to write an official note, to guard against any misunderstanding, and insure an early attention to the subject. I accordingly addressed to his lordship the note, of which a copy is herewith enclosed. No answer has yet been received; but I shall keep this despatch open until the last moment to-night, to enable me, should one come, to forward it by the "British Queen," which sails to-morrow.

[Enclosure.]

Mr. Stevenson to Lord Palmerston.

32 UPPER GROSVENOR STREET,
February 27, 1840.

MY LORD: Since our conversation of yesterday at the Foreign Office, I have deemed it best to put in an official form the explanations which I had the honor of giving to your lordship upon the subject of our interview.

It appears that, in one of the communications from your minister (Mr. Fox) to the Secretary of State, on the subject of the supposed abuse of the American flag by vessels of other Powers engaged in the slave-trade, a representation was incidentally made against Mr. Trist, the consul of the United States at the Havana, who, it was supposed, had (whilst acting for Portuguese subjects, in the absence of the consul of that nation) given to the owners or commandants of slave-ships, to be filled up at pleasure, *printed blank forms*, to which his signature was attached; and which, in the opinion of her Majesty's Government, had contributed in affording essential aid to the masters of such vessels in their illegal and odious traffic. This charge, moreover, it is believed, has been made against Mr. Trist in communications to her Majesty's Government from its colonial authorities.

The President of the United States, feeling that it was due to her Majesty's Government, as well as to the character of the consul, that so grave a charge of official misconduct should be inquired into, has given directions that a strict investigation should take place. This, it appears, has also been asked on the part of Mr. Trist himself. Before, however, an inquiry into the truth of the charge can take place, it has been deemed best to ascertain the precise character of the blanks supposed to have been signed and given by the consul, and, if practicable, to have at least one of them placed in the possession of the American Government. Under this view, I have been instructed by the President to apply to her Majesty's Government on the subject, and to ask that one or more of those printed papers, if in its possession, may be communicated to me with as little delay as possible, to be forwarded to Washington.

I beg leave, therefore, to request that your lordship will do me the honor to state whether there are any of those printed forms, purporting to have been signed by Mr. Trist, in possession of her Majesty's Government; and, if so, whether it will be their pleasure to furnish one or more of them for the purposes indicated.

In the readiness with which the representations of her Majesty's Government upon this subject have been attended to, I flatter myself with the hope that your lordship will not fail to see a spirit of just conciliation on the part of my Government, and a prompt sensibility to a traffic alike in violation of the laws of humanity and those of the two countries.

I pray your lordship to accept assurances of my high consideration and respect.

A. STEVENSON.

Mr. Stevenson to Mr. Forsyth.—Extract.

[No. 89.]

LEGATION OF THE UNITED STATES,
London, March 6, 1840.

I have now the honor to transmit to you the enclosed copy of Lord Palmerston's answer to my note of the 17th ultimo, in the case of the brig "Edwin," of New York, received since the date of my last despatch.

[Enclosure.]

*Lord Palmerston to Mr. Stevenson.*FOREIGN OFFICE, *March 2, 1840.*

The undersigned, her Majesty's principal Secretary of State for Foreign Affairs, with reference to previous correspondence with Mr. Stevenson, envoy extraordinary and minister plenipotentiary of the United States of America, respecting the conduct of Commander Elliot, of her Majesty's ship "Columbine," towards the United States vessel "Edwin," has to acquaint Mr. Stevenson that no report has yet been received at the Admiralty upon this case; but that directions have been given by the Board of Admiralty for instituting an immediate inquiry into the facts stated in the communication from Mr. Stevenson.

The undersigned avails himself of this occasion to renew to Mr. Stevenson the assurances of his distinguished consideration.

PALMERSTON.

Mr. Forsyth to Mr. Stevenson.

[No. 67.]

DEPARTMENT OF STATE,
Washington, March 18, 1840.

SIR: I transmit to you, enclosed, the copy of a despatch addressed to this department, by the consul of the United States at Havana, on the 29th of February last, together with the original documents therein referred to, in which he communicates intelligence of several recent cases of outrage committed by British armed cruisers upon American merchant vessels on the western coast of Africa. These papers are forwarded with a view to enable you again to point the attention of the British Government to the extraordinary and most unjustifiable proceedings of some of her Majesty's naval officers on the African station towards our citizens engaged in lawful commerce on that coast, and to invite such measures on the part of her Britannic Majesty's Government as shall effectually prevent such excesses in future. The case of the brig "Mary," of New Orleans, Tomlinson master, captured on the 18th of August last, when within a short distance of the Gallinas, (her destination,) and subsequently taken to Sierra Leone by the commander of her Britannic Majesty's brig "Forrester," will attract your especial attention, and may properly form the subject of a particular representation, in which you will set forth all the circumstances attending this impudent violation of our flag, as disclosed in the accompanying papers; prefer a claim for indemnification in behalf of the owners of the "Mary;" denounce the conduct of Commander Bond, of the "Forrester," on the occasion referred to; and demand the exemplary punishment of all concerned in this piratical outrage.

I am, sir, your obedient servant,

JOHN FORSYTH.

ANDREW STEVENSON, Esq., &c., &c., &c.

Mr. Stevenson to Mr. Forsyth.—Extract.

[No. 90.]

LEGATION OF THE UNITED STATES,
London, April 13, 1840.

I herewith enclose copies of two notes from Lord Palmerston, upon the subject of the documents desired by the State of Massachusetts, and the printed forms supposed to have been signed by Mr. Trist, our consul at the Havana, in relation to the slave-trade.

[Enclosure.]

Lord Palmerston to Mr. Stevenson.

FOREIGN OFFICE, March 17, 1840.

The undersigned, her Majesty's principal Secretary of State for Foreign Affairs, has the honor to acknowledge the receipt of the note addressed to him on the 27th ultimo, by Mr. Stevenson, envoy extraordinary and minister plenipotentiary from the United States of America, in which Mr. Stevenson requests to be furnished, for the use of his Government, with one at least of certain forms said to have been signed in blank by Mr. Trist, the United States consul at the Havana, and to have been furnished by him to the owners or commandants of vessels about to be engaged in slave-trade; and the undersigned has, in reply, to state to Mr. Stevenson that inquiries will be made whether any papers of this description are in the possession of the British authorities; and, if so, they shall be transmitted to Mr. Stevenson, according to his desire.

The undersigned avails himself of this occasion to renew to Mr. Stevenson the assurance of his distinguished consideration.

PALMERSTON.

Mr. Stevenson to Mr. Forsyth.

[No. 91.]

LEGATION OF THE UNITED STATES,
London, April 14, 1840.

SIR: I have this moment received a letter from Lord Palmerston, in relation to the printed forms requested in your despatch of the 25th of January, of which I subjoin a copy; and am, sir, very respectfully, your obedient servant,

A. STEVENSON.

JOHN FORSYTH, Esq.,
Secretary of State.

[Enclosure.]

Lord Palmerston to Mr. Stevenson.

FOREIGN OFFICE, April 13, 1840.

Lord Palmerston presents his compliments to Mr. Stevenson, and, in reply to that part of his note of the 11th instant which relates to the printed forms said to have been signed in blank by Mr. Trist, has to acquaint Mr. Stevenson that inquiries have been made whether any papers of this description are in the possession of British authorities; and that Lord Palmerston will acquaint Mr. Stevenson with the result of the inquiries as soon as it shall have been made known to her Majesty's Government.

• *Mr. Stevenson to Mr. Forsyth.—Extract.*

[No. 92.]

LEGATION OF THE UNITED STATES,
London, April 28, 1840.

* * * * *
I shall lose no time in examining the documents transmitted in relation to the brig "Mary," and other vessels on the African coast, and fulfilling your instructions.

[Enclosure No. 1.]

Lord Palmerston to Mr. Stevenson.

FOREIGN OFFICE, April 23, 1840.

The undersigned, her Majesty's principal Secretary of State for Foreign Affairs, in his note dated the 9th of September last, had the honor to inform Mr. Stevenson, envoy extraordinary and minister plenipotentiary from the United States of America, that an inquiry had been instituted upon the complaint brought forward by Mr. Stevenson, in his note dated the 26th of August, relative to an alleged outrage committed upon an American ship (the "Susan," of Boston) near Cape Frio light, on the 9th of April, 1839, by the commander of her Majesty's sloop "Grecian" and a boarding-officer from that vessel.

The undersigned has now the honor to transmit to Mr. Stevenson a copy of a letter from the Secretary of the Admiralty, enclosing an extract of a letter from Commander Smyth, of her Majesty's sloop "Grecian," and a copy of a letter from Mr. N. B. Pearse, master of that sloop, explaining the circumstances attending the detention of the "Susan" on the occasion to which Mr. Stevenson's note refers.

The undersigned trusts that the Government of the United States will see, from the narrative which these papers contain, that nothing was done by the officers of the "Grecian," of which the United States Government can justly complain; but that, on the contrary, her Majesty's Government have good ground for complaining of the rude and offensive behavior of Mr. Brewer, a passenger on board the "Susan," towards her Majesty's offi-

cers, while employed in the performance of their duty; and the undersigned has to observe, that, from what is stated in these reports, there seems strong reason to suspect that Mr. Brewer was not unconnected with slave-trade undertakings.

The undersigned has the honor to renew to Mr. Stevenson the assurances of his high consideration.

PALMERSTON.

[Sub-enclosure.]

Sir John Barrow to Lord Leveson.

ADMIRALTY, April 14, 1840.

MY LORD: With reference to your letter of the 7th September last, I am commanded by my Lords Commissioners of the Admiralty to transmit to you, herewith, for the information of Viscount Palmerston, an extract of a letter from Commander Smyth, of her Majesty's sloop "Grecian," dated December 10, 1839, and a copy of a letter from Mr. N. B. Pearse, master of that sloop, which accompanied it, relative to the detention of the American ship "Susan," off Cape Frio, by the "Grecian," on the 9th April, 1839.

I am, &c.,

JOHN BARROW.

[Sub-enclosure.]

Extract of a letter from Commander Smyth, of her Majesty's sloop Grecian, dated December 10, 1839, addressed to Commodore Sullivan, C. B., at Rio de Janeiro.

In reply to your letter of the 25th November, 1839, enclosing copies of a correspondence relative to the United States barque "Susan," boarded by a boat from her Majesty's sloop under my command, I have the honor to state to you, for the information of my Lords Commissioners of the Admiralty, that, while cruising off Cape Frio, I was standing towards the cape with a prize; and at half-past 7 P. M., it being quite dark, flashes were reported as being seen to leeward, which appeared to me to be signals with slave vessels, as I knew that several were expected, and, among them, a barque called the Commodore.

I desired the prize to continue her course for the cape, and then bore up in the direction of the lights, and very soon after discovered a sail; upon which I hoisted a light, and fired a blank gun to bring her to. As far as we (the officers and myself) could distinguish, from the obscurity of the night, the vessel paid no attention to our signals. I then, being anxious not to separate from the prize, ordered a shotted gun to be fired well ahead of the vessel, and shortly after ran up alongside of, and hailed her in the following manner: This is her Britannic Majesty's brig "Grecian"—what barque is that? The answer was: The Susan, from Rio de Janeiro; God damn you, what do you mean by firing a shot across our bows? I'll blow you out of the water.

Not feeling satisfied, from the style of the answer, what the vessel was, I

hailed to say I should send a boat on board. I therefore ordered the jolly-boat to be lowered, and sent Mr. Pearse, master, to ascertain what vessel she was; (and the statement of that officer, which accompanies this letter, relative to what took place on board the Susan, I beg leave to transmit for their lordships' information.)

On the return of the boarding-officer, he related to me, as far as my memory will allow, precisely the words that are in his statement. I confess I should have detained her, and inquired into such unbecoming behavior, had I not been pressed to rejoin the prize, which had on board 430 slaves, who I was extremely anxious should get into port with the utmost speed; therefore every moment's detention to me was of the greatest importance, and I was reluctantly constrained to permit my officer—in fact, my ship—to suffer an indignity, without being able, from circumstances, to examine the case, so as to make an official report thereon. An additional cause of my anxiety to rejoin the prize was through fear that she might mistake the light shown by the Susan for Cape Frio light, which at that time was not visible.

[Sub-enclosure.]

Mr. N. B. Pearse to Commander Smyth.

HER MAJESTY'S SLOOP GRECIAN,
Buenos Ayres, December 10, 1839.

SIR: In compliance with your orders, I beg leave to state what occurred on the night of the 9th April last, while in company with the United States barque "Susan."

Being on board the brig Grecian, cruising off Cape Frio, engaged in the suppression of the slave-trade, and particularly looking out for a slave barque that was daily expected, (viz: the Commodore,) at 7 h. 30 m., P. M., it being very dark, a light was observed in-shore of us, which was visible only at intervals, but when visible was very bright; this was suspected to be a slave vessel making signals to the shore, (this being a place where slaves in great quantities are landed.) We stood after her, and fired a blank gun; and she not heaving to, a shot was fired ahead of her. On closing with her, she seemed to be a barque. She was hailed by you from the fore-castle, telling what ship this was, and asking what she was. The reply was, the ship's name, and "God damn you, what do you mean by firing across our bows? if you fire again, I'll blow you out of the water." I was then ordered to board her, which I did in the jolly boat. On going alongside, I had considerable difficulty in getting on board, it being very dark, and a considerable sea on. No rope was handed over the side, or any of the usual assistance given to a boat going alongside of a vessel.

I had considerable difficulty in scrambling up her side. When I got on deck, I called for the captain; but was immediately surrounded by several persons, who were most clamorous and noisy—particularly one person of the name of Brewer, whose language and general deportment was most insolent and abusive. I told him I had nothing to say to him, but wished to see the captain; on which he merely continued to repeat his abuse, and to offer every interruption to my obtaining any information as to what the vessel was. I repeated to him several times that I had no business with

him, and wished to say nothing to any one but the captain; but all my efforts to have any conversation with him (for as yet I had not seen him) were interrupted by the noisy and turbulent behavior of the said Mr. Brewer, who was now joined in his reproaches and abuse by the other persons standing round, and much confusion was produced on deck by their violent language and insolent menaces.

I had not yet seen the captain; and, although I believed Mr. Brewer to be an American citizen, my mind was by no means free from suspicion of the vessel being a slaver; this same Mr. Brewer having declared, in a boasting manner, some time previously, in Rio de Janeiro, that he was the person who had sold the very slave vessel that we were now in chase of (the Commodore) to her present owners. Under these circumstances, I told them that if I was interrupted by them in communicating with the captain, I should make a signal to the brig for assistance, and calling one man out of the boat, and desiring him to bring a musket and lantern to enable me to make the necessary signal. I had not yet seen the captain, nor had I any proof of the nationality of the vessel. They were now more silent; and having at length ascertained who was captain, I asked him to show me his papers. Mr. Brewer then again interfered, desiring the captain to show nothing but the register. I told them I only wished to satisfy myself that she was an American vessel. I went into the cabin with the captain, and inspected the register, and entered her name, &c., in the boarding-book, in the usual manner. While so engaged, Mr. Brewer and the other passengers came into the cabin. I asked the captain why he gave such an answer to a British man-of-war hailing her; when he told me he had made no such reply, and that that was given had been given by Mr. Brewer, who was a passenger, but not by him, (the captain.) While making the short notation in the boarding-book, Mr. Brewer and the others insisted on my going away and not detaining them; to which I replied, that I should take what time was necessary.

The only time that was lost was by the insolent behavior of Mr. Brewer and the others.

Having seen the register, and being satisfied that she was a regular trading vessel, I made no further inquiries, but left the vessel, requesting she would not make sail until I got on board the Grecian to make the report of her.

I came on board the Grecian, then within hail of the Susan; and having reported her, you immediately hailed her to go on.

From the time she first hove to, until she filled again, it did not exceed half an hour; and the time occupied by me in examining her register, when once produced, did not exceed five minutes.

The whole affair occupied as little time as possible, having been ordered to return immediately in order to rejoin the Gauges prize slave brig, from which we had parted company, and being anxious about her, lest she should have been deceived by the lights seen from the Susan, and mistaken them for Cape Frio light, which was not then visible.

And I further state, that I am ready, if called upon, to substantiate, on oath, the foregoing statement.

I have, &c.,

N. B. PEARSE,
Master of H. M. sloop Grecian.

[Enclosure No. 2.]

*Mr. Stevenson to Lord Palmerston.*32 UPPER GROSVENOR STREET,
April 27, 1840.

Mr. Stevenson presents his compliments to Lord Palmerston, and has the honor to acknowledge the receipt of his lordship's note of the 23d instant, relative to the case of the American ship Susan, of Boston, submitted for the consideration of her Majesty's Government in August last.

Mr. Stevenson will take an early opportunity of transmitting Lord Palmerston's note to his Government; and avails himself of this opportunity to renew to his lordship assurances of his high consideration.

Mr. Stevenson to Mr. Forsyth.—Extract.

[No. 96.]

LEGATION OF THE UNITED STATES,
London, June 3, 1840.

* * * * *

I now transmit to you a copy of my note to Lord Palmerston, complaining of the outrage committed upon the American brig Mary, of New Orleans, by one of the British cruisers on the African coast. No answer has yet been received, nor is it probable that one will be given for some time to come. Several of my former notes, in similar cases, remain unanswered.

[Enclosure.]

32 UPPER GROSVENOR STREET, May 15, 1840.

The undersigned, envoy extraordinary and minister plenipotentiary from the United States, has the honor to inform Lord Palmerston, her Majesty's principal Secretary of State for Foreign Affairs, that he has received instructions which make it his duty again to invite the attention of her Majesty's Government to the continued excesses which, it appears, are still practised by British naval officers upon the vessels and commerce of the United States in the African seas, and more particularly to bring to its notice a recent aggression, of a marked and extraordinary character, committed by the commander of one of her Majesty's cruisers upon an American brig on the high seas, and which, in the opinion of the President of the United States, calls for the immediate action of her Majesty's Government.

To enable Lord Palmerston to judge of the nature and extent of this outrage, the undersigned has the honor of transmitting to his lordship the accompanying documents, detailing the whole proceeding; amongst which will be found the original log-book of the American brig, from the time of her sailing from the Havana to that of her return to that port, four or five months after.

From these papers it appears, that on the 21st of June, 1839, an American brig, called the "Mary," the property of Peter Sabate, of the city of New Orleans, and under the command of Captain David Tomlinson, (both

citizens of the United States,) sailed from the Havana for the Gallinas and Cape Lopez, with a valuable cargo of merchandise belonging to the commercial house of Blanco & Cabello, of that city.

That this vessel was regularly cleared from the Havana, by the consul of the United States, for ports on the African coast.

That on the 18th of August, whilst pursuing her voyage, and within sight of Cape Mount, and not more than twenty-five or thirty miles from the port of destination, a British cruiser called the "Forester," commanded by William Bond, and sailing under the British flag, bore down and fired a gun across the bow of the "Mary," for her to heave to.

That the American colors were hoisted on board the brig, and in full view of the British cruiser.

That Captain Tomlinson accordingly came to, when his vessel was immediately boarded by the commandant of the "Forester," with a subordinate officer and six or eight of the crew.

That, upon examination of the ship's papers, which were all regular, Captain Bond expressed himself dissatisfied; declared that the American consul at the Havana, by whom they were signed, had been removed by his Government; ordered the hatches immediately to be opened, turned up and examined the whole cargo, broke open and destroyed ten boxes, or liquor cases, and finally seized the said vessel and cargo as lawful prize.

That the vessel was thereupon carried by force into Sierra Leone for condemnation; but the prize court refused to exercise jurisdiction over her, upon the ground that she was American property, and that the seizure had been unauthorized and illegal.

That this took place on Saturday, the 24th of August, at 3 o'clock P. M.; at which time orders were given to Captain Tomlinson to leave the port by 1 o'clock the following day, with a further notification that if there was any delay beyond that hour, his vessel would be again seized.

That his papers were then in possession of Captain Bond, as were also five of her crew; and that she had not, besides, suitable provisions of wood and water for going to sea.

That it was not until after 3 o'clock that possession of the brig was restored to Captain Tomlinson by the officer, with a part of her papers and four of her crew. On the following day, however, she was again boarded by another officer, who brought with him the remainder of the papers, without the fifth seaman, (the steward,) who was retained.

That, in consequence of this notification, Captain Tomlinson made immediate preparation to sail, and accordingly put to sea, though so unprovided with wood and water as to make it extremely hazardous to do so.

That on the 30th of August the brig reached the Gallinas, where she went for provisions; and on the 23d of September Captain Tomlinson died, from a fever which he had taken in consequence of his detention in the deadly climate of the African coast.

It further appears that the "Mary" was a clump brig, utterly unsuitable for the purposes of a slaver, and manifestly intended for the employment in which she was engaged—of transporting cargoes of ordinary merchandise.

Such is a brief recital of the facts of this case, which will be found, however, more particularly detailed in the documents which accompany this letter. They afford proof too manifest and decisive to leave room for doubt or denial as to the extent of the outrage, or the reparation which it calls for.

Not content with having boarded and searched, (acts in themselves of in-

sult and violence,) the commandant of the British cruiser had the temerity actually to capture and send into a foreign port for condemnation, in time of peace, as lawful prize, the vessel of a friendly nation engaged in lawful commerce upon the high seas, and under the protection and jurisdiction of its own flag; and that, too, in the absence of that degree of suspicion which, under the provisions of existing treaties between Great Britain and other nations in relation to the slave-trade, would alone justify a mutual right of search in, and capture of, their respective vessels.

Indeed, the whole proceeding on the part of Captain Bond would seem to want nothing to give it the character of a most flagrant and daring outrage; and very little, if any thing, to sink it into an act of open and direct piracy.

Such is the view of the case which the undersigned has been instructed to present to the consideration of her Majesty's Government; and in preferring a claim for suitable indemnity to the owners of the "Mary," he has been further directed to ask for the exemplary punishment of the commander of the "Forester," and those concerned in so wanton and unjustifiable an outrage.

In performing this duty, the undersigned will forbear to enlarge upon the subject. After the former notes which he has had the honor of addressing to Lord Palmerston, and in which he took occasion to express very fully the views of his Government in relation to these violations of its flag, and the vexatious interruptions to which the commerce and navigation of the United States are subjected by her Majesty's cruisers on the coast of Africa, it cannot be necessary to do more than to place her Majesty's Government in possession of the facts, and invite its early adoption of such measures as will have the effect of guarding for the future against such unwarrantable excesses on the part of its naval officers.

Lord Palmerston will not fail to see how unpleasant and painful it must be to the President to have complaints of this character so often pressed upon the attention of her Majesty's Government, and the necessity and importance of preventing their repetition. Indeed, it would indicate a want of confidence in a Government which so well understands its own rights, and what is due to it from other nations, not to infer that a case of such gross indignity and insult, one so inconsistent with all international courtesy, and ill-suited to the friendly relations of two such countries, would be promptly redressed and signally punished.

The undersigned takes occasion to renew to Lord Palmerston assurances of his distinguished consideration.

A. STEVENSON.

Mr. Forsyth to Mr. Stevenson.

[No. 73.]

DEPARTMENT OF STATE,
Washington, July 8, 1840.

SIR: Your despatch No. 92 was duly received and laid before the President. The answer given by Lord Palmerston to your note complaining of the outrage committed by the officers of the British sloop-of-war "Grecian" upon the barque "Susan," is of a nature to call for an early recurrence to the subject in your correspondence with the British Government. You will, accordingly, on the receipt of this despatch, address to Lord Palmerston an official note in the following terms:

“The President has read with feelings of surprise and regret the answer returned by her Majesty’s Government to the complaint preferred on the part of the United States, in the affair of the barque ‘Susan.’ That answer cannot be considered as otherwise than unsatisfactory. The conduct of the British officers is attempted to be justified on their bare and unsupported statements, totally at variance with, and in entire disregard of, the facts registered with every formality usual on such occasions, in the log-book of the ‘Susan ;’ supported, as these are, by the asseverations of persons of respectability, then passengers on board the vessel. In justice to the rights of their citizens, and in pursuance of the principles which the United States have assumed, such an occurrence as that under consideration cannot be allowed to pass over in the manner in which it has been treated by her Majesty’s Government. It would be foreign to the purposes of this communication to raise questions of law out of the occurrence which gave rise to the complaint of the United States.

“The circumstances under which the right of boarding and visiting vessels at sea is usually enforced, are defined with sufficient clearness ; and, even where the right is admitted, usage among civilized nations has prescribed with equal precision the manner in which it is to be exercised. The motive of this communication is, that the British Government should be clearly made sensible that the United States cannot, in justice to their own citizens, permit the recurrence of such causes of complaint. If, in the treaties concluded between Great Britain and other Powers, the latter have thought fit, for the attainment of a particular object, to surrender to British cruisers certain rights and authority not recognised by maritime law, their officers charged with the execution of those treaties must bear in mind that their operation cannot give a right to interfere in any manner with the flag of nations not parties to them. The United States not being such a party, vessels legally sailing under their flag can in no case be called upon to submit to the operation of said treaties ; and it behoves their Government to protect and sustain its citizens in every justifiable effort to resist all attempts to subject them to the rules therein established, or to any consequent deductions therefrom.

“The United States cannot look with indifference upon the laudable exertions made by Great Britain and her allies in the suppression of the slave-trade, towards the attainment of the great object in view ; and so long as those efforts are confined within their proper sphere, they will command applause and good wishes from the people and Government of the United States. But they must be considered as exceeding their appropriate limits, whenever they shall lead to such acts as those which form the subject of this communication. The President has been advised that, on frequent occasions, the flag of the United States, as well as those of other nations, has been fraudulently used by subjects of other countries to cover illicit commerce, and elude the pursuit of British and other cruisers employed in the suppression of the African slave-trade ; and that a pretext has thereby been afforded for boarding, visiting, and interrupting vessels bearing the American flag. The several complaints to which the subject has given rise should convince her Majesty’s Government of the great abuse to which the practice is liable, and make it sensible of the propriety of its immediate discontinuance. It is a matter of regret that this practice has not already been abandoned. The President, on learning the abuses which had grown out of it, and with a view to do away every cause for its longer

continuance, having now directed the establishment of a competent naval force to cruise along those parts of the African coast which American vessels are in the habit of visiting in the pursuit of their lawful commerce, and where it is alleged that the slave-trade has been carried on under an illegal use of the flag of the United States, has a right to expect that positive instructions will be given to all her Majesty's officers to forbear from boarding or visiting vessels under the American flag. This expectation is now distinctly signified to her Majesty's Government, in the belief that it will see the propriety of confining the action of its agents to the vessels of nations with whom her Majesty's Government has formed stipulations authorizing a departure from the rules prescribed by the public law, and thereby prevent the recurrence of circumstances inevitably productive of causes of irritation, and deeply endangering the good understanding now existing between the two nations, and which it is so much the interest of both to maintain unimpaired."

I am, sir, your obedient servant,

JOHN FORSYTH.

ANDREW STEVENSON, Esq.,
 &c., &c., &c.

Mr. Stevenson to Mr. Forsyth.—Extract.

[No. 101.]

LEGATION OF THE UNITED STATES,
 London, July 24, 1840.

SIR: I transmit to you the enclosed copies of papers received a few days ago from the Foreign Office, respecting a schooner called the "Euphrates," equipped for the slave-trade, and having papers, as an American vessel, signed by the vice-consul of the United States at the Havana. I simply acknowledged the receipt of the papers, with an assurance that they would be forwarded for the information of my Government.

[Enclosure No. 1.]

Lord Leveson to Mr. Stevenson.

FOREIGN OFFICE, July 21, 1840.

SIR: I have the honor to transmit to you, for the information of the United States Government, the accompanying extract from a despatch which I have recently received from her Majesty's commissioners at Sierra Leone, together with a copy of its enclosure respecting a schooner named the "Euphrates," equipped for the slave-trade, and furnished, by the vice-consul of the United States at the Havana, with papers as an American vessel.

I have the honor to be, sir, your most obedient, humble servant,
 LEVESON.

A. STEVENSON, Esq., &c., &c., &c.

[Sub-enclosure.]

Extract of a despatch from her Majesty's commissioners at Sierra Leone to Viscount Palmerston, dated July 3, 1839.

MY LORD: We have the honor to inform your lordship that her Majesty's brigantine Dolphin, Lieutenant Edward Holland commanding, being, on the 17th ultimo, in 5° 52' north latitude, and 10° west longitude, detained the schooner "Euphrates," sailing under American colors, (but having no colors hoisted at the time of seizure, which took place during the night,) furnished with papers, as an American vessel, by the vice-consul of the United States at Havana, and commanded by Charles A. Molan, a naturalized citizen of the United States, who declared, with respect to the detained schooner of which he was the alleged master and owner, that she was bound from Havana to the coast of Africa, and was to return to Baltimore.

In the declaration of seizure which Lieutenant Holland presented, on the 26th ultimo, to the judges of the British and Spanish mixed court of justice, accompanied by a petition that the "Euphrates" might be admitted to prosecution, the captor stated that he had detained the said schooner for being Spanish property and equipped for the slave-trade, contrary to the tenth article of the treaty between Great Britain and Spain, signed at Madrid on the 28th of June, 1835; and further, that, by her log, she had, since her arrival on the coast, been engaged in supplying the notorious slave establishments at Gallinas and Young Sisters with rice, contrary to the spirit of the fourth article of the aforesaid treaty.

For the reasons which have frequently before been mentioned as having prevented our acknowledging the right of detention of American vessels, or of such vessels as are recognised as American by the authorities of the United States, we declined to permit of the "Euphrates" being libelled in the British and Spanish court. The captor appeared to expect that a distinction would be made by the court between this case and others of the same class, in consequence of the "Euphrates" hoisting no colors at the time of seizure; but, as the schooner was boarded at night, the wearing her colors at such a time would have been contrary to the universal practice.

We have the honor to enclose to your lordship an abstract of the ship's papers found on board the "*Euphrates*."

H. W. MACAULAY,
WALTER W. LEWIS.

[Sub-enclosure.]

Abstract of the papers found on board the schooner "Euphrates," Charles A. Molan master.

No. 1 is a cancelled American register, cut from the right-hand corner at the top to the left-hand corner at the bottom, and of which only one half was on board the vessel. It is endorsed, "Register No. 24, schooner 'Euphrates,' of Baltimore, 16th March, 1838, tons 84 $\frac{3}{4}$." Attached to this mutilated document, is a bill of sale, filled up in the usual printed form, in the

handwriting of Mr. J. A. Smith, the vice-consul of the United States at the Havana, and by which Thomas Dukehart, of Baltimore, sole owner of the "Euphrates," transfers that vessel for the sum of \$3,800 to Charles A. Molan, a naturalized citizen of New York.

The above deed of sale was signed and sealed by the buyer and seller, at Havana, on the 5th December last; and Mr. Smith, who copied the paper, added to it, on the same day, two certificates under his signature and seal of office—one, to declare that Dukehart had acknowledged the transfer as his act and deed; and the other, to state that the purchaser of the vessel was also the master, and had taken the appointed oath as such, according to law.

No. 2 is an official muster-roll, prepared and certified in the office of the American consulate at Havana, on the day following that on which the bill of sale was executed. It is entitled, "List of persons composing the crew of the schooner 'Euphrates,' of Baltimore, whereof is master Charles A. Molan, bound for Gallinas, coast of Africa."

	Places of residence.	Of what country subjects.
Nicholas Fernandez,	Havana	Spain.
Pedro Orfila,	do.	do.
Francisco Lerda,	do.	do.
Francisco Rodriguez,	do.	do.
Cayetano Nadal,	do.	do.
Benito Berino,	do.	do.
José Padron,	do.	do.

The master, Molan, adds his signature, and Mr. Vice-Consul Smith certifies that the list was verified in his presence. It surely cannot be consistent with the wishes of the United States Government that one of its national vessels, on the day following its sale in a Spanish port, should be despatched, under the sanction of an American consul, to the most notorious slave-mart on the coast of Africa, navigated entirely by a foreign crew, of whom every person, without one exception, was a resident of Havana and a subject of Spain.

Nos. 3 and 4. On the same day two passports were taken out by Don Pedro Badia and Don Francisco Canal, who were described as passengers making a voyage in the "Euphrates" to the *Cape Verd islands*. These persons were evidently the Spanish master and mate of the nominal American vessel; and their character may be correctly estimated by what is known of their previous history. Pedro Badia was the captain of the "Vingador," captured on the 8th of January, 1834, by her Majesty's steam-vessel "Pluto," with four hundred and five slaves on board. The "Vingador" was very heavily armed, and made considerable resistance to capture. Speaking of Badia, so long ago as February, 1834, (class A, 1834, page 15,) her Majesty's commissioners at this place remarked that he was well known in connexion with "illicit adventures from Havana."

Francisco Canal, the other pretended passenger, was master of the Spanish schooner "Dolores," condemned in the British and Spanish mixed court of justice at this place, on the 23d of May, 1837, for having been captured with three hundred and fourteen slaves on board, (class A, 1837, page 30.)

No. 5 is the custom-house clearance from Havana, in which Molan, the American captain of the flag, is called Captain Molena. His vessel was cleared out on the 7th of December last for Newiester—meaning, we pre-

sume, for Newcastle—the large slaving station of Monsieur Teodore Canot, in the neighborhood of Gallinas. Amongst the shippers of the cargo, we meet with the names of the English house of Messieurs Drake & Co., of Havana.

No. 6 is a log-book, written in miserable English. The sea-log begins on the 9th of December last, under the general head of "Transactions on board the schooner 'Euphrates,' from Havana to Gallinas." On the 31st of January, the schooner reached the Rio Pongos, and remained in that river until the 26th February. On the 4th March, she was off Cape Mesurado; and, on the 7th, was boarded by a British brig-of-war, (name not mentioned,) and again, on the 10th, by the same brig. On the 12th, she was boarded by her Majesty's brigantine "Forester;" and again, on the 6th of April, by the same man-of-war, who overhauled her "suspecting" (as Captain Molan remarks) "her to be a slaver, which God forbid she ever should be while I command her." On the 19th of April, the schooner was boarded by her Majesty's brigantine "Tompkin," (Termagant must be meant,) and, on the following day, by her Majesty's brig "Saracen," when Lieutenant Hill, the commander of the "Saracen," endorsed on the ship's papers that the schooner was evidently prepared for the slave-trade. She was subsequently boarded, on the 14th of May, by her Majesty's brigantine "Dolphin," and, on the 17th of May, by her Majesty's brig "Harlequin." The log ends on the 15th ultimo; and the schooner's detention by the "Dolphin," Lieutenant Edward Holland commander, took place during the night of the 16th ultimo.

No. 7 is a bundle of papers, of no particular interest. One of them shows that the writer had been on board the American ship "Black Hawk," commanded by Captain Hickling, whose name has already come before us in connexion with slave-trade.

SIERRA LEONE, July 3, 1839.

[Enclosure No. 2.]

Mr. Stevenson to Lord Leveson.

32 UPPER GROSVENOR STREET,
July 22, 1840.

MY LORD: I have the honor to acknowledge the receipt of your note of yesterday, communicating an extract from a despatch recently received from her Majesty's commissioners at Sierra Leone, together with copies of its enclosures, respecting the schooner called the "Euphrates," equipped for the slave-trade, and furnished with papers which purport to have been signed by the vice-consul of the United States at the Havana, as an American vessel.

I will take the earliest opportunity of transmitting copies of the papers for the information of my Government, from whom the subject will doubtless receive the attention its importance merits.

I have the honor to be your lordship's obedient, humble servant,
A. STEVENSON.

LORD LEVESON, &c., &c., &c.

Mr. Stevenson to Mr. Forsyth.

[No. 102.]

LEGATION OF THE UNITED STATES,
London, August 4, 1840.

SIR: I received last week a note from Lord Palmerston, communicating sundry papers received from the British commissioners at Sierra Leone, in relation to the capture and condemnation of the schooner *Ontario* as a slaver, copies of which I herewith transmit. I acknowledged the receipt of these papers, as you will see by the copy of my reply, without comment.

I am, sir, respectfully, your obedient servant,

A. STEVENSON.

J. FORSYTH, Esq.,
Secretary of State.

[Enclosure No. 1.]

*Lord Palmerston to Mr. Stevenson.*FOREIGN OFFICE, *July 31, 1840.*

SIR: I herewith transmit to you, for communication to the Government of the United States, the copies of two despatches from her Majesty's commissioners at Sierra Leone, upon the subject of the schooner *Ontario*, captured, while sailing under Spanish colors, with two hundred and twenty slaves on board, and condemned in the British and Spanish court of justice at Sierra Leone; and I have to request that you will draw the attention of the President to the accompanying abstract of the American papers, under which the *Ontario* had sailed up to the day when her slaves were embarked.

I have the honor to be, sir, your most obedient, humble servant,

PALMERSTON.

A. STEVENSON, Esq.,
&c., &c., &c.

[Sub enclosure.]

[SPAIN No. 6.]

SIERRA LEONE, *January 20, 1839.*

MY LORD: We have the honor to enclose to your lordship our report of the case of the schooner *Ontario*, Gregorio Martinez acting master, captured under Spanish colors, on the 13th ultimo, by her Majesty's sloop *Pelican*, Brunswick Popham, Esq., commanding, with two hundred and nineteen slaves on board, who had been shipped on the 14th ultimo in the river Nun, and were bound to Havana.

Until within a fortnight of the embarkation of her slaves, the *Ontario* had professed to bear an American character; but, on the 1st ultimo, a bill of sale was executed by the alleged American owner to the late master, José María Mendez, who had previously acted as captain, and shipped the Spanish crew of the vessel at the Havana. We believe the American papers to have been altogether colorable, and merely intended to protect the *Ontario* in her outward voyage. This purpose having been answered, the American flag was repudiated at the moment it became unsafe any longer to sail under it, and the Spanish flag was assumed; which, though it allowed of visitation and

search, would not, like the American, expose the crew to execution as pirates if they had chanced to have fallen in with an American cruiser.

The Ontario, having been captured under Spanish colors, and bound to the same Spanish port where the voyage commenced, with a cargo of slaves on board, had rendered herself liable to condemnation under the slave-trade treaty with Spain. As soon, therefore, as the case was closed, a sentence was pronounced, confiscating the detained vessel, and emancipating the two hundred survivors of the slaves who had been found in the detained vessel by the captor.

We have, &c.,

H. W. MACAULAY,
R. DOHERTY.

Rt. Hon. VISCOUNT PALMERSTON,
G. C. B., &c., &c., &c.

[Sub-enclosure.]

Report of the case of the schooner Ontario, Gregorio Martinez acting master.

SIERRA LEONE, January 20, 1839.

This vessel may be said to have been found without any ship's papers at all. Until within a few days of her capture, with two hundred and twenty slaves on board, she professed to be an American vessel; but, on the eve of the embarkation of a cargo, (which, if found on board her whilst sailing under the flag of the United States, by an American cruiser on the coast, would have exposed the captain and crew to summary punishment as pirates,) a bill of sale was executed by Eleazer Huntington, the late apparent American captain and owner, to a Spaniard of the name of José Maria Mendez.

This bill of sale was signed and sealed in the river Nun, on the 1st ultimo, in the presence of José Cardezo, the captain, and Cayetano Gonzalez, a passenger on board the schooner Magdalena, reported in our last despatch.

Immediately after the transfer had taken place, the Ontario, without changing her name, or procuring a register or passport of any description, assumed the Spanish flag, and took on board a cargo of slaves for the island of Cuba. The fact that she was sailing under Spanish colors, and professed to bear a Spanish national character at the time of capture, had, notwithstanding the absence of any documents to confirm the pretensions of the Ontario, given to the captor the right to visit, search, and afterwards to detain the guilty vessel, when he found that she had actually on board a full cargo of slaves, with whom she was bound to a Spanish port.

As none of the American papers belonging to the Ontario when she carried the American flag were given up to Mendez when the vessel became his property, there is reason to believe that those American papers will again be made use of by the late owner, (Huntington,) in order to protect in the same manner some other Spanish vessel on future voyages to this coast; and that the mock ceremony of a transfer will again be gone through at the moment when, by the embarkation of a cargo of slaves, the continuing to sail under the American flag will be attended with difficulty and danger.

No. 2 is headed, "list of persons composing the crew of the schooner On-

tario of Baltimore, whereof is master Eleazer Huntington, bound for the island of Santome." It is dated at Havana, the 20th of June, 1838, and is signed by Eleazer Huntington. A certificate is added, under the hand and seal of the American consul at Havana, that Huntington had sworn to the correctness of the names of the crew, with the places of their birth and residence so far as he can ascertain the same. On turning to the list, we find that, out of the eight men who navigated this American vessel, three are said to be Spaniards, five Portuguese, and *not one* is even pretended to be a citizen of the United States.

No. 3 is the log-book, in Spanish, for the four first days of the present voyage.

On the 9th instant, the Ontario arrived in this harbor with two hundred slaves on board, and was immediately visited by the marshal and surgeon to the courts. The slaves were landed on the same day, and the prosecution of the vessel proceeded in the usual manner.

The captor's declaration is to the following effect: "I, Brunswick Popham, Esq., captain of her Britannic Majesty's sloop Pelican, hereby declare that, on the 18th day of December, 1838, I detained the schooner named Ontario, sailing under Spanish colors, and commanded by José Hemans, who declared her to be bound from the river Nun to Havana, and having on board two hundred and twenty slaves, said to have been taken on board in the river Nun, on the 4th day of December, 1838."

The acting master, Gregorio Martinez, when examined on the standing interrogatories, deposed: "That he was born at Cadiz; has lived ten years at Havana; is a subject of Spain, and has never served any other State: that he took charge of the vessel on the 28th December, in consequence of the successive deaths of the master before capture, and of the mate since; that he first saw the vessel at Havana, about nine months since, and she is American built; that the vessel sailed under Spanish colors, and had no others; that the vessel is called Ontario, and witness never heard of her bearing any other name; that there were ten officers and mariners, exclusive of witness, all Spaniards, who were hired and shipped by the late master at Havana, seven months ago; that the last clearing port was Havana, where the voyage began and was to have ended; that from Havana the vessel came direct to the river Nun for slaves; that the sole owner of the vessel was José Maria Mendez, who was also the late master, and is a resident of Havana; that the late master was the sole owner, lader, and consignee of the cargo; and the vessel, with respect to her employment in trade, was under his sole management."

From this evidence it would appear that the American papers which the Ontario carried on the outward voyage, and the bill of sale executed in the river Nun on the 1st ultimo, were entirely colorable; and that the vessel was actually Spanish, and the property of Mendez, when she left Havana in June, 1838, being so regarded by the crew whom Mendez shipped at that place.

Another witness was produced by the captor's proctor, but his evidence only served to corroborate that of the acting master.

The case being closed, a court was summoned for the 17th current, on which day the monition was returnable by the marshal. The judgment of the court was, that the schooner Ontario be condemned as good and lawful prize, and that the survivors of the slaves captured on board of her, two hundred in number, be emancipated; nineteen having died subsequently

to capture, and two hundred and nineteen having been on board at the moment of detention.

H. W. MACAULAY,
R. DOHERTY.

[Sub-enclosure.]

SIERRA LEONE, *May 13, 1839.*

MY LORD: In our despatch (marked Spain, No. 6) of the 20th of January last, containing our report of the case of the schooner Ontario, captured whilst sailing under Spanish colors, with two hundred and twenty slaves on board, we remarked that the American papers, under which the Ontario had sailed up to the day when her slaves were embarked, still remained in the possession of Eleazer Huntington, the former owner of that vessel, and would probably be again made use of, as before, to protect some other Spanish vessel, until a shipment of slaves rendered such papers no longer available.

At the time of the detention of the schooner Traveller, by her Majesty's sloop Harlequin, as reported in our despatch of this date, the same Eleazer Huntington was found on board in the character of a passenger, and as such accompanied the Traveller to Sierra Leone.

The opportunity thus offered of preventing any further use being made of the Ontario's American papers was gladly embraced; and when they were placed in our hands by the kindness of Lord Francis Russell, the captor of the Traveller, a memorandum in the following words was written in a large hand across the body of each document:

"SIERRA LEONE, *May 7, 1839.*

"The within-named schooner Ontario, of Baltimore, was sold and transferred by Eleazer Huntington to José Maria Mendez, in the river Nun, on the coast of Africa, on the 1st day of December, 1838, and was captured a few days after by her Majesty's sloop Pelican, with two hundred and twenty slaves on board, who had been embarked in the aforesaid river. The Ontario was subsequently condemned at Sierra Leone, where she was cut up and entirely destroyed.

"H. W. MACAULAY,
"British Commissary Judge."

The rage exhibited by Mr. Huntington on receiving back his papers endorsed as above, sufficiently proved that he had contemplated some further improper use of documents which related to a vessel no longer in existence, and which had been cut up and destroyed under our own inspection.

It is curious to observe, in reference to the abstract of the Ontario's papers, which we have the honor to enclose to your lordship, how frequently, even within our own limited experience, the names of the same parties are met with in connexion with the slave-trade adventures under the American flag; and we trust that the information which we have been able to obtain respecting these persons will induce the authorities of the United States to watch their illegal proceedings more vigilantly.

Three of the four original owners of the Ontario (namely, William Hoop-

er, Andronicus Cheeseborough, and Thomas Whitridge,) were the original owners of the *Mary Cushing*, reported on the 30th ultimo. There is a difference only of twenty one days in the dates of the two registers; and in each case a power of attorney was prepared by the notary public (Fernandez) on the same day that the registers were taken out, authorizing the respective masters to sell their vessels forthwith.

Thomas Wingate, the master of the *Ontario*, to whom authority was given to sell the schooner, is the same person to whom a similar power was granted by the owners of the *Eagle*, just six weeks subsequently, as reported in our despatch of the 12th February last. Wingate sold the *Eagle* at the Havana, on the 10th of March, 1838, and the *Ontario* on the 31st of May, 1838. It would thus appear that Wingate was appointed master of those vessels solely for the purpose of selling them. He was placed in the command of the *Ontario* in October, 1837, and sold her in May, 1838; and in the period between these two dates, (namely, between December, 1837, and March, 1838,) he both commanded and sold the *Eagle*, if any reliance is to be placed on the representations of the American authorities at Havana.

Nathan Farnsworth, who was the purchaser of the *Ontario* on the 31st of May, 1838, was also the purchaser of the *Traveller* on the 7th July, 1838, as mentioned in another despatch to your lordship of this date; and Peter Crusoe, who was a witness to the execution of the bill of sale of the *Traveller*, acted in the same capacity when the *Ontario* was transferred to Farnsworth, and afterwards when the same vessel was purchased by Eleazer Huntington.

We have, &c.,

H. W. MACAULAY,
W. W. LEWIS.

Rt. Hon. VISCOUNT PALMERSTON,
G. C. B., &c., &c., &c.

[Sub-enclosure.]

Abstract of the papers of the schooner Ontario, Eleazer Huntington master.

No. 1. The principal papers of the vessel are attached together, and endorsed in the following words by Mr. N. P. Trist, the American consul at the Havana:

"I, N. P. Trist, consul, &c., do hereby certify that the documents hereunto attached are the true and proper title-papers of the schooner *Ontario*, of Baltimore, in the place of the original register granted her at the port of Baltimore; which register has been duly cancelled at this office, upon the sale and transfer of the said schooner from the owners therein named. In testimony whereof, &c. Signed and sealed with the consular seal on the 23d of June, 1838."

The papers referred to in the above certificate of Mr. Consul Trist were, first, a copy of an American register granted at Baltimore, on the 20th of October, 1837, to William Hooper, William Cobb, Andronicus Cheeseborough, and Thomas Whitridge, owners of the *Ontario*, stating that the said vessel was a schooner of the burden of 95 $\frac{1}{2}$ tons, and that she had been built in Dorchester, in the year 1833.

A power of attorney, prepared at the same time that the above American register was taken out, and signed by the four owners above mentioned, authorized Thomas Wingate, the master of the schooner, to sell her. The execution of this deed was witnessed by Samuel Fernandez and John Powers; the former of these witnesses having been employed as a notary public to prepare the power of attorney.

Wingate accordingly carried the Ontario to Havana, and there sold and transferred her on the 31st of May, 1838, to Nathan Farnsworth; the transfer having been witnessed by Peter Crusoe, and its acknowledgment certified by Mr. Consul Trist on the same day.

Three weeks afterwards, Farnsworth transferred his newly-bought vessel at Havana to Eleazer Huntington, for the sum of \$3,800. The bill of sale was, as before, witnessed by Peter Crusoe, and its acknowledgment attested by the consular signature and seal of Mr. N. P. Trist on the 22d of June, 1838.

The Ontario then sailed for the coast of Africa, and there continued under the American flag until the day when the cargo of slaves (which had been prepared for the return voyage) was ready for shipment; when Eleazer Huntington executed a bill of sale, in the river Nun, in favor of a Spaniard named Mendez; who, however, it afterwards appeared had been the real owner of the schooner from the time when she first arrived at Havana.

SIERRA LEONE, *May 13, 1839.*

[Enclosure No. 2.]

Mr. Stevenson to Lord Palmerston.

32 UPPER GROSVENOR STREET,
August 3, 1840.

MY LORD: I have had the honor to receive your lordship's note of the 31st ultimo, communicating copies of two despatches from her Majesty's commissioners at Sierra Leone, in relation to the schooner Ontario, captured, while sailing under Spanish colors, with slaves on board, and condemned in the British and Spanish court of justice at Sierra Leone, which I will transmit by the earliest opportunity to my Government.

I have the honor to be your lordship's obedient servant,

A. STEVENSON.

LORD PALMERSTON,
&c., &c., &c.

Mr. Stevenson to Mr. Forsyth.—Extract.

[No. 103.]

LEGATION OF THE UNITED STATES,
London, August 12, 1840.

SIR: I herewith transmit the copy of another communication from Lord Palmerston, on the subject of the slave trade, together with sundry original papers and printed forms which accompanied it, connected with the charges

which have been made by this Government against Mr. Trist, our consul at the Havana. You will see, from Lord Palmerston's note, that I am particularly requested to draw the attention of the President to the observations contained in the despatch of the British commissioners at the Havana, upon the subject of these papers.

[Enclosure No. 1.]

Lord Palmerston to Mr. Stevenson.

FOREIGN OFFICE, August 5, 1840.

SIR: With reference to the desire which you expressed in your letter of the 27th February, 1840, to be furnished with certain printed forms, which it was represented that Mr. Trist, United States consul at the Havana, had given, in blank, to the owners or commandants of slave-ships, to be filled up by them at pleasure, I have now to transmit to you, for communication to the United States Government, the accompanying copy of a despatch from her Majesty's commissioners at Sierra Leone, together with the authenticated documents enclosed in that despatch, containing, in original, 1st, the muster-roll of the slave-vessel "Constituição;" 2d, a certificate of the shipment of slave equipment for lawful purposes; and, furthermore, three certificates of the disembarcation of seamen from the vessel in question. And I have to request that you will draw the attention of the President of the United States to the observations contained in the despatch from her Majesty's commissioners at Sierra Leone, upon the subject of these papers.

I have the honor to be, sir, your most obedient, humble servant,
PALMERSTON.

A. STEVENSON, Esq., &c.; &c., &c.

[Sub-enclosure.]

Her Majesty's Commissioners to Viscount Palmerston.

[PORTUGAL, No. 41.]

SIERRA LEONE, May 12, 1840.

MY LORD: We have the honor to acknowledge the receipt of your lordship's despatch No. 6, of the 17th May last, respecting certain papers stated to have been furnished to the owners of vessels about to be engaged in the slave-trade, by Mr. Trist, the United States consul at Havana, who was lately acting as Portuguese consul in that city.

In compliance with your lordship's directions, we transmit, herewith, the two documents alluded to by her Majesty's commissioners in the report of the case of the Portuguese vessel "Constituição," on the 20th October, 1838, and which are the muster-roll, and a custom house certificate of the lawful objects with which an extraordinary number of water-casks, a boiler of large dimensions, and plank, had been embarked in that vessel. The former of these documents have been authenticated by Mr. Trist's certificate, dated the day previous to that on which the muster-roll itself bears date;

whilst a similar paper from Mr. Trist, respecting the custom-house certificate, is wanting that gentleman's signature, though having his seal of office.

With respect to the blank forms bearing the signature of Mr. Trist, stated by Lieut. Oliver, the captor of the abovementioned "Constituição," to have been found, at the time of her seizure, in the desk of a Spanish passenger, who represented himself to be the owner of that vessel and her cargo, we beg leave to state that we have not been able to discover any papers exactly answering the description in question among those lodged in the archives of the court.

In the papers of the "Constituição," we found the enclosed certificates for three sailors, said to have been disembarked from that vessel at Havana; in each of which the description of the man named has been omitted by Mr. Trist, and the space for this purpose left open. In handing these certificates to your lordship, we would beg to draw attention to the fact of the names of two only of the three seamen, stated to have been landed from the "Constituição," being mentioned in the muster-roll, (enclosure No. 1,) although Mr. Trist granted the certificates in question on the day subsequent to that on which he had authenticated the muster-roll.

Should the certificates now transmitted to your lordship not be the papers mentioned by Lieut. Oliver in his report to Admiral Elliot, and alluded to in your lordship's despatch to Mr. Fox of the 22d February, 1839, they cannot have been delivered into the court, as they should have been, when the "Constituição" was presented for adjudication.

We shall take the earliest opportunity of communicating to the senior naval officer on this station your lordship's wishes in respect to the blank forms mentioned by Lieut. Oliver, or the naval commander in chief, that they may be at once transmitted to England for your lordship's information.

We have, &c.,

R. DOHERTY,
WALTER W. LEWIS.

Rt. Hon. VISCOUNT PALMERSTON,
G. C. B., &c., &c., &c.

[Sub-enclosure.]

Matricula e rol da equipagem da escuna Portuguesa denominada Constituição, de que he mestre Eduardo Roberto, a qual segue viagem para São Paulo de Luanda, com a tripulação abaixo mencionada, a saber :

Empregos.	Nomez.	Anos d'idade.	Naturalidade.	Estado.
Capitão -	Eduardo Roberto -	24	Lisboa - -	Solteiro.
Piloto -	Diego Lopez -	28	Cartagena - -	do.
2º piloto -	Ramão Quirzo -	26	Cadiz - -	do.
Contramestre -	José Pinedo -	28	Manilla - -	Cazado.
Carpinteiro -	João São Martino -	30	Cartagena d'Indias -	do.
Despenseiro -	Jose Donorena -	29	do. - -	Solteiro.
Cuzinheiro -	Miguel Marguedal -	28	do. - -	do.
Marinheiro -	Francisco de Goio -	26	Portugal - -	do.
Do. -	Vicente Planely -	24	do. - -	do.
Do. -	Antonio Silva -	26	Figueira - -	do.
Do. -	Antonio Preto -	26	Porto - -	do.
Do. -	Francisco do Rey -	30	do. - -	do.
Do. -	Modesto Antonio -	24	Madeira - -	do.
Do. -	Pedro Simão -	28	Ilha Terceira - -	do.
Do. -	João Baptista -	34	Ilha do Maio - -	do.
Do. -	Zeferino Fernandez -	25	Porto - -	Cazado.
Do. -	João Campany -	30	do. - -	do.
Do. -	Ignacio Laiolla -	28	Lisboa - -	Solteiro.
Moço -	Eusebio Perez -	24	Porto - -	do.
Do. -	Miguel Martorany -	24	Lisboa - -	do.
Do. -	Jose Maria Martinez -	24	Ilha do Faial - -	do.
Do. -	Joaquim Gomez -	23	do. - -	do.
Do. -	Aleixandre do Rozario -	24	Manilla - -	do.
Page -	Gauthano Podrão -	15	do. - -	do.

Armamento.

Doze espingardas, doze fraçados, huma colica, duaz gorrenadas, e seis esmeriz.

HAVANA, 8 de Junho de 1838.

O capitão,

EDUARDO ROBERTO.

CONSULATE OF THE UNITED STATES, *Havana :*

I, Nicholas P. Trist, consul of the United States, do hereby certify that on the day of the date hereof, before me personally appeared Don Eduardo Roberto, master of the Portuguese schooner *Constituição*, and declared the document hereunto annexed to be a true and faithful list of the crew (consisting of twenty-four men, all told) and armament of said vessel ; which declaration is received and certified to by me, because of there not being

here at this time any consul or consular agent of Portugal to do such acts for vessels of that nation.

In testimony whereof, I have hereunto set my hand, and affixed my seal of office, at Havana, this seventh day of June, in the year of our
 [L. s.] Lord one thousand eight hundred and thirty-eight, and of the independence of the United States the sixty-second.

N. P. TRIST.

CONSULATE OF THE UNITED STATES, *Havana* :

I, Nicholas P. Trist, consul of the United States, do hereby certify that Don T. Estivez, merchant of this city, has declared to me that, being thereunto authorized and empowered by Don Luis Carvalho, owner of the Portuguese schooner *Constituição*, he has appointed Eduardo Roberto as master thereof, in the place of Antonio Joaquim, late master; which declaration is received and certified to by me, in consequence of there not being here at this time any consul or consular agent of Portugal to do such acts for vessels of that nation.

In testimony whereof, I hereunto set my hand, and affix my seal of office,
 [L. s.] at Havana, this seventh day of June, in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence of the United States the sixty-second.

N. P. TRIST.

[Sub-enclosure.]

[STAMP.] Sello 3o. [L. s.] Años de [STAMP.]
 2 Rs. 1838 y 39.

DON TOMAS RODRIGUEZ DE YURRE Y ECHAVARRI, contador de ejercito honorable, y principal de la aduana de este puerto por S. M.

Certifico : Que en el registro de la goleta Portuguesa *Constitucion* acierto con destino á San Pablo de Loando al cargo de su capitan Don Eduardo Roberto, existe una poliza con el No. 4, corrida por el propio capitan cuyo tenor es el siguiente : Ocho bocoyes de cuatro pipas ; diez y seis iden de tres ; doce de sesenta y de cien galones para la aguada y conduccion de aciete de palmas al regreso ; un mil seis cientos pies de tablas ; trescientos sesenta y ocho pies de alfardas, todo para formar barraca ; un caldero grande para clarificar aceite ; y á los efectos consiguientes doy la presente, en virtud de decreto del señor administrador general del dia hoy, en la Habana, á nueve de Junio de mil ochocientos treinta y ocho.

TOMAS DE YURRE.

CONSULATE OF THE UNITED STATES, *Havana* :

I, Nicholas P. Trist, consul of the United States, do hereby certify that the signature to the document hereunto annexed is in the handwriting of Don Tomas de Yurre, contador of the royal customs of this place, to whose acts as such full faith and credit are due.

In testimony whereof, I hereunto set my hand, and affix my seal of office,
 [L. s.] at Havana, this eighth day of June, in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence of the United States the sixty-second.

[Without signature.]

CONSULADO DE LOS ESTADOS UNIDOS DE AMERICA.

Filiacion.

Cuerpo
Carnes
Cabello
Ojos
Cara
Color
Boca
Barba
Nariz
Edad

El marinero Eusebio Perez, qui pertenecia á la goleta Portugueza Constitução, ha sido desembarcado legalmente de dicho buque, y está ahora al cargo de este consulado.

Habaña, 8 de Junio de 1838.

N. P. TRIST.

No. 66.

Señales particulares.

CONSULADO DE LOS ESTADOS UNIDOS DE AMERICA.

Filiacion.

Cuerpo
Carnes
Cabello
Ojos
Cara
Color
Boca
Barba
Nariz
Edad

El marinero José Maria Martinez, qui pertenecia á la goleta Portugueza Constitução, ha sido desembarcado legalmente de dicho buque, y está ahora al cargo de este consulado.

Habaña, 8 de Junio de 18

N. P. TRIST.

No. 65.

Señales particulares.

CONSULADO DE LOS ESTADOS UNIDOS DE AMERICA.

Filiacion.

Cuerpo
Carnes
Cabello
Ojos
Cara
Color
Boca
Barba
Nariz
Edad

El marinero Miguel Maristany, qui pertenecia á la goleta Portugueza Constitução, ha sido desembarcado legalmente de dicho buque, y está ahora al cargo de este consulado.

Habaña, 8 de Junio de 1838.

N. P. TRIST.

No. 62.

Señales particulares.

[Enclosure No. 2.]

Mr. Stevenson to Lord Palmerston.

32 UPPER GROSVENOR STREET., August 6, 1840.

MY LORD: I have the honor to acknowledge the receipt of your lordship's note of yesterday, enclosing the copy of a despatch from her Majesty's commissioners at Sierra Leone on the subject of the slave-trade, together with certain authenticated documents therein enclosed; which I will take the earliest opportunity of communicating to my Government, and calling its attention to those parts of the commissioners' despatch which your lordship desires.

I have the honor to be, your lordship's obedient servant,

A. STEVENSON.

Rt. Hon. Lord Viscount PALMERSTON,
&c., &c., &c.

Mr. Forsyth to Mr. Stevenson.

[No. 75.]

DEPARTMENT OF STATE,
 Washington, August 19, 1840.

SIR: Your despatch of the 24th ultimo, (No. 101,) relating, in part, to the case of the American schooner "Euphrates," was received some days since. The President, solicitous to contribute, as far as in his power, to promote the wishes of the British Government for the suppression of the African slave trade, has, with this view, directed me to transmit to you the accompanying extract of a letter received at this department from the consul of the United States at Tripoli, dated October 3d, 1839; and the copy of a letter addressed to the Secretary of the Navy, on the 28th ultimo, by an officer of our navy lately from the coast of Africa, in whose character for integrity and good sense the most perfect confidence is reposed. Some of the facts and suggestions contained in these papers may, it is presumed, prove useful to the British Government in her efforts to repress this odious traffic; and you are accordingly authorized to communicate them, or the substance of them, to Lord Palmerston, in such manner as you may think best calculated to effect that object.

I am, sir, your obedient servant,

JOHN FORSYTH.

ANDREW STEVENSON, Esq., *&c., &c., &c.*

[Enclosure No. 1.]

Consul McCauley to Mr. Forsyth.—Extract.

CONSULATE OF THE UNITED STATES OF AMERICA,
 Tripoli, Barbary, October 3, 1839.

Being aware of the great interest the Government, in common with an immense majority of the American people, take in the suppression of the slave-trade, I beg leave to suggest to the department the possibility of ame-

flourishing; if not exterminating, that branch of the odious traffic which flourishes in the Barbary States, and which apparently escapes the searching observation and attention of European philanthropists.

In some of my former despatches I have noted the arrival of negro slaves by the kafilas, or caravans, from the interior; and I have endeavored to ascertain the exact number they annually imported. But the ill success that has attended all my endeavors to obtain correct statistical information from the Turkish authorities, has also attended me in this instance; yet I am disposed to believe that the number of 2,000 to 2,500 slaves, arriving at this port and Bergasi, is an approximation within the truth; and, though the trade to this regency (the most convenient maritime mart of the interior) for a number of years past, has, owing to the civil war and unsettled state of the country, been greatly diminished, still it is probable that the numbers carried to Egypt and Tunis have proportionably increased, and perhaps very nearly average in each of those States the number imported into this.

Of these slaves, but very few are required for the supply of Tripoli; the great proportion is exported, principally in Turkish and Greek vessels, to the Levant, where they find a ready sale.

[Enclosure No. 2.]

UNITED STATES BRIG DOLPHIN,
New York, July 28, 1840.

SIR: Since my arrival in the United States, I have seen, through the papers, accounts of public meetings in England, in which a contrast is drawn between the United States and Great Britain on the subject of slavery; in which our country has been most shamefully denounced, and great praise given to the British for their philanthropy and humanity in their exertions to extinguish slavery and the slave-trade.

Under these circumstances, I feel it my duty, as an American and public servant, to state what came under my own observation, and the reports of others in whom I have confidence, (the British officers themselves,) during my late cruise on the coast of Africa.

On my arrival at Sierra Leone, I was informed by Governor Doherty, the British Governor of that colony, that, during the last year, sixty-two slavers had been sent into that place; that not more than *one* vessel in *six* was captured by the British cruisers; and that upwards of three hundred thousand slaves were sent from Africa yearly. There are twenty cruisers employed on the coast between the Cape of Good Hope and Cape de Verd, who usually cruise *outsight* of land.

Between Cape St. Anne and Cape Palmas there are two slave stations—one at the mouth of the river Gallinas, and the other at New Cess. There were collected and confined in the barracoons, or slave-prisons—of the former, five thousand slaves; and the latter, fifteen hundred; waiting for an opportunity to ship them across the Atlantic.

It is customary for the slavers to run into one of these stations in the evening, take on board three or four hundred negroes during the night, and run off, with the land breeze, the next morning. If they do not meet with a cruiser after running thirty miles, they are safe until they get to the West Indies; where there is again some slight chance of capture, before they have

an opportunity of landing their cargoes. I therefore proposed to three of the British commanders I fell in with, to blockade these two stations, instead of cruising so far off the coast. The anchorage is good and safe, and one vessel at each station could lie in such a position as to intercept any slaver coming in. The invariable reply to this proposition was: "This is an unhealthy climate; we come out here to make prize-money; if a slaver is captured without her cargo, she is sent to Sierra Leone, where the expense of condemnation amounts to nearly the whole value of the vessel, which is the perquisite of those in the employ of the Government at that place; and we, who have all the labor and exposure, get nothing: whereas, if we capture a vessel with slaves on board, we receive five pounds sterling ahead for each of them, without any deduction. Therefore, it is not our interest to capture these vessels without their cargoes."

Most of the slavers sent into Sierra Leone have such articles on board as are used in trafficking for slaves. When the vessels are condemned, these articles are sold at public auction—are purchased by an Englishman there, who is said to be the agent of Pedro Blanco, the great slave dealer at Gallinas. Whether this is the case or not, is of little consequence; they are put on board of an English cutter belonging to this man, who carries them to Gallinas, and lands them at his pleasure. This is well known to every person at Sierra Leone; and, in conversation with the Governor, when he made some remarks on the shameful use of our flag in this trade, I spoke to him on the subject; stated that the slave-trade was encouraged and abetted by such proceedings, under the very eye of his Government. He said he was sensible of it; but as this was a *legal* traffic, he could not prevent it. British as well as American and French merchant vessels are also engaged in supplying these slave-stations with provisions, and even luxuries, for which they are well paid, and for want of which they could not exist.

Under these circumstances, I say the British Government is *not sincere in its attempts to put down the slave-trade*. Pedro Blanco and others engaged in this business say, if they can save one vessel out of three from capture, they find the trade profitable. This can easily be believed, when slaves can be purchased at Gallinas for less than twenty dollars in trade, and sold for cash in Cuba for three hundred and fifty. A few months before I came on the coast, the ship Venus took away from there a cargo of slaves, and landed in Cuba upwards of eight hundred; by which she cleared two hundred thousand dollars, after paying for the vessel and her whole expenses during the voyage.

The question now naturally arises, "How is this trade to be stopped?" With regard to Gallinas and New Cess, I think the course to be pursued is very simple and effectual. A short distance above the mouth of the Gallinas are a number of small islands, on which are situated the barracoons. These are badly fortified with a few pieces of cannon, and worse manned. One hundred men sent in a frigate's boats would be more than an ample force to break it up, and capture or disperse all the slaves and burn the town in the course of a few hours. One-third of this force would be sufficient to destroy New Cess. As it takes some time to collect slaves on the coast for transportation, other stations would have to be established, which could be again destroyed. And to prevent those men who are now in this business from again engaging in it, they should be either sent away from the coast, or (as they are outlaws, and to make a dreadful example) put to the sword.

I trust, sir, the motive which induced me to make this communication will be a sufficient excuse for troubling the department at the present time.

What I have stated cannot be denied by any disinterested man on the coast; and the inferences I have drawn, I believe are such as would be made by any one conversant with the subject.

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

CHAS. H. BELL,

Lieut. Com. U. S. brig Dolphin.

Hon. JAMES K. PAULDING,

Secretary of the Navy, Washington.

Mr. Stevenson to Mr. Forsyth.

[No. 104.]

LEGATION OF THE UNITED STATES,

London, August 26, 1840.

SIR: I received on the 13th instant your despatch of the 8th of July, (No. 73,) in relation to the outrage committed on the barque Susan, of Boston; and the next day I addressed to Lord Palmerston an official note, a copy of which I have the honor herewith to transmit. No answer to it has yet been received.

I also enclose copies of a note from Lord Palmerston, with the documents accompanying it, purporting to give an explanation of the conduct of Commander Elliot and Lieutenant Tatham, in relation to their proceedings towards the sloop Edwin, of New York. I acknowledged simply the receipt of the papers, with an assurance that they would be forwarded to my Government, with whom it alone rested to decide on the sufficiency of the explanation given. A copy of my note is also enclosed.

I am, sir, very respectfully, your obedient servant,

A. STEVENSON.

Hon. J. FORSYTH,

Secretary of State, &c., &c.

[Enclosure No. 1.]

Mr. Stevenson to Lord Palmerston.

32 UPPER GROSVENOR STREET, *August 14, 1840.*

The undersigned, envoy extraordinary and minister plenipotentiary from the United States, has the honor to acquaint Lord Palmerston, her Majesty's principal Secretary of State for Foreign Affairs, that, having lost no time in transmitting to his Government the note of his lordship, under date of the 23d of April last, in reply to that of the undersigned of the 26th of August preceding, complaining of the outrage committed by the officers of the British schooner the Grecian upon the barque Susan, of Boston, he has been specially instructed to make the following communication in answer to Lord Palmerston's note: The President has read with feelings of surprise and regret the answer returned by her Majesty's Government to the complaint preferred on the part of the United States in the affair of the barque Susan. That answer cannot be considered as otherwise than unsatisfactory. The conduct of the British officers is attempted to be justified on their bare and unsupported statements, totally at variance with, and in

entire disregard of, the facts registered, with every formality usual on such occasions, in the log book; of the Susan supported, as they are, by the asseverations of persons of respectability, then passengers on board the vessel. In justice to the rights of their citizens, and in pursuance of the principles which the United States have assumed, such an occurrence as that under consideration cannot be allowed to pass over in the manner in which it has been treated by her Majesty's Government. It would be foreign to the purposes of this communication to raise questions of law out of the occurrence which gave rise to the complaint of the United States. The circumstances under which the right of boarding and visiting vessels at sea is usually enforced, are defined with sufficient clearness; and even where the right is admitted, usage among civilized nations has prescribed, with equal precision, the manner in which it is to be exercised. The motive of this communication is, that the British Government should be clearly made sensible that the United States cannot, in justice to their own citizens, permit the recurrence of such causes of complaint. If, in the treaties concluded between Great Britain and other Powers, the latter have thought fit, for the attainment of a particular object, to surrender to British cruisers certain rights and authority not recognised by maritime law, the officers charged with the execution of those treaties must bear in mind that their operation cannot give a right to interfere in any manner with the flag of nations not parties to them. The United States not being such a party, vessels legally sailing under their flag can in no case be called upon to submit to the operation of said treaties; and it behoves their Government to protect and sustain its citizens in every justifiable effort to resist all attempts to subject them to the rules therein established, or to any consequent deductions therefrom. The United States cannot look with indifference upon the laudable exertions made by Great Britain and her allies in the suppression of the slave-trade, towards the attainment of the great object in view; and so long as those efforts are confined within their proper sphere, they will command applause and good wishes from the people and Government of the United States. But they must be considered as exceeding their appropriate limits, whenever they shall lead to such acts as those which form the subject of this communication. The President has been advised that, on frequent occasions, the flag of the United States, as well as those of other nations, has been fraudulently used by the subjects of other countries to cover illicit commerce, and elude the pursuit of British and other cruisers employed in the suppression of the African slave-trade; and that a pretext has thereby been afforded for boarding, visiting, and interrupting vessels bearing the American flag. The several complaints to which the subject has given rise should convince her Majesty's Government of the great abuse to which the practice is liable, and make it sensible of the propriety of its immediate discontinuance. It is a matter of regret that this practice has not already been abandoned. The President, on learning the abuses which had grown out of it, and with a view to do away every cause for its longer continuance, having now directed the establishment of a competent naval force to cruise along those parts of the African coast which American vessels are in the habit of visiting in the pursuit of their lawful commerce, and where it is alleged that the slave-trade has been carried on under an illegal use of the flag of the United States, has a right to expect that positive instructions will be given to all her Majesty's officers to forbear from boarding or visiting vessels under the American flag. This expectation is now distinctly

signified to her Majesty's Government, in the belief that it will see the propriety of confining the action of its agents to the vessels of nations with whom her Majesty's Government has formed stipulations authorizing a departure from the rules prescribed by the public law; and thereby prevent the recurrence of circumstances inevitably productive of causes of irritation, and deeply endangering the good understanding now existing between the two nations, and which it is so much the interest of both to maintain unimpaired.

The undersigned renews to Lord Palmerston the assurances of his distinguished consideration.

A. STEVENSON.

[Enclosure No. 2.]

Lord Palmerston to Mr. Stevenson.

FOREIGN OFFICE, *August 17, 1840.*

SIR: With reference to the representations which I have received from you, upon the subject of the conduct pursued towards the American sloop "Edwin," by officers in her Majesty's naval service, I have to acquaint you that her Majesty's Government have now received from Commander Elliot, of her Majesty's sloop "Columbine," a detailed statement of the circumstances under which the American brig in question was visited by the "Columbine," and of the events which took place on that occasion; and I do myself the honor to transmit to you, for communication to the United States Government, a copy of that statement, together with a copy of the statement of Lieutenant Tatham, the officer who executed the orders of Commodore Tucker to visit the "Edwin."

It appears to her Majesty's Government, and her Majesty's Government hope that it will also appear to the United States Government, that these papers give a satisfactory explanation of the conduct of Commander Elliot and of Lieutenant Tatham, on the occasion referred to.

I have the honor to be, sir, your most obedient, humble servant,
PALMERSTON.

A. STEVENSON, Esq., &c., &c., &c.

[Sub-enclosure.]

SIMON'S BAY, *April 22, 1840.*

SIR: In obedience to your orders, and in reply to the documents forwarded by their lordships of the Admiralty, in reference to the circumstances under which the American brig Edwin was boarded by her Majesty's sloop Columbine, I have the honor to state the following facts:

On July 22d, 1839, her Majesty's sloop was standing in for the slaving port of Ambrise, when a sail was seen on the lee bow, and, the weather being hazy, all sail was made to close. On nearing her, we perceived she was a brig, standing on a wind; and when close to her, as she hoisted no colors, a gun was fired.

After a time, the brig hoisted the American flag, but continued on her

course, carrying all sail. This disinclination to show colors, or heave to, excited strong suspicions that the vessel was engaged in the slave-trade, and not entitled to the protection of the flag she hoisted.

Sufficient sail was kept on her Majesty's sloop to close her, and, on getting alongside, Captain Elliot hailed and desired the master to heave to. "Heave to?" was the reply of the master; "I'll see you damned first, you no nation bugger," was the second reply. The language of the American which followed was of the lowest and grossest description, much of which I do not now retain in memory. I remember, however, his hailing and saying "My flag is as good as your bloody piratical one," and some reference to a lesson he stated we had already received on the right of search, and which we should have again.

The language and conduct of the master giving additional suspicion of his vessel not being American, Captain Elliot continued running abreast by her, and urging, by every argument, the necessity of his ascertaining that he had a right to the flag he hoisted, and that he had no slaves on board; adding, "You are aware I can compel you, by firing; but while you hoist that flag, I shall abstain, if possible; but board your vessel I am determined to do."

This was replied to by the most violent and abusive language. Captain Elliot now said, "Come on board, then, yourself, and bring your papers;" which the master of the brig replied to with these words: "I'll see you buggered first."

Soon after which, the crew of the brig hove her to, apparently without any orders from the master.

Captain Elliot now ordered me to bring the master on board, with his papers, to ascertain if he was American; leaving Mr. Wells (master of her Majesty's sloop Columbine) on board the Edwin.

On boarding the brig, I told the master the orders I had received; he, however, was most violent and abusive—declaring no one should see his papers, and no one should force him from his vessel. I told him I had no wish to use any force; but that his conduct had excited suspicions, which he, as an American citizen, should be anxious to disprove.

With the assistance of the mate, he was at last persuaded, and got into the boat, with his papers. On our way to her Majesty's sloop, I recognised the master as a person I had seen at the factories of Ambrise; and on this recognition, he gave me his papers and appeared more tranquil. I now told him I was sure Captain Elliot would allow him to return immediately he ascertained he was an American.

On gaining the Columbine's quarter deck, I delivered the papers to Captain Elliot immediately, followed by the master of the Edwin, who advanced, shaking his fist and grasping at the papers in Captain Elliot's hands—making use of the most abusive language. Mr. Carpenter, (1st lieutenant,) as also myself, stepped in between him and Captain Elliot, to prevent the personal violence and indignities threatened by the master of the Edwin to the commander of her Majesty's sloop, on her Majesty's quarter-deck.

So violent, however, was his conduct, that Captain Elliot ordered two marines to stand between him and the master of the Edwin, who even then pushed forward in the most outrageous manner to grasp his papers, or to strike Captain Elliot, but was prevented by the marines.

Captain Elliot having satisfied himself that he was entitled to the protection of the flag he hoisted, explained that he regretted the steps forced

on him, to disprove suspicions principally founded on the conduct he (the master of the Edwin) had pursued ; and giving him his papers, he returned to his brig ; soon after which, her Majesty's sloop made sail and anchored at Ambrise.

Captain Elliot and myself immediately landed, and repaired to the American factory, where we were received by a Mr. Cox, who stated he was in the same employ with Mr. Dayley, the master of the Edwin, and expressed much concern at what had happened, remarking that he must have been drunk or mad.

Mr. Cox suffering under a bad case of African fever, attended with most serious symptoms, our surgeon attended him, by order of Captain Elliot, who, in his anxiety to show, by every possible means, the feeling which he held towards American citizens, sat by his bedside several hours, and paid him every possible attention during our stay. Under the advice of our surgeon, Mr. Cox recovered ; and nothing could surpass the anxiety shown by him to evince his gratitude.

I further beg to state, that during the past year it has been my duty, as boarding officer, to visit several American vessels, and on no occasion have they shown the least objection to produce their papers ; on the contrary, the very best feeling possible has existed ; and the case now referred to was alike deplored by ourselves as by the American citizens trading at Ambrise.

It is further my duty, in explanation, to state that an additional reason for suspicion in this case was excited from the ascertained fact that many of the slavers sailing from Ambrise and the coast near, have American papers, and are under the American flag. In the month of June last, I boarded the "George Crooks," of Baltimore, a schooner anchored at Cabinda, and in every way prepared to receive a cargo of slaves.

This vessel produced papers signed by the American consul at Havana, from which place she last sailed : on mustering her crew, they were found all Spaniards but the master.

On the 6th July, only a fortnight previous to meeting the "Edwin," I again boarded the "George Crooks," which I found still in the same state of preparation ; but the papers produced as an American prevented further steps being taken.

On our return to Cabinda, we were informed that the schooner "George Crooks" had sailed with a cargo of slaves.

I have, &c.,

ED. TATHAM,

2d Lieutenant of her Majesty's sloop Columbine.

Real Admiral GEORGE ELLIOT, *C. B. &c., &c., &c.*

[Sub-enclosure.]

H. M. S. COLUMBINE,
Simon's Bay, April 30, 1840.

SIR: In obedience to directions from the Hon. George Elliot, dated April 25, forwarding to me your letter of February 20 and its enclosures, relative to the American brig Edwin, I have to acquaint you, for the information of the Lords Commissioners of the Admiralty, that on the 22d of July, 1839, a vessel was reported to me, and chased ; which vessel proved to be

the Edwin, of New York. Her evident desire to avoid us, her disinclination to exchange colors, and her being found off the slave port of Ambrise, induced me to suspect her having no claim to the protection of the American flag; and having had ocular proof that the American flag was unlawfully made use of by the Portuguese on the coast, in order to carry on the slave-trade, I, on closing her, hailed her, and expressed my suspicions, and demanded that she should be hove to, and submit to a search. This was refused; and the gross and insulting language of her master more fully confirmed my suspicions about her. I was about to enforce a search, when he hove to. I then sent a boat, with Lieut. Tatham on board her, and ordered him to demand his papers, and to bring the master on board to me. The conduct of this master was so outrageous, that I was obliged to place two marines, to prevent his carrying his threats into execution. His language was of the grossest nature, and without the slightest provocation, as I did not use one insulting word to him. I forward a corroboration of the above facts, detailed by Lieut. Tatham.

I have the honor to inform you that, were the American flag to be a security to all vessels on that coast that might hoist it, it would be impossible to suppress the slave-trade and acts of piracy. The American schooner George Crooks, of Baltimore, was twice boarded, whilst lying in Cabinda bay, by boats of her Majesty's sloop; only one American on board, and fitted for the reception of slaves. She afterwards sailed, to my certain knowledge, with a cargo of slaves, under the Portuguese flag.

I have, &c.

GEORGE ELLIOT, *Commander.*

The SECRETARY of the Admiralty.

[Enclosure No. 3.]

Mr. Stevenson to Lord Palmerston.

32 UPPER GROSVENOR STREET,
August 24, 1840.

The undersigned, envoy extraordinary and minister plenipotentiary from the United States of America, begs leave to inform Lord Palmerston, her Majesty's principal Secretary of State for Foreign Affairs, that he had the honor to receive, on his return to town, his lordship's note of the 17th instant, transmitting to the undersigned, for communication to his Government, sundry documents, containing a detailed statement of the circumstances under which the American brig Edwin, of New York, was boarded and searched on the coast of Africa, by the officers of her Majesty's sloop-of-war the Columbine, and which had been made the subject of complaint to her Majesty's Government in February last.

The undersigned will take an early opportunity of transmitting these papers to his Government, with whom it alone rests to decide upon the sufficiency of the explanation which has been given of this transaction by her Majesty's naval officers.

The undersigned renews to Lord Palmerston the assurances of his distinguished consideration.

A. STEVENSON.

Right Hon. LORD PALMERSTON,
&c. &c. &c.

Mr. Martin to Mr. Stevenson.

[No. 76.]

DEPARTMENT OF STATE,
Washington, August 28, 1840.

SIR: By direction of the President, I herewith transmit you copies of the papers in the case of the brig Douglas, of Duxbury, Massachusetts, Alvin Baker master, with instructions to make it the subject of an immediate demand upon the British Government for redress, and indemnity to the owners and sufferers. The despatches which you have already received from this department on kindred subjects, render it unnecessary that I should say any thing in elucidation of the principles involved in this case. You will perceive, however, from the accompanying papers, that the circumstances of unwarrantable search, detention, ill usage, and consequent injury to property and life, are of peculiar aggravation; and the President therefore indulges the hope that the British Government will at once recognise the propriety and justice of prompt and satisfactory retribution for these unjustifiable acts of its officers, which have not only inflicted great private wrong, but are calculated to interrupt that harmony which it is for the advantage, as it is no doubt the desire, of both Governments to preserve.

I have the honor to be, sir, your obedient servant,

J. L. MARTIN,
*Acting Secretary.*ANDREW STEVENSON, Esq.,
*&c. &c. &c.**Mr. Stevenson to Mr. Forsyth.—Extract.*

[No. 106.]

LEGATION OF THE UNITED STATES,
London, November 6, 1840.

I herewith transmit the copy of a note from Lord Palmerston, with an extract from a despatch of her Majesty's commissioners at the Havana, relative to three American vessels, supposed to have been engaged in the slave trade on the coast of Africa. I contented myself with a simple acknowledgment of the papers, and that they would be forwarded for the information of the President.

[Enclosure.]

*Lord Palmerston to Mr. Stevenson.*FOREIGN OFFICE,
September 10, 1840.

The undersigned, her Majesty's principal Secretary of State for Foreign Affairs, has the honor to transmit to Mr. Stevenson, envoy extraordinary and minister plenipotentiary from the United States of America, the accompanying extract of a despatch from her Majesty's commissioners at the Havana, by which it appears that on the 12th of June the American brig

"Caballero," on the 13th of June the American brig "Hudson," and on the 24th of June the American ship "Crawford," arrived at the Havana, in ballast, from the coast of Africa, supposed to have been there engaged in slave-trade.

The undersigned requests that Mr. Stevenson will communicate this paper to the Government of the United States.

The undersigned avails himself of this opportunity to renew to Mr. Stevenson the assurance of his distinguished consideration.

PALMERSTON.

[Sub-enclosure.]

Extract of a despatch from her Majesty's Commissioners at the Havana to Viscount Palmerston, dated

HAVANA, July 18, 1840.

During the month of June the following vessels arrived from the coast of Africa; the two first, it is reported, having landed slaves at Puerto Rico.

June 2.—Spanish schooner *Constancia*, in thirteen days from Puerto Rico. Master's name Peñasco, consigned to Messrs. Manzanedo and Abrisqueta, notorious slave-dealers.

June 10.—Spanish schooner *Feliza*, likewise last from Puerto Rico; master's name Sanchez.

June 12.—American brig *Caballero*, in thirty-three days from Corisco, in ballast; Huffington master.

June 13.—American brig *Hudson*, in thirty-seven days from Cabinda, in ballast; master's name, Clift.

June 17.—Portuguese schooner, name unknown.

June 24.—American ship *Crawford*, in thirty-four days from Gallinas, in ballast; consigned to the great slave-dealer, Don Pedro Blanco; master's name, Brown.

We may observe, that the arrivals of the American vessels are published, without scruple, even in the "Diario."

Mr. Stevenson to Mr. Forsyth.—Extract.

[No. 108.]

LEGATION OF THE UNITED STATES,
London, December 1, 1840.

SIR: I herewith transmit a copy of the note which I addressed to Lord Palmerston on the 13th ultimo, in relation to the seizure and detention of the brig "Douglas," of Massachusetts, on the coast of Africa, by the British cruiser "Termagant," with Lord Palmerston's reply to it. You will see that I presented the case as one of a highly offensive and unwarrantable character, and calling for the immediate action of her Majesty's Government. The answer of Lord Palmerston was prompt, but confined to an assurance of an immediate and searching inquiry into the facts of the case.

I likewise forward copies of two other notes to this Government; one, in relation, &c., * * * *; and the other, communicating the documents transmitted in your despatch (No. 75) on the subject of the African slave-trade.

[Enclosure No. 1.]

*Mr. Stevenson to Lord Palmerston.*32 UPPER GROSVENOR STREET,
November 13, 1840.

The undersigned, envoy extraordinary and minister plenipotentiary from the United States, has been instructed by his Government to transmit to Lord Palmerston, her Majesty's principal Secretary of State for Foreign Affairs, the accompanying papers, containing the evidence of another unwarrantable search, detention, and ill-usage of an American vessel and her crew, on the coast of Africa, by one of her Majesty's cruisers employed for the suppression of the slave-trade; and which, in the opinion of the President, forms a proper subject for complaint and satisfactory retribution.

The following are the prominent facts of the case:

The American brig "Douglas," of Duxbury, in Massachusetts, of 210 tons burden, and commanded by Alvin Baker master, and William Arnold mate, sailed from the Havana on the 5th of August, 1839, laden with a cargo of merchandise, and having sundry passengers on board bound for the port of the river Bras.

That, on the 21st of October, this brig, whilst pursuing her voyage, was boarded by Lieutenant Seagram, from her Majesty's brigantine cruiser the "Termagant," with some of her crew, who proceeded, forthwith, to overhaul the ship's papers and passengers' passports; ordered the hatches, which were closed, to be broken open; the American flag, which was then flying, to be hauled down, and the vessel seized as a slaver. That the captain's papers and log-book were then demanded, and taken on board the "Termagant," and the "Douglas" committed to the charge of a master and crew from the British cruiser, who immediately ordered the sails to be set, and proceeded to sea. At six o'clock, P. M., ten men were sent on board with arms and provisions, and the passengers taken to the "Termagant;" and both vessels then made sail, and stood to the westward.

That, on the 23d of October, about daylight, a boat from the "Termagant" came alongside of the "Douglas," with the purser and one of her passengers, for stores and provisions; and then returned to the cruiser.

That, from the 21st to the 26th of October, the American brig continued in charge of her Majesty's cruiser, when they parted, and lost sight of each other; the brig, however, still continuing in possession of the officer and men from the "Termagant."

That, on the 29th, and to the westward of Popoe, on the African coast, the "Termagant" again appeared alongside of the "Douglas," and hove to; sent the supercargo and purser on board, ordered Captain Baker on board the cruiser, and Lieutenant Seagram then delivered to him his papers, with permission to proceed on his voyage.

The passengers were also permitted to return to the "Douglas," and, the "Termagant" having taken her prize-crew and officer on board, the "Douglas" made all sail for the river Bras.

That, on the 6th of November, the "Douglas" anchored in the Nun, (a river on the African coast,) which she left on the 14th of December, and proceeded, in ballast, to Curaçoa, where she arrived on the 22d of January, 1840.

That, on the 6th of February, she sailed from Curaçoa with a cargo of salt, for the Havana; which she reached on the 21st of that month.

That, in the passage from the pestilential coast of Africa to Curaçoa, the "Douglas" lost three of her crew—two American seamen—viz: Hamilton Day, of Providence, and Andrew Clough, of Boston, and Frederick Walton, a British subject, who were taken ill, and died.

That the "Douglas," at the time of her sailing from the Havana, was tight, staunch, and strong; had her hatches well calked and covered, and was well and sufficiently manned, and provided with all things needful for her voyage, and was in that state when she was boarded, and literally captured by the British cruiser.

Such are the facts detailed in the protest of the captain and mate, herewith transmitted; and which, it is presumed, can leave no doubt as to the unprovoked and flagrant character of the proceeding, or the reparation due to the rights of the United States, and the honor of their flag. In presenting the subject to the notice of her Majesty's Government, it cannot be needful that the undersigned should do more than refer Lord Palmerston to the correspondence which has heretofore taken place between the two Governments; and, more especially, to the three notes which the undersigned had the honor of addressing to his lordship under dates of the 5th of February, 15th of May, and the 11th of August last; and to express the painful regret which the Government of the United States feel, that the remonstrances which have been heretofore made should have proved unavailing in preventing the repetition of such abuses as those which have so repeatedly been made the subject of complaint against her Majesty's naval officers.

Her Majesty's Government cannot be insensible of the strong desire which the Government of the United States, and the nation at large, feel in the complete annihilation of the African slave-trade. The course pursued for the last thirty years is best calculated to mark the feelings and opinions of the Government and people of the United States in relation to a traffic now properly regarded, by most civilized nations, as alike repugnant to justice and humanity, and which, in relation to the United States, is not the less so to all the dictates of a sound policy.

It is true that the American Government have declined to become a party in treaties with other nations for the suppression of the slave-trade. Although repeatedly urged by her Majesty's Government to do so, the United States have been forced to decline all conventional arrangements by which the officers of ships of war, of either country, should have the right to board, search, or capture, or carry into foreign ports for adjudication, the vessels of each other engaged in the slave-trade. Indeed, it may be well doubted, apart from other considerations, whether the constitutional powers of the American Government would be competent to carry into effect those portions of the existing system so indispensably necessary to give it the character of just reciprocity.

These objections on the part of the United States have been repeatedly and frankly made known to her Majesty's Government, and are, doubtless, well understood by the British cabinet; and the more especially so, as it was an obstacle proceeding from the same principle, which, it is presumed, prevented Great Britain herself from becoming, formally, a party to the Holy Alliance. It will not, however, be understood that the United States have been insensible to the friendly spirit of confidence with which these applications have been made on the part of her Majesty's Government, or

that they have ceased to feel that strong solicitude for the total annihilation of the traffic which has distinguished the whole course of their policy. On the contrary, having been the first to abolish, within the extent of their authority, the transportation of the natives of Africa into slavery, by prohibiting the introduction of slaves, and by punishing their own citizens for participating in the traffic; and having, moreover, taken the steps which it deemed to be proper to prevent the abuse of their flag by the subjects of other powers, the Government of the United States cannot but feel sincere gratification at the progress made by the efforts of other nations for the general extinction of this odious traffic, and, consequently, undiminished solicitude to give the fullest efficacy to their own laws and regulations on the subject.

They cannot, however, consent that the provisions of the treaties in force between Great Britain and other Powers, for its abolition, and to which they are not a party, shall be made to operate upon the commerce and citizens of the United States. It cannot but be apparent to her Majesty's Government that these treaties are of a nature which cannot, and ought not, to be applied to the United States, under any restrictions or modifications whatever; and the more especially, as they have neither colonies nor the means of carrying out those measures of maritime policy and surveillance which form the basis of these treaties, and are so indispensably necessary to their execution.

In withholding its assent, therefore, from the existing system, and abstaining from all conventional arrangements, yielding the right of search to the armed vessels and cruisers of each other, her Majesty's Government must be sensible that the United States have been influenced alone by considerations arising out of the character of their institutions and policy; and that, having taken the measures which it deemed to be expedient and proper in relation to this subject, the Government of the United States can only leave to other nations to pursue freely the course which their judgment or policy may dictate, and in relation to which the United States certainly can have no disposition to interfere.

The undersigned has, therefore, been instructed, in presenting this case to Lord Palmerston's notice again, in the most earnest manner to assure his lordship that these continued violations of the flag of the United States, and unprovoked wrongs inflicted by British cruisers upon the rights and property of its citizens, under whatever color or pretext, cannot longer be permitted by the Government of the United States; and that he has accordingly been instructed to express to his lordship the confident expectation of the President that her Majesty's Government will not only at once recognise the propriety and justice of making prompt retribution for the unwarrantable conduct of Lieutenant Seagram in the present case, but that it will take suitable and efficient means to prevent future recurrence of all such abuses, involving, as they too often do, not only great private wrong, and consequent injury to property and life, but calculated to interrupt that harmony which is for the advantage, as it is no doubt the desire, of both Governments to preserve.

The undersigned prays Lord Palmerston to accept assurances of his distinguished consideration.

A. STEVENSON.

[Enclosure No. 2.]

*Lord Palmerston to Mr. Stevenson.*FOREIGN OFFICE, *November 19, 1840.*

The undersigned, her Majesty's principal Secretary of State for Foreign Affairs, has received the note which Mr. Stevenson, envoy extraordinary and minister plenipotentiary from the United States of America at this court, addressed to him on the 13th instant, complaining, on the part of the United States Government, of the conduct of Lieut. Seagram, of her Majesty's brigantine "Termagant," in having detained the United States brig "Douglas." The undersigned has to assure Mr. Stevenson that her Majesty's Government will at all times be desirous of repressing and preventing any violation of the flag of the United States by officers of the British navy. With this view, indeed, her Majesty's Government, previously to the receipt of Mr. Stevenson's note of the 13th instant, had, on receiving from Lieut. Seagram an account of the transaction referred to, called upon that officer to explain more fully and particularly the grounds upon which he had considered himself justified in detaining a ship under American colors, and with papers showing her to be American property.

Her Majesty's Government have now directed a prompt and searching inquiry to be made into the facts of the case, as stated in Mr. Stevenson's note; and the undersigned will not fail to communicate further with Mr. Stevenson upon the subject, so soon as her Majesty's Government shall have learnt the result of the inquiries instituted.

The undersigned avails himself of this occasion to renew to Mr. Stevenson the assurances of his distinguished consideration.

PALMERSTON.

[Enclosure No. 3.]

*Mr. Stevenson to Lord Palmerston.*32 UPPER GROSVENOR STREET,
November 20, 1840.

The undersigned, envoy extraordinary and minister plenipotentiary from the United States, has the honor to acknowledge the receipt of the note which Lord Palmerston, her Majesty's principal Secretary of State for Foreign Affairs, addressed to him yesterday, in reply to that of the undersigned of the 13th instant, complaining of the conduct of Lieut. Seagram, of her Majesty's brigantine "Termagant," in relation to the American brig "Douglas," off the coast of Africa, and will take an early opportunity of transmitting it for the information of his Government.

The undersigned derives, in the mean time, much satisfaction from the prompt and friendly assurance of Lord Palmerston, that, previously to the receipt of the note of the undersigned, Lieut. Seagram had been called upon to explain fully and particularly the grounds upon which he had considered himself justified in detaining a ship under American colors, and with American papers; and that her Majesty's Government had further directed a prompt and searching inquiry to be made into all the facts of the case.

The undersigned renews to Lord Palmerston assurances of his distinguished consideration.

A. STEVENSON.

[Enclosure No. 4.]

*Mr. Stevenson to Lord Palmerston.*32 UPPER GROSVENOR STREET,
November 10, 1840.

MY LORD: The President of the United States, solicitous to contribute as far as in his power, to promote the wishes of her Majesty's Government for the suppression of the slave-trade, has authorized me to communicate to your lordship, in such manner as I might deem most suitable, extracts from two communications which have been received by the American Government from their consul in Tripoli, and one of their naval officers, who has recently returned to the United States from the coast of Africa.

As many of the facts and suggestions contained in these papers may be regarded as of an interesting and important character, and of which your lordship may not be fully apprized, I have deemed it best to communicate them *in extenso*, and with that view I have now the honor of doing so. Your lordship will permit me to add my earnest hope that they may prove serviceable in the efforts which her Majesty's Government are making for the extinction of this inhuman and intolerable scourge.

I deem it proper also to state to your lordship that the characters of the individuals by whom these communications have been made, for integrity and good sense, entitle their statements to implicit confidence.

With sentiments of high respect and esteem, I have the honor to be, your lordship's obedient and faithful servant,

A. STEVENSON.

Mr. Forsyth to Mr. Stevenson.

[No. 82.]

DEPARTMENT OF STATE,
Washington, December 3, 1840.

SIR: The accompanying papers were transmitted to the department, through the Honorable James Buchanan, by Messrs. Eldridge, Ramsey, & Co., merchants of St. Thomas, West Indies. They relate to the seizure, detention, and consequent pillage of the schooner Iago, of New Orleans, by her Britannic Majesty's brigantine Termagant, Lieutenant Seagram master. I am directed by the President to instruct you to bring the circumstances to the attention of the British Government, and to found thereon a demand of redress for the outrage and damage suffered through these unjustifiable acts.

I am, &c.,

JOHN FORSYTH.

ANDREW STEVENSON, Esq., &c., &c., &c.

[Enclosures.]

LANCASTER, October 9, 1840.

DEAR SIR: I take the liberty of transmitting to you a package of papers which has been forwarded to me from St. Thomas, by Eldridge, Ramsey,

& Co., merchants of that port. Those papers relate to the alleged capture and robbery of the American schooner Iago, by the authority of the British Government; and it is the desire of these gentlemen that the American Government should interpose, through their minister at London, and obtain an indemnity for them.

I am neither acquainted with Eldridge, Ramsey, & Co., nor the merits of the claim; but they have been introduced to me by letter from Josiah Lockhart, of St. Thomas, with whom I was formerly acquainted.

I address you because I do not know whether Mr. Forsyth is in Washington. Please to drop me such an answer as I may forward to St. Thomas.

Yours, very respectfully,

JAMES BUCHANAN.

J. L. MARTIN, Esq.,
Chief Clerk of the Department of State.

ST. THOMAS, September 19, 1840.

SIR: We have the pleasure herewith to forward an introductory letter from our friend Josiah Lockhart, Esq., as also a parcel of documents relative to the American schooner Iago, which was illegally captured and robbed, (as will fully appear,) by the authority of the British Government.

We shall feel particularly obliged would you forward the same in its proper course for adjustment; and are, dear sir, your obedient servants,

ELDRIDGE, RAMSEY, & CO.

HON. JAMES BUCHANAN,
Washington City, D. C.

By this public instrument of declaration and protest, be it known, that on the 5th day of April, 1839, before me, Edward Power, Queen's advocate and notary public, duly authorized and practising in this colony of Sierra Leone, personally came and appeared Adolphe Dupony, master of the American schooner or vessel called Iago, of the measurement of 53½ tons, or thereabouts, belonging to the city of New Orleans, in the United States of America, who, being duly sworn on the Holy Evangelists of Almighty God, deposed and saith: That he was master of the American schooner or vessel called Iago; and that he set sail from Matanzas, in the island of Cuba, on or about the 12th day of November, 1838, to go to Cape Mesurado, on the coast of Africa, to trade in palm oil, cam-wood, and other African produce; and that, after pursuing his voyage to different parts of the coast, he arrived at Cape St. Paul, where he landed his cargo, and whence he was preparing to go into the interior of the country to trade, and that he had already bought a quantity of palm oil, and other African produce. And this deponent further makes oath and says, that on or about the 21st day of February, 1839, and whilst within 5° 46' north latitude, and 0° 55' east, and whilst this deponent was on shore as aforesaid, the said American schooner or vessel called Iago, whereof this deponent was master, was boarded by Lieutenant S. Seagram, commanding her Britannic Majesty's brigantine of war Termagant, and that, during such absence as aforesaid, this deponent's trunk was broken open, and a sum of money, amounting to 116 Spanish doubloons and 54 dollars, was taken therefrom, and that this deponent's chronometer and his watch were also taken away; and that the hold of his vessel was opened, and a large quantity of wine was drunk, destroyed, and

lost; and that when this deponent went on board the said American schooner or vessel called Iago, he found that all his men had been conveyed on board her Britannic Majesty's brigantine of war Termagant, except the mate, and that this deponent asked permission from the commander of the said brigantine to search the said sailors; and that, upon doing so, he found upon them a sum of money amounting to 114 doubloons and 19 dollars; and that the said sailors informed him that they had taken the said money because they were afraid that they would be set on shore, and abandoned, and that the said schooner or vessel called Iago would be destroyed; and that they tried to secure the said money for the said Adolphe Dupony, this deponent, and also to procure necessaries of life when so left on shore. And this deponent further makes oath and says, that all his clothes were left on shore, and that they have been entirely lost; and further, that all his crew, and a passenger named Bourjolti, a native of Baltimore, were put on shore at Cape St. Paul, and that this deponent was detained and brought to Sierra Leone, where he arrived on or about the 18th day of March, 1839; and further, that Lieutenant Henry S. Seagram, the commander of her Britannic Majesty's brigantine Termagant, endeavored to proceed against this deponent in the British and Spanish mixed court of justice, established in this colony for the prevention of an illicit traffic in slaves, but that the said court would not allow such a proceeding; and on or about the 30th day of March, 1839, the said deponent was again put into possession of the said schooner or vessel called Iago and that this was done in the presence of four masters of vessels, who signed the receipt for the said vessel, and who were present when an inventory was made of the articles on board the said schooner or vessel called Iago: Therefore, the said Adolphe Dupony, master of the said American schooner or vessel called Iago, on his own behalf and on the part and behalf of every one interested in, or in any respect concerned in, the said American schooner or vessel called Iago, doth hereby protest against the said Lieutenant Henry S. Seagram, commander of her Britannic Majesty's brigantine of war Termagant, and for all losses, costs, damages, demurrage, and expenses already incurred and suffered, or which may hereafter accrue, by reason of the illegal detention of the said American schooner or vessel called Iago; and I do further, on the part of the said master, Adolphe Dupony, protest against the said Lieutenant Henry S. Seagram, for the loss of cargo, clothes, a chronometer, and other things, amounting in value to the sum of £2,167, which were suffered by the said master, Adolphe Dupony, by reason of the illegal detention of the said schooner or vessel called Iago.

And I, the said notary public, at the request of the said master, Adolphe Dupony, do hereby solemnly protest in form aforesaid; and I have granted these presents under my seal of office, to serve and avail us occasion shall or may require.

EDWARD POWER,
Queen's Advocate and Notary Public.

Sworn by the said Adolphe Dupony the day on which it bears date, by me,

EDWARD POWER,
Notary Public.
A. DUPONY.

Witness:

CHARLES FRENCH, [L. S.]

Before me, the undersigned, Conrad C. Moe, counsellor of justice, and notary public and royal for the island of St. Thomas in America, personally came and appeared, this twelfth day of February, eighteen hundred and forty, Mr. Adolphus Dupony; and after having been duly identified to me, the said notary, by persons of respectability of this place, as a native of Leghorn, in Tuscany, and citizen of the United States of America, naturalized in New Orleans, and formerly captain of the American schooner "Yago" of and from said place, trading from Matanzas, island of Cuba, to Cape Mesurado and lower coast of Africa, for palm oil and other African produce, declared hereby, *in optima forma juris*, to nominate, constitute, authorize, and appoint the commercial house of Eldridge, Ramsey, & Co., of this place, his true, certain, and lawful attorney, for the special purpose to claim, demand, recover, and receive of and from all and every person or persons authorized, or Governments, whom it doth, shall, or may concern, all and whatsoever is or may become due, owing, and payable unto the appearer on account of the unlawful seizure of the American schooner "Yago" by her Britannic Majesty's ship "Termagant;" and on recovery and receipt of the whole or any part thereof, to give and grant acquittance and discharge, and generally to do, negotiate, perform, decree, and sign all acts, matters, and things, as well judicially as extra-judicially, that circumstances may require, and the said house of Eldridge, Ramsey, & Co. should find requisite or necessary, for the effectual security and support of the appearer's right and interest, and the recovery of his said just claim and demand for the unlawful seizure of the American schooner "Yago" by her Britannic Majesty's ship "Termagant," and whatever is dependant thereupon or incident thereto, as fully and effectually, to all intents and purposes, as the appearer himself might or could do if personally present; the appearer hereby giving and granting his said attorney (the commercial house of Eldridge, Ramsay, & Co.) *facultatem substituendi et revocandi quoties opus* in and touching the premises, and promising and hereby binding himself to ratify, confirm, and hold for valid, all and whatsoever the said commercial house of Eldridge, Ramsay, & Co., or their legal substitutes, shall do or cause to be done by virtue of the present power: which he thereupon ratified and signed before me, the said notary, in presence of the subscribing witnesses, in St. Thomas.

A. DUPONY.

Datum ut supra.

Actum presentibus testibus—

E. B. STEPHENS,
McWEGILLERUSS.

Quod attestor :

C. C. MOE, [L. S.]

Not. Pub. Reg.

I, Henry F. Seagrani, lieutenant and commander of her Majesty's brigantine "Termagant," hereby declare, that on this 21st day of February, 1839, being in about latitude 5° 46' north, longitude 0° 55' east, I detained the schooner named the "Iago," (Spanish property,) sailing under American colors, not armed, commanded by A. Dupony, who was on shore; and the mate (Gayetano Bru) declared her to be bound from Matanzas, island of Cuba, to Cape Mesurado, and back to Matanzas, with a crew consisting of

one master, one mate, six men, and one passenger, equipped for the traffic in slaves, contrary to the treaty with the Queen Regent of Spain, signed at Madrid, June 25, 1835; and that the papers and documents seized by me on board the said schooner, being marked from No. 1 to No. 4, are enumerated in the following list:

1. Log of proceedings, in Spanish.
2. Register.
3. List of crew.
4. Parcel containing letters, &c.

H. F. SEAGRAM,
Lieutenant and Commander.

H. M. SHIP VIPER, *May 19, 1839.*

These are to certify that the "Iago" schooner gave us a long chase, and, when boarded, refused to open her hatches until he had seen Lieutenant Mullen, and was inclined to be very insolent, both to the commander and myself. He was only detained until we had boarded him. It was after firing four guns before he hove to, and three before he hoisted his colors.

H. S. JULIAN, *Mate, at sea.*

Cet officier ment; il ne m'a tiré que deux coups de canon, et le second après que j'avais mis en panne. Si le capitaine me parle le chapeau sur la tête, c'est un malhonnête, et je ne dois pas oter la mien.—19 Mai, 1839.

A. DUPONY.

Le pavillon était hissé depuis le matin, et c'est un infame mensonge.

A. D.

Adolphus Dupony, from Leghorn, in Tuscany, citizen of the United States naturalized in New Orleans, formerly captain of the schooner "Yago," from the same city, bound from Matanzas, island of Cuba, for Cape Mesurado and lower coast of Africa, for trading palm oil and other African produce, arrested in Cape St. Paul by an English vessel.

The following sums, having been found in the possession of the crew belonging to the schooner "Iago," I left in charge of Mr. Stevens, the prize-master, viz: to be given into the possession of the mixed commission court at Sierra Leone:

One bag containing 58 doubloons.

One " " " 56 "

29 mixed dollars.

H. F. SEAGRAM,
Lieutenant and Commander.

[No. 26.]

SECRETARY'S OFFICE,
Colony of Sierra Leone.

Permit to depart on their voyage from this colony to the leeward coast the undermentioned individuals, passengers on board the "Iago," Dupony commander, and bound to the leeward coast:

Jose Dolores,
Francisco Gomez,
Ramon Morn,
Antonio Rodriguez,

} In all, four passports.

[L. s.] Given under my hand and the seal of office, at Freetown, this 6th day of April, 1839.

J. KRULE,
Colonial Secretary.

MAY 14, 1839.

This is to certify that the American schooner Iago, Captain A. Dupony, was lying at anchor at the port of Away, on the coast of Africa, Cape St. Paul's; and, as said captain says to me, has come from Sierra Leone to this place for the purpose of taking his people on board again, but could not find them; and, also, to take his cargo on board, but, as he tells me, could find nothing.

S. SMITH,
Captain of brig *Morris Cooper*.

In pursuance of an act of Congress of the United States of America, entitled "An act concerning the registering and recording of ships or vessels," Adolphus Dupony, of the city of New Orleans, and State of Louisiana, having taken or subscribed the oath required by the said act, and having sworn that he is the true and only owner of the ship or vessel called the Iago, of New Orleans, whereof he (Adolphus Dupony) is at present master, and is a citizen of the United States, as he hath sworn, and that the said ship or vessel was built at Hampton, State of Virginia, in the year 1836, as it also appears from a certificate of registry (No. 96) issued at this port on the 6th day of December, 1836, now surrendered—property changed; and said certificate of registry having certified that the said ship or vessel has one deck and two masts, and that her length is fifty eight feet three inches, her breadth sixteen feet nine inches, her depth six feet three inches, and that she measures fifty-three and sixteen ninety-fifths tons; that she is a schooner—has a square stern, no galleries, and a billet head; and the said Adolphus Dupony having agreed to the description and admeasurement above specified, and sufficient security having been given, according to the said act, the said schooner has been duly registered at the port of New Orleans.

[L. s.] Given under our hand and seal, at the port of New Orleans, this 3d day of November, in the year one thousand eight hundred and thirty-seven.

J. W. BREEDLOVE, *Collector*.
H. D. PEIRE, *Naval Officer*.

List of persons composing the crew of the schooner "Iago," of New Orleans, whereof is master A. Dupony, bound for Matanzas.

Names.	Places of birth.	Places of residence.	Of what country citizens or subjects.	Description of their persons.				
				Aged.	Height.		Complexion.	Hair.
					Feet.	Inches.		
Frederick Gadepaille	New Orleans	New Orleans	United States of America	27	-	-	Regular	Brown
Gayetan Bru - -	Pensacola	Pensacola	Do.	22	-	-	White	Do.
Joseph Flores - -	Do.	Do.	Do.	29	-	-	Dark	Black
John Pach - -	Do.	Do.	Do.	28	-	-	Do.	Do.
John Brown - -	New Orleans	New Orleans	Do.	26	-	-	Do.	Do.
Alous Jayen - -	Do.	Do.	Do.	12	-	-	Do.	Do.

A. DUPONY.

HAVANA, September 3, 1838.

Doc. No. 115.

CONSULATE OF THE UNITED STATES OF AMERICA—*Havana.*

I, John A. Smith, vice-consul of the United States of America, do hereby certify, that on the day of the date hereof, before me personally appeared A. Dupony, master of the schooner "Iago," of New Orleans, and, being duly sworn, did declare that the list hereto attached contains the names of the persons composing the crew of said vessel, together with the places of their birth and residence, so far as he can ascertain the same.

In testimony whereof, I hereunto set my hand and affix my seal of office, at Havana, this third day of September, in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence of the United States the sixty-third.

JOHN A. SMITH.

CONSULATE OF THE UNITED STATES OF AMERICA,
Matanzas, November 9, 1839.

I, Charles P. Traut, vice-consul of the United States of America at this port, and residing within the same, do certify that on this day, before me personally appeared A. Dupony, master of the schooner "Iago," of New Orleans, and, being duly sworn, did declare that John Pach, John Brown, and Alous Jayen, seamen named and described in the above list, have deserted and left said vessel while lying in this port; and that he has shipped Antonio Dias, José Monso Abascal, Ramon Garcia, Bartolo Seguins, Geronimo Dias, José Garcia, Francisco Anton, and Manuel Chirombo—said vessel now bound on a voyage to Cape Mesurado.

[L. S.] Witness my hand and seal of office hereto affixed.

CHARLES P. TRAUT,
Vice Consul.

Continuation du journal de la goëlette Américaine Iago de la Nouvelle Orleans, partie de Matanzas, Isle de Cuba, pour la côte d'Afrique, et Cap Mesurado, arrêtée et envoyée à Sierra Leone, par le brik-goëlette Anglais Termagant.

Du 22 Janvier, 1839, à 2 heures P. M., étant allé à bord pour savoir ce que le commandant désirait, j'ai trouvé le navire plein de matelots Anglais, un officier vêtu en bourgeois, ma malle rompue, mes écuelles ouvertes, mes papiers, mon argent emporté. et mon second m'a dit que dès le matin on avait emmené l'équipage à bord du navire de guerre, que seul il était resté, et avait résisté aux excès criminels des scélérats qui s'étaient emparés du navire, mais que l'on n'avait eu aucun égard à ses représentations; que dès la veille ma malle avait été rompue pour prendre les papiers du navire, et qu'ils avaient été emportés à bord du brik-goëlette, que durant toute la nuit, le navire avait été à la merci des matelots Anglais, qui s'étaient comportés de la manière la plus éhfrée, s'éhivrant, brisant, et volant, etc. etc. etc. A 2^o 30' P. M., le commandant est venu à mon bord et m'a remis un papier signé de sa main; je lui ai représenté la fausseté et l'iniquité de son contenu, que mon chargement était à terre, et allait être pillé ainsi que mes effets, etc.; que j'allais souffrir des dommages et pertes terribles. Tout a été inutile; il m'a repondu

qu'il serait bon pour le payer, et qu'il fallait que j'aille à Sierra Leone ; tout ce que j'ai pu obtenir a été de faire rendre une partie de mon argent qui a été trouvée sur mes matelots et officiers, qui m'ont dit qu'ils l'avaient pris pour me le porter à terre. Tout ce que je lui ai dit pour les laisser venir avec moi n'a servi à rien ; je les ai vus crnement jeté à terre, avec leurs effets, et un baril de bœuf et autre de biscuit. Ces gens demandaient la mort ainsi que le passager Mr. Bourjoli ; je les ai recommandés à l'humanité des nègres. Est il possible qu'en temps de paix entre les États Unis et le Gouvernement Anglais, il se commette des atrocités de cette espèce, et que l'Angleterre envoie sur cette côte des pirates plus cruels que les nègres ? C'est une honte et une abomination. Je proteste contre le Gouvernement Anglais pour donner des navires armés à de pareils scelerats, ainsi que contre le commandant pour la perte de mon chargement, et les dommages et intérêts, etc. etc. Dès aujourd'hui étant prisonnier, je n'ai plus tenu de journal jusqu'à mon arrivée à Sierra Leone, où j'ai été détenu à bord, sans communication, pendant trois jours, après lesquels j'ai été conduit chez un avocat mulâtre, (cès infâmes assassins qui commandent les navires de guerre Anglais ont été choisis pour plaider pour eux contre des blancs un homme de couleur c'est tout dire,) j'observe que mon chronomètre et ma montre m'avaient été enlevées ; ce mulâtre me dit que l'on allait me rendre mes papiers et mon navire, qu'étant Américain la mixed commission Anglaise et soi disant Espagnole n'avait rien à avoir avec moi, et ne voulait pas m'admettre. Je ne pus obtenir aucune justice, on voulut me faire aller à bord par ruse et par force, pour m'emmener je ne sais où, et ensuite, comme cela a été fait à autre navire Américain, m'abandonner au milieu des mers, (voilà comment ces criminels tachent d'ensevelir leurs sceleratesses.) Mr. Dunlap, qui s'est dit officier du Ternagant, alla jusqu'à me dire qu'il avait la force en main, et que si je ne me rendais pas le lendemain avant midi à bord, il m'y feraient conduire. J'eus recours au Gouverneur pour obtenir les documens et protest dont j'avais besoin, et être enfin jugé. Il me dit que cela ne les regardait pas ; que c'était l'affaire de l'amiral, qui est absent ; mais qu'il me donnerait sa protection si l'on voulait m'enlever de force. N'est ce pas une infamie, de conduire les navires à Sierra Leone, où ils ne peuvent obtenir justice que de l'amiral, et ce même amiral n'y est jamais, et n'y a pas un représentant ? Sierra Leone est le manoir des pirates. Enfin le 30 mois on me rendis mon navire et la partie de l'argent qu'on avait trouvé sur mon équipage, et Mr. Stevens, le capitaine de prise, n'ayant pas comparu quand on fit l'inventaire les 4 capitaines experts y procédèrent. Cet officier s'est tres bien comporté avec moi, ainsi que les matelots, depuis notre depart jusqu'au dernier moment. Au soir j'ai embarqué, un matelot Espagnol, pour garder la goëlette avec le cuisinier, qui est le seul homme qu'on ait laissé m'accompagner de tout l'équipage, les jours suivans j'ai embarqué un maître et deux matelots Espagnols, avec leurs passeports ; et après avoir pris les provisions nécessaires, le 10 Avril à 5^h P. M., je me suis mis à la voile pour aller à la recherche de mon équipage et chargement.

Du 10 Avril au Jeudi 11 Avril, 1839, vent à O.S.O., bon frais ; à 7^h P. M., relevé le cap de Sierra Leone au S.E. à la distance de 8^o ; à 9^h P. M., viré de bord, cap au S. ; à 5^h A. M., les îles Baranos à la distance de 1^o à l'E. 1 N.

Du 11 au Vendredi 12 Avril, vent ONO., faible, beau temps ; même cap à 12 A. M., cap S.S.E. ; à 8^h A. M., cap à E.N.E. ; à 8^h P. M., mouilli par 7 brasses à la barre de Sherbroo ; à 7^h A. M., dérapé pour aller à Gallinas, où nous avons mouillé à midi.

Du 12 au Samedi 13 Avril.—J'ai été à terre pour acheter du tabac à consigner des objets que j'ai reçus à Sierra Leone ; beau temps ; belle brise ; le navire en rade.

Du 13 au Dimanche 14 Avril, 1839.—Etant jour de fête, on n'a pu rien débarquer même temps.

Du 14 au Lundi 15 Avril.—Beau temps ; la goëlette Gabon est arrivée, et elle a embarqué le tabac et l'eau de vie que je lui ai donnés ; à 10^o A. M. nous avons fait voile de conserve.

Du 15 au Mardi 16 Avril.—A 6^o P. M., nous sommes sur le cap. Mont à la distance d'un mille, et nous continuons toute la nuit ; à 4^o A. M., forte tournade de terre ; à 10^o A. M., en calme devant le Cap Mesurado ; mis le navire en parure et été à terre.

Du 16 au Mercredi 17 Avril.—Fait route pour New Cestre, où j'ai mouillé à 11^o A. M. ; trouvé Theodore absent.

Du 17 au Jeudi 18 Avril.—Debarqué des grémens et des voiles que j'ai prises à Sierra Leone.

Du 18 au Vendredi 19 Avril, 1839.—Grosse mer ; la goëlette a rompu son ancre, et mouillé la grande ; le monde occupé à changer les grémens vieux du navire.

Du 19 au Samedi 20 Avril, 1839.—Même temps, sans aucune chose de nouveau ; j'ai vu un des gens de l'équipage d'une goëlette Portugaise que le Forester, navire de guerre Anglais, a jettés à terre au grand Corrow, et que les negres ont massacrés et criblés de balles, aussitôt qu'ils ont été à terre. Ce commandant est recommandable par son ihumanité, et je ne sais s'il a reçu tels ordres de son Gouvernement. C'est une honneur.

Du 20 au Dimanche 21 Avril.—Aujourd'hui nous avons reçu la nouvelle que Theodore a été conduit à Sierra Leone, à bord d'un brik Russe, où il allait comme passager, et que deux navires Anglais ont pris ce brik.

Du 21 au Lundi 22 Avril, 1839.—Ne pouvant attendre Theodore pour régler mes comptes, j'ai embarqué 6 paquets complets, et à 3^o P. M. je me suis mis à la voile, vent au SSE. ; nous louvoyons toute la nuit, avec vent et marée contraire ; fait jour à Tirton. Nous continuons à louvoyer.

Du 22 au Mardi 23 Avril.—Il fait nuit sur Pestes à 5 milles de l'entrée de la rivière ; louvoyé toute la nuit ; fait jour sur Sinon hill ; vent à O.

Du 23 au Mercredi 24 Avril.—Fait nuit sur Badon ; à 2^o A. M. forte tournade à la cap jusqu'au matin ; un brik sous le vent à midi, il me hisse pavillon Anglais ; vent frais de SE.

Du 24 au Jeudi 25 Avril.—Peu de vent ; fait nuit près de Bocktown ; au matin temps couvert, tournade au large à midi ; nous montons le Cap Palmas ; le temps, beau.

Du 25 au Vendredi 26 Avril, 1839.—Un brik Américain en vue ; nous mouillons ensemble à la pointe Zalon, où j'ai acheté une pirogue ; à 10^o A. M. nous derapons et fasons route à l'ESE. ; à midi lat. obj. E. 3^o 25' N. ; et la long. 7^o 2' O.

Du 26 Avril au Samedi 27 Avril.

H.	M.	D.	Course.	Vent.	Remarques.
2	-	-	-	-	Beau temps ; toutes voiles dessus.
4	28	-	E. S. E.	S. O.	
6					
8	25				
10					
12	18				
2					
4	18				
6					
8	10				
10					
12	20				

Lat. obs. 3° 28' N. ; long. 4° 33' O.

Du 27 Avril au Dimanche 28, 1839.

H.	M.	D.	Course.	Vent.	Remarques.
2					Beau temps.
4	28	-	E. 15° S.	S. O.	
6					Belle mer.—Vent frais.
8	32	-	-	-	
10	-				
12	28				
2					
4	20				
6					
8	20				
10					
12	24				

Lat. obs. 3° 34' N. ; long. 1° 33'.

Du 28 au Lundi 29 Avril.

H.	M.	D.	Course.	Vent.	Remarques.
2	24	-	N. E. $\frac{1}{4}$ E.	S. O.	Tournade violente. Amenées toutes nos voiles.
4					
6	24	-	-	-	A terre sur Tantumquery.
8					
10	S	-	O. S. O.	-	Tournade que je relève au N. 20° E. ; nous continuons en vue de terre.
12	S				
2	-	-	-	-	A midi nous sommes sur terre.
4					
6					
8					
10					
12					

Du 29 au Mardi 30 Avril, 1839.—A 6° P. M. mouillé entre Ningo et Toupar, 6 brasses ; le temps menaçant une tournade ; à minuit forte tournade, avec tonnerres terribles. A 6° A. M. dérapé et fait route pour le Cap St. Paul ; peu de vent de terre.

Du 30 Avril au 1er Mai, 1839.—A 1° 30' P. M. monté le Cap St. Paul, et mouillé à Agwai à 2° 30' P. M. A 4° P. M., une pirogue est venue à bord, et j'ai appris que tout mon équipage s'en est allé je me suis embarqué pour aller à terre, où l'on m'a remis une lettre du second, qui me fait savoir qu'il est parti, ainsi que le passager et tout l'équipage. J'ai été voir le Cabezera pour obtenir raison de mon chargement ; il m'a répondu qu'il n'en était pas responsable ; que le navire ayant été pris, cela était considéré comme un naufrage, et qu'il n'avait pu s'en sauver de mon chargement ; que l'on avait fourni à mon équipage tout ce dont ils avaient en besoin pour vivre, et qu'il fallait que je payasse ces dépenses.

Au matin j'ai fait toutes les recherches, et je vois des nègres avec les chemises et le corail de mon chargement. C'est fini ; tout est perdu pour moi ; je proteste de nouveau contre le Gouvernement Anglais et le navire capteur pour la valeur de mon chargement, les dommages et intérêts, etc., etc.

Du 1er Mai au Jendi 2 Mai, 1839.—A 3° P. M. est arrivé le négro nommé Popo, venant de l'intérieur ; je lui ai demandé compte de mes effets et de mes comptes papiers, et journal que j'ai laissés chez lui ; il m'a dit qu'il avait consigné tout à mon équipage au moment où il fut jeté à terre ; et que ceux-ci étant partis, ils ne lui ont rien laissé ; le temps je met à la pluie qui dure toute nuit. A 6° A. M., depeché un exprès à Francisco dans l'intérieur, et envoyé la pirogue à bord.

Du 2 Mai au Vendredi 3 Mai.—A 4° P. M. reçu du bord deux paquets et une demi pipe de rhum ; commencé à payer les frais de mon équipage ; un palabre a commencé et a duré jusqu'à la nuit, qui a été belle ; au matin envoyé de l'eau et du bois.

Du 3 Mai au Samedi 4 Mai.—Le palabre a continué ; acheté des provisions fraîches ; reçus des nouvelles du bord ; tout l'équipage est malade ; forte tournade sur le faire du jour ; continué à faire de l'eau.

Du 4 Mai au Dimanche 5 Mai.—Grosse mer ; les pirogues ne peuvent aller à bord. Une goëlette à hunier en vue allant à N. O.

Du 5 au Lundi 6 Mai, 1839.—Même mer et pluie, la fièvre m'ayant pris, je suis obligé de garder le lit et me soigner ; débarqué 4 barils d'eau de vie, et payé le compte de l'équipage.

Du 6 Mai au Mardi 7 Mai.—Francisco m'ayant envoyé dire qu'il va venir, je me suis déterminé à l'attendre ; même temps, même mer.

Du 7 au Mercredi 8 Mai. Un brik a mouillé à Quita, et une goëlette à Zebé ; envoyé de l'eau et du bois à bord, ainsi que des provisions ; beau temps.

Du 8 au Jeudi 9 Mai.—Tournade durant la nuit ; la fièvre m'a laissé ; le jour beau temps.

Du 9 au Vendredi 10 Mai.—La nuit belle ; le brik s'est mis à la voile et louvoie.

Du 10 au Samedi 11 Mai, 1839.—A 4° P. M., le brik a mouillé et brisé le pavillon Américain. A 10° A. M., j'ai été à son bord, et le capitaine m'a promis de venir à terre demain ; le brik est le Moris, Coper, de Philadelphia.

Du Samedi 11 au Dimanche 12 Mai.—Pluie et tournade toute la nuit. A 11 A. M., le capitaine Américain n'a pu venir à terre, et me l'a envoyé dire.

Du Dimanche 12 au Lundi 13 Mai.—Beau temps ; achevé de faire mes provisions et mes affaires.

Du Lundi 13 au Mardi 14 Mai.—Brise très fraîche ; la nuit calme ; le capitaine Américain m'a donné le certificat de la perte de mon chargement.

Du Mardi 14 au Mercredi 15 Mai, 1839.

2	6	—	S. S. E.	S. O.	A 1° P. M. fait voile.
4	4	5			
6	5	—	—	—	Variables.
8	3	5			
10	4				
12	4				
2	3	—	—	—	Tournades
4	2				très
6	2				fortes.
8	1				
10	2				
12	6				

Lat. obs. 4° 53' N. ; long. 2° 59' E.

Du 15 au Jeudi 16 Mai.

2	6	5	S. S. E.	S. O.	Tournade.
4	3	5	O.	-	
6					
8	6	5	S. S. E.		
10	3				
12	2	5			
2	2				
4	1				
6					
8					
10	1				
12	2	5			

Lat. obs. $4^{\circ} 24'$ N.; long. $3^{\circ} 7'$ E.

Du 16 Mai au Vendredi 17 Mai, 1839.

2	1	5	S. S. E.	S. O.	
4	1	5			
6					
8					
10					
12					
2	1	-	S. O.		
4	-	5			
6					
8	1	-	S. S. E.		
10	5				
12	5	5			

Lat. obs. $3^{\circ} 49'$ N.; long. $3^{\circ} 7'$ E.

Du 17 au Samedi 18 Mai.

2	6	5	S. E.	S. S. O.	Pluie et tournades.
4	6	5			
6	7				
8	8	-	-	-	
10	10				
12	10	-	S. E. $\frac{1}{4}$ S.		
2	11				
4	7	-	S. S. E.		
6	7				
8	7				
10	5				
12	3				

Lat. obs. $2^{\circ} 42'$ N.; long. $^{\circ} 47'$ E.

Du 18 au Dimanche 19 Mai, 1839.

2	4	-	S. S. E.	S. O.	Au jour une goëlette venant sur nous, nous prenons chasse.
4	4				
6	3				
8	5				
10	4	-	S. E. 15° S.		
12	4				
2	2	-	-	-	
4	3	5	S. E. 5° S.		
6	4				
8	2	5			
10	4				
12	4				

Lat. obs. 2° 31' N.; long. 6° 7' E.

Du 19 au Lundi 20 Mai, 1839.

2	5	-	S. E.	-	A 3° P. M. un officier de la goëlette est venu à bord, après avoir mis en panne au second coup de canon qu'elle a tiré, et après avoir vu les papiers, il m'a conduit à bord. C'est alors que j'ai su que cette goëlette était le Viper, et le commandant a ordonné qu'on ouvre mes écoutilles; j'ai protesté, et il m'a fait donner le certificat ci-joint.
4	-	-	-	Vent à risées variables.	
6	4	-	S. S. E.		
8	4				
10	4				
12	5				
2	3	-	-	Grosse mer.	
4	3				
6	2	5			
8	2	5			
10	2	5	S. E.		
12	3				

Lat. obs. 1° 55' N.; long. 7° 13' E.

Du 20 au Lundi 21 Mai, 1839.

2	3	-	S. E. $\frac{1}{4}$ S.	S. O. $\frac{1}{4}$ S.	A 4° P. M., la pointe N. de l'île du Prince nous reste S. S. E., et celle de l'O. au S. 16° O. Nous sommes éloignés 8° de la roche du Galle.
4	3				
6					
8					
10					
12					
2	2				Tournade très forte.
4	2	5	-	-	
6	2	5			
8	3	5			
10	3	5			
12	4				

Lat. obs. 1° 31' N.; long. 7° 52' E.

Du 21 au Mardi 22 Mai.

2	4	-	S. E. $\frac{1}{4}$ E.	S. $\frac{1}{4}$ O.	A 8 ^o A. M. l'île de Corisco au S. E. Le vent vient de terre. A midi vue de bord au milieu de canal.
4	4	-	-	-	
6	4	-	-	-	
8	3	-	-	-	
10	3	-	-	-	
12	3	-	-	-	
2	3	-	-	-	
4	3	-	-	-	
6	3	-	-	-	
8	3	-	-	-	
10	3	-	-	-	
12	3	-	-	-	

Du 22 au Mercredi 23 Mai, 1839.—Mouillé à Corisco par 5 brasses ; beau temps ; été à terre.

Du 23 au Jeudi 24 Mai.—Je suis resté à terre avec la fièvre la plus violente ; à 6^o A. M. mis à la voile pour la rivière du Gabon.

Du 24 au Vendredi 25 Mai.—Nous louvoyons ; à 2^o P. M. un brik goëlette Anglais vient en nous tirant des coups de fusil ; ces messieurs sont de la dernière insolence et lacheté ; un officier est venu à bord, et a visité le navire, et m'a conduit à bord, où j'ai eu à faire à un capitaine qui m'a fait des menaces.

Du 25 au 26 Mai.—Le brik goëlette nous suit, et je mets à le cap la nuit ; il veut que je le pilote, et je l'envoie à tous les diables.

Devant nous, soussigné, capitaines de navire, ont été rendu au Capitaine Dupony, de la goëlette Américaine Iago, de la Nouvelle Orleans, par le capitaine de prise, M. Thomas Stevens, les objets suivants : Primo. Les papiers contenant, No. 1, un journal d'habitable : No. 2, le role d'équipage ; No. 3, le registre, ou patente ; No. 4, une patente de pilote de Gaetano Bru, et deux reçus de la douane de la Havane ; et trois lettres, deux pour Montevideo et une pour Bordeaux, qui ont été recachetées avec de la cire rouge. Secundo. Cent quatorze doublons et vingt-neuf piastres portes monnaie Espagnol, en tout, (114 doublons 29 piastres fortes.) Tercio. Le navire dans l'état dans lequel il se trouve, conformément à l'inventaire auquel nous allons proceder, et auquel nous le summons d'assister l'avertissement que s'il s'y refuse, nous l'assurerons dans le protest du Capitaine Dupony.

En foi de quoi, nous signons le présent à Sierra Leone, ce 30 Mai, 1839. Fait en double original.

Como capitan de buque :

VICTOIRE SANCHEZ.

Como capitan Italiano de barto. marcante :

MARIANO IGITCOVICH.

Como capitan de navios :

MANUEL DE NACIM'TO MOMA.

Como capitan au Longcours :

J. E. LAMAR.

THOMAS STEVENS,

Gunner H. M. B. Termagant, in charge of the schooner Iago.

Ndo. Habana, Libro II de 3os Pilotos, folio 268.

DON JUAN BAUTISTA TOPETE Y VIANA, caballero de la real orden Americana de Isabel la Católica, de la militar de San Hermenegildo, condecorado con la cruz de diadema real de la marina, y con el escudo de la retirada de Vera Cruz al castillo de San Juan de Ulloa, brigadier de la real armada, comandante general interino de este apostadero, y de las fuerzas navales de él, &c., &c.

Por cuanto concurren en D. Cayetano Bru, natural de New Orleans, la suficiencia y demás buenas circunstancias, que previenen los artículos 2 y 3 del título 8º de la ordenanza, para ejercer la plaza de tercer piloto particular en los buques mercantes: por tanto, nombro al referido D. Cayetano Bru por tal tercer piloto particular. Y en virtud de este nombramiento, firmado de mi mano, sellado con el escudo de mis armas, y refrendado por el secretario de esta comandancia general, tomada, que sea su razón en la principal de matriculas de esta provincia, podrá ejercer esta plaza, y se guardaran los privilegios y exenciones, que con arreglo á la citada ordenanza deben gozarlos de esta clase.

Dado en la Habana á diez y seis de Enero, de mil ochocientos treinta y seis.

JUAN B. TOPETE.

Francisco de Yrrigoyen, nombramiento de tercer piloto particular, para D. Cayetano Bru.

COMANDANCIA DE MATRICULAS.

Se le formó aciento en esta fecha, y en la lista corriente de los de un clase al f. 170.

HABANA, y *Enero 18 de 1836.*

TOPETE.

Notado en el detale fecha ut supra de los Andes.

Vto. Bno. Para hacer viage á Calcutta con el bergantín General Mina, en clase de 2º piloto.

HABANA, 30 de *Abril de 1836.*

TOPETE.

Vto. Bno. Para hacer viage á New Orleans en la balanda Asturiana de 1º piloto de Derrotas segun examen que ha sufrido por decreto de V. S. en 13 del presente mes.

HABANA, 20 de *Junio de 1838.*

TOPETE.

Nous, soussignés, capitaines de navire, déclarons: Qu'ayant été appelés par le Capitaine Dupony, de la goëlette Américaine Iago, pour constater l'état dans lequel se trouve la dite goëlette, telle quelle lui a été remis par le capitaine de prise, M. Stevens, devant nous, et en notre présence, ainsi que l'inventaire des objets que lui ont été laissé à bord, nous nous sommes transportés à bord de la dite goëlette, et le capitaine de prise ne se trouvant pas

à bord malgré l'intimation qui lui en a été faite de se présenter, avons procédé comme experts, conformément à la loi au reconnaissance et à l'inventaire ; et jurons devant Dieu, et sur la Bible, avoir trouvé que la dite goëlette a besoin d'être calfatée, et a perdu plusieurs feuilles de cuivre, que nous font craindre qu'elle soit piquée dans ses fonds; que les écoutes de mizaine, et de foc lui manque, que divers morceaux des plabords ont été cassées. Dans le chambre a été présenté devant nous la malle du capitaine, dont les pitons du cadenats ont été brisé. Nous avons ensuite fait l'inventaire des objets suivants : La coque du navire, avec son gouvernail, les deux mats, et la beaupré, et bords dehors, avec leurs cordages et haubans. Deux vergues de fortune et deux matereauts de hune. Deux chaines et leurs ancrs, une cabane compue, et une cuisine une abitacle. La grande voile neuve avec sa baume, et écoute le foc, et petit foc sans écoutes.

La mizaine neuve sans écoutes.

Une voile de fortune neuve.

Un peu de voiles vieilles.

Vingt-six avirons de diverses grandeurs.

13 caisses.

10 planches et bouts de planches de pin.

5 planches et bouts de planches de cèdre.

2½ pipes d'eau de vie.

1 pipe de vin.

1 baril huile de palme.

1 baril vinaigre.

4½ pipes pleins d'eau salée.

2 barils de pain.

6 paquets de batais.

3 petits barils de vins.

8 demijames vides.

Une portion de caisses de vins et d'autres choses rompues.

Un baril de lard entamé.

Dans la chambre—

Un baril de sucre entamé.

Un sac de café.

Trois compas.

Une caisse servant de table, et contenant des assiettes et tasses à café, &c.

Divers pots de fer blanc, et trois fanaux.

Diverses provisions.

4 pavillons différents.

Une portion de charbon de terre.

Les objets ci-dessus indiquées étant les seuls que nous avons trouvés à bord, nous avons signé le présent, et l'avons delivré au Capitaine Dupony pour lui servir. Et valoir ce que de raison à Sierra Leone, à 31 Mars, 1839.

Como capitán de navios mercantes :

MANUEL DE NACIM'TO MOMA.

Como capitán :

VICTOIRE SANCHEZ.

Como capitán :

MARIANO IGITCOVICH.

Capitaine au Longcours Français :

J. E. LAMAR.

Mr. Stevenson to Mr. Forsyth.

[No. 109.]

LEGATION OF THE UNITED STATES,
London, December 12, 1840,

SIR: I have the honor herewith to transmit the copy of a note from Lord Palmerston, under date of the 8th instant, in reply to the one from myself of the 10th of November, communicating the documents and information received by the American Government in relation to the African slave-trade.

I am, sir, very respectfully, your obedient servant,

A. STEVENSON.

Hon. JOHN FORSYTH,
Secretary of State, Washington.

[Enclosure.]

Lord Palmerston to Mr. Stevenson.

FOREIGN OFFICE, *December 8, 1840.*

SIR: I have to acknowledge the receipt of your letter of the 10th ultimo, together with its enclosures, on the subject of the African slave-trade; and I beg to express my thanks to you for that communication, and for the information which it contains.

With reference to the suggestion contained in the papers enclosed by you, that a blockade should be instituted at the Gallinas, and at New Cess, as an effectual means of putting down the slave-trade, I have much pleasure in acquainting you that a blockade has for some time past been regularly maintained at the Gallinas by her Majesty's ship "Wanderer," and by other vessels under the direction of its commander; and at New Cess, by her Majesty's ship "Forester."

With reference to the supposition of the writer of the paper which you have sent me, that British cruisers abstain from taking vessels before they have slaves on board, in order that, by capturing such vessels after they have taken their slaves on board, the captors may get more prize-money, I have to explain to you that it is only since the passing of the act 2d and 3d Victoria, cap. 73, that there has existed any legal authority to condemn Portuguese ships detained for being equipped for slave-trade, and not having slaves actually on board; and therefore, until that act came into operation on the coast of Africa, her Majesty's cruisers could not detain Portuguese slave-vessels till they had actually taken their slaves on board; but, with regard to Spanish vessels, the treaty of 1835 between Great Britain and Spain gave to the mixed British and Spanish commissioners a power to condemn slave-vessels under the Spanish flag, if found equipped for slave-trade, even though they might have no slaves actually on board; and during the period which has elapsed since that treaty has been in operation, her Majesty's cruisers have taken, and sent in for adjudication, eighty-five Spanish slavers without slaves on board, and only eighteen with slaves on board. And since the year 1835, her Majesty's cruisers on the coast of Africa have detained, and sent in for adjudication, fourteen Brazilian vessels without slaves on board, and only two with slaves.

You will see, therefore, from these facts, that the writer of the paper in question is entirely mistaken in supposing that the British cruisers on the coast of Africa look to profit instead of to the zealous performance of their duty. And I have further to state, in proof of the zealous activity of British cruisers, that all the slave-vessels sent in for adjudication before any of the mixed commissions in Africa or the West Indies, have been detained and sent in by British cruisers; not one of those slave-vessels having been detained by the cruisers of any of the other contracting parties to the treaties under the stipulations of which those slave-vessels were condemned.

I am, sir, your most obedient, humble servant,

PALMERSTON.

Mr. Forsyth to Mr. Stevenson.

[No. 82.]

DEPARTMENT OF STATE,
Washington, December 26, 1840.

SIR: I transmit to you, herewith, an extract from a letter addressed to this department on the 28th ultimo; by the consul of the United States for Havana, and a copy of the accompanying protest of the master of the schooner "Hero," of New Orleans, against an outrage perpetrated upon this vessel by her Britannic Majesty's brig "Lynx," in August last, on the coast of Africa.

The circumstances attending this violation of our flag, as set forth under oath by the captain, mate, and a portion of the crew of the American schooner, are of a character so wantonly insulting and injurious as to demand prompt redress. It is the President's wish, therefore, that you lose no time in making a representation of this case to her Britannic Majesty's Government, with a view to the punishment of the officer in command of the "Lynx" at the time of the detention and robbery of the schooner "Hero," and to the indemnification of her master and owners for the losses and damages they have sustained by the acts of violence committed.

I am, sir, your obedient servant,

JOHN FORSYTH.

ANDREW STEVENSON, Esq.,
&c. &c. &c.

Mr. Forsyth to Mr. Stevenson.

[No. 85.]

DEPARTMENT OF STATE,
Washington, January 6, 1841.

SIR: I transmit to you, enclosed, the copy of a letter dated the 22d ultimo, addressed to me by Mr. A. A. Frazar, the claimant in the case of the brig "Douglass," of Duxbury, Massachusetts, which formed the subject of my despatch to you, numbered 76, together with one of the papers referred to in his communication. The other, being an authenticated copy

of the protest extended by the master, &c., at the United States consulate at Havana, in March last, is an instrument with which you have already been furnished. This letter and accompanying memorandum of Lieutenant Seagram are placed at your disposal, to be used at your discretion, either in the prosecution or in the ultimate arrangement of this claim on the British Government.

I am, sir, your obedient servant,

JOHN FORSYTH.

ANDREW STEVENSON, Esq.,
 &c., &c., &c.

[Enclosure No. 1.]

BOSTON, *December 22, 1840.*

SIR: I beg leave to transmit to you the accompanying documents relating to the seizure and detention, by Lieutenant Seagram, the commanding officer of her Britannic Majesty's brigantine "Termagant," of the brig "Douglass," of Duxbury, in this commonwealth, Baker master, on the coast of Africa, in October last; and to ask the interposition of the Government of the United States to obtain from the British authorities a proper indemnity therefor.

The brig was engaged in a perfectly lawful trade, without the most remote participation in, or connexion with, traffic in slaves; and there was no just ground to suppose that she was in pursuit of any unlawful object. All the proceedings of Lieutenant Seagram, in this respect, were, if not a wanton, at least a reckless violation of private rights and of the American flag.

Though the brig was held in custody but three days, she was, during that time, kept sailing down the coast, where she was borne along by a strong current, at so rapid a rate that it took her twenty-eight days after her release, to return to the place of her seizure. In the mean time, the officers and crew of the brig were taken sick in consequence of their long exposure under the burning suns of that region; from which sickness, three of the crew died on their homeward passage, and the captain still remains an invalid, and probably will so remain during his life. The loss occasioned by the detention of the brig was much more than the mere loss of time and expenses, during thirty-one days; as the purposes and objects of the voyage were much deranged, and finally partially defeated.

It is difficult to say what sum, under the circumstances, would be a just and proper indemnification for the injuries sustained; and I do not suppose that a full remuneration can be obtained, without wearisome delay and much inconvenience, by going into the details and more remote consequences of the transaction. I would prefer that the matter should be adjusted speedily, and at a loss, rather than that a protracted negotiation should be entered into, though a larger amount should be ultimately obtained.

With these views, I would relinquish my claim to the British Government for five thousand dollars, though a considerably larger sum would not fully repair the damages I have sustained in the premises.

If any further information or proof shall be needed by your department

in the case, may I ask of you the favor to inform me what it is? and if it be in my power to do so, I will promptly furnish it.

I have the honor to be, sir, with much respect, your very obedient servant,
A. A. FRAZAR.

HON. JOHN FORSYTH,
Secretary of State of the United States.

[Enclosure No. 2.]

The American brig "Douglass," from the Havana, bound to the rivers Bras and Bonney, was detained by her Majesty's brigantine "Termagant," on the 21st instant, having a suspicious cargo on board.

I have now allowed her to proceed on her voyage, finding that no information is yet received from the United States respecting the American flag.

Given under my hand, on board her Majesty's brigantine "Termagant," off Popoe, this 29th day of October, 1839.

H. F. SEAGRAM,
Lieutenant and Commander.

Mr. Forsyth to Mr. Stevenson.

[No. 89.]

DEPARTMENT OF STATE,
Washington, March 1, 1841.

SIR: I send you, enclosed, the copy of a letter this day addressed to Mr. Fox, from this department, and transcripts of the papers therein mentioned, relating to the case of the "Tigris," an American vessel recently brought into the port of Salem, Massachusetts, in the charge of a British officer and prize-crew. They are transmitted, to place you in possession of an outline of the transaction, with a view to secure, at the earliest moment practicable, the attention of the British Government to commander Matson's conduct on the occasion. As Mr. Fox will doubtless immediately present the subject to her Britannic Majesty's Government, it may be only necessary, before you leave London, to urge prompt attention to it.

I am, sir, your obedient servant,

JOHN FORSYTH.

ANDREW STEVENSON, Esq.,
S^c., S^c., S^c.

Mr. Fox to the Acting Secretary of State.

WASHINGTON, June 18, 1839.

SIR: I have the honor to acquaint you that her Britannic Majesty's brig-of-war "Buzzard," Lieutenant Fitzgerald commander, arrived in the har-

bor of New York on the 12th instant, having in charge two vessels (the "Eagle" and "Clara," of Baltimore,) detained by Commander Fitzgerald on the west coast of Africa, while engaged in the illicit traffic of slaves.

It appears that the said vessels, when detained by her Majesty's ship "Buzzard," were sailing under American colors, but furnished with fictitious American papers; that both of them are *bona fide* Spanish property, belonging to owners living at the Havana; that the crews were all Spaniards or Portuguese; and that no American citizen was found on board of either vessel, excepting the two persons calling themselves captains—by name, Joshua W. Littig, and Samuel B. Hooker; both of whom have confessed that they have no share, part, or property in the vessels, but had been merely hired for the voyage by the Spanish owners, for the purpose of protecting the vessels from capture or detention by British cruisers, under cover of the American flag.

Under these circumstances, and with the knowledge that the laws of the United States have pronounced the crime of slave-trading by American citizens to be piracy, Commander Fitzgerald rightly determined, in the absence from the coast of Africa of any United States ship-of-war, himself to conduct the slave-vessels "Eagle" and "Clara," together with their reputed captains, to an American port, to be there delivered over to the judicial authorities of the United States, and dealt with according to law.

The two individuals above named, Littig and Hooker, have already been delivered by Commander Fitzgerald into the custody of the United States district attorney at New York. The vessels "Eagle" and "Clara" will likewise be delivered over to the authorities of the United States, if the courts of the United States can legally take cognizance of them as captured American slave-vessels. If, on the contrary, the Spanish character of the ownership and property of the vessels shall be found to stand in the way of their condemnation by the courts of the United States, Commander Fitzgerald will, in that case, carry the said vessels to Sierra Leone for trial before the British and Spanish court of mixed commission there established.

I have the honor herewith to enclose, for the information of the United States Government, a copy of the letter addressed to me from New York, by Commander Fitzgerald; a copy of the instruction addressed to Commander Fitzgerald by Captain Tucker, her Majesty's senior naval officer on the coast of Africa; also, copies of two official declarations by Commander Fitzgerald, respecting the detention of the slave-vessels; to which declarations are annexed the confessions, signed by themselves, of the American citizens "Littig" and "Hooker." These different papers contain, together, full and circumstantial details of the important case of which I have had the honor to state to you the outline.

Having thus placed the whole matter before you, for the consideration of the President's Government, I have only to request that you will favor me with as early an intimation as may be possible of the course which the United States authorities will find themselves justified in pursuing, in order that the commander of her Majesty's ship may regulate his proceedings accordingly.

I have the honor to be, with great respect and consideration, your most obedient and humble servant,

H. S. FOX.

AARON VAIL, Esq., &c., &c., &c.

[Enclosure No. 1.]

HER MAJESTY'S BRIGANTINE "BUZZARD,"
New York, June 12, 1839.

SIR: I have the honor of reporting to you the arrival, at this anchorage, of her Majesty's brigantine under my command, with two vessels, named the "Eagle" and "Clara," of Baltimore, detained by me on the west coast of Africa, under American colors, but with *fictional* American papers; both vessels being *bona fide* Spanish property, owners living in the Havana, and the crews all Spaniards or Portuguese—there not being one citizen of the United States on board either vessel, saving the two persons calling themselves captains, by name "Joshua W. Littig" and "Samuel B. Hooker," both of whom, immediately on detention by me, admitted that they have no share, part, or property in the vessels, notwithstanding they are called *owners* in the American bills of sale; that they were merely *hired* for the voyage (by the Spanish owners) with the view of covering these vessels from capture or detention by British cruisers, by the mere display of the American flag. They both further admit that the vessels were intended for a slave cargo, and were fitted up, and are now in every way ready and provisioned, for the reception of slaves; the captain of the "Clara," S. B. Hooker, acknowledging that he belongs to the house of Forcade & Co., of Havana; and that, had I taken her a week later, it would have been with a living cargo of upwards of three hundred human beings on board, bound to Cuba.

With depositions so strong, and such convincing proofs of the false character of these vessels, and knowing that the act of aiding in the transport of slaves by any of its citizens, is, by the laws of the United States, made piracy, I did not hesitate to detain both vessels; determined, in the absence of any American vessel of war on that coast, to, in this instance, take under my protection the honor of the American flag, and save it from the stigma that would attach, were its mere display to be permitted for a moment longer to protect those engaged in this iniquitous and inhuman traffic.

On joining Captain Tucker, the officer in immediate command of her Majesty's squadron on the west coast of Africa, and stating to him all the above circumstances, he did not hesitate in ordering me here: enjoining me to lay the whole case, through your excellency, before the American Government, confident that so wicked an attempt to basely prostitute the flag of a nation distinguished by its *early* repudiation of the slave-trade had only to be made known to its Government to insure the promptest measures to crush a proceeding alike injurious to the great cause of humanity as disgraceful to the parties engaged in it, and a proceeding that, if persisted in, would completely nullify *all* the treaties that Great Britain has interchanged with Spain and Portugal on the slave-trade; treaties, for the fulfilment of which I trust the whole civilized world feel deeply interested.

Suffer me, therefore, through your excellency, to call the attention of the United States Government to the circumstance of both these vessels, and also to make known the profligate conduct pursued by many of its citizens on the west coast of Africa, in repeated attempts, similar to the present, to bring disgrace on the flag of their nation. I have brought with me the two American citizens, or (so called) captains of these vessels, and have this day surrendered them to the civil authorities of this city. Both vessels I am

prepared to deliver to the American Government, if claimed as American property; if not, I intend returning with them to Sierra Leone, and there give them in, as Spanish vessels, for adjudication in the court of mixed commission, under the late treaty between Great Britain and Spain, dated 25th June, 1835.

I have the honor to be, &c.,

CHARLES FITZGERALD,
Lieutenant and Commander.

HENRY STEPHEN FOX, Esq., &c., &c., &c.

[Enclosure No. 2.]

HER MAJESTY'S SHIP "WOLVERINE,"
Prince's Island, April 5, 1839.

SIR: Having, as the senior commander employed on this station, assumed, on the 3d instant, the duties of senior officer of her Majesty's ships and vessels employed on the west coast of Africa for the suppression of the illicit traffic in slaves; and having received from Commander Craigie, of her Majesty's sloop "Scout," the late senior officer, the reports and documents accompanying this, and your reports relating to the detention of the two vessels named "Eagle" and "Clara," which, on my arrival, I found riding here under Spanish colors, and which were delivered up to you (for being Spanish property, owned by Spaniards residing at Havana, and fitted for the illicit and inhuman traffic in slaves) by Mr. Joshua W. Littig of the "Eagle," and Mr. S. B. Hooker of the "Clara," who have stated themselves to be citizens of the United States, and to have been engaged as masters or commanders of these vessels, to cover, by their presence and the use of the American flag and papers, the traffic in slaves, contrary to the navigation laws of the United States; and being convinced that the Government of that country cannot, and will not, in any way sanction the abuse of their national colors and papers, however they may be obtained—I feel it a duty incumbent on me, as the senior officer on this coast, as much out of respect to the American Government as in duty to my own, to represent and forward by you, as the principal in this instance, the said vessels, with their masters and papers, to the seat of Government in the United States, to be dealt with as the authorities of that country may deem fit; trusting it will be considered that my only motive for taking upon myself this delicate interference can be but that of zeal for a strict discharge of my duty, which renders it imperative on me to take the earliest opportunity of laying before the Government of a friendly Power (with proofs) the abuse to which its national flag is subjected on this coast, in covering and protecting the property of persons (not citizens of the United States) concerned in this inhuman traffic in slaves, which I am employed to suppress, as proved in the instance of the capture of the "Mary Ann Cassade," with a full cargo of slaves, by her Majesty's brig "Brisk."

It will be proved, by some of the documents accompanying this, that the officers in command of her Majesty's ships and vessels employed on this station have at all times observed the greatest delicacy in visiting vessels carrying the American flag.

And being convinced it will also be proved that the greatest attention

has at all times been paid to the citizens of the United States, and assistance rendered to their vessels whenever an opportunity has offered, or it has been required, (as in the case of the "Rosalba," the papers relating to which are in your possession,) I trust it will be considered by the Governments of the United States and Great Britain that I have acted correctly, and discharged this duty in such a manner as will meet their approbation, and tend to increase, if possible, the friendly feelings existing between them. I therefore forward the accompanying order and documents for your authority and guidance.

I am, &c.,

WM. TUCKER,
Commander and Senior Officer.

LT. CHARLES FITZGERALD,
Commanding Her Majesty's Brigantine "Buzzard."

[Enclosure No. 3.]

I, Lieutenant Charles Fitzgerald, commanding her Britannic Majesty's brigantine "Buzzard," hereby declare: That on the 12th day of March, 1839, being in Clarence cove, Fernando Po, I detained the brigantine named the "Eagle," commanded by Joshua Wells Littig, who declared himself to be a citizen of the United States, and that he was not the bona fide owner of the said brigantine, as set forth in the bill of sale found amongst her papers; and that the said brigantine and cargo are Spanish property; and that she was equipped in the port of Havana, for the purpose of carrying on the slave-trade, in May of last year; and that the two persons (whose names are declared by them, respectively, as set forth in a list at foot hereof) now on board the said brigantine, are part of the crew shipped on board at Havana at that time; that the other seamen composing her crew were landed at Lagos, in the Bight of Benin, by Commander Reeves, of her Britannic Majesty's sloop "Lily," when that officer detained the said brigantine "Eagle," while she was riding at anchor in the said road of Lagos, on the 14th day of January, 1839; that Commander Reeves sent the said brigantine to Sierra Leone for adjudication in the court of mixed commission at that place, under the charge of Mr. George Sayer Boys, a mate in her Majesty's sloop, (at that time a passenger in the "Lily," in order to join the vessel he had been appointed to,) and a prize crew; that the said court refused to take cognizance of the charge laid by Commander Reeves against the said brigantine "Eagle;" and that, thereupon, Mr. George S. Boys, the prize-master, proceeded with her from Sierra Leone back to Lagos and to this island, where, upon my boarding the said brigantine this day, he, the said Joshua Wells Littig, feeling that he could no longer disguise the true character of the said brigantine "Eagle," frankly and voluntarily declared to me, in the presence of the said Mr. George S. Boys, mate, and other witnesses, that he surrendered her to me as Spanish property, both on account of her Majesty's brigantine, under my command, being present, and that because he was boarded by the boats of the "Buzzard," in the road of Lagos, and himself and papers strictly examined, on the night of the 31st of December, 1838, when he, the said Joshua Wells Littig, refused to acknowledge what he has now voluntarily stated to me.

The said Joshua Wells Littig also declares: That he was engaged by Don Francisco Morales, at Havana, as a citizen of the United States, in order to cover the said Spanish brigantine "Eagle" with the flag of the nation of which he is a citizen; and that he hath no interest, nor expected interest, in the said brigantine "Eagle," further than what his wages might have amounted to at the termination of his expected voyage.

The said Joshua W. Littig also declares: That, when first boarded by her Majesty's brigantine "Buzzard," and subsequently by her Majesty's sloop "Lily," he was engaged in taking in provisions for the expected cargo of slaves for the said brigantine "Eagle;" and that, when the slaves might have been ready for embarkation, he should have gone ashore at Lagos, and the Spanish flag would have been hoisted by the said brigantine.

The said Joshua W. Littig further declares: That the said bill of sale, found amongst the said brigantine's papers, was drawn out without his being at all a party to it; and that he gave no consideration money, or other value, for the said brigantine being transferred or sold to him; and that he supposes the whole was transacted in the United States consul's office at Havana, without his being privy to it; and that, having sworn to nothing, he does not consider that he is at all a perjured man.

The said Joshua W. Littig further declares: That an agreement was drawn up at Havana, before the said brigantine "Eagle" left that port, between himself and Don Francisco Morales, a Spaniard residing in Havana, (but believed to have come across to the coast of Africa in the said brigantine, and to be now on shore at Lagos,) by which he, the said Joshua W. Littig, bound himself to obey the orders of the said Don Francisco Morales on board the "Eagle," but which document is not now to be found amongst the papers of the said brigantine "Eagle," although I found and read it when I examined that vessel's papers on the morning of the 1st of January, 1839.

Given under my hand, on board her Britannic Majesty's brigantine "Buzzard," in Clarence cove, island of Fernando Po, this 12th day of March, 1839.

CHARLES FITZGERALD,
Lieutenant and Commander.

In witness and testimony to the truth of the above declaration, Joshua W. Littig has hereunto set his hand, this 12th March, 1839.

JOSHUA W. LITTIG.

In my presence:

WALTER SCOTT,
Clerk in charge.

List of the crew of the "Eagle," 12th March, 1839.

Names.	Quality.
José Mejores - - -	First pilot.
Benito Cojegar - - -	Majordomo.

[Enclosure No. 4.]

I, Lieutenant Charles Fitzgerald, commanding her Britannic Majesty's brigantine "Buzzard," hereby declare: That, on this 18th day of March, 1839, being off the mouth of the river Nun, longitude 6° 5' east, latitude 4° 23' north, I detained the Spanish schooner named the "Clara," commanded by Samuel B. Hooker, who declared himself to be a citizen of the United States, and that he is not the bona fide owner of the said schooner, as set forth in the bill of sale found amongst her papers; and that the said schooner and cargo are Spanish property, and was equipped in Havana for the slave-trade, in November of last year; and that the three persons now on board her are Spanish subjects, (their names, as declared by them, respectively, are set forth in a list at foot hercof,) and were entered in Havana as part of the said schooner's crew.

The said Samuel B. Hooker also declares: That he was engaged by Don Pedro Forcade & Co., (Spanish merchants residing in Havana,) as a citizen of the United States, in order to cover the said Spanish schooner and her cargo with the flag of the nation of which he is a citizen; and that he hath no interest, nor expected interest, in the said Spanish schooner, further than what his wages might have amounted to at the termination of his destined voyage.

The said Samuel B. Hooker also declares: That the said Spanish schooner "Clara" was lying in the river Nun, taking in provisions for her expected cargo of slaves; and that about 80 slaves had been bought, and are now in the baracoon, near to where the schooner was lying; and that the said schooner would have sailed out of the river Nun in the course of a week or ten days, with at least 300 slaves on board, destined for the island of Cuba.

Given under my hand, on board her Britannic Majesty's brigantine "Buzzard," at sea, this 18th day of March, 1839.

CHARLES FITZGERALD,
Lieutenant commanding.

In testimony of the truth of the above declaration, the beforementioned Samuel B. Hooker hath hereunto set his hand, this 18th day of March, 1839.
SAMUEL B. HOOKER.

In my presence:

WALTER SCOTT,
Clerk in charge.

Names of the Spanish crew on board the "Clara."

Names.	Quality.
Tomas Gea. Panasco	Spanish mate.
Christoval	Boatswain.

Mr. Vail to Mr. Fox.

DEPARTMENT OF STATE,
Washington, June 20, 1839.

SIR: I have the honor to acknowledge the receipt of your note of the 18th instant, with enclosures, apprizing me of the arrival, at New York, of her Britannic Majesty's brig-of-war Buzzard, Lieut. Fitzgerald commander, having in charge two vessels, the "Clara" and "Eagle," Spanish property, though found sailing under American colors and fictitious American papers, detained by Lieut. Fitzgerald, on the coast of Africa, while engaged in the illicit traffic in slaves; and, with two American citizens found on board of said vessels, brought to this country to be delivered over to the judicial authorities of the United States, and dealt with according to law.

Having laid your communication before the President, I have by him been directed to state to you, that, impelled by the same feelings of abhorrence of the inhuman traffic these men are alleged to have been engaged in, which appear to have induced their detention by her Britannic Majesty's naval officers, and anxious that no means within his reach shall be left untried to prevent or punish infractions of the laws of the United States for the suppression of the slave-trade, the President has directed that copies of your note, and the documents accompanying it, be transmitted to the public prosecutor, with orders to institute, before the proper tribunal, such proceedings against the individuals referred to as existing laws and the circumstances of the case shall authorize.

With regard to the vessels, the attorney of the United States is further instructed, that if, upon the papers being submitted to him, it shall appear that they are fictitious, and that the courts of this country cannot take cognizance of the property as vessels of the United States engaged in the slave-trade, the officers having them in charge may proceed with them as they shall think proper.

I avail myself of this opportunity to offer you assurances of my distinguished consideration.

A. VAIL,
Acting Secretary of State.

H. S. Fox, Esq.,
Esq., &c., &c.

Mr. Fox to Mr. Vail.

WASHINGTON, July 5, 1839.

SIR: I have the honor to acquaint you, that, subsequently to the date of my last letter, relating to the cases of the slave-vessels "Eagle" and "Clara," a third vessel, the "Wyoming," has been brought into New York, in charge of a British officer and prize-crew, under nearly similar circumstances.

It appears that the brigantine "Wyoming," John Edwards (an American) master, sailing under American colors, but navigated by a Spanish crew, and fitted for the illicit Spanish traffic in slaves, was detained, on the 17th of May last, in the river Gallinas, on the west coast of Africa, by

Commander Lord Francis Russell, of her Majesty's ship "Harlequin," and was by him ordered to be conveyed direct to a port of the United States, to be there delivered over to the judicial authorities of the United States; and if claimed as American property, to be dealt with according to law.

I herewith enclose a letter addressed to me by Lieut. Beddoes, the British officer in charge of the Wyoming.

I presume that the United States Government will see fit to place this case, in like manner with those of the "Clara" and "Eagle," in the hands of the competent judicial authorities of the republic.

As it appears that, in the present instance of the "Wyoming," the American reputed master, John Edwards, died shortly after the detention of the vessel, it is the case of the vessel only that will be to be dealt with.

I conceive that the main object gained, for the vindication of public justice, will be this: the British and foreign courts of mixed commission, established at Sierra Leone and at other stations, for the adjudication of cases of illicit slave-trade, are, in the unfortunate absence of any convention for such object between Great Britain and the United States, obliged to refuse to take cognizance of slave-trading vessels detained under the American flag; but if it be legally substantiated that a vessel detained under those circumstances, after being brought into an American port, and full notice given, has not been claimed as American, it is to be hoped that the courts of mixed commission will be enabled to deal with such vessel as the property of Spaniards, or as the property of the subjects of whatever other nation, having a slave-trade convention with Great Britain, the vessel may be found, upon sufficient evidence, really to belong to.

I avail myself of this occasion to renew to you the assurance of my high consideration.

H. S. FOX.

AARON VAIL, Esq.,
Acting Secretary of State.

[Enclosure]

BRITISH CONSULATE,
New York, June 29, 1839.

SIR: Having been ordered by the Right Hon. Lord Francis Russell, commander of her Majesty's sloop Harlequin, to take charge of, and bring direct to New York, the American brigantine Wyoming, detained by the Harlequin, in the river Gallinas, on the west coast of Africa, on the 17th of May last, on suspicion of her being engaged in the illicit traffic of slaves, I have the honor to acquaint you that I arrived with the said brigantine Wyoming in this port last night.

The Wyoming had on board, at the time of her capture, besides her captain (an American) and ten Spaniards, her crew, fourteen Spanish passengers from the Havana—by the captain's report, slave-factors.

Her fittings are in all respects similar to those of other vessels engaged in the slave-trade, she having on board enormous casks for water, (capable of containing three tuns each,) a slave deck marked and numbered, and a very large quantity of rice.

The captain, John Edwards, died suddenly from the bursting of a blood-

vessel, the day following the sailing of the Wyoming. I was unable, therefore, to obtain any declaration from him.

I have delivered such papers as were in my possession relative to the detained vessel, to the British consul at this port, who has laid them before the attorney general.

Should it be necessary for me to proceed to Washington, I am prepared to do so instantly.

I have the honor, &c.

J. W. BEDDOES,
Lieutenant H. M. ship Harlequin.

H. S. Fox, Esq.,
Envoy Extraordinary and Minister Plenipotentiary,
§c. §c. §c., Washington.

Mr. Forsyth to Mr. Fox.

DEPARTMENT OF STATE,
Washington, July 16, 1839.

SIR: I have the honor to acknowledge the receipt of your note of the 5th instant, and its enclosure, in relation to the vessel Wyoming, which has been recently brought into the port of New York, in charge of a British officer and prize crew, under circumstances nearly similar to those connected with the cases of the slave ships Eagle and Clara, the subject of your communication of the 18th ultimo; and to inform you that copies of those papers have been transmitted, with the necessary instructions, to the district attorney of the United States at New York.

I have the honor to be, sir, with high consideration,
Your obedient servant,

JOHN FORSYTH.

HENRY S. FOX, Esq.,
§c. §c. §c.

Mr. Vail to Mr. Fox.

DEPARTMENT OF STATE,
Washington, August 14, 1839.

SIR: I have the honor to enclose the copy of a letter from the attorney of the United States for the district of New York, communicating to this department the result of his examination of the cases of the vessels called the "Eagle" and "Clara," which formed the subject of your note of the 18th of June last, and of my answer to it dated the 20th of the same month.

With very high consideration, I am, sir, your obedient servant,
A. VAIL, *Acting Secretary.*

HENRY S. FOX, Esq., §c., §c., §c.

[Enclosure.]

UNITED STATES DISTRICT ATTORNEY'S OFFICE;
New York, August 9, 1839.

SIR: I have had the honor to receive your letter of the 20th of June last, in relation to the two vessels called the "Eagle" and the "Clara," shortly before brought into this port by the British brig-of-war "Buzzard," under the command of Lieutenant Fitzgerald, together with the copies of correspondence enclosed therein.

The papers found in each of these vessels have been placed in my hands by Lieut. Commandant Fitzgerald; and I have examined the same, for the purpose of ascertaining the real character of the property. The following matters appear on these papers:

1. That the vessels were built and registered at Baltimore. The register of the "Eagle" is dated December 1, 1837, and that of the "Clara" July 27, 1838.

2. That the vessels being afterwards in the port of Havana, they were transferred, at the office of the American consul in that port—the "Eagle" to Joshua W. Littig, and the "Clara" to Samuel B. Hooker; the bill of sale, in each case, being executed by the master of the vessel named in the register, acting by virtue of a power of attorney from the owners.

3. Littig and Hooker are represented by the papers to be American citizens. They respectively assumed the command of the vessels transferred to them, as the masters thereof; and they were in command when the vessels were examined and detained by the British cruisers.

4. Although, on the face of the papers, the vessels are thus represented as American property, there is the best reason to believe that they were really owned by Spanish subjects, and that the names of the American citizens were used as a mere cover to conceal the true ownership; and such, after a careful and deliberate examination of the subject, is my own decided belief.

This conclusion is founded, not only on the full acknowledgments made by Littig and Hooker to Lieut. Commandant Fitzgerald, and the other facts set forth in the documents laid before the State Department, (the particulars of which need not be repeated by me,) but on an inspection of various memoranda and other documents in the Spanish language, laid before me with the ship's papers, and which strongly confirm the Spanish ownership. I have, therefore, the honor to report, as the result of my examination and inquiries, that the documents by which these vessels are represented to be American property are, in fact, *fictitious*; and that each of the vessels is really Spanish property.

Under these circumstances, I do not think myself authorized by your instructions to proceed against the vessels, and have so intimated to the British consul and to Lieut. Commandant Fitzgerald; but I have as yet made no formal communication on the subject to either, partly because I am not instructed to do so, and partly from an impression that the department may itself prefer to communicate to the British minister the decision which shall have been made.

Hooker, one of the American citizens found in these vessels, died soon after their arrival in this port. Against the other (Littig) I have obtained an indictment, founded on the 2d and 3d sections of the act of the 10th of May, 1800. In the view which I first took of the case, I did not believe

that this act applied, because no slaves were ever *actually* transported in, or brought on board of, or procured for, Littig's vessel; and I am yet strongly inclined to this opinion. But as it has been held by Mr. Justice Story, in an information against a vessel under the 1st section of this act, that it is not necessary, to constitute an offence against that section, that slaves should have been taken on board, I have so far changed this opinion as to procure the indictment. Previously to this, I had instituted a civil suit against Littig, for the penalty imposed by the act of 1794, which applies where vessels are fitted out in the United States *with intent* to engage in the slave-trade; which act, and the like one of 1818, I had supposed the only ones applicable to the case, and that only in the event of its being proved that the "Eagle" had been prepared in Baltimore with the *express design* of being employed as a slaver; a fact which it very soon appeared could not be proved. As Littig was discharged on bail, in the penal action, before I thought of preferring an indictment against him, he is not now in custody; but a warrant has been issued for his arrest.

I am, sir, very respectfully, your obedient servant,

B. F. BUTLER,
U. S. District Attorney.

AARON VAIL, Esq.,

Act. Secretary of State of U. S., Washington City.

Mr. Vail to Mr. Fox.

DEPARTMENT OF STATE,
Washington, August 19, 1839.

SIR: I have the honor to enclose the copy of a letter from the attorney of the United States for the southern district of New York, communicating the result of an investigation of the case of the brigantine "Wyoming," which, as you were informed by a letter from the Secretary of State of the 16th ultimo, he had been directed to institute.

I am, sir, with very high consideration, your obedient servant,

A. VAIL.

H. S. Fox, Esq., &c., &c., &c.

[Enclosure.]

UNITED STATES DISTRICT ATTORNEY'S OFFICE,
New York, August 15, 1839.

SIR: Pursuant to the instructions contained in your letter of the 9th ultimo, I have examined the case of the brigantine "Wyoming," recently brought into this port in charge of a British naval officer and prize-crew; and have the honor to report, that although the only papers found on board the vessel are an American register and a list of persons composing her crew, in which she is described, in accordance with the register, as "the brig Wyoming of New York," I am yet entirely satisfied that the vessel was, in point of fact, owned by a Spanish subject or subjects resident in the island of Cuba.

The register bears date the 22d of December, 1838, and was granted, in the port of New York, to *Joseph A. Scovill* of this city, as sole owner. *Nicholas Christopher* is described therein as then being master of the vessel. By the certificate of *J. A. Smith*, American vice-consul at Havana, dated March 4, 1839, it appears that *John C. Edwards*, an American citizen; took the oaths required by law, and on that day became the master of the vessel, in place of *Christopher*. The crew, as appears by the list made by *Edwards*, on 7th of March, 1839, was composed exclusively of Spanish subjects resident at Havana. In addition to this circumstance, it is stated by Lieutenant *Beddoes*, the British officer in charge of the vessel, that at the time of her detention there were on board fourteen Spanish passengers, from the Havana, stated by the captain to be slave-factors.

The facts above mentioned are well calculated to induce the belief that the vessel had been disposed of, at the time of the change of masters, to some person or persons resident at Havana; and such, as I am informed by Mr. Scoville, of this city, her former owner, was really the case. This gentleman, soon after the arrival of the "Wyoming" at this port, submitted to my inspection sundry letters written from Havana in the beginning of the present year, by Captain *Christopher*, detailing the particulars of a sale, and of the disposition of its proceeds, of the brig in question, under a letter of attorney from the owner, Mr. Scoville. From these letters, and the other part of the correspondence, and other papers exhibited to me by Mr. Scoville, it appears that the vessel was sent to Havana with a cargo, and that Captain *Christopher* was instructed, after disposing of his cargo, to sell the vessel, if he should be able to find a purchaser; and that he did, accordingly, as attorney for the owner, make such sale to *Francisco Rocosa*, a Spanish subject residing at Havana.

In this state of the case, I have not thought it proper to institute any proceedings against the vessel; but, for reasons similar to those mentioned in my letter of the 9th instant, in relation to the "Eagle" and the "Clara," have made no formal communication to Lieutenant *Beddoes*.

I am, sir, very respectfully, your obedient servant,

B. F. BUTLER.

AARON VAIL, Esq.,

Act. Secretary of State, Washington.

Mr. Fox to Mr. Forsyth.

WASHINGTON, October 30, 1839.

The undersigned, her Britannic Majesty's envoy extraordinary and minister plenipotentiary, has been instructed by his Government to transmit to the Secretary of State of the United States the enclosed copies of papers, consisting of numerous official reports and despatches received by her Majesty's Government, which contain evidence of the surprising and deplorable extent to which the American flag is now employed for the protection of the inhuman traffic in African slaves.

Her Majesty's Government are well persuaded that a knowledge of the frauds and evasions of the law which these papers disclose—frauds and evasions practised for the purpose of covering the most cruel and sordid acts of barbarity against a portion of the human race—will excite feelings of as

deep sorrow and indignation in the Government of the United States, as the discovery of them has occasioned to her Majesty's Government; and that the Government of the United States will not delay to take resolute and effectual steps, either singly or in concert with Great Britain, for suppressing this dreadful system of crime, and for rescuing the respected flag of the republic from a reproach which the vilest enemies of mankind are seeking to cast upon it.

It was naturally to be expected that the first information upon facts relating to the African slave-trade, although connected with the flag of a foreign nation, should be conveyed through the officers of the British Government. The various and long-continued efforts of Great Britain for the suppression of the trade, the extensive control exerted through the conventions with foreign Powers, and the special courts of commission established in different quarters of the globe, have given to her Majesty's Government superior means of intelligence to what can be possessed by the Government of any other country.

It does not appear that the American flag began to be extensively employed for the protection of the slave-trade until between two and three years ago; but, from that time to this, the abuse has continued to increase in a regular and terrible proportion. Various circumstances, which are clearly pointed out in the enclosed papers, appear to have contributed to produce this effect; but it is chiefly to be ascribed to the following cause: Through the persevering efforts of Great Britain, nearly all Christian nations, with the exception of the United States, have been induced to engage in a common league for the suppression of the trade. Most of the maritime Powers have now conceded the right of search, under due regulations, to her Majesty's cruisers; and new conventions negotiated with foreign Governments are every day adding to the extent of the combination. The miscreants who drive the detested traffic in human beings are thus gradually losing their former protections, and are betaking themselves to the remaining flag whose protection can avail them. It will be seen that Spanish, Portuguese, and Brazilian slave traders, with outlaws and pirates of all nations, are now flocking under the cover of the American flag. The great bulk of the trade will soon be carried on under that protection alone; and unless severe measures of repression be adopted, the astonishing sight will be shown to the world, of the flag of that nation, which, to its great honor, was amongst the first to abolish the slave trade, becoming its chief support and protection.

The undersigned will now proceed to point out to the Secretary of State of the United States some of the leading cases, of which the particulars are detailed in the enclosed papers.

In the year 1837, the attention of her Majesty's officers was excited by the discovery that various vessels, intended for the African slave-trade, were built and equipped in the ports of the United States, from whence they had proceeded, under the American flag, either to Havana, or to the Cape Verd islands, or direct to the slave coast of Africa; being there for the first time (and generally by fraudulent means) transferred to some Spanish or Portuguese owner, and making the return voyage, with cargoes of slaves on board, under the Spanish or Portuguese flag.

It will be found by the enclosed reports, that in the month of October, 1837, two vessels of the above description, named the "Washington" and the "Joseph Hand," sailed from Havana for the Cape Verd islands, under

the flag of the United States ; their ultimate destination being the coast of Africa, and their employment the illicit traffic in slaves. These vessels were followed, in the month of November of the same year, by the American schooner the "Cleopatra," whose destination and character, and the criminal objects of the voyage, proved to be the same as in the cases preceding.

But one of the earliest and most marked cases of illicit slave-trading under the protection of the American flag, to which the undersigned is desirous of calling the attention of the United States Government, is the case of the "Venus," of Baltimore. This vessel was built at Baltimore in the beginning of 1838, destined, there is full reason to believe, expressly for the slave-trade. In July, 1838, she was despatched from Baltimore to Havana, consigned to a well known and shameless slave-trader of that place, of the name of Mazorra. On the 4th of August following, she again sailed from Havana, under the American flag, fully equipped for the slave-trade, and bound ostensibly to Bahia, in Brazil, where she was to be transferred to the Portuguese flag. Instead of proceeding, however, to Bahia, she sailed to the coast of Africa ; and returning, in the short space of four months, to the coast of Cuba, landed a cargo of no less than 860 slaves in the immediate neighborhood of Havana. The name of the vessel had in the mean time been changed to the "Duqueza de Braganza," and upon her return to Cuba she bore the Portuguese flag ; but it does not appear that any valid or legal transfer had taken place : in any case, her outward voyage, with equipment for the slave-trade, was protected by her American character. The illegal objects for which this vessel was employed, and the fraudulent transfer of ownership and flag, were assisted, there is no doubt (though it is to be hoped unintentionally) by the circumstance of the United States consul at Havana exercising, at the period in question, the functions of Portuguese consul also.

The "Venus" was reported at the time to be one of the fastest sailing vessels ever built, and to be capable of conveying the enormous cargo of 1,100 slaves. The guilty partners in the voyage above recounted are believed to have made a clear profit, by that one voyage, of 200,000 dollars—the fruits of their inhuman crime. Most assuredly, as long as such amazing profit can be acquired, the same crimes will be committed, unless some means can be found to amend and strengthen the law, or unless far more vigilant and strenuous exertions be used to enforce the law as it exists. It will be found that all the above particulars, which were first reported by her Majesty's authorities at the Havana—namely, the slave-trading adventure of the "Venus" to the African coast ; her protection on the outward voyage, though equipped for slave-trade, under the American flag ; the shipment of 1,100 slaves ; and the fraudulent substitution of the Portuguese for the American flag, when the slaves were actually on board—are fully and remarkably confirmed by the statement of a British officer on the African station, (Lieutenant Popinam, of her Majesty's sloop "Pelican,") which will be cited in a subsequent part of the present note.

By referring to the series of correspondence herewith enclosed, it will be seen that Lieutenant Kellett, commanding her Majesty's brig "Brisk," in a despatch, dated the 23d of October, 1838, calls the attention of Rear Admiral Elliot to the case of the United States schooner "Mary Hooper," Charles Bergstian master and owner, belonging to Philadelphia. This vessel sailed from Havana on the 28th of May, 1838, for Porto Praya, consigned

to a notorious slave-dealer at the Gallinas. When last boarded by the "Brisk," she was lying off Tradetown, ready to take in a cargo of slaves. "This," observes Lieutenant Kellett, "is not the first instance in which the flag of the United States has been made use of for the purpose of screening offenders from her Majesty's ships. If this case is successful, I fear the difficulties of her Majesty's squadron, in suppressing the slave-trade on this coast, will be greatly increased; as I feel confident we shall, in the succeeding season, have numerous vessels carrying on the traffic in a similar manner, when it can be done with such impunity. I am satisfied she has also Portuguese papers, which the master partly admitted (when I first boarded her) he had received at Porto Praya. If she were to meet, on her arrival in the West Indies, a United States ship of war, she has Portuguese papers; and American papers for her Majesty's ships; which, in all probability, will be the means of her being successful."

It is to be observed, that the United States consul at Havana assisted in clearing out the "Mary Hooper" from that port, when bound upon the voyage of illicit slave trade above denounced.

In a further despatch, addressed to Rear Admiral Elliot, by Lieutenant Kellett, dated Sierra Leone, October 29, 1838, that officer states as follows: "On the 27th instant, latitude $8^{\circ} 32' N.$, longitude $13^{\circ} 30' W.$, I boarded and seized the schooner 'Mary Anne Cassard,' under American colors. I have to state that this vessel was lately sold by Gilbert Cassard, of Baltimore, by power of attorney, to Messrs. Hernandez and Basden, of Matanzas. The crew are composed of one British subject, (the master, who was formerly in her Majesty's brigantine 'Lynx,' on this coast, and was paid off in her;) the remainder are all Spaniards. This vessel I have put into the Spanish mixed commission court for adjudication, being clearly of opinion that she is Spanish property, fitted and equipped for the slave trade."

Rear Admiral Elliot, commanding her Majesty's naval forces on the African station, in a despatch dated 6th February, 1839, calls the attention of her Majesty's Government "to the protection which slave-vessels receive from assuming the flag of the United States;" and in referring to the case of the "Mary Ann Cassard," reported by Lieutenant Kellett, in his despatch of the 29th October, 1838, Rear Admiral Elliot states as follows: "The seaman who passed for the American captain was, I believe, an American by birth, though, wishing to be received on board the 'Lynx,' he had passed himself as an Englishman in that vessel; the man was unable to navigate any vessel, and was merely engaged to pass himself as the American captain, when boarded by a British man-of-war. She (the 'Mary Ann Cassard') had her Portuguese colors on board all the time, as was proved when she was captured, a month afterwards, by the same vessel-('Brisk,') which she mistook for a French brig cruising on the same part of the coast, and consequently assumed the Portuguese character, having her slaves then on board. Several of the slave-dealers have declared their intention to have an American sailingmaster in each vessel, and American colors; and some have had the impudence to assert that the Government of the United States would not discountenance such practices by any *act* or agreement which could prevent such gross abuse of the American flag, and such direct violation of their own laws. Her Majesty's sloop 'Lily' has sent in a Spanish vessel under American colors, her whole crew Spanish, but with a pretended American captain on board. I was also informed by the American barque 'Active,' that the 'Saracen' had detained a Spanish

slave-vessel at the Gallinas, under American colors. The probable object of using the American flag will be to protect the vessels up to the time of the cargo being ready for shipment, then to go through the farce of selling the vessel to a Portuguese or Spaniard. The actual sale of nearly all the slave-vessels in question takes place at the Havana, where one man is engaged to personify an American captain; but they seem very indifferent as to having any American papers. The mere flag, in their opinion, is sufficient; and, as they are all provided also with their proper national flag, they are prepared, in case of meeting an American vessel of war. I must crave their lordships' early instructions on this growing evil and abuse, which I feel is much too disgraceful to meet with any countenance, direct or indirect, from the Government of the United States."

In a further despatch to her Majesty's Government, dated from the African station the 13th of February, 1839, Rear Admiral Elliot states: "I have the honor to forward the copy of a letter from Lieutenant J. L. R. Holt, commanding her Majesty's brigantine 'Bonetta,' from which, and my former letters, it will be observed that the use of the American flag is becoming rapidly more general in the protection of the Spanish slave vessels. Of American flags used for this purpose, there are more than twice as many at present on the coast; and in so barefaced a manner do they proceed, that some have not even an American to personify the captain, but satisfy themselves with furnishing one of the crew with a certificate of naturalization for the occasion. If her Majesty's ships were at liberty to send some of the pretended Americans to the United States, and the Government of that country were to uphold the honor of their flag, by subjecting such lawless felons to prosecution and punishment, it would soon put an end to the nefarious usurpations of their flag by the most notorious slave-dealers belonging to Spain and Portugal."

It will now be seen that similar complaints have been offered, and that similar violations of the laws of the United States, with abuse of the American flag for the protection of illicit slave-trade, have been denounced by her Majesty's naval officers employed on the Brazilian station. Lieutenant Birch, commanding her Majesty's brig "Wizard," in a despatch addressed to Commodore Sullivan, senior naval officer at Rio Janeiro, dated off Bahia, November 12, 1838, makes a report to this effect: "I beg to submit to your notice the following statements relative to the extensive share the American flag has in forwarding and covering the traffic in slaves carried on by parties in the port of Bahia. The American brig 'Dido,' of Baltimore, her master Phillips, and Manuel supercargo, when under American colors, and, *vice versa*, when under Portuguese colors, left the Havana about March, 1837, with a general slave cargo, consisting of arms, ammunition, spirits, tobacco, &c., &c.; touched at Port au-Prince, St. Domingo, also at Bonavista, Cape Verde islands, where it is probable she got Portuguese papers after the usual sham sale had been effected; from thence she proceeded to Oney river, Lagos, in the Bight of Benin, and, after leaving there, disposed of her cargo; visited Wydah, where she provisioned, returning to Lagos. She finally sailed with five hundred and seventy-five slaves on board: her crew consisting of Phillips, master; Manuel, supercargo; second mate, (a relation of Phillips,) an American mulatto, a Sicilian, (since murdered at Bahia,) a Norwegian, two Portuguese, and one Englishman. After a three weeks' passage, she made the sand-hills to windward of Bahia. On reconnoitring the port, her Majesty's sloop 'Sparrowhawk' was observed at an-

chor ; upon which they hauled off—hoisting, however, their distinguishing flag forward, and American colors abaft, which was acknowledged from the village outside the bar. That same evening, five hundred and seventy slaves (five having died on the passage) were landed close to the point Itaparica, at the village. During the night the 'Dido' was cleared out, and made her appearance in Bahia next day, under American colors. The above confirms what I had before learned from report off Bahia. The Englishman (James Fox) now serving on board the 'Wizard,' states that he would have no objection to make oath to the truth of the above statement, provided security was warranted against his being tried for a misdemeanor, or otherwise punished for his share in the transaction. James Fox received seventy five dollars a month, as wages, and one hundred dollars bounty when slaves were landed. The 'Dido' was under Portuguese colors at Lagos. The 'Dido' left Bahia again on the 27th of July, with a general cargo, for the coast ; and was reported by the 'Mary Cushing,' of Baltimore, as having been left by her, in September, in Lagos river, in the Bight of Benin."

In a despatch of the same date, also addressed to Commodore Sullivan, Lieutenant Birch further reports as follows: "I boarded, on the 16th of September, off Point St. Antonio, (Bahia,) the 'Eagle,' of Baltimore, a two-top-sail schooner of two hundred and ten tons, under American colors, J. W. Littig master, with crew and passengers, (in all, twenty-one men,) from St. Thomas, on the line, in ballast. Her American papers were produced, and I did not conceive myself warranted in searching her. It was reported in Bahia that she had landed slaves to the northward ; and her appearance, on boarding, warranted the suspicion."

The same officer, in a further despatch, dated off Bahia, December 20, 1838, addressed to Commodore Sullivan, states: "I have the honor to report that, on the 9th of November I boarded, off Bahia, the American schooner 'William Ridgway,' John Chase, jr., master and part owner, with flour for the market. After discharging, she was offered for sale ; and would have been sold to parties for the slave trade, but the bills tendered could not be negotiated ; and she left Bahia on the 19th December, for Baltimore. John Chase, jr., last voyage, sold the 'Juliana' schooner, to parties in Bahia ; she sailed for the coast of Africa about the 30th July, with a great cargo : it is said she will take slaves to Havana. John Chase, jr. told me he had on the stocks a vessel to be called the 'Mariana,' nearly ready, but built expressly for the slave trade ; and that by God he would build as long as he could find purchasers."

Again, in another despatch, dated off Bahia, December 20, 1838, the same officer makes the following report, with respect to the American schooner the Mary Cushing: "I boarded on the 10th of November, off Bahia, the 'Mary Cushing,' of Baltimore, schooner of one hundred and forty tons, under American colors, Reynolds master, with a crew of ten men, (all either Portuguese or Spaniards,) from Lagos and Prince's Island, in ballast, bound to Bahia. Her master volunteered leave to inspect between decks ; four leaguers and about twenty water casks were observed in her hold, and also a quantity of loose plank ; her range and coppers were much larger than those generally used in merchant service. In Bahia it was known she had been sold to parties at the Havana, for the purpose of slaving ; that the former American master remained on board with her register, that she might still bear the flag of the United States. From the Havana she went to

Oney river, Lagos, for the purpose of taking in slaves ; but being closely watched by one of her Majesty's cruisers, she, after a stay of some weeks, sailed, and finally came to Bahia in ballast ; she is expected shortly to sail for the coast with a general cargo, and, the first good opportunity that offers, will ship slaves ; when the American master will leave with his register, and her first mate take charge, with the sale policy effected in the Havana. The master observed to the boarding officer, upon some allusion being made to the American colors he had flying, that, had he negroes on board, we should not see those colors up."

Upon referring once more to that portion of the enclosed correspondence which relates to the coast of Africa, it will be found that Captain Popham, commanding her Majesty's sloop "Pelican," in a despatch addressed to Rear Admiral Elliot, dated 24th December, 1838, states as follows : " The active and undisguised assistance given to the slave-trade by citizens of the United States of America, is as notorious as it is disgraceful. The American flag has, in several instances, given protection to Spanish and Portuguese traffickers in human beings. The last instance was too shameful to pass unnoticed. A ship called the 'Venus,' of 450 tons, built at Baltimore, on the most approved model for swift sailing, arrived at Lagos from Baltimore on or about the 5th of November last. About the 24th of the same month she sailed from Lagos, with a very large cargo of slaves, said to amount to 1,150. The American flag and papers (in possession of Mr. Phillips, the commander, of Baltimore) protected her until a few days before she sailed ; when he left, and the Portuguese flag was substituted for the American. It is therefore evident that, under the American flag, she was perfectly ready for the reception of slaves. On the 28th of November, about a hundred miles south of Lagos, the 'Pelican' chased this ship, and at first gained on her ; but she was lightened by throwing her deck cargo and spars overboard, then sailed away from us with ease, although every effort was made to come up with her. On the 30th, somewhat southeast of where our chase commenced, we picked up two spare topmasts, a topsail yard, and main top-gallant mast of very large dimensions, quite new, and evidently but a day or two in the water. This confirmed what I heard in Lagos about the 'Venus.' We boarded then a large American brigantine, discharging a cargo for the purchase of slaves. Mr. Littig, the *soi-disant* owner and commander, said the cargo was Portuguese property, and that he hoped the brigantine soon would be. This is the third vessel brought out (the first and second sold for the slave-trade) by the same individual. The 'Pelican' sailed from West Bay, Prince's island, on Saturday, the 15th of December, for Ascension. On Monday, the 17th, at daybreak, a suspicious sail was reported as being very close to us. She immediately tacked. We made all sail in chase, and at 7 P. M. detained the Portuguese slave-schooner 'Magdalena,' with a cargo of 320 slaves, from the river Bras, or Nun. Amongst her passengers was a citizen of the United States, (Mr. Huntingdon,) who had, on the 1st of December, made over to a Spaniard the schooner 'Ontario,' of Baltimore. Her sale was, no doubt, effected at Havana, although the bill of sale mentioned it to have taken place in Bras. In this instance, the American flag gave unqualified protection to the slave-trade ; for the 'Ontario' was boarded by the boats of her Majesty's ship 'Viper,' in November ; and she was then reported as preparing for the reception of slaves, but having American papers and colors. After a little conversation with the Portuguese commander of the 'Magdalena,' he in-

formed me that the 'Ontario' was in company on Sunday afternoon. This information was taken immediate advantage of, and sail was made on a NW. by W. $\frac{1}{2}$ W. course. Tuesday, at daybreak, (after a fine run,) a sail was seen to the westward; the morning was thick and rainy; but at 10 A. M. the weather cleared up, and I despatched Lieut. Marsh with the two gigs to capture the 'Ontario.' This he did at 11h. 30m., with 220 slaves on board. She was under Spanish colors, but had no papers whatever. 'Ontario, of Baltimore,' was painted in large letters on her stern. Both these vessels I sent to Sierra Leone for adjudication, informing the British commissioners of my intention to detain the American (Huntingdon) until I received your orders respecting the disposal of him. However, on a careful perusal of the instructions in my possession, and of the correspondence between Great Britain and the United States of America on the subject of the slave trade, I was induced to alter my intention, feeling that I should not be borne out in interfering with a citizen of the United States, which, it appears to me, the American Government evinced no disposition to tolerate, *even in very extreme cases*. I do not doubt, from all I hear, that the citizens of the United States (generally of Baltimore) are more deeply interested in the slave-trade to the Havana and Brazil than is generally supposed."

In a despatch addressed to her Majesty's Government by the British commissioners at Havana, on the 1st of January, 1839, of which an extract is enclosed, it will be found reported, that in the year 1837 eleven American vessels, and that in the year 1838 no fewer than nineteen American vessels, were employed in the illicit slave-trade between Cuba and the African coast. It is also stated in the same despatch (and the fact is deeply to be regretted) that the demand for newly imported slaves from Africa had been enhanced, and the temptation to violate the law in like proportion heightened, by the large increase in the number of sugar-plantations which has recently taken place in the island of Cuba, chiefly through the investment therein of American capital and American industry. A due consideration of this fact will assuredly prompt the United States Government to exert unremitting efforts for preventing the abuse of the national flag; for it is impossible to suppose that any portion of the American people, who have so often and so solemnly pronounced their abhorrence of the slave trade, should desire to be allowed, either directly or indirectly, to reap benefit from the continuance of it.

Some of the remaining cases to which the undersigned will now direct the attention of the United States Government, not only contain evidence of the audacious abuse of the American flag by reckless and unauthorized men, the outcasts of society, who follow the profession of the slave-trade after the manner of public robbers and pirates; but they disclose circumstances of a painfully suspicious character, with respect to the practices followed in the consulate of the United States at the Havana—practices which have, no doubt, had the effect of affording material assistance to the detested traffic, and which have a moral tendency, still more deplorable, of inducing the world to believe that the authorities and Government of the republic are not in earnest resolved to labor for its extinction. Her Majesty's Government are unwilling to believe that any authorized agent of the United States would intentionally aid or favor the prohibited African slave-trade. But, in cases like these, where the temptations that urge men to violate the law are so powerful; wherethe devices resorted to are so variously and artfully contrived; and where a system of crime is to be dealt with, of

such extreme and barbarous atrocity, it is clear that an habitual carelessness and want of vigilance on the part of public functionaries may produce nearly the same degree of mischief as the sin of actual connivance.

Rear Admiral Elliot, in a despatch dated from the island of Ascension, January 1st, 1839, addresses the Lords Commissioners of the Admiralty as follows: "I beg leave to call their lordships' attention to the circumstance of the American consul at the Havana affixing his signature to the papers of vessels about to be engaged in the slave traffic under the Portuguese flag, as stated by Lieutenant Kellett, of her Majesty's brig 'Brisk;' and in the report of Lieutenant Oliver, of the 'Fair Rosamond;' as well as to *the said consul signing blank forms*, to be filled up at the pleasure of persons in command of these vessels."

Lieutenant Kellett, in a despatch dated Sierra Leone, August 8, 1838, makes the following report to Rear Admiral Elliot: "I have to inform you that, during my late cruise to the Gambia, I boarded the Portuguese schooner 'Senhora de Bom Viagem,' from the Havana, at which place she cleared out for Porto Praya, but did not call there, and was on her way to the island of St. Thomas. I beg to state that I examined her papers, and found that the American consul at the Havana had signed all her papers, his reason for so doing being expressed in them; namely, there being no Portuguese consul, or other authorized agent there, from the Portuguese Government to do so."

It will be further seen that Lieutenant Oliver, commanding her Majesty's sloop "Fair Rosamond," on the African coast, reports: "That, on the 19th of July, 1838, he boarded the Portuguese slave-schooner the 'Constituição,' lying in Acara roads, where the captain produced a Cape Verd island paper, dated the 10th of December, stating the vessel to be American built, in which the name of the captain differed from that on the muster-roll; and there were likewise found Spanish custom-house clearances, to which were affixed the name of Mr. Trist, the American consul, there being no Portuguese at the Havana. Her passengers, 11 in number, had Spanish passports, and evidently held the highest offices on board. One stated himself to be the owner of both vessel and cargo. In his desk was found a certificate of his birth as a Spaniard, and several *printed forms, signed by Mr. Trist, left blank*, for them to fill up at pleasure."

Commander Reeve, of her Majesty's sloop "Lily," in a despatch to her Majesty's Government, dated Gambia, April 2d, 1839, makes the following statement: "Having captured a vessel under American colors, lying at Lagos, called the 'Eagle,' the entire crew of which were Spaniards, with the exception of a man calling himself both master and owner, I sent her to Sierra Leone for adjudication; but the mixed commission court have refused to decide, on the ground that the ship's papers produced set forth that she is an American vessel. When captured, she was last from Havana, and answered the description (sent by the Admiralty to the commander-in-chief) of a vessel employed in the slave trade, called the 'Tres Amigos,' under Portuguese colors, about to sail from Maranhão. She was sold at the Havana, and the American vice consul attested the sale and granted American papers. Three other vessels had been captured under like circumstances by the 'Brisk,' 'Saracen,' and 'Forester,' and the court has acted in like manner; one of which was afterwards taken with slaves on board: she then hoisted Portuguese colors. I have to request you will be pleased to acquaint my Lord Commissioners of her Majesty's Admiralty with the cir-

cumstance, that immediate steps may be taken to check the protection of that flag to the slaver, or it will be useless for her Majesty's cruisers to be employed in the suppression of that inhuman traffic."

The case of the schooner "Florida," which occurred in the beginning of the present year, offers a glaring example of the systematic abuse of the American flag, and of the facilities which are afforded for the continuance of this scandal, by a want of proper caution in the office of the United States consulate at the Havana, where it might have been hoped that the utmost vigilance would be exercised, to prevent the flag of the republic from being lent to such vile and criminal purposes.

The "Florida" was visited in the river Gallinas, on the 13th of January, 1839, by Lieutenant Hill, of her Majesty's brig "Saracen," and found to be completely fitted up for the slave-trade. The papers which were found on board showed that an American register had been taken out for the vessel at Baltimore, in June, 1838, by G. Elvear; that she was despatched from Baltimore to the Havana, and made over to a partner of the notorious slave-trading firm of Manzaneda; that a fictitious sale was executed at the Havana to one Williamson, who was to assume the character of owner and the duties of master, and who was to receive a small monthly stipend for assisting, by his name and presence, in concealing a Spanish slave-trade adventure under an American cover. The British and Spanish mixed commission at Sierra Leone declined to take cognizance of the case of the "Florida," because the papers, although upon the strongest grounds believed to be fictitious, gave an apparent American character to the vessel. The subsequent fate of the "Florida" is remarkable, and serves to confirm the suspicion of fraud. The reputed American master, (Williamson,) after soliciting and obtaining from the British captor personal protection against his own Spanish crew on board the "Florida," who had mutinied, determined, upon his arrival at Sierra Leone, to break up and abandon the "Florida" altogether. He accordingly removed on board an American merchant vessel lying in the port, and then caused the "Florida" to be hauled on shore, dismantled, broken up, and sold; declaring his intention to apply the proceeds, in the first instance, to pay himself the wages due to him, and then to hand over the balance to the real owners of the vessel whenever he should meet with them.

The British commission at Sierra Leone, in reporting to her Majesty's Government the above case of the "Florida," in their despatch of the 31st January, 1839, offer the following important observations: "It will be seen that George Elvear, of Baltimore, took out an American register for his schooner "Florida" in June, 1838, and immediately despatched her to Havana for sale, under the charge of the captain, (Matthew Kelly,) who was appointed the agent of the owner, with a power of substitution. Kelly appointed Don Juan Manzaneda, of the firm of Manzaneda & Abusqueta, his substitute; and, within three months and a half from the date of the American register, a bill of sale of the 'Florida' was executed by Manzaneda to D. B. Williamson, the present master. Such are the representations of the ship's papers; unfortunately, however, for the credit of the bill of sale, another paper was discovered, showing that Williamson, instead of being the owner, was to receive from the well-known slave-trading firm of Manzaneda & Abusqueta (who, if not themselves the owners of the 'Florida,' were, at any rate, the agents of the owners) a small monthly stipend for assisting, by his name and presence, in concealing a Spanish slave-trade

adventure under an American cover. The pay of this man was only to continue until the vessel should be ready to receive her return cargo, when, owing, we presume, to an intention to change the flag to Portuguese or Spanish, his services would be no longer of use; but even then he was to be allowed his passage back to Havana, free of expense. The equipment of the 'Florida' for the slave-trade was complete, and the captor would have possessed ample means of convicting his prize of being an essentially Spanish vessel engaged in the illicit traffic, had he been permitted to take advantage of the information acquired by his unauthorized search. The aforesaid Williamson acknowledged that, so far as the bill of sale related to himself, it was false, and that he had no claim whatever to the character of owner; and he attempted to clear himself of being a party to the fraud, by declaring that he had not been aware of the existence of this false document until some time after he had left Havana. We have little doubt that the American register and muster-roll are as fictitious as the paper the falsehood of which is admitted; they are, however, recognised by American authorities as true and valid, entitling the vessel which carries them to all the privileges of an American character; and, in our view of the matter, the fact of such a recognition is sufficient to protect from search and detention an apparent American vessel, so long as America persists in refusing to our cruisers the right of visitation. The tenderness with which the independence of the flag of the United States has been treated under so much provocation will, we trust, have its proper effect. Of the actual existence of the evils which were anticipated from America's determined denial of the privilege of search, no doubt can now be entertained; and it is to be hoped that some remedial measures will at any rate be adopted by herself to check and punish the abuse, which has clearly resulted from her retention of a right which other nations have consented, under certain circumstances, and for a well defined and humane object, to waive, without any injury to their national honor. We will here only recommend one measure, to which America can offer no reasonable objection. It is, that a force of small brigs, brigantines, or schooners of war, should be sent on this coast by the American Government, each of which should cruise and visit the slave-trading rivers and stations in company with one of our own vessels. Cruising singly would have comparatively little effect, as the same vessel which would show American colors and papers to a British officer, might show Portuguese or Spanish colors and papers to an American officer. The crews of such vessels are always composed of Spaniards, with the exception of one American, who, in the presence of the British cruiser, would figure as the American captain, and, before the cruiser of his own nation, would declare himself a passenger, and would probably produce a passenger's passport from Havana. Cruising in couples, on the contrary, would remove the possibility of such evasion. If the American flag and pass were assumed by a slaver, she would be taken charge of by the one; and if she declared herself, or if she could be proved to be Spanish, Portuguese, or Brazilian, she would be a prize to the other man-of-war. At present, however, the coast swarms with vessels, apparently American; and a rich harvest of prizes would follow the arrival of a squadron of American cruisers, armed with authority to capture on the ground of equipment."

The undersigned earnestly invites the attention of the United States Government to the remarks and suggestions of the British commissioners above cited. Those gentlemen possess a thorough knowledge of the frauds

and devices resorted to by the miscreants who now carry on the illicit slave-trade ; and they are the best possible judges of the means which ought to be employed to counteract them. The earnest wish of her Majesty's Government to obtain the concurrence of the Government of the United States in an agreement for the exercise of a mutual right of search, under proper regulations, is sufficiently well known. If this concurrence cannot be obtained, the employment of a combined force of British and American cruisers along the slave coast, upon the plan above suggested by the British commissioners, would no doubt effect a speedy and material diminution of the trade.

The undersigned, however, would respectfully suggest that no time ought to be lost in amending the United States law against slave-trade, to the extent of making that law applicable to vessels manifestly equipped for the slave-trade, even when no slaves are found actually on board. The addition of this clause to the British law, and the insertion of an analogous article in many of the recent slave-trade conventions concluded between Great Britain and foreign Powers, have been found of material service in repressing the trade. By means of the equipment-article and law, not only are many slave-traders punished by the loss of their vessels, which they would otherwise save from condemnation, but (what is of far more importance to the cause of humanity) slave-trade adventures are thereby frustrated before the fulness of the crime has been committed ; and, consequently, before the unfortunate Africans, the destined victims of the crime, have been doomed to the horrors of embarkation as slaves, and to the chances of misery and destruction that follow.

The same despatch from the British commissioners contains also, with reference to the case of the "Florida," the following remarks upon the conduct of the United States vice-consul at Havana, as exhibited by the papers found on board the vessel : "He (the American vice-consul) recognised as a valid document a register which had apparently been cancelled, and of which only the left half was produced to him ; and he acknowledged Williamson as owner of the Florida, and the purchaser of that vessel, although no power of attorney, or power of substitution, was forthcoming to prove the right which either Kelly, the alleged agent, or Manzaneda, the alleged substitute and seller, had received from Elvear, the original named in the mutilated register, to dispose of the property in question. Nor does it seem to have excited any doubt in the mind of Mr. Smith, that a vessel, fully equipped for the slave-trade, and bound for the most notorious slave mart on the coast of Africa, should be cleared out from Havana by one of the most extensive slave merchants of Cuba, with a crew of which the captain of the flag was the only person who professed to be an American citizen." A reference to the abstract of papers found on board the Florida, which is annexed to the despatch of the British commissioners, will satisfy the United States Government that the above remarks are neither unjust nor unnecessarily severe.

Another gross and flagrant instance of the abuse of the flag of the United States for purposes of illicit slave-trade, is furnished by the case of the schooner "Hazard," of Baltimore, Russell Barber master ; which vessel was fallen in with on the coast of Africa, under American colors, by her Majesty's brigantine Forester, and detained on the ground that she was equipped for slave-trade, and that there were sufficient reasons for believing her to be a Spanish vessel. The "Hazard" was brought for trial before the British

and Spanish mixed court of commission at Sierra Leone; but the fact of the vessel having been detained while sailing under the flag and pass of the United States, rendered it improper, in the opinion of the court, to sanction the prosecution. The British commissioners at Sierra Leone, in reporting this case to her Majesty's Government, in their despatch of the 31st of January, 1839, (to which despatch is annexed an abstract of the papers found on board the "Hazard"), make the following statement: "The 'Hazard' received an American register, at Baltimore, on the 11th of May, 1838; and, on the following day, she was despatched to Havana for sale. On the 19th of September, Don Francisco Montero, a merchant at Havana, who has since accompanied the vessel in the ostensible character of supercargo, received full power to dispose of the vessel when, where, and how he pleased. There is little doubt Montero had, in fact, become the owner of the property over which he possessed such absolute control, and that the power of attorney under which that control was exercised was a mere blind. Barber, the American, was also, it appears, only 'captain of the flag;' the real master, who cleared out the vessel from the Havana, and whose name was endorsed on the clearance as captain, being Don Benito Sandez, who is described on the muster-roll as first mate. Although cleared out for St. Thomas, the destination of the 'Hazard' was the slaving-port of Lagos, in Africa, and she carried from Havana letters for various persons at that place; and the fittings of the vessel sufficiently demonstrated the illegal object of the voyage. The American captain died on his passage to this port; and the 'Hazard' was thus left to navigate the seas without having on board one citizen of the nation to which she claimed to belong. The crew were all foreigners; a Spanish merchant exercised over her all the rights of ownership; and she received her outward cargo and her slave trading equipment in a Spanish port, to which, according to the declaration of the late master, she intends to return when her business on the coast is completed. There is nothing to connect her with America, but her Baltimore register, and the recognition of her American character by Mr. Smith, the United States vice-consul at the Havana. Nor could she ever have been intended to have been employed in the commerce of America; for, on the day after the American register was obtained, she sailed for Havana, with a power of attorney on board to sell her forthwith. Under these circumstances, all that the captor required to procure the condemnation of the 'Hazard' as a Spanish vessel engaged in the slave-trade, was the right to avail himself of discoveries produced by his visitation and search."

Annexed to the despatch of the British commissioners, from which the above is an extract, will be found an abstract of the various papers and letters discovered on board the 'Hazard.' The especial attention of the United States Government is invited to those papers, as not only containing evidence of the nefarious employment of the American flag in this one instance, but as throwing important light upon the constant and regular system of fraud which is now practised for the purpose of covering the African slave-trade by the use of the American flag; and for the prevention of which, the United States consular agents at the Havana have certainly not exerted the necessary vigilance.

It will be seen, by reference to a correspondence which took place in the month of January last, between her Majesty's commissioners at the Havana and the United States consul at that port, (copies of which correspondence are amongst the enclosed papers,) that the United States consul at the Ha-

vana continues to receive with reluctance and ill-will, and with a singular want of courtesy, whatever useful evidence and information is tendered to him by her Majesty's commissioners respecting the evasions and violations of the American law for the suppression of the slave-trade. Her Majesty's Government have reason greatly to regret this disposition on the part of an authorized agent of the United States.

It is to be remembered that the two Governments have mutually engaged to each other, by the 10th article of the treaty of Ghent, that they will "use their utmost endeavors to promote the entire abolition of the slave-trade;" and it would seem to be no more than was required by the respect which the agents of each country must feel for the other, that they should not only themselves act in strict accordance with the spirit of the engagement which their own Government has contracted, but that they should with readiness and cordiality furnish to, and receive from, the agents of the other Government, any evidence or information which may be calculated to enable that other Government more effectually to accomplish the common purpose.

It will likewise have been observed that the United States consul at the Havana is reported to have been in the habit, during the absence of a regular Portuguese agent, of exercising the functions of Portuguese as well as American consul for that port. The extreme imprudence of this arrangement will surely be acknowledged, when it is considered that the subjects of Portugal are the most inveterate and audacious slave-dealers that infest the ocean, and that the port of Havana has long been one of the most notorious and offensive slave-marts on the globe.

It also appears, as will have been seen by the official reports above cited, that the United States consul at the Havana, when clearing out vessels notoriously about to be employed in the slave trade, has followed the extraordinary practice of affixing his name to *blank forms*, to be filled up at pleasure by the persons in command of those vessels. Her Majesty's Government would deeply regret to discover that an authorized agent of the United States, possessing apparently the confidence of his Government, had directly and intentionally lent his assistance to the detested traffic in slaves; but the undersigned must repeat, that the extraordinary and unaccountable conduct here reported must inevitably produce the same effect as wilful and criminal connivance.

With reference to this part of the subject, the undersigned will next call the attention of the United States Government to certain facts connected with the conduct pursued in the American consulate at Havana, which transpired upon the trial of the Portuguese slave-vessel the "*Dulcinea*;" an official report of which trial, furnished by the British commissioners at Sierra Leone, and annexed to their despatch to her Majesty's Government of the 5th of December, 1838, is placed amongst the enclosed papers.

The "*Dulcinea*" was captured north of the line, under Portuguese colors, with 253 slaves on board, by Commander Popham, of her Majesty's sloop "*Pelican*," on the 31st of October, 1838; and being brought for adjudication before the British and Portuguese court of mixed commission at Sierra Leone, was condemned as a good and lawful prize, on the 3d of December of the same year. The papers found on board the vessel showed that she had wrongfully assumed the Portuguese flag; and that the illegal adventure, in the course of which she was captured, was in its character essentially Spanish. Two certificates, signed by Mr. Trist, United States consul at the Havana, acting apparently in the character of Portuguese consul, also

were attached to the matricula, or muster-roll, of the crew of the "Dulcinea. One of these certificates declared that the individual who acted as master of the vessel had received his appointment to that office from the agent of Mr. Caldas, the person who was named in the register of the "Dulcinea" as Portuguese owner of the vessel; and the other certificate stated that the schooner "Dulcinea" carried a crew of 16 men. In contradiction to the first mentioned certificate, the master himself declared that he had received his appointment from Mr. Silva, a Brazilian subject settled at the Havana; and the master declared further, that Mr. Silva was sole owner of the vessel, and owner of the greater part of the cargo. The other certificate seems to have been framed for the purpose of supporting the matricula or muster-roll; but that document was very irregular and suspicious, since it was drawn up according to the form of the muster-rolls of slave-vessels, without mentioning the name of a single officer of the vessel; and it bore no marks of having been submitted to the Spanish authorities of the port from whence the vessel sailed. It is possible that both the declarations (the one attested in the certificates, and the one sworn to by the master) were equally false; but, in any case, it appears upon the face of these documents that the seal and signature of the United States consulate was lent to attest gross inaccuracies, and to sanction fraudulent practices devised for covering illicit slave-trade. Her Majesty's Government earnestly hope that the Government of the United States will order a strict investigation to be made into the facts here denounced, and will cause such strict regulations to be enforced for the future as may prevent a repetition of such culpable practices.

The undersigned regrets to add, that the case of the "Victoria," a vessel condemned at Sierra Leone, in the month of January last, as a Spanish slaver, although wrongfully and fraudulently assuming the Portuguese flag, furnishes still further and more recent evidence of the extraordinary practices followed in the consulate of the United States at Havana, tending to afford the sanction of the seal and signature of that consulate to notorious and almost avowed undertakings of slave-trade and piracy. The details of this case are given in full (among the enclosed papers) in a despatch from her Majesty's commissioners at Sierra Leone, dated the 31st of January, 1839, with a report of the trial annexed.

With reference to the case of the slave-trading vessel (the "Eagle," of Baltimore) which was recently brought into the harbor of New York, in charge of a British officer and prize crew, and which has finally been delivered back into the hands of the captor, as Spanish property, by the decision of the judicial authorities of the United States: some important additional information respecting the character of that vessel, and respecting her previous slave-trading voyages between Africa and Brazil, under the protection of the American flag, is furnished by the British commissioners at Sierra Leone, in a despatch to her Majesty's Government, of the 12th of February, 1839. Before being finally captured by her Majesty's ship "Buzzard," the "Eagle" had already (as has been stated in a former part of this note) been visited and detained in Lagos roads, on the coast of Africa, by her Majesty's ship "Lily," Captain Reeve commander, upon suspicion of being employed in illicit slave-trade on Spanish account. Her protection under the American flag constrained the British and Spanish mixed commission to decline entertaining the case. In transmitting to her Majesty's Government an abstract of the papers found on board the "Eagle," the British commissioners offer the following statement: "The 'Eagle' ob-

tained an American register at Baltimore on the 1st of December, 1837, and on the same day her owner took measures to effect a sale of her. Being built and intended for the slave-trade, she was at once despatched to Havana, where she was soon after disposed of. Who became the real owner, it is difficult to say; but the ostensible owner was the present master, (Joshua W. Littig,) to whom every assistance for clearing his vessel for the coast was rendered by the consul and vice consul of the United States at Havana. On the 9th of May, 1838, the 'Eagle' was cleared out at the Havana, with a regular slave equipment, for the island of St. Thomas, although Mr. Consul Trist, in a certificate, on the following day, declares that she was bound to Whydah, and the log shows that her real destination was Lagos. The crew shipped at Havana, with the sanction of the American consul, were all Spaniards, and agreed to serve under the American, (Littig,) '*or whoever should go for master,*' on a voyage to Whydah, or '*wherever the master may direct.*' Accordingly, having reached this coast, and having been loaded at Lagos, they proceeded to Brazil, and entered into the port of Bahia on the 18th of September, 1838, after having landed (as there is every reason to believe) a cargo of slaves somewhere in the immediate neighborhood. Mr. Foster, the American consul at Bahia, disregarded the absence of any clearance or authority which would justify the 'Eagle's' appearance at Bahia, as if it were allowable for a vessel to wander over the world, from one quarter of the globe to another, in defiance of her papers. He overlooked the complete slaving-equipment which she carried, and the Spanish crew by which she was navigated. Indeed, he added twelve Spanish seamen to her muster-roll, and then despatched her to the coast of Africa, ballasted with slave-leaguers, and with a cargo of tobacco worth \$20,000, shipped by the oldest slave-dealer in Brazil, and consigned to the order of an Havana merchant at Lagos. In addition to the twelve Spaniards added to the former Spanish crew at Bahia, six other Spaniards were there shipped, furnished with passports as passengers bound to the coast of Africa. These persons were, however, in like manner seamen, and were still on board the 'Eagle' when detained by her Majesty's sloop 'Lily,' two months after their arrival on this coast. A crew of twenty-seven Spaniards and one American on board a vessel so furnished, both from its composition and numbers, sufficiently showed the real character of the expedition for which they were engaged. From some amongst the papers which relate to another American brig, the 'Teazer,' we discover that Joshua W. Littig is no novice in the art of making the American flag subservient to the slave-trading adventures of Spanish and Brazilian merchants. We have been more particular in detailing the facts of these American cases, from the belief that they would be made the subject of representations to the American Government. Although the flag of the United States has been so extensively employed in the slave-trade, that it is now met with in every slave haunt on the coast, it is only lately that such has been the case. The immediate causes which have led the slave-dealers to invoke its assistance, were: first, the expressed determination of America not to be a party to any convention on the subject of the slave-trade; secondly, the concession of an equipment article by Spain; and, thirdly, the practical adoption of the principle, that in cases where the right of visitation and search exists, the national character of a vessel may be fixed by the residence of her merchant owner, and by the course of trade in which she is engaged, in opposition to the presumption arising from her flag and register. Three years ago, the abuse which now so universally

prevails as to be a matter of every-day occurrence, was only a subject of anxiety and apprehension. In a despatch which we had the honor to address to your lordship on the 2d of January, 1836, speaking of the various means which, in our opinion, would be used to escape from the operation of the new Spanish treaty, the commissioners remarked: 'It seems probable that the flag of the United States may be made use of for the same purpose, particularly by those vessels intending to trade north of the line.' And again, in the same despatch: 'American vessels will, we have no doubt, be employed in assisting slave adventures, by conveying to the coast, without fear of detention, all the articles necessary for the outfit of a vessel on her return voyage, and which, if found on board of one of the vessels for whose use they are intended, would at once lead to her condemnation.' At the very same time that the above despatch was written, the commissioners at the Havana expressed, in their despatches to your lordship, similar opinions and apprehensions. Since then, the unfavorable anticipations which our experience had taught us on both sides of the Atlantic to form, have been too fully realized."

The above extracts sufficiently denounce the open and audacious manner in which the flag of the United States is now assumed by the slave traders of Spain and Brazil; and it is also evident therefrom, that the United States consuls at Havana and at Bahia have not interfered to prevent it.

Mr. Bartlett, British consul-general in the Canary islands, states in a despatch to her Majesty's Government, of the 31st of July, 1839, that on the 15th of that month a vessel, under the American flag, called the "Two Friends," suspected on very strong grounds to be engaged in the slave-trade, arrived at the port of Santa Cruz, in Teneriffe. It appears from the evidence contained in the documents annexed to Mr. Bartlett's despatch, that the said vessel (the "Two Friends") left the Havana, bound for New Orleans, with a Spanish captain and a crew of eleven men, and with a Spanish flag flying; that at New Orleans American papers were procured, an American flag hoisted, and a new crew of sixteen men entered as Americans, although none of them were natives of the United States; and the Spanish captain and crew were then, as is customary on slave-trading voyages, entered on the papers of the vessel as passengers. The vessel was navigated under a bill of sale and a custom-house clearance from New Orleans, but she had no log-book on board. From New Orleans she proceeded to Cabanas, in Cuba, and shipped at that place leg-irons, coppers, bags of rice, and other articles belonging to the notorious equipment of slave-traders. She then sailed for Africa, and landed the above slave-trading articles at Gallinas; and thence lastly proceeded, in the month of July of this year, to Santa Cruz in Teneriffe, where some of her crew, having found that the vessel was engaged in slave-trade, left her.

The above is a summary of the evidence regarding the voyage of the "Two Friends," of which the details will be found in the documents annexed to Mr. Consul Bartlett's despatch, which are placed amongst the enclosed papers.

One other important point to which the undersigned is desirous of calling the attention of the United States Government, is the fact of foreign vessels, fully equipped for slave-trade, and notoriously destined for that illegal pursuit, being permitted to enter ports of the United States, refit, and again clear out for the prosecution of their criminal enterprise.

It will be seen by referring to a despatch, herewith enclosed, from her

Majesty's commissioners at Sierra Leone, dated July 31, 1838, that after reporting the case of the Portuguese slave-vessel the "Prova," a short while before captured on the African coast with a cargo of two hundred and twenty-five slaves on board, and condemned by the mixed commission, those gentlemen state as follows: "Stress of weather and damage received at sea compelled the "Prova," soon after she left the Havana, to put into Charleston to refit, and she remained there for nearly three months. The outward appearance alone of this vessel would, it might be supposed, have excited suspicion as to the real object of her voyage; but it is surprising that, fitted and equipped as she was for the slave-trade, and with her leaguers and slave-deck on board, she should have been permitted to clear out from an American port for the coast of Africa. Francisco José Dias, the master of the 'Prova,' deposed that the voyage commenced, and was to have ended, at Havana; that the last clearing port was Charleston, that the vessel was proceeding on her voyage from Havana to the African coast, when she carried away her jib-boom, and received other considerable damage, which compelled her to go to Charleston, where she remained about *three months refitting*, and thence sailed direct to the Calabar, where her slaves were shipped."

Her Majesty's Government entertain a confident hope that the Government of the United States will adopt such measures as may be calculated to preclude, for the future, the possibility of vessels evidently employed in illicit slave-trade refitting at their leisure, and again publicly clearing out from a port of the United States.

With a desire to avoid carrying the present note to an inconvenient length, the undersigned has limited himself to a consideration of the leading points contained in the enclosed papers. A number of further details will be found in those papers, well deserving the attention of the United States Government.

It would also be a superfluous duty for the undersigned to offer any lengthened observations on the remarkable manner in which the statements and arguments above recapitulated have been recently confirmed by the cases of the four vessels, the "Eagle," "Clara," "Wyoming," and "Catharine," captured under American colors, while engaged in illicit slave-trade, and brought into the harbor of New York in charge of British officers and prize-crews. The whole details relating to these cases are already in the possession of the Government of the United States.

In conclusion, the undersigned has to state, that it remains the settled opinion of her Majesty's Government, that the most sure and effectual means of checking the African slave-trade would be afforded by a conventional agreement between Great Britain and the United States for the mutual exercise of the right of search, under due regulations, by the cruisers of the two nations; and the undersigned is instructed once more to urge this proposal upon the serious attention of the President of the United States. The regular, rapid, and frightful increase of the African slave-trade under the abuse of the American flag, which has been observed to take place since the period when the above proposal was last discussed, appears to her Majesty's Government to offer a very strong argument in favor of a reconsideration by the United States of the decision then formed. If obstacles, which her Majesty's Government are unwilling to anticipate, should still prevent the concurrence of the United States in such an agreement, her Majesty's Government have only to express their anxious hope that the

Government of the United States may be able to devise some other effectual method, either singly, or in concert with Great Britain, for arresting the progress of a guilty and sinful traffic, which her Majesty's Government are well convinced the Government of the United States do, equally with the Government of Great Britain, abhor, reprobate, and detest.

The undersigned avails himself of this occasion to renew to the Secretary of State of the United States the assurance of his distinguished consideration.

H. S. FOX.

HON. JOHN FORSYTH,

Secretary of State of the United States.

Schedule of Documents.

No. 1.—Her Majesty's Commissioners to Viscount Palmerston. Havana, October 31, 1837.

No. 2.—Her Majesty's Commissioners to Viscount Palmerston. Havana, December 20, 1837.

No. 3.—Extract from a despatch from her Majesty's judge at the Havana, dated August 22, 1838.

No. 4.—Lieut. Kellett, R. N., to Rear Admiral Elliot. H. M. brig Brisk, at sea, October 23, 1838.

No. 5.—Lieut. Kellett to Rear Admiral Elliot. H. M. brig Brisk, Sierra Leone, October 29, 1838.

No. 6.—Rear Admiral Elliot to Charles Wood, Esq. Melville, at sea, February 6, 1839.

No. 7.—Rear Admiral Elliot to Charles Wood, Esq. Melville, at sea, February 13, 1839.

No. 8.—Extract from a despatch of Lieut. Holt, R. N., to Rear Admiral Elliot. H. M. brig Bonetta, Prince's Island, February 11, 1839.

No. 9.—Lieut. Birch, R. N., to Commodore Sullivan, C. B. H. M. brig Wizard, off Bahia, November 12, 1838.

No. 10.—Lieut. Birch, R. N., to Commodore Sullivan, C. B. H. M. brig Wizard, off Bahia, November 12, 1838.

No. 11.—Lieut. Birch, R. N., to Commodore Sullivan, C. B. H. M. brig Wizard, off Bahia, December 20, 1838.

No. 12.—Extract from a despatch of Captain Popham, R. N., to Rear Admiral Elliot. H. M. sloop Pelican, at sea, December 24, 1838.

No. 13.—Extract from a despatch from her Majesty's Commissioners at Havana. January 1, 1839.

No. 14.—Extract from a despatch from Rear Admiral Elliot to Mr. Wood, dated Melville, Ascension, January 1, 1839.

No. 15.—Lieut. Kellett, R. N., to Rear Admiral Elliot. H. M. brig Brisk, at Sierra Leone, August 8, 1838.

No. 16.—A return of vessels engaged in the slave-trade, searched and detained by her Majesty's ships and vessels under the orders of Rear Admiral the Hon. George Elliot, C. B., on the Cape and African station, between October 1 and December 31, 1838.

No. 17.—Commander Reeve to Charles Wood, Esq. H. M. sloop Lily, Gambia, April 2, 1839.

No. 18.—Her Majesty's Commissioners at Sierra Leone to Viscount Palmerston. Sierra Leone, January 31, 1839. Two enclosures. Case of the Florida.

No. 19.—Her Majesty's Commissioners at Sierra Leone to Viscount Palmerston. Sierra Leone, January 31, 1839. One enclosure. Case of the Hazard.

No. 20.—Her Majesty's Commissioners at Havana to Viscount Palmerston. Havana, January 19, 1839. Four enclosures. Correspondence between the British Commissioners and Mr. Consul Trist.

No. 21.—Her Majesty's Commissioners at Sierra Leone to Viscount Palmerston. Sierra Leone, December 5, 1839. One enclosure. Case of the Dulcinea.

No. 22.—Her Majesty's Commissioners at Sierra Leone to Viscount Palmerston. Sierra Leone, January 31, 1839. One enclosure. Case of the brig Victoria.

No. 23.—Abstract of the papers found on board the brig Eagle, J. W. Littig master.

No. 24.—Mr. Consul Bartlett to Viscount Palmerston. Santa Cruz, July 31, 1839. Three enclosures. Case of the Two Friends.

No. 25.—Her Majesty's Commissioners at Sierra Leone to Viscount Palmerston. Sierra Leone, July 31, 1839. One enclosure. Case of the Prova.

[Enclosure No. 1.]

HAVANA, *October 31, 1837.*

MY LORD: The following is the list of vessels that have cleared from this port, during the past month, for the coast of Africa, viz:

- October 2. Portuguese schooner Felicidad, for San Tomé.
- “ 3. American schooner Washington, for Buena Vista.
- “ 18. Spanish schooner Union, for Santiago de Praya.
- “ 19. Portuguese schooner Estela, do.
- “ 20. American schooner Joseph Hand, for Cape de Verds.

Of the arrivals during the same period, we are only able to name two vessels—the Portuguese schooner Francisca, from San Pablo de Loanda, and the Ligera, from the island of Principe; though we have heard circumstances particularized which left no doubt in our minds of one or two others. It is, however, worthy of remark, that much more caution is now observed respecting vessels from the coast of Africa, as the signals for them at the Moro Castle have ceased to be made; and also the entries in the books of the coffee-houses where the merchants resort.

Of the vessels cleared at the custom-house for the coast of Africa, your lordship will perceive there are two Americans.

We have, &c.,

J. KENNEDY,
EDW. W. H. SCHENLEY.

Viscount PALMERSTON,
G. C. B., &c., &c., &c.

[Enclosure No. 2.]

HAVANA, *December 20, 1837.*

MY LORD: The following is a list of the vessels that have cleared out from this port for the coast of Africa during the last month:

- November 2. Portuguese schooner *Ligera*, for *Isla de Principe*.
 “ 7. Swedish brig *Victoria*, for *Cape de Verds*.
 “ 18. Portuguese schooner *Vigilanta*, for *Loando*.
 “ 25. American schooner *Cleopatra*, for *Cape de Verds*.
 “ 25. Portuguese schooner *Sies Igual*, “
 “ 30. Portuguese brig *Triunfo de Loando*, for *San Tomé*.

Of these, the *Cleopatra* and the *Sies Igual* are entered in the names of the great slave-dealers, *P. Martinez & Co.*

During the month the following vessels have arrived from the coast of Africa:

- November — Portuguese schooner *Manuelita*.
 “ — “ “ *Dos Hermanos*.
 “ 16. “ “ *Olympia*, *Silva* master.
 “ 25. “ “ Name unknown.
 “ 28. “ “ *Volez*, *Leusa* master.
 “ 30. “ “ *Maria Teresa*, *Malho*.

Your lordship will perceive that all these vessels sail now under the Portuguese flag, though there is no doubt that most, if not all, are manned and owned by Spaniards. In addition to these, it ought to be added, that *Lieut. Jauney*, now here in charge of the Spanish schooner *Matilda*, has brought information of the *Arrogante* (a vessel manned entirely by Spaniards, but under the Portuguese flag) having been captured, with 409 negroes on board, off *Cape Antonio*, by *H. M. sloop Snake*; and it is further reported here, that the *Urmea*, also under Portuguese colors, has been taken by *H. M. sloop Ringdove*, with 518 negroes on board, and sent to *Sierra Leone*.

We have, &c.,

J. KENNEDY,
 E. W. H. SCHENLEY.

VISCOUNT PALMERSTON,
G. C. B., &c. &c. &c.

[Enclosure No. 3.]

Extract from a despatch from her Majesty's Judge at the Havana, dated August 22, 1838.

“Another vessel of the like character arrived here the 4th instant, and is thus reported in the *Diario* of the 5th.

“From *Baltimore*, in twenty-four days, the American ship ‘*Venus*,’ Captain *Wallace*, tons 460, with bricks to *Don Jose Mazorra*—passengers two. Of this vessel there is the following notice in a *Baltimore* paper, (the American,) of the 4th July: ‘A noble corvette ship, the *Venus*, Captain *Wallace*, pierced for eighteen guns, built in this city on foreign account, is also ready for sea. She is, we learn, the sharpest clipper-built vessel ever constructed here, and, according to the opinion of nautical men, must out-sail any thing that floats.’ The consignee's name, (*Mazorra*,) your lordship

will remember to have had reported several times, and it is said he is half owner of the *Venus*. I have not learned whether she is actually to sail with long guns, but I have heard reports of two other vessels having been prepared during last month with six guns each, and that one was to sail equipped to cope with any cruiser on the coast.

"The "*Venus*" is destined for Mozambique, and is arranged to bring as many even as one thousand negroes; in which case, it is said, she would clear to the speculators from \$100,000 to \$200,000 in her first voyage—her cash price being estimated at \$50,000, and the expenses of cargo and slaves at another \$50,000.

"On the subject of vessels going equipped under the American flag to the coast of Africa, there to be pretended to be transferred for the first time to some Portuguese or Spanish owner, I have had several conversations with the American consul at this place, a gentleman of high character and of considerable reading and observation. I regret, however, to say that I have received only the most discouraging replies on every point relating to the prohibited traffic; and to add, that this seems the general feeling here of the American community. They all seem to declare that it would be a question not to be entered on—of inquiring into their equipments—as interfering with their trade, not knowing how far such interferences might be led to extend; and that England may as well think of closing up the workshops of Birmingham, where they say the bolts and shackles are manufactured, as call on America to forbid the sailing of vessels equipped with them. In answer, I have not hesitated to express my disbelief of the shackles coming from Birmingham, and to declare my full conviction that at no port whatever in England would they allow any such articles to be shipped, had they any idea of their being intended for such a purpose.

"I regret to have also to inform your lordship, that, during the suspension of the Portuguese consul, as I have previously stated, the American consul has been acting *pro tempore* in that character; thus unquestionably giving a certain degree of effect to the abuse of the flag of his republic, under its association with the slave-trade, and the pretended transfers to other owners on the coast of Africa."

[Enclosure No. 4.]

HER MAJESTY'S BRIG "BRISK," AT SEA,
October 23, 1838.

SIR: I have the honor to call your attention to the case of the brig "*Diligente*," condemned in the Spanish mixed commission court, to her Majesty's brig "*Brisk*," under my command.

This vessel was condemned at Sierra Leone in December, 1836, as the "*Paquete de Cabo Verde*," sold to a Mr. Lake, and transferred, by bill of sale of the 2d of January, 1837, to Miguel Bentinotte, (a Spanish slave-dealer at the Gallinas,) for £1,000. This notorious character arrived at Sierra Leone for the above purpose, and cleared out under Spanish colors for the Havana, in April, 1837. She then visited several ports in old Spain, and ultimately arrived at Cadiz on the 30th September, 1837. It would appear, from a fictitious bill of sale, dated the 2d of January, 1837, at Cadiz, that the vessel was sold as the "*Ferroz Africano*," to Gabriel Lopez, attor-

ney to Francisco Cordova de Mello, of Cape Verd islands, who is the nominal owner of all Spanish vessels which, since the treaty with Spain in 1835, have been transferred to the Portuguese flag.

It will appear that this vessel, after a sham bill of sale, received a passport from the Portuguese consul general at Cadiz, dated 5th January, 1837, and her name changed to the "Diligente," at the very time that the vessel and owner were at Sierra Leone, and then only two days in his possession. It has appeared that the master and mate are on the roll dated 5th January, 1837, and the master's name in the passport of the same date; though, in evidence given before the court of mixed commission, they swear they never saw the vessel until 1838.

I beg leave to call your attention to the conduct of the consul of her most Faithful Majesty aiding and assisting in carrying on the slave-trade, contrary to the solemn treaty entered into by her Government. This most glaring case of fraud could not have been completed without the assistance and connivance of the authorities of her most Christian Majesty at the port of Cadiz.

I beg leave also to call your attention to the case of the American schooner "Mary Hooper," Charles M. Bergstian master and owner, belonging to Philadelphia. She sailed from Havana the 28th May, 1838, for Port Praya, and was consigned to a notorious slave-dealer at the Gallinas: this vessel, when last boarded by the "Brisk," was lying off Tradetown, ready to take on board a cargo of slaves. This I believe is not the first instance in which the American flag has been made use of for the purpose of screening offenders from her Majesty's ships. If this case is successful, I fear the difficulties of her Majesty's squadron in suppressing the slave-trade on this coast will be multiplied, as I feel confident we shall, in the succeeding season, have numerous vessels carrying on this abominable traffic in a similar manner, when it can be done with such impunity. I am satisfied she has also Portuguese papers, which the master partly admitted (when I first boarded her) he had received at Port Praya. Did she, on her arrival in the West Indies, meet a United States ship of war, she has Portuguese papers; and American for her Majesty's ships; which will, in all probability, be the means of her being successful.

The consul of the United States at the Havana has assisted in clearing this vessel out.

I have, &c.,

A. KELLETT,
Lieutenant Commanding.

Rear Admiral the Hon. GEORGE ELLIOT,
C. B., &c., &c., &c.

[Enclosure No. 5.]

HER MAJESTY'S BRIG "BRISK,"
Sierra Leone, October 29, 1838.

SIR: I have the honor to inform you, that, on the 27th instant, in latitude 8° 32' north, and longitude 13° 30' west, I boarded and seized the schooner "Mary Ann Cassard," under American colors. I have to state that this vessel was lately sold by Gilbert Cassard of Baltimore, by power

of attorney, to Messrs. Hernandez and Basden, of Matanzas, and received her cargo there; when sold, the register of the vessel was cancelled. She had no American papers but the roll, which was signed by the United States consul at Matanzas. The crew are composed of one British subject, the master, (who was formerly in her Majesty's brigantine the "Lynx," on this coast, and was paid off in her;) the remainder are all Spaniards. This vessel I have put into the Spanish mixed commission court for adjudication, being clearly of opinion that she is Spanish property, fitted and equipped for the slave-trade.

I have little doubt that, when at Bona Vista, on her voyage to the coast, she received Portuguese papers; she has also a Portuguese flag. I propose, when the examinations of the master are taken, to lodge information against and commit him for trial as a British subject engaged in the slave-trade. I have on board the "Brisk" an armorer's mate, who formerly served in the "Lynx," and was a messmate of the individual from fifteen to eighteen months.

I think, sir, the case of this vessel will have this good result—that it will prove to the individuals carrying on the nefarious slave-traffic that fraud and deception will not always be successful.

I purpose proceeding to-day to the rivers to the northward, having received information that there are slave-vessels there.

I have, &c.,

ARTHUR KELLETT,

Lieutenant and Commander.

Rear Admiral Hon. GEO. ELLIOT,

C. B., &c., &c., &c.

[Enclosure No. 6.]

MELVILLE, AT SEA,

February 6, 1839.

SIR: I beg leave to enclose, for the information of my Lords Commissioners, an extract of a letter from Captain Popham, of her Majesty's sloop "Pelican," under date the 24th December last, and three letters from Lieutenant Arthur Kellett, commanding the "Brisk;" by which their lordships will see the protection which slave-vessels receive from assuming the Portuguese and American flags.

The seaman on board the "Mary Ann Cassard," alluded to in Lieutenant A. Kellett's letter of the 20th October, 1838, who passed for the American captain, was, I believe, an American by birth, though, wishing to be received on board the Lynx, he had passed himself as an Englishman in that vessel; the man was unable to navigate any vessel, and was merely engaged to pass as the American captain when boarded by a British man-of-war; she had her Portuguese papers and colors on board all the time, as was proved when she was captured a month afterwards by the same vessel, ("Brisk,") which she mistook for a French brig cruising on the same part of the coast, and consequently assumed the Portuguese character, having her slaves then on board.

Several of the slave-dealers have declared their intention to have an American sailing-master in each vessel, and American colors; and some

have had the impudence to assert that the Government of the United States would not discountenance such practices by any *act* or agreement which could prevent such gross abuse of the American flag, and such direct violation of their own laws.

Her Majesty's sloop "Lily" has sent in a Spanish vessel under American colors; her whole crew Spanish, but with a pretended American captain on board. I was also informed by the American barque "Active" (and where they seemed delighted at the occurrence) that the "Saracen" had detained a Spanish slave-vessel at the Gallinas under American colors.

The probable object of using the American flag will be to protect the vessels up to the time of the cargo being ready for shipment; then to go through the farce of selling the vessel to a Portuguese or Spaniard.

But, in case of the capture of vessels with *slaves on board*, under the *American flag*, I should beg to know what is to be done with the man passing for the American captain.

The actual sale of nearly all the slave-vessels in question takes place at the Havana, where one man is engaged to personify an American captain; but they seem very indifferent as to having any American papers. The mere flag, in their opinion, is sufficient; and as they are all provided also with their proper national flag, they are prepared in case of meeting an American vessel of war.

I must crave their lordships' early instructions on this growing evil and abuse, which I feel is much too disgraceful to meet with any countenance, direct or indirect, from the Government of the United States.

I have, &c.,

GEO. ELLIOT,

Rear Admiral and Commander-in-Chief.

CHARLES WOOD, Esq., &c., &c., &c.

[Enclosure No. 7.]

Extract.

MELVILLE, AT SEA,
February 13, 1839.

SIR: I have the honor to forward, for the information of my Lords Commissioners of the Admiralty, a copy of a letter from Lieutenant J. L. R. Holt, commanding her Majesty's brigantine "Bonetta," by which, and my former letters, it will be observed that the use of the American flag is becoming rapidly more general in the protection of the Spanish slave-vessels.

Of American flags used for this purpose, there are more than twice as many at present on the coast; and in so barefaced a manner do they proceed, that some have not even one American to personify the captain, but satisfy themselves with furnishing one of the crew with a certificate of naturalization for the occasion.

If her Majesty's ships were at liberty to send some of these pretended Americans to the United States, and the Government of that country were to uphold the honor of their flag, by subjecting such lawless felons to prosecution and punishment, it would soon put an end to the nefarious usurpa-

tions of their flag by the most notorious slave-dealers belonging to Spain and Portugal.

GEO. ELLIOT,

Rear Admiral and Commander-in-Chief.

CHARLES WOOD, Esq.,

&c., &c., &c., Admiralty.

[Enclosure No. 8.]

[EXTRACT.]

HER MAJESTY'S BRIG BONETTA,
Prince's Island, February 11, 1839.

On my passage to Accoa, with the prize-crews of her Majesty's sloop Pelican, I boarded, on the 23d day of January, a very fast new American Baltimore schooner, in ballast, evidently intended for the slave-trade; all his crew Spanish, and her master, I believe, a Frenchman, but declaring himself a naturalized American. Papers correct.

J. L. R. HOLT,

Lieutenant Commanding.

[Enclosure No. 9.]

HER MAJESTY'S BRIG WIZARD,
Off Bahia, November 12, 1838.

SIR: I beg to submit to your notice the following statements, relative to the extensive share the American flag has in forwarding and covering the traffic in slaves carried on by parties in the port of Bahia.

The American brig Dido, of Baltimore, (her master Phillips, and Manuel supercargo, when under American colors, and *vice versa* when under the Portuguese colors,) left the Havana about March, 1837, with a general slave cargo, consisting of arms, ammunition, spirits, tobacco, &c.; touched at Port-au-Prince, St. Domingo, also at Bonavista, Cape Verde islands, where it is probable she got Portuguese papers after the usual sham sale was effected; from thence she proceeded to Oney, river Lagos, in the Bight of Benin, and after having there disposed of her cargo, visited Whydah, where she provisioned. Returning to Lagos, she finally sailed, with five hundred and seventy-five slaves on board; her crew consisting of Phillips master, Manuel supercargo, second mate a relation of Phillips, an American mulatto, a Sicilian, (since murdered at Bahia,) a Norwegian, two Portuguese, and an Englishman, James Fox. After a three weeks' passage, she made the sand hills, to windward of Bahia. On reconnoitring the port, her Majesty's sloop Sparrowhawk was observed at anchor; upon which they hauled off, hoisting, however, their distinguishing flag forward, and American colors abaft, which was acknowledged from the village outside the bar. That same evening, five hundred and seventy slaves (five having died on the passage) were landed close to the point Itaparica, at the village. During the night the Dido was cleared out, and made her appearance in Bahia next day under American colors.

The above confirms what I had before learnt from report off Bahia.

James Fox, now serving in the Wizard, states that he would have no objection to make oath to the truth of the above statement, provided security was warranted against his being tried for a misdemeanor, or otherwise punished for his share in the transaction.

James Fox received \$75 a month as wages, and \$100 bounty when slaves were landed.

The Dido was under Portuguese colors at Lagos.

The Dido left Bahia again on the 27th of July, with a general cargo for the coast, and was reported by the Mary Cushing, of Baltimore, as having been left by her, in September, in Lagos river, in the Bight of Benin.

I have, &c.,

THOS. F. BIRCH,
Lieutenant and Commander.

Commodore SULIVAN,
C. B., &c., &c., &c.

[Enclosure No. 10.]

HER MAJESTY'S BRIG WIZARD,
Off Bahia, November 12, 1838.

SIR: I have the honor to report, that we boarded, on the 16th of September, off Point St. Antonio, Bahia, the Eagle, of Baltimore, a two topsail schooner of two hundred and ten tons, under American colors, John Littig master, with crew and passengers, (in all, twenty-one men,) from St. Thomas on the line, in ballast. Her American papers were produced, and I did not conceive myself warranted in searching her. It was reported in Bahia that she had landed slaves to the northward, and her appearance on boarding warranted the suspicion.

The Brazilian authorities appear to have been satisfied, as, on the 19th of October, she sailed with a general cargo for the coast of Africa.

I have, &c.,

T. F. BIRCH,
Lieutenant Commanding.

Commodore SULIVAN,
C. B., &c., &c., &c.

HER MAJESTY'S BRIG WIZARD,
Off Bahia, December 21, 1838.

SIR: I have the honor to report, that, on the 9th of November, I boarded, off Bahia, the American schooner William Ridgway, John Chase, jr., master and part owner, with flour for the market. After discharging, she was offered for sale; and would have been sold to parties for the slave-trade, but the bills tendered could not be negotiated, and she left Bahia on the 19th December for Baltimore.

John Chase, jr., last voyage, sold Juliana schooner to parties in Bahia. She sailed for the coast of Africa about the 30th July, with a great cargo.

It is said she will take slaves to the Havana. John Chase, jr., told me he had on the stocks a vessel to be called the Mariana, nearly ready, but built expressly for the slave-trade; and that, by God, he would build as long as he could find purchasers.

I have, &c.,

T. F. BIRCH,
Lieutenant Commanding.

Commodore SULLIVAN,
&c., &c., &c.

[Enclosure No. 11.]

HER MAJESTY'S BRIG WIZARD,
Off Bahia, December 20, 1838.

SIR: I have the honor to report, that her Majesty's brig boarded, on the 10th of November, off Bahia, the Mary Cushing, of Baltimore, schooner of one hundred and forty tons, under American colors, Reynolds master, with a crew of ten men—all either Portuguese or Spaniards—from Lagos and Prince's island, in ballast, bound to Bahia.

Her master volunteered leave to inspect between decks; four leaguers, and about twenty water-casks, were observed in her hold, and also a quantity of loose planks. Her range and coppers were much larger than those generally used in merchant-vessels.

In Bahia, it was known she had been sold to parties at the Havana for the purpose of slaving; that the former American master remained on board with her register, that she might still bear the flag of the United States.

From the Havana, she went to Oney, river Lagos, for the purpose of taking in slaves; but being closely watched by one of her Majesty's cruisers, she, after a stay of some weeks, sailed, and finally came to Bahia in ballast. She is expected shortly to sail for the coast with a general cargo, and the first good opportunity that offers will ship slaves, when the American master will leave with his register, and the first mate will take charge, with the sale policy effected in the Havana.

The master observed to the boarding officer, upon some allusion being made to the American colors he had flying, that, had he negroes on board, we should not see those colors up.

I have, &c.,

THOS. F. BIRCH,
Lieutenant and Commander.

Commodore SULLIVAN,
C. B., &c., &c., &c.

[Enclosure No. 2.]

[EXTRACT.]

HER MAJESTY'S SLOOP PELICAN,
At Sea, December 24, 1838.

The active and undisguised assistance given to the slave-trade by citizens of the United States of America is as notorious as it is disgraceful. The

American flag has in several instances given protection to Spanish and Portuguese traffickers in human beings. The last instance was too shameful to pass unnoticed.

A ship called the *Venus*, of four hundred and fifty tons, built at Baltimore, on the most approved model for swift sailing, arrived at Lagos from Boston on or about the 5th of November last. About the 24th of the same month she sailed from Lagos with a very large cargo of slaves, said to amount to eleven hundred and fifty. The American flag and papers (in possession of Mr. Phillips, the commander, of Baltimore) protected her until a few days before she sailed; when he left, and the Portuguese flag was substituted for the American. It is therefore evident that under the American flag she was perfectly ready for the reception of slaves.

On the 28th of November, about a hundred miles south of Lagos, the *Pelican* chased this ship, and at first gained on her; but she was lightened by throwing her deck cargo and spars overboard, then sailed away from us with ease, although every effort was made to come up with her. On the 30th, somewhat southeast of where our chase commenced, we picked up two spare topmasts, a topsail yard, and maintop-gallant-mast of very large dimensions, quite new, and evidently but a day or two in the water. This confirmed what I heard in Lagos respecting the *Venus*.

We boarded then a large American brigantine, discharging a cargo for the purchase of slaves. Mr. Littig, the *soi-disant* owner and commander, said the cargo was Portuguese property, and that he hoped the brigantine soon would be. This is the third vessel brought out (the first and second for the slave-trade) by the same individual.

Lieutenant Holland, of the *Dolphin*, could give you the fullest information respecting the *Venus*, as he often boarded her at Lagos.

The *Pelican* sailed from West Bay, Prince's island, on Saturday, the 15th of December, for Ascension. On Monday, the 17th, at daybreak, a suspicious sail was reported as being very close to us. She immediately tacked; we made all sail in chase, and at 7 o'clock, A. M., detained the Portuguese slave schooner *Magdalena*, with a cargo of three hundred and twenty slaves, from the river *Bras*, or *Nun*. Among her passengers was a citizen of the United States, (Mr. Huntington,) who had, on the 1st of December, made over to a Spaniard the schooner *Ontario*, of Baltimore. Her sale was no doubt effected at Havana, although the bill of sale mentioned it to have taken place in *Bras*.

In this instance the American flag gave unqualified protection to the slave-trade, for the *Ontario* was boarded by the boats of her Majesty's ship *Viper*, in November; and she was then reported as preparing for the reception of slaves, but having American papers and colors.

After a little conversation with the Portuguese commander of the *Magdalena*, he informed me that the *Ontario* was in company on Sunday afternoon. This information was taken immediate advantage of, and sail made on a N. W. by W. $\frac{1}{2}$ W. course. Tuesday, at day break, after a fine run, a sail was seen to the westward. The morning was thick and rainy; but at 10 o'clock A. M. the weather cleared up, and I despatched Lieutenant Marsh, with the two gigs, to capture the *Ontario*. This he did at 11 h. 30 m. A. M., with two hundred and twenty slaves on board. She was under Spanish colors, but had no papers whatever. "*Ontario*, of Baltimore," was painted in large letters on her stern.

Both these vessels I sent to Sierra Leon for adjudication; informing the

British commissioners of my intention to detain the American (Huntingdon) until I received your orders respecting the disposal of him. However, on a careful perusal of the instructions in my possession, and of the correspondence between Great Britain and the United States of America on the subject of the slave-trade, I was induced to alter my intention; feeling that I should not be borne out in interfering with a citizen of the United States, of which it appeared to me the American Government evinced no disposition to tolerate, *even in very extreme cases.*

It has been mentioned by Spaniards and Portuguese slaving on this coast, that, were it not for the very active co-operation of the Americans, the slave-trade would very materially decline; in fact, be but feebly carried on.

I do not doubt, from all I hear, that the citizens of the United States (generally of Baltimore) are more deeply interested in the slave-trade to the Havana and Brazil than is generally supposed.

BRUNSWICK POPIAM, *Captain.*

Rear Admiral the Hon. GEORGE ELLIOT,

C. R., &c., &c., &c.

[Enclosure No. 13.]

Extract from a despatch from her Majesty's Commissioners at Havana, dated 1st of January, 1839.

An astonishing number of new sugar estates have been opened throughout the island within the last two years. In the district of Cienfuegos, of forty estates now working there, twenty-seven have been of recent formation; and though this may be above the average, we believe it does not much exceed the proportion of many other districts in course of cultivation. We regret to think that, of these estates, many have been commenced by American subjects; who will thus, of course, give considerable impetus to the slave-trade by means of their capital, industry, and skill. Nor have the efforts of the planters (relying on the falling off of exports from the British West Indies, consequent on the measure of emancipation) been unrewarded with success. In the three years preceding the last, the exportations from that place and Matanzas, of boxes of sugar, were—

In 1835	-	-	-	-	-	491,570
1836	-	-	-	-	-	500,153
1837	-	-	-	-	-	506,952

While in the last season the number amounted to 610,512; and in the present, it is calculated a like quantity will have been raised, and, but for a severe drought in the autumn, would have reached 50,000 more.

With regard to the vessels engaged in the slave-trade, your lordship will perceive that, in the year 1837, there appear to have been—

Portuguese	-	-	-	-	-	40
Spanish	-	-	-	-	-	19
American	-	-	-	-	-	11
Swedish	-	-	-	-	-	1
						<hr/>
					Total	71
						<hr/>

And in the past year, the numbers are—

Portuguese	-	-	-	-	-	42
American	-	-	-	-	-	19
Spanish	-	-	-	-	-	8
French	-	-	-	-	-	1
Brazilian	-	-	-	-	-	1
						<hr/>
						Total 71
						<hr/> <hr/>

So that, while your lordship's efforts have been successful in inducing the Spanish Government to deter their subjects from adventuring under their flag in this traffic, and may be equally successful with the Portuguese, it appears that the American flag will be at the command of whoever chooses to embark in such inhuman speculations.

We have only further to add, and it is with great regret, that, on account of the new plantations, the demand for negroes in the market is as high as ever, and the price, therefore, remains proportionally high also; consequently, the inducement to prosecute the trade will continue the same, so long as those inclined to engage in it may find protection from the Governments which refuse the only co-operation that would be effective to control them.

[Enclosure No. 14.]

Extract from a despatch from Admiral Elliot to Mr. Wood, dated

"MELVILLE," ASCENSION, *January 1, 1839.*

I beg leave again to call their lordships' attention to the circumstance of the American consul at the Havana affixing his signature to the papers of vessels about to be engaged in the detestable traffic alluded to, under the Portuguese flag, as stated by Lieut. Arthur Kellett, of her Majesty's brig "Brisk," and in the report of Lieut. Oliver, of the "Fair Rosamond;" as well as the said consul signing blank forms, to be filled up at the pleasure of the persons in command of these vessels.

[Enclosure No. 15.]

HER MAJESTY'S BRIG "BRISK,"
Sierra Leone, August 8, 1838.

SIR: I have the honor to inform you that I arrived here this day from the river Gambia, where I had been, in obedience to your orders, to put myself in communication with the Governor of that settlement. I remained there twelve hours, and have called in here for information, which I expect to receive relative to the sailing of slavers from the Sherbro' and Galinas; for which cruising I proceed to-morrow. I have to inform you that, during my late cruise to the Gambia, I boarded the Portuguese schooner "Senhora de Bom Viagem," from the Havana, at which place she cleared

out for Porto Praya, but did not call there, and was on her way to the island of St. Thomas. I beg to state that I examined her papers, and found that the American consul at the Havana had signed all her papers; his reason for so doing being expressed in them, viz: "there being no Portuguese consul or other authorized agent there, from the Portuguese Government, to do so."

I have, &c.,

ARTHUR KELLETT,
Lieutenant Commanding.

Rear Admiral the Hon. GEORGE ELLIOT,
&c., &c., &c.

A return of vessels engaged in the slave-trade, searched and detained by her Majesty's ships and vessels under the orders of Rear Admiral Honorable George Elliot, C. B., on the Cape and African station, between the 1st of October and the 31st of December, 1838.

Name of prize.	Under what colors.	How rigged.	No. of men.	No. of guns.	No. of tons.	No. of slaves on board.	When and where taken, if at sea, latitude & longitude.	Whence.	Whither bound.	No. of days out.	Remarks.
Paquete— 1. "Felis"	Portuguese	Two-topsail brig.	28	—	115	196	July 19, 1838, lat. 4° 15' N, long. 7° 30' E.	Bonny	St. Jago de Cuba.	1	
2. "Constituição"	Portuguese	Two-topsail schooner.	24	4	115	None	Accoa Roads	Havana	St. Paul de Loando & Matanzas.	64	She produced a Cape Verde island paper, dated 10th December, 1837, stating her to be <i>American</i> built, in which the name of the captain differs from that on the muster-roll; found Spanish custom-house clearances, to which are affixed the name of Mr. Trist, as American consul, there being no Portuguese at the Havana; all eleven passengers had Spanish passports, and evidently held the highest offices on board; one stated himself to be the owner of both vessel and cargo; found in his desk certificate of his birth as a Spaniard, and several printed forms, signed by Mr. Trist, <i>left blank</i> for them to fill up at pleasure; found a Spanish log in the main hold, and a Spanish <i>ensign secreted</i> . She had four men neither accounted for by muster-roll nor passports; making a total of thirty-nine. Her cargo is rich, consisting of powder, spirits, silks, Manchester goods, and tobacco; has slave-irons, plank for deck, large coppers, and leaguers.
3. "Dolcinea" detained by Pelican.	Portuguese	Schooner	16	—	80	253	31st October, lat. 4° 16' N, lon. 3° 44' E.	Lagos	Havana	—	Six slaves had died; the remainder were healthy; the vessel in good order; her sails new.

MELVILLE, Ascension, January 1, 1839.

[Enclosure No. 17.]

HER MAJESTY'S SLOOP LILY,
Gambia, April 2, 1839.

SIR: Having captured a vessel under American colors, lying at Lagos, called the Eagle, (the entire crew of which were Spaniards, with the exception of a man calling himself both master and owner,) I sent her to Sierra Leone for adjudication; but the mixed commission court have refused to decide, on the ground that the ship's papers produced set forth that she is an American vessel; when captured, she was last from Havana, and answered the description sent by the Admiralty to the commander-in-chief, of a vessel employed in the slave-trade, called the Tres Amigos, under Portuguese colors, about to sail from Marenham; she was sold at the Havana, and the American vice-consul attested the sale, and granted American papers. Three other vessels had been captured under like circumstances, by the Brisk, Saracen, and Forester, and the court had acted in like manner; one of which was afterwards taken with slaves on board: she then hoisted Portuguese colors.

I have to request you will be pleased to acquaint my Lords Commissioners of the Admiralty with the circumstance, that immediate steps may be taken to check the protection of that flag by the slaver, or it will be useless for her Majesty's cruisers to be employed in the suppression of that inhuman traffic.

A day before I left Sierra Leone, a vessel arrived under American colors, captured by the Termagant; she will of course be released. No other flag will be seen on the coast in a short time, for it affords all the protection a slaver can require, under the existing laws.

I have, &c.,

JOHN REEVE, *Commander.*

CHARLES WOOD, Esq., &c., &c., &c.

[Enclosure No. 18.]

[EXTRACT.]

SIERRA LEONE, January 31, 1839.

MY LORD: We have the honor to enclose an abstract of the papers of the schooner Florida, David Bell Williamson master; which vessel was presented to us for admission into the British and Spanish mixed court of justice, on the 26th instant, by Lieutenant Worsley Hill, of her Majesty's brig Saracen. We declined to accede to the captor's application in this respect, on the ground that all the papers of the detained schooner set forth that she was an American vessel.

The reasons for the course which we have thought it our duty to pursue with regard to such seizures, have been so fully stated in our despatch (No. 87) of the 30th of November, 1838, that it will be needless now to repeat them; and, incompetent as we feel ourselves to deal with cases of this description, we are proportionally anxious that measures should be taken in the proper quarters to rectify the scandalous and increasing abuse of the flag of the United States.

From the enclosed abstract, hastily made, of the Florida's papers, before

they were returned to the captor, on his petition being rejected, it will be seen that George Elvear, of Baltimore, took out an American register for his schooner Florida in June, 1838, and immediately despatched her to Havana for sale, under the charge of the captain, Matthew Kelly, who was appointed the agent of the owner, with a power of substitution. Kelly appointed Dons Juan M. Manzanedo and Abrisqueta his substitute; and, within three months and a half from the date of the American register, a bill of sale of the Florida was executed by Manzanedo to D. B. Williamson, the present master.

Such are the representations of the ship's papers. Unfortunately, however, for the credit of the bill of sale, another paper was discovered, showing that Williamson, instead of being the owner, was to receive from the well-known slave trading firm of Manzanedo and Abrisqueta, (who, if not themselves the owners of the Florida, were at any rate the agents of the owners,) a small monthly stipend for assisting, by his name and presence, in concealing a Spanish slave-trade adventure under an American cover. The pay of this man was only to continue until the vessel should be ready to receive her return cargo, when, (owing, we presume, to an intention to change the flag to Portuguese or Spanish) his services would be no longer of use; but even then he was to be allowed his passage back to the Havana free of expense. The equipment of the Florida for the slave-trade was complete; and the captor would thus have possessed ample means of convicting his prize of being an essentially Spanish vessel engaged in the illicit traffic, had he been permitted to take advantage of the information acquired by his unauthorized search.

The declaration of Lieutenant Hill states, that he boarded the Florida on the 13th instant, in the river Gallinas, in his boat, her Majesty's brig Saracen lying at anchor off the bar; no colors were hoisted at the time, and Williamson was on board another vessel lying close by; but, on being hailed, he immediately returned to his own schooner, declaring himself master, and that it was an American vessel.

Two days afterwards, Captain Williamson, who appears to have been a silly, timid man, applied to Lieutenant Hill for protection against his own crew, who were all Spaniards, and had threatened his life. He is then represented to have stated that he would not venture again on board the Florida, which he would abandon altogether if he could only procure payment of his wages on the outward voyage from the agent of the vessel at the Gallinas, through Lieutenant Hill's interference. He further acknowledged that, so far as the bill of sale related to himself, it was false, and that he had no claim whatever to the character of the owner; and he attempted to clear himself of being a party to the fraud, by declaring that he had not been aware of the existence of this false document until some time after he left Havana. We have little doubt that the American register and muster-roll are as fictitious as the paper, the falsehood of which is admitted; they are, however, recognised by American authorities as true and valid, entitling the vessel which carries them to all the privileges of an American character; and, in our view of the matter, the fact of such a recognition is sufficient to protect from search and detention an apparent American vessel, so long as America persists in refusing to our cruisers the right of visitation.

The tenderness with which the independence of the flag of the United States has been treated, under so much provocation, will, we trust, have its proper effect. Of the actual existence of the evils which were anticipated from America's determined denial of the privilege of search, no doubt can

now be entertained; and it is to be hoped that some remedial measures will at any rate be adopted by herself, to check and punish the abuse which has clearly resulted from her obstinate retention of a right which other nations less jealous and exclusive have consented, under certain circumstances, and for a well defined and humane object, to waive, without any injury to their national honor.

We will here only recommend one measure, to which America can offer no reasonable objection. It is, that a force of small brigs, brigantines, or schooners of war, should be sent on this coast by the American Government; each of which should cruise and visit the slave-trading rivers and stations, in company with one of our own vessels. Cruising singly would have comparatively little effect, as the same vessel which would show American colors and papers to a British officer, might show Portuguese or Spanish colors and papers to an American officer. The crews of such vessels are always composed of Spaniards, with the exception of one American; who, in the presence of the British cruiser, would figure as the American captain; and, before the cruiser of his own nation, would declare himself a passenger, and would probably produce a passenger's passport from Havana. Cruising in couples, on the contrary, would remove the possibility of such evasion. If the American flag and pass were assumed by a slaver, she would be taken charge of by the one; and if she declared herself, or if she could be proved to be Spanish, Portuguese, or Brazilian, she would be a prize to the other man-of-war. At present, however, the coast swarms with vessels apparently American, and a rich harvest of prizes would follow the immediate arrival of a squadron of American cruisers, armed with authority to capture on the ground of equipment.

The United States consul at the Havana recognised as a valid document a register, which had apparently been cancelled, and of which only the left half was produced to him; and he acknowledged Williamson as owner of the *Florida*, and the purchaser of that vessel, although no power of attorney, or power of substitution, was forthcoming to prove the right which either Kelly, the alleged agent, or Manzanedo, the alleged substitute and seller, had received from Elvear, the original named in the mutilated register, to dispose of the property in question. Nor does it seem to have excited any doubt in the unsuspecting mind of Mr. J. A. Smith, that a vessel fully equipped for the slave-trade, and bound for the most notorious slave-mart on the coast of Africa, should be cleared out from Havana by one of the most extensive slave-merchants in Cuba, with a crew of which the captain of the flag was the only person who professed to be an American citizen.

We have, &c.,

H. W. MACAULEY,
R. DOHERTY.

VISCOUNT PALMERSTON, *G. C. B.*,
&c., &c., &c.

[Sub-enclosure.]

Abstract of the papers of the schooner "Florida," David Bell Williamson master.

No. 1. Part of an American register, which has been cut diagonally from the left corner at the top to the right corner at the bottom. Only the left side

is produced ; which, however, contains the endorsement, "Permanent register No. 50, schooner 'Florida,' of Baltimore, 19th June, 1838 : tons 38 $\frac{1}{2}$." Beyond this, little information can be obtained, as the absence of the right half of the document prevents our ascertaining its contents.

No. 2. A bill of sale, by which Don Juan M. Manzanedo, a merchant of Havana, in virtue of a power of substitution granted by Matthew Kelly, attorney of George Elvear of Baltimore, sole owner of the schooner "Florida," transfers all right and title in the said vessel to David Bell Williamson, for the sum of \$6,200. To this document is attached a certificate from the American vice-consul, Mr. Smith, on the 4th of October, 1838, that Manzanedo had appeared before him and acknowledged the transfer as his act and deed. A second certificate by the same functionary, on the same day, declares that "David B. Williamson has taken the oath required by law, and is at present master of the schooner 'Florida,' in place of Matthew Kelly, the late master."

No. 3. The muster-roll of the crew, signed by the master, D. B. Williamson, and certified by the American vice-consul.

No. 4. The custom-house clearance from Havana, dated on the 9th October, 1838, stating that the American schooner "Florida" was bound to the Cape Verdes and Gallinas.

No. 5. There is another paper, dated two days before the bill of sale was executed, which proves the latter document to be fictitious.

It is a formal agreement between Messrs. Manzanedo and Abrisqueta, who have lately been so deeply engaged in the Havana slave-trade, and the master, (Williamson ;) and stipulates that the latter, although the ostensible owner, shall receive \$70 a month during the outward voyage, and until the "Florida" be ready to take on board her return cargo, when his services shall cease ; and that a passage back to Havana shall be found for him, free of expense, in the same vessel.

SIERRA LEONE, *January 31, 1839.*

[Sub-enclosure.]

SIERRA LEONE, *February 12, 1839.*

MY LORD: With reference to our despatch marked "separate," of the 31st ultimo, on the subject of the detention of the American schooner "Florida," D. B. Williamson master, we have now the pleasure to inform you that the object of Lieutenant Hill, the captor, has been fully accomplished by the total destruction of that vessel.

The assertion of the ship's papers that Williamson was the owner of the "Florida," coupled with the anxiety of that person to obtain the amount due to him for his services on board, and then to free himself from all further connexion with the vessel, induced Mr. Macauley to suggest to Lieutenant Hill that Williamson's object might be attained, if, as the acknowledged owner of the "Florida," he would direct her to be treated in all respects as a condemned Spanish vessel, and to be sold at public auction.

The suggestion was approved of by Lieutenant Hill, and was immediately acted upon by Williamson, who had previously removed from the protection of her Majesty's brig "Saracen" to that of an American merchant vessel lying in the harbor. Accordingly, without the intervention of Lieutenant Hill, who sailed on a cruise, or of her Majesty's commissioners, who had no communication whatever with Williamson, but with the assistance of a mercantile agent employed by Williamson for the purpose, the "Florida" was dismantled; her stores, spars, sails, and cargo, were landed; and she was then conveyed to Destruction bay, where the hull was beached and cut into four parts.

The whole was soon after sold by public auction, and the proceeds handed over to Williamson, who declared his intention of paying himself therefrom in the first instance, and of handing over the balance to the real owner of the vessel, whenever he might chance to meet with him.

While the process of dismantling and cutting up the "Florida" was going on, the rage and astonishment of the Spanish officers belonging to her may be imagined. Application was made by them to the principal lawyer of the place, for advice and assistance; and a large sum of money was offered to him, if he would save this new and beautiful vessel from destruction. They declared she was owned by merchants of Havana, and that Williamson was only a seaman on board. But all was in vain. The papers under which the "Florida" sailed, verified and attested as they were by the American vice-consul at Havana, proclaimed Williamson to be the true, lawful, and sole owner. He followed his own inclinations with respect to the disposal of his own property, and, having realized the sum which its sale in detached portions produced, he sailed on the following morning for New York, in the American brig which had, for some time previous, afforded him shelter and protection from the vengeance of his late messmates.

We have, &c.

H. W. MACAULAY,
R. DOHERTY.

Viscount PALMERSTON, *G. C. B.*,
&c., &c., &c.

[Enclosure No. 19.]

[EXTRACT.]

SIERRA LEONE, *January 31, 1839.*

MY LORD: We have the honor to enclose to your lordship, herewith, an abstract of the papers found on board the schooner "Hazard," Russell Barker master, which was fallen in with on the 4th instant, in 5° 43' north latitude, sailing under American colors, by her Majesty's brigantine "Forester," Lieutenant Colin Yorke Campbell commanding, and detained on the ground that she was equipped for the slave-trade, and that there were "reasons for supposing her to be a Spanish vessel."

On the 29th instant, an attempt was made to bring the "Hazard" before the British and Spanish mixed commission court of justice; but the fact of the vessel having been taken whilst sailing under the flag and pass of the United States, (a fact which is necessarily stated in the preliminary declaration of the captor,) rendered it improper, in our opinion, to sanction the prosecution of the vessel in any of the courts of mixed commission.

The "Hazard" received an American register at Baltimore, on the 11th May, 1838, and on the following day she was despatched to Havana for sale. On the 19th September, Don Francisco Montero, a merchant at Havana, who has since accompanied the vessel in the ostensible character of supercargo, received full power to dispose of the vessel when, and where, and how he pleased. There is little doubt Montero had become the owner of the property over which he possessed such absolute control; and the power of attorney, under which that control was exercised, was a mere blind. Barker, the American, was also, it appears, only "*captain of the flag*," the real master, who cleared out the vessel from Havana, and whose name was endorsed on the clearance as captain, being Don Benito Sandes, who is described on the muster-roll as first mate.

Although cleared out for St. Thomas, the destination of the "Hazard" was the slaving port of Lagos, as she carried from Havana letters for various persons at that place; and the fittings of the vessel sufficiently demonstrated the illegal object of the voyage. The American captain died on his passage to this port, and the "Hazard" was thus left to navigate the seas, without having on board one citizen of the nation to which she claimed to belong. Her crew were all foreigners. A Spanish merchant exercised over her all the rights of ownership; and she received her outward cargo and her slave-trading equipment in a Spanish port, to which, according to the declaration of the late master, she intends to return when her business on the coast is completed. There is nothing to connect her with America, but her Baltimore register, and the recognition of her American character by Mr. Vice-consul Smith. Nor could she ever have been intended to have been employed in the commerce of America; for, on the day after the American register was obtained, she sailed for Havana, with a power of attorney on board to sell her forthwith. Under these circumstances, all that the captor required to procure the condemnation of the "Hazard" as a Spanish vessel engaged in the slave-trade, was the right to avail himself of discoveries produced by his visitation and search.

In reporting the cases of the "Mary Ann Cassard" and the "Florida," we remarked that their registers appear to have been cancelled, being cut through diagonally, and only one-half of each being produced. The "Hazard," on the contrary, was supplied with an entire document. This difference gives an appearance of probability to our conjecture respecting the invalidity of registers so mutilated.

We have the honor to be, &c., &c.,

H. W. MACAULAY,
R. DOHERTY.

Right Hon. Lord Viscount PALMERSTON,
G. C. B., &c., &c.

[Sub-enclosure.]

Abstract of the papers found on board the schooner "Hazard," Russell Barker master.

No. 1. A permanent American register, No. 40, dated and signed at Baltimore on the 11th of May, 1838, setting forth that James Frazier, of Baltimore, in the State of Maryland, had taken the required oath, and was sole

owner of the schooner "Hazard," of Baltimore, built during the year 1838, and measuring 120 $\frac{1}{2}$ tons; and that Edwin Bailey was the master of the vessel.

An endorsement by Mr. J. A. Smith, the American vice-consul at Havana, on the 24th September, 1838, states that Russell Barker was master on that date, and had taken the proper oath as such.

No. 2. On the day after the above American register was granted, a power of attorney was prepared by John Gill, a notary public of Baltimore, by which the owner, James Frazier, authorizes the captain, Edwin Bailey, to sell the "Hazard," or to appoint a substitute for that purpose.

No. 3. Annexed to the last paper is a power of substitution, executed at Havana, by Bailey, on the 19th of September, 1838, which empowers "Don Francisco Montero, of Havana, and supercargo of the 'Hazard,' to dispose of the schooner at his own discretion."

The witness to the execution of this deed was Mr. Smith, the vice-consul, who afterwards, in his official capacity, attested its correctness.

No. 4 is a muster-roll of the crew, certified, in like manner, by the American vice-consul, on the 11th October, 1838. Montero, the supercargo intrusted with the disposal of the vessel, is not mentioned at all; but Russell Barker is named as master, and Benito Sandes and William Pons as first and second mates—the one being called a Portuguese, and the other a Frenchman.

No. 5. The clearance from the Havana shows the following endorsement on the sealed envelope: "The American schooner Hazard, *Captain Don Benito Sandes*, bound from Havana to St. Thomas, despatched the 12th October, 1838."

In the enclosure, also, although Barker is there styled the captain, Don Benito Sandes is again named as the shipper of all those articles of slaving equipment, slave-deck, water casks, &c.; the shipment of which is, in these documents, usually assigned to the master.

Nos. 6 to 10 are five private letters, of which one is addressed to Gerónimo Villar, captain of the brigantine "Ligeiro," at Onim; another to Francisco Gallardo, mate of the same vessel, but here called by her Spanish name of "Galgo;" and a third to Don Mathias Baptista de Carvalho, who, it will be recollected, was the consignee at Onim of the "Ligeiro," reported in our despatch of this date, marked Spain No. 9. The two former gentlemen being at Sierra Leone, received their letters much earlier than they would otherwise have done. The two other letters are addressed to Don Antonio de la Peña and Don Estevão del Castillo. The name of the former of these persons is well known to us in connexion with the slave-trade.

Nos. 11 to 14. Four log books were found on board, relating to the present and former voyages made by the persons who kept them. They are all written in Spanish or Portuguese.

SIERRA LEONE, *January 31, 1839.*

[Enclosure No. 20.]

HAVANA, *January 19, 1839.*

MY LORD: In the despatch No. 39 of 1838, dated the 22d August last, from her Majesty's commissioners at this place, your lordship was informed of the arrival here of the American slave-ship "Venus," built at Baltimore expressly for the slave-trade, and of her departure shortly after for the coast of Africa. The "Venus" sailed hence under the American flag, with several American citizens on board; but in the ship's articles, of which a glance in bravado was afforded her Majesty's commissary judge, it was expressly stipulated that she was to be taken to Bahia, there to be transferred to the Portuguese flag. This, however, appears not to have been done; for, in the almost incredibly short period of five months, the ship has returned, and in the beginning of this month landed on the coast the extraordinary cargo of not fewer than 860 slaves. At this time the name was changed to the "Duqueza de Braganza," and she bore the Portuguese flag; but it was a matter of doubt whether a valid (if any) transfer of her had taken place, and it was currently believed that the American subjects who had sailed in her from this port had been present at the time when the slaves were taken on board. Indeed, it was reported from the parties themselves that they had been visited on the coast of Africa, when bearing the American flag, by the officers of a British cruiser; and upon being asked what they were doing there, answered the inquirers by saying "it was no business of theirs, and that they were Americans." They boasted, also, that though one of the cruisers watched and saw them take part of their cargo on board, and attempted afterwards to follow them, yet the chase was made in vain; and undoubtedly the wonderfully short time in which this unprecedentedly successful voyage has been made, fully warrants the character which the ship brought here with her for her fast-sailing qualities.

Under these circumstances, we felt it our duty to call the attention of the American consul (who is also acting as Portuguese consul) to so gross a violation of the laws, as well as the flag, of the United States; bearing in mind the ungracious reception he gave to a former like communication to him from the British commissioners at this place. (See Parliamentary papers for 1836, class A, pages 193 and 212.)

To this communication of ours the answer was returned, (of which we enclose your lordship a copy,) stating, at very considerable length, the opinions which had actuated him (the consul) on the occasion just referred to, as well as his views in the present instance. The answer is worthy of consideration, as an evidence of the feelings held by certain classes of the American community with regard to the slave-trade, and the part taken by the British Government to suppress it, and characterized by all the sensitiveness the concomitant of weakness. Altogether, whether clear or obscure, it appears a paper calculated, if not intended, to excite an angry correspondence; but the irritating points of which we carefully forebore to notice in our reply, contenting ourselves with generally asserting our duties, and the grounds on which we exercised them. As we hear the correspondence has been sent to the Government of the United States, we trust your lordship will consider the terms in which we addressed the consul, as well as those in which we answered his reply, to be deserving the support of her Majesty's Government.

With regard to the ship "Venus," otherwise the "Duqueza de Braganza,"

we should state that the original cost, we understand, was \$30,000, and that the fitting out and expenses of every description for the voyage, including the value for the return cargo, was estimated at \$60,000 more: say, altogether, \$100,000. The number of negroes brought back, as has been before stated, was 860, and they are said to have been sold at \$340 a head; producing the sum of nearly \$300,000, of which, therefore, two-thirds was net profit. So long as such returns can be effected, we fear that no efforts whatever will be effectual in suppressing the traffic; and certainly not, while the dealers have only to meet such a system of corruption as pervades every department of the Government of the island.

We have only further to add, that the ship "Duqueza de Braganza" is principally owned by the slave-dealer Mazorra, whom we have so often had occasion to name, and a Frenchman named Gautier; and that she is preparing again for another voyage.

We have, &c.,

J. KENNEDY,
CAMPBELL J. DALRYMPLE.

The VISCOUNT PALMERSTON,
G. C. B., &c., &c., &c.

[Sub-enclosure.]

HAVANA, *January 8, 1839.*

SIR: As it may possibly not have come to your knowledge, we think it right to make you acquainted with the report prevalent in this place respecting the ship "Venus," which arrived here the 4th August last, from Baltimore, and sailed shortly after for the coast of Africa.

This vessel, you will no doubt remember, arrived and sailed hence under American colors; under which it is said she took in a cargo of negro slaves, and has landed them, within the last few days, on this coast—about 860 in number. The report further states there are several American citizens implicated in this flagrant violation of the laws of the United States; and as the "Venus" may be hourly expected in the harbor, we would respectfully suggest to you that such immediate steps may be taken, on her arrival, as may lead to the punishment of such offenders.

The peculiar relationship in which the United States are placed with Great Britain, induces us more anxiously to hope you will participate in the feelings with which this communication is made.

We have, &c.,

J. KENNEDY,
CAMPBELL J. DALRYMPLE.

N. P. TRIST, Esq., &c., &c., &c.

[Sub-enclosure.]

CONSULATE UNITED STATES OF AMERICA,
Havana, January 8, 1839.

GENTLEMEN: I have received, at a late hour this evening, your letter addressed to N. P. Trist, Esq., and dated Havana, January 8, 1839, which the presence of company in my parlor, where it was delivered, has prevented

my opening until the night is too far advanced to permit me to engage in the task of a reply, without encroaching on the rest which a long day of unremitting labor demands. Unfitted as this has rendered me for resuming my pen at this moment, I am, however, impelled to do so by the desire to obtain without delay the important information which your letter affords ground for believing that it may be in your power to furnish.

Upon referring to the files of your predecessors in office, you will probably find there a letter addressed by them to me, towards the close of the year 1836, and by me returned, upon the ground that I deemed it incumbent upon me to decline receiving any communication of that nature.

Upon comparing the two, you will perhaps be sensible that the letter now before me, although differing from the other in one material particular, is yet so far of the same nature as to come within the rule which, upon that occasion, I announced as that of my conduct; and my conviction in regard to the indispensableness of which has since been fortified.

Thus viewed by me, it would now impose again the unpleasant duty then discharged, were it not that the essential duty just adverted to leaves me to a certain extent free, in this instance, to avail myself of the information of which you may be possessed, and at the same time to indulge the disposition towards British functionaries which fixed sentiments for the people have long made a part of my character.

In thus departing from the course pursued towards your predecessors, it is necessary that, to preclude misapprehension, I should trouble you with an explanation, which would have been made to them, had it not been prevented by the tenor of their communication.

This was of so extraordinary a character, indicating so utter an oblivion, or innate ignorance, of the simplest applications (until then, deemed by me self-evident) of first truths in regard to international independence, that it left me no other alternative to the course of passing it over, as I did, without remark or notice, than that of facing it with a rebuke such as my command of language would have been severely tried in making commensurate with my sense of the insult. It would have accorded as ill with the habitual tone of my feelings towards their nation, as the provocation did with a decent respect for the independence of mine.

From this unwelcome necessity I was spared, by the relations, or rather the no-relations, in which we stood; a circumstance, no sooner adverted to, than it stripped the communication of every attribute save naked absurdity: rendering it a fit object of derision alone, until, upon the contemplation thus awakened of what was going on around us here, and connected with it in Great Britain, that feeling gave way to the more serious mixture of sorrow and indignation, at the spectacle of such prostitution of the energies of the British people in theatrical playings off, to their delusion, and to the benefit of whomever it might concern, in a cause which, whatever differences of opinion may exist with regard to the justness or the immoderateness of the zeal displayed in it, is sanctified by a sincerity and a self-forgetfulness, in proportion to the intensity of which every empty show got up by self-seekers turning it to profit becomes intensely disgusting and hateful.

Had the case been different, through the existence of any tangible relations between us as agents of the two countries, the necessity would have been forced upon me, and consequently upon the Government of the United States, to demand to know upon which of the principles that govern the relations of States, and in consequence of what event, it might be, that any

crimes or misdemeanors, real or assumed, committed by citizens of the United States in this port, or elsewhere, except on British territory, had become objects of cognizance to the British Government, so as to justify an agent of that Government, placed here in official relations with an agent of the Government of the United States, in supposing himself entitled to communicate, in formal manner, to the latter, the results of the supervision exercised by him over the proceedings of American citizens and American vessels, (which proceedings, it may be remarked, were subjects of as little concealment here, and those results matters of as great notoriety, as the recent arrival of the French Prince from Vera Cruz,) accompanied with the information *that it would be his painful duty to report the same to his own Government!*

Such a demand, it would, under some circumstances, have been imperative on me to make. But it was not so in the present; and unpleasant as was the alternative which they presented, I deemed myself fortunate, even at that cost, to escape the obligation to be instrumental in forcing upon the British Government a question from which there was no escape, but a direct disavowal of an indecency so gross that its absurdity was the only palliation of which it could be susceptible; while, at the same time, the circumstances of the case were such as to obviate the necessity of such disavowal; precluding, as they did, unless by gross impeachment of its good faith, the supposition that the outrage upon the United States could have been intended by that Government. The persons from whom it had proceeded had, it was to be taken for granted, been sent here by their Government in no other capacity than that in which they had been recognised by the Spanish, under the treaty, which alone entitled them to be here at all: which capacity was purely judicial, or fractionally so, as part of a mixed court, whose functions consisted solely in bringing to adjudication, with the least delay and inconvenience, such vessels as, under the treaty between the two countries, might be detained for having been engaged in an illicit traffic in slaves.

Such being the sole purpose for which they were permitted to have an official residence upon Spanish territory, and even the form of process for that limited purpose having been strictly and minutely defined by treaty, it could not be conceived that their Government had condescended to abuse the opportunity thus afforded, by sending them on any other errand; above all, was it not to be supposed that, openly trampling under foot the plainest rights of a nation which, however unfortunate, is still recognised as one of the States of Europe, it had intended their conversion into organs for offering unprovoked insult in the same breath to that nation, and to the foreign consuls holding exequaturs from her, and entitled, through decency to her, if no other motive, to be respected by all who accepted the right to official dwelling in her territory. The treaty which placed them here, and a decent respect for the good faith of their Government, absolutely precluded, then, the supposition that it could have been a party to the letter addressed by them to me. Moreover, the functions assigned them were so very limited, and of a nature so extremely simple, as to afford an obvious apology against even the charge of having neglected so to instruct them in relation to their duties as to secure against all such abuses of their situation.

Such instructions are requisite, and the duty to give them imperative, only in proportion as the complexity of the functions intrusted to a public agent, or the haste in which he may be called upon to act, is such as to

expose him to doubt or oversights. A perusal of the treaty shows that it afforded neither of these grounds for precautionary instructions. Never were duties, or one single duty rather, (for it consists of a mere decision upon a naked question of fact,) more simple in its nature or more clearly defined; and it almost transcends belief, that persons charged therewith should ever undesignedly (the only mode of transgression which a Government can anticipate on the part of those in whom it puts trust, or provide against by instructions) overlook the boundaries of the field assigned to them, or fancy themselves placed in any official relations whatever towards foreign consuls resident here.

Such were the considerations which governed my course in regard to the communication from your predecessors; and which, unpleasant as was the task of returning, reconciled me thereto as being, however rude in outward semblance, at bottom by far the least objectionable to all parties, of the alternatives forced upon me.

The present communication, I was happy to see, is free from the offensive peculiarities of the former. Still, it is liable to the fundamental objections inseparable from any communication which you could possibly address to me in regard to the conduct of citizens of the United States; one of which, indeed, applies to official communications on any subject whatever. This is, that there exists not any official relation of any kind between us. The other, that, whatever relations might exist, and whatever might be my own functions in regard to offences committed by citizens of the United States against our laws, they could not be such as to allow me to recognise the right of any agent of any foreign Government to interfere, in any possible mode or degree, in the discharge of my duties, or to forbear repelling such interference if offered.

This is a necessary consequence of the independence of our two countries. You refer to "the peculiar relationship in which the United States are placed with Great Britain." Since the 4th of July, 1776, the only relation in which they stand to each other is that of two independent nations—"enemies in war; in peace, friends." Of that independence, one of the vital parts consists in the exclusive execution, no less than the exclusive enactment, by each, of its own laws; rigorously excluding and repelling all interference in the one no less than the other. If there be upon earth two nations for whom, above all others, their own welfare and that of the world demand the most scrupulous regard for, and watchful observance of this principle, those nations are the two whom you have named. Mine is wedded to it in all its bearings; and if, as I trust, the harmony now happily subsisting between the two Governments is to endure, so as to allow the elements comprised in the bosoms of the two nations a fair opportunity to work out their natural results, it can only be through the cultivation of the same sentiment by your Government towards ours, if no other.

So thoroughly imbued with it is the latter, that no consul or other functionary of the United States at this place, or elsewhere, however full and accurate the information which he might have acquired on the subject, and however sincere his zeal against the slave-trade, would ever dream of volunteering an official communication to a functionary of Great Britain in regard to the amount of British fabrics made expressly for the coast of Africa, nor of the number of casks of shackles (the distinctive instrument for carrying on the slave-trade) of British manufacture annually exported to this island; some of which I have seen passing through the custom-house

here, without attracting any more notice from either officers or bystanders than so many boxes of Dutch cheeses. He might, under instructions from his Government, have traced these things to their sources, so as to be able to designate every British manufacturer, merchant, and ship, from and through which they had reached thus far on their way to the coast of Africa; and upon looking into the statutes of their Parliament, he might have discovered that they could not have got here without gross violation of British law. But so great is the silent force of the general national sentiment upon this point, it would never occur to him as a thing proper, or decent, or possible, that he should assume to take part in the administration of those laws, by addressing official communications in regard to their violation, to British functionaries charged or not charged with preventing it. If such an American officer were to be found, he would be a very remarkable exception; and whatever might be the force of the motives impelling him to a course so inconsistent with the general sentiment of his country, there is one particular in which that course would be seen to evince the utmost respect for, if not dread of it, if his object in thus trampling upon the principles of national independence were to play off before any portion of his countrymen.

However insensible he might be to other things, the dread of their penetration would effectually deter him from attempting any such game, unless he had furnished himself with better materials for it than rumors. If requested to do so, he would, doubtless, cheerfully comply, as I trust that you will, with the request I now earnestly make to you—to oblige me, at the earliest possible moment, with all the information, of any kind, regarding persons, occurrences, or things, calculated to be of use to the Government of the United States, in regard to the ship "Venus," or any matter connected with her; and particularly the fact of her having taken in a cargo of negroes whilst under the American flag; and the other fact, that there are several American citizens implicated in this violation of our laws, and who those citizens are. One of you, gentlemen, has had the advantage of pursuing his studies at the Temple; and I need not tell you, therefore, that the great object is to obtain such materials, in the shape of facts, or persons, or indications of either, as may be susceptible of use towards the conviction of every individual implicated. If materials of this kind cannot be furnished by you, I would thankfully receive any specific facts, although unconnected with names of persons, should you not be at liberty to divulge them, which your peculiar opportunities and command of time for the purpose may have brought to your knowledge.

I am, &c.,

N. P. TRIST.

To J. KENNEDY and

CAMPBELL J. DALRYMPLE, Esqs., &c., &c., &c.

[Sub-enclosure.]

HAVANA, January 10, 1839.

SIR: We have the honor to acknowledge the receipt of your answer of the 8th instant, to our communication of the same date, respecting the ship "Venus," which vessel, we have since heard, entered this harbor at a late

hour the evening before. In reply to your request to be furnished "with all the information regarding persons, occurrences, or things, calculated to be of use to the Government of the United States, in regard to the ship 'Venus,' or any matter connected with her; and particularly the fact of her having taken in a cargo of negroes whilst under the American flag; and the other fact, that there are several American citizens implicated in this violation of your laws, and who those citizens are:" we beg to say, we have already communicated as much of the information we possessed as we felt ourselves at liberty to do. We referred you to the reports prevalent in this city upon the subject, and we hoped, as no doubt is entertained of their truth, that you would have thought them deserving of your own immediate investigation, either through the Captain General of the island, or by your own authority, and the intervention of the commander of the American vessel of war now in the harbor. Any such investigation, on your part, by examination of the log book and crew, could not have failed to elicit, much better than any information we could be expected to divulge, whether the following circumstances, as reported, are well founded or not:

1. Whether there were any American citizens on board the "Venus," during her late voyage to the coast of Africa, and who those citizens are.

2. Whether the "Venus" was visited on the coast of Africa by any British cruiser or cruisers, without being detained in consequence of her bearing the American flag; but one of which cruisers, having observed her take in some negroes under that flag, afterwards chased her, though without success.

3. Whether any sale or transfer was made of the vessel after leaving this harbor, and when, so as to divest her of her American character.

The ship's articles, we have heard, provided that she was to be taken to Bahia, where the sale was to take place; but the short time she has been absent (only four months) puts this out of the question; and, whether transferred or not to any other flag, we fear it is indisputable that a gross abuse has been practised of the American flag. It certainly forms no part of our duties at this place to take any steps to vindicate such a violation of your laws; nor have we any wish to interfere in any such cases, further than arises from an anxiety to suppress, if possible, all similar infringements of the rights of humanity. Our objects are too high, and our conviction of their rectitude too strong, to allow us to be turned from our course by taunts of any kind; and, with regard to the United States in particular, we would wish to preserve unimpaired our respect for the laws which have declared the slave-trade piracy. But it is in proportion to the respect we would wish to entertain, that we should regret to find those laws a dead letter, and your professions not followed up and carried into effect.

We have, &c.,

J. KENNEDY,
CAMPBELL J. DALRYMPLE.

N. P. TRIST, Esq., &c., &c., &c.

[Sub-enclosure.]

FOREIGN OFFICE, *April 16, 1839.*

GENTLEMEN: I have received your despatch, No. 5, of the 19th of January, 1839, containing copies of a correspondence which had taken place

'between yourselves and Mr. Trist, the United States consul at the Havana, on the occasion of your having communicated to that gentleman information respecting the vessel, the "Venus," which had sailed from the Havana for Africa, under the flag of the Union, with several American citizens on board, and had returned within four months, with a cargo of 860 slaves from Africa.

With reference to that part of Mr. Trist's letter to you which relates to British fabrics made expressly for Africa, and to shackles of British manufacture, intended for slave-trade, exported from England and imported into Cuba, I have to desire that you will state to Mr. Trist that, if he can at any time furnish her Majesty's Government, through you, with any information which may, directly or indirectly, enable her Majesty's Government to enforce the penalties of the law against British subjects who may be concerned in slave trade, her Majesty's Government will feel most sincerely obliged to him.

You will observe to Mr. Trist, that the two Governments having, by the 10th article of the treaty of Ghent, mutually engaged to each other that they would "use their utmost endeavors to promote the entire abolition of the slave trade," it seems to be perfectly consistent with the respect which the agents of each country must feel for the other country, that they should not only themselves act in strict accordance with the spirit of the engagement which their own Government has contracted, but that they should furnish to the agents of the other Government any information which may be calculated to enable that other Government more effectually to accomplish the common purpose.

I am, &c.,

PALMERSTON.

HER MAJESTY'S COMMISSIONERS, *Havana.*

[Enclosure No. 21.]

SIERRA LEONE, *December 5, 1839.*

MY LORD: We have the honor to forward, enclosed, our report of the case of the Portuguese schooner "Dolcinea," captured on the 31st October, by her Majesty's sloop "Pelican," Brunswick Popham, Esq., commander, in lat. 4° 16' north, long. 3° 44' east, with 253 slaves on board, who had been embarked at Lagos three days previously, and were then on their way to the island of Cuba.

In this, as in every other Portuguese case which has lately come before us, it would not have been difficult, even from the evidence of the offending parties, to show that the illegal adventure, in prosecuting which capture and condemnation took place, was especially Spanish.

The Portuguese master denies altogether the truth of the representations contained in his register and matricula, (the only two papers which he produced to the captor,) although the aid of the American consul was, as usual, called in to support the credit of those fraudulent documents. In opposition to these papers and to the American consul's certificate, which state that a Portuguese subject, named Francisco Caldas, is the owner of the "Dolcinea," and that the agent of Caldas at the Havana, José Mazorra, appointed the present master to the command of the vessel, the master him-

self declares that he was appointed captain by the notorious Joaquim José Duante Silva, of Bahia, but who has lately settled at Havana, and who is the sole owner of the detained vessel, and also of the greater part of her outward cargo.

It is, however, only fair to both parties to state that we attach no credit to either statement.

The fact of the "Dolcinea's" capture to the north of the line, with a cargo of slaves on board, having been fully proved, a sentence of condemnation was pronounced against the vessel and cargo on the 3d instant, and the survivors of the slaves were at the same time emancipated.

We have, &c.,

H. W. MACAULAY,
R. DOHERTY.

Viscount PALMERSTON,
G. C. B., &c., &c., &c.

[Sub-enclosure.]

Report of the case of the Portuguese schooner "Dolcinea," José da Luz Carvalho master.

This vessel was furnished with a Portuguese passport from the provisional Government of the islands of Prince's and St. Thomas, dated at St. Antonio, Prince's island, on the 28th October, 1836, authorizing her to proceed on a voyage of lawful commerce to the Havana, by way of the coast of Africa. The owner of the vessel, who was master also, is said to have been Francisco Elisbao Correa Caldas.

Three weeks after this time, an endorsement was made on the passport to the following effect: "Boarded by her Majesty's brig Charybdis, November 21st, 1836, lying at Lagos;" signed "E. B. Power, mate." The "Dolcinea," however, succeeded, both on this and a subsequent voyage, in escaping her Majesty's cruisers on this coast and on the West India station, and safely landed a cargo of slaves on the island of Cuba.

The next endorsement on the register is made by Fernandez, the Portuguese consul at Havana, on the 20th of April, 1837, on occasion of the "Dolcinea" clearing out again for the coast of Africa, under the command of a new captain, named Fernando Rees Peres.

The only other paper of which the captor could obtain possession, was a matricula, dated at Havana, on the 23d of May last, (1836,) and to which two certificates of Mr. Trist, the American consul, are attached: the one declaring the appointment of the present master by Don José Mazorra, a merchant of Havana, the empowered agent of Caldas, the Portuguese owner named in the register; and the other declaring that the schooner carried a crew of sixteen men.

We have no doubt that the "Dolcinea" cleared out from Havana in May last under another name, and is a Spanish vessel. No clearance from the Havana custom-house was produced; and neither of the papers which we have noticed, and in which alone the "Dolcinea" is mentioned as a Portuguese vessel, was submitted, in any way, to the Spanish authorities. It is impossible not to believe that this fact was well known to the American consul, who attested the matricula of the vessel. The matricula, besides, does not contain the name of a single officer; because the Spanish captain

and mates embarked, no doubt, according to the general custom, with passports as passengers bound to the same destination as the vessel.

It would appear that Mr. Trist, and his subordinate, Mr. Smith, are willing enough to be deceived on these occasions; otherwise, the prudent and easy course might be followed, of requiring the production of the clearance from the custom-house at the Havana, before they grant their official seal and signature to verify muster-rolls of crews, the falsehood of which is evident on the face of them.

The "Dolcinea" having been captured with slaves on board, north of the line, and her condemnation being therefore certain, whether as a Portuguese or Spanish vessel, it was deemed advisable by the captor's proctor to prosecute her under that character which she professed to bear. Accordingly, on the arrival of the "Dolcinea" in this harbor, she was brought into the court of the British and Portuguese mixed commission.

The marshal reported that only four of the slaves had died on their passage to this port; and the surgeon stated their general appearance to be healthy, although several of the number required hospital treatment for dysentery and wounds. No time was lost in landing the unfortunate creatures, and we are happy to say that none subsequently died during the time they were under the superintendence of the court.

On the 26th ultimo, the captor's declaration and the affidavit of Mr. William Rolland, mate of the capturing ship, and prize master, verifying the ship's papers, were received and filed; a monition was published by the marshal, citing all interested parties; and the witnesses in preparatory were examined on the standing interrogatories.

The captor's declaration of capture is to the following effect: "I, Brunswick Popham, commander of her Britannic Majesty's sloop-of-war 'Pelican,' hereby declare that, on this 31st day of October, 1838, being in or about latitude 4° 16' north, long. 3° 44' east, I detained the schooner named 'Dolcinea,' sailing under Portuguese colors, commanded by José da Luz Carvalho, who declared her to be bound from Lagos to Havana, and having on board 253 slaves, said to have been taken on board at Lagos, on the 27th of October, 1838. Amongst the passengers on board the 'Dolcinea' appears the name of Eduardo Roberto, who commanded the schooner 'Constituição,' the condemnation of which we reported in our despatch No. 71, of 20th of October, 1838.

The master (José da Luz Carvalho) deposed: That he was born at Lisbon; has lived a year and a half at Havana; is a subject of Portugal, is married, and his wife and family reside with him at Havana; that he was appointed to the command of the detained vessel, and possession of her was given to him by Joaquim José Duante Silva, a Portuguese resident at Havana; that he first saw the vessel there about seven months ago; that she is Mexican built; that he was present when the vessel was seized for having slaves on board; that she sailed under Portuguese colors, and had no others; that all the crew were hired and shipped six months and a half ago, at Havana, by Duante Silva; that the last clearing port was Havana, where the voyage began, and where it was to have ended, and whence he came direct to Lagos for a cargo of slaves, and, having obtained it, he was returning direct to Havana at the time of capture; that he was captured on the 31st of last month, after a chase of thirty-two hours; that the owner of the vessel was Joaquim Duante Silva, who has lived eight or nine months at Havana, but previously resided at Bahia; that he saw the said Duante Silva buy her; that the price of the vessel was \$6,000 or \$7,000, which was paid, but witness

knows nothing of any bill of sale; that the owner of the vessel was the lader and principal owner of the cargo, part of which was, however, owned by other merchants.

The second witness, who was a seaman of the detained vessel, pretended ignorance on almost every point involved in the standing interrogatories; and, in other respects, his evidence is of small importance.

The captor's case having closed with an affidavit from the prize-master, accounting for the four deaths which had occurred on board the "Dolcinea" on her passage to this port, publication of the evidence in preparatory was decreed; and the monition being returnable into the registry on the 3d instant, the court assembled on that day, and condemned the schooner "Dolcinea" as good and lawful prize to the Crowns of Great Britain and Portugal.

It was further decreed that there were on board the said vessel, at the time of her capture by her Britannic Majesty's sloop "Pelican," Brunswick Popham, Esq., commander, two hundred and fifty-three slaves; of whom four had died previously to the arrival of the vessel in this harbor, and none subsequently; and that the survivors (two hundred and forty-nine in number) should be emancipated from slavery.

H. W. MACAULAY,
R. DOHERTY.

SIERRA LEONE, *December 5, 1838.*

[Enclosure No. 22.]

SIERRA LEONE, *January 31, 1839.*

MY LORD: Herewith we have the honor to transmit to your lordship our report of the case of the brig "Victoria," Antonio José Alfonso master, captured under Portuguese colors, on the 16th of November, 1838, at anchor in Lagos roads, by her Majesty's brigantine "Dolphin," Lieutenant Edward Holland commanding, and condemned on the 28th instant, in the British and Spanish mixed court of justice, as a Spanish vessel illegally equipped for the slave-trade.

The ostensible but pretended owner of the "Victoria" was the Portuguese merchant, Matheas de Silva Louro, who, the witnesses state, "was born, and has resided all his life, at Lisbon, where he is married, and where his family (Portuguese, like himself) resided with him." This gentleman should be made to feel the consequences of thus lending his name to further a smuggling adventure.

It would also be desirable that the Government of the United States should discontinue the proceedings of their agents at Havana, Mr. N. P. Trist and Mr. J. A. Smith, who openly assist in the despatch of vessels which, from their armament and force, they are perfectly well aware are intended to act either as slavers or pirates, or both.

We beg leave also to enclose, for your lordship's information, a copy of the translations of some of the letters found on board the "Victoria."

We have, &c.,

H. W. MACAULAY,
R. DOHERTY.

Viscount PALMERSTON,
G. C. B., &c., &c., &c.

[Sub-enclosure.]

Report of the case of the brig "Victoria," Antonio José Alfonso master.

This vessel sailed under a Portuguese passport, obtained at Lisbon, from the Conde de Lumiares, Secretary at War and Foreign Secretary *ad interim*, and dated on the 31st October, 1836. In this paper the owner is said to be Matheas de Silva Louro, and the master José Lopez Ferreira, both Portuguese subjects. The vessel is authorized to make a voyage from Lisbon to Cadiz, thence to Prince's island, and other ports in Africa; to return to Lisbon. No intention, however, existed, either on the first, the second, or the present voyage, of returning to Lisbon; Havana being the port where her real owners resided, and where her subsequent voyages began and ended. The passport was visaed on the 18th of April, 1837, at Prince's island, and was endorsed by her Majesty's ship "*Union*" *K. D.*, off Lagos, on the 22d May, 1837. She was met with again in the same place seven months afterwards, (in December, 1837,) by her Majesty's brig "*Saracen*," Cuba having been visited in the mean time.

2. A second successful trip to the island of Cuba was then made, as we find her on the 30th of June, 1838, clearing out from Havana for the island of St. Thomas. In her clearance, signed by Don Tomas Yurra, contador of the royal customs, the water-casks, slave-boilers, and slave deck, are cleared out as articles employed in lawful traffic; and to the document is attached a certificate, under the hand and seal of Mr. Trist, the American consul, that to these acts of Don Tomas de Yurre "*full faith and credit are due.*"

3 is the muster roll of the crew, to which two certificates of the American consul (Trist) are attached: one setting forth that Don Tomas de la Peña, the agent at the Havana of the owner, (Louro,) had appointed Don Antonio José Alfonso, the present master, in the place of José Lopez Ferreira, the master named in the passport; and the other declaring that Alfonso had appeared and verified the matricula.

This document shows a very large armament, and a crew of 34 men; although the master, it will be observed, subsequently stated that there were thirty-seven persons on board, besides himself. Mr. Trist could not but have known that a small vessel, so manned, must be intended for a slaver or a pirate.

From the papers found on board, it is discovered that the real master of the vessel was a Spaniard named Juan Baptista de Zavala, who was generally addressed as the captain of the brig "*Victoria*," and occasionally as the captain of the brig "*Potento*:" for, in this case, as in that of the "*Ligeiro*," alias "*Galgo*," the former Spanish name of the vessel was considered the true one: Zavala's name does not appear on the muster-roll; but it is admitted by the witnesses that he directed all the proceedings of the voyage.

This fact will more fully appear from the translated copies of some of the papers which accompany this report, and which, if they do not convey any new information respecting the plans of slave-dealers, serve to show the regularity and system with which the slave-trade of Spain, under the flag of Portugal, is now pursued. We learn from them, also, that, as the voyage of the "*Victoria*" commenced at Havana, so it was to have ended at the same port; that the vessel was to carry slaves on the return voyage; that

she had fetters and slave-boilers on board, the latter of which she was directed to attach to a buoy and sink; and that the late captures of empty slavers, sailing under Portuguese colors, had filled the slave-traders with doubt and dismay. Of the six vessels referred to in these papers, as consigned to Don Emilio Martin, at Lagos, two (the "Dolcinea" and "Liberal") have been condemned as Spanish vessels illegally equipped; and the two others (the "Josefina" and "Catalina") have got away from the coast in safety, with their human cargoes.

4. The log-book states that the "Victoria" left Havana on the 1st of July, 1838; arrived at Gallinas on the 11th of August; and left it again on the 25th of the same month. She reached Lagos on the 4th of September; and, after discharging her cargo there, she cruised up and down the coast for rice and provisions, returning to Lagos about the 10th of November. Capture took place on the 16th of that month.

The "Victoria" was accompanied to Sierra Leone by the capturing ship, her Majesty's brigantine "Dolphin," commanded by Lieutenant Edward Holland, and on the 24th ultimo was presented to the British and Spanish court, as a Spanish vessel violating the 10th article of the treaty of June, 1835.

The captor's proctor petitioned that the declaration of the facts of capture and the ship's papers, verified by affidavit, might be received and filed; that a monition against all interested parties might be issued, and a commission of inspection be directed to the surveyors of the court; and that the witnesses in preparatory might be examined on the standing interrogatories.

Antonio José Alfonso, the captain of the flag, deposed: that he was born at Oporto, where he has generally lived till within the last two years, during which he has had no fixed residence on shore; that he is a subject of Portugal, and never has been a subject of any other State; that he was appointed to the command of the detained vessel at Havana, in the month of June, 1838, by José Silva, a former master, a Portuguese, whose residence is not known; that he was present at the capture, but does not know on what account it took place; that the vessel was sailing under Portuguese colors, and there were no others on board; that the vessel is called "Victoria," and he has never heard of her bearing any other name; that she is about 250 tons burden; that there were thirty-seven officers and mariners, besides witness—ten of whom were Spaniards, and the rest Portuguese; that neither he, nor any of the officers or mariners, had any interest in either the vessel or cargo; that he was master on board; that there were no passengers; that Havana was the last clearing port, where the voyage began, which was to end at Bahia; that the vessel touched, during the voyage, at Gallinas, where part of the cargo was discharged, and then went to Lagos, where the remainder of the cargo was landed; that capture took place on the 16th of November, whilst the "Victoria" was still at anchor at Lagos; that the papers of the vessel were for Prince's island and the coast of Africa; that the sole owner of the vessel was a Portuguese merchant, named Matheas de Silva Louro, who was born, and has resided all his life, at Lisbon, where he is married, and where his wife and family (Portuguese, like himself) reside with him; that the sole owner, lader, and consignee of the cargo, is João Baptista Zavala, a Biscayan, who is also supercargo on board, and with whom rested "the sole direction of the vessel, with regard to her employment in trade."

The evidence of the other witness, Juan Alexandre Garay, is only worthy of mention for the contradiction which it contains to Alfonso's assertion that the "Victoria" was, at the time of capture, on the point of commencing a voyage to Bahia. Garay declares that Lisbon was the place to which she was destined. The two statements are equally false. The surveyors stated, in their report, that they found a slave-deck, measuring 1,228 feet, fitted, laid, and numbered; water-casks capable of containing upwards of twenty thousand gallons, all filled with fresh water; and a regular slaver's caboose, fitted to receive four small boilers, each capable of containing sixteen gallons of water.

The case for the prosecution being closed, publication of the evidence was decreed on the 27th ultimo; and the monition, issued on the 24th, was returned into the registry on the 31st ultimo, with the certificate of the marshal that it had been properly served.

It became necessary, however, to defer the adjudication for some time, to enable the registrar to complete the yearly and quarterly returns and accounts which were due on the day the monition was returned, but which had not been completed, in consequence of the mass of court business which had constantly required his attention.

The case was finally disposed of on the 28th instant; and the proof of Spanish ownership and course of trade, in conjunction with equipment for slave-trade, being deemed conclusive, a sentence of condemnation was pronounced upon the "Victoria" and her cargo.

H. W. MACAULAY,
R. DOHERTY.

SIERRA LEONE, *January 31, 1839.*

[Enclosure No. 23.]

Abstract of the papers found on board the brig "Eagle," J. W. Littig master.

No. 1. A bill of sale, showing that a permanent American register (No. 118) was granted at Baltimore, on the 1st of December, 1837, to the brig "Eagle," of 205 tons, and which had been built at Baltimore during the same year. The original owners are declared to have been W. G. Harrison and W. Price, both resident at Baltimore.

On the same day that the abovenamed owners obtained an American register for the "Eagle," they executed a power of attorney in favor of Thomas T. Wingate, the master, by which that person was empowered to sell the vessel, and to grant a proper transfer to the purchaser.

Acting on this power of attorney, Wingate sold the "Eagle" at Havana, on the 10th of March, 1838, to the present owner and master, Joshua W. Littig; and the completion of the transfer was witnessed by Mr. J. A. Smith, the American vice-consul. To give authenticity to Littig's title, the power of attorney from the original owner to Wingate, and the bill of sale from Wingate to Littig, were both verified by Mr. N. P. Trist, the American consul, under his hand and seal of office. He also certified "that the original register was deposited at the American consulate, to be sent to the collector of the customs at Baltimore." But it is remarkable, that, while the bill of sale is attested by the American consul on the 10th of March

1838, the power of attorney, in virtue of which alone the bill of sale could have been executed, was not attested by the same party till the 10th of May following.

No. 2. The heading of this paper is as follows: "It is agreed between the master, seamen, and mariners of the American brig "Eagle," of Baltimore, whereof J. W. Littig is at present master, *or whoever shall go for master*, now bound from the port of Havana to Whydah, a port on the coast of Africa, or *wherever the master may direct*, not exceeding ten months," &c.

The names of Littig and nine Spaniards are appended to the agreement, which is dated on the 5th of May, 1838, and to which Mr. Trist's certificate is added on the 10th of the same month.

At Bahia, on the 13th of October last, twelve more men were entered on the list, increasing the crew to more than double its former number; and of these twelve, there is only one name which appears to belong to an American citizen. But it is impossible to pronounce positively, as the usual practice of mentioning the birthplaces of the men was not followed. A certificate from Mr. George R. Foster, American vice-consul *pro tempore*, dated at Bahia, on the 15th of October, 1838, and affixed to the original muster roll taken out at Havana, states that the crew of the "Eagle" consisted of twenty-two men, all told.

No. 3. On the 9th of May, 1838, the "Eagle" was cleared out by the custom-house at the Havana, for the island of St. Thomas, with a regular slave-trading cargo and equipment, shipped by Don J. Morales.

No. 4. The log-book, in English, shows that on the 14th of May, 1838, the "Eagle" left Havana for the coast of Africa, reaching the Cape de Verds on the 14th of June, and then running south. She was off Cape Palmas on the 28th of June, anchored off St. Paul's on the 1st of July, arrived in Lagos roads on the 5th, and there commenced discharging her cargo on the 7th of July. Here there is a break in the log until the 30th of August, on which day the sea-log states the "Eagle" "got under way for Bahia;" and then nothing material is noticed until the 18th of September, when the vessel arrived at her destined port in Brazil.

No. 5 is a certificate from Mr. George R. Foster, American vice-consul at Bahia, that the "Eagle," which had arrived shortly before from the coast of Africa, was about to sail again for the same quarter. This we presume to be a notice to the Bahia custom-house; it is dated on the 15th of September, 1838.

No. 6. Another certificate from Mr. Foster, on the same day, states that he had given back to Captain Littig the bill of sale which had been left in his hands.

No. 7. A list of the crew of the "Eagle," independent of, and additional to, the paper No. 2, but an exact copy of it, certified by Mr. Foster, and dated on the same day as the last two papers.

No. 8. A bill for ship's stores, supplied by Messrs. Wilson, Brothers, to the brig "Eagle," dated Bahia, October 16, 1838.

No. 9 is an invoice of tobacco, amounting to \$20,000, shipped by the well-known Joaquim José Duante Silva, on account of Don Joaquim Andreo, of Havana, on board the American brig "Eagle," bound to Lagos.

Nos. 10 to 15 are passports for six Spaniards making a passage to the coast of Africa from Bahia, dated on the 17th of October, 1838.

No. 16. On the 19th of October, 1838, Mr. Foster furnished Captain Littig with a certificate that the latter had been forced to receive on board

the "Eagle" five African convicts, and to give bond that they should be landed on the coast of Africa, before the authorities would allow of the departure of the vessel.

No. 17 is a bill, without date, for the services rendered by the American vice-consul at Bahia, in the following words :

Brig Eagle, Capt. J. W. Littig,

	To consulate, DR.
Deposite and delivery of vessel's papers	\$4 00
Certificate attached to shipping articles	2 00
Two certificates to clear vessel out	4 00
Recording the bill of sale	2 00
	<hr/>
	\$12 00

Received payment for George R. Foster, vice-consul.

CHARLES GREAVES.

No. 18 is a bill for anchorage during thirty-two days.

Nos. 19 and 20 are a fort pass and custom-house clearance, dated at Bahia, on the 19th of October, 1838.

Continuation of log-book No. 4.—On the 20th of October begins the sea-log, written in English, of a voyage from Bahia to the coast of Africa. The "Eagle" came to anchor in Elmina roads, on the 13th of November, 1838; and, after purchasing beans and corn on the coast, she pursued her route to Lagos, where she arrived about the 26th. On the 28th and 29th of the same month, she was boarded by her Majesty's sloop "Pelican;" and on the 9th of December, by her Majesty's sloop "Pylades," but was detained by neither. The "Dido," belonging to Pedro Martinez & Co., is mentioned as having sailed from Lagos on the 23d of December. The "Eagle" was a third time boarded, in the middle of the night of the 1st ultimo, by an officer from her Majesty's brigantine "Buzzard;" but was released on the following morning by the commander of that cruiser. A long and circumstantial account of this affair is given by Littig, and signed by three of the persons on board. The log continues from this time to the 13th ultimo. Capture took place on the following day.

No. 21. An imperfect log book for part of the month of November, written in Spanish.

No. 22 is an agreement, dated on the 23d of December, 1838, between Captain Littig and Isidora Miguel Braza, for the freight of some articles to be shipped on board the "Eagle," at Lagos; but their place of destination is not mentioned.

No. 23 relates to the brig "Dos Amigos," condemned in the British and Spanish mixed court of justice, on the 28th ultimo, and reported in our despatch marked Spain No. 10. The paper in question is the list of the crew of the American brig "Two Friends," John B. Conner master, bound to Havana, from New York—the list being dated at the latter place, on the 21st of January, 1837. It is endorsed by Mr. Woodbridge Odlin, the American consul at Bahia, on the 29th of April, 1837, who states that the "Two Friends" had shortly before been sold in that port. In the voyage from Havana to Bahia, it would appear that Conner acted as "captain of the flag," Careira being the real master of the vessel. Our statement of the character originally borne by the "Dos Amigos" is thus completely confirmed.

The next three papers relate to the American brig "Teazer," mentioned in a despatch of her Majesty's commissioners, dated August 31, 1837, (class A, 1837, page 130,) as having cleared out for this coast on the 21st of that month. In that case, as in the present, Joshua W. Littig appeared as owner and master, and so continued, until it became necessary to change the colors of the "Teazer" to Spanish or Portuguese, on the eve of the shipment of a return cargo of slaves; when both he, and such portion of crew as were Americans, were discharged from further service.

No. 24. The *first* paper is an American bill of sale for the "Teazer," of Baltimore, transferred to J. W. Littig, by Robert A. Taylor, on the 18th of July, 1837; but the place where the deed was executed is not mentioned.

No. 25. The *second* paper is the muster-roll of crew, consisting of eighteen persons, shipped in the American schooner "Teazer," Joshua W. Littig master, bound to Lagos and Prince's island; and it is certified by Mr. Vice-consul Smith, at Havana, on the 22d of August, 1837.

No. 26. The *third* paper contains, on one sheet, the receipts of Royal Pond, John Moore, John Wilson, John Shields, and Joseph Bramwell, for their wages for two months and twenty-six days' service on board the American brig "Teazer," Captain Littig. The document is dated at Prince's island, on the 19th of November, 1837, when these five American seamen were *apparently* paid off, on the vessel being prepared for her human cargo. It is most probably a colorable paper, intended for use in the event of the "Eagle," under her new name and colors, being boarded on her homeward voyage; and by no means necessarily implies that Littig and the other Americans actually left the vessel at Prince's island in November, but only that from that time they wished to have some ground for claiming to be considered as passengers on all necessary occasions.

Nos. 27 to 40 are fourteen unimportant papers.

SIERRA LEONE, *February* 12, 1839.

[Enclosure No. 21.]

SANTA CRUZ, *July* 31, 1839.

MY LORD: On the 15th instant, a brig called the "Two Friends," under American colors, anchored in this bay. On the 22d, two seamen, named Francis Cassedy and Joseph Oliver, came to her Majesty's consular office, and said that they belonged to the brig, and that they did not wish to serve on board any longer. In answer to my inquiries as to their motives, they made a statement, which I took down in writing, and they signed. The enclosure marked No. 1 is a copy. I immediately went to the Marquis of Concordia, the Commandant General, and communicated the facts to him; and afterwards sent an official note, dated the 22d of July: a copy contained in enclosure No. 2.

On the 26th of July, another seaman (John Maguire) came to the office. I wrote down his statement, which he signed. The enclosure No. 3 is a copy; and I, in consequence, wrote another letter to the Marquis, dated July 26th: copy contained in enclosure No. 2.

Since the date of the Marquis of Concordia's answer to my letter, dated July 23d, the sails of the brig have been brought on shore, and also the arms that were on board. An official communication also has been made

to the General, by the Swedish consul, in consequence of a representation from a Norwegian sailor, one of the crew of the "Two Friends." Mr. Cullen, the American consul, who usually resides at Port Orotava, has come to Santa Cruz.

There cannot be the slightest doubt that the "Two Friends" was engaged in a slaving voyage; and, in my opinion, after what has occurred, if the vessel should be allowed to go to sea, either with the Spanish or American crew now belonging to the ship, (the Spanish crew are borne as passengers, and the Spanish captain as supercargo,) it is probable that they will become pirates; and so I told the General.

I understand the brig is navigating under the authority of a bill of sale, and a custom-house clearance from New Orleans. There is no log-book on board.

In my official letter to the General, I entered into details, and stated minute facts, that he might have grounds for ordering a strict investigation of the circumstances of the fitting of the brig, the ownership, and objects of the voyage, if so disposed.

I am, &c.,

R. BARTLETT, *Consul.*

Viscount PALMERSTON, *G. C. B., &c., &c., &c.*

I enclose a memorandum respecting the sailors on board the brig "Two Friends," as stated by Francis Cassedy and Joseph Oliver.

[Sub-enclosure.]

Francis Cassedy, native of Newry, in Ireland, shipped at Liverpool on board the "Edward Bonnyfied," of Philadelphia, for New Orleans, John Durkey master. Joseph Oliver, native of St. Ubes, in Portugal, left London in the ship "Portsea," for New York, and from thence went to New Orleans.

They state that the brig "Two Friends" left Havana with a Spanish captain and crew, and Spanish flag, bound to New Orleans. There (J. Oliver says) the brig arrived about the 31st March or 1st April. He went on board two days afterwards, and there were no Americans on board.

The deponents say, at New Orleans American papers and flag were obtained, and a crew of sixteen men were shipped as Americans, but are all foreigners except one.

The deponents say that they signed articles to go to a port in Cuba, from thence to port or ports in Europe, thence to the coast of Africa, and from thence to a port of discharge in the West Indies.

The "Two Friends" sailed from New Orleans to Cabanas, in the island of Cuba, and thence shipped small irons for the legs, coppers, and about fifty or sixty bags of rice, which were landed at Gallinas, on the coast of Africa, (and Cassedy says, also, two Portuguese flags and two French flags,) where the ship proceeded from Cabanas, and remained twenty-four hours only, and arrived at Santa Cruz (Teneriffe) on Monday, the 15th July, after a passage of thirty days.

Francis Cassedy states, that on his arrival at Cabanas he asked for his discharge, when he found out the destination of the ship, which was de-

nied; and he is now desirous of leaving the ship, as he does not wish to be employed in the slave-trade, which he has no doubt is the object of the voyage. Joseph Oliver states that he also wishes to leave the ship, and refuses to continue the voyage. He (Cassedy) is serving on board the American ship "Two Friends," under the name of Robert Dashiell. A protection for a man of that name was given to him by William Rogers, a seaman on board.

FRANCIS CASSEDY.
his
JOSEPH x OLIVER.
mark.

SANTA CRUZ, July 22, 1839.

[Sub-enclosure.]

Memorandum respecting the sailors on board the brig "Two Friends," under American colors, as stated by Francis Cassedy and Joseph Oliver.

American crew, 13—Two Englishmen, two Prussians, three Frenchmen, two Italians, one Norwegian, one Portuguese, one Spaniard, one American.

NOTE.—Two Englishmen and one Russian went on shore at Cabanas, in Cuba.

Spanish crew, 11—Six Portuguese, five Spaniards.

[Sub enclosure.]

John Maguire, native of Liverpool, states that his father was a custom-house officer in Liverpool, and died about six years ago; and a few days before his death he obtained the appointment of landing-waiter. The said J. Maguire says, that, being in New Orleans, he went to the office of an agent for ships, named Gibbs, and asked for a ship; that Gibbs told him he had a very good ship, called the "Dos Amigos;" that he shipped at once, without further inquiry; and that he went on board, and, seeing the Spanish crew, he asked who they were, and was told they were passengers; that he (Maguire) shipped in the name of George Anderson, that being the name of a sailor belonging to the American frigate "United States," who, when that ship was paid off, gave him (Maguire) his discharge; and that he has no other American protection; that, when the American ship "Two Friends" arrived at Cabanas, in Cuba, he asked the captain for his discharge, and was told he might go on shore; and when preparing to do so, the mate called him back, and said, "Jack, you had better go with us;" he told him "no;" and the mate then said, "How are you to get on shore?" and there being no means of doing so, he proceeded on the voyage; that, before the ship arrived at Gallinas, the men's names were changed, except some of

those that had American protections; and that the deponent was called Samuel O'Neil.

The circumstances of the voyage, as stated by Cassidy, the deponent confirms. He objects to serve in the "Two Friends."

JOHN MAGUIRE.

SANTA CRUZ, July 26, 1839.

[Enclosure No. 25.]

SIERRA LEONE, July 31, 1839.

MY LORD: We have the honor to inform your lordship that, on the 2d instant, the British and Portuguese court of mixed commission condemned the Portuguese schooner Prova, Francisco José Dias master, for being engaged in the illicit traffic in slaves; and emancipated the survivors of the slaves found on board of her at the time of her capture by her Majesty's sloop Pylades, William Langford Castle, Esq., commanding.

The Prova was captured on the 3d ultimo, whilst lying at anchor in the Calabar river, having just before taken on board a cargo of 225 slaves, and being on the point of getting under way for the purpose of conveying those slaves to Havana. She arrived in this harbor on the evening of Saturday, the 23d ultimo; and proceedings, in the usual form, were commenced against her on the following Monday, which were closed on the 2d instant, when she was adjudged to be a good and lawful prize.

Our report in this case we have now the honor to enclose; from which your lordship will perceive that this is one of the ordinary cases of slave-traders, owned and freighted at Havana, but sailing under the Portuguese papers obtained at the Cape de Verde islands. The water-casks and slave-deck were, as usual, cleared out as part of the lawful cargo of the vessel.

Stress of weather, and damage received at sea, compelled the Prova, soon after she left the Havana to put into Charleston to refit; and she remained there for nearly three months. The outward appearance alone of this vessel would, it might be supposed, have excited suspicion as to the real object of her voyage; but it is surprising that, fitted and equipped as she was for the slave-trade, and with her leaguers (shaken) and slave-deck on board, she should have been permitted to clear out from an American port for the coast of Africa.

We have, &c.,

H. W. MACAULAY,
R. DOHERTY.

VISCOUNT PALMERSTON,
G. C. B., &c., &c., &c.

[Sub-enclosure.]

Report of the case of the Portuguese schooner Prova, Francisco José Dias master.

This vessel was furnished with a commercial passport, or register, from the Government of the Cape de Verde islands, dated at Villa de Praia, in

the island of St. Jago, on the 29th of December, 1835. She is therein stated to be of American build, to be owned by the notorious Luis Pereira de Mello, and to be commanded by Libano Agostinho de Campo. It does not appear that this passport was made use of for a long period after it was obtained; and the first endorsement upon it is made by Fernandez, the Portuguese consul at Havana, on the 27th of July, 1837, when she cleared out from that place for the island of St. Thomas, under the command of Francisco José Dias, the present master. The passport is again endorsed by the Portuguese vice consul at Charleston, on the 13th of November last—the vessel having been obliged to put into that port in distress, a few days after leaving the Havana. The only other endorsement is in the following words: “Boarded by her Majesty’s brig *G. N. W.*, after a long chase, in latitude 4° N., long. 3° 30'. He had his guns and muskets loaded; and states he is going to Calabar to land a passenger.” This memorandum is without any date; but we have reasons to think that the initials, or number, is that of her Majesty’s schooner *Fair Rosamond*. The passenger, on account of whom it was pretended by the *Prova* that she was running into the Calabar, is presumed to be a person of the name of Andres Cibras, by whom a passport for St. Thomas, which is among the ship’s papers, was obtained from Tacou, the Captain General of Havana, on the 26th of July, last year.

In the official manifest and clearance from Havana, 20 bundles of shaken casks, for bringing back palm oil, and 2,000 feet of boards, are mentioned as part of the legitimate cargo; and it is remarkable, as a proof of the utter disregard of even ordinary forms by the authorities at Havana, in despatching slave-vessels, that while the custom house clears out the *Prova* solely for the river Calabar on, the 26th of July, the Portuguese consul certifies, on the following day, that she was cleared out solely for the island of St. Thomas.

From the 24th of August to the 16th of November, the *Prova* was detained in Charleston. It does seem somewhat extraordinary, that a vessel, both in appearance and fittings, obviously destined for the slave trade, should have been allowed quietly to leave a port of the United States, with her slave-trade equipment on board, after such ample opportunity had been afforded of ascertaining the real object of her voyage. In the documents signed by the American custom house officers, it is stated that the *Prova* put into Charleston in distress, and that no part of her cargo was landed there. The cargo which she had on board is, however, described; and “twenty bundles of shooks” are included in the description. This circumstance was, alone, it would be supposed, calculated to cause suspicion.

From two log-books found on board the prize, it appears that she came direct from Charleston, which she left on the 16th of November, 1837, bound to the river Calabar, which she did not reach until the 22d of January, 1838, having been much impeded by calms.

After a lapse of rather more than four months, the guilty intention of the *Prova*’s voyage was carried into effect, and a cargo of slaves was taken on board on the morning of the 3d ultimo; immediately after which, she was boarded and taken possession of by the boats of her Majesty’s sloop *Pylades*, W. L. Castle, Esq., commanding. A midshipman and prize-crew were then placed on board the prize, and she was despatched to this place for trial.

On the 23d ultimo, the *Prova* came to anchor in this harbor; and the clean and comparatively comfortable condition of the slaves and the vessel

reflects great credit on Mr. W. G. Macpherson, the officer who commanded her. The marshal's report stated that 225 slaves had been on board the detained vessel at the time of capture, and that only 20 had died during the passage up. The surgeon represented that the slaves generally were thin and squalid, owing, as was represented to him, to their having been confined in barracoons for several months before their embarkation; that dysentery was prevalent among them, and that 54 cases of that disease would require to be treated in hospital; that the size of the vessel was quite inadequate to the number on board; and that it was desirable that the whole of the slaves should be landed as soon as possible. This recommendation was carried into effect on Monday morning, the 25th ultimo; the *Prova* having only arrived on Saturday evening, and it being, therefore, impossible to receive her into court, or to present a petition for the landing of the slaves, until the following Monday morning.

The vessel was libelled in the British and Portuguese court, in the usual manner; and, on the petition of the captor's proctor, the affidavit of the prize-master, verifying the facts of seizure and the authority of the seizor, and authenticating the ship's papers, was received, together with the captor's declaration and inventory of stores found on board the detained vessel. A monition was issued to the marshal, summoning all interested parties to appear on or before the 2d instant; and the witnesses in preparatory, produced by the captor's proctor, were ordered to give immediate attendance, for the purpose of their being examined on the standing interrogatories.

On this occasion, Francisco José Dias, the master of the detained vessel, deposed, that he was born in Lisbon, and has lived there till within the last two years, and that he now resides at Bonavista, in the Cape de Verde islands; that he has never served any State but Portugal; that he was recently married at Matanzas, where his wife now is—but only temporarily, as witness's house is at Bonavista; that he was appointed to the command of the detained vessel, and possession of her was given to him at Havana, about 12 months since, by Don Gregorio Meneudes, a resident in Havana—but whether a Spaniard or Portuguese, witness is ignorant; that witness first saw the vessel there about a month previously, and believes she is Brazilian built; that he was present when the vessel was seized for having slaves on board; that she had no colors but Portuguese; that she is 91½ tons burden, and had a crew of 23 officers and mariners, exclusive of witness—all of whom (except two Spaniards) were Portuguese subjects, and all were hired and shipped at Havana, by witness, in July last; that neither he, nor any other of the officers or mariners, had any interest in either vessel or cargo; that he was master on board; that there was one passenger, a Spaniard, named Pedro Cibras, who was a clerk at Havana, and was taken on board there for a passage to St. Thomas; that witness knows nothing further about him; that he was not taken to St. Thomas, because his health would not permit of it, and that he had no interest or authority respecting the vessel or cargo; that the voyage commenced, and was to have ended, at Havana; that the last clearing port was Charleston; that the vessel was proceeding on her voyage from Havana to the coast, when she carried away her jib-boom, and received other considerable damage, which compelled her to go to Charleston, where she remained about two months refitting; and thence sailed direct to the Calabar, where her slaves were shipped; that the capturing vessel was first seen outside the Calabar, on the day after the seizure of the *Prova* by her boats; that the capture took place

within the bar of that river, on the 3d of June; that the name of the owner of the vessel is in the passport, but witness does not recollect it, being personally unacquainted with him; that the owner resides at St. Jago, Cape Verde, and is a Portuguese by birth; that witness is ignorant of the existence of any bill of sale; that he believes the vessel, if restored, will belong to the party named in the passport, and to no other person; that the consignee of the vessel at Havana, and the lader of the cargo there, was Don Gregorio Menendes, a resident merchant in that place; that witness was the purchaser and lader of the slaves shipped in the Calabar, and who were bought, by order of Menendes, with the goods shipped by that person at Havana; that the slaves were to have been landed at Havana, on account and risk of Menendes, and will belong to that person if restored; that the vessel was under witness's management with regard to her trade, and he corresponds with Menendes only; that he knows nothing of the former voyage of the vessel; that the cargo shipped at Havana was a general trade one; that the present cargo is slaves—of whom 225 were shipped altogether—all from the shore in the old Calabar river; that, after capture, the vessel was taken to Sierra Leone.

Ramon Peña, the cook of the Prova, was the other witness examined; but his deposition is of no consequence, as he pretended ignorance on every point respecting which he was questioned.

The publication of the above evidence was decreed on the 26th ultimo; and on the same day the prize-master was allowed to file an affidavit, accounting for the deaths which had occurred amongst the slaves. By this document it appeared that 24 slaves had died between the 3d ultimo and the landing of the survivors on the 25th ultimo, notwithstanding every care and attention on the part of the officer and seamen composing the prize-crew.

A petition for a day of trial was then presented, which was answered by appointing Monday, the 2d instant, for the purpose—the monition issued on the 25th ultimo being made returnable on that day.

When the court met, a return from the liberated African department was presented by the marshal, showing that seven slaves had died in the interval between their landing and the sitting of the court. The evidence taken in the case, of which an abstract has been given above, was read; and the illegal employment of the detained vessel at the moment of her capture being fully admitted by all parties, the Prova was pronounced a good and lawful prize to the Crowns of Great Britain and Portugal; and the survivors of the slaves captured on board of her, 194 in number, were decreed to be emancipated from slavery. It was also declared that sufficient proof had been produced that 225 slaves had been on board the detained vessel when taken possession of by the captors; of whom 24 had died before the vessel could land her slaves in this colony, and 7 subsequently.

H. W. MACAULAY,
R. DOHERTY.

SIERRA LEONE, July 31, 1839.

Mr. Forsyth to Mr. Fox.

DEPARTMENT OF STATE,
Washington, February 12, 1840.

The President has directed the undersigned, Secretary of State of the United States, to reply to the note of Mr. Fox, her Britannic Majesty's sen-

voy extraordinary and minister plenipotentiary, of the 30th of October last, on the subject of the African slave-trade.

The Government of the United States is animated by as sincere and strong a desire to see the African slave-trade annihilated as can possibly actuate that of her Britannic Majesty, and has, from its foundation to the present hour, pursued a uniform and consistent course for the accomplishment of that end. Its duty to the world, in that respect, has been faithfully performed; and if the traffic still exists as a disgrace to humanity, it is to be imputed to nations with whom her Majesty's Government has formed and maintained the most intimate connexions, and to whose Governments Great Britain has paid for the right of active intervention, in order to its complete extirpation. It is not, therefore, deemed at all necessary to take a more extended notice of Mr. Fox's general denunciation of the criminality of the traffic, or of the opinion expressed by him, that it is the duty of civilized nations to unite in its destruction. The Government of the United States having taken the steps which it deemed to be the proper ones on its part, leaves to others to imitate or avoid the example it offers, without pretending further to interfere with their right to decide, or with their decision when made. It is not forgotten that this Government, at one time, contemplated conventional arrangements with other Powers; and that one negotiated with the Government of Great Britain was not ratified, in consequence of an irreconcilable difference of opinion in the two branches of the treaty-making power in this country.

The opposition then manifested, and which compelled great caution and reserve in future dealings with the subject, has, it must be admitted, been strongly fortified by recent events, and especially by the present state of the relations between the different Powers who have entered into conventional arrangements upon the subject.

That a fraudulent use of the American flag has been made by foreigners, was made known to the President by the consul of the United States at Havana, who has pointed the attention of this Government to the defects of the laws regulating the transfer of vessels sold abroad, under which those frauds have been attempted or perpetrated. The President has lost no time in calling the attention of Congress to the subject, by whom it will, without doubt, be fully considered, with a view to the adoption of all necessary amendments.

The state of things on the coast of Africa, as disclosed by Mr. Fox's communication, has rendered necessary there the presence, for some time, of an American naval force, as a measure of precaution, to protect American vessels from improper molestation in that quarter of the globe; and also to detect those foreigners who may be found carrying, without proper authority, the flag of the United States.

Mr. Fox suggests, under the instructions of her Britannic Majesty's Government, that the laws of the United States against the slave-trade are insufficient; but, in the several cases detailed by him, there is nothing to sustain a presumption that any practicable change in those laws could reach the persons who are at the present day engaged in the trade. The United States have no authority to punish the subjects or citizens of other nations for offences committed against the laws of their own country on the high seas, or within a foreign jurisdiction; and the President does not understand upon what principle her Majesty's Government can expect that that of the United States will either refuse admission to the vessel of a friendly

nation, which seeks refuge in distress, or establish a scrutiny into the business in which such vessel may be engaged, with a design to deny succor or a clearance if found to be destined for a trade hateful to the United States, or forbidden by the laws of the country to which she belongs. Her Majesty's Government (no doubt inadvertently) overlooked the essential difference in the relative situation towards Portugal, Spain, and Brazil, of the two Governments of Great Britain and the United States. With Spanish, Portuguese, or Brazilian vessels, forced into our ports by misfortune, although engaged in the slave-trade, the officers of the customs have no right to interfere. It is the business of the consuls of foreign Powers within the United States to watch over the interests of their countrymen, and to enforce an observance of the laws of their respective nations; and the Government of the United States does not interfere with any supposed infractions of them, except on official application in behalf of the Governments of those nations in each particular case.

The President sees with regret, by the contents of Mr. Fox's note, that her Britannic Majesty's Government continues to think it important that the United States should become a party to a convention, yielding the mutual right of search to the armed vessels of each other, with a view to detect persons engaged in the slave-trade. Her Majesty's Government considers such convention as the most sure and effectual mode of checking that trade. After the determination which the position and policy of the United States have required this Government to make, the President would regret extremely to be convinced that in this regard her Majesty's Government judges correctly. He cannot but think, on a careful examination of the evidence exhibited with Mr. Fox's note, that her Britannic Majesty's Government has overlooked both the causes of the present shocking condition of the slave-trade, and the remedies which are demanded to correct the evil. To do justice to his opinions on this subject, it would be necessary for the undersigned to institute a scrutiny into the proceedings of other friendly nations, which might justly be considered uncalled for and invidious. It will be sufficient to appeal to a few broad facts well known to her Majesty's Government, and to apply to them the well established rules of trade and of criminal law. There are slave markets. In these slave markets, if they can be reached before detection, the profits of the trade are certain and enormous; and impunity is, in that event, unfortunately for the true interests of humanity, quite as certain as profit. Destroy the market, and there is no slave-trade. Pursue the criminal into the places where his profit is derived; render punishment there as certain as detection, and detection as certain as just vigilance can make it; and the fear of punishment will be strong enough to overcome the love of gain—the great stimulant under which the laws of humanity are every day violated by worthless members of all human societies. In the largest and most profitable of these markets, her Britannic Majesty's commissioners of the mixed commission have named vessels employed in the slave-trade; mercantile houses as notoriously dealing in that traffic; the number of Africans brought in, contrary to legal enactments and treaty stipulations. Like statements are made by her Britannic Majesty's naval officers, and the commissioners of the mixed commission in Sierra Leone. All the evidence furnished points to the source of the mischief, and indicates the only effectual corrective. The President, from all that Mr. Fox has presented, and that which has been furnished through the officers of the United States, sincerely believes that the complete extirpation

of the slave trade depends not so much upon the formation of the new convention desired by Mr. Fox, as on the faithful execution of those already existing. But little can be expected from the promulgation of new laws, while those already adopted are treated as dead letters in the criminal code.

The unfavorable constructions placed upon the conduct of the consul of the United States at Havana, by the officers of the mixed commission, and communicated to this Government by Mr. Fox, have received from the President the consideration which is due to their character, and to the importance of the subject to which they relate. Fully informed as is her Majesty's Government of the opinions and wishes of that of the United States upon the subject of the slave-trade, it can scarcely be necessary to say that no officer of the United States, who is amenable to the President, would be allowed by him to remain in office for a single day after it was made to appear that he was so recreant to his duty as to countenance, in any way, a traffic in itself so odious, and which is so severely denounced by the laws of his country.

The conduct of the United States consul at Havana, in this respect, will necessarily undergo investigation after what has been said of it by her Majesty's Government; but the President would be unjust to the known reputation of Mr. Trist, if he did not express his confident hope that the result will be such as to satisfy all that great injustice has been done to him upon this subject, and that his public and private character is without reproach. It is very plain that the inferences and suspicions of the officers of the mixed commission, derogatory to the official fidelity of Mr. Trist, have chiefly had their origin in the displeasure which was manifested by him at receiving from them information which they believed calculated to advance the known views of his own Government in relation to the slave-trade. The excited feelings of Mr. Trist, on the occasion referred to, might, unexplained, give cause for unfavorable inferences. But this circumstance loses all its force when it is considered that the displeasure of the American consul arose, not from the fact that the communications were made to him, but from the estimate which he formed of the motives by which those who made them were influenced. Their avowed object was to induce him to take steps at Havana to prevent vessels, which had once been American, from further prosecution of the slave trade, and to bring to punishment certain alleged American citizens for having been parties to it. In the case of the "Venus," it was a prominent point to prevent her leaving the port of Havana; and Mr. Trist was advised to make application, to that end, to the Captain General. Mr. Trist, it appears, regarded himself not only utterly powerless in respect to the accomplishment of either of the objects proposed to him, but also considered the office which the commissioners undertook to assign to him, to be that of arraigning the local authorities of Havana, from the Captain General down, for failing to detect or notice a notorious infraction of laws, to the strictest enforcement of which they are bound, not in the ordinary degree, but in the especial manner arising from the treaty obligations of their Government to that of Great Britain. Regarding the matter in this light, assuming that the officers of the mixed commission so understood it themselves, and believing an application to the Captain General for his interference, by the commissioners, to be not only the appropriate, but the only one which could promise success, Mr. Trist became impressed with a belief that the commissioners, in making their communication to him, did so under a full conviction that its only ef-

fect would be to attach to the Government of the United States a portion of the odium justly due to others for the disreputable scenes which were every day passing under their eyes, without a well grounded expectation that his interference would be at all useful in arresting them. The President does not allow himself to believe that such was their object; but it is certain, as well from the correspondence itself, as from the communications of Mr. Trist to his own Government, that he so understood it. Constituting, as this belief undoubtedly did, the paramount motive for his conduct upon the occasion, it effectually repels the construction attempted to be placed upon it by the commissioners. A correspondence between the subordinate officers of the two Governments, in situations like the present, is always permitted for the interchange of reciprocal civilities, and, in some cases, tolerated upon subjects properly belonging to the Governments themselves; but should never be persisted in when objected to on either side, and more especially when the ground of that objection is, that the correspondence is designed to call in question the acts or good faith of the Government of the objecting officer. It is, therefore, to be regretted that the officers of the mixed commission did not, after the emphatic refusal of the consul of the United States at Havana to correspond with them upon the subject of the slave-trade in 1838, adopt, on a late occasion, the course now pursued, in communicating with this Government through their own. Much excitement and misconstruction would certainly have been prevented by it, and probably without prejudice to the objects in view.

Her Majesty's Government does not appear to be aware of the nature and extent of the services performed by Mr. Trist for the subjects of Portugal. There being no Portuguese consul at Havana, he did for some time what had for many years been done by his predecessor, Mr. Shaler, and is now understood to be done by the Tuscan consul, at the instance of the Captain General himself—and what was supposed to be due by national comity from the consul of one friendly nation to the subjects of another, who had no consul of their own to call upon—he certified to the execution of the ordinary documents connected with their maritime transactions. He could not be aware that his certification of the execution of a deed of sale, or of the signature to a protest, or affidavit to a manifest or list of crew, was to be taken as higher proof than if given by any other consul, or that he was responsible for the truth of the contents of either of those documents; and the undersigned feels himself bound to say, that he cannot comprehend how it could be so regarded by any unprejudiced mind. It is due to the subject farther to state, that the moment Mr. Trist found there was reason to apprehend that his so acting was thought capable of being construed to be inconsistent with the duties expected of him by his Government, he at once refused his farther agency in the matter, and the Tuscan consul began to act, as has been stated. Since December, 1838, he has performed no services for the Portuguese consulship—a fact which could not but be known to her Majesty's commissioners, and which they ought, in justice to Mr. Trist, to have communicated to her Majesty's Government.

Prior to the receipt of Mr. Fox's note of 30th October, imputations against Mr. Trist appeared in the public journals; and he was immediately induced, upon seeing an article in one of them purporting to be a compendium of British parliamentary papers, which contained grave charges against him in his official character, to address a letter to the undersigned, requesting that a formal demand might be made on her Majesty's Govern-

ment for one or more specimens of certain blank forms, signed by him, to be filled up as occasion might require, which were alleged to have been found on board of vessels engaged in the slave trade, and for all other specific information that could be furnished relative to this matter. Mr. Trist preferred this request with a view to meet the charges; and a compliance with his wish was only postponed because Mr. Fox had, in conversation, intimated his intention of making a communication to this Government regarding the abuse of its flag, connected with a complaint against the American consul at Havana, which, it was supposed, would probably be accompanied by one of the blanks referred to—an expectation which was not realized. With a view to a perfect understanding of the charge against Mr. Trist, and to enable him fairly to meet it, Mr. Stevenson has been instructed to apply to her Britannic Majesty's Government, in conformity with the wish of the United States consul at Havana.

In closing this answer, the undersigned is instructed to give to Mr. Fox the most explicit assurances that the whole subject will be carefully and deliberately weighed; and the most decisive measures within the competency of the Executive, and in accordance with the principles herein explained, to reach the evil, will be taken, and continued until the necessity for their continuance shall no longer exist.

Availing himself of this occasion, the undersigned renews to Mr. Fox the expressions of his great consideration and respect.

JOHN FORSYTH.

HENRY S. FOX, Esq., &c., &c., &c.

Mr. Fox to Mr. Forsyth.

WASHINGTON, March 30, 1840.

SIR: With reference to a former communication, which the undersigned, her Britannic Majesty's envoy extraordinary and minister plenipotentiary, had the honor to address to the Secretary of State of the United States, upon the subject of the African slave-trade, and the deplorable extent to which the American flag is abused for the protection of that inhuman trade, the undersigned has been further directed by his Government to communicate to the Government of the United States the two enclosed papers, consisting of reports from her Majesty's commissioners at Sierra Leone upon the case of a schooner called the "Rebecca," captured by one of her Majesty's cruisers on the coast of Africa, and condemned by the British and Spanish mixed court of commission at Sierra Leone, for being engaged, on account of Spanish owners residing at Havana, in the illicit traffic of slaves.

It will be seen by the United States Government, that the papers now communicated disclose, in a clear and remarkable manner, the means to which the Spanish slave-traders of Cuba are accustomed to resort, in order to obtain the protection of the flag of the United States in aid of their barbarous and abominable system of crime.

The undersigned avails himself of this occasion to renew to the Secretary of State of the United States the assurance of his distinguished consideration.

H. S. FOX.

HON. JOHN FORSYTH,

Secretary of State, &c., &c., &c.

[Enclosure No. 1.]

SIERRA LEONE, April 10, 1839.

MY LORD: On the 22d ultimo, her Majesty's brigantine "Forester," Lieutenant Campbell commander, visited the Gallinas, where she found the schooner "Rebecca," without any official papers on board, and under no national flag. The mate of the Rebecca, Nicolas Echevarria, was in charge of her, and represented to the seizer that the master of the schooner, whom he described as Domingo Artata, had carried on shore with him the papers of the vessel, which he said were Portuguese. The mate farther stated that the schooner had come from Havana to Gallinas under the command of George Watson, an American, (who was then on board,) and that she was owned by a resident of Havana. Lieutenant Campbell, under all the circumstances, considered it to be his duty to detain the Rebecca, as Spanish property illegally equipped, and to send her to this port for trial.

She arrived here on the 27th ultimo, and proceedings were immediately instituted against her on the above charge, in the British and Spanish mixed court of justice.

Our report of this case we have now the honor of transmitting to your lordship.

Although no ship's papers were found on board the "Rebecca," the private documents, in connexion with the evidence of the witnesses, furnish a complete illustration of the mode in which the American flag is at present employed to facilitate the Cuba slave-trade.

The American owner of the "Rebecca," after having disposed of her to an Havana slave-merchant, allowed the former American papers and master still to remain on board the vessel, (no longer his property,) on the outward voyage to the coast of Africa, and until her return cargo of slaves should be ready for shipment; when the nominal American master of the vessel was to transmit to the former American owner the American register cut across the middle, by two separate conveyances, so that the owner "might cancel his bonds at the custom-house."

The flag of America, which the "Rebecca" had no right to bear, was thus used by the Spanish slave-merchant to protect the outward voyage of a vessel which would otherwise have been liable to seizure and condemnation under the Spanish treaty, on the ground of equipment; and the nominal American master, the willing agent of the fraud employed to give a specious color to the transaction, was plainly told by his former American employer that he must no longer look to him for a remuneration for his services, but either to Ealo, the owner at Havana, or Alvarez, the consignee at the Gallinas.

This the American (Watson) seems to have been quite willing to do; and in a letter (copy of which was found in his log-book) he informs a correspondent, that on a former trip of the same nature he had realized a clear profit of \$380, including his wages, and the net proceeds of three slaves, who were reserved for him out of the homeward cargo.

On the present voyage the amount of Watson's wages does not appear; but a passage from Gallinas back to Havana, on board the "Rebecca," was to be found; for him and he was to receive one slave out of the cargo, as his perquisite.

It will be observed, from paper No. 6, that the merchants of Havana rely

with confidence on the protection which will be afforded, to a very considerable extent, by the American flag, in carrying on illicit slave-trade.

We have, &c.,

W. H. MACAULAY,
WALTER W. LEWIS.

VISCOUNT PALMERSTON,
&c., &c., &c.

[Enclosure No. 2.]

Report of the case of the schooner "Rebecca," Domingo Artata master.

At the time of the detention of this vessel at the Gallinas, she had no flag flying, and was unprovided with official papers of any kind which could afford her a national character. The following documents, found on board of the schooner when she was seized, showed that she had cleared out from Havana for Gallinas in January last, as an American vessel, under the command of George Watson, an American citizen; and that, on reaching her destination, she was to be delivered by Watson to Pablo Alvarez; of the Gallinas, who was to ship a cargo of slaves, with which the schooner was to return to Havana, bringing the American master as a passenger.

No. 1. A clearance from the Havana, dated the 25th of January, 1839, stating that the American schooner "Rebecca," Captain Watson, was bound to the Gallinas, with a cargo of spirits, rice, arms, ammunition, and some bales of merchandise shipped by José de Ealo.

No. 2. A letter to George Watson, from the late American owner of the vessel, F. Neill. It is dated Havana, January 21st, 1839, and is to the following effect:

"You will proceed with the schooner 'Rebecca,' under your command, direct from here to Gallinas, and, on your arrival there, deliver her up to Don Pablo Alvarez, of the said place, agreeably to an arrangement I have made here with Don José Ealo, looking to either of them for any demand you may have for your services, as well as the crew and officers. You will, upon your arrival at Gallinas, after delivery of the schooner 'Rebecca' aforesaid, send her register, in two different vessels, to me at Baltimore, cutting it in the middle, in order that I may cancel my bonds in the custom-house."

"F. NEILL."

No. 3. Instructions for Señor Don Domingo Artata, dated Havana, 21st January, 1839, from Silvestre Iriarte and Thomas Trigoyen. The following is an extract:

"On your arrival at Gallinas, you will place yourself under the orders of Don Pablo Alvarez, and observe those which he may give you with the greatest exactness. You will both take care that the American schooner 'Rebecca' keeps her flag till the moment of putting her cargo on board. You will bring in the vessel citizen Watson, with a slave which he has our permission to bring with him. When loaded, you will steer directly to this island."

Then follow general directions concerning the different points in the island of Cuba where he might possibly have to land the slaves.

No. 4. A receipt given by the Spanish mate, Echevarria, to the American master, Watson, for the vessel, in the following words :

“SCHOONER ‘REBECCA,’ *Gallinas, March 20, 1839.*

“I hereby acknowledge that I this day took charge of the schooner ‘Rebecca,’ lately under your command, in the name of Don Pablo Alvarez.

“NICOLAS ECHEVARRIA.”

No. 5. A parcel of six log books of the voyage of the American schooner “Rebecca” from Havana to the Gallinas. Of these, there is one in English and five in Spanish. Only two of the logs contain a complete account of the voyage: one of these two has apparently been kept by the Spanish master, Domingo Artata, as, in addition to the late voyage to Gallinas, it contains the history of a previous voyage there, and back to Cuba, which he had made on account of Pablo Alvarez, to whom he was again consigned. The log-book written in English, apparently by George Watson, is very imperfectly kept, until the “Rebecca” was anchored at the Gallinas, when Watson seems to have considered it necessary to be more particular, and he accordingly entered the hours at which the shore canoes came off to him, and the several articles they each carried away from the vessel. On the 19th of March, he notes the disembarcation of “all the irons and other small packages with them.” There is a copy of a letter in this book, in English, dated Havana, May 25, 1837, stating the writer to have made a successful voyage with 503 negroes; that his wages amounted to \$280, besides three slaves; and his clear profit by the trip was \$880.

No. 6. Two letters, under the same date of January 22, 1839, to Juan Batalla, of Gallinas, from Tomas de Trigoyen, Juan Suris, and Racon & Co., at Havana. In these letters, it is notified to Batalla that his correspondents will despatch to him, from Havana, a vessel to carry from 300 to 350 slaves, as soon as it can be purchased. “The only difficulty,” they say, “which has hitherto delayed the carrying our intentions into effect, has been that of the flag—arising from the scarcity of American vessels of the class and burden which we require; for all other impediments are easily surmounted. As vessels of the description required are constantly arriving, and as, amongst several that are expected, it will not be difficult to find one that suits us, you may reckon with all certainty on one sailing for your place about the 25th of February.” It is suggested that Batalla may with safety increase his trade to 1,500 slaves annually; and he is recommended to put himself in communication with Pablo Alvarez, of Gallinas, in order to accomplish that object.

There were many other papers found on board, which appeared to be of not much importance.

The detained vessel reached this port on the 27th ultimo, and was duly reported by the marshal to the courts. On the following day proceedings were instituted against her in the British and Spanish mixed court, on the charge of her being a Spanish vessel illegally equipped. The papers (not ship’s papers) seized, having been authenticated by the affidavit of the cap-

tor, and his declaration being sworn to, the said papers were filed, and the usual monition was issued. The declaration of Lieutenant Colin Yorke Campbell, commander of her Majesty's brigantine "Forester," stated, that, being off the Gallinas on the 22d of March ultimo, he detained the schooner "Rebecca," having no colors flying, but with a Portuguese ensign on board. The schooner was in custody of Nicolas Echevarria, her first mate, who declared her to have come from Havana to Gallinas, during which voyage she was commanded by George Watson, an American. The said George Watson then stated that he had formally given up the said vessel to Echevarria on his arrival at Gallinas, agreeably to his orders from F. Neill, the late owner. The mate, Echevarria, further stated that the vessel was owned by José Ealo, of Havana; and that the Portuguese papers belonging to the vessel had been conveyed on shore, on the day previous, by the master of the schooner, Domingo Artata; which statement respecting the carrying away of the papers was confirmed by George Watson, who now described himself as a passenger on board. Lieutenant Campbell, considering the "Rebecca" to be Spanish property, detained her for being illegally equipped.

On the 30th ultimo, the mate, Echevarria, and the passenger, George Watson, were produced by the captor as witnesses in the case, and examined on the standing interrogatories. Echevarria deposed "that the name of the master is Domingo Artata; has known him during one year. He was born in the province of Biscay, in Spain, where he generally resides. He is married, and his wife resides there also. The master was appointed to the command by one Ealo, a Spaniard, residing in Havana; from whom, also, he received possession at that place three months ago. First saw the vessel there and then; does not know where she was built. He was present at the capture; does not know on what pretence it took place. The vessel sailed under Portuguese colors, and there were no others on board. The vessel is called the 'Rebecca;' has never heard of her bearing any other name. She is of 142 tons burden. There were 12 officers and mariners, exclusive of the master, all Spaniards, shipped by the master at Havana; witness does not know at what precise period, as he found them on board when he himself joined the vessel there, three months ago. Neither he nor any of the officers or mariners had any interest in the vessel or her lading; was mate on board. There was one passenger, named Watson, an American by birth, and a seaman by profession. He was taken on board when the vessel left Havana, in order to proceed to Gallinas; witness does not know on what business. He had no concern or authority in or over the vessel or cargo. The voyage began and was to end at Havana, which was the last clearing port. The vessel touched at Gallinas to discharge her cargo; which was done, with the exception of a small part of it. The capturing ship was first seen while the detained vessel was at anchor at the Gallinas, at two o'clock in the evening of the 22d of the month instant; capture took place within an hour. The destination, by the papers, was Gallinas and Havana; and the course had been at all times directed to the former place. There are no guns mounted on board. There were six cutlasses and two pistols, but no ammunition, save what was contained in the cargo. No resistance was made to capture, nor were there any instructions for resisting or avoiding capture; or for destroying or concealing the vessel's papers. Ealo, from whom the master received command and possession, was the sole owner of the vessel; knows it, because he cleared out and transacted all the business of the vessel. Does not know if he be married, nor how long he

has resided in Havana. He knows nothing of a bill of sale, price, or transfer of the vessel. The owner of the vessel was also sole lader, owner, and consignee of the cargo. He knows nothing of the lading of the last voyage. The cargo brought out on the present was tobacco, aguadilute, dry goods, cutlasses, muskets, and ammunition. The vessel, after capture, was brought direct to Sierra Leone. He knows nothing of the truth and fairness of the passports and other papers; he does not know that any of the papers were destroyed, concealed, or made way with; he knows nothing of any writings relating to vessel or cargo in any other country; he knows nothing of any charter party; he does not know whether or not the cargo be insured. The vessel, with respect to her employment in trade, was under the direction of one Alvarez, of Gallinas; bulk was broken at Gallinas only. No slave has been put or received on board, for the purpose of the traffic in slaves, during the present voyage."

To the special interrogatories respecting the equipment of this vessel, the mate swore, in reply, that "the hatches are not fitted with open gratings. The coverings of the hatchways are not pierced, or otherwise fitted to receive iron bolts or bars; none of which are on board. There are two bulkheads—those of the cabin and fore-castle. There are spare planks, fitted and numbered, so as to form a complete slave-deck fore and aft. There is no part of a slave deck laid at present. There were eighteen or twenty pairs of shackles, to be used against the crew in the event of mutiny or disobedience, but no bolts or handcuffs. There are leaguers and casks on board capable of receiving eighty pipes of water, in all, and containing two pipes of fresh water at the time of capture. There are no tanks or staves. The vessel was supplied with the means of carrying so much water, because it was required for the use of the crew.

"There were four mess kids for the use of the crew. There were three or four iron boilers for the use of the crew. There are two leaguers, capable of containing a puncheon each, which are filled with rice for the use of the crew. There is no flour, and no Indian corn."

The evidence of George Watson, lately the American master of the vessel, was to the effect, that he was born in America; Falo, of Havana, appointed him to be master of the schooner, about two months ago, and not Domingo Artala, as the mate had stated. He gave possession of the vessel to the mate (Echevarria) on the 20th ultimo; a statement which the mate's receipt, found with other papers on board, confirmed. The cause of capture was want of colors and papers for the schooner. Previous to detention, the vessel sailed under the American flag; she had Portuguese colors, and none other on board. The crew were all Spanish, and shipped at Havana by the owner. He had orders from the American owner (F. Neill) for destroying the vessel's papers, and his instructions on delivering over the vessel to Pablo Alvarez, at Gallinas, according to his directions. He sent away the American register to Havana, on the 20th ultimo, having first divided it into two parts, according to the late American owner's instruction. The papers he burnt. The last voyage of this vessel was with flour from Baltimore; at which time he was mate on board. He believes there were not any passports or other papers found on board the vessel; and none were, to his knowledge, delivered out of the vessel or carried away.

The evidence of Watson respecting the illegal equipment of the vessel, was nearly a repetition of that given by the mate on that subject, and served to establish that portion of the captor's allegations against the schooner.

Publication passed in the cause on the 30th ultimo; and the monition, issued on the 28th, was returned and filed on the 6th instant, on which day the court met for the adjudication of the vessel.

The court, in giving judgment, remarked upon the absence of every official paper which might have enabled the "Rebecca" to claim some national character, her former American ship's papers having been destroyed two days prior to the seizure of the vessel, and no other ship's papers having been substituted for them. It became, therefore, necessary to have recourse to the parol and documentary evidence given in the case, to decide what national character the vessel was entitled to bear. This evidence clearly proved that the "Rebecca" was owned by merchants resident at Cuba; that her American flag had only been worn to conceal the Spanish ownership on the outward voyage, as she had ceased to be an American vessel before the voyage commenced; that her return-cargo was to consist of slaves, who were to be delivered at the same Spanish settlement where she was fitted out, on the account of Spanish merchants.

No doubt could therefore exist, that, as a Spanish vessel, the "Rebecca" was liable to the penalties of the Spanish treaty, if a violation of it could be established against her; and illegal equipment having been admitted by the witnesses, the ship and cargo were condemned.

H. W. MACAULAY,
WALTER W. LEWIS.

SIERRA LEONE, *April 10, 1839.*

Mr. Forsyth to Mr. Fox.

DEPARTMENT OF STATE,
Washington, April 1, 1840.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of a note dated the 30th ultimo, from Mr. Fox, envoy extraordinary and minister plenipotentiary of Great Britain, calling the attention of the Government of the United States to the case of a schooner called the "Rebecca," captured on the coast of Africa by her Britannic Majesty's cruisers, and alleged to present an instance of resort by Spanish slave-traders to the protection of the flag of the United States.

As the papers accompanying Mr. Fox's note disclose circumstances which might lead to prosecutions before the courts of this country, for violation of existing laws, the undersigned requests that Mr. Fox will procure from his Government, with as little delay as practicable, such authentic documentary evidence, touching the case referred to, as may be in its possession, and likely to aid in the attainment of the ends of justice.

The undersigned avails himself, &c.

JOHN FORSYTH.

HENRY S. FOX, Esq., &c., &c., &c.

Mr. Fox to Mr. Forsyth.

WASHINGTON, *August 15, 1840.*

SIR: I have much satisfaction in communicating to you, by direction of her Majesty's Government, the enclosed report received from Commander

Tucker, of her Majesty's ship "Wolverine," stationed on the coast of Africa, in which are enclosed copies of a correspondence that had passed between that officer and Lieutenant John J. Paine, of the United States navy, commanding the United States schooner "Grampus;" and of an agreement entered into between them for mutual co operation and assistance in the suppression of the African slave-trade.

Her Majesty's Government have been much gratified by the intelligence of this zealous co-operation, on the part of the United States commander, for the attainment of an object which both Governments have equally at heart.

I avail myself of this occasion to renew to you the assurance of my distinguished consideration.

H. S. FOX.

The Hon. JOHN FORSYTH, &c., &c., &c.

[Enclosure No. 1.]

HER MAJESTY'S SLOOP "WOLVERINE,"

Sierra Leone, March 12, 1840.

SIR: I have the honor to transmit the annexed copies of the correspondence between Lieutenant John S. Paine, commanding the United States schooner of war "Grampus;" and myself, relating to the suppression of the slave-trade; and also a copy of the requisition and agreement made by us for mutual co operation and assistance, which I trust will be approved of by you and by the Government, and be the means of putting a final stop to the slave-trade on this coast.

I beg further to inform you, that the "Grampus" arrived here on the 7th, to be employed for a short time on the western coast of Africa, for the protection of American property, and suppression of the slave-trade carried on under the American flag.

Previous to my arrival, the "Dolphin," United States schooner of war, commanded by Lieutenant Bell, had arrived here, and sailed for the leeward coast, on the same duties as the "Grampus," but independent of her.

I have, &c.,

WM. TUCKER,

Commander and senior officer.

Rear Admiral the Hon. GEORGE ELLIOT,

G. C. B., &c., &c., &c.

[Enclosure No. 2.]

HER MAJESTY'S SLOOP "WOLVERINE,"

Sierra Leone, March 10, 1840.

SIR: Having been informed that the vessel under your command is to be employed on this coast to protect the American mercantile interests, and to prevent the flag of the United States being used by people engaged in the slave trade, I hasten to offer you the co-operative services of the squadron under my orders, and to assure you I shall be most happy to enter into and make any arrangements with you, to render mutual assistance, that we may

be the better able to carry into execution the orders and views of our respective Governments.

I beg to inform you that I lately detained two vessels completely equipped for and engaged in the slave-trade, under American colors, with American papers, and commanded and manned by American citizens with American protections. The said vessels were yesterday condemned as good and lawful prizes to the Crowns of Great Britain and Spain; it being proved that they were Spanish vessels, belonging to Spanish persons residing in the Havana.

I have further to inform you that nine more slave-vessels are daily expected from the Havana, completely equipped for the slave-trade, under the American flag; four of which are bound to the rivers Nun and Bras, near to Cape Formosa; the remaining five being bound to different parts of the coast: making, with the two taken, in all eleven vessels from the Havana under American colors.

I have, &c.,

WM. TUCKER,
Commander and senior officer,

Lieutenant PAINE,
Commanding the United States schooner "Grampus."

[Enclosure No. 3.]

UNITED STATES SCHOONER "GRAMPUS,"
Sierra Leone, March 10, 1840.

SIR: I have the honor to acknowledge the receipt of your letter of this date, and I can assure you that I can in no way more decidedly meet the views of my Government than by a hearty co-operation for the suppression of the slave-trade under the American flag, having proper regard to international relations with other Powers. I accept with pleasure your offer, and will enter into any arrangements that may, on further discussion, seem proper.

With very high respect, I am, &c.,

JOHN S. PAINE,
Lieutenant Commanding.

Commander WM. TUCKER,
Senior officer, coast of Africa.

[Enclosure No. 4.]

Commander William Tucker, of her Britannic Majesty's sloop "Wolverine," and senior officer on the west coast of Africa, and Lieutenant John S. Paine, commanding the United States schooner "Grampus," in order to carry as far into execution as possible the orders and views of their respective Governments respecting the suppression of the slave-trade, hereby request each other, and agree, to detain all vessels under American colors found to be fully equipped and engaged in the slave-trade, that, if proved to be American property, they shall be handed over to the United States schooner

"Grampus," or any other American cruiser ; and that, if proved to be Spanish, Portuguese, Brazilian, or English property, to any of her Britannic Majesty's cruisers employed on the west coast of Africa for the suppression of the slave-trade, so far as their respective laws and treaties will permit.

Signed and exchanged at Sierra Leone, this 11th day of March, 1840.

WM. TUCKER,

*Commander of her Majesty's sloop "Wolverine,"
and senior officer, west coast of Africa.*

JOHN S. PAINE,

Lt. commanding United States schooner "Grampus."

Mr. Fox to Mr. Forsyth.

WASHINGTON, August 16, 1840.

SIR: I have the honor, herewith, to enclose to you the copy of a despatch, with its enclosures, addressed to me by her Majesty's Secretary of State for Foreign Affairs, upon the subject of the claim of the British captors of the American ship "Wyoming," to receive a due portion of the value accruing from the forfeiture and sale of that vessel—the "Wyoming" having been detained on the coast of Africa by her Majesty's sloop "Harlequin," Lord Francis Russell commander, under suspicion of being engaged in the illicit traffic in slaves ; and when brought into New York for adjudication by the competent tribunal, having been there condemned and forfeited, upon a separate action for breach of the United States navigation laws.

Her Majesty's Government desire to submit this claim to the consideration of the President, recommending it to his favorable and friendly attention. The merits of the case are fully detailed in the papers which I have the honor to enclose.

I avail myself of this occasion to renew to you the assurance of my distinguished consideration.

H. S. FOX.

HON. JOHN FORSYTH, &c., &c., &c.

[Enclosure.]

[SLAVE-TRADE—No. 7.]

FOREIGN OFFICE, May 30, 1840.

SIR: I transmit to you, herewith, a copy of a communication which I have received from Messrs. Stilwell, agents for the officers and crew of her Majesty's sloop "Harlequin."

Messrs. Stilwell state that her Majesty's brig "Harlequin" having met with a United States vessel, named "Wyoming," fitted up for the slave-trade, took her to New York, in order that she might be brought before the proper court of law in the United States to be tried for slave-trade ; but that an informality having been discovered in her papers, she was, on the ground of that informality, taken before a district court of New York, and was condemned in that port for a breach of the American navigation laws.

Messrs. Stilwell state that, by the United States law, the officers and crew of the "Harlequin" have, as informers in the case, a just title to one-fourth of the proceeds of the vessel, when sold, after condemnation of the court.

But Messrs. Stilwell solicit that, under the peculiar circumstances of the case, the captors may be allowed not only that fourth share, but also a portion, if not the whole, of the moiety of the proceeds which, by the law of the United States, appertains to the United States Government in cases of vessels condemned in courts of the Union, for offences similar to that on account of which the "Wyoming" was sentenced.

I have to desire that you will submit this application of Messrs. Stilwell to the United States minister, and that you will express the hope of her Majesty's Government that the United States Government will judge it worthy of their favorable consideration.

I am, with great truth and regard, sir, your most obedient, humble servant,

PALMERSTON.

H. S. Fox, Esq., &c., &c., &c.

[Sub-enclosure.]

ARUNDEL STREET, STRAND,
London, April 29, 1840.

MY LORD: As agents to Lord Francis Russell, the commander, and the officers and crew of her Majesty's sloop "Harlequin," we beg to address your lordship on the subject of a capture which was effected by that vessel on the 17th of May, 1839, off the river Gallinas, on the west coast of Africa.

The vessel captured was called the "Wyoming," of New York; and having been evidently fitted out for the traffic in slaves, (as the slave-deck was ready for laying,) was despatched to New York under the command of Lieutenant Beddoes, as prize officer.

Upon her arrival there, it was ascertained that the vessel, which, on reference to her register, (a copy whereof is herewith sent,) had been originally built at Baltimore, in the year 1838, had, on or about the 4th of March, 1839, been sold or transferred at the Havana, and that such transfer or sale had not been made known to the collector of the port of New York, or any other collector of the United States, as required by the act of Congress approved on the 31st of December, 1792, and entitled "An act concerning the registry and recording of ships and vessels."

It being thus apparent that a breach of the American navigation laws had been committed, proceedings were commenced against the said vessel in the district court of the southern district of New York; and the usual monitions having been issued and returned, and libel filed, the Hon. Samuel R. Betts, the judge of the said court, on the 15th October last decreed that the said brig "Wyoming," together with her tackle, apparel, and furniture, be condemned as forfeited to the United States; and, when sold, that the proceeds arising therefrom should be distributed according to law. A copy of this libel and decree are also herewith left.

We have had reference to the various acts of Congress, for the purpose

of ascertaining what right the captors had, by law, in the said proceeds; and find that, by the 29th section of the said act of 1792, the proceeds are to be distributed as directed by an act of Congress approved on the 4th of August, 1790, entitled "An act to provide more effectually for the collection of the duties imposed by law on goods, wares, and merchandise imported into the United States, and on the tonnage of ships and vessels."

On reference to that act, we find, by section 69, that the distribution directed to be made is as follows: one moiety to the American Government, and the other between the informer, and the collector, naval officer, and surveyor or surveyors of the district wherein the penalties shall have been incurred.

We have therefore to request that your lordship will, on the part of the captors, intercede with the American Government not only for the payment of the one-fourth of the proceeds to which they are by law entitled as the informers, but that, under the peculiar circumstances of this capture, the American Government will award to the captors the whole or some portion of the moiety of the proceeds to which they are by law entitled.

We have, &c.,

THOMAS STILWELL & SONS.

Rt. Hon. Lord Viscount PALMERSTON,

&c., &c., &c.

[Sub-enclosure.]

[No. 480.]

Four hundred and eighty.—Permanent. In pursuance of an act of the Congress of the United States of America, entitled "An act concerning the registry and recording of ships and vessels:"

Joseph A. Scovill, of the city, county, and State of New York, having taken or subscribed the oath required by the said act, and having sworn that he is the only owner of the vessel called the "Wyoming," of New York, whereof Nicholas Christopher is at present master, and is a citizen of the United States; and that the said ship or vessel was built at Baltimore, State of Maryland, during the year 1838, as per register No. 84, issued at Baltimore September 14, 1838, now surrendered—property changed; and said register having certified that the said vessel has one deck and two masts, and that her length is 88 feet 5 inches, her breadth 22 feet 2 inches, her depth 8 feet 10 inches, and that she measures 154 $\frac{1}{2}$ tons; that she is a brig, has a square stern, no galleries, and a billet-head; and the said Joseph A. Scovill having agreed to the description and admeasurement above mentioned and specified, and sufficient security having been given according to the said act, the said brig has been duly registered at the port of New York.

[L. s.] Given under our hands and seals at the port of New York, this 22d day of December, in the year 1838.

JOHN I. MUMFORD,

Deputy Collector.

W. S. COE, Naval Officer.

[Sub-enclosure.]

The President of the United States of America to all to whom these presents shall come—greeting :

Know ye, that we, having inspected the records and files of the district court of the United States for the southern district of New York, do find certain writings there remaining of record, in the words and figures following,^o to wit :

District court of the United States of America, for the southern district of New York.

At a special district court of the United States of America for the southern district of New York, held at the city of New York, in the said district, on the second day of September, in the year of our Lord 1839, comes Benjamin F. Butler, attorney of the said United States for the southern district of New York, who prosecutes in this behalf for the said United States ; and being present in this honorable court in his proper person, in the name and on the behalf of the said United States, alleges, propounds, and declares, as follows :

1st. That a certain brig or vessel, called the "Wyoming," was heretofore, that is to say on the 22d day of December, in the year 1838, at the port of New York, duly registered as a ship or vessel of the United States.

2d. That the said brig or vessel, so registered as aforesaid, was heretofore, to wit, on or about the 4th day of March, in the year of our Lord 1839, at the port of Havana, in the island of Cuba, sold and transferred, in whole or in part, by way of trust, confidence, or otherwise, to some person or persons to the said libellant unknown, said person or persons then being subjects or citizens of some foreign Prince or State to the said libellant unknown.

3d. That although the said brig or vessel was so sold or transferred as aforesaid, the said sale or transfer thereof was not made known to the collector of the port of New York, nor to any other collector of any collection district of the United States, as required by the act of Congress approved on the 31st day of December, 1792, entitled "An act concerning the registry and recording of ships and vessels."

4th. That the said brig or vessel, called the "Wyoming," is now in the port of New York, in the southern district of New York, and within the jurisdiction of this honorable court.

5th. That by reason of the premises, and by force of the statute in such case made and provided, the said brig or vessel, as aforesaid, her tackle, apparel, and furniture, have become forfeited to the use of the United States.

Lastly. That all and singular the premises are, and were, true, public, and notorious ; of which, due proof being made, the said libellant prays the usual process, and monition of this honorable court in this behalf to be made ; and that all persons interested in the said brig or vessel, or in her tackle, apparel, or furniture, may be cited in general or special to answer the premises ; and all due proceedings being had, that the said brig or vessel, with her tackle, apparel, and furniture, may, for the causes aforesaid, and others appearing, be condemned, by the definitive sentence and decree of this honorable court, as forfeited to the use of the United States, according to the form of the statute in such case made and provided.

B. F. BUTLER,

U. S. District Attorney for Southern District N. Y.

[Sub-enclosure.]

At a special term of the district court of the United States of America for the southern district of New York, held in the city of New York, in the said district, on the 15th day of October, in the year of our Lord 1839:

Present: the honorable SAMUEL R. BETTS, District Judge.

The UNITED STATES OF AMERICA

vs.

The BRIG "WYOMING," HER TACKLE, &c. }

Final Decree.

The monitions issued in this cause having been heretofore returned, and the usual proclamations having been made, and the default of all persons being duly returned: it is therefore, on motion of Benjamin F. Butler, Esq., attorney for the United States, ordered, sentenced, and decreed by the court now here, and his honor the district judge, by virtue of the power and authority in him vested, doth hereby sentence, order, and decree, that the brig "Wyoming," her tackle, apparel, and furniture, above mentioned, be, and the same accordingly is, condemned and forfeited to the United States.

And upon like motion, it is further ordered, sentenced, and decreed, that the clerk of this court issue a writ of *venditioni exponas*, to the marshal of this district, returnable on the first Tuesday of November next; and that, upon the return thereof, he distribute the proceeds according to law.

SAMUEL R. BETTS.

All of which we have caused, by these presents, to be exemplified, and the seal of the said district court to be hereunto affixed.

Witness, the honorable Samuel R. Betts, judge of the district court of the United States, for the southern district of New York, this 19th day of October, in the year of our Lord 1839, and of our independence the 64th.

FREDERICK J. BETT'S, *Clerk.*

I, Samuel R. Betts, judge of the district court of the United States for the southern district of New York, do hereby certify that the foregoing attestation is in due form.

SAMUEL R. BETTS.

NEW YORK, October 19, 1839.

Mr. Fox to Mr. Forsyth.

WASHINGTON, August 18, 1840.

SIR: With reference to the letter which I had the honor to address to you on the 15th instant, enclosing a correspondence between Commander Tucker, of her Majesty's ship "Wolverine," and Lieutenant Paine, of the United States schooner "Grampus," with the copy of an agreement entered into between those officers for mutual assistance and co operation in repressing the slave-trade on the coast of Africa, I now further enclose to you, by direction of her Majesty's Government, copies of additional correspondence from the same quarter, reporting the detention, in the Rio Pongos, by the commander of her Majesty's ship "Bonetta," of a schooner under Ameri-

can colors, called the "Sarah Anne," of New Orleans, charged with being engaged in the slave-trade, and the delivery of the said vessel by her Majesty's officers to the commander of the United States schooner "Grampus."

I avail myself of this occasion to renew to you the assurance of my distinguished consideration.

H. S. FOX.

Hon. JOHN FORSYTH, &c., &c., &c.

[Enclosure.]

[SLAVE-TRADE—No. 11.]

FOREIGN OFFICE, *June 29, 1840.*

SIR: With reference to my despatch, (Slave-trade, No. 10,) respecting an agreement between Commander Tucker, of her Majesty's ship "Wolverine," and Lieutenant Paine, of the United States schooner "Grampus," for mutual co-operation in suppressing the slave-trade, I herewith transmit to you a copy of a letter, and of its enclosures, from the Admiralty, stating that Lieutenant Stoll, of her Majesty's brig "Bonetta," had detained, in the Rio Pongos, a schooner under American colors, called the "Sarah Anne," and had delivered her up to the commander of the United States schooner "Grampus;" and I have to desire that you will communicate these papers to the United States Government.

I am, with great truth and regard, sir, your most obedient, humble servant,

PALMERSTON.

H. S. Fox, Esq., &c., &c., &c.,
Washington.

[Sub-enclosure.]

HER MAJESTY'S BRIG "BONETTA,"
Sierra Leone, March 16, 1840.

SIR: In consequence of information I had received, that a Spanish slaver was in the river Pongos, I seized, on the 3d instant, the vessel pointed out to me, concealed in an obscure muddy creek, where I could not have found her had not a native of the neighborhood, who was in the boat, led us to the spot. The vessel thus captured proved to be the "Sarah Anne," of New Orleans. On boarding, we found only three persons on deck, (two of them Spaniards, and one a Sardinian,) who stated that they knew not under what colors the vessel sailed; that the captain was called Don Raymond, and the mate Don Alberto.

The "Sarah Anne" has, 1st, a children's slave-room—the deck partly laid; 2d, bunks or sleeping-places on deck, to allow of the cabin being used for a woman's slave-room, as is customary in slavers; 3d, a larger quantity of leaguers and water casks than are necessary for her crew as a merchant vessel, without any custom-house certificate relative thereto; 4th, boilers, (four in number,) each capable of cooking a larger quantity of food than requisite for her crew as a merchant vessel; 5th, a large quantity of fire-wood. On searching, an American ensign and pendant, and an American muster-

roll and manifest, were found: these papers stating her to have cleared out at New Orleans on the 10th May, 1839, with an American crew, for Cape Mesurado. Two log-books were also found by me: by one of which, she was at Cape Mesurado on the 5th July, and reached the river Pongos on the 10th; and by the other, in the river Pongos on the last of that month. One, therefore, is evidently a false log.

By the track of her chart, she had proceeded direct from the Havana to the river Pongos; and, by the testimony of the men found on board, had sailed from New Orleans with a crew, consisting of the captain, (Don Raymond Zhently de Pedro, a Spaniard,) Don Alberto (or Albert) Slete, the mate, (whom they thought an American,) and three Spanish, one Austrian, one Sardinian, and one Genoese seaman, and one Spanish boy. They also stated, that at the Havana the "Sarah Anne" embarked Don Juan, a passenger, a mate, and the boatswain, (a Spaniard.) One of the Spaniards from on board stated that he had been wrecked in the American pilot-boat, on the bar of the Pongos, and had applied to Don Alberto for passage to Havana, which had been granted him.

The vessel was aground in the creek at half ebb when seized, which detained us for some hours, affording plenty of time for any communication by boat from the mate or master; but no one came, though we heard a hailing (in English) from among the mangroves, which reached to the water's edge on each side of the vessel; which hailing, the men of the crew attributed to the mate. As soon, however, as we began to warp her out, a fire of musketry was directed upon the boats, and a second volley upon the vessel, which a prompt return silenced. When we had cleared the creek, the mate (Albert Slete) came on board, and stated that he was an American. His trowsers were muddy, and he said he had been in the mangroves; which renders it extremely probable that he was with the party who fired on us. Coupling this circumstance with the fraud apparent on the vessel's papers, and her destination, cargo, and crew having, according to the statement of the men left on board, been falsely deposed to, even at the port of clearance, I detained Slete, and brought the vessel to this port, believing her to be Spanish property; but as no official Spanish papers have been found, and the fraudulent use of the American flag, in this instance, is such as will, I feel assured, call forth the strong displeasure of the Government of the United States, while various Spanish papers and instructions may, with the evidence of the detained men, lead to the conviction of such of the persons concerned as may prove to be American citizens, I beg to give up to you, for adjudication in America, the vessel and her papers in the same state as when captured, with the persons belonging to her who have been detained.

The captain, (Ramon Zority de Pedro,) who has reached this place in a canoe, was taken, not long since, in a small vessel condemned here; the particulars of which I will obtain from the court, if he can be traced; but the use of fictitious names may defeat my purpose.

I enclose lists of all the papers found on board, and of all persons who have belonged to the vessel, according to the testimony of the men detained, with particulars as they have stated, in order that their future statements may be checked, should they attempt concealment of facts. I enclose also an abstract of some particulars from the log.

Having had the pleasure of cordial intercourse with the officers of both the American cruisers employed in the suppression of the slave-trade, I may

be permitted to add, that, with such unanimity of feeling and objects as exists between us, and is manifested by the two great nations to which we have the honor and happiness to belong, the fraudulent adoption of the American flag will no longer avail the foreign pirates who attempt to sully it, by falsely claiming, for purposes of a blood-stained traffic, the character and privileges of American citizens, through perjury, subornation, and heartless fraud.

I have, &c.,

JOHN L. STOLL.

Lieut. PAINE,

Commander of the U. S. schooner "Grampus."

[Sub-enclosure.]

UNITED STATES SCHOONER "GRAMPUS,"

Sierra Leone, March 16, 1840.

SIR: I have the honor to acknowledge the receipt of your letter of this date, offering to deliver over to me the schooner "Sarah Anne," of New Orleans, taken at the river Pongos as a slaver, and on suspicion of being Spanish property.

Ramond Fronte, the person named, and whose signature is affixed as captain of the "Sarah Anne," has written to me to claim protection as an American citizen, and I have detained him on suspicion of slave-trading. I will make an arrangement to receive the vessel from you as soon as an anchor and a boat can be procured, of which it seems she is destitute.

I am confident that I only carry out the views of my superiors in office, in thanking you, and offering my cordial co operation for the suppression of the slave-trade, as far as our existing treaties allow us to act.

I am, &c.,

JOHN S. PAINE,

Lieutenant Commanding.

Lieut. JOHN L. STOLL,

Commanding her Majesty's brig "Bonetta."

[Sub-enclosure.]

HER MAJESTY'S BRIG "BONETTA,"

Sierra Leone, March 16, 1840.

SIR: Referring to my letter of the 16th instant, reporting my proceedings to this date, I beg to enclose copies of correspondence with the commander of the United States schooner "Grampus," relative to the transfer to him of the American schooner "Sarah Anne," of New Orleans, detained for having engaged in the slave-trade; which vessel he purposes sending to America for trial.

I have, &c.,

JOHN L. STOLL,

Lieutenant Commanding.

Commander TUCKER,

Her Majesty's sloop Wolverine, Senior Officer, &c.

[Sub-enclosure.]

HER MAJESTY'S SLOOP "WOLVERINE,"
Sierra Leone, March 17, 1840.

SIR: With reference to my letter of the 9th instant, (No. 114,) transmitting copies of letters from Lieut. Stoll, reporting his having detained a schooner under American colors; and referring to my letter of the 12th instant, (No. 115,) transmitting copies of the correspondence between Lieut. Paine, commander of the United States schooner "Grampus," and myself, I have now the honor to transmit the accompanying copies of the correspondence between Lieutenant Stoll, commander of her Majesty's brigantine "Bonetta," and Lieutenant Paine, commanding the United States schooner "Grampus," relating to the abovementioned schooner, detained under American colors, which Lieut. Stoll has handed over to Lieut. Paine, as fully explained in their letters; and I beg to call your attention to the great friendly feeling which exists between the two services, and the prompt and decided measures taken by Lieut. Paine.

I have, &c.,

WILLIAM TUCKER,
Commander and Senior Officer.

Rear Admiral Hon. GEO. ELLIOT,
Commander-in-chief.

Mr. Fox to Mr. Forsyth.

WASHINGTON, August 19, 1840.

SIR: With reference to previous communications which I have had the honor to address to you upon the subject of the African slave-trade, carried on through the fraudulent assumption of the American flag by the illicit slave-traders of other nations, I am directed by her Majesty's Government to communicate to you the enclosed copy of a despatch, which was addressed, at the close of last year, by her Majesty's consul at the Cape Verde islands, to the British commissioners for the suppression of slave-trade at Havana, containing information with respect to two vessels, under American colors, then recently engaged in slave-trade on the African coast; and containing information also with respect to the meditated establishment, between Cuba and the African coast, of regular companies for the joint purposes of piracy and slave-trade; the chief means of executing which nefarious design will be afforded, there is reason to apprehend, by a fraudulent use of the flag of the United States.

I at the same time forward to you, by direction of her Majesty's Government, a list of American vessels which arrived at Havana from the coast of Africa during the year 1839, and lists of American vessels which were despatched from Havana for Africa during the year 1838, as furnished to her Majesty's Government by the British commissioners at Havana.

The United States Government will regret to learn that in the year 1838 *nineteen* vessels, and in the year 1839 *twenty-three* vessels, bearing the flag of the Union, left Havana for the coast of Africa, under the strongest suspicion of being engaged in the slave-trade.

I avail myself of this occasion to renew to you the assurance of my distinguished consideration.

H. S. FOX.

Hon. JOHN FORSYTH, &c., &c., &c.

[Enclosure No. 1.]

BRITISH CONSULATE,
Boa Vista, Cape Verdes, November 30, 1837.

GENTLEMEN: Information has just reached me of the arrival of two vessels, under American colors, at the island of "Sal," originally from the Havana, but last from the coast of Africa, where it is reported they have landed their cargoes.

They are both schooners, and American built: one a Baltimore clipper, and the other a New York pilot boat. They have American colors and sailing captains, but the crews are principally Spanish and Portuguese. Their object in visiting Sal is said to be to complete arrangements for taking in a cargo of slaves upon the coast. A most respectable inhabitant of these islands, who has seen the vessels in question, and been in conversation with the parties connected with them, informs me that he has learnt of two companies being about to be formed at the Havana: one to carry on the slave-trade by vessels, which will be ordered to keep at a certain distance from the coast, and there wait to receive their cargoes from small vessels under the French flag; and the other company to equip a certain number of small fast-sailing vessels, to act as pirates upon the commerce of Great Britain.

My informant's belief is (and I have also heard the same opinion expressed in another quarter) that the vessels alluded to belong to these companies, and that the largest schooner looks for a cargo of slaves from the neighborhood of Senegal and Gorée, and that it is the intention of the pilot-boat to try her luck as a pirate upon British commerce near to these islands. A period of two months is given before they intend returning to the Havana.

It is supposed that these islands, from their neglected state, will be made the rendezvous for the slave-dealing, piratical set of Cuba, who seem determined to use every art and exertion which money can effect to counteract the recent measures of Great Britain for the suppression of the slave-trade.

I trust that these representations will induce her Majesty's Government to order a man-of-war to these islands; and, should there be one at disposal in your vicinity, I have earnestly to recommend her being sent to look after the vessels here spoken of, calling at this port for information.

I have, &c.,

JOHN RENDALL,
Her Britannic Majesty's Consul.

HER MAJESTY'S COMMISSIONERS,
&c., &c., &c., Sierra Leone.

List of vessels, under the American flag, which sailed from the Havana for the coast of Africa during the year 1838.

No.	Date.	Class.	Name.	Destination.	Remarks.
1	January 19	Schooner	Gabriel	Isla del Principe	Returned 16th September.
2	February 22	Brig	Alexander	San Tomé.	
3	May 7	Schooner	Mary Hooper	Cape de Verdes.	Returning 7th January as Duqueza de Braganza.
4	May 9	Brig	Eagle	San Tomé.	
5	June 16	Schooner	Fame	San Pablo de Loanda.	
6	July 18	Schooner	Traveller	Isla del Principe.	
7	July 23	Schooner	John Holland	San Tomé.	
8	August 18	Schooner	Dolphin	San Tomé.	
9	August 22	Brig	Plant	Cabo Verde.	
10	August 23	Ship	Venus	Bahia de Todos los Santos.	
11	August 27	Schooner	Shark	Cabo Verde.	
12	August 29	Brig	Mary Jane	Cabo Verde	
13	Septem. 18	Brig	Comet	Cabo Verde	Returned January 4, 1839.
14	October 9	Schooner	Florida	Cape de Verdes.	
15	October 11	Schooner	Hazard	San Tomé.	Captured.
16	Novem. 7	Schooner	Clara	San Tomé	
17	Decem. 3	Schooner	Liberty	Rio Pongos.	
18	Decem. 22	Schooner	Constantia	San Tomé.	
19	Decem. 24	Schooner	William Savin	Bahia de Todos los Santos.	

List of vessels, under the American flag, which sailed from the Havana for the coast of Africa, during the year 1839.

No.	Date.	Class.	Name.	Destination.	Remarks.
1	Jan. 23	Schooner	Rebecca	Gallinas.	
2	Jan. 26	Brig	Oriental	Lagos	
3	Feb. 8	Schooner	Wm. Bayard	Cape de Verdes.	Returned Oct. 21, and sailed 26th for N. Orl'ns.
4	Feb. 19	Brig	Morris Cooper	Lagos.	
5	Feb. 21	Schooner	Perry Spencer	Gallinas.	
6	Mar. 6	Brig	Wyoming	Pitavasa	Captured, and carried to United States.
7	Mar. 6	Schooner	Octavia	Costa de Oro	Returned September 2.
8	Mar. 21	Schooner	Jos. Wilding	Cape de Verdes.	
9	June 17	Schooner	Hound	Lagos.	
10	June 17	Brig	Mary	Gallinas	Returned November 12.
11	June 25	Schooner	Catherine	Gallinas and Bonny	Captured by H. M. S. Dolphin, and carried to
12	June 26	Schooner	Elvira	Prince's Island.	[United States.
13	July 2	Schooner	Butterfly	Isla del Principe	Captured by H. M. S. Dolphin, and carried to
14	Aug. 1	Brig	Douglas	Bonny.	[United States.
15	Sept. 10	Schooner	Lark	Isla del Principe.	
16	Sept. 21	Schooner	Hound	Cape Mesurado & Gallinas.	
17	Sept. 24	Schooner	Cutter Campbell	Gallinas.	
18	Oct. 12	Schooner	Nymph	Rio Braza.	
19	Oct. 23	Ship	John	Costa de Oro.	
20	Nov. 14	Schooner	Asp	Rio Braza.	
21	Dec. 11	Schooner		Isla del Principe.	
22	Dec. 16	Schooner	Centipede	San Tomé.	
23	Dec. 23	Schooner	Hyperion	San Tomé.	

NOTE.—American schooner "Hound" at St. John's, Puerto Rico, about the middle of November, bound to Africa.

[Enclosure No. 4.]

List of American vessels which have arrived from the coast of Africa, during the year 1839, at the port of Havana.

No.	Date.	Class.	Name.	Master.	Remarks.
1	Jan. 4	Brig	Comet	Dickson	From Gallinas.
2	Sept. 2	Sch'r	Octavia	Hickaling	From Gold coast.
3	Oct. 24	Sch'r	Oriental	Hatch	From Bahia de San Salvador.
4	Nov. 12	Brig	Mary	Hutton	From Gallinas and Porto Rico.
5	Dec. 25	Brig	Alexander	Hill	From Isla del Principe.

Mr. Fox to Mr. Forsyth.

WASHINGTON, August 20, 1840.

SIR: I am directed by her Majesty's Government to communicate to you, for the information of the Government of the United States, the enclosed authentic printed copy of an apostolical letter, or brief, which was promulgated by his Holiness the Pope, on the 3d of December last, admonishing and enjoining all Catholics to abstain from the crime of trading in slaves under any form whatever.

It is to be hoped that this pious act, on the part of the head of the Roman Catholic Church, will prove of material efficacy in arresting the progress of a sinful and inhuman traffic, which it is the bounden duty of all Christian Governments to use their utmost efforts for suppressing.

I avail myself of this occasion to renew to you the assurance of my distinguished consideration.

H. S. FOX.

Hon. JOHN FORSYTH, &c., &c., &c.

[Translation of enclosure.]

Apostolical letter of our most Holy Lord, Gregory XVI., by Divine Providence, Pope, against the traffic in negroes. (De nigratarum commercio non exercendo.)

ROME.—FROM THE PRESS OF THE REV. APOST. CHAMBER, 1839.

POPE GREGORY XVI., FOR FUTURE COMMEMORATION.

Placed on the summit of apostolical power, and, through no merits of our own, vicegerent of Jesus Christ, the Son of God, who, through his exceeding love, became man, and vouchsafed to die for the redemption of the world, we deem that it becomes our pastoral solicitude that we should seek to turn the faithful altogether from the unfeeling traffic in negroes, or any

other human beings. Verily, when the light of the gospel first began to diffuse itself, those unfortunate men, who, by occasion of so many wars, had fallen into cruel servitude, felt their condition among Christians very much alleviated. Inspired, indeed, by the Divine Spirit, the apostles taught servants to render obedience to their masters in the flesh, as unto Christ, and to do the will of God with a cheerful mind: yet they commanded also unto masters that they should use their servants kindly; that they should render unto them what is just and right, and that they should not employ threats; remembering that the God of both is in heaven, and that with him there is no respect of persons. Since, then, true charity towards all men is every where strongly inculcated by the evangelical law, and Christ our Lord has declared that, whatever kindness or mercy is rendered or denied to the weak or the indigent, he will consider as rendered or denied unto himself, it is clear, that not only should Christians regard their Christian servants in the light of brothers, but, also, that they should humble themselves before those who are worthy to be free; which, indeed, Gregory Nyssenus indicates to have been customary, at first, upon the occasion of the solemnities of Easter. Nor were those wanting, who, animated by a more ardent charity, *delivered themselves into bonds, that they might redeem others*; of whom, the apostle testified that he knew many; as also our predecessor, Clement I, of most holy memory. Therefore, in the progress of time, when the darkness of heathenish superstition was entirely dissipated, and the manners of uncivilized races had been mollified by the beneficent influence of that faith which worketh through love, for successive ages, no slaves existed among many Christian nations. Yet, truly, we are grieved to say that afterwards, even among the number of the faithful, there were those who, shamefully blinded by the lust of sordid lucre, in scattered and remote lands, reduced Indians, negroes, and other unfortunate beings, into slavery; or, the traffic in those who had been made captive by others having been commenced and augmented, did not hesitate to encourage or profit by such unworthy actions. Several of the Roman pontiffs, our predecessors, did not, indeed, fail to reprehend severely, by virtue of their office, the course of these, as noxious to their own salvation, and opprobrious to the Christian name; from which they beheld, as a consequence, the nations of the unfaithful confirmed in their animosity to our true religion. To which things relate the apostolic letter of Paul III, given on the 29th of May, 1537, under the ring of the Fisherman, to the Cardinal Archbishop of Toledo; and another, and ampler, of Urban VIII, given on the 22d of April, 1639, to the collector of the laws of the apostolic chamber in Portugal; in which letters they are gravely rebuked by name, *who reduce into slavery western or southern Indians; who buy, sell, exchange, or give them away, separate them from their wives and children, despoil them of their goods or possessions, carry or send them to other regions, or in any manner deprive them of their liberty, retain them in servitude, or render counsel, favor, or assistance to those who are guilty of such acts, under any pretext or color whatever, or presume to teach or preach the same to be lawful, or in any manner co operate therewith.*

These decrees of pontiffs, to be ever held in remembrance, Benedict XIV subsequently confirmed and renewed, in a new apostolical letter to the prelates of Brazil, and certain other regions, given on the 20th December, 1741, in which he stimulated their vigilant solicitude throughout the bounds of their ecclesiastical districts. Before this, however, a more ancient of our

predecessors, Pius II, when, in his day, the power of the Portuguese was extended to Guinea, the region of the negroes, gave a letter on the 7th October, 1462, to the bishop about to proceed thither, in which he not only granted to this prelate all the faculties opportune for the exercise of the holy ministry with greater fruit, but, on the same occasion, gravely rebuked those Christians who carried away converts into slavery. And, also, in our own times, Pius VII, impelled by the same spirit of religion and charity which animated his predecessors, employed his influence assiduously with the powerful, that the traffic in negroes might, at length, altogether cease among Christians. These decrees and efforts of our predecessors did, indeed, avail not a little, by the grace of God, in protecting the Indians, and others referred to, from the cruelty of invaders, or the cupidity of Christian merchants; not so much, however, that this Holy See can rejoice in the full accomplishment of its desires, since the traffic in negroes, although diminished in some parts, is still practised by many Christians. Wherefore, we, desiring to avert so great a reproach from all the borders of Christianity, and the whole matter (a council of some of our venerable brethren, the cardinals, being called) having been duly weighed, walking in the footsteps of our predecessors, by our apostolical authority admonish and conjure earnestly, in the Lord, the faithful of Christ, of every condition, that hereafter they do not unjustly molest Indians, negroes, nor any other race of men, nor spoil them of their goods, nor reduce them into slavery, nor render countenance or assistance to those guilty of such practices; nor carry on that inhuman commerce by which negroes, as though they were not men, but mere brutes, held in any manner of servitude, without distinction, against the laws of justice and humanity, are bought, sold, and devoted to cruel and sometimes intolerable labor: and, moreover, through the love of gain, held out to the first possessors of the negroes, dissensions and perpetual wars fomented throughout the regions which they inhabit. Verily, all these practices, as altogether unworthy of the Christian name, we reprobate by our apostolical authority; and by the same authority we strictly prohibit and interdict any ecclesiastic or layman from defending the traffic in negroes as lawful; under any pretence whatever, and from presuming to preach, or in anywise teach, in public or private, any thing at variance with the admonitions contained in this apostolical letter.

And, in order that this letter may be more readily known to all, and that no man may plead ignorance of it, we decree and order that, as is the usage, it be published, and copies of it remain affixed on the doors of the church of the Prince of the Apostles, and of the apostolical chamber, and of the general court in Monte Cretario, &c., by one of our messengers. *

Given at Rome, in the church of Santa Maria Maggiore, under the ring of the Fisherman, on the 3d day of December, 1839; of our pontificate the ninth year.

ALOISIUS CARD. LAMBRUSCHINI.

Mr. Fox to Mr. Forsyth.

WASHINGTON, August 21, 1840.

SIR: With reference to former communications, which I have had the honor to address to you by order of her Majesty's Government, upon the subject of the lamentable extent to which the African slave-trade is carried

on through means of the fraudulent assumption of the American flag, which protects the miscreants and pirates engaged in that detestable traffic from capture and condemnation by her Majesty's officers, I have now further to communicate to you the enclosed despatch, with documents annexed, relating to a vessel called the "Perry Spencer," detained on the coast of Africa, in the month of May last, while engaged in the illicit traffic of slaves. The "Perry Spencer," it will be seen, hoisted at one time Spanish, and at another time American colors. Under the former character, she was seized by one of the British cruisers, and carried for trial before the mixed court of commission at Sierra Leone; but it appearing, upon investigation, that she was furnished with an American pass, granted by the United States consul at Cuba, the court of commission held itself bound, in consideration of such consular act of recognition, (notwithstanding the obvious Spanish ownership and Spanish character of the transaction, and although the pass had been obtained for the sole purpose of fraudulently covering Spanish interests,) to release the slaves, and dismiss the cause.

The circumstances of this case appear to be well deserving the attention of the United States Government, with a view to the adoption of effectual measures for preventing such unworthy abuse of the American flag.

Lavall myself of this occasion to renew to you the assurance of my distinguished consideration.

H. S. FOX.

HON. JOHN FORSYTH, &c., &c., &c.

[Enclosure.]

[SLAVE-TRADE—No. 12.]

FOREIGN OFFICE, July 9, 1840.

SIR: Her Majesty's Government has learnt, by accounts recently received from Sierra Leone, that, on the 8th May, 1839, her Majesty's brigantine "Lynx," Lieutenant Brodhead commander, met with and boarded a schooner named the "Perry Spencer."

The "Perry Spencer," on being boarded, hoisted American colors; she was found to be equipped for slave-trade, and her papers showed that she belonged to Spanish merchants resident at the Havana.

Lieutenant Brodhead having acquainted the master of the "Perry Spencer" that his vessel must proceed to New York to be tried, on account of the irregularity of the vessel's papers, the master hauled down his American colors, and hoisted Spanish colors, and declared the vessel to be a Spanish vessel.

On this last mentioned statement, Lieutenant Brodhead took the "Perry Spencer" to Sierra Leone, to be tried as a Spanish vessel by the mixed British and Spanish court of justice at that place.

On investigation, it appeared that the vessel was furnished with an American pass, which had been granted to her by the United States consul in Cuba; and although the papers discovered by the captor proved that the American character which the vessel had assumed was only a cover for Spanish interests, the court was of opinion that the recognition of her nationality, by a consular agent of the United States, rendered it improper in the captor to exercise over her a right of search; and the court therefore dismissed the case.

I transmit to you, for communication to the United States Government, an abstract of the papers found on board the "Perry Spencer." This case is another instance of the application of the flag of the Union to purposes of slave-trade; and her Majesty's Government trusts that the United States Government will be led to take more effectual measures than it has hitherto done to prevent a continuance of this abuse.

I am, with great truth and regard, sir, your most obedient, humble servant,
PALMERSTON.

HENRY STEPHEN FOX, Esq., &c., &c., &c.

[Sub enclosure.]

Abstract of the papers of the schooner "Perry Spencer," Joseph Monroe master.

No. 1 is an American register, marked "No. 27, permanent," dated at Mobile, on the 2d of April, 1838, declaring that the schooner "Perry Spencer" was of the burden of 79 $\frac{3}{5}$ tons; that she was owned by the firm of Austin & Tardy, jointly with Edward Griffin, all of Mobile; that Dominique Naguet was captain; and that the said ship was built in Dorchester, State of Maryland, as appeared by register No. 20, issued at Mobile on the 6th March, 1838, (only twenty-seven days before the present register was issued,) which is now surrendered, the property being changed.

There is only one endorsement on the register, made by Mr. J. A. Smith, the American vice consul at Havana, on the 27th of January last, stating that Joseph Monroe, the present master, had taken the oath required by law, and was in command of the vessel, in lieu of Dominique Naguet, the late master.

No. 2 is a list of persons composing the crew of the schooner "Perry Spencer," of Mobile, whereof is master Joseph Monroe, and bound for Cape de Verds, (islands.) It is dated at Havana, on the 21st of February last, and is signed "Joseph Monroe," by a man who evidently can hardly write. The list contains the names of only four persons: of these, two are said to be American citizens, belonging to Baltimore, and the other two are merely said to reside at Havana; but it is not mentioned of what country they are citizens or subjects; and, with respect to all four, no note whatever is made as to their "place of birth," although a column in the printed form was provided for the purpose. But to this imperfect muster-roll of only *four* seamen (in which the blanks are, even to this day, not filled up) is attached a certificate from the same Mr. J. A. Smith, under his signature and seal of office, in the following words: "Havana, February 21st, 1839.—I, J. A. Smith, vice consul of the United States of America, do hereby certify, that, on the day of the date hereof, before me personally appeared Joseph Monroe, master of the schooner 'Perry Spencer,' of Mobile; and, being duly sworn, did declare that the list hereunto attached contains the names of the persons composing the crew of the said vessel, together with the places of their birth and residence, so far as he can ascertain the same." And yet there is not a single entry of the place of birth opposite one of the names in the muster-roll.

No. 3. From Havana, the "Perry Spencer" appears to have gone direct

to Matanzas, as there is a custom-house clearance from the latter place on the 26th of February last.

No. 4 is an invoice, or bill of parcels, dated at Havana, on the 9th of February, 1839, and headed "Ildefonso Perez to Torres & Rodrigues, Dr."

Then follows a regular account of goods—apparently the cargo shipped on board the "Perry Spencer," at Havana. It is written in English—probably from a copy, but evidently by a person who did not understand the English language. Dozen is spelt "dozains;" "tobaco," "rom," "razon," mean tobacco, rum, razors; and the words "sum of backwar" are met with, instead of "amount brought forward." There is no signature to the invoice, which makes Ildefonso Perez a debtor to Torres & Rodrigues in the sum of \$8,961.

Nos. 5 and 6 appear to be exact copies of the same invoice, but written in the Spanish language.

No. 7 is a private agreement written in Spanish, and laying open the real character of the vessel, the illegal objects of her voyage, and the position which the American master occupied on board. The following is a translation :

"This document is to show that we, the undersigned, Joze Monroe on one side, and Francisco Costa on the other, have agreed to what follows :"

"1st. I, Joze Monroe, engage to conduct the American schooner 'Perry Spencer' to the port of Gallinas, in Africa, or to any other which her owner and master, Don Francisco Costa, may direct me; he paying me at the rate of ninety dollars per month during the time which I remain on board.

"2d. And I, Francisco Costa, owner and master of the said schooner, engage to pay the said Joze Monroe, as her captain, at the rate of ninety dollars per month during the time which he may remain on board; and, in case it should suit my interest and that of the undertaking to sell the vessel, it shall be obligatory upon me to keep him on board, paying him the same monthly wages of ninety dollars until she return to the city of Havana; and, for mutual protection, we have signed two documents of this tenor, at Havana, on the 20th February, 1839.

" FRANCISCO COSTA,
" JOSEPH MONROE.

" Witnesses :

" M. H. MORRIS,

" FRANCISCO GOU MOLE."

No. 8 is the log-book of the vessel, written in Spanish. It is very imperfect; and some of its leaves have been torn out, both at the beginning and end. The first date is February 28, 1839, when the schooner had left Matanzas; and the last date is April 30, 1839, eight days previous to capture.

SIERRA LEONE, *June 17, 1839.*

Mr. Fox to Mr. Forsyth.

WASHINGTON, *February 1, 1841.*

SIR: I duly communicated to her Majesty's Government the official note which I had the honor to receive from you, dated April 1, 1840, wherein, with reference to a previous letter that I had addressed to you upon the

subject of a schooner called the "Rebecca," captured on the coast of Africa by one of her Majesty's cruisers, and condemned as a Spanish slaver, and whose case offered an instance of resort by Spanish slave-traders to the protection of the flag of the United States, you requested, on the part of the United States Government, that further authentic documentary evidence touching the case might be procured, in order to enable the courts of this country to proceed effectually against the persons implicated for violation of existing laws.

Reference having accordingly been made, without delay, by her Majesty's Government, to the British commissioners for the suppression of the slave-trade at Sierra Leone, I have now the honor to transmit to you the copy of a despatch received by her Majesty's Government, in reply, from the British commissioners, and, together therewith, a series of certified copies of papers and documents connected with the case of the slave-vessel "Rebecca."

I avail myself of this occasion to renew to you the assurance of my most distinguished consideration.

H. S. FOX.

Hon. JOHN FORSYTH,
Sec., Sec., Sec.

[Enclosure No. 1.]

[No. 24—SLAVE TRADE.]

FOREIGN OFFICE,
 December 17, 1840.

SIR: I received your despatch (Slave-trade, No. 3) of April 1, 1840; and, in compliance with the wish therein expressed, on the part of the United States Government, to be furnished with documentary evidence touching the facts disclosed in the case of the United States slave schooner "Rebecca," I directed her Majesty's commissioners to furnish me with any evidence in their possession on the points referred to. And I now transmit to you, for communication to the United States Government, a copy of a despatch from her Majesty's commissioners, enclosing certified copies of papers connected with the case of the vessel above mentioned.

I am, &c.,

PALMERSTON.

HENRY STEPHEN FOX, Esq.,
Sec., Sec., Sec.

[Enclosure No. 2.]

[No. 67—SPAIN.]

SIERRA LEONE, August 3, 1840.

MY LORD: We have had the honor of receiving your lordship's despatch, (No. 11,) of the 8th of May last, and its two enclosures, acquainting us that your lordship had communicated our report of the case of the condemned slave schooner "Rebecca" to the Government of the United States, with a

view to their taking measures for preventing the American flag being abused for the purposes of the slave-trade, as it had been in the instance in question ; and that it is, in consequence, the wish of the United States Government to be placed in possession of documentary evidence whereon to pursue legal measures against the citizens of the United States concerned in this transaction.

In compliance with your lordship's directions, we now beg leave to transmit certified copies, under the hand of the registrar, and the seal of the mixed commission, of such papers respecting the case of the "*Rebecca*" as appear calculated to effect the object in view by the United States Government.

The papers so forwarded consist of a copy of the original letter of Mr. F. Neill, the American owner and seller of this vessel, instructing his captain (Watson) to convey her from Havana to the Gallinas, under the United States flag and pass, for delivery there to Pablo Alvarez, in conformity with an agreement he had made with José Ealo, of Havana ; and having so done, that Captain Watson was to return the said pass, cut into two parts, by separate conveyances, to him (Neill) at Baltimore, so as to enable him to cancel his bond with the customs. Also a copy of the Spanish mate's original receipt, on the transfer of the vessel from the said American captain, (Watson,) on her arrival at Gallinas, to Pablo Alvarez.

There is also a copy of the translation of the custom-house clearance at Havana, showing that the "*Rebecca*" cleared out as an American vessel, and was commanded by Watson ; a copy of the translation of the instructions from the *bona fide* Spanish owners of this vessel, (the well known Yriare, and Trigoyen, of Havana,) to their Spanish captain, Domingo Artata, in which he is directed to have the American flag kept flying until the cargo (slaves) is put on board ; and copies of the translations of two letters from Trigoyen, and a number of persons at Havana concerned in some slave adventure, in which is mentioned the sailing of the "*Rebecca*," really under the command of the Spanish master, Artata, and not under the command of the American, (Watson,) in whose name she had been cleared out at the Havana.

The foregoing papers are accompanied by copies of the depositions of the Spanish mate and American captain, taken before the British and Spanish mixed court, in the trial of the brigantine "*Rebecca*," which serve further to explain the proceedings connected with the transfer of this vessel from the American to the Spanish flag.

We have, &c.,

WALTER W. LEWIS,
R. DOHERTY.

VISCOUNT PALMERSTON,
G. C. B., &c., &c., &c.

[Sub-enclosure.]

Original papers found on board the "Rebecca."

"HAVANA, January 21, 1839.

"SIR : You will proceed with the schooner '*Rebecca*,' under your command, direct from here to Gallinas ; and on your arrival there, deliver her

up to Don Pablo Alvarez, of the said place, agreeably to an arrangement I have made here with Don José Ealo; looking to either of them for any demand you may have for your services, as well as the crew and officers.

"Your obedient servant,

"F. NEILL.

"You will, upon your arrival at Gallinas, after delivery of the schooner 'Rebecca' aforesaid, send her register, in two different vessels, to me at Baltimore—cutting in the middle—in order that I may cancel my bonds in the custom-house.

"F. NEILL.

"Captain GEO. WATSON,
"Com. American schooner 'Rebecca,' Havana."

"SCHOONER 'REBECCA,'
"Gallinas, March 20, 1839.

"I hereby acknowledge that I this day took charge of the schooner 'Rebecca,' lately under your command, in the name of Don Pablo Alvarez.

"NICOLAS ECHEVARRIA."

[Translations of papers found on board the "Rebecca."]

HAVANA, January 21, 1839.

From Havana to Gallinas.—The American schooner "Rebecca," Captain Watson.

I, Don José Perez Santin, honorary provincial intendant, effective commissary of war of the first class of the royal armies, and administrator general of the royal maritime revenues of this capital, for her Majesty, &c., do certify, that, by the intervention of the señor honorary accountant of the army and principal of this royal custom-house, Don Tomas Rodriguez de Yurre, there have been embarked in the American schooner "Rebecca," Captain Watson, bound for Gallinas, the following, Don José de Ealo: twenty-six casks of rice; three half-barrels of rice; seven bags of rice; five hundred and thirty-one demijohns of rum; fifty-four more demijohns of rum; forty barrels of biscuit; fifteen guns; five hundred half-barrels of gunpowder; and sundry provisions and liquors for the mess; twenty-seven bales from the depôt; ten barrels of tobacco, in leaf, also from the depôt.

JOSE PEREZ SANTIN.

Instructions for Señor Don Domingo Artata.

HAVANA, January 21, 1839.

On your arrival at Gallinas, you will place yourself under the orders of Don Pablo Alvarez, and observe those which he may give you with the greatest exactness. You will both take care that the American schooner "Rebecca" keeps her flag till the moment of putting the cargo on board. You will bring in the vessel citizen Watson, with a slave (bulto) which he has our permission to bring with him. When loaded, you will steer directly to this island, and take the port that may be most convenient, pro-

vided it be to the west of Trinidad on the southern side, or of San Juan de los Remedios on the northern; and whatever may be the point to which you proceed, you will keep the vessel at anchor there, and the cargo ashore, until you advise us of your arrival, and we proceed thither, or send some one on our behalf. If, in consequence of any unforeseen circumstance, you should arrive at a port in this island more to the eastward than those which we have mentioned above, you will send the vessel to this port; and it will remain, with the slaves (bultos) ashore, at your disposal, until we proceed thither, (upon your advising us,) or send some person in our stead, without appointing any consignee; and you will either borrow sufficient for your expenses, or sell the articles which may be absolutely necessary for that purpose. You are on no account to consider the voyage terminated at Puerto Rico, though you should be obliged to go in there; and must only supply most necessary wants, and proceed to this island. You will address yourself, if you should be obliged to put in there, to Don Martin José Machicota, on account of Don Tomás Trigoyen.

SILVÉSTRE IRIARTE,
TOMAS DE TRIGOYEN.

Señor Don Juan Batalla, Gallinas, recommended to Artata by his friend Trigoyen.

HAVANA, *January 22, 1839.*

SIR, AND MY FRIEND: In consequence of your two esteemed letters of 10th and 24th October of last year—the first from Petit Bassa, and the second from Gallinas—we have determined to despatch to you a vessel of (capable of carrying) 300 to 350 slaves (bultos) within twenty or thirty days; and her not being yet bought is owing to Don Manuel Masino not having sold, till to-day, his share of her. The vessel will carry all of the merchandise, and every thing else that you ask for; and even if you were to make 1,500 slaves (bultos) per annum, you would not exhaust your resources, for you have only to ask for what you require. This letter is carried by the master of the schooner Rebecca, Don Domingo Artata, which goes consigned to Don Pablo Alvarez, who has been written to, under this date, to request him to assist you as far as he is able; and it would not be amiss if you were to put yourself in communication with him as soon as you receive this, to try to send us a splendid expedition.

I remain, &c.,

TOMAS DE TRIGOYEN.

HAVANA, *January 22, 1839.*

SIR: Availing ourselves of the opportunity of the schooner Euphrates—Captain Don Pedro Torres, we wrote to you as outfitters, and in the name of the other persons interested in the expedition of the Constitucion, which you commanded; of the loss of which vessel we were aware, and for which occurrence we expressed our sorrow. If that letter fortunately reached you, it will have informed you of our desire to send you another vessel for the purpose of saving the remains of that one; and that we only delayed

sending her till you had acquainted us with the state of our affairs in your charge, and with the arrangements which circumstances had obliged you to adopt.

In effect, your favors dated last October arrived; and, in consequence of what you have communicated to us therein, and of the hopes with which you flatter us, of being yet able to make a good business to our mutual advantage, we have determined to purchase a vessel and merchandise, in conformity with your recommendation; and the only difficulty which has hitherto delayed our carrying our intention into effect is that of the flag, arising from the scarcity of American vessels of the class and burden which we require; for all other impediments are easily surmounted. As vessels of the description required are constantly arriving, and as, amongst several that are expected, it cannot be difficult to find one that suits us, you may, with all certainty, reckon upon one sailing for your place about the 25th of next month, (February.) Relying upon this as sure, take your measures, calculating the passage so that on her arrival she may find the cargo ready, and experience the shortest possible delay in her return. Unfortunately, the shareholders have declined any further outlay; and as, on the part of Trigoyen and the house, we cannot venture, among so many risks, all the capital which is required; and as we cannot distress our establishments to take over the third which belonged to Don Manuel Masino, as outfitter, it has been found necessary, much against our inclination, that he should renounce his rights and shares in favor of some other person, who, by good luck, is our friend Don Juan Suriz, who, as the person to whom the share is ceded, signs this letter, in order that you may be acquainted with his signature, which is confirmed by that of Masino, who also signs. Don Tomas de Trigoyen has written to you by the Rebecca, which takes this; and, although he signs as an individual, we ratify all that he says in that letter, and leave for another opportunity whatever else may occur to us which may not be of moment.

We remain, &c.,

RACON & CO.
TOMAS DE TRIGOYEN.
MANUEL MASINO.
JUAN SURIZ.

Our friend Don Pdo. Racova does not sign, in consequence of his being in the country. Villela begs of you to tell him something of Aquilino, to whom he again recommends you.

SEÑOR DON JUAN JOSE BATALLA,
*Late captain of the schooner Carcamana,
Malaqueta, Petit Bassa.*

DEPOSITIONS TAKEN IN THE CASE OF THE REBECCA.

British and Spanish Mixed Court of Justice, Sierra Leone, in the case of the schooner Rebecca, Domingo Artata master.

SATURDAY, March 30, 1839.

Nicholas Echevarria, mate on board the said vessel, being produced, sworn, and examined on standing interrogatories, and standing special interrogatories, deposeseth and saith as follows, viz:

To the 3d, saith: The name of the master is Domingo Artata; has known him during one year; he was born in the province of Biscay, in Spain, where he generally resides; he is married, and his wife resides there also.

To the 4th, saith: The master was appointed to the command, by one Ealo, a Spaniard residing in Havana, from whom also he received possession there, three months ago. First saw the vessel there and then. Does not know where she was built.

To the 5th, saith: He was present at the capture; does not know on what pretence it took place. The vessel sailed under Portuguese colors, and there were no others on board.

To the 6th, saith: The vessel is called the Rebecca. Has never heard of her bearing any other name. She is of one hundred and forty-two tons burden. There were twelve officers and mariners, exclusive of the master, all Spaniards, shipped by the master at Havana; witness does not know at what precise period, as he found them on board when he himself joined the vessel there, three months ago.

To the 7th, saith: Neither he nor any of the officers or mariners had any interest in the vessel or her lading; was mate on board. There was one passenger named Watson, an American by birth, and a seaman by profession. He was taken on board when the vessel left Havana, in order to proceed to Gallinas; witness does not know on what business. He had no concern or authority in or over vessel or cargo.

To the 8th, saith: The voyage began and was to end at Havana, which was the last clearing port. The vessel touched at Gallinas to discharge her cargo; which was done, with the exception of a small part of it.

To the 9th, saith: The capturing ship was first seen while the detained vessel was at anchor at the Gallinas, at two o'clock in the evening of the twenty second of the month instant. Capture took place within an hour. The destination by the papers was Gallinas and Havana, and the course had been at all times directed to the former place.

To the 10th, saith: There are no guns mounted on board. There were six cutlasses and two pistols, but no ammunition, save what was contained in the cargo. No resistance was made to capture, nor were there any instructions for resisting or avoiding capture, or for destroying or concealing the vessel's papers.

To the 11th, saith: Ealo, from whom the master received command and possession, was the sole owner of the vessel. Knows it, because he cleared out and transacted all the business of the vessel. Does not know if he be married, nor how long he has resided in Havana.

To the 12th, saith: He knows nothing of bill of sale, price, or transfer of the vessel.

To the 13th, saith: The owner of the vessel was also sole lader, owner, and consignee of the cargo.

To the 14th, saith: He knows nothing of the lading of the last voyage. The cargo brought out on the present was tobacco, aguardiente, dry-goods, cutlasses, muskets, and ammunition. The vessel, after capture, was brought direct to Sierra Leone.

To the 15th, saith: He knows nothing of the truth and fairness of the passports and other papers.

To the 17th, saith: He does not know that any of the papers were destroyed, concealed, or made way with.

To the 18th, saith: He knows nothing of any writing relating to vessel or cargo in any other country.

To the 19th, saith: He knows nothing of any charter-party.

To the 20th, saith: He does not know whether or not the vessel or goods be insured. The vessel, with respect to her employment in trade, was under the direction of one Alvarez, of Gallinas.

To the 21st, saith: Bulk was broken at Gallinas only.

To the 22d, saith: Nothing was taken out of the vessel at the time of capture.

To the 23d, saith: Nothing has been taken out since.

To the 24th, saith: He does not know the rank of searching officer.

To the 25th, saith: He and the detained crew have been well treated.

To the special interrogatory, saith: No slave has been put or received on board, for the purpose of the traffic in slaves, during the present voyage.

To the standing special interrogatories.

To the 1st, saith: The hatches are not fitted with open gratings.

To the 2d, saith: The combings of the hatchways are not pierced or otherwise fitted to receive iron bolts or bars, none of which are on board.

To the 3d, saith: There are two bulkheads—those of the cabin and fore-castle.

To the 4th, saith: There are spare planks, fitted and numbered so as to form a complete slave-deck fore and aft.

To the 5th, saith: There is no part of a slave-deck laid at present.

To the 6th, saith: There were eighteen or twenty pairs of shackles, to be used against the crew in the event of mutiny or disobedience. No bolts or handcuffs.

To the 7th, saith: There are leaguers and casks on board capable of receiving eighty pipes of water in all, and containing two pipes of fresh water at the time of capture. There are no tanks or staves. The vessel was supplied with the means of carrying so much water, because it was required for the use of the crew.

To the 8th, saith: There were four mess-kits for use of the crew.

To the 9th, saith: There were three or four iron boilers for use of the crew.

To the 10th, saith: There are two leaguers, capable of containing a puncheon each, which are filled with rice for the use of the crew. There is no Indian corn.

NICOLAS ECHEVARRIA.

This examination was taken, and the truth thereof sworn to, through the interpretation of Jan Van Luyck, who was first duly sworn faithfully to interpret between the parties in this cause.

JAN VAN LUYCK.

Before me:

J. MILLER, *Acting Registrar.*

British and Spanish Mixed Court of Justice, Sierra Leone, in the case of the schooner "Rebecca," Domingo Artata master.

SATURDAY, March 30, 1839.

George Watson, passenger on board the said vessel, being produced, sworn, and examined on standing interrogatories and standing special interrogatories, deposeth and saith as follows, viz:

To the 1st, saith : He was born at Providence, Rhode Island, North America ; is a citizen of the United States of America ; has never been subject of any other State ; is not married.

To the 2d, saith : He was appointed to the command by one Ealo, who lives at Havana, and is a subject of Spain ; from whom also he received possession there, two months ago. First saw the vessel when she was on the stocks, at Baltimore, in the month of May last.

To the 3d, saith : He resigned the command, at Gallinas, to Nicolas Echevarria, the first officer on board, whom he has known since the vessel left Havana. He was born, to the best of witness's knowledge, in Spain, and generally resides at Havana. He is not married.

To the 4th, saith : He himself appointed this person to the command, and delivered possession to him at Gallinas, on the 20th of the month instant, in consequence of his not finding there a person named Pablo Alvarez, to whom he had the orders of the present and the former owner, Frederick Neill, to transfer the vessel. From this former owner he partly received his orders, at a time when he was unable to see Ealo.

To the 5th, saith : He was present at the capture. It took place because the vessel showed no colors and had no papers. The vessel had previously sailed under American colors ; but her flag was then Portuguese, and she had no other flag then on board, to witness's knowledge.

To the 6th, saith : He does not know the vessel's name. She was called the "Rebecca" while under his own command ; never knew or heard of her bearing any other name at any former period. She is of one hundred and forty-two tons burden. There were eleven officers and mariners on board, exclusive of witness and including the present master, all Spaniards, hired and shipped at Havana, by the owner of the vessel, two months ago.

To the 7th, saith : He had himself no interest in the vessel or her lading, nor, to his knowledge, had any of the crew ; was master from Havana to the Gallinas. There were two cabin passengers, whose names are unknown to witness, Spaniards by birth, and apparently seamen by profession, taken on board at Havana, and destined to Gallinas ; witness does not know on what business. One of them had property in vessel or cargo ; witness believes in both ; was so informed by the other. Neither of them exercised any authority on board.

To the 8th, saith : The last clearing port was Havana, where the voyage began, but witness does not know where it was to end. The vessel touched at Gallinas, to be delivered to Pablo Alvarez there, and to discharge her cargo ; which was done, with respect to the greater part of it.

To the 9th, saith : The capturing vessel was first seen about nine or ten o'clock, on the morning of the 21st or 22d of the month instant, off Gallinas, and in sight of land ; capture took place almost immediately. The vessel had been standing off and on, as a strong breeze and heavy sea made it unsafe to lie there at anchor. At the moment, she was lying to ; but on the appearance of the man-of-war, the sails were instantly filled. She was already under full sail. Her destination, by her papers, was the Gallinas only, to which place the course was at all times directed when the weather would permit.

To the 10th, saith : There are no guns mounted on board. There were eight or ten cutlasses, and several kegs of ammunition ; which may have been cargo or otherwise, for witness does not know. No resistance was made to capture, nor were there any instructions for resisting or avoiding capture ;

but there were for destroying the vessel's papers, together-with the instructions themselves, on delivering over the vessel ; and for cutting, at the same time, the register into two parts, to be thus sent to the Havana by two opportunities : which was, accordingly, all done on the 20th instant. The instructions, which were from Frederick Neill, the late owner, bore in the first instance that witness was to command the vessel to the Gallinas, and there to make the transfer of her to Pablo Alvarez, already mentioned ; and they contained nothing further.

To the 11th, saith : Ealo, from whom he received command and possession, was the sole owner of the vessel ; knows it from general report, and from his own statement. His wife and family (who are, like himself, subjects of Spain) reside with him in Havana ; does not know how long he has resided there ; he formerly lived near Bilbao, in Spain.

To the 12th, saith : He knows nothing of any bill of sale. The price, as he has heard, was nine thousand dollars ; does not know if it was paid. It was a fair equivalent ; and the sale was truly made. Verily believes the vessel, if restored, will belong to Ealo, and to no other person. There are no private agreements for her return to former owners.

To the 13th, saith : He thinks the owner of the vessel must also be owner of the cargo, of which he was the lader and consignee at Havana.

To the 14th, saith : The lading of the vessel on her last voyage was flour, shipped at Baltimore for Havana, on which voyage witness was mate of the vessel.

The cargo on the present voyage consisted of tobacco, aguardiente, calicoes, gunpowder, rice, and boxes, (which apparently contained muskets.) The vessel, after capture, was brought direct to Sierra Leone.

To the 15th, saith : He believes there were no passports or other papers found on board, save some passports of the seamen ; and cannot tell whether they were true, fair, or otherwise.

To the 17th, saith : The American papers were destroyed by burning in presence of no witness. No papers were, to witness's knowledge, delivered out of the vessel, or carried away.

To the 18th, saith : He does not know whether any writings, relating to vessel or cargo, exist in any other country.

To the 19th, saith : He does not know that there was any charter-party.

To the 20th, saith : He does not know whether or not the vessel or goods were insured. The vessel, with respect to her employment in trade, has been usually under the direction of Mr. Frederick Neill. Will write to him, as well as to the owner, to acquaint him with his fulfilment of his instructions.

To the 21st, saith : Bulk was broken at Gallinas only.

To the 22d, saith : Nothing was taken out of the vessel at the time of capture.

To the 23d, saith : Nothing has been taken out since.

To the 24th, saith : He does not know the rank of the searching officer.

To the 25th, saith : He and the detained crew have been well treated.

To the special interrogatory, saith : No slave had been put or received on board, for the purpose of the traffic in slaves, during the present voyage.

To the standing special interrogatories.

To the 1st, saith : The hatches are not fitted with open gratings.

To the 2d, saith : The combings of the hatchways are not fitted to receive iron bolts or bars, none of which are on board.

To the 3d, saith: There are three bulkheads—those of the cabin, fore-castle, and store-room.

To the 4th, saith: There are spare planks on board, numbered and fitted for a second deck to extend fore and aft.

To the 5th, saith: No part of a second deck is laid.

To the 6th, saith: There were no shackles, bolts, or handcuffs.

To the 7th, saith: There are casks and staves on board capable of receiving, in all, seventy tons of water, or thereabout; and containing about four tons of fresh water at the time of capture. There are no tanks or other means of conveying water.

Does not know why she was supplied with the means she has.

To the 8th, saith: There were four or five dozen of mess tins; witness does not know for what purpose.

To the 9th, saith: There are three or four small iron boilers for use of the crew.

To the 10th, saith: There were two small barrels of rice, besides what was contained in the cargo; a cask of flour, some Indian corn, and two or three bags of beans, for the use of the crew.

GEO. WATSON.

This examination was taken, and the truth thereof sworn to, before me,

J. MILLER, *Acting Registrar*.

These are to certify that the foregoing are just and true copies of two original writings of four letters, as translated from the original Spanish, and of depositions of two witnesses, filed in the case of the schooner Rebecca, whereof Domingo Artata was master, as appears by the records of the British and Spanish mixed court of justice in which the said schooner was condemned.

In faith and testimony whereof, I have hereunto set my hand and affixed the seal of the mixed commission, at Freetown, in the colony of
[L. S.] Sierra Leone, this third day of August, in the year of our Lord one thousand eight hundred and forty.

J. MILLER, *Acting Registrar*.

I hereby certify that the papers hereunto annexed are those sent by her Britannic Majesty's commissioners at Sierra Leone, in their despatch to Viscount Palmerston marked "Spain, No. 67," of August 3, 1840, as true copies of original papers connected with the case of the Spanish schooner Rebecca, duly certified by the registrar, and under the seal of the court of mixed commission at Sierra Leone.

LEVESON. [L. S.]

FOREIGN OFFICE, December 16, 1840.

Mr. Fox to Mr. Forsyth.

WASHINGTON, February 4, 1841.

SIR: In addition to former communications, which, by direction of her Majesty's Government, I have had the honor to address to you upon the subject of the African slave-trade, and of the frequency with which the subjects of other countries engaged in that nefarious traffic endeavor to protect themselves from the punishment due to their crimes by a fraudulent assumption of the American flag, I herewith transmit to you a further series

of documents relating to the same matter, which her Majesty's Government are desirous should be carried to the knowledge of the Government of the United States.

These papers consist chiefly, it will be seen, of despatches and reports from the British commissioners for the suppression of the slave-trade, residing at Sierra Leone and at Havana, and contain details in particular of the cases of four slave-vessels (the "Laura," "Asp," "Lark," and "Mary Cushing") captured by her Majesty's cruisers on the coast of Africa, during the course of the last year. The above vessels, in like manner with many others formerly mentioned, although fitted out for the slave-trade upon account of Spanish owners, had been enabled fictitiously to assume the United States flag, and to perfect their outward voyage to the coast of Africa under that fraudulent protection. Fortunately, however, for the ends of humanity and justice, the evidence found against the vessels, after their arrival upon the African coast, was sufficient to enable the mixed court of commission at Sierra Leone to condemn them as Spanish slavers.

Amongst the enclosed series of papers will likewise be found reports from the British commissioners at Sierra Leone, containing some additional evidence in relation to the slave-vessels "Butterfly" and "Catharine;" the circumstances attending the capture of which vessels are already known to the Government of the United States. Lastly, there will be found amongst the enclosed papers copies of a correspondence between her Majesty's commissioners at Havana and Mr. Everett, a gentleman who visited that port by commission from the Government of the United States; which correspondence her Majesty's Government are desirous should be conveyed to the knowledge of the President.

You will be gratified to learn, by another correspondence herewith enclosed, that her Majesty's commissioners at Sierra Leone entertain hopes of a considerable diminution of the slave-trade under the fraudulent protection of the American flag, in consequence of the presence upon the African coast of the United States ship-of-war "Dolphin," commissioned to cruise on that station for the suppression of the trade.

I avail myself of this occasion to renew to you the assurance of my distinguished consideration.

H. S. FOX.

HON. JOHN FORSYTH, &c., &c., &c.

[Enclosure No. 1.]

FOREIGN OFFICE, August 7, 1840.

SIR: With reference to my despatches marked "Slave-trade, Nos. 10 and 11," of this year's series, respecting the proceedings of cruisers of the United States employed on the coast of Africa in putting an end to the abuse of the flag of the Union for purposes of slave-trade, I herewith transmit to you, for communication to the United States Government, a copy of a despatch from her Majesty's commissioners at Sierra Leone, reporting that the United States brigantine-of-war "Dolphin" had arrived at Sierra Leone, under orders to cruise on the coast of Africa for the honorable purpose above-mentioned.

I am, with great truth and regard, sir, your most obedient, humble servant,
PALMERSTON.

HENRY STEPHEN FOX, Esq., &c., &c., &c.

[Sub-enclosure.]

SIERRA LEONE, *February 20, 1840.*

MY LORD: We have the honor to acquaint your lordship that the American brigantine-of-war "Dolphin," Lieutenant Charles H. Bell commanding, appointed by the Government of the United States to cruise upon this coast for the repression of the slave-trade, in so far as it is prosecuted under the flag of America, arrived in this harbor on the 9th instant, and sailed, seven days thereafter, for Cape Mesurado and the American settlement of Liberia. It was the intention of Lieutenant Bell to proceed to the southward and eastward as far as Cape Coast, from whence he proposed to retrace his course, and again to visit this colony, in passing upward to the rivers to the north of it. The period for which his cruise is appointed does not extend beyond the month of June next; but, on his return to America, he will leave behind him, on the coast, the American schooner-of-war "Grampus," which was under orders to proceed on the same service forthwith, and which, he informed Governor Doherty, might be expected in this port within a fortnight from the present date.

We are much gratified in being enabled to communicate to your lordship this intelligence; and trust that the adoption by the American Government of a measure so decisive, will be attended with the best results in favor of the cause which it is intended to serve, and will concur powerfully with the other circumstances to which reference was made in our despatch of the 31st ultimo, (marked Spain No. 10,) in putting a period to the scandalous abuse of the American flag, by its employment in the illicit traffic which has now been so long, and we fear so successfully, persevered in.

We have, &c.,

R. DOHERTY,
C. HOOK.P. S.—*March 7.*—The "Grampus" arrived here this day.Rt. Hon. VISCOUNT PALMERSTON,
G. C. R., &c., &c., &c.

[Enclosure No. 2.]

FOREIGN OFFICE, *August 8, 1840.*

SIR: With reference to my previous despatches on the subject of Spanish slave-vessels which have attempted to conceal their real national character by the assumption of the flag of the United States, I herewith transmit to you, for communication to the United States Government, a copy of a despatch from her Majesty's commissioners at Sierra Leone, reporting the case of the schooner "Laura," which was detained under American colors by the boats of her Majesty's brigantine "Viper;" but having, upon investigation, been found to be a Spanish vessel engaged in slave-trade, was condemned on that ground, in the mixed British and Spanish court of justice at Sierra Leone.

I am, with great truth and regard, sir, your most obedient, humble servant,

PALMERSTON.

HENRY STEPHEN FOX, Esq., &c., &c., &c.

[Sub-enclosure.]

SIERRA LEONE, *January 31, 1840.*

MY LORD: We have the honor to transmit, for your lordship's information, our report of the case of the Spanish schooner *Laura*, Henry Hantsman captain of the flag, and Juan Costa master, which was detained off Cape Mesurado on the 7th instant, while sailing under American colors, by her Majesty's brigantine *Viper*, Godolphin James Bruslem lieutenant and commander; and was condemned three days ago in the British and Spanish mixed court of justice, for being fully equipped for the illicit traffic, contrary to the treaty of 1835.

The history of this schooner resembles, in its most important particulars, that of the several Spanish vessels which, during the last sixteen months, have been detained on this coast, and brought to Sierra Leone under the flag of America, and which have been successively reported to your lordship. Built at Baltimore for the Spanish slave-trade, the *Laura* is there provided, after no great interval of time, with a permanent register; and the same day on which it is dated, measures are adopted for effecting her sale at Cuba—the owners granting a power of attorney for the purpose, in favor of a person who is employed to navigate her to that island, and who, on arriving at the Havana, transfers this authority, by means of a power of substitution endorsed on the deed, to the nominal American master, whose services are there engaged; and, at the same time, actually disposes of the vessel to Spanish purchasers, one of whom proceeds with her to this coast, on her first slaving adventure, as actual master and supercargo. In completing this fraud, the parties to it are assisted in the usual manner by the consular agents of the United States at the Havana; and, if we may judge from what has fallen under our observation in these courts, the Baltimore ship-builders and their attorneys are but rarely, if ever, deceived in the just reliance with which they depend for assistance on those gentlemen.

We entertain a strong hope that this disgraceful system draws to a termination; and that the present is one of the last instances of the prostitution of the flag of the United States to the purposes of the slave trade, which it will be our duty to communicate to your lordship. One circumstance which induces us to form this expectation, is the great interest which the recent visit made to America by Lieutenant Fitzgerald, in her Majesty's brigantine *Buzzard*, in company with his prize the *Eagle*, of which we had the honor to report the case on the 20th instant, as well as the arrival there, about the same time, of the *Wyoming*, captured under similar circumstances, would appear to have excited in that country;—the feeling of indignation, loudly expressed by the American public at the dishonor done to their flag by its employment in this commerce—an employment apparently now first disclosed to them in all its extent and infamy; and the alarm among the friends and parties to those slaving adventures in the United States, with which the expression of this sentiment could not fail to be accompanied. Another reason is, the sudden removal which is said to have taken place of Nicholas Trist, the American consul at Havana, from those functions in which he has so much abused the trust reposed in him by his Government, to the protection and encouragement of the illicit traffic. And, finally, our chief ground of hope is in the new course respecting American-Spanish vessels which these courts have been enabled to pursue, and which, of itself, will probably have the greatest effect when

the intelligence of it shall have reached the Bights, and crossed the Atlantic, in causing the American flag to disappear from the coast in this commerce.

We have the honor to be, with the greatest respect, my lord, your lordship's most obedient and most humble servants,

R. DOHERTY,
L. HOOK.

Rt. Hon. VISCOUNT PALMERSTON,
G. C. B. &c., &c., &c.

[Sub-enclosure.]

Report of the case of the schooner Laura, Henry Hantsman master.

SIERRA LEONE, January 31, 1840.

The schooner *Laura*, built at Baltimore in the year 1838, and first owned by James Hooper, William Cobb, and Andronicus Cheeseborough, of that place, was by these persons despatched to the Havana during the month of May last, under the command of James Tyler, likewise of Baltimore, to whom they granted a power of attorney to enable him to effect her sale on his arrival at that port. A register having been procured on the same day on which the power of attorney is dated, Tyler proceeded with the vessel by way of the Spanish main, where, at a place called Sebasco, he loaded a cargo of logwood; and reaching Havana some time in last autumn, he acted on his authority and commission from the Baltimore owners, by selling the vessel to Juan Costa and another person, both Spaniards by birth, and residents of Havana. Costa shipped a Spanish crew, and engaged the services of Henry Hantsman, of Baltimore, as nominal master, and of other Americans as a part of his officers and crew, that they might support and justify, by their presence, the fraud of carrying the American flag and American papers which it was his intention to commit. Nor, in effecting their respectable purpose, did he and Tyler want for the sure assistance of Mr. Consul Trist. During the month of October, Costa sailed for Matanzas, where he hired the remainder of his crew, Americans or Spaniards; and, on the 9th of November following, cleared out from thence with a complete slave equipment for Cape Mesurado.

The *Laura* was already within sight of this destination, and the last preparations were making on board for the cargo of human beings she was to embark there; an additional bulkhead was completed and ready to set up; and the carpenter was even proceeding, in obedience to the orders he had just then received, to pierce the hatchways for the iron bars provided to receive them; when, on the morning of the 7th instant, the *Viper* happily hove in sight, and sent off her boats in chase. As soon as this took place, and capture became inevitable, the Spanish papers, and all the most disposable articles of equipment, were destroyed; the shackles, mess-tins, and a boiler being thrown overboard, and the papers burnt or sunk. The schooner, on her detention, was carried into the American settlement of Liberia, and arrived here on the evening of Saturday the 18th, accompanied by the capturing vessel.

On the following Monday the marshal reported this arrival, and the same day the captor petitioned, by his proctor, for permission to enter the case.

This being granted, and next morning (the 21st) his declaration being received, the seizure being sworn to, and a few papers (which escaped the destruction of the others) filed, the monition was immediately issued.

The papers saved and filed were five :

1. A permanent register in an entire state, dated at Baltimore on the 11th of May last, containing the names already cited of the three owners, declaring James Tyler to be master ; and referring to a certificate of registry of the 15th of February preceding, said to be "now surrendered," the property being part transferred. An endorsement on this register, of the 19th of October, subscribed by the American consul at Havana, declares Henry Hantsman to be master in the room of James Tyler.

2. The power of attorney, of the same date as the register, executed by the Baltimore owners in favor of Tyler, with a power of substitution by the latter person endorsed upon it, constituting the master, Henry Hantsman, attorney in his room ; dated at Havana, on the 19th of October, and the same day attested by Mr. Trist.

3. A muster-roll of the crew, nominally under Hantsman on the voyage from Havana to Matanzas, containing the names of four Americans and two Spaniards.

4. A muster-roll and seamen's articles of the same crew, on the voyage from Matanzas to Cape Mesurado, containing the substitution of two additional American names for those of the two Spaniards in the first list, and the addition of that of a ship's cook. This paper states the master to be Henry Hantsman, or *whoever shall go for master* ; and it mentions that the voyage was to end "in some port or ports of the West Indies."

5. A manifest from Matanzas, which certifies to the equipment of forty water-casks, of rice, fire-arms, and cutlasses.

Little or none, therefore, of the information sought for was obtained from those papers ; but the disclosures made by the witnesses amply compensated for this deficiency. The master (Hantsman) spoke with some reserve, especially at the commencement of his deposition, having been severely threatened by Costa, a man of great ferocity, and being under considerable apprehension in consequence ; but, nevertheless, even his admissions were more than sufficient to condemn the vessel. He stated that he had been placed in the command, which he alleged he held, by Tyler, and by another person whom he believed to be a Spaniard ; that the vessel was built at Baltimore ; that he was present at the capture, which took place on account of water-casks and a slave-deck on board ; that the vessel sailed under American colors, and carried no others ; was called the *Laura*, and never to his knowledge bore any other name ; that he was master, and his crew consisted of three Americans and two Spaniards, shipped by him at Matanzas in October—none of whom, so far as he knew, had any interest in the vessel or lading, as he had none himself ; that he also received on board, at Matanzas, three cabin and nine fore-castle passengers, all Spanish seamen, proceeding to Cape Mesurado, in order to take possession of the vessel there, when he himself and his crew should leave her, which they were permitted to do on their arrival at that place ; that two of those passengers, named Housa and Costa, exercised some authority on board, which the deponent gave them in consequence of the great interest they appeared to take in the vessel, and that he thought it probable that Costa had some share in the vessel and cargo ; that the voyage having begun at Matanzas, was to end in Cuba ; that the capture took place near Cape Mesurado,

while they were steering for the land—that place being the destination of the vessel; that there were on board ten cutlasses and ten muskets, with a small quantity of ammunition for the use of the vessel on the return voyage, but against whom those articles were to be used he could not tell; that the vessel was owned by Juan Costa, of Havana, one of the passengers, and the cargo by Cabrida, a merchant of Matanzas, both Spaniards by birth; that a bill of sale of the vessel was made by the Baltimore owners in favor of the former master, James Tyler, which by him was transferred to witness, and by witness to Costa; that this instrument was dated eighteen or nineteen months ago, and that he last saw it when he delivered it up to Costa at the time of the seizure; that the transfer was a true one; that when the Viper hove in sight, Costa and the cabin passengers threw into the galley five different Spanish writings, with the nature of which he (witness) was unacquainted; that twenty round iron bars were ready for securing the hatches, although the combings of the hatchways were not yet bored; that a complete slave-deck was laid fore and aft; that a bag of shackles and bolts was thrown overboard just before the boats of the man-of-war came alongside; that there were forty leaguers, capable of receiving, on an average, one hundred and fifty gallons of water each, all filled with fresh water at the time of capture; that he has no doubt they were intended to carry water for slaves; that there were twenty-four mess-tins, an iron boiler, two hundred bags of rice, and eight of peas and beans—all for the use of slaves.

The deed spoken of in this deposition as a bill of sale, is obviously the power of attorney which now appears with the other papers, although the witness falls into so great an error with respect to its date. It will be observed that, as he proceeded in his evidence, this deponent scarcely attempted to conceal the fact of Spanish ownership, or the object of the equipment; but the American carpenter, who was next examined, spoke, and without any reservation.

This witness declared that there were two masters—the flag captain, (Hantsman,) and the real Spanish master, named (as he thought) Costa, and a resident at Matanzas, who, from the day of the vessel's sailing from that place until the time of her capture at Mesurado, took the entire charge and command of her, evinced the greatest interest in the success of the voyage, and, with another Spaniard of Matanzas, who had appointed both masters, was in fact owner of the vessel and her stores—for cargo she had none; that this person informed witness, the day after they sailed, that he was proceeding to Africa for slaves, whom he intended to take back to Cuba; that, as there were two masters, so there were likewise two crews—one consisting of four Americans, and another of fifteen Spaniards, exclusive of the two masters, respectively; that an additional bulkhead, a complete slave-deck, water, iron bars, shackles, mess-tins, a boiler, and stores, were all provided and ready for the use and consumption of a cargo of slaves; and that, had the capture not taken place when it did, witness would the same day have pierced the combings of the hatchways for the reception of the bars; that he himself assisted in throwing overboard shackles, mess-tins, and a boiler, on the approach of the capturing boats; that the vessel was steering for *Gallinas* at the time of seizure; and that the return voyage would have been for Matanzas, although the slaves were to be landed at the most convenient port on the coast of Cuba.

In the remaining particulars embraced by the interrogatories, this witness corroborated the testimony of the master.

Information so complete could leave no room for doubt as to the nationality of the vessel, and her infringement of the Spanish treaty. It more than confirmed the averments of the captor's declaration. No claimant appeared; and the monition being returned on the 28th instant, the court decreed, the same day, that the American flag, under which the *Laura* had been detained, was falsely and fraudulently assumed by that schooner; that, at the time of her seizure, she was a Spanish vessel engaged in the slave-trade; and that she should be condemned a prize to the Crowns of Great Britain and Spain.

R. DOHERTY,
L. HOOK.

Rt. Hon. VISCOUNT PALMERSTON,
G. C. B., &c., &c., &c.

[Enclosure No. 3.]

[No. 15—SLAVE-TRADE.]

FOREIGN OFFICE, *August 8, 1840.*

SIR: I herewith transmit to you, for communication to the Government of the United States, the accompanying extract from a despatch which I have recently received from her Majesty's commissioners at the Havana.

You will, by a note, communicate that paper to the United States Government; and add the expression of the confidence of her Majesty's Government, that the President will regret to perceive by it that the flag of the United States of America still continues to be abused, to a very great extent, for purposes of slave-trade, notwithstanding the attention directed to that evil by the Government of the United States.

I am, with great truth and regard, sir, your most obedient, humble servant,

PALMERSTON.

HENRY STEPHEN FOX, Esq., *&c., &c., &c.*

[Sub-enclosure.]

Extract from a despatch from her Majesty's commissioners at the Havana, dated June 13, 1840.

We transmit to your lordship a list of the vessels that have been despatched from this port to the coast of Africa during the last four months. From this, your lordship will perceive that they are 21 in number, including one (the "Importador") which, though ostensibly sailing for Goa, is, no doubt, intended for Mozambique. Among these, there are 10 under the Portuguese flag, 8 under the American, and 3 under the Spanish.

Your lordship will regret to observe that there still continues the abuse of the flag of the United States to the same increasing degree as last year, notwithstanding the attention of the United States Government has been so strongly directed to the correction of the evil. Of the eight American vessels, no fewer than five were cleared out by a Mr. Charles Tyng, an Ameri-

can resident here as a merchant, who was the agent, if not the owner, of the slave-vessel "Catharine," taken last year by one of her Majesty's cruisers, and sent to the United States, where she was condemned.

No. 16 on the list, we should point out as the celebrated "Locorro." Despatched—

1. February 15th, for San Tomé, Portuguese schooner "Olympia."
2. February 22d, for San Pablo de Loanda, American schooner "Hudson," by Charles Tyng.
3. March 6th, for Gold Coast, American schooner "Audubon."
4. March 20th, for San Pablo de Loanda, Spanish schooner "Numantisco."
5. March 23d, for Gallinas, American brig "Theophilus Chase."
6. March 24th, for Santiago de Prova, Portuguese schooner "Josefina."
7. March 26th, for Goa, Portuguese brig "Importador."
8. March 27th, for Cabo Verde, Spanish schooner "2ndo Rosario."
9. March 28th, for Bonny, Portuguese schooner "Paz."
10. April 1st, (sailed in May,) for Mozambique, Portuguese ship "Gloria."
11. April 14th, for Gallinas, Portuguese schooner "San Pablo de Loanda."
12. April 28th, for Lagos, Portuguese brig "Trovao."
13. April 29th, for Cabo Verde, Portuguese schooner "Bacua Union."
14. May 2d, for Lagos, American brig "Plant," by Charles Tyng.
15. May 2d, for San Pablo de Loanda, American schooner "Lone," by Charles Tyng.
16. May 4th, (sailed 11th,) for Mozambique, Portuguese ship "Maria 2da."
17. May 6th, for Bonny, Spanish brig "Marinero."
18. May 11th, for Gallinas, Portuguese schooner "Pombinha."
19. May 11th, for Gallinas, American schooner "Seminole," by Charles Tyng.
20. May 12th, for Gallinas, American brig "Alexander."
21. May 27th, for San Pablo de Loanda, American schooner "Kite," by Charles Tyng.

[Enclosure No. 4.]

[No. 16—SLAVE-TRADE.]

FOREIGN OFFICE, August 10, 1840.

SIR: I herewith transmit to you a report of the case of the schooner "Asp," Wilson L. Weems nominal master, which, while lying at anchor in the river Nun, was detained by her Majesty's sloop "Wolverine," and was taken to Sierra Leone, and condemned there, on the ground that she had a slave equipment on board, and that she was a Spanish vessel.

The "Asp" was built at Baltimore, and, at the time of her detention, displayed the flag of the Union, and was furnished with an American pass; but she never had any American owners, for she was built in 1839 to the order and for the account of Messrs. Pedro Martinez & Co., Spanish merchants at the Havana; and those merchants having transferred a portion of their property in her to Ramon Garcia, also a Spaniard, Ramon Garcia

was appointed supercargo, and acted also as commander on the voyage on which the vessel was detained.

The course of that voyage was intended to be from the Havana to the river Nun, and back again; and in the river Nun the "Asp" was to have taken in a cargo of slaves.

When detained, she had five Americans on board, and a Spanish crew of 18 persons.

Evidence of the abovementioned facts having been produced, showing that the vessel was in reality Spanish, and that the slave trading voyage on which she was detained was essentially a Spanish venture, the mixed British and Spanish court of justice at Sierra Leone condemned her accordingly, as a Spanish vessel concerned in slave trade.

The enclosed paper contains a detailed account of the circumstances attending this case; and I have to desire that you will, by note, communicate them to the United States Government, in corroboration of the statements already furnished to the President, on the frequency with which the United States flag is employed for purposes of foreign slave-trade.

I am, with great truth and regard, sir, your most obedient, humble servant,

PALMERSTON.

HENRY STEPHEN FOX, Esq.,
 &c., &c., &c.

[Sub-enclosure.]

Report of the case of the Spanish schooner "Asp," Wilson L. Weems master.

It would appear that this vessel, although constructed at Baltimore, never had any American owners, but was built to the order and on account of the Havana house of Pedro Martinez & Company, to which, at the time of capture, she chiefly belonged.

She was built in 1839; but by whom, is not discovered. Before leaving Baltimore for Cuba, her first voyage in the trade to which she was destined was so far prepared for, that she received a shipment of rice, which was subsequently found on board by the captors. At this time she was commanded by a Baltimore master named William Knight, who proceeded with her to the Havana, where she arrived about the beginning of November last, and where, in concert with Charles Tyng, an American by birth, but a naturalized Spaniard, Knight placed the flag-captain (Weems) in nominal charge; a Spaniard named Ramon Garcia Bior, the real master and a part owner, going on board at the same time as supercargo, with a large Spanish crew, all furnished with passports, and with five Americans, Weems exclusive. A quantity of specie and tobacco being then shipped by Tyng, who appears to have acted as agent for the vessel and shipper of the cargo, (the better to keep a name so notorious as Martinez & Company out of view,) the "Asp" proceeded direct to the Bight of Benin; and having landed her small cargo, for the immediate purchase of slaves, at the mouth of the river Nun or Bras, she sailed a few miles up that river, and there anchoring on the 13th January, was, within three days, captured by the Wolverine's boats.

By that vessel she was carried, in the first instance, to Accoa and Cape

Coast, and on the 29th ultimo arrived in this harbor. Sunday intervening, a petition to receive the declaration and affidavit of the captors was presented on the 2d instant; when it was immediately granted, and the same day the monition issued.

On board of this vessel were found the following seven papers :

1st. A permanent register, dated at Baltimore on the 2d of October, 1839, and bearing an endorsement made at Havana on the 14th November by the American vice-consul Smith, certifying to Wilson L. Weems being at that time master.

2d and 3d. The muster-roll and seamen's articles, containing the names of six Americans, two Spaniards, a German, and a Frenchman—the muster-roll being certified at Havana on the 16th November by Mr. Consul Trist.

4th and 5th. A custom-house clearance and bill of lading from Havana, declaring the shipper of the cargo to be Charles or Don Charles Tyng.

6th. A personal passport, dated at Havana on the 15th November, 1839, for Don Ramon Garcia Bior, declared to be proceeding to the islands of Prince's and St. Thomas.

7th. A very imperfect ship's log, written in English.

On the day following the reception of the case, the evidence of the flag-captain (Weems) was received, to the effect—that he was a citizen of the United States, born near Annapolis, in Maryland; that he lived at Baltimore, where the detained vessel was built; that he first saw her about the beginning of November last, at Havana, and, on the 17th of that month, was there put in command and possession by Tyng and Knight; that he was present at the capture; that the colors were American, and that no others were on board; that the vessel never had any name but “Asp,” and measured 140½ tons, (the tonnage stated in the register;) that the crew comprised eight Anglo-Americans and twenty-one Spaniards—eighteen were not enrolled as crew, but were furnished with passports as passengers, though they did the duty nevertheless of seamen, and were intended to form the crew on the return voyage; that the entire ship's company were shipped at Havana—the Americans by Tyng, and the Spaniards by the supercargo Don Ramon, who alone, of all on board, had any interest in vessel or cargo, and who was largely interested in both; that this person and one Francisco were to be respectively master and mate on the return voyage, which was to be from where the outward voyage had commenced, (Havana;) that, after leaving Havana, the vessel had touched nowhere until she reached the mouth of the Nun, where her specie and tobacco were landed for the purchase, as he believed, of slaves; that she then anchored a few miles up the river; and that the capture was there effected by the boats of the man-of-war, on the 16th of January, at sunrise; that she joined that vessel next morning.

This witness further declared, that no resistance was made to capture, nor, so far as he knew, were there any instructions enjoining it; that, nevertheless, the vessel was armed with twelve cutlasses, twenty-four muskets, and two pairs of pistols, with a canister of cartridges, to be used, as he imagined, on the return voyage against risings of slaves or man-of-war boats; that the principal owner of the vessel was Simon Terran, the present acting partner of the house of Pedro Martinez & Co., of Havana, and himself a Spaniard by birth and allegiance, and that to him witness was to look for payment; that the other partners of that house were also part

owners, as well as the supercargo Ramon ; that in his (witness's) belief the vessel was built to order, on account of Terran and others concerned, and that this real ownership had been covered by the name of the former master, (Knight ;) that Tyng was lader and consignee of the cargo, which belonged to the same owners as the vessel, and consisted of rice, specie, and tobacco ; that of the papers, a private journal, kept by the Spaniard Francisco, was taken on shore, on the approach of the capturing boats ; that he (the deponent) corresponded with the owner Terran ; that, previous to capture, no slave had yet been received on board at the time of seizure. Many iron bars, proper for securing the hatches ; spare planks, intended for a slave-deck ; leaguers and casks half-filled with fresh water, capable of holding ninety pipes, and intended to carry water for slaves ; and seventy or eighty bags of rice in the cargo, intended for slaves and crew ; besides which, a barrel of shackles, a box of mess-tins, and one large iron boiler, had been conveyed on shore previous to capture.

Such was the clear testimony of the first witness. It was in a good measure corroborated, and in no respect shaken, by that of Manuel Arrojo, the Spanish steward of the vessel, who was next examined. This witness concurred in representing the course of trade as Spanish, and admitted that Don Ramon acted as an officer of the vessel, and held the command while the master slept.

As was to be anticipated, he knew nothing of the ownership ; and he affected to consider the Spaniards as passengers only, and to be ignorant of their business on board.

Nevertheless, in his further depositions respecting equipment, he not only spoke to the facts of there having been bars on board for securing the hatches, planks for a slave-deck, water-casks for sixty or seventy pipes of water, and eighty or ninety bags of rice ; but declared that those articles were intended, as he conjectured, and could not but believe, for a cargo of slaves.

No further deposition was taken ; and publication of this evidence being decreed, nothing more was done in the case until the return of the monition. It was returned, duly certified by the marshal, on the 9th instant ; and on that day judgment was pronounced, declaring the vessel to be a lawful prize.

R. DOHERTY,
L. HOOK.

SIERRA LEONE, *March 12, 1840.*

[Enclosure No. 5.]

[No. 18—SLAVE-TRADE.]

FOREIGN OFFICE, *August 14, 1840.*

SIR : With reference to previous correspondence on the subject of the conduct pursued in respect to slave-trade by Mr. Trist, late consul for the United States at the Havana, I herewith transmit to you, for communication to the United States Government, copies of a despatch and of its enclosures from her Majesty's commissioner at the Havana, containing copies of a correspondence which that gentleman had held with Mr. Everett, who is understood to have been deputed by the Government of the United States to investigate the charges advanced against Mr. Trist.

I at the same time transmit for your information the copy of a despatch which I have recently received from her Majesty's commissioners at Sierra Leone, upon the subject of certain papers said to have been furnished in blank by Mr. Trist to the owners or commanders of slave-vessels; and I transmit to you, also, a copy of the letter with which I communicated that despatch to the United States minister at this court.

I am, with great truth and regard, sir, your most obedient, humble servant,
PALMERSTON.

HENRY STEPHEN FOX, Esq., &c., &c., &c.

[Sub-enclosure.]

[EXTRACT.]

[SEPARATE.]

HAVANA, *June 15, 1840.*

MY LORD: In the despatch No. 11, of 1840, dated the 21st of March last, we informed your lordship of Mr. Trist, the United States consul at this place, having sailed hence by order of his Government, to proceed to Washington, for the purpose of explaining his conduct relative to the different charges brought against him, and especially, as it is said, the part he had taken on behalf of the slave-dealers.

Shortly after his departure, Mr. Everett, formerly minister from the United States to the court of Madrid, arrived here to investigate the charges, and, after having been engaged several weeks in his inquiries, sought an introduction to me, for the purpose of obtaining what information I could afford. An interview accordingly took place on the 23d May; and on the 28th, in order to obviate any misconception that might have arisen at this meeting, I sent to Mr. Everett a brief recapitulation of what I had verbally stated. Of this communication, therefore, I have now to transmit your lordship a copy, and beg to refer to it, though only a succinct summary of facts that we have had from time to time to report to your lordship, and of our opinions respecting them.

Consequent upon the communication above mentioned of the 28th of May, a further correspondence having taken place between Mr. Everett and myself, I have also the honor to transmit your lordship further copies of two letters to me, and of my answer in reply. Mr. Everett, I understand, left the Havana yesterday, for New Orleans, on his way to Washington.

I have the honor, &c.,

J. KENNEDY.

Viscount PALMERSTON,
G. C. B., &c., &c., &c.

[Sub-enclosure.]

HAVANA, *May 28, 1840.*

SIR: At the close of our interview at my house on Saturday evening last, the 23d instant, you expressed a wish to receive from me any further information or observation that might occur to me, beyond what I had then

to communicate respecting the assistance afforded the slave-trade of this place by American citizens generally, and at the American consulate in particular.

To further your inquiries on these points, I have since given the subject the best consideration in my power, but without finding aught to add to, or to subtract from, the communications I had then to make. For fear, however, I might not have made myself understood in the way I could wish, I beg to adopt the course I then offered you, of giving you in writing a succinct detail of what I had verbally stated.

You will remember I began by declaring that, although I could not but understand Mr. Trist's language and conduct to be designedly insulting to the British Government and nation, no less than to the British commissioners, in our communications with him, still I had no inclination to stand forward as his accuser, or to canvass his actions, further than as those of a public functionary, for whose conduct on public questions his Government might fairly be held responsible. At any rate, avowing my private opinions of those actions, I left it to others to give what weight they might think due to my allegations.

My first object of remark, then, was a paragraph relating to the slave-trade in Mr. Van Buren's message to Congress of December last, in these words :

"Recent experience has shown, that the provisions in our existing laws which relate to the sale and transfer of American vessels, while abroad, are extremely defective. Advantage has been taken of these defects, to give to vessels, wholly belonging to foreigners, and navigating the ocean, an apparent American ownership. This character has been so well simulated as to afford them comparative security in prosecuting the slave-trade—a traffic emphatically denounced in our statutes, regarded with abhorrence by our citizens, and of which the effectual suppression is nowhere more sincerely desired than in the United States. These circumstances make it proper to recommend to your early attention a careful revision of these laws, so that, without impeding the freedom and facilities of our navigation, or impairing an important branch of our industry connected with it, the integrity and honor of our flag may be carefully preserved. Information derived from our consul at Havana, showing the necessity of this, was communicated to a committee of the Senate near the close of the last session, but too late, as it appeared, to be acted upon."

From this passage, referring to a notice taken by the United States Government only about March, 1839, of what so materially affected the integrity and honor of their flag, I concluded either that Mr. Trist had only very shortly before communicated the information, or that he had previously done it in a manner not to impress upon their attention the heinous character of the transactions.

Yet, so far back as October, 1836, had the British commissioners called his attention to the first speculations of the slave-traders, as to what protection they might receive from the United States flag; and of their subsequent use of it, he must have been as well aware.

I give you a paper showing that, prior to 1836, we have no account of any vessel sailing hence under the United States flag to Africa, to be employed in the slave-trade.

In October, 1836, five vessels sailed hence under that flag, having arrived

here about a month previously from the United States, equipped for slave-trade, viz :

Anaconda	Rosanna, and
Viper	Fanny Butler.
Martha	

In that same month (October, 1836) the British commissioners called the attention of Mr. Consul Trist to the circumstance.

In 1837, eleven vessels sailed hence under the United States flag, for that purpose, viz :

The Bee	Washington
Two Friends	Joseph Hand
Morris Cooper	Cleopatra
Terrible	Perry, and
George Washington	Itramurra
Teazer.	

In 1838, nineteen vessels sailed hence, under the United States flag, for that purpose, viz :

Gabriel	Venus
Alexander	Shark
Dido	Mary Jane
Mary Hooper	Comet
Eagle	Florida
Fame	Hazard
Traveller	Clara
John Holland	Liberty, and
Dolphin	William Savin.
Plant	

In 1839, twenty-three vessels sailed hence, under the United States flag, for that purpose, viz :

Rebecca	John
Douglas	Hannah
Morris Cooper	Centipede
Cutter Campbell	Oriental
Octavia	Lark
Hound	Perry Spencer
Catharine	Nymph
Butterfly	Joseph Wilding
William Bayard	Mary
Hound	Elvira, and
Wyoming	Hyperion.
Asp	

Thus, then, I showed you that for more than two years had the slave-traders been presuming upon impunity, to be insured from the adoption of the United States flag, without the United States consul calling on his Government to take the requisite measures to prevent it; for there can be no doubt that, had he done so in a proper manner, the President would have taken much earlier notice of such communications than have left it only to "near the close of the last session."

The next question that arises on this view of his conduct, as to the motives that influenced him, are sufficiently explained by our meanwhile finding Mr. Trist in close contact with the slave dealers at this place, and in

their fullest confidence. This was by his taking upon himself to act as Portuguese consul; in which capacity it was notorious he had no interests to serve but those of the slave-traders, Portugal having no trade whatever with this island, and only lending her flag for this illicit traffic, in return for a high duty on the transfer of foreign vessels to that flag: no less than 15 per cent. on the nominal purchase-money.

The late Portuguese consul, (Mr. Fernandez,) who had been only a few months appointed consul, began his duties by acting upon the opinion that he ought to enforce the laws of Portugal against fictitious transfers of vessels to the Portuguese flag.

He therefore refused to pass several slave-vessels which had no just claim to sail under that flag; and it was for this offence only, upon the complaints and under the influence of slave-dealers, that he was suspended from his office. This was at the latter end of 1837, or beginning of 1838; and the first person to whom the slave-dealers then turned their eyes, and above all persons found willing to lend himself to their schemes, was the United States consul.

He (Mr. Trist) had no such scruples as Mr. Fernandez, and he passed, as it appears, all papers presented to him, without any hesitation. For this we have the evidence, not only of the British pro-consul at the Cape de Verdes, who charges him with the fact, (Parliamentary papers 1839, class B, further series, page 110,) but also the author of a pamphlet, styling himself "A Calm Observer," published this year, in express vindication of Mr. Trist's conduct as consul at this place.

This writer states, unequivocally, that had Mr. Fernandez been acting Portuguese consul, the "Venus," a notorious slaver, would not have been allowed to sail under the Portuguese flag. Yet the papers of this notorious slaver did Mr. Trist allow to pass, without, as we can learn, any attempt to arrest her progress, first as American, and afterwards as Portuguese consul.

In this capacity he has been acting for nearly, if not full, two years. Confining my observations, however, only to one year, I will take the year 1838 for my consideration of his conduct. In that year we know of forty-two vessels under the Portuguese, and nineteen under the American flag, that sailed hence for the coast of Africa, unquestionably to be employed in the slave-trade. In that same year arrived here, from Africa, forty-four under the Portuguese, but not one under the American flag, that we know of. We know there were others, both that sailed and arrived, besides those in our lists; of which, however, we cannot take account, not having full particulars respecting them. For instance: in the letter of the pro-consul at Cape de Verdes, (above referred to,) there is mention made of the American schooner "James Webb" arriving there, from Havana, 15th July, 1838, with a Spanish crew, the bill of sale and list of crew being made out by Mr. Trist; of which we have no other notice, and it is not in our list. This schooner, it seems, went there for Portuguese papers, which the Governor refused to give. Passing by these, then, still we have it before us that in 1838 there were upwards of one hundred slave-vessels on which Mr. Trist received the consular fees! The amount of those fees it is impossible for any one to say, who was not likely to be in possession of such knowledge; but we may be sure that, as the slave-dealers had it in their power to pay well, in proportion to the assistance and protection they received on the one hand, so, on the other, any person interfering in such matters, and with such characters, would insist on being bribed in proportion to the disgrace-

fulness of the duties he undertook, and to undertake which he was under no sort of obligation.

Of his easiness with regard to passing papers, in the case of the "Venus" we have already had one proof. In the papers relating to slave-trade, published in 1839, by order of the House of Commons, we have another, not less remarkable. (See papers, class A, further series, page 58.) It is the case of a piratical vessel, named the "Constituição," found, when taken, to have twenty-one long guns (18 pounders) on board, with muskets, cutlasses, and ammunition in proportion, all laid about the deck, and prepared for action. She was taken by boats, however, without resistance; and, among the papers, the matricula was found to have a "certificate from Mr. Trist, intended to authenticate the matricula, dated one day before that document was signed by the master of the vessel."

To the customs clearance, also, "was a certificate added, from the American consul's office, as to the signature of the customs officer, dated a day previous to the customs certificate, which it was to authenticate, and which Mr. Trist had not signed,"—probably some one in the office.

Of the character of this piratical vessel, Mr. Trist could scarcely have failed to be ignorant; or, as sailing in defiance of the laws of all nations, it was his duty to all the world to have denounced her to the local Government, or otherwise had her arrested in her lawless career: instead of which, he appears to have even gone out of his regular course to facilitate her progress.

We can only judge of men's motives by their actions: and there are some of a nature which, to attempt to deny, or to explain away, would be an imputation upon our understandings. From persons committing such acts, however, we cannot be surprised to find any aggravation of their conduct, even though in the shape of senseless, unprovoked, and undistinguishing insult.

I acknowledge that the United States Government does not, owing to the constitution of the Government, possess that control over the acts of individual citizens which some others may possess; and therefore that it would be unjust to charge upon that Government the criminality of individuals. But the United States Government has control over its officers; and in proportion to the want of power over lawless individuals, ought those officers to be careful not to compromise the Government by their conduct.

In equal proportion ought the Government to guard against being compromised by the acts of its officers, and adopt a becoming comportment toward them, when departing clearly and wilfully from the honorable course of their public duty.

In conclusion, I beg to express my gratification, individually, to learn from your very satisfactory assurances that the conduct of Mr. Trist, in refusing to receive communications from the British commissioners, on the subject of slave-trade, has not met the approval of his Government. The fact of you, sir, a functionary of a higher class, applying to me for information upon these important inquiries, though standing towards us in no stronger degree than the British commissioners with the American consul, is a sufficient manifestation of your opinions on the subject.

For myself, I hold my time, and any information I can give respecting slave-trade, at the disposal of any one interested in such inquiries; believing that the more the truth is known and honestly spoken, the better it will be for the suppression of that murderous traffic.

Much more, then, do I feel gratified to meet upon this ground one especially appointed for such a purpose, by the Government to which the whole Christian world is looking, to watch its proceedings, and which has in its power so much to effect, as it shall please to determine, for good or for evil.

I have, &c.,

J. KENNEDY.

A. H. EVERETT, Esq.,
 &c., &c., &c.

[Sub-enclosure.]

HAVANA, June 1, 1840.

SIR: I have received your letter of the 28th ultimo, and beg you to accept my thanks for the information contained in it, and for the frank and friendly tone in which it is written.

It will be of great use to me in preparing my report upon the subject into which I have been directed by the Government of the United States to make inquiry.

To avoid any misunderstanding in any quarter, I will add a single remark upon a passage near the close of your letter, in which you express your gratification at finding that the conduct of Mr. Trist, in declining to receive some communications from the British commissioners here, had not met with the approval of his Government, and also intimate that the fact of my addressing myself to you upon the subject shows that I entertain individually a similar opinion.

The British minister at Washington having, by order of his Government, formally charged the consul of the United States at this port with abusing his official character for the purpose of affording facilities to a trade which is subjected by our laws to the penalties of piracy, the President deemed it necessary, from respect to the high authority on which the charge is made, as well as from the deep interest which he feels himself in the subject, to order a thorough investigation into the conduct of Mr. Trist.

Information to this effect has been given, through Mr. Fox, to the British Government.

In ordering this investigation, it was not, however, the intention of the President to prejudice the question against Mr. Trist, in any of its parts. In this, as in other cases of inquiry, the burden of proof rests upon the accusing party, and the person accused is presumed to be innocent until the close of the examination shall have shown the real state of the case.

It was also not my intention to be understood as expressing, either by the fact of addressing myself to you for information, or by any thing which I may have said at our late interview, any opinion upon the conduct of Mr. Trist, in declining to receive some communications which were offered to him by the British commissioners here. The course taken by Mr. Trist was justified by himself at the time, in his correspondence with the commissioners, and with his own Government, on grounds founded on the form in which those communications were made; and he expressed, in some of his letters to the commissioners, his willingness to receive information, if conveyed in a form and manner which he should consider unobjectionable.

It would be premature for me, during the progress of the inquiry, to express any opinion upon the validity of his objections.

But, as formal difficulties of this kind, whether well or ill-founded, could be no obstacle to communication between any other persons, excepting those with whom they had originated, I have felt myself at liberty, and indeed thought it my duty, having been charged by my Government to obtain information upon the subject in question, to seek from your commission, as one of the best sources on the island, any that might be in their possession, and that they might think proper to communicate.

With renewed thanks for the friendly spirit in which you have met this overture on my part, I beg leave to assure you of the high respect and esteem with which

I am, &c.,

A. H. EVERETT.

J. KENNEDY, Esq., &c., &c., &c.

[Sub-enclosure.]

HAVANA, June 5, 1840.

SIR: I owe you an apology for not having sooner sent you an answer to your communication of the 28th ultimo. The accompanying letter was ready on the day of its date, but has been kept back until I could ascertain the proper mode of transmitting it to you.

In the mean time I have received your supplementary note of yesterday, and have made the (verbal) correction which you desire in the former one.

May I ask the favor of you to furnish me with any information that may be in your possession, and that you may think proper to communicate, upon the following points:

1. The total number of ships engaged in the slave-trade with this island, in the year 1839, and their respective flags.
2. The houses in the Havana that are chiefly concerned in the trade.
3. The amount and mode of distribution of the gratuities paid, by the parties concerned, to the Government of the island.
4. The method of proceeding in your commission, and the number of cases that have been brought before it, with their results.
5. The disposition made of the negroes who have been liberated by order of the commission.

I fear you will think that I give you a great deal of trouble; but the peculiar character of the subject in which I know that you, in common with all the friends of humanity, take the deepest interest, and the very obliging manner in which you have already attended to my wishes, will, I hope, furnish a sufficient excuse.

Permit me to add, that I shall be most happy, if you desire it, to serve you in the same way, to the extent of my ability, and to furnish you with any information upon the subject which you may request, and which may be accessible to me, either here or from the United States.

I am, &c.,

A. H. EVERETT.

J. KENNEDY, Esq., &c., &c., &c.

[Sub enclosure.]

HAVANA, *June 9, 1840.*

SIR: I received only yesterday your notes of the 1st and 5th June instant, and hasten to answer them as fully as I can. In the first, you favor me with an explanation of your views as to that part of my communication to you of the 28th May, in which I express my gratification to learn that Mr. Trist's conduct, in refusing to receive communications from the British commissioners here, had not met with the approval of his Government; and, in the second note, you request me to furnish you certain information, as pointed out under five heads of inquiry.

With regard to the first note, I certainly understood you to assure me, in express words, that whatever opinions Mr. Trist entertained on his being warranted to refuse communications from the British commissioners on the subject of slave-trade, those opinions were not reciprocated by your Government; and I considered the best proof of this to consist in the fact of your honoring me with a visit, for purposes which would be inconsistent with those opinions if you held them. You now say Mr. Trist justified his refusal on the ground of form; but, in his letter to the commissioners, of the 29th November, 1836, he made no objection whatever as to form. On the contrary, he grounds his refusal in these terms: "Besides the general objection to holding, with any agent of a foreign Government, any correspondence not warranted by the very limited official character with which he was invested" on the broad plea "of his Government having declined the overtures for a convention on the slave-trade made by the British Government, and in a manner evincing the most decided disinclination to become a party to even any discussion on the subject." You will also remember that Mr. Trist not only refused to receive a communication from the commissioners in 1836, but, in his voluminous fanfaronade (I know not what else to call it) of July and August of last year, declared he would not even open a letter from us in future, addressed to him, if aware of the quarter from which it came. This threat he actually carried into effect, by returning the short note of acknowledgment we sent in reply; and that not in the usual style of common courtesy, but in a thick, coarse sheet of paper, through the post-office, though his messenger, in going there, must have had to pass by the street in which we held our office.

In your present note, I understand you only to mean that you do not stand in a position to prejudge him on any particular point; and this interpretation I take, therefore, in preference to the conclusion which would otherwise arise from your disclaimer of my remarks, viz: that your Government did approve of his conduct, even on the occasion in 1836. In your note of the 5th instant, you request information on the following points:

"1. The total number of ships engaged in the slave-trade with this island, in the year 1839, and their respective flags.

"2. The houses in the Havana that are chiefly concerned in the trade.

"3. The amount and mode of distribution of the gratuities paid, by the parties concerned, to the Government of the island.

"4. The method of proceeding in our commission, and the number of cases that have been brought before it, with their results.

"5. The disposition of the negroes who have been liberated by order of the commission."

To the first inquiry I regret being unable to give a direct reply. In a

contraband traffic, the parties, of course, must resort to all modes of deception; and thus, as each slave-vessel bears two or three different names, and may sail out under the American and return under the Portuguese flag, it is impossible for us to distinguish them with any certainty of accuracy. Substituting, however, the words "this port" for "this island," as in your note, I give you the reports that we received in 1839 of there having sailed hence in that year, for the coast of Africa—

26	vessels	under the Portuguese flag;
23	"	under the American;
8	"	under the Spanish;
1	"	under that of Montevideo;
1	"	under that of Hamburg.

Total 59

While there arrived here from Africa—

39	vessels	under the Portuguese flag;
5	"	under the American;
2	"	under the Spanish;
1	"	Oriental, (South American.)

Supposing these were different vessels, there would therefore be, altogether, 106 vessels that year engaged in slave-trade from this port alone; and, though some (as the "Venus," for instance) might be counted twice over, yet, if we make allowance for vessels engaged in the traffic the knowledge of which may not have reached us, that number may, perhaps, be nearly accurate.

Though you have not asked for any returns respecting the present year, thinking your inquiries would be incomplete if not brought down as far as possible, I will further state, that, in the five months past of 1840 there have sailed hence for the coast of Africa—

11	vessels	under the Portuguese flag;
8	"	under the American;
4	"	under the Spanish.

While there have arrived, as far as we know—

12	vessels	under the Portuguese flag;
5	"	under the Spanish;
		None under the American.

In reply to your 2d and 3d inquiries, I beg to say, that I should feel exceedingly indebted myself for any information on those points, that might be relied on. Few persons, I believe, could give you more, if he pleased, than Mr. Trist; but it is the misfortune, for one in my situation, to be refused information freely detailed to others, for fear of the parties giving it being implicated in consequence. I may, however, state, that, of the American vessels sailing hence this year, suspected of being intended for slave-trade, five, at least, (viz: the "Hudson," the "Plant," the "Lone," the "Seminole," and the "Kite,") were cleared out by Mr. Charles Tyng, an American merchant here, who was much interested in, if not the owner of, the "Catharine," sent to the United States last year, and, I believe, condemned there, for having been engaged in slave-trade.

With regard to the 4th question, I beg to refer you to the several volumes of slave-trade papers printed by order of the House of Commons, which you informed me you had. I have no list of cases made out, and, not exactly knowing whether you wish to confine your inquiries to this commission,

or to include (as, indeed, would be only fair) the labors of the three others at Sierra Leone, Rio de Janeiro, and Surinam, would prefer your taking your information from those papers, from which alone I could furnish you any respecting them.

In reply to the last question, I may save you a lengthened reference to those papers by stating, shortly, that, previous to 1835, the negroes emancipated by the mixed court here were all delivered over to the Government of the island, by whom they were in fact sold, or disposed of so as eventually to be treated as badly, or worse even, than ordinary slaves, or than felons. You have, no doubt, heard of the *emancipado* woman, allowed without a premium to Mr. Trist, whom he had, up to a recent date, working out of his house, upon payment to him of about two dollars and a half per week. There have been several other cases of the like character brought to our knowledge; and the general condition and treatment, altogether, of the *emancipados*, all accounts prove to have been most lamentable. In 1835, in consequence of the representations made to them to this effect, the English Government undertook the whole charge of negroes captured by British cruisers; and they are now, as soon as sentence of liberation is passed, sent to some of the British colonies, under regulations ordered by the Government.

I believe I have now fully answered, and certainly to the best of my ability, the inquiries you made. Should there be any further information required, I shall be as ready to attend to your future inquiries in our mutual endeavors to suppress that traffic, for the suppression of which I trust we are all equally sincerely desirous.

I have, &c.,

J. KENNEDY.

A. H. EVERETT, Esq., &c., &c., &c.

[Sub-enclosure.]

[PORTUGAL, No. 41.]

SIERRA LEONE, May 12, 1840.

MY LORD: We have the honor to acknowledge the receipt of your lordship's despatch No. 6, of the 17th May last, respecting certain papers stated to have been furnished to the owners of vessels about to be engaged in the slave trade, by Mr. Trist, the United States consul at Havana, who was lately acting as Portuguese consul in that city.

In compliance with your lordship's directions, we transmit herewith the two documents alluded to by her Majesty's commissioners in the report of the case of the Portuguese vessel "Constituição," on the 20th October, 1838; and which are the muster-roll, and a custom-house certificate of the lawful objects with which an extraordinary number of water-casks, a boiler of large dimensions, and plank, had been embarked in that vessel.

The former of these documents has been authenticated by Mr. Trist's certificate, dated the day previous to that on which the muster-roll itself bears date; whilst a similar paper from Mr. Trist, respecting the custom-house certificate, is wanting that gentleman's signature, though having his seal of office.

With respect to the blank forms bearing the signature of Mr. Trist, stated by Lieutenant Oliver, the captor of the abovementioned "Constituição," to have been found, at the time of her seizure, in the desk of a Spanish passenger, who represented himself to be the owner of that vessel and her cargo, we beg leave to state that we have not been able to discover any papers exactly answering the description in question among those lodged in the archives of the court.

In the papers of the "Constituição," we found the enclosed certificates for three sailors, said to have been disembarked from that vessel at Havana; in each of which the description of the man named has been omitted by Mr. Trist, and the space for this purpose left open.

In handing these certificates to your lordship, we would beg to draw attention to the fact of the names of two only of the three seamen stated to have been landed from the "Constituição" being mentioned in the muster-roll, (enclosure No. 1,) although Mr. Trist granted the certificates in question on the day subsequent to that on which he had authenticated the muster-roll.

Should the certificates now transmitted to your lordship not be the papers mentioned by Lieutenant Oliver in his report to Admiral Elliot, and alluded to in your lordship's despatch to Mr. Fox of the 22d February, 1839, they cannot have been delivered into the court, as they should have been, when the "Constituição" was presented for adjudication.

We shall take the earliest opportunity of communicating to the senior naval officer on this station your lordship's wishes in respect to the blank forms mentioned by Lieutenant Oliver; so that, in the event of those forms being in the possession of Lieutenant Oliver, or the naval commander-in-chief, they may be at once transmitted to England for your lordship's information.

We have, &c.,

R. DOHERTY,
WALTER W. LEWIS.

Right Hon. VISCOUNT PALMERSTON,
G. C. B., &c., &c., &c.

[Sub-enclosure.]

FOREIGN OFFICE, August 5, 1840.

SIR: With reference to the desire which you expressed in your letter of the 27th February, 1840, to be furnished with certain printed forms, which it was represented that Mr. Trist, United States consul at the Havana, had given in blank to the owners or commanders of slave-ships, to be filled up by them at pleasure, I have now to transmit to you, for communication to the United States Government, the accompanying copy of a despatch from her Majesty's commissioners at Sierra Leone, together with the authenticated documents enclosed in that despatch, and containing in original: 1st. The muster-roll of the slave-vessel *Constituição*; 2d. A certificate of the shipment for lawful purposes; and furthermore, three certificates of the disembarkation of seamen from the vessel in question. And I have to request that you will draw the attention of the President of the United States to the

observations contained in the despatch from her Majesty's commissioners at Sierra Leone, upon the subject of these papers.

I have, &c.,

PALMERSTON.

A. STEVENSON, Esq., &c., &c., &c.

[Enclosure No. 6.]

[SLAVE-TRADE, No. 19.]

FOREIGN OFFICE, *August 22, 1840.*

SIR: I herewith transmit to you a report of the case of the Spanish schooner "Lark," which was detained by the boats of her Majesty's sloop "Wolverine," and condemned at Sierra Leone, on a charge of being concerned in slave-trade.

The captain of this vessel attempted to take advantage of the flag of the United States, in order to hide the fact that the "Lark" was a Spanish vessel, engaged in Spanish slave-trade.

But the "Lark," when taken, had a complete slave equipment on board, and she was commanded and partly owned by a Spanish subject, named Juan Barba, who had twice before been brought to Sierra Leone as a captain of a slave vessel.

It is true that the "Lark" obtained an American protection for the flag captain; and she had a muster-roll, containing the names of six Americans as her crew. But she had, also, a complete Spanish crew of thirty-three persons; and her owners were Simon de Ferran and Juan Barba, both Spaniards, and residents at the Havana; and those two persons were also the owners of her cargo.

It is, moreover, to be observed, that the voyage on which she was captured was from the Havana to the coast of Africa, and back to the Havana, and not to or from the United States.

These facts establish, beyond a doubt, the employment of the "Lark" in the slave trade, the Spanish character of the vessel, and the Spanish character of the adventure in which she was engaged; and I have to desire that you will, by a note to the United States minister, make the American Government acquainted with the principal circumstances of this case, as a further instance of the manner in which Spanish slave-traders attempt to shelter themselves under the flag of the United States, and thus to escape the punishment to which they would be liable in their proper national character.

I am, with great truth and regard, sir, your most obedient, humble servant,

PALMERSTON.

HENRY STEPHEN FOX, Esq., &c., &c., &c.
Washington.

[Sub-enclosure.]

Report of the case of the Spanish schooner "Lark," Thomas M. Soloman master.

This vessel arrived on the 29th ultimo; and the case was received into court, and the monition issued on the 2d instant.

The papers found on board were the following :

1. A permanent Baltimore register, of the 22d of April, stating the tonnage to be $94\frac{3}{8}$, with an endorsement on it by the American vice-consul at Havana, of the 29th of June following, declaring Thomas M. Soloman to be master at that date.

2. A charter-party, made on the 11th of April last, between W. B. Smith, agent of the owners, and Juan Barba, for a voyage of four months, from Havana to Prince's island, or elsewhere, as Barba might direct ; it being provided that, at the end of that period, the vessel should return to Havana. In this deed it is declared to be an express condition of the charter, that no article of illicit traffic shall be shipped or received on board during the term of it. A note is annexed, signed by S. P. Terran, by which that person (one of the owners) guaranties the performance of the articles of agreement by the charterer ; so that, even supposing Barba not to be himself an owner, (which, however, he was,) it is one and the same party which contracts on either side, and the agreement is illusory.

3. A muster-roll, certified by the American consul at Havana, containing the names of the American crew, six in number, who were shipped at Havana in September last.

4. Seamen's articles, containing the same names, with the addition of those of four Spaniards subsequently received on board at St. Thomas. In this document, the crew are stated to be hired for the coast or elsewhere, as the master might direct.

5. An American protection for the flag-captain, (Soloman,) certifying to his being a citizen of the United States.

The remaining numbers, amounting to thirty-three, consisted of passports for Juan Barba, Simon Campo, and the Spanish crew ; one English and sundry Spanish logs and books of navigation, with a few letters of Barba, and a variety of unimportant memoranda ; all in the Spanish language.

From this abstract it will be perceived that the history of the "Lark" does not differ from that of other Spanish vessels which have been before the court ; and, in the absence of further evidence, the information which the papers afford would itself have sufficed to establish the Spanish ownership of the vessel and her Spanish course of trade. The testimony, however, of the American master, who withheld nothing, was in all respects conclusive against her.

This person deposed, that, himself a native of Philadelphia, he received command and possession from William Moore, another American citizen who had been formerly master ; that he had first seen the schooner at Baltimore, in February of last year, before she was yet masted ; that he shipped as crew, at Havana, an Italian and four Americans—which four he afterwards discharged at St. Thomas, and replaced by four Spaniards ; that there were, further, fifteen Spanish passengers, with passports for St. Thomas, who were destined to receive over the vessel at the Nun or Bras river ; that of those persons, Juan Barba, the supercargo, who had an interest in the adventure, and was to supersede witness in the command there, had the management of the vessel with respect to her employment in trade, and already acted as an officer on board, together with another Spaniard named Simon Campo ; that the voyage began, and was to end, at Havana ; that the vessel proceeded direct to the Nun, and discharged tobacco, beads, and two thousand feet of plank ; that she then went to St. Thomas for farinha and water, with which, returning to the Nun, she anchored there

on the 16th of January last, and was captured, while at anchor, by the boats of the "Wolverine;" that she was armed with muskets and cutlasses, and had a supply of ammunition for defence against canoes; that he believed the owners of the vessel to be Simon de Terran and Juan Barba, (both Spaniards and residents at Havana,) and that they were also the laders and owners of the cargo; that, on the voyage to Sierra Leone, after capture, the vessel was taken to Accoa and Cape Coast; that the charter-party was made at Havana; that during the voyage no slave had been put or received on board, for the purpose of the illicit traffic; that there were on board, at the moment of seizure, five pairs of shackles and bolts, water-casks for seventy pipes of water, (all filled with water) twenty mess-kids, two iron boilers, one hundred bags of rice, and twenty-four of farinha; and that those provisions and the water were intended, as the witness supposed, for the use and consumption of a return cargo of slaves.

The Spanish cook, who was also examined, could not speak to the ownership, but confirmed the master's statements respecting the course of trade and equipment, and declared the Spaniards on board to be, what they were even on the outward voyage—not passengers, but crew.

On the eighth day (the 9th of the month) the monition was returned, duly certified by the marshal; and, in the British and Spanish court held that day, the vessel was condemned as prize.

R. DOHERTY,
L. HOOK.

SIERRA LEONE, *March* 14, 1840.

[Enclosure No. 7.]

FOREIGN OFFICE, *September* 29, 1840.

SIR: I herewith transmit to you, for communication to the Government of the United States, the accompanying copies of two despatches from her Majesty's commissioners at Sierra Leone, relative to a Spanish schooner fully equipped for the slave-trade, which had been found sailing under American colors and with American papers, under the name of "*Mary Cushing*."

This vessel, under her assumed name, escaped the operation of the equipment article of the treaty between Great Britain and Spain; and it was not until her slaves, which had been collected at Lagos, were ready to be embarked, that she assumed her real character of the Spanish slaver "*Sete de Avril*."

The vessel was captured on the day following that on which she had taken on board 424 slaves, and was condemned in the mixed British and Spanish court at Sierra Leone.

I am, with great truth and regard, sir, your most obedient, humble servant,
PALMERSTON.

H. S. Fox, Esq., &c., &c., &c.

[Sub-enclosure.]

[SEPARATE.]

SIERRA LEONE, *April* 30, 1839.

MY LORD: We have the honor to enclose to your lordship an abstract of the papers found on board the schooner "*Mary Cushing*," lately detained, whilst sailing under American colors.

Although the rule which has been applied to such cases prevented the prosecution of the vessel in any of the mixed courts, we were favored with a perusal of her papers by the kindness of the capturing officer, and a summary of their contents has been recorded.

The consignee of the "Mary Cushing" at Bahia, André Pinto da Silveira, her consignee at Lagos, Mathias Baptista de Carvalho, and her agent at Prince's island, Francisco d'Alva Brandao, are well known for their extensive engagements in the slave-trade, and would alone have excited suspicion respecting the proceedings of this nominal American vessel. But her real character, and the illegal objects of the voyage, were sufficiently shown by a complete slave-trading equipment; by a numerous foreign crew, (the captain of the flag being the only American on board;) and by the schooner being under the sole direction of the Spanish supercargo, Fernando Reyes, who acted in all respects as the owner, which he very probably was.

We have, &c.,

H. W. MACAULAY,
WALTER W. LEWIS.

The Rt. Hon. Lord Viscount PALMERSTON,
G. C. B., &c., &c., &c.

[Sub-enclosure.]

Abstract of the papers found on board the schooner "Mary Cushing."

No. 1 is a permanent register, (No. 87,) dated at Baltimore, September 29, 1837, naming William Hooper, Andronicus Cheesebrough, and Thomas Whitridge, as the owners, and James Tyler as the captain. It describes the "Mary Cushing" to be a schooner of the burden of 144½ tons, and to have been built at Baltimore during the year 1837.

An endorsement on the passport, by Mr. N. P. Trist, the American consul at Havana, dated on the 19th of May, 1838, is to the following effect:

"Benjamin Reynolds, having taken the oath required by law," is at present master of the "within named vessel, in lieu" of James Tyler, late master.

The present master, who is here called "Benjamin Reynolds," is, in the Havana muster-roll, called "B. L. Reynolds," and he signs that document "Benjamin Reynolds." A bill of lading at Prince's was afterwards made out in the name of "B. L. Reynolds," and at Bahia he was called "Benito Louis Reynolds." But this man, who signed himself in May, 1838, at Havana, "Benjamin Reynolds," signed his name on the 11th ultimo, at El Mina, "Benito Reynolds."

What may be his proper name, it is impossible to say.

No. 2 is a power of attorney, made at Baltimore on the day after the register was obtained, by which the three owners of the "Mary Cushing" authorize the master (Tyler) to sell that vessel forthwith, or to appoint a substitute for the purpose. Tyler accordingly appointed "Don Fernando Reyes, of the city of Havana, supercargo" of the "Mary Cushing," to dispose of the vessel. This power of substitution was executed by Tyler, at Havana, on the 30th of April, 1838, and was witnessed by J. A. Smith, the American vice-consul.

A certificate of the acknowledgment of the deed was added on the same day by Mr. Trist, the American consul, under his official seal and signature.

Reyes was most probably the owner of the "Mary Cushing." He at any rate possessed the most absolute control over her, directed all her proceedings in the character of supercargo, and was empowered to sell her when and where he pleased.

No. 3 is a muster-roll, containing the names of sixteen persons, including the master and the supercargo, Reyes. Of these, one only is stated to be a citizen of the United States, and he (Sylvester Rocq) was "born at Buenos Ayres."

This paper, which, like all the others procured at Havana, bears the certificate of Mr. Trist on the 21st of May, 1838, is headed "List of persons composing the crew of the schooner 'Mary Cushing,' of Baltimore, whereof is master B. L. Reynolds, bound for ——." It is extraordinary that Mr. Trist should have felt no difficulty in clearing out an American vessel with a wholly foreign crew, and with her destination left blank; nor was the schooner supplied, so far as appears, with any clearance from the custom-house authorities of that port. The reasonable presumption from such circumstances is, that the "Mary Cushing" cleared out as a Spanish or Portuguese vessel, and carried with her the above papers, at the same time, to give a color to her pretensions so long as it might suit her to wear an American cushion [flag?]

No. 4. We next hear of the "Mary Cushing" on the 19th of October, 1838, at Prince's island, on the occasion of her leaving that place for Bahia. A bill of lading, which names B. L. Rugnals as the captain, but is signed by the noted slave dealer Francisco d'Alva Brandao as consignee, declares that three pipes of palm-oil were shipped at Prince's, for delivery to André Pinto de Silveira, at Bahia.

There can be little doubt that the cargo really carried to Brazil consisted of slaves; and the fact might be ascertained, if it were worth while, through our consul at Bahia.

No 5 is a bill of lading, dated at Bahia on the 19th of January, 1839, and signed by "*Benito Louis Reynals*," for thirty pipes of spirits and a few cutlasses, to be delivered at Lagos, to Senhor Mathias Baptista de Carvalho.

This is the same person whom we had occasion to refer to as the consignee of the condemned Spanish slave brig "Dos Amigos," reported in our despatch marked "Spain No. 10," of the 31st of January, 1839.

No. 6 is an official muster-roll of a new crew, shipped at Bahia, on the 23d of January, 1839, and certified on the same day, under the hand and seal of the American acting consul, George R. Foster, whose zeal in forwarding slave-trading adventures under the American flag was so conspicuous in the case of the brig "Eagle," reported in our despatch (marked "Separate") of the 12th of February, 1839. The crew with which the "Mary Cushing" was allowed by this gentleman to clear out from Bahia, consisted of twenty men, exclusive of the American master, every one of whom was a foreigner. The only person of the old crew who remained on board was Fernando Reyes, who still bore the title of supercargo. The schooner was cleared by Mr. Foster for Prince's island, although the bill of lading just referred to shows that she was bound to Lagos.

Nos. 7 and 8 are two certificates, dated on the 23d and 24th of January, from the same American consul, that the vessel had cleared at the custom-

house, and that the American register and muster-roll had been delivered up.

Nos. 9 to 12 are four official documents, from the authorities of Bahia, dated on the 25th and 26th of January last, acknowledging the receipt of harbor and customs dues, and authorizing the vessel's departure.

No. 13 is a Dutch paper, or receipt, signed by the Governor of El Mina, on the 11th ultimo, and giving the native names of nineteen negro passengers, who had been placed on board the "Mary Cushing," apparently for a passage to El Mina. It is not unlikely that these passengers were some of the negro recruits whom the Dutch Government have been enlisting in large numbers in that quarter.

No. 14 is a Spanish log-book, kept by Reyes, the Spanish supercargo, of the voyage from Havana to Prince's island, in May and June, 1838.

SIERRA LEONE, April 30, 1839.

[Sub enclosure.]

SIERRA LEONE, November 15, 1839.

MY LORD: We have the honor to transmit to your lordship, enclosed, a report of the case of the schooner "Sete de Avril," Manoel Martinho captain of the Portuguese flag, which vessel was lately detained as the American schooner "Mary Cushing," reported in our despatch (marked "separate") of the 30th of April, 1839. The "Sete de Avril" was captured on the 27th of September, by her Majesty's brig "Waterwitch," Lieutenant Henry James Matson commanding, for having on board a cargo of 424 slaves, who had been embarked at Lagos on the previous day; and she was condemned, on the 2d instant, in the British and Spanish mixed court of justice, when the survivors of the slaves, 415 in number, were emancipated.

The detained vessel continued under the protection of her American papers until the very hour that her slaves were embarked. Her American captain was still on board when she was captured, full of slaves, and the Spanish supercargo of the "Mary Cushing" was still the admitted supercargo of the same vessel under her new name.

The owners of the vessel and slaves being avowedly Spanish merchants, resident at Havana, the condemnation of the detained property was pronounced in the British and Spanish mixed court.

We have the honor to be, with the greatest respect, my lord, your lordship's most obedient and most humble servants,

H. W. MACAULAY,
R. DOHERTY.

Right Hon. Lord VISCOUNT PALMERSTON,
&c., &c., &c.

[Sub enclosure.]

Report of the case of the schooner "Sete de Avril," Manoel Martinho captain of the flag.

The only papers found on board this vessel, were a Portuguese passport and a muster-roll. The former was granted at Prince's island, on the 2d of

October, 1838, and describes the "Sete de Avril" to be a Portuguese schooner owned by Jezuino Baptista de Carvalho, commanded by the present captain of the flag, and bound to the Costa da Mina, and the Cape de Verde islands.

The muster-roll, taken out on the previous day, gives the names of eighteen persons composing the crew.

The alleged owner of the "Sete de Avril" has been several times mentioned in our late reports.

He was the writer of letter No. 25, found on board the "Intrepido," (Brazil No. 119, of the 26th September, 1839.) He was also the consignee and ship's husband of the "Ligeira," reported under this date, and is described by the master of that vessel as "a Brazilian merchant, belonging to Bahia, but residing at Havana."

The "Sete de Avril" is no other than the pretended American schooner "Mary Cushing," whose case was fully reported in our despatch (marked "separate") of the 30th of April, 1839; and the American captain of the flag, who at Sierra Leone, and elsewhere, supported the false pretensions of the vessel to an American character, was still on board the schooner when she was captured fully laden with slaves.

The marshal of the court reported the arrival of the "Sete de Avril" at Sierra Leone on the 21st ultimo, with more than four hundred slaves on board; and on the following day the case was presented for prosecution in the British and Portuguese court of mixed commission, when the ship's papers were authenticated and filed, the declaration of seizure was received, the monition was issued, and the witnesses were directed to attend to the registry.

On the same morning, the slaves, to the number of four hundred and seventeen, were landed; the healthy being placed in the liberated African yard, in Freetown, and those requiring constant medical attendance being sent to the upper hospital at Kissy, the lower hospital having been occupied by small-pox patients.

The surgeon's report was, on the whole, favorable; only seven had died on the passage, and only thirty-seven of the remainder were suffering dysentery and other complaints prevalent on board slave-ships.

The captor's declaration is to the following effect: "I, Henry James Matson, lieutenant and commander of her Majesty's brig 'Waterwitch,' hereby declare, that on the 27th day of September, 1839, being in or about latitude 5° 55' north, longitude 30° 20' east, I detained the ship or vessel named the *Sete de Avril*, sailing under Portuguese colors, not armed, commanded by Manoel Martinho, who declared her to be bound from Lagos to Havana, with a crew consisting of seventeen men and thirteen passengers, and having on board 427 slaves, said to have been taken on board at Lagos on the 26th day of September, 1839, and are enumerated as follows.

				Healthy.	Sickly.
Men	-	-	-	112	90
Women	-	-	-	63	10
Boys	-	-	-	96	35
Girls	-	-	-	15	5

"I do further declare that the said ship or vessel appeared to be seaworthy, and was supplied with a sufficient stock of water and provisions for the support of the said negroes and crew on their destined voyage to Ha-

vana ; but that the negroes were in a wretched state, owing to so many being crowded into so small a vessel ; (she was only 144 American tons.)

"And I also further declare, that I have boarded this vessel several times during the last two months, (the last time on the 15th instant,) then sailing under American colors, and called the "Mary Cushing;" and that B. Reynolds, an American citizen, who lately called himself master, and now calls himself a passenger on board the said vessel, has been removed to the 'Waterwitch,' to be retained there until the pleasure of the commander-in-chief is known."

Manoel Martinho, the captain of the Portuguese flag, deposed, in reply to the standing interrogatories, "that he was born at Lisbon, where he has since lived ; is a subject of Portugal, and has never been subject to any other State ; that he was appointed to the command of the detained vessel at Lago, in the month of September, by Don Fernando Reyes, a Spanish subject living at Havana ; that he first saw the vessel at Bahia, nine or ten months ago—she was built at Baltimore, in the United States ; that he was present at the capture, which took place because there were slaves on board ; that the crew consisted of sixteen officers and mariners, exclusive of witness, part Spaniards and part Portuguese, some of whom were shipped at Bahia by a previous American master, and some by witness at Lagos ; that there were thirteen passengers on board—~~one~~ of whom, named Fernando Reyes, had been taken on board at the Havana, and accompanied the vessel as supercargo, and the remaining twelve belonged to different slave vessels, which had been captured and condemned at Sierra Leone, and they were returning to Havana in search of employment ; that Jezuino Baptista de Carvalho, a Brazilian born, residing at Havana with his wife and family, was the sole owner of the vessel ; that the lader and consignee of the cargo was the supercargo, Fernando Reyes, on whose account and risk the slaves were to have been delivered at Havana."

José Antonio Echevarrai, mate of the detained vessel, deposed "that the vessel is called '*Sete de Avril*;' but previous to the 26th September last, and from the time of her building, (two years before,) she had borne the name of '*Mary Cushing*;' being then under the flag of the United States of America : that the present voyage began at Bahia, which was the last clearing port, and was to end at Havana ; that the vessel touched, by order of the supercargo, Fernando Reyes, at Elmina, where two canoes were purchased, and thence went to Lagos for slaves ; that Jezuino Carvalho, a native of Brazil, but living at Havana, is the owner of the vessel."

The prize-master's affidavit of the number of deaths which had occurred amongst the slaves on their passage to this port, showed that only seven slaves had died whilst the vessel was in the charge of the captors.

This closed the evidence in preparatory, and publication thereof was decreed. The monition, which had been published on the 22d, was returned into court on the 29th ; and the case would then have been disposed of by the court, but the exclusively Spanish character of the adventure in which the "Sete de Avril" was engaged at the time of her capture, determined the commissioners to condemn the detained vessel in the Spanish, rather than in the Portuguese court.

It has been already shown that the "Sete de Avril" is the same vessel which, under the designation of the American schooner "Mary Cushing," was brought before the British and Spanish court in April last ; and from the documents to which we have obtained access on these two occasions, the following information has been obtained.

Having left Havana at the latter end of May, 1838, under the flag and pass of the United States, the "Mary Cushing" came on the coast of Africa; and, about four months after her departure from Cuba, she obtained at Prince's island her present Portuguese papers, which allowed her to proceed to the Costa da Mina and the Cape de Verde islands. Fraud, however, marked every step of her progress; and a voyage to the Brazils was immediately afterwards made, with a legitimate cargo of three casks of palm oil. There can be no reasonable doubt that, on that voyage, a cargo of slaves was landed on the coast of Brazil, just as on the present voyage a cargo of slaves was being conveyed to Cuba; and had the "Mary Cushing" been boarded on her former voyage, as she was on the present one, by one of her Majesty's cruisers, the Portuguese papers were at hand to save appearances, as well as to secure the personal safety of the American captain; but the object of the voyage having been accomplished when the slaves were safely landed, the port of Bahia was entered under the American flag, and the Portuguese papers and colors were laid by for another occasion.

The "Mary Cushing" then cleared out from Bahia for Lagos on the 26th of January, 1839; and from this time until the 26th of September, the schooner found complete protection under her American papers and flag. Nor were the Portuguese papers, which had been obtained at Prince's island immediately prior to her last voyage to Bahia, again brought into use until the *very hour* when a cargo of four hundred and twenty-seven slaves was embarked for a passage to Havana.

As to the identity of the vessel, there can be no mistake; the name "Mary Cushing" was still painted on the stern of the so called "Sete de Avril;" Benjamin Reynolds, the American captain of the "Mary Cushing," was found on board that vessel, when, under another name, she was captured loaded with slaves; and Don Fernando Reyes, of the city of Havana, and supercargo of the "Mary Cushing, (as he was described in one of the papers of that vessel,) continued to act as supercargo of the "Sete de Avril."

A Spanish nationality had been impressed on the detained vessel, whether we refer to the papers under which she sailed, or to the depositions of the witnesses.

The sole owner of the vessel was declared to be Jejuino Baptista de Carvalho, and the sole owner of the cargo Fernando Reyes, both well-known and admitted residents of Havana.

The case was accordingly removed into the Spanish court; from which a monition, returnable in three days, was issued for publication; and the evidence taken in the British and Portuguese court was permitted to be used in the new prosecution.

On the 2d instant, the court met to dispose of the case; and the marshal's return of the slaves who were in his charge on that day having been received, a sentence of condemnation was pronounced against the "Sete de Avril," and the emancipation of the survivors of her slaves (four hundred and fifteen in number) was decreed.

The prize-master had deposed that only seven slaves died on the passage of the schooner to this port; only two died subsequently to her arrival: the number of slaves on board at the time of capture was, therefore, declared to be four hundred and twenty-four.

H. W. MACAULAY,
R. DOHERTY.

[Enclosure No. 8.]

[SLAVE-TRADE—No. 21.]

FOREIGN OFFICE, *September 30, 1840.*

SIR: I send to you, herewith, for transmission to the Government of the United States, the accompanying copies of two despatches from her Majesty's commissioners at Sierra Leone, enclosing abstracts of the papers found on board the slave schooners "*Catharine*" and "*Butterfly*," when detained under American colors, on the coast of Africa, by her Majesty's ship "*Dolphin*."

I am, with great truth and regard, sir, your most obedient, humble servant,

PALMERSTON.

H. S. Fox, Esq., &c. &c., &c.

[Sub-enclosure.]

[SEPARATE.]

SIERRA LEONE, *August 28, 1839.*

MY LORD: We have the honor to enclose to your lordship an abstract of the papers found on board the schooner "*Catharine*," Frederick Adolph Peterson master, detained on the 12th instant, off Lagos, whilst sailing under American colors, by her Majesty's brig "*Dolphin*," Lieutenant Edward Holland commanding.

The detained schooner, which arrived at Sierre Leone yesterday, only remained here a few hours, whilst taking in water, and has to-day proceeded on her voyage to New York; the yellow fever, which is now raging throughout the colony, rendering it very undesirable that her stay here should be protracted beyond what was absolutely necessary.

During this short interval, we made a memorandum of the "*Catharine's*" papers, which were obligingly submitted to our inspection by Mr. R. H. Dundas, the senior mate of the "*Dolphin*," and the prize-master appointed to carry the detained vessel to the United States.

We should have been glad if time had allowed of our rendering the enclosed abstract more full; but on this, as on almost every other occasion of the same kind, the necessity of returning to the captor, without delay, the papers of a vessel which is not admitted to prosecution, did not allow of great minuteness of research.

Lieutenant Holland showed great judgment in selecting a case like the present for representation to the Government of the United States.

In none other of the numerous instances in which the American flag has been abused to cover a Spanish slave-trade, has the exposure of the fraud been so complete and irrefragable. Nothing is here left to inference; no opening is left to cavil or doubt. In spite of all the falsehood and misrepresentation of the ship's papers, and in spite of the formal certificates in which Mr. Vice consul Smith announced the due and regular appointments of three out of the four successive masters who commanded this vessel within a period of 49 days, it is proved beyond question that the actual captain of the vessel was Don José Pereyra; that the actual crew consisted of 24 Spaniards, who took out passports as *passengers* before leaving Havana; and that the American master and his few companions, after standing forward as the crew of the vessel on the outward voyage, were, in their turn, to become merely passengers, so soon as the return cargo of slaves should be shipped.

To facilitate the success of this iniquitous scheme, an American citizen, named Thrasher, asserted in one of the papers that the cargo of trade-goods and the slave-equipment of the vessel (the boilers, slave-deck, beams, and leaguers) were shipped by him, and were his sole property; and the American vice-consul added his certificate that "Thrasher" was well known to him, and that he "was the only shipper of the said goods."

Your lordship has considered it right, on some late occasions, to remonstrate with Portugal on the conduct of her consular agents at Cadiz and Havana; but, however disgraceful was the conduct of those functionaries, it has been considered not unworthy of imitation by the representative of the free Government of the United States.

It is reported here that Mr. N. P. Trist, the American consul at Havana, has been recalled, owing to the assistance which he was charged with rendering to Spanish slave-trade adventures. We cannot, however, credit this report, whilst we see Mr. Vice-consul Smith zealously endeavoring, month after month, with perfect impunity, and to a far greater extent than it was possible for Mr. Trist to have done, to degrade his national flag, and to brutalize the character of American seamen, by encouraging them to engage in a contraband traffic.

We have, &c.,

H. W. MACAULAY,
R. DOHERTY.

VISCOUNT PALMERSTON, &c., &c., &c.

[Sub-enclosure.]

Abstract of the papers found on board the schooner "Catharine," Frederick Adolph Peterson master, sailing under American colors.

No. 1. The American register of this vessel, which is numbered 61, and dated at Baltimore on the 10th May, 1839, describes the "Catharine" to be a schooner of 125 $\frac{1}{2}$ tons; and to have been built in Baltimore during the year 1839, to be owned by Robert W. Allen and John Henderson, both of Baltimore; and to be commanded by William S. Wedge.

Within twenty-six days after this register was granted at Baltimore, it received an endorsement at Havana, under the hand of Mr. J. A. Smith, vice-consul of the United States at that port, stating that one Andrew Morrow had taken the oath required by law, and was appointed master of the "Catharine," in the place of W. S. Wedge, the late master.

A second endorsement, on the 28th of the same month, states that the newly appointed master (Morrow) had been replaced by Frederick Adolph Peterson, the present master, who accordingly took the requisite oath as the captain of an American vessel.

Thus was the schooner commanded by three different captains during the short space of forty-nine days.

No. 2 is a muster-roll of the names of the persons who, it was pretended, formed the crew of the "Catharine."

They are as follows:

Ebenezer Tucker, citizen of the United States.

Joseph Macki, do. do.

William Manning, citizen of the United States.

James Williams, do. do.

John Francis, of Italy.

Henry Elliot, of Spain.

This list is dated on the 28th of June, and is signed by the master; and a certificate from Mr. Vice-consul Smith is added, stating the master had, before him, verified the list of crew, consisting of six persons, all told. The names of the last two men on the list are evidently not either Italian or Spanish, and, if not American citizens, we should suspect them to be British subjects. For the first, American protections were produced.

No. 3. A printed form of ship's articles, in the rough state in which we have always found this document on board the other American vessels which have come before us under the same circumstances as the "Catharine." The heading of the paper declares that "the schooner Catharine, Charles Babson master, was bound for Prince's island, or to trade to other ports on the coast of Africa, for a voyage not to exceed eight months." A pen has been drawn through the name "Charles Babson," the fourth captain mentioned as belonging to the schooner within a period of seven weeks, and the name "F. A. Peterson" has been written over it.

No. 4. The falsehood of the ship's papers was, however, clearly proved by the discovery of the muster-roll of the Spanish crew of the "Catharine," consisting of twenty-four persons, all of whom were on board that vessel at the time of her detention. The following were the officers:

Captain, Jose Pereyra; 1st mate, Estevan Barbett; 2d mate, Jose Sanchez; boatswain, Francisco Torres; boatswain's mate, Jose Veina; cooper, Juan Baragas; carpenter, Carlos Saldaña.

Then follows a list of seventeen other men.

Nos. 5 to 25 are twenty-one passengers' passports, taken out at Havana by the Spanish officers of the vessel whom we have named, and by almost the whole of the remainder of the Spanish.

From these documents alone, and without reference to the papers which we shall presently have to describe, it is evident that the nominal American master and his men were the passengers, and that the pretended Spanish passengers were the actual crew of the detained vessel.

No. 26 is a clearance from the custom-house at Havana, dated on the 21st of June last.

The Spanish authorities seem to have been in as much doubt respecting the name of the person who figured as captain of the flag, as were the agents of the vessel themselves. Mr. Vice consul Smith had certified that Wedge had ceased to be connected with the "Catharine" on the 5th of June; and yet, on the 21st of the same month, he was mentioned as the master in the official manifest of cargo. After the document was sealed up, the mistake was apparently discovered; for, without any alteration being made in the enclosure, the envelope gives the names both of Captain Wedge and Captain Morrow—"Captain Wedg dizo Morrow."

No. 27 is a printed form of charter-party, filled up in English, and dated at Havana on the 25th June last, between Charles Tyng, *agent of the owners of the schooner "Catharine,"* (master's name scratched out,) lying at Havana, of the one part, and John S. Thrasher, of the other part; the former charters the "Catharine" to the latter, for a voyage from Havana to the isles of Princes, or other port or ports on the coast of Africa, *as the agent of the charterer may direct.* Jose Pereyra, the Spanish captain and

supercargo of the "Catharine," and the consignee of her cargo, but who took out a passenger's passport as mentioned above, must be meant by "the agent of the charterer."

The vessel was chartered for eight months, at the rate of three hundred dollars per month; and the charterer was, in addition, to pay the wages of the crew and the victualing of the ship during the whole period.

No. 28 is an invoice of merchandise shipped by J. S. Thrasher, (the charterer,) on board the American schooner Catharine, "Peterson" (written over another name) master, bound to the *isles* of Princes, for the account and risk of the shipper, being a native-born citizen of the United States, and consigned to Joseph Pereyra, Esq.

The slave equipment of the vessel is included with the cargo of trade goods; and we particularly noticed the following articles, which would have infallibly condemned any Spanish vessel on board of which they had been found:

14 large hogsheads (shooks)	} leaguers.
10 long hogsheads (shooks)	
14 hogsheads, containing 175 bundles of tobacco.	
1 boiler for clarifying.	
1,500 feet of white-pine boards.	
14 joists.	

The above invoice was dated at Havana, on the 22d June, and signed by J. S. Thrasher. To this document, which proclaimed, in all but express terms, the slave-trading object of the "Catharine's" voyage, the indefatigable vice-consul of the United States did not hesitate to attach "a certificate that the shipper was well known to him as a citizen of the United States, and that he was the only shipper of the goods mentioned in the annexed invoice." Well known as Mr. Thrasher was to Mr. Smith, his connexion with Havana slave-trade could not have escaped the observations of the consular agents of his own country, for even we have remarked upon it on one or two occasions; at any rate, it might have been hoped that a gentleman in Mr. Smith's situation would have stopped short of sanctioning the shipment of such articles as we have enumerated.

No. 29 is a bill of lading for the goods comprised in the invoice just described. It was signed on the 27th of June by F. A. Peterson, although *Babson* is here again mentioned as master in the body of the document.

The beams and plank for a slave-deck, the slave-boiler, and the empty leaguers, are said to have been received on board, and, with the trade goods, were consigned to Jose Pereyra, the Spanish captain of the vessel.

No. 30 is an open letter of instructions to the nominal American master of the "Catharine," from the charterer, dated at Havana, June 28th, 1839. The following is an extract:

"Should the consignee, Jose Pereyra, Esq., wish you to proceed to any other port or ports of Africa, [than Prince's island,] with or without cargo, you will implicitly obey his instructions, as he has my full power to act as he may see fit for my interest. You will be particularly careful, however, not to receive on board the schooner any cargo that is contraband, or that is not allowed by the laws of the United States to be laden on board American vessels. A number of persons having applied to me for a passage out in the schooner, I have consented, [these are the Spanish officers and crew mentioned in Nos. 4 to 25;] but you will take care that their passports are in order, and that there are no circumstances attending them which will be likely to bring you into the least difficulty."

No. 31. On the same day that the above letter of instructions was written by Thrasher, a secret but formal agreement was entered into and signed between Jose Pereyra, the Spanish captain named in the last document as the consignee of the cargo of the "Catharine," and the director of the expedition, on one side, and the nominal captain, F. A. Peterson, on the other side.

It is hereby stipulated "that the said F. A. Peterson shall *go out* as master of the said schooner, on her present voyage, for the sum of one hundred dollars per month, and three hundred dollars gratification; that the wages of the said F. A. Peterson are to continue should he return in this vessel, or in any other *for which J. Pereyra is agent*, [in paper No. 27 Charles Tyng is called agent of the owners of the 'Catharine;'] but should the said F. A. Peterson wish to leave the vessel on the coast, the said Jose Pereyra binds himself to pay the said F. A. Peterson three hundred dollars gratification, and his wages up to the day he leaves the vessel, less one hundred dollars received at Havana as one month's advance."

No. 32. The Spanish list of crew (No. 4) and the last paper (No. 31) were of course only discovered after a careful and minute search on the part of the captor. But another concealed paper was at the same time brought to light, which, on account of its interesting nature, we copy entire. It is in a feigned hand, and without either date or signature; but is most probably the composition of Mr. Thrasher, and was found in the possession of the nominal American master:

"The main thing for you to do on this voyage is, to be ready, in case you are boarded by a man-of-war, to show your log-book, (which must be regularly kept from the time you leave here,) your ship's register, your charter party, your muster-roll, and your instructions. You are, *in that event*, to take all command with your American sailors, according to your roll; and all the others *are to be* passengers.

"You are to be very careful that, in any cross questions, you do not commit yourself; but always stick to the same story.

"When the vessel is discharged, you must at once cut your register in two pieces; one piece you must enclose, direct, and send to Messrs. Thomas Wilson & Co., Baltimore; and the other piece you will bring with you, and give to me when you return here.

"You must be very particular about this; and do not let any time pass, after the cargo is out, before you cut the register in two pieces; and be careful to keep them separate. Throw one piece overboard, if you are obliged to it by being boarded by a man-of-war."

No. 33 is a sketch or drawing of the "Catharine's" hold, as it would present itself when all the leaguers and water-casks should be stowed fore and aft. The leaguers are marked and numbered in the sketch, and fitted exactly to the shape and run of the vessel; and, although shipped in shooks, could, with the assistance of the cooper and a reference to the plan, be set up and stowed in their proper places in a very short time.

No. 34 is the log-book, kept in English (or what is intended for English) by Peterson, who evidently is neither English nor American.

His handwriting, as well as his composition, shows him to be a foreigner—probably a German or Swede. On the first page, he remarks that the schooner "Catharin" was bound to "Prinz island;" on the second page, he calls his vessel the "schonen Catharine;" and, on the third page, "schonner Catharien." The log begins on the 28th of June, and is kept up

to the 12th instant; on which day it is supposed the detention of the vessel took place.

No. 35. A Spanish log, which ends in like manner on the 12th instant, mentions that the "Catharine" was at that time in 5° 34' north latitude.

We next come to a bundle of letters directed to several of the slave-dealers of "Lagos" by different well-known slaving-merchants of Havana.

The "Catharine" thus appears to have been bound to "Lagos," and she was captured in that neighborhood about six weeks after she left Havana.

Much interesting information might, we have no doubt, have been obtained from this correspondence; but as the "Catharine" only touched at Sierra Leone for a few hours on her way to New York, we were unable either to copy or translate any of the letters, and could only glance at their contents.

Nos. 36, 37, and 38, are three letters from Joaquim José Pereira d'Abreo, of Havana, addressed severally to Izidoro Martins Braga, José Cotta y Vienda, and Domingo José Martins, or to their order, if absent from Lagos. They are all duplicates of letters, dated on the 8th of June; and a postscript is added to each, under date 23d June. They refer generally to slave-trading vessels and plans, and particularly mention the arrival at Havana of the "Astrea," which had been despatched from Lagos on the 10th of April last with a full cargo of slaves, who had been sold at Havana at three hundred and sixty-seven dollars (equal to about £80 sterling) ahead, all round.

Nos. 39 and 40 are two duplicates of letters written by Joaquim José Duarte Silva, of Havana, formerly of Bahia, under date the 18th of June, to Manoel Luiz Pereira and Manoel de Paixão Pereira, and mentioning the sale of all the negroes in the "Astrea's" cargo at twenty-one doubloons and ten dollars, (equal to three hundred and sixty-seven dollars,) as stated in d'Abreo's letters; the doubloon, or ounce, containing seventeen Spanish dollars.

The names thus introduced remind us of the case of the American brig "Eagle" reported in our despatch (marked "separate,") of the 12th of February last; and it is more than probable that some of the same parties were interested in both vessels. Both were bound to Lagos; the cargo received on board the "Eagle" at Bahia, was shipped by the firm of Joaquim José Duarte Silva, the writer of the last two letters; and whilst the "Eagle" was consigned to Messrs. Wilson & Brothers, at Bahia, the captain's secret instructions in this case (No. 32) direct that one half of the "Catharine's" American register shall be sent to Messrs. Wilson & Co., of Baltimore.

SIERRA LEONE, August 28, 1839.

[Sub enclosure.]

[SEPARATE.]

SIERRA LEONE, September 18, 1839.

MY LORD: Enclosed we have the honor to transmit to your lordship an abstract of the papers found on board the schooner "Butterfly," Isaac Morriss master, detained on the 26th ultimo, whilst sailing under American colors, by her Majesty's brigantine "Dolphin," Lieutenant Edward Holland commanding.

No attempt was made to libel the "Butterfly" in the British and Spanish

mixed court of justice. The captor's proctor was, however, kind enough to allow us a perusal of the papers, from which the enclosed abstract was prepared.

After having taken in water at Sierra Leone, the "Butterfly" was despatched to New York, in the charge of an officer from the capturing ship.
We have, &c.,

H. W. MACAULAY,
R. DOHERTY.

VISCOUNT PALMERSTON,
&c., &c., &c.

[Sub-enclosure.]

Abstract of the papers found on board the schooner "Butterfly," Isaac Morriss master, sailing under American colors.

No. 1 is a *temporary* American register, No. 77, dated and signed at New Orleans on the 24th of May, 1839, and sets forth that the schooner "Butterfly," of New York, was built in Baltimore in the year (not known;) that she is of the burden of 118 $\frac{5}{8}$ tons, and that she was both owned and commanded by Nathan Farnworth.

Twenty-four days after this register was granted at New Orleans, it was endorsed by Mr. J. A. Smith, the American vice-consul at Havana, with a certificate that Isaac Morriss, the present master, had succeeded the owner (Farnworth,) in the command of the vessel, and had taken the oath required by law.

No. 2 is an official list of the crew engaged to navigate the schooner from New Orleans to Havana, dated at the former place, on the 28th of May, 1839.

On the 17th of June last, Farnworth resigned the command to Morriss, who came in the vessel as mate from New Orleans; and on the 28th of June, Mr. Vice consul Smith certified that, with the exception of the master, (Morriss,) all the crew shipped at New Orleans had on that day left the schooner, and that in their stead a crew of eight persons, (all foreigners, without exception,) had been hired to navigate the "Butterfly" to Prince's island.

Mr. Smith further certified that Captain Morriss had sworn to the correctness of his crew-list, and had also declared that he carried with him ten passengers.

No 3. These passengers, (who, however, amounted to fifteen instead of ten persons,) proved to be, as might have been conjectured, the Spanish crew of the vessel; and a list of them, in the handwriting of Captain Morriss, begins with the well-known name of Francisco Monteiro, who lately came before us as the owner and supercargo of the nominal American schooner "Hazard," reported in our despatch (marked "separate,") of the 31st of January, 1839.

The professed owner of the "Butterfly," here called Nathaniel Farnworth, we believe to be the same person who, under the name of Nathan Farnworth, was so intimately connected with the slaving adventures in which the nominal American vessels "Ontario" and "Traveller" were engaged, as reported in two of our despatches (marked "separate") under date the 13th of May last.

No. 4 is a printed form of "ship's articles," filled up in the usual rough and irregular manner.

No. 5 is a passenger's passport for Francisco Monteiro, just mentioned, dated at Havana on the 26th of June, 1839.

No. 6 is another passenger's passport, of the same date, in favor of José Antonio Cortina, a name with which we are also well acquainted, in connexion with former endeavors to elude the provisions of the Spanish treaty, under cover of the Portuguese flag.

Nos. 7 to 19 are thirteen other passengers' passports, taken out by the rest of the Spanish crew, who, with Monteiro and Cortina, and the eight Spanish seamen shipped under the sanction of the American vice-consul, formed a full slaving crew of 23 persons, independently of Isaac Morriss, the captain of the flag, and the only American citizen on board this nominal American vessel.

No. 20 is a charter-party between Jaymé Font & Co., consignees of the "Butterfly," and Francisco Monteiro, the passenger above mentioned, dated at Havana on the 22d of June last. By this document, Monteiro engaged to load and despatch the "Butterfly" within eight days. The vessel is said to have been "bound for Prince's and St. Thomas's, or to any other port on the north coast of Africa"—meaning, apparently, any port north of the line. Thirty days were allowed to unload and load at the port of delivery; after which time, demurrage was to be payable; and \$3,000 was the price agreed upon for the use of the vessel during the voyage.

No. 21. It is rather remarkable that, although Monteiro was named in the last paper as the charterer of the vessel, Font & Co., the pretended agents of the owners from whom the vessel had been hired, were, in a formal manifest of the cargo, dated at Havana on the 27th of June last, represented as the shippers of the goods, and Monteiro merely as *consignee*. Amongst the cargo thus shipped and consigned, we find one iron boiler and 1,000 feet of lumber included; these articles being, in other words, the "Butterfly's" slave-boiler and slave-deck.

The last two papers (the charter-party and manifest of cargo) are both written in the English language, with the object, apparently, of at once satisfying the inquiries of the British cruisers on this coast by a plausible but false representation. We can fancy no other reason for having these documents drawn in English; the agent of the owners and the charterer of the vessel; in one case, and the shipper and consignee of the cargo, in the other case, being confessedly Spaniards.

No. 22. The bill of lading of the cargo named in the manifest, (No. 21,) and which, like the other document, includes the boiler and plank, is dated at Havana, on the 27th of June, and is signed by Captain Morriss. Jaymé Font & Co. are therein again named as the shippers; Francisco Monteiro as the consignee; and freight is said to be payable according to charter-party.

No. 23. In the custom-house clearance from Havana, dated on the following day, (the 28th of June,) Francisco Monteiro, and not Font & Co., is declared to have been the shipper of the cargo. But such inconsistencies may always be looked for, in tracing the history of these fraudulent transactions.

No. 24. On the day after the "Butterfly" cleared out at Havana, Jaymé Font & Co., the pretended consignees of the "Butterfly" at Havana, and the agent of her owner, addressed a letter to Captain Morriss, recapitulating the ship's papers with which the schooner was furnished, with the object,

it would seem, of reminding him what documents he ought to present for inspection, in the event of his being boarded by a man-of-war.

Nos. 25 and 26 are two Spanish log-books, commencing on the 1st of July, when the "Butterfly" left Havana, and continued up to the 26th ultimo, when the detention of the schooner took place.

No. 27 is a log of the voyage, kept by Morriss, in the English language, but in a very slovenly manner, both the writing and spelling being very bad.

SIERRA LEONE, September 18, 1839.

Mr. Fox to Mr. Forsyth.

WASHINGTON, February 5, 1841.

SIR: The case of the American vessel "Tigris," recently carried into the port of Boston, in Massachusetts, in the care of a British officer and prize-crew, and there delivered over to the judicial authorities of the United States, upon a charge of having been engaged in the illicit traffic of slaves on the coast of Africa, has, I believe, been duly brought to the knowledge of the United States Government by the district attorney of the port of Boston. I have now received from Mr. Grattan, her Majesty's consul at Boston, the following information. It appears that the district attorney, (Mr. Mills,) acting in the case for the United States, did, at the commencement of the business, legally bind over Mr. Jackson, the British officer in charge, to appear as witness in the criminal prosecution of the master and mate of the "Tigris," for violation of the laws of the United States; thus sanctioning a *prima facie* case against the "Tigris," and inducing and authorizing Mr. Jackson to file, as he has done, a libel against the vessel and cargo. But Mr. Mills has since desisted from all further co-operation in the prosecution, having both refused the request of the consul that he would claim the protection of the court for his own witness, (Mr. Jackson,) when arrested at the suit of the very parties he was bound over to prosecute; and having since declined to take any part in the civil suit—that is to say, in filing a libel against the vessel and cargo. Her Majesty's consul and the legal counsel employed by Mr. Jackson are apprehensive that this conduct, on the part of the district attorney of the United States, for which they are unable to account, will risk the failure of the ends of justice, and the loss of the civil action, which is instituted equally for the benefit of the United States, as for that of the captors and informers. One effect of this want of co-operation has already been, that the owners of the "Tigris" are endeavoring to bind the British officer (Mr. Jackson) personally to give security, or, as it is technically expressed, to "stipulate" for damages, to a large amount, in the event of the action failing; and this course, it seems, they would not have been able to pursue, if the district attorney had duly borne his part in forwarding the civil prosecution. I do not pretend to be accurately acquainted with all the legal points and considerations involved in the question; but as a due and full execution of the existing laws against the slave-trade must be the object of all parties, I hope that it may be in the power of the United States Government, upon a due examination of the matter, to give such instructions to the district attorney of Boston as may cause him to lend a more effectual aid in the prosecution.

I avail myself of this occasion to renew to you the assurance of my distinguished consideration.

H. S. FOX.

HON. JOHN FORSYTH, &c., &c., &c.

Mr. Forsyth to Mr. Fox.

DEPARTMENT OF STATE,
Washington, February 11, 1841.

SIR: I have the honor to acknowledge the receipt of your letter of the 5th instant, on the subject of certain proceedings connected with the case of the American vessel "Tigris," recently carried into the port of Boston, in the care, as you state, of a British officer and prize-crew. No information relating thereto having been communicated to this department, a definitive reply cannot be given to your letter until all the facts have been obtained from the United States attorney in Boston, who will be written to immediately to transmit them. In the mean time it is presumed that, in an event so extraordinary as that of a vessel acknowledged to be American, brought into an American port in the care of a British officer and prize-crew, any failure to act by the district attorney must have been occasioned by an opinion that his official interference was not required by the obligations of his public duty.

I avail myself, &c.,

JOHN FORSYTH.

HENRY S. FOX, Esq., *q̄c.*, *q̄c.*, *q̄c.*

Mr. Forsyth to Mr. Fox.

DEPARTMENT OF STATE,
Washington, February 13, 1841.

SIR: I have the honor to acknowledge the receipt of your note of the 1st instant, communicating, in compliance with a request of this department, additional evidence in relation to the slave-schooner "Rebecca." The accompanying papers, together with a copy of your note, were immediately forwarded to the United States attorney for the district of Maryland. A copy of his reply is herewith transmitted to you.

You will perceive that the original papers are necessary, before the persons implicated can be prosecuted with any prospect of condemnation.

Allow me to hope that, by your aid, the original papers required may be obtained from her Britannic Majesty's Government.

I avail myself of this occasion to offer you renewed assurances of my distinguished consideration.

JOHN FORSYTH.

HENRY S. FOX, Esq., *q̄c.*, *q̄c.*, *q̄c.*

[Enclosure.]

UNITED STATES DISTRICT ATTORNEY'S OFFICE,
Baltimore, February 10, 1841.

SIR: I had the honor, on yesterday, to receive your communication of the 6th instant, relating to the case of the "Rebecca," and accompanied with sundry documents.

The "Rebecca" cleared from the port of Baltimore as an American vessel; and it is most manifest that she sailed from the Havana to the coast of Africa, on a slave-voyage, under American colors and with American papers.

In consequence of your letter of April last, in relation to this vessel, I instituted suit on the bond given for the return of her register; and the security paid, without defence, the penalty of \$1,200.

But the papers then received from you, as well as those now received, are totally insufficient and unavailable for the purpose of instituting criminal proceedings, either against F. Neill, the American owner of the "Rebecca," or against Watson, the captain. The documents are all copies; and, being such, they cannot be used as evidence even in a civil case, much less in one invoking criminal process.

I wonder, indeed, that the enlightened officers of the British Government, familiar, as some of them certainly are, with the rules of evidence in British law, should not have been aware of the inefficacy of copies. I may add, however, that the collector of Baltimore informs me that neither Neill nor Watson has been in Baltimore since the "Rebecca" first left this port. Their families still reside here. I wish, therefore, that the British Government would furnish to ours the original papers found on board the "Rebecca" when captured. The guilt of Neill could then be established under his own hand. That of Watson might perhaps require verbal testimony.

I have the honor to be, &c.

NATHL. WILLIAMS.

Hon. J. FORSYTH,
Secretary of State.

Mr. Forsyth to Mr. Fox.

DEPARTMENT OF STATE,
Washington, March 1, 1841.

SIR: By the directions of the President of the United States, I have the honor to transmit to you a copy of a letter from Mr. Mills, the United States attorney for the district of Massachusetts, on the subject of the "Tigris," an American vessel brought into the port of Salem under charge of a British officer and prize-crew, and to inform you that the explanation of the attorney is entirely satisfactory to the President. You will also receive, herewith, the copy of a letter from the commander of her Britannic Majesty's brig "Waterwitch," which was delivered to Mr. Mills in Boston. The President has seen from it, with great satisfaction, that Commander Matson of the "Waterwitch" has acted in this matter without instructions from his Government, and upon his own responsibility only. With due consideration to the motives alleged for this extraordinary interference with an American vessel by a British ship-of-war, it is considered by the President his indispensable duty to call, through you, the attention of her Majesty's Government to this act of Commander Matson, that it may be visited with such distinct reprehension as to prevent the repetition of a similar act by other officers in her Majesty's service. The commanders of the ships-of-war of the United States on the coast of Africa are instructed not to molest any foreign vessels, and to prevent any molestation of American vessels by

the armed vessels of any foreign nation. However strong and unchangeable may be the determination of this Government to punish any citizens of the United States who violate the laws against the African slave-trade, it will not permit the exercise of any authority by foreign armed vessels in the execution of those laws.

I avail myself of the occasion to renew to you, sir, assurances of the distinguished consideration with which I have the honor to be your obedient servant,

JOHN FORSYTH.

HENRY S. FOX, Esq., &c., &c., &c.

[Enclosure.]

U. S. DISTRICT ATTORNEY'S OFFICE.

SIR: I have had the honor to receive your letter of the 12th instant, enclosing a copy of a communication recently received from the British minister, in regard to my conduct as an officer of the United States, in the case of the American vessel "Tigris." The facts in the case are as follows:

On the 30th December, 1840, I received from the clerk of the court for this district a letter from Lieutenant H. J. Matson, commander of her Britannic Majesty's brig "Waterwitch," stating that he had detained and sent to Boston the American brig "Tigris." The original letter is herewith enclosed. The Tigris was brought into Salem by Midshipman Jackson and a prize-crew of eight men. I made a complaint against the officers and crew of the brig, charging them with having knowingly served on board a vessel of the United States employed in transporting slaves from one foreign port to another. On this complaint a warrant was issued, and the officers and men brought before the district judge for examination. The judge, on the examination, discharged all but the master and mate of the brig, who were ordered to make their appearance at the circuit court to be held in May next. The judge also recognised Mr. Jackson to appear as a witness at the same. Here the proceedings against the master and mate rest, till the case is brought before the grand jury in May. I have but little expectation that the evidence will be sufficient to convict them on the trial, should the grand jury find a bill.

In regard to the brig and cargo, it was a grave question whether I should institute proceedings against them. The vessel was fitted out for a regular trading voyage to the coast of Africa; and there was not the least ground of suspicion that the owners intended she should be any way concerned in the transportation of slaves. And I was then, and am now, satisfied that the evidence in the case is not sufficient to condemn the brig, and, in all probability, would not be, even if a commissioner were sent to Africa to take the deposition of witnesses there. With this view of the case, I did not consider it my duty to file a libel against the brig and cargo. There was another consideration that probably had some influence on my mind in coming to this conclusion. It was the manner in which the brig was seized and sent home. I had serious doubts whether the act would be sanctioned by the President; and, if not, the filing of the libel in behalf of the United States might, in some measure, embarrass the question.

I cannot say how far my proceeding against the master and mate operated upon Mr. Jackson, to "induce him to file his libel;" but I told him, immediately after the examination, that I should not libel the brig, and gave

him my reasons as above stated. No application, however, was made to me, either by Mr. Jackson, the British consul, or their counsel, to file a libel, till after the libel was filed in court. When it was ascertained that the libellants would be required to stipulate for costs and damages, they applied to me to adopt the proceedings, to relieve them from that embarrassment. This I declined doing, and, as I think, very properly. The same request was made by their counsel; to which I replied, in writing, that I should not file a libel in the case, unless I was directed to do so by the department.

Mr. Fox also complains that the district attorney has refused to protect his own witness. A few days subsequent to the examination before the district judge, Mr. Jackson was arrested on several writs sued out from the State courts in behalf of the officers and men of the "Tigris." In the opinion of his counsel, the amount of bail required was excessive; and they sued out a writ of habeas corpus, also returnable in the State court, for the purpose of getting Jackson discharged, or the required amount of bail reduced. On the morning previous to the discussion of this question, Mr. Grattan called at my office, and requested me to protect Mr. Jackson, on the ground—that he was under a recognizance as a witness. I told him that, in my opinion, I had no right to interfere in the business; and that if I did, it would be unavailing. But I added, that if he or Mr. Jackson's counsel could suggest any way in which I could protect him, I would do it with pleasure. I afterwards conversed with his counsel on the subject, and I understood them to concur with me in the opinion I had expressed to the consul. This is a brief statement of the facts in the case; and I hope that my conduct in the case will meet the approbation of the department.

I am, sir, respectfully, &c.,

JOHN MILLS,
United States Attorney.

HER BRITANNIC MAJESTY'S BRIG "WATERWITCH,
Off Angola, October 19, 1840.

SIR: I have the honor to inform you that I have detained and sent to Boston the American brig "Tigris," under the following circumstances: Having received information that she had a negro slave-boy on board, under suspicious circumstances, I boarded her, while at anchor off Ambrise, on 7th instant; and on my calling on the mate, who was in charge of the vessel, to account for the boy being there, he stated that he was received at St. Thomas, and was going with them to America. The master, coming on board soon after, made the same statement, and produced a passport, which was evidently a false document. Finding that the boy did not understand a single word of either English or Portuguese, I disbelieved the story, and called on the crew, who all confirmed the master's statement. From the kroomen I learned that he had lately been taken on board at Benguela; and, on my asking the master if that were not the case, he boldly and confidently denied it.

I then placed an officer and six men on board the "Tigris," and proceeded to St. Paul de Loando (Angola) for the purpose of hearing the boy's statement through an interpreter; his deposition was taken before the chief judge of the city of Loando, through the medium of two sworn interpreters, and in the presence of several British and Portuguese naval officers—an at-

tested copy of which I beg to enclose (A.) By that it appears that he is a native of "Guilingues," near Benguela, from whence he was forcibly taken by the crew of the "Tigris." I then returned to Ambrise, and informed the master that I intended sending his vessel to America; on which he presented me the enclosed letter (B;) in consequence of which letter, I proceeded to Benguela, and procured the deposition of João Maria de Souza e Almeida, as well as attested copies of his correspondence with José de Castro relative to this boy, (enclosure C.)

By these documents it appears that Castro sent a Nagó slave to Benguela, in the "Tigris," at which place he now is, a slave of Almeida, and where he is likely to remain. It further appears that the boy "Heme" was being transported in the "Tigris" from his own country to St. Thomas, in consequence of his having been sold to Castro, whose property he now actually is; the reason for this exchange, or barter, is known to all who are acquainted with this coast, viz: that foreign slaves are of much greater value than natives of any neighboring place, who cannot be trusted at large, and are generally worked in chains to prevent their going "home" without leave, which is impossible for those who are brought from a great distance. The ultimate fate of the boy "Heme" was of course uncertain; had he been sent in the "Tigris" to America, he might have been sold there, or he might have returned to St. Thomas; but it is evident that he would never have returned to his native country.

These, sir, are my reasons for taking upon myself the responsibility of detaining the "Tigris;" but, in doing so, I find myself placed in a very delicate position, not having any orders or instructions to interfere with vessels belonging to citizens of the United States, whatever their employment might be. But having maturely weighed the bearings of this case, I feel it a duty which a British officer owes to the Government of the United States, not to allow a crime, which our respective Governments have each declared to be piracy, to pass unnoticed. I have therefore sent the vessel (failing to meet a cruiser of the United States) to the port from whence she sails, to be dealt with according to those laws which have been so glaringly violated.

I have the honor to be, sir, your very obedient humble servant,

H. J. MATSON,

Lieut. and Com'r of Her B. M. brig Waterwitch.

To the SECRETARY OF REGISTRAR

of either of the Circuit Courts of the United States.

Mr. Trist to Mr. Forsyth.—Extract.

CONSULATE OF THE UNITED STATES,
Havana, February 12, 1836.

SIR: It becomes my duty to communicate to you the fact, that what is in reality a branch of the *African slave-trade* is at this moment in active operation, and rapidly increasing, under the flag of the United States, by the transportation of blacks from this island to Texas.

Whole cargoes, so soon as landed from the Spanish slavers fresh from the coast of Africa, have recently been purchased and shipped for Texas in American vessels. The number thus sent to that country within a few

months past is estimated at upwards of one thousand; and the rate will doubtless go on increasing, until strong measures of suppression be resorted to. If these be delayed, Texas will be inundated with Africans, a portion of whom can scarcely fail to find their way into the United States.

This traffic is carried on under the mask of contracts of apprenticeship, whereby the blacks bought here for the Texas market bind themselves, in consideration of their liberty and maintenance, to serve for a certain term of years. In the present state and prospects of that country, it scarcely admits of doubt that these contracts are mere forms; that the negroes are intended to be held, and will be held, in perpetual slavery; that they are, to all intents and purposes, *slaves*; and that every vessel engaged in their transportation hence to Texas is as truly and essentially pursuing the African *slave-trade*, as those are wherein they are brought hither from the Gold Coast.

But even if it were otherwise—if they were really to become free at the expiration of the term of years for which alone they are ostensibly bound;—although, under that supposition, the *terms* of the last act on the subject, (May 15, 1820,) whereby its operation is restricted to the offences of making and carrying *slaves*, would be inapplicable to the case; still it would be met by that of April 20, 1818, which prohibits the transportation, in vessels of the United States, of any negro, &c., “to be held to service or labor.”

This carrying of blacks to Texas is not altogether a new thing. It has been known for some years past that instances occasionally occurred, although very few in number, and on a very small scale. Of these, two have, at long intervals, become known to me since I have held this office—being unreservedly communicated by the parties, (natives of the United States settled in Texas,) who applied to me to certify to the instrument of apprenticeship which had been executed here, and to their declaration that they were about to proceed to Texas with their apprentices. The question of the legality of the transportation of negroes of this description in an American vessel thus presented itself to me; and having then taken a view of it altogether different from that which I now entertain, and, as I am now convinced, a totally erroneous view, I must beg leave to trouble you with a word of explanation on this point.

By the laws of Mexico, negro slavery cannot exist; but only apprenticeships for seven or nine years—I forget which. Independently, then, of the contract of apprenticeship used on these occasions, (which I then considered, as I now consider it, in itself of no more value than a piece of an old newspaper,) the fact of the blacks being destined for Texas was proof that they were not, because, agreeably to the laws of the country, they could not be transported to be held as slaves. The question, therefore, was, whether these indented servants could be lawfully transported in an American vessel; for upon this depended whether I should or should not give the desired certificate.

I had recourse to Gordon's Digest of the Laws of the United States. Title 7th of his Commercial Code treats “of the slave-trade.” The first of the two chapters embraced under that title is entitled “*Slave-trade prohibited*,” and the second, “*Provisions to prevent the IMPORTATION of slaves into the United States*.” Judging from this title of the second chapter, I took for granted that its provisions could have no bearing upon the point then in question; and as I had at that moment, (as I almost invariably have,) more things to do than the daily and hourly interruptions to which I am subject allow me to accomplish, I confined myself to the perusal of the first

chapter, and then a close examination of the terms of the various acts to which reference is therein made.

This examination satisfied me that there was no illegality in the transportation of blacks in American vessels to a country, agreeably to the laws of which they could not be held as *slaves*. And being so satisfied, I gave the desired certificate.

Since my return here, however, on the 23d ultimo, learning that the business was increasing to an enormous extent, and the present state of Texas being such as to leave no doubt that (whatever may be the laws of Mexico) the blacks now taken there are taken with the intent to make *slaves* of them, I determined to examine, from the first to the last, every act of Congress at all touching the subject, to see if they did not contain something which might have a bearing upon this point; and this examination has made me acquainted, for the first time, with the abovementioned act of April 20, 1818, whereby the *transportation* in vessels of the United States of any negro, &c., "to be held to service or labor," is forbidden. This act I now find in Gordon's Digest, in the chapter headed, "as above stated, "Provisions to prevent the *importation* of slaves into the United States:" whereas its provisions chiefly relate to, and prohibit, the *transportation*—or the mere having on board even—of slaves, &c., in any part of the world.

I shall immediately write on the subject to Commodore Dallas, and to the collectors at New Orleans and the other ports on the Gulf; the examination I have made of our laws, having left the impression, that not only is a vessel liable to be seized while engaged in such a voyage, but that, on her return to the United States, she may be libelled for *having been engaged* in it. Should this impression be correct, I will take the liberty to suggest the expediency of immediately instructing the United States attorneys at ports on the Gulf to have their eye upon the small vessels, particularly, arriving from the bottom of the Gulf or from Havana; and, when there may be any ground for suspicion, to take the proper measures for ascertaining from the crews what they have been about.

One disadvantage, which vessels engaged in this traffic would labor under in a suit, is, that, in consequence of no clearances being granted from this port to Mexico, &c., they are obliged to take them for other countries—generally some of our southern ports; so that, although their cargoes be, in truth, destined for Texas, their papers show them to be destined for the United States. These vessels commonly clear here (both at the custom-house and at the consulate) *in ballast*. The negroes are taken in secretly, in port or on the coast.

HON. JOHN FORSYTH,
Secretary of State.

Extract of a letter from N. P. Trist to Hon. John Forsyth, Secretary of State, dated Havana, December 29, 1836.

I have the honor to enclose a copy of a letter (which, from my answer, also enclosed, it will be perceived that I have returned to the writers) addressed to me by the agents kept here by the British Government, under their convention with Spain, for the suppression of the slave-trade. The one (Mr. Schenley) with the title formerly of commissary judge, recently changed to that of judge simply, sits, conjointly with a commissioner of the

same grade, (the Conde de Fernandina, a native,) as a prize-court, to decide upon the captures made by the British cruisers under the treaties. The other (Dr. Madden) bears the title of arbitrator, recently substituted for that of commissioner of arbitrations; and, when a difference occurs between the two judges, it is decided by lot whether the point shall be settled by the British arbitrator, or by a Spanish agent of the same character.

[Enclosure No. 1.]

HAVANA, *October 17, 1836.*

SIR: We have the honor to acquaint you with the following circumstances, as being intimately connected with your consulate and the flag of your nation, which it will be our painful duty to report to his Majesty's Government.

During the month of September there arrived in this port, for sale, from the United States, four new schooners—we believe two from New York, and two from Baltimore; all, however, built at the latter place—viz: the "*Anaconda*," "*Viper*," "*Emanuel*," and "*Dolores*," expressly constructed and peculiarly fitted for carrying on the slave-trade. The two former of these vessels having received on board, from the French house of Forcade & Co., a cargo which, by the treaty of the 28th June, 1835, would have condemned as a slaver any vessel bearing Spanish colors, cleared out and sailed under the American flag—the "*Anaconda*" on the 6th, the "*Viper*" on the 10th instant, for the Cape de Verde islands; there to be transferred to a Portuguese subject, and to proceed with the flag of that nation to the coast of Africa, upon a slaving enterprise.

The protection which these schooners will receive from the American colors, both as regards their fitting and cargo, will effectually secure them against capture by her Majesty's cruisers until they arrive at the scene of their depredations. The *Emanuel* and *Dolores* have, we believe, left the port under the Spanish flag; but we have also to inform you that, some time since, the brig *Martha*, of Portland, which arrived here from Matanzas, took on board, in this harbor, a cargo which would equally have confiscated as a slaver any Spanish vessel, and sailed direct for the coast of Africa, to deliver it at some of the numerous factories, or dens of infamy, established there in connexion with the slave-traders of Havana.

The facilities thus afforded by the flag of the United States for carrying on this inhuman traffic could never, we feel convinced, have been contemplated by your enlightened Government—especially as, during the period that these schooners were taking in their cargoes, the harbor was visited by American men-of-war, which, had any convention existed between the two Governments, such as has been acceded to by almost every other maritime Power, a seizure of the most important nature, as regards these iniquitous expeditions, must have been effected. However, we do not entertain the least doubt but that a knowledge of the above circumstances will instantly produce measures calculated to remedy so deplorable and flagrant a profanation of the American colors.

We have the honor to be, sir, your obedient servants,

EDW. W. H. SCHENLEY,
RICH. R. MADDEN.

N. P. TRIST, Esq.,
United States Consul, Havana.

[Enclosure No. 2.]

CONSULATE OF THE UNITED STATES,
Havana, November 29, 1836.

GENTLEMEN: On my return to this city a few days since, from the United States, I had the honor to receive your letter of the 17th ultimo, which would have been sooner acknowledged, had not matters of more immediate urgency prevented my bestowing upon it the full consideration which, at a glance, the importance of its bearings was seen to require.

It has probably escaped your attention, that overtures, previously made, for a convention of the character referred to in the closing paragraph of your letter, were more recently repeated by his Britannic Majesty's minister at Washington, and then declined by the Government of the United States, in a manner evincing the most decided disinclination to become a party to even any discussion whatever of the subject.

Had this been adverted to, you would have been sensible that, besides the general objection to my holding with any agent of a foreign Government any correspondence not warranted by the very limited official character with which I am invested, the occurrence to which I refer has rendered it particularly incumbent upon me to decline receiving any communication of the nature of that which I now beg leave to return.

I have the honor, gentlemen, to be your obedient servant,

N. P. TRIST.

EDWARD W. H. SCHENLEY,
RICH. ROB. MADDEN, Esqs.

Extracts of a letter from N. P. Trist to Hon. John Forsyth, Secretary of State, dated

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, May 22, 1838.

SIR: I have the honor to enclose the register and crew-list of the schooner "Washington," of Baltimore.

This register and crew-list have made the voyage from the coast of Africa in a vessel under the Portuguese flag, laden with slaves; and I have little doubt that it was so planned when the vessel left here, in order that the efficacy of these documents might be tried, should occasion arise for preventing a search by a British cruiser.

Before entering upon the case, I must explain the circumstance, but for which it would never have attracted my notice: that for four or five weeks past, Portuguese vessels and mariners have been getting their declarations authenticated and business despatched at this consulate, as had been practised for many years, until the appointment, during the last, of a consul for Portugal at this place.

Immediately after my appointment to this consulate, I received, while at Washington, a visit from Mr. Torlade, the chargé of Portugal; the object of which was to request me, in the name of his Government, to accept that of consul of Portugal also. I at once replied, that this was not allowed by our constitution; and upon his meeting this objection by stating, as a proof that I must be mistaken, that the appointment of Portuguese consul had

been accepted and held by my predecessor, Mr. Shaler, with the express approbation, too, of the Department of State, I promised to review my opinion, and accede to his request, if possible; a promise which was made as a mode of waiving discussion, rather than from any idea that any consideration, or argument, or precedent, although sanctioned by the department, (which, if it had ever taken place, I felt convinced must have been some act of inadvertence, into which I did not think it worth while to inquire,) could produce any change of opinion in me as to the meaning of the words, "no person holding any office of profit or trust under them shall accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state."

Accordingly, when Mr. Torlode called to know my final determination on the subject, I informed him that the acceptance of his offer was impossible; but at the same time gave him the assurance that it would always afford me pleasure to render any service in my power to vessels or mariners of his nation.

In the settlement which took place on my arrival at Havana between myself and Mr. Cleveland, the vice-consul of Mr. Shaler, (who, from the time of my appointment, had held the office as my representative,) it appeared that a certain amount had, during the latter period, been received by him in the capacity of Portuguese consul; all right to which was, of course, disclaimed by me.

For some time after I had taken the consulate into my own hands, when a Portuguese captain or sailor presented himself to make a declaration or have a document endorsed, his business was despatched by me, by means of one of the ordinary forms as consul of the United States, and without my making any charge or accepting any remuneration. Subsequent reflection, however, having satisfied me, that in regard to official acts done in this manner, at the voluntary request of Portuguese subjects, there was not any impropriety in my charging fees, I determined to do so, and to take in all cases the same fees as if the services were rendered to American vessels or citizens; and such continued to be the practice of my office, until the appointment of a Portuguese consul in the course of the last year.

These services have consisted, with regard to seamen, in giving them, in order to their being permitted to be on shore, the same certificate that they have been discharged from their vessel which is used for American seamen; and with regard to other parties, in authenticating the signatures of the authorities of this place, and declarations by the master or others—generally attaching to the *rol*, (list of crew and armament, where there is one,) and the *patente* or the *pasaporte* (answering to our *register*)—a certificate, stating that the master had declared the crew-list to contain a true statement of the crew and armament of his vessel, or that a new master had been appointed. These acts have always been done as consul of the United States; and have embodied the explanation, that they were done by me, because of there not being at this place any consul or consular agent of Portugal, to do such acts for vessels or subjects of that nation.

About a month ago, Don Jose Miguel Fernandez, the gentleman appointed last year consul of Portugal, informed me that he had received instructions to consider himself suspended from his functions; and requested that, until this matter should be settled, I would act as before, in regard to Portuguese vessels and subjects.

Having made this explanation, I will now enter upon the case.

On the 7th instant, the *patente* of the Portuguese schooner *Senhora da Boa Viagem* was produced at this office, and report made of her arrival from the coast of Africa in ballast; which is understood by every one here to mean that she had succeeded in landing a cargo of slaves on the coast of this island, or of Puerto Rico.

The presumption being that this vessel, like most others of the same class, was some Baltimore schooner that had gone from this to the coast of Africa under American colors, to be there sold *in form*, (the real sale having no doubt taken place here, previously to her departure,) and put under the Portuguese flag, inquiry was, through mere curiosity, made one day by my vice-consul, of a Baltimore captain who visited the consulate on business; who replied that she was the schooner *Washington*, of Baltimore, and stated that the American captain who had taken her to the coast of Africa had also got back here.

The *Washington* was a Baltimore schooner that had arrived here on the 7th of September, 1837, from Savannah, under the command of Frederick Neill, who was on the register as sole owner.

Neill appointed, as master, Charles Ghetly, a naturalized citizen of the United States, who had come out as mate of the schooner *Thomas H. Smith* of New York, a vessel that was also sold. He then left here, after having put his vessel at the disposal of Ferdinand Clark, (an American merchant of very unenviable repute, long a resident of this city,) to whom he executed a power of attorney, authorizing him to employ her in any way, or to sell her. Clark substituted a Spaniard as attorney, with power to sell; and on the 3d of October she was despatched at this consulate for Matanzas, whence, no doubt, (her reported cargo being powder and merchandise,) she was destined to the coast of Africa.

On Saturday, the 12th of May, 1838, Ghetly, the late master who had taken the schooner to Africa, made his appearance at the consulate, and, not finding me there, stated his business to the vice-consul: which was, to inquire, on behalf of the owners of the schooner, (late *Washington*, now *Senhora da Boa Viagem*), if she could be again put under the American flag.

He was desired to call on Monday morning. On reaching the consulate that morning, I was informed of this, and my attention was called to the date of the *patente* which the schooner had brought to this port. That *patente* bore date in the year 1836; and as there was no doubt as to the identity of the vessel with the schooner *Washington*, which had arrived and sailed at the times above stated, it followed that the document was unquestionably false.

From this, and the other circumstances of the case, I inferred that the schooner had navigated under the protection also of her American register; and my first impulse was to demand her seizure, upon the allegation that she was an American vessel navigating under the Portuguese flag. (Of course, if her national character had not been lawfully changed, by a regular substitution of other documents for her American papers, she still remained American in that particular, whatever might be her national character in respect of ownership.)

As to the strongest ground which really existed for her seizure—to wit, that she had brought a cargo of slaves from Africa—it was one which it would not have done to bring forward. And this for the two reasons: 1st.

That it would have proved absolutely impossible to establish it legally, however notorious the fact might be ; and 2d. That the allegation of any such fact by me, in a communication addressed to any of the authorities, would have amounted to a direct charge of flagrant violation of duty on their part, from the Captain General down, in failing to detect or notice a notorious infraction of laws ; to the strictest enforcement of which they are bound, not in the ordinary degree, but in the especial manner arising from the treaty obligations of their Government to that of Great Britain. It could not have failed, therefore, to be resented as a wanton insult, by which I could not possibly have expected to effect any end whatever.

Such was the view that I had taken of the case, when Captain Ghetly and the owner (a Spaniard of this place) called to see me on the subject of the change of flag which it was desired to effect.

I told them that, so far from such a thing being possible, my impression was that I must proceed forthwith to demand the seizure of the vessel.

This alarmed the owner excessively ; and he asked why ? My reply was, that all the circumstances of the case, so far as known to me, were so suspicious that such a step on my part seemed unavoidable.

Upon reflection, I perceived that my course ought to depend entirely upon the sufficiency of the Portuguese document which she carried, to secure to her an entry, without question, at the Portuguese consulate, had one existed at this port. If it were of this character, the only circumstance which (supposing the same train of events precisely) could ever have come to my knowledge as American consul, would have been, that a schooner, known to be the *Washington*, having returned to this port from the coast of Africa under the Portuguese flag, (exactly as it was taken for granted that she would, unless captured,) her owner here wished to get her back again under the American flag.

On the other hand, if this document were insufficient to command her recognition as a Portuguese vessel, her failure to obtain it would probably have become known to me ; and this, together with the circumstance that she was a vessel that had left here under the American flag, would have led me to institute inquiry on the subject, and proceedings against her if that should prove unsatisfactory.

I explained my position to the gentleman who had recently discharged the office of Portuguese consul, and the necessity that I was under to govern my course entirely by the information which he should give me as to the sufficiency of the document to insure to a schooner coming in under the Portuguese flag a recognition in that character ; for, if this had happened, it could never have become any business of mine to inquire what vessel she originally was, nor what document she carried, nor whether it was ten days or ten years old.

Upon examination by him, it proved to be a genuine *patente real*, which would have secured to her an entry, without question, at the Portuguese consulate, as, together with her other papers, it had done at the custom-house here.

I was thus relieved from the disagreeable prospect of having to take steps that would, to be sure, have been attended with no small *éclat*, not only here and all over the United States, but still more in Great Britain ; but which could not have resulted in any earthly good. For, however true it might have been that her Portuguese document was worthless, and that she

had sailed with her American register, and that consequently she was still an American vessel—these were facts which—however well known they might have been to every human being in Havana, it would have proved utterly impossible to establish legally, or to procure the recognition of by any tribunal in this island.

Hon. JOHN FORSYTH,
Secretary of State.

Extracts of a letter from N. P. Trist to the Hon. John Forsyth, Secretary of State, dated December 18, 1838.

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, December 18, 1838.

SIR: The correspondence of which I have the honor to submit copies (enclosures Nos. 1, 2, 3, 4, 5, and 6) will make you acquainted with a step which I have recently deemed it my duty to take, and the results with which it has thus far been attended.

Previously to giving a narrative of the case, I beg leave to offer some further explanation than that presented in the correspondence, of the grounds upon which the proceeding rests.

These, as appear from my letter to Commander McKenney, of the Ontario, are—

1st. That, independently of the particular defect upon its face, the paper (enclosure No. 7) presented by the master of the brig Thomas is not such a document as it is lawful for any vessel to sail with upon the high seas under our flag.

2d. That a national vessel, lying within the waters of a foreign State, may, without infringement of its sovereignty, visit a merchant vessel under the same flag, and, if good cause appear, take her crew into custody, and take possession of the vessel.

The first of these positions admits, I think, of being conclusively established by a review of our legislation on the subject, beginning with that of the first Congress; although, so far as I have had within reach the means to form an opinion, and the capacity to use them, the legislative intention with regard to the *regulation of navigation* under our flag, seems to have been, in no slight degree, frustrated by the bearing, apparently indirect, of judicial decisions. This opinion rests upon a careful examination of the acts of Congress and books within my reach, with reference to the question—What is a vessel of the United States?

What vessels can a consul of the United States, consistently with his duty to his country, (depending, as this necessarily does, where no express rule can be found for his government, upon the nature of her obligations to her own citizens and to the rest of the world,) recognise as entitled to wear her flag, and, under its protection, to navigate the high seas and visit foreign ports? Is it the will of that nation, which was the first to extort respect for its flag from the corsairs of the Mediterranean, and has since extorted it from the tyrant of the ocean, that that flag shall belong exclusively to her own citizens? Or is it her will that it shall be a sloop-shop domino, to be hired to any masquerading pirate that may have effrontery enough to venture into an American port, and obtain a clearance therefrom?

This, I need not say, is a question of deep import. In regard to it, I have arrived at an opinion as to my line of duty, the grounds of which cannot, for want of time, be presented here, but shall be as early as possible. The opinion itself, however, is, that it is beyond question inconsistent with the laws of the United States, that any vessel, by whomsoever owned, shall sail upon the high seas and visit foreign ports, under the flag of the United States, unless "duly registered," or "*duly enrolled* and licensed;" and in the latter case, only when forced by stress of weather, or some accidental cause, unless specially licensed for the fisheries.

This being the opinion at which I have arrived, the next question was as to the line of duty of an American consul, in the event of a vessel, unprovided with a proper document, but under the American flag, visiting his port under circumstances affording just ground for suspicion of piratical intent. *To have her seized*, was the conclusion which forced itself upon me. For what purpose? For the purpose of being held at the disposal of the Government against which the offence was committed, of leaving the waters of the United States and sailing under the American flag without a proper document.

Leaving this point for the present, I will now take up the second of the grounds upon which my proceeding rests. I must beg leave to premise, that the man does not live who can be more deeply impressed than I am with the importance of maintaining inviolate the principle of national independence. Our country has, thus far, most honorably distinguished herself by her respect for it; and that, in proportion as she grows in power, this distinction should rise into exalted pre-eminence, is an object near to my heart, as an American citizen. If, therefore, the case should present any departure from the course prescribed by that principle, this will not have proceeded from any want of an active reverence for it; and the highest gratification which the occasion could procure me, would be that of seeing it made one for the most emphatic recognition of its sacredness.

The question presented by this ground of my proceeding is one with regard to which the knowledge I possess of international law proved insufficient to enable me to arrive at a satisfactory conclusion, either in favor of, or against, the exercise of this power by the commander of a national vessel. No case in point was presented by any of my books; nor could I, by means of general principles, satisfy my mind that it was a right which did not exist. Foreign national vessels themselves formed an absolute exception to the right of jurisdiction of a nation within its own waters. Was it inconsistent with the principle of national independence, considered upon its own broad ground, or in any of its particular applications, as recognised and specified by the authorities, that this right should exist; that a concurrent jurisdiction should reside in national vessels, over their own merchantmen, to the extent of taking person and vessel into custody? I could see no such inconsistency; and, upon weighing the benefits and the evils which were likely to result from such a right, the scale seemed clearly to preponderate on the side of the former. In a word, unable to ascertain whether the right did or did not exist, it appeared that it ought. My bias was, however, against its exercise—upon the rule that, where there is doubt, inaction is the safe course.

On the other hand, practice is the foundation of the laws of nations; and, so far as regards our national vessels, (of which alone I know any thing,) no doubt exists of its being a common every-day practice with them to exercise jurisdiction over our merchantmen in foreign ports, to the

extent of sending a force on board in cases of mutiny or disturbance of any kind, and taking persons into custody. This, I have no manner of doubt, can be proved to have occurred times without number in this very port. Here, then, was a practice which covered the whole ground presented by the question; for, although I knew of no case in which the vessel had been taken possession of, I knew of none in which the circumstances of the case presented any inducement to do so; but, so far as principle was involved, here was an established and unquestioned practice of exercising jurisdiction on board of American merchant vessels; and between taking possession of persons and taking possession of the vessel, what line could be drawn?

So far as regarded the principle of national independence, it seemed to me evidently impossible to draw any distinction whatever. Still, had the practice appeared to me to be a violation of the exclusive right of jurisdiction arising from that principle, it would have had no weight upon my determination; but, conceiving it to be a salutary modification of it, and one which ought to exist, although I could not ascertain that it was recognised, but deemed it exceedingly probable that it never had received any formal recognition, I came to the conclusion to act upon it.

This determination was immediately carried into effect, by a letter to Commander McKenney, (enclosure No. 1,) with the result which will be seen in his reply, (enclosure No. 2.) The course which the matter subsequently took will be seen in my correspondence with the Captain General, (enclosures Nos. 3, 4, 5, and 6.)

This outline will suffice to show the grounds upon which my proceedings have been officially placed. I will now enter upon a narrative of the case, from which will be perceived the considerations which have influenced me.

I have long been impressed with a growing sense of the necessity of new enactments by Congress to infuse vitality into our navigation acts, which, in regard to some of their most important ends—and, among these, the most important of all, in a high politico-moral point of view, to wit, the security of our flag from the vilest prostitution—are *absolutely a dead letter*. This is one of many topics to which it has for some time been my wish and purpose to invite attention; and want of time, arising from the oppressive nature of my immediate official duties, together with the desire not to bring these subjects up for consideration until I should be able to present them in the relations which they bear to each other, and in a manner justifying the views I have been led to form, has alone prevented my having already done so. Here I must content myself with repeating the assertion just made, that, in these respects, our navigation acts are *absolutely a dead letter*. To give but one instance of the present state of things, the only requisite to a Malay pirate's becoming an "American vessel," entitled to enter all the ports of the world, and to navigate until Doomsday under the flag of the United States, is, that she should once enter an American port, and there be sworn to by an American citizen as his property. Nay, this necessity of a visit to an American port is the doctrine of the strict constructionists—one, and perhaps the most generally prevalent creed, being that such a formality is altogether superfluous; that an oath before an American consul is all-sufficient; and wo to the consul who shall be so audacious as to demur to acting the part required of him in this process for transforming a Malay or Tripolitan into an American, entitled to wear the

flag, and bear it whithersoever the wind listeth, and to *demand* recognition and protection from any American consul, under penalty of ruin by actions for damages, to be kept up so long as pirate or smuggler gold shall hold out.

A joint perusal of the enclosed documents, (enclosure No. 9,) and of the act of Congress of March 26, 1810, to which *express reference* is made upon the very face of the former, by the notary who drew it up, will afford an idea as to whether or not the legislative intention which visibly pervades our whole statute book stands any chance of being fulfilled without an addition or two to its catalogue of penitentiary offences.

They (the slave-traders) have come to the determination, as I learned the very day before the arrival of the brig Thomas, to try the experiment, [of sailing under the American flag;] and, as the first step, to send their swiftest vessels to ports in the United States, to be there transformed into Americans. Of this it was my intention to give immediate notice, when the present case came upon me a month or two sooner than I had anticipated, and presented me with the alternative to allow the audacious proceeding to pass on to its fulfilment, or to judge for myself as to the proper way to meet it.

On this point I experienced but slight hesitation. The document produced to me was of so barefaced a kind, as not to present any of the legal difficulties which a better contrivance might have thrown in my way. A more favorable opportunity could not be desired for striking a blow which should convince these gentry that, in adopting the hint under which they were now acting, they had counted without their host.

I therefore wrote a letter to the Captain General, of which enclosure No. 8 is a copy. After doing so, however, reflection upon the course which the matter was likely to take satisfied me that it would scarcely do to send it. He would have to refer it to the law officers, and the probability was that their proceedings would be so dilatory that the vessel would sail before they could make up their minds whether it was lawful or not to stop her. At any rate, the parties would have it in their power to change the whole nature of the case, at a moment's warning, by a bill of sale. It seemed to me, therefore, that perhaps the only course that could promise any result would be to keep silence, let the brig sail, and to get Captain McKenney to intercept her at sea.

I accordingly went to ask him about the feasibility of this plan. His answer was, that if she got the wind of him, it would be impossible to catch her; but that he would have no hesitation to take her where she lay, if I called upon him to do so.

I returned to my office, revolved the subject in my mind once more, and determined to avail myself of his offer. She was taken possession of that evening; and while waiting at my office (between 7 and 8 o'clock) to learn this result, I was informed by my vice-consul that some men had just come, in great trepidation, to say that they wanted a bill of sale passed of the brig Thomas.

The next morning, immediately after breakfast, I called upon the Captain General, who, so soon as I was seated, asked if I had seen Colonel Somers, (a colonel in the army, who is the chief aid of his excellency;) and upon my answering in the negative, observed that he had sent him to me. I explained our not having met, by the circumstance of my having come directly

from my residence, while he had probably gone to my office ; and remarked that I had called, through respect, to give to his excellency, at an earlier moment than my engagements until late the preceding evening had rendered possible by letter, a verbal explanation of an occurrence of which, probably, he was already apprized. He replied, yes ; and I stated the grounds upon which I had acted, and the object ; which was, that the brig should remain in the custody of the commander of the Ontario until instructions could be received from Washington.

A conversation then ensued, in which his excellency said that such proceedings could not be consented to by him ; that the consequence would be the subversion of every thing like law in the country ; that every one would be for taking the law into his own hands ; that he must abdicate at once, if such things were to be submitted to ; and that it was inconceivable to him how this transaction could be viewed in any other light than as an insult to the Government. The latter idea being that which best admitted of definite argument, I attached my reply to it, by observing that the only question could be, whether the proceeding was or was not justified by the law of nations ; that if it was, it could not be viewed as an insult ; and if it was not, still it could not be viewed as such, unless the Government of the United States should refuse the reparation which the case might call for ; and that I could pledge myself that, so far from its entertaining any disposition to such injustice, its course would be distinguished for the reverse. I informed him of the practice of our national vessels with regard to persons, and observed that it was impossible for me to perceive any ground of distinction between taking the crew of a vessel into custody and taking possession of the vessel itself.

This practice he insisted that he could not conceive the existence of ; and leaving this point, at which I found it impossible to fix the conversation, he expressed his surprise that I, in particular, in whose friendly sentiments, and in the moderation of whose views in regard to consular powers and privileges, he had so much reason to confide, should assert such a right as that now in question : and here he adverted to some case, which he said had happened recently, of the imprisonment of a French consul by the Government of the United States. In reply to which, I observed that this Government had precisely the same right, and could imprison consuls if they offended against its laws ; to which I held now, as I always had, that they are subject and amenable, having no general right to claim exemption from any obligation attached by the regulations of the country, to person, house, or property, nor to exercise powers conflicting with the exclusive jurisdiction belonging to its government, whose indubitable right it was to judge, independently of any consul, as to the privileges or facilities which he could properly claim, and, in case of collision in regard to either, to make that judgment prevail. I requested his excellency not to misconceive my position in the present case, by supposing that it involved any inconsistency with my professed views, or that I claimed, as vested in the consul, the power which had been exercised. The act was the act, not of the consul of the United States, but of the commander of the United States ship Ontario. My agency in the matter consisted in giving information to an officer of the United States navy, and calling upon him to take such measures as I deemed the case called for ; but he was not subject to my orders, nor was the force under his command to be considered as under mine. Respect prompted me to give to his excellency an unreserved explanation of the

occurrence, including my agency therein ; but he must not so far mistake the nature of that agency, or of my communication to him, as to suppose that it involved any assertion, by me, of the right of a consul to employ force for taking persons and vessels into custody. The subject did not admit of being viewed in that light : for this implied that the consul had a force under his orders ; which was not the fact—in regard, at least, to any consul of the United States. The act was an act of force, and it could, therefore, be traced by his excellency no further than to the superior officer under whose command the force employed upon the occasion avowedly was. He was the ostensible and avowed actor in the business, and the only person who could be officially looked upon, as such, by the authorities. As a matter of right, the Government of the United States alone could possess any knowledge of his having acted in compliance with a call from the consul ; and to that Government alone could it belong to take official cognizance of the act of the consul, or to hold him accountable for it.

Towards the close of our interview—which, very contrary, I am convinced, to his excellency's anticipations (for I found him deeply disturbed, and left him but little less so,) was conducted without the slightest approach to any angry or uncivil word, and ended without either a rupture or a concession on my part—he observed, inquiringly, “ Well, then, you maintain this position ?” and upon my replying without hesitation, and as a matter of course, “ Certainly, I should not otherwise have taken it,” he shrugged his shoulders, and elevated his eyebrows in the manner common to his countrymen, and implying, “ Well, I cannot see what is to be the end of it.” On rising to take leave, I remarked, “ I will now go and write an oficio to your excellency, stating the occurrence, and the grounds and object of the proceeding ; and your excellency, as may seem to you best, may either wait until you receive it, or address one to me without waiting.”

I then proceeded to see Captain McKenney, whom I found in company with Mr. Farrand, his first lieutenant. From them I learned that the captain of the port, a post captain in the navy, had visited the Ontario with a message from the Captain General, which, in the absence of Captain McKenney, had been delivered to Lieutenant Farrand, requiring, as he understood, that the brig should be returned to her moorings in *ten minutes*. Lieutenant Farrand referred him to Captain McKenney, who was at an hotel in the city, and from whom he received for answer, that, having been placed by the commander of the station under my directions, he had acted in pursuance of them on this occasion, and would cheerfully comply with the request made of him by the Captain General, if it should come from me.

Captain McKenney stated that the captain of the port had proffered any assurance (*security* he said, but I take for granted that this word was improperly used by the interpreter) that might be deemed necessary to a compliance with his request. I then repaired to my office, and engaged in writing my first letter to the Captain General, (enclosure No. 3.) About one P. M., just as the fair copy of this was about to be ready for my signature, the Spanish friend above mentioned came in, and observed, that, in consequence of my visit, he had gone to the General's, (where, by the way, he goes at the same hour every day,) where his knowledge of my character and views had enabled him to give the most positive assurance that my course would prove all that was fair and friendly ; and he then proceeded to explain that, by “ *nuestras leyes*,” (he is a lawyer,) by which the course of the

Captain General must be governed, he was constituted the judge of all contentions between foreigners and a proceeding of this kind was not permitted. After listening to all he had to say, I was about to attempt to make him understand my view of the case, and to point out that the question turned, not upon "*nuestras leyes*," (our laws,) but upon the law of nations, when an oficio (enclosure No. 4) was delivered to me from the Captain General. Observing to my visiter, "Here is an oficio from his excellency; allow me to see what he says"—I perused it. The tone proved such as I wished it might be; and, although it involved points which might be seized for the purpose of controversy, there was no position laid down in it which the circumstances of the case rendered it unavoidable to notice and dispute.

As every hour's delay would add to the mortification of the authorities, I felt it my duty to exert myself to relieve them from suspense with the least delay possible. At 5 P. M., my second letter to the Captain General being ready, I called there, on my way home, to deliver it with my own hands. He had just risen from table, and was standing in his parlor, surrounded by eight or ten officers, taking coffee. After declining his offer of a cup, I delivered my letter, informing him of its tenor, and added, that, apprehensive that if any time elapsed between the restoration of the vessel to her first mooring and her being taken into custody under his orders, the parties would evade their accountability by passing a bill of sale, I would accompany my letter with a request that the captain of the port should be instructed to receive her from the officer of the Ontario. I then said, that, according as it might be most agreeable to his excellency, I would take measures for causing her to be delivered that evening or the next day; and, upon his replying that it was indifferent to him, I said that I would fix the hour of ten on next morning. He beckoned an aid to him, to give him a message for the captain of the port, and I made my bow. I then called upon Captain McKenney, to inform him of what had occurred.

The next morning the brig was returned to her moorings, and there taken into custody by the captain of the port, together with such of her crew as had been taken the day before. On that occasion the American master had not been found on board; on the present, however, under the idea that the proceedings were at an end, he repaired on board, and began to assume command in a very dictatorial manner; and Lieutenant Farrand, upon being requested by the Spanish officer to designate the persons who composed the crew, pointed him out first; which accorded perfectly with my intentions—he being, indeed, the person whom I was most anxious to have secured.

The vessel of which he has thus acquired the ownership, by the magic of an oath, is one of the most celebrated slavers of the island, and one of the fleetest vessels in the world. She is of French build, and the tradition concerning her is, that she was constructed for the purpose of rescuing Napoleon from St. Helena. However this may be, there is no doubt of her being a vessel of very extraordinary properties, and that, once at sea, she laughs at cruisers. On her last voyage, she took in 612 slaves, and landed 555; at that time under Portuguese colors, and called the General Espartero. She was recently put under the Spanish flag, and sailed for Key West, with the name of Tomas, which was retained in its English spelling (Thomas) upon her adopting the American flag. At the time she was taken possession of by Lieutenant Farrand, there were found in her cabin three sets of colors—American, Portuguese, and Spanish.

I will close by calling attention to enclosure No. 9, which is not the first document of the sort, proceeding from the same source, that has come under my notice. It closes, as will be perceived, with a parade of special reference to the laws of the United States, highly calculated to impose upon any person who, from any cause, might be led to trust to it. In another instance within my recollection, this display of legality was made still more imposing by a certificate from the Governor and Secretary of State of Louisiana, authenticating the signature of the notary. How many persons are there, officers of the navy or others, who, upon the production of such a document, would not be impressed with the idea that it was one not only allowed, but actually prescribed, in every case of the sort, by the laws of the United States? And yet it is at bottom nothing more nor less than a contrivance for setting at naught the very act to which it expressly refers, and could not fail to be seen to be so by any person who should compare them together. It totally misstates both the object and the language of the act; and, having done this, proceeds to do the very identical thing which the law expressly prohibits, in the very identical word used in the prohibition. It first states that the vessel, "being of foreign construction," is precluded by the act of March 26, 1810, "from having a *register* or sea-letter." Now the act says nothing about "foreign construction," nor does it preclude any vessel "from having a register." What it does is, to preclude any vessel from having a sea-letter, which shall not have a register, &c.; and forbids all such from having not only a *sea letter*, but any "other document, *certifying* or proving *any* vessel to be the property of a citizen," &c. The certificate, by thus totally misstating the words and meaning of the law, has made a case in which it becomes necessary to "supply, as far as may be, the want of such documents;" and this it does by certifying and "proving that said vessel is *bona fide* the property of a citizen," &c.

If it be deemed desirable that such a state of things should be put a stop to, I would beg leave to suggest, as the only effectual way to do so, a law expressly prohibiting the clearance of any vessel under the flag of the United States from any custom-house, unless said vessel be duly registered or enrolled and licensed, &c., (in the words of the act of March 26, 1810,) according as the voyage be a foreign voyage, or be a coasting or fishing voyage; and making it a penitentiary offence for any notary public within the United States, or any person not duly authorized by some law of the United States, to make out or to authenticate any document relating to any ship or vessel, certifying or proving such ship or vessel to be the property of a citizen or citizens of the United States, unless it be a mere bill of sale, or other document connected with the title; in which case, it shall bear upon its face, immediately over the signature and seal of said notary, and written, or printed, in letters of at least double the size of those used for the most operative words, "*This document is not intended to have, and has not, any value as a navigating paper of said vessel,*" and making it a penitentiary offence, likewise, for any consul of the United States to recognise as entitled to wear the American flag, any vessel, other than a national vessel, except ships or vessels duly registered, or duly enrolled and licensed.

Congress owe it to themselves, also, to either repeal the provisions having for object to secure that registered vessels shall belong to the persons named in the register, or to devise some means of detecting and punishing the setting of all these provisions (the most particularly, nicely, and minutely drawn up in the whole statute-book) at naught, by a false oath, which has long ceased to have the slightest odium attached to it; nothing, so far as

my impressions can be relied upon, being more common and ordinary than the putting of a vessel "in the name," as it is called, of some person who does not own the smallest shred of a rope in her, and neither has, nor expects ever to have, the slightest interest in her of any kind.

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

HON. JOHN FORSYTH,
Secretary of State, Washington.

[Enclosure No. 1.]

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, December 13, 1838.

SIR: There is now lying in this harbor, under the flag of the United States, a vessel which I deem it my duty to call upon you to take possession of, and at the same time to take into your custody such of her crew, master and officers included, as may be found on board.

She entered port yesterday, and is officially reported in the papers of this morning as the "American brig Thomas, Howell master, in one day from Key West, (tonnage 195) in ballast, to Don Tomas Lopez." She has to-day been reported at this consulate by the said master, calling himself J. S. Howell, of Philadelphia, who, in reply to the usual questions, stated that he is from Key West, and that his crew consists of nineteen men, all told—all foreigners except himself.

In the act of receiving the paper presented instead of a register, as the document with which the vessel is navigated, my vice-consul inquired of the master, "Where are you of?" and received for answer, "Of Havana." With an exclamation of surprise, he perused the document, and perceived that the vessel is therein called "the brig Thomas, of Havana." Independently of this fatal defect, which only serves to display in a stronger light the audacity of the proceeding, the document is absolutely worthless. No American vessel can rightfully be upon the high seas, even on a coasting voyage, unless provided with a document of a very different character.

Here, then, is a vessel entering this port under our flag, reported to the authorities of the place as American, and then placed, as such, under the protection of this consulate, while she has on board an immense crew, consisting of foreigners, and is totally destitute of any document which could allow of my recognising her as an American vessel that could rightfully venture at all upon the high seas; the only paper produced by her master being one which is stamped with falsehood and absurdity on its very face.

The proper course in such a case is plain. She has been recognised by the authorities as a vessel of the United States, and by the master has been placed, as such, under the protection of this consulate. I must therefore treat her as an American vessel, navigating in a manner not allowed by our laws, and under circumstances justifying strong suspicion of piratical intention. Upon these two grounds, (the first of which is amply sufficient,) I call upon you to take possession of her, and to take into your custody every individual engaged in navigating her, in order that she and they may be removed to the United States.

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

WILLIAM E. MCKENNEY, Esq.,
Commanding U. S. ship Ontario, harbor of Havana.

[Enclosure No. 2.]

UNITED STATES SHIP ONTARIO,
Harbor of Havana, December 13, 1838.

SIR: I have the honor to acknowledge the reception of your letter of this day's date, in which you state that the American brig *Thomas*, Howell master, having arrived in this port, and deposited in your office papers insufficient for the purpose of navigating the high seas; which papers having been submitted to my inspection, I have, agreeably to your request, taken possession of the said brig, and she is now under the guns of this vessel, where I will detain her until further instructions from you.

Very respectfully, sir, your obedient servant,

WM. E. MCKENNEY,
Commander.

N. P. TRIST, Esq.,
Consul of the United States, Havana.

[Enclosure No. 3.]

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, December 14, 1838.

Deeming it required by the respect due to the authorities of the country, I take the earliest moment to communicate officially to your excellency a statement of the occurrence which took place in this port yesterday afternoon, in regard to the American brig *Thomas*, with an explanation of the grounds upon which the commander of the United States ship *Ontario* acted on the occasion.

The brig *Thomas* was yesterday reported at this consulate by a person calling himself J. S. Howell, of Philadelphia, who represented himself as the master and owner of the vessel; and in reply to the usual questions, stated that he is from Key West, and that his crew consisted of nineteen men—all foreigners except himself. He then presented, as the document with which his vessel was navigated, a paper altogether insufficient to allow me to recognise her as having rightfully left the waters of the United States; but, on the contrary, highly calculated, particularly when taken in connexion with the extraordinary number and the character of her crew, to afford strong grounds for suspecting piratical intention, in addition to the violation of the law of the United States actually committed by her coming without a proper document.

An American vessel of this character I deemed it to be beyond question my imperative duty to take instant steps for causing the seizure of, upon the ground of the violation of the law of the United States, committed by her being brought to this port; and had it not been for the presence here of a national vessel of the United States, I should have been under the necessity of troubling your excellency with a request that she and her crew might be immediately taken into custody by the authorities of the place, to be detained subject to the orders of the Government of the United States, until its will should be known.

From this necessity I deemed myself fortunate in being exempted, in consequence of the United States ship *Ontario* being in port. Accordingly, I addressed to her commander, William E. McKenney, Esq., a statement of

the facts, together with the request arising out of them; with which I should have troubled your excellency had he not been here, or had he, upon receiving them, experienced any hesitation as to the course which, under all the circumstances of the case, his duty prescribed. No such hesitation was evinced by him, and he forthwith proceeded to take possession of the brig, and of such of her crew as were found on board; in the design, as may be inferred from what proceeds, to retain possession of her, in compliance with my call, until the will of the Government of the United States shall be known.

I have the honor to be, with the highest consideration, your excellency's obedient servant,

N. P. TRIST.

His Excellency DON JOAQUIN DE ESPELETA, &c.,
Captain General, &c., &c., &c.

[Enclosure No 4.]

[TRANSLATION.]

CAPTAIN GENERALCY OF THE EVER FAITHFUL ISLAND OF CUBA.

Under this date I received from the captain of the port the oficio which runs thus:

"Most excellent sir: I pass to the cognizance of your excellency's authority the unpleasant occurrence which took place at the careening wharf of Don José Travieso, between the hours of four and five yesterday afternoon; and which was, that a boat, manned with fifteen or twenty men, armed with swords and pistols, and officers, belonging to the Anglo-American sloop of-war 'Ontario,' now at anchor in this port, boarded the American brig Thomas, Howell master, then moored and fastened to said wharf; and after unmooring her, took her in tow and removed her to the vicinity of said sloop of-war; all which I make known to your excellency, in fulfilment of my duties."

In consequence of which, I gave an order that the said captain of the port should present himself to me, in order that he might repair on board the said sloop-of-war, and manifest from me to her commander the surprise which this event had occasioned me—for, being, as chief of foreigners, invested with the exclusive cognizance of every cause or complaint for which there might be room, in order that I might proceed to do justice in accordance with the laws, I hoped he would forthwith take order that every thing should remain as it was before the occurrence above mentioned took place, making known to me whatever ground of complaint he might have in regard to the vessel in question, to the end that the suitable issues might follow; and inasmuch as the said captain of the sloop-of-war replied to him that, in this matter, he has not acted of his own motion, but solely to carry into effect the order or disposition of your lordship,* I hope that for the justice of my claim, as well as for the preservation of the good harmony which reigns between our nations, you will take the steps that may be proper, in order that all may remain in the state in which it was before the occupation of the brig; since your lordship should not doubt that in my authority

* Lordship is the proper title of consul, as prescribed by Spanish law.

you will find all the justice due to the claim or complaint which you may have to allege in regard to the said vessel.

God preserve your lordship many years.—Havana, December 14, 1838.

JOAQUIN DE ESPELETA.

To the CONSUL GENERAL
of the United States at this place.

[Enclosure No. 5.]

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, December 14, 1838.

I have the honor to acknowledge the receipt of your excellency's oficio of this date; and to state, in reply, that, in compliance with the request with which it closes, I shall, with pleasure, call upon the commander of the "Ontario" to return the brig "Thomas" to the moorings from which she was yesterday taken.

Reposing, as I do, the fullest confidence in the just exercise, by your excellency, of the authority with which you are invested, it would have been gratifying to me to be enabled to meet the request of your excellency with an unqualified compliance, unaccompanied by any stipulation or reservation. From this gratification I am, however, precluded by the nature of the subject, which places me under the necessity of referring your excellency to the official explanation which I have had the honor to address to you this day.

Upon reference thereto, it will be perceived that the ground upon which, in compliance with a call from me, the commander of the United States ship "Ontario" has taken possession of the brig "Thomas" and her crew, is, *that a violation of the law of the United States has been committed, by navigating her upon the high seas, and bringing her to this port; and the object of her seizure is there stated to be, that she might be detained here, subject to the disposal of the Government of the United States.*

Your excellency's oficio, written before mine was delivered to you, and, consequently, before the precise ground and object of the seizure could be known, does not meet this point; and hence the necessity (to which I reluctantly yield) of the compliance that I should have felt happy in being able to give, without the addition of a word.

Perfect as is my reliance upon the proper use of your excellency's general authority on this occasion, yet, inasmuch as, from the expression of your excellency's oficio, it is to be inferred that the exercise of *judicial* authority alone was in the contemplation of your excellency at the moment it was written, it becomes unavoidable that I should call your excellency's attention to the fact that the nature of the case is such as not to admit of the exercise of judicial authority upon it any where, except within the territory of the United States; and that, consequently, the only one of the attributes of your excellency's high post, that could be called into exercise on the subject, is purely of the highest *executive* character. The brig "Thomas" is an American vessel, which has committed a violation of the law of the United States, and, consequently, it is only within the territory of the United States that any proceedings of a judicial character can possibly take place on the subject. The only capacity, therefore, in which your excellency could be appealed to in this case, on behalf of the Government of the United States, would be, not as "efe de estrangeros," but as the highest

executive officer of her Catholic Majesty in the island, charged with the fulfilment, on her part, of the obligations which one sovereign owes to another; among which, is the very obvious one to seize and deliver up, upon the demand of a friendly Government, in a case like the present, any vessel leaving the waters of the State to which she belongs, and navigating the high seas in defiance of the laws of that State, upon which rests the proper regulation of its vessels and the security of its own commerce, and that of all other nations, from the dangers that would attend the toleration of such lawless proceedings.

Such being, from the nature of the case, the only possible appeal to the authority vested in your excellency whereof it admits, I shall evince the sincerity of the expression which I have offered, of my entire reliance upon a just exercise of that authority, by proceeding to put in execution the compliance, already announced, with your excellency's wishes. If I waited until your excellency's reply to this could be received, that measure could not be carried into effect until to-morrow. To avoid this delay, I shall forthwith proceed to the only step on my part which is requisite.

In the confidence that your excellency's authority will be instantly exercised in such a manner as to secure the brig Thomas, and the crew by whom she was brought here, and to hold them subject to the demand of the Government of the United States, so that my compliance with your excellency's request shall be attended with no other effect than that of transferring the custody of the vessel and the crew from the commander of the Ontario to persons under your excellency's orders, I shall recommend to him to cause her to be removed at once to her first mooring, and there to be delivered to the captain of the port.

Long as this communication has already become, I must not close it without correcting an error which your excellency's offico contains in regard to the reply given by the commander of the Ontario to the request made of him this morning in your excellency's name. The purport of that reply merely was, to refer to me as the channel through which he desired that all communication with him on the subject should pass. It could not have been his intention to convey the idea that he was a mere instrument in my hands, or that he was acting in obedience to my orders; and the impression that such was his meaning must have been the result of misconception, which receives a very natural explanation from the difference of language. Commander McKenney understands his post as an officer of the navy of the United States, and knows, therefore, that I have no right to give him orders, nor he any right to receive them from me. It is my duty to give him information, and to call upon him to pursue any line of conduct which the case may appear to me to demand. It is his duty to judge for himself whether the case is one that requires or justifies that line of conduct. But, in doing so, he acts upon his own responsibility; and, whether the call made by me be complied with or not, he does not obey or disobey an order. This distinction in regard to the functions of consuls and officers of the navy might, in some cases, be of great practical importance; and I have, therefore, deemed it proper not to let the error in which it is confounded pass without notice.

I have the honor to be, with the highest consideration, your excellency's obedient servant,

N. P. TRIST.

His Excellency DON JOAQUIN DE ESPELETA, &c.,
Captain General, &c., &c., &c.

[Enclosure No. 6.]

[TRANSLATION.]

CAPTAIN GENERALCY OF THE EVER FAITHFUL ISLAND OF CUBA.

I have under my eyes the two oficios of your lordship, of yesterday's date ; by the first of which you are pleased to make known to me the occurrence which took place on the previous afternoon in regard to the American brig Thomas, and the second has for object to reply to that which I addressed to you in consequence of the same event.

I have experienced with satisfaction the conviction of your constant good disposition to promote, on your part, the perfect harmony which has always existed between this Government and that of the United States and their functionaries, as is proved by your lordship's having at once agreed that the brig Thomas should be returned to the anchorage where she lay, and be delivered to the captain of the port.

With regard to the securing of the vessel and her crew, which your lordship so strongly recommends to me, I have already given all the proper orders for it to be punctually carried into effect, without prejudice to whatever else that may be proper ; and upon which I reserve to myself to reply, to the end that the rights of our respective Governments may be maintained unharmed.

The which I have the honor to say to your lordship, in reply to your aforesaid oficios, reiterating the assurances of my consideration.

God preserve your lordship many years.—Havana, December 15, 1838.

JOAQUIN DE ESPELETA.

The CONSUL GENERAL
of the United States at this place.

[Enclosure No. 7.]

UNITED STATES OF AMERICA, *Territory of Florida.*

Know all men by these presents : That on this eleventh day of December, in the year of our Lord one thousand eight hundred and thirty-eight, before me, Joseph A. Thouron, a notary public duly commissioned and sworn, in and for the county of Monroe, Territory of Florida, United States of America, qualified and authorized by law to administer oaths and affirmations, personally came and appeared J. S. Howell, of Philadelphia, State of Pennsylvania ; who, being duly sworn upon the holy Evangelists of Almighty God, declared and said : That he is a citizen of the United States of America, and the true and only owner of the brig Thomas of Havana, whereof he (the said J. S. Howell) is master ; and no subject or citizen of any foreign Prince or State has, directly or indirectly, by way of trust, confidence, or otherwise, any interest in the said vessel, or the issues or profits thereof. And it appears from the certificate of S. R. Mallory, our inspector of the customs for the district of Key West, on file in my office, that the said brig has one deck, a square stern, no galleries, and a billet-head ; that she is in length eighty seven feet, in breadth eleven feet, (?) in depth twenty-three feet, (?) and measures 195 $\frac{1}{2}$ tons ; and that she is Spanish built.

In testimony whereof, I, the said notary, have hereunto set my hand and fixed my notarial seal, at Key West, in the county and Territory aforesaid, on the day and year first aforesaid, in the sixty-third year of the independence of the United States.

JOS. A. THOURON, *Not. Pub.*

CONSULATE OF THE UNITED STATES OF AMERICA, *Havana* :

I, Nicholas P. Trist, consul of the United States, do hereby certify that the foregoing is a true copy of the document deposited in this consulate, upon the 13th day of the present month, by J. S. Howell, as the paper with which he navigated "the brig Thomas, of Havana."

In testimony whereof, I hereunto set my hand and affix my seal of office,
 [L. S.] this 18th day of December, A. D. 1838, and of the independence of the United States the 63d.

N. P. TRIST.

[Enclosure No. 8.]

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, December 13, 1838.

I am under the necessity of addressing to your excellency, in the name of the Government of the United States, a demand that the brig Thomas, which entered this port yesterday under the flag of the United States, be, together with her master and crew, taken into custody, to be delivered into that of the commander of the United States corvette Ontario, now lying in this harbor.

The facts upon which this demand rests are as follows: The said brig having, as is above stated, entered this port yesterday, and been published in the *Diario* and the *Noticioso* of to-day as the "American brig Thomas, Captain Howell, in one day from Key West, tonnage 195, in ballast," has this moment been reported at this consulate by the master, calling himself J. S. Howell, of Philadelphia, in the State of Pennsylvania, who, in reply to the questions usual upon such occasions, stated that his vessel was last from Key West; that her crew consisted of nineteen men, all foreigners, himself excepted; that she was called the "Thomas, of Havana," and was exclusively owned, as well as commanded, by himself. He then delivered, as the document with which she was navigated, a paper altogether worthless for the purpose, it being of a description altogether different from any document recognised by the law of the United States as one with which any vessel, owned by a citizen of the United States, may rightfully sail upon the high seas or visit any foreign port.

Facts which are of the most public notoriety, and can with ease be judicially proved, afford an overwhelming presumption that even this document has not the slightest foundation in truth, but is a most audacious attempt, by means of perjury on the part of a lost and reckless man, to cover with the American flag a vessel which has no right whatever to its use. But it is altogether unnecessary to look beyond the face of the document itself; inasmuch as upon it, and it alone, is based the demand which I now have the honor to address to your excellency. Admitting it to be altogether above suspicion as to the truth, the case is one of a vessel, owned by a citizen of the United States, sailing upon the high seas, and entering this port, with a document totally insufficient to justify her being thus navigated.

Resting upon this single point, and begging that it be kept perfectly isolated and distinct from every other circumstance that may have a tendency to mix itself with it, I have the honor to address to your excellency this demand—that the brig Thomas, together with the master, officers, and crew, by whom she was brought to this port, be taken into custody by the authori-

ties of the place, and transferred to that of the commander of the United States ship Ontario, with a view to their being held at the disposal of the Government of the United States, for removal to the country whose laws have been violated by her being brought hither.

I have the honor to be, with the highest consideration, your excellency's obedient servant,

N. P. TRIST.

His Excellency DON JOAQUIN DE ESPELETA, &c.,
Captain General, &c., &c., &c.

[Enclosure No. 9.]

Schooner Venus.

Fac-simile of a document now deposited in this office, as the navigating paper of the schooner Venus.

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, December 18, 1838.

N. P. TRIST.

STATE OF LOUISIANA, *City of New Orleans :*

Be it known, that this day, before me, Carlile Pollock, notary public in and for said city, duly commissioned and sworn, personally came and appeared Michael Moore, residing in this city, who declared that, for the consideration of the sum of two thousand dollars to him paid in ready money, the receipt whereof he hereby acknowledges, he does, by these presents, grant, bargain, and sell unto John K. Wilbur, residing in this city, a citizen of the United States of America, the Mexican schooner called the *Venus*, of Campeachy, together with her boats, sails, rigging, masts, spars, tackle, apparel, and furniture, as she now lies in this port.

Said vessel is of the burden of 103 $\frac{3}{4}$ tons, Mexican admeasurement.

To have and to hold the said schooner and appurtenances unto the said John K. Wilbur, his heirs and assigns, to their proper use and behoof, forever. And the said Michael Moore, for himself and his heirs, said schooner and appurtenances to the said John K. Wilbur, his heirs and assigns, shall and will warrant, and forever defend, against the lawful claims of all persons whomsoever, by these presents.

Done and passed at the city of New Orleans, in the presence of Achille Chiapella and Herrman Lucas, witnesses, who have hereunto signed their names, together with the parties and me, the said notary, this fifteenth day of August, one thousand eight hundred and thirty-eight.

MICHAEL MOORE,
JOHN K. WILBUR,
CARLILE POLLOCK, *N. P.*

A. CHIAPELLA,
H. LUCAS.

I certify the foregoing to be a true copy of the original act extant in my register, according to the law and usage of this State.

In faith whereof, I grant these presents, under my signature and the impress of my seal of office, at New Orleans, this fifteenth day

[L. s.] of August, one thousand eight hundred and thirty-eight.

CARLILE POLLOCK, *N. P.*

UNITED STATES OF AMERICA, *State of Louisiana* :

To whom it may concern : Be it known that on this fifteenth day of August, eighteen hundred and thirty-eight, before me, Carlile Pollock, a notary public in and for this city of New Orleans, duly commissioned and sworn, personally came and appeared John K. Wilbur, of this city, to me (notary) well known, who, having been duly sworn to declare the truth, deposed that he is a citizen of these United States, and the true and only owner of the schooner called the Venus, of New Orleans, (formerly the Venus, of Campeachy,) being the same vessel which is described in the within deed of sale; and that no citizen or subject of any foreign Prince or Power is interested in said vessel, nor in her gains or issues, by way of trust, confidence, or otherwise, howsoever; and thereupon he signed his name.

JOHN K. WILBUR.

And I, the said notary, do hereby certify that that vessel, being of *foreign construction*, is precluded by the laws of Congress of these United States, passed the 26th of March, 1810, from having any *register or sea-letter*; and these presents are intended to supply, as far as may be, the want of such documents, by proving that said vessel is *bona fide* the property of a citizen of the United States of America.

In witness whereof, I, the said notary, have granted these presents, under my signature and the impress of my seal of office, at New Orleans, on the 16th August, 1838.

CARLILE POLLOCK, N. P.

Extract of a letter from N. P. Trist to the Hon. John Forsyth, Secretary of State, dated January 12, 1839.

SIR: I have the honor to enclose a copy (enclosures Nos. 1, 2, and 3) of a correspondence which has just been forced upon me by the gentlemen resident here on the part of the British Government, as members of a mixed court for adjudicating upon vessels detained under the treaties between Great Britain and Spain for the suppression of the slave-trade. Here the correspondence closes, as their reply will not receive any from me; and the momentary departure from the line of duty dictated by first principles, upon which I have ventured in receiving from them any communication whatever, will, I trust, find a sufficient apology in the circumstances of the case, when fully explained.

My letter contains allusions which, when the many and urgent matters now pressing upon me shall have been disposed of, I will send you a full explanation of.

Hon. JOHN FORSYTH, *Secretary of State.*

[Enclosure No. 1.]

HAVANA, July 8, 1839.

SIR: As it may possibly not have come to your knowledge, we think it right to make you acquainted with the report prevalent in this place respecting the ship "Venus," which arrived here the 4th August last from Baltimore, and sailed shortly after for the coast of Africa.

This vessel, you will no doubt remember, arrived and sailed hence under American colors, under which it is said she took in a cargo of negro slaves, and has landed them within the last few days on this coast—about 860 in number.

The report further states there are several American citizens implicated in this flagrant violation of the laws of the United States; and as the "Venus" may be hourly expected in this harbor, we would respectfully suggest that such immediate steps may be taken on her arrival as may lead to the punishment of such offenders.

The peculiar relationship in which the United States are placed to Great Britain induces us more anxiously to hope you will participate in the feelings with which this communication is made.

We have the honor to be, sir, your most obedient, humble servants,

J. KENNEDY,

CAMPBELL J. DALRYMPLE.

N. P. TRIST, Esq.

[Enclosure No. 2.]

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, January 8, 1839.

GENTLEMEN: I have received, at a late hour this evening, your letter addressed to "N. P. Trist, Esq.," and dated Havana, 8th *July*, (intended doubtless for January,) 1839, which the presence of company in my parlor where it was delivered, has prevented my opening until the night is too far advanced to permit me to engage in the task of a reply, without encroaching upon the rest which a long day of unremitting labor demands. Unfitted as this has rendered me for resuming my pen at this moment, I am, however, impelled to do so by the desire to obtain without delay the important information which your letter affords ground for believing that it may be in your power to furnish.

Upon referring to the files of your predecessors in office, you will probably find there a letter addressed by them to me towards the close of the year 1836, and by me returned, upon the ground that I deemed it incumbent upon me to decline receiving any communication of that nature.

Upon comparing the two, you will perhaps be sensible that the letter now before me, although differing from the other in one very material particular, is yet so far of the same nature as to come within the rule which, upon that occasion, I announced as that of my conduct, and my conviction in regard to the indispensableness of which has since been fortified. Thus viewed by me, it would now impose again the unpleasant duty then discharged, were it not that the essential difference just adverted to leaves me, to a certain extent, free in this instance to avail myself of the information of which you may be possessed; and, at the same [time,] to indulge the disposition towards British functionaries which fixed sentiments for the people have long made a part of my character.

In thus departing from the course pursued towards your predecessors, it is necessary that, to preclude misapprehension, I should trouble you with an explanation which would have been made to them, had it not been prevented by the tenor of their communication.

This was of so extraordinary a character, indicating so utter an oblivion

or innate ignorance of the simplest applications (until then deemed by me self-evident) of first truths in regard to international independence, that it left me no other alternative to the course of passing it over, as I did, without remark or notice, than that of facing it with a rebuke such as my command of language would have been severely tried in making commensurate with my sense of the insult. It would have accorded as ill with the habitual tone of my feelings towards their nation, as the provocation did with a decent respect for the independence of mine. From this unwelcome necessity I was spared by the relations, or rather the no-relations, in which we stood: a circumstance no sooner adverted to, than it stripped the communication of every attribute save naked absurdity; rendering it a fit object of derision alone, until, upon the contemplation thus awakened of what was going on around me here, and connected with it in Great Britain, that feeling gave way to the more serious mixture of sorrow and indignation at the spectacle of such prostitution of the energies of the British people in theatrical playings off, to their delusion and to the benefit of whomever it might concern, in a cause which, whatever differences of opinion may exist with respect to the justness or the immoderateness of the zeal displayed in it, is sanctified by a sincerity and a self-forgetfulness in proportion to the intensity of which every empty show got up by self-seekers turning it to profit becomes intensely disgusting and hateful.

Had the case been different, through the existence of any tangible relations between us as agents of the two countries, the necessity would have been forced upon me, and consequently upon the Government of the United States, to demand to know upon which of the principles that govern the relations of States, and in consequence of what event it might be, that any crimes or misdemeanors, real or assumed, committed by citizens of the United States in this port, or elsewhere, except on British territory, had become objects of cognizance to the British Government, so as to justify an agent of that Government, placed here in official relations with an agent of the Government of the United States, in supposing himself entitled to communicate in formal manner to the latter the results of the supervision exercised by him over the proceedings of American citizens and American vessels, (which proceedings, it may be remarked, were subjects of as little concealment here, and those results matters of as great notoriety, as the recent arrival of the French Prince from Vera Cruz,) accompanied with the information *that it would be his painful duty to report the same to his own Government!* Such a demand, it would, under some circumstances, have been imperative upon me to make. But it was not so in the present; and, unpleasant as was the alternative which they presented, I deemed myself fortunate, even at that cost, to escape the obligation to be instrumental in forcing upon the British Government a question from which there was no escape, but a direct disavowal of an indecency so gross that its absurdity was the only palliation of which it could be susceptible; while, at the same time, the circumstances of the case were such as to obviate the necessity of such disavowal, precluding, as they did, unless by gross impeachment of its good faith, the supposition that the outrage upon the United States could have been intended by that Government. The persons from whom it had proceeded had, it was to be taken for granted, been sent here by their Government in no other capacity than that in which they had been recognised by the Spanish, under the treaty, which alone entitled them to be here at all; which capacity was purely judicial, or fractionally so, as part of a mixed

court, whose functions consisted solely in bringing to adjudication, with the least delay and inconvenience, such vessels as, under the treaty between the two countries, might be detained for having been engaged in an illicit traffic of slaves. Such being the sole purpose for which they were permitted to have an official residence upon Spanish territory, and even the form of process for that limited purpose having been strictly and minutely defined by treaty, it could not be conceived that their Government had condescended to abuse the opportunity thus afforded, by sending them on any other errand; above all, was it not to be supposed that, openly trampling under foot the plainest rights of a nation, which, however unfortunate, is still recognised as one of the States of Europe, it had intended their conversion into organs for offering unprovoked insult in the same breath to that nation, and to the foreign consuls holding exequaturs from her, and entitled, through decency to her, if no other motive, to be respected by all who accepted the right to official dwelling in her territory. The treaty which placed them here, and a decent respect for the good faith of their Government, absolutely precluded, then, the supposition that it could have been a party to the letter addressed by them to me. Moreover, the functions assigned them were so very limited, and of a nature so extremely simple, as to afford an obvious apology against even the charge of having neglected so to instruct them in relation to their duties as to secure against all such abuses of their situation. Such instructions are requisite, and the duty to give them imperative; only in proportion as the complexity of the functions intrusted to a public agent, or the haste in which he may be called upon to act, is such as to expose him to doubts or oversights. A perusal of the treaty shows that it afforded neither of these grounds for precautionary instructions. Never were duties, or one single duty, rather, (for it consists of a mere decision upon a naked question of fact,) more simple in its nature, or more clearly defined; and it almost transcends belief, that persons charged therewith should, even undesignedly—the only mode of transgression which a Government can anticipate on the part of those in whom it puts trust, or provide against by instructions—overlook the boundaries of the field assigned to them, or fancy themselves placed in any official relations whatever towards foreign consuls resident here.

Such were the considerations which governed my course in regard to the communication from your predecessors, and which, unpleasant as was the task of returning it, reconciled me thereto, as being, however rude in outward semblance, at bottom by far the least objectionable to all parties of the alternatives forced upon me. The present communication, as I was happy to see, is free from the offensive peculiarities of the former. Still it is liable to the fundamental objections inseparable from any communication which you could possibly address to me in regard to the conduct of citizens of the United States—one of which, indeed, applies to official communications on any subject whatever: this is, that there exists not any official relation of any kind between us; the other, that whatever relations might exist, and whatever might be my own functions in regard to offences committed by citizens of the United States against our laws, they could not be such as to allow me to recognise the right of any agent of any foreign Government to interfere, in any possible mode or degree, in the discharge of my duties, or to forbear repelling such interference if offered.

This is a necessary consequence of the independence of our two countries. You refer to “the peculiar relationship in which the United States

are placed with Great Britain." Since the 4th of July, 1776, the only relation in which they stand to each other, is that of two independent nations—"enemies in war; in peace, friends." Of that independence, one of the vital parts consists in the exclusive execution, no less than the exclusive enactment, by each, of its own laws; rigorously excluding and repelling all interference in the one no less than the other. If there be upon earth two nations from whom, above all others, their own welfare, and that of the world, demands the most scrupulous regard for and watchful observance of this principle, those nations are the two whom you have named. Mine is wedded to it in all its bearings; and if, as I trust, the harmony now happily subsisting between the two Governments is to endure, so as to allow to the elements comprised in the bosoms of the two nations a fair opportunity to work out their natural results, it can only be through the cultivation of the same sentiment by your Government towards ours, if no other.

So thoroughly imbued with it is the latter, that no consul, or other functionary of the United States, at this place or elsewhere, however full and accurate the information which he might have acquired on the subject, and however sincere his zeal against the slave-trade, would ever dream of volunteering an official communication to a functionary of Great Britain in regard to the amount of British fabrics, made expressly for the coast of Africa, nor the number of casks of shackles (the distinctive instrument for carrying on the slave-trade) of British manufacture annually exported to this island; some of which I have seen passing through the custom-house here, without attracting any more notice, from either officers or bystanders, than so many boxes of Dutch cheeses. He might, under instructions from his Government, have traced these things to their sources, so as to be able to designate every British manufacturer, merchant, and ship, from and through which they had reached thus far on their way to the coast of Africa; and, upon looking into the statutes of their Parliament, he might have discovered that they could not have got here without gross violations of British law. But so great is the silent force of the general national sentiment upon this point, it would never occur to him, as a thing proper, or decent, or possible, that he should assume to take part in the administration of those laws, by addressing official communications in regard to their violation to British functionaries charged, or not charged, with preventing it. If such an American officer were to be found, he would be a very remarkable exception; and, whatever might be the force of the motives impelling him to a course so inconsistent with the general sentiment of his country, there is one particular in which his course would be sure to evince the utmost respect for, if not dread of it, if his object in thus trampling upon the principle of national independence were to play off before any portion of his countrymen. However insensible he might be to other things, the dread of their penetration would effectually deter him from attempting any such game, unless he had furnished himself with better materials for it than rumors.

If requested so to do, he would doubtless cheerfully comply, as I trust that you will with the request I now earnestly make of you—to oblige me, at the earliest possible moment, with all the information of any kind regarding persons, occurrences, or things, calculated to be of use to the Government of the United States in regard to the ship "Venus," or any matter connected with her; and particularly the fact of her having taken in a cargo of negroes whilst under the American flag; and the other fact, that

there are several American citizens implicated in this violation of our laws, and who those citizens are. One of you, gentlemen, has enjoyed the advantage of pursuing his studies at the Temple; and I need not tell you, therefore, that the great object is to obtain such materials in the shape of facts or persons, or indications of either, as may be susceptible of use towards the conviction of every individual implicated. If materials of this kind cannot be furnished by you, I would thankfully receive any specific facts, although unconnected with names of persons, should you not be at liberty to divulge them, which your peculiar opportunities and command of time for the purpose may have brought to your knowledge.

I am, gentlemen, very respectfully, your obedient servant,
N. P. TRIST.

J. KENNEDY and
CAMPBELL J. DALRYMPLE, Esqs.

[Enclosure No. 3.]

HAVANA, *January 10, 1839.*

SIR: We have to acknowledge the receipt of your answer of the 8th instant, to our communication of the same date respecting the ship "Venus," which vessel we have since heard entered this harbor at a late hour the evening before.

In reply to your request to be furnished "with all the information regarding persons, occurrences, or things, calculated to be of use to the Government of the United States, in regard to the ship 'Venus,' or any matter connected with her; and particularly the fact of her having taken in a cargo of negroes whilst under the American flag; and the other fact, that there are several American citizens implicated in this violation of your laws, and who those citizens are;"—we beg to say that we have already communicated as much of the information we possessed as we felt ourselves at liberty to do. We referred you to the reports prevalent in this city upon the subject, and we hoped (as no doubt is entertained of their truth) that you would have thought them deserving of your own immediate investigation, either through the Captain General of the island, or by your own authority, and the intervention of the commander of the American vessel of war now in the harbor. Any such investigation on your part, by examination of the log-book and crew, could not have failed to elicit, much better than any information we could be expected to divulge, whether the following circumstances, as reported, are well founded or not:

1st. Whether there were any American citizens on board the "Venus," during her late voyage to the coast of Africa, and who those citizens are.

2d. Whether the "Venus" was visited on the coast of Africa by any British cruiser or cruisers, without being detained in consequence of her bearing the American flag, but one of which cruisers, having observed her take in some negroes under that flag, afterwards chased her, though without success.

3d. Whether any sale or transfer was made of the vessel after leaving this harbor, and where, so as to divest her of her American character.

The ship's articles, we have heard, provided that she was to be taken to Bahia, where the sale was to take place; but the short time she has been absent, (only four months,) puts this out of the question; and whether transferred or not to any other flag, we fear it is indisputable that a gross abuse has been practised of the American flag.

It certainly is no part of our duties at this place to take any steps to vindicate such a violation of your laws; nor have we any wish to interfere in any like cases, further than arises from an anxiety to put an end to all such nefarious infringements of the rights of humanity. Our objects are too high, and our conviction of their rectitude too strong, to allow us to be turned from our course by taunts of any kind; and with regard to the United States in particular, we would wish to preserve unimpaired our respect for the laws which have declared the slave-trade piracy.

But it is in proportion to the respect we would wish to entertain, that we should regret to find those laws a dead letter, and your professions not followed up and carried into effect.

We have the honor to be, sir, very respectfully, your most obedient, humble servants,

J. KENNEDY,
CAMPBELL J. DALRYMPLE.

N. P. TRIST, Esq.,
Consul, &c., &c.

Extracts of a letter from N. P. Trist to the Hon. John Forsyth, Secretary of State, dated

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, January 20, 1839.

SIR: It becomes my unpleasant duty to make known to you a case wherein our flag has, there is no room for doubt, been used to protect a vessel while in the very act of taking in slaves on the coast of Africa.

Having thus premised, I will enter upon the story of the Venus: giving, first, the few facts susceptible of judicial proof, which are in themselves of no moment; and then the particulars, which, known probably to every white man, and many of the black, in Havana, can never become known here, to any legal purpose.

During the last summer, among the newspaper notices of ship launches which caught my eye, was that of a splendid corvette at Baltimore, built, I think the papers stated, "on foreign account;" and which I conjectured to be for the Government of Mexico, or some other Spanish-American State.

On the 3d of August that corvette arrived here, under the name "Venus," and became at once the admiration and talk of the city, to so remarkable a degree that I several times determined not to be a solitary exception, but to pay her a visit; which, however, occupation put out of my power. She was immediately reported at this consulate, by the master, William Wallace; who, on the 11th of August, discharged his crew, consisting of eighteen men besides himself, according to law: paying, without difficulty or discussion, (a circumstance of very rare occurrence,) the three months' extra wages for the four who were on the crew-list as citizens of the United States. He subsequently appointed in his stead, as master, William M. Phillips, who had received his discharge as mate; which change was endorsed upon the register, as is always done. Phillips shipped another crew; and, upon clearing at this consulate on the 23d of August, and receiving his register, he reported his crew to consist of nineteen men, all told, (all foreigners, except four,) his cargo to consist of merchandise, and his destination to be the coast of Africa.

No man in Havana doubted that, even supposing her to have been *bona fide* American property at the time she left Baltimore, (where she was registered in the name of Lambert Gettings, as sole owner,) she had ceased to be so before her departure hence. The case, however, was one which our laws could not reach—so far, at least, as a consul could have any thing to do with their execution. Indeed, it was one of such ordinary occurrence, as to merit no notice whatever, except on account of the size and beauty of the corvette. The practice of holding a vessel “in the name” of another man (who, to oblige you, merely has to swear [see sect. 4, &c. of act of Dec. 31, 1792,] that he is the sole owner, &c.) being so common-place an affair, apparently, that even I have been requested by an American resident, who evidently did not suppose he was doing any thing wrong, and whose request was received, therefore, only with a laugh, as I shook my head, and told him it was impossible (for which, as I afterwards discovered, he set me down “as a very impolite man,” and worthy object of grudge,) to allow a vessel he was about to buy to “be put in my name.”

Nor did any man doubt that she had sailed on a slaving voyage. My belief (and probably that of every one else) was, that she would touch at the Cape de Verds, or some other convenient point, there to change her papers and land her American master, with any other person she might have on board, who could not engage in taking in negroes without putting his neck in the halter.

On the 7th or 8th instant, the news became current, and reached my ears, that the *Venus* had got back from the coast, and had landed a cargo of 860 slaves; which every boatman in the harbor, assisted by his own or his neighbor's arithmetic, knew, no doubt, before sunset that-day, to amount, at twenty ounces a head; (a moderate estimate,) to three hundred thousand dollars, in round numbers; leaving for the profits of the “expedition,” after paying for vessel and all, about two hundred thousand! (a clear profit, affording, it may be remarked, in anticipation of the particulars of the story, good encouragement to pay liberally for the use of American papers, and for the services of an American to act as exhibitor thereof.)

Taking for granted, that, except in magnitude, the case was like those of every day occurrence, and having much to occupy my thoughts besides the profits of money speculations of any sort, (concerning which I am, perhaps, the most ignorant and least inquisitive man in the city,) the ship *Venus* passed across them just as the schooner *Conchita* or *Dos Hermanos*, &c., had probably done before her, without exciting any interest in the details of her achievement, or producing any effect on my mind, except in strengthening the impression that we ought to devise some means for effectually preventing the use of our flag for the protection of vessels on their voyage to the coast in quest of negroes; for I had no reason to suppose that any thing beyond this had occurred in the present case.

On the 9th instant, the *Venus* having entered port during the night previous, the sailor gossip of the crew, and their unreserved communication to all whom curiosity prompted to visit the beautiful corvette, or to inquire how she had comported herself, soon scattered far and wide the particulars, which the day before had been obtained (if obtained at all) only by the comparative few whom a command of time and a taste for *quidnunc* “news” had enabled to secure the distinction.

One of these particulars was, that the name under which the *Venus* had returned to this coast was “*Duquesa de Braganza*.”

The other particulars came under the head, "that the American captain had conducted himself *admirably*," to wit: the ship, on arriving at "the coast," had been boarded by a British officer, who had inquired of the master whether he had brought her out for sale, or to take in negroes; and the reply was, that no one there could afford to buy her. And after this, he had stood by them until the very last negro was on board. She had then put to sea; and being chased by the British, had mocked them, by taking in sail now and then, to allow them to come up a little.

These, no doubt, are all facts; but, whether they can ever be turned to legal account in our country, (where alone this is at all possible,) depends upon very remote contingencies. The least so, apparently, is that of obtaining the evidence of the British officer in question, and of others who saw the negroes on board. With regard to the crew of the *Venus* when she left here, I have been unable to learn that there was a single citizen of the United States on board, except the master. Upon clearing, he stated that the crew comprised four; and this probably accorded with the new crew-list, which had been made out for him in this office. But these documents having never been recorded here, I am unable to discover who the three besides himself were. From another source, however, I am able to ascertain that, if any Americans did ship in the *Venus*, they were deserters (*bona fide* or collusive—the latter the more probable) from other vessels, and had never come under the notice of this consulate. The system which (partly with an express view to prevent Americans from shipping in slavers) I have established with regard to all seamen who are regularly discharged, or who come in any way under my cognizance, requires that the shipping master should make known to me the vessel in which any such seaman has shipped, by bringing to this office, where it is put on file, the *permit to be on shore*, issued by the captain of the port, in favor of such seamen, with an endorsement thereon of the vessel in which he has shipped.

From these I ascertained that, of seamen who had come under my cognizance, but a single one shipped in the '*Venus*,' (*Thomas Wheeler*); who had been discharged from the same vessel as a foreigner. These three American seamen, who came from Baltimore in the *Venus*, were *William P. Gossick*, *John F. Hayne*, and *John Cook*. The first shipped in the brig *Antelope*, of New Bedford, which went to sea on the 13th of August; the second in the brig "*A. E.*" of Baltimore, cleared on the 16th of August; and the third in the schooner *Patsy B. Blount*, of New York, cleared on the 17th of August.

No doubt existing as to the fact of the return of the *Venus* to this port, and there being a legal possibility that she might have entered port, not as the *fragata Portuguesa, Duquesa de Braganza*, (which every one knew to be the character in which she had entered,) but under her first name, and as an American vessel, I deemed it advisable officially to ascertain the truth in regard to the matter.

It first occurred to me to address an inquiry to the captain of the port in regard to the vessel, founded upon the report of her having entered at night. Upon reflection, however, it was plain that, although the discharge of my duties required that I should inform myself of every vessel arriving under our flag, and I could, therefore, with perfect propriety, make inquiry with respect to them, yet I had no right to go a line beyond this, by official inquiries

concerning arrivals or departures under other flags; which would imply a pretension to the exercise of official cognizance or espionage over the whole movement of the harbor. I consequently framed my inquiry in such a way as to effect the object without stepping beyond my province, by confining it to American vessels, while it was made to embrace all arrivals within the period during which the 'Duquesa' had entered. The result will be seen from the enclosed correspondence.

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

Hon. JOHN FORSYTH,
Secretary of State.

[Enclosure.]

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, January 11, 1839.

SIR: With a view to the discharge of my duties under the laws of the United States, in regard to American vessels entering this port, I take the liberty to trouble you with the request that you will communicate to me the name and class of every vessel reported to you, or to any boarding-officer acting under your orders, as an American vessel—that is, as navigating under the flag of the United States—which may have entered this port since the 6th instant; that is to say, from meridian on that day to meridian on this—the hour at which I am writing.

I have the honor to be, with much consideration, your obedient servant,
N. P. TRIST.

To Don JUAN DE MONTANO,
*Post Captain in the Royal Navy of her Catholic Majesty,
and Captain of this Port.*

Extract of a letter from N. P. Trist to Hon. John Forsyth, Secretary of State, dated

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, January 22, 1839.

SIR: Under a daily deepening sense of the shocking demoralization exhibited by our commercial marine, in the unchecked *selling at naught*, by whomsoever feels so disposed, of every provision to be found in our laws for its regulation,—defective as this would be, were they all in active force, instead of being, as they are, absolutely dead letters,—I have long proposed to myself the task of laying before you, so soon as I could find time to digest them into something like system, the suggestions afforded by my experience in regard to the provisions which might promise to put a stop to the most monstrous, at least, of these abuses.

The recent events which have crowded upon me have, however, produced so deep an impression of the necessity of *immediate* action, in regard to some particulars, that, for some days past, I have postponed every thing which admitted at all of being postponed, to the duty of submitting to

you, at the earliest possible moment, my views with respect to them, although in a cruder shape than I would otherwise have presented them in.

The particular subject most urgently calling for legislative action is the new face now attempted to be given to the slave-trade, by the use of our flag for its protection, under contrivances which existing laws—executed, particularly as they seem to have been for a long period, and cannot now but be expected to continue to be, until fresh vitality be infused into them by Congress—are insufficient to defeat, or at least to *insure* the defeat of.

Aware of the little time that remains for action by the present Congress, and, on the other hand, most deeply impressed with the importance that they should not adjourn without acting, I have, with a view to rendering this possible, thrown into the shape of two acts, ready for immediate action upon them, the provisions which appear to me necessary to nip this new enormity in the bud, and prevent its growing (as infallibly it will, if allowed twelve months start) into a tree that cannot fail to cast a deep shade over our nation. The same provisions are calculated also to exercise a purifying influence in other respects, which call for them with scarcely less urgency than the one concerning which that urgency is most prominent.

AN ACT to prevent the use of the flag of the United States for the protection of vessels engaged in, or designed for, the slave-trade; or,

AN ACT to prohibit the taking of vessels, for sale, to the coasts of Africa, and other places.

[Two draughts: the one varying from the other only at the beginning. In case the second draught should be used, the first of the above titles must be adopted.]

Prefatory remarks to the "Act to prevent the use of the flag of the United States," &c.

The occurrence that has happened is as follows:

1. A ship designed for the slave-trade is built in the United States—(no doubt built on *foreign account*.)

2. She however takes an American register, and is brought to Havana.

3. The crew are discharged, and another American master is appointed to her.

4. The new master ships another crew, and the vessel, with her original register, sails for the coast of Africa.

5. Arrived there, she is boarded from a British cruiser. The American captain points to his flag, and perhaps exhibits his register; and laughs at the British men-of-war who are watching him.

6. A large cargo of slaves is taken on board, and every arrangement made for setting sail at a moment's notice. This being accomplished, the favorable circumstances for sailing are waited for; and these having come, the American master leaves the ship, (taking his register with him, perhaps, and probably signing a bill of sale at the moment,) and she sails. The cruisers that have been on the watch chase her; but her fleetness mocks pursuit.

[In this instance, the vessel was, no doubt, built in the United States, on foreign account; and the sale, if any has been passed, was merely *pro forma*. Of this, there have probably been other instances.

The generality, however, of vessels built for this purpose, brought here for sale, are, no doubt, at the time of their arrival, *American property*. When these meet, as they almost always do, with a purchaser, there can be no doubt that the value is received, and the transfer of property, to all intents and purposes, consummated at this place. But, for the purpose of keeping the vessel under the protection of the American flag, some American citizen is appointed master, (real or nominal,) and sails in her, provided with a letter of attorney, empowering him to sell. Sometimes, instead of this, the arrangement consists in passing a bill of sale here, from the American owner or agent, to some other American citizen, who does not own a rope in her, but serves to fill the place occupied by the attorney on the other plan.

Hitherto, the practice has been for a vessel thus prepared to proceed to the Cape Verde islands, or to Bahia, &c., to be there sold and transferred to some other flag before proceeding to the coast of Africa. But this formality having proved to be attended with great expense, in the shape of loss of time no less than of actual expenditures, while, on the other hand, the risk of capture, although sensibly diminished, still remained very serious, and has recently been increased, the present plan has been hit upon to diminish that risk yet further; indeed, reduce it to next to nothing, by keeping the vessel under the protection of the flag of the United States while taking in her cargo of slaves, and until the moment of her sailing from the coast.]

Such being the nature of the occurrence, the question arises, What provisions are requisite to prevent its repetition?

The act to be prevented is, the taking of slaves on board a vessel under the protection of the American flag, or having on board American citizens and American documents, or persons and documents purporting to be such.

This is an act which comes within the prohibitions and penalties already in existence. But we here see it connected with another act, in such a way that, to all practical intents, it is impossible to distinguish the one from the other. It is practically impossible to know, to any legal purpose, when the one act ceases and the other begins. So long as a vessel intended for the slave-trade can possibly be taken under the American flag to the coast of Africa, to be there sold, just so long will it be, to all legal intents, impossible to know whether the act of taking in the slaves (supposing that this admits of proof at all) occurred before or after the sale. And supposing this impossibility not to exist, but that there could be an absolute security against the taking in of a single slave until after the sale and change of flag, it would not be the less true that ours had been used to directly facilitate, promote, and protect the slave trade; a vessel that has once exhibited American papers being sacred from search, if there were a thousand foreign cruisers around her.

To prevent the one act is, then, indispensable as a means for preventing the other. That is to say, it must be rendered impossible to take to any of these convenient places, under the American flag, a vessel destined for the slave trade, for the purpose of there selling her; whether such purpose be real, or only feigned, to cover a sale already effected elsewhere.

But the act thus required to be prevented is not the mere taking a vessel there for sale, but the taking of a vessel *destined for the slave-trade*.

This qualification is of a nature to present obstacles the most serious to the efficacy of any prohibition which can be passed upon the subject; and there are but two ways in which they can be prevented from entirely

neutralizing its effect. The first is, to omit the qualification altogether; The second, to make the mere fact of slaves being taken on board the vessel, within a stated period after the sale, or pretended sale, conclusive proof of the prohibited intention.

With regard to the first, it is to be observed that its apparent harshness would be apparent only. It may well be questioned whether, in the course of licit trade in vessels as objects of sale, an American vessel would once in ten years be sent to any of the prohibited places for sale by a *bona fide* American owner. And supposing those places to afford ever so good a market for vessels of American build, the question would still remain, whether any advantage which could thereby result to American ship builders or venders is entitled to be respected, at the sacrifice of the long-settled policy of the nation in regard to the prevention of its citizens from being concerned, directly or indirectly, in the slave-trade, or in aiding or abetting it.

I should say not; and should therefore be decidedly in favor of a law prohibiting the taking of American vessels to such places *for sale*, without any qualification whatever. Such a law I have made a draught of, containing the provisions which have occurred to me as requisite to give to the prohibition a practical effect.

To meet views different from my own in regard to the necessity of the qualification just referred to, I have prepared another draught, in which I have endeavored to introduce that qualification in the only way which appears to me at all compatible with any efficacy in the laws.]

First draught.

AN ACT to prevent the use of the flag of the United States for the protection of vessels engaged in, or designed for, the slave-trade; or,

AN ACT to prohibit the taking of vessels, for sale, to the coast of Africa, and other places, and for other purposes.

SEC. 1. *Be it enacted, &c.*, That it shall not be lawful for any ship or vessel sailing under the flag of the United States, or having on board any paper or document purporting that such ship or vessel is owned, wholly or in part, or is commanded by any citizen or citizens of the United States, to be taken from any port or place in the United States, or in the West Indies, or elsewhere,* to any port or place on the coast of Africa, or in the Cape Verde islands, or any island near or adjacent to said coast, with the intent or design, on the part of the owner or owners, or pretended owner or owners, of such ship or vessel, or on the part of any person or persons acting, or pretending to act, in behalf of such owner or owners, real or pretended, that, while at any port or place on the coast of Africa, or in the Cape Verde islands, or any island near or adjacent to said coast, or on the voyage there-to, such ship or vessel shall be sold, in whole or in part, by a sale, real or pretended, or be transferred to the possession or command of any person or persons whatsoever, unless such sale or transfer be to a citizen or citizens of the United States, and be unattended with any alteration, real or pretended, in the national character of such ship or vessel, whether by the use of any

* This amounts to saying, any port or place whatsoever, and the phraseology seems awkward; but it has the advantage of pointing out the places more particularly calling for the provision, and, at the same time, avoiding the danger of leaving the door open to a resort to others for the same purpose.

flag other than that of the United States, or by there being on board any paper or document purporting that such ship or vessel possesses any other national character.

SEC. 2. That if any ship or vessel sailing under the flag of the United States, or having on board any paper or document purporting that such ship or vessel is owned, wholly or in part, or is commanded, by a citizen or citizens of the United States, shall be taken to any port or place on the coast of Africa, or in the Cape Verde islands, or any island near or adjacent to said coast, and any negro, or other native of Africa, shall be there taken or received on board such ship or vessel, with the intent or design, on the part of the master or commander for the time being, that such negro or native shall be transported elsewhere as a slave, or as a person held to service or labor, then, and in such case, every person, other than a slave or person held to service as a slave, or as an apprentice under age, who shall be on board such ship or vessel at the time when such negro or native shall be so taken or received, or shall be detained on board, shall be deemed to have aided and abetted in the slave-trade, and shall be adjudged a pirate; and, on conviction thereof before the circuit court of the United States, for the district wherein he shall be brought or found, shall suffer death: * *Provided, however,* That if, upon the trial of any person prosecuted under this enactment, it shall be proven that, before the taking of any negro or native on board, as aforesaid, such ship or vessel had been sold or transferred to any citizen or subject of any foreign state, and that there no longer remained on board any paper or document of the kind described in the beginning of this section; and further, that such ship or vessel was then provided with a paper or document really and truly conferring upon her a new national character; then, and in such case, the penalty imposed by this enactment shall not be suffered by any person who was not a citizen of the United States, or a resident in the United States at the time when he embarked in such ship or vessel: *And provided, further,* That neither the specification of certain places, nor any thing else herein contained, shall be construed or held to weaken the force of any enactment contained in any law against the carrying or transporting, or taking or receiving on board, of any negro or colored person held to service or labor.

SEC. 3. That any citizen of the United States, or other person resident therein, who, as the real or pretended owner, or part owner, of any such ship or vessel, or as the attorney or agent of any such owner, or part owner, real or pretended, shall be concerned in any such sale, or pretended sale, or in any such transfer of possession or command as is prohibited in the first section of this act, shall, on conviction thereof by due course of law, forfeit and pay a sum not exceeding five thousand dollars, nor less than one thousand, and shall, moreover, be imprisoned for a term not exceeding seven years, nor less than three years.†

SEC. 4. That whenever any such ship or vessel shall be cleared at any port of the United States, or in the West Indies, or elsewhere, for any port or place on the coast of Africa, or in the Cape Verde islands, or any other island near or adjacent to said coast, it shall be the duty of the collector of the customs of such port of the United States, or of the consul, vice-consul, commercial agent, or vice-commercial agent of the United States at such port in the West Indies, or elsewhere, before granting or issuing any docu-

* Penalty taken from sections 4 and 5, act of May 15, 1820.

† Penalty taken from section 3 of act of April 20, 1818.

ment requisite to the sailing of such vessel, to require the personal appearance, before himself in person, of the master and crew thereof, and of every person who shall have taken passage in such vessel; which appearance having taken place, the collector, or the consul, vice-consul, commercial agent, or vice-commercial agent, shall separately examine, under oath, the said master, and each of the persons thus summoned before him, concerning his name, age, place of birth, place of residence, the names and place or places of residence of his parents, and of any brother or sister whom he may have; the name or names, and place or places of residence, of the person or persons in whose employ he has been at any time for two years previous; and, finally, the names and place or places of residence of the three residents of the United States to whom he is best known: all of which particulars shall be written down in a deposition, to be subscribed and sworn to by the person to whom they relate, and attested by the person attesting the same; who shall, moreover, append thereto an account of the person of the deponent, comprising his stature in feet and inches of English measure, the color of his hair and eyes, his complexion, and the character of his forehead, nose, and mouth.

SEC. 5. That if the master of any such ship or vessel, destined to, or cleared for, any port or place as aforesaid, shall fail to inform the collector, or the consul, vice-consul, commercial agent, or vice-commercial agent, truly and accurately, in regard to the port or place for which his vessel is destined or cleared, such master shall, on conviction thereof by due course of law, be subject to the same penalties as are defined in the third section of this act.

SEC. 6. That if the master of any such vessel, destined to, or cleared for, any port or place as aforesaid, upon being required by the collector, or the consul, vice-consul, commercial agent, or vice-commercial agent, to state the particulars prescribed to be written down and deposed to by the fourth section of this act, shall wilfully practise deception in regard thereto, or to any part thereof, such master shall, on conviction thereof by due course of law, forfeit and pay the sum of one thousand dollars, and be imprisoned for the term of one year; and if any seaman, or other person belonging to the crew, or any passenger, shall practise the like deception, he shall suffer the same imprisonment.

SEC. 7. That if any collector, or any consul, vice-consul, commercial agent, or vice-commercial agent, upon being informed by the master of any such vessel that she is destined to, or cleared for, any port or place as defined in the fourth section of this act, shall fail to proceed in the mode therein directed, he shall, on conviction thereof by due course of law, forfeit and pay the sum of one thousand dollars for each and every such failure, and be incapable of holding any office or employment under the Government of the United States.

SEC. 8. That it shall be the duty of every collector, consul, vice-consul, commercial agent, or vice-commercial agent, after taking any such deposition as is provided for in the fourth section of this act, to transmit, within fifteen days after the same shall be taken, or by the first safe opportunity which may occur after the expiration of that time, an authenticated copy thereof to the Secretary of State of the United States, together with a statement of the circumstances which led to the taking of the same, the name of the vessel, and the name or names of the owner or owners and the consignee or consignees. And the penalty for a failure to comply with this requirement shall be the same as is provided in the seventh section of this act; in

order to the enforcement of which, in either case, it shall be the duty of the Secretary of State to cause information of any such default that may become known to him to be given without delay to the Solicitor of the Treasury.

SEC. 9. That upon the receipt of any such authenticated copy, transmitted in pursuance of the requirement contained in the section immediately foregoing, the Secretary of State shall cause a copy thereof to be transmitted to the Solicitor of the Treasury, who shall transmit it to the attorney of the United States for the district wherein the deponent has his home or residence, or, if he be not a resident in the United States, wherein is situated the port where he usually ships, or did last ship. And it shall be the duty of such attorney, upon receiving the same, to inform himself forthwith, as completely as possible, in regard to all the particulars set down therein; and, should he discover any cause for suspecting any deception to have been practised, to communicate it to the Solicitor of the Treasury. Moreover, upon the return of the deponent to his place of residence, such attorney shall give notice of his return to the first grand jury which may sit at the place of meeting nearest to such place of residence, whose duty it shall be to call such deponent before them, and examine him in regard to the voyage or voyages performed by the vessel to which he belonged after the time when his deposition was given; what has become of, and where he separated from, such vessel; and all other particulars pertinent to the true intent and meaning of this act: and the result of such examination shall be forthwith communicated by such attorney to the Solicitor of the Treasury.

SEC. 10. That whenever, in the opinion of the Secretary of State, or the Solicitor of the Treasury, sufficient ground shall exist to suspect an infraction of any of the provisions of this act, it shall be the duty of the one or the other, (as the case may be,) to instruct the attorney of the district where any such suspected offender may have his residence, or may at the time be, to take forthwith all lawful measures for bringing him to trial; and it shall be the duty of every attorney of the United States to take such measures, of his own motion, and without waiting for any such instructions, whenever any circumstance shall come to his knowledge affording reasonable ground to suspect an infraction of any prohibition or requirement contained in this act.

SEC. 11. That any attorney of the United States who shall fail to comply with any of the requirements of this act, shall, on conviction thereof by due course of law, be incapable of holding any office or employment under the Government of the United States, and, also, of being allowed to practise in any court of the United States. And if, in the course of any trial in any court of the United States, it shall appear in evidence that any such default has occurred, it shall be the duty of the judge, or the senior judge, presiding at such trial, to give immediate notice thereof to the President of the United States.

SEC. 12. That all forfeitures incurred under this act shall enure, one moiety to the United States, and the other to the person or persons who shall sue for and prosecute the same to effect; and all imprisonments incurred under this act shall be suffered in the penitentiary of the District of Columbia.

SEC. 13. That prosecutions, informations, or actions for offences under this act, may be brought at any time within five years* after the commission

of the same, or after the return of the offender to his known place of residence in the United States.

SEC. 14. That nothing in this act contained shall be held to prohibit the sale of any ship or vessel, or the transfer of the possession or command thereof, at any port or place in the colony of Liberia, or any other colony on the coast of Africa under the protection of the Government of the United States: *Provided*, That such sale or transfer shall take place with the knowledge of the Governor of such colony, and by deed authenticated under his hand and seal; and that two authenticated copies thereof, each accompanied with an explanation of the cause of such sale or transfer, and of the destined employment of such vessel, be transmitted by, or on behalf of, the original owner or owners, to the Secretary of State of the United States: one of which copies shall be transmitted through the Governor aforesaid, and the other by a different channel, severally, by the two first safe opportunities which may occur to any port in the United States, within eight days of the date of such sale or transfer. And in default of any of the requirements contained in this proviso, such sale or transfer shall stand on the same footing as if this section had not been added to the act.

Second draught.

AN ACT to prevent the use of the flag of the United States for the protection of vessels engaged in, or destined for, the slave-trade.

SEC. 1. *Be it enacted, &c.*, That (for the purpose of affording to a ship or vessel designed for the slave-trade the protection of the flag of the United States while on her voyage to the coast of Africa, or while upon said coast,*) it shall not be lawful for any ship or vessel sailing under the flag of the United States, or having on board any paper or document purporting that such ship or vessel is owned, wholly or in part, or is commanded, by any citizen or citizens of the United States, to be taken from any port or place in the United States, or in the West Indies, or elsewhere, to any port or place on the coast of Africa, or in the Cape Verde islands, or any island near or adjacent to said coast, with the intent or design on the part of the owner or owners, or pretended owner or owners, of such ship or vessel, or on the part of any person or persons acting or pretending to act in behalf of such owner or owners, real or pretended, that, while at any port or place on the coast of Africa, or in the Cape Verde islands, or any island near or adjacent to said coast, or on the voyage thereto, such ship or vessel shall be sold, in whole or in part, by a sale, real or pretended, or be transferred to the possession or command of any person or persons whatsoever, (if such ship or vessel shall be designed to be employed in the slave-trade, and the object of such proceeding shall be to afford to her the protection of the flag of the United States while on the voyage to any port or place as above described, or while there lying.*)

SEC. 2. (The same as section 2, of the first draught.)

SEC. 3. That, if any ship or vessel of the description contained in the first section of this act shall be taken to any port or place as therein described, and, while there, or on the voyage thereto, shall be sold, by a sale, real or pretended, or be transferred to the possession or command of any

*One only of the parts within parentheses is to be retained.

person or persons whatsoever, and, at any time within the period of six calendar months from and after the date of such sale, or pretended sale, any negro or other native of Africa shall be there taken or received on board such ship or vessel, with the intent or design, on the part of the master or commander for the time being, that such negro or native shall be transported elsewhere as a slave, or as a person held to service or labor; then, and in such case, such sale, or pretended sale, shall be deemed and held to have taken place in violation of the true intent and meaning of this act.

SEC. 4. (The same as section 3, of the first draught.)

And so on to the end: changing only the number of each section by making it the *next highest* number; and taking care, wherever one section is referred to by its number, in the body of another, to make the proper change in that reference also.

AN ACT in addition to "An act concerning the registering and recording of ships or vessels."

SEC. 1. *Be it enacted, &c.*, That to carry more fully into effect the provisions of an act entitled "An act concerning the registering and recording of ships or vessels," passed on the 31st day of December, 1792, the Secretary of the Treasury shall cause a proper and distinct form to be prepared for the particular oath or affirmation appropriate to each of the several cases wherein such oath or affirmation is required to be taken and subscribed, in order to the registry of any ship or vessel, or to complete the validity thereof. And a sufficient number of copies of every such form shall be transmitted to the collectors of the several districts, who shall, in every case of any such oath or affirmation, see that the form appropriate thereto, and no other, shall be used. And if such oath or affirmation shall not be taken and subscribed in the manner and form herein required, the certificate of registry, to the issuing or confirming of which it may relate, shall be forfeit and void; and the collector shall forfeit the sum of five hundred dollars for each and every such offence.

SEC. 2. That the taking or receiving of any such certificate of registry as the act to which this act is an addition provides for the issuing of, shall be deemed and held proof conclusive that the party so taking or receiving the same did take or make any oath or affirmation therein prescribed as a requisite to the issuing of such certificate. And, in case any of the matters of fact in such oath or affirmation alleged, which shall be within the knowledge of the party so swearing or affirming, shall not be true, such party shall, on conviction thereof by due course of law, forfeit and pay a sum not exceeding five thousand dollars, nor less than one thousand dollars, and shall be imprisoned for a term not exceeding five years, nor less than two years; which penalty shall not be deemed or held to interfere with the operation of any penal enactment contained in the act to which this act is an addition.

SEC. 3. That the transmission to the Register of the Treasury of a copy of each certificate of registry issued by the collector of any district, which is required by the tenth section of the act aforesaid, shall take place within one week after the issuing of the same; and, for every failure to comply with this requirement, the collector shall forfeit and pay the sum of one hundred dollars. And if any collector shall designedly fail to transmit

any such copy of a certificate of registry, with the intent to withhold a knowledge thereof from the Register of the Treasury, or to prevent the publicity thereof, such collector shall, on conviction thereof by due course of law, suffer the same fine and imprisonment prescribed in the second section of this act; and the same shall be suffered by any person holding office or employment under the Government of the United States, who shall knowingly aid or abet in, or connive at, such suppression or prevention of the publicity of a certificate of registry.

SEC. 4. That, on the first day of the months of February, May, August, and November, in each year, the Register of the Treasury shall transmit to the Secretary of the Treasury a statement of the number of certificates of registry issued at any collection district, during the three months ending on the last day of the months of January, April, July, and October, immediately preceding; which statement shall specify the class and name of each vessel, the port to which she belongs, and the name or names of the owner or owners thereof. And said statement shall be forthwith published officially, by order of the Secretary of the Treasury.

SEC. 5. That if, in the course of any suit or proceeding in law or equity, it shall appear that any person, other than the person or persons named in any certificate of registry, is, or was at the time of issuing such certificate, or at any subsequent time prior to the surrender of such certificate, in the mode required by the act to which this act is an addition, interested in the ship or vessel named in such certificate, it shall be the duty of the court to make such fact known to the attorney of the United States for the district wherein that court is in session. And if the party or parties, or any of them, thereby implicated, shall reside or be found in such district, it shall be the duty of such attorney forthwith to take all lawful steps for bringing him or them to trial for any offence thus appearing to have been committed; and if the party or parties, or any of them, shall be known or supposed to reside or to be in another district, it shall be the duty of such attorney to forthwith make known all facts pertinent to the matter, to the attorney of the United States for such other district, whose duty it shall be to proceed in the manner above directed.

SEC. 6. That if any person shall employ, or procure to be employed, or knowingly assist in so employing or procuring to be employed, any citizen of the United States, or person pretending to be a citizen of the United States, to make false oath or affirmation in regard to the ownership of any ship or vessel, or any other matter or thing required to be sworn or affirmed to, in order to the registry of such ship or vessel, the person so offending shall, on conviction thereof by due course of law, suffer the same fine and imprisonment prescribed in the second section of this act. And any person holding office or employment under the Government of the United States, who shall knowingly connive at such employment, or at the making of such false oath or affirmation, shall, on conviction thereof by due course of law, incur the same penalty.

SEC. 7. That in case of the sale of any ship or vessel of the United States, in whole or in part, or of the transfer of any title or interest therein, by way of trust, confidence, or otherwise, to any person or persons whatsoever, at any foreign port or place, or at sea, while proceeding to such port or place, where there shall be a consul, vice-consul, commercial agent, or vice-commercial agent of the United States, the certificate of registry of such ship or vessel shall, from and after such sale or transfer, or the

arrival of the ship or vessel at such port or place, (as the case may be,) cease to belong to, or be valid as a document for the protection of, such ship or vessel, and shall be disposed of in the manner following; to wit: it shall be divided into two parts, by cutting it diagonally from the right-hand upper corner to the left-hand lower corner; and the upper of these two parts shall be delivered to the master, with a certificate attached that such register has been divided in pursuance of this act; and said master shall dispose of the same in the mode prescribed for the disposal of the entire certificate of registry, by the seventh section of the act to which this act is an addition, and shall thereby be deemed to have fulfilled the condition of the bond therein required to be taken; and the under part shall be transmitted by such consul, vice-consul, commercial agent, or vice-commercial agent, to the Secretary of State, for the Register of the Treasury, within seven days after such cutting, or by the first safe opportunity that may occur thereafter. And if any owner, or part owner, or master, of any such ship or vessel, or any agent or attorney of such owner, part owner, or master, being present at such port or place, shall be a party or privy to any such sale or transfer, and shall fail to make the same known to the consul, vice-consul, commercial agent, or vice-commercial agent, he shall, on conviction thereof by due course of law, incur the penalty provided in the second section of this act: and in any prosecution for the enforcement thereof, the fact of any such sale or transfer being proven, the person under the prosecution shall be held to prove that the delivery of one-half of the register to the master, as above directed, did take place, or that he did protest against its not taking place; and in default of such proof, he shall be convicted. And if any consul, vice-consul, commercial agent, or vice-commercial agent, upon having such sale or transfer made known to him, shall fail to proceed as above required, he shall, on conviction thereof by due course of law, incur the penalty provided in the second section of this act.

SEC. 8. That, in case of any such sale or transfer as is described in the section immediately foregoing, such sale or transfer, if made to a citizen or citizens of the United States, entitled, by the act to which this act is an addition, to own a ship or vessel of the United States, shall be made by some instrument of writing in the nature of a bill of sale, which shall recite, at length, the certificate of registry above required to be divided; and such bill of sale shall be passed and recorded in the office of the consul, vice-consul, commercial agent, or vice-commercial agent, if one there be. And previously to the passing of any such bill of sale, the person or persons acting as vendor or vendors therein shall personally appear at such office, and shall severally make and subscribe an oath or affirmation in the words following, to wit: (varying them only so far as to suit the case when persons more than one are about to acquire the ownership, or right, title, or interest:) "I [here insert his name, place of abode, and occupation] do solemnly swear, (or affirm,) to the best of my knowledge and belief, that, in the sale or transfer, about to be effected of the ownership of (or the part ownership of, or an interest in) the [here insert the class and name of the vessel, and the port to which she belongs;] said sale or transfer is to be made to [here the name, place of abode, and occupation of the purchaser] really and truly for his own proper use and behoof, and that no other person whatsoever is intended thereby to acquire any right, title, or interest whatsoever, by way of trust, confidence, or otherwise, in said vessel, nor any control over the same: and further, that the said [here the name of the purchaser] is a citi-

zen of the United States of America, and does not reside in any foreign country, (or does reside in a foreign country,) to wit : at [here the name of the place and country,] as consul of the United States, or as an agent for, and a partner in the house of [here the name of the co-partnership] consisting of citizens of the United States, and now actually carrying on trade at [here the name of the place] in the United States." And the person or persons about to acquire the ownership, or the right, title, or interest which is to be transferred, or so many of them as shall be at such foreign port or place, shall also personally appear at the same office, and shall there severally make and subscribe an oath or affirmation in the words following, to wit : " I [here his name, place of abode, and occupation] do solemnly swear (or affirm) that, in the sale or transfer about to be effected, of the ownership of (or the part ownership of, or an interest in) the [here the class and name of the vessel, and the port to which she belongs ;] said sale or transfer is to be made to me alone, really and truly for my own proper use and behoof, (or to myself,) and [here the name of any other purchaser that there may be] only, really and truly for our own proper use and behoof ; and that no other person whatsoever is intended thereby to acquire any right, title, or interest whatsoever, by way of trust, confidence, or otherwise, in said vessel, nor any control over the same. And I do further swear (or affirm) that I am, at this moment, a citizen of the United States of America, owing allegiance to no other nation, prince, or potentate, whatsoever ; and that I do not reside in any foreign country, (or do reside in a foreign country,) to wit : at [here the name of the place and country] as consul of the United States, or as an agent for, and partner in, the house of [here the name of the co-partnership] consisting solely of citizens of the United States, and at this time carrying on trade at [here the name of the place] in the United States." And if any person, by whom this last defined oath or affirmation is prescribed to be taken, shall not be at such foreign port or place, he shall be represented by an attorney, duly empowered to subscribe the same in his name, by a letter of attorney, executed before a notary public, of the place of residence of the constituent, and bearing upon the face of it proof that it has been recorded in the office of said notary, and that said constituent is known to him, or has been satisfactorily proven to be a citizen of the United States, and to have his residence at such place.

SEC. 9. That the oath or affirmation of every purchaser shall be made and subscribed in duplicate, and be, moreover, recorded in the office where taken ; and one of said duplicates shall be attached, by the seal of such office, to the bill of sale, and shall, from and after such attachment, constitute a part of every such document, essential to the validity thereof, for the protection of the vessel until her return to the United States, or for any purpose whatsoever ; and the other of said duplicates, attached to an authenticated copy of the bill of sale, shall be transmitted to the Secretary of State, for the Register of the Treasury, under the same envelope with the half of the original certificate of registry, the transmission whereof is required by the seventh section of this act. And it shall be the duty of the Register of the Treasury to add a statement in regard to all such vessels, as an appendix to the statement required by the fourth section of this act, which appendix shall also be published as a part of said statement.

SEC. 10. That in case of any such sale or transfer as is described in the seventh section of this act, made to the subject or citizen of any foreign Prince or State, or directly or indirectly, by way of trust, confidence, or other.

wise, for the benefit of any such person, or made to or for the benefit of any citizen of the United States not entitled by the act to which this act is an addition to own a ship or vessel of the United States, to wit: any such citizen who resides in a foreign country, except he be a consul of the United States, or an agent for and partner in a house or co-partnership, consisting of citizens of the United States, and actually carrying on trade within the United States, such sale or transfer shall be made by some instrument of writing in the nature of a bill of sale, which shall recite, at length, the certificate of registry above required to be divided; and such bill of sale shall be passed and recorded in the office of the consul, vice-consul, commercial agent, or vice-commercial agent of the United States, if one there be. And upon the face of such bill of sale, and of the record, and of every authenticated copy thereof, shall be written the words, "*This vessel is no longer a ship or vessel of the United States;*" which words shall be written in letters of not less than one half inch in height, and above the signatures, or between them, in such way that they cannot be cut out without manifest mutilation of the instrument. And an authenticated copy of the bill of sale shall be transmitted to the Secretary of State, for the Register of the Treasury, under the same envelope with the half of the original certificate of registry, the transmission whereof is required by the seventh section of this act. And it shall be the duty of the Register of the Treasury to add a statement in regard to all such vessels, as a second appendix to the statement required by the fourth section of this act; which appendix shall also be published as a part of said statement.

SEC. 11. That, excepting the endorsement of a change of master, required by the fifteenth section of the act to which this act is an addition, it shall not be lawful to make upon, or to attach to, any certificate of registry, any instrument of writing whatever, excepting only a bottomry bond upon the ship or vessel to which the same belongs; and, if any other instrument of writing be made upon or attached to any such certificate, with the consent of the master or owner in whose custody it shall at the time be, such certificate shall become forfeit and void. And if any bottomry bond shall be made upon or attached to any such certificate, with the intent to evade any provision of this act, or of the act to which it is an addition, in regard to the ownership of the ship or vessel to which such certificate belongs, by giving to any person or persons not named in such certificate any control over such ship or vessel, contrary, to the true intent and meaning of these acts, there shall be a forfeiture of the ship or vessel, together with her tackle, furniture, and apparel, or of the value thereof, to be recovered, with costs of suit, of the person or persons giving or accepting such bond.

SEC. 12. That, in any suit or prosecution for the forfeiture of any bond taken under the seventh section of the act to which this act is an addition, in regard to the use of a certificate of registry and the delivery thereof by the master upon his return to the United States, the return of such master being proven, the defendant or defendants shall be held to prove by what vessel, at what place, and at what time, it did occur; and in default of such proof, the bond shall be forfeit.

SEC. 13. That the provisions of this act shall be held to be in addition to, and not as substitutes for, the provisions of the act to which it is an addition.

SEC. 14. That all forfeitures incurred under this act shall enure, one moiety to the United States, and the other to the person or persons who

shall sue for and prosecute the same to effect; and every imprisonment incurred under this act shall be suffered in the penitentiary of the District of Columbia.

SEC. 15. That prosecutions, informations, or actions for offences under this act, may be brought at any time within five years after the commission of the same, or after the return of the offender to his known place of residence in the United States.

Extracts of a letter from N. P. Trist to the Hon. John Forsyth, Secretary of State.

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, January 25, 1839.

SIR: Since the affair of the brig "Thomas, of Havana," two vessels of the same character have arrived from New Orleans. But for the disconcerting effect of that affair upon the new plan of operations, whereof it was the first specimen, (and one of so *unnecessarily* bold a type as to have caused the author of it to be cautioned and entreated by those interested in the business not to jeopard the common weal by such fool-hardiness, and afterwards to be cursed for having done so, spite of their remonstrances;)—but for the result of that first move, at least a dozen vessels would, by this time, have been sent to, and returned from, New Orleans; and many of these would at this moment be on their way to the coast of Africa, under the flag of the United States, and provided with a document which, if it do not prove of far more imposing aspect than an American register, this will not be for want of signatures and counter-signatures—corroborated, too, by abundance of seals. A copy of one of these is enclosed, (enclosure No. 1.)

In anticipation of the arrival of vessels of this description, and to prevent the parties here from incurring the loss and inconvenience of lading them before discovering that they could not be cleared by me, I instructed the vice-consul (who discharges the duty of receiving ships' papers) to give notice of this fact whenever the occasion should offer. This has proved the cause of various applications to me, to know if there were no possible way in which a vessel of this description could be allowed by me to clear under our flag; all which have met the same answer—"absolutely impossible, under any pretext whatever, until I receive instructions."

I enclose a letter received by me from Captain Albert F. Ryan, of the schooner *Swift*, (enclosure No. 2,) of New Orleans, (late the *Conchita*), and a copy of my reply, (enclosure No. 3,) written on the day on which he requested it. The captain's letter (whereof I send the original, retaining an exact copy) is valuable, as being an honest avowal of facts known to every one, although it would probably prove impossible to establish them in a court of justice.

I have been fully aware, from the beginning, that I should subject myself to actions for damages, the far from improbable result of which (owing to the difficulty of judicially proving facts of this nature, however notorious) would be adverse. But I experience no concern whatever on the subject; being fully satisfied that, under all circumstances, if it were to cost our country a million of dollars, that, or indeed any amount of money, would be well

pent; and entertaining no apprehension that the justice of the Government will allow me to suffer.

I will repeat here, that my opinion in regard to vessels of this kind is the result of a *thorough* examination of our law, and that I do not entertain a shadow of doubt that it will be substantiated in the completest manner, so soon as I can accomplish the task (to which every spare moment is devoted) of analyzing the legislation of Congress upon the subject.

Meanwhile, as a specimen of the looseness with which this matter has been treated, and of the little reliance which is to be placed upon current notions in regard to it, I will refer you to no less a lawyer than Chancellor Kent. (*Commentaries*, vol. 3, p. 146.)

"Every vessel, wherever built, and owned by an American citizen, is entitled to a custom-house document for protection, termed a passport, under the act of June 1st, 1796." The ground upon which this position is advanced is then given—"for it applies to every ship or vessel of the United States going to any foreign country."

Now this argument rests altogether upon the assumption that "ship or vessel of the *United States*," means ship or vessel owned by an American citizen! But this is the very reverse of the truth. "*Of the United States*," is a technical expression, having a precise meaning, which was formally established and affixed to it at the very outset of our legislation, in the very first act of Congress (September 1, 1789) for the regulation of vessels. Those words are there established as a *denomination* which shall belong to such and such vessels, "and no other." This is again repeated in the first act of the next Congress, (December 31, 1792.) Having taken this precaution, Congress had surely a right to expect forever after to be understood when, using this designation, they spoke of "ships or vessels of the *United States*;" and if not forever after, at least so shortly after as the 1st of June, 1796.

Again: compare with the terms of the act of March 26, 1810, what Chancellor Kent (vol. 3, p. 145) gives as its substance—particularly when this is taken in connexion with what follows on the next page. In saying "or to vessels wholly owned." &c., he omits all notice of the words "at that time." (to wit, the 30th June, 1810,) which are contained in the act, and which show that the only object in adding any thing to the words "except to vessels duly registered or enrolled and licensed as vessels of the *United States*," was to include, also, within the permission, or rather to except, also, from the prohibition, particular vessels *then in existence*, and entitled to (although they might not have been taken out) the documents therein specified. This writer affords many more topics for remark in this field; but I must here close for the present.

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

Hon. JOHN FORSYTH,
Secretary of State.

[Enclosure No. 1.]

STATE OF LOUISIANA, *City of New Orleans* :

Be it known that this day, before me, Carlile Pollock, notary public in and for said city, duly commissioned and sworn, personally came and appeared

Manuel Simon Cucullee, a co-partner of, and herein acting in the name of, the firm of M. S. Cucullee, Lapiere, & Co., of this city, attorneys in fact of Don Pedro Alvarez, of the city of Havana, and island of Cuba, (duly constituted by the substitution made to them on the 30th October last, before Francisco Valeiro, notary at Havana, from Pedro Martinez & Co., of the procuration granted in favor of the latter by the said Pedro Alvarez, before the same notary, on the 26th March, 1831;) who declared that, for the consideration of two thousand dollars to the said M. S. Cucullee, Lapiere, & Co., paid in ready money, (the receipt whereof they hereby acknowledge,) they do, in the name and behalf of the said Don Pedro Alvarez, by these presents grant, bargain, and sell, unto Albert F. Ryan, of this city, here present, acknowledging possession, and accepting, his heirs and assigns, the Spanish schooner called the Conchita, of the Havana, belonging unto their said constituent, together with her boats, rigging, sails, masts, spars, tackle, apparel, and furniture, as she now lies in this port—which vessel is sixty-four feet two inches in length, eighteen feet one inch in breadth, and six feet eight inches in depth, and measures 66 $\frac{2}{3}$ tons: to have and to hold the said schooner and appurtenances unto the said Albert F. Ryan, his heirs and assigns, to their proper use and behoof, forever; and the said sellers, for their said constituent, said schooner and appurtenances to the said purchaser, his heirs and assigns, shall and will warrant and forever defend against the lawful claims of all persons whomsoever, by these presents. And thereupon the said present purchaser declared that it is his intention to change the name of said schooner, to be called hereafter the Swift, of New Orleans.

Done and passed at the city of New Orleans, in the presence of Achille Chiapella and Herrman Lucas, witnesses, who have hereunto signed their names, together with the parties, and me, the said notary, this seventh day of December, one thousand eight hundred and thirty-eight.

ALBERT F. RYAN,
M. S. CUCULLEE.

A. CHIAPELLA,
H. LUCAS.

CARLILE-POLLOCK, N. P.

I certify the foregoing to be a true copy of the original act, extant in my register, according to the law and usage of this State.

In faith whereof, I grant these presents, under my signature and the impress of my seal of office, at New Orleans, this seventh day of
[L. s.] December, one thousand eight hundred and thirty-eight.

CARLILE POLLOCK.

STATE OF LOUISIANA, *City of New Orleans* :

To whom it may concern : Be it known that on this seventh day of December, eighteen hundred and thirty-eight, before me, Carlile Pollock, a notary public in and for the city of New Orleans, duly commissioned and sworn, personally came and appeared Albert F. Ryan, of this city, to me (notary) well known; who, having been duly sworn to declare the truth, deposed : That he is a citizen of these United States, and the true and only owner of the schooner called the Swift, of New Orleans, (formerly the Conchita, of Havana—being the same vessel which is described in the

within deed of sale;) and that no citizen or subject of any foreign Prince or Power is interested in said vessel, nor in her gains or issues, by way of trust, confidence, or otherwise howsoever. And thereupon he signed his name.

ALBERT F. RYAN.

And I, the said notary, do hereby certify that said vessel, being of foreign construction, is precluded, by the law of Congress of these United States passed the 26th March, 1810, from having any register or sea-letter; and these presents are intended to supply, as far as may be, the want of such documents, by proving that said vessel is bona fide the property of a citizen of these United States of America.

In witness whereof, I, the said notary, have granted these presents, under my signature and the impress of my seal of office, at New Orleans, this 7th day of December, 1838.

CARLILE POLLOCK.

UNITED STATES OF AMERICA.

STATE OF LOUISIANA.

By Edward D. White, Governor of the State of Louisiana :

These are to certify, that Carlile Pollock, whose name is subscribed to the instrument of writing herein annexed, is now, and was at the time of signing the same, a notary public in and for the city and parish of New Orleans; that his signature is genuine; and that all his official acts, as such, are entitled to full faith and credit.

Given at New Orleans, under my hand and the seal of the State, this eighth day of December, one thousand eight hundred and [L. s.] thirty-eight, and of the independence of the United States the sixty-third.

E. D. WHITE.

By the Governor :

WM. C. C. CLAIBORNE,
Secretary of State.

Don Antonio Argote Villalobos, consul de S. M. C. para el Estado de la Luisiana, con residencia en Nueva Orleans—

Certifico que las firmas de la vuelta son del Sor. Gobernador de este Estado de la Luisiana, y del Secretario del mismo Estado; y el sello de que han usados el de la propia secretaria, á cuyos documentos asi firmados y sellados, se da entera fe y credito en juicio y fuera de el. Y para que conste, doy el presente, firmado de mi mano y con el sello de este consulado, en la Nueva Orleans, á 11 de Diciembre de 1838.

ANTONIO ARGOTE VILLALOBOS. [L. s.]

[Enclosure No. 2.]

HAVANA, *January 18, 1839.*

SIR: I called at your office several times without being able to obtain an audience; "Not in," has invariably been my answer. As I have no wish in

the world to be troublesome, or intrude on your privacy, I've adopted this method of laying before you my wishes and views—as trifling as they may appear to you, are of consequence to me; and as an American citizen, I demand the right of being heard.

This voyage that I engaged to perform would have been advantageous to me if you had not put your veto on and crushed it in the bud, which has made it just the reverse, as I was at considerable expense preparing for it; not having the most distant idea it would have been obstructed, and perhaps terminated, at this place. My reasons are rational enough. My individual arrangements were made with one of the most respectable houses at New Orleans. The schooner was regularly cleared as an American vessel, and the usual bonds signed at the custom-house in the presence of Mr. Breedlove, the collector, owned and commanded by an American citizen, and sailed with a protected crew. Now what young man would, under these circumstances, suppose he would have any difficulty thrown in his way? I answer, not one. The collector of such a port as New Orleans, the second commercial seaport in the United States, has a very responsible office to fill, as you are very well aware of. It is presumed no ordinary man would be placed there; nor one unacquainted with commercial transactions; nor one that would knowingly do what was wrong. In fine, he is sworn into office to do his duty with fidelity, to detect fraud, and support the constitution. Now an office of such high standing and trust in the republic would, in my humble opinion, be a criterion of no inferior kind, and would, by most persons, be considered a sufficient guarantee in their official capacity to move by. This officer, as I have said before, cleared me out from the United States; but you refuse to do the same from a foreign port, because a law, passed in 1810, forbids it. That law, in my opinion, is not explicit enough on that point to justify your putting it in practice in this case. I don't perfectly understand it: it can be read two ways. In fact, it don't appear to have ever been put in practice; otherwise the collectors of the ports would have taken particular notice of it, and would by no means have jeopardized their sureties by infringing it. Now what I ask is, if you will not clear me out for a foreign port, let me clear for New Orleans, where I came from; and if I have done wrong, I can there rectify the mistake. I will give bonds to the value of the vessel that I'll go direct to that port with [without] deviation. You told me in your office, the other day, the collector of the port of New Orleans was bound to clear me out; then you are surely bound to do it, as he sent me from the United States an American vessel, which my papers prove. I can see no reasonable objection you can have to sending me back the same, with the same papers. Laws should not be put in force until they are passed and made known to the people. If Congress would pass a law to this effect—that, under any circumstances whatever, no vessel shall be entered or cleared out of a port in the United States as an American, nor have any protection from the country; neither wear its flag, except she have a register or license—once they were parted with, she should forever remain an alien. Here would be no enigma, but plain sailing. Any man with two ideas above a goose would understand this, and know what was meant by it. But as the law runs at present, men of such standing as yourself and Mr. Breedlove differ in its meaning. As I have proceeded so far on my voyage, it is ungenerous to defeat it for this reason; your humble servant and some two or three Americans will be thrown out of employ-

ment. You appear resolved to put a stop to this turning foreign vessels into American vessels. I am perfectly of your opinion. I grant it ought to be stopped. I am sensitively alive to the interest and honor of the country. I'll sacrifice private interest for the public benefit at any time, by issuing such a law as I have mentioned. These people would be compelled to buy a registered American vessel every voyage to do their business, which of course would throw more work into the hands of the American mechanic. If I was disposed, or rather for fear of trespassing on your time, I would lay before you a case, and prove to your satisfaction wherein the naturalized citizen has, and do [does] make a greater convenience of American protection than in my case; for here employment is given to the citizens. Emigrants go to some court-house in the States and get their papers shortly after their arrival ***** them ready made, if they are not particular about names (not quite so ***** American seamen's protections bought and sold at 25 cents apiece, I'll admit.) With that paper in his possession, he is a ready-made Yankee: off he starts for Mexico: he gets into business and into difficulty: calls upon his adopted country; and comes very near bringing this flag which I peaceably wear at my mast-head in the field of battle to be defended by the native citizen. Two-thirds of the claims on Mexico, I am told, have been sent in by these kind of men. I could have enlarged on this subject and placed it in a stronger light, but I won't worry you. I merely mentioned it to show that the Government sanctions the issue of papers indiscriminately that are likely to do more harm than those Mr. Breedlove gave me. They are of daily occurrence. Mine is a rare one, and might be suffered to pass, but never repeated. In conclusion, I again repeat, either yourself or Mr. Breedlove is in the wrong. I'll not take it upon myself to decide, but I hope you will decide in my favor. If you have written to the Secretary of State to stop these proceedings, he will no doubt notify all the collectors to that effect. This, in all probability, will be the last case you'll ever be troubled with; then be lenient, and let it pass.

You will have the goodness, sir, to reply to this, either through the post office, or leave a note with the vice-consul. I will be at your office on Monday, at 11 o'clock. I stay on the opposite side of the city, and don't come into town every day, or I would not have troubled you with this letter—I could have managed to see you.

I am, sir, very respectfully, your most obedient, humble servant,
ALBERT F. RYAN.

To the AMERICAN CONSUL
of this City and Port.

[Enclosure No. 3.]

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, January 21, 1839.

SIR: The mass of urgent matters now pressing upon my hands, and daily accumulating, despite of every exertion I can make, renders it indis-

pensable that I should, as far as possible, avoid interruption, by transacting business through the vice-consul. For this reason, he was instructed to say to any person who should make inquiry, or wish to see me on the subject of any of these vessels, (carrying such papers as yours,) that it is absolutely impossible that I should consent to their clearing from this port under the American flag; and that, consequently, as all discussion on the subject must be fruitless, I could not afford the time for entering into any with any one.

The ground upon which this determination has been taken is a perfect conviction that I have no right, by any act of mine, to recognise these vessels as entitled to navigate the high seas under the American flag. This granted, leaves me no discretion whatever in regard to the port for which it may be proposed to clear the vessel—whether it be for one in the United States, or for the coast of Africa. But even if I had a discretion on the subject, it could not be exercised without converting the whole proceeding on my part into a farce, which would be attended with no other effect than to bring disgrace upon Government, by subjecting its consul to the imputation of having got it up solely for the purpose of extorting bribes from the individuals here interested in the voyages. All that they desire is, as you know, that their vessels should once get clear of the Moro, under the American flag; and I need not tell you that, were I to consent to such a proceeding, there are a few men in Havana who would not at once ascribe it to bribery. And although you should faithfully adhere to your promise to take the vessel to New Orleans, others, who would be entitled to the same arrangement, would not fail to abuse it.

But, as above stated, the ground which I have taken leaves me no discretion on the subject, and would not allow me to consent to the clearing of any such vessel, were it but for Matanzas even, or to her passing the Moro.

I sincerely regret the inconvenience and disappointment which you thereby experience; the more so, because your deportment presents a strong and honorable contrast to that of others, who seem to think themselves entitled, on all occasions, when any thing adverse to their wishes may be done by the consul, to offer him indignity and insult. If it were in my power to do any thing in your favor, it would afford me real gratification to do it.

I must, before closing, correct an error into which you have fallen, in supposing me to have said, in our interview the other day, that the collector at New Orleans "was to clear you." What I did say, in reply to your remark on the subject, was, "that, for aught I knew, there *might* be some law under which the collector felt himself bound to give a clearance to any vessel, for which an American citizen demanded one, as being his property; leaving upon himself all the consequences of such demand, if the vessel should prove not entitled to navigate the high seas."

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

Captain ALBERT F. RYAN,
Schooner Swift.

Mr. Trist to Mr. Forsyth.

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, May 4, 1839.

SIR: On yesterday, three seamen, calling themselves Americans, appeared at this office, and stated that they had been brought by a coaster from Cabañas, (a fine port, not open to foreign commerce, to leeward of this, on the same side of the island,) where they had been left by the brig *Gabriel*, in consequence of their refusal to proceed on the voyage to the coast of Africa. This vessel was now, they said, under the American flag, called the "*Two Friends of New Orleans*," Durkee master; and the owner (*Havana* owner) had found them a passage to this place, and come up in the same coaster. They had put into Cabañas *for water!*

The *Gabriel* is a famous slaver. She has recently been under the Portuguese flag, but last sailed from this port, a few weeks since, under the Spanish, for New Orleans. There she has, no doubt, obtained the letter of naturalization; my refusal to recognise the validity of which, in other cases, has prevented her coming to this port. It sufficed, however, to enable her to kidnap American sailors in an American port, for a business which puts their necks in the halter. There were, they say, three flags and three captains on board: one for the American flag, a second for the Portuguese, and a third for the Spanish. The last, however, had the direction of every thing.

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

Hon. JOHN FORSYTH,
Secretary of State.

Extract from a letter from N. P. Trist, Esq., to Hon. John Forsyth, Secretary of State, dated

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, May 4, 1839.

SIR: Referring to my No. 73 of this date, I enclose a copy (enclosure No. 1) of a document put into my hands by Captain Fullerton T. Kneass, of Philadelphia, a few days before his decease in this city, which happened on the 22d of March last.

The proceedings shown by this document to have occurred, are a sample of the course which I have for some time past been satisfied that it was the design of the British Government to pursue. In addition thereto, I will state that I have been verbally informed of the actual capture, by a British cruiser on the coast of Africa, of an American vessel—as perfectly American as a good register and an American captain could render her. This captain being threatened by his captor with hanging, confessed that the vessel was not American property, but Spanish. She was taken to Sierra Leone, where the judges refused to condemn her. The captor, however, took it upon himself to do so; and proceeded to break her up, in the mode agreed upon between the British and Spanish Governments. Whatever may have been the real character of the vessel, the facts, as stated to me, were such that no British officer had any more right to capture the vessel, or to set foot on

board of her even, than he had to pursue the same course towards one of the New York and Liverpool packets.

The case of Captain Kneass is one of a number that have occurred, and will continue to occur until put a stop to by new legislation. The schooner John H. Holland having been sold here, (doubtless to Spaniards, although nominally to an American,) he went out in her to act as American master, and exhibit her American document (bill of sale embodying a copy of the register) and flag, until the moment should come for taking the slaves on board; at which time he was to separate from her, taking the American document with him. Cruising about the coast, watching this opportunity, he fell sick; and his condition at the moment of her departure was such, that as there was no immediate or certain prospect of another opportunity for quitting the coast, his only chance for life was to do so in her. He came in her, therefore, as a *passenger*—a fact, which I told him, however true it might be, would be viewed as a mere pretence; and would not, unless very clearly proved, have sufficed to save his neck from the halter, had he been taken and brought to trial.

Hon. JOHN FORSYTH, *Secretary of State.*

[Enclosure No. 1.]

Extract from the log book of the schooner John H. Holland, of Philadelphia, on the coast of Africa.

December 17 1838.—At 11 A. M. weighed anchor at Anson bound to Quitta, at 1.30 P. M. saw a vessel to leeward standing in shore, wind SW. at 2.30 P. M. saw another vessel to windward off Cape St Paul bearing down for us under all possible sail, we standing on and off shore taking advantage of the changes of wind and current, the vessel to leeward which was a Schooner kept away before the wind and made all possible sail. At 5.30 P. M. the vessel to windward which also proved to be a Schooner fired a gun. I hoisted my colors still standing on shore under all sail shortly after fired again. I immediately took in my foresail and hove to head to the SSE. the schooner still under all sail running down for us. At 6.15 P. M. saw a boat coming towards us under sail when within Pistol shot of us fired a musket or pistol when within hailing distance ordered me to keep my vessel away the which I refused to do telling them I was waiting for them at 6.35 P. M. the Boat came along side with six men and an officer, they jump'd on board each armed with cutlass and Pistol the officer gave command to one of his men to take the helm and keep away after the man-of-war as they said the Schooner was to chase the Schooner that was to leeward of us. I remonstrated with him told him my vessel was American vessel that he was doing wrong to come on and take forcible possession of an American vessel without asking any questions. I also remarked that it was an act of Piracy—he said he was bound to obey his orders. He examined the papers, found all correct made an apology and left us. I having lost ten hours time by the operation saw no colors hoisted on board the man-of-war. Quitta Dec 18 at 3 P. M. saw a vessel to leeward beating up, at 7.30 P. M. came within hailing distance, hail'd us, ask'd if I had his boat after answering no asked the name of the vessel and if she was an English vessel answered no I said she was American I then asked the

name of his vessel the Viper, said he would come on board at 8 P. M. the boat came alongside with an officer, came on board ask'd for his boat, told him she left the night before for the Schooner he said he would take possession of my vessel until he found his boat. I told to recollect she was an American vessel he asked for the papers showed them to him after asking several questions of no importance left us. I remarked before he left us that I would make a report to the U S Government of the transaction, said he did not care.

FULLERTON T. KNEASS.

CONSULATE OF THE UNITED STATES OF AMERICA, *Havana* :

A true copy, verbatim, literatim, et punctuatim, compared with the original, deposited with me by the late Captain Kneass. Compared this 4th day of May, 1839.

N. P. TRIST, [SEAL.]

Mr. Trist to Mr. Forsyth.—Extracts.

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, September 7, 1839.

SIR: One of our merchants at this place, who takes Niles Register, called my attention, a day or two since, to an article from the "Commercial Advertiser," under the caption "American Slaves," contained in the first-named paper of the 3d August, to which I beg leave to refer.

Whatever, to a reader unacquainted with the subject, is a bearing of these statements upon myself may seem to be, there is one single point only in which, to a person by whom it is understood, they can appear entitled to notice. With this one exception, to render manifest to those least conversant with the matter of these allegations, that, as grounds of impeachment of my character, they are absolutely futile, nothing further is requisite than the substitution of an exact statement of precise facts, for the vague and loose terms whereby my name is connected with the slave-trade in the mode so calculated to beget sinister surmises and calumnious imputations. This one point, however, is of a nature to impel me to request that it be made the ground of a demand upon the British Government. * * * *

Under this aspect of the subject, it is, that I now deem myself justifiable in requesting that one of these allegations against me be made the subject of a communication from our Government of a demand, founded, not upon the allegation itself, but solely and exclusively upon the fact of its publication. * * * *

The particular allegation to which these remarks have reference, is that wherein it is charged that "blank forms" have been "signed" by me for the use of persons in command of vessels about to be engaged in the slave-trade.

This allegation first appears in the following passage :

"Then a despatch from Lord Palmerston to Mr. Fox, dated March 22d, 1839, including papers received at the Admiralty, showing that the American consul at Havana (Mr. Trist) had affixed his name to the papers of

vessels about to be employed in the slave-trade; and had also *signed blank forms*, to be filled up at pleasure by the persons in command of these vessels."

In a subsequent part of the article, it is repeated in the specification of one of "those vessels," to wit:

"The schooner '*Constituçāo*,' under Portuguese colors, from Havana, with papers signed by Mr. Trist, and also *blank papers* signed by him, to be filled up as occasion might require."

This vessel is stated to be among those "searched and *detained* by British vessels on the African station, between October 1st and December 31st, 1838." Her papers, including these "*blank forms*," must, consequently, be at this moment in the possession of the British authorities; as, probably, are also the papers of those other "vessels," referred to in the despatch of Lord Palmerston, or in its enclosures from the Admiralty.

The demand which I beg leave to suggest is of—

1st. One or more specimens of the blank forms secured on board the "*Constituçāo*," and also of those found on board the other vessel or vessels referred to by the words "those vessels," in the despatch of Lord Palmerston, or its enclosures.

2d. A list, with all possible particulars of time and place, of "*those vessels*," whether "*detained*" or only searched, on board which any such "*blank forms*" have been found, together with the name and nation of each of "*the persons*" in whose possession they were found; and the further particular whether it was or was not, in each instance, ascertained that this person, by whom, as is alleged, they were "to be filled up at pleasure," could write the English language, or was accompanied by any one who possessed that requisite for making use of them.

3d. A statement with regard to any of such "blank forms" as may have been seen, but cannot be supplied, of—1st. Their size and general appearance. 2d. Their tenor. 3d. Whether they were *sealed* as well as "signed;" and 4th. The uses to which they could have been put: that is to say, the possible "*occasions*" that "*might require*" them "*to be filled up*;" the particular matter wherewith they might be filled up; and the particular benefit, which, being thus filled up, they could secure to the holder.

A charge of a graver aspect can scarcely be conceived than that here published to the world against the American consul at Havana; while the deed imputed to him is not only of the deepest baseness, but such also as to betoken that degree of recklessness which belongs only to the most abandoned characters, the hand by which the imputation is cast is, to all appearance, a warrant that it has not been cast lightly; that this act has been preceded by all the consideration due to its nature, and has been done under a full sense of the responsibility which attaches to it when proceeding from a quarter where (the world is entitled to believe) none of the safeguards against the crime, or the impolicy of casting aspersions unwarranted by truth, can have failed to exercise its proper influence.

Had this imputation proceeded from the source whence (so far as may be judged from the one case specified in the article before us) it originally arose, or even from the quarter to which it was thence transmitted, the case would have been essentially different. Coming from such a source, unaccompanied with the glare of authority which now dazzles every eye that is turned upon it, the intrinsic improbability of the act charged could not have failed to be manifest to all, nor to exercise upon every judgment

the influence belonging to it. Appearing merely in the report of a naval officer (probably of a very subordinate grade) engaged in the task of reporting the character of the documents taken possession of by him on the occasion of making a capture, or perhaps only seen in the course of a hasty search at sea, an imputation of this nature would, at once, direct the attention to all the probabilities of error on the part of such an agent, acting upon such a subject, under circumstances of excitement and haste, the reverse of favorable to deliberate thought and scrupulous accuracy, even upon those matters which the course of his profession was likely to bring him most frequently into contact with, and to render most familiar. In the one scale would be seen to be the intrinsic improbability of the act charged; and, opposed to this, only the improbability of carelessness, or of mistake without carelessness, on the part of a naval lieutenant, in examining and reporting upon the nature of the papers found on board a vessel searched and detained by him; or rather upon the nature of a certain portion of those papers, manifestly of an altogether secondary importance, and, to himself particularly, if not altogether devoid of interest, yet of a very inferior interest to that attaching to any other portion of the same papers which might exercise an influence upon the question as to the validity of the capture.

Such, however, is not the nature of this case. The imputation does not come from the hand of a lieutenant, nor from that of an admiral; nor is the authority upon which it rests that of the report of a lieutenant or of an admiral, transmitted, in the ordinary course of business, from one functionary of the Government to another; nor is it even a report of this nature, transmitted to the foreign Government to whose officer the act is imputed. These are so many different forms in which the allegation might have appeared, each transcending the other in importance, and carrying with it a weight of authority proportionate to the rank of the officer and to the degree of deliberateness implied in his action on the subject. But the form in which it does here appear invests it with an importance infinitely beyond that which could have attached to it under any other circumstances. It is that of a formal charge, published to the world by the British Government, at the instigation of its principal minister, for the conduct of its relations with the other Governments of the world. Coming from the highest possible functionary, the act, too, is done under circumstances corroborating the assurance afforded by the rank of the actor, that the subject has received his most earnest and deliberate attention; that the imputation is not lightly hazarded; but, on the contrary, its grounds have been carefully investigated, and been found such as to warrant a principal minister of state in assuming, in the eyes of the world, the responsibility of calling upon his Government to make proclamation of the fact that the deed has been committed.

Mr. Trist to Mr. Forsyth.

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, December 17, 1839.

SIR: I have pledged myself to a demonstration, which shall leave not a shadow of doubt upon any mind of the *absurdity* of the imputations against me in regard to the slave-trade; and, also, supposing them not to be absurd, of their *untruth*. This, however, is a task, the accomplishment of which

is exposed to but one contingency—that of my ceasing to live before I can marshal, in their proper order, the *facts* which constitute the materials out of which that demonstration is to be constructed. These facts are placed beyond dispute, and therefore require not that I should engage, with respect to them, in the collecting of testimony; seeing that they already stand recorded in our custom-houses, or constitute a part of the (so far as I know) *universal* belief in our country, among its ship-masters, ship-owners, merchants, collectors, lawyers, and judges, in regard to one of the most important of the points involved.

The work, although in truth not requiring any other basis, would, however, have seemed to many eyes imperfect, unless seen to be supported externally by buttresses, consisting of the belief on the subject prevalent at this place, among those under whose eyes my official life has passed. It was proper, therefore, that their testimony should be added to the proof which it was already in my power to adduce, or which, rather, already existed, and required only to be pointed out. To secure it against the casualities to which it was exposed, has therefore presented itself as the thing first to be done. The buttresses are erected; and although, in the estimation of the architect, not requisite to the support of his intended structure, they cannot but add to its security. By breaking the violence of the tempest that howls over the spot, they will serve also the immediate purpose of affording him some protection whilst engaged in his work.

The documents herewith transmitted consist of—

No. 1. A letter addressed by N. P. Trist, consul of the United States of America at Havana, severally, to George Knight, John Morland, Edward Spalding, and Daniel Osgood, the four American residents at Havana whose names are best known in their own country, and throughout the commercial world: November 4, 1839.

No. 2. The questions enclosed in the foregoing letter.

No. 3. Reply of John Morland: November 11, 1839.

No. 4. Reply of George Knight: November 15, 1839.

No. 5. Reply of Daniel Osgood: November 18, 1839.

No. 6. Reply of Edward Spalding: November 20, 1839.

These documents require no remark from me, further than to call attention to the fact, that, although some of the queries relate to my general character, they are put solely on account of their special bearing upon points of character involved in the particular imputation in question. The error is to be avoided, of considering the design with which these interrogatories were drawn up to be the vindication of my general official course or character. For any such purpose they would necessarily appear incomplete, and, to the same extent, unsatisfactory.

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

Hon. JOHN FORSYTH, *Secretary of State.*

Postscript.—It will be perceived, that, with a view to meet objection on that score, the affidavits of these gentlemen have been obtained to their replies; with the exception only of that of Dr. Osgood, who had left the city for the interior before it occurred to me to do so.

I would beg leave to suggest that inquiry be made in our commercial cities into the standing of these respondents, (all New Englanders;) and, also, whether there be any *other* American merchants established at Havana; and, if so, *who they are.*

N. P. T.

[Enclosure No. 1.]

[EXTRACTS.]

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, November 4, 1839.

SIR: Through the press of our country, you have become apprized of the charge published to the world against "the American consul at Havana," that he has "affixed his name to the papers of vessels about to be engaged in the forbidden traffic in slaves; and has, likewise, SIGNED BLANK FORMS, to be filled up at pleasure by the persons in command of those vessels." *

Of the matter of evidence which may be pertinent to a question of this kind, all that relates to *character* is of obvious and high importance. Of the acts which may be imputed to a man, some are of a nature to admit of absolute and specific disproof; while, in regard to others, the negative admits of no other support than that of probabilities. To the latter class, indeed, belong every act with which a man can be charged, except when, by the specification of time and place, such individuality is given to it as brings within the bounds of possibility an absolute proof that it could never have occurred. In any other case, the negative can have no other support than such probabilities as, from the nature of the subject, may exist with regard to it.

To this class belongs the act of signing "blank forms," "to be filled up at pleasure, by the persons" to whom they are supplied, which, in the allegations above quoted, is represented as being among my official practices. To it few things, in the shape of testimony, can be more directly pertinent, whether for support or disproof, than the character which my acts and deportment as an officer and as a man may have established for me upon this theatre. The practice imputed to me is of the very deepest baseness; and not only does it imply turpitude and venality the most sordid, but the utter shamelessness and recklessness which belong to none but the most abandoned characters. The imputation, therefore, cannot fail to find either corroboration or contradiction in the estimation which my conduct may have affixed to me, in regard especially to those particular features of character which are particularly implicated in the charge.

For this reason I have determined to seek, upon these points, the testimony of some of those under whose eyes my official existence has passed; beginning with those of my own countrymen whose names are most extensively known both at home and throughout the commercial world.

The best shape in which testimony on such points can be given, is that of specific replies to precise interrogatories. At the same time, this is the least inconvenient form in which the task of giving such testimony can be proposed to any one. The trouble is reduced to its minimum when the questions are so drawn up as to require only a *yes* or *no* in reply. This will be found to be the character of those (fifty-two in number) herein enclosed, which I trust that you will deem the position wherein I am placed by this wanton calumny, a sufficient apology for requesting you to take the trouble of carefully perusing and giving written replies to.

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

[Enclosure No. 2.]

We, George Knight, John Morland, and Edward Spalding, do hereby certify, that the fifty-two questions hereunto attached by means of the seal of the consulate of the United States of America at this city, are an exact copy of those enclosed in the letter addressed to us, severally, by N. P. Trist, under date November 4, 1839; which questions have been answered by John Morland, in his letter under date the 11th of the same; by George Knight, in his letter under date the 15th of the same; and by Edward Spalding, in his letter under date the 20th of the same: of which letters duplicates have been signed by us, respectively. Witness our hands, at Havana, this 14th day of December, 1839.

EDWARD SPALDING,
GEORGE KNIGHT,
JOHN MORLAND.

Questions.

1. Has any instance ever come to your knowledge, of my having, to accommodate any person whatever, "signed a blank form" of any description whatsoever, "to be filled up by" such person, or by any one in his behalf?

2. Until the recent publication, referred to in my letter, had you ever heard of any act of the kind being imputed to me?

3. Had you ever heard of any act of the kind being imputed to the consulate of the United States of America at Havana, since it came into my charge?

4. Now that it is known to you that the imputation has been made, do you believe in its truth?

5. Do you positively disbelieve it?

6. Do you think that your opportunities have been good for forming a correct estimate of my character as an officer and as a man?

7. Has any thing whatever ever, to your knowledge, occurred, affording any ground whatever for distrusting my probity or trustworthiness, either as an officer or as a man.

8. Have you ever known any definite imputation to be cast upon me, either as an officer or as a man, in respect to probity or trustworthiness?

9. Have you ever heard of any such imputation, from any quarter?

10. Have you ever heard of any such imputation, from any quarter which, supposing the same imputation from the same quarter to have been cast upon a person altogether unknown to you, would have been deemed by you entitled to any credit?

11. So far as my character is known to you, is it a mercenary one?

12. Do you consider it to be the reverse of mercenary?

13. Do you consider me to be eager after money?

14. Has any fact ever come to your knowledge, evincing such eagerness?

15. Have you ever heard of any such fact?

16. Have you ever known any improper charge to be made at my office?

17. Have you ever heard of any such improper charge?

18. Have you ever heard of any contention whatever having arisen out of any charge or demand for money made at my office, in my own behalf?

19. Have you ever known me to shrink from contention on other subjects presented by the official relations in which I am placed?

20. Have you ever heard of my so doing in any instance?

21. Is not the law of the United States, requiring the payment of three months' extra wages upon the discharge of seamen, exceedingly hateful to all classes upon whom it bears—ship-masters, ship-owners, and merchants?

22. Is there not a particular odium attached to the demand of those extra wages by the consul?

23. Is not this provision of the law such, that nothing more is requisite for its successful evasion than the merest tacit connivance on the part of the consul?

24. Does not a general sentiment prevail on the subject, that the consul ought to connive at its evasion?

25. Have you ever heard of an instance in which such connivance was given by me?

26. Have you ever heard of an instance in which, knowing or hearing of any attempt or intention to evade this law, I have failed to take active measures to enforce its observance?

27. In the whole circle of consular duties, do you know of one, in regard to which a consul capable of sacrificing duty to personal considerations would be so sure to evince such disposition?

28. Except in regard to the course pursued by me in cases wherein sailors or mariners of subordinate grade were parties against ship-masters, has any official act of mine ever come to your knowledge, that was deemed by you objectionable?

29. With the exception just stated, have you ever heard of any official act being imputed to me, which was deemed by you objectionable?

30. Have you ever heard of any such imputation from any quarter, which, supposing the same imputation from the same quarter to have been cast upon a person altogether unknown to you, would have been deemed by you entitled to any credit?

31. With regard to the cases excepted in question 28, wherein sailors or mariners of subordinate grade were parties against ship-masters, has not my course been the reverse of that which was recommended by considerations of personal convenience or interest?

32. In such cases, have you ever known an instance in which I failed to pursue the course dictated by my own judgment, or to prove utterly regardless of who the parties might be, or who might take an interest in the subject, or what opinion might be entertained as to the propriety of my course by my countrymen, whether friends or strangers to me?

33. From the knowledge which you possess of the mode in which slave-trade operations are conducted and talked of here, do you believe it possible that the consul of the United States at this place could be, in any way, directly or indirectly, concerned or interested in that business, without its coming to your ears?

34. Until the charges to that effect, recently made in the newspaper press of the United States, had you ever heard that the idea of my being in any way concerned or interested in the slave trade had ever entered the head of any one?

35. Has any ground whatever for any such belief ever presented itself to your mind?

36. Has any suspicion of the sort ever crossed your mind?

37. Now that the charge has been made, do you attach any credit thereto?

38. Do you positively disbelieve it?

39. Have you ever known an instance of a "false bill of sale of a vessel," or of a fictitious document of any sort, having been granted by me, or having issued from my office?

40. Have you ever heard of any such instance?

41. Do you believe that any such instance ever occurred?

42. Since this consulate has been held by me, have you ever known an instance of a vessel which had arrived at this port under a foreign flag, having exchanged it for the flag of the United States?

43. Have you ever heard of any such instance?

44. Do you believe that any such instance ever occurred?

45. Since this consulate has been held by me, have you ever known an instance of a vessel's leaving here under the American flag, whether for the coast of Africa or any other part of the world, which had not as absolute and perfect a right to leave, and to be exempt from all consular interference in so doing, as any packet that ever cleared for the port of New York, or any sugar-laden-ship that ever cleared for "Cowes and a market?"

46. Have you ever heard of any such instance?

47. Do you believe that any such instance ever occurred?

48. Have you ever known an instance of any infraction or evasion of any law of the United States taking place through my connivance, or with it?

49. Have you ever heard of any such instance?

50. Do you believe that any such instance ever occurred?

51. Suppose a vessel to leave Havana under the Portuguese or any other flag, to be employed in the slave-trade; and suppose said vessel to be provided with a number of all the forms known to you as being used in the American consulate at this place—said forms being signed in blank by the consul, and also sealed with the seal of the consulate, "to be filled up at pleasure by the person in command of that vessel;" can you conceive a single use that any of such blank forms could be put to?

52. Suppose an occasion to arise in which it should be desirable to make such vessel pass for an American vessel: can you conceive any possible way in which any or all of said blank forms could be made to serve that purpose?

N. P. TRIST.

NOVEMBER 4, 1839.

Explanatory remarks on questions 8, 9, and 10.

1. These questions distinguish between *knowing* an imputation to be cast upon the probity or trustworthiness of an officer, and *hearing* of such an imputation.

The nature and object of the distinction will be best explained by an example:

A hears B charge the consul with having *demand*ed a higher fee than he was entitled to receive; or with having *connived* at the infraction of a law; or with having *made out a false document*; or with having *received money on account of a sailor, and retained it*; or with any other such act. Or,

in regard to his personal character, with having *acted in bad faith towards some person* ; or with having *deviated from the truth* ; or with having *lived beyond his means* ; or with having *shown that he was indifferent or careless about contracting pecuniary obligations*.

A hears B say that the consul has been charged with one of the foregoing acts.

In the former case, A has *known* an imputation to be cast upon the consul's probity or trustworthiness. In the latter case, he has only *heard* of such an imputation.

If either of these cases had happened to A, he would answer the corresponding question 8 or 9 in the affirmative. If neither had happened to him, he would answer both in the negative.

2. Another explanatory remark which these three questions call for is this: the last of the three (No. 10) has been added to the other two, in order to preclude the necessity of any thing more than a *yes* or *no* in reply to each of them, without the addition of a word in regard to the character of the source whence the imputation may have come.

Thus, both 8 and 9 may be answered in the affirmative ; and the answer to 10 will convey the information whether the source or sources whence the imputation or imputations came were, or were not, deemed by the respondent to be deserving of credit.

The answer to both 8 and 9, or to either of them, may be *yes* ; and yet the answer to 10 be *no*. On the other hand, if the answer to both 8 and 9 be *no*, then it follows that the answer to 10 must also be *no*. In this case, the question becomes altogether unnecessary ; the sole purpose for which it is put, being to meet the case of an affirmative answer to 8 and 9, or either of them.

It is to be noted, too, that these questions relate to *definite* imputations—to the imputation of *acts* of misconduct, and not to *vague* imputations ; such, for instance, as "*the consul is a rascal*," or, "*the consul's motive for exacting the three months' extra wages is to make money*."

[Enclosure No. 3.]

HAVANA, November 11, 1839.

SIR: In compliance with the request in your favor of the 4th instant, I give the following replies to the fifty-two questions therein enclosed :

1. To the first, I reply : No.
2. To the second, I reply : No.
3. To the third, I reply : No.
4. To the fourth, I reply : No.
5. To the fifth, I reply : Yes, most positively.
6. To the sixth, I reply : Yes.
7. To the seventh, I reply : No.
8. To the eighth, I reply : No, never from persons to whom I gave credit.
9. To the ninth, I reply : Never, except from persons to whom credit was not due.
10. To the tenth, I reply : Yes, I have, as the imputations were made in ignorance, and for that reason were generally unworthy of credit.
11. To the eleventh, I reply : No.

12. To the twelfth, I reply : Yes, just the reverse.
13. To the thirteenth, I reply : No.
14. To the fourteenth, I reply : No.
15. To the fifteenth, I reply : No.
16. To the sixteenth, I reply : Never.
17. To the seventeenth, I reply : No.
18. To the eighteenth, I reply : No.
19. To the nineteenth, I reply : No.
20. To the twentieth, I reply : No.
21. To the twenty-first, I reply : Yes.
22. To the twenty-second, I reply : Yes.
23. To the twenty-third, I reply : Yes.
24. To the twenty-fourth, I reply : Yes.
25. To the twenty-fifth, I reply : Never.
26. To the twenty-sixth, I reply : No.
27. To the twenty-seventh, I reply : No.
28. To the twenty-eighth, I reply : No.
29. To the twenty-ninth, I reply : No.
30. To the thirtieth, I reply : No.
31. To the thirty-first, I reply : I believe it has.
32. To the thirty-second, I reply : No.
33. To the thirty-third, I reply : No.
34. To the thirty-fourth, I reply : No.
35. To the thirty-fifth, I reply : No.
36. To the thirty-sixth, I reply : No.
37. To the thirty-seventh, I reply : Not the least.
38. To the thirty-eighth, I reply : I do.
39. To the thirty-ninth, I reply : No.
40. To the fortieth, I reply : No.
41. To the forty-first, I reply : No.
42. To the forty-second, I reply : No, never.
43. To the forty-third, I reply : No.
44. To the forty-fourth, I reply : No.
45. To the forty-fifth, I reply : No.
46. To the forty-sixth, I reply : No.
47. To the forty-seventh, I reply : No.
48. To the forty-eighth, I reply : I do not.
49. To the forty-ninth, I reply : No.
50. To the fiftieth, I reply : No.
51. To the fifty-first, I reply : No.
52. To the fifty-second, I reply : No; though, at first, I was inclined to think it possible that a blank bill of sale might have had the consular certificate; but when I recollected the consular seal was used to attach the certificate to the bill of sale, I became convinced to the contrary.

I am your most obedient servant,

J. MORLAND.

N. P. TRIST, Esq.,
Consul of the U. S. of America.

NOTE.—Having been requested to state the imputations against Mr. Trist's probity or trustworthiness, which are referred to in my answers 8, 9, and 10, as having been known or heard of by me, I comply with that re-

quest by saying, the imputations alluded to in the 8, 9, and 10, were such as are made in the American papers, and which I know to be false, when applied to Mr. Trist. There were some of the persons, however, to whom I should have given credit, if I had had no knowledge of the accused persons.

J. MORLAND.

CONSULATE OF THE UNITED STATES OF AMERICA, *Havana* :

I, John A. Smith, vice-consul of the United States of America, do hereby certify, that, on the day of the date hereof, before me, personally appeared John Morland, of this city, merchant, who, being duly sworn, did declare, that the letter hereunto attached, under date November 11, 1839, addressed to N. P. Trist, Esq., consul of the United States of America, contains the replies of him, the said Morland, to the fifty-two questions enclosed in the letter addressed to him by the said N. P. Trist, under date November 4, 1839; and the said Morland did further declare that his said replies are, to the best of his knowledge and belief, true and correct.

In testimony whereof, I hereunto set my hand, and affix my
[L. S.] seal of office, at Havana, this 14th day of December, in the year of our Lord one thousand eight hundred and thirty-nine, and of the independence of the United States the sixty-fourth.

J. A. SMITH.

JOHN MORLAND.

[Enclosure No. 4.]

HAVANA, *November 15, 1839.*

SIR: In compliance with the request in your favor of the 4th instant, I give the following replies to the fifty-two questions therein enclosed.

1. To the first, I reply : No.
2. To the second, I reply : No.
3. To the third, I reply : No.
4. To the fourth, I reply : No.
5. To the fifth, I reply : Yes.
6. To the sixth, I reply : Yes.
7. To the seventh, I reply : No.
8. To the eighth, I reply : Never.
9. To the ninth, I reply : No.
10. To the tenth, I reply : No.
11. To the eleventh, I reply : No, quite the reverse.
12. To the twelfth, I reply : Yes.
13. To the thirteenth, I reply : No.
14. To the fourteenth, I reply : Never.
15. To the fifteenth, I reply : Never.
16. To the sixteenth, I reply : Never.
17. To the seventeenth, I reply : No.
18. To the eighteenth, I reply : Never.
19. To the nineteenth, I reply : Never.
20. To the twentieth, I reply, Never.
21. To the twenty-first, I reply : Yes, very.

22. To the twenty-second, I reply : Yes.
 23. To the twenty-third, I reply : Yes.
 24. To the twenty-fourth, I reply : Yes.
 25. To the twenty-fifth, I reply : Never.
 26. To the twenty-sixth, I reply : Never.
 27. To the twenty-seventh, I reply : No.
 28. To the twenty-eighth, I reply : No.
 29. To the twenty-ninth, I reply : No.
 30. To the thirtieth, I reply : No.
 31. To the thirty-first, I reply : Yes.
 32. To the thirty-second, I reply : Never.
 33. To the thirty third, I reply : No.
 34. To the thirty-fourth, I reply : Never.
 35. To the thirty-fifth, I reply : Never.
 36. To the thirty-sixth, I reply : Never.
 37. To the thirty-seventh, I reply : None.
 38. To the thirty-eighth, I reply : Positively.
 39. To the thirty-ninth, I reply : Never.
 40. To the fortieth, I reply : Never.
 41. To the forty-first, I reply : No.
 42. To the forty-second, I reply : Never.
 43. To the forty-third, I reply : Never.
 44. To the forty-fourth, I reply : No.
 45. To the forty-fifth, I reply : No.
 46. To the forty-sixth, I reply : Never.
 47. To the forty-seventh, I reply : No.
 48. To the forty eighth, I reply : Never.
 49. To the forty-ninth, I reply : Never.
 50. To the fiftieth, I reply : No.
 51. To the fifty-first, I reply : No.
 52. To the fifty-second, I reply : I do not see any.
- I am, sir, respectfully, your obedient servant,

GEO. KNIGHT.

N. P. TRIST, Esq.,
Consul of the U. S. of America.

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CONSULATE OF THE UNITED STATES OF AMERICA, *Havana :*

I, Nicholas P. Trist, consul of the United States of America, do hereby certify, that, on the day of the date hereof, before me personally appeared George Knight, of this city, merchant, who, being duly sworn, did declare that the letter hereunto attached, under date November 15, 1839, addressed to N. P. Trist, Esq., consul of the United States of America, contains the replies of him, the said Knight, to the fifty-two questions enclosed in the letter addressed to him by the said N. P. Trist, under date the 4th of November, 1839; and the said Knight did further declare, that his said replies are, to the best of his knowledge and belief, true and correct.

In testimony whereof, I hereunto set my hand, and affix my seal of
 [L. s.] office, at Havana, this 14th day of December, in the year of
 our Lord one thousand eight hundred and thirty-nine, and of
 the independence of the United States the sixty-fourth.

N. P. TRIST.

GEORGE KNIGHT.

[Enclosure No. 5.]

HAVANA, *November 18, 1839.*

SIR: In compliance with the request in your favor of the 4th instant, I give the following replies to the fifty-two questions therein enclosed :

1. To the first, I reply : No.
2. To the second, I reply : No.
3. To the third, I reply : No.
4. To the fourth, I reply : No.
5. To the fifth, I reply : Yes.
6. To the sixth, I reply : Yes.
7. To the seventh, I reply : No.
8. To the eighth, I reply : No.
9. To the ninth, I reply : No.
10. To the tenth, I reply : No.
11. To the eleventh, I reply : No.
12. To the twelfth, I reply : Yes.
13. To the thirteenth, I reply : No.
14. To the fourteenth, I reply : No.
15. To the fifteenth, I reply : No.
16. To the sixteenth, I reply : No.
17. To the seventeenth, I reply : No.
18. To the eighteenth, I reply : No.
19. To the nineteenth, I reply : No.
20. To the twentieth, I reply : No.
21. To the twenty-first, I reply : Yes.
22. To the twenty second, I reply : Yes.
23. To the twenty-third, I reply : Yes.
24. To the twenty-fourth, I reply : Yes.
25. To the twenty-fifth, I reply : No.
26. To the twenty-sixth, I reply : No.
27. To the twenty-seventh, I reply : No.
28. To the twenty-eighth, I reply : No.
29. To the twenty-ninth, I reply : No.
30. To the thirtieth, I reply : No.
31. To the thirty-first, I reply : Yes.
32. To the thirty-second, I reply : No.
33. To the thirty-third, I reply : No.
34. To the thirty-fourth, I reply : No.
35. To the thirty-fifth, I reply : No.
36. To the thirty-sixth, I reply : No.
37. To the thirty-seventh, I reply : No.
38. To the thirty-eighth, I reply : Yes.
39. To the thirty-ninth, I reply : No.
40. To the fortieth, I reply : No.
41. To the forty-first, I reply : No.
42. To the forty second, I reply : No.
43. To the forty-third, I reply : No.
44. To the forty-fourth, I reply : No.
45. To the forty-fifth, I reply : No.
46. To the forty-sixth, I reply : No.

47. To the forty-seventh, I reply : No.
48. To the forty-eighth, I reply : No.
49. To the forty-ninth, I reply : No.
50. To the fiftieth, I reply : No.
51. To the fifty-first, I reply : No.
52. To the fifty-second, I reply : No.

I am, sir, respectfully, your obedient servant,

DANIEL OSGOOD, M. D.

N. P. TRIST, Esq.,

Consul of the United States of America.

[Enclosure No. 6.]

HAVANA, November 20, 1839.

SIR : In compliance with the request in your favor of the 4th instant, I give the following replies to the fifty-two questions therein enclosed :

1. To the first, I reply : No.
2. To the second, I reply : No.
3. To the third, I reply : No.
4. To the fourth, I reply : No.
5. To the fifth, I reply : Yes.
6. To the sixth, I reply : Yes.
7. To the seventh, I reply : No.
8. To the eighth, I reply : No.
9. To the ninth, I reply : No.
10. To the tenth, I reply : No.
11. To the eleventh, I reply : No.
12. To the twelfth, I reply : Yes.
13. To the thirteenth, I reply : No.
14. To the fourteenth, I reply : No.
15. To the fifteenth, I reply : No.
16. To the sixteenth, I reply : No.
17. To the seventeenth, I reply : No.
18. To the eighteenth, I reply : No.
19. To the nineteenth, I reply : No.
20. To the twentieth, I reply : No.
21. To the twenty-first, I reply : Yes.
22. To the twenty-second, I reply : Yes.
23. To the twenty-third, I reply : Yes.
24. To the twenty-fourth, I reply : Yes.
25. To the twenty-fifth, I reply : No.
26. To the twenty-sixth, I reply : No.
27. To the twenty-seventh, I reply : No.
28. To the twenty-eighth, I reply : No.
29. To the twenty-ninth, I reply : No.
30. To the thirtieth, I reply : No.
31. To the thirty-first, I reply : Yes.
32. To the thirty-second, I reply : No.
33. To the thirty-third, I reply : No.

34. To the thirty-fourth, I reply : No.
35. To the thirty-fifth, I reply : Never.
36. To the thirty-sixth, I reply : No.
37. To the thirty-seventh, I reply : No.
38. To the thirty-eighth, I reply : Yes.
39. To the thirty-ninth, I reply : No.
40. To the fortieth, I reply : No.
41. To the forty-first, I reply : No.
42. To the forty-second, I reply : No.
43. To the forty-third, I reply : No.
44. To the forty-fourth, I reply : No.
45. To the forty-fifth, I reply : No.
46. To the forty-sixth, I reply : No.
47. To the forty-seventh, I reply : No.
48. To the forty-eighth, I reply : No.
49. To the forty-ninth, I reply : No.
50. To the fiftieth, I reply : No.
51. To the fifty-first, I reply : No.
52. To the fifty-second, I reply : No.

I am, sir, respectfully, your obedient servant,

EDW. SPALDING.

N. P. TRIST, Esq.,

Consul of the United States of America.

CONSULATE OF THE UNITED STATES OF AMERICA, *Havana :*

I, Nicholas P. Trist, consul of the United States of America, do hereby certify, that on the day of the date hereof, before me, personally appeared Edward Spalding, of this city, merchant ; who, being duly sworn, did declare that the letter hereunto attached, under date November 20, 1839, addressed to N. P. Trist, Esq., consul of the United States of America, contains the replies of him (the said Spalding) to the fifty-two questions enclosed in the letter addressed to him by the said N. P. Trist, under date November 4, 1839 ; and the said Spalding did further declare, that his said replies are, to the best of his knowledge and belief, true and correct.

In testimony whereof, I hereunto set my hand, and affix my seal of office, at Havana, this fourteenth day of November, in the year of [L. s.] our Lord one thousand eight hundred and thirty-nine, and of the independence of the United States the sixty-fourth.

N. P. TRIST.

EDWARD SPALDING.

Mr. Trist to Mr. Forsyth.

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, December 18, 1839.

SIR : Referring to my No. 107, I have the honor to transmit three other documents relating to the same subject, to wit :

No. 1. Letter from N. P. Trist to C. D. Tolmé, Esq. : November 9, 1839.

No. 2. Questions enclosed in the foregoing letter.

No. 3. Reply of C. D. Tolmé: November 15, 1839.

These documents require no remark from me, further than to call attention to the fact, that, although some of the queries relate to my general character, they are put solely on account of their special bearing upon points of character involved in the particular imputation in question. The error is to be avoided, of considering these interrogatories as drawn up with a view to the vindication of my general official course or character. This would have required a much wider scope of inquiry.

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

Hon. JOHN FORSYTH,
Secretary of State.

[Enclosure No. 1.]

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, November 9, 1839.

SIR: Events having rendered it due to my character, both as a man and an officer, that I should seek, in relation to a particular imputation upon it, such evidence as the nature of the subject admits of, my knowledge of you enables me at the same time to appreciate your value as a witness, and, notwithstanding the seeming delicacy of our official positions relatively to the subject, to appeal without hesitation to your sense of the obligation to bear testimony to the truth. Had I to choose from all the persons known to me, whether personally or by name only, one in whom to put reliance as a source of information in regard to the slave-trade, and all matters directly or indirectly connected therewith, the selection could fall upon none but you. Ever since I first formed your acquaintance, on my arrival here nearly six years ago, it has, if I mistake not, constituted part of your official duty to collect information of this character; and in saying that, of all those who, on this theatre, during the period just stated, have participated in that duty, there is not one in behalf of whom the most distant pretension could be advanced to compare with you in any one of the qualifications for this or any other public trust, I do but give utterance to a conviction which is not only mine, but, so far as I know or believe, that of all who have ever had any means to form an opinion on the subject. I entertain not a doubt that it is the common sentiment of this place—entertained by foreigners of all nations, as well as your own countrymen; and that it cannot fail to have penetrated at home, wherever the opportunity has been conjoined with the capacity to form an estimate of your character.

With regard to the fountains of information which may here exist upon this or any other subject, you possess the keys to them all, in your command of the four languages spoken here—an advantage that in you proves the more effective, from your strong taste and eminent talent for social converse. On the other hand, your understanding is known to be of an order to afford a security for the discrimination indispensable to a correct use of such powers and opportunities; whilst that security receives corroboration, from the aversion of a moral nature such as yours to both the deception and the injustice which are the natural fruits of the careless adoption and reckless propagation of untruth. In a word, your qualities of head and heart; your

intelligence, penetration, and tact; your frank, cordial, and prepossessing manners; your conscientiousness and benevolence—all conspire to afford a security that the task of collecting information on the subject in question, as pursued by you, has been pursued in the way that such a task must be, to produce a result of any real value; that your aim has been to *do*, and not to *seem*; that you have deemed it your duty always, first to satisfy your own mind upon a point, before stamping it as a thing which might be thrown into the currency of facts; that you have acted under that never-failing sense of obligation to truth (which is necessary to inspire the habitual earnestness after fact) so distinguishable from the reckless *ad captandum* spirit prevalent at this hour, that welcomes to its net any thing and every thing, however improbable, however untrue, however preposterous, which may suit the heated imaginations on whose excitement it profits, and, thereby obtaining acceptance as proof of high desert in the purveyor, answer the only purpose for which he cares.

This language, although merely the utterance of what every one here knows and feels—only more or less distinctly, according to the opportunities he may have enjoyed—will, I am aware, be apt to subject the understandings of us both, if not my motives, to reproach. The semblance of flattery will, however, vanish before the truth, that these facts constitute the reason why value should be attached to your testimony. That testimony is sought, because it is valuable; and it is valuable, because of the qualifications which you have brought to the task of making yourself conversant with the slave-trade, and all things incident thereto. In speaking as I have done, therefore, I have merely given my reason for calling you as a witness. Had your testimony been destined for use at this place, where a residence of many years has made you well known, or in your own country, where you must be better known still, it would have been superfluous to assign any reason of the kind for asking it. But it is intended for use in my country, where you are not known; and it was necessary, and therefore proper, that those upon whose minds it is designed to operate should learn something of those qualities of its source, whereon its value so greatly depends. That information, in whatever shape produced, could come only from myself. It could consist only of statements made by me, or of statements procured by me; so that, whether under the one form or the other, the truth of the matter could not be adduced, without exposing me to the imputation of offering flattery, and you to that of accepting it. This being the case, it could matter but little, in respect to this unavoidable semblance of flattery, whether it should appear in this letter or in some appendage to it; whilst, in other respects, the letter asking your testimony (in truth, addressed rather to the public in my country than to yourself; for, otherwise, the request might, with greater convenience, have been made orally) seemed the most appropriate place for declaring my reason for desiring it.

The best shape in which testimony of the nature of that which I am seeking can be given is, that of exact replies to precise interrogatories; for the reader can at once perceive whether these are so framed as fully to elicit whatever information the witness may possess. At the same time, this is the least troublesome form in which the task of giving testimony can be proposed to him. The trouble is brought within the narrowest compass possible, when the questions are so put as to require only a *yes* or *no* in reply. This will be found to be the character of those (fifty-nine in number) herein enclosed, which I trust that you will deem the necessity under which I am

placed for the testimony of those here who have had the best opportunities to acquire a knowledge of my acts and character, a sufficient apology for requesting you to take the trouble of carefully perusing and giving written replies to.

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

To C. D. TOLME, Esq.

[Enclosure No. 2.]

Questions.

1. Has any instance ever come to your knowledge of my having, to accommodate any person whatever, "signed a blank form," of any description whatsoever, "to be filled up by" such person, or by any one in his behalf?

2. Until very recently, had you ever heard of any act of the kind being imputed to me?

3. Had you ever heard of any act of the kind being imputed to the consulate of the United States of America at Havana, since it came into my charge?

4. Now that it is known to you that the imputation has been made, do you believe in its truth?

5. Do you positively disbelieve it?

6. Do you think that your opportunities have been good for forming a correct estimate of my character as an officer and as a man?

7. Has any thing whatever ever, to your knowledge, occurred, affording any ground whatever for distrusting my probity or trustworthiness, either as an officer or as a man?

8. Have you ever known any definite imputation to be cast upon me, either as an officer or as a man, in respect to probity or trustworthiness?

9. Have you ever heard of any such imputation from any quarter?

10. Have you ever heard of any such imputation from any quarter, which, supposing the same imputation, from the same quarter, to have been cast upon a person altogether unknown to you, would have been deemed by you entitled to any credit?

11. So far as my character is known to you, is it a mercenary one?

12. Do you consider it to be the reverse of mercenary?

13. Do you consider me to be eager after money?

14. Has any fact ever come to your knowledge evincing such eagerness?

15. Have you ever heard of any such fact?

16. Have you ever known any improper charge to be made at my office?

17. Have you ever heard of any such improper charge?

18. Have you ever heard of any contention whatever having arisen out of any charge or demand for money made at my office in my own behalf?

19. Have you ever known me to shrink from contention on other subjects presented by the official relations in which I am placed?

20. Have you ever heard of my so doing in any instance?

21. Is not the law of the United States, requiring the payment of three months' extra wages, upon the discharge of seamen, exceedingly hateful to all classes upon whom it bears—ship-masters, ship-owners, and merchants?

22. Is there not a particular odium attached to the demand of those extra wages by the consul?

23. Is not this provision of the law such, that nothing more is requisite for its successful evasion than the merest tacit connivance on the part of the consul?

24. Does not a general sentiment prevail on the subject, that the consul ought to connive at its evasion?

25. Have you ever heard of an instance in which such connivance was given by me?

26. Have you ever heard of an instance in which, knowing or hearing of any attempt or intention to evade this law, I have failed to take active measures to enforce its observance?

27. In the whole circle of consular duties, do you know of one in regard to which a consul, capable of sacrificing duty to personal considerations, would be so sure to evince such disposition?

28. The course pursued by me on divers occasions in cases wherein sailors or mariners of subordinate grade were parties against ship-masters, has it not, to the best of your knowledge and belief, come in direct conflict with the universal sentiment among American merchants and ship-masters at this place, and been deemed highly prejudicial to their interests?

29. With the exception of the course pursued by me on the occasions referred to in the last question, have you ever heard of any official act being imputed to me, that, by any American merchant or ship-master of respectable character, was deemed to be objectionable?

30. The nature and extent of your acquaintance and intercourse with American merchants and ship-masters, and with merchants and ship-masters of other nations, associating with the former being considered, is it, or is it not, in the highest degree improbable, that a single imputation of the kind mentioned in the last question could have been brought against me without your hearing of it?

31. With regard to the cases excepted in question 28, wherein sailors or mariners of subordinate grade were parties against ship-masters, has not my course been the reverse of that which was recommended by considerations of personal convenience or interest?

32. In such cases, have you ever known an instance in which I failed to pursue the course dictated by my own judgment, or to prove utterly regardless of who the parties might be, or who might take an interest in the subject; or what opinion might be entertained as to the propriety of my course by my countrymen, whether friends or strangers to me?

33. From the knowledge which you possess of the mode in which slave-trade operations are conducted and talked of here, do you believe it possible that the consul of the United States at this place should be, in any way, directly or indirectly, concerned or interested in that business, without its coming to your ears?

34. Until the charges to that effect, recently made in the newspaper press of the United States, had you ever heard that the idea of my being in any way concerned or interested in the slave-trade had ever entered the head of any one?

35. Has any ground whatever for any such belief ever presented itself to your mind?

36. Has any suspicion of the sort ever crossed your mind?
37. Now, that the charge has been made, do you attach any credit thereto?
38. Do you positively disbelieve it?
39. Have you ever known an instance of a "false bill of sale of a vessel," or of a fictitious document of any sort, having been granted by me, or having issued from my office?
40. Have you ever heard of any such instance?
41. Do you believe that any such instance ever occurred?
42. Since this consulate has been held by me, have you ever known an instance of a vessel, which had arrived at this port under a foreign flag, having exchanged it for the flag of the United States?
43. Have you ever heard of any such instance?
44. Do you believe that any such instance ever occurred?
45. Since this consulate has been held by me, have you ever known an instance of a vessel's leaving here under the American flag, whether for the coast of Africa or any other part of the world, which had not as absolute and perfect a right to leave, and to be exempt from all consular interference in so doing, as any packet that ever cleared for the port of New York, or any sugar-laden ship that ever cleared for "Cowes and a market?"
46. Have you ever heard of any such instance?
47. Do you believe that any such instance ever occurred?
48. Have you ever known an instance of any infraction or evasion of any law of the United States taking place through my connivance, or with it?
49. Have you ever heard of any such instance?
50. Do you believe that any such instance ever occurred?
51. Suppose a vessel to leave Havana under the Portuguese or any other flag, to be employed in the slave-trade; and suppose said vessel to be provided with a number of all the forms known to you as being used in the American consulate at this place—said forms being signed in blank by the consul, and also sealed with the seal of the consulate, "to be filled up at pleasure by the person in command of that vessel:" can you conceive a single use that any of such blank forms could be put to?
52. Suppose an occasion to arise, in which it should be desirable to make such vessel pass for an American vessel: can you conceive any possible way in which any or all of said blank forms could be made to serve that purpose?
53. To the best of your knowledge and belief, has any vessel, under the flag of the United States, ever cleared from this port for the coast of Africa, or any other part of the world, which it was competent to the consul of the United States to refuse to deliver the papers of, upon the demand of the master, or to interpose any other hindrance to the departure of?
54. To the best of your knowledge and belief, has any vessel, under the flag of the United States, ever cleared from this port for the coast of Africa, or any other part of the world, which, had she been under the British flag, (all other circumstances being precisely the same,) it would have been competent to the British consul, under any British law, to refuse to deliver the papers of, upon the demand of the master, or to interpose any other hindrance to the departure of?
55. To the best of your knowledge and belief, has there ever been any more mystery or concealment at the consulate of the United States, in regard

to vessels destined to the coast of Africa, than in regard to those destined to New York or to "Cowes and a market?"

56. To the best of your knowledge and belief, has there ever been the slightest hesitation on the part of the consul of the United States, or at his office, in answering any inquiry of yours concerning any occurrence that might there have taken place, or in imparting to you any information which might be there possessed in regard to the sale or destination of a vessel, or any other particular concerning her?

57. To the best of your knowledge and belief, did or did not the same utter want of reserve prevail at the consulate of the United States towards the British commissioners on the slave-trade and their secretary, until this state of things was reversed, with respect to them, in the month of November, 1836, in consequence of a communication which they addressed to the consul?

58. To the best of your knowledge and belief, was or was not the secretary to the commissioners in the habit of paying frequent visits to the American consulate, kept in the same house where they had their office?

59. To the best of your knowledge and belief, did or did not the said secretary ever fail to obtain from the vice-consul, as a thing of course, answers to any inquiries he might see fit to make?

N. P. TRIST,

NOVEMBER 9, 1839.

[Enclosure No. 3.]

HAVANA, *November 15, 1839.*

SIR: To the interrogatories contained in your letter of the 9th instant, I reply as follows:

1. To the first: Never.
2. To the second: Never.
3. To the third: Never, until such imputations appeared in the public papers.
4. To the fourth: I do not.
5. To the fifth: Most positively.
6. To the sixth: The very best, arising from our long official intercourse and private intimacy.
7. To the seventh: Nothing.
- 8 and 9. To the eighth and ninth: Never, except by the journalists of the United States, and in papers presented to the British Parliament.
10. To the tenth: On account chiefly of the latter, viz: what is contained in the parliamentary papers, I probably should have deemed it deserving of sufficient credit to lead me to inquire into the truth of the imputation.
11. To the eleventh: Certainly not.
12. To the twelfth: The very reverse—perhaps to a fault.
13. To the thirteenth: By no means.
14. To the fourteenth: None.
15. To the fifteenth: Never.

16 and 17. To the sixteenth and seventeenth: From your general as well as your official character, I am convinced that you would spurn the idea of making, or suffering to be made, any overcharge in your consulate; nay, I perfectly remember, that, shortly after your arrival here to take possession of the consulate, certain fees then charged were reduced, and the

excess which had been received subsequent to your appointment was returned to the houses by which it had been paid.

18. To the eighteenth, I reply : Never.

19. To the nineteenth : I have not ; on the contrary, I should say that, for the maintenance of the rights of your country and fellow-citizens, you were sometimes disposed to show fight a little more hastily than was required.

20. To the twentieth : I have heard Americans, who supposed themselves injured by the Government or individuals of this place, complain that you did not take up their cause ; but I am certain that you never refused to do so when they had justice on their side. In fact, I remember instances in which Englishmen and Americans being jointly implicated, we have worked hand in hand to serve them, and that your aid on such occasions was most willingly and efficiently given.

21. To the twenty-first : Undoubtedly.

22. To the twenty-second : There is.

23. To the twenty-third, I answer : I should think so.

24. To the twenty-fourth : I conceive there does, except among those to whom connivance at any evasion of the laws is hateful.

25. To the twenty-fifth : Never.

26. To the twenty-sixth : No.

27. To the twenty-seventh : I do not.

28. To the twenty-eighth : It has. Your determination to establish equal justice between shipmasters and their seamen, adopted from your very first arrival, I consider to be the foundation of all the clamors raised against you.

29. To the twenty-ninth : With that exception, I have not.

30. To the thirtieth : I do not think it could.

31. To the thirty-first : Undoubtedly.

32. To the thirty-second : Never ; I consider you, in the administration of justice, to have pursued, without fear or favor, that course which, in your conscience, you believed right.

33. To the thirty-third, I reply : Utterly impossible.

34. To the thirty-fourth : Never, never. Had any one here started such an idea, he would have been laughed at by the respectable portion of the community, and by all your friends whose indignation was not raised by the iniquity of such an imputation.

35, 36, and 37. To the thirty-fifth, thirty-sixth, and thirty-seventh : Not the slightest.

38. To the thirty-eighth : I disbelieve it *in toto*. I know it is false.

39. To the thirty-ninth : Never.

40. To the fortieth : I never heard it here ; but I have seen it stated in papers presented to the British Parliament that you had granted " false bills of sale for vessels."

41. To the forty-first : I feel a delicacy in contradicting assertions thus put forward ; but I conceive there must be some misunderstanding in the matter, or that the bills of sale referred to were forged ; for I am sure that you never, in your life, executed a false document.

42, 43, and 44. To the forty-second, forty-third, and forty-fourth, I reply, that, so far from your having ever suffered a vessel, under foreign colors, being here transferred to the American flag, (as I have known to be done by consuls of the United States in other ports,) you have completely set your face against such transfers ; and, in some instances, parties requiring them have held you responsible for not agreeing thereto.

45, 46, and 47. To the forty-fifth, forty-sixth, and forty-seventh : I am not sufficiently acquainted with the laws of the United States to say whether you could or could not, under the circumstances under which American vessels have left this port for Africa, have prevented their departure ; but I presume not, as vessels, under precisely similar circumstances, have been suffered to depart direct from the United States for Africa.

48, 49, and 50. To the forty-eighth, forty-ninth, and fiftieth, I answer : That I am convinced you would not wittingly do or suffer such a thing.

51 and 52. To the fifty-first and fifty-second : The forms used in the American consulate are known to me ; and I am not aware that any of them could be filled up so as to be put to such a use as you allude to ; certainly not to give an American character to the vessel of any other nation : though, perhaps, the blank certificates might be so filled up as to deceive ignorant or inexperienced persons on these points.

53. To the fifty-third : I repeat that I am not sufficiently acquainted with American law to answer the question ; but my impression is, that an American consul has no legal authority to detain a ship's papers, or put obstacles in the way of her departure from the place of his residence, whatever her cargo or destination.

54. To the fifty-fourth : I know of no British law by which it would have been competent for a British consul to refuse to deliver the papers of a British vessel, when demanded by the master, or to interpose any other hindrance to her departure from the port of his residence, to whatever place she might be bound, or whatever cargo she might have in ; but, in the event of British vessels clearing out here for the coast of Africa, laden with articles usually shipped for the purpose of purchasing slaves, (as several American vessels have done,) it would be his duty, acting under instructions given by Mr. Canning to the British consul at Bahia in the year 1825, "to discourage such undertakings, and report to the Secretary of State the names, together with a particular description of such Englishmen as might be engaged in them." It would also be his duty, I conceive, to do the same if such vessels, though in ballast, appeared (like the Baltimore clippers that have gone from hence to Africa) to be of a class likely to be turned to ulterior slave-trading purposes.

55. To the fifty-fifth query, I reply : To the best of my knowledge and belief, there has not.

56. To the fifty-sixth : I have always found the utmost readiness on your part to answer my inquiries on the subject.

57. To the fifty-seventh : I have no means of answering this question positively. I should think not.

58. To the fifty-eighth : The British commissioners at one time had their office under the same roof as your own ; and I then frequently saw their secretary conversing with your vice-consul.

59. To the fifty-ninth, I reply : I should think not ; but I cannot speak positively to the point.

I have the honor to be, sir, your most obedient servant,

C. D. TOLMÉ.

N. P. TRIST, Esq.,

Consul of the United States, Havana.

I certify that the above is a true copy :

C. D. TOLMÉ.

HAVANA, November 25, 1839.

Mr. Trist to Mr. Forsyth.

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, January 23, 1840.

SIR: With a view to answer an inquiry in regard to the sale of two American vessels which were despatched from hence to the coast of Africa about a year ago, I was, last evening, engaged in turning over the leaves of the record-book of this office, appropriated to bills of sale, when my eye was caught by one that made me aware of an omission in the account given by me (No. 65, January 20, 1839) of the case of the ship "Venus." This, I hasten to supply.

On turning to that account, it will be perceived that no mention is there made of the sale of the "Venus" to William M. Phillips; but only of his having been appointed master by William Wallace, the master who brought her here, and endorsed as such upon the register.

In the record-book, however, I find that subsequently to the endorsement of Phillips on the register, (which endorsement was made on the 9th of August, 1838,) a bill of sale to him was executed on the 23d of August, 1838, by Charles Drake & Co., as attorneys of Lambert Gittings, of Baltimore, under letter executed on the 9th of July, 1838, before John Gill, notary public. This letter of attorney (the original) I now transmit, (enclosure No. 1,) retaining a copy thereof. On reference to the semi-annual return, it will be seen that the day on which this bill of sale was passed is the same on which the vessel was cleared at this office by the delivery of the register to Phillips. The vice-consul states, further, that, so far as his recollection can be relied on, the sale took place subsequently to said clearance.

The consequence acquired by the case of the "Venus" renders it particularly mortifying that, in making a statement of that case, such an omission should have occurred. This mortification would be extreme, were it not perfectly evident that the omission cannot have been intentional. In the first place, no motive whatever, that will bear examination, can be conceived for a wish, on the part of a consul, to conceal the fact that any vessel was thus sold; and, in the second, admitting a motive of the kind to have existed, it must be shown to have been of very extraordinary weight, indeed, before it can be supposed to have overbalanced the one objection, (to say nothing of any other,) the utter hopelessness of suppressing such a fact in regard to a case which I, at the very moment, was suggesting a governmental inquiry into.

I will add a word of explanation in regard to the manner in which this omission occurred. In my letter of September 7th-12th, 1838, on the subject of the archives business, I mentioned an attack of fever experienced by me a few weeks previously. That attack had come on in the night of the 17th-18th August, as I ascertain from the endorsement made by me on a note from the vice-consul under date the 21st of that month; which note (the original) I now transmit, (enclosure No. 2,) retaining a copy.

(It is transmitted, because, at the same time that it relates in part to the very subject now before us—the ship "Venus"—it also speaks for itself as a faithful illustration of the ordinary current of business in my office; of the constant communication between the vice-consul and myself in relation thereto; and of the utter falsity of the so bandied charge of neglect of its duties—a charge which, having no other *origin* than the enmities excited

by the earnestness with which I have devoted myself to them, has no other basis than the mere absence of my body from the consulate at a time of day when there is a natural tendency to its becoming a daily lounge, and consequent disappointments in seeing me on the part of persons who, either without having any business at all with my office, or such business only as it is indispensable should be discharged by an assistant, would consume the best part of every day, and thus prevent my attention being given to the subjects that demand it.)

From these dates it will be seen that the 23d of August, 1838, the day on which the bill of sale of the "Venus" was passed, was one of the first days of my convalescence from an attack of fever, occasioned entirely by mental fatigue in the discharge of my duties. The fact of this sale was, no doubt, mentioned to me immediately after. Perhaps, even the certificate authenticating the deed was signed by myself. When, however, six months afterwards, in the ensuing January, I had occasion to write a statement of the case, the sale had altogether escaped my recollection; and it so happened that, in the inquiries made by me on that occasion, of the vice-consul, in regard to the particulars and dates, which could be positively ascertained only by reference to the entries made by him, nothing occurred to suggest to him the necessity of reminding me of the bill of sale which had been passed subsequently to the material occurrence (the appointment of Phillips as master, and the corresponding endorsement upon the register) whereby the custody of the vessel, together with the right to demand and receive her documents, had been first transferred to the same individual.

To judge from the circumstances, this is the obvious explanation of my omission on that occasion to mention the fact of the sale in connexion with the other particulars stated by me. Had it been adverted to by me, it would have been mentioned; and had the vice-consul been aware that it was not thus adverted to, he would have called my attention to it.

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

Hon. JOHN FORSYTH,
Secretary of State.

[Enclosure No. 1.]

UNITED STATES OF AMERICA, } to wit:
State of Maryland,

Be it known that, on the ninth day of July, one thousand eight hundred and thirty-eight, before me, John Gill, notary public, dwelling in the city of Baltimore, in the State aforesaid, came Lambert Gittings below named, and acknowledged the following letter of attorney to be his act and deed.

In testimony whereof, I have hereunto set my hand, and affixed my notarial seal, the day and year aforesaid.

JOHN GILL, *Notary Public.*

Know all men by these presents that I, Lambert Gittings, of Baltimore, owner of the ship or vessel called the Venus, of Baltimore, of the burden of 466 tons, or thereabouts, whereof William Wallace is at present master,

do make, constitute, and appoint, Messrs. Charles Drake & Co., of Havana, my true and lawful attorneys, for me and in my name to receive and give receipts for the balance of account due to me from Edward Gantos and J. Vieira dos Santos; and, on payment thereof, to transfer said ship Venus and appurtenances, in due form of law, to José Mazorra, or such other person or persons as the said Edward Gantos and J. Vieira dos Santos may direct; with power also, as attorney or attorneys under them, for that purpose to make and substitute, and do all lawful acts requisite for effecting the premises: hereby ratifying and confirming all that my said attorneys, or my substitute or substitutes, shall do therein, by virtue hereof.

In witness whereof, I have hereunto set my hand, and affixed my seal, the ninth day of July, in the year of our Lord one thousand eight hundred and thirty-eight.

LAMBERT GITTINGS, [L. s.]

Signed, sealed, and delivered, in the presence of

JOHN GILL, *Notary Public.*

WILLIAM H. JAMS.

[Enclosure No. 2]

HAVANA CONSULATE,

August 21, past 2 o'clock, P. M.

MY DEAR SIR: The enclosed officio* I opened, and read the contents; I am surprised at the result of the investigation.

The seamen of the Kremlin are very anxious to ship; they fear getting sick; but, on inquiry, they want to go in the ship "Venus."† The contract runs thus: "From Havana to one or more ports on the Gold Coast of Africa, and from thence to Bahia, where the voyage ends."

Captain Phillips, of Baltimore, commands the "Venus." He tells me that he gives her up on her arrival at Bahia, and gives more wages in consideration of the crew being discharged at Bahia.

The men of the Kremlin are willing to take their chance of recovering the wages due them; it appears that the \$40 per month to go in the ship "Venus" is the inducement.‡

The schooner "North America" is liberated, or, otherwise, the supercargo.

Captain Foque says he is still willing (as I understood him) to settle with the crew as you say, but must protest.

I hope you are much better. There is nothing new.

Your obedient servant,

J. A. SMITH.

N. P. TRIST, Esq., *§c.*, *§c.*

* The "officio" here referred to was the official letter from the Captain General, under date August 21, 1838, informing me of the decision in the case of the men of the brig "Pearl," of Boston.—N. P. T.

† This remark has reference to a rule which I had established, that no sailor who had come under my cognizance as an American citizen should ship in any vessel for the coast of Africa, whether under the American flag or not. It was a stretch of power on my part; but it was indispensable to prevent them from constantly putting their necks into the halter.—N. P. T.

‡ They were not allowed to ship in her, and were exceedingly wroth on the subject.

Mr. Trist to Mr. Forsyth.

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, February 29, 1840.

SIR: The recent arrival from the coast of Africa, of the brig "Douglas," of Duxbury, Alvin Baker master, has reminded me of some documents which I had prepared, so far back as November last, for the purpose of transmitting them; as would long since have been done, had they not, though repeatedly thought of, yet been as often driven from my mind by the numerous objects claiming my attention. The delay originated in my wish that they should be accompanied by the statement of John Hutton, mate of the brig "Mary"—a very intelligent, and, so far as I could judge, truth-telling young mariner. For the purpose of reducing to writing a number of particulars mentioned by him in conversation, I repeatedly appointed a time for him to come to my office; but he always found me engaged in a manner that rendered a postponement unavoidable; and, finally, he left without its having been possible for me to carry that design into effect.

Of the documents now transmitted, one (enclosure No. 1) is a literal copy of a declaration and protest, made by David Tomlinson, master of the brig "Mary," of New Orleans, against the commander of her Britannic Majesty's brig Forester, by whom, as will be perceived, he was captured and taken to Sierra Leone; his detention in the deadly climate of the coast of Africa being thereby sufficiently prolonged (particularly when connected with the vexation and anxiety of mind consequent thereon), to turn the scale against his escape with life from the risk encountered by all white men who venture into it. This protest, as will be seen, is signed by the mate, the second mate, and three of the crew. I personally examined the mate (John Hutton) and two of the crew, (John Boaln and John Irvine) and the result was, that the statements contained in the protest were corroborated as fully as they possibly could be by their testimony.

A second (enclosure No. 2) is the log-book of the "Mary," kept by the aforesaid John Hutton, from her leaving this port, on the 21st of June, to her return, on the 12th of November, 1839. In this will be found some of the details obtained orally from the mate and seamen, and which serve to complete the outline begun in the captain's protest. On the 18th of August, when in sight of Cape Mount, (which is within 25 or 30 miles of the Gallinas, where her cargo was to be delivered,) the "Mary" was captured by the Forester, and taken to Sierra Leone. The prize court, on the ground that she was an American vessel, refused to exercise jurisdiction over her. Of this they were informed at 3 P. M. on Saturday, the 24th of August; at which time they received orders to leave port by 1 P. M. on the day following, with a notice that, if they delayed beyond that time, they should be seized. The Mary's papers were yet in possession of the commander of the Forester, as were also five of her crew; and she had not a proper provision of either wood or water for putting to sea. At half-past 3, possession of the "Mary" was restored to Captain Tomlinson by an officer who visited her, bringing with him a portion of her papers and four of her crew. At 10 A. M. on the following day, an officer came on board with the remainder of the vessel's papers, but without the fifth man (the steward) belonging to her; whereupon, in consequence of the notification from the court, they weighed anchor, and made all possible speed out of the harbor; putting to sea in so unprovided a state, with regard to both wood and water, as no

vessel should venture out in. On the 30th August they reached Gallinas, where Captain Tomlinson wrote, and they signed, the protest; he being then on shore with the fever, of which he subsequently (the 23d September) died, on the return voyage.

Another American ship master, who was detained at Sierra Leone, contrived to make his escape from thence in the "Mary." He also died on the passage.

Among the particulars stated by the mate, (in presence of the men, who likewise affirmed it,) was one which bore the stamp of truth upon its face, in a manner unsuspected, probably, by the narrator; who can scarcely be supposed to have been aware that, among the articles of "equipment," which, under the treaty stipulations between Great Britain and Spain, are sufficient to condemn a Spanish vessel, handcuffs are comprised. The occurrence, as related by him, was as follows: "One of their men (of the prize-crew) came aft with a pair of irons, which he had found in the bows—such as our vessels always carry, in case a man proves unruly. We had no occasion to use them, sir; but it is as well not to be unprovided. He flung them on deck: 'There, (says he,) there! that's enough to condemn ye, and make ye our lawful prize.'" Summary extension, this! to vessels under the flag of the non-consenting, refractory American Government, of a provision which exists as to Spanish vessels, in consequence solely of the free consent and agreement of the Spanish monarch! The incident, however, is in perfect keeping with all that we here learn of the body of doctrine whereby the department of these African-station cruisers, and of some nearer home, is governed towards vessels under the American flag—whether rightfully, or fraudulently; whether pursuing an employment, for which even American cruisers would have no right to interfere with them, or one which, to an American cruiser (but to an American cruiser *only*) would afford just ground for capture. From all accounts, officers and men seem to be full of the notion that the rules which they have obtained Spanish leave to enforce upon Spanish vessels apply to American vessels, all the same; that if one cannot carry a cooking apparatus or a water-cask beyond a certain size, neither can the other; and that the same right vests in them to search either, and turn the cargo upside down, in quest of *prohibited articles!*

A circumstance which added greatly to the weight of the testimony given by these men, was, that they spoke without asperity of their captors. The prize-master, (McPherson,) they informed me, (upon being closely questioned, with a view to discover their frame of mind,) was not a member of the temperance society. He did drink, but not to excess. He did not get drunk, as did the rest of the prize-crew; and he treated them well. "He was doing his duty, sir: he could not help it."

Before quitting the subject of the "Mary," I will add, that (although the violation of principle in regard to the right of search would be the same, had she been the sharpest of clippers, with her hold full of slaves) the treatment experienced by her is the more inexcusable, from her being a clump brig, utterly unsuitable for a slaver, and manifestly fit for nothing but the employment in which she was engaged—the carrying of cargo; and that, too, a cargo which, very possibly, might have been made up entirely (excepting only the aguardiente and tobacco) of merchandise brought to this place from England, which all concur in saying is exported, all the year round, direct from England to Africa; and supplies of which are constantly furnished to the slave-factories from Sierra Leone itself—the

very seat of that prize-court before which the "Mary" was dragged when within sight of her port of destination. So manifestly did this "clump," dull, merchant character, belong to the vessel, that I deem it in the highest degree probable that she was so set down, even in the reports of those agents of the British Government here, who find it convenient to swell their lists of "American slavers," by embracing in them every vessel under our flag that clears for Africa; although it may be ever so notorious that she is employed solely to deliver a cargo there, which an English vessel may carry from Liverpool, but which a poor Spaniard dare not be freighted with. Those reports, not unfrequently, I believe describe the appearance of the vessels.

Enclosure No. 3 is a letter addressed to me, on my request for a written statement, by Captain William A. Hickling, who, it will be seen, refers to "the Hon. William Prescott and Professor John W. Webster, of Cambridge." On meeting him last evening, he told me that he had taken, or was about to take, a cargo for the coast of Africa; and wished to be informed whether the American flag could count upon protection there now, and an American ship-master, upon having his vessel overhauled by his own countrymen, who had a right to examine him, instead of having to submit to insult from foreigners, who have none.

The arrival of Captain Baker, which has proved the cause of this communication being made now, has disclosed another of these cases, if not of consummated, at least of more than half, murder upon an American citizen engaged in as perfectly lawful a calling as if he had gone with a cargo of sugars to the Baltic. A few months ago he left here, as hale a looking young mariner as one would wish to set eyes on; and the other day, (he, too, having come under British guardianship, and having, consequently, his detention in that deadly atmosphere prolonged sufficiently to determine the point against him,) his skeleton came limping into my office with the help of a crutch, to tell me that he was "getting better," but had been very sick, and in that state had had to navigate all the way from Curaçoa, with but one man before the mast fit for duty!

I wished, from the bottom of my soul, that I could put him at that instant on the floor of the House of Representatives, to gasp out his tale into its ear.

A statement of his case (which is one peculiarly entitling him to protection and to sympathy) shall be transmitted as soon as he is well enough to make it. He is in the hands of an excellent physician, who reports that he is getting better.

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

HON. JOHN FORSYTH,
Secretary of State.

[Enclosure No. 1.]

This is to certify that I, David Tomlinson, captain of the American brigantine Mary, of New Orleans, formerly of Philadelphia, do claim damages of her Britannic Majesty's brigantine-of-war Forrester, commanded by Wm. Bond, in behalf of the owner of said brigantine Mary, of New Orleans—say

five hundred dollars per day, from twelve o'clock the eighteenth of August, to the twenty-ninth of the same month at twelve o'clock; which time I was in as good position to make the Gallinas as when taken prisoner by said Forester.

1st. I, David Tomlinson, having taken command of the abovenamed brigantine of New Orleans, the property of Mr. Peter Sabate, lying in Havana, took a freight from the house of Blanco & Caballo, merchants in Havana, to proceed to the Gallinas, from thence to Cape Lopez, for the sum of three thousand eight hundred dollars.

2d. Took on board a general cargo for the abovenamed port or ports of the coast of Africa, and cleared the said brigantine at the United States consul's office in Havana, to proceed to the Gallinas.

3d. Left Havana on the 21st of June, 1839 (say eighteen hundred and thirty-nine) and pursued my course for the said Gallinas; and on the eighteenth of August, 1839, (say eighteen hundred and thirty-nine,) I sighted Cape Mount, which is twenty-five or thirty miles from the abovenamed port; and while doubling the above named cape, the said Forester bore down on the brigantine Mary, and fired a cannon for me to heave to. I discovered she hoisted the English flag, so I brought the brig to. She then lowered a boat, and the commander and an under officer, with six or eight seamen, [boarded me] and demanded my papers, which I put in his hands. He commenced with the bill of sale and a copy of the vessel's register, stating that he did not recognise that signature as from the consulate of America in Havana, as he well knew the man had been removed from office. I told him, if he took any steps with the vessel contrary to law, I should reclaim damages, as she was despatched at the American consul's office in Havana; and that I hoisted the American flag in answer to his. I also showed him my bills of lading, with the ship's papers; but he was not satisfied with seeing them. But he sent his under officer to tear up the hatches, and he went below and turned my cargo upside down, broke or damaged ten boxes of liquor-cases, which fell in my hands at nine dollars each, stating, at the same time, that I need not give myself any uneasiness about the cargo; that it and the vessel was his, and I was his prisoner; and that he would put my passengers on the beach, and send me and my men to prison at Sierra Leone—I still telling him to beware of his proceedings; that America did not allow her flag to be treated in that manner. He said he did not respect me, my flag, nor my papers; that I was his prisoner, and the vessel his; to be quiet, and I would meet a better end. He then left on board Mr. Macpherson and six men, all armed. About 5 o'clock he sent a boat with an order for me to be brought on board. I declined, stating that I was captain of the vessel and responsible for the cargo; but I was told it was no use—go I must. So they took me on board the Forester. He (the commander) took me below, and tried his best endeavors to induce me to say the vessel was Spanish property, by offering me bribes of various kinds; and, at last, he told me if I would say she was Spanish, I should put what she and her cargo would bring, *with all the passengers' money,** in my pocket. I answered, that the vessel was American property, and that all England could not induce me not to protect it as such. He then said he would hang me. I told him I did not fear his threats; that, in hanging me, he left my country to revenge my death; and death was preferable to me

* See log book, (enclosure No. 2,) Aug. 21, 1839.—N. P. TRIST.

to dishonor. He then found he could neither bribe nor frighten me; so he sent me on board the *Mary* again, quite late in the evening, when I found the cargo broached, and all his men and some of mine in a state of intoxication, knocking and tearing about the vessel with their cutlasses, like so many pirates. I went on deck to order my men below; but I was told by those placed on board that I had no business on deck, and that I must go below, for I was a prisoner, and that the vessel belonged to them and their commander. The next morning we were at sea, out of sight of land; the said Forester in company with us. He sent a boat on alongside, demanding my passengers; but they did not wish to go, stating that they did not like to move their trunks and baggage until they knew where they were to go; but they were told to obey orders, by the officer on board. So I wrote a note to the commander, requesting his permission to allow them to return on board the *Mary*. So he asked them which they preferred; they answered, the *Mary*. So he returned them, with a demand for my men; excepting my first mate, who went on board. He then took them, one by one, to make them say the vessel was Spanish property, stating to them that the vessel would go to Sierra Leone, her cargo to be sold for her benefit, and I be thrown in prison, and they would lose their wages if they did not declare she was Spanish property; but if they did, they should have their pay. But the first told him he could not be frightened to take a false oath; and he was sent forward, and put on two-thirds allowance; and the second the same. He then took the cook in hand, and he, through malice, stated that he knew her to be Spanish property; he having told the men often that he would do me some damage if he could get an opportunity, because I made him clear the cook-house. So the commander sent him below, ordering the steward to give him wine and plenty to eat. He then took another one, (a boy of Irish parents,) and told him he should do this, that, and the other with him, for he shipped as an American, and was Irish; but the boy told him he was born in America, and did not fear him nor his threats—that he could not take a false oath. So he was sent forward with the other two. He then took an Englishman, who, it seems, had told his story to those on board the *Mary*, when in a state of intoxication, the night before; for I never knew he was an Englishman before.

JOHN HUTTON, *Mate*.

JOHN THOMSON, *2d Mate*.

JOHN BOALN, *Seaman*.

his

JOHN x ALLEN, *Seaman*.

mark.

JOHN IRVINE, *Seaman*.

[Enclosure No. 3.]

HAVANA, November 16, 1839.

SIR: Agreeably to your request, I appear before you with a written statement of the manner in which I was treated by the British cruisers while on my late voyage to the western coast of Africa. I commanded a schooner named the *Octavia*, of New Orleans, which was chartered by a house of this city last March for the sum of \$4,000, to carry a cargo consisting of sundry articles (such as rum, tobacco, and dry-goods,) to be de-

livered at Accoa and Little Popo—places on the western coast of Africa. I was properly cleared by you, sir, with the papers of my vessel all correct, and my officers and crew Americans. I had on board four Spanish gentlemen, as passengers. When I arrived in the latitude of about 5° north, and between the longitude of about 15° and 20° west, I fell in with a British brig of war named the Acorn, which bore down on me with a press of canvass—the wind light at the time; and when within a distance of about two miles of me, he lowered away his boat, well manned, and made for me. When pretty close he fired a bow-swivel, which sent a ball through my flying jib, and then, being pretty close, bade me heave to—the schooner at the time not going through the water more than a knot per hour. In a minute after he was alongside, when a lieutenant and some six or eight men with drawn sabres and pistols pounced on my deck and took command. I underwent a scrupinizing examination: all my papers investigated; my after-hatch opened and searched; my main hatch being barred and buttoned down at the time, to protect the cargo. The officer said that he could make a prize of me if he liked; found fault with the size of my spars, (which, by the by, were rather small;) that my water casks were large, &c. He then demanded to see and examine the trunks of my passengers, and to search my cabin. But this I resisted, and told him he could only effect this by force of arms; and that I should consider it an atrocious and unwarranted piratical act, and should immediately protest against him, proceed to the United States, and seek redress of my Government. This argument had its due weight; for he desisted from any attempt: and after a decent lecturing which I gave him, and which he did not much relish, he took his departure. I had his company all the next day, and the following night we parted.

My next adventure with these refined scoundrels was at Popo. I had the honor of a visit from the commander, and his first lieutenant, of the British cruiser named the Termagant. At the time, I was lying on a bed of sickness on shore; my mate officiated. He informed me by letter of the visit; that much fault was found with my vessel; that she looked very suspicious; examined my papers and my hold; said that he could take me, but that the vessel was not of sufficient value. A British merchant brig was lying at the time in the roadstead taking in palm-oil; on board of which he placed a boat well manned, to watch my motions. When I in part recovered from my sickness, I took in sand ballast, and proceeded to the Havana. In consequence of many calms and light head-winds, I found myself getting short of provisions, which obliged me to beat to windward and endeavor to get to some of the Cape de Verde islands; and when in the latitude of about $4\frac{1}{2}^{\circ}$ north, and longitude of 12° west, I fell in with a schooner which proved to be a British cruiser (name I do not recollect) bound for Sierra Leone. He bore down to me, bade me shorten sail and heave to, or he should fire into me; when a lieutenant and a number of seamen, all armed, boarded me and took command. At the time I was lying very sick in my cabin. He investigated my papers and searched my hold; said he was sorry he had not fallen in with me before; that my cargo he knew must have been Spanish property, and that I was aiding and abetting slavery. He was pretty insolent on my requesting him to spare a little bread. He said he could not supply me, he then being near his port. My papers being entirely correct, and crew answering to the crew-list, he let me pass. That a vessel any way suspicious should be examined, is per-

feally right; but after the papers are found correct, I consider a British man-of-war has nothing further to do with an American vessel; for, so long as an American vessel is not detected in the act of slaving, or with slaves on board, what has a British vessel of war to do with us? Is there any law, I ask, sir, specifying the sized casks we are to carry? the number or the shape, size or rig, of our shipping? Is there any law prohibiting us carrying out Spanish property, or the property of any other nation, to any quarter of the world, *not excepting Africa*? We are a nation of merchants, and, as long as we can find a good sale for our shipping, or obtain a good freight, are we to be prevented performing our contracts by a foreign Power? If there is any doubt of the legality of our transactions, why not station our own men-of-war, whose duty it should be to investigate vessels found sailing under our flag? What is John Bull to us? Are we not an independent nation, and our right to cruise the ocean acknowledged by all nations? Our beloved country has certainly degenerated, or our Government would not look thus tamely and indifferently on the barefaced and atrocious proceedings of the pirate of the sea, whose actions are cloaked under a British flag and patent—a mere dissimulation shielded by the term *philanthropy*, when it actually is known that a greater part of the slaves carried into Sierra Leone find their way to Gallinas, and there sold and reshipped; a proof of which is this—that slaves have been taken and retaken no less than five different times. Besides this proof most of the goods shipped to the African market generally, and in particular to the British colonies, are sent there to sell to the slave-dealers, or as orders from slave-merchants. It is well known that the very individuals who compose the court of Sierra Leone import immense quantities of British manufactured goods to supply the market of Gallinas. There is no denying it. This British zeal, *alias* philanthropy, is all a mere humbug. The English navy is getting well drilled, while she ruins Spain and her colonies to bring her East India produce into market. There is certainly some of the most unprincipled men manning and commanding some of the African cruisers. I could mention some of the blackest transactions committed on individuals, whose persons have been stripped, money found and purloined; and this atrocious act warranted by a British officer, *alias* cloaked pirate. Even in the West Indies we are examined, and, in a number of cases, insulted by these overbearing men-of-war. I know a certain master, who is now here, who lost \$500 on the sale of his cargo, by being detained some hours by the British brig-of-war named the Snake, who kept the vessel so long *hove to*, that the current swept her to leeward of her port; and it was two days ere she could regain her original position, which was just off Moro castle. Had he not been fired at repeatedly, and in danger of being killed, he would not have brought to at the time. This detention, however, was the means of frustrating his market. This brig is called the Rebecca, and has any thing but the appearance of suspicion. I hope some prompt measures will be speedily resorted to by our Government, if it is only for the honor of our flag, handed to us unsullied by our patron saint, Washington!!! When our flag is trampled and spit on, as has been the case on the African coast; when our papers and our consular certificates have not been considered legal, and not a sufficient guaranty for the protection of our vessels and property, it is time some measures should be adopted to enforce that respect due to our nation, second to no other on the face of the globe.

Hoping this written statement, with my views on the subject, will meet your approbation,

I am, sir, with respect, your obedient servant,

WILLIAM A. HINCKLING.

N. P. TRIST, Esq.,

Consul of the United States.

CONSULATE OF THE UNITED STATES OF AMERICA, *Havana :*

On the day of the date hereof, before me, Nicholas P. Trist, consul of the United States of America, personally appeared William A. Hinckling, writer of the within letter, and, being duly sworn, did declare, that the matters of fact therein set forth are truly and exactly stated. And the said deponent being by me asked what part of the United States he hails from, states that he was brought up from the age of eight years in Boston, (being a native of the island of St. Michael, one of the Azores,) and that he is there known to many persons, among whom he refers to the Hon. William Prescott, and Professor John M. Webster, of Cambridge.

In testimony whereof, I hereunto set my hand and affix my seal of office, this 27th day of November, A. D. 1839, and of the independence of the United States the sixty-fourth.

[L. S.]

N. P. TRIST.

Extract of a letter from N. P. Trist to Hon. John Forsyth, Secretary of State, dated

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, March 10, 1840.

SIR: I have the honor to transmit (enclosure No. 1,) copy of a letter addressed to me under date November 28, 1839, by Commander William A. Spencer, of the United States ship Warren, together with (enclosure No. 2, and sub-enclosure No. 1,) a copy of my reply under date the 29th of the same month.

HON. JOHN FORSYTH,

Secretary of State.

[Enclosure No. 1.]

Extract of a letter from Commander William A. Spencer to N. P. Trist, Esq., Consul of the United States at Havana, dated

UNITED STATES SHIP WARREN,
Havana, November 28, 1839.

SIR: I have received orders from our Government to cruise with this ship under my command, on the north side of Cuba, during the ensuing winter months, and to visit this harbor; the purpose of which is, to attend to, to promote as far as may be in my power, and to protect, the commercial interests of the United States.

There is reason to believe that several American vessels have been for some time, and are now, engaged in conveying slaves from Cuba to Texas. It is my object, if it be possible, to suppress this traffic, so far as citizens of the United States are concerned in it; and I shall be pleased to receive from you any information which may have come to your knowledge upon the subject.

N. P. TRIST, Esq.,

Consul of the United States at Havana.

[Enclosure No. 2]

Extract from a letter from N. P. Trist to Commander William A. Spencer, dated

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, November 29, 1839.

SIR: I have the honor to acknowledge the receipt of your favor under date of yesterday, and, upon the two subjects therein presented, to state—

1st. With regard to the employment of American vessels in carrying slaves from this island to Texas, if any such business is going on, or has recently been, it has been conducted with very extraordinary secrecy. The slave-trade from Africa is no more made a secret of (except in a legal sense) than the commerce with England, which supplies merchandise for exportation to the coast of Guinea. Its incidents and casualties—the arrivals and departures, captures and escapes—form one of the commonest topics of daily news. It is one which you cannot well avoid hearing of many times in the week. Such being the state of the case here, with regard to it, you will readily conceive what very extraordinary pains must be taken to conceal the Texian branch of the traffic, (if it do really exist,) from the fact that I have no cause whatever to believe in its existence, other than the identical one which has, it is said, been deemed by a late British traveller (and he by no means an illiberal one—the Hon. Mr. Murray) quite sufficient to justify the assertion, that the business of supplying the United States with Africans from this island is one that must necessarily exist; which conclusive reason is to be found in the fact that slaves are a hundred *per cent.*, or more, higher in the United States than in Cuba; and that a *cent per cent.* profit is a temptation which it is not in human nature, as modified by American institutions, to withstand.

The circumstances in which Texas is, at this juncture, placed, render it extremely probable, to my mind, that the introduction of blacks from this island has, to a partial extent, taken place there, from the period when her struggle with Mexico commenced. At that time, one instance of such transportation came to my knowledge, (the number, to the best of my recollection, was either a little under or a little over fifty;) and, early in the year 1836, I heard that there were grounds for believing that other cases had recently occurred. Since that time, I have not, to the best of my recollection, heard of any.

There is one point upon which I am perfectly satisfied; which is, that the exportations to Texas have been on a very limited scale; and that the collective amount cannot be otherwise than inconsiderable. On this branch

of the subject, as on every other, the most preposterous exaggerations are prevalent. A very intelligent and candid English traveller, who was here about a year ago, told me that, whilst in Paris a short time before, he had heard it stated by a person from this island, that the exportation of blacks hence to Texas amounted to *ten thousand* annually. This was, of course, immediately recorded in all note-books as part of the unquestionable statistics of the slave-trade. Now, I feel perfectly satisfied that the entire number, from the commencement to the present time, cannot amount to anything like *five thousand*. I consider it more probable that it is under than that it is over the *one-half* of five thousand.

But, whatever might be the activity of the business, it would by no means follow that our flag is engaged in it. There are reasons to cause it to be preferred; there are likewise reasons against that preference. The personal consequences of detection under the Spanish or Portuguese flag are very slight; whilst, under ours, they could not fail to be exceedingly severe. And, with regard to the risk of detection, there is no part of the world where this would be so great from an American cruiser as precisely on the line from this to Texas. In a word, I do not believe that any one purposing to transport slaves from here there, would hesitate to select one of the coasting vessels of this island for the purpose. I will add, that, if it be practicable to effect the introduction of Africans into Texas in such number as your inquiry supposes, I can see no sufficient reason why the trade should not be a direct one, instead of the supply being derived second-hand from this island. This very fact would go to show that the demand must be too inconsiderable to justify the obviously cheaper mode of supply.

Such are my impressions in regard to the subject. You are now on the spot, and can compare them with the result of your own inquiries. Any thing that I can do, to further these, will be done. In the beginning of 1836, upon hearing, as is above stated, that there were grounds for the belief that some of our vessels had been thus employed, I wrote, for the information of our ship-masters, (who evidently possessed very vague and imperfect notions concerning our legal prohibitions on this subject) a notice, which has remained ever since stuck up at the door of the consulate. To this was added, about a year after, a second notice, to make them aware of the legal prohibitions and penalties established on the same subject by the Government of Texas. A copy of these two notices is herein enclosed. They serve, if I mistake not, to make the matter sufficiently plain for any understanding; so that, if violations of the law have been committed, the offenders cannot take shelter under the plea of ignorance.

N. P. TRIST.

WILLIAM A. SPENCER, Esq.,
Commanding U. S. ship Warren.

[Sub-enclosure No. 1.]

NOTICE

It being understood that several *American vessels* have lately been chartered for the transportation of *Africans* or *black men* from this island to TEXAS—

Notice is hereby given to American ship-masters, and to all others concerned, that *any and every such proceeding* is in direct violation of the laws of the United States.

In *no case whatever* is it lawful for any American vessel to carry a *slave*, or a *black or colored person held to service or labor*, except only in going from one port in the United States to another.

Except, as just stated, no American vessel can *lawfully sail* with *any black or colored person whatsoever*, unless such black or colored person be *really and truly, to all intents and purposes, FREE*. To take or have on board any *negro or colored person whatever*, who may in *any way* be "*held to service or labor*," no matter whether such colored person be called by the name of *apprentice*, or any other, is strictly forbidden by law. The law is just as certainly violated in carrying Africans, no matter under what name, from this island to Texas, as in bringing Africans from any part of their own coast to this island.

In any case of the violation of the law, the vessel and cargo *are sure to be condemned*, if seized while on the voyage to Texas, or elsewhere, with any such colored person on board, or if prosecuted after her return to the United States. And the master and every person employed in said vessel are, moreover, subject to the *heaviest penalties*, the least of which is *fine and imprisonment for three years*, and, in some cases, amounting to DEATH.

CONSULATE OF THE UNITED STATES,
Havana, February 23, 1836.

Attention is particularly invited to the following *act* of the Legislature of TEXAS, passed for the purpose of giving more certain effect to the provision of the constitution of that country, which makes it PIRACY to introduce slaves from any part of the world, except the United States of America.

It will be seen, that to introduce into Texas any *African whatever*, or any *slave*, excepting only such slaves as were previously held in slavery in the United States, *in conformity with the laws of the United States*, subjects the offender to DEATH.

This penalty would be incurred by any one who should introduce into Texas from this island, (as well as any other part of the world,) *any AFRICAN, under any pretext whatsoever*, or any slave born in the island, whether such introduction were effected by landing directly upon the coast of Texas, or by landing within the jurisdiction of the *United States*, on the one side, or of Mexico upon the other.

CONSULATE OF THE UNITED STATES,
Havana, March 10, 1837.

Extract of a letter from N. P. Trist to the Hon. John Forsyth, Secretary of State, dated

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, March 10, 1840.

SIR: As an accompaniment to the document contained in my No. 121, of this date, regarded as illustrative of the spirit in which I have acted in relation to the alleged prostitution of our flag to the slave-trade, I transmit

(enclosure No. 1) a copy (made for transmission at the time it was written, but lost sight of in consequence of the pressure of other matters) of a letter addressed by me, under date of January 3, 1839, to Commander Benjamin Page, jr., of the United States ship "Natchez."

HON. JOHN FORSYTH,
Secretary of State.

[Enclosure No. 1.]

CONSULATE OF THE UNITED STATES OF AMERICA.

Havana, January 3, 1839.

SIR: In reply to your request that I would communicate to you any matter that might exist here, bearing upon the duties of our naval service, together with the number of American vessels now in port, I have the honor to state that our vessels, of every class, amount to fifty-nine.

Upon the other topic I have, happily, nothing to say, except that among the vessels under our flag, or provided with American papers, which your contemplated cruise may afford opportunities for visiting, some may possibly prove to be engaged in the slave-trade, either bound to the coast of Africa, equipped in the peculiar manner requisite for that purpose, or bound hitherward, with negroes on board. Of the vessels thus engaged, a few are ships of remarkably fine model and uncommon sailing properties—which belong also very generally to the rest, consisting of brigs and schooners, of burdens varying from one to two hundred tons, although sometimes above or below those points. Should you fall in with any vessel of the kind above referred to, there is more likelihood of her exhibiting her assumed American character, if kept in ignorance of yours, than if it be made known to her.

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

BENJAMIN PAGE, Jr., Esq.,
Commanding U. S. ship "Natchez."

Case of the brig "Thomas," of Havana.

[The brig "Thomas" is the vessel that was seized in the harbor of Havana by the United States ship "Ontario," (as reported in my No. 61.) This communication contains the conclusion of the case. The last of the enclosures (No. 6) is my letter to the Captain General, wherein the principle on which I had proceeded in the business is explained and vindicated.—N. P. T.]

Mr. Trist to Mr. Forsyth.

CONSULATE OF THE UNITED STATES OF AMERICA,

Havana, March 11, 1840.

SIR: Among the papers which have been long ready for transmission, awaiting only the period when I might command time for writing the ne-

necessary explanation of them, are those now enclosed; which will be seen to form a sequel to the documents in the case of the brig "Thomas," of Havana, first reported in my No. 61, December 18, 1838. To be complete, they should be accompanied by some extracts (with comments thereon, showing their absurdity and falsehood) taken by me from the protest made by Jacob S. Howell master and (pretended) owner of the "Thomas," on the 8th of January, 1839, before Don Felix Lancis, a notary public of this city; which protest forms part of the "*expediente*" enclosed for my inspection in the Captain General's letter of the 15th January, 1839, replied to by mine of the 28th of the same month. This part of the subject, however, must be postponed for the present.

Enclosures Nos. 1 and 2 are copies of notes that passed between the captain of the port and myself, in regard to the Spanish sailors who composed the crew of the brig "Thomas." They had left Havana in that vessel under the Spanish flag. At Key West the flag had been changed, without any agency of theirs; and they had returned, in the same vessel, to Havana. Here they had been arrested by order of the Captain General, in pursuance of my request, (as is shown in my No. 61,) and were in confinement. Feeling for the hardship of their case, the captain of the port interested himself in their behalf, and orally addressed to me, through my clerk, the inquiry, whether I would have any objection to their being at once liberated, instead of being kept in custody until the matter should be decided. My answer proving favorable, his note was written in pursuance of an intimation from me, and my reply led to the liberation of the men.

Enclosure No. 3 is a copy of my reply to a communication from the Captain General, (that I cannot at this moment lay my hand upon,) enclosing an "*expediente*," which consisted of a mass of documents appended to a memorial addressed to him by Capt. Jacob S. Howell, of the "Thomas;" which memorial was made up of a string of absurd inventions, in regard to the mode in which he had become proprietor of the vessel, and the purposes to which she was to be put; concluding with a prayer that he might be forthwith liberated, and his vessel be restored to him. The Captain General, in pursuance of the advice of the Auditor of War, asked my opinion upon this prayer; and my letter contains my reply.

Enclosure No. 4 is a copy of my letter to the Captain General, enclosing, in pursuance of instructions that day received from the Secretary of State, the document delivered at this office by Captain Howell as the navigating document of the brig "Thomas."

Enclosure No. 5 is a letter from the Captain General, embodying the opinion of the Auditor of War on the general question of the rightfulness of the seizure of the brig "Thomas" by the United States ship "Ontario," in this port. To this, as well as to my reply, (enclosure No. 6,) wherein the grounds on which I proceeded in that case are explained, I beg leave to invite attention.

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

Hon. JOHN FORSYTH,
Secretary of State.

[Enclosure No. 1.]

[TRANSLATION.]

CAPTAINCY OF THE PORT OF HAVANA,
December 22, 1838.

In consequence of what your clerk told me yesterday, on the subject of what I requested him verbally to make known to you, respecting the liberation of the Spanish crew of the American brig Thomas, to the effect that this class of persons should not interfere in the case now pending; and you having acceded thereto, being convinced, from what I showed, they ought to be set at liberty, (as the said clerk told me,) I have to request that you would favor me by saying it officially in writing, in order that it may be allowed by the chief authority.

God preserve you many years.

JUAN DE MONTAÑO.

To the CONSUL of the *United States*.

[Enclosure No. 2.]

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, December 22, 1838.

SIR: I have the honor to acknowledge the receipt of your oficio of this date, and, in reply thereto, to repeat what I said yesterday in answer to the verbal inquiry from you, to wit: that, under the circumstances of the case, (affording, as they do, conclusive reason for believing that the Spanish seamen composing the crew of the brig "Thomas" were placed in the category in which they were found through the acts of other persons, wherein they had no participation whatever,) I could see no just ground for prolonging their imprisonment.

I have the honor to be, with much consideration, &c., your obedient servant,

N. P. TRIST.

Señor Don JUAN DE MONTAÑO,
Captain of the Port.

[Enclosure No. 3.]

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, January 28, 1839.

Engagements of such urgency as not to admit of postponement have prevented an earlier reply to your excellency's favor of the 15th instant, embodying a consulta of the Auditor de Guerra, and enclosing the expediente therein referred to as having arisen on the petition of Jacob S. Howell, master of the brig Thomas.

The subject on which your excellency's oficio found me occupied having at length allowed me time for the examination of these documents, the expediente is now, in compliance with your excellency's request, returned, ac-

accompanied with the desired expression of my views on the point presented in the consulta of the Auditor de Guerra.

My object in requesting of your excellency the detention of the brig Thomas, and the arrest of her crew, was (as then stated) that both might be held here, subject to the demand which the Government of the United States might make for their delivery. In regard to the Spanish seamen composing the crew, it clearly appeared, from the circumstances made known to me by the captain of the port, that no criminality of intention attached to them; and I experience no hesitation, therefore, in giving my consent to their liberation. With respect to the vessel and the master, my request remains in full force. At the same time, however, entertaining as I do a perfect reliance upon your excellency's disposition to secure the avowed object of that request, I recognise the perfect propriety that this should be done in the most lenient way, and the least inconvenient to the parties, which to your excellency's good judgment may afford a promise to be effectual.

I have the honor to be, with the highest consideration, your excellency's obedient servant,

N. P. TRIST.

His Excellency Don JOAQUIM DE ESPELETA,
Captain General, &c.

[Enclosure No. 4.]

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, February 9, 1839.

In compliance with instructions this day received from the Secretary of State of the United States, I have the honor to enclose to your excellency the document delivered at this consulate by Jacob S. Howell, master of the brig Thomas, of Havana, on the day after her arrival at this port under the flag of the United States. The ground upon which I am instructed to place this act is, that said vessel not being American property, she is not entitled to the protection or interference of the Government of the United States.

With a view to the identity of this document, I have written upon it a certificate (authenticated by the seal of this consulate) that it is delivered to your excellency in compliance with instructions from the Secretary of State of the United States.

I have the honor to be, with the highest consideration, your excellency's obedient servant,

N. P. TRIST.

His Excellency Don JOAQUIM DE ESPELETA,
Captain General, &c.

[Enclosure No. 5.]

[TRANSLATION.]

POLITICAL AND MILITARY GOVERNMENT OF HAVANA,
January 15, 1839.

The Auditor of War, to whom I submitted the documents (*expediente*) respecting the seizure of the brig Thomas, has given me the following opinion, under date of the 31st of December last:

"**MOST EXCELLENT SIR:** I have examined the preceding official communications, which your excellency was pleased to submit to me for my opinion, with the matureness required by their importance; and finding the occurrences which led to them set forth with sufficient clearness in the report addressed to your excellency by the captain of the port, the exactness of which is proved, I shall not delay by referring to the facts, but shall direct my attention principally to the points of law cited by the consul of the United States in his last communication.

"That gentleman cannot but agree that the public consular character with which he is invested could never authorize him, of himself, to determine that a vessel anchored in the bay should be unmoored and violently seized by another, as has been the case with regard to the brig Thomas; and he will also agree that no commander of a vessel of war is empowered to do so, on any grounds whatsoever. The consul knew this well, when, upon the request of your excellency in your letter of complaint, he ordered that the vessel should return to her post, and that the other measures which he had adopted, or which had been adopted, with his consent, by the captain of the ship Ontario, should be suspended; by which the consul has given an undoubted proof of his desire to avoid every thing calculated to break the good understanding and harmony which should subsist between the representatives of two friendly Governments. But as the consul, while thus showing his consideration, has added some explanations relative to the exclusive right of his Government to take cognizance of this affair, and he at the same time defines the limits within which the powers and authority of your excellency should be restrained, I cannot do less than rectify the mistaken idea which the consul of the United States has conceived on this point—confounding the right with the act of exercising it. He says, that the grounds on which the commander of the United States ship Ontario took possession of the brig Thomas and her crew, in consequence of his request, are, that a violation of the laws of the United States had been committed by the said vessel in having * * * sea, and been brought to this port without the proper documents. I shall abstain from determining whether or not the said violation of the laws has been committed, as it does not pertain to our affair, and your excellency has not said any thing on this particular to the consul. The commander of the brig may have committed an infraction of the law, and rendered himself liable to the penalty assigned to him. The Government of the United States will decide that question, for which no Spanish authority nor courts is competent; and let its right to do so be admitted. The act of exercising this right in the bay of this port, or the manner in which it was done, is that which your excellency justly opposed, and on which you communicated with the consul.

"That gentleman adds, in his said communication, that, considering it to be his duty to take the necessary steps for the seizure of an American vessel which had violated in that manner the laws of his nation, he had applied to the commander of the ship Ontario, in order that this should be done as it was done; and that, had not the said ship-of-war been in the bay, he should have been under the necessity of applying to your excellency for the purpose. This last measure was that to which he should have had recourse, whether the ship-of-war belonging to his nation had been in the bay or not; and it is the only measure permitted by the public right of nations, whose laws are common to all countries; and the affair could not have been transacted in any other way, without opening the door to the greatest disorder,

inasmuch as every ship-of-war or merchant-vessel lying in the bay of any port is, so long as she remains there, under the protection of the national flag of the country, and cannot be injured or molested by any other, without the intervention of the superior authority of the territory. To that authority recourse should always be had in all cases of complaints or claims which might disturb the peace of the bay, or restrain in any way the freedom of commerce, which the port offers to all other nations under the guaranty of its own laws; for if an act, such as the one in question, be allowed to-day, another less just may occur to-morrow, and the injured party will consider himself entitled to retaliate for an unjust aggression. Such is the line of conduct observed in all seaports, and which no doubt prevails in New York and Boston. The government of which places would certainly not allow a Spanish ship, or ship of any other nation, to do in their ports what the ship Ontario did in this bay, as it would be an offence to the national flag of the United States, and an infraction of the public right of nations.

"Upon all which, I conclude, by declaring to your excellency that the consul of the United States ought to have applied to your excellency to request the seizure of the brig Thomas, and the other measures which he might have deemed necessary; in which case, your excellency would have proceeded with due regard for the harmony required for the interests and respective duties of the two allied nations. And as the aforementioned consul has given information of these circumstances to his Government, your excellency ought in like manner to communicate them to our Government, so that repetitions of the same acts might not be made in future. Such is my opinion; your excellency can, however, determine what you consider most proper."

And as I agree with this opinion, I communicate it to you, for your information. God preserve you many years.

JOAQUIM DE ESPELETA.

The CONSUL
of the United States of America.

[Enclosure No. 6.]

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, February 13, 1839.

The same causes which delayed the acknowledgment of the officio of your excellency under date of the 15th ultimo, embodying the consulta of the Auditor de Guerra upon the petition of Jacob S. Howell, master of the brig Thomas, have operated to prevent an earlier reply to your excellency's officio under the same date, embodying the consulta of the same officer, under date the 31st December, upon the general principles involved in the proceedings which have taken place in regard to that vessel.

This officio will be transmitted by me to the Secretary of State of the United States, to whom the courteous and friendly spirit which pervades it cannot fail to prove in a high degree gratifying; and as the important point involved is now before our respective Governments, it is with no small reluctance that I yield to the necessity of troubling your excellency any further upon the subject. But the argument of the Auditor de Guerra is in some respects of a character to forbid that I should allow it to pass out of my hands entirely without remark.

This argument sets out with the two positions: 1st. That the consul "cannot do less than acknowledge that the public character of consul with which he is invested can never authorize him to determine or order, by himself, that a vessel anchored in a bay shall be unmoored or taken possession of violently by another, in the manner that happened with regard to the brig Thomas;" and 2d. That "he will equally acknowledge that neither can this authority reside in any commander of a vessel of war, whatever may be the reason which should determine him."

To the first of these positions I must reply, by a reference to my former officio to your excellency, wherein I endeavored to place in what I considered its true point of view the real nature of consular agency in a case of the sort. From the view there presented, it will be seen that I deem it to be the right and duty of a consul to hold with the commander of a national vessel of his Government any communication which he may judge proper; and that, for the nature of any such communication, or for any results with which it may be attended, whatever they may be, the consul is not, in any manner accountable to the Government to which he is accredited, but solely and exclusively to his own. Whatever may be the conduct of a consul in this respect, whether avowed, or supposed merely, it constitutes a subject for the cognizance of his own Government exclusively; and one, therefore, in regard to which the Government to which he is accredited cannot have any right so much as even to question him; the only mode of reaching the subject at all, being through the Government whose agent he is. Lest I should be so far misunderstood, as to be supposed to take this position in regard to the consular character generally, I will repeat, that it relates here solely to the one point—the right of a consul to be exempt from all direct accountability to the Government to which he is accredited, for any communication which he may deem it proper to make to a naval commander of his flag. Subject as a consul is to the laws of the country in which he resides, his correspondence with the naval commanders of his own is a subject beyond the cognizance of the authorities to whom he is accredited; which cannot be officially inquired into or noticed by them, and which cannot, therefore, bring the consul into collision with the laws to which he owes respect and conformity. Whatever may be the results with which such correspondence may be attended, in the course pursued by a naval commander, every act committed by the latter must be considered by the authorities as *his* act, without any right on their part to look behind him, and inquire whether his acts were done in consequence of advice or requisition from the consul. Nor can this truth be affected by the circumstance, that in a case of the sort, the naval commander may prefer to communicate with the authorities through the consul. In such case, the consul is a mere organ of communication between the authorities and the naval commander, who is, with respect to them, the only cognizable agent in the business, and beyond whom they have no right to look, except directly to the Government whose commission he bears. If the consul is known, or supposed, to have given improper advice or instructions to the naval commander, these may constitute a proper subject of representation to the Government whose agent the consul is; but the question whether it was competent to the consul to give such advice or instructions, or any other question relating to them, is one which cannot form a subject of discussion between him and the authorities to whom he is accredited.

From the first position of the Auditor de Guerra, I will pass to the second:

this relates to the right of the commander of a national vessel to seize a merchant vessel under the same flag, in the waters of a friendly Power. This is the true point of the case. It is one of high and general importance; and it will doubtless receive immediately, from the two Governments, the attention to which it is entitled.

In anticipation of their decision, the Auditor de Guerra assumes that the right does not exist, upon grounds which, although I acknowledge that they are not devoid of force, are yet far from appearing to me conclusive. For the reason above stated, I am, however, exempted from the necessity of troubling your excellency with any remarks upon the subject.

But the same exemption does not exist with regard to the position next assumed by the Auditor de Guerra, and in immediate connexion with the foregoing. Having denied the right of a commander of a national vessel to act as was done in this case, he proceeds to say: "Of this the consul was well aware when, requested by your excellency in your letter of reclamation, he determined that the said brig should return to her place of mooring, and that the other measures which he had adopted should be suspended."

Upon this inference of the Auditor from the course pursued by me, I am under the necessity of remarking, that it is not warranted by any part of the official correspondence which I had the honor to hold with your excellency upon the occasion, nor by any circumstance in the proceedings. The question of the right of the commander of the Ontario to make the seizure was not raised, and, with the dispositions which I entertained upon the occasion, I considered it fortunate that it was not raised; inasmuch as I was thereby left free to pursue a line of conduct which its agitation would have closed against me. Had that right been distinctly called in question, I should have deemed it my duty to advise the commander of the Ontario to maintain it. The restoration of the brig to her moorings, in compliance with your excellency's request, could, at most, be viewed as an acknowledgment of the duty to restore her upon the demand of the authorities of the country; which is an essentially different thing from an acknowledgment that the seizure was made without right. The one does not at all follow from the other. It is perfectly possible that, on the one hand, the right to make such seizures should be vested in national vessels, and be daily exercised; and, on the other, that a right to demand the restoration of vessels thus seized should be vested in the authorities of the country, to be exercised or not, as they might deem proper. There is no incompatibility whatever between the two rights; and, consequently, a recognition of the latter, however express and unqualified it might be, could not, by any legitimate mode of reasoning, be construed into an acknowledgment that the former does not exist.

But even the recognition here supposed has not taken place, except so far as it is susceptible of being drawn as a legitimate inference from the mere fact of the restoration of the brig, when asked for by your excellency. In the present case, there was no assertion, on the part of the authorities of the country, of a general right to make such a demand, and of the consequent duty to comply with it. Had there been, it could not, with my advice, have been met by a recognition on the part of the commander of the Ontario; for I was then, and am at this moment, far from being satisfied that it exists.

In conclusion, I beg leave to remark, that the course pursued in consequence of your excellency's demand was not intended to be considered, and

does not admit of being viewed, as a concession of any general principle which might be involved in the case. As little do I so regard the course pursued by your excellency. The matter fortunately admitted of being dealt with, as to avoid the necessity of bringing those principles into immediate discussion ; and the case, as it now stands for the consideration of the two Governments, presents only an instance of the satisfactory manner in which a subject—dangerous as it may be, from the conflicting views of the parties in regard to their strict rights—may be disposed of, when both are actuated by a sincere desire to maintain harmony. That desire was strong in me ; and it was manifested by your excellency in a manner which left me at liberty to indulge it without reserve, and cannot but do you high honor in all eyes.

I have the honor to be, with the highest consideration, your excellency's obedient servant,

N. P. TRIST.

His Excellency DON JOAQUIM DE ESPELETA, &c., &c.

Captain General, &c., &c., &c.

Mr. Trist to Mr. Forsyth.

WASHINGTON, August 21, 1840.

SIR: Referring to my No. 117, (29th February, 1840,) beginning and conclusion, I now transmit certain documents (enclosures Nos. 1 to 6) relating to the case of the brig "Douglas," of Duxbury, Alvin Baker master.

The nature of this case—the enormity of the wrong suffered in it—speaks for itself upon the face of the outline narrative contained in the protest of Captain Baker. An inoffensive American citizen, quietly pursuing his lawful calling upon the highway of nations, is, without any colorable pretext whatever, but solely in the wantonness natural to the spirit of insolence and of rapine, when permitted to feel that their impulses may be indulged without instant rebuke and punishment, arrested by a British cruiser ; dragged hundreds of miles out of his way, along the pestilential coast of Africa ; detained in its deadly atmosphere long enough to turn the scales against his escaping from it with impunity ; and then, without trial, without judicial proceedings of any kind, without even any communication between the captor and any superior officer, he is turned adrift to bury his crew and work his way home as well as the winds and waves will let him, with one or two sickly companions to help the emaciated and crutch-supported remnant of what, but a few weeks before, was a hale, bright-eyed New England tar, in navigating his vessel to a port of safety !

But these features, striking as they may be, are entirely inadequate to afford an idea of the grossness of the outrage perpetrated in this case ; of its cruel injustice, when considered as a visitation upon such a man as Captain Baker ; of the strong claim which it presents to the sympathy of his country, and to redress at her hands. It would be requisite to possess a personal knowledge of the man, and of the circumstances in which he stood ; of the faithful, patient, steady, noiseless diligence rendered in return for the pittance which it earned for him and his ; of his quiet, unobtrusive, unpresuming, yet manly bearing ; of the anxiety and sorrow experienced by him at the necessity of exposing his constitution to the ravages of the

climate of Africa, when he unexpectedly found that necessity presented to him as the alternative to a breach of the contract by which he had bound himself and his owner, and a lawsuit by which both might be ruined.

On reference to the first of the two charter-parties, (enclosure No. 2,) it will be seen that, in November, 1838, the brig was let to Charles D. Brown, for a term of time, to carry cargo "to such ports as said Brown or his agents may order;" "that is, to such ports where vessels of her draught of water can go, and where *there is no legal restriction to prevent.*" The Douglas had been a regular trader employed in carrying cargo between various ports in the United States and the island of Cuba; and upon entering into this charter-party, Captain Baker doubtless had not the most distant idea of ever being called upon to go to the coast of Africa. It so happened, however; for, seven months after, the charterer found it for his advantage to require of him to carry a cargo there. This *surprise* would have been cruel enough in itself, without any aggravation from extraneous causes. How it was aggravated, will be seen from the documents; and it will be made to appear yet more fully, on inquiry into particulars not there detailed.

It will be seen from the second charter-party (enclosure No. 3) that he had six passengers—three in the cabin, and three in the forecabin; and, from the protest, (enclosure No. 1,) that these passengers were all taken out on the 21st of October. The "Termagant" kept company with the "Douglas" till the 25th. On the 27th, the latter vessel is anchored by her prize-crew at Popo. On the 28th, the "Termagant" makes her appearance in the offing. Next morning, the prize weighs anchor and joins her. The Spanish passengers are restored to their vessel; Captain Baker is ordered on board the cruiser; and, on repairing there, has his papers returned to him, and is told to go about his business.

One thing stated to me by Captain Baker (which he said, however, that he did not wish to put in his protest) was, that he had no doubt that the Spanish passengers had *bought themselves clear*. They were greatly alarmed at the prospect of being kept prisoners, and then being taken to Sierra Leone, to be detained, they did not know how long; and there was no doubt on his mind that they had given money to the commander of the "Termagant," and that this was the secret of the release of his vessel under such extraordinary circumstances; for the "Termagant" had parted company with her prize, under the pretext of going off to some place which he named, to communicate with the admiral. But she had not found the admiral: so that the whole proceeding, the capture and the release, was entirely of his own mere motion.

In regard to the latter particulars, my recollection is uncertain as to whether Captain Baker averred them of his own knowledge, or not; but the particulars themselves are as he stated them.

A descriptive list of the enclosures is subjoined.

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

Hon. JOHN FORSYTH,
Secretary of State.

Enclosures.

No. 11.—Protest of Alvin Baker, master of brig Douglas, of Duxbury.
Havana, March 12, 1840.

No. 2.—Charter-party between Alvin Baker and Charles D. Brown. Havana, November 27, 1838.

No. 3.—Charter-party between Charles D. Brown and Charles Tyng. Havana, July 10, 1839.

No. 4.—Bill of lading of cargo shipped in brig Douglas. Havana, August 3, 1839.

No. 5.—A. Frazer, owner of brig Douglas, to N. P. Trist. Boston, July 18, 1840.

No. 6.—A. Frazer to N. P. Trist. Boston, August 8, 1840.

[Enclosure No. 1.]

CONSULATE OF THE UNITED STATES OF AMERICA, *Havana* :

By this public instrument of protest, be it known and made manifest to all whom it doth, or may, or shall, concern, that, on the day of the date hereof, before me, John A. Smith, vice-consul of the United States for the city of Havana, personally came and appeared Alvin Baker, master of the brig Douglas, belonging to the port of Duxbury, in the State of Massachusetts, of the burden of 210 tons, or thereabout; also, William Arnold, mate of said brig, and Nicholas Luther, of and belonging to the brig aforesaid; who, being severally sworn, did declare and depose, that the said brig being laden with a cargo of merchandise, they, the said appearers, made sail in and upon the said brig, from the port of Havana, bound to the port of the river Brus, on the 5th day of August, 1839; that, in the prosecution of the voyage, nothing material occurred until the 21st of October, 1839. At 9 A. M., a heavy squall from the southward and eastward, and large quantity of rain; took in all sail but the foretopmast stay-sail, and run before the wind. At 11 A. M., her Britannic Majesty's brigantine "Termagant's" boat boarded us, Lieutenant Seagram commander, and overhauled the captain's papers and passengers' passports; he then went on deck, and ordered the after-hatch taken off, which the captain forbade him doing; but his men still continued breaking the hatch out; and the captain then ordered the American flag to be hauled down, as they had taken charge, which was immediately done. On breaking out some of the cargo, he said it was for the slave-trade, and that he should seize and stop her for the same; he then demanded all the captain's papers and log-book, and took them on board his vessel, leaving us in charge of the master and men from the man-of-war; they then ordered the topsails loosed and set, and stood to the westward. At 6 P. M., they sent 10 men on board with arms and provisions, and took the rest of her men on board; they then took all the Spanish passengers on board the man-of-war, and then the captain and purser came on board with our papers and log-book, sealed with her Majesty's stamp, and delivered them to the master from the man-of-war; they then returned on board of their vessel, and both vessels made sail, and stood to the west. Latitude at noon, 4° 30'; N. long. 3° 45' east by account. In setting maintop-gallant-sail, parted the brace. This is civil account. 22d commences with calms and light airs from the southward, and pleasant weather, and still in charge of said officer and crew, and sailing in company with the man-of-war to the westward. At 6 P. M., found one demijohn of spirits forward, embezzled from the cargo. October 23d.

Throughout these 24 hours light variable winds and calms; still in charge and in company with the man-of-war, standing to the westward. At 7.30 P. M., the man-of-war's boat came alongside with the purser and one of the Spanish passengers for some stores and poultry; at 8 do. returned on board again. 24th.—These 24 hours light winds from the south and westward, and pleasant weather; still in charge of said officer, and in company with the man-of-war, steering to northward and westward. 25th.—The first part light airs from the westward, and passing clouds; lost sight of the man-of-war; still in charge of said officer, standing to the northward and westward; latter part squally off the land, and rain; took in and made sail as required; the man-of-war's men broached on the paints. 26th commences with light wind and pleasant weather; still in charge of said officer, and standing to the northward and westward; at 11 A. M., her Britannic Majesty's brig of war "Waterwitch's" boats boarded us; at 11.30 ditto., returned on board again; at meridian, tacked to the eastward; at 2 P. M., squally, with rain; shortened sail, &c.; at 2.30 ditto, made sail again, the "Waterwitch" in company through the night; in sounding, lost the deep-sea lead, and about 50 fathoms of line. 27th commences with light airs, inclinable to calm; at daylight, saw the land; at 10 A. M., a canoe came off from the shore with some of the natives; found we were to the westward of Popo; at meridian, a breeze sprang up from the westward, and we run down along the land, towards Popo; at 7 P. M., came to with the small bower, with 30 fathoms of chain, about 3 miles off the land; still in charge of said officer from the "Termagant." 28th commences with light airs off the land; lying at anchor, just to the westward of Popo, in charge of said officer; in the afternoon, the sea-breeze; at 4 P. M., her Britannic Majesty's brig "Waterwitch" came in with a Brazilian schooner, prize to said brig; hove to and sent her boat on board; at sundown, a brigantine hove in sight, and run down for the "Waterwitch," supposed to be the "Termagant." 29th.—At daylight, saw a sail off in the offing; hove the anchor up, and made sail, and stood out towards her with the wind to the westward; at 9 A. M., the strange sail hoisted her colors, and it proved to be her Britannic Majesty's brigantine "Termagant;" we still in charge of said officer and crew from her; hove to for her to come up to us; at 10 ditto, she came up with us; hove to, and sent her aboard with the supercargo and purser, and sent for the captain; the captain went on board of the "Termagant," and the commander delivered him his papers, and charged to proceed on his voyage; the passengers came on board, and the "Termagant" took her prize-crew and officers on board again; Little Popo bearing NE. by N., by compass—distance 10 miles by estimation; at 11 A. M., made all-sail on our course towards the river Bras. This day contains 12 hours, and commences sea-account; and nothing more occurred, in particular, until the 6th November, when we came to anchor in the river Nun; and, on the 14th day of December, left the river Nun, and proceeded in ballast towards Curaçoa; and, on the 22d January, 1840, at 10 P. M., saw the light and land of Buenos Ayres; made sail on the ship, and stood to the northward; at midnight, squally; split fore-topsail and mainsail; at 4 A. M., hove to again; at daylight, made sail, and at 2 P. M., brought up in the harbor of Curaçoa. On the 6th February, sailed from Curaçoa, bound to Havana with a cargo of salt; and on the 20th, at 6 P. M., came to anchor in the harbor of Havana; having lost on the pas-

sage from the coast of Africa to Curaçoa, three men by sickness, viz: on the 25th December, 1839, Hamilton Day, a native of Providence; on the 1st of January, 1840, Andrew Clough, of Boston; and on the 2d of January, 1840, Frederick Walton, of London.

And that, on the twenty-first day of February, 1840, again reached the city of Havana, when this first named deponent came on shore, within twenty-four hours thereafter, and noted protest, to be extended, as is now done.

And the said appearers did severally further declare, that the said ———, at the time of her departure from the port of Havana aforesaid, was tight, staunch and strong; had her hatches well and sufficiently caulked and covered; was well and sufficiently manned, provided, and furnished with all things needful and necessary for said voyage; and that during said voyage, the said appearers and ship's company used their utmost endeavors to preserve the said brig, and the goods of her loading from damage.

And therefore the said Alvin Baker did declare to protest, as by these presents he solemnly doth protest, against all and every person, or persons, whomsoever it may or shall concern; and particularly against the Government of her Britannic Majesty, for this unlawful, vexatious, and injurious act on the part of the commander and crew of the aforesaid brigantine *Termagant*; holding the said Government responsible in damages for all injury suffered by said vessel and cargo, and any person interested therein, and for the loss of time and of health by himself and crew, consequent upon the detention and vexation caused by said unlawful, injurious, and vexatious act.

A. BAKER,
WILLIAM ARNOLD,
NICHOLAS LUTHER.

All which matters and things were declared alleged and affirmed, before me the said vice-consul. And therefore I hereunto set my [l. s.] hand and affix the seal of my office, being requested to certify and testify the premises.

Thus done and protested, at the city of Havana, the twelfth day of March, in the year of our Lord one thousand eight hundred and forty, and of the independence of the United States the sixty-fourth.

J. A. SMITH.

ALVIN BAKER,
WILLIAM ARNOLD,
NICHOLAS LUTHER.

CONSULATE OF THE UNITED STATES OF AMERICA, *Havana* :

I, John Morland, vice consul of the United States of America, do hereby certify, that the foregoing is a true and correct copy of a protest made by Alvin Baker, master of the brig *Douglas*, of Duxbury, and extended and recorded in this consulate on the twelfth day of March, in the year of our Lord one thousand eight hundred and forty.

In testimony whereof, I have hereunto set my hand, and affixed the seal of this consulate, at Havana, this twentieth day of March, in [l. s.] the year of our Lord one thousand eight hundred and forty, and of the independence of the United States the sixty-fourth.

JOHN MORLAND.

[Enclosure No. 2.]

[CHARTER-PARTY.]

HAVANA, *November 27, 1838.*

It is mutually agreed this day, between Alvin Baker, master of the good brig called the Douglas, of the measurement of 209 tons, or thereabouts, now lying in Havana, and Charles D. Brown, that the ship being tight, staunch, and strong, and every way fitted for the voyage, and shall be ready to receive cargo on the third of December, 1838, which shall not exceed what she can reasonably stow and carry over and above her tackle, apparel, provisions, and room sufficient for the accommodation of the captain and crew; and, being so loaded, shall proceed from the port of Havana to such ports as said Brown, or his agents, may order, for the space of eight months, from the 3d of December, 1838; that is, to such ports where vessels of her draught of water can go, and where there is no legal restriction to prevent. Said Baker reserves the right of selling the brig at any time during said service, provided it does not subject said Brown to the violation of any contract which he has entered into, thereby subjecting him to a loss.

The freight to be paid on the true delivery of the cargo, at the rate of two dollars per ton (register measurement,) per month, to be paid at each and every port, as it may accrue; said Brown is to have the hold, the cabin, and deck of said brig, and is to put on board such goods, or merchandise, as he or his agent may see fit, (contraband excepted,) for which the captain is to sign bills of lading. Said Baker is to go as master of said brig, without sickness, or some good cause, should prevent. The lay-days shall be as follows: such time as may be necessary for loading and discharging at the different ports she may be ordered; at the end of which time a demurrage of twenty dollars shall be paid, day by day, as it may become due.

The cargo to be received and delivered at the expenses of said Brown, who is also to pay stevedore labor, over and above the crew, all port-charges, pilotages, and team-hire, and all charges appertaining to the cargo and sailing of said brig, always excepting the wear and tear of the sails, rigging, and ground tackling, and the necessary expenses of keeping the said brig in good condition to receive and carry cargo.

It is also further understood and agreed, if at the expiration of eight months from the 3d December, 1838, said Brown should wish to retain the said brig for a further time, he is permitted so to do, on the same terms and conditions as above stated; and in either case the brig is to be given up in Boston. Said Brown is to pay for all stores and provisions for the passengers, and is to receive all passage money. If on a homeward passage, at the expiration of eight months this charter to continue, pro rata, until her arrival at Boston.

To the true and faithful performance of this agreement, the parties do hereby bind themselves, each to the other, in the penal sum of dollars.

CHARLES D. BROWN,
ALVIN BAKER.

[Enclosure No. 3.]

[CHARTER-PARTY.]

HAVANA, *July 10, 1839.*

It is mutually agreed this day, between Charles D. Brown, of the good brig called the Douglas, of the measurement of 209 tons, or thereabouts,

now lying in Havana, and Charles Tyng, that the ship being tight, taught, staunch, and strong, and every way fitted for the voyage, and shall be ready to receive cargo on the 15th July, which shall not exceed what she can reasonably stow and carry over and above her tackle, apparel, provisions, and room sufficient for the accommodation of the captain and his crew; and, being so loaded, shall proceed from Havana to the Rio Bras, or Bong, on the coast of Africa—the cargo to consist only of rum, clothes, tobacco, and frame and boards for a house.

The freight to be paid, on the true delivery of the cargo, at the rate of five thousand dollars, one half (say two thousand five hundred dollars) to be paid here before sailing; the other half (two thousand five hundred dollars) to be paid here when the parties shall hear that the cargo is delivered at Rio Bras, or Bong. The lay-days shall be as follows: the brig shall be despatched on or before the last day of the present month; thirty running lay-days for discharging the cargo, commencing from the day the vessel comes to an anchor at Rio Bras, or Bong, at the end of which time a demurrage of thirty dollars shall be paid, day by day, as it may become due. The cargo to be received and delivered at the side of the vessel, on account of the charterer. The charterer is to put alongside the brig at Rio Bras, or Bong, sufficient ballast when the cargo is out.

It is also further understood and agreed, that six passengers shall go in the brig—three in the cabin, and three in the forecabin; they putting all the necessary provisions on board—the brig to find nothing but wood and water. One of the passengers is a cook, and will, if necessary, cook. The three cabin passengers will pay fifty dollars each for their passages—the three in the forecabin to go free of passage. All port charges and presents to the king, at Bong, to be paid by the charterer.

To the true performance of this agreement, the parties do hereby bind themselves, each to the other, in the penal sum of twenty-five hundred dollars.

CHARLES D. BROWN,
CHARLES TYNG.

I hereby acknowledge to have received the full amount of this charter in advance, and therefore have no further claim on the charterer.

CHARLES D. BROWN.

[Enclosure No. 4.]

[TRANSLATION.]

Bill of lading.

I, Mr. Baker, captain and master of the American brig Douglas, now at anchor in this port of Havana, being about to undertake a voyage to the port of Bony, do declare that I have received on board, according to manifest, and marked and numbered as in the margin, from Don Carlos Fyng, the effects of which a list is given on the back of this bill, which I acknowledge to have been satisfactorily delivered to me; and in the same manner I bind myself, on arriving safe with the said vessel, to deliver them in the said port, or in that set forth in my register, to Don Pablo Freiras, or to his order; who, upon my faithful delivery of the same, is to pay me for freight.

and transportation, according to contract. For the due fulfilment of which, I bind my person and property, and especially the said vessel, freights, rigging, and the best care thereof, according to the custom and law of commerce; signing three of this tenor, one of which being fulfilled, the others become void.

ALVIN BAKER.

HAVANA, August 3, 1839.

[On the margin, in English, with a Spanish translation]

A frame, said to be a house, part of which is on deck, not accountable, but all on board to be delivered.

[On the back of the bill of lading.]

1—12	12	bales.	with 600 pieces of	_____
13—26	14	do	700 do	do
27—33	7	do	492 do	do
34—37	4	do	200 do	muslin.
38—43	6	do	299 do	striped.
44—57	14	do	700 do	
58—67	10	do	500 do	
80—87	8	do	400 do	
68—79	12	do	600 do	
88—91	4	do	250 dozen	handkerchiefs.
92—99	8	do	500 do	do
100—103	4	do	376 do	do
104—113	10	do	400 do	do
114—117	4	do	348 do	do
118—124	7	do	700 do	do
125—128	4	do	400 do	do
129—131	3	do	300 do	do
1—140	140	do		Leaf tobacco.
1—3	3	do	90 packages	glass beads.
4—8	5	do	150 do	do
9—14	6	do	1,960 do	do small.
42 pipes		rum.		Havana date on the other side;
50 barrels				contents unknown, and account-
50 do				able for leakage.
339 quarter casks		brandy.		
One case, and other trifles.				

[Enclosure No. 5.]

Boston, July 18, 1840.

DEAR SIR: I have just received from Havana a copy of the protest and documents of brig Douglas, late from the coast of Africa, and am informed by Captain Baker, that Mr. Brown, of Havana, gave you a copy of the same, in order to present to the British minister at Washington, for our claim for damages sustained on the coast of Africa, when in the performance of our lawful trade, by a British cruiser, &c., &c.

Will you have the kindness to state to me the prospect of and state of our claim, and any other information relating to the subject; and if it is necessary for me to take any further steps in the business? I claim five thousand dollars damage, and little enough, too, for the loss of a crew and the health of the captain forever.

Your attention to the above will confer a great favor on

Your obedient servant,

A. A. FRAZER,

Owner of brig Douglas, of Boston.

N. P. TRIST, Esq.

[Enclosure No. 6.]

BOSTON, August 8, 1840.

DEAR SIR: Yours of the 5th is received. Enclosed is a copy of both the charter-parties made in Havana.

I wish it distinctly understood that whatever claim is allowed, is *allowed* brig Douglass, of Boston, and paid A. A. Frazer, owner, for whom it concerns.

Will you be kind enough to inform me, from time to time, of your proceedings in the business, &c., &c.

Respectfully, your obedient servant,

A. A. FRAZER.

N. P. TRIST, Esq.

Mr. Trist to Mr. Forsyth.

WASHINGTON, August 22, 1840.

SIR: Referring to my No. 146, for the circumstances under which the brig "Douglas," of Duxbury, left Havana for the coast of Africa, I now transmit a copy of an endorsement made by me upon the register. It will be seen to be the document transmitted to the President by the collector at New York, and referred by him to the department, with directions that it be communicated to me for explanation. It had always been my purpose to communicate it as part of the case of the "Douglas;" so that the call thus made upon me did but anticipate the execution of a previously formed intention.

In my No. 146, I have mentioned the anxiety and unhappiness occasioned Captain Baker by the necessity under which he found himself of proceeding to the coast of Africa. It was, to him, an unknown region, peopled with terrors in every shape—the coast fever, pirates, and last though not least, British cruisers; from a portion of which, at least, according to accounts, American vessels experienced such treatment as to make them an object of equal dread, excepting only that they stopped short of actual throat cutting with the unlicensed freebooter.

The endorsement written by me upon the register of the "Douglas," was the result of an application from Captain Baker, under such circumstances, to know whether he could lawfully arm his vessel with two small

guns, for protection against any piratical boats he might fall in with in that dreaded region, and, if so, whether I would make an endorsement to that effect upon her register.

Knowing, as well as any matter of the kind can be known by me, that he did possess this right; and knowing, too, that the cruiser of no foreign power on earth has, in time of peace, any more right to search his vessel than a pirate has, I told him so. I expressed to him my astonishment and my mortification at learning, as I recently had, that the notion was not unprevailing among our ship-masters that the *British* navy had a right to search our ships in time of peace; that they allowed themselves, without even so much as protesting against it, or making the outrage known to their Government, to be boarded, and overhauled, and ordered to take off their hatches, by British lieutenants and midshipmen; and I told him that I considered it not only the right, but the sacred duty, of every American ship-master intrusted with his country's flag, to defend it from such indignity, where circumstances were such as to afford any hope of the defence proving effectual; and where they were such as to preclude such hope, then to make a solemn protest and abandonment of the property and the flag intrusted to him, and call upon his Government to discharge its duty. This being the opinion and advice which, as an American citizen, no less than as an American officer, I felt it my duty to give him, I felt it likewise my duty to furnish him with the proof that he had been so advised, on the face of the endorsement which he had asked at my hands. I thought, too, that it might have the good effect of bringing to their senses upon this vital point such officers of the British navy as the register might be produced to, and should, should it fail of that effect, lead to their being brought to their senses in some other way.

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

Hon JOHN FORSYTH,
Secretary of State.

[Enclosure No. 1.]

CONSULATE OF THE UNITED STATES OF AMERICA, *Havana* :

On the day of the date hereof, before me, Nicholas P. Trist, consul of the United States of America, personally appeared Alvin Baker, master of the within-named brig "Douglas," and, being duly sworn, did declare: That, having engaged to take a freight from this port to Bony, on the coast of Africa, and being about to depart for said destination, he, the said declarant, doth deem it a proper precaution, for the safety of his vessel while on said coast, to arm her with two iron guns of the calibre of 2½ pounds. And I, the said consul, recognizing the right of said master to take the said precaution, do furthermore hereby give it my full and entire approbation; and I do enjoin it upon said master, as he deems himself worthy of having the title of citizen of the United States of America, to use the said guns, should circumstances be such as to afford any hope of its being done effectually, as long as he has a pound of powder to put into them, against any and all assailants; whether these be pirates, having plunder in view, or officers of cruisers of any foreign Government, pretending only to search his vessel,

after he shall have exhibited to them this register, and cautioned them not to violate his country's flag.

In testimony whereof, I hereunto set my hand and affix my seal of office, at Havana, this third day of August, in the year of our Lord

[L. s.] one thousand eight hundred and thirty-nine, and of the independence of the United States the sixty-fourth.

N. P. TRIST.

Extracts of a letter from N. P. Trist to Hon. John Forsyth, Secretary of State, dated

WASHINGTON, September 28, 1840.

SIR: Having at length accomplished the task imposed by that branch of the labors of the conspiracy for the destruction of my character, the pretexts for which were found in alleged outrages upon American shipmasters and seamen, I now find time to bestow upon other subjects.

Referring to my No. 64, under date of January 12, 1839, enclosing a copy of my correspondence at that period with the British agents resident at Havana, under conventions with Spain relative to the slave trade, I now transmit (enclosures Nos. 1 and 2) a sequel to that correspondence, which occurred in July of the same year.

Stripped of what (to borrow the expression of the Westminster Review in a recent article on the subject) may be termed "official cant," the sum and substance of the pretext seized upon by them for deriving from our country materials for those "tubs for the whale," which it is their business to keep up the supply of, consists in the evasions of our laws, whereby vessels calculated for the slave-trade are built and furnished to the trader. Although, according to Mr. Buxton's recently published statistics of English manufactures made and calculated exclusively for the slave-trade, the annual amount is at least ten-fold that of the vessels which, according to the British commissioners' returns, were furnished from our country to Havana, in 1838; yet shipping does not constitute an item in Mr. Buxton's list, and it may be inferred, therefore, that no "clippers" are among the products of British industry for the traffic.

That the evasions of law by means of which they are furnished are, however, far from impracticable in the British dominions and under the British flag, is, however, proved by the two following cases, occurring in 1838, and; as will be seen, under circumstances peculiarly calculated to awaken suspicion, and peculiarly favorable to scrutiny.

In March, 1838, the Portuguese brig *Arrogante*, captured by H. B. Majesty's brig *Snake*, was condemned as a slaver by the mixed commission at Sierra Leone. At this British port she was sold, purchased for *British* account, (on the face of the proceedings,) sent to London, there obtained a British register, with which, and under the British flag, she made her appearance at Havana, and thence proceeded to Vera Cruz. On her return to Havana, early in 1839, she was sold and put under Spanish colors, changing her name to *Iberia*, with which she sailed, and returned at the beginning of this year, after landing a cargo of slaves at Puerto Rico.

In November, 1838, the Portuguese slaver *Velarona* was captured, off Gallinas, by a British cruiser. This vessel also had been condemned at Sierra Leone; and after condemnation, had obtained a British register, with which she proceeded to London, where, after being registered *de novo*, in January, 1838, she cleared for Cadiz, and was subsequently put under the Portuguese flag.

There is every reason to believe, indeed the circumstances are such as to leave no doubt on any mind at all acquainted with the state of things at Havana, that both these vessels, though carrying British registers, belonged from the very first, (at the time of condemnation, and at the time of purchase under the condemnation) to the greatest slave-trading house in Havana. No fact is more notorious there, nor at Sierra Leone itself, than that the principal slave-traders have agents at the latter place and at London, to purchase and ship goods, (at Sierra Leone *the very goods sold under condemnation*, besides those imported without molestation under the protection of the British flag,) and do all other things needful for their interests.

I will now turn to a fact, having the same bearing as the preceding, and which furthermore suggests the question, whether there be any considerations, of a *commercial* or *political* nature, that can afford a satisfactory explanation of the preference given to the island of Cuba, as the country from which to cut off a supply of slaves.

The writer in the Westminster Review above referred to—a truly enlightened and ingenuous one, who, in the cause of sobriety and truth, has not feared to attack the hydra of cant in its very fen—enumerating the sources from which light might have been elicited by a Parliamentary investigation, says, “from the West India interest details might have been procured, showing *the interference of the foreign slave-trade with their prosperity.*” Here, then, we have an incidental recognition of the fact that, among the evils incident to the slave-trade, a sense of which constitutes the basis of the public sentiment adverse to it, is the injury experienced by British colonial interests, in consequence of the colonies of other nations possessing a supply of labor from which they have been cut off.

Under this aspect of the subject, therefore, to break up the slave-trade from Africa to Cuba would be to injuriously affect, at least in a commercial point of view, the prosperity of that island; whilst, to leave the same slave-trade free to flow from Africa to Brazil, would be to confer a benefit upon that portion of our continent.

Now, what has been the apportionment of slave-trade suppression zeal, vigilance, means, and efficiency between these two countries? According to Mr. Fowell Buxton's recent work, “the most considerable of slave markets is Brazil;” the annual import into which, he says, “would be moderately rated at *one hundred thousand.*” The annual importation into the island of Cuba is estimated by him at *sixty thousand.* The mode in which he contrives to run up the latter number so high is a curious instance of the imposture which an ardent mind, intent upon reaching a particular result, may practise upon itself. He seizes upon a random assertion, made obviously in a spirit of great exaggeration, in a despatch from the Havana commissioner; and this assertion, manifestly intended by the writer to apply only to a particular period, is extended by the commentator over the whole subject! I entertain no doubt whatever, that, by rating it at sixty

thousand, the true number is considerably more than trebled; and thus convinced in regard to Cuba, fairness requires that, in comparing her slave-trade with that of Brazil, I should suppose an equally preposterous exaggeration to have occurred in Mr. B.'s estimate concerning the latter.

Deducting two-thirds from each number, the ratio will remain the same; so that whether we take Mr. Buxton's estimate to be correct, or to be two-thirds out of the way, the comparison is unaffected; the trade of Cuba is to that of Brazil as six to ten. For every six vessels captured on their way to Cuba, there ought, therefore, to be ten captured on their way to Brazil. What has been the actual result in this respect? The Parliamentary papers on the slave trade furnish the reply down to the close of 1838. It will be there seen that of the slavers captured in the five preceding years, not quite *one-tenth* were destined to Brazil, or fitted out from thence.

Nor is this all. The disparity, to be estimated at its full worth as an evidence on the point under consideration, must be viewed in connexion with the maritime features of the two countries, as bearing upon the question of the difficulty of intercepting communication with them.

And what are the relations in which these two countries commercially stand towards the United States and Great Britain respectively? How is the commerce of each shared between the two rivals? How would the commercial interests of each rival be affected by the "prosperity" of the two countries, as dependent upon the activity or the sluggishness of the slave-trade? Commercially speaking, Cuba is not more a dependency of the United States than Brazil is of Great Britain. "The imports," says McCulloch, speaking of Brazil, "are chiefly from Great Britain, consisting principally of our cotton, linen, woollen, hardware, and other manufactures, amounting annually to about £4,000,000" (\$20,000,000.) And it is but recently that the idea of stimulating Brazil, as a cotton-growing country, by means of British capital, into rivalry with the United States, has been relinquished for the plan of accomplishing the same end with the free labor of Hindostan.

It will be seen, that, in my reply to the commissioners, I notified to them my determination to return unopened any communication they might address to me. This notification was carried into effect in regard to one which was brought to my office on the 6th of September, 1839, and was returned unopened through the post-office, as will appear from the certificate (enclosure No. 5) of a clerk in the counting-house of Messrs. George Knight & Co.

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

HON. JOHN FORSYTH,
Secretary of State.

[Enclosure No. 1.]

HAVANA, July 1, 1839.

SIR: With reference to the correspondence we had with you in January last, respecting the slave-ship "Venus," which had, about four months previously, sailed from this place under the flag of the United States, for the

coast of Africa, and had returned with a cargo of eight hundred and sixty slaves on board, we have now the honor to inform you that we have received a despatch from her Britannic Majesty's principal Secretary of State, confirmatory of our assertion that her Majesty's Government will feel most sincerely obliged by your furnishing us at any time with any information which may, directly or indirectly, enable her Majesty's Government to enforce the penalties of the law against British subjects who may be concerned in promoting the slave-trade, either by furnishing British fabrics or shackles of British manufacture, or otherwise.

Her Majesty's Secretary of State observes, "that the two Governments having, by the tenth article of the treaty of Ghent, mutually engaged to each other 'to use their utmost endeavors to promote the entire abolition of the slave-trade,' it seems perfectly consistent with the respect which the agents of each country must feel for the other country that they should not only themselves act in strict accordance with the spirit of the engagement which their own Government has contracted, but that they should furnish to the agents of the other Government any information which may be calculated to enable that other Government more effectually to accomplish the common purpose."

We have the honor to be, sir, your obedient servants,

J. KENNEDY,
CAMPBELL J. DALRYMPLE.

N. P. TRIST, Esq.,
United States Consul, Havana.

[Enclosure No. 2.]

The American Consul to the British Commissioners, July 2, 1839.

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CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, July 2, 1839.

SIR: I was honored last evening with your letter of that date, and I now engage in the reply which is to close the correspondence between us.

You inform me "that we have received a despatch from her Britannic Majesty's principal Secretary of State, *confirmatory of our assertion*, that her Majesty's Government will feel most sincerely obliged by your furnishing us at any time with any information which may directly or indirectly enable her Majesty's Government to enforce the penalties of the law against British subjects who may be concerned in promoting the slave-trade, either by furnishing British fabrics, or shackles of British manufacture, or otherwise."

Surprised that such an "assertion" on your part could at the time have escaped my notice—and this so entirely, that, even when reasserted, my effort at recollection in regard to it was baffled—I have turned to your last communication, wherein alone it could be contained. Its reproof has dispelled the distrust thus awakened in my own attention and memory, by lodging the error with yours. Not only is this "assertion" not there, but no intimation of the kind; not a word on the subject can I find.

Relieved at this certitude that I am not chargeable with the remissness into which your error led me to suppose that I must have fallen, I proceed to respond now to this intimation, as I should have deemed it incumbent upon me to do then, had it been then conveyed.

In the first place, then, as the mode of conveying it gives it the air of an acceptance of a proffer from me, I must begin by correcting a misconception of my letter, whereat I cannot but experience some surprise. Seeing that its entire scope was so pointedly opposed to an interpretation of the kind, it does seem strange that any thing contained therein should have been construed into a proffer of my services to "her Majesty's Government," in the honorable capacity of informer general against British manufacturers, merchants, and mariners, to the end that they may be visited with the penalties of British law.

The letter in question does, it is true, contain the words "if requested to do so, he would doubtless cheerfully comply;" and these words refer to the supposed "American officer" previously spoken of as one who, although he might have acquired, in regard to British fabrics for the slave-trade, and to British laws on the subject of such supplies, a knowledge so complete as to enable him to specify every infraction of those laws, and to designate every individual concerned therein, would nevertheless be deterred by the silent force of the general sentiment of his country in regard to the principle that it exclusively belongs to every nation to execute, no less than to enact, its own laws, from ever dreaming to "volunteer" an official communication "on the subject to any functionary of Great Britain," or "to assume to take part in the administration of those laws." These words do certainly occur in my letter. So far, therefore, as it is consistent with sound logic to infer a writer's state of mind, disposition, and intention upon a particular point, from the mere correlation of two or three sentences, or parts of sentences, discarding all else contained in his discourse, so far may the imputation to me of this proffer be deemed logically and morally justifiable. He, however, whose logic is so stubborn as to refuse itself to this convenient process of elimination, and who consequently finds himself under the troublesome necessity to take facts as they are, and to keep their parts together, however much some of them may incommode him, will scarcely require a second

perusal of even this particular part of my letter, to satisfy him that the sentence in question, friendly though it be, does not warrant so heavy a draught upon the good nature with which it is pregnant, as this acceptance of its readiness to answer such calls would imply. He will see the true measure of the obligingness which it holds out, as determined by the general tone and views that pervade the letter in regard to the principle involved, and as illustrated by the particular request addressed to you, which immediately follows in the same sentence—to extend no further than a readiness to lend my aid, so far as the communication of facts might go, when called for by the British authorities in regard to any particular case of the violation of those laws of their own country which it is their proper business to protect against infringement. To this extent, I deem it the duty of every man, as a citizen of the world, to evince his interest in the maintenance of law, whether in his own particular country or in another. A murder, for instance, committed upon British soil, or under the British flag upon the high seas, and proofs in regard to which might chance to come to my knowledge, I should, although myself not within British jurisdiction, deem it my duty to bear witness to if called upon, and even to volunteer the information, if the circumstances were so extraordinary as to afford a ground for the presumption that information from me might be of avail to the appropriate guardians of British law. So, in regard to infractions of other laws: for instance, infractions by British subjects of British laws against the slave-trade, My recognition of this duty is restricted, however, to such laws as I may approve, because, from many causes—but above all, that radical and widely operating one, the detestable structure of governments—there is no foreign country whose laws, so far from yielding to them an indiscriminating respect in this particular, I would, while exempt from the duty arising from being in the country, hesitate to do all in my power to screen a fellow-man from the penalty of: in many cases, for instance, which might arise under the British law of treason, of libel, the corn laws, and others:

Forbidden as this construction so manifestly is, by the whole tone and drift of my letter, it seems particularly surprising that it should be hitched, as it is in your present letter, to this particular part of mine—to those *shackles* and other articles for the slave-trade, the far greater part of which comes (so at least says Havana rumor or notoriety) from England; of which shackles, and other articles, mention was made by me for the very reason that the facts connected with them afforded the most forcible illustration of the power of that principle, which the proffer construed by you, from my letter, is irreconcilably at war with. They were adverted to by me for the special purpose of illustration, in respect to *American* notions concerning the scrupulous regard for the principle of NATIONAL INDEPENDENCE, which, among us, is held to be the *first* of all international duties; not less from the habitual reverence arising from our deep conviction of its vital importance to the whole human family, as a general rule for the conduct of its members towards each other, than from the innate sentiment, springing from our knowledge of ourselves, that its punctual observance towards us is a condition absolutely indispensable to the maintenance of that peace, upon which the best hopes of humanity depend, and to which we are so pre-eminently inclined, through the force of those institutions, to whose results our brother-man in the old world is indebted for the demonstration which now cheers him—that the objects to which peace is important as a means of attainment, are objects worth caring for.

But it was not this principle alone that forbade the offer which has thus been imputed to me. Had no such preventive existed, the idea of making it would still have been altogether foreign from my thoughts; and had it accidentally been suggested, it could have been considered only to be dismissed as a proposal fraught with insult to yourselves, no less than your Government; by venturing to approach you with which, any officer of the American Government would richly earn the sharpest rebuke you could send, and could not fail to receive the severest reproof from those to whom I am amenable. On the one hand, the immense energies of the British people, devoted by the Government under whose control those energies are to the extirpation of the slave-trade in any and every part of the world; its zeal so ardent as to spurn at all obstacles, not even excepting that "national independence," the sacred inviolability of which her statesmen and philosophers are so anxious to guard, that scarcely a speech is uttered, or an Edinburgh or a Quarterly Review printed, that does not abound in the most impressive adjurations in regard thereto; overleaping all bounds, and passing from the narrow sphere of action appropriate to it, to fill all space, and "vindicate the rights of humanity," wherever outraged in this particular; with numberless agents of all grades, civil and military, posted for this one object in all quarters of the globe; at this spot, a consul who must be known to his Government, as he is here, to be a man of high character, superior talent, great industry, and eminent effectiveness as a man of business and of the world; and, besides this officer, a numerous and costly establishment of commissioners, and their adjuncts, civil and military, stationed here for the one and only purpose of justifying the selection made of them by their devotion, body and soul, to the duties of the service in which they are enlisted! This is the picture on the one hand. On the other, one officer of the United States, burdened with the duties of the consular office in regard to upwards of one-half of the navigation resorting to this port, and contending single-handed with all the cares attending such a charge! With these two pictures before our eyes, and considering the contrast which they present in the one particular of command of time alone, could a greater impertinence be conceived on the part of the American consul? could he possibly be guilty of greater presumption, of a more indecent reflection upon the fitness, intellectual or moral, of all these agents; and not of them alone, but of the agents at home to whom they owe their employ, than such a proffer of his services to do their work?—and this, too, in regard to the particular which, from the very nature of things, must, more than any other, be subject to their sure means of cognizance and control?

These remarks will indicate in what light the subject will present itself to me, if, instead of the aspect under which it has just been considered, (given to it by the error into which you have fallen,) it be viewed under that of a proposal originating with your Government, that I should engage in the office of denouncer or informer against the residents of Manchester and Glasgow, Sheffield and Birmingham, who may engage in the weaving and forging of fabrics and shackles, and the residents of Havana, who may receive them for sale.

Correspondent to, if not identical with, the reasons which existed to prevent such a proffer from me, are the objections to my accepting the employment when tendered; and if, in regard to the latter point, the principle and the considerations brought into view with respect to the former do not ap-

ply with precisely the same force, in exactly in the same direction, those considerations have here new bearings, upon which I cannot but remark.

Supposing a necessity really to exist for invoking aid to the official machinery now in operation here under the control of the British Government, it might still be questioned whether a proposal to an officer of that of the United States, to furnish such succor in the capacity of an informer, can be regarded as "perfectly consistent with the respect which the agents of" one sovereign ought to deport themselves with towards that of another. This, indeed, strikes me as so very questionable, that it is only by ascribing the act to the ardent zeal which burns on the subject, that it appears to me reconcileable with a disposition such as I believe, and very sincerely rejoice in believing, to be truly reciprocated towards my country by your Government, and, what is far better still, by the people.

This impression, with regard to the character of such a proposal, derives no little strength from the recollection of the view taken by your predecessors in office, on the occasion of an incident that arrested my attention on looking over, a year or two since, one of those collections of slave-trade documents, by the publication of which the British Government afford to all, who feel curiosity on the subject, materials for acquiring a definite idea of the nature of the occupation afforded to, and the results effected by, those costly establishments; whereby, if "operative" inconveniēce from taxation be augmented in a but insensible degree, the same may, perhaps, not with truth, be affirmed in regard to the convenience and effectiveness of ministerial patronage. The incident referred to occurred in a correspondence between your predecessors and the Captain General, brought on by their being compelled by their sense of duty to "acquaint" him with a certain "report" in relation to the slave-trade between Cuba and Texas. Of the specific allegations embraced in this report, one was, "that several cargoes have recently left this island." In the report to their Government of their doings on this subject, they state that their "*information*" was "*obtained*" through so authentic a channel, that they gave to it "*the fullest credence.*" The communication to the Captain General being referred by his excellency to one of his official law advisers, (as, by the constitution of this Government, it was indispensable it should be before he could take any action upon it,) the opinion and advice given was, that, in order to obtain, in relation to this subject, such tangible matter as was legally indispensable, as a basis to any exercise of the authority vested in the Captain General to see the laws faithfully executed, his excellency should request of the British commissioners to "acquaint" him with certain particulars: such as the *names of the persons*, or of the vessels referred to—in what *part of the island* the occurrences had taken place. The letter, conveying this apparently very natural request, is replied to by one made up chiefly of matter responsive to matter *non-existent* in the letter replied to; and the request itself is responded to by—"it is no part of the duty of his Britannic Majesty's commissioners to bring before, or prosecute in, Spanish courts of justice, delinquents against Spanish laws;" to which is added a vindication of the step taken by them in making him "acquainted" with the "report;" which vindication consists of the conclusive proposition, that "it would be highly culpable in them, were they to neglect any opportunity so to act!"

In their report to the Secretary of State, this request is treated very disdainfully, as "*the attempt to impose, if possible, upon the commissioners the odium of public accusers.*" They add, too, that this "would not only

be totally incompatible" with "their judicial capacity," (the incompatibility of what was proposed to them with *their* judicial capacity would be of difficult demonstration,) "but contrary to the instructions of his Majesty's Government upon this head."

How far the proposal now made, spontaneously, and without just provocation on his part, to the consul of the United States, bears resemblance to the "*attempt*," which, being made as an apparently natural consequence of their own proffer of service, was, nevertheless, deemed highly derogatory to the dignity of the British commissioners, and a compliance with which was forbidden by "the instructions" to officers existing for the sole purpose of devoting themselves to the extirpation of the slave-trade;—to what extent this present proposal possesses the obnoxious properties of that "*attempt*," it would, perhaps, prove a not easy matter to measure.

I began by considering the question under the favorable supposition that a necessity really existed for invoking my aid. But when this supposition is inadmissible; when the reality corresponds with the picture sketched above; when the facts of the case show that, so far as human instruments and appliances can be relied upon for any object to be here effected in relation to the slave-trade, the people of Great Britain are paying for what strikes every beholder who bestows a moment's thought upon what is passing before him as a most wasteful superfluity;—when such is the truth of the matter, the only interpretation which the invocation seems to be susceptible of, is (with respect to those, at least, from whom it immediately proceeds) one that appears as little reconcilable with respect towards the foreign officer appealed to, as with candor, sincerity, and good faith towards their constituents and the world.

In such light does my poor judgment compel me to view this proposal as coming from you; and, in the spirit of frankness, which is due to every matter connected with the relations between the two nations, whose natural intimacy and good fellowship, while they afford demonstration of their own importance, involve, likewise, some elements of peril to their continuance, I feel bound to tell you so. My belief has, for some time past, been, that if our two nations are destined to become involved soon in a quarrel, the cause will be found in this subject; and its opportunity to become effective will be owing entirely to "the mother and the daughter," instead of coming to a clear, distinct, and positive understanding in regard to the matter, on the first symptom of motherly interference, or rather interference of the mother's servants, having allowed themselves to become involved in entanglements presenting some Gordian knot that will defy all cunning but that of the sword edge. If this calamity should befall, no part of the blame shall rest upon my shoulders.

In this spirit, then—the spirit of sincerest cordiality towards the people in whose name you act, and the most heartfelt wish that peace between us may be eternal, and our friendship ever waxing stronger—I speak my mind to you. I tell you that your proposal meets no sympathy in my bosom; that I consider it essentially disrespectful to my nation, and essentially wanting in good faith towards your own: a proposal, regarding which circumstances constrain me to believe that you were fully aware that it would not be acceded to, and that, if acceded to, still no useful result could by any possibility follow therefrom: that, therefore, it was not made in earnest; and that, if it were in the honestest earnest, still it would amount to neither more nor less than that I should take a part in that ringing of the

changes upon "rights of humanity," "nefarious traffic," and those other worn-out, though still right profitably popular catches, with which every observer of what has been going on here for years, whose stomach is not so strong as to be proof against the powers of tartarized antimony, has long been sick, even unto nausea.

As a farce, it might be laughed at, (which, indeed, it is here, by all whose characters possess sufficient levity,) if, as a mockery—as an obscene desecration of a holy thing—it did not kindle indignation in every bosom where dwells any vestige of that love of truth which can alone dispute dominion with the father of lies.

"It is," says Mr. Fowell Buxton—one of those of your countrymen—whose anti-slaveryism is as distinguishable from that of another class, embracing men of both high and low degree, as virgin gold is distinguishable from stinking pinchbeck—"It is superfluous to quote authority for the facts just enumerated, as they are notorious to commercial men." This, in a work but a few months ago published in Albemarle street; which, although it exhibits, in the readiness with which evidence is admitted, and in the hasty estimate made of its force, symptoms of the well-known bias of the author's mind, yet bears everywhere that impress of sincerity and honest conviction which, to a cool eye, if not to the heated optics of a brain-bubbling fanatic, it is so difficult for any false-coiner to counterfeit.

And what are these "facts," which, in Great Britain—in the heart of England; at the very centre whence all these costly *seekers* of—"information" (!) are despatched—are so "notorious to commercial men," that, from the Albemarle street press, it is proclaimed to be "superfluous to quote authority" in regard to them? What are they? Why, regular statistics—"ascertained"—founded upon "returns," about the "correctness" of which, and the completeness of which, (in regard, at least, to the "entire quantity of cotton goods manufactured in Lancashire,") there can be no doubt. And to what subject do these *ascertained* statistics relate? To "the amount of goods prepared for the slave-trade, (and absolutely inapplicable to any other purpose except the slave-trade,) manufactured in this country!"

Among these facts are the following: That the merchandise chiefly, if not exclusively, given in exchange for slaves, consists of cowries, Brazilian tobacco in rolls, spirits, and Manchester piece-goods; in the proportions of about one-third cowries, one-third tobacco and spirits, and one-third Manchester cotton goods. That the value of Manchester goods manufactured in 1836, exclusively "for the African legitimate-trade," is £150,000—say \$750,000. (There is no definition given of the boundary which separates the goods prepared for the "legitimate," from goods prepared for the "illegitimate," African trade. A moment's reflection must satisfy any mind that the task of tracing it must present difficulties not less than those which inhere in that of reducing to perfect distinctness the territories of Maine and of New Brunswick. And if this be true in regard to the mere tracing of such a line, what must the task be of *maintaining* it! Goods "manufactured exclusively for the African legitimate trade!" Does there, or does there not, lurk here a wretched self-delusion? How long do the goods remain under the control of the "legitimate" traders? Into whose hands is that control to pass? For whose *use* and *purposes* is it that they are destined? Is it for the use and the purposes of the people, among one of the "more polished, and dignified, and orderly" tribes of which, according to recent British authority, (Encyclopedia of Geography, by Hugh

Murray, &c., &c., &c.,) "there are *two annual* customs, as they are called, in which the king and chief men seek to propitiate the manes of their ancestors by a crowd of victims;" on which two annual occasions, foreigners "are selected in preference; but, as each seeks to multiply the number, unprotected persons cannot walk the streets without the hazard of being seized and immolated." "At the death of any of the royal family, victims *must* bleed in *thousands*; and the same is the case when the king seeks from the powers above favorable omens." "The legal allowance of wives for the king is upwards of three thousand, selected from the fairest damsels in his dominions;" who, "on any capricious disgust," are "often put to death." And "so natural did the king consider the slave-trade, that he could with difficulty be dissuaded from sending fifty boys, and as many girls, as a present to the King of England!" Is it for the use and the purposes of the people who, Mr. Buxton tells us, "worship the shark and the snake, and whose prince imagines the agency of an evil spirit in the loadstone;" among whom "the parent, debased and brutalized as he is, *barter his child!*" Is this the people to whom these "legitimate-trade" goods are bartered? If so, how far, in space or in time, must they travel before they become susceptible of being used to multiply those cases where the tempted parent "barter his child?" To resume the facts: That the value of goods manufactured in Lancashire, "adapted *only* to the slave-trade," is £250,000—say \$1,250,000. That goods suited to the slave-trade alone are manufactured not in Lancashire only, but at Glasgow likewise. That, besides loom fabrics, "ammunition and fire-arms to a large amount, and, like the goods, of a quality only fit for the slave-trade, are sent from this country to Africa. The annual amount of such exports is stated in the official tables (No. 6, of 1836, Tables of Revenue, &c., published by authority of Parliament) to be £137,698—say \$688,490.

These are some of the facts. Among the British manufactures therein particularized, I see not those *shackles* which have been fixed upon as the sure characteristic whereby a vessel may be infallibly assigned to the slave-trading class; casks of which (rolling through the custom-house here, without attracting any more notice from any one, save myself, than if they had been so many boxes of "negro heads") have elicited an inquiry, which, by the officer passing them, was evidently deemed as decisive an indication of my want of familiarity with the products of British Vulcan-industry, as a similar inquiry concerning negro-head cheeses would have been of ignorance in regard to the handicraft of Dutch dairy-maids. This omission in the commercial statistics of Mr. Buxton's work, of an article so important and so striking as shackles, cannot but be deemed evidentiary of great carelessness on his part, in making use of the materials which he had at hand; seeing that the sleepless vigilance, untiring zeal, indefatigable industry, and eminent ability, which the correspondence of his Britannic Majesty's commissioners, so far as it has come under my eye, proves that this place has been the theatre of, forbid the supposition, not only that their communications contain no information on a matter which is too entirely undisguised here to merit the epithet *notorious*; but that they have left any particle of such information to be desired, which human endeavor and human skill could accomplish the fishing up of.

Nor do the foregoing details upon this point exhaust the store supplied by parliamentary papers. They constitute but a specimen of the monstrous multitude of indecent facts, in the presence of which this kindred proposal

comes forth ; and which, while they serve to keep its effrontery in countenance, make it, as a mockery, but the more flagrant. At the very same period—the same month of the same year—when your predecessors, availing themselves of evasions of American law committed by American vessels, as a convenient pretext for getting up a fresh display of philanthropic zeal, were opening against the slave-trade a new fire of “dens of infamy,” “inhuman traffic,” and all the other projectiles belonging to that peculiarly costly and efficient ordnance, for both the supply and the use of which you are at present the contractors ; and were engaged in the further task of informing the American consul that it would be “the painful duty” of his Britannic Majesty’s commissioners “to report to his Majesty’s Government” these evasions of American law by American vessels !—at this same period (the month of October, 1836) another slave-trade scene was being enacted, or, as you would perhaps prefer it, was enacting, at Rio de Janeiro.

According to Mr. Fowell Buxton, “the most considerable of slave-markets” is *Brazil*, the capital of which is *Rio de Janeiro*. According to the same authority, the number of African slaves “brought annually into these five Brazilian ports would be moderately rated at 100,000—one hundred thousand.” From these two statements, showing the comparative rank of Brazil as a slave-market, and the “real amount” of slaves annually imported, it may be fairly conjectured that, of the amount of British merchandise manufactured *expressly for*, and adapted *solely to*, the illegitimate “African trade,” (*i. e.*, the slave-trade,) the portion which finds its way to Brazil is probably not altogether insignificant. Regarding that other amount of British products which is “*manufactured exclusively for* (but which Mr. Buxton does *not* appear to have it in his power to assure us is also *adapted exclusively to*) the African legitimate trade,” materials for a like conjecture do not seem to be afforded by the work in question. From our general knowledge of the commercial wants and supplies of the two countries, respectively, it may be deemed probable that there are not very many articles supplied by “the African *legitimate* trade,” whereof Brazil is in want ; and were these articles ever so numerous, it may, without any great hazard, be presumed that, in the teeth of the rivalry of “legitimate African traders,” direct from the mouth of the Thames, she could not well afford to pay for them in British manufactures, seasoned by twice crossing the line in the course of their to and fro across the Atlantic. The conclusion to which every consideration suggested by the subject concurs to point, is that, of all English goods *suitable for the African* market which find their way to Brazil, and are there entered, *not* for consumption, but *in transitu*, a small portion only, if any, can be presumed to be *not* intended for the slave-trade.

So it appears to have seemed to the Government of Brazil. In its ignorance of the laws of commerce, it appears also to have entertained the stupid notion, that, to enhance the cost of these goods to the slave-trader, would be to present a hindrance to his traffic. It might prove insufficient, and even altogether transitory ; since similar goods, or goods answering the same purpose, might be supplied by some other country at about the same price. Still it must necessarily be felt. So far as its efficacy might go, and so far as this might last, it would hinder the traffic ; and, at any rate, if the result should be only to substitute other foreign goods for those in present use, at least would the products of British industry be rescued from the prostitution to which they were now condemned. Governed by such stupid notions, or at least with the avowed design to fulfil its duty by doing something

which might "operate as an *indirect* discouragement of that traffic in slaves" which baffled its direct efforts at suppression, the Brazilian Government passed on the 26th October, 1836, a law imposing a duty of 15 per cent. upon "all English goods *suitable for the African market*, which might arrive *in transitu* at any of the ports of Brazil."

This duty was formally protested against by the British diplomatic representative at Rio, "as opposed to the spirit of the compact between Great Britain and Brazil, and *highly injurious to the interests of British commerce!*" And this step on his part was approved by his Britannic Majesty's principal Secretary of State for Foreign Affairs!!

And it is with an overpowering array of effulgent facts like these, flaring, like an Havana noon-tide sun, in the face of all Christendom, that, upon a subject whereon the people of England have been brought to a state of mind bordering on that of phrensy, which, as it prevailed among our common ancestors in regard to the Holy Sepulchre, is now an object of special school-boy wonder to us, so long as we have not advanced far enough in the great volume of history to "wonder at nothing"—which man can do; a subject which, throughout England, Scotland, and Ireland, affords at this day, at once the favorite field for enthusiasm to gambol in, and the most profitable one for hypocrisy to vend those cunningly compounded cakes and cordials, whereof the raw material is so cheap. It is with this store of facts already collected—with these means and opportunities for exploring every region and diving into every depth where the promise of a fact may be—with the double certainty thus afforded by a region of enthusiasts, attended by an army of sutlers, that, of all these means and opportunities, not one will remain unimproved—that the single-handed, toil-worn American consul at Havana, has it gravely proposed to him to engage in the task of collecting information, in order that the British Government may be "*enabled!*" to accomplish the conviction of "British subjects who *MAY BE concerned in promoting* the slave-trade, by *FURNISHING BRITISH FABRICS!*"

Of a piece with this mockery, is every one of the steps to which, in the height of that infatuation naturally and inseparably attached to such a career, you have been tempted by the illusive hope that the American consul would be found ready to take a part in your game of deception; or, if he prove refractory, could, by tricks of stalest diplomacy, be entangled into giving it a reluctant co-operation. Of a piece with it, is every single step on the part of your commission, that has ever come under my notice, as laid down in such parts of the chart of its course as your Government have seen proper to publish to the world, or as constituting here the subject of local talk and criticism.

Those regarding myself I will now pass under review. The task is so irksome a one, and interferes so much with the pressing engagements from which I am never free, that these causes contributed in no slight degree to my determination, in January last, to allow your letter of the 10th of that month to remain unnoticed, although I was not unaware of the accumulation of inconvenience that might ultimately prove the consequence of my leaving undisturbed the self-complacency of which it bore such flourishing manifestations. This possibility has become realized. My self-indulgence on that occasion is rewarded by its natural fruit, in the shape of the same task which ought then to have been performed, magnified at an unconscionably usurious rate. Your *perseverance* in these wanton displays of strategic skill is crowned with success—in one respect,

at least. I confess myself forced one move from that position of inaction with regard to you, which was the dictate alike of duty and of inclination. Thus compelled, I will still struggle for free agency, so far as regards the nature of the part which I am to act. It shall not be that of your selection, but of my own. It shall consist of a renewed effort to accomplish the end at which my former endeavors have so ineffectually aimed—to carry home to your comprehensions the considerations which forbid my acting in concert with you, and to impress upon your judgements the conviction that the enterprise to weaken the controlling efficacy of those considerations is an utterly hopeless one.

The means to this end can consist only of a still further development of the views and reasons which compel my refusal.

I will, in the first place, repeat the truth which I have already endeavored to awaken you to a sense of, and which your last communication contains nothing to affect in the slightest degree the force of—that *we do not stand in any official relations towards each other*; that you do not belong to any class of officers, created as channels of communication between nation and nation, or by custom acting as such; you do not so much as belong to any class of officers common to all nations for the internal purposes of each, and who, by this common character alone, might seem justified, under some circumstances, in recognising each other as fit parties to official converse; you are agents, created for a definite special purpose, existing solely in consequence of precise treaty stipulations, and as instruments for their effectuation between particular members of the family of nations; that, consequently, it would be absurd (and, in one aware of the absurdity, wrong and criminal) in any officer of any nation, not one of the parties to those stipulations, to allow himself to be made an instrument for practically placing his country into the predicament of such a party. This would be true upon general principles, and in any case of the mere absence of consent of the nation represented by such officer. But in a case where there may have been a deliberate refusal of such consent, the force of the obligation becomes immeasurably magnified, and its violation by a conscious offender assumes the hue of treason itself.

Such a case is the present. So manifestly is it so—and so flagrant, therefore, the indecency of the pertinaciousness displayed by you, to make me relinquish the position which I should deserve the doom of a traitor for abandoning—that, with it alone for a ground of judgment, the most charitable eye could not fail to discern in this pertinacity a strong evidence of some latent spring of action, whereof, if a compound one, egregious folly and ignorance could not possibly be the only plates. To one placed in my position, it is but too manifest that the chiefly active principle from which your conduct proceeds is a sordid selfishness, as little worthy of the nation in whose name the position which you abuse allows you to act, as it is of the holy cause to which lip-service is, with such prodigal self-oblivion and waste of all that it costs, rendered by you.

To bring this with satisfactory force and clearness to the comprehension of others less advantageously situated for personal observation, nothing further is requisite than to lay before them a faithful sketch of the actually existent truth here in regard to the slave-trade;—here, on this theatre, where, to the disgust of every one—whether he were or were not alive to the importance to the human race of the principle of national independence—that sacred article of the Catholic cosmopolitan faith has been seen ruth-

lessly and wantonly trampled under foot, through the prostitution, by self-seeking place-holders countenanced by self-seeking patronage-holders, of the might of a powerful nation to the purpose of insulting, without so much as the possibility of good to the cause that furnished the pretext, or to any cause but that of their own game of deception, the defenceless subjects and abject authorities of that government which, of all existing in Christendom at the present day, is the most utterly impotent for good.

The truth of the existing state of things here, in relation to the slave-trade, can be condensed into one sentence. It is a pursuit denounced in every possible way by the LAW—by law FOREIGN *made* and FOREIGN *imposed*—and supported by an overwhelming PUBLIC OPINION. These few words express not only the fact in both its branches, but also the cause from which the second branch chiefly derives that vigor which makes it overtop and stifle the other. And is it not in the nature of man that such an effect should follow from such a cause?

Thank God! it is. Thank God! that there is implanted in the heart of man, in the shape of an instinct, a something whose impulses drive him in the same line of conduct that is enjoined by the most lofty and intellectual patriotism. Forbid it Heaven! that the spirit of nationality, which with the masses is the instinctive safeguard provided by the Great Architect for that self-government, which, as it affords to man his only hope of well-being, becomes, in exact proportion to his rise as an intellectual and moral being, enshrined amid those cherished convictions which fill the place of instinctive impulses; Heaven forbid that this spirit should ever be found extinct in any people, be they ever so deeply plunged in ignorance, or debased by vice. God forbid that it should ever perish, or ever fall short of fulfilling the great purpose for which it was given—that of vindicating national independence; come the assault from whom it may, on whatever pretext, on whatever ground. God forbid that any reform, in religion, in morals, in law, or in government, be it ever so important or so urgent; that any question that can possibly be presented to the mind of man—if there be an attempt to decide it among any people through an invasion of their national independence—shall fail to be dismissed from their thoughts, never to be entertained again, until, acting as one man, they shall have repelled the invasion, and vindicated triumphantly this most sacred of all sacred causes.

But whether this effect of an assault upon a people's independence be desirable or not, it is a part of the truth which exists here with regard to the slave-trade. Here, that effect has been produced. The published correspondence of your commission bears (although this seems to have escaped the notice alike of those who, perhaps unconsciously, divulged the fact, and those upon whom it was thrown away) testimony to its existence; and if this had not so chanced, it would still be known, as it is known, to every man in Havana; unless, indeed, there should chance to be here some with powers of volition so strong as to close their minds at pleasure to conviction, and to render them insensible to the most salient of all the points of the public sentiment in which they move and have their being.

In one of those nostrum-doctor discourses, which, on the spot where they are concocted, and among those who know the true value of the ingredients which constitute the theme of the grandiloquence, prove a plentiful source of merriment, not undisturbed now and then by a flash of indignation, when thought is turned upon the motives to, and the conse-

quences of, this peculiar and stupendous quackery—in the despatch of the 2d of January, 1837, which forms a proem-invoice of sundry packages of precious matter, labelled “Returns of arrivals and departures,” are contained various remarks explanatory of the peculiar expenditure of toil and skill involved, on this particular occasion, in the task of collecting the ingredients. Hitherto, they had been so conveniently at hand, as to “render the completion of the lists little more than matter of form.” Now, however, “the case was materially altered;” and circumstances are explained “whereby your lordship will perceive it to be a matter of some difficulty to ascertain, with the same accuracy as formerly, the proceedings of these vessels.”

Besides this acknowledgment, that, hitherto, there had been not even so much as “some difficulty” in ascertaining “with accuracy” “the proceedings of these vessels;”—in other words, that their proceedings were known to everybody, and there was no wish or attempt at concealment;—another truth is omitted, in the heat of the illustration bestowed upon this interesting circumstance: that, now, “some” thing in the shape of a “difficulty” had come into existence, to afford an antagonist more substantial than empty air for commissioner-zeal to grapple with. This other truth is thus expressed: “*Whatever may at one time have been the feeling of some of the principal landed proprietors in favor of the suppression of the slave-trade of this island, we confidently believe that there scarcely exists at the present time ANY individual who entertains such a wish—nay, who would not do his utmost to sustain it.*”

A truth! in one sense at least, though not precisely, in the literal meaning of the words, a true picture. And a melancholy one it is, whether considered in itself, or in its cause. Not so, however, when considered as a result. Of what is it the result? Of a wanton trampling upon the principle of national independence—and this, too, attended with peculiarly aggravating circumstances; the most insupportable of which is, that the Government which should resent the indignity and repel the invasion has been made the instrument for inflicting them; that the people feel that that Government which should perish rather than suffer its own free action with regard to its own subjects to be interfered with, is the abject slave of their oppressors. Then, to make the goading still more intolerable, comes the double conviction on their part (than which none entertained by man was ever more sincere) that the traffic in slaves is justifiable and right; and that the contrary belief, now professed on the part of the English people, is a hollow profession, put forth to cover the utterly selfish and unprincipled desire and design to destroy countries whose rivalry in commerce or in power has become to them an object of dread.

This is the cause of that unanimity which, as an evidence that their office had become “some” thing less of a sinecure, was, by your predecessors, stated to exist upwards of two years and a half ago. This it is which has rendered universal among the people the conviction and the feeling, that, abandoned and betrayed by their helpless Government, they are placed in that predicament where it is the right and the duty of every man to protect himself; the general right and duty of all men individually to protect and sustain each other. It is not in regard to the slave-trade—to its impolicy, or its inhumanity, or its undesirableness in any respect—that such a change of opinion and of sentiment has, or could have, come over the land. Such a change was, in the nature of things, impossible. Of all the causes which might have conspired to create here, in a number of individ-

uals ever so small, an opinion and sentiment adverse to the traffic, not one but must necessarily have acquired greater force with every revolving year. The progress might have proved very tardy; but there could not have been a retrograde. It is not the *slave-trade* that has become in itself so popular, that not "any individual" could be found in the island but would "do his utmost to sustain it." No such retrograde has taken place. On the contrary, the sentiment adverse to it has made progress; although one that has been slackened by the operation of another sentiment, and is not easily discernible through its manifestations. This other sentiment is the sentiment of nationality. It is to its impulses that not an individual could be easily found, but would prove true,—not an individual but would "do his utmost to sustain," not "*it*"—not the *slave-trade*—but the individual carrying on the *slave-trade*. His own convictions upon the subject of the *slave-trade*, the feelings of his bosom towards any man capable of engaging therein, might prompt him to hang the offender. But he has had awakened in him a strong, overpowering sense of the fact, that this cannot be done without bowing his neck to foreign made and foreign-imposed law. This comes over him; and every duty becomes as nothing before the one duty of defiance,—every feeling is overwhelmed in its angry surges.

This result so naturally belongs to all such intermeddling, that it could scarcely have proved possible to avoid it, even had the British commissioners here confined themselves, with the most guarded circumspection and most refined delicacy, to the simple line of their duties as defined by the treaty stipulations. Had they—as they were bound to do by the plainest principles of international right, and would have been compelled to do by any government capable of an effort in defence of its own dignity or the rights of its subjects—contented themselves with the discharge of those functions for which alone they had been created, and for which alone they had obtained a residence upon Spanish territory;—had they thus deported themselves, their mere presence here could not have failed to prove a cause of irritation to any man, whether friend or enemy to the *slave-trade*, capable of a feeling for his country. But when, instead of a course so enjoined by every consideration of policy, with regard to the professed object, no less than of international decency in a powerful nation (or any one allowed to act in her name) towards a helpless one, a course directly the reverse has been pursued; when the attitudes in which they seemed to delight in seizing every occasion to exhibit were of a kind to impress upon the beholder that they belonged to a newly-invented class of plenipotentiaries, endowed with faculties of too transcendent an order to be confined within determinate boundaries; and when, at the same time, these displays were seen by all to be of such a nature, that those making them could not possibly expect, and therefore could not possibly intend, any other effect from them—*here*, at least—than that of reminding the authorities, and through them the people, that they were bound to bow politely to insult;—when such has been the course pursued, what must be the result? What must be the intensity in which it prevails?

That result is—the reawaking of the old guerilla spirit: that spirit which, when their national independence was suffering at the hand of Napoleon, was known by the French soldier to be near when he saw his comrade drop with the knife-handle projecting from his chest;—which, noiseless and unsecn, mowed a path for the angel of death through those serried ranks, in countless efforts to penetrate and to scatter which the Mameluke whirlwind had ineffectually spent itself.

Possibly I may have been led to form an exaggerated estimate of the intensity of this feeling, by what I know—and had rather die than doubt—would be kindled in my country by any, the remotest, approach to what I see inflicted upon this. There are things not a few in the United States, which are deemed by me to be crying evils, to remedy any one of which is a labor well worthy of exclusively occupying the patriotic ambition of a distinguished citizen. Not one of them, however—intent as I might be upon its extirpation, and near as I might have approached to the happiness of accomplishing it—but would be instantly laid aside, to await the return of times of *peace*, at the slightest indication of foreign interference. And the certainty and the promptness of my doing this, would be in exact proportion to the magnitude of the evil. To say nothing of slavery, (which—although I believe the condition of the slave in my native State to be incomparably better than that of the English operative—occupies nevertheless, in my estimation, by far the first place in our catalogue of evils,) there are, among others, the Bowie knives, of which you have perhaps read. So serious an evil do I consider the practice of carrying these murderous weapons, which prevails in one part of our country, that no effort to put an end to it, which I could make with any promise of success, would be omitted. Nor is there any severity of penalty that I would stop short of, if necessary, to accomplish this. But if this Bowie knife evil were to become an object of philanthropic zeal in your, or any other foreign country; and circumstances should be such as to impart to your government the wish and the power to interfere with ours in regard to this object of my abhorrence,—to dictate a law for its extirpation, and to take a hand in its execution;—that abhorrence would be laid aside, never again to occupy my thoughts until your law and your interference had been driven into the sea; and, if necessary to the accomplishment of this, every reaping-hook should be beat into a Bowie knife, and every maiden in the land should be taught to handle it.

Nay, there is one thing which would have the power to make me turn my arm against my own country; and that is, her proving herself capable of tolerating such an abuse of power by those intrusted with her Government. No radical now drawing breath in what I feel towards very much as my native county of Devon—for there my forefathers were born and died for many generations—can look forward with more heartfelt pleasure to the time when the people of England will be free. When the oppression under which, in every possible shape, their heads have been so long bowed into the very dust, shall have come to its end,—when the House of Lords shall exist only upon the page of history, and a real representation shall have taken the place of that detestable *simulacrum* by which, in their own name, they have been plundered, and the wealth and the power resulting from their toil and their ingenuity have been so shamelessly squandered, in every imaginable mode in which it could subserve the selfishness of a sordid few; when the skilful and industrious workingmen of Great Britain—the bone and sinew of the most affluent and potent state upon earth—shall no longer know as a reality, but look back upon as an absurd fable, that state of things, so incredible unless so substantiated, of which the appalling picture was unfolded by the Edinburgh trials in January of last year:—that picture of the industrious classes, self-organized for the purpose of protection against want; and as a means to this end, every man regularly contributing from the scanty remnant left him by that hateful system of robbery, called parliamentary taxation, to supply a fund for the support of secret tribunals and officials, the object of whose existence is to doom him to death and to effect the murder,

if, maddened by the agonies of a starving wife, or the cries of a famishing child, he shall prove so reckless in his desperation as to accept work at lower wages than those decreed by the unknown despots to whose mandates he owes implicit submission, or to accept of work at all, from an employer whom they may have deemed it necessary to put under the ban; when incredulity will be but strengthened by the tale, that under such a state of things—so shockingly unjust was the distribution of political power—the mountain of taxation was still further heaped up upon the agonized giant's chest, through the obedience yielded by place-holders to the necessity in which they found themselves, to abdicate their sinecures or conciliate the votes of a handful of hair-brained enthusiasts, governed by a fixed idea, and reckless of every other earthly consideration, pursuing, as the great paramount cause of humanity, and the only one deserving their regard, the object of their sofa-inspired visions: dreams, the downy current of which, the voice of reason, or the cries of famine issuing from myriads of their famished countrymen, were alike ineffectual to disturb!—the time when Ireland may write the epitaph of her Emmet; when the sense of governmental oppression shall have ceased to be so keen in the bosom of the “sans potato” O'Connell tribute-payer, as to make him insensible to all besides,—even to the true character of that Derrinane patriotism, whose cormorant scream, eternally vexing the ear of his country, makes her atmosphere alive with “rint.”

The time must come when all this shall have passed away, and become incredible to the common mind. It cannot be distant. Could it be hastened one single hour by any labor of my individual head or hand, there is not a man among the radicals of South Devon who would, with greater alacrity, buckle to the task; and yet, did my country at this moment possess—as possess she will, before many more lustres shall have passed over her the power to interfere with the question, and to settle it; and did she prove herself capable of abandoning that majestic attitude towards other States, which distinguishes her from them, as her Washington is distinguished from their leaders, and in which she has influenced their destinies solely by the force of that example, under the efficacy of whose holy presence the thrones and the aristocracies, and the impostures and shams of the old world are so rapidly crumbling into dust, and vanishing forever from this earth;—could she prove thus recreant to the principle of national independence, one, at least, of her sons would prove true to the sacred cause, even to the length of taking part against her; and even although assured that the certain consequence of his doing so would be the reanimation of the cold dead embers of ancient torism, and the revivification of the right divine, with its accursed brood of wrongs and oppressions, for years beyond that period when the coming struggle shall be over—when merry England, and Auld-lang-syne, and their sister isle, the land of the tear and the smile, quietly basking in the blessed light of Democracy, under institutions modelled after ours, shall unite in a hymn to the daughter-land that first taught the world how to reconcile liberty with law, the might of an empire nation with the freedom of a village republic.

Such being my own feelings on this topic, my judgment is perhaps not to be trusted in regard to the state of things which, upon this stage, has been produced and now exists.

So far, however, as that judgement can be relied upon, the picture is not highly charged. To all practical purposes, the slave-trade has become

hallowed in all eyes here, as a consequence of the union which patriotism has been forced into with it. They are now effectually wedded; and they will continue to be one flesh, until the causes which have aroused the spirit of nationality, to impart to it so strange a *penchant*, shall have ceased to exist. Then, but not till then, may the divorce be hoped for.

With this result before us for a warning, it is proposed now to give patriotism in wedlock to piracy also. By the same foreign-made and foreign-imposed law, Spaniards are to be told that that piracy, which every man, and, above all, every mariner in the world, for countless generations back, has been taught from infancy to look upon as a crime—nay, to the mariner, *the* crime of crimes;—that it is no worse than that slave-trade, which some now living may recollect to have seen most actively carried on by the mistress of the seas. Hereafter, the two shall go under one and the same name; and the man who believes, and whose *country* believes, it perfectly right, and even laudable, to pursue a business wherein, while his own end of gain is accomplished, he proves the instrument of snatching hundreds of negroes from famine on the coast of Africa, or from immolation in the hecatombs daily reeking either to Mumbo Jumbo, or to some inferior concentration of the divine essence, from a clay shark idol down to the airy ghost of any man who is entitled after death to the consideration due to the husband and lord of from thirty to three thousand wives;—the mariner or merchant whose country's mind continues yet unenlightened in regard to the slave-trade, viewed in its ultimate consequences, and whose conscience can find therefore a sufficient sedative in the knowledge that he is bringing negroes from such a state of things in their own country, to one where they will have a chance of plenty and a long life—is to be told that if he be tempted to engage in this pursuit, he might as well add to it, whenever opportunity offers, the plunder of merchant-ships, and the murder of merchants and women and children who have adventured upon the great deep. This addition will not make his neck a whit the less safe: and this he is to be told—not by his own country; not even by his own *jure divino* master; not under the sanction of the faintest shade of rightful authority: but by a foreign Power, whose usurpations on this very subject have rendered itself the object of his deepest hate, and his own Government the object of ineffable contempt to him. What brood of horrors is to come of this new match, those who get it up can perhaps tell. They have shown such a reach of foresight in regard to the fruits of the first, that this is no unreasonable expectation to indulge in towards them.

Nor is the sentiment thus engendered here, with regard to the slave-trade, by these wanton exhibitions of contempt for the principle of national independence, confined to the Spanish population. Such a spectacle is not of a nature to be looked upon with composure by any man whose soul is not so sold to mammon as to forbid his seeing, or caring for, any thing save the to and fro of the money-bags. Every man with a spark of soul has experienced its influence; and as the degree in which he has done so was necessarily proportionate to the interest he was capable of experiencing in matters not directly and individually concerning himself, so has it been felt the most strongly by those to whose nature and principles the slave-trade is most repugnant. This is no theoretic speculation. No man, at all conversant with the mechanism of which human opinion and sentiment are the products, could fail to perceive at a glance that it must have so turned out. No man, placed upon this stage, with his five senses about him, could

fail to become immediately aware of the fact, that it has so turned out: unless, indeed, the prospect of a snug pension, as a reward for patriotically and philanthropically bearing up against the tedium of a heavily charged West Indian sinecure, should constitute an "object too high" to permit him to be sensible of any thing passing around him; and, above all, of any such inconvenient circumstance as, if he possessed a conscience, might render it a troublesome hindrance to any display got up to show off to distant eyes the utility of his sinecure; by attaching a sting to the consciousness that it served only to render positively and actively detrimental to the service in which he was receiving pay, an office which, restricted to its assigned duties, might prove no worse than merely useless.

From the one truth, that *the slave-trade is a pursuit denounced in every way by the law*, and upheld by an overwhelming public opinion, it would be no difficult task for any one acquainted with Spanish character in all its bearings, social, legal, and political, to deduce every particular requisite to the composition of the most detailed picture of the existing state of things here in regard to this subject. Such a picture, Colonel Napier could paint with his eyes shut.

It would, for instance, be a waste of words to inform him that here *the trade is made no secret of, except towards the authorities*; and towards them *only* when acting in their official capacity—that, on all other occasions, it is spoken of with just as little reserve as any other pursuit; and every particular incident to it is as generally known as those that arise in any other branch of trade. Indeed, far more generally known: for it constitutes a pursuit in regard to which the people consider themselves *at war*; an unprovoked, one-sided war, to be sure, but this only serves to whet their spirit the sharper—and every incident of which, therefore, possesses a zest which cannot belong to those of any other branch of business, or even to any political subject. Every capture of a slaver is a wrong: to be talked of to become known to all, to be stored up in the memory of each. Every arrival is an exploit—a victory over the common enemy: the news of which (that would be proclaimed by the church bells, but that the Government does not dare) runs like wildfire, to arouse exultation in every breast, and to kindle anew both the spirit of cupidity, and the flames of defiance.

It would, in like manner, be a waste of words to inform him of the other fact, that the man would awaken universal derision—and derision merely, only because no apprehension would exist of any thing to disturb that feeling, and to convert it into one more serious—who should gravely undertake to set on foot proceedings with a view to the judicial establishment of any one of the facts or incidents thus known to the whole city as the favorite part of the news of the day, on every day almost of the year. A shout of laughter would greet him at every street corner; and if he encountered there nothing more cutting than a laugh, it would only be because of the universal confidence that he was a harmless lunatic, who might, without danger to any one, be left free to follow his humor.

What individual on this spot, but knows this? In England itself, who can devote his understanding to the subject for a single hour, and not be fully aware that this must be the real state of the case? Why, the picture is ready drawn in this very work of Mr. Buxton. In the chapter entitled "*Failure of efforts already made for suppression of the slave-trade,*" which does that credit to his common-sense which I anticipated upon perusing, in the *introduction*, the following words: "*we attempt to put down the slave-trade by the strong hand alone; and this is, I apprehend, the cause*

of our failure. Our system, in many respects too feeble, is in one sense too bold;" in this chapter, which affords the first glimmering of sanity that has for a long time appeared upon the subject; at least in union with *sincerity*: for there is no lack of worldly wisdom in one of the parties—and may, I trust, be hailed as an earnest that reason is at no very remote day to assert her empire over it: Mr. Buxton, while endeavoring to enforce his position, (a most incontrovertible truth, to any mind that has enjoyed and used any opportunity to acquire definite notions on the subject,) that even a universal agreement among nations to declare the slave-trade piracy would prove inefficacious, adduces in support of it the experience of the "three nations who have already tried the experiment of declaring the slave-trade to be piracy—Brazil, North America, and England."

"Brazilian subjects, (he says,) from the time of passing the law, have been continually engaged in the slave-trade; indeed we are informed that the whole population of certain districts are concerned in it, and *not one* has suffered under the law of piracy."

With regard to the United States, he observes, "It will not be denied that American citizens have been largely engaged in the traffic; but I have yet to learn that even one capital conviction has taken place during the eighteen years that have elapsed since the law was passed."

Not to break the thread of Mr. Buxton's illustration, I will merely observe here: that, if, by the assertion which he says "will not be denied," he means merely that, in regard to the slave trade, cases have occurred of the successful evasion, and consequently of the unpunished infraction, of the laws of their country by reckless desperadoes, who, either by birth or by adoption, were citizens of the United States, then the only point to be discussed between us would be the precise meaning here attached to the word "largely." But if the author meant to express his belief that there is a want of sincerity on this subject in the people of the United States—that there exists among them a disposition to countenance the violation of our laws against the slave-trade—I can affirm that he is utterly misinformed. Not an American citizen could be found who does not know such an assertion to be untrue, with just the same certainty that an Englishman would know the untruth of a similar assertion if made with regard to the crime of infanticide in England.

The difference between the cases of Brazil and of the United States is one that no European, not even an enlightened Englishman, can realize and estimate at its full force. It is just as impossible for him to do so, as it is for an American *man* to realize those reciprocal feelings, condescension and deference—to call them by the mildest names, and to view them under their faintest aspects—which, in the atmosphere of England, are so naturally and unconsciously awakened when "My Lord" and "Mister" are so thrown out of their proper spheres as to come in contact. Brazil law is imposed by the Government upon the people; and, so far as an inference may be drawn from the relations existing between them, and the historical character of the stronger in regard to its proneness to make such use of its power, this particular law may be presumed to have been imposed upon the Government of Brazil by the Government of England. Hence it is the reverse of surprising that a Brazilian law—above all, that this law, should in "certain districts," or in all districts, be set at defiance by "the whole population," and should be a by-word among them. Nor is it surprising that these violations should be rendered still easier than they otherwise might be, by the conui-

vance of the Government to which it has been dictated. In the United States, on the contrary, all this is clearly impossible. Not only is it impossible that the Government should have a law dictated to it by any foreign Power; but, on our side of the Atlantic, it ceases to be a fiction; it is literally true, to an extent absolutely inconceivable to a European bred mind, that the voice of the Government is nothing more than the concentrated voice of the people. Hence, such a state of conflict between the law and public sentiment as Mr. Buxton may be a believer in, the existence of in our country is an absolute impossibility. Had the law been a special one, enjoining or prohibiting a particular mode of conduct upon or to a particular and limited class of citizens, there might be a possibility of its necessity not being generally understood, and, consequently, of its being with a large class the object of a neutral sentiment generally, and of a hostile one whenever it might come up for enforcement. But, with regard to a general law, binding upon the whole nation, and, with regard to every individual in it, imposing an emphatic restriction upon that complete and absolute right—which nowhere else upon earth exists so untrammelled—of every man to apply his capital or his labor to such uses as he sees fit, with regard to a law of this kind, the supposition is altogether inadmissible.

To return from this unexpectedly long digression to Mr. Buxton's illustrations "of the inefficacy of such a law." He informs us that the most striking is that furnished by the experience of the British Government itself, in its sway over the Isle of France. (To estimate the comparative force of this fact with respect to any regarding the island of Cuba, it is necessary to advert to the circumstance, that the Isle of France is about 150 miles in circumference, and not distinguished by any thing like the countless multitude of ports, islets, and keys, which are so characteristic of the coasts of the island of Cuba, the sea line of which is at least 1,500 miles.)

"For ten years," says Mr. Buxton, "*the slave-trade prevailed at the Mauritius, to use the words of Captain Moresby before the committee of the House of Commons, 'as plain as the sun at noonday.'* Many were taken in the very act, and yet no conviction, I believe, took place." "I fear that such a law would be a dead letter, unless, at all events, we had the *bona fide* and cordial co-operation of the colonists. Were we able to obtain this in our own dominions? Our naval officers acted with their usual energy on the coast of the Mauritius. When General Hall was Governor there, and when Mr. Edward Byan was the head of the police, *every thing possible* was done to *suppress the traffic*, and to *bring the criminals to justice*. No persons could act with more meritorious fidelity, (and I grieve to say, poorly have they been rewarded by the Home Government;) it became, however, but too evident that the law was unavailing. *The populace would not betray the slave-trader; the agent of the police would not seize him; if captured by our officers, the prisons would not hold him, and the courts would not convict him.*"

This is the picture of a ten years' experience of the British Government, in a small field, of only twenty five miles radius, under its own exclusive and absolute control; bounded by that mountain-wave on which her power is without limit, and which here enclosed a mere handful (some six or seven thousand) of the white race—and these, conquered subjects; to keep whom in subjection the British people were taxed at a rate which may be conjectured from the officially ascertained fact, that, in the course of fifteen years, "the expenditure of Government in the island exceeded the revenue

by no less than £1,026,208." Upwards of five million one hundred thousand dollars! or annually, at the rate of upwards of three hundred and sixty-six thousand dollars, were the productive classes of England, Scotland, and Ireland, taxed for that *part* alone of the cost which was taken out of their pockets to be sent round the Cape of Good Hope to the Isle of France, to be there disbursed. With regard to the mode in which the absolute power possessed by the British Government over this handful of the white variety of the species, whom conquest and treaty had converted into free British subjects, each, of course, *ipso facto* encased in a suit of the invulnerable panoply whereof so exhaustless a supply is ever ready to issue, at the nod of Westminster wigs, from that magic armory which venerable tradition accustoms even us to believe in the reality of, and teaches our thoughts to connect with the words, "British constitution;" with regard to this point, an idea is afforded by the circumstance, which, however trivial it may seem, may be adduced upon the same principle that a feather may be used to show the direction of the wind—that the Governor of the Mauritius, satisfied that, against "offenders of this kind," no conviction could be obtained on the island, "was obliged to resort to the *strong expedient of sending*" them to England *for trial* at the Old Bailey! A Governor selected to administer the British "constitution" to newly annointed "British subjects," "obliged to resort to the strong expedient of sending them FOR TRIAL." on a western voyage, from the remotest island of the Indian ocean, under the southern tropic, round the Cape of Good Hope, across the line, to "Old Bailey," in the 52d degree of north latitude! and this, in regard to the very same "infamous practice," for denouncing the King of Great Britain's unblushing patronage of which, as shown by the tyrannical exercise of his royal negative upon the reiterated effort made by my native country to render practicable the "abolition of domestic slavery by first "excluding all further importations from Africa," a Virginian was, in 1774, marked out for proscription; and, had the power of the British Government proved commensurate with its law, would have been torn from the native land whose interests and rights he was thus vindicating, in connexion with those of humanity at large, to be sent "for trial" for high treason, on an eastern voyage across the Atlantic, to the same point.

This Mauritius experience of the British Government, in a little field, under its own absolute control, would have sufficed, one would suppose, if not fully to enlighten, yet sufficiently to prepare for readily receiving light, every mind really desirous to acquire a knowledge of Havana truth in regard to the same subject. So perfectly adapted, so irresistibly conducive to this end does it seem to be, that it is no easy matter to conceive (even after making allowance for all the fogs that could be kept heaped around the subject by individuals to whose present salaries and future pensions one fair glimpse at the reality might prove destruction) how any such mind can have failed to become, long ago, fully disenthralled from the dupery.

The particulars I have given sufficiently fill up the picture of the Havana reality, for the purpose, at least, of enabling a general estimate to be formed of the real character and merits of the communications which you saw fit to address to me in January last. No one need be told that in regard to a subject which, besides presenting an all-absorbing object of direct pecuniary interest to numerous individuals, and one of an interest less direct, but very sensible, to a far more numerous class, forms the favorite theme for gossip throughout the classes connected in any way with the commer-

cial movement, and the salient point for every *quidnunc's* attention—the only possible difficulty connected with the obtainment of information must consist, not in collecting a show of the materials, thus ever coming up and floating past every eye, but in winnowing the true from the false, and reducing facts to their true and exact shape and dimensions.

Under the general aspect belonging to the subject, then, any such proceeding on your part, as an offer to make me acquainted with a “rumor,” or a “report,” is, upon its very face, a manifest absurdity, if no worse. It would be the same, if the matter of your communication consisted of substantial *facts*, instead of “*reports*,” unless, indeed, you were prepared to furnish, or to indicate, some portion or other of that matter of *evidence* or *proof* which can alone impart to facts a legal existence—which alone could “enable” (as the British Government desires to be, through my instrumentality, in regard to British merchants and manufacturers) the authorities of any country to use these facts, were they ever so *notorious*, as a basis of action. Without such preparation on your part, any such proceeding would be an absurd farce; and, if the disposition were wanting, it would be a despicable mockery.

Now, it is a matter of fact, known to every man in Havana, and which defies contradiction, (for not one can be found bold enough to give it,) that no such disposition did exist, or could exist, on your part. If your facts were of the most conclusive kind, and you had a dozen respectable witnesses to each, you would not *dare* to name one of them. Nay, had the individual from whom your information was derived been known to me, (and circumstances so plainly pointed him out, that the presumption was too strong to permit a doubt to rest on the mind of a single individual acquainted with the parties,) and had he been summoned by me as a witness, he would have been sure, as such, to know nothing on the subject.

This is so notorious here, that no one having the least pretension to character for candor would venture to dispute it. The slave-trade is a matter which every one who feels any curiosity on the subject, knows all about. Nay, although destitute of such curiosity, he cannot, if he possess the use of his ears, and understand any language spoken at Havana, avoid hearing the news of the day or hour, of which it always constitutes the most piquant topic. To make sure of exact accuracy, is a task which, on this subject, as on every other, is attended with trouble and difficulty in various degrees. But the particulars no one can avoid hearing. And yet, although everybody knows all about the slave-trade, no one so knows any thing about it, that the testimony he could or would give in a court of justice, or for any judicial purpose, upon any point connected with it, would be worth a straw.

What, then, was the end which you had in view, in addressing to me your two communications of January last?

The presumptions afforded in regard to this question, by the existing state of things here, clearly are:

1. That you could not expect to make known to me any particular, of which I was likely to be, or to remain, ignorant.
2. That, supposing you possessed grounds for such an expectation, you could not anticipate that any possible measure on my part, in regard to the subject of such information, could be attended with any useful result. In addition to these presumptions, resulting from the general state of the case, was a third, arising from the relation which I had assumed towards your

commission, by the act of returning its communication of the month of October, 1836, to wit :

3. That, supposing the latter of the foregoing presumptions to be so far reversed, that it was in my power to adopt some measure that would prove otherwise than futile, you could not anticipate that I could be moved thereto by your interference, but had every reason to believe the reverse ; that, so far as my disposition and my course in regard to the subject could possibly be influenced, in any way, by such interference, the only possible consequence of your venturing upon it would be decidedly adverse to the cause which you are paid to promote.

Such are the presumptions which arise from the mere general fact of your addressing to me a communication of this nature. They are not very favorable to the character of the end which you proposed to yourself. Let us now see what grounds of judgment are disclosed by the particular contents of your letters.

The end and aim of the first of the series (that of the 8th of January) is set forth in the opening paragraph, as follows :

"As it may possibly not have come to your knowledge, we think it right to make you acquainted with the report prevalent in this place," &c.

Here, so far as your proceedings could be presumed to be governed by a definite purpose, and so far as your assertion in regard to such purpose could be relied upon, we have the assurance—1st. That the *end and aim* of your letter was *"to make you (me) acquainted with" a certain "report."* 2dly. That the motive which immediately determined your volition to the adoption of this object, as an end to be accomplished through your instrumentality, or your spontaneous exertions rather, was, the *conviction that it was right.* *"We think it right"*—that I should be made acquainted by you with this prevalent report. And, 3dly. That the motive which determined your judgment to this conviction—the reason why you thought it right that I should thus be made acquainted with this prevalent report—was, the *possibility that it might not have come to my knowledge* : *"as it may possibly not have come to your knowledge."*

Here we have, in perfectly logical completeness, the end and aim of your letter ; the conviction which induced you to adopt it as an end ; and the ground upon which that conviction rested. In point of form, a truly complete and satisfactory piece of logic ! If it were but correspondent in respect to substance, it would leave nothing to be desired. Unhappily, however, the strength of the material is in perfect contrast to the skill of the workmanship ; and the worthless chain serves only to make us deplore that so much precious labor should have been thrown away.

Not but that there is also some good stuff in it, too. The middle link has the sound of true metal. As a determining motive to the will, nothing can be better than, nothing else so good as, conviction of right. It is in exact proportion as our conduct is squared thereby, that we accomplish the approach to perfection of which, as moral agents, we are susceptible. Our moral nature can aim at nothing higher. The man who acts up to what he believes to be right, fills the measure of his duty as a morally accountable being. He may be an idiot, who thinks it right to plunge his noddle into melted lead, by way of experiment upon its refreshing properties ; or he may be a fanatic, who thinks it right to set the world on fire, in order to evade the flames of the judgment-day : and, as a consequence of these convictions, those to whom they are not imparted may think it right to

avail themselves of the properties of strait jackets. Still, not one of this unenlightened multitude, if he have satisfactory assurance of the sincerity of conviction in the opposite party, will, if he be himself under the dominion of reason, consider him a just object of resentment or blame. His own safety, or that of society, may render it indispensable that he be held to what may be termed physical accountability; and this may be painful and severe to the last degree: but, for moral accountability, the supposition leaves no room. Such is the advantage of acting up to what we think right; and such the immunity attending all error resulting from adherence to this golden rule. The condition upon which the granting of this immunity depends, is seldom, however, lost sight of. It presupposes, and imperatively requires, that the conviction be, not an affected belief put on for the occasion, nor even one carelessly taken up; but a real, sincere belief—the result of an honest, deliberate, and anxious exercise of our powers of reasoning, such as God may have made them. The immunity must therefore be withheld, when good grounds exist for believing the alleged conviction to be defective in any of these particulars.

Among the great number of grounds which may exist for a belief in the insincerity of an alleged conviction, and the still greater variety of possible combinations of such grounds, few can possess more inherent strength than the utter inadequacy of the logical motive to which the alleged conviction is ascribed by the man pretending to entertain it. So long as he merely affirms the conviction, without telling us any thing of the process in the hidden mechanism of his brain, whereby that conviction was evolved, he is comparatively safe. But the first step he takes in the way of assigning reasons, brings him upon perilous ground. If the reasons which he tells us that his conviction rests upon be clearly such as, according to human experience, no conviction of the sort can be supported by, in any mind not under some very extraordinary stimulus, we cannot, on our part, avoid the conviction that there is something wrong somewhere. And if, in addition to this, it be apparent, from the circumstances of the case, that the actor has inducements, independently of any conviction of right, for proposing to himself the same end, we are forced to the conclusion that his alleged conviction is a feigned one, and that his volition has been determined by another motive. The very least which our conclusion can involve is, that if the end aimed at by the actor was truly believed by him to be right, he thought it right also to conceal the true ground of his self-satisfactory conviction, and to feign a false one.

Few judgments are to be found endued with such powers of resistance, that they could resist for so much as half a minute the conviction that the present is a case of this kind.

According to your own statement, the "report" is already "*prevalent* in this place." You take the step of making me acquainted with it. The moral motive of this step is, (so you say,) the conviction that it is right. The logical motive to this conviction is, (so you say,) the possibility that the report may not have come to my knowledge!

What is this "report?" Why, an American vessel of such extraordinary beauty as to render her, and the purpose to which she is destined, the common talk of the whole city, is, through successful evasion of American law, brought to Havana, and sails for the coast of Africa: not a man in the place, who has bestowed a thought upon the subject, doubting that upon reaching that part of the world she will be divested of her American character.

order that she may with impunity be employed in the traffic which, by the laws of the United States, would subject to the punishment of death every individual pursuing it under the American flag. Some months after, she returns to the island of Cuba; successfully accomplishing the object for which she was sent, by bringing a large number of African slaves. Among the particulars relating to her voyage, one is, that she retained her American character and papers until the time arrived for taking the negroes on board; and that while under their protection she was boarded by an officer from a British cruiser, to whom the American master—conscious though he was of a wicked evasion of the laws of his country—coolly pointed out her flag, fully confident in its efficacy to protect him, on the highway of nations, against any meddling on the part of any foreign Power.

This is the "report" which had become "prevalent" in this place. This report in regard to a most remarkable vessel, has already become *prevalent* in this city. There is a *possibility*, however, that it may not have come to the ears of the American consul. This possibility proves sufficient to force upon the minds of the British commissioners the conviction, that it is right for them to take the step of making him acquainted therewith; and this conviction being thus produced, the step is taken by means of a letter!

Such is your own account of your proceeding! Is there a man to be found, who, without any particular knowledge upon any part of the subject, and possessed of the merest general notion of our relations, would fail to perceive, at a glance, that the most absurd insincerity is stamped upon its very face?

No, sirs; this cannot go down; nor was it expected to—it was a mere contrivance (and a wretchedly bungling one it is) to serve the purpose of a head-piece to your communication. The end and aim of that communication, and the spirit in which it was conceived, rendered it of no consequence how awkwardly botched its figure-head might be. Indeed, the more disgusting it should prove, the better; for the more in harmony would it be with the great end and aim of the proceeding.

No, sirs; you may have had some end in view, which you thought a "right" and just end; and, for accomplishing it, you may have thought that communication a "right" and just means. But the end set forth at its beginning is one which you did not have in view. No one possessing the slightest general knowledge of the subject, or of our relations, could believe for an instant that you could really entertain the belief that the American consul was *un-*"acquainted with the report *prevalent* in this place respecting the ship *Venus*;" or, supposing him to be so, that to change his state of ignorance on the subject of this "report" into one of acquaintance with it, could be an object of solicitude with the British commissioners.

Thus much regarding what was *not* the end which they had in view. With regard to the opposite question, I will hereafter adventure into a speculation, founded upon these same materials, which will *not*, I believe, be deemed very hazardous. For the present, it is proper to pursue the examination of your communications, for the purpose of ascertaining what sort of things they may contain, besides the logical chain of end, motive, and reason, which has been set down in the inventory.

In stating the particulars of this report, you unconsciously, as it were, run into a *respectful suggestion*—thus:

"The report further states there are several American citizens implicated in this flagrant violation of the laws of the United States; and, as the *Venus*

may be hourly expected in this harbor, we would respectfully suggest that such immediate steps may be taken, on her arrival, as may lead to the punishment of such offenders."

This forcibly illustrates the danger of such interference. Moved by the mere possibility that a certain report might not have come to my ears, and setting out with the sole design of making me acquainted with it, you cannot accomplish the task of stating the particulars, before your disinterested zeal and generous ardor in the cause take such entire possession of your soul as to hurry you into the indiscretion of "respectfully" making to the officer of a foreign State, under circumstances which immeasurably magnified the indecency of such a step, a *suggestion* which no officer of your own Government, however subordinate his grade, could do otherwise than repel, if coming from any one not in immediate command over him, as a most impertinent *interference*; and, if coming from his immediate commander even, to resent as a most insulting imputation. Such would have been the character of this "respectful" proceeding, even had the object of it been an officer of your own Government, and under your own immediate orders. What, then, becomes its complexion when viewed in the light proper to it: as addressed to the officer of a sovereign State—to one for whom you really did not possess an official existence; and not only thus, but who had been placed under the necessity of declining, in the most peremptory manner, to recognise you in any way as persons with whom he could hold official converse; and who had based this determination upon the peremptory refusal finally given by his Government, in reply to the repeated importunities of yours, to even listen to any proposal for making of this subject a ground of agreement!

Such turned out to be, at the very first step you took, the consequence of your permitting yourself to commit this interference: so difficult is it to avoid losing sight entirely of the cold dictates of worldly propriety, when the impulses of so holy an enthusiasm as yours are once yielded to!

Nor can the force of this illustration of that peril be adequately appreciated, without adverting to a circumstance which places in the strongest possible point of view the utter gratuitousness and wantonness of the suggestion into which you were thus "respectfully" hurried. Had you, under precisely similar circumstances, made such a suggestion to a lieutenant placed under your orders, it could not have failed to be looked upon, by every eye endued with vision for such mundane considerations, as a prostitution of your influence at home to the indulgence of a disposition to wantonly inflict insult. Supposing you to have possessed authority to make "respectful" suggestions to me in regard to the discharge of my duties, this authority never could have been confided to you in the design that you should exercise it, except on fit occasions, and in a proper manner: that is to say, on occasions when you might have some ground at least for the belief that your suggestion would not prove altogether superfluous; and in a manner which would not, in the absence of all cause for it, convey the insulting imputation of neglect of duty. From such an imputation no suggestion is free, which, in general terms, merely suggests to an officer to do his duty: and this is the character of your suggestion. Conceiving it to be my duty (for, if you did not, the absurdity and grossness of your conduct in every way become but the more flagrant) to take "such immediate steps as may lead to the punishment of such offenders," you make to me the suggestion that these "steps" "may be taken."

Now, at the precise moment when this "respectful" suggestion was addressed to the consul of the United States, what were the particular circumstances of his position in regard to "American citizens implicated in" the class of violations and evasions of the laws of their country, to which this case belonged? These circumstances, to be sure, had never been communicated by him to you. He had even deemed it proper to meet, in a mode plainly signifying a determination not to be led into it, a proffer of conversation on the subject from one of you, (the judge commissioner :) for, towards you, and *because* of your preposterous pretensions, it is a topic upon which his lips have ever been sealed; and, reversing the course which all acquainted with his character know to be natural to him on all subjects, he has ever maintained, with regard to this, a marked and significant reserve, in the design that you should not forget that it had become forbidden ground. Until their pretensions to interfere in the execution of the laws of his country, the subject was one on which the American consul was as ready to converse, with his usual want of reserve, with the British commissioners, as he always has been with the British consul. His natural disposition in this respect had not been altered, even by the somewhat curious and instructive lesson contained in the published correspondence of one of the predecessors of the present judge commissioner—a gentleman of well-known eminence in the science of entomology; among the fruits of whose eight years' exile in this land of (to him) good cheer, operas, and nobility *tertulias*, besides the invaluable contributions to the suppression of the slave-trade, which have been attended with such notable effect, was a magnificent collection of insects, and a snug little fortune, estimated, in cash and retiring pension, at something over one hundred thousand dollars. Before this gentleman's return from the woful exile, his patriotic and philanthropic sacrifice in enduring which has been thus inadequately rewarded, and while the present republic of Texas constituted one of the States of Mexico, (by whose laws slavery was not recognised, although engagements to service for a term of years were :) at this period, a settler in Texas, from the United States, visited Havana, and here purchased a number of slaves, in the design, as he alleged, of transporting them to that part of the Mexican republic; thereby changing the condition of slavery for life, in which he found them, into that of servants for seven years: while, on his part, he acquired a legal right to their services for that term. From there not being here, at the time, any consul of Mexico, this person was under the necessity of applying at the consulate of some friendly Power for any consular service which he might need; and his origin naturally directed him to that of the United States. There, at his request, his declaration under oath, to the effect above recited, was received; and this declaration was *authenticated* under the consular seal and signature: that is to say, the consul gave a certificate, not that the negroes had been emancipated, nor of any other event in the case, but solely and simply that the individual, having appeared before him, had *declared* those facts. His *declaration* was received and certified to. Such, precisely, was the document delivered to him; and, inasmuch as the occurrence connected itself obviously with the slave-trade, it was naturally mentioned by the consul on occasions when the African traffic (which he might designate as the "*nefarious*" traffic, but for the habitual caution in regard to these epithets of zeal, inspired by the disgust awakened by witnessing their use as a stock in trade) came upon the carpet. Among the persons with whom it was thus made a subject of con-

versation, was the then judge commissioner, resident here, on the part of Great Britain.

After the measure of this gentleman's years of arduous toil in this yellow-fever atmosphere had been filled, and his own person, as well as his brilliant entomological collections, had been transferred to the salubrious air of England, the consul, upon looking over one of the slave-trade document volumes of Parliamentary Papers, perceived that the occurrence above related had been embalmed for the use of some future writer on that interesting branch of natural history (in the estimation of some, not inferior in interest to entomology itself) dedicated to the genus *homo* of the mammiferous class. So mutilated and altered, however, had this subject become, in the process of preserving it, that it could never be used in the composition of a work for rigorously scientific purposes; and would prove altogether valueless, except as affording the parent idea for an embellishment to some historical novel on the slave-trade. Of the extent of this alteration, a conception can be formed only by comparing with the foregoing picture of the original subject, in its own shape and proportions, the same subject as embalmed in the collection of facts contained in the "report on the slave-trade for 1835," transmitted by "his Majesty's commissioners to Viscount Palmerston," from "Havana, 1st January, 1836."

"In the spring of last year, an American agent from Texas purchased, in the Havana, two hundred and fifty newly imported Africans, at two hundred and seventy dollars per head, and carried them away with him to that district of Mexico; having first procured, from the American consul here, certificates of their freedom."

"Certificates of their freedom!" Most accurate "report!" And this is written by a gentleman whose philosophical habit of precision of thought and of language would doubtless have been ineffably shocked at any amateur-entomologist tourist who should have betrayed such looseness in either respect, as to confound a butterfly-maggot of the Trojan with one of the Greek tribe, or to speak of a *Lepidopteron* of the *Fusicorn* family as a *Filicorn*.

With such a specimen before us of the scrupulous accuracy of official "reporters" of slave-trade facts, Mr. Fowell Buxton cannot but be exonerated from all blame for those exaggerations in regard to every particular connected with the subject, which produce at every page exclamations from every well-informed reader, but were to be anticipated from any man writing in his closet, under the smoke canopy of London, with materials of this description for his reliance.

The purchaser of these slaves appears before the consul, and declares, under oath, that he has emancipated them on the condition that they shall serve him for the term of seven years; and that he is about to embark them for Texas, to be there held under this contract and the laws of Mexico, which, by their own force, would make the negroes free so soon as they landed there. A certificate of the fact, that this declaration has been made, is given by the consul. Two or three years after, the latter finds that the official collector of facts, stationed here by the British Government, with whom it had formed a topic of the same unreserved conversation which would have been held on the subject with any other gentleman, has, in the course of a statement, written a year after the occurrence, when the circumstances relating to the condition of Texas had become materially altered, and wherein this transportation of Africans from Cuba to that country is repre-

sent as a branch of the slave-trade—that this official “reporter” has introduced him (the consul) into the narrative, in the character of a person from whom this alleged slave-smuggler had “procured” “certificates of their freedom.” that is to say, certificates to the fact that *the Africans were free!* And this specimen of philosophical precision occurring, too, at Havana, in a British commissioner picture of the American consul, at the very period when, according to subsequent developments, (see Edinburgh Review for April, 1838,) Lord Glenelg, his Britannic Majesty’s Secretary for the Colonies, was engaged in drawing nice distinctions as a basis for instructions to the Governor of British Guiana, charging them that care must be taken to prevent *Africans* being imported, (say from the coast of Guinea, distant fifty or sixty day’s sail from Demerara,) under the order in council permitting the importation from India, at more than double the distance, and in any quantity in which they could be stowed on board of any craft, the industrious, the frugal, the delicately shaped, the gentle, the graceful, the refined, the engaging natives of Hindostan! Of these rice-eaters (*eaters* when philanthropy leaves them any of their rice to eat) who “have never seen the sea,” and could not be made “to comprehend the nature of the voyage,” ship off, under the British flag, or the Spanish, or the Portuguese, or any flag you please, to the Mauritius, or to the coast of Surinam, any quantity that can be kidnapped into an agreement, under which they fancy themselves about to be taken to “one of the company’s villages.” *Hindoos?* yes! in any quantity. But beware of touching an *African!* The former possess, to be sure, a fraction of the title which constitutes the only available passport to the consideration of the legitimate philanthropy of the hour; but their title is far from perfect. They have the black skin, but they want the woolly hair and the flat nose. They belong to the *Caucasian* variety of the human species—the *highest*; instead of belonging to the *Ethiopian*—the *lowest*: that race, which, according to the highest of modern authorities, in a British work belonging to the republic of science, and free alike from partisan exaggeration and from cant, whether of the Fire-the-faggot or of the Mawworm type, “has ever remained plunged in barbarism, with no higher idea of *law* than the despotic whim of the reigning chief; with no written language, nor even a code of hieroglyphics; which, “after centuries of intercourse with the most enlightened nations, has retained its character unchanged;” holding, by universal consent among naturalists, “the lowest station among the varieties of his species,” and exhibiting in some of its hordes “the lowest debasement of the human form, and the least capacity for mental improvement.” It was in enjoining upon British governors the proper discriminations between these two varieties of the species, that the colonial office was engaged at London, at the period when the British agent at Havana for collecting and reporting facts in relation to the slave-trade was erecting, at the expense of the American consul, so striking a monument of the habit of scrupulous accuracy resulting from his zoological pursuits!

When led into this digression, I was about to state, in regard to the particular circumstances of my position at the moment when your sense of right impelled you to “respectfully suggest” to me not to omit the discharge of my duty, that, although those circumstances had never been communicated by me to you, and although I had deemed it my duty to repulse advances from one of you (the judge commissioner) to make of them a topic of conversation, yet they were no secret. They had thrown the

whole port and city into an uproar—producing, among the class of people particularly sensitive on this subject, a greater commotion than, to my knowledge, has ever been produced here. This could not but have been known to you, even had your perceptions of what is passing around you been still less lively than they would seem to be; nor could the cause have been unknown to you. Even had it not formed the subject of town talk, there was not a *guadano* in the harbor who could have refrained from giving all the particulars to any person understanding Spanish, who should have taken a seat in the stern of his boat.

It was the seizure of a vessel and crew in this port, within sight of the harbor-master's office, and at an hour when the quay there is most crowded, by an armed force from the United States sloop-of-war Ontario, then lying in the harbor. The character of the vessel, and the ground of her seizure, were equally notorious. She was a celebrated slaver belonging to this port, one of the fleetest vessels in the world, and the more remarkable from the not uninteresting historical association attached to her by tradition, that the vessel upon whose keel and model she was a new structure had been devised and built in France, for the express purpose of attempting the deliverance of Napoleon from the friendly guardianship of Sir Hudson Lowe. This well known vessel had but a short time previously left this port, and had returned to it under the American flag, procured by means of a bill of sale to the American captain, for the purpose of protecting her, not while carrying slaves, but while on her voyage to the coast of Africa. This was known, just as all such things are known here, as a matter of *notoriety*, but not as one in regard to which *judicial proof* could be hoped for. The documents carried by her, however, were of a nature that in itself, afforded, in my opinion, sufficient ground for her seizure by a cruiser at sea; (that is to say, by an *American* cruiser, and by an *American* cruiser *only*.) And owing to the hopelessness of this being accomplished at sea, except under such extraordinarily favorable circumstances as could not be anticipated, it was done in this port.

The American master who had brought her here was, at the time your communication was addressed to me, known to the whole city to have been already some weeks in prison, at my demand. And, not only was the case of a nature to occasion the more talk, from the accidental notorieties of the vessel, but there chanced also to be a corresponding circumstance connected with the captain, who, a native citizen of the United States, and one probably of very good connexions, was known here to the whole port, and all the surrounding grog-shops, as a most distinguished and sympathy-exciting victim of "consular persecution," under the pretext of protecting against, and rescuing from, brutal oppression on his part, the black crew whom he had brought from the United States.

The seizure of this vessel and crew in this port had been ventured upon, too, notwithstanding a strong doubt on my part as to the compatibility of such a proceeding with the principle of national independence; my respect for which had been rendered the more lively, and my disposition to avoid all infringement thereon the more scrupulous, from the anxiety here awakened in me, that, in regard to a helpless nation particularly, the conduct of a servant of the American people should exhibit the most pointed contrast to the course of the individuals whom circumstances allowed to act in the name of those trans-Atlantic brethren of ours, whose noble energies, calculated, from their own nature, to prove an almost unmixed benefaction to the

whole world, have, to subserve the selfishness of the sordid few whose reign of misrule has so nearly reached its end, been converted, for so many fair portions of man's globe, into the heaviest curse that weighed upon them.

With this train of recent events, bringing into such forcible relief to every eye my disposition in regard both to the black race in questions of justice between a black sailor and a white captain, and to the evasion of American laws against the slave-trade, your "respectful" suggestion, in regard to a notorious case, presenting a "flagrant violation of the laws of the United States," that I would not omit to perform my duty, possessed in the highest perfection every element which, had it been made in the purest sincerity, had been addressed to a lieutenant or midshipman of the royal navy, placed under your special orders, could not have failed to subject you, from every candid man, to the imputation of either the extremest absence of mind, or the most ungenerous disregard of, the most brutal contempt for, the feelings of those subjected to the calamitous necessity of holding, at least as subordinates, or fancied subordinates, official intercourse with you. After this "respectful" suggestion, comes, as a finishing flourish, to set it off—"The peculiar relationship in which the United States are placed with Great Britain induces us more anxiously to hope you will participate in the feelings with which this communication is made." To this I replied, at the time, by a piece of information, which, to my regret, appears to have been thrown away: That, since the 4th of July, 1776, the only relation in which they stand to each other is, that of two independent nations—"enemies in war; in peace, friends:" that a vital part of national independence consists in the exclusive execution, no less than the exclusive enactment, by each, of its own laws; and it requires, in regard to the one, no less than the other, the vigorous repulse of every pretension at foreign interference; and that, if there be upon earth two nations from whom, above all others, their own welfare and that of the world demand the most scrupulous regard for, and punctilious observance of, this principle, these two nations are "the mother and the daughter."

I will now proceed to your second letter, of the 10th of January last, which was in reply to my answer to your first. Supposing it possible (although far from probable) that you might have both the ability and the will to put me in possession of some matter of evidence, or of some clew thereto—of something, in fine, which might avail towards the legal establishment of the fact, and that your communication, to "make" me "*acquainted* with the report *prevalent* in this place," and to "respectfully suggest" to me "such steps as may lead to the punishment of such offenders"—that is to say, "such steps" as might "suggest" *themselves* to me—might be looked upon as mere diplomatic verbiage, which, not being intended to have a meaning, must not be scrutinized for one, but be considered as a professional way of saying "I have something to tell you if you will let me." Supposing all this possible, though extremely improbable, I determined, for once, to overlook your impertinence, and see what would come of my encouraging you to open your budget. Nothing! not so much as a mouse would the mountain yield; and yet I made every disposition I could to facilitate the accouchment, and cheer you to the effort. In particular, you were reminded of the important distinction, which, although unprofessional men are apt to overlook it, cannot but have been rendered familiar by Temple lucubrations and circuit experience, and their daily contact with which renders gentlemen of the robe so inhumanly insensible to the weight of *rumored* facts and *notorious* facts,

that, in any coterie of tender-hearted old ladies, would, in the twinkling of an eye, send the "horrid wretch" who has committed the rape to the gallows.

Of the reality of this distinction, and of the respect paid to it wherever British law prevails, until British governors are "obliged to resort to the strong expedient" of brushing the inconvenient cobweb away, a strong example is afforded in the Mauritius experience of the British Government, already quoted from the recent work of Mr. Fowell Buxton. There, although the slave trade prevailed "for ten years," "as plain as the sun at noon-day," not a single one of these tens of thousands of notorious facts, in flagrant—flagrant "as the sun at noon-day"—violation of the law, could the Governor get judicially established. "Offenders of this kind" had, by a "strong expedient," to be sent "*for trial*," on a four months' voyage.

Examples of the same kind might be indefinitely multiplied—I mean of the kind to illustrate the distinction between notorious facts, and facts in regard to which judicial proof may be obtained; not of the kind to illustrate the "strong expedients" of British governors, although even these pearls are not so rare but that, with a demand sufficient to justify the undertaking, a string or two might, with due industry of research, be obtained. But, of the former kind, the instances are so profusely scattered in every direction among the multifarious products of the press, that it is no longer necessary to be a gentleman of the robe to possess a perception of the truth which they illustrate. If it be not familiar to any old dame in the United States who solaces the hours of her son's absence by dipping into his Edinburgh Review, it must be because her thoughts are wandering too much after him, to be intent upon the meaning of what she reads. How else, than by a clear and perfect realization of this distinction, can she, for instance, comprehend the statements made by Mr. O'Connell, in a House of Commons speech, (February 14, 1838,) quoted in the Edinburgh Review for April, 1838? How else is it possible for her to realize the possibility of such facts in a country where any thing called a "Government" is in existence? or in any aggregation whatever of featherless bipeds, with or without government? But for the aid of this key, she must needs assign these statements also to that new class of truths which will be distinguished hereafter as the *Daniela*, and the type of which is exhibited in its highest perfection in the famous Virginia negro-breeding truth. The orator's theme is the state of things among the working classes of Great Britain and Ireland, already alluded to by me—one feature of which is the thrice incredible fact to an American mind, that the operative in those countries compulsorily pays, not the Der-rynane tribute-money, (this being peculiar to Erin Mavourneen,) but a far more considerable share of his weekly earnings, for the support of—*what?* Why, nothing more than the "*secret committee of assassination*," that is bound by oath to make away with him, or, by the efficacy of sulphuric acid upon his eyes and flesh, to convert him for life into a loathsome cripple, if, when Famine shall make his cold hearth her abode, and his wife and little ones her prey, he shall prove so insane as to forget the conditions on which alone, in that home of "the genius of universal emancipation," he has, *practically speaking*, (in contradistinction to *legally, theoretically, and oratorically*,) any right to use the head and hands which God gave him—one of which conditions is, that he shall not work for a farthing less than the price established by the secret committee; and another, that he shall not work, at any price, for any employer whom the committee may have put under the ban, even although the cause of this-measure should be, that said em-

ployer, as a reward for a faithful service of "thirty years" in his factory, had granted to the veteran the boon of "taking his son as an apprentice" in the same establishment, while the arrangement conflicted with one of the laws which the secret committee were bound to enforce, having for its object to keep down the number of apprentices, in order that the wages of the "skilled workmen" may not be endangered.

Of the efficacy of the "sulphuric acid," which is one of the instruments, for keeping up the supply, and paying for the use of which upon his own person, the operative is compelled to contribute a portion of his weekly earnings, the following will afford an idea: it is taken from a certificate, "obtained in the course of judicial investigation," from James Corkindale, M. D., surgeon of the Royal Infirmary at Glasgow. "He (Charles Cairney, a cotton spinner) had, the evening before his admission, got a large quantity of sulphuric acid dashed in his face by a fellow-workman. The acid was spread over the whole right half of his head, from the nose to the nape of the neck. The effect produced was deep sloughing or mortification, by which the half of his face and the half of the scalp became an ulcerated surface; thick patches of mortified parts falling off in succession. The right eye was completely destroyed, and the right ear dropped off with the dressings, an entire putrid mass. He suffered great pain, and was several times in danger of his life. He remained five months in the infirmary, and was removed to the country because his general health was declining. Though the surface is now skinned over, yet the new formed skin is imperfect; it often becomes raw, and is so unseemly that he has always one-half of his head and face covered with a handkerchief." And this picture, be it borne in mind, presents the result, not of personal hate—of diabolical revenge in some demon under the human form—but of the regular operation of the regular systematic organization into which, for this express purpose, as in their opinion, a necessary means to the end of securing themselves against starvation, the British industrious classes have been compelled by the force of circumstances! It is not a solitary individual case, *sui generis*, standing out by itself, as a counterpart to that world-renowned one of the Italian, who was considered to have brought revenge to the highest pitch of perfection by carrying some of the same liquid about him to squirt it into his enemy's eyes: it is a mere specimen of a large number of the same species, itself constituting but part of a genus, consisting, according to the Edinburgh Review, of "the innumerable crimes committed by combinations in different parts of the country."

Of these O'Connell facts—the *Irish*, not the *Virginian*—facts whereof the *venue* is laid in "Dublin and other places in Ireland," and not in those high-fenced "pens" used by Virginia negro-breeders for constraining individuals of the two sexes to the conjunction which is so abhorrent to their nature,—the following are specimens, all culled from a single page:

"This system of combination was carried on by clubs, to which the workmen were called on to pay three shillings per week." "In the case of one man, who had worked thirty years in the factory, the employer asked the man how he could serve him. The man said he should be greatly benefited by having his son taken as an apprentice, and that it would be an act of charity. The boy was so taken; but the workmen turned out against it, and the boy was withdrawn." "One man, who had resisted the turnout, was assassinated in the open day, in the presence of twenty persons."

"This was before the repeal of the combination laws. After that repeal, the clubs lost much of their power." Of which *improved* state of things, the following are specimens, (the clubs no longer having it in their power "to act as they did before," and being under the necessity to do "by others what they did not wish to do by themselves:") "Four murders were committed, not by the clubs, but by men whom they paid for that purpose." "In Cork, within the last two or three years, no fewer than thirty-seven individuals had been burnt with vitriol; many of whom were deprived of sight. These were the results of the acts of the trades clubs." "In Dublin, four murders had been committed by similar agents." "The clubs did not themselves act openly, but they paid agents, whom they called welters. Those welters attacked any man who was pointed out to them, and murdered him when the opportunity offered." "He had strong evidence of the atrocity of the crimes committed by the welters, whose number amounted to about six thousand." "On Thursday last the premises of a timber merchant were set on fire immediately after his having been served with a notice." "These men were ready to execute any vengeance, according to order; and although the trade combinators did not commit actual offences themselves, they had *always a standing army in the welters.*" "A fortnight previously to this last disgraceful crime, a man and his wife having died of cholera, the master, in whose employment they had been, with praiseworthy humanity took two helpless orphans, the children of these people, as apprentices. The combinators revolted at this, and insisted on their immediate discharge; to which the master was obliged to accede, having no power to resist their mandate."

Such are the O'Connell illustrations of the difference between flagrant violations of law, which are notorious; nay, in regard to which even "*strong evidence*" exists, (for Mr. O'Connell says that he—*he*, the Curtius of the age—has "*strong evidence of the atrocity of the crimes committed*" by this welterian bi-legionary force,) and flagrant violations of law, in regard to which strong evidence "*can be obtained,*" or even be used after it is obtained.

These, however, are afforded by the state of the "*operatives*" in Ireland; and there may be some extraordinary peculiarity in her condition, which renders it unfair to adduce them in regard to this important difference, when considered in its general bearing upon human affairs. A peculiarity of this nature is, indeed, more than hinted at by Mr. O'Connell, in a sentence which would have constituted a forcible illustration of the views that I have endeavored to unfold in regard to the cause of the difficulty attending the execution, upon this stage, of the slave trade laws. In regard to this regularly organized body of nineteenth century "*free companions*"—for the number, "*six thousand,*" is too high to permit us to associate with their occupation that idea of mystery which might justify us in calling them "*bravos*"—and their regularly organized employers, the orator says: "There was a *great difficulty* in getting evidence against those parties; *for*, unfortunately, so *little sympathy* existed in Ireland between the governors and the governed, that it was a matter of *great difficulty* to get the law enforced in any case." Of this sentence, the points are so arranged as to form a logical chain of the St. Patrick order; but it presents with sufficient distinctness, at least for general purposes, the difficulty of getting evidence as a *cause* (or as an *effect*, if you choose to insist upon taking "*for*" in its strict meaning) of the difficulty of getting the law enforced; and the want of sympathy between those

who make the law, and those who are called upon to conform to it, as a cause for both the recited difficulties, coupling them whichever way you will.

As, therefore, these are only Irish illustrations, it may not be amiss to contemplate one derived from the recent experience of British law, upon its own proper ground—within the “four seas,” which serve, instead of “towers along the steep,” to the ever-glorious little island whose grassy vales and rock-moss glens, so many of us on this side of the Atlantic have unconsciously learned to look towards with feelings of love and pride, as the land of our fathers, and of the fathers of our language.

For our present object, also, we have to look no further than the same article in the same number of the Edinburgh Review. A more striking illustration of the important difference in question could not be desired, than that afforded by the case of attempted murder upon a cotton-spinner named Graham, in which no fewer than *four hired* assassins were employed. In this case, three of the four murderers were arrested, and were, “in the hollow voice of the wounded man himself,” identified. They were “defended with the greatest ability by the first counsel at the bar;” but Kean was, nevertheless, “unanimously convicted.”

Lafferty and Orr, however, were convicted only of *assault*, (though it afterwards turned out that they were *hired* accomplices to murder.) With regard, however, to the fact, that these men acted as mere agents in the employ of the committee of the cotton-spinners’ union, there was “no evidence;” and consequently, “though *no one* in that part of Scotland had *any doubt* that this really was the case, yet there was no proof of it *attempted* at the trial.”

Such was the judicial result, and to this was the judicial *attempt* even restricted, in a case wherein it afterwards appeared that, besides the man wounded by them, who was a “*nob*,” (that is to say, a workman who departed from the requirements of the committee,) Messrs. Wright, Dunlop, Lindsay, and Ewing, were particularly pointed out to them as persons *whose lives* should be taken as soon as possible;” with other details, which are thus summed up by the Edinburgh Review :

“It is now” (after a lapse of thirteen years) “proved, by the concurring testimony of two witnesses—one of whom was the assassin hired to discharge the pistol, and the other a member of the *secret select committee*, by whom the assassins were to be paid—that four men were *hired* by the committee of the association to shoot a *nob*, by way of striking terror into the rest; that the persons engaged in the murder were four in number, and that they were to get £100 for it; that the expense of defending the assassins at their trial was borne by that body; that the wives of the transported assassins were maintained from its funds, and the one who was sentenced to Bridewell was sent, after his liberation, to America, at their expense. This is proved by the concurring testimony of two witnesses, at the distance of thirteen years from each other, and in totally different judicial investigations: the confession of the assassin emitted recently after his trial, being buried in the records of the parliamentary committee; that of Murdoch, the member of the *secret select committee*, obtained in the course of the trial for another murder perpetrated by a member of the association, in a subsequent strike, thirteen years after. And, as if to make the proofs of the guilt of the combination still more complete, the association, in the interim, little dreaming of the confession of their hired assassin, and of the testimony of

their own secret committee-man, had the hardihood to call a meeting, where they denied all connexion with the assassination or knowledge of the persons who had instigated it; bringing forward, in an especial manner, an individual (Patterson) who denied their participation, but who has since been proved to have been *the very person who was present at the hiring*, and who, *by proving it* before the secret select committee, *obtained for one of the assassins* his share of the promised reward."

No further illustration can be needed, in regard to either the reality of this difference, or the very marked, nay, absolutely controlling, influence which it exercises over human affairs in every country where the reign of the thing called law is established; and which it must continue to exercise so long as her Majesty shall not be deposed to make room for that Ashantee equivalent of "strong expedients," the strong predilection for, and exclusive use of which, has been particularly noticed by modern naturalists as constituting an essential part of the moral characteristic of the Ethiopian variety of the human species.

That the materials whereof you might be in possession, for a reply to an encouraging answer to your first communication, would prove such as to show that you were not altogether unmindful of this important difference, I deemed, as I have above stated, not altogether impossible; and, therefore, I determined to overlook, for this once, the considerations that forbade my recognising you as fit objects of official intercourse, and to give you the opportunity to tell me all you might have to reveal.

The event corresponded with the strong probabilities which the case presented. The supposed possibility which I had made the basis of my calculation, turned out to be an entirely imaginary quantity; and my condescension to have been altogether thrown away. Not even a mouse, as I before observed, did the mountain bring forth. Nothing so tangible even as a vapor, did the rumbling herald. With a proper apparatus, and due promptness, even a smoke might have been caught. But nothing came. The rumbling renewed itself; and lo! I was as empty-handed as before: for, unhappily, sound is a thing that modern-science has not yet taught us to make a preserve of.

Throwing open the door to you as wide as it was possible to turn it, I begged you to bring in "all the information of any kind, regarding persons, occurrences, or things, calculated to be of use to the Government of the United States, in regard to the ship *Venus*, or any matter connected with her;" and lest this should be deemed so general as to be somewhat vague, I particularized as points in regard to which any thing in the shape of evidence, or a clew to evidence, would be most acceptable, the two facts—that she had "taken in a cargo of negroes whilst under the American flag; and that there are several American citizens implicated in this violation of our laws."

To this, you "beg to say that we have already communicated as much of the information we possessed as we felt ourselves at liberty to do." And what was the amount of "*information*?" that had been thus "communicated" by you? Why, "the report prevalent in this place!"

But if your letter contained nothing in the nature of evidence or information, this was not the only particular in which it corresponded to its forerunner; for, like it, it proved to be a cornucopia of other things.

First came the ground for *conjecture*; which, though you did not feel yourselves at liberty to go the length of giving me information, was so considerably and charitably attached to your reluctant denial of what I asked for—a denial which, while it fulfilled the duty that forbade your actually un-

locking the casket to me, generously went as near to a violation of it as honor would allow; being so managed, as, by rattling the contents in my ear, to give me the assurance that it was not empty. Although you could not give me any more information, you so contrived your denial as to let me into the cause of it. It was not that, from having already given me all, you had no more to give. The loaf was not all disposed of; but you were not "at liberty" to favor me with another slice.

This, although kindly meant, proved but one of the daily occurring instances of injudicious charity; for its only effect was to throw me into perplexity. First, there was the possibility that this form of speech had been inadvertently used by you, as a diplomatic mode of saying merely that you could not give me any more information, without any intention to intimate that nevertheless you had possessed yourselves of a further supply. Then came up to the support of this conjecture the extreme improbability, resulting from the whole state of the case here in regard to the slave-trade, your means of information included, (so far as these could be judged of, either from my personal knowledge of persons and things, or from comparisons between the information contained in your published communications to Government, and that contained in the current reports of every day,) that it could be in your power to add a particle to the "report prevalent in this place," or to give me the slightest available clew to evidence. On the other hand, against the adoption of this conjecture, the manifest meaning of the sentence recurred; tending to preclude the supposition that it could have been written in any other design than to convey that meaning. And in corroboration of the propriety of thus supposing you to mean what you said, came the not improbable conjecture, that, however accurate and full your information might be on any matter connected with the slave-trade, it must have been received under the seal of secrecy, and be now bound up by your pledge, express or plainly implied, not to bring your informant into difficulty. In regard to the necessity of faithfully adhering to this pledge, and cautiously avoiding to expose any one who might on any occasion have deemed "it right to make you acquainted with the report prevalent in this place," to being called upon by the authorities as a witness, or becoming known to the public as one who assumed the responsibility of interfering in the business, except for the innocent purpose of making people "acquainted with the report prevalent in this place;"—in regard to this duty, there was likewise a strong probability of your being adequately impressed. It was possible even that you might have heard tell of the angry feeling, rising to open threats rung in his own ears, at that very period "prevalent in this place" against the American consul, for the course pursued by him in regard to the vessel already mentioned: a feeling which, as it had a real practical inconvenience, and the frustration of very extensive plans for its basis, rose to a pitch deemed by some to be not altogether void of danger; although counteracted by the sentiment of justice awakened towards a foreign officer, who was seen to have pursued a very plain line of duty, restricted entirely to his own flag, without the least pretension on his part to interfere with any other. But, although you might not be "acquainted with" this "report prevalent" here, you could not but be supposed to be perfectly familiar with this aspect of the subject; and being, no doubt, readers of the Edinburgh Review, you had probably had your impressions in regard to it very recently refreshed by a passage so strikingly to the point, and so highly calculated to produce that effect, as the following picture of the difficulty experienced in

that country, whose claims to be considered as emphatically the *land of law* are so generally conceded, in regard to procuring witnesses on the subject of secret committee of assassination proceedings, in regard to protecting their lives after they are procured, and in regard to the requisite (merely "*exile for life*") to their personal safety, after their evidence is given.

"The proceedings at the late trial have rendered it too clear that the account of these combinations, given thirteen years ago, still applies to them. It is sufficient to observe, that in that trial the prisoners were charged with *eleven* different crimes committed during the continuance of a strike—including the murder of a spinner on the streets of Glasgow, and two attempts at fire raising; and that, although the evidence, in the opinion of the jury, failed to connect *the prisoners* with the more aggravated of these charges, yet they were all *fully proved* to have been committed by *some person* connected with, and in the interest of, the combination.

"When such powerful means of intimidation are at the command of, and unscrupulously used by, the ruling committees of trades unions, it will not appear surprising that the *most unbounded terror* should prevail among the workmen who find themselves exposed to the assaults or violence of these formidable conspiracies. This, accordingly, is one of the most remarkable features of the case; and the one which is most alarming, both in a moral and legal point of view. It was stated on oath by the sheriff of Lanarkshire, at the late trial, *that it was with the utmost difficulty* that witnesses could be got to come forward to give evidence against the combination; and that *he was obliged to meet them in the night, at different obscure places*, in order to take their depositions; and that *as soon as these were delivered*, the witnesses were, *at their own request*, put in *jaill*, to protect them from violence: in which five of them lay *for five months*, till the trial came on. They required to be assured of protection by the court, in the strongest and most solemn manner, before they could be *brought to speak out*; and the result has been, that they must all be sent into *exile for life*, as none of them *could remain with safety in this country*."

Such proved to be the ocean of conjecture into which I was launched, to be tossed about from one wave to another, by the mistaken though kindly-meant qualification of your denial of my request for information.

To make up for the lack of this object of my desire, you renewed your present of an article of which I was not particularly in want. Close upon the heels of your denial of the former, comes a largess of new "*respectful*" suggestions—or, more properly speaking, *reproachful* suggestions; for in this shape do they present themselves this time: thus furnishing a continuation of that chain of illustrations, commenced in your first letter, of the danger, already remarked upon by me with reference to it, which attends the first step in such a proceeding as yours. Your first letter begins only in the design to make me acquainted with a report; then comes a "*respectful*" suggestion; and now, at the very beginning, as it were, of your second letter, come suggestions, not of what I ought to do, but of what I ought to *have done*.

Bowing, as in duty bound, to censure cast by so legitimate a hand, I am nevertheless internally upheld by the secret consciousness that the step which I am thus charged with having omitted could not have been taken, even had my post been occupied by one more worthy of acting under your directions.

The step thus retrospectively suggested by you, in connexion with the

hope which, spontaneously kindled in your enthusiastic bosom, had expired in the cold presence of my inglorious inaction, was an "immediate investigation;" which investigation, more definitely expressed, meant an "examination of the log-book and crew;" and this examination was to be effected by me in one of two ways, to wit: either "through the Captain General of the island," or "by" my "own authority and the intervention of the commander of the American vessel of war now in the harbor."

All very simple and obvious! Quite after the fashion of the new Joe Miller instruction for fitting a vessel to move by steam:—Big boiler in the inside, two big wheels on the outside; fit them together "by the intervention of" certain pistons, &c., &c.; kindle a fire under the boiler; and away she goes. Had this process for obtaining evidence against a slaver but been imparted to the world in time for the use of the Governor of Mauritius, he might have been induced thereby to flatter himself awhile longer than the "ten years" during which the slave-trade prevailed under his nose, "as plain as the sun at noon day," that he might accomplish something, stopping short of the "strong expedient" of the Ashantee variety. But beautifully simple as the thing may appear upon paper, it would, like so many other instructions that have been drawn up, beginning with the celebrated pinch-of-salt method of fowling, prove, upon trial, to be of no practical value, owing to the want of sufficiently precise directions for the various intervening processes which are to establish the connexion between those prescribed by the instructor.

In the present case: how, for instance, was the boy to get near enough to the bird to deposite the salt upon its tail? How was the consul to get hold "of the log-book and crew," or of either of them?

Why, nothing simpler. There were two several processes, either of which could not fail: one is defined as "through the Captain General;" the other as "by the consul's own authority, and the intervention of the commander of the American vessel of war."

Of these two processes, let us pursue the details, step by step; this being the only way to ascertain whether any process can work at all in practice. We will begin with the last defined.

Supposing the jurisdiction of the American consul to be absolute in regard to every vessel entering the port of Havana under the American flag, it must evidently be restricted to them. As an officer, he has no right to set foot on board of another. The second process presupposes, therefore, that any vessel to which it may be proposed to apply it, has entered the port under the American flag. Had the "Venus" done so, the course of the consul would have been so plain, that perhaps no suggestions from his Britannic Majesty's commissioners would have been requisite to make him enter upon it. But what was the fact in regard to her flag? The possibility of his doing this, was so obvious to those concerned, that, had his Britannic Majesty's commissioners brought with them to this place the betting propensity, (which is said to be even more common among their countrymen than it is among those of the consul,) they would have experienced no difficulty whatever in obtaining a wager, at any odds, that the "Venus" would *not* return to this port under the American flag. And so it happened; as, indeed, it was positively *known*—just as well known, and just as soon, as the fact of her return to this coast—that it would happen. It was known that she had returned under the Portuguese flag, and under the name of "*Dequesa de Braganza*." By a strange fatality, too, as if it had

been fated that no circumstance should be wanting which could possibly enhance the flagrancy of both the absurdity and the disingenuousness of this proceeding on the part of the British commissioners, one of them (the judge commissioner) happening to have honored the consul with a visit at his office, at the same time that he was receiving one from a British merchant (Mr. Morrison) of this city, (which time was about eight hours prior to the delivery of their first communication on the subject,) the latter mentioned the fact of the *Venus* having returned to this coast under the Portuguese flag, and also her new name. The effect produced by this disclosure upon the judge commissioner proved it to be an altogether unexpected and unwelcome one—a most vexatious slip of the tongue, on a subject upon which they had been conversing; and the feelings of awkwardness into an exhibition of which the surprise betrayed him, were but rendered the more distressingly potent by the mode adopted to conceal them.

This fact of the change of flag was *à priori* so extremely probable, from every circumstance bearing upon the question, that, in the opposite scale, nothing existed but the merest possibility—such as would not weigh a feather in the conduct of any man upon any subject. Unaccustomed as he is, however, to rely, even in a case affording a presumption of this sort, upon one hearsay merely, when opportunities exist for further inquiry, the consul availed himself of these; and the result was, to satisfy his mind as completely in regard to the fact of a change of flag, as in regard to that of the identity of the vessel. That the *Venus* was now under the Portuguese flag, and called *Duquesa de Braganza*, was not a bit less generally or less surely known, than that the *Venus* had got back from Africa. Officially speaking, however, there yet remained a possibility—for the contrary had not been officially ascertained—that the vessel was still under the American flag, and had been reported as American to the boarding officers. As she had entered in the night, this was the only way in which her national character could have been disclosed. In an unofficial way, this object presented no difficulty whatever. It was the simplest thing in the world to ask at the captain of the port's, and to receive the answer; which proved to correspond with the report, as it was sure to do. Still this was not officially ascertaining the fact; and it was desirable that I should do so. But how was it to be done? Why, nothing simpler, you will think. A letter to the Captain General, demanding to know under what flag the *Venus* had returned to this port!

To this course, obvious as it may appear, there were, however, several objections. In the first place, it would, to this extent, have confounded the American consul with the British commissioners, in regard to the very particular in which he desired to keep himself in the most pointed contrast to them. I had been sent here, and recognised here, to act in regard to American vessels; but not to catechise the authorities in regard to any others—to a ship, for instance, which, for aught I knew or could know, (bearing in mind the important distinction which I have taken so much pains to illustrate, between notoriety and judicial proof,) might be enveloped in some vitally important state mystery. Had I written such a letter, and had it been replied to by the request that I would point out the provision or the principle which authorizes a consul to exercise a surveillance over any other vessels than those which show his flag, I should have been no less embarrassed than it would have chanced to your predecessors to be, had I inquired of them, on a certain occasion, how it had come to pass that the

proceedings of American vessels had got under the surveillance of British commissioners, so as to render it their duty to "report to his Majesty's Government" (advising the American consul of such report) any infractions or evasions actually committed by those vessels, or supposed to be so, against the laws of their own country. In the second place, supposing this objection not to exist, or the Captain General to prove so indulgent as to overlook it; there lay a practical difficulty, which could not fail to arrest me at the very first step: for it is not easy to see how his law-advisers could have failed to point out to him the necessity of proceeding regularly to work in the matter, and precluding all mistake, by requesting me to designate the vessel to which I referred under the name *Venus*, and to indicate to him the witnesses who could establish her identity with the *Venus* that had sailed from this port under the American flag. In other words, what ground had I for asserting that the ship which had been reported to the boarding officers as the Portuguese *Duquesa de Braganza*, was the same American *Venus* that had been the talk and the admiration of the whole port a few months previously? Supposing this balk to have been effectually surmounted; it must still be apparent, (to any gentleman of the robe, particularly,) that so interminable a succession of mountains lay behind, that the only consequence of my getting over the first would be to render the difficulty of retreat the more remarkable. But it is needless to enter upon the consideration of these, seeing that the first balk could not be got over. And to this truth, you, gentlemen, could not have failed to advert, had not your attention been so engrossed, as it is known to be, by "objects too high," and "convictions of rectitude too strong, to allow" any share of it to be thrown away upon things so grovelling, and considerations so mundane. Had every effort been made to establish judicially the mere identity between the *Venus* and the *Duquesa de Braganza*, and had the Captain General lent himself to the task with all the ardor that commissioner-zeal could desire, what would have been the result? Utter discomfiture; unless, indeed, the parties interested should have seen clearly that they could safely venture to indulge in a little sport—just as the *Venus* was said to have done with the British cruisers that chased her on the coast of Africa, by taking in sail to let them come up a little, now and then. Without such a prospect before them, they would not have allowed so much as the identity of the vessel to be established. You felt sure of it; so did I. But not small would have been my embarrassment, had I been called upon to produce a good specific reason, or a good corporeal witness, to establish it. Such a request would have placed me in a position even more critical than that in which your predecessors found themselves some years ago, after making the Captain General "acquainted" with the "report" about the Texan slave trade: for I should have had neither judicial incompatibility nor dignity to mount upon; nor so much even as the pretence to creep behind, that this was calling upon me "to bring before or prosecute in Spanish courts of justice delinquents against Spanish laws." Nor would the result have been very brilliant, had I, in my strait, essayed to call you down from your transcendental contemplations, by imploring you to supply me with a witness. However wide my invocation might have awakened you to terrestrial realities, the only one that it would have been in your power to discern, germane to the question, would have been the fact, corresponding to that whereon rested the oath which, we have seen, was taken no longer ago than last year, by the Lanarkshire sheriff, "that it was with the utmost difficulty that wit-

nesses could be got to come forward to give evidence." If, indeed, my power had been such as to enable me to assure them, "in the strongest and most solemn manner," of protection within the walls of a strong jail, so long as their testimony should be wanted here; that not more than five or six months of this state of safety should elapse before the commencement of the trial; and that, so soon as this should be brought to a close, they should "all be sent into exile for life, as none of them could remain with safety in this country;"—had it been in my power to give all these assurances, it is not impossible that a witness or two might have been "brought to speak out." But, even if my power had been adequate to the fulfilment of all these conditions, I am not certain (so liable am I to troublesome dubitations—all arising, no doubt, from my imperfect American education) that it would have seemed to me altogether reconcileable with received (perhaps, at this moment, exploded) axioms in penal jurisprudence. I do not see under what aspect such a mode of procuring witnesses against a man's life could be considered, so that it should seem beyond the ground covered by the prohibition of bribery as a means to such an end. To procure witnesses by the promise to keep them in jail for an indefinite number of months, and at the end of this keeping to send them "in exile for life"—all for the purpose of making their lives safe, and all, no doubt, at public expense!—in what light can it appear to be any thing else than a bribe? This proceeding does certainly, to me, appear to belong to the class of "strong expedients;" and although I do not by any means deny that the necessity of the case is rendered strong enough to fully justify it by the present state of things in the island of Great Britain, I am not satisfied that I could have reconciled it to myself to adopt it upon this theatre.

It is clear, then, that even this little point—the official ascertainment of the absolute truth in regard to the possibility that the Venus had returned as Venus still, and not as a terrestrial Duchess—was of a nature to present a difficulty not altogether beneath notice. As American consul, I could not, by my "own authority," whether exercised directly and alone, or conjointly with and through "the intervention of the commander of the American vessel of war," advance any pretension to engage in an "examination of the log-book and crew," until I had previously ascertained the fact, that, whether Venus or Hecate, she was under the American flag. Had I gone on board on any such errand, I should have most richly earned the reception which, on two occasions in this port, when an American ship-master came to ask my advice in regard to a threatened visit from a British man-of-war to take out one of his men, I have enjoined it upon him to bestow upon the commanding officer of the party, to wit: to forbid his setting foot on his deck; and if he persisted, then to knock him down, and to go on knocking down until he should have cleared his deck or been overpowered; and, in this latter case, to haul down his flag and come to me. Which injunction, allow me to add, was given, not through any hostile feeling—for I could most cordially have extended my hand to the officer at the very moment of despatching the captain in all haste to defend his ship; but because I was persuaded (and am still) that one such practical illustration from a Yankee hand, of the American notion of national independence, would be of greater service in attracting to the subject the attention of the whole world, and in fixing it upon its proper basis, so that, forever after, not a midshipman in any vessel of the royal navy that floats but would be required to understand it thoroughly before he was intrusted with the command of

a gig—than all the editions of Grotius and Vattel that all the press could send forth. Most richly, therefore, would I have earned a knocking down, had I proceeded on board the *incognita*, to inspect her log-book—unless, indeed, I had ascended her side prepared to make a polite retiring bow upon being informed (as any man and every man on the wharf would have told me I should be) that she was not an American vessel. And, had I gone alongside to make the inquiry before ascending, the sailors might have taken it into their heads to talk Portuguese at me, which I do not understand; or they might have asked me, in some language which I do understand, why I had not made the inquiry at the captain of the port's, and so saved boat-hire. The difficulty that presented itself to my addressing him, or any other of the authorities, on the subject of this vessel, has already been stated. Upon reflection, however, a mode occurred of effecting the object indirectly, and by a course which should bear no resemblance to British commissioner proceedings; which was, to address a note to Don Juan de Montano, post captain in the royal navy, and captain of the port of Havana, requesting him to communicate to me the name and class of every vessel reported to him, or to any boarding officer under his command, as an American vessel—that is, as navigating under the flag of the United States—which had entered port during a period which was so defined as to embrace the two days prior and the two days subsequent to the night on which the Duquesa de Braganza was known to have arrived; and thus effected my object, without advancing any pretension to obtrude myself upon the authorities for recognition as an accredited spy upon the movement of the port, or act in any other capacity than that in which it clearly belonged to me to act—as American consul.

Upon examination, therefore, the first of the two processes laid down by you for accomplishing the “examination of the log-book and crew,” although it be evidently an ingenious one, proves not altogether suited to practical use. Like tail-salting, it is a beautiful abstraction; but the vulgar properties of organized matter forbid its application. With regard to the other of the two processes—that “through the Captain General”—it would be superfluous to enter here into a labored examination of its practical merits; seeing that, while considering the applicability of the one that was to proceed by my own authority, we were led to the necessity of my having recourse to the Captain General, and perceived what the result would be, it cannot be necessary to point out the mode in which the same result would follow from a dependence of exactly the same nature, only more entire, upon the same functionary.

Let us now resume the consideration of your letter. In addition to this reproachful suggestion of—1st. what I ought to have done, to wit: accomplish the “examination of the log-book and crew;” and, 2dly, the two processes whereby it might have been done; you favor me with the specification of three several points, in regard to which the said examination “could not have failed to elicit” much better information than any you “could be expected to divulge.”

This part of your letter is proof against criticism. The proposition is a most logical deduction from the premises; quite as truly so, and quite as practically applicable, as the antique truth of Greek geometry—that if he had only been provided with a fulcrum firm enough, Archimedes might have lifted up the earth; or, as the comparatively modern discovery of French zoology—

that "if my aunt had been born a male, she could not have failed to be my uncle."

Your specification of these three heads of inquiry closes with a statement of reasons for believing that the ship's articles had provided that she should go to Bahia, and that she had never been there. After which, comes your "fear" that, whether transferred or not to any other flag, "it is indisputable that a gross abuse has been practised of the American flag."

The only remark which I shall make upon this point, is, that if you only feared that such an abuse had been practised, circumstantial evidence has less power upon your minds than it has upon mine. I had no doubt whatever upon the subject; no more than Mr. Daniel O'Connell had, that "a gross abuse had been practised" of the right to walk the streets, in the case of the man who, "for agreeing to work at a lower rate of wages, was assassinated in the open day, in the presence of twenty persons." But, *cui bono*? To judge from the way your last head of inquiry is put, and your remarks thereon, it would seem that you were under the impression that if the ship had cleared for Bahia, a sale or transfer could lawfully have taken place there only; and as she could not have been to Bahia, she consequently could not have been lawfully sold, nor have been divested of her American character. Supposing all this, premises as well as conclusion, to be true: where were the means judicially to establish the mere identity of the vessel even—the mere fact that this vessel, which had just entered the port of Havana, was the same vessel which had sailed from it about four months before? But where is it written that the sale or transfer of a vessel cannot lawfully take place at sea?

To my great relief, I now find myself so near the end of my toilsome journey—a most dusty and weary way it has proved—as the closing paragraph of this, your second and penultimate communication. It opens, too, in a tone that was quite exhilarating to hear; affording, as it did, encouragement to suppose that you had been refreshing your minds by a dip into the fountains of the law: "It is certainly no part of our duties at this place to take any steps to vindicate such a violation of your laws." Nothing, certainly, could have been better conceived or expressed, barring a few superfluous words—*e. g.*, "at this place," and "such a." Striking these out, and substituting *any* in the place of the latter, so as to make it read, "it is certainly no part of our duties to take any steps to vindicate any violation of your laws," the proposition would seem not unworthy to have been extracted almost verbatim from the note book of the most attentive listener to Mackintosh's Lectures on the Law of Nations. Judge, then, my disappointment at perceiving that, instead of a full stop at "laws," there was not so much as a comma; and that, in the very same breath, you went on, "nor have we any wish to interfere in any like cases, further than arises from an anxiety to put an end to all such nefarious infringements of the rights of humanity."

If the art of diplomatic writing has been truly defined as the art of covering paper with sentences that, collectively, shall amount to nothing; and if that assemblage of words can be said to amount to nothing, in which the meaning of the latter half (so far as meaning can be found to it) is directly the reverse of that of the first, what a perfect specimen of the art have we here! A single sentence, comprising within its modest sphere two specimens of perfection: beginning with a proposition worthy of the luminous mind of Mackintosh; and this proposition run into another so skilfully, that

no mark is left at the line of junction ; and the whole taken together, is a production worthy of being the "couronne" prize production of the first "élève" of the most eminent professor that ever delivered a "*cours de style diplomatique* !"

You begin by making me believe that you have been brought to your senses, and become sensible that you have nothing to do with the execution of American laws. Not content with offering me this assurance as to your actual state of mind on the subject, you go on to present me with something else—in the shape of a sort of consequence from it, in regard to your future conduct ; which, of course, I took for granted, was to be in harmony with this beginning of the sentence—that is to say, in contrast with your previous conduct. Give the beginning of this sentence, down to the word "nor," inclusive, to any man in the world, save a professor of "*style diplomatique*," and ask him what must logically follow after "nor." What will be his answer ? Why, "nor"—*shall we advance hereafter any pretension to do so.* According to the rules of logic, this was the inevitable termination of the sentence. But what was the appendage to this "nor," furnished by your guide-book on diplomatic style ? Why, that you had not "*any wish*"—(used as synonymous with *purpose*, as appears from the sequel)—you had not "*any wish to interfere in any like cases, further than*" a certain extent ! And what was this field, to which your interference was thus graciously to be restricted ? Why, it was to extend no further than your "*anxiety to put an end to all such nefarious infringements of the rights of humanity.*" And having thus defined your sphere of action, you add, as a discouragement to any further refusal on my part to recognise your right to gambol in it *ad libitum*, that "*our objects are too high, and our conviction of their rectitude too strong, to allow us to be turned from our course by taunts of any kind.*"

But for the principle involved, this limitation of the field of your pretension, could it but have been accompanied by the certitude that it would be *bona fide* observed by you, would have been so satisfactory as to command my acquiescence. With such an assurance attached, the pretension would, to all practical intents, prove identical with no pretension at all ; and could it but have been thus accompanied, the principle alone would have been in the way of my desire to prove complacent on the occasion. But the stubborn case would not change its nature, to accommodate my wishes ; and there stood both the principle and the uncertainty, as insurmountable bars to them.

The former difficulty has already been sufficiently expatiated upon. The latter merits also a consideration of its particular nature and properties. The one belongs to the law of nations ; the other is of a less abstract and more practical type. Your "*anxiety to put an end to all such nefarious infringements of the rights of humanity ;*" this was to be the limit of your interference. Thus far, and no farther. Consequently, if there was no such anxiety, there was to be no such interference. This was to be the bargain. Who will doubt—that is, understanding by "*anxiety*," something *heartfelt*, something which impels one not "*to the corners of the streets that he may be seen of men,*" but to "*shut the door,*" that he may meditate effectually on the mission to which he is called—who will doubt that, taking "*anxiety*" to mean this, I might, without risk of any practical infraction of the principle which forbade your interference, consent to your interfering, as far as "*anxiety*" would carry you ?

If there were any such doubter among those who might have followed

me thus far, the following might, perhaps, be attended with the effect of sufficiently corroborating previous impressions to convert the doubt into conviction.

"The Factory Child.

"Yes, our little factory girl is nine years old: she is no longer a child; she is a dwarfed woman. Her infancy was passed in pining, pining want: from the first almost an untended thing—left days and days alone: the mother denied the enjoyment of maternal sympathies by sharpest penury, (the fiend that, at the hearths of the poor, now chills, now blights, and now makes stony-hard the human heart,) by keen necessity of out-door toil for the infant mouth at home. God knows how the child learned to walk. A short time, and another baby engrosses the few hours (nay, half hours) stolen from work to lavish on the last born; and then, another helpless squalid thing; and then, another; and then, our little factory girl becomes a nurse; and, at six years old, hugs in her lean arms her half-naked tattered-demonial brother. She has not strength to carry him, meagre as he is; but shuffles and stumbles with him along the street: and now she sits in doorways: and now in lanes and alleys her infant mind receives the seeds of future things—if things of goodness, a blessed chance; if otherwise, the unthinking virtuous throw up their eyes and marvel at the wrong! And thus the child passes her first nine years of infant life. What an infancy! Lean and withered, and careworn! (yes, careworn!) her baby countenance made dull and colorless, by the miserable aspects everywhere surrounding her, she seems as if she had never been younger; nay, more, that years could hardly make her look more old: there is within her face of babyhood, so deep a stamp of sad maturity. All the better yearnings of the heart—the peace, the sportiveness, born and abounding at the hearths of competence—what has she known of these? Life to her has been a joyless, selfish, hungry, peevish thing. Her home has been the home of grinding want. At her fireside, man, the lord of creation, has been a serf to the lowest necessities, and not always a silent and unrepining one. How often is the brutal husband and the reckless father the horrid handiwork of misery alone! Of all the violence, the cruelty, inflicted on each other, by the miserably poor, how much of it is but the wild outburst of intolerable self-suffering! And our little factory girl has seen this; and the shadow of the evil has fallen upon her face.

"Let us, however, accompany the child to the factory. What a bitter season! how the wind howls! with what a dash the sleet is flung against the windows! the earth is frozen hard as iron; and the wind cuts blighting! snow is on the ground. It is five o'clock on a January morning: the child is up; and, with its scanty covering pulled about it, descends shivering, to the street. Poor little wench! her blood is frozen under her very finger-nails! her foot too (for her shoes have been patched past further patching, and yawn in half a dozen places) is galled with a nasty chilblain, and she limps most painfully. Her father, bound to the same factory, lifts her upon his back; and, checking an oath, groans from between his teeth. The girl is nine years old; and half clad, in a desolating January morning, is carried—through cold and darkness carried to work!

"The girl is now in the factory. From this moment her childhood utterly ceases: she is bonds woman to all the cares of mature life: nine hours

a day is her allotted time for work; the remainder of the twenty-four hours to be passed—in what? In the sports of youth? in the happy, artless recreations of children, to whom even the consciousness of existence is, at times, a source of the keenest pleasure? An hour and a half is given to breakfast and dinner; and when we remember the wages earned by the factory girl, (sometimes as much as 4s. 6d. per week,) and the costliness of the luxury of bread, an hour and a half for two meals is surely time sufficient: they might, we have no doubt, be eaten (ay, both) in half the allotted time. There yet remain many hours—hours for what? for the merest rudiments of education. After nine hours' unceasing labor in the cotton factory, how elastic the mind! how apt for instruction! how strong to pore over a book! how fitted to receive any impressions that shall raise its possessor a degree above the beast slaughtered for the shambles! The factory girl returns home; and what can she do but sleep? what should she do, but seek oblivion from the noise, the racking noise of engines, the hell of sounds which she has all day suffered? Who would keep her one half hour from her miserable bed? Who would lessen the blessings of sleep, since sleep may sometimes bring to her at least dreams of quiet visions of happiness? What to her are reading and writing? Let her quaff forgetfulness."

Such is the picture sent to us on this side of the Atlantic by an English painter! Wretched little mortal! Shocking and revolting as is the bare thought of such a metamorphosis; horribly impious as would seem to be such a desecration of the noblest of God's works upon this earth, as the transformation of the little blue-eyed, flaxen-haired maiden, with her "expanded forehead, large and elevated cranium," the future seat of that inscrutable movement which shall prove that in "this race" the moral feelings and intellectual powers have been developed in the highest degree of perfection which human nature has ever exhibited, "into a being with a black skin," hair short, black, and woolly; skull compressed on the sides, and elongated towards the front; forehead low, narrow, and slanting; "of that variety of the species which 'it is fully granted' holds the lowest station;"—altogether ineffable as must be the disgust awakened by such a proposal, who that can dispassionately exercise his reason on the subject, will fail to be convinced that to snatch her from such a doom as awaits the English factory child, this metamorphosis (beastly as it might be) would be a work of mercy? Who shall deny that he would be doing a good act, who (could nothing else be done for her) should place her as a little woolly-headed Ethiop on the coast of Guinea, ready to be embarked in a slaver; and thus bless this living thing with a chance, on the one hand, of a speedy deliverance from this earthy coil; on the other, of continuing wrapped in it, where, whatever might be her appointed task, at least would the airs of heaven ever fan her cheek, the glories of God's creation forever beam in her eye; lighted up by that sun whose warmth, making her forever a stranger to the power of the cutting blast, would, at the same time, ripen that endless succession of fruits which was to preserve her forever from the pangs of hunger!

Who now can fail to be qualified for the task of appreciating the intensity of your "anxiety," proportionate as this must be to the quickness and the depth of your sympathies with human suffering? Who that adverts for an instant to this picture of "the factory child," and knows that she contributes her mite to pamper you in the luxurious sloth of a sinecure, as a fit preparation for the dignified ease of a pension, to pay which, also, her little frost-bitten fingers must be spy;—who that will

"Look here upon this picture, and on this,"

but must be deeply penetrated with the intensity of that philanthropic "anxiety," which, if your heart

"Be made of penetrable stuff—
"If damned custom have not brazed it so
"That it is proof and bulwark against sense,"

you must ever be tormented with, "to put an end to all such nefarious infringements of the rights of humanity?"

But, whether the nature of your "anxiety" were such as to render the risk of interference on your part great, or to reduce it to nothing at all, the principle was still the same; and that principle I could not consent to allow you to infringe. You give me to understand that you are not to be turned from your course in this respect. If this means that you are determined to persist in getting up, whenever occasion may offer, this wretched farce of addressing to me a communication to make me "acquainted with a report prevalent in this place," then I give you notice that my patience is exhausted, and that any and every communication from you shall be returned unopened; or, if not at once perceived to be from you, then, so soon as it shall be discovered to be so, without my reading a word of it. This shall be *my* "course." You shall *not* interfere, in any mode, manner, or degree, in the execution of any law which it may have pleased my country to pass for the government of its citizens. So far as the principle of national independence is in my keeping, it shall not be invaded in any way, nor to any extent. Henry Brongham should not do it, were he here in proper person. William Wilberforce should not do it, could he rise from the dead to make the attempt. Think ye, then, that it shall prosper when coming from stipendiaries? No! not if war were to come of it. Dr. Channing is not a more sincere lover of peace than I am. Revenge, whether on the part of a nation or of a man, is abhorrent alike to my most settled convictions, and to my most cherished habits of feeling. Interest—that is, mere money, or property, or commercial gains, on however magnificent a scale—could never weigh with me against the miseries of war; and yet, if I could read in the book of destiny that, by flinging your communications, into your teeth, I should prove the author of the longest war that ever desolated Christendom, there would be no faltering on my part. No! not if I foresaw that, in the defence of my country—of that part of it, I mean, which would be chiefly exposed to assault—every matron and every maid would have to arm. Before I would submit to your pretension, or would meet it when persisted in, in any other tone than that defiance which I now hurl, my daughter should make a bonfire of her books and her music; and, bidding adieu to those pursuits which are to qualify her for the womanly employment which she has been taught to look forward to for support—that of training the minds and hearts of her young fellow-citizens of our magnificent republic in the same way that her mother, and her paternal grandmother's countrywoman, (Maria Edgeworth,) have trained her own—she should dedicate herself to the *rifle*, until to her eye and her finger its cunning should be as obedient as it proved to the Tennessee man who drew the closest sight and touched the surest hair-spring trigger at New Orleans.

I will now pursue this paragraph of your letter to its close. Having apprized me that "our objects are too high, and our conviction of their rectitude too strong, to be turned from our course by taunts of any kind," you

go on, in the same breath : " and with regard to the United States, in particular, we would wish to preserve unimpaired our respect for the laws which have declared the slave trade piracy. But it is in proportion to the respect we would wish to entertain, that we should regret to find those laws a dead letter, and your professions not followed up and carried into effect."

The utterly illogical connexion by which you string together the different phrases, or parts of phrases, of which your communications are made up, has already been the subject of remark. This defect in composition, if sometimes occasioned by the writer's not knowing how to express what he really wishes to say, is ever discernible in him who has an end in view which he dare not openly and plainly avow. To effect this end, being at bottom his only motive for writing, he cannot but say something which shall tend towards it; while, on the other hand, the fundamental rule which forbids an honest avowal as to what it is that he is driving at, imposes the necessity of his dovetailing these matters pertinent to his object into others that are not so, and are used for the very reason that they are not so. Sometimes, and for a very obvious cause, these pilot or file-leader parts are quite contradictory to those which they are designed to cover the entrance of: as, for example, your admission, above examined, that it is no part of your duties to interfere in the execution of American laws, used to begin an assertion of your determination to interfere. At other times their sense is not contradictory, but merely neutral: so that no one can discover any relation between the proposition that is pertinent to the disavowed or unavowed object of the discourse, and that which is used to usher it in. Of this latter kind are the two sentences now before us. The part of them which is pertinent to your object, is that which begins by informing me of the *wish* which you *would* indulge (if you could, understood) to preserve unimpaired your respect for the American laws which have declared the slave-trade piracy, and of the regret that you would experience at discovering that these laws were mere empty professions. This *wish* in the conditional mood, and this subjunctive *regret* by anticipation, are worn-out formulas for saying, indirectly, that the *hope* no longer exists, and that the *regret* has become a reality. In plain English, the meaning of these phrases is an assertion on your part that the American "laws which have declared the slave-trade piracy" are not entitled to respect, inasmuch as they are a mere profession; designed, of course, for the purpose of imposing on the world, and not intended to be obeyed by our citizens. This is the plain English of the matter. But how is it introduced? In a plain straightforward English way? Not at all. It is awkwardly shuffled into the pack; stuck to a proposition, between which and itself there is not the remotest semblance of a logical connexion. Suppose the Grand Seigneur, after asserting his purpose to keep up the practice of throwing the handkerchief, to say "My objects are too high, and my conviction of their rectitude too strong, to allow me to be turned from my course by taunts of any kind; and with regard to Roxana, 'in particular,' I will indulge my caprice whenever it moves me." Such a sentence in Constantinople "familiar dialogues" would not present any very serious difficulty to the student. The order of ideas is natural; and the sense of the concluding proposition might almost be guessed at. The logical force of the phrase "in particular," would indicate that something of the sort must be the fate of Roxana. But suppose that, instead of "I will indulge my caprice," the phrase "in particular" were followed by the words "I would wish to preserve unimpaired" my admira-

tion of her grandmother's embroidery. Such a sentence would clearly present a puzzle that could be solved by nothing short of the most consummate Arabic scholarship; and even that could effect nothing more than its grammatical solution: for the highest logical acumen would be baffled in the attempt to discover the connecting thread between the high considerations which determined the Sultan to keep up handkerchief-throwing, and his wish, with respect to Roxana "in particular," not to lose his admiration for her grandmother's embroidery. The possible existence of a logical connexion between the two things could, at best, be matter of merest surmise; unless some *savant* in eastern manners and customs should be able to make us acquainted with some part of the boudoir mysteries of an oriental harem, an allusion to which was involved in the Sultan's speech, and which should serve to explain how "in particular" the wish to keep on admiring Roxana's grandmother's embroidery had something to do with the lofty motives on which rested his inexpugnable determination to keep on throwing the handkerchief.

Thus much with respect to the logical merits of the mode selected by you for giving utterance to this slander upon my country; merits which I should not have deemed it worth while to bestow a word upon, but for the evidence which they afford of consciousness of wrong on your part, in regard to both the end which you proposed to yourselves, and the means to which it obliged you to condescend. I will now bestow some consideration upon the slander itself.

This slander embodies two assertions; or, if you prefer it so, only insinuations: first, that the American laws against the slave-trade are a "dead letter;" second, that they are mere "professions," with which to cheat the world. The first of these assertions (or insinuations, as the case may be) has for its subject the actual state of things now existent, with respect to the observance of our slave-trade laws. The second has for its subject the existing frame of mind of the people of the United States in regard to that state of things.

That a law is a "dead letter," means that its influence is not at all felt, or but imperceptibly felt, in the community upon whom it is nominally binding; and this may be true in two senses, which are the opposite of each other. One of these is, that the object of the law has been so perfectly fulfilled as to render a conformity with its provisions so much a matter of general habit, that no one thinks of departing from it. The other is, that the object aimed at by the law is not fulfilled at all: that it is not executed, no one minds it, and any one may break it who chooses.

But little reflection is requisite to perceive that the state of things corresponding to the first of these modes, in which a law may be said to be a "dead letter," is rather favorable than otherwise to occasional infractions of its provisions. If, for example, it were possible for the suppression of the slave-trade to be accomplished by the mode now pursuing by the British Government—the "strong-hand" mode, as Mr. Fowell Buxton calls it, in that glimmer of returning sanity which I have already greeted with due attention, (which expectation is, in my humble opinion, as rational quite as would be that of curing a human body covered with chronic ulcers, by searing them over so as to stop the issue;)—if this result could be brought about, what would be the consequence? Why, of course, the British people would be relieved from the charge of supporting the expensive machinery now at work, or, if not actually at work, at least kept up ready to go to work

whenever occasion offers. British commissioners would, of course, retire upon their pensions; and British sailors would no longer be sent to cruise on the coast of Africa, when the only thing remaining to be caught there would be the coast fever. Under such a state of things, all treaty stipulations for the right of search; all statute provisions awarding head-money to captors; and every part of the machinery, would become "a dead letter;" unless, indeed, with regard to the right of search, it should appear politically expedient to maintain it in healthy vigor, if for no other purpose than merely to keep other nations in mind that the British people were so free of the burden of taxation, that they could afford to maintain the police of the seas at their own sole charge. Under these circumstances, which presuppose the slave-trade to be entirely suppressed, and to be a business in which, as a general rule, no one thinks even of engaging; it is evident that, for this very reason, an occasional adventurer who should break in upon the general habit would experience still less difficulty in accomplishing his enterprise, than attends similar ventures at this moment; although, even now, with all the preventive service in full activity, the risks are so considerable that slaves sold here at \$250 to \$300, yield a profit sufficient to most rapidly enrich those who engage in the business.

In the sense of "dead letter," illustrated by this example, it is true that the laws of the United States are a "dead letter." But he who asserts or insinuates that they are so in any other sense, asserts or insinuates what every man, woman, and child in the United States—that is, every one who has ever had his or her attention awakened to the subject—(for generally, they are as little conversant with it as they are with the condition of the little factory girls, who help to pay British commissioners' salaries and pensions,) knows to be as stupid and flat a falsehood as the O'Connell Virginia "breeding-pen lie;" or, as any American stump-orator would utter, who, finding it to his account to pay that sham in the shape of a patriot—as like to one of the Emmet order, as a "stuffed Paddy" is to a genuine son of Erin—in his own coin, and having become sufficiently a blackguard for the exploit, (both which suppositions, being derogatory to my country, are ventured upon for the sake of illustration only,) should tell his hearers that Derrinane Abbey is a brothel, where a father prostitutes his daughters to any comer for half-a-crown.

On reaching the second branch of your slander, we quit the terra firma of material occurrences, (any assertion in regard to the existence of which admits of being proved or disproved through men's senses,) to mount into a more sublimated region. We have now to deal with human motives. The question is, whether sufficient grounds are afforded upon this theatre, or can be collected from any and all the four quarters of the globe, to justify the imputation upon the people of the United States that their laws against the slave-trade are a mere "profession;" that they have enacted these laws, not with the purpose of causing them to be observed, but (for this, also, is expressed by the word *profession*) in the design of imposing on some other nation or nations.

In regard to the latter idea, I observe only, that, familiarized as your minds have become with it, in regard to those unfortunate nations where the people and the Government are different things, and to whom treaty-obligations might be dictated to pass laws which there was nowhere any power to carry into effect, and the passing of which, consequently, might perhaps be, in truth, a mere "profession," it is not very wonderful that the

force of habit in dealing with nations such as these should have led you so far to forget yourselves as to use the same word (flagrant as is the absurdity of the application) in speaking of the United States of America; where, compared with the condition of other States, the relations between the people and the Government present a contrast not more striking than the defiance which they have together ever hurled at the invader of their sovereignty. It is in the nature of things possible that such a republic should have once passed laws, concerning the enforcement of which she had now become indifferent, and which such indifference alone prevented the repeal of. But it is in the nature of things impossible, that, feeling herself, as she does feel, to be a match for the world, were it combined against her independence, she should either put or keep on her statute-book any law as a mere "profession."

This, however, is a mere accident to the slander. Its substance consists essentially in the charge that our laws against the slave-trade are not accompanied with the purpose and the wish that they should be observed.

In regard to a charge of this nature, be the Government against which it is brought as badly constituted as it may, as little in harmony with the people, or as traitorously subject to foreign dictation, as you please, the test afforded by the mere fact of the extent to which the law is fulfilled, or falls short of fulfilment, is an exceedingly fallacious one. It may be received in evidence, and that is all. Its weight too must evidently diminish in exact proportion with the identity between the Government and the governed, and the freedom of the State from foreign dictation and foreign entanglements; for, in exact ratio with these, must be the improbability that any law would be enacted, except in the intention on the part of the people that it should be observed.

Of the insufficiency of this test, the cases already adverted to in the course of this letter, as illustrations upon other points, will serve for this also. Take for example the Mauritius case. How apt would a superficial thinker, or a person regardless of doing injustice, provided his turn could be served thereby, have been to consider, or to bring forward, the fact of the prevalence of the slave-trade during ten long years of British rule, all the while "as plain as the sun at noonday," as proof that the British Government was insincere in the "professions" so oft repeated to the world; or that it had found it impossible to procure officers who could be got to do their duty! And yet how unjust would have been the imputation! as Mr. Buxton so strongly testifies with regard to both branches of the united service.

But, strongly as this instance may exemplify the important truth, there is an illustration of it, in the presence of which a thousand such would only be as so many farthing candles in the presence of the sun.

It is furnished by the same article in the same number of the *Edinburgh Review* that has already supplied me with so many facts exactly to the points which I wished to enforce. The present is so striking, that, although afraid of exhausting your patience, and exceedingly anxious on my own account also to get out of this labyrinth in which I have found myself involved, while intent upon explicating the matters so skilfully condensed within the narrow compass of your communications, I cannot resist the temptation to dwell upon it.

Among the avowed ends of government, none is more generally professed than the protection of every man in the enjoyment of the fruits of his labor. This, it is true, is known to be a theoretic fiction; if not purely, yet to so

great an extent, that the practical operation of the least imperfect Governments is such as to present a lamentably long catalogue of exceptions to the rule : so that, judging from these results, particularly when collectively considered, the rule might be supposed the very reverse of that just expressed, and to be to rob every man of the largest possible share of the fruits of his labor. The extent, too, to which any given country will exhibit grounds for the supposition that the latter is the practical guide of its Government, seems to be regulated by some law of nature of very uniform operation, and to be everywhere dependent, in an inverse ratio, upon the diffusion of political power there prevailing. Wherever this is sufficiently concentrated, the principle will be found in sufficient intensity to have its efficacy attested by the taxation of the mass of the population to within an inch of their lives. And so, in proportion, where circumstances are less favorable to its operation. So boundless is the field of public service ; so innumerable the ways in which the State may be served, and a title be thereby acquired to a fair compensation for so doing ; and so manifest is this truth to those charged with the custody and management of that field, that the only possible objection that can ever be encountered from them, to the multiplication of the persons employed under their direction, consists in the difficulty of proportionably increasing the number of the fair compensations ; so that no one shall suffer in consequence of the admission of co-laborers. The consequence of this natural illimitableness of the field of public service is, that the aggregate fairly earned by exertion or residence therein will never fall short of the entire amount that may, by the most improved process of squeezing, be extracted from the rest of the community. This, however, applied after they shall have undergone an indefinite variety of minor or partial processes of the same general nature ; resulting from schemes for the regulation of individual pursuits, the encouragement of enterprise, and other similar useful objects, enforced upon the community at the suggestion of the philanthropic few blessed with a share of political influence. In Great Britain, for instance, where circumstances are supposed to be not the most favorable in the world to the operation of the principle, and where their merits in this respect have been diminished of late years, and threaten before long to become nearly, if not quite, extinct,—not a single man of the thousands who partake of “ Government money ” ever touches a shilling that he is not—so boundless is the illusoriness of human convictions—believed by himself, and by those who award it, to be fairly entitled to ; and yet the result is such as “ The Factory Child,” the Edinburgh trial, Mr. O’Connell’s speech, and other corresponding pictures, afford a conception of.

But if this one among the avowed ends of government be everywhere a fiction, to the full extent that it may be in the power of the ruling few to render it so, it does not follow that all their professions must be equally empty in regard to others ; for instance, the protection of every man in the right to labor. To be truly stated as one of the ends of government, as government exists in England,—even this would require a great many qualifications ; for there is a vast difference between the right to employ one’s head and hands as God bestows it, and as it is recognised by the law of England. To a certain extent, however, it has, according to the latter, an actual existence—in a far less restricted shape, too, than in China ; and it would no doubt be recognised by English lawyers as part and parcel of that “ right of personal security,” which, as Blackstone informs us, “ consists in a person’s legal and uninterrupted enjoyment of his life, his limbs, his body,

his health, and his reputation ;" and is ranked by him as the first of the "three principal or primary articles" of those rights which "were formerly, either by inheritance or purchase, the rights of all mankind. But in most other countries of the world, being now more or less debased and destroyed, they at present may be said to remain, in a peculiar and emphatical manner, the rights of the people of England." To determine the precise extent to which it is recognised as part of the "rights and liberties of Englishmen," would be an enterprise of no slight labor, and is not requisite to the present purpose. It is sufficient to know that something of the sort does actually exist; that it constitutes part of "that *residuum* of natural liberty which is not required by the laws of society to be sacrificed to public convenience," and to maintain which is "the first and primary end of human laws." Nor can this part of the *residuum* be viewed as a fictitious quantity; abstraction having already been made of all such portions of the "power of acting as one thinks fit, without any restraint or control, unless by the law of nature," as the Government could have any motive whatever for striking out. This being done to the fullest extent, some part must remain; in regard to which it cannot but be the real, sincere, and earnest desire of Government to fulfil "the first and primary end of human laws," by affording to it the most perfect and absolute protection. After the bees have worked and produced, such a thing is conceivable as to prevent their falling into the luxurious indolence which might be the consequence of leaving to them all their own honey. It is conceivable, too, that it might seem expedient to support bees of a particular class in their natural propensity, to make others conform to certain regulations, whereby the public good should be promoted, and at the same time the particular convenience of the contrivers. But, to prevent the honey's being made at all, whether by direct Government interference, or by allowing the workers to be stopped and killed by those who do not choose to work,—this is a design which it would be the height of absurdity to impute to the regulating power.

This proposition being, I think, clearly established, I will now introduce a case which will show that a belief in this utter impossibility would be forced upon any mind preoccupied with the notion that the non-execution of a law justifies the imputation of insincerity upon the Government from which it emanates. It will be seen, that, if the slightest weight in this respect could belong to the mere facts that a law is infringed, and that the Government knows it to be so, the mass of testimony afforded by this case is so absolutely overwhelming, that no earthly escape would remain to the British Government from the stigma of wilful indifference to the utter inoperativeness of the laws for the protection of its own native subjects, on their own native soil, in that right, the maintenance of which is pronounced by Blackstone to be "the first and primary end of human laws;" nay, in the most vital of all the vital points of that right—one so sacred that it is not specially noticed by him, for the simple reason that an invasion of it is a thing the possibility of which has not occurred to the imagination even of one man in ten millions. To make a slave of a man; to compel him to work for you, and not for himself: such a thing is, unhappily, too much in the way of man's propensities, to be a stranger to the thoughts of many. But to obstruct a man in the exercise of his right to work—and this, not for the sake of preventing his employing himself upon this or that particular thing, or in this or that particular way, but to prevent him from working at all: who ever dreamed of the possibility of such a thing? A by-law

binding the parties to starve ; to look on their wives and children, and listen to their expiring groans from famine, rather than—take work ! subjecting each to the penalty of death, if he falter ; and this penalty enforced with a certainty that fulfils to the utmost this difficult requisite to the efficacy of a penal law ! Such an *imperium in imperio* as this—such a hell upon earth—what raving bedlamite ever crouched before the picture of ?

And yet this is the picture of a reality ; of a reality which it was reserved to this present age of wonders to produce for the contemplation of man. It is the picture of Great Britain at this moment. Not a fancy sketch, generalizing a few particulars ferreted out in some obscure corner, which misery, and vice, and anarchy, had been allowed to make their own, and thus only snatched from the oblivion into which they were already sinking. Nor is it an historical painting after the style of Chateaubriand's *Atalæ*, whereby so true a conception of the manners and customs of Indian squaws is conveyed ; or of that modern improvement upon *Atalæ*, De Beaumont's *Marie*, which presents views so just and accurate, that the only shape in which they could be embodied was a romance, that, like Shakspeare's plays, proves its fidelity to nature by the contempt it shows for all such pedantic shackles as the unities of time and space, and corroborates this proof by a contempt which the Bard of Avon's courage was not equal to, for coherence or verisimilitude, in any of their modes. It is nothing of all this. It is a literal, prosaic, David Wilkie picture of a fact—of one vast, overwhelming fact ; its appalling magnitude covering the whole length and breadth of the land.

“ *These associations,*” says the Edinburgh Review, “ *have now become so universal, and are already so thoroughly organized, that their effects, be they for good or for evil, must be of the most extensive kind.*”

What are “ these associations ” which “ have now become so universal ? ” Why, they constitute a *government*—the actual, existing Government of Great Britain and Ireland, so far as the “ operative ” class is concerned ; the Government which, except that it does not directly interfere with the processes of tax-extracting set in operation by the other Government consisting of king, lords, and commons, is the governing Government for cotton-spinners, and all such animals—the Government which regulates their conduct, and which executes them when they prove disobedient.

And of this Government, what are the avowed ends ? How is it constituted ? What are its laws ? What are its powers ? What means does it generally employ for maintaining the authority of its laws ? How does the system work ? All these questions are answered by the Edinburgh Review.

The great end of the institution is to give practical force to the doctrine, that “ the laborer is worthy of his hire.” It is to secure to the “ operative ” a fair compensation for his labor.

In the constitution of government adopted for this purpose, traces are not wanting of the influence of example. As might be anticipated, it exhibits, both in its distribution of political power, and in the use made of it, a family likeness to that “ matchless ” product of the “ wisdom of ages ” which is administered by the superior classes of the same community, (if community it may be called,) for their special benefit. This species of union is founded, originally, on the principle of “ universal suffrage.” So says the Edinburgh Review. Whereat the transatlantic democrat, into whose hands the number has come, cannot but prick his ears, and look with all

his might, to see how democracy turns out to work on this partial experimental scale, amid the corruptions and oppressions of the old world. But, alas! it is all a mistake. The "universal suffrage" is there, it is true; but so is it in the "House of Lords;" so was it among those "*very noble and approved good masters*," who erst did wield the trident. Every man has a vote. "In some trades," pursues the Edinburgh Review, "the whole associated workmen form one body; by the votes of a majority of which, the office bearers and ruling committee are appointed. In others, each manufactory forms a meeting of its own, a majority of whom choose a delegate, and a majority of these delegates elect the ruling committee." All purely democratic, until we find out that these "*associated workmen*" are, with respect to the vulgar herd of workmen, a "select few;" that the association consists of those individuals who have acquired the right to discharge the functions of a workman of the "skilled or initiated class;" and that this skilled or initiated class, which is the constituent body of the ruling committee, forms but a part of a small fraction of those employed in all the branches of the same trade. For instance, "the number of *spinners* in Glasgow in April, 1837, was between eight and nine hundred; and the *piecers* and *pickers*, carders and reelers, dependent on their labor, about seven times as many."

One of the first cares of these peers is, of course, to guard against all inconvenient increase of their own body; for what more obvious, as a means of preventing the wages of a particular species of labor from falling, than to prevent the number of laborers from augmenting? The legal provisions for this object, although, with regard to the ultimate end of the government, they are like any other mere laws; yet are, with regard to their bearing upon the constituent body, to be viewed as supplemental to the organic laws, and ought to be considered in connexion with them, before descending to those divisions of the subject which are essentially subordinate.

"In order to effect this object," (that of "guarding against the influx of new hands into the trade,") "the trades unions have very generally laid heavy restrictions upon the admission of any persons to the benefits of their association. Very effectual methods, therefore, are taken to accomplish this object. A long period of apprenticeship is usually required before the young aspirants are admitted to the skilled or initiated class; during the whole of which time, the apprentice must pay a stated contribution to the funds of the association. A considerable sum, too, is generally required to be paid in the name of entry-money, by every apprentice or skilled hand, for admission, from any distant quarter." "In addition to this, several trades have a permanent system of offering *bounties* to such persons as will leave the trade and the country altogether." In the regulations of the Glasgow cotton-spinners, they observe that "another, and perhaps a greater, cause of the increase of hands in our trade, is the employing of boys as piecers. We have before our eyes many examples of other trades acting nobly to cure this evil of *apprentices*, and it is certainly our paramount duty to use every method we can suggest to stop the increase of boy piecers. We propose to embody this law in the obligation—that no man shall employ a boy as piecer, except according to the privilege long ago stated in our rules." In a word, no man not a member of the association, however great his skill, however urgent his necessities, is allowed to earn his bread by taking work; nor is any manu-

facturer at liberty to give employment to any such man, or to take in an apprentice, except with the consent of the ruling committee.

One of the direct consequences resulting from this interference with both classes, masters and workmen, who are parties to the employment and disposal of labor, is, that "the current of labor is forcibly prevented from flowing out of those channels in which it is redundant;" and the country exhibits "that extraordinary diversity in the remuneration of different kinds of labor, which has long struck foreigners with such astonishment." Remuneration, on the principle of competition in the labor market, is thwarted;" and the effect is to—"depress, to a most undue and disastrous degree, the remuneration of the more unskilled, but numerous class of laborers in the community." "By forcibly elevating at times the wages of the skilled classes, they have compelled the masters to depress the wages of the more numerous unskilled class of persons in their employment; by debarring industry, in general, an access to the skilled trades, except under very heavy restrictions, they have thrown a vast multitude of their fellow-workmen back upon the unskilled departments, and have lowered the price of labor they receive, to an extent that has proved, in the highest degree, injurious both to the habits and welfare of the most numerous class in the community." In a word, the consequence of this annihilation of that "*residuum*" of a man's natural *right to work*; which, so far as the Government is concerned, is left him by the common and the statute law, and is by them also theoretically secured to him against assault by his fellow-subject—is the *starvation* of Britons by the thousand. For example: "While there has been no material diminution in the price of provisions from 1815 to 1832, the remuneration of the hand-loom weaver has fallen to *one-third of what it then was*. Indeed it is *perfectly well known that they are generally and proverbially working at the starving point: that their earnings do not exceed from six to ten shillings a week; and that any considerable commercial crisis reduces them to starvation*. This deplorable reduction in the wages of this species of labor, (which, in comparison with that of the combined operatives, may be called unskilled, because it can be learned in a few months,) took place at the *very time when the cotton-spinners were making from twenty-five to thirty-five, and the colliers from thirty to forty shillings a week*." In one instance of the sort, "at Airdrie, in Lanarkshire, in 1837," being effectually protected by the power of Government in their right to labor, "the starving weavers were soon making thirty shillings a week by working in the coal-mines."

Of this description are the consequences of the fundamental rule so obviously requisite for preserving the purity of the ruling body—of that body which, from its own bosom, selects the few who are to hold in their hands the destinies of all—"skilled" patrician, no less than "unskilled" plebeian.

However it may be elected, "*the result is the same*. Chosen either by a single or double election of the whole associated workmen, the committee of management, originally selected by the equal suffrages of all, are, in the end, *invested with despotic power*. *To their decrees or regulations, all the members of the combination are bound—not merely by the obligation they come under on entering the association, but by the powers and terrors with which its office bearers are invested—implicitly, and without hesitation, to submit*."

With regard to the code of laws of this extraordinary body-politic, we

will first consider what may be termed its *economical* part, consisting of the modes of conduct prescribed to its members or to strangers; and, afterwards, its *penal* part, or the punishments awarded, and the process for attaching them, to infractions of the former.

"The regulations laid down by this despotic body, as may naturally be supposed, are such as are calculated to elevate the price of their *skilled* labor—to prevent strangers from ever interfering with it, and to secure to the different members of the combination their due proportion of the employment to be obtained.

"It is generally a fixed principle, that no persons shall be permitted to work for any of the masters by whom they are employed, who do not belong to the association. If an uninitiated workman makes his appearance among them, and the master insists for his right to employ him if he chooses, the whole combined workmen in his employment immediately *strike*; and he is left, with his new hand, in the midst, perhaps, of some important operation. Till the obnoxious workman is dismissed, no other member of the combination is permitted to enter the master's employment. Thus the master finds himself unable to go on with his business, or execute his orders, while all his brethren in the same trade are getting successfully on with theirs; his capital remains unproductive; his workshop or manufactory is stopped; he becomes liable to heavy penalties and damages for breach of contract to the persons from whom he received his orders; and, in the end, wearied out by a fruitless resistance to the combined body of skilled workmen, whose assistance is essential to his operations, he is generally forced to submit, after having sustained a heavy loss, and, perhaps, incurred very serious responsibilities."

"In order to secure the monopoly of the skilled part of the trade, it is usually enacted, by the ruling committee, that no master shall employ more than a small proportion of apprentices to skilled workmen. In some trades, he is only permitted to employ one for three skilled workmen; in some, one for four; in others, one for five. In all, however, the proportion of skilled to unskilled must be very large. If the master ventures to infringe upon this regulation, or to engage more than the prescribed number of apprentices, he receives a command from the committee of the union to dismiss immediately the extra hands; and, if he disobeys their orders, the whole combined workmen in his employment receive notice that they must forthwith strike; and *the trembling operatives, with a heavy heart, obey, and reduce themselves, by their obedience, to destitution.*"

"The ruling committees also take upon themselves to fix the number of *hours* which the men are to labor, and the *wages* they are to receive. It would be incredible *à priori* to what a length, in some trades, their laws carry this restriction, and how effectually, by a compact, well-organized combination, they can succeed in raising, for a long period, the price even of the most necessary articles of life. As an example: The colliers of Lanarkshire, taking advantage of the great demand for iron during the joint-stock mania of 1835 and 1836, issued a mandate that no collier should work more than three or four days in the week, and, at the utmost, five hours in each day. This order was implicitly obeyed by the whole of the combined colliers around Glasgow; and not only by them, but by the whole colliers in Renfrewshire, Dunbartonshire, and Stirlingshire—amounting, in all, to between two and three thousand.

"The wages which the men were to get for working between twelve

and fifteen hours a week, varied from thirty to thirty-five shillings." (The consequence was, that the price of fuel at Glasgow was exactly doubled, and so continued for upwards of eighteen months.)

"The uniform practice of the combined workmen is to fix a rate below which, not only no member of the union, but no person whatever, shall work to any master." "The variations in the price of manufactured produce, or the changes in the activity of commercial dealings, are not permitted to have any effect in lowering (whatever they may have in raising) the rate of wages. The master does not venture to give—the workmen to take—a lower rate of wages than that fixed on, even although the depression of trade compels the one to make a reduction, and the necessity of the other, from his situation, renders him willing to accept it. The despotic committee steps in, even in the most secret agreement between man and man, and says to the master: '*whatever your necessities or circumstances may be, you shall not give less than a certain rate;*' and to the workman, '*though on the verge of starvation, you shall not engage yourself for one farthing less than the prices of the committee; and, if you cannot get them, you must remain without work altogether.*' If he attempts to take employment at a lower rate, and is discovered, he is instantly branded as a deserter from the union, or 'nob,' and exposed to persecution and violence in many different ways; and if he still continues to work at the reduced rate, the whole combined workmen are ordered immediately to leave the employment in which he is engaged, and the master finds himself under the necessity of either dismissing him, or submitting to the commands of the committee."

"Another principle which is very generally acted upon by these unions, is, that the master is not allowed a choice of workmen, if he requires any additional hands. He is not permitted to choose those whom he would prefer, but must go to a certain office, called among the tailors, 'a house of call,' and there take the first man who stands upon the list for employment. This principle is established, it is believed, in London, Dublin, Edinburgh, and Glasgow, both among tailors and many other trades. Its levelling and injurious effect upon the real interests of the workmen, and the free employment of labor, is sufficiently evident. One main inducement to increased industry, skill, or activity, is taken away, when idleness is in this manner put on a level with industry, talent with remissness, and skill with inattention."

"Another practice of the unions, often most distressing in its consequences both to the workmen and masters, is the rule generally acted upon—that no workman who does not pay his regular contribution, or who has proved himself at all refractory to the commands of the committee, is permitted to work in any master's employment."

Thus much will suffice to convey an idea of the regulations prescribed; and to some extent, also, of the means of enforcement which are, by the reviewer, so blended with the rules, that it is not always easy to separate them. It is requisite, however, to bestow a further and separate consideration upon the penal part of this strange code.

In regard to it the reviewer says: "When a plan of combination, anxiously and systematically contrived to interfere in so many particulars, with the free employment and disposal of labor, on the part both of masters and workmen, is generally carried into effect, throughout the whole kingdom, in almost all the skilled trades, it may readily be conceived that a

very powerful machinery must be required to enforce general obedience to its mandates. This, however, is not wanting; and the means employed with this view constitute, perhaps, the most dangerous and hidden parts of this system of confederacy. Various methods are resorted to, in order to support the authority and enforce the commands of the ruling committees."

Of these "various methods," he gives the three most important :

First. "A regular weekly contribution is levied from every member, according to the rate of wages he receives. That of the Glasgow cotton-spinners was proved, by the books of the union recovered at the late trial, to have been half-a-crown a week ; and on extraordinary emergencies, five shillings from each man. It may readily be conceived that the contributions from an association embracing several thousand persons, will soon amount, at this rate, to a very large sum."

Second. "In the next place, some of the trades unions have adopted the additional security of compelling all the members to take secret oaths; which bind them, first, to keep secret the taking of the oath, and, secondly, to obey in all matters, legal or illegal, the will of the majority, as expressed by the ruling committee." The form of the oath is: "I, A. B., do voluntarily swear, in the awful presence of Almighty God, and before these witnesses, that I will execute with zeal and alacrity, as far as in me lies, every task or injunction which the majority of my brethren shall impose upon me in furtherance of our common welfare; as the *chastisement* of nobles, the *assassination* of oppressive and tyrannical masters, or the *demolition* of shops that shall be deemed incorrigible; and, also, that I will cheerfully contribute to the support of such of my brethren as shall lose their work in consequence of their exertions against tyranny, or renounce it in resistance to a reduction of wages. And I do further swear, that I will *never divulge the above obligation*, unless I shall have been duly authorized and appointed to administer the same to persons making application for admission, or to persons constrained to become members of our fraternity."

The reviewer, after giving some striking illustrations of the efficacy of the oath in defeating all legal proceedings against "atrocious crimes connected with combination-conspiracies," proceeds to the *third*, "last, and most powerful engine for maintaining the authority and enforcing the commands of the ruling committee: *terror and intimidation*—the most effectual means of influencing mankind. This branch of the system consists of *two parts*. In the first place, the cajoling, molesting, threatening, and assaulting the new hands, or *nobs*, who are in any manner acting contrary to the mandates of the committee; then getting up mobs to terrify the refractory hands, and strike a general terror into the whole community: and if all these methods fail of success, the *resource remains of appointing, by secret ballot, 'a SECRET SELECT COMMITTEE' to organize the means of assassinating the refractory hands and masters, and setting fire to the mills of such employers as hold out against the desire of the association.* It fortunately happens that all the parts of this most nefarious system have been completely established by judicial evidence."

With regard to the practical working of this new form of government, the following instance conveys an idea of it under its Scottish modifications—a type which the reviewer informs us, is comparatively a mild one. It is the Glasgow cotton-spinners' strike of 1837, which lasted "from April 5th to August 5th, being a period of 17 weeks and 5 days."

"To those unacquainted with the details of this manufacture, it is proper to premise, that the spinners are the skilled operatives, who, by the aid of machinery, convert the raw cotton into threads; and that each of them gives employment to a certain number of women and girls, called piecers, carders, pickers, and reelers, who perform subsequent operations upon the cotton twist, and whose employment is entirely dependent upon the preparatory labor of the spinners. The number of these female operatives employed by each spinner, or to whom his operations furnish employment, varies from five to eight; and they are instantly thrown out of bread the moment that the spinners' operations terminate. The number of spinners in Glasgow in April, 1837, was between eight and nine hundred; and the piecers and pickers, carders and reelers, dependent on their labor, about seven times as many."

"It may readily be conceived what must have been the sufferings of the operatives during the latter weeks of this disastrous strike. The aliment allowed by the association to each man, during the latter part of the strike, was only *eighteen pence* a week. Such was the deplorable pittance to which the deluded was reduced, who refused, or was compelled by the committee to refuse, during the whole time, from thirty to thirty-five shillings a week! The condition of the *female operatives*—the piecers, pickers, carders, and reelers—*was infinitely worse*; for there was *no fund whatever* provided for their maintenance; and, *from the commencement, they were thrown upon the streets, without either asylum, employment, or subsistence.* It may readily be conceived what must have been the consequence of six or seven thousand women being kept in a state of destitution and idleness for four months; especially when in close proximity to equal numbers of the other sex, always trained to disorderly habits by the habitual receipt of high wages and the habit of frequent intemperance. The necessary consequence was, that crime and immorality increased to a frightful degree; and the rapid progress of fever, as well as great increase in the rate of mortality, evinced, in an appalling manner, *how fatal such strikes are to the best interests of the laboring poor.*"

Upon concluding the details relating to Scotland, the reviewer prefaces others, elucidating the condition of the sister kingdoms, with the following remarks:

"The details which have now been given must, to persons not practically acquainted with these matters, *appear so extraordinary* that they *may fail* in obtaining general credit; and, being chiefly drawn from one district of the country, may be thought to be owing to some peculiar malignity which the principle of combination acquires when brought into connexion with the Scottish character. But, from the documents to which we are now about to refer, it will be seen that *the same evils exist to an equal, perhaps greater extent*, both in England and Ireland; and that, in the latter country in particular, *the system has acquired a degree of atrocity, and produced effects even more disastrous than have yet been experienced on this side of the channel.*"

After giving the details thus introduced, the reviewer comments upon them as follows:

"But the limits of this article forbid us to enter into further details of the facts connected with this important question. Enough has been stated to prove that the trades unions, as they are now *practically* in operation, have established a *despotism of the most universal and withering descrip-*

tion over the great body of the working classes—a despotism only the more severe and oppressive, that it arises from the tyranny of their own brethren. It was well observed by Sir Edward Sugden, in his speech in the House of Commons, on the 14th of February last, relative to the cotton-spinners' case, that no despotism is so severe and degrading as that which is inflicted by one section of the working classes over the other. Of the truth of this observation, the proceedings we have been investigating afford a memorable example. The Preston strike, it has been shown, threw at once eight thousand of the working classes out of employment. Including their families, it reduced *from twenty to thirty thousand human beings* at once to a state of starvation. The strike of the cotton-spinners and colliers in Lanarkshire, in 1837, threw at least two thousand five hundred skilled, and fifteen thousand unskilled, operatives into a state of entire idleness, in which they were kept, some for four, others for six months. Thus, including their families, it retained *at least forty thousand human beings*, during that long period, in a state of compulsory idleness and abject destitution.

“It may safely be affirmed, that there is no instance in the history of the world of such a tyrannical act as this being carried into effect by the authority of any Government, however despotic. If the Czar Peter, or the Sultan Mahmoud had, in the plenitude of their authority, attempted such an exercise of power, they would have been instantly overthrown. Even the sanguinary Committee of Public Safety could never have ventured on such an arbitrary stretch of authority against the industrious population of the *Faubourg St. Antoine*; and the long columns of pikemen which issued from that dreaded quarter whenever the price of provisions, or the cessation of employment, had grown into an intolerable height, proved that how great soever their power was, it had not reached that pitch of being able to compel men to forego the staff of life. Lord Bacon long ago said that the worst rebellions are those which arise from the stomach; and it is recorded as one of the most singular instances of the power of Suwarrow over his fanatical soldiery, that he sometimes contrived to get through an extraordinary dearth of provisions in his camp, by proclaiming a fast for four-and-twenty hours. But what is that, to the power assumed by the committee of the trades unions? They proclaim a fast, not for a day, but for four months; compel thirty or forty thousand human beings to remain in idleness and starvation for that long period; and imperiously command, not only the members of their own combination, but all other workmen whatever, from any quarter, from infringing upon, or interfering with, that state of compulsory idleness. This deplorable state of matters, too, is not produced by a numerical majority of the whole human beings concerned. The skilled laborers—that is, a twentieth or thirtieth part of the mass—alone are consulted; and a majority of them, in the first instance, adopt the fatal step. After it is adopted, and the committee organized, the power even of that small majority is at an end. It in itself has fallen under the dominion of the committee of its own creating, which is in possession of the public funds; which feels none of the penury shared by the general body; which is invested with money to hire assassins, and armed with the terrors of murder, fire raising, and vitriolic acid. For months before the strike terminates, the great majority even of the skilled workmen who authorized it, have come heartily to repent of their folly; they secretly lament their unhappy blindness, and execrate the leaders who advised them to the fatal step; but they dare not venture to give breath in public to these sentiments,

and, in sullen mournful silence, continue to yield unwilling obedience to the mandates of the secret ruling committee. Meanwhile, their families are reduced to the last stages of destitution; multitudes are perishing for want; licentiousness arises out of idleness; crime out of suffering; fever and pestilence make fearful inroads on a depressed and extenuated population; until, at length, the miseries and lamentations of the starving multitude compel the committee to abandon the contest, and permit the joyful sounds of industry and happiness again to be heard through the land."

Behold, then, the government which, while their "betters" were engaged in taxing them, to provide salaries and pensions for commissioners, to support a naval force, and to maintain the vast expenditure wasted in countless ways in the chimerical project of enforcing upon the subjects of foreign States the extorted concurrence of their Governments in a measure which, in England itself, had been carried only after a dubious contest of twenty years, conducted by "the single man of his age to whom it would have been possible to conduct such a struggle through all its ceaseless difficulties and disappointments:"—behold the government which the operatives of Great Britain, the "skilled" operatives, have established for themselves, and over *their* inferiors! Well might this reviewer, on presenting such a picture to the world; express doubt with regard to its "*obtaining general credit*" in the country even which it depicts; when, such has been the indulgence of its higher classes: in what the biographer of Charles Lamb calls the "taste for oratorical philanthropy," they are reckless zealots in behalf of so monstrous a perversion of the governmental trust! With such a reality howling around them, what possible excuse for their course, but that in the pursuit of the preposterous schemes suggested by their sofa visions, they have become too wrapped to be conscious of what is passing around them; and that, if awakened to it, "the details *must* appear so *extraordinary* that they may fail in obtaining general credit?"

But, in adverting to this spectacle, my purpose was not to make any such comments upon it. It was simply to show that the infraction of a law is no proof of insincerity in the Government from which it proceeds. If such a theory were to be set up, where would, in the present case, be the escape of "King, Lords and Commons" from the charge of the most absolute indifference to the reign of murder in the place of law, so long as the authority of the former should be restricted to the inferior regions of society, and Blackstone's "first and primary end of human laws" should be as if it were not, in regard to vulgar operatives only?

It is clear, then, that, even admitting what, as I have already said, is known to every man, woman, and child in the United States to be untrue, to wit: that our laws against the slave-trade were inoperative,—the theory which alone could afford any countenance to your slander, as an inference from such a fact, is an altogether fallacious one. But if this theory were as sound as it is the reverse, still it could not in the present instance avail you. It could, at best, throw around the calumny a seeming of fairness, that could hide its brazen face and cheat the beholder so long only as it should not be dissipated by having turned upon it the flood of light which this melancholy volume of man's history sheds upon the question.

What says the history of the slave-trade in regard to my country?

"America," says Mr. McCulloch, in his Dictionary of Commerce, after giving a sketch of the twenty years' struggle "in the British Parliament," "*America abolished the slave-trade at the same time as England*"—the

daughter, doubtless, treading in the footsteps of the mother! So, at least, will every British reader understand.

And who is it that thus summarily disposes of British-American history, and, with a single stroke of the pen, draws the parallel between it and that of the mother country? Is it some stipendiary, paid to keep up a supply of the raw material suited to the purposes of Sergeant Talsourd's dealers in "oratorical philanthropy?" No: it is a purely scientific writer, in a most elaborate and carefully digested work, devoted exclusively to commerce, and designed for the use of the whole English-speaking world. With such an illustration of the philosophic caution and scrupulousness that prevails in regard to America on this subject, who will wonder at the manifestations of these historic virtues, with which the transatlantic press teems at this day no less than it did, on other points, in the by-gone? Who, for instance, will experience any surprise at the contrast presented by the truth on the one hand, and the following picture on the other?

It is of a man who, by a writer (see *Ed. Rev.* April, 1838,) peculiarly competent to enlighten the British public in regard to American affairs and men, is pronounced to have been "a mere shadow" "of JEFFERSON, one of the truly great intellects of America;" while, had he only been qualified by the most cursory perusal of Jefferson's published writings to express an opinion of his intellect, he could not but have been aware that if there ever had been a living intellect to which that of THOMAS JEFFERSON actually *deferred*, it was the intellect of that friend, of whom, in the unfinished posthumous sketch of his own life, he expresses the opinion that he was the *first* man of every assembly in which, after his first youth, he ever sat; and of whom he adds, "with these consummate powers was united a pure and spotless virtue, which no calumny has ever attempted to sully." Such, in the estimation of THOMAS JEFFERSON—and not of him alone, but, it is not risking much to affirm, of a host of others, with GEORGE WASHINGTON at their head—such was JAMES MADISON: he whose intellect is now, by universal consent, revered as the creative one of that model-constitution, the destined influences of which over the fate of the human race are already seen to be beyond calculation; and the principles of which were so far beyond the depth of the contemporary "statesmen" of the old world, that, even after they had been for half a century in the operation contemplated by the designer, a European traveller has, by general acclamation, been elevated above his countryman MONTESQUIEU, for acquiring and imparting little beyond a decent understanding of them. Such was the man, whom this reviewer (whose lofty European pre-eminence could yet desport in a friendly parenthetical witticism upon the ignorance, so natural in an American lawyer and "President," as to make it doubtful whether it was *his* or "Miss Martineau's" betrayed by the one or the other, in "attributing unity to this bicomposite personage, Coke Littleton;" which witticism, however, proves to be the fruit of the reviewer's learned inadvertence to the fact, that Coke Littleton being but an elliptical name for *Coke's Commentary upon Littleton*, it was not much more irregular, after mentioning the work, to speak of the writer as one man, than it would be, upon mentioning Blackstone's Commentaries, to "attribute unity" to the Venerian professor:)—such was the man, of whom this reviewer speaks, as "Miss Martineau's friend Madison;" and tells his readers, "at the same time, it seems, he accounted for his selling *his own slaves*, by mentioning their horror of going to Liberia—a horror which he admitted to be prevalent among the blacks!"

Here we see "Miss Martineau's friend Madison" held up, as one of those nefarious "dealers in human flesh," to the generous indignation of all "oratorical philanthropists," and of all humane listeners, who, unlike Charles Lamb, are admirers of such philanthropy. He actually did commit the atrocity of "selling *his own slaves*;" and for this atrocity his apology was, that they had a horror of "going to Liberia!" But what were the facts of the case? How was it that this sale of "human flesh" came to be connected in the way of cause and effect with the said "human flesh's" horror for Liberia? Did Miss Martineau not take the trouble to inquire? or is it the reviewer who has not thought it worth while to explain?

And, in the first place, what sort of a country is this Liberia, for which Mr. Madison's slaves had a horror? What would have been their condition there, had they consented to the removal? Had these critics upon American morality but adverted to the fact, the prosecution of this inquiry might have shed some useful light to their minds upon the true nature of the condition which these pieces of "human flesh" refused to exchange for that of inhabitants of Liberia; preferring to be sold from hand to hand in the former, rather than to live as freemen in the latter.

Liberia is a settlement upon the coast of Africa, which, in Europe, so impossible is it for the genius of the American people and their institutions to be there understood, is honestly looked upon as an evidence of American ambition for colonial aggrandizement. However this may be, and whatever the ulterior designs to which it is to be subservient, the avowed object for which it has been formed is that of serving as a receptacle for such free negroes and mulattoes as may consent to accept a passage to and outfit in that country; such removal being, by the laws of the States where the institution of slavery unfortunately exists, a condition to liberation; which condition, barbarous and inhuman as it may be, seen to be by the purer intellectual and moral vision of Europe, rests upon a deep-seated conviction in the American mind, on a subject that has for upwards of a century been uppermost in the thoughts of our best and greatest men. That this conviction must be erroneous, scarcely admits of a doubt: seeing that it is in conflict with what is absolutely self-evident to European judges; who, besides their superiority of intellect and of moral sentiment, possess in so vastly higher a degree the requisite opportunities for forming a correct estimate of the consequences that would ensue from the experiment of constituting a democratic state of the white man and the negro in about equal portions. But, although doubtless a fruit of barbarous ignorance and selfishness conjoined in men habituated from infancy to the horrible practice of "dealing in human flesh," yet the conviction is not the less strong and sincere; and this will, perhaps, give to the barbarous law of which it has been the parent some title to a mitigation of the execration that it so deservedly encounters. Of the intensity in which this conviction exists, the following passage from the posthumous autobiographical sketch left by JEFFERSON, affords a not inadequate idea. It will be borne in mind, that it is from the same pen which, in the year 1778,—the persistence of the British Government in forcing the slave-trade upon Virginia having been *ipso facto* arrested by the breaking out of the revolutionary war three years previously—drew the bill to prevent the further importation of slaves, which passed into a law "without opposition," (the King of Great Britain's power to negative being now extinct,) "and stopped the increase of the evil by importation, leaving to future efforts its final eradication." Giving, at the age of 77, an account

of the labors of himself and two other Virginians to whom, forty years previously, had been committed the task of preparing a code of laws for the new Commonwealth that had then just thrown off the transatlantic yoke, he says, in regard to "*the bill on the subject of slaves,*" that it "was a mere digest of the existing laws respecting them, *without any intimation of a plan for a future and general emancipation.* It was thought better that *this* should be kept back, and attempted only by way of amendment, whenever the bill should be brought in. *The principles of the amendment, however, were agreed on; that is to say, the freedom of all born after a certain day, and deportation at a proper age.* But it was found that the public mind would not bear the proposition." Here it is seen that to the minds of these three Virginia abolitionists of the year 1778—long before William Wilberforce ever dreamed of becoming one—*deportation* appeared a natural consequence to *liberation*. Let us see, now, how it was with the survivor of the three, in the year 1821. Had his anxiety on the subject abated? Had his views about the natural connexion between abolition and deportation undergone any change? "*Nor,*" says he, speaking of their plan for the extinction of slavery, "*will the public mind bear it, even at this day. Yet the day is not distant when it must bear and adopt it, or worse will follow. Nothing is more certainly written in the book of fate, than that these people are to be free; nor is it less certain that the two races, equally free, cannot live in the same government. Nature, habit, opinion, have drawn indelible lines of distinction between them. It is still in our power to direct the process of emancipation and deportation, peaceably, and in such slow degree as that the evil will wear off insensibly, and their place be, *pari passu,* filled up by free white laborers. If, on the contrary, it is left to force itself on, human nature must shudder at the prospect held up. We should in vain look for an example in the Spanish deportation or deletion of the Moors. This precedent would fall far short of our case.*"

This conviction, "*that the two races, equally free, cannot live in the same government,*" is the ground of, or the pretext for, (whichever may best suit European charity,) that law in the States of the Union that are cursed with the institution of slavery, which renders a colony such as Liberia indispensable as an auxiliary to the wish on the part of any citizen to convert into freemen the bondsmen whom the acts of past generations have forced upon him the care and the responsibility of providing for. How far the properties desirable in such a place of refuge are possessed by this particular colony, may, in some measure, be judged from the quotations contained in Mr. Buxton's recent work, already so often adduced: "Nothing can be more delightful than a stroll along the borders of the beautiful fields, winding occasionally along almost impervious clusters of young palms, whose spreading branches excluded every ray of the scorching sun, then opening suddenly on an immense rice-field of the most delicate pea-green, skirted by the beautiful broad-leaved plantain and banana, literally groaning under the immense masses of their golden fruit." "Ashmun," says Mr. Buxton, "who seems to have had a clear view of the interest of the Liberian settlers, writes to them thus: 'Suffer me to put down two or three remarks, of the truth and importance of which you cannot be too sensible. The first is, that the cultivation of your rich lands is the only way you will ever find out to independence, comfort, and wealth! You may, if you please, if God gives you health, become as independent, comfortable, and happy, as

you ought to be in this world. The flat lands around you, and particularly your farms, have as good a soil as can be met with in any country. They will produce two crops of corn, sweet potatoes, and several other vegetables, in the year. They will yield a larger crop than the best soils in America; and they will produce a number of very valuable articles, for which, in the United States, millions of money are every year paid away to foreigners. One acre of rich land, well tilled, will produce you three hundred dollars worth of indigo. Half an acre may be made to grow half a ton of arrowroot. Four acres laid out in coffee plants, will, after the third year, produce you a clear income of two or three hundred dollars. Half an acre of cotton-trees will clothe your whole family; and, except a little hoeing, your wife and children can perform the whole labor of cropping and manufacturing it. One acre of canes will make you independent of all the world for the sugar you use in your family. One acre set in fruit-trees, and well attended, will furnish you, the year round, with more plantains, bananas, oranges, limes, guavas, papaws, and pine-apples, than you will ever gather. Nine months of the year, you may grow fresh vegetables every month; and some of you, who have lowland plantations, may do so throughout the year. Clear your lands, plant your crops, keep the weeds down; and the most favorable climate in the world, alone, under the direction of a bountiful Providence, will do more for you than all your toil and care could accomplish in America.”

This is Mr. Buxton's adopted account of the country, for going to which Madison's Virginia negro slaves indulged a horror! And no wonder! How frightful must their condition at home have been, to permit any one to entertain the idea that they could ever be brought to consent to a removal to such a place: let their passage thither, and their settlement there, be provided for with ever so much care! Deplorable as is the condition of factory girls and operatives in Great Britain, how vainly might the drum beat among them, from one end of the year to another, for recruits for such a colony! But, still, how is it that this horror of theirs for Liberia could furnish to this “dealer in human flesh” a pretext for practising his nefarious trade upon them? What possible connexion is there between the two things? These connecting links happen to have come under my notice.

They are such as Adam Smith could have given a very shrewd guess at, had the two extremes been put into his hands. He would have required no further assistance than is afforded by his own proposition, that a slave “can have no other interest, but to eat as much and to labor as little as possible.” Madison inherited a number of tracts of land, with slaves upon each. He lived long enough to see the daily increasing unprofitableness of these plantations reach the point of requiring the sale of part of his property, to make good the arrears of income. The negroes did not choose to change masters, and he was averse to selling them. The consequence was, that land was sold—first one piece, and then another; the slaves meanwhile retiring upon the part that was retained, until his estate finally exhibited the spectacle of an overpeopled country: the women all breeding so soon as they reached the age of fourteen or fifteen, and continuing to yield an active obedience to the precept “increase and multiply,” until the hand of time put a stop to it. The population no longer produced enough to support it. What kind of treatment it received at his hands, may be judged from one fact. His neighborhood, although a remarkably healthy one, was

visited by a fever of extraordinary malignity, which broke out among "his people," as a man's slaves are habitually termed in Virginia. Its nature was such as to require the free use of stimulants. Brandy and water, or whiskey and water, would answer; but rich old wine would be better still. Of this, a plentiful stock had been laid in, years before, at a period of greater plenty, to mellow, and correspond in flavor to Madison hospitality. It was such old madeira as, transatlantic epicures say, no man knows who has not crossed the ocean, and as makes a London alderman's mouth water to hear tell of it. Well: as this wine was thought by the doctor to be yet better for the pieces of "human flesh," than even good cognac and water, it was poured out to them like water. This will convey an idea of the treatment which the "human flesh" received at the hands of this dealer. But, such things could not last forever; loath as the master was to part with beings who, even during the eight years through which the voice of his country had kept him in the office of President, had never known any other title to call him by than the "master Jimmy" which dated as far back as he could recollect, something of the sort must be resolved upon: for when a population of a hundred souls, or more, with land a plenty to cultivate, although indeed not a little the worse for bad tillage, do not raise bread and meat enough for their own consumption, it requires a heavier purse than that of Madison's was when he had passed threescore and ten, to make up the deficit. What was to be done? Were they to be set free, and turned loose upon the parish? This had been a proceeding worthy of the practical wisdom of those who, from their London ottomans, would instruct the Virginians how to manage all such matters; but it accorded as little with Virginia notions in regard to "human flesh," as it did with Virginia law. What then? Why, Liberia! It was proposed to them. But no: the "amis des noirs," of the truly enlightened and truly philanthropic class, who, like Miss Martineau, are so clear-sighted as to see that colonization is a mere device of miscreants who would perpetuate "the traffic in human flesh," and, like her, commiserate the weakness of vision in such well-meaning men as Jefferson and Madison, which they betray, by not perceiving that 2,000 or 3,000 persons in eighteen years is not the rate at which to get rid of a population that increases 60,000 in one year:—these true friends of the black man had set their faces against his going to Liberia. They had resolved that he should be free in America; and, to deter him from emigrating to the land of his forefathers, was therefore a purpose so holy, that no fraud conducive thereto but must be pious. Hence, the minds of the blacks were effectually poisoned against the land which, for their race, had been ascertained by Ashmun, and other such like instruments of the dealers in "human flesh," to be a terrestrial paradise. Madison's slaves, consequently, would not listen to such a proposition. Every time it was renewed, it found them but the more steeled against it. Finally, the alternative was presented to them, to consent to emigrate to Liberia as freemen, or to be transferred to another master. They with one voice elected the latter; and the sale of "human flesh" did accordingly take place, to a purchaser approved by themselves—a native of the same county in Virginia, who, having removed to the banks of the Mississippi, had there found a soil and a product which would bear what, in the days of Adam Smith, it seems, that there were already but two colonial products that could bear the expensiveness of—slave labor.

Such is the truth in regard to the little incident in the life of Madison, the trafficker in "human flesh," which is so delicately touched on by the

Edinburgh Reviewer!—whether in a manner so dextrous as to leave unimpaired the truth of Jefferson's posthumous attestation, that, to the consummate intellectual powers of the father of the constitution, "was united a pure and spotless virtue *which no calumny has ever attempted to sully*," I shall not pretend to decide.

Of a piece with the fidelity of this Edinburgh Review sketch of one of America's men, in the relations in which he stood towards the institution of slavery, is the political economist's historical sketch of America's course in regard to the abolition of the slave-trade—that traffic which, according to Mr. Pitt, whose oratory upon the subject appears to constitute Mr. Buxton's favorite reservoir of remarkable sayings, is "the greatest practical evil that ever afflicted mankind;" while, according to the Edinburgh Review, the death of that same minister (not his political, but his natural death—nothing short of that) must now, by "the most calm and impartial judgment," be regarded as "the necessary precursor" of any measure on the part of the Government which he swayed, to put an end to what was by far the most active branch of the traffic—that carried on by British capital and British sailors, under the British flag.

"America," says McCulloch, "abolished the slave-trade at the same time as England!" But how did this coincidence happen? How chanced it that the daughter did, on this particular subject, prove so conformable to the example set by the mother?

Her preparation for it had, it must be admitted, been not altogether bad. About the period in the world's history (which, to this island in particular, is especially memorable) when his Majesty the King of Great Britain was engaged in fulfilling that royal contract entered into early in the eighteenth century, with his Majesty the King of Spain, for a supply of 144,000 negroes, for this island, at the rate of 4,800 a year, which were to be "seven palms high, sound, and not aged," and allowing "three to a ton," his Catholic Majesty was to pay for at the rate of "900 reals per ton;"—about this period, when the punctual performance of such royal engagements was deemed so nationally interesting, that, if Lord Howe's biographer can be relied upon, Parliament voted £10,000 for the "support" of the "settlements" on the coast of Africa, and Captain Howe (afterwards Admiral Lord Howe) was sent there "in the Glory, a frigate of the largest class," "to protect the traders;"—then it was that Anthony Benezet, the Pennsylvania quaker, (one of those pure spirits to whom the corruptions and oppressions of the old world were insupportable, and whose natural field of action was therefore in the new,) was engaged in the task of enlightening the minds of his countrymen in regard to the nature of "the trade," and in sowing the seeds of that detestation for the institution of slavery, which fell in so congenial a soil that it required but a few years to make it the overwhelming public sentiment of the country.

This is what we see, upon casting a glance back as far as the early part of the last century. Coming down to the period of our Revolution—when, without ceasing to be of the same race, our fathers parted company with those who have remained under the rule of "King, Lords, and Commons"—we find that, in August, 1774, upwards of eight years before that Sunday in the month of November, 1782, when "Mr. Ramsay, a clergyman, who was the first, we believe, (says the London Quarterly,) to call public attention to the subject of *negro* slavery," happened to have among his auditory (and to plant in that listener's bosom "the germe of his future labors

in that cause") the particular individual, of whom the *Edinburgh Review* says: "The political position assigned to him by his constituency in Yorkshire, the multitude and intimacy of his personal friendships, the animal spirits which knew no ebb, the insinuating graces of his conversation, the graceful flow of his natural eloquence, and an address at once the gayest, the most winning, and the most affectionate, *marked him out*, as the *single man of his age*, to whom it would have been possible to conduct such a struggle through all its ceaseless difficulties and disappointments." Upwards of eight years before the occurrence of this wonderful conjunction of the circumstances, from whose union alone, as thus declared by the highest British authority, it was within the range of human possibilities that the British Parliament should be induced, during the present age, to forbid the slave-trade to British merchants and ships,—a Virginian was proposing to his countrymen an address to King George III, setting forth their grievances, and entreating him, as he valued the integrity of the empire committed by Providence to his hands, "to deal out to all equal and impartial right." At the head of the grievances complained of, at the hands of his Majesty, as "holding the executive powers of the laws of these States," is the abuse of his power to negative the laws of the American Legislatures; and at the head of the instances of this "shameful abuse of a power trusted with his Majesty for other purposes," are placed those whereby the repeated endeavors of the colonists to arrest the slave-trade had been foiled: "For the most trifling reasons, and sometimes for no conceivable reason at all, his Majesty has rejected laws of the most salutary tendency. The abolition of domestic slavery is the great object of desire in those colonies where it was, unhappily, introduced in their infant state. *But, previous to the enfranchisement of the slaves we have, it is necessary to exclude all further importations from Africa. Yet our repeated attempts to effect this, by prohibitions, and by imposing duties which might amount to a prohibition, have been hitherto defeated by his Majesty's negative: thus preferring the immediate advantages of a few British corsairs, to the lasting interests of the American States, and to the rights of human nature, deeply wounded by this infamous practice.*"

This, in 1774, was already history in regard to that "unterrified commonwealth," which, in her earliest infancy, had not shrunk from the vindication of her right before the might of England, when wielded by the arm of Cromwell.

Not two years had passed over, when the following flowed from the same pen: "He [the King of Great Britain] has waged cruel war against human nature itself; violating its most sacred rights of life and liberty, in the persons of a distant people who never offended him; captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither. This piratical warfare, the opprobrium of *infidel Powers*, is the warfare of the *christian King* of Great Britain. Determined to keep open a market where men should be bought and sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce. And that this assemblage of horrors might want no fact of distinguished die, he is now exciting those very people to rise in arms among us, and to purchase that liberty of which he has deprived them, by murdering the people on whom he also obtruded them: thus paying off former crimes committed against the liberties of

one people, with crimes which he urges them to commit against the lives of another."

At this time the war of the Revolution was fairly begun, and the coasts were lined with King George's fleets, which put an end to trade of every sort, the slave-trade included; except that new branch of it which consisted in stripping the estates of the attainted rebels of Virginia and the Carolinas and Georgia of their laborers, and transporting these to the West India islands, there to enjoy, upon the plantations of loyal officers, or those to whom loyal officers might dispose of them, that liberty which royal proclamations held out as the reward for cutting as many rebel throats as possible. Nevertheless, although thus suspended through the operation of war, the slave-trade was not left to the effect of its casualties solely. In 1778, (four years before Wilberforce heard that sermon from Ramsay, on the subject of negroes, which "planted the germe of his future labors in the cause," and nearly ten years before those labors commenced,) a bill to prevent all further importation of negroes was introduced into the Legislature of Virginia, and "passed without opposition;" thereby giving the force of law to the "resolution to discontinue the importation of slaves," which, four years before, amid the excitement caused by the Boston port bill, and the anxieties attendant upon the impending struggle, had signalized the first proceedings of that convention, which, upon the dissolution of the Legislative Assembly by the royal governor, was elected by the people of Virginia "to consider the state of the colony, and particularly to appoint delegates to a general congress of all the colonies"—that same Continental Congress which assembled at Philadelphia in 1774, and then, nearly two years before it threw off all allegiance to the British king, responded to the "resolution of the convention of Virginia," by the "resolution not to import, or purchase any slave imported, after the first day of December in this year, and wholly to discontinue the trade."

The year 1787, which was signalized by Mr. Wilberforce's undertaking that "cause, by his labors in which he is the most extensively and permanently known," is memorable also in world history for the labors of that convention, which resulted in the formation of the existing Union, and the establishment, by the free suffrages of the people of thirteen independent States, of a Government as essentially different from any of the chance-begotten institutions under which humanity had hitherto groaned, as MAN is different from the monsters that peopled the earth's primeval slime: that Government which is equally admirable and striking as an attestation of the improvement which our race had undergone, and must forever continue to exhibit, whether it be considered in the political wisdom evinced in its structure, or in the patriotic intelligence of which its adoption by the separate action of the people of thirteen distinct States was a manifestation, far surpassing any yet afforded by the annals of mankind.

In these thirteen States, the institution of domestic slavery had, during their colonial dependence, been generally recognised; and the efforts made to arrest the increase of that portion of the population had been defeated by the tyrannical prostitution of the King's negative to promote the temporary commercial profits of a few traders residing at Liverpool and other ports of England, at the expense of "the lasting interests of the American States." In the greater number of these, however, it fortunately remained inconsiderable. But five of them, at the head of which stood Virginia, with a population nearly doubling that of the next largest State, depended altogether

upon slave-labor for those agricultural products which constituted their only wealth, and the extended cultivation whereof could alone give value to that virgin soil; of which the boundless expanse invited the planter to make his children rich by sending them forth, each with a gang of new hands, which the liberality of transatlantic merchants would have supplied without stint.

The allurement, however, proved ineffectual; and the very year (1788) which, on one side of the Atlantic, witnessed Pitt and Sir William Dolben engaged, from the beginning of May till the 7th of July, "in their struggles to pass the bill for regulating the transport of slaves"—merely subjecting the English traders to "*regulating*" restrictions—when, such was the philosophical indifference to this subject among the Oxonian and Cantab statesmen of the old world, that, according to the London Quarterly, "Charles Fox went grouse-shooting, while Pitt," "in a House of forty-one members, one more only than a quorum," was engaged in the strenuous exertions which were crowned by the passage of the bill "by only thirty five votes in a sort of Rump Parliament;"—the very year which witnessed this contrast of apathy and zeal on one side of the ocean, saw, on the other, the planters of Virginia, and the Carolinas, and Georgia, making a voluntary offering upon the altar of their country, of a portion of that national independence which they prized so highly—deliberately surrendering, for the general welfare, a part of the right of self-government, of which each was so jealous, and subjecting themselves forever to an express inhibition to admit any more slaves after a limited period.

Already, for the period of ten years, had this inhibition been imposed upon Virginia by her own act. Nor would it now have been made prospective in this general law binding upon all the States, but through a concession, which, as a means to unanimity in the adoption of the Union, was made to the two southernmost States, which had suffered greatly from the incursions of loyal forces on the water side, and, on the other, of those scalping-knife allies, against the employment of whom the thunder of Chatham had vainly expended itself; and, in consequence of this double visitation, had suffered a double drain of that agricultural population on which the malignity of their climate to the white man renders them entirely dependent: one stream flowing to the Indian maize grounds on their southern and western borders; the other to the scarcely more remote loyal sugar-colonies, to the population of which the Virginia tobacco-plantations, no less than the rice-swamps of Carolina and Georgia, continued throughout the war, as they were destined subsequently to do in that which is known among us as the "*second war of independence*," to contribute not unfrequent quotas.

Virginia had, so soon as her action on the subject was freed from the trammel of the royal negative, obeyed the dictates of her long cherished convictions; barring, by a law of her own, the door against African importations, in long anticipation of the period when it might again be thrown open by the return of peace. But Carolina and Georgia thought it unwise, by binding themselves to the same interdict, to destroy the possibility of supplying the void thus produced in their agricultural laboring class.

In what light the subject presented itself at the time, is shown by the following remarks, made in the convention of the State of North Carolina, to whom their fellow-citizens had confided the trust of deliberating upon the merits of the proposed union, and of the Government which it was to establish; and of deciding the momentous question, whether that State

should or should not become one of its members. These remarks were uttered in July, 1788, the very month of the very year when (so insignificant did the subject appear to the transatlantic public mind, even with regard to enactments for "regulating" the slave-trade) "Fox and Burke, (so says the London Quarterly,) though they had originally *spoken* for the bill, (Talfourd's "oratorical philanthropy!") did not think it worth while to stay in town to *vote* for it;" and, consequently, Fox went his way a grouse-shooting, leaving the bill to be disposed of by a rump of forty-one members—at a time, too, when its fate there was so uncertain, as it may be presumed to have been from the indication afforded by the vote in the House of Lords, where the most strenuous exertions of the prime minister, who "kept Parliament sitting with no other business before it," had just been able to accomplish nothing more than the passage of the same bill "by a majority of two;" and this, after "many amendments," which "were technically fatal" to it.

At this very same time—one year before Wilberforce "first proposed the abolition of the slave-trade to the House of Commons"—in the little town of Hillsborough, in the State of North Carolina, the convention, deliberating upon the adoption of the present constitution of the United States of America, had under consideration that particular clause which conferred upon the General Government authority to prohibit the importation of slaves after the year 1807. Upon the demand of one of the members for an explanation of this restriction of that power to the period subsequent to the year 1807, Mr. Iredell said: "I rise to express sentiments similar to those of the gentleman from Craven. For my part, were it practicable to put an end to the importation of slaves immediately, it would give me the greatest pleasure; for it certainly is a trade utterly inconsistent with 'the rights of humanity, and under which great cruelties have been exercised. When the entire abolition of slavery takes place, it will be an event most pleasing to every generous mind, and every friend of human nature; but we often wish for things which are not attainable. It was the wish of a great majority of the convention to put an end to the trade immediately; but the States of South Carolina and Georgia would not agree to it. Consider, then, what would be the difference between our present situation in this respect, if we do not agree to the constitution, and what it will be if we do agree to it. If we do not agree to it, do we remedy the evil? No, sir, we do not. For, if the constitution be not adopted, it will be in the power of every State to continue it forever. They may or may not abolish it, at their discretion. But if we adopt the constitution, the trade must cease after twenty years, if Congress so declare, whether particular States please or not. Surely, then, we gain by it. This was the utmost that could be obtained. I heartily wish more could have been done. But, as it is, this Government is nobly distinguished above others by that very provision. Where is there another country in which such a restriction prevails? We therefore, sir, set an example of humanity, by providing for the abolition of this inhuman traffic, though at a distant period. I hope, therefore, that this part of the constitution will not be condemned, because it has not stipulated for what it was impracticable to obtain."

Mr. Iredell added to what he had said before, that "the States of Georgia and South Carolina had lost a great many slaves *during the war*, and that they wished to supply the loss."

...This limitation, to the end of the year 1807, of the restriction upon the

powers conferred on the General Government in regard to the slave trade— which limitation formed part of the restriction, as it was imposed at the time the Government was originally devised, in 1787—affords the explanation of that coincidence in point of time, between the legislation of Congress and that of the British Parliament, which is so stated by McCulloch, as to impress any reader with the notion that the former was the fruit of the latter—the result of the spirit of imitation on the part of the daughter, watchful of the struggle going on in the bosom of the parent, and yielding a conformity to her example.

“America abolished the slave-trade at the same time as England!” Yes, the act of the British Parliament bears date the 25th of March, 1807; and that of the American Congress, on the 2d of the same month of the same year. But what reader of the above sentence, coming in at the close of a sketch of that twenty years’ struggle in the British Lords and Commons, which the Edinburgh Review pronounces Wilberforce to have been the only *man* of the age who could have brought it to a successful issue, would ever divine that, to all intents and purposes, (above all, when considered in its relations to a struggle of that nature,) the American law had passed—her measure of abolition had been agreed upon before Wilberforce had made the first move by which that twenty years’ struggle was brought on?

But, although restricted in this one particular, the General Government of the Union was left free in all others regarding the slave trade. Before the year 1808, it was precluded from interfering with the importation of slaves into such of the States as might see fit to allow it; but, in all other respects, its power over the subject was as unlimited as that of the British Parliament—if it be allowable to compare two things so entirely dissimilar as a government constituted in such a manner that its action must necessarily be a true exponent of the general sentiment of the nation, and one composed of a detestable sham, under the name of a representative body, tacked on as an appendage to another, consisting of hereditary wisdom and patriotism; the general action of which could never have for its aim any other than that which is too well understood at the present day to require mention, and the particular action of which on any one subject might be determined in favor of any scheme, however wild or iniquitous, by the desire of the *ins* or the *outs* to conciliate the favor and purchase the votes of half a dozen “members,” *representing* (!) perhaps not as many hundred electors.

The use made of the authority thus vested in the *truly* “representative” government, which I have thus been led to compare with the transatlantic sham that passes under the same name, is seen upon our statute-book and in the decisions of our courts.

Simultaneously, almost, with the establishment of the American Government, was a measure on the part of Spain with regard to her colonies, which afforded a test to the sentiment of the people of the United States with regard to the slave-trade. To the contract between their two Majesties, whereby, in the early part of the century, his Britannic Majesty engaged to keep up the supply for his Catholic Majesty’s possessions, of Africans “not less than seven palms in height,” succeeded other contracts in which the place of his Britannic Majesty was supplied by private individuals—among whom the most conspicuous place seems to have been occupied by the house of Baker & Dawson of Liverpool, within whose field of operations this island was placed by a royal order of 1786. Some years after this, however, although the negroes were delivered by these contractors at the

moderate price of 155 dollars, it was deemed advisable to abandon this system of privileged, for that of free trade; and, accordingly, the Canary islands, together with San Domingo, Cuba, and Puerto Rico, were thrown open to the vessels of all nations bringing slaves. Here was an inviting field to the enterprise of New England ship-owners and mariners; and the commercial skill which has raised them to such eminence in other branches, would no doubt have rendered them formidable competitors of the Liverpool traders in this lucrative pursuit.

But this temptation proved as ineffectual to navigating New England, as that of obtaining for her emigrating sons to the rich alluvions of the west a plentiful supply of hands at 100 to 150 dollars a head had proved to planting Virginia. In March, 1794—not a year after the votes by which the House of Commons rejected, not only a proposal for abolishing the slave-trade, but one also for “restricting the number of slaves to be annually imported into our own colonies,” and then another “*for prohibiting the employment of British capital in the introduction of slaves into foreign settlements*,”—nearly two years before the time when, the philosophical indifference to the subject still prevailing, “a body of Wilberforce’s supporters, sufficient to have carried the bill for abolition, were enticed from their places in the House by the new opera of the ‘Two Hunchbacks,’ in which a conspicuous part was assigned to the great vocalist of that day, Signor Portogallo;”—three years before the period when he encountered “a defeat more signal than any of those which he had hitherto endured;”—ten years before the Lords defeated, for the second time, the bill after it had passed the Commons; and upwards of eleven years before “the House of Commons of 1805, receding from their former resolutions, rejected his bill,”—their own bill, twice sent by them to the Lords;—on the 22d of March, 1794, a law, passed without opposition, went into effect, involving an exercise by the Government of the United States, of the whole authority vested in it with regard to the slave-trade. The American Congress did the very thing which the British Commons at the very same period refused to do; they “prohibited the employment of” *American* “capital in the introduction of slaves into foreign settlements.” Nor was the prohibition confined to American capital; it embraced all capital and labor whatsoever, whether American or foreign; and forbade its employment for that purpose anywhere within the jurisdiction of the United States. This law is still in force; and it would be difficult to find, in any code, one more anxiously or skilfully framed.

The prohibition established by it applies to “any citizen of the United States, or foreigner, or any other person coming into or residing within the same.”

It is, that no such person “shall, for himself, or any other person whatsoever, either as master, factor, or owner, build, fit, equip, load, or otherwise prepare any ship or vessel, within any port or place of the said United States, nor shall cause any ship or vessel to sail from any port or place within the same, *for the purpose* of carrying on any trade or traffic in slaves, to any foreign country; or for the purpose of procuring from any foreign kingdom, place, or country, the inhabitants of such kingdom, place, or country, to be transported to any foreign country, port, or place whatever, to be sold or disposed of as slaves.”

To enforce this prohibition, it is provided—1st. That any vessel fitted out “for the said purpose” shall be forfeited to the United States; 2d. That every person so building, fitting out, equipping, loading, or otherwise pre-

paring, or sending away, any ship or vessel, knowing or intending that the same shall be employed in such trade or business, contrary to the true intent and meaning of this act, or anyways aiding or abetting therein, shall severally forfeit and pay the sum of two thousand dollars—one moiety thereof to the use of the United States, and the other moiety thereof to the use of him or her who shall sue for and prosecute the same; and, 3d. A penalty, to be sued for and distributed in the same way, of two hundred dollars for each and every person transported in violation of this prohibition.

The act contains a further provision, having for its object to prevent a violation of the prohibition on the part of foreign vessels, by retaining a control over their employment after they may have left the jurisdiction of the United States. It is: that in the case of suspicion, on the part of any citizen, that a foreign vessel is intended for the slave-trade, and the information on the subject being deemed satisfactory by the officer of the customs to whom it may be communicated, the vessel shall not be allowed to clear, until a satisfactory bond shall be given that none of the natives of Africa, or of any other foreign country, shall, within nine months, be taken on board, contrary to the true intent of the prohibition.

The questions of construction, arising in prosecutions under this act, have been decided in a manner evincing any thing but a bias towards parties acting contrary to its spirit. Thus, although the acts of preparing a vessel, and of causing her to sail, are essentially distinct, an information describing both acts in one count has been twice held to be sufficient. In another case, it has been decided that, to incur forfeiture, "it is not requisite that the vessel should be completely fitted and ready for sea; the right of seizure attaches as soon as the preparations have proceeded so far as clearly to manifest the intention." So with regard to the penalty of two thousand dollars, for building, fitting out, &c., any vessel, or anyways aiding or abetting therein: it has been decided that "the forfeiture attaches under the preceding article, where the *original voyage* is commenced in the United States, whether the vessel belong to citizens or to foreigners, and whether the act is done *suo jure*, or by an agent, for the benefit of another person, who is not a citizen or resident of the United States;" and further, that taking the vessel to a foreign port, and there making a sale to a foreigner, and commencing a new voyage from that port, "does not break the continuity of the original adventure," but leaves the party in the United States subject to the penalty, just the same as if the vessel had gone direct from the United States to the coast of Africa.

This is a fair specimen of the action of the Government of the United States, by laws and judicial decisions; the former of which succeeded each other from 1794 to 1800, 1803, 1807, 1818, 1819, and 1820, as experience suggested new provisions for the complete effectuation of the object of utterly disconnecting the country, its citizens, and its residents, in all possible modes, with the slave-trade. These laws bear upon their face the impress of that sincerity, and that directness of purpose, so naturally characteristic of the laws of a country where legislation on any subject of moment cannot be aught else than the expression of the general opinion and sentiment, adopted and formed with the deliberation which cannot but precede them in a community where every man has a voice; where the doctrine of passive obedience, whether to kings or to majorities, is unknown; and where the authority of the State itself, and the correlative duty of obedience or conformity on the part of the individual citizen, are understood

and felt to rest upon a compact to which every citizen is a party, with all the rights inseparable from that relation—a compact which enjoins it as the paramount duty of every citizen, that, in the exercise of his share of political power, he shall not aid in any unnecessary violence to the interests, the opinions, or the prejudices even, of any other; and the practical influence of which is, that, in exact proportion to the interest which any question may excite in any portion of the community, is the consideration shown for it in the formation of that general sentiment,—a conformity to which, on the part of the minority, who may not concur in it, is universally understood and felt to be the necessary price of the harmony and peace of society under the least imperfect of the forms in which the imperfection of human nature allows it to exist. These laws every individual in the country is free to denounce any infraction of, to authorities that *dare* not, if they had the disposition, omit any step towards its punishment; their pecuniary penalties are so heavy, and so distributed, as to afford the strongest incentive to vigilance, on the part of every individual capable of being quickened by the prospect of lucre in the discharge of the duty which every man in a republic owes to the law; and the country is one, happily, where no man is afraid to speak out, and no necessity exists for bribing him with the promise of personal safety within the walls of a prison, to be exchanged at the expiration of an uncertain term of months, for the reward of “exile for life.”

Thus much in regard to the points presented by your two first communications. They might be dilated upon much further; but want of time to spare to the subject admonishes me to dismiss them, and to proceed to your third and last communication;—that which has led me to engage in a task which I should so willingly have avoided, and all necessity for which I had indulged the hope of having precluded, by the reception given to your first essays in this line.

In this third communication, besides the proposal, conveyed in your own language, which has already been the subject of comment, I am favored with an extract from the “Despatch from her Britannic Majesty’s principal Secretary of State,” in the following words: “The two Governments having, by the 10th article of the treaty of Ghent, mutually engaged to each other ‘to use their utmost endeavors to promote the entire abolition of the slave-trade,’ it seems perfectly consistent with the respect which the agents of each country must feel for the other country, that they should not only themselves act in strict accordance with the spirit of the engagement which their own Government has contracted, but that they should furnish to the agents of the other Government any information which may be calculated to enable that other Government more effectually to accomplish the common purpose.”

To judge from the juxtaposition in which you have placed this extract, with the proposal that I should accept the post of informer-general against British subjects, it would seem to have been intended as an argument to justify the proposal. If it is to be so considered, my answer to it is already given.

To judge of its meaning by its own terms, the design of the writer would seem, however, to have been somewhat different from the purpose to which you have applied the passage. It seems to have been intended as a vindication of the respectfulness of the step taken by you in addressing to me your communication of January last, upon the general ground that “it seems perfectly consistent with the respect which the agents of each

country must feel for the other country, that they should "furnish to the agents of the other Government any information which may be calculated to enable that other Government more effectually to accomplish the common purpose." And this general proposition is presented as a logical inference from the stipulation contained in the treaty of Ghent, whereby, in regard to the "total abolition of the slave-trade," it was "agreed that both the contracting parties shall use their best endeavors to accomplish so desirable an object."

How far this stipulation warrants the deduction here made from it, I will now inquire; and then I will examine how far, supposing the general proposition to be a sound one, it can afford justification to that course on your part, in defence of which it is brought forward.

To any mind in the slightest degree conversant with the principle of national independence in its simplest applications, it is evident that this stipulation does not confer upon either party a shadow of right to interfere, in any mode, manner, or degree whatever, with the other, in the means which she may see fit to employ for fulfilling the object on her part; which proposition, however, requires one qualification,—that those means shall not be in violation of the received principles of international law. For instance: that, under the plea of "best endeavors to accomplish so desirable an object," one of the parties shall not effect the conquest of weaker States, or establish over their Governments a control irreconcilable with those fundamental principles, and with that state of things, the maintenance of which is of paramount importance to the world. But, with this one qualification only, the proposition is self-evident. The stipulation does not, in the slightest degree, abridge the independence of either party, in regard to her action upon the subject. It leaves her free to pass her own laws, and to provide for their execution, by her own exclusive action; and confers no right whatever upon the other party to interfere with that action.

One right it does confer upon both parties, and one right only, to wit: that the other "shall use its best endeavors." The only particular in which this right is susceptible of qualification, regards the precise nature and extent of the action thus made obligatory upon the several parties. Among the limitations in this respect, necessarily attaching to any covenant of the sort, between whatsoever two parties, (provided these had a title to be considered to be within the pale of civilization,) one obviously is, that the endeavors to which each should be deemed to be bound should not be of a character inconsistent with the general principles of civilized government; and the same protective limitation must evidently apply, also, to any particular principle that might be held sacred by one only of the parties. Hence, the obligation, although mutual, could not be absolutely identical in its details, as applicable to either party, unless they should chance to possess governments exactly alike; for, unless such an identity should exist, measures might be rightfully expected from the one, which it would be unjust to require of the other. For instance: the "expedient" adopted by the Governor of the Mauritius shows that, although "strong," it was not absolutely inconsistent with the principles prevailing in Great Britain with regard to the rightful exercise of authority over British subjects; it would, therefore, not be unreasonable in the Government of the United States to expect that, among the "best endeavors" to which that of Great Britain is bound, it should freely use, through her colonial Governors, the "expedient" of sending culprits to the Old Bailey "for trial." But it would be allo-

gether unreasonable in the latter to expect of the former to use any means of corresponding strength: seeing, that in the catalogue of acts of tyranny charged, in the declaration of independence, against the King of Great Britain, is that of having "combined with others" (the Lords and Commons) "for transporting us beyond seas to be tried for pretended offences;" and that this referred to an act of Parliament, which, two years before, by the same pen, had been thus commented upon in the proposed address to the King: "By the act for the suppression of riots and tumults in the town of Boston, passed also in the last session of Parliament, a murder committed there is, if the Governor pleases, to be tried in the court of King's Bench, in the island of Great Britain, by a jury of Middlesex. The witnesses, too, on the receipt of such a sum as the Governor shall think it reasonable for them to expend, are to enter into recognizance to appear at the trial. This is, in other words, taxing them to the amount of their recognizance; and that amount may be whatever a Governor pleases. For who, does his Majesty think, can be prevailed on to cross the Atlantic, for the sole purpose of bearing evidence to a fact? His expenses are to be borne, indeed, as they shall be estimated by a Governor; but who are to feed the wife and children whom he leaves behind, and who have no other subsistence but his daily labor? Those epidemical disorders, too, so terrible in a foreign climate: is the cure of them to be estimated among the articles of expenses, and their danger to be warded off by the almighty power of a Parliament? And the wretched criminal, if he happen to have offended on the American side, stripped of his privilege of trial by peers of his vicinage—removed from the place where alone full evidence could be obtained—without money, without counsel, without friends, without exculpatory proof—is tried before judges predetermined to condemn. The cowards who would suffer a countryman to be torn from the bowels of their society, in order to be thus offered a sacrifice to parliamentary tyranny, would merit that everlasting infamy now fixed on the authors of the act."

Nor is the difference in the details of this obligation, as it attaches to the parties respectively, necessarily confined to fundamental points, of the nature of that just adverted to. It may extend to others, such as the proper principles to be observed towards other nations; or to matters of secondary importance, such as the mere expenditure of money. In respect to the latter, for instance: one Government might, from its very constitution, be irresistibly predisposed on all occasions to a magnanimous prodigality; and have it in its power to indulge the propensity, without stopping to enter into a miserly comparison of the two sides of the account, for the purpose of ascertaining whether the resulting benefit was, in certainty and degree, commensurate with the inconvenience experienced by those who provided the means for the expenditure: while, on the contrary, the other party to the agreement might be constantly subject to an equally effective bias towards a vulgar parsimony, through the impossibility of its engaging in any expenditure of the substance of the people over whom it was intrusted with the power of taxation, without a rigid inquiry, justifying it under every aspect in which its rightfulness could come in question. In such case, it would clearly be no less unreasonable and inconsistent with the true spirit of the stipulation, for the liberal Government to require of the other to keep pace with its lavish expenditure, than it would be for the latter to insist upon the former's placing a curb upon its own generous spirit, in order that the penuriousness with which it was in contrast should not be put to shame.

A corresponding difference might be occasioned by the character of the two Governments, with reference to the rest of the world. One of them, for example, might be so constituted that its course towards foreign nations should naturally exhibit always a strict conformity to the maxim, "Peace and honest friendship with all nations, entangling alliances with none;" while a propensity directly the reverse of this might belong to the character of the other. The former might be known to be ever governed by the idea that its business was to attend to the concerns of its own people, and not of any other; that, if it regulated the conduct of its own citizens, and maintained their rights, its office was fulfilled; and that its duty, both to them and to the rest of mankind, alike dictated a total abstinence from all intermeddling in the concerns of other States, and that these should be left to manage their own affairs,—the Government dealing with its subjects, and the subjects with the Government, according to their respective notions of right and wrong, and their respective means of control. The latter, on the contrary, might be known to be confirmed in the habit of considering itself the ordained regulator of the affairs of humanity at large; so that, in the distribution of its attention over the vast sphere of action belonging to it, but a small share could be allotted to the condition of its own immediate subjects, so long as any topic connected with "the rights of humanity" should exist; in respect to which, the composition of other Governments might be beneficially modified, or their action advantageously influenced in any way, whether by directing and quickening it, or by assisting its operation, by taking part in the execution of the laws they might be prevailed upon to pass for the regulation of their subjects. It is undeniable that a difference of this kind would afford just ground for one between the exertions that the parties might severally be required to make towards the object in regard to which their best endeavors had been mutually pledged. The Government distinguished for its contracted views, might, without laying itself open to the charge of disappointing any expectation that could reasonably be entertained from one of such a character, limit its endeavors towards the abolition of the slave-trade by other Governments, to declarations of its own conviction and sentiments with respect to it upon all fit occasions; and to the influence of its example, in faithfully maintaining the authority of laws truly calculated to prevent its own citizens from taking part, directly or indirectly, in the traffic; or from facilitating it on the part of others. Moreover, as the maintenance of laws of this kind is particularly expensive, and as this expensiveness increases in a geometrical ratio with the distance of the theatre upon which infractions may be committed, it follows that their absolute maintenance, so that unpunished violations of them shall be altogether unknown—an impossibility to any Government, with regard to any law—cannot be reasonably counted upon: above all, from a Government which, besides being one of those to whom "strong expedients" are forbidden, belongs also to the parsimonious class, that are so cramped in regard to the faculty of disposing of the fruits of the people's industry, as to be under the necessity always of justifying any exercise of it, by showing that it has not been abused, either through the inherent worthlessness of the end, or through its being of too uncertain or too costly accomplishment. With regard to a Government of this restricted nature, all these considerations concur to set limits to its obligation, which have no existence for one whose nature impels and allows it to spurn at all such restraints; and whilst the former, through its considerateness of expense, and other causes, might, without criminality, fall somewhat short of

the utmost attainable perfection in the maintenance of its own laws, the latter might, without injustice, be expected to act a very different part, and not only to exercise all its influence in directing the legislation of other countries, but also to volunteer to enforce their laws: to this end covering the sea with her cruisers, and the land with agents of all sorts, regardless of cost.

But, after making every such qualification of it, the right resulting from this stipulation still remains to each of the parties. It is a right that the other "shall use its best endeavors;" and although it does not by any means follow, from this right, that either party should possess that of interfering in any manner with the other, by pretending to take part in either the enactment or the execution of her laws, it does follow that, if this obligation be unfulfilled by either party, a further right does thereupon attach to the other, to wit: the right to charge her with faithlessness, in the face of the world; and to resort to such other measures as the power of the aggrieved party may render practicable, and the extent of the injury may warrant.

This right, "the 10th article of the treaty of Ghent," quoted by her Majesty's principal Secretary of State, does confer upon the British with regard to the American Government, if the latter prove unfaithful to the obligation thereby incurred. But it confers no other. That stipulation does not, in any manner, affect the independence of the two parties. It leaves it absolute and intact as before; and confers upon neither the right to advance any pretension, or so much as to propose even to take part, either in the making or in the executing of the laws of the other. Above all, does it not afford any ground for any proceeding of the sort on the part of subordinate agents residing in a foreign country, and accredited there for a special purpose only, towards other subordinate agents, who, although accredited to the same authorities, are not placed, and, from the special character of the former, cannot possibly be placed, in any official relationship with them.

But, admit for a moment this proposition of her Majesty's principal Secretary of State to be incontrovertible! Does it afford any justification of the course pursued by you? Not the slightest. Anxious as he appears to have been to cover your position, he could not venture upon a proposition broad enough to afford it even a shadow of protection. What he says amounts, in truth, to nothing but a disclaimer of intentional disrespect, thrown into the shape of an unsound argument that no disrespect was shown. The disclaimer may be accepted; but the fallacy relates to a point too important to allow it to pass unexposed.

What is it that to the principal Secretary "seems perfectly consistent with the respect which the agents of each country must feel for the other country?" Why, that they should, on either part, "furnish to the agents of the other Government any information which may be calculated to enable that other Government more effectually to accomplish the common purpose." Admitting this to be true, what is the thing to be furnished? It is "*information*;" and this information must be of a particular kind. Under this rule, even, you could not, consistently with the respect which the principal Secretary says you "must feel" for my country, offer to furnish me with any information, unless it were "calculated to enable" the Government of the United States "more effectually to accomplish the common purpose."

Manifestly fallacious as the Secretary's principle appears to me; and obvious as is, to my mind, the duty of denying to it all influence whatever, in any determination I might come to in a case of the kind; yet I can conceive cases in which the nature of the "*information*" communicated, and all the

circumstances attending the communication, would afford conclusive evidence of that sincerity of purpose, which, however misdirected it may be, ever carries with it its own title to a respectful and friendly reception. But the present case, unfortunately, is not of this class. To furnish the American consul at Havana with "*information*," which there might be a possibility of his not possessing, and truly "*calculated to enable*" his Government to make it a basis of action, would be one thing. To make that same officer "acquainted with the *report* prevalent in this place," is another, and a very different thing; so different, that, to be sensible of the difference, it fully suffices to bestow one's consideration upon the naked act itself, without adverting to the various adjuncts, in the shape of suggestions and hopes, with which you judged proper to garnish it. And this brings me to the speculation into which, upon the occasion of showing that your object in addressing these communications to me could not possibly be that which you avowed, I announced my intention to venture, with regard to what really was the object at which you were driving. The task is, indeed, a superfluous one; seeing that my opinion on the subject cannot but be already sufficiently disclosed. But, as the speculation has been promised, I will give it.

The belief, then, which every thing has conspired to force upon my mind—which no single circumstance exists to weaken—is, that your communication was addressed to me without the remotest expectation that your making me "acquainted with the report prevalent in this place" could, by any possibility, conduce to any useful end regarding the subject; and that the occasion was seized by you to get up, for stage-effect at home, a display of zeal and efficiency, the hollowness of which could at that distance alone fail to be seen into, and to excite the contempt proper to such exhibitions. This, however, was a consideration which they could not be expected to be otherwise than regardless of, whether at home or in this remote theatre, whose bosoms could feel comfortable under such a burden as the consciousness of being parties to the little game of patronage here exhibited to admiring eyes. So long as the object of getting up a show of efficiency, to cover the sinecure reality, could be accomplished, it mattered little what people here might think. Nor, although the primary, was this the only end which the occasion might be made to serve. It was a favorable one to punish the United States for having so pertinaciously resisted the entreaties of the British Government to flatter and conciliate the influences which had acquired such predominance over the action of its own place-holders and place-seekers, by the one concession of giving its consent to the plan constituting its navy the grand high constable of the seas, and becoming a party to the grant to it of the right of search. This punishment might be inflicted in the shape of the calumnious imputation, which your diplomatic skill taught you "respectfully" to present in the friendly guise of suggestions, hopes, and regrets; and, besides the gratification of the feeling which prompted it, who could tell but that the chastisement might be attended with the further advantage and glory to the actors, of subduing the stubbornness upon which it was expended? It was accordingly ventured upon; and if you are not by this time satisfied that the act was one in which you displayed greater valor than discretion, it is because my humble powers do not correspond to the good-will which will ever animate me upon such an occasion, whether the slander cast at my country come from the hand of an underlying sinecurist, or from that of the principal Secretary of State.

If, as circumstances would seem to indicate, you really did indulge, while hazarding this step, in the delusive notion that expedients of the sort could be attended with the effect of extorting from the Government of the United States the oft-denied privilege of searching the vessels of its citizens, this would only be an additional proof of the utter misconceptions which yet prevail with regard to us. Could the people of Great Britain but be as free from all iniquitous taxation, as they ever will remain from that for which a pretext would be afforded by the consent of the United States to place themselves under the pupilage of the British Government, and to have their laws, whether on land or at sea, executed by the agency of the British navy or of British commissioners, Mr. Hume's occupation (in one field, at least) would be gone; for the condition of his countrymen would, in that respect, leave nothing to be desired. The right of search! You do not understand us; this is but too plain. Why, if through some extraordinary combination of circumstances, the administration of the Government of the United States should chance to fall into the hands of a man disposed to enter into such an arrangement, it would still be as far as ever from its accomplishment. To present for the consideration of the Senate, a treaty subjecting American vessels to search by the officers of a foreign Power—and, above all others, of Great Britain—would transcend the daring of any man, unless he were so far insane as to covet the distinction of impeachment. Such an idea could find a harboring-place in no American brain but that of a lunatic; and that the reverse should be counted upon by a European, only proves how little Europe understands America. The truth to which I have pointed in regard to the cause of the impossibility of a conflict in the latter country between law and public opinion, applies with no less force to the subject of national independence. In European countries, this is (except when some very extraordinary crisis may have arisen to throw the people into unusual excitement) a vague abstraction, which, to the common mind, appears as far above its own proper region of thought and sentiment, as the King's judicial ubiquity, or his more general exemption from fallibility. Like these attributes of majesty, independence is something which concerns the *Government*, and with which the *subject* has nothing to do. Far different is the case in my country. There, national independence is an object familiar to the thoughts and dear to the heart of the citizen—a sacred heir-loom, handed down from the generation of '76; the history of the acquisition of which, and the duty of transmitting it unimpaired, is among the first lessons of the infant mind. It is seen to be a part of that self-government, which (the dearest inheritance of the people) belongs to them; cannot be invaded without grievously wronging them; cannot be alienated without enslaving them. Not a man in the country, however little he might have thought upon the subject, but would perceive, at a glance, that the most atrocious usurpation of which the public servants could be guilty, would be that of presuming to grant away to any foreign Government any right to take part in the exercise of the powers confided to them. Not one but would feel it as an injury to himself, personally—the attempted robbery of a treasure, whereof he knows and feels himself to be one of the rightful owners. How could this fail to be the case in a country where, instead of the King's birthday, or the Queen's birthday, it is the birthday of INDEPENDENCE that is celebrated; where every man's and every woman's earliest recollection of the discharge of artillery, or of martial music, or of the firing of crackers, exists in indissoluble association with the FOURTH OF JULY? The two

wars in which the nation has been engaged, (I say the *two*, because the war with France has left no national impression.)—how are they distinguished, think you? As the *first* war of INDEPENDENCE, and the *second* war of INDEPENDENCE! When we buried the hatchet at the close of the last, great were the rejoicings! At the return of blessed peace, no people ever showed more joy; and, amid the thousand ways in which this displayed itself, were heard congratulatory addresses to the Chief Magistrate of the Union, from the cities whose long silent wharves resounded once more with the hum of commerce. But even at that moment, INDEPENDENCE was not forgotten. Glad as they were to bury the hatchet, they were not unmindful of the duty of marking the spot, and of freshly inscribing the causes which might command it to be again dug up. Witness the following extract from the answer of the President—the same “dealer in human flesh” who, upwards of twenty years after, was guilty of the atrocity of “selling his own slaves”—to one of these addresses:

“A candid review of the trials to which our country has been exposed, and of its conduct previous and subsequent to the appeal to arms, will always do equal justice to its love of peace, and its energies in war; to the stability of its political institutions amid threatening shocks, and the public spirit which animated, and was in turn cherished by them; to its respect *for the rights of other nations, and its firmness in asserting its own.*”

“The present generation, in disregarding temporary interests, when brought into competition with *essential rights* and *national character*, the *only* foundations of lasting prosperity, has emulated the wisdom and the virtue of that which bequeathed to it the blessings of FREEDOM and INDEPENDENCE; and it will have the happiness of handing down the precious trust, with additional security and lustre, to the generations which are to follow.”

By a singular coincidence it has happened, that while engaged in writing these remarks, I have received a bundle of Washington newspapers; upon opening which, the first thing that has caught my eye is an article headed “*International law—Brazil*,” on the subject of an occurrence at Rio in April last; which has recalled to mind one of precisely the same nature, of which, in the same month of last year, the same place was the theatre. The first in order of time is thus narrated in an American paper of June 11, 1838, containing news from Brazil to the latter end of April, brought by the American ship *Mogul*: “A good deal of excitement had been created at Rio, in consequence of an outrage committed by the British corvette *Rover*, upon a Brazilian vessel, on board which were the inspector of the arsenal, the commandant of marine artillery, and two other Brazilian officers. The outrage consisted in first firing upon the Brazilian vessel, and then compelling the officers on board of her to go on board of the *Rover*. The difficulty grew out of an order given by the commander of the corvette to the commander of the Brazilian vessel, as the latter was passing the former, and to which no attention was paid by the Brazilian. The case had been represented to the British chargé d’affaires, and it was said he had promised to make reparation.” The more recent occurrence, (which, in one particular, will be seen not to admit of governmental “reparation,”) is thus related in the letter addressed upon the occasion by the British chargé to the British commodore in command on that station: “By representations made to me by the Government of his Imperial Majesty, I am informed, that, on the 21st instant, the steamboat *Especuladora*, returning from the island of Pa-

queta to this city, was fired into by the Ganges; one of the vessels lately captured with Africans on board; and that a Brazilian gentleman on board was mortally wounded. The communication of Senhor Oliveira does not suggest that there was the slightest provocation for this act, nor is it said that it was accidental."

In neither case are we furnished with the key to the outrage. Little doubt, however, can be entertained that in both instances it arose from officer-like zeal in discharge of the duty assigned to the British navy, of carrying into execution the laws of Brazil for the suppression of the slave-trade. Ardor in the exercise of the right of search affords so natural an explanation, and it seems so difficult to imagine any other, that, in the absence of a conflicting statement, it seems scarcely possible to reject it.

The last incident also "is represented to have caused great excitement in that city;" the more so, as the victim was a young gentleman of great worth, and held in general esteem, who had been married but a week or two. So much for a steamboat excursion in the very harbor of his native city, under the right of navigation left to Brazilian subjects, after the magnanimous concession by their Emperor of the right of search! Such scenes may happen in the port of Rio, "between the island of Paqueta and the city;" and the irritation yet find a cooling salve in diplomatic "reparation." But suppose any thing of the kind to occur in the waters of Massachusetts, between George's island and the "Tea"-wharf; or of New York, "between Staten island and the city;" or of Virginia, between "Crane island and Norfolk;" or of South Carolina, between the "Palmetto battery" and Charleston: what would be the consequences?

A few words more, and this task will have reached its close. While upon the subject of the prevailing public sentiment here, in regard to the slave-trade, I have adverted to the double conviction, whereby it is upheld in the minds of the Spanish population—that the pursuit is in itself right, and that the present action of the British Government in regard to it is not the fruit of a contrary conviction, but springs solely from a desire to promote its own political and commercial power by inflicting injury upon other States. I have expressed, too, my own belief that this conviction is as honest a one as ever dwelt in the human mind. From this avowal, together with the general tone of my remarks, so strongly contrasting as it does with the formulas which constitute, at the present day, the only approved mode of speaking on the subject, it might be hastily inferred that the conviction is shared in by me. No greater error could, however, be committed; and although it is a matter of no moment what my individual opinions may be, on this or any other subject, yet it seems to be of some possible consequence that those of the writer of this letter be not the subject of such misconception. It possibly may come into the hands of some sincere inquirer, truly anxious for correct views in regard to this momentous topic; and the effect upon such a mind would be very different, according as it might have fallen into, or avoided, the error of regarding the writer as an advocate of the slave-trade.

Besides this inducement not to dismiss the subject without a short exposition of my own creed, I have another. Mr. Buxton's recent work affords to my mind, as I have already stated, a glimmering of returning reason; in a quarter, too, whence it is doubly welcome, from its being so entirely unexpected. His proposal, not to rely altogether upon "the strong hand" for the suppression of the slave-trade, and his remarks connected with that view of the subject, constitute one of the numberless encourage-

ments afforded by the history of human opinion, never to despair of the ultimate prevalence of truth over error, and of sober sense over distempered enthusiasm. They show that reason has already so far asserted her empire in this field, as to influence the judgments even of a mind possessed as that of Mr. B. has so long been; and such a phenomenon cannot but warrant high hopes that the time is not distant when the phantoms which for so long a period have peopled it shall be dispelled, and her sway shall be undisputed.

With regard to such a period, the present state of things affords abundant grounds for apprehending a most unfortunate revulsion of public sentiment upon the subject. That which now prevails, although sound in itself, has been built upon such a foundation, that, unless one more substantial be timely provided, its fate, so soon as the sun of truth shall begin fairly to shine upon it, will be like that which has so often befallen religion, when reared upon a similar basis. By furnishing my own views upon the subject, and making known the grounds upon which my opposition to the slave-trade rests, I may perhaps, therefore, be rendering an essential service to the cause.

In the first place, then, I do not concur in the belief that the course pursued by the British Government in regard to this subject, since the period when it yielded to the sentiment which demanded a prohibition of the traffic to British merchants and ship-owners, is to be ascribed altogether to a deliberate design to inflict injury upon other nations. The springs of human action are naturally too complex to justify the ascription of such an effect to so simple a cause. That it is in the present case a compound, involving a vast variety of ingredients, the products no less of what is good than of what is evil in our nature, I entertain no doubt; and although, on perusing the eloquent burst of the enthusiasm kindled by one of its effects in the bosom of Channing, or the no less pleasing echo awakened by that burst on the opposite side of the Atlantic, in the pure strains of Rogers, I cannot divest my mind of a strong doubt whether the sober award of posterity is to correspond to the annunciation of it which these poetic prophets have ventured to record; yet am I not either insensible to the moral beauty of a portion of the motives, at least, from which it sprung. To those who are to come after us, however, am I content to leave the question in all its parts. To the next generation, probably, opinion upon the character of the experiment will have ceased to depend upon speculation. It will have become a simple question of fact, whether it was of a nature to be attended with any other result than that of hastening the day when the British colonies, on which the curse of slavery rested, should become uninhabitable to the white man, except while under the immediate protection of a portion of that immense military and naval establishment which the British people must, some day or other, tire of maintaining. And, with respect to the question of motives, it will belong to some future Hallam to trace the working and the natural fruits of that distribution of political power in Great Britain, under which it befel the people, whilst "loaded with an unprecedented debt, and with a grinding taxation,"* and engaged in establishing for themselves the sub-government of secret select committees of assassination, and in maintaining armies of welters six thousand strong, to be taxed another round hundred millions of dollars, besides the various cou-

*Channing's eulogy on this act of the British Parliament.

tingent small sums requisite for providing stipendiary magistrates, land force, and naval force, judge commissioners, and all the innumerable accessories, in order that that part of the nation whose imaginations had been plied with pictures of barbarities and miseries existing only in the brains of enthusiasts, or the lies of impostors, until they were worked up to the proper pitch, might be indulged with the experiment. He will perhaps also point out that such a thing could never come to pass under a truly representative government, such as that existing in Great Britain in his day: its democratized action showing, in every movement, a conformity to the vulgar injunction that charity should begin at home, and superseding all necessity for corps of welters and their secret employers.

But if I have not deemed it necessary to bring my mind to a state of absolute conviction in regard to the several shares of influence to be allotted to the various motives by which the action of the British Government has been determined in regard to slavery and the slave-trade, the case is far different in regard to these subjects themselves. Upon both, my mind has, for a long period, known no other state than that of the most absolute conviction; and these convictions do not differ from those manifested by the Virginia convention of 1774, in their resolution against the further importation of slaves, and which, 33 years afterwards, obtained the ascendancy in the British Parliament.

With regard, however, to the grounds upon which they rest in different minds, there is a great difference; one which, as I have already stated, I consider to be attended with great-peril to the good cause, and to be entitled, therefore, to the most earnest attention.

He in whose bosom enmity to the slave-trade rests upon no surer foundation than belief in the accuracy of such pictures as are presented in the work of Mr. Buxton, or sometimes find a place in the speeches of Lord Brougham, is in no small danger of becoming an infidel. At least is it exactly proportionate to his chance of ever seeing, in place of the preposterous creations built up by the most reckless generalization of a few selected facts, the plain, unvarnished reality. To judge from this class of representations, none can be engaged in the traffic but men or demons, whose mission upon this earth is to earn distinction as aids of the King of Terrors, and who never deem an "expedition" a happy one, unless attended with the most frightful destruction of human life. The truth, however, is, that these men are as true and devout worshippers of mammon as ever carried on trade in any of its shapes. Their object is money; and it may be doubted whether a money-making pursuit was ever followed upon this earth, in which a nicer adaptation prevailed of the means to the end—nicer calculations with regard to contingencies of every sort—nicer attention to every arrangement by which loss could be avoided. Whatever may have happened in one or two, or in any number of selected instances, the character of the traders affords a security that they do not incur the expense and risk of fitting out vessels for the coast, for the mere pleasure of cramming them with Africans, in the design that one-half may perish, or without especial regard to the number that may safely be embarked. It is not many months since I had a conversation with an American ship-master—one of that class which has acquired for their flag a celebrity all over the globe, and than whom no better judges can be found of the qualities of a vessel, or of the arrangements for a voyage. Although as little connected with the trade as Mr. Buxton himself, he had, within a short period, enjoyed opportunities, in

this and other parts of the world, to indulge his curiosity by the inspection of slavers; and the result was, that even his New England experience and ingenuity had not protected him from admiration at the perfection exhibited by these vessels in every possible particular: in mould, in rigging, in fitting, in the manner in which every provision was made, both as to arrangements and as to supplies, that could tend to the success of the only object of all this trouble and expense—the transportation of the human cargo in safety and good health. True, the fruit, thus far, of the measures against the slave-trade, has been the substitution of small, sharp, wet clippers, for the large, clump, dry vessels, of double and treble the tonnage which would now be employed to transport the same number of persons; and there is no telling how far this process of reduction may be carried. This will depend altogether upon the point to which the necessity for it may be pushed by the multiplication and increased efficiency of British cruisers. If this should prove great enough, the size of the slavers will be brought down as low as ten tons, or thereabouts; and should these vessels be found still too large to escape, the probability is that the trade will be suspended until such time as a relaxation of vigilance shall enable it once more to break out. But, whatever the womb of time may be destined to bring forth, in regard to the aggravation of the horrors of the slave trade, through the efforts for its suppression by “the strong hand,” the sober, unexaggerated truth in regard to it, as it now exists, is such that no one whose enmity to it rests upon a belief in those horrors, as depicted in the books and speeches of enthusiasts, or “oratorical philanthropists,” can fail to become a backslider upon acquiring correct information in regard to the matter. And even if the reality of those horrors should be found to correspond exactly with these pictures of them, dangerous consequences might still result to any such mind, from adding to its grounds of judgment a knowledge of the change of condition resulting from a transportation in a slaver across the Atlantic. My own earliest recollection of a print is of that celebrated *section* of a slave ship, constituting, if I recollect right, the frontispiece to one of Wilberforce’s publications. There was something in it which excited my curiosity, and this was, by my grandmother, diverted from the engraving, which necessarily remained a puzzle to me, to the trade itself; with the horrors of which my infant mind was filled, and for which a hatred was inspired, correspondent to that which animated the bosom of my instructress, the most remarkably generous and benevolent person in a very large circle of acquaintance. Nor did my subsequent education at all disturb this first impression. The feeling grew with my growth, and strengthened with my strength. My preparation, upon coming to this country, had not, therefore, been of a character to predispose me to view the slave-trade with favor, and to form, upon what I saw, a judgment conflicting with that which had been the growth of my life. And yet it has so happened!—so far, at least, that I now entertain a deliberate and oft-revolved doubt, whether, *considered merely in itself*, the slave-trade be not a positive benefit to its supposed victims. Were the trade open, and regulated in the way that emigrant passenger-vessels are, I should entertain no doubt upon the subject. But even taking it as it is—nay, more, admitting Mr. Buxton’s generalizations to afford an unexaggerated picture of its horrors; and taking into view, also, the average condition of the slave in this island, as contrasted with what it was in his native country, as learned from himself, from travellers of all nations, and from sea captains who have visited the

coast, without being connected in any way with the traffic, I am strongly inclined to the belief, that the purest and most judicious philanthropist that ever lived, if called upon to decide the question for a cargo of slaves ready for embarkation on the coast of Guinea, and required to found his judgment solely upon the probable consequences to these particular individuals, would unhesitatingly pronounce in favor of their encountering all the perils and hardships of the voyage;—and this, although, from his birth and education, he should be totally without knowledge of the actual condition of the native African, in regard to morals, to intellect, and to the standard of physical comfort; and consequently prone to the utterly preposterous exaggeration of the horrors to be suffered by *him* on the voyage, resulting from an estimate of the circumstances with reference to his own feelings, or to those which would be experienced by an inferior class of his own civilized countrymen in the same situation: this being the ordinary mode of realizing the horrors of the voyage;—the compassionate reader, being perhaps a lady, who, from habit, would be rendered miserable by the necessity of dispensing for a day with her tepid bath, or the attendance of her maid, and the objects of her compassion human beings, with the attributes of humanity so dormant in them, that all ages and sexes will move about among each other stark naked, in the presence of clothed strangers, both white and black, utterly devoid of all sense of bodily exposure,—an insensibility which extends even to occasions whereon some of the lower animals never fail to manifest the reverse!

Such has been the result of the opportunities of personal observation and inquiry afforded by a residence upon this island. Nor has this effect been produced upon my mind alone. Upon my mentioning it last winter to a countrywoman of mine, who had recently visited Boston, she told me that a similar view of the subject had, within a year or two, been presented to the world by a distinguished New England divine; who, driven by ill-health to pass a winter at St. Jago de Cuba, had there availed himself of the opportunity to test the truth of his impressions, by comparison with the reality before him.

And such, I am satisfied, will be the result of the same opportunities upon every candid mind that takes sufficient interest in the subject to make use of them. He who cares nothing about it, may come, and stay ever so long, and go as he came; secure in his gratuitous and convenient creed. But let the honest inquirer after truth—he for whom every thing that concerns humanity has an interest—beware. Unless his enmity to the slave-trade has some better basis than a shuddering at the horrors of the voyage, or sympathy with the “miserable victims” who have escaped them, he runs great risk of being made at heart a slave-trader in less than six months after he shall have begun to use his own eyes, ears, and understanding.

Fortunately, this has not been the case with me; nor with my countryman, the Boston divine. However unprepared a European mind may be apt to be for such a shock, that of an American is likely to be better armed. He will find a never-failing objection to the slave-trade in—**SLAVERY**. He will be under no necessity even of having recourse to the fact, that the slave-trade, although it may be attended with the effect of beneficially changing the condition of the individuals to whom it affords an escape from the horrors to which they were born, has nevertheless a tendency to perpetuate them, and to retard the period when this variety also of the species might emerge from the debasement in which it has remained through long ages

of intercourse with civilized man. As yet, unfortunately, all the importance of this fact rests upon a *hope*—a hope which, in its turn, rests chiefly upon what the negro has been made to become while the slave of the white man instead of the black: and consists in the inference thence deduced, that, when delivered from bondage, he may continue to manifest the same capacity for improvement, instead of yielding to the propensities which draw him downwards. This argument has more substance in it than the horrors of the voyage. But it, even, as yet, rests upon a hope; and the only one that can be urged, which presents an insurmountable objection to the traffic, is, *the nature of slavery itself*—the inherent evil nature of the institution, at least when planted in a society of freemen of the Anglo-American race.

What, then, is the objection to the institution of slavery? Is it that, as the African believes, it extends the range of cannibalism, and imparts to the white man the bad practice of feasting on “human flesh”? Is it that, as Daniel O’Connell believes, or affects to believe, it so depraves the master as to make of him an architect of breeding-pens, for keeping the sexes in forced conjunction? It is neither of these; nor is it that the black man is equal to the white—an absurdity belied alike by all history and the researches of every naturalist. Nor is it that, admitting him to be the equal of the white in every particular, this would constitute a sufficient reason for attempting to form a society by placing the two races in juxtaposition. Such a project might possibly prosper in a state acknowledging a distinction of ranks, where the gradation, beginning with a king, might end with the black; and the latter be habituated to regard the white man of the rank just above him, with the same deference that the latter would give him the example of, by showing it to the ranks to which he was subordinate. But to attempt to construct a democratic state with such materials, would be chimerical in the extreme, even upon the supposition that the black is morally and intellectually the equal of the white; for, admitting this equality, their homogeneity would be as far as ever from being a truth; there would still remain those physical differences, which create an insuperable bar to the accomplishment of any such project. This is a point which has ever exacted attention from those reasoners upon the subject who were most interested in it; whilst, by those least so, it has been utterly neglected. Hence the irreconcilable difference in their respective views; hence the difficulty on the part of a European in comprehending the full import of Madison’s patriotic wish, that he were endowed with the power of metamorphosing the black man into a white; hence the readiness with which Miss Martineau would pronounce in favor of instant emancipation *without* “deportation;” whilst Jefferson, at the close of a long life devoted to the welfare of man, and in nothing more distinguished than for his early, his ardent, his unflagging zeal on the subject of slavery,—in the very same breath which conveys his parting adjuration to his country, to make haste and rid herself of the institution, expresses also his conviction that it is not “*less certain* that the two races, equally free, *cannot* live in the same Government!” And why so? Because “nature, habit, opinion, have drawn indelible lines of distinction between them.” And what would be the consequence of these distinctions? What effects would they produce upon the feelings of the two races, if once placed in such a relation of equality? This question may present ground for dubitation to a European mind, impressed from earliest infancy with all the notions proper to a subordination of ranks, and insensibly confirmed in all the correspondent habits of

thought and of feeling. But an American could not fail to see at a glance the working of the whole scheme—that its certain and instant consequence would be aspirations on the part of the black to a *social* equality, to which nature interposes an insurmountable barrier; whilst the denial of it would inevitably prove a source of heartburning and hatred, altogether inextinguishable, except in the last drop of the blood of one of the two races. The reality of this physical barrier to that amalgamation which would at once be pretended to by the black, constitutes the particular in regard to which European notions upon the subject seem most defective; although it is far from being the only one with respect to which ignorance the most profound is manifested: witness the Edinburgh Review's avowal, even after studying Miss Martineau's "six volumes,"—that it could not so much as "presume to guess the exact meaning" of the word "amalgamationist," which popular instinct in the United States has substituted for "abolitionist," as the proper designation of the man who would venture upon abolition without "deportation;" and the appropriateness of which any smart Philadelphia schoolboy could, after five minutes reflection, have justified to the reviewer, by explaining to him that, if the black race were raised to political equality with the white, they would naturally and inevitably aspire to be received into white society, and to be accepted and sought by white maidens and youths as husbands and wives; that, if these claims should be denied, a worse state of feeling would arise than that which belonged to the relation of master and slave; and that, consequently, as it could not be supposed to be the design of the abolitionist to substitute this worse state of feelings for the other, he must contemplate with complacency that which could alone prevent it—the *amalgamation* of the two races. This is the rationale of the process whereby "amalgamationist" has become substituted for "abolitionist," since the zealots on this subject have avowed projects which every American schoolboy can trace to their consequences—consequences, the contemplation of which would be awful indeed, were it not that the intelligence, the sobriety, and the experience of the American people, in discharging the high trust of self government, interpose a barrier, against which all the zealots which Christendom can send forth upon this new crusade may harmlessly expend their fury. And it is in view of these consequences that the amalgamationist has awakened in the general bosom of the country a sentiment of disgust and loathing—the very reverse of that which, for several generations, had prevailed in regard to the abolition of slavery, and which, consequently, was felt to require a distinctive name. Its baptism followed; and, although it would perhaps be impossible to ascertain by what voice the name was first called out, it no sooner struck the public ear, than the popular instinct, alive with a true although a latent and perhaps unconscious knowledge of the subject, recognised it as the right one. It is now a word engrafted upon the language, to live as long as it shall, and to become conspicuous in the history of the race to which it belongs. Already potent to kindle indignation wherever an assemblage of American citizens has been gathered together, it is destined to manifest, through the whole length and breadth of our land, an intensity of power such as never belonged to word before, and which will inhere in it until all remembrance of the abhorrent proposal shall have died away. This "amalgamation," which the Edinburgh Review was so utterly at a loss for the meaning of, is fraught with significance for the American mind. To it, it means those particulars belonging to the

subject of the extinction of slavery, which present the great—indeed the only, obstacle to it: that obstacle, of which so beautiful and emphatic an expression was contained in the wish of one of America's patriot sages, that his fiat could make the black man white; that obstacle, but for which slavery would, long ere now, have been known to the Anglo-American only as the power of kings, lords, and commons, is known to him—a thing of history, to be looked upon, not in the future, but in the past alone; and to be looked back upon with no other feelings than congratulation and honest pride. This, the very kernel of the matter, is the particular in regard to which European ignorance is most absolute, its temerity most conspicuous, the recklessness of its fanaticism most preposterous. This is the particular, therefore, in regard to which it most behooves every man who takes an interest in the subject, to acquire just conceptions. Amalgamation is an absolute impossibility. Nature has thus decreed it. The truth rests, not upon the *superiority* of the white man to the black, but upon the existence of *physical differences*, which create in the one a repugnance to amalgamation with the other. The moral and intellectual *superiority* of the white race, although a settled point in natural history, is yet, from its nature, a topic upon which ignorance may indulge forever in contentious pertinacity; but the existence of *physical differences* is a simple matter of fact, which, both in itself, and in the repugnance affixed to it by nature, is placed, by the senses of sight and smell, beyond the reach of controversy; and there it would still remain, even although the moral and intellectual superiority should be demonstrated to be on the side of the black. This is the foundation-truth of the American view of the subject. Let every European, who deems that subject of such paramount importance as to justify his turning a deaf ear to the appeals which the evils more immediately present to his view may make to his philanthropy—let him study the thing until his mind shall have become penetrated with this one truth; and if he be honest and sincere, it can scarcely happen to him to become a mischief-maker. Under the safeguard of this one monitor, he may, without great risk, give the reins to his zeal.

Now will any person, whose frame of mind upon the subject stops short of that reckless fanaticism which obliterates all vestige of candor, experience any great difficulty in bringing his mind to a recognition of this all-important truth. Any one who has made the experiment, must be aware how readily the scales will drop from the eyes of the most self-deluding enthusiast, provided his mind be still capable of feeling and acknowledging the force of truths which it cannot controvert. Among the instances of this, which have come under my own notice, is one in which the convert was a British naval officer. He had distinguished himself in his profession by a remarkably bold and gallant exploit; and his standing as a man and a christian was even higher than that which he had acquired as an officer. Among other details which I learned respecting him, one was, that he belonged to the evangelical party in England; another, that he had a charming family, delightfully brought up, the daughters of which were remarkable for their loveliness. This last circumstance furnished me with the best possible touchstone of the sentiments which lay at the bottom of his heart in regard to the black man: for, in a conversation which took place on the subject, he averred that his feelings towards the two races were precisely the same,—that, with him, it made no difference whatever whether a man was black or white. There could be no manner of doubt that the assertion

was uttered in the most perfect sincerity ; but I nevertheless felt sure that even his comparatively slight means of personal observation and knowledge of the black man must have been attended with the effect of implanting in his bosom something which, unconscious as he might be of its existence, could be summoned up, to give the lie, practically, to what he had persuaded himself to regard as a truth. This was tested by the supposed case of two suitors to one of his lovely daughters—a white man and a black man ; between whom, in point of education, character, talents, morals, manners, and fortune, there should not be the slightest shade of difference. Which would he prefer that his daughter should accept ? His candor would not allow him to pretend that he would not have a preference ; nor, had I pressed the point, could it have allowed him to say that he had not rather consign his daughter's corpse to the grave, than her living person to such a nuptial couch. And thus will it ever be with every person in whose bosom a respect for truth be not utterly obliterated. If he possess any, the slightest, personal knowledge of the black race,—if they be to him any thing else than creatures of the imagination purely,—he must have within him, however unconsciously, the germe of an invincible repugnance to “ amalgamation ;” and this will, upon the first occasion, develop itself, with a vigor exactly proportionate to the knowledge he may have acquired of the physical differences which separate the two races, and will forever prove what Jefferson calls them—“ indelible lines of distinction.” How truly they are so, can be fully known only to one born and bred among blacks : for he alone can know how they defy the influence of time, of habit, of opinion, of affection. I was born amidst black domestics ;—a black woman carried me in her arms, and the attachment between us was as strong as ever existed between a white child and a white nurse. So far from entertaining for those of her color the dislike and hatred which constitute the supposed attribute of a slave-owner, my feelings towards them are kindlier even than those which I entertain towards my own race ; for they are softened by the influence of a deep-rooted hatred for the condition in which the force of circumstances has placed them. I can take a black man by the hand as cordially as I can a white man of the same merit ; and I had rather shake hands with an honest black hack-driver in Pennsylvania Avenue, at Washington, than with any white scoundrel, however fashionable or titled, that could offer me that honor in Portland Place, London. I have travelled in the mail-coach in company with a mulatto man, who has fallen asleep with his head resting on my shoulder ; and I have submitted for hours to the inconvenience, rather than disturb him, for the sole reason that he was a colored man ; for his deportment had strongly recommended him to my respect, and I feared that to notice this consequence of his drowsiness might be attended with the effect of mortifying him. Such, from the moment of my birth to the present hour, have been my intercourse with, and my feelings towards, the race : and yet, times without number, have I been made sick—has my stomach been actually turned—by the effluvia from the skins of two or three cleanly black domestics exerting themselves a little, in the apartment in which I was, in the removal of pieces of furniture ! And these are the people whom European enthusiasts work themselves into the belief that they look upon and feel towards exactly as they do towards their own species ! In introducing the incident of the British officer, I have called him a convert ; because, after having been thus made aware of the truth in regard to the effect produced upon himself by the physical

differences in question, nothing but reflection could be necessary to bring before him the consequences that must inevitably attend such discriminations as he would himself make upon the reciprocal feelings of the two races, if placed side by side upon a footing of civil and political equality. Nor could he fail to perceive, that the nearer their condition should approach to such equality, the more active and operative would necessarily become every cause calculated to bring into relief those "indelible lines of distinction" drawn by the hand of nature, and make them a source of endless heartburnings and hate.

What, then, again, is the true objection to the institution of slavery? Is it, that in no stage of society, under no imaginable circumstances, it can be beneficial to the parties? Such is not my belief: for I entertain not a shade of doubt that there are in existence at this moment in England, and in Africa, thousands and hundreds of thousands of human beings, whose condition would, in every possible particular, be immensely benefitted—their own, and that of their children for several generations—could they be set down in the woods of New Holland, in the relation of master and slave. Is it, even, that, in the state in which it exists at this day in the United States, it gives birth to the oppressions, brutalities, and horrors, with the glowing pictures of which the world is being entertained by the approved philanthropy of the hour? No! so far is the reality in this respect from constituting a valid objection to slavery,—so far is it from being true, that the condition of the slave in the United States affords a just theme for playing upon the sympathies of the toil-worn and tax-worn operative of England,—that not a citizen of the slaveholding States of America, who believes in the hundredth or thousandth part of the miseries and the vices of the British laboring classes, as depicted by British writers of the highest standing, but knows that the condition of the American negro slave is, under every aspect—the religious and the moral, no less than the physical—beyond all comparison better than that of the poorer classes in Great Britain; and as to the "sans potato" of poor old Ireland! why there is not a negro cabin in all America; where "rint" for his succor might not be obtained from the inmates, unless they should drive the narrator of his condition from their door, through indignation at the attempt to make them believe that any set of human beings could be so badly off; or, *more* incredible still, that there should be another set—their own countrymen, too!—with hearts strong enough to add to their miseries, even to the climax of selling the "*kish!*" Yet, I must not be understood to claim the superiority in all respects for the state of the negro slave over that of the "sans potato;" for, under the religious aspect, although recent statistical comparisons between the religious condition of the slave population of the United States, so far as a test is afforded by the number of churches and of communicants, is far better than that of the population of London itself, yet, in regard to the genuine sentiment of religion, the negro is doubtless far beneath the Irish peasant, who seems to be so thoroughly imbued by his Maker with the most earnest resignation and piety, that no degree of pressure has power to crush it out of him.

The true objection to slavery is one which has no existence, except with respect to American institutions, and the hopes which these, and these alone, justify, as to the possible condition of the species. It is in its irreconcilableness with the workings of the democratic principle—the great fountain of hope to the human race—and in that alone, that the institu-

tion of slavery finds its unavoidable and irrevocable condemnation. If the condition of society were destined to remain such as it is at the present day all over Europe,—nay, but for the positive assurance afforded by the democratic principle, that it must and shall change,—what man, truly informed in regard to the condition of the laboring classes on the two sides of the Atlantic, would dare to whisper a syllable in condemnation of domestic slavery? Not one! It is only in presence of democracy—of beautiful, lovely, glorious democracy—that it becomes hideous and hateful. It is not for what it in itself actually is, but for what it must become, and what it must hinder and prevent, that it deserves execration. The condition of the American slave is better, beyond comparison, than that of the European laborer. So far as an American may be allowed to judge from Miss Martineau, and other British authorities, the *state of feeling* between the slave and his master is, beyond comparison, better than that which exists at this moment between the “employer” and the “employed” in Great Britain. To judge, therefore, from this comparison, slavery is a blessed thing. And yet it is a hateful one! Why? Because, although the variety of our species which the naturalists of all nations place at the foot of the scale is not equal to that variety which is by all placed at the head; although the negro is decidedly, inherently, and irremediably inferior to the white man; although, possibly, he may not only be, as he is, comparatively inferior, but may further prove to be positively and incurably incapable of improvement, except when in contact with, and in subjection to, some higher variety of the species;—notwithstanding this truth and this possibility, yet he is too good to be a slave *in the presence of democratic institutions*. Under such as the old world is still groaning and gasping under, it is far from impossible that he might fit well into the lowest of the subdivisions into which the human cattle are parcelled; and there contentedly, because unprogressively, remain. But in the presence of democratic institutions, this is impossible, even to the Ethiopian man. There, as the slave of the white man, he does improve,—no one can fix a limit to his improvement; and as, in exact proportion as a man rises in the scale of humanity, he becomes unfit to be a slave, it is impossible but that the point of his absolute unfitness must be reached. Meanwhile, the institution cannot but prove the cause of an endless, ever-renewing struggle, in every thinking mind and every conscientious bosom, between its convictions of right and its sentiment of justice, and the stern necessities which every revolving hour must disclose; each bringing with it a shock to both, which shall be severe in exact proportion to the fitness, moral and intellectual, which the master has attained to be a citizen of a democratic State.

This is the true objection to the institution of slavery. As yet, it applies to my country alone. But through the hopes which her example has long inspired, and daily infuses fresh vigor into, for the destiny of man in other countries, it becomes prospectively applicable to all, in regard to which the aspiration may be indulged—that their inhabitants, too, will one day prove themselves capable of self government. With regard to others, it can matter but little, judging from the present condition of the world, whether their laboring class shall or shall not consist of Africans, under the name of slaves. But, for all such,—for every country which has the faintest hope of establishing and maintaining a democratic government,—nothing is more to be deprecated than this institution: for, unless the slaves should be of the same race as the masters, (thereby admitting of “amalgamation,”) or, if of a dif-

ferent one, should be so few in number as to present no serious obstacle to "deportation," their presence in the land cannot fail, sooner or later, to be felt as the deepest curse with which it could have been visited. And for every such country, therefore, must the slave-trade, the instrument for entailing that curse—however beneficial it may, at the moment, be to both parties—be looked upon as the greatest of all possible calamities.

Here, gentlemen, I must take leave of the subject—not, by any means, that it is exhausted, or that my interest in it flags; but that I have no more time, at present, to bestow upon it. It is one so fraught with importance, that there seems to be no end to the topics of which it is prolific. They rise up on all sides, and each appears so highly entitled to attention, that, greatly as this communication has swelled beyond any limits which, at the outset, I should have entertained the remotest thought of undertaking to fill—these are narrow to what they must have been, had full justice been done, even so far as I am capable of rendering it, to the few upon which I have touched. If, in the treatment of these, I should seem to have been not altogether observant of the approved style for diplomatic composition, this is to be ascribed, not to any want of the respect due to the sublime game of international push-pin, (whereof the Swedish chancellor betrayed so superficial and crude an estimate when he sent his son to take part in it, in order that he might see with how moderate an expenditure of wisdom the world's affairs are managed,) but, on the contrary, to my indisposition to profane it, by applying to illegitimate uses those high formularies which it belongs to none but its regularly ordained priests to hold converse in. Had we been placed in a diplomatic relation of any sort, the case would have been different; and I should have been studious to fulfil the duty of imitating, as closely as possible, the most approved specimens of the art of so stringing words together that no meaning shall attach to them. But, as I before attempted to make you sensible, we have been thrown here into positions the very reverse of this; and the consequence has been, so far to reverse the line of duty on my part, as to make it incumbent upon me to endeavor, as far as possible, to say something which should have a meaning. Not only were we not placed in any relation of any sort, but to this negation events had superadded a positive prohibition. Your credentials had never been exhibited to me, and were of a nature to make the idea of their being so the very height of absurdity. To me, you could be officially known only as the agents of a foreign Government, possessing existence and residence here, in consequence solely, and in pursuance solely, of an express and private stipulation between that Government and the one to whose authorities I was accredited in the precise and very limited capacity of consul. That a stipulation of this character must necessarily be restricted in its operation to the parties between whom it may exist, cannot fail to be, to any mind capable of a moment's thought, a self-evident proposition. The function, for the discharge of which you had been sent and admitted here, stood defined in the treaty, and was known to consist solely in adjudicating upon the simple question of fact, whether a vessel detained under the provisions of that treaty had been found under any of the categories which it forbade. That adjudication should follow the detention of a vessel "with as little delay and inconvenience as possible," was expressly declared by the treaty to be the sole object of the establishment of those "two mixed courts of justice;" of one of which you are members, and as such alone possess any official existence. How could this capacity place you in any relation of

any sort to the American consul resident here? Indeed, no capacity, having such an origin, of how complex a nature soever in itself, could possibly have been attended with any such effect. There is absurdity in the very idea. But that absurdity, which might have found some palliation in the complexity of functions extremely intricate and difficult in their nature, is heightened by the extreme simplicity and oneness of that with which you are charged. In what terms, then, seeing that the naked idea is preposterous in the extreme, shall it be spoken of, when considered in the precise shape and vesture given to it by your pretension, and the circumstances under which this has been advanced and persisted in? What shall be said of a pretension, on the part of the members of such a "mixed court of justice," to take part in the execution of the laws of the United States of America, by making to their consul at Havana "respectful" suggestions in regard to the line of his duty, real or supposed? And when a pretension, in itself so purely ridiculous, is advanced under the circumstances created by the deliberate, reiterated, and peremptory refusal of the Government of the United States to become a party to any arrangement whatever, of a nature similar to that between Great Britain and Spain, which alone confers upon these judges their Anglo-Spanish existence; and then pertinaciously persisted in, under such additional circumstances as those created by the course of the consul, in referring to that refusal of his Government, and pointing to the peculiar complexion imparted by it to the subject,—who can fail to perceive that for the extreme of preposterousness has been substituted the extreme of indecency?

I am, gentlemen, your obedient servant,

N. P. TRIST.

P. S. August 29, 1839.—The date under which this letter was begun is evidence of my wish to bring our correspondence to a close at the earliest possible moment, as the present date is of the hindrances which that wish has encountered. A long series of interruptions, beginning with the visit of the frigate Constitution, and the occurrence of the birthday of independence, early in July, and involving a severe attack of the prevailing epidemic cough, has repeatedly compelled me to lay it aside; and, more recently, the departure of my vice-consul on a visit to the United States has been attended with the double effect of diminishing my command of time, and depriving me of that of my clerk's pen; thereby compelling me to make use of that of another copyist, whose want of familiarity with the language is but too apparent upon the slovenly face of his pages. This will, however, be excused, I hope, in consideration of his being the only person whose services I could, at this moment, obtain. He might have done better, upon a second attempt; but even this is rendered impossible by a permanent engagement contracted by him previously to his undertaking the present copy.

To J. KENNEDY and
CAMPBELL J. DALRYMPLE, Esqrs., &c.

Mr. Trist to Mr. Forsyth.

WASHINGTON, November 28, 1840.

SIR: I have the honor to lay before you a copy (transmitted to me for the purpose by the vice-consul, on behalf of the captain) of a protest extended in the consulate of the United States of America at Havana, by James B. McConnell, master of the schooner *Hero*, of New Orleans, for an outrage perpetrated upon that vessel by her Britannic Majesty's brig *Lynx*.

On referring to the consular return for the first half of the current year—embracing the period during which the direction of the consulate was committed to Mr. Everett, with an especial view to this subject—it will be perceived that the *Hero* was despatched at the consulate on the 13th of June, reported by the master as cleared for Wydah, coast of Africa; and that, consequently, she is one of the vessels referred to in the concluding passage of Mr. Everett's report:

"I was desirous, while at the Havana, to find some opportunity of ascertaining, by experiment, how far it would be practicable to bring the individuals concerned in the abuse of our flag to justice; and had determined, if any suspicious case should present itself, to direct the acting consul to make the attempt. I inquired daily at the consulate into this, and every other point of interest; but, although two or three vessels were cleared for the coast of Africa under our flag, I was explicitly assured by the acting consul, ('a gentleman of undoubted veracity and honor,' as in a previous part of the report he is stated to be,) in regard to each, that there was no suspicion of abuse or illicit trade."

To this evidence in regard to the perfect lawfulness and rightfulness of the business in which the *Hero* was engaged, (although, to be sure, this is a point with which her Britannic Majesty's brig *Lynx* had no concern, and which, therefore, does not strictly belong to the subject, under the aspect in which it is brought into view by this outrage,) it may not be superfluous to add, as a corroborative fact, that the gentleman referred to by Mr. Everett enjoyed, in addition to his other opportunities of information, all those which could be afforded by the most intimate personal relations with Mr. Kennedy, her Britannic Majesty's commissary judge, with whom, at the same period, Mr. Everett was officially in close communication.

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

HON. JOHN FORSYTH,
Secretary of State.

CONSULATE OF THE UNITED STATES OF AMERICA, *Havana*:

By this public instrument of protest, be it known and made manifest to all whom it doth or may or shall concern: That on the day of the date hereof, before me, John A. Smith, vice-consul of the United States of America for the city of Havana, personally came and appeared James B. McConnell, master of the schooner "*Hero*," belonging to the port of New Orleans, in the State of Louisiana, of the burden of 126 tons, or thereabouts; also Joseph Williams, mate of said schooner, and Henry Lord and James D. Stow, seamen belonging to said schooner aforesaid;—who, being severally sworn,

did declare and depose, that the said schooner being laden with a cargo of assorted merchandise, they (the said appearers) made sail in and upon the said schooner from the port of Havana, bound to Wydah, (coast of Africa,) on the fifteenth day of June, 1840: that, in the prosecution of the voyage, nothing material occurred until the ninth day of August, 1840, when, at 3h. 30m., we were boarded by the commander of her Britannic Majesty's brig Lynx, and brought to an anchor, and the hatches opened, and the hold overhauled; and, after a short overhaul, the commander decreed that he would send the vessel to Sierra Leone, and that the captain and cook might stop on board, and all the rest of the crew were to go on board of the Lynx, and to be sent on shore. Captain McConnell complained to the commander of the brig on account of the conduct of the men whom he put on board the schooner Hero, and had charge of the vessel one night; they having robbed the vessel of all the provisions they could get at, viz: two hams, about one-third of a barrel of mackerel, and broke open one barrel of bread, and did considerable damage to the cargo. The commander said that, if the hams could be found on board his vessel, he would give the schooner up again, and let her proceed on her voyage. The hams being found on board his vessel, the crew were all sent on board our own vessel again, and commenced to clear up decks and get the vessel under way; the commander of the brig having thought proper to give her up. At 5h. 30m. came to at Wydah, furled sails, &c.; ends fine. A. M. fine weather. At 8, canoes came off to receive cargo. On opening the hatches, found considerable damage done to the cargo by the crew of the British brig-of-war Lynx, through carelessness and bad stowage of the pipes of aguardiente, that were broken out and hoisted on deck by them; two pipes being bilged, and several stowed bung down, and consequently leaked very much.

And therefore the said James B. McConnell did declare to protest, as by these presents he doth solemnly protest, against all and every person or persons whomsoever it may or shall concern, and particularly against the Government of her Britannic Majesty, for this unlawful, vexatious, and injurious act on the part of the commander and crew of the aforesaid brig-of-war Lynx; holding the said Government responsible, in damages, for all injury suffered by said vessel and cargo, and any person interested therein, by said unlawful and injurious act.

JAMES B. McCONNELL,
 JOS. WILLIAMS,
 HENRY LORD,
 JAMES D. STOW.

All which matters and things were declared, alleged, and affirmed, before me, the said consul; and, therefore, I hereunto set my hand, and affix the seal of my office, being requested to certify and testify the premises.

Thus done and protested, at the city of Havana, this third day of November, in the year of our Lord one thousand eight hundred
 [L. s.] and forty, and of the independence of the United States the sixty-fifth.

J. A. SMITH.

CONSULATE OF THE UNITED STATES OF AMERICA, *Havana* :

I, John A. Smith, vice-consul of the United States of America, do hereby certify that the foregoing is a true and correct copy of a protest made and extended in this consulate.

In testimony whereof, I hereunto set my hand and affix the seal of this consulate, at Havana, this ninth day of November, in the year

[L. s.]

of our Lord one thousand eight hundred and forty, and of the independence of the United States the sixty-fifth.

J. A. SMITH.

Mr. Forsyth to Mr. Everett.

[CONFIDENTIAL.]

WASHINGTON, *February 1, 1840.*

MY DEAR SIR: Our consul at Havana, Mr. Trist, and his assistant, Mr. Smith, will come to the United States, to give their testimony in a cause pending in Baltimore, for a violation of laws prohibiting the slave-trade, in April. They will probably leave it about the middle of March, and be absent from Cuba six weeks or two months. A clerk of Mr. Trist, who is well acquainted with the business of the consular office, and whose integrity is relied on, (Mr. Crusoe,) will remain in Havana to attend to its duties. The President, however, in the present juncture, and in view of a great clamor against Mr. Trist, wishes to have in Havana, during his absence, some experienced citizen, of known character and intelligence, who may, without being formally substituted as consul, have a controlling power over the office, see that Mr. Crusoe makes no mistakes, and examine into the condition of the general trade between the United States and Cuba; and be able, on his return, to report to the President upon the several allegations made against Mr. Trist during the past summer; upon the present state of the slave trade in the island; and, generally, into the facts connected with it, which would repel any imputation attempted to be thrown upon the United States, or any of its officers, for want of due vigilance in the execution of the laws of our country against the African slave-trade. A short visit to Cuba at that season would be agreeable and interesting; and, as the duties to be performed are delicate, important, and confidential, the President has thought it possible you would be willing to undertake them. Your former connexion with the Spanish Government, knowledge of Spanish habits and customs, and your probable personal acquaintance with the present Governor General of Cuba, the Prince of Anglona,—all concur to make it desirable that you should perform this duty for the Government of the United States. I presume it will not interrupt your other engagements; and, although emolument is not thought of, yet, in justice to you, the expense of your voyage and temporary residence in Havana will be borne by the United States; and, as you will carry a confidential letter from the department to the Captain General, I hope you will not find it impracticable to accede to the President's wishes. In that event, I ask the favor of you to let me know it immediately, that you should make your preparations for your voyage in convenient season to take Washington on your way to Havana. While here, you will receive all the information necessary, and the particular wishes of the President, for your guidance during your absence.

I am, sir, respectfully, your obedient servant,

JOHN FORSYTH.

ALEXANDER H. EVERETT, Esq., *Boston.*

DEPARTMENT OF STATE,
Washington, March 4, 1840.

SIR: Mr. Nicholas P. Trist, our consul at the Havana, having been subpoenaed to appear at the next term of the court of the United States for the district of Maryland, to give his testimony in a case involving a violation of the laws against the slave-trade, will have to leave his consulate for a period of probably six or eight weeks, commencing in the course of this month. The importance to our commerce with the island of Cuba, that no interruption should take place in a proper discharge of the duties of that office, has induced a desire on the part of the President that an American citizen of character and intelligence should, for the purpose of superintending it, proceed to the island, remain there during the absence of Mr. Trist, and avail himself of the opportunity to collect information on various topics of public interest, and discharge other duties of a confidential character. I am directed by the President to express to you his satisfaction at your acceptance of the agency, and to instruct you on the several points which will demand your attention.

The same motive which brings Mr. Trist to the United States also calls for the presence of Mr. Smith, his assistant in the discharge of the consular functions. His clerk, Mr. Crusoe, remains at the consulate, and will act as Mr. Trist's agent or deputy. As this gentleman has long been connected with the office, no doubt is entertained of the correctness of Mr. Trist's impression of his entire ability to attend to the discharge of the ordinary duties of the consulate, nor of the propriety of his being intrusted with the seal of the office, and the authority of affixing his signature to all documents emanating from it, as the agent of the consul. Difficulties, however, of which you are probably not entirely unaware, have, for a long time, existed at the consulate, of which it is desirable that the cause should be investigated, and removed if possible. They had their origin, principally, in differences between the consul and the masters of American vessels, as to the rights and duties of each, respectively; and the consequence has been, a state of irritation and excitement, which adds not a little to the difficulty of accomplishing the object in view. The President wishes to avail himself, for that purpose, of the circumstance of the concerns of the consulate being for a time under the superintendence of a person entirely foreign to the feelings which have necessarily grown out of the present state of things. You will, therefore, on your arrival at the Havana, place yourself in communication with Mr. Trist, if he should not yet have left for the United States; or, if he should, with Mr. Crusoe; and, without taking formal possession of the consulate, assume an active and constant superintendence its of duties; see that they are discharged according to a fair, equal, and just interpretation of the laws; and report to this department, with a view to their correction, any misapprehensions of their provisions, and any usages erroneously subsisting at the consulate; and prevent any error Mr. Crusoe might commit in the temporary discharge of the duties of the consulate.

It is alleged (or, rather, it has become a matter of general notoriety) that, notwithstanding the provisions of Spanish legislation against the African slave-trade, that traffic is carried on to some extent under the Spanish flag; and that one of its results is the introduction of a great number of Africans, for the purpose of being held to slavery in the island of Cuba. Although the United States have carefully avoided all interference by or with foreign nations on this subject, it has forced itself upon the notice of their Govern-

ment, and rendered it desirable that information, on the correctness of which reliance might be placed, should be obtained for this department. It is, therefore, the wish of the President, that, during your stay at the Havana, and by all means not liable to give offence to the local authorities, you apply yourself to an examination into the condition of the African slave-trade, as carried on by or for account of inhabitants of the island, the flags used to cover it, and the foundation of the opinion entertained by the British members of the mixed commission sitting at Havana for the trial of infractions of existing treaties between Great Britain and Spain for the suppression of the slave-trade, that the course of policy of the United States has been injurious to the efforts made by other nations for the extirpation of that trade. Among the evidences of such an opinion which have reached this department, are formal allegations made by the commissioners referred to, that Mr. Trist has not, in the exercise of his official duties, faithfully carried out the views and wishes of his own Government in relation to the traffic in slaves; and that he has neglected the performance of his duty in other matters. Among the papers which have been submitted for your perusal, and of which a synopsis is enclosed, you will have found those allegations more explicitly stated. They have been made known to Mr. Trist, and partially answered by him. It is the intention of the President that, during Mr. Trist's visit to the United States, the complaints made against him, both in relation to the slave-trade, and his alleged wrongs to citizens of the United States, shall be fully investigated; and it is probable that, before the result of your agency can be known, the matter will have been finally disposed of. From the information already here, and that which it is expected that Mr. Trist will be able to furnish in addition, it is believed that all those charges will be satisfactorily explained, and that the Government will have it in its power to vindicate, at once, the justice of its own policy, the singleness of purpose with which it has been carried out, and the integrity of its agent. But, in order to preclude the possibility of a doubt in this respect, either at home or abroad; and, whatever may be the result of the investigation here, to fortify it by information obtained on the spot, through a channel entirely free from any of the feelings which the subject may have engendered on both sides, and therefore acting with perfect impartiality, it is made your especial duty to collect, from all sources, such facts, and the evidence in support of them, as may have a bearing upon the subject; to make yourself perfectly master of it in all its parts; and report the result of your labors in a manner which will put it in the power of the Government to say that, at the same time that it was availing itself of the means usually resorted to of coming at the truth in such matters, it sought, by the institution of a special agency, to reach sources of information which might have escaped the ordinary process of investigation.

Your compensation for services and expenses will be at the rate of \$400 per month, commencing on the day on which you left your residence to come here and receive your instructions, and ending at the expiration of one month from the time you will have left Cuba on your return to the United States.

I am, sir, your obedient servant,

JOHN FORSYTH.

ALEXANDER H. EVERETT, Esq.

DEPARTMENT OF STATE,
Washington, March 18, 1840.

SIR: Since your instructions were delivered to you, communications have been received at this department from Mr. Trist, stating that Mr. Crusoe, who was to exercise the functions of consul during his absence, would, from ill-health, be unable to do so; and that he had appointed as his agent, in Mr. Crusoe's stead, Mr. John Moreland, who, some years since, acted in the same capacity during a visit of Mr. Trist to the United States. The President, who has been apprized of the change, directs that it be left discretionary with you, either to take possession of the consulate and assume the exercise of its functions in your name, or to allow Mr. Moreland to do it under your superintendence. You will, accordingly, on your arrival at Havana, make such use of the discretion left you by the President's decision as you may judge most advantageous to the interests placed under your charge.

I am, sir, your obedient servant,

JOHN FORSYTH.

A. H. EVERETT, Esq.,

Special Agent of the Department of State, Havana.

Mr. Everett to Mr. Forsyth.

[CONFIDENTIAL.]

WASHINGTON, D. C., July 21, 1840.

SIR: In the instructions which I received from you on my departure for the island of Cuba, you inform me that "it is the wish of the President, that, during my stay at the Havana, and by all means not liable to give offence to the local authorities, I should apply myself to an examination into the condition of the African slave-trade, as carried on by or for account of the inhabitants of the island; the flags used to cover it; and the foundation of the opinion entertained by the British members of the mixed commission sitting at the Havana for the trial of infractions of existing treaties between Great Britain and Spain for the suppression of the slave-trade, that the course of policy of the United States has been injurious to the efforts made by other nations for the suppression of the trade."

Reserving for a future communication the more general topics of the history and present state of the trade in slaves, carried on with the island of Cuba, I propose, in the present report, to confine myself to some remarks upon the use that has been made of the flag of the United States for the purpose of covering this traffic, and the extent to which the consular authorities of the United States, on the island, have been implicated in these abuses.

SEC. I.—*Extent to which the American flag has been employed at the Havana for the purpose of covering the slave-trade.*

That the flag of the United States has been employed of late years to a considerable extent at the Havana, for the purpose of covering the slave-trade, is a matter of public notoriety. This practice appears to have commenced in the year 1836—probably, in consequence of the increased difficulties thrown in the way of the trade, as carried on under the Spanish flag about that time, by the treaty between Great Britain and Spain of the pre-

ceding year. From the year 1836, up to the close of the year 1839, the number of American vessels engaged in the trade has been constantly increasing, and was greater for the year 1839 than for any preceding one.

During my stay at the Havana, the consul, the vice-consul, and the clerk previously employed in the office, (Mr. Crusoe,) were absent, and the consular records had been removed. The acting consul (Mr. Moreland) had had no connexion with the office, and little intercourse with the consul; previously to his appointment. In consequence of these circumstances, it was not in my power to obtain at the consulate any information as to the precise extent to which the national flag has been employed to cover the slave trade; nor was there on the island any other source from which such information could naturally be sought or expected, excepting the mixed commission, organized under the late treaties between Great Britain and Spain for the purpose of superintending the execution of those treaties. All the information in the possession of this commission has been communicated to the British Government, and is published in the parliamentary papers relating to the slave-trade. It appears, from the statements given in these papers, that, according to the estimates of the British commissioners, the number of American vessels employed in the slave-trade, at the Havana, in 1836, was five; their names are as follows:

The Anaconda,	The Rosanna, and
Viper,	Fanny Butler.
Martha;	

In 1837, eleven vessels, according to the same authority, were employed in this trade, viz:

The Bee,	The Perry,
Two Friends,	Teazer,
Morris Cooper,	Washington,
Terrible,	Cleopatra, and
George Washington,	Uramura.

In the year 1838 the number had increased to nineteen, whose names were as follows:

The Gabriel,	The Venus,
Alexander,	Shark,
Dido,	Mary Jane,
Mary Hooper,	Comet,
Eagle,	Florida,
Fame,	Hazard,
Traveller,	Clara,
John Holland,	Liberty, and
Dolphin,	William Savin.
Plant,	

For 1839 the number was estimated at twenty-two, viz:

The Rebecca,	The Butterfly,
Oriental,	Douglass,
William Bayard,	Lark,
Perry Spencer,	Cutter Campbell.
Wyoming,	Nymph,
Octavia,	John,
Joseph Wilding,	Asp,

The Hound,
Mary,
Catharine,
Eloisa,

The Hannah,
Centipede, and
Hyperion.

I have thought it proper to insert these lists as the only approximative estimates that have been, or probably now can be, made of the precise extent of the abuse in question. They appear, however, on comparing them with the general statements of vessels cleared for the coast of Africa, to be simply lists of all the American vessels that sailed for that coast in the years under which they are respectively placed. It is not probable that they were all intended to bring back return cargoes of slaves; some of them not being of a construction suitable to that service. But the error on this account would, perhaps, be rather formal than material, since nearly all the vessels despatched for the coast of Africa from the Havana carry out cargoes, to be employed at the factories on the coast in purchasing slaves. No returns have, of course, been published for the present year. I was told, by one of the British commissioners at the Havana, that their estimate of the number of American vessels employed in the trade up to the first of June, was eight. This agrees nearly enough with the list of clearances for the coast during the same period, which amounted to nine: their names as follows:

The Plant,
Lone,
Crawford,
Hudson,
Audubon,

The Caballero,
Theophilus Chase,
Alexander,
Seminole, and
Kite.

The acting consul was of opinion that none of these vessels were intended to be employed in bringing back return cargoes of slaves.

SEC. II.—*Forms in which our navigation is employed to cover the slave-trade.*

The vessel is built and equipped in some American port, (commonly that of Baltimore,) and cleared as an American ship for the Havana. If it be the object merely to send out a cargo of merchandise suitable for the market, the American character of the vessel is retained, and, after discharging on the coast, she takes some other direction. If it be intended that she shall return to the Havana with a cargo of slaves, a sale, real or fictitious, is made to an individual of some other nation—commonly Portuguese; the contract to take effect after the arrival of the vessel on the coast of Africa. The American crew is discharged, and one composed of foreigners is substituted for it; a single American remaining to personate the American captain, in case the ship should be visited during her outward passage. In some cases, the whole of the American crew remain on board, and are entered on the roll as passengers. On the arrival of the ship on the coast of Africa, the flag is changed; the American captain is put on board some other vessel, (if not registered as a passenger in the Portuguese documents;) and the ship, after taking in her slave cargo, returns, under Portuguese colors, to the island. Here she lands her cargo at some convenient point on the coast, and then enters the Havana as a Portuguese vessel returning in ballast from the coast of Africa.

SEC. III.—*Existing legislation against abuses of this description.*

The entire illegality of these proceedings, under the existing laws of the United States, is sufficiently apparent. The act of March 2^d, 1794, provides that no citizen of the United States, or foreigner coming into the country, shall, for himself or any other person whatever, whether as master, factor, or owner, build, fit, equip, load, or otherwise prepare, any ship or vessel within any port or place of the said United States, nor shall cause any ship or vessel to sail from any port or place within the same, for the purpose of carrying on any trade or traffic in slaves to any foreign country, or for the purpose of procuring from any foreign country, place, or kingdom, the inhabitants of such country, to be transported to any foreign country, port, or place whatever, to be sold or disposed of as slaves. To enforce this prohibition, the act provides that any vessel fitted out for the purpose in question shall be forfeited to the United States; and that any person so building, fitting out, equipping, loading, or otherwise preparing or sending away, any ship or vessel, knowing or intending that the same shall be employed in any such trade or business, contrary to the true intent and meaning of the act, or in any way aiding or abetting therein, shall severally forfeit and pay the sum of two thousand dollars—one moiety thereof to the use of the United States, and the other moiety thereof to the use of him or her who shall sue for and prosecute the same. A penalty of two hundred dollars, to be sued for and distributed in the same way, is also imposed for each person transported in violation of this prohibition; and, in order to prevent the violation of the law by foreigners, it is provided, that, in cases where there shall appear to be a reasonable ground for suspicion that a foreign vessel is intended for the slave-trade, the collector of the customs may refuse to give her a clearance, until a satisfactory bond shall have been furnished that none of the natives of Africa, or any other foreign country, shall, within nine months, be taken on board of her, contrary to the true intent of the prohibition.

In construing this act, the courts of justice have decided that, in order to incur forfeiture, it is not necessary that the vessel should be completely fitted and ready for sea, but that the right of seizure attaches as soon as the preparations have proceeded so far as to render the intention manifest. It has also been decided that the forfeiture attaches where the original voyage commences in the United States, whether the vessel belonged to citizens or foreigners, and whether the party incurring it be himself the owner of the vessel, or the agent of some other person, native or foreigner. It has likewise been settled, that, taking the vessel to a foreign port, and there making sale of her to a foreigner, and commencing a new voyage, does not break the continuity of the original adventure, but leaves the parties in the United States subject to the penalty, just as if the vessel had gone direct from the United States to the coast of Africa.

By the act of April 20, 1818, the penalties imposed by the one just quoted, are considerably increased, the persons convicted of offending against its provisions being subjected to a fine of not more than five nor less than one thousand dollars, and imprisonment for not more than seven nor less than three years.

Finally, by the act of May 15, 1820, the offence of being engaged in the slave-trade is declared to be *piracy*, and the persons convicted of it are subjected to the punishment of *death*.

SEC. IV.—*Course pursued by the consul at the Havana, in regard to American vessels engaged in the slave-trade.*

Such being the extent to which the flag of the United States has been used for the purpose of covering an illicit trade in slaves, and such being the severity of the existing legislation against that abuse, the serious and important question arises: How has it happened that the consular authorities on the island, and particularly at the Havana, which has been the principal seat of the abuse, have not interfered to prevent it?

The first and most natural supposition would perhaps be, that the trade has been carried on so secretly as to have escaped the knowledge of the consular authorities. But this supposition is precluded by acknowledged facts. It is agreed on all hands that the arrival and departure of the vessels engaged in the trade are matters of public notoriety. The consul at the Havana remarks, in a letter to the British commissioners, that "the slave-trade is a matter which every one who feels any curiosity upon the subject knows all about; and that, although destitute of such curiosity, he cannot, if he possess the use of his ears, and understand any language spoken at the Havana, avoid hearing the news of the day or hour, of which it always constitutes the most piquant topic." The same idea is repeated in various forms, whenever the occasion calls it forth, throughout the whole correspondence of the consul with the British commissioners and with the Department of State.

The violations of the laws against the slave-trade, which have occurred at the Havana, being thus not less notorious than they have been gross and palpable, the question returns: Why the consular authority has not been employed to prevent them, or, where that could not be done, to bring the persons engaged in them to punishment?

The reason given by the consul, in various passages of his correspondence, for not interfering, is, that, although the character and destination of the vessels engaged in the slave-trade are notorious, it is not practicable to obtain such evidence of them as would be a sufficient basis for legal proceedings. In a passage immediately following the one just quoted from a letter to the British commissioners, the consul remarks, "that, although everybody at the Havana knows all about the slave-trade, no one so knows any thing about it, that the testimony he could or would give in a court of justice, or for any judicial purpose, upon any point connected with it, would be worth a straw."

SEC. V.—*Case of the Venus.*

In order to form an opinion with greater distinctness and certainty upon the validity of this reason, it may, perhaps, be useful to take a single case: I will use for this purpose that of the *Venus*, which has been rendered, by accidental circumstances, more notorious than any other. The *Venus* is a very fine ship, built at Baltimore in the year 1838, for account of the house of Mazorra, at the Havana, which has obtained a memorable notoriety by its extensive dealings in the slave-trade. The *Venus* was built and equipped expressly for this trade, and was regularly cleared at the custom-house as an American ship. She arrived at the Havana in the summer of that year, and soon after sailed again—still in the character of an American ship—ostensibly for the port of Bahia. In less than four months, however, she returned to the Havana under Portuguese colors, and bearing the name of

the Duquesa da Braganza. After landing somewhere on the coast a cargo of eight hundred and seventy slaves, (the living remains of eleven hundred and twenty, whom she is said to have taken on board,) she entered the harbor of Havana, as in ballast from the coast of Africa. The gross proceeds of this voyage are said to have been about \$300,000, and the expenses of the vessel and outward cargo less than \$100,000—leaving a clear profit of not less than \$200,000. The Venus is still engaged in the trade, under her new name, and was lying in the harbor of the Havana when I was there. She had made several voyages not less successful than the first; and, from her beauty of construction and fast sailing, has always been an object of particular attention.

On the first arrival of the Venus at the Havana, her character and destination were notorious to the whole population of the place—including, of course, the American consul, as the person particularly charged with the duty of observing every occurrence connected with the navigation of his country. She was prepared and fitted out for an illegal trade, which rendered her liable to forfeiture; subjected the persons engaged in fitting her out and navigating her to long imprisonment and heavy penalties; and, should they accomplish the object intended, to capital punishment, as principals or accessories in the crime of piracy. Was it not the duty of the consul to request of the local authorities the seizure of a vessel so situated; or, at least, to take such steps as might have appeared best fitted to establish, by positive evidence, the facts which common rumor had rendered notorious? Had the Venus been prepared and fitted out for a piratical voyage of a different character, would the consul, on being informed of the fact by common rumor, or in any other way, have hesitated to request her detention? I think not; and yet, under the existing laws of the United States, it is just as clearly the duty of the consul to detain a vessel intended for the slave-trade, as it would be to detain one intended for a piratical voyage in the more ordinary acceptation of the terms.

After a four months' voyage to the coast of Africa, the Venus returned (as I said before) under Portuguese colors, and the new name of the Duquesa de Braganza, which she has since borne. On this occasion, the British commissioners at the Havana addressed a letter to the American consul, suggesting to him the expediency of taking some steps to ascertain her character, and stating, particularly, that an examination by him of the crew and papers might, perhaps, throw some light upon the subject. It does not appear, however, that any steps of this kind were taken, although it is settled law, (as has been remarked above,) that taking the vessel to a foreign port, and there making sale of her to a foreigner, and commencing a new voyage, does not break the continuity of the original adventure, but leaves the parties engaged in it as fully subject to the penalties imposed by the law as if the vessel had gone direct from the United States to the coast of Africa. It was, therefore, still a matter of high importance to ascertain her slave-trading character by sufficient evidence—supposing even that she had changed her national flag. It is quite doubtful, however, whether any *bona fide* sale had taken place, and, consequently, whether she were not still liable to forfeiture as American. Certainly she had not had time, since she was recognised by the consul, and cleared at the custom-house as American, to go to Bahia, where it was understood she was to procure her Portuguese papers.

Was the consul, then, justifiable in not taking any steps to arrest the crim-

inal career of this vessel; and, particularly, in not subjecting her crew and papers to examination, agreeably to the suggestion of the British commissioners—which, had it not been suggested by them, must, of course, have occurred to himself as the first and most natural proceeding? In a letter to the commissioners, written some time afterwards, the consul makes some remarks upon this point, which may serve to give his view of the subject. The commissioners had suggested that an examination might be made “through the Captain General, or by the consul’s own authority and the intervention of the American vessel of war then in the harbor.”

The consul says, in reply, that “supposing the jurisdiction of the American consul to be absolute in regard to every vessel entering the port of Havana under the American flag, it must evidently be restricted to them: that, had the *Venus* returned under the American flag, the course of the consul would have been so plain, that perhaps no suggestion from the British commissioners would have been requisite to make him enter upon it. That she was now under the Portuguese flag, and called *La Duquesa de Braganza*, was not less generally nor less surely known, than that she had got back from Africa; and that he had obtained an official assurance of this change in the name and character of the vessel, by inquiry of the captain of the port.” Being thus informed, first by common rumor, and then on official authority, that the *Venus* had assumed the name and character of a Portuguese vessel, the consul seems to have supposed that, in consequence of that fact, all right of intervention, or examination even, on his part, had entirely ceased; his authority in this respect being, in his opinion, limited to vessels bearing the American flag. He even intimates that he should have exposed himself to the danger of merited personal violence, if he had gone on board a vessel, the character of which was not certainly known to him, for the purpose of ascertaining whether she were or were not American.

Without expressing any opinion how far this view of the subject may be correct; and supposing, with the consul, that his right of direct intervention, on his own authority, is restricted to vessels bearing the American flag,—it does not seem to follow,—of necessity, that there was nothing farther to be done. By stating to the Captain General that the vessel had notoriously been engaged in a piratical expedition, and that, though she now bore the Portuguese flag, it was doubtful whether she was not still American, he might probably have obtained an order for her detention, and permission to examine her papers and crew. The consul appears to suppose that such an application to the Captain General would have been attended with great difficulties; and, particularly, that it would have been necessary, as a preliminary point, to establish, by sufficient legal evidence, the identity of the *Duquesa de Braganza* with the *Venus*: which, he thinks, could not have been done. In regard to this point, it seems to me that the consul exaggerates the difficulties of the case. I cannot conceive that it would have been at all embarrassing to have been called on for evidence, sufficient to warrant examination, that these two vessels were one and the same.

But, supposing even that this objection were surmounted, says the consul, “it must still be apparent that so interminable a succession of mountains lay behind, that the only consequence of my getting over the first would be to render the difficulty of retreat the more remarkable.”

No intimation is given by the consul of the nature of this new chain of difficulties which it would have been necessary to encounter after the removal

of the one just alluded to; and it is, of course, impossible to judge how far his apprehensions in this respect were well founded. For myself, I am unable to imagine what the difficulties alluded to could have been. The Captain General must either have granted or refused the proposed intervention. In the former case, the object would have been effected. In the latter, nothing worse could have happened than the failure of a well-intended effort to sustain the honor of the national flag, and enforce the laws of the Union.

Nor does it appear at all probable, as the consul seems to apprehend, that the Captain General, had he even thought proper not to accede to such an application, would have considered the making of it as an unwarrantable act, or have required the consul to "point out the provision or the principle which authorizes a consul to exercise a surveillance over any other vessels than such as show his flag." That ships often assume a character and show a flag which do not belong to them, is notorious everywhere; and at the Havana is, unfortunately, too much so to be questioned by any one. To exercise an inspection over foreign flags, so far as to take care, if possible, that they are not used without authority, by Americans, as a cover for the violation of the laws of their own country, far from being a usurpation of power in a consul, is one of the duties regularly appertaining to his office; and it is difficult to imagine a case in which the propriety of such inspection could be less questionable than that of a vessel known to have been engaged in a piratical expedition, which had been American, and of which the ostensible Portuguese character was, to say the least, extremely doubtful. The Captain General would certainly have had no right to regard an application for authority to ascertain the true character of such a vessel, as offensive; and it would be doing him injustice to suppose, without evidence, that he would have done so.

The considerations which I have now stated, and which tend to show that the consul might, with propriety, have taken some steps to ascertain the character of the *Venus* on her return to the Havana, apply with still more force to the case of the same vessel, on her first arrival from the United States. It was then as notorious at the Havana that she was intended for a piratical expedition, as it was, after her return from Africa, that she had been upon one. She bore the American flag, and was assuredly an American vessel. Whatever difficulties may have stood in the way of an examination of her crew and papers after her return from Africa, in consequence of her real or pretended change of national character, they did not exist at the time of her first arrival from Baltimore. In reference to her condition on her return from Africa, the consul says, in his letter to the commissioners, that "had she entered the port under the American flag, his course would have been so plain, that perhaps no suggestions from the British commissioners would have been requisite to make him enter upon it." On her arrival from Baltimore, she did enter the port under the American flag. Why did not the consul, at that time, take the course which he himself declares to have been, under the circumstances in which the vessel was then placed, too plain for doubt?

The reasons given by the consul for not taking any steps to ascertain the true character of the *Venus*, on her return from Africa under the name of the *Duquesa de Braganza*, are, no doubt, substantially the same that influenced his conduct in other cases of a similar description. If the views that I have taken of the subject be correct, it seems to follow that the consul might, without impropriety, have made, (or, rather, that it was his duty to

make,) stronger efforts than he has done to check the piratical practices that have been carried on under his eye, with the aid of the American flag. In all cases where the vessels engaged in them actually bore the American flag, he possessed an undoubted right to examine the papers and crew, on his own authority. Where there had been an ostensible change of character, he had an equally undoubted right to request from the Captain General authority to ascertain, by examination, whether the apparent change was real or fraudulent. That such efforts would have always resulted in failure, is far from being certain. Indeed, the knowledge by the public that such efforts had been and would be in all cases made, would be, of itself, a powerful check upon the continuance of these illicit proceedings, whatever might be the result of the attempt to stop them in any particular case.

SEC. VI.—The course pursued by the consul in regard to vessels under the American flag, in some degree sanctioned by the example of the revenue and prosecuting officers of the United States and of the British Government.

If the remarks which have now been made should appear in some degree to implicate the consul in a charge of neglecting his duty, it may be said, on the other hand, in his defence, that the same charge, whether well or ill founded, must rest with at least equal, if not greater weight, upon the revenue and prosecuting officers at the port of Baltimore. That the *Venus*, for example, was building for a piratical expedition, was probably as notorious at Baltimore, while she was on the stocks, as it was at the Havana, after she had taken in her outward cargo. She was liable, by law, to forfeiture; and the persons engaged in building and equipping her to imprisonment and heavy penalties. Why did not the prosecuting officers libel her in the district court? Why did the collector permit her to clear out as an American vessel intended for lawful trade? It is presumed that the answer given to these questions would be, that it was impossible to procure any evidence of the illegal character of the vessel, that would be available in a court of justice. A recent experiment seems to show that this supposed impossibility is far from being real. Though the effort of the prosecuting officers in the case alluded to did not terminate in the conviction of the parties indicted, the general result of the trial was not of a nature to encourage offenders to persevere in their illegal course. Still, if the prosecuting and revenue officers at Baltimore thought it necessary to acquiesce in the building, equipment, and clearance of this and other vessels notoriously intended for piratical expeditions, was the consul at the Havana bound to exercise a greater degree of vigilance? Might he not fairly consider it as settled, by the acquiescence of these officers, (who had the same or nearly the same views for ascertaining the true character of these vessels which he had,) that the case was beyond the reach of the existing laws?

Such, whether right or wrong, seems to have been the consul's conclusion. He has accordingly, on several occasions, recommended, in his correspondence with the Department of State, the passage of new laws upon the subject; and in the course of the last year transmitted draughts of two bills, which have been communicated to a committee of the Senate, and employed as a part of the materials for the bill now before Congress. What the operation of this bill, should it become a law, will be, remains to be seen. For myself, I must confess that the existing laws, as detailed above, appear

to me clear, and well adapted to the purpose in view. The penalties are certainly as severe as the strongest friend to that purpose could desire them to be; and I incline to doubt whether any new provisions will add much to the efficiency of the existing ones. These, if enforced, would be effectual. If they cannot be enforced, it must be because public opinion is not yet ripe even for the present legislation; and, in that case, to make the laws more severe, would really weaken them, by increasing the difficulty of enforcement. Nevertheless, the interest taken by the consul in the passage of a new law upon the subject serves, in connexion with other circumstances, to show that his omission to take any active measures for the enforcement of the existing laws has not been owing to indifference, neglect, or any more corrupt motive, but to a settled conviction, well or ill founded, that all such attempts much necessarily prove ineffectual; and such was also, no doubt, the motive of the prosecuting officers at Baltimore, in pursuing a similar course.

In illustration of the difficulty of procuring, in cases of this description, any evidence that would be available in a court of justice, the consul, throughout his whole correspondence with the department and with the British commissioners, repeatedly urges at great length, and at times with considerable force, the example of the British Government itself. Notwithstanding the extraordinary zeal shown by that Government for the suppression of the slave-trade, its constant efforts to induce other Governments to concur in taking measures to effect this object, and its frequent denunciations through various agents, including the commissioners at the Havana, of supposed neglect of duty in this respect by the agents of other Powers, it still finds itself compelled to acquiesce in the existence, within its own territories, of practices tending directly to sustain and nourish the slave-trade; and precisely similar in character to the occasional building and equipment of ships intended for the trade in some of the ports of the United States. It appears from the statements of British writers of high authority, (the correctness of which has not been called in question,) that articles suited to the slave-trade *only* are annually manufactured in Manchester to the estimated value of \$1,250,000; that articles of a similar value are also manufactured in other places; and that one-third of the articles habitually given by the Brazilian slave-traders to the coast of Africa, in exchange for slaves, consists of British manufactures. It is even stated by the consul at the Havana, as a fact within his own knowledge, that the shackles employed in confining the slaves on shipboard are manufactured in England. It does not appear that any efforts have been made by the British Government to prevent these practices, which are, as has been said, precisely similar in character to the occasional building and equipment in our ports of ships intended for the slave-trade. On the contrary, when the Brazilian Government, in the year 1836, with a view to the discouragement of the slave-trade, passed an act imposing a duty of 15 per cent. upon all English goods suitable to the African market, which might arrive *in transitu* at any of the ports of Brazil, the British agent at Rio Janeiro formally protested against it; and for so doing received the approbation of his Government. The British agent in making this protest, and his Government in approving it, no doubt proceeded on the supposition that the same manufactures which are employed in the slave-trade are also employed in lawful commerce; and that it would be unjust in the Brazilian Government to discourage their use, because they are sometimes abused for an illegal pur-

pose. But this consideration applies with equal force to the case of ships built and equipped for the slave-trade in the ports of the United States; and should have served as a caution to the British Government and its agents not to impute improper motives to other Governments or their agents, for acquiescing in a state of things which finds its exact parallel in the British dominions, and is acquiesced in by the British Government.

SEC. VII.—*Conclusions respecting the course pursued by the consul in the cases of vessels bearing the American flag.*

From a fair review of the considerations on both sides of the question, it would seem to follow :

1st. That the consul might, without impropriety, and in the full discharge of his duty ought to, have taken more active measures to prevent the illegal use of the American flag for the purpose of covering the slave-trade, and to bring to punishment the persons engaged in these practices.

2d. That his omission to do so has not been the result of indifference, or any more corrupt motive; but of a settled conviction that any measures which he could take for the purposes alluded to would be entirely ineffectual, from the impossibility of procuring such evidence as would be available in a court of justice.

3d. That in this conviction (though probably erroneous) he is sustained by the practice of the prosecuting and revenue officers at Baltimore, and of the British Government, in cases of a similar description.

SEC. VIII.—*Course pursued by the consul at the Havana, in regard to Portuguese vessels engaged in the slave-trade.*

The considerations from which I have deduced these conclusions apply substantially to all the proceedings of the consul in reference to vessels under the flag of his own country. It is of course unnecessary to lengthen this report, by examining the details of each particular case. There is, however, one portion of his official conduct which seems to require a separate notice, since it must be justified, if at all, on different grounds from those which are urged in defence of the rest. I now allude to his employment of the consular seal and authority, to authenticate the papers of Portuguese vessels.

It appears that in the early part of the year 1838, the Portuguese Government ordered their consul, Don J. M. Fernandez, a member of the house of George Knight & Co., to discontinue the performance of the duties of his office. Supposing that this order might be only a temporary suspension, and that he should soon be restored to his place, he requested the consul of the United States to act in his stead, and to authenticate with the American seal and signature the papers of Portuguese vessels. The consul consented; and continued to render that service from about the beginning of April, 1838, till the close of the year, when he voluntarily declined to act any longer in this capacity.

It also appears, that during the year 1838 the Portuguese flag was the one chiefly employed for the purpose of covering the slave-trade. In that year the whole number of vessels engaged in the trade with Cuba, according to the estimates given in the British parliamentary papers, was seventy-one: of which, forty-two were Portuguese; nineteen, as has been already

stated, American ; eight Spanish ; and one Brazilian. Of the seventy-one vessels which, according to these estimates, were employed during that year in their piratical expeditions, sixty one, therefore, were sailing with papers authenticated by the seal and signature of the American consul at the Havana.

SEC. IX.—*Case of the Portuguese slave-trader Constituição.*

As a specimen of the sort of vessels which received, as Portuguese, the sanction of the American consular authority, may be mentioned the *Constituição* ; of which a particular description is given in the report of the British commissioners at Sierra Leone, where she was tried and condemned. She was a schooner of one hundred and twenty-eight tons burden, built at Baltimore, and owned by Spaniards at the Havana, but fraudulently placed under Portuguese colors. To her muster roll were annexed two certificates signed by the consul of the United States—one, authenticating the master's declaration in regard to the roll ; and the other, the owner's declaration as to the appointment of the master. The clearance at the custom-house is also authenticated by a certificate from the American consulate, dated, like the one attached to the muster-roll, a day previous to the date of the document itself. This difference of dates is not explained by the consul. The *Constituição* was a slave-trader of the worst kind, manned by a crew of about forty persons, armed with twenty-one long eighteen pounders, besides blunderbusses, muskets, and cutlasses, and differing in no essential particular from a common pirate.

SEC. X.—*Reasons alleged by the consul for authenticating the papers of Portuguese slave-traders.*

It is understood to be a common practice, during the temporary absence of a consul, or vacancy of the consular office, for the consul of some other friendly Power to act in his stead. This practice is described by the consul in his letter to the department as a "common law of the consular body," and as being "on several occasions recognised in acts of Congress with regard to the authentication of documents." In ordinary cases, it would, of course, be of itself a matter of entire indifference, and would even be viewed with approbation by the Government, as mutually convenient in turn to all the maritime Powers. It is apparent, however, that the case changes its character entirely when the practice in question becomes the means of covering an illicit trade. In that case, it can no longer be viewed with approbation or indifference. It is fraught with acknowledged evil, and must be justified on grounds peculiar to itself.

The distinction between the two cases in which the consular seal and signature are employed to authenticate the papers of native and foreign vessels is obvious. In regard to the vessels of his own country, the consul is bound by his official duty to perform his functions to the best of his knowledge and ability. He must take all possible care that his action shall not lead to an abuse of the flag ; but, after doing every thing which he believes in his conscience can be done to this end, he must act, although he may feel at the time a strong persuasion, amounting to moral certainty, that he is sanctioning a secret fraud beyond the reach of law.

In regard to foreign vessels, the case is different. He is under no obliga-

tion to render consular services to the subjects of any foreign Power. He does it, if at all, from mere courtesy; and although such courtesy be in ordinary cases highly commendable, it puts on an opposite character (as has been remarked) when it has the effect of facilitating illicit trade, especially under the revolting form of piracy. That the flag of the United States should have been employed for nearly a year to cover, or in some way protect and countenance, the whole slave-trade of the island of Cuba,—that in that year the consular seal and signature should have given sanction in various degrees to the papers of sixty-one vessels directly or indirectly engaged in expeditions which the laws of the United States denounce and punish as piratical,—is a deplorable fact; the character of which no justification on grounds of mere courtesy can be supposed for a moment even to extenuate.

I am compelled to add, that a portion of the considerations alleged by the consul in his defence on this head appear to me to aggravate, instead of palliating, the impropriety of his proceedings. In his letters to the department he remarks, that, “under a sense of the obligation imposed upon him by the laws recognising the practice in question, quickened by a very indignant feeling of the audacious trampling under foot of the first principles of international independence, enacted under his eyes by agents of the British Government towards two unfortunate nations, *he experienced a decided gratification* in putting his signature and seal of office to papers, a large proportion of which were sure to come into possession of the British Government, and thus prove to it the spirit of defiance in which its game of oppression and imposture combined could be treated by an American consul.”

It is no part of the duty of an American consul to regulate his official duty in any respect by his views, whether favorable or unfavorable, of the policy of foreign Governments. The duty of giving, on proper occasions, an official expression to the feelings which that policy is fitted to excite, and of adopting corresponding measures, has been committed by the people to other agents. A consul who undertakes to perform it, assumes a portion of the powers delegated to the General Government of the Union. This is true, even when the policy complained of bears directly upon the honor and interest of our own country; and is still more obviously so, when, as in the present case, it bears upon third parties, such as Spain and Portugal. If the error now alluded to had had no other result than a misplaced expression of opinion in official correspondence, it would have been comparatively unimportant; but where it forms one of the inducements to acts of so extraordinary a character as lending the sanction of the consular seal and signature to the papers of forty-one vessels engaged in piratical expeditions, it becomes of the highest consequence, and cannot but be regarded as meriting the severest reprobation.

The remarks which immediately follow the passage last quoted from the consul's letter to the department upon this subject are even more singular:

“The authentications which I gave, [to the papers of Portuguese vessels,] though merest moonshine with regard to any question that could possibly arise concerning these vessels as slavers, were attended with an effect of a very positive and important kind. As corroborating the other proofs which the vessel might carry of a regularity of proceeding in her fitting out and departure, they were, to a certain extent, evidences of a non-piratical intent. There is faith among robbers; and I doubt not that, under circumstances in which piracy, particularly upon an American flag, might have been re-

solved upon, the mere fact of their having for their own protection a document with the signature and seal of the American consul would turn the determination the other way."

It is difficult to say what construction ought to be put upon this extraordinary passage. Was there an understanding, formal or implied, between the consul and the persons interested in these expeditions, that if they turned pirates they would spare the American flag? This is, perhaps, hardly probable; but, on the mildest construction of his language, it must still be received as certain, on his own evidence, that one of his inducements to authenticate the papers of these vessels was the expectation that, in the event of their turning pirates, he should, by so doing, avert their depredations from the American flag: in other words, he gives the sanction of the American consulate to the actual exercise of piracy upon the natives of Africa, in order to avert the exercise of it in a possible contingency from his own countrymen. It is hardly necessary to remark, how utterly inconsistent such a course would be, not merely with justice and common humanity, but with the generous sentiments that are natural to every American citizen. I am confident that I express the universal feeling of my countrymen when I say that they would much sooner expose their lives in an effort to protect the Africans from piracy, than purchase an exemption from it for themselves, by facilitating its exercise upon the inhabitants of Africa, or any other foreign country.

It is far from being apparent, as is stated at the commencement of the last extract, that these authentications of Portuguese papers were entirely unimportant ("merest moonshine") in facilitating the operations of these vessels. They could not, of course, give them at sea the protection of the American flag; but they were of great use in procuring them their clearances as Portuguese vessels—a character to which most of them had really no claim. The consul himself informs the department that one of his motives for giving up the charge of the Portuguese consulate was the discovery of the fact that the local authorities at the Havana *affected* to consider his authentications of Portuguese papers as a warrant for *clearing the vessels*. This conduct on the part of the authorities does not seem to me to be justly liable to the charge of *affectation*; but to have been, on the contrary, the natural and proper course. The consular authentications of the roll and passport, or register, which were given in these cases by the American consul as a substitute for the Portuguese, are, in fact, the warrant upon which the custom-house in all countries regularly clears out a foreign vessel. But, even had the authorities at the Havana acted irregularly in this particular, the fact that they thought proper to consider the authentication of the American consul as a warrant for clearing the vessel ought to have prevented him from describing that authentication as entirely unimportant, or, in his own language, "mere moonshine."

In the same letter to the Department of State from which I have made the preceding extracts, the consul further remarks, that "it seemed to behoove him as a man and an American citizen to maintain the independence and honesty of his conscientious sentiment upon the subject of slavery, as unconfounded as possible with the Mawworm professions and tricks which daily awakened in him the most lively disgust. Hence, *convinced though he was that the vessel was a slaver*, he could receive the declaration of the master in regard to his crew, and give him a certificate thereof, upon the same principle, and with as perfect freedom of conscience, as, had the circumstances be reversed, he would have given to a British manufacturer or

merchant a certificate of his declaration as to the true contents of a bale of cottons or a cask of shackles, however notorious it might be that they could have been made for no other purpose than the slave trade."

The meaning seems to be, that he would as readily and with as "clear a conscience" facilitate the operations of one set of foreigners engaged in the slave-trade as those of another. This may be conceived, the principle being exactly the same in regard to all; but how he could take such a course in any case with a "clear conscience," except under the pressure of absolute necessity, (which could never exist in regard to any foreign vessel,) is not so apparent. Nor is it easily seen how he could expect to show that his professed opposition to the slave-trade was sincere, and not hypocritical, by giving the sanction of his official seal and signature, without necessity, to the papers of any foreign slave-trading vessel, whether British or Portuguese. Such a course, far from showing that he was sincere, would certainly, if not very fully and satisfactorily explained, lead to a directly opposite conclusion.

The observations made by the consul, in his letter to the department, in defence of his course in taking charge of the Portuguese consulate, so far as I have considered them, rather weaken than strengthen his case. The only remark contained in the letter which, if well founded, would furnish an actual justification of his course (or, rather, would place it on the same somewhat doubtful footing with his course) in regard to the ships of his own country engaged in the slave-trade, is that in which he transiently alludes to an "obligation" imposed upon him by the acts of Congress recognising the practice prevailing among consuls to act for each other in turn, as occasion may require. It is obvious, however, that the obligation, if any, imposed by such recognition, is of the slightest character; and though quite sufficient as an official authority to do what in ordinary cases would be amply warranted by mere courtesy, cannot for a moment be regarded as requiring or authorizing him to give his official sanction to practices possessing, under our legislation, the character of capital crimes.

The consul remarks, that he accepted the agency at the request of the Portuguese consul; kept it from week to week, under the impression that the suspension of the consul would be temporary; and, at the close of the year, resigned it, "under the fear of imputations likely to grow out of the great lucrativeness of the charge; and also because the authorities affected to consider his authentications of Portuguese papers as a warrant for clearing the ships."

The trivial motives of courtesy, convenience, and the pride of pecuniary independence, here alleged, are, I need hardly say, of no weight, in one way or another, in a case of this description. It is, in fact, little better than mockery for the consul to say, on the one hand, that he gave the sanction of his official seal and signature to the papers of a few piratical vessels in the expectation that he should not be called upon to render the same service to many more; or, on the other hand, that he discontinued this practice from an apprehension that he should be suspected of acting from interested motives. The detestable character of the expeditions in which these vessels were engaged should have prevented him from giving them his sanction in a single instance; and is the only motive that could, with propriety, be alleged for discontinuing such a course, if he had unfortunately been led by any circumstances to adopt it.

The remarks in which the consul represents himself as retiring from the

agency, for the reason, among others, that the local authorities at the Havana affected to consider his authentication of the papers of Portuguese vessels as a warrant for clearing them, has already been alluded to. When considered as containing an implied apology for undertaking the agency, it is open to the obvious objections—

1. That the consul ought to have known beforehand that his authentication of the papers of Portuguese vessels, as a substitute for the Portuguese consul, would be, and ought to be, regarded by the local authorities as a warrant for clearing them.

2. That if he did not know this beforehand, he ought to have discovered it long before the close of the year; and

3. That if his authentication of the papers of these vessels had been less important to them than it was, or, in his own language, "mere moonshine," he was still bound, by the strictest obligations of duty, not to contaminate his official seal and signature by connecting them unnecessarily, even in the most remote and unimportant way, with these expeditions.

SEC. XI.—*Conclusions on this head.*

On a review of this branch of the subject, I am under the necessity of saying, that the serious charge of authenticating the papers of Portuguese vessels, most of them known to be engaged in the slave-trade, for the whole year of 1838, remains without any sufficient explanation. Although the consul states, himself, that he received a pretty large amount of fees for his services in this agency, I do not suppose that he was led to undertake it by motives of pecuniary interest. A regard for national independence in the abstract, just and generous in itself, but in this instance totally misapplied, seems to have been the principal motive which led him to overlook the most obvious considerations of humanity and official duty. Far from feeling, as he says he did, "decided gratification" in the reflection that his official seal and signature would be seen by the British visiting officers on board the Portuguese slave-traders, he ought to have contemplated the possibility of such an occurrence, had it been unavoidable, with the deepest mortification; and where, as in the present case, no necessity for it existed, he should have shrunk from any act tending to produce it, as unjust, inhuman, and in the highest degree discreditable to himself and his country.

It is much to be feared that the influence of this misapplied zeal for national independence upon the conduct of the consul was increased by the effect of a somewhat erroneous view of the character and operation of the African slave-trade. He states, in a letter to the British commissioners, that the abhorrence of the slave-trade in which he had been educated had been somewhat modified by his residence in the island of Cuba; and that he now considers its operation, so far as the individuals carried away and sold as slaves are personally concerned, as positively beneficial. He regards it as objectionable only because it is inconsistent with the practical development of democratic principles of government. "My preparation," he remarks, "for coming to the Havana had not been of a nature to predispose me to view the slave trade with favor, and form, upon what I saw, a judgment conflicting with that which had been the growth of my life. And yet it has so happened; so far, at least, that I now entertain a deliberate and oft-revolved doubt whether the slave trade, considered in itself, be not a positive benefit to its supposed victims. Were the trade open, and regulated in the way that emigrant passenger-vessels are, I should have no doubt whatever on the subject. But even taking it as it is, I am strongly

inclined to the belief that the purest and most judicious philanthropist that ever lived, if called upon to decide the question for a cargo of slaves ready for embarkation on the coast of Guinea, and required to found his judgment solely upon the probable consequences to these particular individuals, would unhesitatingly pronounce in favor of their encountering all the perils and hardships of the voyage. The true objection to slavery lies in its irreconcilableness with democratic principles. This objection has no application, except with reference to American institutions, and the hopes which these, and these alone, justify as to the possible condition of the species. Through these hopes, the objection becomes progressively applicable to all countries in regard to which the aspiration may be indulged, that their inhabitants too will one day prove themselves capable of self-government. With regard to others, it can matter but little, judging from the present condition of the world, whether their laboring class shall or shall not consist of Africans under the name of slaves."

As the island of Cuba is, to all present appearance, one of the last places in which democratic principles of government will be applied in practice, it is, of course, one of those where, in the opinion of the consul, it matters but little whether the laboring class consist of freemen or slaves. And as he also holds the opinion that the abduction of the slave from Africa, and his importation into Cuba, are, so far as he is individually concerned, a positive benefit, the consul cannot be supposed to look with any very strong disapprobation upon the slave trade as carried on with that island.

The views of slavery and the slave-trade, which are here expressed by the consul at the Havana, are not those which form the basis of the legislation of the United States upon this subject. Our laws not only contemplate slavery as a relation entirely at variance with the equality of personal rights, and the liberty of speech and action, which are the leading principles in our political institutions; but they regard the act of carrying away a man by force from his own country, and selling him for a slave in another, as one of the greatest injuries that can be inflicted upon him. Notwithstanding the general mildness of our penal code, they make it a crime punishable with death. Considering this essential difference between the views of the consul upon this whole subject, and those which are expressed in the laws of the United States, it would not be very singular if he should (unconsciously, perhaps, to himself) have exhibited somewhat less activity in the enforcement of these laws than he naturally would have done under other circumstances. This difference may therefore, as I remarked before, have had some influence in increasing the effect upon his mind, of the misapplied zeal for national independence which seems to have been, in regard to the Portuguese vessels, the motive that chiefly determined his conduct.

In the remarks which I have made above, upon the course taken by the consul in regard to vessels of our own country known to be engaged in the slave-trade I have considered that portion of his conduct as entirely distinct from all the others, and have given him full credit for the necessity in which he supposed himself to be placed, of recognising the national flag, as such, unless he had positive proof, available in a court of justice, of facts that would justify a contrary proceeding. But, after looking separately at the several portions of his conduct, it is necessary, in order to form a correct estimate of the whole, to view the different parts in connexion, and examine their bearings upon each other. When, in so doing, we find the consul lending the sanction of his official seal and signature to Portuguese

vessels engaged in the slave trade, not only without necessity, but without reluctance, and even with feelings of "decided gratification," under the influence of his peculiar views on the subjects of national independence and slavery, it is perhaps not unnatural to conclude that these same views may have had some effect in determining his conduct in regard to the vessels of his own country, and may have led him to acquiesce more readily than he otherwise would have done in the supposed impossibility of finding every evidence, available in a court of justice, of facts which are admitted by all to be as notorious as the sun at noonday.

That the impossibility of finding evidence was not in all cases the consul's motive for not taking measures to enforce the laws, is apparent from the course which he pursued in that of the *Washington*, or *Senhora da Boa Viagem*, in which he was called upon to act in both capacities as consul for Portugal and the United States. A few remarks upon this case will close this branch of the subject.

SEC. XII.—*Case of the Washington, alias Senhora da Boa Viagem.*

The *Washington*, a Baltimore-built schooner, arrived at the Havana in September, 1837, and in October of the same year cleared at Matanzas for the coast of Africa. On the 7th of May following, report was made at the American consulate, where Portuguese vessels were then despatched, of the arrival of the schooner *Senhora da Boa Viagem*, under Portuguese colors, *in ballast* from the coast of Africa; and her register was deposited in the consul's hands. The identity of this schooner with the *Washington* was known, and, on inspecting her Portuguese register, it was found to be dated in 1836—a year before her first arrival as an American at the Havana. It was apparent, of course, that there had been no valid change of her national character, and that she was still American. She was therefore liable to forfeiture, and the captain who had returned in her to capital punishment.

Here was positive evidence, available in a court of justice, and actually in the consul's possession, sufficient to condemn the vessel. His first thought, as may be supposed, was to request her seizure; but, on farther reflection, he adopted a different course. He determined to submit the register to the inspection of the suspended Portuguese consul. If it should be pronounced by him to be genuine, the American consul might conclude that it would have been acknowledged as such by the Portuguese, had he been acting in his official capacity; and that the American consul would, in that character only, never have known that there was any thing fraudulent about it. In that case, he conceived that he should be at liberty to suppose himself ignorant of the facts which he actually knew, and not to proceed against the vessel. If, on the other hand, the document should prove not to be genuine, he might conclude that it would not have passed the Portuguese consulate, and that he should probably have been informed of its rejection, and of the fraudulent character of the transfer. Under these circumstances, he would feel himself obliged to proceed against the schooner. This idea was accordingly acted on. The register was exhibited to the Portuguese consul, and by him pronounced to be genuine; the American consul supposed himself not to know the facts of which he had the documentary evidence in his hands; and the *Washington* was permitted to continue her career of piracy.

On what principle of law or morals the consul could feel himself excused from performing his duty, according to facts within his knowledge, because,

under other circumstances, he might not have known the same facts, is not explained. There are, doubtless, some cases in which an individual might not think himself at liberty, from considerations of delicacy, to make use, for certain purposes, of information that might be within his power. But the circumstances must be very extraordinary, which would justify the suppression of facts, that might be used for the conviction of a criminal; and, in the present case, I am unable to see that there was any reason whatever why the consul should not have taken advantage of the facts in his possession. The idea of being restrained by refined notions of delicacy, from doing justice to a criminal of this description, is, of course, inadmissible.

In a letter to the department upon this subject, the consul represents himself, while his course was still undecided, as telling the delinquent captain, who had returned in the vessel, and had had the effrontery to present himself at the consular office, that he (the consul) "should be truly glad if it should prove not to be his duty to molest him." Having satisfied himself, in the way I have described, that it was not his duty, he finds himself "relieved from a disagreeable necessity." These are expressions which are not usually employed by officers empowered to enforce the laws, in conversations with criminals, and in reference to the measures that are likely to bring them to justice.

Had he requested the seizure of the vessel, he says that he should have done it on the ground that she was an American navigating under the Portuguese flag, and not that she was a slave-trader. The Captain General, he thinks, would have regarded a request to seize her as a slave-trader as a "wanton insult." It is well known that the local authorities of the island connive at the contraband trade in slaves, and are paid for so doing by the parties:—in other words, that they are associates in the concern. But is the American consul to be deterred from doing his duty, because an honest performance of it may not be agreeable to the local authorities? If the objection be valid in one case, it is of course valid in all; and the consul loses entirely the power of enforcing the laws in this particular. The regular duty of consular and diplomatic agents is to make representations to the local authorities, which must often, from the nature of the case, be very disagreeable; and the precise reason why those agents are invested, by the usage of nations, with important privileges and exemptions, is, that they may do their duty in this respect with entire freedom.

In the case of the *Washington*, the consul, although he held in his own hands documentary evidence sufficient to condemn her, was still fully satisfied that any steps which he could have taken would have been ineffectual. "It would have been impossible to establish the identity of the two vessels." "Endless delays would have been resorted to; false swearing in all its forms employed to effect the purpose." Or, "supposing even," (to use his own language on another and similar occasion—that of the *Venus*,) "supposing even the Captain General, with every legal and judicial functionary in the island, to be devoted, heart and soul, to having this case judicially established, and a hundred men able and willing to give the amplest testimony in regard to it, not one of them could do so without sealing his fate. A thousand knives—thousands of knives would be eager to drink his blood gratis; and if, to hire a single one, a thousand ounces were the price, they would be subscribed in three hours. Nay, gold to any amount would be poured out like water." The consul proceeds to state, at considerable length, that the reason why the British commissioners have not been more active in denouncing infractions

of the treaties, is concern for their personal safety; and that his own has been in some degree hazarded by the steps which he has at times taken in the discharge of his consular duty.

From the strength of the language in which this particular consideration is expressed, it may be concluded that it is one of those which have had the greatest influence on the consul's mind. The apprehensions of personal violence, to which he seems to give way, appears to me, from every thing that I witnessed or could learn upon the spot, to be greatly exaggerated; and are not, at all events, a proper motive of conduct. If the state of things be such at the Havana that an American consul really cannot perform his functions with safety, he should be withdrawn. While he remains, he should do prudently but fearlessly what he knows to be his duty, and leave the consequences to be settled between the two Governments.

SEC. XIII.—*Blank forms signed by the consul, and said to have been found on board the Portuguese slave-traders.*

It is stated in the reports of some of the British cruising officers to the Admiralty Department, which have been communicated by the British minister at Washington to the Department of State, that those officers found, on board some of the slave-trading vessels which they visited, *blank forms* bearing the signature of the consul at Havana. On being apprized (in the first instance, through the newspapers) of this statement, the consul wrote to the department, requesting that application might be made to the British Secretary of State for Foreign Affairs "for a communication of one or more of these forms, with a specification of the uses to which the British Government supposed that they were intended to be put, and of the reasons why that Government regarded them to be genuine papers, and not forgeries." In the same letter, the consul remarks that "the absolute disproof of the calumny is in his hands, and that he shall use it; but that this task must be reserved for a future occasion." The intended subsequent communication here alluded to has not yet, I believe, been transmitted to the department.

On inquiry at the consulate into the probable foundation of this statement, (which can hardly be supposed to rest upon a mere invention of the British cruising officers.) I was told by the acting consul that it must have arisen from the abuse, incidental or intentional, of a printed form in frequent use at the consulate, and of which a copy is annexed to this report. The acting consul stated it as a fact within his knowledge, that it was the practice of the consul to sign these forms in blank, and to place a number of them in the office, to be used in his absence by the vice-consul or the clerk. It is easy to conceive that, without the connivance of any one attached to the consulate, some of these blank forms so signed might pass into the hands of the agents of Portuguese slave traders, who might go to the office to procure the consular certificate.

Another suggestion, which some circumstances render perhaps still more probable, is, that blank forms so signed may have been corruptly furnished to the persons holding them by some one attached to the consulate. I take pleasure in saying that, in regard to this, as well as every other ground of complaint against him, I believe the consul to be above the suspicion of acting from corrupt pecuniary motives. The vice-consul, (Mr. Smith,) an aged and highly respected citizen of Massachusetts, is also, from what I hear of his

character, entirely above suspicion. I regret to say that I cannot express myself in an equally satisfactory manner in regard to all the persons who have recently been employed in the consulate,—and particularly a Mr. Crusoe, who was for some time a clerk in the office, and who seems, from what I heard of his character, to have enjoyed much too large a share of the consul's confidence. Mr. Crusoe is the person to whom it was the intention of the consul to intrust the charge of the office during his absence; and I cannot but consider it as fortunate that accidental circumstances prevented this arrangement from taking effect. Mr. Crusoe is a young man, born, I believe, in Gibraltar, who came to the Havana some years ago, from Rio Janeiro, where he had been employed as a clerk in the American consulate. This circumstance, together with his acquaintance with foreign languages, and somewhat pleasing manners, appears to have been his recommendations to the consul at the Havana for a similar employment there. He was taken into the office on a small salary, and had no other visible resources; but it was soon apparent that he must have some ways and means unknown to the public. I was informed by the acting consul, (Mr. Moreland,) a gentleman of undoubted veracity and honor, that Crusoe's pay, as clerk, would not have defrayed the expenses of his dress; and that he was a person of dissolute and extravagant habits. These circumstances naturally led to the suspicion that he might procure supplies of money from the slave-traders, by employing his position in the office to facilitate in some way their operations. Representations, as I understand, were made to the consul upon this subject; but without the effect of shaking his confidence in the individual alluded to, which continued unimpaired up to the last moment of the consul's stay in the island, as was apparent from the fact that he had made arrangements for giving Mr. Crusoe the whole charge of the consulate during his absence. A severe fit of illness with which Crusoe was attacked just before the consul's departure, defeated this plan, and made it necessary for him to give up his place in the office. When I was at the Havana, I found him partially recovered, and expecting, on the return of the consul, to be reinstated in his place. The impression in regard to his character which was made upon me by his conversation and deportment, corresponded with the accounts that I had heard of him, and satisfied me that he was a person who ought not to be trusted. The most probable solution of the problem presented by the blank forms appears to me to be, that they were copies of the form annexed to this report, signed by the consul for use at the office, and sold by Crusoe to the Portuguese slave traders, to be employed by them in authenticating papers as occasion might require.

SEC. XIV.—*Correspondence of the consul at the Havana with the British commissioners.*

The correspondence that has taken place, from time to time, between the consul and the British commissioners at the Havana, constitutes, strictly speaking, no part of the consul's official proceedings; but as it is frequently alluded to in his correspondence with his Government, and in the publications that have been called forth by the agitation of this subject, it may not be improper to give it some attention in this report.

As early as October, 1836, the British commissioners called the attention of the consul at the Havana to some cases of apprehended violation of our laws prohibiting the slave-trade, which appeared to them to require his in-

tervention. At the beginning of this communication, they state that "it would be their painful duty to report the circumstance to their Government." The letter containing this passage is understood to have been written by Mr. Schenley, (then one of the commissioners, and temporarily acting as the principal one,) a person of but little discretion, or capacity for business. He has since been removed to another situation, similar in character to the one he held at the Havana, but of less importance; and, from what his successor (Mr. Kennedy) said to me on the subject, I had some reason to suppose that the imprudent language which he employed in this letter was among the causes that led to his change of position.

The letter containing this offensive passage was returned to the British commissioners by the consul, with an intimation that he did not feel himself at liberty to receive any communication of that character. Here all correspondence ended for the time. Two years afterwards, when the *Venus* returned from Africa under the character of the Dutchess of Braganza, the British commissioners addressed a letter to the consul, which I have already had occasion to allude to, and in which they suggested the propriety of his taking some steps to ascertain the character of the vessel, and enforce the laws of the United States, so far as the occasion might appear to require. This letter was written by Mr. Kennedy, who had in the interim taken the place of Mr. Schenley on the British commission, and has since acted as the principal commissioner. Mr. Kennedy is a person of superior talent, and of frank though not very polished manners. He had been a member of Parliament before he came to the Havana; and it is commonly understood that he obtained his employment as commissioner in consideration of his having vacated his seat for the borough of Tiverton, in order to make room for Lord Palmerston, who had lost his election to the House of Commons. However this may be, it is certain that he had, on two or three occasions, displayed a rather uncommon degree of independence in his political course. He was the only member of the House of Commons who divided with O'Connell in favor of repealing the union with Ireland, and was one of a very small minority who opposed the grant of an indemnity to the West India slave-holders on the emancipation of their slaves. The latter vote seems to show that he has a strong personal feeling on the subject of slavery, independently of any considerations of expediency or policy. This feeling may probably have been derived in part from the influence of Mr. Wilberforce, who was his relation, and in early life his guardian. It serves to account naturally for any excess of zeal which he may have shown in the execution of his duties as commissioner, and particularly in his correspondence with the consul.

The consul made a reply to this letter, in which, after distinguishing favorably between its style and that of the preceding one, he requests the commissioners to furnish him with any information which they may possess respecting the vessel in question. The commissioners, in a short reply, pointed out more particularly than in their preceding letter the steps which they thought the consul ought to take. To this reply the consul rejoined at considerable length, and with so much asperity, that the British commissioners did not deem it expedient to pursue the subject, and merely sent a brief note, which, for the second time, terminated the correspondence.

Some months afterwards they wrote another short letter to the consul, informing him, by direction of Lord Palmerston, "that the two Governments having by the tenth article of the treaty of Ghent, mutually engaged

to each other that they would 'use their utmost endeavors to promote the entire abolition of the slave-trade,' it seems to be perfectly consistent with the respect which the agents of each country must feel for the other country, that they should not only themselves act in strict accordance with the spirit of the engagement which their own Government has contracted, but that they should furnish to the agents of the other Government any information which may be calculated to enable that other Government more effectually to accomplish the common purpose."

To this letter the consul, after an interval of some weeks, made a long and argumentative reply, in which he reviews the whole subject of slavery in all its bearings; censures in strong terms the course pursued by the British Government in regard to this subject; and freely accuses that Government and the commissioners, to whom the reply is addressed, of insincerity and corruption, as well as impertinent interference in matters with which they have no concern.

It is impossible to review the correspondence without perceiving that the consul, though apparently influenced by sentiments of an upright and generous character, has totally lost sight of the moderation in style and temper which ought to characterize all communications, however informal, between persons charged with important national interests. The phrase above alluded to, as introduced by the British commissioners into their letter of 1836, though it might possibly have admitted a more favorable construction, appeared upon its face to intimate that they considered the American consul as responsible to the British Government, and might fairly be regarded as offensive. In taking this view of it, and in returning the letter which contained it, the consul exhibited a proper sensibility on the score of national honor, and a suitable discretion. Thus far he kept himself in the right, and placed his correspondents in the wrong. Unfortunately, in his part of the subsequent correspondence he displays other qualities, and reverses, so far as lay in his power, the positions of the parties. As the next communication from the commissioners was, by his own admission, inoffensive in point of style, no good reason can be given why it should not have been received in a friendly spirit. Although the consul is certainly correct, in saying as he does, with great emphasis, in his letters to the commissioners, that he and they are not formally known to each other in their public capacities, and that there can be, of course, no regular official intercourse between them, there could be no objection to informal communications, either verbal or written, where they appeared likely to promote any object in which both parties had a common interest. It is well known to all who have any experience in diplomacy, or knowledge of general history, that such communications constantly take place among the agents at the same residence of different nations who are engaged for the time being in any common cause; that agents so situated are considered as constituting virtually a sort of permanent standing committee; that each habitually seeks information and counsel from all the rest, as a favor; and that the rejection of an offer of such information and counsel as an improper interference, would never be thought of. How naturally such communication takes place in all similar cases, I had occasion to observe in an occurrence that took place while I was at the Havana. It happened that a British vessel was taken by a Spanish pirate out of Matanzas, and that the acting American consul accidentally received the earliest intelligence upon the subject that reached the Havana. Without stopping for a moment to in-

quire whether he should not be suspected of exercising an improper surveillance over foreign flags, or impertinently interfering with matters that did not belong to him, the acting consul immediately communicated the information which he had received to the British consul, and to the Captain General. The Captain General and the consul, far from regarding this proceeding as an impertinent interference with their official duties, expressed the warmest gratitude for it, as for a favor done them. The next morning I found the captain of a British national ship, then in the harbor, at the office of the consul, and in consultation with him on the subject.

I am unable to see why a friendly intimation from the British commissioners respecting the character and operations of a vessel known to have been engaged in an expedition denounced alike by the British and American legislation as piratical, should not have been received in a similar way. In treating such an intimation as an impertinent interference with his official duties, the consul lays himself open to the suspicion of being under the influence of some secret motive of an improper character,—although I cannot suppose that he was really governed by any worse considerations than the zeal for national independence, and the peculiar views on the subject of slavery in general, to which I have previously alluded as the probable leading motives of his conduct through the whole of this business.

In making these comments upon the tone of our consul's correspondence with the British commissioners, I shall not, of course, be understood as expressing approbation of all the proceedings of the British Government in its intercourse with foreign nations, upon this subject,—still less of all its pretensions and proposals. Some of these are of a nature to authorize the suspicion, that while a large portion of the persons in England who have taken part in the effort to abolish slavery and the slave-trade have been governed by honorable and philanthropic motives, another portion have been governed by other motives of a far more questionable character. But, admitting the justice of this suspicion to any extent which may be thought reasonable; and supposing even (what, in the present case, does not appear to be necessary) that the offer of information made to the consul by the British commissioners might fairly be regarded as an impertinent interference with his official duties,—respect for his own Government and himself, if not for the commissioners and the British Government, should have dictated to him the indispensable necessity of employing in his reply a perfectly decorous language in regard to the latter. In the communications between the agents of different nations upon important political interests, opprobrious terms and direct imputations of improper motives are entirely inadmissible. This is a rule which suffers no exception; and the agent who imprudently violates it, far from strengthening his case, (as the consul seems to suppose that he was doing,) materially weakens it, and places himself, so far as manner is concerned, whatever may be the substantial merits of the question, in the wrong.

SEC. XV.—*General conclusion.*

I have thus briefly reviewed the various topics connected with the abuse of our flag at the Havana, and stated, in regard to each, the conclusion that appeared to result from the evidence before me. I am not required by my instructions to make any report upon the complaints that have been made, by several shipmasters, of supposed improprieties in the treatment which they received from the consul. I had no opportunity, in the absence of the consul and of all the parties, and without even the advantage of con-

sulting the consular papers, to form any opinion upon their complaints, other than such as might result from reading the summary statements of some of them which I received from the department, and from some occasional conversations of a general character with persons who had known the facts at the time of their occurrence. Impressions formed on grounds so slight as these could, of course, be of little consequence, and scarcely deserve to be mentioned,—especially since the case of Captain Wendell, which seems to have been thought the most important, has been brought into the courts of justice. I will add, however, that any opinion in regard to these cases, so far as I was able to form one, was favorable to the course pursued by the consul.

I was desirous, while at the Havana, to find some opportunity of ascertaining by experiment how far it would be practicable to bring the individuals concerned in the abuse of our flag to justice; and had determined, if any suspicious case should present itself, to direct the acting consul to make the attempt. I inquired daily at the consulate into this and every other point of interest; but, although two or three vessels were cleared for the coast of Africa under our flag, I was explicitly assured by the acting consul in regard to each, that there was no suspicion of abuse or illicit trade.

I am, sir, with high respect, your most obedient servant,

A. H. EVERETT.

Hon. JOHN FORSYTH,
Secretary of State.

[Copy of blank form, enclosed in the preceding.]

CONSULATE OF THE UNITED STATES OF AMERICA, *Havana*:

consul of the United States of America, do

hereby certify,

In testimony whereof, I hereunto set my hand, and affix my seal of office,
at Havana, this day of in the year of our Lord one
[L. s.] thousand eight hundred and , and of the independence of
the United States the

Mr. Forsyth to Mr. Trist.

DEPARTMENT OF STATE,
Washington, February 10, 1841.

SIR: I send you, enclosed, the copy of a correspondence which took place last summer at Havana, between Mr. A. H. Everett and her Britannic Majesty's commissioners at that place. These papers were recently communicated to this department by Mr. Fox, her Majesty's minister at Washington, with other papers in regard to the subject of the African slave-trade; and relating, as they do, to your official conduct, it is deemed proper that you should be put in possession of them. Your observations upon them, and the report of Mr. Everett, heretofore put into your hands, will be impatiently expected by this department.

I am, sir, your obedient servant,

JOHN FORSYTH.

N. P. TRIST, Esq. *Consul, &c.*

Mr. Trist to Mr. Forsyth.

NEAR-EVERETTSVILLE, ALBEMARLE COUNTY, VA.,
February 13, 1841.

SIR: I have the honor to acknowledge the receipt to-day of your favor of the 10th instant, covering copies of certain papers recently communicated to the department by her Britannic Majesty's minister at Washington.

They consist of two series, 1st. A despatch from Mr. Kennedy, the British commissary judge at Havana, enclosing the correspondence between himself and Mr. A. H. Everett. 2d. The reply of Lord Palmerston to the call made upon him at my request, [despatch No. 94, September 7, 1839,] for the grounds of the charge published by him to the world against the American consul at Havana, of having furnished to the masters of "vessels about to be engaged in the forbidden traffic in slaves" certain "blank forms" signed in blank, "to be filled up at pleasure, as occasion might require."

The latter subject will be found fully discussed in my examination of Mr. Everett's report. I will here confine myself to this response of Lord Palmerston to the call made upon him. It affords a true idea of the game of which (as I well knew must happen) I have become the object, in consequence of the mode in which the audacious pretension advanced by agents under his direction was met by me. The charge turns out to be what I pronounced it to be—a wanton calumny. A calumny, inasmuch as it is false. Wanton, inasmuch as it is absurd; so essentially absurd, as to render it impossible that it should be seriously believed in by any one conversant with the subject, (the papers used in navigating vessels,) with express reference to which it was uttered; and consequently impossible, but it must be at bottom a sheer fabrication, or have originated in mistake on the part of some subordinate officer—a mistake which might be perfectly venial in its origin, but was far otherwise in the use thus made of it by a principal Secretary of State, recklessly seizing upon it as a pretext for a blasting charge against one placed towards him in the relation which had grown up between us through the acts of functionaries under his direction. That it had originated in an unintentional misstatement by some boarding officer—a midshipman, perhaps—in taking note of the papers hastily inspected in a search at sea, or in some such way, I deemed the more probable supposition, as will be seen on turning to the despatch above referred to.

This conjecture is substantially verified by the documents now furnished by Lord Palmerston. These "blank forms" signed in blank, "to be filled up at pleasure," which constitute part of the outfit furnished by the consul to "vessels about to be engaged in the slave-trade," turn out to be—what? *Three certificates of the discharge of so many sailors at the port of Havana, found on board of one vessel!* Such proves to be the character of the important documents for enabling slave-traders to navigate unmolested, or otherwise affording facilities to their operations, which the world has had the word of her Britannic Majesty's principal Secretary of State for Foreign Affairs for believing the American consul at Havana to be in the practice of furnishing signed in blank, "to be filled up at pleasure!"

And is it true even that these three certificates are signed in blank? No! upon the face of each is written the name of the sailor, and of the vessel from which he is discharged. In what, then, originated the assertion that they were thus signed? In this: the printed form contains in the margin a printed column of the words (stature, eyes, hair, nose, &c.) ordinarily used

in such documents for describing the person by writing opposite the height, complexion, &c. of the person named in the body of the certificate. These details, for a reason which will presently be stated, are not written in these certificates. And this is the sense in which it is true that they are "signed in blank."

Would any one have believed it? Could any one have conceived the possibility of such a catastrophe to such a plot? And yet it is but of a piece, as will be seen in my examination of Mr. Everett's report, with the rest of the miserable game.

Lord Palmerston, upon being called upon to substantiate the truth of his Parliament-made proclamation, invokes the commissioners at Sierra Leone. They transmit all the documents delivered by the officer (Lieut. Oliver, of the "Fair Rosamond") with whom the statement had originated, on his taking possession of the vessel, (the Portuguese schooner *Constituição*;) and they "beg leave to state that we have not been able to discover any papers *exactly answering the description in question*, among those lodged in the archives of the court," "Should the certificates now transmitted to your lordship not be the papers mentioned by Lieutenant Oliver in his report to Admiral Elliot, and alluded to in your lordship's despatch to Mr. Fox of the 22d February, 1839, they cannot have been delivered into the court, as they should have been, when the *Constituição* was presented for adjudication." All the circumstances, however, go to prove, beyond the possibility of doubt, that these certificates *are* the papers described by "the description in question;" "in each" of them, as the commissioners point out, "the description of the man named has been omitted by Mr. Trist, and the *space for this purpose left open*." They go on to point out another fact.

"In handing these certificates to your lordship, we would beg leave to draw attention to the fact, of the names of two only of these seamen stated to have been landed from the *Constituição* being mentioned in the muster-roll, (enclosure No. 1,) although Mr. Trist granted the certificates in question on the day subsequent to that on which he had authenticated the muster-roll."

This is of value, as an indication of Sierra Leone wealth in facts against the consul, and of the importance of those facts. Sierra Leone, it will be recollected, is the seat of the court before which the vessels—Spanish, Portuguese, and *American*—containing all these astounding proofs of the consul's malpractices, with which the welkin has been ringing for years past, have been taken for adjudication; and the commissioners to whom Lord Palmerston had recourse are judges of that tribunal. They here put themselves to the trouble of calling his lordship's attention to a certain discrepancy between these certificates and the crew-list, or "muster-roll," as they call it, of the vessel. Of the three names on the certificates, *one* is not to be found on the crew-list! Admit this to be true with regard to all three of the sailors, what would the fact be worth? What would it prove, or tend to prove? Of what earthly importance could it be, under any possible point of view? Who can so much as imagine a motive for intentionally putting upon such a certificate a name not upon the crew-list? Let any one conversant (as these commissioners cannot but be) with maritime affairs—let every officer of our navy, every captain in the merchant service, be called upon to exercise his ingenuity upon the problem. Who is it that does not know that sailors are in the habit of calling themselves one day by one name, and the next day by another? that they oftener ship by a "fancy

name" than by the true one? And what is the real truth of the matter, as shown by the documents referred to? The names on the certificates are *Eusebio Perez*, *Miguel Maristan*, and *José Maria Martinez*. On inspecting the crew-list, we find the first of these names, and also the last; and these two are separated only by one name, to wit: *Miguel Martorany*. Now, suppose the point to possess importance, instead of being, as it is, utterly destitute of the least semblance of it; who would require any thing further to satisfy his mind that this *Miguel* is the man who was discharged; and that the discrepancy between *Maristan* and *Martorany* originated in a clerical error in making out either the crew-list or the certificate—if, indeed, the man did not himself give rise to it, through his habitual use of either name, indifferently? There is not a day but the very same thing happens, and to a far greater extent, all the world over, as is known to every one who ever had any thing to do with sailors. Take the famous case of the brig *Kremlin*, (House report No. 707—1839-'40.) In my first communications, I called the second mate *John Fitch*. This name was taken from the crew-list, made out at the New York custom-house. His true name, plainly written on the shipping articles, from which the crew list had been made out, was *Chauncey Fitch*. What, then, I again ask, is this "fact" worth, that his lordship's "attention" should be so carefully called to it? What possible motive could any one conversant with the subject have for making this parade of it, except that of eking out, for effect upon uninformed minds, the commissioners' dearth of something more substantial? Can their resort to such means fail to speak volumes upon this point?

But why were these important navigating documents signed in blank, "to be filled up at pleasure?" Why was not the height, and the color of the eyes and hair, and character of the nose, of *Miguel* and his companions, scrupulously written down, so as to secure the officers of her Britannic Majesty's navy from perplexity in deciding whether the vessel searched by them was or was not equipped in contravention of the treaty? In reply to this question, I will refer to the explanation of the nature of these certificates of discharge of sailors, their origin and their purpose, contained in the House report No. 707 of the last session, (p. 358 et seq., particularly p. 392—7.) The certificate is intended for use (and it is absolutely insusceptible of any other earthly use) at the office of the captain of the port, as the basis of his *permit to be on shore*; and this particular form was adopted at his suggestion. After it had been printed, the trouble attending the minute description of the sailor's person at the consulate was found to be needless, inasmuch as it was repeated directly after, in making out the permit at the captaincy of the port, where, also, from the greater facility in the use of the proper Spanish terms, and other causes, the trouble was less felt. On this account, the filling up of the certificate with these details was discontinued. In this instance, the certificates are seen not to have been presented at the captaincy of the port, (where they would have been retained, and permits delivered in their stead,) but to have gone on board the vessel. How did this happen? I cannot speak positively, but it is not very difficult to conjecture. The men, probably, after asking their discharge and receiving it, in a moment of dissatisfaction, perhaps, with the captain, or some one else on board, agreed to ship again; and, consequently, had no occasion to present themselves at the captaincy of the port.

Having disposed of his lordship's documentary proof in support of his blasting charge, I will take up the two other documents transmitted by him.

First. The *crew-list* or "muster-roll." This is "authenticated" by me; that is to say, it has attached to it two certificates—the one, stating the declaration of the merchant named therein that he appointed the mariner named therein as master; the other, that the master declared the list to be a true and exact one of the crew and armament of the vessel.

It is remarked by the commissioners, that the certificates are "dated the day previous to that on which the muster-roll itself bears date." This fact is brought into view also by Mr. Everett, in his report, with the comment that it "is not explained by the consul." As it was from his report that the fact first became known to me, it could scarcely have happened that it should at that time have been made the subject of explanation "by the consul." No reader of the report could fail to take for granted that the case had been made the subject of explanation, and that this explanation was before the reporter, and constituted the subject of his remark. Such, however, is not the fact: this is the first time that the subject has, in any way, become a topic of remark by me. "Not explained!" What is there in it to explain? To what mind does it not explain *itself*? Who can imagine a motive of any sort which could cause such a discrepancy to occur through design? Here is a crew-list, with a certificate attached to it by means of a seal, so as to form part of it. The certificate refers to the list, states the number of men named in it, and that the captain declares it to be a true list of his crew. But the certificate is dated one day earlier than the document to which it is thus attached and thus refers; and this suspicious, impenetrable mystery "is not explained by the consul!" Millstone of millstones! what vision so keen as to penetrate thee? Why, where is the man—except, indeed, Lord Palmerston, and the British commissioners, and Mr. Everett—who can, for the life of him, help seeing at a glance the utter impossibility that "this difference of dates" should have occurred through any other cause than error or oversight, purely accidental and unintentional? Where is the imagination so potent as to conjure up the faintest semblance of a motive for it? Oversight, inadvertence, *carelessness*, if you will, is the only possible cause for it. And does it imply any very extraordinary degree of carelessness even, that, in attaching to a crew-list, dated the 8th of June, a certificate stating its contents, the certificate should, whether correctly or incorrectly, be dated the 7th of June, without noticing the date of the list?

The second of the two documents is the "custom house certificate." The same considerations apply to the "fact that the consul's signature is wanting" to the certificate attached to this document by means of the consular seal. No cause can be imagined for this fact, except oversight; and no one can help seeing the probability that the oversight in regard to both documents was caused by a press of business at the moment when the certificates were attached to them.

In regard to this document, also, the statement of its nature and purport, first by the commissary judges, and then by Lord Palmerston, is richly entitled to the "attention" which they invoke to the important particulars which have been under consideration. It is not unworthy of its association with the "forms signed in blank, to be filled up at pleasure." By the commissary-judges it is described as "a custom-house certificate of the lawful objects with which an extraordinary number of water-casks, a boiler of large dimensions, and plank, had been embarked in that vessel." By way of improvement upon this, in its bearing upon the consul, Lord Palmerston

(possibly one of his correspondents ; but, so far as my memory can be relied upon, it is his own language,) in some despatch of his, referring to this very document, avers, as specially entitled to attention, the fact that "the consul has put his name to a certificate of the lawful objects" for which articles prohibited by the treaties under which Spanish and Portuguese vessels are subject to search by British cruisers had been embarked. Admit this to be true ; what possible operation could such a certificate have, or be expected to have ? A certificate that things which the treaty forbids a Portuguese vessel to carry, are carried by her for a lawful object ! In what possible way could this prove a "facility" for any possible purpose ? What possible end can be served by specially invoking in "despatches" written for publication in parliamentary papers "attention" to such a fact, except effect upon the uninformed—except the end of producing the impression that such a certificate possesses the virtue to hinder, in some way, the measures for enforcing the prohibition ? But I am wandering from my object ; which is, simply to point out the misrepresentation—to prove, by the document itself, the untruth of the statement.

"Put his name to a certificate !" What do these words mean ? They mean this—nothing less : that the person in regard to whom the averment is made, is the certifier to the facts set forth in the certificate. If A "puts his name" to a certificate that a certain cask contains hardware, and B appends to A's signature a certificate that it is his signature, would it, or would it not, be a wilful falsehood in any one knowing the English language, to make this act of B's the ground of the averment that he had "put his name" to a certificate that the cask contained hardware ?

Well, here is the document. And what does it turn out to be ? First, however, let us have recourse to "McCulloch's Dictionary of Commerce," in order that we may be duly prepared against becoming perplexed in considering a subject which, to judge from these givings out of my lord and his despatch-writers for the "parliamentary papers," is of a nature at once so novel and so intricate.

"MANIFEST, in commercial navigation, is a document signed by the master, containing the name or names of the places where the goods on board have been laden, and the place or places for which they are respectively destined. * * * * * The manifest must be made out, dated, and signed, by the captain, at the place or places where the goods, or any part of the goods, are taken on board." The author then refers to other heads, under which are given the details of the subject, showing that, at every port of the United Kingdom (as is the case at Havana, and at every other port in the world where a custom-house exists) the master of a ship, before taking cargo on board, is required to present at the custom-house a *statement of the articles so intended to be laden*.

We are now prepared against perplexity from the mysterious properties of the "custom house certificate" under consideration. We may now, without disturbance from the impressions produced in regard thereto, examine how far it tallies with the description of the Sierra Leone judges ; and how far the consular certificate attached to it verifies the averment of Lord Palmerston. According to them, the custom-house certifies to the "lawful objects." According to the improvement upon them, it is the consul who does so. Here is the document. Its sum and substance is as follows : The custom-house certifies that, among the statements there registered by the master of the vessel, is one of the following tenor : "Eight casks of 4 pipes,

sixteen do. of 3 do., twelve do. of 100 and of 60 gallons ; for carrying water and palm oil on the return voyage. Sixteen hundred feet of boards, and 378 feet of scantling, for building a shanty. One large boiler for clarifying oil." This certificate is signed by the contador of the custom-house, and the contador's signature is certified to by the consul.

Compare the "fact" with the averments published to the world in regard to it! And what can be the motive for such misrepresentation? Can it arise from any other cause than a consciousness that the naked truth will not answer *the purpose*? Had the course of the consul truly been of the character asserted, could it be requisite to resort to such expedients?

But, it will be asked, why go even so far as to certify to the signature of the contador? Why did the consul authenticate the documents at all? This is a totally different question. It has (and I bespeak especial attention to the fact) no connexion whatever with the point now under consideration. One thing at a time. The point now is, the *truth* of the charges—the utterly blasting charges—proclaimed against me by Lord Palmerston, under all the guaranties for their accuracy afforded by his station. They were instantly met by an emphatic denial, and a call for the proof. The proof is produced, and it refutes them. It does more; it proves the spirit, the utterly reckless spirit, in which the game has been carried on; and that they who played it were fully aware that the truth could not answer the purpose. The other topic is too extensive a one to be discussed here: at least, it has been rendered so by the misrepresentations which it is requisite to meet. It will be found discussed in my examination of Mr. Everett's report. Here I will merely point to the fact, that the only possible operation which these authentications could have any where, was that of *proving that these documents were executed at Havana*. This truth is stamped upon their face; and their being in the English language could have no other effect than to render it the more palpable and flagrant to the officers of that power which seems determined not to relinquish its prerogative as high constable of the seas. Beyond this, it could have but one effect—that of proving that the American consul at Havana was not afraid to furnish to the stipendiaries of cant the weapons which he knew would be used against him. The battle has come on. Whether his trust in the power of truth is to be justified, remains to be seen. In the effect of the inspection of the documents before us, we have a cheering omen as to the final result. Even if I should fall, the cause must prevail. The principle of national independence will receive the attention due to it; and it, at least, will triumph.

Before taking leave of the vessel which has furnished the precious trumps of which such skillful use has been made, I will recur to one of them—the *crew-list*. The important fact (the "difference of dates") connected with the consular certificates attached to it has been considered. It remains to consider it in itself. Under this aspect, also, it has furnished a basis for fine melo-dramatic effect.

Here is the *crew-list*, bearing the consular certificates to the effect above stated. What does it show? "Twenty-four men, all told," to wit: captain, 1st and 2d mates, boatswain, carpenter, steward, cook, eleven sailors, five boys, and one waiter. It states, also, the arms on board, to wit: twelve muskets, twelve swords, one *colica*, two *gorrevadas*, and six *esmins*, (Portuguese words, of which I do not know the meaning.)

Here, too, in the parliamentary papers for 1839, (Lord Palmerston to Mr. Fox, March 22, 1839, enclosure 3,) is the official "return," communicated

to our Government, containing the remarks of the commander of the "Fair-Rosamond," by whom the schooner was searched, and seized, and carried to Sierra Leone for adjudication. He states the "crew" to number "twenty-four," and the "guns" to be "four." Also, that there were "eleven passengers, with Spanish passports, who evidently held the highest stations on board," and four men who had no passports, and were not on the crew-list. He states, further, that she had no slaves on board, but a rich cargo of merchandise for the African trade, with slave-irons and plank for deck.

Now turn to the statement given by Mr. Everett—given, *with express reference to the fact that this crew-list bore the consular attestation*, and for the express purpose of showing precisely what was sanctioned by that attestation. It is to afford an idea of "the sort of vessels which received as Portuguese the sanction of the American consular authority."* After this preamble, he describes the vessel. "She was a schooner of one hundred and twenty-eight tons burden, built at Baltimore;" "was a slave trader of the worst kind, manned by a crew of about forty persons, armed with twenty-one long eighteen-pounders, besides blunderbusses, muskets, and cutlasses, and differing in no essential particular from a common pirate." And this (as the reader of the report cannot but understand that he has the word of the reporter for believing) is the horrific crew and armament which had been sanctioned by the consular attestation of the master's declaration as to his crew-list! Compare this with the crew-list, and also with the report of the captor. He says "four guns," without stating the calibre. But, to see the marvel of this armament, it must be considered with reference to the size of the vessel. A schooner of 128 tons, *armed with 21 long eighteen-pounders!* Let all wonder cease at the celebrity of Baltimore shipwrights: part of their craft consists in imparting positive levity to the timber used by them. Doubt it who may, here is the proof. Let philosophers dogmatise as they will, and pronounce positive levity to be a positive absurdity, irreconcilable with their "laws of matter;" behold the material refutation in the handiwork of Baltimore artisans! Here is a schooner, dancing over the wave with an armament that would be a tolerably substantial main battery for a stout frigate, and would almost sink a corvette of the first class, despite her 700 tons measurement!

She is withal a "slave-trader of the worst kind." In what consists the difference of "kind," referred to by this superlative? And, for a climax, she is a "common pirate:" for, "in no essential particular" does she differ from one. Not only is she a "pirate." This word alone does not suffice; for it might fail to convey the exact truth; it might be understood in its limited, special sense, as referring to the mere carrying of slaves, which, by our law, is made what is called "statutory piracy." She is a "common pirate." Thus combined, the word answers exactly. In this union it possesses a well-settled, well-known meaning. What is it? In what consists the "essential particular" to which it refers? Everybody knows.

And what is the upshot of all this? To what end? Of course, it is to preclude misconception. It is in order that the "information," the facts, which the reporter's duty requires him to report as his Havana discoveries,

Here is a variation, akin to those which I have pointed out (see examination of the report) in the uses made by Mr. Everett of the phrase "vessel engaged in the slave-trade." Sometimes, the view taken of my acts requires that they appear to carry with them Portuguese authority; and then, my capacity is that of "acting consul for Portugal." Here, it is the "American consular authority" that is exercised to "sanction" a Portuguese vessel!

(taken from despatches addressed from London to the Department of State at Washington,) may be understood exactly as they are; that the department may be accurately informed as to the precise nature of the consular act of attesting the declaration of the master of this "common pirate," which sailed from Havana for Africa, laden with the "rich cargo" of merchandise described by the officer, who, finding on board articles prohibited by the treaty, seized her, and procured her condemnation as a vessel intended to carry slaves.

The other series of papers (the correspondence between the commissary-judge and Mr. Everett) will be passed in review in another communication.

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

Hon. JOHN FORSYTH,
Secretary of State.

Mr. Trist to Mr. Forsyth.

NEAR EVERETTSVILLE, ALBEMARLE CO., VA.,
February 18, 1841.

SIR: It was my expectation that by the middle of January, at latest, I should be enabled to lay before you my examination of the report made by Mr. A. H. Everett; and this expectation would have been realized, but for my being, towards the close of the year, visited with an affection of the head, which incapacitates for any thing like continuous mental exertion. Having been subject to it from boyhood, I know from experience (what is familiar to all physicians) that the proper and only remedy is rest and recreation. But, through my desire to finish the task in which this attack found me engaged, I was tempted to disregard the dictate; and the consequence has been to aggravate and prolong it to such a degree, that I am now farther from the object, for which I incurred the risk, than I probably should have been had I at once yielded to the necessity of allowing myself some relaxation. That this necessity should have occurred, is scarcely to be wondered at; considering that, from the early part of 1838, down to this time, my mind has been incessantly on the stretch—not, to be sure, in the sense denoting severity of effort, but in the sense of continuous toil. During this period, I have known no respite from it. There has not been a moment when I was free from subjects presenting the most urgent demands upon my attention.

For many weeks past, the affection has been gaining ground, so as to render continuous thought more and more difficult. Endeavor as I will, it now takes me several days to plod along through as much work as, two months ago, I could, without inconvenient effort, accomplish in one. Under this state of things, I have determined to transmit to you the accompanying portion of my work, to be followed by the other parts as they shall be got ready. I yet flatter myself with the hope that the whole may be so before the end of the month.

The portion now transmitted more than suffices—or I labor under some strange hallucination—to show the degree of reliance to which the report is entitled: whether it be viewed in regard to the correctness of the "infor-

mation" reported, the accuracy of the averments of fact, expressed or implied, (more frequently in the latter shape,) in which it abounds, or the spirit which has presided in its concoction.

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

Hon. JOHN FORSYTH,
Secretary of State.

EXAMINATION OF MR. EVERETT'S REPORT.

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* In point of fact, this chapter, like many others, does not contain a particle of "information," obtained at Havana or elsewhere. It is purely a dissertation, for the benefit of the Secretary of State, or any other whom it may concern, upon the consul's correspondence. This point will be treated of hereafter.

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EXAMINATION OF MR. EVERETT'S REPORT.

Preliminary remarks.

“*Judex damnatur cum nocens absolvitur*,” is a maxim which Mr. Everett has kept steadily in view in discharging the duty confided to him. Indeed, it has not served merely to govern him in the performance of his appointed task. Its influence has extended much further: it has been such as to render him unconscious of the existence of any bounds to the field of duty in which he found himself. This, if it be not apparent to every eye, upon the face of his report, will become so in the course of the examination on which I am about to enter.

Let me not be misunderstood. If I advert to the spirit in which the trust committed to him has been fulfilled, I do it not in the spirit of complaint. It is solely to call attention to the appropriateness and the value of his work as a basis for my vindication. No one can read it, and suspect him of bias in my favor. All to whom I am known will see in it abundant proof that he is not one of them; that, whatever weight of character may have become attached to me in the course of the forty years that I have lived, it has had no disturbing power over the equipoise of his judgment; that to his eye, every act of mine—every indication, whether of act or of motive—has appeared through the achromatic atmosphere of pure reason, divested of any coloring which individual character can serve to impart.

This is precisely, so far as it bears upon myself, as I should have wished it to be, both for my own sake and the sake of the country. The charges against me are of a nature to require absolutely that they be refuted, or the brand be put to my forehead; and of all possible forms of refutation, none other, perhaps, could have been equally effectual with the one to which a reply to this report must necessarily take. That the charges are there presented under the guise best calculated to secure their reception, no one can read it and fail to be fully aware; and if they be dislodged from his mind, nothing more can be requisite to satisfy him that my task has been thoroughly performed,—that their nature has been proved to be such that, under no guise, can they dwell where daylight shines.

SEC. I.—*First section of the report examined: alleged employment of American vessels in the slave-trade at Havana.*

I. I now enter upon the examination of the report. Full justice to the subject would require a minute analysis of the entire production: for in it we know we have the result of the endeavors of a mind no less ingenuous than able; and of all the forms which the exposition of a subject may take, few are better calculated to convey a lively perception of the truth, than that which consists in following up such a mind, step by step, examining the views at which it has conscientiously arrived, and discovering their deceptiveness. Two considerations conspire, however, to restrict this operation, in the present instance, to a comparatively narrow field. Want of time on my own part, and a proper regard for that of others, equally require that a process so fruitful of prolixity and tediousness be limited to that portion of the report which constitutes the basis whereon the edifice has been

erected. If, on examination, it proves to be unsubstantial, no further exploration will be needed to make us sure that the entire superstructure must partake of the inherent nature of all baseless fabrics; and that the only title which it can possess to further consideration rests upon the advantage above adverted to, as derivable from contemplating the semblance of truth in contrast with the reality.

II. Locke in his Essay "on the conduct of the understanding," ("in its progress towards knowledge," as he afterwards explains, contradistinguishing these inquiries which are engaged in, in the design of "much talk and little knowledge," from such as have knowledge purely for their aim,) remarks, "I will not here repeat again the getting *clear and determined ideas*, and the employing our thoughts rather about *them*, than about sounds put for them; nor of the *settling the signification of words*, which we use with *ourselves* in the search of truth, or with *others* in discoursing about it." And further on, "I have copiously enough spoken of the *abuse of words* in another place; and therefore shall, upon this reflection, that the sciences are full of them, warn those that would conduct their understandings right, *not to take any term* for any thing *till they have an idea of it.*" From these, and numerous other passages of the same import, scattered everywhere throughout his writings, it is manifest that the use of words without "determined ideas" was deemed by him, as it can scarcely fail to be by any one who gives his attention to the subject, the most operative of the omissions "that men are guilty of, in reference to their reason, whereby this faculty is hindered in them from that service which it might do, and was designed for."

III. The importance of the maxim so earnestly inculcated by this great reasoner, is very strikingly verified in the report under consideration. It proves that, however distinguished for acuteness the inquiring mind may be, and however thorough its discipline, the precaution enjoined by him is the only safeguard against being unconsciously led by vague and fallacious reasoning to the most deceptive views.

IV. A case presenting a stronger title to this, and every other precaution against error, can scarcely be conceived. Essentially juridical in its nature, the inquiry presented by it, to be conducted justly and fairly, must be conducted with the nicest observance of those maxims which jurisprudence has gathered around the shrine of justice, and consecrated as indispensable instruments for obtaining her responses. In the question here discussed, it is true that no human life is placed in jeopardy. But it is no less true, that a human reputation is at stake; that, upon the decision, turns the imputation of a man's character; and upon the conduct of the inquiry, depends the righteousness or the unrighteousness of that decision. In proportion, then, as our estimate of the value of character, and our sense of the accountability incurred by taking away a man's good name, may be high, must the obligation to give heed to the delicate juridical nature of the inquiry impress itself strongly and clearly upon the mind.

V. The question is, whether a public officer has been guilty of lending himself to violations of the laws—the highly penal laws of his country. Such is the inquiry here conducted by Mr. Everett. The answer arrived at is in the affirmative.

VI. Let us pause for a moment to consider what such an answer to such an inquiry presupposes. It implies, first, that it has been fully and clearly established, that violations of the law have been committed: violations, not

of its *spirit*, but of its *provisions*; infractions, in the strict sense, requisite to the conviction of the offender. It implies, secondly, that it has been fully and clearly established that the requisite proof of such infractions existed, and was within the officer's reach. It implies, thirdly, that it has been fully and clearly established that all this was known to him, or might have been known, had he used the degree of vigilance rightfully to be expected from the occupant of his post. And, fourthly, it implies that it has been fully and clearly established, that, with reference to such a state of facts, it was by law his duty to act; and that he has failed so to do. And supposing these points to be all established, a supplemental inquiry would still remain, before the degree of moral reprehension warranted by them could be determined. For this, it would be requisite to ascertain whether the official supineness was wilful and deliberate, and induced by corrupt motive; whether it arose from some human frailty of a lighter shade; or whether its cause is to be found simply in a mistaken view of law and duty.

VII. The first of these requisites involves, as its indispensable basis, strict attention to the precise nature of the prohibited act. This is a point whereon, particularly, every thing like vagueness is clearly inadmissible. In the last, is involved an equally determinate reference to the duty alleged to have been omitted—a precise specification of the course which ought to have been pursued. It clearly will not do to say, vaguely, that the officer ought to have acted; and, upon the strength of such an assumption, to find him guilty for not having acted. It must be shown, with the utmost precision, what the duty is which he is charged with having proved false to; wherein consists the action which ought to have been taken by him; and how the obligation to take that action attached to his post.

VIII. Such are the conditions, manifestly attached by the very nature of the subject, to a damnatory decision of the question discussed in the report before us; such the heads, with reference to which all the matter it may contain pertinent to the subject will naturally arrange itself; such the tests by which its relevancy must be tried, and the standards by which its sufficiency must be judged.

IX. The groundwork of the report before us is an inquiry under the following head:

“1. *Extent to which the American flag has been employed at the Havana, for the purpose of covering the slave-trade.*”

Of the matter worked up into this foundation, the larger blocks (which, owing perhaps to the space occupied by them, seem most apt to catch the eye, and to fill the mind) are seen to be certain lists of names “of American vessels employed in the slave-trade at the Havana.” The remainder consists of a variety of materials, which, although less striking to the eye, do not the less contribute to the imposing effect that results from the combination. What each is to prove to be, when the touchstone shall be applied, remains to be seen.

X. And, first, what does Mr. Everett mean by a vessel's being “employed in the slave-trade?” This question will bring into view properties of the work under consideration, illustrating forcibly the natural consequences of adventuring into dissertations upon indeterminate topics of thought. Are the ideas associated in his mind with these words perfectly distinct and definite, or are they vague and confused? Are they such that the act of being “employed in the slave-trade,” in his acceptance of the phrase, is the same act which the law (and Mr. Everett, using the language of the law)

calls "piracy?" Or, waiving the strictness in this respect which the juridical nature of the inquiry prescribes, and supposing it to be designed solely for popular use: are those ideas the same as those commonly associated with the phrase, or are they different? These are points of vital importance. Upon them obviously depends whether the views presented in the report be accurate and trustworthy; or whether they only serve to prove that his own understanding has been imposed upon, and that the same condition awaits every understanding that shall place reliance on them.

XI. A foreign statistical inquirer into American manufactures might publish an estimate of the number of thousand of negro slaves at this moment employed in the service of the proprietors at Lowell; and it is possible he might do this without the remotest intention to deceive his readers: and yet such would inevitably be the result, to any one among them who should chance not to know that there is not a slave in Massachusetts, or who should not, by being apprized of this author's mental habit of giving free scope to the *maxim qui facit per alium facit per se*, have been put upon his guard against his understanding his facts too literally. But for this security against misconception, he could scarcely fail to commit towards the proprietors of spinning-jennies (who are merely purchasers of not so much even as slave-labor, but only its products) the injustice of confounding them with actual "dealers in human flesh:" the proper designation, in the only approved phrase-book of the philanthropy of the hour, for those American citizens whose lot it is to have been born to the condition in which Washington, and Jefferson, and Madison, and Monroe passed their lives, and in which the last of the five twice-elected chief magistrates of the Union is about to close the career that has made his name a word of power throughout the Christian world. Again: the English manufacturer who makes, the English merchant who ships, and the vessel under the British flag which transports from London or Liverpool to Bonny (the great slave-mart on the coast of Africa) goods made expressly for the slave-traders, may, without any very extraordinary license of speech, be said to be "employed in the slave-trade:" and yet the announcement of a ship as being so employed would naturally convey the impression that she was employed in the transportation of slaves; and the news-collector who should make such an avowal in any other design, would, however innocently, practise deception. A far less degree, even, of looseness in the use of words, is adequate to the production of similar effects. For instance: a writer upon the state of morality in our own country might aver, in illustration of its deplorable debasement, that the highest posts of honor and trust, in all branches of the Government, General as well as State, are filled by "notorious felons." This is literally a fact. And yet, the American who should present it to the world as part of the fruit of his researches into the moral condition of his country, would, however innocent of the design to calumniate her, inevitably convey an altogether erroneous and unjust conception, in regard to her depravity, to any reader not fully aware of the precise sense of the words, wherein alone felonious misdeeds can be truly said to have countenance from the public sentiment. Against such misconception, the only security would be a knowledge of the fact that the author's abhorrence of the practice of duelling was so intense as to obliterate in his mind, no less than in the eye of the law, all distinction between "murder" or "manslaughter" in a duel, and felony of the same kind done for revenge or for lucre.

XII. It is manifest, too, that the danger here adverted to is great, in exact proportion as the subject under contemplation is calculated to work upon the sympathies; and that in the same degree, therefore, doth it behoove us, in discoursing upon such a topic—unless our purpose be to play upon the imagination—sedulously to shun all vague generalities, and to deal only in terms of so definite and precise an import as shall secure us equally against the danger of wandering from the subject ourselves, and that of conveying to others ideas not properly belonging to it.

XIII. Acting, then, upon the golden maxim so earnestly inculcated by the eminent lover of truth from whom I have quoted, I will begin by attempting to ascertain what ideas are associated in Mr. Everett's mind with the expressions—"covering the slave-trade"—"employed in the slave-trade." When this shall have been effected, we shall be prepared, first, to comprehend clearly the facts averred by him; and next, by comparing those facts with one another, and with facts derived from other sources, to judge, in regard to the picture presented by him to our minds, how far the effect produced by it is entitled to reliance as a faithful reflection of sober realities, or how far it may be requisite to guard against allowing it to affect us, except as a product of the imagination.

XIV. Through his eagerness to arrive at "the extent to which the American flag has been employed at the Havana for the purpose of covering the slave-trade," Mr. Everett plunges at once into this inquiry, without allowing himself time to ascertain the *sense* in which it may be affirmed with truth that it is so used at all. The search through the section for information upon this point does not, however, prove altogether abortive. With due diligence, and a little practice in analysis, a student may generally succeed in ascertaining—to the extent to which it may, from its nature, be susceptible of ascertainment—what his author means by the terms he uses. Accordingly, towards the close of the section we discover indications of what, in perusing this report, we are to understand by the phraseology in question.

XV. I have already adverted to certain lists "of American vessels employed in the slave-trade at the Havana," which are displayed in this section. These lists (which I will here remark *en passant*, to resume the subject in a more convenient place, are introduced in a manner not a little calculated to produce a vague and misty impression, strangely contrasting with the effect elsewhere produced by evidences of a ready command of apposite and clear language,) are followed by these remarks:

"I have thought it proper to insert these lists, as the only approximative estimates that have been, or probably now can be, made of the precise extent of the abuse in question. They appear, however, on comparing them with the general statements of vessels cleared for the coast of Africa, to be *simply lists of all the American vessels that sailed for that coast* in the years under which they are respectively placed."

Thus far, then, we see that Mr. Everett having (very naturally and wisely, seeing that they are kept at Havana for this special purpose, at a cost to their tax-paying countrymen exceeding, pensions included, the aggregate amount of salary received by the four heads of department at Washington,) had recourse to the British commissioners for "information as to the precise extent to which the national flag had been employed to cover the slave-trade," receives from them, as the only *approximation* now ("now," at this late day!) practicable, "of the precise extent of the abuse

in question," certain annual "estimates;" (*estimates of the number of vessels put into the novel shape of lists containing the name of each vessel!*) which estimates, on comparison with certain "general statements," (what these are will be shown hereafter,) turn out to be "simply lists of all the American vessels that sailed for Africa!"

XVI. But I have been led out of my way. My purpose here was not to call attention to the nature of this specimen of the "discoveries" which, through the disinterested zeal and philanthropic devotion of commissary judges and their adjuncts, and at an annual expense so trivial as barely to exceed the salary of the President of the United States, are being accomplished at Havana for the benefit of the British people; to be thence transmitted (first, duly decked and set off with what the *Westminster Review*, in a recent article on the subject, is so impolite as to term "official cant,") to her Britannic Majesty's principal Secretary of State; by him to be laid before Parliament. This I intended to postpone to another occasion. My design in quoting the passage was to show that in it is to be found, (partially, at least,) the present object of our search; which, through Mr. Everett's sense of the importance of placing beyond doubt the accuracy of the "estimates" procured by him, chances to have been incidentally, and to all appearance inadvertently, introduced at the close.

"It is not probable that they [the American vessels that sailed for Africa] were all intended to bring back return cargoes of slaves, some of them not being of a construction suitable to that service. *But the error on this account would perhaps be rather formal than material*; since nearly all the vessels despatched for the coast of Africa from the Havana, *carry out cargoes to be employed at the factories on the coast in purchasing slaves.*"

Here, then, we have a tolerably sufficient clew for arriving at the signification attached in the writer's mind to the most important phrases used in his report. Agreeably to the definition which this passage furnishes the materials for constructing, an "American vessel *employed in the slave-trade at the Havana*" is—

Firstly. Any American vessel which sails from Havana for Africa, intended to be employed in the transportation of slaves.

Secondly. Any American vessel which sails from Havana for Africa with a cargo of slave-trade merchandise.

XVII. Upon the first of the classes coming under this definition it is to be remarked, that, on a point of vital importance, the description is totally silent. The impression conveyed by the language in this, and other parts of the report, is, *that whilst employed in carrying slaves, the vessel remains American*; that she continues to be American property, navigated with American documents, and under the American flag. We are told of "*American vessels*" which are "*employed in the slave-trade,*" and which are thus employed "*at the Havana.*" And then we are cautioned not to commit the error of supposing that *all* the "*American vessels*" so ascertained to be "*employed in the slave-trade at the Havana,*" are sent to Africa to bring back cargoes of slaves. The impression made by all this is, as every one who reads it must be fully aware, such as I have just stated. It is, that *American vessels* bring cargoes of slaves to Cuba. When, however, we engage in the task of analyzing these materials for the purpose of framing a definition, we become aware that they do not suffice for one corresponding to the impression thus made. The nearest approach to precision which they admit of, leaves this important point entirely undetermined. The de-

scription is positive only as to the particular that the vessel intended to bring back slaves is an American vessel *at the time of her departure for Africa.*

XVIII. Now the point thus passed over without notice is of the very highest importance, under every aspect of the subject; and it requires but a glance to perceive that, in those bearing upon the consul, it is entitled to the most scrupulous attention. It is true, that to build or fit an American vessel in an American port for the slave-trade, and carry her for sale to Africa, or to any part of the world, is a high offence against our laws; and it is perfectly obvious that the spirit of the law is equally violated by the fitting out such a vessel at Havana. But it is no less true that, by the same laws, the offence of so fitting and despatching a vessel, to be sold *before her employment in transporting slaves*, falls immeasurably short of that of so employing an American vessel. However indistinct the two acts may be in the eye of the moralist, the law makes them as distinct as death is from life. Whether the latter be not the act which would be understood to be meant by the averment "an American vessel is employed in the slave-trade," every reader must judge for himself. Besides this distinctness of the two acts in the eye of the law, there is another reason for not confounding them in an inquiry such as the present. Even if the odium attached to them were the same both in law and in morality, it would still be obvious that the ground for imputation against the consul (supposing him clothed—which hereafter will be seen not to be the fact—with ample powers in the premises) would be far less in the one case than in the other. To sell American vessels fitted for the slave-trade, deliverable on the coast of Africa, or to despatch them for sale there, is obviously a business far easier to manage so as to elude official vigilance, and, consequently, so as to dispense with the necessity of official connivance, than would be that of "employing American vessels in the slave-trade at the Havana," in the sense wherein the averment that such a business is carried on would be generally understood. The one is, from its nature, susceptible of concealment to any degree almost that may be requisite to meet the activity of vigilance exerted against it. The existence of the practice may be ever so notorious; indications of the nature of the business in individual instances may be ever so manifest; and yet it may be sheltered by contrivances imparting an absolute security against rightful official interference—so long, at least, as the rightfulness of such interference shall depend upon its accordance with provisions of the law. In regard to the other, the very reverse is true. Let it be conducted in a secrecy ever so guarded, the chances against the possibility of its remaining concealed are immense. An American vessel could not take a single slave from Africa to any part of the world, without imminently endangering the life of every man on board. Detection would impend over them during the voyage; and the risk would attend them wherever they might go in our country, for the offence would not fail to be known to all; and the proof to convict all would forever hang upon the tongue of each.

XIX. That the distinction here adverted to is in the highest degree material, will be at once felt by every generous—nay, by every humane reader, in the relief his bosom will experience, after having been loaded with Mr. Everett's tables showing "the precise extent of the abuse in question," upon being informed, as by me he now is, that, excepting one single instance, (to be stated hereafter,) the former is the only one of the

two senses of the phrase in which, so far as I have had reason to believe, any lists can be adduced of "American vessels employed in the slave-trade at the Havana." In the mind of such readers, too, this relief may be not unattended with a feeling of surprise that any writer should venture upon using a phrase of such a texture in such a sense; above all, without a distinct and formal notification for the security of all who might be in the habit of taking for granted that the meaning which a writer intends to convey corresponds with the effect naturally produced by his language.

XX. Let us now bestow some attention upon the second of the species embraced under this comprehensive and ill-defined genus. And here, again, we have one of the proofs, in which the report abounds, of the danger of engaging in dissertation upon indeterminate topics. We have seen how strictly juridical in its nature the present inquiry is—how strong its title to every precaution against injustice. And here, as a consequence of the neglect of those precautions, we see Mr. Everett sliding—unconsciously sliding—from the seat of criminal judge into the post of moral censor. For the act forbidden by the law, and which alone can properly be the subject of contemplation in this inquiry, we here see unconsciously substituted an act, which, be its moral turpitude what it may, constitutes no legal offence whatever! What would be thought of the prosecuting attorney who should have a fellow-citizen arraigned as the captain of an "American vessel employed in the slave-trade at the Havana," and should offer to make good this accusation by proving that he had carried out from Havana to Africa a cargo of slave-trade merchandise for the factories on the coast? * And what would be thought of the jury and the judge who, upon the ground that the error was "rather formal than material," should bring in a verdict, and pass sentence accordingly? And supposing it a thing possible to find such an attorney, such a jury, and such a judge, would it follow, by any means, that if an officer of the Government were to fall into their hands, charged with having permitted an American vessel to be employed in the slave-trade, such charge would, by the same jury and judge, be agreed and adjudged to have been made good, by the attorney's establishing the fact that the captain had, without any attempted obstruction on the part of the officer, sailed with his cargo of slave trade merchandise?

XXI. Thus much of these two classes of vessels, considered separately. It is requisite, before taking leave of the definition in which they are embraced, to advert to the effect of their union. This evidently is, to render of altogether uncertain signification, when met with in this report, the expression "American vessel employed in the slave-trade at the Havana," or "the American flag employed at the Havana for the purpose of covering the slave-trade;" and, as a consequence, to extend the same uncertainty over the reasonings and the sentiments based upon, or arising from, the facts averred by means of them. When, in an inquiry turning upon infractions of highly penal laws, we discover that things so utterly dissimilar as acts of the highest degree of criminality, and acts to which no legal criminality whatever is attached, are confounded together under one denomination,—and that denomination, a phrase *per se* expressive of the criminal act in its most odious shape,—what can be expected but vagueness and incoherence in the reasoning, deceptiveness and inconsistency in its results?

* Such merchandise, it may be added, as is daily shipped to those same factories, in British vessels, from England, where it is manufactured; and also from the slave-trade abolition colony of Sierra Leone, where it is condemned by decree of court when caught on the high seas in Spanish vessels.

XXII. And such are the characteristics which the report presents at almost every page. Of the consequences naturally resulting from the disregard of every rule for the proper conduct of an inquiry of this nature, I will now point out a striking instance, in the shape of a flagrant contradiction between two views of the same identical point, successively taken by him on two distinct occasions; on the one of which, the bearing is upon Consul Trist; on the other, upon Mr. Everett himself.

First. Here, at the outset of his report, Mr. Everett is, we see, intent upon showing, first and foremost, "the extent" to which "American vessels have been employed in the slave-trade at the Havana." So absorbed has he become in the contemplation of the subject under this aspect, that he loses sight of all else; the object, the nature, the bearings of the inquiry, are forgotten; abhorrence of the slave-trade assumes undivided empire in his mind; and all practices, whether lawful or unlawful, which are rendered subservient thereto, present to his eye the same hue. His picture is painted accordingly; and he holds it up, unconscious alike of the illusion of which it is the image, of the deception which it must practise, of the injustice which it must cause. Such is the nature of the process at the outset; where the effect—I do not say design—is to fill the mind of the reader with a vague conception of *enormity*, in the way of *magnitude*, to blend itself with the idea awakened by "American vessels employed in the slave-trade at the Havana." With respect to the question, what vessels may be justly ranked under this category, we see that, *here* it seems to the writer of the report, to distinguish between the two classes of vessels which we have been remarking upon, would be to make a distinction "rather *formal* than *material*."

Second. In this light does the point appear to his eye when the bearing of the question is upon the extent to which the employment of American vessels in the slave-trade has, by Consul Trist, been allowed to prevail. Let us now carry our glance forward: for there, at the very conclusion of the report, is to be seen what colored light the same eye receives from the same point, when the question being incidentally, perhaps unconsciously, reproduced, (to an effect—I do not say in a design—very different, too, from that attending it at first,) the bearing is upon the writer himself.

I. In one of the latter divisions of the report, the writer, after imputing to me a *quasi* avowal—the defective part of which is supplied by an inference of his own making—of most pitiable personal poltroonery, as an apology for failing to discharge the duties of my post,* avails himself of the opportune occasion produced by the necessity of casting this imputation, to make disclosure of his own conviction that "the apprehensions of personal violence, to which the consul seems to give way," are "greatly exaggerated;" and, furthermore, to broach so novel and hazardous an opinion as that the suggestions of cowardice do not constitute "a proper motive of conduct." He then proceeds to say: "If the state of things be such at the Havana, that the American consul really cannot perform his functions with safety, he should be withdrawn. While he remains, he should do prudently, but

* This passage will come under examination hereafter. Then will be seen the pure gratuitousness of the imputation of any such avowal, and also that of the inference by which the imputed avowal is eked out. Whether the dastardliness here held up to view as one of the characteristics of my nature, discovered by the study bestowed by Mr. Everett, do really belong to it or not, is a point in regard to which those who have known me longer may, perhaps, possess grounds of more trustworthy opinion.

fearlessly, what he knows to be his duty ; and leave the consequences to be settled between the two Governments."

2. Having thus ventured, without any reference whatever to self, upon setting up so severe a standard, by which to try courageous fidelity to duty in the consular post, Mr. Everett quits the topic for others totally unconnected with it, the discussion of which brings him to the end of his report. But one of the objects for which he was sent to the Havana having been, it seems, to assume the superintendence and direction of the consular functions during the absence of the consul, it very naturally occurred to him, as a proper conclusion of his report, to give an account of his stewardship in this particular. Nor is it in the least surprising that, in so doing, he should be led to show that his conduct had squared with the standard of duty set up in his own mind ; and as this could, of course, be none other than that formerly adverted to in commenting upon the consul's cowardice, that, however unintentionally and inadvertently on the part of the writer, his own courageous disregard of personal consequences should, by the power of contrast, be forcibly brought to the reader's mind. Such will be seen to be the effect of the passage.

"I was desirous, while at the Havana, to find some opportunity of ascertaining by experiment how far it would be practicable to bring the individuals concerned in the abuse of our flag to justice ; and had determined, if any suspicious case should present itself, to direct the acting consul to make the attempt. I inquired daily at the consulate into this, and every other point of interest ; but, although two or three vessels were cleared for the coast of Africa under our flag, I was explicitly assured by the acting consul that there was no suspicion of abuse or illicit trade."

3. Such is the concluding paragraph of the report. Of all that ever were penned, surely not one could be found more pregnant of any thing, than it must at a glance be perceived to be, of inconsistencies with what precedes it. In regard to a portion of these, to discern them clearly, in their precise shape and dimensions, it would be requisite to dissipate the mist spread over the subject by the terms employed ; and, penetrating beneath such impalpable dust as "experiment" and "make the attempt," get at whatever tangible matter may be hid beneath. After ascertaining the precise nature of every step within the bounds of physical possibility for the acting consul to take, we should be enabled to form a definite conception of the compatibility or incompatibility of every such proceeding with law ; and, also, in regard to the possibility of such "experiment" being attended with any practical result whatever—save, indeed, that of making known to the world the contempt for personal danger, and the other high properties of a character which might have otherwise remained a light under a bushel ; and, beyond this, serving as an intimation to the wrongdoers, that, with so vigilant and resolute a person superintending the consulate, it would be expedient for them to substitute a little show of mystery, in place of the openness with which they had heretofore carried on a business, which all merchants and ship-masters know to be altogether beyond consular control, although *not* beyond consular reach for purposes of empty display. Above all, such ascertainment of the precise nature of the proceedings which the acting consul might have instituted under Mr. Everett's direction, would enable us to judge how far the reason here offered by him for not having given such order is a valid reason ; and then, again, how far there may be consistency or inconsistency between it and the imputa-

tions upon the consul, grounds for which have been so copiously derived from his omission, by such like "experiments," to give honest proof of the sincerity of his sense of the duties of the post.

4. But these, and other points presented by the passage, must be passed over for the present. The point in regard to which it is now adverted to is,—the unconscious alteration which it manifests in the notion or conception associated in Mr. Everett's mind with the phrase "American vessels engaged in the slave-trade at the Havana." At the outset, where the bearing is upon "Consul Trist," the reporter, we have seen, discerned at a glance a perfectly satisfactory reason for considering as belonging to that denomination all vessels despatched to the coast of Africa; for, if they do not all go to fetch slaves, they nearly all carry out cargoes of merchandise to be used in the slave-trade. Thus is the question disposed of, where it presents itself in such a way as to require to be explicitly met, stated, and answered; and, consequently, in a way highly favorable to deliberate and full consideration, as well of its nature, as of the consequences and bearings of the decision. Here, we see, it recurs: not in the same favorable manner for commanding deliberate thought, but only incidentally,—involved in the view taken of a particular case. Nor is the bearing any longer upon the same person. And what is the result? *Of these "two or three vessels," which chanced to clear for the coast during the term of Mr. E.'s superintendency, not one was a vessel "employed in the slave-trade!"*

XXIII. This concluding passage of the report contains matter too precious to admit of being dropped without further consideration. So flagrant a proof of vagueness and inconsistency in the mode wherein the inquiry has been conducted, would seem to be as much as one could expect to extract from a single sentence. In reality, however, this constitutes but a comparatively insignificant part of its utility: as will be seen in the number of topics for profitable inquiry which disclose themselves upon examining it.

XXIV. Mr. Everett, during his stay at Havana, was "*desirous to find*" an opportunity to deal with one of these "American vessels employed in the slave-trade." So strong was this desire, that he would not have required a "notorious case;" such as the consul had been allowing the so frequent recurrence of. All he asked was, that a single "suspicious case should present itself." And yet, despite the extreme moderateness of this desire, the Fates were unkind. Mr. Everett had to leave Havana without a single opportunity "to direct the acting consul to make the attempt." To what can be ascribed so total a disappointment of a wish, which—seeing how rare, how notorious the practice in question has been shown to have been, down to the moment of Mr. E.'s arrival at Havana; and how flagrantly unlawful, and easy of detection withal—must be allowed to be as reasonable a wish as ever arose on any subject. Could it be owing to mere accidental coincidence between the arrival of Mr. Everett, and the cessation of all such unlawful practices as are stated and unfolded in the course of the report? Or will the calculus of probabilities require us to reject this conjecture, in order to adopt, as apparently the sole alternative, the belief that the one event was the cause of the other;—that the newspaper announcement in our country of his destination to Havana, carried to all bosoms the conviction that the time for such occupations was past? That an effect so striking should have attended the mere announcement of his advent, without allowing time for so much as one single manifestation of

his powers, is, it must be confessed, far from probable. This improbability, great as it is, however, must perhaps yield to the unlikelihood of the occurrence of such a phenomenon without a cause.

XXV. Be this as it may—be the events linked together or not, and in what way, the fact is so. Mr. Everett “inquired daily at the consulate;” he inquired not vaguely and loosely, but in a manner the most precise and close, “into every point of interest;” and yet not so much as a “*suspicious case*” even dared present itself during his mission. No longer are American vessels, built or fitted for the slave trade, so audacious as to make their appearance at Havana. No longer do American vessels, even when “not of a construction suited to that service,” presume to take freights for the factories on the coast. The day for such temerity is gone. The business is at an end. True, “two or three vessels were cleared for the coast of Africa under our flag.” Ah! Here, then, after all, we are to be furnished with the key to the problem on which we have been expending our ingenuity. The effect, if sudden, was not so violent as we were first led to suppose. True, at Mr. Everett’s approach, all slave-trade channels of employment for American vessels suddenly freeze up. But the vessels are not on that account laid up. Under its benign influences, deadly stagnation cannot occur. Channels of lawful enterprise spontaneously open, even in the direction of the very slave-marts. American vessels continue to depart for the coast of Africa, and to do so without concealment, or *show* of concealment. The masters, had the nature of their business afforded any motive for keeping dark to Mr. Everett, would doubtless have done in these cases as is daily done in others where any reason exists for not making known the destination of a vessel; they would have cleared for any part of the world they chose to name—for Tampico, or Key West, or New Orleans, or Turk’s island, or Jamaica, or Charleston, or for Smyrna, after figs, raisins, and currants; or, in fine, for any port the name of which is to be found in the “*Universal Gazetteer*.” But, no! they actually, though Mr. Everett was there, “cleared for the coast of Africa!” Conclusive evidence this, of innocence—proof that they had nothing to dread from inviting even *his* scrutiny; and that the errand which took them to the coast, whatever it might be in the sight of the moralist, had no element of illegality in its composition. What, then, was the nature of this new employment? Of course, we need not be told what it was *not*. To make ourselves perfectly sure on this point, we need but recur to the opening chapter of the report—to the very rudiments of all those clear and vivid conceptions of consular malversation with which it has impregnated our minds. There will be found the certainty that the purpose for which these vessels were despatched to the coast of Africa cannot possibly have been either to *bring back slaves*, or to *carry out merchandise to be employed in the purchase of slaves*.

XXVI. But how was this ascertained by Mr. Everett? What did they carry to the coast? What were they “intended to bring back?” Were they “of a construction suitable to that service?” If yea, what countervailing evidence did Mr. E. require of the parties to satisfy his mind of their innocence? To convince him that nothing illicit had been done, or was in contemplation, that the vessels were not at that instant forfeit to the United States for having been built for “that service,” and that there was no intention to sell them on the coast for the purpose of becoming employed therein? These points, and others that will readily suggest themselves to one who has followed Mr. Everett through his inquiry, and attended to the

nature of the various grounds of imputation discovered by him, or who, without undergoing this preparation, shall give his attention to the nature of the subject, are manifestly of the very highest interest. A minute account of the steps taken by Mr. E. on these occasions would prove of incalculable value, by showing, so far as they might extend, the way for a consul to go to work to make sure that American vessels are not violating American law. Such a demonstration of the precise nature, the practicability, and the effectiveness of the process whereby consular duty in this respect may be fulfilled, would serve to dispel at once all doubts which the want of definiteness in other parts of the report might seem to leave room for, in regard to the precise measure of culpability properly belonging to the omissions whereof the consul, whose reputation is under trial, has, by Mr. Everett, been found guilty. And even if such process should appear to the Attorney General to be not strictly warranted by law, and to require some additions to the powers vested in consuls, still the demonstration of its nature and its value would not be thrown away. It might yet serve as an inducement to Congress, and as a guide teaching it how, by means of consular agency, may be accomplished the object of securing the observance of its laws.

XXVII. This estimate of the value of a precise account of such a process will scarcely be deemed an exaggerated one. Still less questionable will be the justness of expectation on the part of the reader of this report to be informed that steps of this nature were taken by Mr. Everett before he could reconcile it to his sense of duty to permit the departure of these vessels. What just grounds for surprise, then, to find—in place of the details which would be so valuable,—in place even of the assurance, which we could not but expect, that every conceivable step had been taken for placing beyond doubt every conceivable “point of interest” connected with these vessels—the assurance that Mr. Everett “*was explicitly assured by the acting consul that there was no suspicion of abuse or illicit trade!*”

XXVIII. What a world of matter is here presented for reflection! Compare it with the grounds and the matter of crimination and insinuation by which it is preceded. Taking this fact as it is, and in itself, without looking deeper than its surface, or beside it, or beyond it, at any of the questions just asked, or of the numberless other questions which connect themselves with it in every direction,—what a lesson does it read upon the danger attending the loose mode of inquiry, whereof it serves to crown this most notable specimen!

XXIX. And how does it appear on analysis? What is the ground here assigned by him for permitting the departure of these vessels without subjecting them, and all connected with them, to the most searching scrutiny? Does not every one who has read this report feel that, from its author, above all men breathing, such scrutiny is what he should have expected, and had a right to expect? And what is permitted to take its place? An *assurance!* From *whom*, and of *what*? The person from whom it comes is none other than him whom Mr. Everett has found in charge of the consulate, selected and placed there by the very consul whose career of connivance at “piratical practices” under his country’s flag has just been so clearly exposed, and so forcibly depicted! And supposing the integrity and veracity of this acting consul to have been ascertained to be ever so far above suspicion, what is the sum and substance of the assurance received from him by Mr. Everett? Why, “*that there was no suspicion of abuse*

or illicit trade." "*Suspicion?*" Perhaps the acting consul may be a man not prone to suspicion, but, on the contrary, of so very confiding a nature that the mere fact of *his* considering a case free from suspicion could be no better than a broken reed, sure to pierce the hand that rests on it. What assurance, and from what quarter, had Mr. Everett possessed himself of upon this point? "*Abuse,*" "*illicit trade!*" These are the matters in regard to which there was no suspicion in the acting consul's mind. But, admit that we have ascertained his integrity to be suspicion-proof, and himself to be the most suspicious of men; still it will be true that the assurance from him depends, for any substantial properties it may have, entirely upon the meaning attached in his mind to these words. This may be such that it really is not worth a straw. Being an old merchant—with mind on the one hand far more familiarized with the practices of the mercantile world than Mr. E. could well be; on the other, far less informed in the niceties of the law than the studies called for by the present special vocation of the latter gentleman afford assurances of his having become—the acting consul might quite unconsciously have answered in a manner to deceive his quest. With a moral sense no less acute, perhaps *his* notions regarding the licit and the "illicit" in trade may have been less exact—accordant rather with the general sense prevalent on the subject, arising from the current of *practice*, than with the precise provisions of the *law*. In *his* idea of an "abuse," particularly when considered with reference to the question of consular interposition, doubtless were mixed up the impressions resulting from his experience; his forty-odd years' gathering as an American merchant from practice, from observation, and from reading; in regard to what is, or is not, competent to an American consul to interfere with, to what extent American merchants and ship-masters are by the law placed under his supervision and control. Did Mr. Everett so conduct his interrogatories as to secure against these and other sources of misapprehension and error? Did he take the precaution to inform the acting consul what *he* meant by "abuse or illicit trade?" Did he apprise him that he was clothed with full powers to take every step requisite for "bringing to justice the individuals concerned;" that he was determined to fulfil this duty, regardless of personal consequences; and that he considered as an "American vessel employed in the slave-trade," and therefore as affording fit opportunity for "the experiment," *first*, every vessel despatched for Africa in the design to sell her there to be employed in bringing back slaves; *secondly*, every vessel so despatched to carry slave-trade goods?

XXX. Upon these points the report is silent. Turn we then to another topic of inquiry presented by this assurance. Its consideration is requisite to enable us to judge how far Mr. Everett was justifiable in allowing his vigilance to be thus put to sleep. It may possibly also disclose some new grounds of judgment as to the accuracy of the views taken in regard to Consul Trist's wilful supineness, and the justice of the inferences deduced therefrom. This assurance—whether spontaneously proffered to Mr. E., or given at his demand—*had a motive*; and that motive could have been nothing else than *suspicion*: the very thing which Mr. Everett was assured did not exist. The suspicion may have been not very violent; and, on inquiry, it may have proved unfounded, or insufficient. But, that suspicion did exist, and exist in the mind of Mr. E., is just as certain as that he wrote this sentence. Nor did it arise without a cause. Nor can that cause have consisted of aught else than one or more grounds of belief that

these cases were different from those which awakened no suspicion, that they might be precisely such cases as Mr. Everett was so anxious "to find" a single specimen of. What were these grounds? Let us know them. This will be useful, not only with reference to these particular instances, but to the subject generally. It will afford an insight into it, under one of its most important aspects. We shall be made acquainted with the features wherein the cases that justly excite consular suspicion, and justly call for consular interposition, differ from those which do not; and then we shall be enabled to judge how far the nature of things, and the current practices of the mercantile world, admit the possibility of concealing such features from the eye of the consul, who should, by his course, give notice to all inclined to illicit practices, that, in his presence, the features in such practices, which it is customary to leave in their natural state, because the parties know that no legal consequences can attend their exposure, must be cunningly bepatched and bepatched. How far, for instance, the circumstances of a vessel's being destined to the coast of Africa, with or without a cargo for the factories, is of a nature to admit of being concealed by the captain's giving out that he is going on a commercial speculation, which nobody has any business to ask any questions about; or that he is going to clear in ballast for 'Turks' island after a cargo of salt, to carry it to a certain place, where he has intelligence it can be exchanged for codfish, or smuggled to great profit; or that he has laden with sugar, coffee, and segars, for Mobile, or Yucatan, or "up the Mediterranean."

XXXI. Here, again, the information is meagre. Of all the grounds whereon the suspicion may in these cases have rested, Mr. Everett mentions but one; and even this comes in incidentally: for it is thus we learn that these vessels "*cleared for the coast of Africa.*" Let us see whether further light on the subject can be obtained from another source.

XXXII. What are the "two or three vessels" here referred to? Mr. Everett arrived at Havana on the 3d day of April, and left on the 15th day of June, 1840. Their names will consequently appear in the semi-annual "consular return of American vessels arriving at and departing from Havana," for the half year ending 30th June last. Upon looking over this return, we find that the vessels which, so far as the return may be relied upon, (that is to say, so far as the masters may have seen fit to clear for their real destination, and not for a feigned one,) departed for the coast of Africa, during the period of Mr. Everett's superintendence, were, the *Alexander*, the *Seminole*, the *Kite*, and the *Hero*: the first of which is set down as having cleared on the 13th of April; the last, on the 13th of June. Strictly speaking, therefore, we must substitute *four* as the exact number of such clearances, in place of the indefinite phrase "two or three."

XXXIII. The first effect of these names is to produce the impression that the vessels to which they belong are not altogether strangers to us; that, on some occasion or other, we have got acquainted with them as "American vessels employed in the slave-trade." Turning back to the beginning of the report, we find our recollection corroborated by the fact that three of the four names are upon the last of the lists there presented; which closes with the *Alexander*, *Seminole*, and *Kite*. This recurrence to it serves also to make us more clearly aware than we could well be without having our attention thus specially directed to the point, that this list is distinguished from those which precede it by several important peculiarities,—important, if not in themselves, yet as illustrative of the scrupu-

lous nicety and precision with which the delicate subject is, in *some* of its parts at least, dealt with; even where their consequence does not appear to call for such particularity. In the paragraph immediately preceding that which serves as an introduction to the present list, we have been informed of the coincidence discovered by Mr. Everett between the Parliament published "estimates" and certain "general statements" consulted by him; and after such a discovery, especially, two of the distinctive features pointed out by him in this list might, to an eye less exact than his, seem altogether immaterial, and the mention of them altogether superfluous,—except, indeed, for the purpose of keeping up in our minds a due sense of the dependence upon aid from the British commissioners, unavoidably occasioned by the recondite, if not mysterious, nature of the subject into which Mr. E. is pursuing his researches. Of these apparently immaterial peculiarities, the first consists of the circumstance that the list which they serve to distinguish wants the authoritative value imparted by the process of parliamentary publication—a want which, owing to the coincidence just adverted to, would scarcely seem, in itself, entitled to special mention;—"No returns have, of course, been published for the present year." The second is a consequence of the first. Having no published estimates to give, "the mixed commission" (as Mr. E.'s source of information is by him designated; with what accuracy, will be seen hereafter) are presented with the alternative of leaving him to grope his way in the dark, with no other assistance than that which may be afforded by those "general statements, and under the consequent further disadvantage of having no further means for keeping the subject enveloped in its appropriate air of mystery, or of venturing upon an act of such questionable propriety as that of revealing to him their unpublished "estimates." In this conflict, the importance of his being enlightened overbears all other considerations,—at least to the extent of inducing them to go so far as to reveal, if not their "estimate" of the *names*, yet their "estimate" of the *number* of the offending American vessels, from the 1st of January to the 1st of June, 1840.

"I was told by one of the British commissioners at the Havana that their estimate of the number of American vessels employed in the trade up to the 1st of June was *eight*. This agrees nearly enough with the list of clearances for the coast during the same period, which amounted to *nine*."

Having thus incidentally explained how it came to pass that the commissioners' unpublished estimate was revealed to him; and then shown, from its high accordance with the exact number, (so high as *eight* is to *nine*;) how vigilantly and accurately their duties must be fulfilled, Mr. Everett gives the names of *ten* vessels, and closes by notifying to us the remaining peculiarity by which this list is distinguished.

"The acting consul was of opinion that none of these vessels were intended to be employed in bringing back return cargoes of slaves."

This sentence is distant a few lines only from the passage affording, as we have seen, the requisite materials for forming a definite conception as to what the writer means by an "American vessel employed in the slave-trade." It will not escape attention, that, agreeably to the meaning thus discovered, the peculiarity here mentioned is altogether immaterial, with respect to the question under consideration. The vessels on this list are not the less on that account "American vessels engaged in the slave-trade;" nor can we suppose that it so seemed to Mr. Everett, or that he took the trouble to inform us of this peculiarity for the purpose of producing any

such impression. The only motive by which he could have been actuated must have been a lively sense of the mere curiosity of the fact (unconsciously quickened, perhaps, by the gratification inspired by its *moral*, if not *legal* distinctiveness) that, of these ten "American vessels employed in the slave-trade," all should have chanced to be therein employed precisely in the same way, and not one in the particular form which consists in the carrying of slaves—that form which (though, in a strict legal inquiry, such as that wherein Mr. E.'s faculties are immersed, it be not distinguishable from any other) is the most abhorrent to popular opinion and sentiment in our country.

XXXIV. The names, then, of the vessels are ascertained; and in merely ascertaining their names alone, we have been led to results far from uninteresting. These are not the only ones attending the search. Among others which might be brought into view by pursuing the subject, are two that seem specially entitled to notice:

1. The proof which we here find, that the notion of "an American vessel employed in the slave-trade at Havana," whereby the British commissioners are governed in the construction of their "estimates of the numbers" of such vessels, (*estimates of numbers*, in the novel, and, beyond question, highly improved form—precluding all room for doubt as to the closeness of the approximation—of a list, specifying each individual by name,) corresponds exactly with the definition which we have constructed out of the materials supplied by Mr. Everett. Of the ten vessels cleared for the coast of Africa, none, according to the opinion of the acting consul, (which Mr. E. quotes without any expression of distrust,) "were intended to be employed in bringing back slaves." Of the same ten vessels, nearly every one, according to the "estimate" of the British commissioner, is an "American vessel employed in the slave-trade." It is clear, then, that these "estimates" must have been constructed upon the plan of bringing indiscriminately under this denomination all vessels clearing for the coast of Africa, from the mere circumstance of their so clearing: and this, not only without *inquiry* into the other features which the case may present, but without *paying regard* to them even when they present themselves, and are of so decided and convincing a character as to force upon the acting consul (whom Mr. E. deems worthy of reliance) the positive belief that the vessel is despatched without any intention of her becoming employed in the transportation of slaves.

2. *The clashing of the testimony and authority of these fountains of information to Mr. Everett with the testimony and authority of Mr. Everett himself.*—This result is, of all others, the one to which the foremost place in importance unquestionably belongs. A correspondent degree of attention is bespoken for it. Although this discordancy be but an illustration of what every one at Havana knows to be the true nature of these estimates, yet is it *such* an illustration as could scarcely have been hoped for. Considering the liberal readiness evinced by the "mixed commission" to supply Mr. Everett with information, and the advantage thus enjoyed by him for securing against error in his own views and results, by subjecting these to the test of comparison with the full and perfect fruits of commissioner-opportunities and experience, a discrepancy of the sort is certainly not a little wonderful, and cannot but be admitted to be an indication of, at least, occasional heedlessness on his part. The discrepancy referred to is this: Mr. Everett is informed by the British commissioner, "that their estimate

of the number of American vessels employed in the trade up to the 1st of June is *eight*." He then gives the list of clearances for the coast during the same period, which he says are *nine* in number. (On counting, the list proves to contain *ten*.) This is at the beginning of the report. At its conclusion, Mr. Everett is led incidentally to mention "two or three vessels," which he, though burning with desire to show what could be done by a consul acting under his superintendence and direction, was constrained to allow to depart for Africa; so utterly free were they from "suspicion of abuse or illicit trade." The exact number of vessels which he so allowed to depart, proves, on investigation, to be *four*. Of these four, the *Hero* is one. She cleared after the 1st of June, and must therefore be left out of the balance, in weighing the authority of Mr. Everett's report against that of the British commissioner's "estimate." The other vessels which Mr. Everett found himself under the necessity of allowing to depart for the coast were (as we ascertain by means of the consular return) three, to wit: the *Seminole*, *Alexander*, and *Kite*; which cleared, respectively, on the 11th, 13th, and 27th days of May, and belong therefore to the count. Accordingly, we find these names on the list of *ten* clearances for the coast, given by Mr. Everett at the commencement of the report, in corroboration of the commissioner's estimate of *eight* vessels "engaged in the trade." This "estimate," unfortunately for our present purpose, proves to be one of the old-fashioned kind, and to constitute an exception to all the rest from the same source. Unlike those by which it is preceded, it gives, not *names*, but only a *number*. Had the former been given, their perusal would have sufficed to show that *one*, at least, of the above three names, is among them. But they are not given; and the consequence of the omission is, to compel us to have recourse to the powers of mathematical demonstration. Mr. E.'s list of names of vessels contains *ten*. The commissioner's estimated number of vessels is *eight*. That the three vessels incidentally mentioned (without naming them) at the conclusion of the report as having departed for the coast with Mr. Everett's permission, are three of the ten named on that list, is proved by the consular return. And now for the properties of number, as a means for ascertaining whether any of these same three vessels were embraced in the commissioner's "estimate." That this *must* have been the case with regard to at least *one* of the three, is certain,—just as certain as that the difference between the number on the list and the number in the estimate is *two*, and that this number is *one* less than *three*. The list being *ten*, while the estimate is but *eight*, it is possible, in regard to any three names embraced in the former, that two of them may not be embraced in the latter. But it is impossible that this should be the case with regard to all three. It is *impossible*, therefore, but that *one of these three vessels should have been embraced in the commissioner's estimate, at the time when that estimate was imparted to Mr. Everett*. Upon reflection, too, we shall perceive abundant reasons for believing (and but one reason for believing the contrary) that, *at this moment, all three of those vessels, and the fourth also, are embraced in that estimate*. Among these reasons is the fact, which will come under special notice hereafter, that the suspicious features of these cases were pretty nearly identical in all. Another consists in the obvious possibility that the commissioner's number was made up by including in his estimate all these three last clearances for the coast, (occurring under Mr. E.'s superintendency,) and omitting some of the previous

ones, which did not, perhaps, present any suspicious features. A third of these reasons consists in the equally obvious possibility, that Mr. E.'s list and the commissioner's estimate were identical; and the apparent discrepancy caused solely by inaccuracy on the part of the commissioner, in saying "*eight*," instead of "*ten*." We see that, even in writing, with the list before him, Mr. E. calls the number "*nine*." A fourth of these reasons consists in the high probability that the discrepancy may have been caused solely by the decided advantage possessed by Mr. Everett for obtaining *early* information on these points, in his right of daily scrutiny into the doings of the consulate. No one can peruse the communications of the commissioners to their Government, nor even the opening section of Mr. E.'s report, without being penetrated with the truth, that the departure of a vessel for the coast was a matter generally, if not always, so shrouded in mystery as necessarily to require time, no less than pains and patience, to obtain "*information*" in regard thereto. It follows, therefore, that the British commissioners—unless we suppose them capable of adopting as their own such crude "*information*" as could not fail to be gathered on a morning stroll on the wharf, to see the vessels sail; or an evening lounge there, or at the coffee-houses, to get a sip of commercial news, or take a dip into the papers—would naturally have been somewhat later than Mr. Everett in obtaining intelligence of so recondite a phenomenon as the clearance of an American vessel for the coast of Africa. Making due allowance for this disadvantage on their part, it becomes manifest that, although at the moment when their estimate was imparted to Mr. E., the two last vessels on his list (which cleared, as we have seen, on the 13th and 27th days of May) may not *yet* have become embraced in that estimate, it does not by any means follow that this did not happen afterwards. The reason to which I have adverted as the only one that suggests itself to my mind for a contrary belief, consists in the difficulty which cannot but have been experienced by the British commissioners in satisfying their minds that *any* vessel, cleared whilst the consulate was under the superintendency of one whose views and sentiments seem to have harmonized so perfectly with theirs, could with any propriety be reported to her Britannic Majesty's Government as being engaged in the slave-trade.

Despite this difficulty, however, it arithmetically results from the facts gathered from the beginning and the end of the report, and here brought together and collated, that, had Mr. Everett been capable of such indiscretion as to ask to see the *names* whereof the commissioner's unpublished "*estimate*" was made up, he must have experienced the shock of finding that, of his three innocent vessels, (not innocent, merely, but defying the rigorous standard set up for jealous Cæsar's wife,) *one*, certainly, and possibly *all*, were about to be reported to her Britannic Majesty's principal Secretary of State; through him to be laid before Parliament by her Majesty's command; and by Parliament to be published to the world as American vessels engaged in the "*heinous traffic*," which British commissioners cannot so much as transmit the names of, without telling how their hearts sicken at writing them! Could the judge-commissioner at Havana but be favored with an opportunity to become aware of the egregious blunder thus committed by him, surely he would rejoice in repairing, before the process of parliamentary publication should carry it beyond his reach, the gross injustice done to one who has evinced so due a sense of the value of their "*estimates*," and a sympathy so just and so cordial with the spirit in which they are framed!

XXXV. Such being the character of these results attending the very first step in our search after the grounds on which may have rested Mr. Everett's suspicion against these vessels, let us pursue the inquiry. To what class of vessels did these four belong? To what ports did they belong? What business took them to Havana? Upon what errand did they go to Africa? What cargo, if any, did they carry? What freight was paid them? What other inducement, if any, had they for proceeding to that deadly and every way perilous coast?

The information upon these points afforded by the consular return, (founded, however, the reader must bear in mind, so far as cargo and destination are concerned, upon what the master chooses to say,) is as follows:

The *Seminole* (the first of the four that cleared) was a schooner of 97 tons burden, belonging to Vienna. She came from New Orleans with a cargo of flour, lard, &c. She cleared for *Gallinas* (coast of Africa) with a cargo of "rum, tobacco, dry goods, and rice."

Next comes the *Alexander*, a brig of 198 tons, belonging to New Orleans. She came from that port, bringing tobacco, cotton, and provisions; and cleared for *Gallinas*, carrying "tobacco, dry goods, aguardiente, &c."

Third, the *Kite*, a schooner of 97 tons, belonging to Vienna. She came from New Orleans with lard, and cleared for *Kibendo*, (coast of Africa,) under a new master, with an "assorted cargo."

Last comes the *Hero*, a schooner of 126 tons, belonging to New Orleans. She came from that port with cotton and flour, and cleared for *Wydah*, (coast of Africa,) with "rum, dry goods, and tobacco."

XXXVI. Such are the particulars upon these points, found in the semi-annual return, which was being made up for transmission to Government at the period when Mr. E. "inquired daily at the consulate into this and every other point of interest." What rare good fortune the parties must have had, to be provided with the means of allaying "suspicion" so entirely, as to be permitted to depart without his calling upon the Captain, General to stop them, (consequently, without being subjected to the difficult task of obtaining from the Spanish tribunals a decision adjudging their employment perfectly lawful and innocent; the denunciation to have been gratuitous, wanton, and malicious; and the sufferers to be entitled to costs, charges, indemnity, &c.;)—how very rare their good fortune in being thus ready with the requisites for clearing their own skirts, and for disappointing Mr. Everett of the opportunity after which he panted, and which he doubtless considered within his grasp, can be conceived only by attentively considering the intrinsic weight of the suspicious circumstances here grouped together; but grouped together, as the result proves them to have been, to no other purpose than that of tantalizing Mr. E. with the prospect of a fruition which, through the force of the exculpatory circumstances presented to his judgment, (of the nature of which we are not informed,) his sense of justice compelled him to forego.

First, the *class* of these vessels—one a brig, the rest schooners; of the very burdens, too, (as, on reference to the parliamentary papers and other authorities, will appear,) that are employed in carrying slaves.

Then, the *places to which they belong*. New Orleans is one, Vienna the other. What and where is this Vienna, which affords such an indication of active foreign commerce as to have, at one and the same moment, during Mr. Everett's short sojourn there, two vessels in the port of Havana? On inquiry, I learn that the name belongs to a little obscure port, low down

on the Chesapeake bay, which would never be heard of beyond its own limits, but for the circumstance that it happens to be the spot where a pretty active business is carried on in building bay craft, for carrying wood and oysters, and such like purposes. This very circumstance conspires, with the obscurity of the port, its probable want of capital or any other element for a foreign trade, its relative position to Baltimore, its proximity to the sea—in fine, with every consideration that can suggest itself with regard to this topic, to attach stronger suspicion to a schooner in the port of Havana that “hails from” Vienna, than if she hailed from Baltimore itself, the great building-yard for fast-sailing schooners; which, as all the world knows, has, for half a century, supplied all America, and other places besides, with vessels of that description, for all sorts of uses, the slave-trade among the rest. In regard to the latter purpose, to hail from Vienna is, at this juncture particularly, by far the more suspicious circumstance of the two; for whilst, on the one hand, it leaves scarcely room for a doubt that the building and sending out of the vessel is as truly a Baltimore speculation as if she had been built at that port; it affords, on the other, strong grounds for the suspicion that the proceeding was of a nature to make it advisable to carry it on where it would be so much less apt to attract notice and excite scrutiny. It seems scarcely possible that an American citizen in any foreign country, be his errand there what it may, should hear of an American vessel belonging to “Vienna,” without having his curiosity awakened; and the improbability appears greater still, that this should happen to any American at Havana, without his becoming fully aware that (at this precise juncture, particularly, when the vigilance of the officers of the law has been so strongly excited at Baltimore) Vienna is precisely the sort of place, of all others, that persons who had found it to their account to build and sell Baltimore clippers for the slave-trade would select for pursuing the business, free from suspicion and risk of interruption. And if such could scarcely fail to prove the effect of the name of this unknown port upon any American at Havana, though his visit might be ever so casual a one,—how much stronger the improbability of its failing to be produced upon one standing in such relations to the subject as those occupied by Mr. Everett! And if no other motive had existed for bestowing his closest attention upon the points thus suggested, how certainly must this effect have been produced, by his desire to guard himself from the danger of committing the injustice against the consul that might attend hasty inferences of criminal connivance on his part, drawn from appearances which, to the superficial observer, might seem conclusive; both as to the illegality of the practice, and the wilful connivance thereat; and yet, upon close investigation, prove to be, perhaps, perfectly compatible with innocence; and, if not so, still of a nature to defy consular control.

Next, the *cargoes*. Those which they have brought do not, it is true, constitute, even when considered in connexion with the class and the homes of the vessels, any grounds for suspicion—at least, in the legal sense. A glance at the returns will show that vessels of all classes, fast-sailing schooners included, daily arrive at Havana, with intentions perfectly innocent, from all quarters, and with all sorts of cargoes; and it is no less apparent that these vessels daily clear, also, with intentions equally innocent. These are circumstances from which no inference can be drawn, one way or the other. The fleetest schooner may come direct from Baltimore or Vienna, in ballast; or by the way of Savannah, with rice; or by way of Halifax, with codfish;

and the fact of her having done this, taken together with her build, or any other indication of the possible ulterior designs of her owner, affords no ground for a conjecture even, as to what will be her cargo and destination on leaving port. But, when the master sees fit to load and depart without concealment, declaring to all inquirers what his cargo is, and where he is going, the case is different. In the present instance, the outward cargoes of three of the vessels are seen to have been made known somewhat in detail; the fourth, to have been declared "an assorted cargo." The three specified cargoes—of what do they consist? "Rum, tobacco, and dry goods," with (in one of the cargoes) the addition of "rice." This is carried by the *Seminole*. Now, what is rice taken to the coast of Africa for, particularly as part of the cargo of a Baltimore—no, a *Vienna*—clipper? The authorities on such points would answer, that the only purpose can be to feed the negroes that are to be brought home in her. That rice is put to such use, is unquestionable. It might perhaps seem, nevertheless, questionable whether this fact should be deemed sufficient ground for a law of Congress prohibiting American vessels, or American schooners only, or American schooners of a certain rate of sailing only—say ten, or nine, or eight knots—from taking rice from Havana to Africa, and empowering the American consul there (whenever he can ascertain the fact, and make sure of being able to establish it by judicial proof) to detain, as an intended slaver, every vessel of that description which shall have taken rice on board. Be this as it may, the fact is so. One of the articles of cargo, as voluntarily declared by the master, wherewith Mr. E. allowed the schooner *Seminole* to depart for a noted slave-mart on the coast of Africa, was the very article constituting the ordinary staple food of the negroes on the voyage from Africa. And of what uses are "rum, tobacco, and dry goods" susceptible? Mr. Buxton's recent work (published in 1839) on the slave-trade affords the answer. Speaking of that carried on by Brazil, he tells us that the merchandise given in exchange for slaves consists chiefly, if not exclusively, of *cowries*, *Brazilian tobacco*, *spirits*, and *Manchester piece-goods*, in the proportions of about one-third cowries, one-third tobacco and spirits, and one third Manchester cotton goods.

Lastly, *the places of destination*. These are seen to be of a nature to cap the climax to the presumption against these vessels, giving to it all the solidity that can be desired in *prima facie* PROOF; and completing the assurance which it affords, how extraordinary must have been the good fortune of the parties to be able to bear up against such a combination of damning appearances, and, by placing their perfect innocence above "suspicion," to enrich juridical history with another of those impressive lessons with which it is replete, against the danger which the incompleteness of human knowledge and the imperfection of human judgment conspire to render inseparable from every violation, however inevitable in the discharge of human duties, of the precept "Judge not, lest ye be judged."

XXXVII. Of the pertinence and the value of the matter which the question suggested by Mr. Everett's "two or three vessels cleared for the coast of Africa" has thus served to bring into view, the reader cannot, I think, fail to be clearly impressed. He cannot, unless I greatly mistake, but be sensible that he has acquired a closer insight into the nature of the subject discussed by Mr. Everett than he possessed when he arose from the perusal of the report; and has become awakened to the delicate character of the inquiry, and to the duty of caution in hastily adopting inferences, how-

ever obvious they may seem. The mine from which these good things have come is not exhausted. It is barely opened. Let us bring out another lump or two. We had to go to the consular return in quest of the names of the "two or three vessels." In the search for these names, other things have caught our eye, which serve to suggest other questions. Some of these I will indicate.

XXXVIII. Among the names seen on the last of the imposing arrays drawn up in the opening section of the report is "Hudson." This is one of the American vessels which, according to the British commissioner's "estimate," had been "employed in the slave-trade at the Havana," from the 1st of January to the 1st of June, 1840. Let us, for the purpose of comparing the features of the two cases, take some one of the numerous other American vessels that arrived and departed during the same period.

Of the five hundred and twenty-seven reported in the consular return for the *first* half of the year 1840, is the schooner *Lion*. She is seen to have arrived on the 17th of February. The *master's name* is W. Clift; her *burden* is *ninety-nine* tons; she belongs to the port of Mystic, hard by Boston. In reply to the question *where he is from*, the master answers "New Orleans." To the question what *cargo* he has brought, he answers "*flour, lard, &c.*" The return further shows, that on the 29th of February, the master (having complied with the prerequisite established by American law, by obtaining a clearance at the Havana custom-house,) appeared at the consulate to demand his register; and that on this occasion being asked what *cargo* he had taken in, and what place he had cleared for, he replied, "*sugar, coffee, cigars and fruit*," and "*New Orleans*." Is there any thing suspicious in all this? To be sure, on comparing her with the vessels sold at Havana for the slave-trade, she is seen to be precisely of the same class and burden. But supposing the consul armed with all the powers vested in all the officers of all the courts of our country put together; does this, or any other element in the case, afford any apparent ground for consular action?

Let us now take up the return again, in quest of that American slave-trader, the "*Hudson*." We find that she arrived on the 18th of January—the *master's name* to be A. Clift—her burden to be *ninety-nine* tons—her home to be the same port of *Mystic*, hard by Boston. She comes from *New Orleans*, bringing a *cargo* of "*flour, cotton, &c.*" The return further shows that, on the 26th of February, Captain A. Clift, (brother, perhaps, to Captain W. Clift, of the *Lion*,) presented himself at the consulate to demand his register, and there stated that he had taken in an "*assorted cargo*," and that the place for which he had cleared was "*Africa*."

Now, in what do these two cases differ? Simply and solely in the answers given by the captains to the two last questions—questions which they are under no legal obligation to answer. Suppose that any motive of any kind had existed for the captain of the *Hudson* to conceal her outward cargo and destination: was it at all obligatory on him, either in *law*, or in *commercial practice*, to divulge either? Did law or did custom present any hindrance to his adopting, in regard to both, precisely such form of concealment as might best suit his purposes?—to his taking on board, for instance, (supposing him scrupulous about uttering an untruth,) a box of sugar, a bag of coffee, a box of cigars, and a thousand oranges; and telling the consul that his cargo consisted of "*sugar, coffee, cigars, fruit, et cetera?*" Or, in regard to his destination, to his asking at the custom-house (where

his real cargo would probably, not certainly be known) a clearance for Sisal, or Campeachy, or any obscure port on the "Spanish main," or elsewhere? or having obtained at the custom house a clearance for his real destination, to his telling all inquirers, the consul included, that he was going to New Orleans, or to Sisal, or to any other place he might choose to name? No such obligation exists. This is known to every one who knows any thing of the subject; and, to all such, it cannot possibly be otherwise than perfectly obvious, that if the master of the Hudson stated his cargo to be an "assorted cargo," and his destination to be "Africa," he knew that, by so doing, he subjected himself to no inconvenience, or risk of inconvenience; that what he was doing, he had a legal right to do; and even if there was any illegality in it, this was so contrived as to be beyond consular interference; that the facts which he thus chose to make known are not of a character to make it the duty of the consul to take, or to afford the slightest pretext for his taking, any step that might subject him to the slightest detriment or inconvenience. To all such, it must be equally manifest, that, had Captain A. Clift had any motive for withholding a knowledge of either particular from her Britannic Majesty's commissioners at Havana, there is nothing in the nature of either to have presented any difficulty to his rendering the acquisition of such materials for their "official *cant*," (to borrow once more the language of the *Westminster Review*,)—a somewhat harder task than that of transcribing the current ship news of the hour.

Nor can it fail to be equally manifest, that the same considerations apply with no less force to the case, on the supposition that Captain A. Clift had bargained to sell his schooner on the coast of Africa, or had actually sold her, deliverable there; and, besides the sale thus bargained for, or effected, had taken on board all the requisites for adapting her to the purpose of transporting slaves.

XXXIX. By this one consular return for the half year, during a portion of which the consulate was under the superintendency of Mr. Everett, materials are offered for an indefinite number of illustrations of the subject, under similar aspects. Compare, for instance, the schooners *Harriet Smith*, *Mohawk*, and *William Wallace*, that arrived on the 2d, the 5th, and the 8th of January. Their burden is 99, 95, and 99 tons. The first comes from New York, bringing a cargo of "apples, onions, &c.;" the second from Baltimore, with "bricks and chairs;" the third from Mobile, with "lumber." The first is reported by the master as clearing for New York, with "fruit;" the second, as being sold to foreigners; the third, as clearing for Matanzas, in ballast.

Among the arrivals between the 8th and the 13th of February, we see the schooner *La Bruce*, of 97 tons; the schooner *Merchant*, of 99; the schooner *Guatemala Packet*, of 84; the brig *Midas*, of 150. The *Merchant* belongs to New Orleans, the other three to Baltimore; and one of these comes by the way of Savannah, with rice; another by the way of Honduras, with hides, &c.; and the third direct from Baltimore, with "cocoa, flour, and hams." The first of the four is, by the master, reported as sold to foreigners; the second, as cleared for New Orleans, with "coffee," &c.; the third, as cleared for Honduras, with an "assorted cargo;" and the fourth, for Baltimore, with "coffee, sugar, and fruit." This same schooner, (*Merchant*), after several more voyages from and to New Orleans, during Mr. E.'s stay at Havana, returns on the 15th of June, (the day of his departure;) and she, too, is sold to foreigners.

On the 5th of March we see the brig *Theophilus Chase* arrive in ballast from Kingston, Jamaica. She rates 168 tons, and belongs to Harwich, Massachusetts. Among the other arrivals between the 2d and 7th of the same month, are the schooners *Fruiterer*, of New York, (a celebrated clipper,) 129 tons; *Joseph Brown*, of Fall River, 90 tons, from Mobile; *Courtney*, of Baltimore, 96 tons, from Mobile; *Victory*, of Baltimore, 65 tons, from Key West; brig *Anawan*, of Fall River, 138 tons, from Wilmington; *Lancet*, of Charleston, 150 tons, (a remarkable sailer,) from Charleston; and the *Caspian*, of Newport, 99 tons, from Matanzas. Now, which of these vessels is destined to the honor of a place among the American slave-traders, embraced in the British commissioner's "estimate?" Surely the clipper schooners; and the Baltimore clippers in preference to all others! Not at all. It is reserved exclusively for the Barnstable bay brig the *Theophilus Chase*. And to prove how accurate the commissioner's "estimate" is, the consular return shows that on the 24th of March the captain came (no doubt coolly and deliberately, unless he chanced to be in a hurry, as Yankee captains not unfrequently are, especially when getting ready for sea) to the consulate for his register; and then and there, coolly and deliberately, (with the saving clause just written,) stated his cargo to be "rum, rice, and tobacco," and his destination "Gallinas," on the coast of Africa! Of the other vessels, the first is reported by the master as loaded with fruit, and destined to New York; the second, with coffee and cigars, for Mobile; the third, with fruit, for New Orleans; the fourth, as sold to foreigners; the fifth, with molasses, for Fall River; the sixth, with coffee and cigars, for Charleston; the seventh, with coffee, for Mobile.

On the 13th of April, the brig *Alexander*, of 198 tons, and schooner *Hero*, of 126 tons, both belonging to New Orleans, arrive from New Orleans. When they clear, the former is stated by the master to be laden with "tobacco, dry goods, aguardiente," &c., and destined to Gallinas; the second, to be laden with coffee and sugar, and to be destined back to New Orleans. Upon the return of the latter to Havana, in May, she also, without concealment, takes in the same cargo as the *Alexander* had, and departs for Wydah, another slave-mart on the African coast.

XL. Another topic of the highest value presents itself in the fact, appearing on the face of the consular return, that, whilst the consulate was under the superintendency of Mr. Everett, a number of sales of American vessels (all schooners, and probably all Baltimore built) took place. The consideration of this fact, in the most important of its bearings upon Mr. E.'s report, properly belongs to the review of the next section to that now under examination. It is here adverted to, on account of a question suggested by it, when viewed in connexion with the departure for the coast of Africa, under our flag, of a number of vessels of the same description.

The consular return shows the number of American vessels sold to foreigners during the first half of the present year to have been *eleven*. Of these, *four* were sold prior to the arrival of Mr. Everett. Of the remaining *seven*, three arrived during the month of April, after he had entered upon the superintendence of the consulate, one arrived in May, and three in June. The last of these (she arrived on the 15th of June, the day of Mr. Everett's departure from Havana) was the *Merchant*, a schooner of 99 tons, which the return shows to have previously made three voyages from and to New Orleans, in February, March, and May. Of the other six, the *Elizabeth*, a schooner of 95 tons, belonging to St. Augustine, was reported as having

last come from Key West; the *Laura*, a schooner of 102 tons, belonging to New Orleans, as from that place; the *Lark*, a sloop of 42 tons, belonging to Appalachicola, as from thence; and the *Blanch*, the *Light*, and the *Wasp*, three Baltimore schooners of 103, 58, and 118 tons, reported as having come—the first, straight from Baltimore, with cargo; and the other two from Boston and Nassau, both *in ballast*; a circumstance greatly strengthening the presumption afforded by the other particulars, that they had *come out expressly and solely for sale*.

On comparing these six cases of *sale* of vessels (including three avowed "Baltimore schooners") with the four cases of *departure* of vessels for the coast, (including two avowed "Vienna schooners,") the following questions present themselves:

1. Is it at all improbable that these Vienna schooners would prove at least equally saleable, for the purpose of being employed in transporting slaves, when safely moored in the harbors of Gallinas and Ribendo, on the coast of Africa, (for which, with Mr. Everett's approbation, they were permitted to depart,) as the three Baltimore schooners did prove to be in the harbor of Havana? This question implies that the Vienna schooners were not actually sold before their departure from Havana. But what reason is there for making any such supposition? Suppose a bargain for their sale to have been made and concluded, and the money, wholly or in part, paid, prior to their taking in their—what we have Mr. Buxton's authority for calling—cargoes expressly assorted for the slave-trade! Suppose such a transaction to have occurred: is there aught in its nature to have presented any insurmountable obstacle to its being kept concealed from Mr. Everett?

2. Suppose the persons by whom the Baltimore schooners were purchased at the Havana to have been desirous of buying them, *not* at Havana, but *on the coast of Africa*; and to have been willing to pay the requisite additional consideration to induce the venders to take their vessels there! Suppose such an arrangement to have been made: would it have been, in the nature of things, impossible for the masters of these vessels to lade them also with "rum, tobacco, dry goods, and rice?" Or, after having done so, to clear them at the custom-house for Gallinas, Ribendo, and Wydah? Or, having accomplished these tasks, to get through the final labor of appearing at the consulate; demanding the return of their registers, under the express provision of American law; and (Mr. Everett's permission being first had) having those registers delivered to them?

XLI. The materials for useful illustration afforded by this consular return are by no means exhausted; but I will lay it down for the present, lest the reader's attention—and, I may perhaps venture to add, his faculty of wonder—should be taxed too far.

We may now turn from the consideration of Mr. Everett's columns of American slavers to that of the frame-work in which they are set.

XLI^a. After some explanatory remarks in regard to its origin and object, the report opens as follows:

"That the flag of the United States has been employed of late years to a considerable extent at the Havana, for the purpose of covering the slave-trade, is a matter of public notoriety. This practice appears to have commenced in the year 1836—probably in consequence of the increased difficulties thrown in the way of the trade as carried on under the Spanish flag, about that time, by the treaty between Great Britain and Spain of the preceding year. From the year 1836, up to the close of the year 1839, the number of American vessels engaged in the slave-trade has been constantly

increasing, and was far greater for the year 1839 than for any preceding one."

Here we have, *first*, an averment of the fact, that the practice, which the author of the report has been sent to Havana to inquire into, "is a matter of public notoriety;" (whether *there* only, or *here* also, be meant, we are not told;) and, *secondly*, a statement of its origin and derivation. And here, again—as at every page almost of the report—will every reader, in any degree habituated to require of himself definite ideas in connexion with the words of his author, become sensible of the necessity of pausing to collect his thoughts. What does Mr. Everett mean by the expressions "covering the slave-trade"—"engaged in the slave-trade"—used in the above averments respecting the American flag and American vessels? What is the nature of "this practice?"

That, at the outset of such an inquiry as the present, this point is a point of infinitely greater importance than the origin and derivation of the practice, which are made to fill its place, will be felt the instant it suggests itself. Already, as we first entered upon this examination, it has claimed our attention; (*supra*, X.—XIII. *et seq.*) and we were there enabled to discover materials for constructing the definition requisite to our following the author without danger of becoming bewildered. To the materials there found, an addition now presents itself; which was overlooked from its being contained, not in the section under examination, but in the explanatory remarks by which, as has just been stated, the report is introduced.

XLIII. This preface, after giving, in the language of his letter of instructions, the objects to which his attention was directed, closes as follows:

"Reserving for a future communication the more general topics of the history and present state of the *trade in slaves*, carried on with the island of Cuba, I propose, in the present report, to confine myself to some remarks upon the use that has been made of the flag of the United States for the purpose of covering *this traffic*, and the extent to which the consular authorities of the United States, in the island, have been implicated in these abuses."

Here we have matter requiring a modification of the definition constructed on a former occasion. The object of Mr. E.'s contemplation is stated to be "the *trade in slaves*." What do these words mean? What ideas do they convey to the reader? The word "trade," by itself, means buying and selling, together with every operation incident thereto. Equally comprehensive, and consequently indeterminate, is the signification of the phrase "trade in slaves," standing by itself. Used, however, with reference to a *vessel*, its signification becomes restricted and perfectly definite and precise. A vessel cannot either buy or sell, nor bargain, nor chaffer. Of all the operations, an idea of which is embraced in the meaning of the word, a vessel can only *carry*. The averment that a vessel is engaged in "the trade in slaves," can mean, therefore, only this *one thing*—that *she is employed in carrying slaves*: just as the same averment, substituting *cotton* for slaves, could mean nothing else than that she is employed in carrying cotton.

Accordingly, such—as every reader must be sensible upon clearing up his thoughts—is the impression made by the two passages under consideration. He feels that he has Mr. Everett's assurance for the fact, that American vessels have been extensively employed in *carrying slaves* from Africa to the island of Cuba. This is the meaning conveyed by "American vessels engaged in the trade."

In regard to the other phrase, "use of the American flag for the purpose of covering this traffic," (the "trade in slaves,") its meaning is such as to admit of its being used convertibly with the former; whilst it admits also of a use materially different, and consequently leaves room for doubt which of the two is intended. The averment that an "American vessel is engaged in the slave-trade," means that the vessel employed in carrying slaves is really and truly an *American* vessel; this fact constitutes part of the fact averred. The averment that "the American flag is used to cover this traffic," may be used in precisely the same sense; or the meaning intended to be conveyed may be, that the vessel so employed is not an American vessel, but only *passes* for such, by means of some illicit contrivance enabling her to carry the flag. This effect, also, may perhaps be discovered by the reader, who will take the trouble, among those resulting from these two passages of the report. Upon reflection, he may, perhaps, ascertain that a part of the impression made by their perusal consists in the idea, that not only have *American* vessels been engaged in carrying slaves, but vessels *not* American have been enabled, by means of false papers, to "*cover*" themselves with the American flag for the same purpose.

XLIV. Such, then, agreeing to the lights thus far afforded by the report, is the meaning which we are to attach to these phrases. The nature of "this practice" now stands revealed. Doubt hovers not over the precise type of the offence committed by those numerous "American vessels employed in the slave-trade at the Havana," the names of which are presently to be marshalled out in long array. The precise nature of the facts here intended to be averred by Mr. E., as the groundwork of his report, is ascertained with all the exactness that it is possible for any intention to be by means of human language. Nothing could surpass the clearness, the distinctness, and the positiveness, to which the meaning of these averments has now been reduced; and no longer do they admit of being met in any other way than by an unqualified *yes* or *no* to their truth. Such being the case, the labor of reply to this portion, at least, of the report, and to every thing resting upon it, would limit itself to that of writing an utter and naked denial of their truth, were it not for the interruption to this state of certitude in regard to the precise character of the conceptions and meaning of Mr. E., occasioned by the passage at the close of this same section quoted and examined on a former occasion; (*supra*, XV.) The reader who peruses Mr. Everett's lists, under the impression made upon his mind by the explanatory and other matter immediately prefixed to them, of course believes himself to be reading the names of American vessels that have been engaged in carrying slaves from Africa to Cuba. In the matter appended to those lists, however, is involved, as we discovered on the occasion just referred to, conclusive proof that "*American vessels employed in the slave-trade at the Havana*" is a denomination which, as used by Mr. E., does not, by any means, belong exclusively to vessels *carrying slaves*, but is equally appropriate to the kinds of vessels there described; (*supra*, XVI.)

This totally changes the character of the reply appropriate to Mr. E.'s averments, expressed by means of these phrases of doubtful import. To meet them with a simple acknowledgment or denial, is no longer practicable: for, in one of the senses of the phrase, they may be true; and, in its other senses, false. Inquiry into the particular sense intended on the particular occasion becomes, therefore, an indispensable preliminary to every answer.

The only effect, then, resulting from the attention now bestowed upon the important matter contained in the last quoted passage, which we had overlooked when the point first occupied us, is, that the definition then constructed must be made anew, or at least altered by the addition of a third class of vessels to the two now embraced under it. The genus will now consist of *three* species: two of them absolutely determinate; the third, absolutely indeterminate in a vitally important particular.

Agreeably to the senses now ascertained to be attached to the phrase in the mind of Mr. E., whenever we meet with the averment that "an American vessel has been employed in the slave-trade at the Havana," we are to understand his meaning to be some *one* of these *three* things:

1st. That a vessel, being an American vessel, has been employed in carrying slaves.

2d. That a vessel, being an American vessel, has been sent from Havana to Africa, "intended to be employed in bringing slaves."

3d. That a vessel, being an American vessel, has been sent from Havana to Africa, with a cargo of merchandise intended to be employed in the purchase of slaves.

And whenever we meet with the averment that "the American flag has been used for the purpose of covering this traffic," we may rest assured that the fact intended to be averred is a fact either identically the same as some one of the foregoing; or differing from it only in the particular, that the vessel was not truly American, but falsely passed for such.

XLV. Of the three acts here contemplated, the first and the last agree in the particular that both are perfectly definite. They differ in the particular that the first constitutes an offence against our laws, to which they have attached the name of *piracy* and the punishment of *death*; whilst the last constitutes *no legal offence whatever*. The second of the three is indeterminate in the particular requisite to make known whether the intention with which the vessel is sent to Africa be, that she shall be employed in carrying slaves, *retaining* her American character, or *after becoming divested* of it by sale to a foreigner. In the one case, the intention is to commit the offence against our laws, which they have named piracy, and punish with death; in the other case, it is to commit an offence which those laws call a misdemeanor, and punish with fine and imprisonment.

XLVI. The meaning of these averments regarding the employment of American vessels, and the use of the American flag, being ascertained, (this may seem an altogether inadmissible application of the word; but it is not so. For instance, with regard to the whereabouts of a cambric needle, it might, with equal propriety of language, be said to have been *ascertained* to be in a lady's needle book, or in—a Pennsylvania hay-stack,) we may now proceed to the consideration of their *truth*.

Recurring to the passage with which the report opens, (*supra*, XLII) we find, in the first sentence, two averments: the one is, "that the flag of the United States has been employed of late years, to a considerable extent, at the Havana, for the purpose of covering the slave-trade;" the other states "this practice" to be "a matter of perfect notoriety." For convenience sake, we will confine our consideration to the first of the two; admitting, as a matter of course, that a "*practice*" of the sort, if it existed, would necessarily be "a matter of perfect notoriety."

To respond, then, to the first of these averments, it must be considered successively under the different meanings which we have ascertained to belong to the phrase, as used in this part of the report.

1. *The averment in its first sense.*—Under the first of these meanings, the averment is, *that American vessels have been employed of late years, to a considerable extent, at Havana, in bringing slaves from Africa.* This, the sense in which, agreeably to the first of the above enumerated significations of the phrase, this averment *must* be taken, is also the sense wherein, from the matter immediately preceding and immediately following it: the “trade in slaves,” and “the number of American vessels engaged in the trade” it cannot fail to be understood by all readers.

Reply.—In this shape I meet it by averring, that, to the best of my knowledge and belief, *not the slightest foundation for it exists.* I have *never* had any reason whatever to believe, or to suspect, that an American vessel had brought to the island of Cuba, from Africa or elsewhere, a single slave, or negro, held, or intended to be held, to service of any kind—unless it be a domestic slave from our country, occasionally accompanying the master or mistress; as, by our courts, it has been decided may lawfully take place. And, inasmuch as, according to one doctrine on this point, *ownership* alone determines the national character of a ship, (agreeably to which, any vessel, however documented, that is known not to possess *that* requisite, may be denied to be an “American vessel,”) I will preclude all possibility of doubt in regard to my meaning, by saying, that, under the term “American vessel,” I include every vessel, by whomsoever she may at the time be owned, which, having ever been an American vessel, and documented as such, still *ostensibly* retains that character, and carries those documents. In this comprehensive sense of the words, it is that I affirm that *no* “American vessel” ever has, so far as I have had any cause to suspect, been thus employed. The only thing in the nature of a qualification, which I have to add to this, my most emphatic assertion of the *utter groundlessness* of the averment under consideration, is a reference to two cases which constitute exceptions (though in a very partial sense) to the fact asserted by me. These two cases (which I instantly communicated to Government) were cases wherein grounds existed for the belief that negroes had been *taken on board* a vessel on the coast of Africa, which, although she doubtless had previously been divested of her American character, in respect of ownership, had not been divested of that character in respect to *documents*—so far, at least, as the fact of her having her American documents on board at the moment might be judicially held to prevent such divestiture from being complete. The particulars of these cases will come under consideration hereafter; for, strange to say! (if, after the first page of this report, the word *strange* can, with justice, be applied to *any* thing which it may disclose,) these two partial exceptions to the general truth of the matter, have been produced by Mr. Everett in a manner conveying the impression that they constitute fair specimens of the nature of those cases of “American vessels engaged in the slave-trade at the Havana,” whereof his long columns are made up.

2. *The averment in its second sense.*—In this sense, as we have seen, the fact stated is indeterminate in an important particular; and this indeterminateness requires that the averment be considered and responded to, under *both* the forms of which the fact is susceptible in regard to that particular.

First.—Under one of these forms, the averment is, *that, of late years, American vessels have, to a considerable extent, been despatched from Havana to Africa, in the intention of their being employed in bringing slaves*

to the island of Cuba; they continuing to be American vessels whilst so employed: that is to say, retaining their American OWNERSHIP, American DOCUMENTS, and American FLAG.

Second.—Under the other form, the averment is the same as the foregoing, excepting in the particular that the intention, *instead of being, that the vessels should retain the American flag and American documents whilst employed in carrying slaves, was, that they should be divested of both, and NOT RETAIN A SINGLE ELEMENT OF THEIR FORMER AMERICAN CHARACTER.* In other words, the intention was neither more nor less than that the vessels *should be sold or delivered on the coast of Africa.*

Reply.—Under the first of these forms (*which is the form wherein every reader will feel that it presents itself to him*) I meet the averment in its second sense as I did in its first; that is to say, by averring that, so far as I know or believe, *it has not the slightest foundation to rest upon.* I have never known, or had cause to suspect, that any American vessel was despatched with any such intention. And here, again, lest there should appear to be room for doubt as to the meaning of this averment of mine, I will add, that I have never had cause to suspect any such intention with regard to the employment of a vessel in that way, whilst she should retain her American character in *any one* particular; that is to say, whilst she should be owned by American owners, or be provided with American papers, or carry the American flag.

Under the second of these forms, I meet it by saying, *first*, that, so far as, from *indications* alone, and without any actual *knowledge* of its occurrence in a single instance, a practice may be averred to exist—it is perfectly true, *that numerous American vessels have been despatched to Africa, to be there transferred to purchasers of other nations, who intended to employ them in carrying slaves.* Often, doubtless, the vessel has been so despatched, *after* being sold; and when, to consummate the event which would deprive her of every vestige of right to be deemed an American vessel, nothing remained but the act of delivery, and the payment of such portion of the purchase money as, by the secret bargain between the parties, might have been made payable on the fulfilment of the condition. And, *secondly*, I say, that the nature of the act whereof this practice consists will be made the subject of remark presently, and will be shown to be such as to place it altogether beyond the reach of consular control; and this, not under existing laws alone, but under any laws that could be passed.

3. *The averment in its third sense.*—In this sense, the fact stated is, *that American vessels have of late years been employed, to a considerable extent, at Havana, in carrying cargoes of merchandise intended to be employed in the slave trade.*

Reply.—In this sense, I meet it by saying, *first*, that it is doubtless true. *Secondly*, that, to carry merchandise of any and every sort to Africa, from Havana or elsewhere, constitutes, so far as I know, as absolute a legal right of every American ship-owner as that of carrying cotton to Liverpool. This is true, whatever the purpose may be to which the merchandise is destined, and by whomsoever it may be owned; whether it be carried on owners' account, or as freight—as American property, or as Spanish; whether it be intended to be used for barter against palm oil, elephants' teeth, and gold dust, or against slaves. *Thirdly*, that, as the law now stands, the right to carry merchandise *intended* for the latter purpose, is as absolute as to carry merchandise intended for the former; and, consequent-

ly, the intention may be avowed, declared, and proclaimed, by whomsoever chooses. And if such intention were made illegal, the only practical effect any such law could have, (so long as it stopped short of a prohibition to carry to Africa any article which might tempt the slave-owners of that country to part with their captives, instead of keeping them for dinner on grand occasions, or for propitiatory sacrifices to Mumbo Jumbo,) would be, to render it necessary, *perhaps*, for the master, after loading with such merchandize, whether on freight, or as a trading adventure, to say, or to swear, that he did not entertain, or know of, any such unlawful intention. *Fourthly*, that, on comparing together those two acts—the one unlawful, the other lawful;—that is to say, the act of despatching a vessel from Havana to Africa, for sale, or for delivery there, to persons intending to employ her in carrying slaves, (which act clearly is, in itself, an infraction of the spirit, though not of the provisions of the law;) and the act of despatching the same vessel without any such intent, but solely to carry a supply of merchandize to the factories where slaves are bought, it becomes perfectly obvious that, to render these two acts absolutely undistinguishable to any eye at Havana, nothing is requisite but *secrecy*, in regard to points which present no difficulty whatever in being kept profoundly secret. And, consequently, that supposing the American consul at Havana to be clothed by law with every conceivable power that could, consistently with the principles of our institutions, be exercised on the subject, and to be provided with all conceivable instruments and means; and the Government of that country to consent to the freest exercise of those powers and use of those means within its territory,—it is scarcely possible but all this provision against the prohibited act would, so long as the other remained unprohibited, prove just so much idle machinery. This could scarcely fail to be its character, unless, indeed, by the dexterous seizing of an occasion, now and then, it might be put in motion for the purpose of *effect*; to the end, not of *prevention*, (deemed by all, at this day, to be the only justifiable object for which penal laws can be enacted; and which may, perhaps without error, be deemed to be also the end, a desire to promote which can alone justify zeal in their execution,) but solely of making display of consular vigilance; and, by bringing the penalty of the law upon some wretched culprit less practised and dexterous in concealment than the rest, keep up the impression that, however notorious it might be that infractions of the law were daily committed with impunity, under the garb of the exercise of a legal right, and however obvious the certainty of such impunity to whomsoever should take care to adjust the garb nicely, yet this condition should be vigilantly insisted upon, and the penalty be inexorably applied to any who should be so careless or so awkward as to leave it unbuttoned at a single button.

4. *The averment in its fourth sense.*—This sense, as we have seen, corresponds to the first of the series; and may be the same identically, or may differ from it in the particular, that the vessel in regard to which the fact is stated was not in reality an American vessel, but only *passed for* such, by means of false documents.

Reply.—In this sense, I meet it by averring to the best of my knowledge and belief—

First. That, since the Havana consulate came into my charge, not a single instance has ever occurred of a vessel's being in that port, "put under the flag" of the United States. This being the established phrase for the process whereby a ship's national character becomes changed by transfer of

ownership and acquisition of new documents. (Which transfer, as is obvious, may be true or may be purely feigned ; and, consequently, the change of national character may be real, or may be ostensible only.)

Second. That, during the same period, no instance has ever occurred of a vessel's clearing at Havana under the American flag, unless she had *arrived* as an American vessel, *documented as such, with genuine documents from a custom-house in the United States.* Nor has an instance ever occurred of any vessel, except a vessel of this kind, receiving at Havana *any* document of *any* sort, purporting that she was an American vessel, in *any* sense whatever of the term. Nor has any such document ever been issued in regard to any such vessel, except where the applicant had a strict right to receive it on demand, and the consul no authority to withhold it.

Third. That, upon the transfer of ownership in a vessel of the United States from one citizen to another, the law requires a bill of sale, wherein the register is recited, word for word ; and when such transfer takes place at a foreign port, it is *customary* to pass such bill of sale at the consulate, and to have it recorded there. This, however, is mere custom, not obligatory by law. The parties are under no legal obligation to acquaint the consul thereof ; nor is he authorized by law to interrogate any citizen, as the buyer or seller in such transfer, known or conjectured, in regard to its genuineness, or their motives or objects. Of the American vessels despatched from Havana, some go without any such transfer having taken place, (or, at least, having been made known at the consulate,) and consequently without any such bill of sale on board. In other cases, a sale having taken place, or the plans of the parties requiring that one should be made to appear to have taken place, by an ostensible transfer of the vessel from one citizen to another, and it being by them seen fit to have the instrument executed and recorded at the consulate, the vessel becomes provided with a bill of sale bearing the consular authentication. This instrument found on board of American vessels, which, *having arrived at Havana with American registers obtained at American custom-houses,* had gone from thence to the coast of Africa to carry cargoes only,—or both for this purpose, and in the intention of a transfer there,—constitutes the *sole foundation for all the imputations against the consulate, in regard to the supplying of fraudulent papers for the use of the American flag to cover the slave-trade.*

Fourth. That, agreeably to a doctrine (which, so far as I know, is *universally* prevalent among our navigating and mercantile classes, and in favor of which legal authorities of the highest standing may be quoted,) *American ownership* constitutes the only requisite for imparting to a ship the right to navigate under the flag of the United States. When this ownership is acquired in a port of the United States, the vessel has a right to recognition from the Government authorities there, and to documents for her protection as an American vessel upon the high seas. When the ownership is acquired in a foreign port, the same right arises with respect to the consul there. Such is the doctrine that is held and acted upon, all the world over ; and the recent application of which at Canton, to the purpose of converting British ships into American, in order to evade Chinese law, has been read of (though probably without arresting attention) by every newspaper reader in our country. The facility which it affords for procuring the cover of the American flag for any vessel, whenever an American can be got to personate the part of purchaser, is too obvious for remark. At Havana, within some years past, it might have been made the source of

immense wealth by an American consul, capable of being bribed into connivance at what he considered unlawful; or (supposing him not versed enough in the law to form opinions of his own) capable of accepting gratuities, for *merely allowing matters to take their course* according to what high authorities pronounced to be law. This is what *might* have happened. What *has* happened is, *first* that no such transaction ever has occurred; and, *secondly*, many vessels have arrived at Havana under the American flag, thus obtained at ports of the United States, and at other foreign ports; and even this class of cases would readily have yielded, as the price of connivance, enough to constitute a large fortune. But, *not one of them ever got out of the port under the American flag*; and where a douceur of a thousand dollars or two would have been the reward of the course that *might* have been pursued—the mere *taking for granted* that what had been done at American ports had been rightly done—protests, threats of ruin by the law, and of death by the dagger, constituted the reward of the course that *was* pursued. These facts are here adverted to, not in the spirit of self-commendation—I beg I may not be so far misapprehended—but, as evidence. They are introduced here not as facts, which it would be decent in any officer of the American people to take to himself credit for; but as facts which every man at Havana who knows any thing of its commercial movement, knows to be true—facts which no man could remain ignorant of, who should pass a single day there, and devote it to inquiry into this subject—facts which, from their nature, constitute *proof* against the justice—and not only against the justice, but against the plausibility, or semblance of justice—of the imputations that have been cast at me, in regard to the supplying of vessels with false documents.

5 and 6. *The averment in its fifth and sixth senses.* These are correlative to its second and third, and the reply to them is embraced in that just given to its fourth. It contains an explicit and unqualified denial that, in any instance whatever, any vessel ever was put under our flag at Havana, or any vessel of this description ever was provided with a single document of any kind, purporting that she was an American vessel. And containing this denial, it covers the whole ground of every imaginable averment in regard to the *uses* to which vessels of this description have been put.

XLVII. Having thus accomplished the toilsome task resulting from the form given by Mr. Everett to his fundamental averment, and replied to it by stating to what extent it has foundation in truth, and how far his language must be considered purely metaphorical, (and quite as highly so, to say the least, as in the averment *imagined* by me at the outset of this examination, in regard to the number of negro slaves at this moment in the employ of the Lowell capitalists,) I will now proceed to consider more particularly the *nature* of the *matter of fact*, thus averred by me to constitute—with the exception of the two cases already adverted to, as having been produced by Mr. Everett *as specimens* of the rest—the sole ground for any assertion connecting the American flag with the slave-trade at the Havana.

This truth, (that such is the *sole* ground for any such assertion,) I again affirm, most unqualifiedly, and emphatically. Had it engaged Mr. Everett's attention, it would doubtless have had the effect of suggesting words better calculated than those used by him, to convey a conception of the true *nature* of the "practice," the existence of which he was in the act of averring, as a

basis for his commentaries. In such case, in place of the phrases which have produced upon us the effects already examined, we should have read something of the following import: that American vessels had, contrary to the spirit and intent of American legislation, been employed in ways conducive to the slave-trade; or, that the American flag, owing to the exemption it secures to (or, at least, to which, *of right, it entitles*,) vessels sailing under it from the powers of sea police vested in the British navy over the subjects of Spain and Portugal, by virtue of express grants from their sovereigns, (whom British writers, official and unofficial, do not scruple to represent as having been *bribed with gold* to make the concession,) had been used to cover merchandise and vessels, intended for the slave-trade, on their way to the coast of Africa. Then, too, would Mr. Everett's columns of names have been endued, if not with the positive virtue of conveying perfectly precise ideas, at least with the negative one of not conveying ideas grossly erroneous. The American reader, as his eye ran them over, would have possessed the comforting assurance, that, bad as the abuse might be, it was no worse than this: that every name which he read was the name of an American vessel that had gone to the coast of Africa, either to carry merchandise for the slave-trade, or, as herself, an article for sale for that trade; or, perhaps, uniting both purposes in one.

Such, in part, might perhaps have been the consequence of Mr. Everett's giving heed to the precise nature of the matter of fact before him. Another part of the effect might have been to suggest reflections—possibly to direct him to studies—from which would have resulted conceptions of the *properties* of this matter of fact, in regard to law and to the possibility of control by means of consular authority, sufficiently definite, at least, to prevent his falling into the gross contradictions exhibited by his own course when charged with the superintendence of the consulate, as compared with his grounds for the freest censure of, and most unsparing imputation upon, a consul acting without the advantage afforded by such supervision and direction: the contradiction of saturating, first his own, and then his readers' imagination, with "piracy," and consular connivance at "piratical pursuits" under his country's flag; all which effect is produced by an array of names, corresponding to cases which, upon the slightest inspection, prove to be identically the same, in regard to illegality, or the semblance of it, with other cases occurring under his own superintending eye, with vigilance specially directed, and specially stimulated for the occasion.

The *nature*, then, of this matter of fact—which I aver to constitute the only matter of fact contained in the field of inquiry, so curiously opened to our view by Mr. Everett—what is it? In what consists the *acts* involved in "this practice?" What are their legal properties? And what their properties in regard to the authority vested in consuls?

I do not intend to engage fully in this inquiry. I have stated it solely for the purpose of calling attention to one or two points of importance.

The acts under contemplation are, first, the act of despatching an American vessel from Havana, freighted with merchandise for the use of the slave-traders. Secondly, the act of despatching such a vessel from Havana, in the design of transferring her on the coast to slave-traders.

1. The first is a perfectly lawful act. It is so, whether the merchandise be taken for his own account, or for account of others, be they citizens or foreigners. Any American citizen has an absolute legal right to commit it as often as he may choose; and defy the whole Government of the whole

United States, executive and judiciary, to pretend to interfere. No power to hinder him in the exercise of this right exists upon earth—unless, indeed, it reside in the British “Trident,” as an emanation from that “omnipotence,” of which it is, or has been, the symbol.

2. The second does not, of itself, constitute an infringement of law. It is, or is not, unlawful, according as it be, or be not, attended with the element of illegality, created and established by the Legislature. What is this element? It consists of the fact, that the vessel was built or fitted for the slave-trade “*within the jurisdiction of the United States.*” It requires that, *at the time of her departure from the waters of the United States,* it was intended she should be employed in carrying slaves. If such was the intention at that time, then will the act of despatching her from Havana to the coast be but a continuation of an infraction of the law, already committed by the sailing of the vessel from our waters. Such is the law. Under its provisions, as is clear from their very letter, and as they have been expounded by the courts, a jury cannot convict any one of having committed an offence against law, in selling a vessel fitted and equipped for the slave-trade, knowing and intending that she should be employed in that trade, if a doubt rests on their minds whether such intention was completely formed *before her sailing from our waters.* Such is the extent of the powers of control over practices of this nature, which the Legislature has vested in *the judges and juries of the land.* Agreeably to its express limitations, any owner of an American vessel, or any American citizen, who should choose to purchase one at Havana, or at any other foreign port where it may be not contrary to the local law, might there fit and adapt her in the most complete and perfect manner to the purpose of carrying slaves, and sell her, or take her to Africa for sale; and he might do this openly and boastfully, defying interference from any earthly power.

Waiving, however, all distinctions upon this ground, I will suppose the law to be so framed as to render the act of despatching a vessel in the design of selling her for the slave-trade, equally unlawful, whether she be so despatched from a foreign port or a port in our own country.

3. We shall then have under contemplation, as the modes wherein the slave-trade is aided by means of an abuse of the liberty of the American flag, *two acts*: the one *lawful*, the other *unlawful*. In point of *law*, they do thus differ. Their nature, too, is essentially different: they are perfectly distinguishable; on no occasion of their occurrence, can they possibly be confounded together—*provided* we possess an insight into them. If a man load his ship with goods, on freight or on venture, for the coast of Africa, and depart solely in the design of delivering or selling *those goods*, he does one thing. If the same man, with or without taking in a cargo of this kind, departs in the design of selling *his vessel*, or (if the bargain be already made and concluded) of delivering her on the coast, he does another and a totally different thing. In what does the difference consist? In the *intention*. To all practical intents, therefore, the distinctiveness of these two acts—the one lawful, the other unlawful—depends entirely on the knowledge possessed of the intention existing in the mind of the captain at the time he sails. The captain is the same, the vessel the same, the cargo the same, the destination the same: the question, whether the sailing of the vessel be a lawful act or an unlawful act, is a question which depends altogether upon what the captain may intend to do with her when he shall have reached the coast. Such is the difference between the two acts. Such the entire

ground upon which rests the possibility of their being distinguished. And this, whether they be considered *before* commission, when the vessel is only about to sail; or *after* commission, when she has sailed. For instance, supposing one, or all, of the four vessels laden with goods for the slave-trade, which departed with Mr. Everett's consent, for the coast of Africa, to be ascertained to have been there transferred to slave-traders; still the lawfulness or unlawfulness of the act *committed at Havana*, in departing with those vessels, would depend upon the point whether the intention thus to transfer them did *at that time* exist, or whether it was formed *subsequently*. Such being the nature of the only ground upon which any functions which could possibly be vested in a consul could possibly be exercised, the question, what possible practical result could attend their exercise, is a question that no one can experience any difficulty in satisfying his mind upon; though a full conception of all that it involves can be found only by one qualified, by a thorough acquaintance with the every-day pursuits and practices of the commercial world, to see the subject in all its bearings.

XLVIII. We have compared together the two acts—the lawful and the unlawful—wherein the abuse of the flag to cover proceedings subservient to the slave-trade consists. Let us now take the subject in another point of view, by considering *one* of those acts—the *sale of vessels designed for the slave-trade*—under its various aspects. The difference between these consists in the time at which the sale is avowed and the divestiture of the American character of the vessel takes place.

This divestiture does always take place before the vessel is applied to the purpose of carrying slaves; for, as I have already stated (*supra*, XLVI) this business is not pursued by American vessels. The point of time when it occurs varies, however, according to the precise nature of the transaction. (This applies equally to vessels which may originally have been built to order, on foreign account, as to those built on speculation and sent out for sale; which doubtless constitute by far the larger portion.) In some cases, the sale is avowedly effected at Havana, and the vessel becomes divested *there* of her American character; as happened in the cases (*supra*, XL) that occurred during Mr. Everett's superintendency of the consulate. In others, no sale is avowed; and consequently no such divestiture takes place. The vessel departs as she came, as an American vessel, (cleared for Africa or such other place as the master chooses to name,) just as others do, without having been sold, or without any intention to sell them; as *may* have been the fact in regard to each of the four vessels despatched for Africa with Mr. Everett's permission.

To understand clearly the various forms which a covert transaction of this nature may assume, we will begin by considering the legal rights by means of the exercise of which they are effected.

1. The right of the master of an American ship to appoint another in his stead. The exercise of this right is an event of daily occurrence: induced by every variety of motive, and combination of motives. In regard to these motives, no consul, no officer of the Government, low or high, is clothed with authority to interrogate an American citizen. An instance of their operation is afforded by one of the four cases of vessels which departed, with Mr. Everett's permission, for the coast of Africa: the consular return shows that the "Vienna" clipper *Kite* arrived at Havana on the 23d April, under *M. Martin* as master; and that her register was, on the 27th May, deliv-

ered to *John F. Haynie* master, who declared his cargo to be *assorted*, and his destination to be *Kibendo*, coast of Africa.

2. The right of every American ship-owner to sell his vessel in a foreign port, and of every American ship-master, or other citizen having domicile in the United States, to buy an American ship in any foreign port. This also is a right, the exercise of which is an event of daily occurrence; and which, in regard to the motives of the parties, is equally exempt from inquisition on the part of consul or other Government agent. It is so, not only in regard to the motive, but also in regard to the very *act* itself—the *mere fact* that a sale has taken place. This they are under no obligation to divulge to him. It is customary to execute the bill of sale at the consulate, and to have it authenticated and recorded there; but there is no obligation to do so.

Take again, for the purpose of illustration, the same case of the Vienna clipper *Kite*. Captain *Martin* may, for aught we know, have been her owner, as well as commander; or, without being *really* her owner, he may have been so *ostensibly*—that is, by his name being written as such upon her register—(this, to be sure, would imply perjury; but to “hold a vessel in another’s name,” by means of a “custom-house oath,” is well known to be a very innocent form of proprietorship;) or he may have been empowered by the real owner to sell her. And Captain *Martin* being, in some one of these ways, endowed with the faculty of selling, Captain *Haynie* may have been endowed with a corresponding faculty to become the owner, as well as master, in the place of his predecessor. He may have been known to all Havana to be a man without a cent. But who knows but Captain *Martin* may have been disposed to *trust* him as buyer, no less than as master? And supposing his confidence not to have extended so far, who knows what means of raising money on credit Captain *Haynie* may have possessed? He may have had a letter of credit from some merchant at New Orleans, or Vera Cruz, or any where else, in or out of our country, who knew him to be the very sort of man to trust with the means of making “a good spec” on joint account, should occasion offer, by purchasing a cheap clipper schooner at Havana, and taking an “assorted cargo” to Africa; and there, after disposing of cargo “to the best advantage,” making sale of vessel also; or bringing her back with palm-oil, ivory, gold dust, and whatever else he might pick up; or by the way of Smyrna, with figs and raisins; or by the way of any other place, with any other lawful cargo, “according to the best of his judgment.” Or supposing him destitute of all such means, he may have credit at Havana itself. Some Spanish or other merchant may have been extremely desirous to despatch the “assorted cargo” immediately; and Captain *Martin* having as good reasons not to trust his schooner out of his own hands, as the fact of the change of masters proves him to have had against going himself to the coast of Africa, the merchant may have agreed to advance to Captain *Haynie* the money requisite to his becoming the owner of the schooner, to be repaid by the freight she should earn in thus carrying out “assorted” cargoes to the coast.

In some one of these ways, the ownership of the *Kite* may, for aught we know, have become vested in Captain *Haynie*. And though this should be proved not to have actually happened, it would still remain absolutely undeniable that it *might* have happened. This is all that my present purpose requires: for it is merely to bring clearly before the reader the truth, that if it *had* happened, *nothing* but the *mere good will and pleasure of*

the parties to exercise an unquestionable legal right was requisite to its being kept entirely secret from Mr. Everett.

It follows, then, as we may incidentally observe, that should it perchance hereafter turn out, that, owing to her "assorted" cargo, and her build as a Vienna clipper, the *Kite* has been captured on the coast by "her Majesty's brig Termagant," or any other of her Majesty's cruisers, and carried, as an "American slaver," to be judged by the "mixed commission" at Sierra Leone; and should Captain Haynie, to avoid protracted imprisonment there, or for any other good cause, confess that it had all happened exactly as is above supposed, with the addition, too, that the vessel was to all intents Spanish property, and moreover, that "the consul knew all about it,"—should this perchance occur, no imputation would attach to Mr. Everett for defective vigilance in the discharge of his duties. No ground for such imputation would be afforded by the circumstance that this sale had not been discovered by him, or even that he had instituted no inquiry into the matter. *A fortiori*, no such ground would be afforded by any particulars that might come to light in regard to the details of the transaction between Captains Martin and Haynie—their motives, inducements, and views. The law allows any American citizen, domiciled in his country, to become the purchaser of an American ship. It leaves the parties to such sale at perfect liberty to make it known to the consul, or not, just as they see fit. In regard to a private transaction stamped with these legal characteristics, it would be a contradiction in terms to say that it constitutes the duty of the officer, from whom all knowledge of it may thus rightfully be withheld, to keep himself informed of even so much as the fact of its occurrence. The contradiction would be still greater, to say that any blame could attach to him from any illegal designs which such transaction may have been the means of effectuating. Suppose the law to impose upon the parties to every sale the obligation to make it known to the consul, and to clothe him with authority to interrogate any ship-master in regard to any such supposed event: it would not by any means follow, that his authority extended so far as to warrant any pretension on his part to question them in regard to the particulars of such transaction, or the motives which might be at the bottom of it.

We will pursue the consideration of this case one step further. Supposing such a sale to have taken place between Captains Martin and Haynie, what legal accountability would have attached to the former? Let us suppose that he returns straight to the United States; and that, instead of keeping out of the way to avoid troublesome questions, he puts himself to the trouble of courting inquiry. The *Kite* belongs to Vienna, but came to Havana from New Orleans. It is at the last place, therefore, that his crew-list bond was given. He goes there to have it cancelled; and produces to the collector the required proof that his crew has been discharged at Havana according to law. This is all that the collector of that port has any thing to do with. Suppose him, however, to inquire after the vessel: the reply, of course, is, that she is sold. Captain Martin next proceeds to Vienna; and walks into the collector's office, to apply for a register for the *Falcon*, a new schooner just launched there. "What have you done with the *Kite*?" "Sold her." "Where is the register?" "I sold her to an American citizen—a Captain Haynie; and of course her register remained with her." "Well, but your register bond!" "Why, that remains in force, I know; but Haynie will bring the *Kite* back to the States after a while,

and then he will take out a new register, and deliver up mine to be cancelled. He was only going out to Kibendo, on the coast of Africa, with an assorted cargo, from Havana; and had engaged to go from Kibendo to London, or Sierra Leone, after another, according to the orders he may receive at Kibendo from the agent of his freighter at Havana, Don Pedro Martinez. They pay such good freight that I had half a mind to engage in the business myself; and would have done so, spite of the coast fever, if I had not been afraid of trouble, detention, and ruin, from those British cruisers; who, 'tis said, board you, and seize you, and d—n your flag, and put a prize-crew on board, who get drunk, and break up every thing, and play the very devil, and carry you off to Sierra Leone. They seem to be determined to have all the trade to the coast to themselves. If Haynie should be so lucky as to steer clear of them, I have no doubt he will make a good business of it, and be back after a voyage or two, unless he should find a good chance to sell the schooner. In that case, if the sale is to a foreigner, he will take care of the register. I am in no fear of the bond becoming forfeit by any thing he will do."

Such is the tenor of Captain Martin's answer. The Vienna collector turns to the bond, and sees that its condition runs in such a way that the captain's view of the matter may possibly be correct, and that he may have done right in leaving the register with the schooner. However, as he has not had any experience with *registered* vessels, he reports the case at Washington; and receives a reply founded on the following passage in a circular to consuls, under date July 1, 1805, signed by James Madison, Secretary of State, showing that Captain Martin knew as well what he was about in leaving the register with the schooner, as he would have known had he passed the bill of sale at the consulate, and been advised by Mr. Everett in conformity with the instruction:

"When registered vessels are lost, condemned as not sea-worthy, or are sold to foreigners, you will, with the consent of the captain, or other person representing the former owner, cancel the register and return it to the Treasury Department; but if such consent is withheld, you will, in lieu of the register, transmit information of the circumstance, that recourse may be had to the bond. When a sale is made to a citizen of the United States, you are not to oppose the register's being returned in the vessel to which it belongs, as otherwise the purchaser may be exposed to weighty inconveniences, whilst the bond will operate as a safeguard against fraud."

* This circular, and another under date October 1st, 1803, enclosing "remarks made by the Comptroller of the Treasury, respecting sales of American registered vessels," have, within the last few days, (November, 1810), for the first time, come to my knowledge. They appear to have been lost sight of in the lapse of time, and to exist nowhere but in the record-book; an accidental search into which by one of the clerks in the Department of State has caused them to be brought to my notice. They have proved a source of no small gratification to me, in the identity of the views they present upon some nice points of interpretation, with those to which I had been led by my own examination of the acts of Congress. One of these points—upon which no small diversity of opinion does, I know, exist among the bar and the bench—is presented in the above extract—the proper disposal of the register, in case of the sale of the vessel abroad to an American citizen.

The conclusion at which I had arrived—as was stated by me in the district court at Baltimore in April last—is, that the proper navigating document for a vessel of the United States is her register; and that this ought to remain with her, however often her ownership may pass from one American citizen to another, until her return to the United States—this being the time at which it is contemplated by law that the register is to be delivered up, and a new one obtained. The grounds upon which this conclusion rested in my mind were, first, the meaning of the various provisions of the law when collated; the legislative intention thereby evinced: and, secondly, the *practical reasons* set forth in the above extract; that is to say, the inconve-

3. These two legal rights—the right to appoint a new master, and the right to sell and buy—are, as the reader will perceive at a glance, those by means of the exercise of which, separately or conjointly, the sale of a vessel to a foreigner may remain a covert one, so long as the parties may arrange and agree to keep it so. Recapitulating the various forms which such a sale may assume, we have—

First, cases where the sale is avowed, and the vessel is forthwith divested of her American character.

Second, cases where the sale is covert; and the vessel departs without any ostensible change, whether of ownership or of master.

nience to which the new owner might be exposed in consequence of the want of a register; and the fact that if it were once separated from her, returned to the Government, and the bond cancelled, the consequence would be that a vessel, to all legal intents and purposes a "vessel of the United States," would be abroad, and the Government be destitute of that security which the Legislature intended should be possessed, by means of the register-bond, in regard to every such vessel.

Upon another point, also, do my own views here receive confirmation; inasmuch as the legislative intention manifestly is, that a vessel thus sold shall not thereby become divested of her national character, but shall continue to be, to all intents, "a vessel of the United States." Her character as such cannot be affected by the circumstance of the register's being separated from her, and returned to Government for cancellation. In such event, the place of the register cannot but be supplied by *that* document, which the law requires to be executed on every such occasion, (and which some have inferred to be intended by the law as a *substitute* for it,) to wit: the bill of sale, wherein the register is recited word for word. As evidence of the fact that the vessel is a registered vessel, this document—particularly when authenticated by that officer of the Government in whose custody, by express provision of the law, the register is at the time of the sale—cannot but be deemed of equal validity with the register itself. It is a document prescribed by law, authenticated by the officer appointed by law to authenticate it, and necessarily embodying a transcript of the register which is in that same officer's legal custody. It is a document, therefore, the validity of which as evidence of the fact that the vessel is a "vessel of the United States," entitled to all the respect, as such, to which a vessel can be entitled, is as beyond dispute as a new register would have been had the sale taken place at a port of the United States, and such new register been issued by the collector.

Such is the view at which I had arrived upon this point, and which I found confirmed in the above passage; for whilst it instructs the consul "*not to oppose* the register's being returned in the vessel," it does not instruct him to insist upon it, or to inform the parties that this is the proper course. It says, too, "as otherwise the purchasers *may* be exposed to weighty inconveniences;" not *will* be so exposed. Both clearly indicating that, in the opinion of the Secretary of State and of the law-officers of the Government, a vessel thus sold may rightfully navigate as a registered vessel, and is entitled *therefore* to respect as such, although she should not actually have a register on board. (It will be noticed that the word in the foregoing quotation is "*returned*." It is thus written in the record. That this is a clerical error for the word *retained*, is, however, rendered probable by the consideration that whilst the practical operation would necessarily correspond to the latter word; the former, by conveying the idea of the necessity of an immediate *return* to the United States, implies a restriction upon the right of an American citizen to buy a vessel abroad, for which no warrant can be found in the law, and which would be incompatible with the purpose for which such purchase may be made.)

My practice has conformed with this view. When a sale of this nature has taken place, under circumstances indicating an intention to take the vessel to Africa, I have pursued the plan of cancelling the register, and transmitting it to Government; thereby securing against the abuse which might result from the party's being in possession of *two* documents of equal validity and force, for the protection of a vessel as a vessel of the United States (either of which, consequently, might be illicitly used for the purpose of giving that character to some other vessel;) whilst, on the other hand, I entertained no doubt that the bill of sale, alone, possessed all the virtue that could reside in the register itself. In this, however, the event proves that I was mistaken; so far, at least, as regards "her Majesty's cruisers." For, assuming to themselves not only to stop and to search American vessels, but also to judge of the validity of the acts of officers of the American Government, they have exercised this power by treating as an old newspaper any mere *bill of sale* from the "consul at Havana;" and by wishing that they "could catch him, to hang him." Should the schooner *Kite*, of Vienna, (or any other of the vessels despatched for the coast, with Mr. Everett's leave) escape similar treatment, it will be owing perhaps to the circumstance that Captain Haynie did not purchase her, (or if he did, thought it best not to have the sale passed at the consulate, lest the register should be taken from her,) and will consequently have a Vienna custom-house register instead of a trumpery Havana consulate *bill of sale*, to exhibit to any British midshipman who may honor him with a search.

Third, cases of covert sale, where the master who brought the vessel, not choosing to proceed in her, she is put by him under a new master, employed and paid by himself, or perhaps by the purchaser, to take her to the place of delivery agreed upon.

Fourth, cases of covert sale, where the vessel is not only put under a new master, but becomes ostensibly his property, by means of a bill of sale executed either privately or at the consulate, and there authenticated and recorded.

Fifth. To these may be added a fifth class, embracing cases presenting features identical with those of the second, third, and fourth; and differing from them only in the fact that no sale has taken place, and the vessel is despatched in the intention of selling her, or with an understanding that she will be bought on the coast.

4. In all these cases, if the vessel has been built in, or has been despatched from, the United States, in the design that she shall be sold for the slave-trade, *the infraction of our law is identically the same.*

5. In one particular, however, cases of the first class materially differ from the rest. In the latter, the *intention to sell* the vessel *may* not have existed. Whatever may have been covertly done, she has departed without any apparent consummation of such intention—without any manifestation or indication of it, beyond the ground for mere surmise; and of the utter fallaciousness of this ground, the consular returns furnish abundant proofs, afforded by her build, and other particulars which are daily presented by cases that are daily proved *by the event* to have been free from all illegal intention. Not so, however, in regard to cases of the first class. A vessel may be suited to the slave trade; but if she departs from Havana without any apparent sale, this fact of sale, at least, is wanting to corroborate any presumption which may have arisen that she was despatched from the United States in violation of law. But if that same vessel is avowedly sold, this corroboration is *not* wanting. It exists, and exists officially. The vessel *is sold*; and this has become officially known to the consul.

Now, supposing this officer to be clothed with powers bearing in any manner—whether in the way of control, prevention, or punishment—upon the violation of law here under contemplation; which of these classes of cases is it that presents the strongest claim to action on his part? Is there any sort of comparison in this respect between cases of the first class and the rest? Is not the title of the former immeasurably the greater? Does not the occurrence of such a case afford immeasurably the stronger ground for imputation against the consul, who has allowed it to occur without taking any steps in relation to it?

And what does the consular return show for the period of a little over two months, during which Mr. Everett was charged with the management of the consulate, with special reference, as appears from his report to this very subject;—that period during which he was anxious “to find” a case of violation of our laws, upon which to test the efficacy of the powers wherewith he was clothed (what these were, and what the means and instruments through which they were to operate, I do not pretend to be able to form any definite conjecture,) for bringing the offenders to justice? It shows that, of this very class of cases—besides the four cases which, for aught he knew, or could know, or possessed any authority to ask to know, may have been cases of either of the other four classes—no less than six successive instances occurred! And his report shows that these *were not deemed by him worthy of so much as a mention!*

And what are we to infer from this? That his zeal was all affected? or, that it was directed against objects altogether imaginary? Cases which he did not "find," for the same reason that he never would have found them: they had no real existence; they were cases which no man, whatever might be the nature of his business, was under any necessity to create for him. Cases to which, if he found some similitude, yet he found no true counterpart in the *realities* before him, when, suddenly and unexpectedly, he was placed among them; cases to which those realities, *which he had not seen*, might also have borne only a semblance, which, if not less striking to the distant or superficial observer, was also not less known to be illusory by him under whose eye they occurred.

XLIX. Resuming the consideration of the opening passage of the report, (*supra*, XLII.) the next thing which it presents to our attention is the historical fact in regard to the time when "this practice" commenced, and to its cause.

In this fact, we now (having ascertained in what this practice consists) have something tangible with which to deal. The practice consists, we have seen, in two acts: the one lawful—the other unlawful. We have seen, also, that the latter may be involved in the exercise of the right to commit the former; and that to do this effectually, requires nothing but the will to do it. We have seen further, that, of all the modes in which the unlawful act may be committed; the one wherein its commission is most apparent; indeed, ~~wherein alone it need be at all apparent at Havana~~—is precisely that form, in regard to which we possess the assurance afforded by the *practice* of Mr. Everett while intrusted with the consulate, specially with a view to this abuse, that it is beyond control; even by means of extraordinary powers, such as he may have been clothed with, united with the most ardent desire to "*find* an opportunity" for their exercise. We have seen that, if such an opportunity can be expected, it must be from a case of sale avowedly consummated at Havana; for, except in cases of this description, the sale may, without any imaginable difficulty, be completely blended with and concealed under an exercise of the right to take a cargo to the coast, exactly as it was exercised, with his permission, in the four cases which have been under consideration.

Such being the fact, it might seem immaterial to my vindication *when* this practice commenced, and consequently a waste of the time of the reader to go into any inquiry upon this point. But, if he have read the report, he will have felt, if he have not distinguished, the force of this alleged commencement of the abuse in its bearing upon me. Of the overwhelming mass of most unfavorable impressions, which cannot fail to have resulted from its perusal, one will have been received here. Until the year 1836, all has gone right at Havana. Until then, no violations of American law in regard to the slave-trade. Such is the impression here received, as the reader cannot fail to be sensible the moment he is reminded of it; nor can he fail to be sensible either that, should the statement to which this impression is owing be proved to be altogether erroneous, the effect upon his mind, in regard to the reliance due to the impressions he has received, naturally will not be, and justly cannot be, confined to this one point.

L. The last of the series of laws for preventing the slave-trade and practices conducive thereto, by any person subject to our legislation, is the act of Congress of the year 1820, declaring the trade in slaves, by any American vessel or American citizen, to be piracy.

The last of the series of measures, having the same object in view, was the convention with Great Britain, submitted to the Senate for ratification in 1824. Among the documents laid before Congress on that occasion, is a letter from Mr. Canning to Mr. Adams, then Secretary of State, under date April 8th, 1823. In this letter the following passage occurs :

“With respect to any doubt of its utility (the right of search) created by a persuasion that very few vessels, under American colors, have been discovered, for some time past, on the coast of Africa, it requires but little reflection to prove that no conclusive inference can be drawn from that circumstance. * * * As late as the 14th January, 1822, it was stated officially by the Governor of Sierra Leone, ‘that the fine rivers Nunez and Pongas were *entirely under the control of renegado European and American slave-traders.*’ But, if it were even manifest that the active and judicious exertions of your naval officers, in that quarter, *had really effected a total disuse of the American flag in slave-trading,* the right of search would still be most highly desirable, in order to secure and extend so important an advantage.”

The date of this letter, it will be noticed, is three years after the passage of the last act of Congress ; and, consequently, at a time when all the prohibitory provisions that now exist were in force. In what precise way the American flag was then supposed to be used in “slave-trading” does not appear. But one thing is certain : if it was by carrying merchandise to the coast in American vessels, or by taking such vessels there for sale, the statute-book shows that the first constituted no offence against our laws ; and the second, the offence the least severely denounced by them, whilst, at the same time, it is the most easily practised. The probability, therefore, is strong that the practices here referred to by Mr. Canning were identical with those which, to Mr. Everett’s mind and that of the reader of his report, “appear to have commenced in 1836.”

But it is of *Havana* that Mr. Everett speaks ; and, consequently, it is to *Havana* that his statements must be understood to refer. Very well ; we will not stop to inquire whether this be what really is understood by the reader of the report ; we will suppose it to be so. Admit, then, the fact, that this practice really did commence *at Havana*, in the year 1836 ; that is to say, this year commenced, at *Havana*, the practice of shipping goods to Africa in American vessels, and of supplying the slave-traders with vessels despatched from the United States, in an intention contravening the *provisions* of our laws, to be sold at *Havana*, or on the coast after visiting *Havana*, or with vessels which, having left our waters without any such design on the part of those concerned, were, in contravention of the *spirit* of those laws, sold at *Havana*, or despatched from thence for Africa in the design to sell them there. To the mind apprized of the fact that practices of this nature had existed *somewhere* as far back as 1822, and that it was only with respect to *Havana* that it could be asserted to have “commenced in 1836,” this assertion would naturally suggest the inquiry whether there was any greater difficulty to its commencing *there* in 1822 than in 1836 ; whether, *if* it had so commenced there at the latter period only, this could be ascribable to any impediment to its beginning sooner, or to any cause save the want of motive. To any candid mind *thus prepared*, this question could not have failed to suggest itself. Nor could it have failed to exercise its influence in the sentiment awakened towards the consul at *Havana* in 1836.

Let us now see whether it really be true that this practice commenced at Havana in 1836.

Mr. William Shaler, the first American consul recognised at Havana, and my immediate predecessor in office, died there in the spring of 1833. The last year of his service, consequently, was the year 1832. Upon inspection of the semi-annual consular returns for that year at the Department of State, I find the first signed by the vice-consul, Mr. Richard Cleveland, a citizen of Boston, well and advantageously known there, though not so extensively throughout our country as his friend Mr. Shaler was; the record is signed by Mr. Shaler himself.

The first shows *eleven* sales to foreigners, (the same number, precisely, shown by the return for the first half of the present year, though not divided in the same manner exactly between the different months—those corresponding to the period when Mr. Everett had charge of the consulate being fewer,) to wit: in January, brig *Volador*, of Baltimore, and sloop *Enterprise*, of Charleston; in March, the Baltimore schooners *Raritan*, *Chesapeake*, *Delaware*, *Susquehanna*; in April, the schooner *William Ross*, of Key West; in May, the schooners *Post Boy*, of Philadelphia, (built in Worcester county, Maryland,) *Eagle*, of Baltimore, *Engineer*, of Baltimore, and brigs *Zephiro*, of St. Thomas, *Scion*, of Salem; in June, schooner *Hope*, of New Orleans.

The second return shows *four* sales, to wit: Schooners *Union*, from New Orleans, (unregistered,) *General Geddes*, of Charleston; and brigs *Toison*, of New York, and *Catalina*, of Baltimore. To the mention of these may be added that of the schooner *Henry*, of Baltimore, (built in Matthews county, Virginia,) which arrived July 23d, and cleared August 4th in ballast, for Bahia Honda, one of the unopened ports of the island.

Among the particulars which may be noticed respecting these vessels, one is, that the first of those belonging to Baltimore, the *Volador*, came to Havana from a *British* port. Whether she had been *there* purchased, or there fitted, for the slave-trade, is a point no less uncertain than whether she was so purchased or fitted at all. A second is, that the *Eagle*, which was sold in May, had arrived on a former occasion in March, and gone back to Baltimore. Another is, that the brig *Zephiro*, returned as registered at "*St. Thomas*," and as built in "*America*," had *Raimundo de Arrobos* for master, who reported her as being from *Africa*, in ballast.

Now, having thus become aware of this case, I must not pass it by without stating that *nothing of the sort* has ever happened since I took charge of the consulate; that, during this whole period, I have *never*, in a single instance, had the slightest reason to believe or to suspect that any vessel, arriving at Havana as an American vessel, had been engaged in the transportation of slaves. (Nor for suspecting that any vessel, purporting to be an American vessel, or to sail under the flag, ever came to Havana, without being reported as such at the consulate.) Judging of this case of the *Zephiro* from what it appears upon its mere face, it is unquestionably a most suspicious one, and I do not see how any American consul could reconcile it to his sense of duty to allow it to occur, without forthwith taking steps to have it sifted to the bottom, and instantly reporting it to his own Government. And yet I do not entertain a shadow of doubt that, if such steps were not taken, it was solely because Mr. Shaler saw clearly and distinctly—nay, positively knew—that no step which possibly could be taken, whether of his own mere motion, or under instructions from his Government, could

possibly be attended with any useful result at Havana. Nor do I entertain a shadow of doubt that, were he now living, his explanation on the subject would fully satisfy any mind of the least candor, that his motives afforded no ground for the imputation of—to borrow the language of Mr. Everett with respect to myself—having “given way to apprehensions of personal violence,” or for any other imputation, to which his character with those who know him might give the lie.

To pass down into the period of my own incumbency. I entered in person upon the duties of the office early in 1834. In the summer I returned to the United States, and went back to Havana in December. In a letter written by me from that place, under date of December 13, 1834, I called attention to the subject in the following passage, which was immediately acted upon :

“I must not close this without taking the liberty to suggest the expediency of an order from the Treasury to the custom-houses, requiring the strictest possible vigilance with regard to the crew-lists of American vessels clearing for this island and Porto Rico, and their conformity in every respect to the provisions of the law : otherwise, American seamen will be induced, by extravagant wages, to ship in our ports *as foreigners*, that they may be discharged here—to be shipped in slavers—without affording me an opportunity to interfere.

“There is another branch of this subject which will perhaps be deemed worthy of immediate attention. *These slavers are all built in the United States.* Heretofore, the practice has been to bring them out under our flag, changing it after getting here ; but, to avoid coming in contact with this consulate,” (this had reference especially to the disposal of the sailors,) “they are getting into the way of leaving our ports under the Spanish flag. * * * *The vessels built for the slave-trade come chiefly, perhaps altogether, from Baltimore and New York.*”

In another communication from me under date of the 27th of the same month, to which I shall hereafter have occasion to refer, the subject is again mentioned in a passage relative to practices in regard to sailors connected with these vessels ; which also was immediately acted upon, as is shown by the following endorsement upon it, in the handwriting of the President :

“The Secretary of State will forthwith furnish to the Secretary of the Treasury an extract from the within, so far as relates to the collector of Baltimore. A. J.”

Ll. Having, as I believe, effectually effaced the unfavorable impression produced by this statement of Mr. Everett, I will now state that there is *one* practice which does in truth “appear to have commenced in the year 1836,” and so late even as the latter half of that year, to wit : the practice of *taking cargoes of merchandise from Havana to Africa in American vessels* ; and also, (we have seen how the one may be undistinguishably blended with the other, as effectually so as *azote* is with *oxigen* in the air we inhale,) of *taking American vessels there for sale or for delivery.*

On examining the consular returns in the Department of State for the period during which the consulate has been under my charge, I find that the first cases of the sort are presented in the return for the latter half of 1836. These are seven in number. Some of the details connected with them are as follows :

	Vessel's class and name.	Master.	Owned at	Cleared for
1	Ketch Angel -	H. A. Leidersoff -	New Orleans	Africa.
2	Schooner Cleopatra -	W. H. Everett -	New Orleans	Africa.
3	Schooner Viper -	E. Galt -	New York	Cape Verdes.
4	Schooner Anaconda -	W. Knight -	New York	Cape Verdes.
5	Ship Rosanna -	G. Chason -	Boston	Cape Verdes.
6	Schr. Fanny Butler -	J. Petherson -	New Orleans	Cape Verdes.
7	Brig Martha -	S. D. Runnels -	Portland	Africa.

From the list of registers of American vessels wrecked and sold, transmitted at the same time, it further appears that the *Rosanna* was one of three vessels sold to American citizens by bill of sale passed at the consulate.

On comparing the above names with the names of "the number of American vessels employed in the slave-trade at the Havana in 1836," as given by Mr. Everett, "according to the *estimate* (anglicè *conjecture*?) of the British commissioners," it will be seen that their said "estimate" of names is defective, inasmuch as it omits *Angel* and *Cleopatra*. Had it occurred to him, therefore, before drawing up the report of the discoveries accomplished by him in this region of mystery, solely through the aid afforded by the British commissioners, to consult the returns in the Department of State, he would have become aware that those discoveries did not constitute "the only approximative estimates that probably *now* can be made of the precise extent of the abuse in question."

Another fact belonging to the history of "the abuse in question," in the year 1836, and directly connected with this, the first of the "approximative estimates," obtained through Mr. Everett's good fortune at Havana, is one which might have disclosed itself to him, had he not in this manner overlooked at least *some* of the materials existing at Washington. I mean the fact that, upon my return to Havana, in November, 1836, the first thing I did, after determining in what way it behoved me to meet the communication from the British commissioners on the subject of these very vessels, was to transmit a copy of the correspondence to the Department of State. Thus was its attention called to the subject as soon as my own; and, from the spirit displayed in this field by the British Government, I knew that there was not the slightest danger of its being allowed to fall asleep; I knew that it would enjoy all the benefit of British commissioner vigilance; and that a full and timely supply of "estimates" was no less certain than one of "consular returns."

This fact—had it been mentioned by Mr. Everett, in connexion with his first "estimate"—might have modified somewhat the effect produced by it, and by those which follow it, upon the mind of the reader of the report. But—it may be said—the very first word in the report is the word "confidential;" and being designed solely for the perusal of the Secretary of State, to whom it is addressed, and not for that of the public, it was not requisite to embody in it, either for his information or as a safeguard against erroneous impressions, any portion of the materials already in his possession. This consideration would be conclusive, but for the fact, that, had this principle of exclusion prevailed, there would have been

no report at all: or—as this may seem something of an Irishism—the report would have been a very different thing from what it is. Strip it of what was already in the possession of the department, and there is nothing left either of matter for statement, or matter for comment. Besides, although not *written* for the public, and although it be marked “*confidential*,” and although Mr. Everett might be—as he doubtless is—incapable of the remotest thought of being instrumental in causing a paper written by him under such circumstances, and thus *marked* by him, to become public,—despite all this, it might so happen. From the very nature of the subject, the President might—I do not doubt that he will—deem it due, both to the country and to the consul at Havana, to make it public. Or, supposing the President to entertain different views, the nature of the subject, and the extraordinary degree of attention it has excited, might cause it to be called for. This indeed—as I learnt the other day from an officer in our army, who made it the subject of an inquiry—has already happened, through the press at the north. Moreover, supposing none of these causes to prove effectual in preventing the report from remaining “*confidential*” to the end of time, the supplemental materials thus passed over without a notice in it, although existing in the department, might, through the operation of any one of an indefinite number of causes, have thereby lost their only chance of ever becoming connected with the matter which it contains; and thus, of ever producing the effect of modifying the impressions which it makes. This might have happened at the moment, through the very confidence of those who had employed him, in his fitness in every respect for the trust for which he had been selected. His report might have been accepted as the essence of the whole matter—elaborated with all the care, all the skill, all the impartiality, that ever was bestowed by lover of scientific truth, in quest of the properties of matter. Thus might ought else have been deemed refuse, undeserving consideration. And, even although this belief might have failed to command so ready adoption, yet might the only possibility of its fallaciousness being fully demonstrated have passed away—*with a breath*. The *one* person in the world, qualified by his knowledge of the existence of those refuse materials, and of the nature of the subject, to draw forth the virtue that lay in them, might at any instant—before, even, his hand could be put to the task—have been summoned before another tribunal: leaving behind him a name covered with aspersions which no hand could now wash out.

Had these considerations presented themselves to the mind of Mr. Everett, his report would have been a very different thing from what it is. It would have been a much shorter document, or much longer one; and in either case, my labor would have been much curtailed. And had it been so ordered, I might have died: leaving it unaccomplished, and yet my name without a stigma.

LII. We will now recur to the report. Immediately after the opening paragraph, (*supra*, XLII,) upon which we have been so long occupied, comes the following:

“During my stay at the Havana, the consul, the vice consul, and the clerk previously employed in the office, (Mr. Crusoe,) were absent, and the consular records had been removed. The acting consul, Mr. Morland, had had no connexion with the office, and little intercourse with the consul, previously to his appointment. In consequence of these circumstances, it was not in my power to obtain at the consulate any information as to the

precise extent to which the national flag has been employed to cover the slave-trade; nor was there on the island any other source from which such information could naturally be sought or expected, excepting the mixed commission organized under the late treaties between Great Britain and Spain, for the purpose of superintending the execution of those treaties."

Mr. Everett goes on to say, "all the information in the possession of this commission has been communicated to the British Government, and is published in the parliamentary papers relating to the slave trade. It appears from the statement given in these papers, that according to the estimates of the British commissioners, the number of American vessels employed in the slave-trade at the Havana, in 1836, was five: their names as follows."

These two passages constitute the entire paragraph. I have split it into two distinct portions, in order to fix the reader's attention, for the present, closely upon the first. I wish him to peruse it again, and to mark the impression which it makes upon his mind—the impression which he receives from each fact individually, and from the whole, as they successively group together.

The leading fact of all is the fact that *Mr. Everett sought information from "the mixed commission."* All the rest stand to it, as they also do to one another, in the relation of *reasons*.

The *first* of the chain, starting from the point where it is attached to the fact which it serves to support, is the fact, that it was not in Mr. Everett's "power to obtain at the consulate any information as to the precise extent to which the national flag has been employed to cover the slave-trade."

The *second* link is, the fact that "the acting consul, Mr. Morland, had had no connexion with the office, and little intercourse with the consul, previously to his appointment."

The *third* is, the fact that "the consular records had been removed."

The *fourth* is, the fact that "the consul, the vice-consul, and the clerk previously employed in the office, (Mr. Crusoe,) were absent."

LIII. Reversing the order in which they are counted, I will begin with the topmost link; that is to say, the

Fourth. Here, then, we see, that, at Mr. Everett's approach, the whole consulate scatters. Of all those who had been directly connected with the abuse which he went to ferret out, not one dare show his face. Such is the impression which will be here produced by this "confidential" report—should it perchance cease to be confidential (*supra*, LI)—upon every mind not apprized of the fact, that the consul and the vice consul chanced to be absent for the very same reason that Mr. Everett chanced to be at Havana; this event having, in part at least—perhaps wholly—been caused by an express request from the consul. Their presence as witnesses in a slave trade case in Baltimore being considered indispensable, a subpoena was transmitted to Havana. This summons was enclosed in a letter, conveying to the consul, in a manner evincing the most flattering confidence, authority to select a person to remain charged with the consulate during this unavoidable absence of both himself and the vice-consul; and this mark of confidence was replied to by the request that some person selected by Government might be sent out for the purpose. This fact will again come under consideration, in replying to an imputation which Mr. Everett has felt it his duty to bring against me, in connexion with "the clerk (Mr. Crusoe) previously employed in the office."

Well, why was he also absent? The reader may perhaps know what a "white swelling" is; if not, his doctor can tell him. On my departure from the United States, on the 14th of March, Mr. Crusoe, a youth under age, of an exceedingly scrofulous temperament, had been confined to his bed in my house since early in January, with a second attack of "white swelling" in the knee. My physician thought at first, that, unless the leg was amputated, it would kill him; and though the case proved far more favorable than could be hoped, I left him with little expectation of ever seeing him again. How far this doubt was justified may be judged from the following passage in the first letter received by me from Havana. The writer is a lady of our own country, who chanced to be then staying at the house of my physician; and who, considering the purpose which it serves—the putting of *truth* in a strong light, where strong light is so much needed as it is upon these murky collections of rank suspicion—will, I know, pardon the liberty.

"All went on pretty well at your house, until last Sunday," (April 5th, *two days after Mr. Everett's arrival*), "when Juliana came, in great haste, to say that Mr. Crusoe was dying. The doctor was out; but, as soon as he could be found, he went directly to the wind-tower, where he found Mr. Crusoe almost gone in a fit of apoplexy. It seemed it had been some time since he was taken; and Juliana and the neighbors whom she had called in were too much frightened to do any thing but run away; so that, when the doctor arrived, he was quite senseless, and almost gone. By very copious bleeding and violent medicines he was restored to consciousness, though not to reason. The next day the doctor found the orders which he had left had not been obeyed; and the attendants, in their alarm, had tied him hands and feet with coarse ropes, until he was in an agony of terror. It was impossible to have him die in such a manner; and Mrs. ——— and the doctor wrapped the bed-clothes about him, and had him brought directly here, cot and all. He raved constantly, either of his sister who died a year ago, and whom he thought he saw in her shroud, or of your little Pattie and Browse—the latter particularly. Indeed, in his saddest moods it needed but to say, *where is Browse?* to bring a smile over his face, and change the current of his thoughts. He is now" (six days after Mr. Everett's arrival) "somewhat better, and knows us all, and answers our questions generally; but the doctor still seems doubtful in regard to him. His head is shaved and blistered, and he is haunted by the fancy that therefore he is mad; but he is far more comfortable and quiet than when he first came."

In a letter from his physician, dated 30th May, he says, "Mr. Crusoe is now living at Guanabacoa, (five miles from Havana,) for the re-establishment of his health, and also for the benefit of the baths for his knee joint."

Was all this known to the writer of the report? Situated as he was—placed in direct communication with Mr. Morland, (who had the same physician for his family physician,) in a community where the American and British residents constitute a circle, containing, in all, not a dozen households—could such a case as the foregoing possibly fail to become known to any one who should inquire, not of Mr. Morland alone, but of *any* one speaking the English language, "Where is Mr. Crusoe?" And does not the reader of the report feel that he was entitled to receive, together with the fact of this absence, some intimation of this other fact, as to its cause, to secure him from the unjust suspicion that Mr. Crusoe was ab-

sent in order to keep out of Mr. Everett's way? And will not this sentiment become more decided still, when, further on in the report, the fact of Mr. Crusoe's illness comes to be made known to him, not as a safeguard against injustice, but as the very key-stone of perhaps the most damning of all the imputations in the whole book; one which is not only imposing in itself, but serves to impart solidity to the rest; and the influence of which is seen to pervade the entire structure, running, as molten lava would in an edifice of stone, into every nook and cranny, to consolidate every part, and bind the whole together?

LIV. The fourth link being thus disposed of, we will take up the

Third. "*The records had been removed.*" Not only had all the persons employed in the consulate vanished at Mr. Everett's approach, but the papers also! Such—as at least some readers will have felt—is the impression produced.

This averment does not rest altogether upon imaginary grounds. To a certain extent, it is true that the records had been removed. I will first state what that extent is; and then inquire into its operations with respect to the subject upon which Mr. Everett was in quest of information. This inquiry will both subserve the special object proper to it, and also tend to elucidate the spirit in which averments possessing such tendencies to create misconception are hazarded.

For the extent to which it is true that the records had been removed, I refer to the letters (appendix A) between myself and the vice consul, Mr. John A. Smith of Newburyport, who is, as Mr. Everett says he is, (in further proof of which see the testimony, House report No. 707, 26th Congress, 1st session, p. 293,) "an aged and highly respected citizen of Massachusetts," and in whose exclusive custody the records have always (with the exceptions stated in his letter) been. He states, and states truly, so far as I know or believe, that "the only part of them (the records) which was not in the office during Mr. Everett's stay here, was that which you carried away with you; that is to say, Mr. Shaler's correspondence with the Secretary of State and authorities here, and your own." The correspondence here referred to, it was indispensable to take with me, with reference to my defence against one branch of the preposterous inventions of calumniators by which was assailed. A portion of it, to be sure, doubtless existed at Washington, and would be accessible to me there; but I contemplated passing only a very short time at Washington. In the first place, having (to make sure of being in attendance at the district court at Baltimore on the appointed day) to sail for Charleston much earlier in the season than my physician thought it safe for me to venture north, (on account of a bronchial affection of some years' standing,) I purposed remaining in the south until the last moment; and such was the fury of the tempest of malignity and mendacity raging against me, it was requisite that the interval between my landing at Charleston and my proceeding to Baltimore should be diligently employed in using those materials for my defence. In the next place, I could not tell how long my presence in Baltimore might be required; and I intended, so soon as it could be dispensed with, to pass the remainder of my stay in our country, among my friends in Virginia.

Such, then, is the extent to which the records of the office (in addition to which may be mentioned, although no part of its records, two note and memorandum books—the one kept by Mr. Smith, the other by myself—in regard to the discharge of seamen and other occurrences relating to our re-

spective duties; whereof mine was brought away for the reason above stated, and his for use in court at Baltimore, where it was produced) had been removed, and such the cause of their removal. Let us now see what are the consequences of which it was susceptible with reference to the object of Mr. Everett's pursuit.

1. He was in quest of "*information*." Upon what point or points? These are not specified by him, except so far as they may be considered to be so by the phrase "*as to the precise extent to which the national flag has been employed to cover the slave-trade.*"

By availing ourselves here of the results previously obtained by means of the laborious processes of analysis and comparison, the necessity of which presented itself at the outset of this examination, we are enabled to specify individually the points of inquiry comprehended under the present phrase; and by comparing these with the points in regard to which law or custom requires facts to be *recorded* at a consulate, we shall know positively "the precise extent" of the information in regard to the former points which could possibly be expected to be afforded by the records of the Havana consulate, if ever so perfectly kept, and in ever so complete a state laid before the investigator.

Upon this truth, I desire particularly to fix the reader's attention. Mr. Everett was doubtless desirous of information upon any and every point bearing in any possible manner upon the "abuse in question." Whatever the precise *nature* of this abuse might be, he was anxious to be informed of every fact in any manner relating to it—of every fact going to connect the American flag in any possible way with the slave-trade. But it is perfectly obvious, and absolutely unquestionable, that the only *facts* of this nature, which he or any one else could possibly expect to find in the consular records, are those facts, and those facts *alone*, which by law or by custom are *recorded* in a consulate, or ought to be there recorded. Admit that the most outrageous and flagrant violations of the law had been of daily occurrence, and that they had been openly connived at by the consul; that American vessels by the dozen had brought cargoes of slaves into the very harbor of Havana, and that the consul had been known to every one as part owner of every such vessel; still it would be obvious that the only possible indications of all this which could be expected to be discovered upon the records of the office would necessarily consist of such facts as I have just described. For any other facts than these, the inquirer would necessarily be dependent upon other sources of information. Even in regard to this class of facts, it is obvious that, in exact proportion to the flagitiousness of the practices participated in, or connived at, by the consul, would be the certainty of no such fact being put upon record if it afforded any indications of those practices. But, waiving this consideration, and supposing every fact to be truly recorded exactly as it happened, according to the true intent and spirit of the law, or, where the law is silent, strictly according to custom, it still remains unquestionable that this class of facts constitutes the only information that could possibly be afforded by the records.

2. Of what, then, does this class of facts consist?—It consists of the facts in regard to every American vessel visiting the port which Government makes it the duty of the consul to report in the "consular returns;" and which, by law or by custom, it is the duty of the master to report to him, that it may be so embodied in his return. These facts are: 1, date of arrival; 2, class; 3, name; 4, burden; 5, master; 6, crew on her arrival (Americans

and foreigners ; 7, where from ; 8, where belonging ; 9, ports touched at ; 10, cargo inward ; 11, value of cargo inward ; 12, amount of cargo landed ; 13, cargo outward ; 14, value of cargo outward ; 15, crew on her departure (Americans and foreigners ;) 16, date of departure ; 17, where for. (Under this last head, when the vessel has been sold to foreigners, this fact is stated.)

These are the particulars in regard to every vessel which are embodied in the semi-annual return ; a transcript of which is sent to Washington, the original remaining in the consulate.

Mr. Smith's letter tells where those originals were during Mr. Everett's stay at Havana. But, waiving this fact, and admitting that they were inaccessible to him—nay, that *all* the records had been destroyed by fire—it would still be incontestably true that the above particulars constitute the only particulars bearing upon the *employment* of American vessels, or in any way *concerning* American vessels, which he could under any circumstances have expected to find there ; the only particulars which could be considered as having been by that event placed beyond his search. No matter how flagitious or extensive the practice connived at or participated in by the consul might, from *other* sources, have been ascertained to have been, it would still remain incontestably true that the only indications of those practices that could possibly have been afforded by those records, had they not been destroyed, consist in such as may, from the nature of the above enumerated particulars, be afforded by them. The records have not been destroyed ; but it has appeared to me worth while to point out what, had such an event occurred, would have been the *extent* of the *possible* consequences with reference to the subject under consideration ; and consequently the extent of the ground which could thereby have been afforded for imputing to the consul a disposition to baffle the researches of Mr. Everett into “the precise extent to which the national flag has been employed to cover the slave-trade,” or employed in any other way whatsoever.

3. It remains to consider these particulars with reference to those of which Mr. Everett was in quest ; to consider how far any fact coming under these several heads *can*, from its nature, be pertinent to the object he had in view. Giving to the field of his inquiry the most comprehensive scope possible, how far, and in what way, is it in the nature of things possible that any fact coming under any of the foregoing heads, or any group of such facts, can shed a ray of light upon any point embraced in that field ?

We have seen (*supra*, XLIV-V) the various particulars which, according to some of the six senses in which Mr. Everett uses the phrase, severally suffice to constitute a case wherein “the national flag has been employed to cover the slave-trade.”

The particular requisite to constitute such an invent in the first sense of the phrase is, it can scarcely be necessary to say, one that Mr. Everett would in vain have searched the records in quest of. Supposing that an American vessel, laden with slaves, had arrived at Havana every day in the year ; it could scarcely be expected that, in any one of those three hundred and sixty-five cases, the master would have so stated in reply to the question, “What cargo ?” And supposing so improbable an event to have occurred, it could scarcely be expected that the consul would have *recorded* such a fact without instantly taking steps in regard thereto ; the least of which, if the only one, could be to bring it to the attention of his Government.

The particular requisite to constitute it in the second sense essentially consists, as will be recollected, in an *intention*. Now, in regard to the act

itself of taking a vessel to Africa, it is one in regard to which, assuming that the master had no motive to conceal his destination, the records might be expected to afford information of its occurrence every time it had happened. But, so far as regards the *intention* that such vessel should be employed in bringing back slaves, or in any other way, the returns show that this is a particular for which no head has been provided; and in quest of which, therefore, a search of the records would necessarily prove no less vain than a search into the statute-book would after a law clothing a consul with authority to ask any American ship-master who may see fit to make known his vessel's destination to Africa, whether his intention in taking her there be, or be not, that she shall be employed in bringing back slaves; or whether his intention be, or be not, to sell her, (or whether he have not already sold her, and his intention be not merely to deliver her;) and whether it be not also the intention of the purchaser to employ her in bringing back slaves.

In regard to the act as signified by the third sense of the phrase, its criminality also (I mean its *moral* criminality, for in law it has none) depends upon an *intention*; the intention, to wit: that the goods carried are to be employed in the purchase of slaves. To it, therefore, the foregoing remarks are equally applicable. The return contains a column for the *cargo*, (which, accordingly, is truly reported so far as the master may see fit truly to state it,) but it contains no column for the *purposes* to which that cargo is destined. Nor does the law invest consuls with the authority to interrogate any American citizen on the subject, or provide any penalty in case such citizen be not prepared to give the desired information, or see fit to affect utter ignorance upon the point, or even see fit to consider such an interrogatory an insult.

Thus, then, in regard to the three first of Mr. Everett's six forms of using the flag "to cover the *slave-trade*," we see how far the records might by any possibility furnish particulars relevant to his inquiry. In regard to neither of these forms could any of those particulars possess such relevancy, except so far as their precise nature in each individual case might be considered as affording ground for a presumption that the element of criminality characteristic of those forms respectively had existed.

With respect to the other three of the six forms, it will be recollected that they correspond to the first three; differing from them only in the particular that the vessel, instead of being *truly* an American vessel, (that is to say, a vessel carrying a *register* from the Treasury Department—such, according to *my* doctrine, though *my* doctrine alone, being the *only* kind of vessel entitled to navigate under our flag,) is a vessel "put under the flag" in consequence of purchase, real or ostensible, by an American citizen. Concerning vessels of this description, no particulars could be expected to be found on record in a consulate, except those corresponding to the above-enumerated heads. Under every one of these heads, too, the particular stated would be of precisely the same nature as that stated with respect to *registered* vessels. The only one of all the heads under which any difference could present itself is the *first*; that is to say, the *date of arrival*. If the vessel had been "put under the flag" *at the port from which the return came*, this fact would, of course, be stated in lieu of the date of her arrival as an American vessel. This possibility of a difference has not, however, any application to the port of *Havana*, at least since the consulate came under my charge, (nor do I know that it has with reference to any anterior period.) Owing to the peculiar view of our law entertained by *me* on this point, and to this

cause alone, *no* vessel has ever been "put under the flag" *there*. Vessels of this description have *arrived* there from ports in our country even, but my peculiar doctrine has been carried so far as to refuse to recognise them as American vessels. This is all that has occurred in regard to such vessels at *my* consulate.

LV. Besides the materials which were thus within Mr. Everett's reach at Havana—although to no purpose, since he was unconscious of the fact, (which were accessible to him at Washington, also, where his report was drawn up, although to no purpose there either, perhaps from the same cause)—there existed in the consulate *other* materials, of the very highest interest, bearing directly upon a point in regard to which he cannot but have experienced the keenest curiosity, and which I happen positively to *know* were *not* beyond his reach.

The former, had they been used by him either at Havana or at Washington, would, as we have seen in regard to the first of his lists of "American vessels engaged in the slave-trade," (*supra*, LI,) have enabled him both to supply deficiencies in the British commissioners' "estimates" of the names of such vessels, so far as mere names can go, and also to render those lists of names more available for any imaginable purpose, be it what it may—except indeed *one*, which I will leave it to the reader of the report to specify, knowing it, as he does, from that best of teachers, *experience*—by adding to each of those names all the particulars under some fifteen or twenty heads, which the consul possesses any authority to ask to be informed of by a ship-master; the very same particulars which constitute the sum total of all that could be learnt from the "consular records," as kept during the period when the office was in the vigilant keeping of Mr. Everett, in regard to the schooner *Kite*, of *Vienna*, or any other of the four vessels that sailed by his permission for the coast of Africa, should British commissioners, entertaining the same opinion as himself, that "the error on that account would be rather formal than material," "feel it our painful duty to report to her Majesty's Government," and her Majesty's Government see fit to proclaim to the world, in proof of the indecent pertinacity of the American Government in affording to the slave-trade the protection of its flag, the astounding fact that, although a gentleman of Mr. Everett's standing had been sent to Havana under pretence of being specially empowered and instructed to prevent such practices, yet, during his short stay of about two months, no less than *four* "American vessels employed in the slave-trade" had openly and unblushingly been allowed to take their register from the consulate and depart for the coast of Africa!

The latter might be used by him for a purpose no less directly relevant to the imputations upon the American Government, through its consul at Havana. Of all the charges with which the welkin had been made to ring, none had been so oft repeated, or was so distinctly audible, as that of "*granting bills of sale*." "The consular records had been removed." So reports Mr. Everett: meaning, as his reader will understand, *ALL* the records, or, at least, all that could have been inspected to any purpose, with reference to those charges against the American Government, which, by the head of that Government, Mr. Everett was employed for the express and special purpose of inquiring into the truth of. Now, although *some* of those records had been removed, and others were, it seems, undiscovered by him, yet there was *one*, at least, which had not been removed, and which, during Mr. Everett's stay at Havana, *was made use of by the acting consul*, whom

Mr. Everett, on an occasion when his regard for truth and habit of scrupulously weighing his expressions are brought to bear against the consul, states to be "a gentleman of undoubted veracity and honor." That one is the *record book of SALES OF VESSELS*, a very remarkable volume, of large atlas size, and which, on this account, lies upon a table where it could scarcely escape the eye of any one entering the office in quest of "*records*." Be this as it may, it certainly could not fail to be produced by a gentleman of Mr. M.'s "undoubted veracity and honor," in reply to any call by Mr. E. for records, if Mr. Morland knew where to find it. Now, that he did know where to find it, is proved by the fact, that, whilst Mr. E. was at Havana, several blank sheets cut out of it were sent to me at Washington by Mr. Morland, in compliance with a request from me to that effect. I had intended to bring with me specimens of all the forms used in the office, to be employed in a demonstration of the absurdity of the allegation against me, of "furnishing blank forms to vessels employed in the slave-trade;" and, having omitted to do so, I wrote to request Mr. Morland to transmit them to me; and, to make sure of their being transmitted complete and without delay, I desired him, in regard to bills of sale, to cut them out of the book, in case he should not be able readily to lay his hands upon them. This was done. Thus it is that I happen to have it in my power to aver positively, that, if all other records were beyond Mr. Everett's reach, this *one*, at least, was under his hand, open to his inspection. And what is its nature? What are its bearings upon the object in quest of which Mr. Everett went on his errand to Havana? Here is another point, to which I desire particularly to invite the reader's attention. Let him consider those bearings, and then try whether his imagination can be effectually taxed for a reason why *this record*, and the topic with which it directly connects itself, are passed over in the report without so much as a mention? The charge concerning those "blank forms furnished by the consul to slave-traders, signed in blank, to be filled up at pleasure, as occasion might require," was not forgotten. It will be found to constitute the raw material out of which one of the most ingenious chapters in the whole book is constructed. Why, then, were the "bills of sale" omitted? Of the two charges, that of "*granting* (as it is termed by the British pro-consul at the Cape Verdes) bills of sale" was, in the eyes of all persons at all acquainted with the papers used in navigating vessels, beyond comparison the more plausible; for, whilst they were necessarily at a loss concerning the nature of such "blank forms"—concerning the uses to which they could possibly have been put—and, consequently, concerning the motive which any consul could have had for furnishing them, they could not be at a loss, in regard to either point, with respect to bills of sale. Being thus, beyond all comparison, the more plausible of the two, it was, beyond all comparison, the more entitled to attention from any one charged with the duty of investigating the subject, whether with a view to ascertain the justice or the groundlessness of the imputations against the consul, and, through him, against the Government and the country, or with a view to ascertain the weak points of the law at which its spirit was thus defeated. But, whatever may be its comparative claims, it cannot but be obvious to every eye, that it presents a positive title to attention no less strong than manifest. And, had it received that attention, what would Mr. Everett have discovered? By inspection of the record, he would have ascertained that the bills of sale which the consul had been accused of "*granting*," were bills of sale in each of which was embodied the register of some

American vessel, copied word for word from that document. At least, would he have *ascertained* this to be the truth of the matter, so far as the record of the office could be relied upon, as showing the truth. And this, perhaps, might have been deemed by him sufficient ground for stating—not positively, but with the same approximation to positiveness evinced by him in regard to the period when the practice of “employing American vessels in the slave-trade at Havana” had commenced, (*supra*, XLIX.)—for stating with this degree of positiveness, that the *extent to which bills of sale “appear” to have issued from the consulate is in cases of sale of American registered vessels bought, or ostensibly bought, by American citizens.*

Nor is this all that would have been discovered by him in regard to this matter. He could scarcely have failed to be led to inquire of the acting consul, Mr. Morland, “a gentleman of undoubted veracity and honor,” and of his other sources of information; and those inquiries could not have failed to result in his ascertaining, so far as their knowledge and belief could be relied on—

First. That no bill of sale, or other document for putting a vessel under the American flag, or enabling her to pass for an American, ever had issued from the consulate.

Secondly. That, according to the universal opinion, it is the *right* of any American citizen to purchase a foreign vessel, at home or abroad, and to sail her under the flag; and that, in the exercise of this right, it is his right to *demand* of American collectors and American consuls a recognition of his vessel as an American vessel, and to *demand* of consuls, *at their peril*, through suits for detention, demurrages, and damages of all kinds, the authentication of the papers proving her thus to be American property, and consequently an American vessel, entitled to be deemed and respected as such wherever she may float.

Thirdly. That, agreeably to this doctrine, the consul refusing such agency in any case, affords unquestionable grounds for action against him; and, if such action were brought in our own country, even, nothing could save him, unless he were able to *prove—judicially* prove—that the vessel was *not* truly the property of an American citizen.

Fourthly. That in cases where there was no reason whatever to doubt this fact, and where the consul did not hesitate to declare that he considered the party entitled to indemnity from the Government, he had taken upon himself the responsibility of refusing to recognise such vessels as American; because, according to *his* interpretation of the law, the fact of ownership did not suffice to constitute them such; and for the further reason, that if he were clothed with authority to discriminate between such vessels according to the reality or the fictitiousness of the asserted ownership, it would be practically impossible for him to make such discriminations; and,

Fifthly. That, had the consul been capable of abusing the opportunities offered by his post, through mercenary considerations, this doctrine, against which he had stood up, afforded the certain means of amassing an immense fortune; nothing was requisite but that he should acquiesce in the exercise of this legal *right*, and take bribes for so doing.

These are facts which Mr. Everett would have ascertained. How far they are pertinent to the inquiry intrusted to him, how far they would have tended to shed light upon the justice of the imputations cast upon the consul, and, through him, upon the Government and the country from

whom Mr. Everett held that trust, it is for that Government and that country to judge. To them also does it belong to decide whether any reason for his omission to touch upon this subject of *the bills of sale* can be so much as imagined, that will prove at all compatible with the anxiety displayed in the report to bring forward grounds for extenuating *surmises* in favor of the consul, and to find occasions for disclaimers of the belief that he was actuated by *corrupt* motives; a disbelief which the reader of the report will perceive to have arisen purely *ex generositate*, and that a concurrence therein is by no means obligatory upon a judge less generously inclined.

I must not dismiss this topic without mentioning a circumstance which, to some extent, in addition to the facts already stated, goes to justify Mr. Everett's impression that "records had been removed." In order to make sure of being in Baltimore by the appointed day, the vice-consul and myself were under the necessity of taking passage in a vessel for Charleston, to sail on the 14th of March. Expecting hourly to learn from Washington, that, in compliance with my request, some one was on his way to Havana to take charge of the consulate, I waited till within a few days of her sailing; and then, no such intelligence having yet come, (nor did I receive any before our departure,) it became indispensable to make some arrangement for the care of the office. The person selected by me was Mr. Morland. He made it a condition that the office should be removed from the place where it was kept. This condition presented a great difficulty. It was, however, overcome; and the removal effected on office days. After one day's experience in this new locality, it was ascertained to be not at all suitable; and a second removal took place. The consequences, in regard to the condition of the books, papers, and furniture of the office, may readily be conceived. One removal, under the best circumstances, is bad enough. What then must be the effects of two, occurring thus unexpectedly, and in the most piecemeal, confused, and hurried manner, whilst the current business of the office was unavoidably going on—captains running from place to place to get despatched; and all this at a moment when I was engaged in the last arrangements for my departure; on such errands, too, as those which carried me to our country! Add, that the clerk in the office was an altogether new hand, and all cause for surprise will disappear, that, in such a packed, jumbled, and confused state as every thing in the office necessarily was left on our departure, (early the very next morning after the last removal,) and, doubtless, to some extent, remained until the return of the vice-consul, some incident may have occurred, (I have, indeed, a recollection that something of the sort was mentioned as having occurred, in one of the acting consul's letters to me, upon which I cannot at the moment lay my hand,) in connexion with Mr. E.'s inquiry for the records, calculated to excite, in a mind so well disposed to unfavorable impressions as his appears to have been, the belief that "the records had been removed."

* I have searched for the letter, and it proves my recollection to have been right, although far more favorable to Mr. Everett than the fact warranted. My supposition takes for granted that an inquiry for "the records," generally, had been made by him. This seems not to have been the case. The following extract (the letter is dated Havana, May 29, and was received at Washington June 11) will show what ground he had for reporting that "the records had been removed." "Mr. Everett has repeatedly asked for the consular letter book, as he wanted to refer to some of your letters to the Department of State, and was surprised there should not be one existing here which he might inspect; and, I thought, seemed to think it was kept from

LVI. Our attention is next claimed by the *second* link in this chain of reasons. This consists of the fact that "*the acting consul, Mr. Morland, had had no connexion with the office, and little intercourse with the consul, previously to his appointment.*" And here, again, I bespeak the reader's attention to the impression which this fact, both in itself and conjointly with the rest, makes, and helps to make, upon his mind.

Let him note it well; and then observe how far it becomes modified by a knowledge of the following facts:

"No connexion with the office, and little intercourse with the consul." And these facts *adduced* in *proof* that Mr. Morland was not—and as an *explanation* that *he* could not be expected to be—qualified to give *any* information on the subject, with the investigation of which Mr. Everett was intrusted.

Now, for some supplemental facts under this head:—

First. Mr. Morland is the very oldest and most experienced American merchant at Havana; thoroughly conversant with all the ways and practices of the place, and with commercial and maritime subjects generally.

Second. He was an intimate acquaintance of Mr. Shaler and Mr. Cleveland, the predecessors of myself and Mr. Smith in the office, and at that time a daily visitor there.

Third. Shortly after the consulate passed into my charge, the office was removed to Mr. Morland's house, where it continued to be kept, and I resided until the summer of 1835; when this ceased to be the case, solely in consequence of his being compelled to give up the house to the owner, and to remove to one where the office could not be kept.

Fourth. On my departure from Havana in the summer of 1834, the office was left in Mr. Morland's charge as vice-consul, and so continued until my return.

Fifth. During the period just referred to the records were in the immediate custody of Mr. John A. Smith, an intimate friend of Mr. Morland of some thirty-odd years' standing, long an inmate of his family, whose integrity and sense had been thoroughly tested in his employ and that of others. During this same period the current business of the office, in all matters—the discharge of seamen, protests, sales of vessels, &c., &c.—was performed generally by Mr. Smith, or by a clerk under his immediate supervision; the vice consul signing the papers thus prepared.

Sixth. This has continued to be the case ever since my return to Havana in December, 1834, excepting two periods of about three months each in 1838 and 1839; during the former of which Mr. Smith was partially disabled by sickness, and the latter was passed in a visit to his family in Massachusetts. During my last absence from my post, in the summer and fall of 1836, and also the preceding one, the year previous, Mr. Smith remained charged with the consulate.

Seventh. It is true that of late years—owing to a cause purely personal, and which it is therefore unnecessary to specify—there had been no intercourse between the consul and the person whom Mr. Everett found in

him, although he did not hint such a thing; and as I had mentioned Crusoe, and papers left at Dr. M.'s, (these were my private and domestic papers,) I applied to Dr. M. for Crusoe's address, that Mr. Everett might go with me and interrogate him. The Dr. could not give it; which Mr. E. was so much surprised at that I was very glad to have a visit from Crusoe yesterday, (Dr. M. having sent him,) and I immediately gave him a note to Mr. E."

charge of the consulate, placed there by the consul. But it is no less true that Mr. Morland's thirty years' intimacy with the vice-consul was not thereby in the slightest degree impaired; and that, besides the frequent occasions for his visiting the consulate on business as an American merchant, his visits were not limited to those occasions. The office was also Mr. Smith's *residence*, to which he was generally confined by lameness, and where—after office hours, no less than during office hours—he was daily visited by his friends, Mr. Morland among the number.

The reader may now judge whether there be accordance or discrepancy between the *impression* received by him from the report and the *truth* in regard to the extent of Mr. Morland's disqualification, as one of the causes which rendered it impossible for Mr. Everett "to obtain at the consulate *any* information" upon the subject, to the "examination" of which he had, as he tells us, been requested, on the part of the President, "to apply" himself. The reader may judge how far Mr. Morland may have been incapable of shedding light upon the mysterious facts which constituted the sum and substance of what Mr. Everett has just told him "is a matter of public notoriety;" whether those facts had reference to the *doings at the consulate*, or to the doings in the port. Lest, however, I should here lead the reader to the commission of injustice towards the reporter, I must remind him that, whatever may have been the *impression* received by him, that impression may have been not warranted by the language. Mr. Everett does not say that he could not obtain "*any* information" on the subject he was charged to investigate, but "*any* information *as to the precise extent* to which the national flag has been employed to cover the slave-trade." The impression intended to be conveyed by him may, therefore, have been only that Mr. Morland could not tell him "the precise" *number* of vessels thus employed, not that he was totally in the dark as to the *nature* of the doings at the consulate, or the *nature* of the practices out of the consulate, in regard to which he was commissioned to seek information. To the full benefit of this distinction, therefore, he is strictly entitled.

LVII. We have reached the *first* link: "*It was not in my power to obtain at the consulate any information as to the precise extent to which the national flag has been employed to cover the slave-trade.*" This is here presented as being composed of wires drawn from the other links, brought together, twisted, and bent into a hook, upon which to hang the leading fact, that Mr. Everett sought information at the hands of "the mixed commission."

Although thus presented to the reader, as a "*consequence* of these circumstances," this reason is entitled to attention also apart from "these circumstances," and all other things besides. It constitutes, in itself, a substantive averment of the fact, that it was not in Mr. Everett's "power to obtain at the consulate any information."

Considered as an inference, it requires no other reply than a reference to the examination bestowed upon the averments from which it is inferred.—(*Supra*, LII to LVI.)

Considered in itself, it is already replied to by the numerous proofs of its sheer gratuitousness, adduced with reference to other averments.—(*Supra*, XXXII to XL.)

We have seen, that—if the interpretation to be put upon the language here used be such as to embrace only the *number* of vessels "employed in the slave-trade"—even then information was not wanting, either at the con-

sulate or at the Department of State, which would have made Mr. Everett aware that the British commissioners' "estimates" of names were incomplete, and have put it in his "power" to remedy that imperfection. And, supposing his desire to perfect "the only approximate estimates that have, or probably can *now* be made of the precise extent of the abuse in question," to have extended beyond the mere names; we have seen that in this case, too, materials the most abundant for the indulgence of such desire existed at both places.

LVIII. The suspending chain having been examined, we now come to the thing that hangs upon it: "*Nor was there on the island any other source from which such information could naturally be sought or expected, excepting the mixed commission, organized under the late treaties between Great Britain and Spain for the purpose of superintending the execution of these treaties.*"

This—the reader will, doubtless, be surprised at the notification—will prove to be not unworthy of the chain wrought to uphold it. In regard to the latter, he will have experienced no difficulty in recalling the impressions which it made upon his mind in individualizing them, and in perceiving the force, and nature, and extent of their bearings. With respect to this *leading fact* of the paragraph, the case is different. It will have exercised an influence over his mind; and yet he will be unconscious of it, and will remain so, even after being told that this has happened. He may peruse the words over and over again, and be utterly at a loss to conceive what I refer to—utterly at a loss to conceive how they can have exercised any such influence—and utterly at a loss to conceive how their plain, obvious meaning can involve any thing requiring reply or comment. Let him then follow me.

This averment embodies two distinct substantive facts: *first*, that Mr. Everett sought information from "the mixed commission;" *second*, that this mixed commission is "organized for the purpose of superintending the execution of these treaties." The former constitutes, of itself, the *leading fact* of the paragraph; *that fact*, without the occurrence of which Mr. Everett would never—unless he had been so singularly favored by fortune as to have it in his power to consult elsewhere the "published parliamentary papers relating to the slave-trade"—have had it in his power to "obtain" those "approximative estimates" of names, which, by the industry of the British commissioners, have been rescued from oblivion; and without which he would not have had "*any information*" to report to Government as the fruit of his mission to Havana. The latter is stated incidentally; but it is not the less, on that account, a distinct, substantive fact; which may be true or otherwise, and which may have its bearings.

Besides these two facts, the averment embodies a third, which in strictness belongs to the chain of reasons above considered. It is the fact, that the mixed commission constituted the only source of information left to Mr. Everett. No! I am incorrect; the only source "from which such information could *naturally be sought or expected.*" Words are things—on some occasions at least—and great injustice might ensue from divesting this fact, as stated by Mr. Everett, of the unpositive import which these words impart to the averment, considered merely in itself; and also of the *apologetic* hue which they impart to it, considered as a reason for seeking information from that source. We shall see that this tone of apology is not without its meaning; and that it did not accompany the fact without a cause.

Upon this fact, the whole report is seen to be built; and it was due to it, therefore, to note the minutest incident connected with it, however trivial it may seem. But leaving this incident out of consideration for the present, and giving our attention solely to the averment, considered in itself, it may appear somewhat open to question, whether—in regard to a practice, the prevalence of which “of late years to a considerable extent at the Havana is a matter of public notoriety”—it really could be the case that the mixed commission constituted the *only* source besides the consulate, from which information *could* naturally be sought or expected in regard to the precise nature of the practice, or any other particular regarding it. Admit, if you will, that, although organized to attend to the doings of British and Spanish vessels solely, it was nevertheless the *best* source from which to seek such information in regard to American vessels also. But the *only* source?

This point is one upon which I could clearly and fully demonstrate, that this *only* source of information was, of all others, the one least entitled to reliance, for either accuracy or completeness. Referring, however, to the partial demonstrations of this truth, which I have already had occasion to introduce, and also to the nature and extent of the “information,” (I do not mean the *commentaries upon my communications to Government*, but the *information* collected at Havana) contained in the report, I must here leave Mr. Everett’s selected tree of knowledge to be judged of by its fruits, and proceed to the consideration of the *leading fact*, which constitutes the germ out of which his report is seen to sprout and grow.

LIX. Mr. Everett sought information from the “mixed commission.” ’Tis a *mixed* source of information, mark you! one, the waters of which, if, from one of its springs, those waters were apt to be tinged with an unfavorable hue, were sure, before they issued from the source, to receive from its other spring something to impart to them a neutral tint. ’Tis a *mixed* body—half British, half Spanish. If the former were inclined to be inimical to the consul, on account of his aiding and abetting the slave-trade under the American flag, the latter could not well be otherwise than friendly to him for the same reason. No injustice—no bias—against him, therefore, evinced in seeking information from this *mixed* source.

Is this the impression produced? And should this impression be ascertained to be of the same nature as those already examined, what will be the effect upon the reader? Should it be discovered that it was to no *mixed* source, but to a one-sided source, a source overflowing with the bitterest personal hate towards the consul, that Mr. Everett applied for information, what will the reader think? Will he not think that a fact of this nature is one which *he* was entitled to know, and which *I* was entitled to have known by him? But beyond all, what will be the effect upon him of the deliberate suppression of this fact, in the mode here practised?*

* Nor is it here alone. Not only in regard to the source at which Mr. Everett sought information, but in regard to the source also from which that information came, which Mr. Everett obtained and produced, is this idea kept up, and all idea of a source purely British carefully excluded. The sentence immediately following the one now under consideration serves to introduce to the reader certain lists of vessels, copied from documents published by the British Parliament. But it is still “the mixed commission,” from which the *information* is derived. It is taken directly from those British papers, owing solely to the greater convenience of referring to published documents—owing solely to the circumstance, that “all the information in the possession of this commission has been communicated to the British Government, and is published in the parliamentary papers relating to the slave-trade.”

Admit, for a moment, that, unapprized of the precise nature, the composition, the treaty-stip-

Now, the "information" produced by Mr. Everett established the fact, that the only source from which he drew was, *one* (the British) *side* of "the mixed commission." And, on examining the second of the two facts embodied in this averment of his, we shall come to know that those British members constituted the only portion of the mixed commission from whom, by him or any one else, particularly by any American who had passed an hour at Havana, and spent that hour in inquiries of his countrymen, or of the British residents, or of any other foreign residents, or of any one whatsoever, information in regard to American vessels "could naturally be sought or expected." Not a man there could have suggested any such application to "the mixed commission." Not a man there but would have hooted at the absurdity of such an application. We shall come to see, further, that this fact is kept out of the reader's view by means of an utter misstatement of the "*purpose*" for which that commission is "*organized*;" a misstatement, too, of which this is not the only bearing upon the consul.

Do I complain of all this, or of any part of it? Nothing further from my thoughts! I rejoice at it. On my own account, at least, I rejoice at it. I could have wished—on every account have wished—this report to be a different thing from what it is. But since it was to be what it is, nothing could have been more fortunate for me than that this sentence should be contained in it—a sentence which cannot but speak, to every reader, volumes in my defence, against the spirit in which it is written, and against every imputation which it conveys.

Do I complain that Mr. Everett sought information at the hands of the British commissioners? No: it was right and proper that he should do so. It was incumbent upon him to obtain from these residents, specially charged with devoting themselves to this subject, and supported at an enormous expense for that sole object, all the information which could possibly be drawn from them. This was due to the Government, to the country, to himself, and to me. On my own account alone, I would not, for any earthly consideration, have had him omit the discharge of this duty. It was indispensable to my vindication. Had it been neglected, I could not, whatever might have been the character of his report, have pointed to the relations in which I stand towards those men, to the proofs I possess of what they are capable of, and to the fact that even *they* could bring no definite allegation against me, which I could not with a breath scatter to the winds. And, having such a report to deal with, as that which now lies before me, I could not, had this duty been neglected by Mr. Everett, have pointed, as I now do, to the fact that it was not neglected—to the spirit in which its performance is disclosed—harmonizing, as it does, with the spirit that pervades the report throughout—and to the fact, that Mr. Everett has returned from Havana no less empty-handed than he went; that, even with the zealous co-operation of the British commissioners, he could not obtain at that place a single *fact* in the slightest degree affecting

related functions, and the spirit of the *body* (and consequently of the groundlessness of any expectation from *it* in regard to American vessels) Mr. Everett has applied to "the mixed commission," and had then, for the first time, become aware, that the British *portion* of the body alone exercised any supervision over American vessels, and was alone competent to answer a single inquiry in regard to them; admit this to have occurred, and then say—under this, the most favorable supposition that the nature of the subject admits of—whether the mode in which the information *obtained* by him is introduced be at all compatible with what was right and proper to be done.

my character ; and that, to build up an impeachment of it, he has had no other materials than commentaries, furnished by his own ingenuity, upon *my communications to Government*: these being his substitutes for the "information" he was sent to collect.

LX. The reader of the report having thus learnt that the source at which Mr. Everett sought information, and at which he obtained that which he produces, was the "mixed commission," he will naturally feel curious to know what "the mixed commission" means: to learn something of the nature of this body, which thus constituted the only source at which information in regard to American vessels "could naturally be sought or expected." A curiosity so natural could not but be anticipated by Mr. Everett, and accordingly it is provided for. This mixed commission is a body organized at Havana, under treaties between Great Britain and Spain for the suppression of the slave-trade in the dominions of the latter, "for the purpose of *superintending the execution of those treaties.*"

This suffices every purpose. If not the *only* source from which any information on the subject could be expected, certain it is that a body constituted for such a purpose, and of course clothed with authority and powers commensurate therewith, is the source above all others from which to indulge such an expectation. Their duty being that of *superintendence* over the whole subject, nothing in any manner connected with or relating to the slave-trade could be supposed unknown to them. Their business it was, officially to take cognizance of every thing of the sort.

Such is the impression conveyed: is it not? Let us now turn to the treaties.

After the stipulation reciprocally giving the right of search in regard to British and Spanish vessels—(a right which, it may be observed, is, together with all its concomitants, absolutely a dead letter, in regard to British vessels; inasmuch as the commander of a poor Spanish gun-brig or schooner would as soon think of lighting his cigar with his commission, and throwing the lighted paper into the face of the prime minister, as of incurring the fearful responsibility of seeking to make prize-money by disturbing the African commerce of "our great and good ally," by vexatious searches of British ships bound to the slave-marts, under the pretence that they might be laden with "prohibited articles,")—after this stipulation, and others, determining what particulars of equipment or of cargo should constitute ground for detaining a vessel so searched, and taking her before one of the tribunals provided by the treaty, the 7th article runs thus:

"In order to bring to adjudication with as little delay and inconvenience as possible, the vessels which may be detained according to the 4th article of this treaty, there shall be established, as soon as may be practicable, two *mixed courts of justice*, formed of an equal number of individuals of the two nations, and named for *this purpose* by their respective sovereigns. These courts shall reside, the one in a possession belonging to his Britannic Majesty, the other within the territories of her Catholic Majesty.

"These courts, from which there shall be no appeal, shall *judge the causes submitted to them*, according to the provisions of the present treaty."

In the appendix to the treaty it is stipulated that "the mixed courts of justice shall be composed in the following manner: The two high contracting parties shall each of them name a judge and an arbitrator, who shall be *authorized to hear and decide*, without appeal, all cases of capture or

detention of vessels which, *in pursuance of the stipulations of the aforesaid treaty, shall be brought before them.*"

This is the treaty of 1835, (the last) under which "the mixed commission" is organized, and such are the functions committed to it. The general power of *superintendence* over the whole subject, with the idea of which the reader's mind has been filled, reduces itself therefore to the *authority to hear and decide* cases brought before them, in consequence of the capture or detention of a British or Spanish vessel upon the high seas, in pursuance of the stipulations of the treaty.

But although the field of its agency be thus narrowed down, "the mixed commission" may, in the discharge of these functions, limited though they be, have acquired a knowledge of practices implicating the American flag. Although the only vessels that could have been brought before this court of justice were British or Spanish vessels, yet, in regard to all or some of these vessels, it might have become officially known to the court that they were of American build—possibly that they were provided with American papers. This is true. That facts of this nature may thus incidentally have been brought to light, is obviously possible. That this was possible *only*, is, however, rendered certain by the fact that they constitute no part of the "information" obtained by Mr. Everett from "the mixed commission." At least, none such is disclosed in his report.

It would be uncandid in me not to add, that this deficiency may be owing solely to the very rare occurrence of cases calling for the discharge of the proper functions of the "mixed commission." Some such have, I know, occurred at Havana during my residence there. But my impression (although I have never given any attention to the subject) is a very decided one, that they have been exceedingly rare; and this impression is corroborated by the parliamentary papers, the only one within my reach, which has been shown me at the Department of State, as having been transmitted on account of its bearings against me. Among the papers therein contained, is a despatch from the British commissioners at Havana, under date January 1, 1839, stating "that no vessel has been brought before the mixed court at this place during the six months last past."

With such an illustration before him of the activity required for fulfilling the purpose of its creation, the reader will be sensible that as little cause for surprise is afforded by the fact that no information in regard to American vessels was obtained from the "mixed commission," as by the other fact, that the British side of this "court of justice," without neglecting the functions, for the discharge of which they had obtained residence on Spanish territory, found abundant leisure for exercising a voluntary superintendence over American vessels. Considering how ample that leisure, and how little toilsome in its nature is the task of copying from the "ship news" in the daily papers, or of noting down from oral information, the name of a vessel avowedly despatched for the coast of Africa, the only cause of surprise in this respect would seem to be afforded by the incompleteness of their "estimates" of names. But I have been here led into a digression. My purpose was solely to possess the reader of the truth, that the impression received by him, in regard to "the purpose" for which "the mixed commission" was "organized," is no less incorrect than the impression that the source from which the information produced to him was obtained, is that same "mixed commission."

LXI. I must not take leave of the point without calling the attention

of the reader to the influence which may, in another place, have been exercised over his judgment by the impression here received in regard to the proper functions of the "mixed commission." In the foregoing remarks (*supra*, LIX) I was led to observe, that the bearing against the consul, then indicated, is not the only adverse bearing of the misconception. I will now state what the remark had reference to.

In a subsequent part of the report, I am deemed very reprehensible in not having thankfully received "information" in regard to American vessels, whenever tendered to me by the British commissioners.—Mr. Everett is of opinion that such tenders were fully warranted by "diplomatic usage," and it was my duty to be governed thereby. This whole subject will come under review hereafter. I shall then demonstrate the precious properties of the information thus thrown away upon me, and the character of the game, a part in which it was attempted to force upon me; and in this connexion I will bestow some consideration upon Mr. E.'s views of diplomatic duty, for the purpose of ascertaining whether they be worthy of their association with the "estimates" of names. For the present, I propose merely to invite the reader to consider how far his concurrence (if he have concurred) in the censure founded on my non-acceptance of British-commissioner information may have been caused by the impression here received in regard to the character of the body from which it emanated, and the consequent probability of its high value. However sensible he may become, the instant it is stated to him, of the unquestionable truth of the proposition, that a body thus constituted, created under special treaty-stipulations between Great Britain and Spain, for purposes limited to the subjects of those two nations, could not, whatever might be the nature and extent of their functions, possess any right to pretend to take part in the execution of American laws, or to offer counsel or instruction, under whatever cloak disguised, to any American consul, in regard to the discharge of his duties: however sensible the reader may be of this truth, yet will all his thoughts and feelings with respect both to the proffer and to the rejection of information from such a source, necessarily receive a different hue, according as *its* supposed nature be such as he has been led by Mr. Everett to believe it to be, or such as I have proved it to be. A body constituted for the purpose of exercising a *superintendence* over the port of Havana, in regard to slave-trade practices, would naturally become possessed of official information, the most exact and complete, in regard to every particular connected with the subject; and from this very fact would result, if not strictly a *right*, yet perhaps a *quasi-right*, to impart that information wherever it was supposed to be needed. And though this *quasi-right* even were denied, still would such a fact go far to palliate "any excess of zeal" that might be exhibited in making such communications. But, to a body created for the purpose solely of judging vessels detained upon the high seas, and brought before them, to decide whether the case comes within the provisions of the treaty, none of these considerations apply. And in regard particularly to fractional parts of such a body—above all, to its *foreign* elements, to those members of it who possess a residence even within the territory, solely in virtue of the same solemn compact which restricts their agency to the discharge of the functions prescribed to them—it is perfectly obvious that no such ground of palliation has any existence. Grant, if you will, that the members of such a "mixed court of justice" are to be viewed as diplomatic agents:—grant, further, that,

according to the standard of right and wrong which governs "diplomatic usage," it be right that they should act as spies over the proceedings of the port, and communicate to their Government all the information they may obtain;—grant all this, and it will still be very far from clear that it can be at all right, or decent, that they should exercise such *espionage* in an open, ostentatious, and wantonly insulting manner, towards the authorities of the country; and still further from clear that such a course can rightfully be pursued towards the accredited agents of other nations, not parties in any way to the treaty which gives them their judicial existence. For a pretension, under whatever cloak it may be disguised, to counsel, advise, or intimidate any such agent of an independent state, in regard to the discharge of his duties, there obviously cannot exist either right, *quasi* right, or palliation. But I am anticipating. Here must the topic be dropped for the present.

LXII. Immediately following the sentence of the report last quoted, comes the one which constitutes the concluding words of the introduction, under cover of which the "estimates" (by name) of "the American vessels employed in the slave-trade at the Havana" are ushered into the reader's presence.

"It appears, from the statement given in these papers, that, according to the estimates of the British commissioners, the number of American vessels employed in the slave-trade at the Havana, in 1836, was five; their names as follows."

The curious infelicity of the language here used I have already taken occasion to point out. As a subject for mere literary criticism, it would be altogether too minute for notice, except, perhaps, as illustrative of the negligences into which the best writers even are apt sometimes to fall. But, considered in connexion with the impressions made upon the mind of the reader at every page of the report, and with the means by which those impressions are produced—considered as an indication of the *spirit* in which the report is written—it acquires an importance that would otherwise not belong to it.

What is the established meaning of the word "estimate?" What are the ideas which it awakens in a mind conversant with our language? Sometimes it is used as a synonyme of *statement*; and applied to a collection of facts, in regard to which every thing is positive and certain. This, however, is a loose and improper use of it; and it is evidently not in this sense that it is here employed. When properly used, one of the ideas conveyed by it is the idea of *doubt*. Its meaning involves the fact that *uncertainty* is connected with the thing spoken of. In what way connected? In the way of *number*. By considering a few instances of its ordinary use, we shall clearly perceive that the uncertainty whereof it is expressive has reference to *number*, and to number alone. It has no reference to the *nature* of the units estimated. Whatever those units may be, an "*estimate* of their number" means nothing else but their number itself; with the additional idea, that it is not absolutely *ascertained*, but only *conjectured*, with a greater or less approach to certainty. But this idea of doubt has no reference to any thing but the number—none whatever to the nature of the things under contemplation: whether these be things or events—the apples on a tree, or the murders committed within a given time. An *estimate* of the cost of an edifice built, or to be built, means the number of dollars it has cost or will cost, not absolutely ascertained. An *estimate* of the killed in a battle,

means the number of men who have been killed—the number of deaths which have occurred—not absolutely ascertained. The uncertainty attaches solely to the *number*; not at all to the nature of the thing called a *dollar* in the one case, nor to the nature of the occurrence called a *death* in the other. That in the one case dollars have been spent, and that in the other men have been killed, are facts, the certain occurrence of which is implied by the word. The only uncertainty is as to the number. An averment that an estimate has been made of apples on a tree, or of the number of killed in a battle, involves a *positive* averment of the fact, that, at the time the estimate was made, there were apples on the tree, or a battle had taken place, and men had been killed. The only uncertainty is about the precise number. In regard to these facts, the idea of uncertainty is absolutely excluded.

Such, accordingly, is the impression made upon the reader of the report. In regard to the *fact* that American vessels have been “employed in the slave-trade,” no idea of uncertainty is conveyed to him. On the contrary, nothing but positiveness, in corroboration of the impressions previously received. The only uncertainty is about the *number*. And concerning the *number*, even, uncertainty prevails in regard only to the *whole* number; for here are the names of *some*. This, therefore, is the impression resulting from the sentence. The *only* uncertainty implied by it being uncertainty regarding the *number* of vessels employed, and not at all about the nature of their employment; and five vessels being named—it produces all the effect of a *positive statement* that these vessels had been ascertained to be so employed; and, moreover, that there were others which were supposed, though not ascertained, to be so employed. And this effect, too, is produced by means of a word implying uncertainty, and a statement which avoids the responsibility of a distinct and positive averment of the facts, a belief in which is impressed on the reader's mind.

Suppose a battle to take place on the northeastern boundary, and a “slip” from one of the Maine presses to be sent off in all directions, as follows:

“According to the *estimate* of the adjutant general, the number of field officers killed in the battle was five; their names as follows:

“General Winfield Scott.

“Colonel Worth.

“Colonel Cross.

“Colonel Kearney.

“Colonel Mason.”

What would be the effect of such an announcement? Why, some readers would take for granted that the editor, in the excitement and hurry of the moment, had used the word “*estimate*” in a loose sense, instead of *statement*. They would argue thus: The word “*estimate*” implies uncertainty, it is true; but it implies uncertainty in regard to number *alone*. Had the names not been given, we might consider it a matter of doubt whether the number of field officers killed had really amounted to so many as five. But here are the names. We must consider it certain, therefore, that these officers have been killed. The only room for doubt is, whether there be not some more to come. On the other hand, they whose judgment might be warped by their feelings would *hope* that the word had been hastily used instead of *conjecture* or *supposition*. Upon the same grounds they would build up an inference directly the reverse of the foregoing. Their minds would fasten upon the fact, that the use of this word indicates uncertainty

in the writer's mind; that the names prove that the uncertainty did *not* exist with regard to the *number*; and that, consequently, it must have existed with regard to something else,—to wit, the *event*. And should the news turn out to be a mere *conjecture*—should the next mail bring the intelligence that not a single field officer had been killed—the editor would not be altogether destitute of a sort of apology for the misconceptions and agony caused by his bad English. He could say that, inasmuch as he had given the names, and used a word implying uncertainty, everybody might have known that the uncertainty had reference to the fact that any one of the five had been killed.

It may be worth while to compare Mr. Everett's English with that of the British commissioners. Formerly, if my recollection serve, "vessels employed in the slave-trade" was the established formula, as a heading to the lists periodically transmitted by the British commissioners, in proof of the toil (possibly of the expense also) encountered by them, in collecting from recondite sources the names of vessels announced in the current "ship news" of the day, as cleared for Africa. At that period—acting, no doubt, on Mr. Everett's present view of the matter, under its legal aspect, that "the difference on that account would be rather formal than material"—they boldly set down on the lists thus headed every American vessel despatched for Africa, although she might be laden with an "assorted cargo" of American tobacco and spirits, and British merchandise—just such as is daily shipped from London or Liverpool to Bonny or Gallinas, either directly, or through Sierra Leone. Of late, however, the formula appears to have been changed. Whether it be through the greater modesty and scrupulousness of recent British commissioners, or through a more rigorous signification, having become attached to the words, forbidding so liberal an application of them, I cannot say; but the fact is so. Judging from the volume of parliamentary papers already referred to, the commissioners, in making up their list of clearances for Africa, no longer present them as collects of their discoveries of vessels *positively* "engaged in the slave-trade." The formula now used is such as to signify that, in regard to vessels thus despatched for Africa, the commissioners have not carried their industry of research further than to discover that they are "SUSPECTED of being engaged in the slave-trade."

On reference to the volume just mentioned, this will be perceived to be the formula in use for the commissioners' lists, transmitted in January, February, and March, 1839; beyond which, the volume does not extend. The word used is "*list*," and the vessels named therein are averred to be "*suspected*." No such English appears in their communications as "*estimate of the number*," applied to a series of *names* of vessels. Nor are those vessels averred positively to be "employed in the slave-trade:" an averment in regard to which, it may be observed, that even the word *employed*, as a substitute for *engaged*, helps to impart significance to it, in the idea which it conveys of *continuous* occupation. A statement that the schooners Bold and Cautious have sailed under circumstances justifying the suspicion that they are to be *engaged* in smuggling, conveys the impression that the occupation referred to is, or may be, for the occasion only. An "estimate of the number of vessels *employed* at New Orleans, in the cotton carrying-trade, in the years 1836, -7, -8, and -9," conveys an idea not of occasional, but of continuous occupation.

LXIII. Speaking (*supra*, LIX) of the weight due to the fact that Mr. Ev-

Everett has returned from Havana no less empty-handed than he went, when considered in connexion with the other fact, that he had sought information at the hands of the British commissioners, I "pointed to the relations in which I stand towards these men—to the proofs I possess of what they are capable of." A specimen of the matter thus referred to I will now introduce.

Let me begin by calling attention to the truth, that personal details cease to be *personalities* when they are adduced solely as *evidence*—when the only motive for their use is the vindication of *truth*. Suppose a man on trial for murder; and a witness to be produced who had possessed every imaginable opportunity for knowing every act and movement of the accused during the period under contemplation, and who yet can state no fact against him;—suppose, further, this witness to be a bitter enemy of the accused, and a malignant man, an insincere, unscrupulous man; and, moreover, to be so situated, that it is demonstrably to his interest that the accused be convicted. In such a case as this, would any friend of truth and justice—I speak not of technical rules of practice founded on general considerations—question the right of the accused to make all this appear? Is it, or is it not, a corroboration of the exculpatory testimony which he would have a right to adduce—which every lover of truth and justice would have a right to know?

We are here in a court of justice. I am on my trial. My character is at stake. Towards this source of information to Mr. Everett, I stand in precisely the relation supposed. A portion, at least, of the facts proving that such is my position, I will adduce; regardless of the imputation which, in some eyes, may seem to attach to me, of dealing in personalities.

Mr. Everett found at Havana two British commissioners: the *judge* (Mr. Kennedy) and the arbitrator (Mr. Dalrymple) under the treaty above quoted, (*supra*, LX.) As established by the treaty, the functions of the latter consist in giving (when lot assigns it to him, and not to the Spanish arbitrator) the casting vote in case of difference between the British judge and the Spanish judge. Under the same treaty, the functions of the former consist in hearing and deciding, in conjunction with the Spanish judge, the case of any vessel brought before them in pursuance of the stipulations.

To these two individuals must be added a third; for, although he had left Havana some months prior to Mr. Everett's visit, yet, as part of the "source of information" to Mr. Everett, it would be altogether unjust to omit him. I refer to Dr. RICHARD ROBERT MADDEN; who, first as the temporary occupant of the post of arbitrator, and afterwards as the holder of a sinecure created for him under the title of "superintendent of liberated Africans," had resided at Havana during the very three years when, as is shown by Mr. E.'s "estimates" of names, the slave-trade "under the American flag" was most active. For proofs of the nature of this individual, as developed during the period of ten years from 1829 to 1839, and of his unflinching zeal against "Consul Trist," not only as an enemy to the slave-trade, but also as a philanthropist in general, and specially as a friend to sailors, and consequently as a friend and ally of *Ferdinand Clark*,—for proofs upon all these points, I will refer to the documents accompanying report No. 707 of the House of Representatives at the last session, 1839-'40. A portion only of these documents have direct reference to *Dr. Madden*; but they all bear directly upon the acts and character of *Ferdinand Clark*, as the head of the conspiracy; the most prominent place among the rank-

and file of which cannot be disputed to Dr. Madden, unless it be by Dr. Burnstead or Colonel Oramel H. Throop. In this way it happens that the illustration of Dr. Madden's nature, afforded by his congeniality and fellowship with Clark & Co., cannot be at all appreciated without a perusal of the entire mass. To this reference, I must add one to a specimen (appendix B) of the character of the "information" wherewith, on his departure from Havana, Dr. M. was fraught, in regard to the manner in which the employment of American vessels in the slave-trade took place with the consul's open connivance. The reader who will take the trouble to compare this case with that of the schooner *Kite*, or any other of the four vessels that, by Mr. Everett's permission, departed for Africa, will doubtless deem him fortunate in not having found this *Argus* at Havana.

LXIV. Towards Mr. Dalrymple, the arbitrator, I stand in no relation at all, that I know of. He attends to his own business, by giving his casting vote when occasion requires; and leaves me and other foreign consuls to attend to ours.

With respect to Mr. KENNEDY, the case is widely different. And here I must advert to the sketch of his character given by Mr. Everett—given with special reference to me, in the course of a vindication of the conduct of the *present* British commissioner, which will come under review hereafter—by way of apology "*for any excess of zeal*" which may have been "shown in the execution of his duties as commissioner, and particularly in his correspondence with the consul." In what those "duties" consist, and how far a "correspondence with the consul" constitutes any part of their "execution," the reader of the report *now* (*supra*, LX) possesses the means of judging correctly, and *justly*, towards the consul.

Mr. Everett, who appears to have been more fortunate in obtaining a close insight into Mr. Kennedy's character, together with an exact knowledge of the particulars of his personal and parliamentary life, than into the precise *nature*, or even the "precise extent," of the practices in regard to which he was sent to seek information, tells us "Mr. Kennedy is a person of superior talent, and of frank, though not very polished manners;" and goes on to state a number of particulars calculated to impress the reader with the belief that this gentleman is engaged at Havana in a *labor of love*. One of these commendable incidents which "seems to show that he has a strong *personal feeling on the subject of slavery*, independently of any considerations of expediency or policy," consists of the fact that he "was one of a very small minority" in the British House of Commons "who *opposed the grant of an indemnity*" to his fellow-subjects in the West Indies, when the power acquired by him as the representative of two or three hundred voters of a rotten borough in England was exercised for the purpose of depriving those fellow-subjects of their property in the labor, without which their lands and improvements were valueless. Strong as may be the presumption afforded by such an exercise of irresponsible power in regard to the disinterestedness of his zeal, this impression that he is engaged at Havana in a labor of love will be found to stand the trial of a ray of truth as ill as those already effaced from the reader's mind.

All this is stated by Mr. Everett with express reference to *me*. Its bearing is very obvious. I will begin, therefore, by remarking—lest the reader should be led to suppose me a person likely to be unfavorably influenced in my official course by "frank, though not very polished manners," and upon this ground to deem me prone to the misconduct of which, in Mr. Everett's

eyes, I have been guilty—that they are the very sort of manners most apt to produce a favorable impression upon me : and for this reason—that they constitute *prima facie* evidence of an unsophisticated, uncalculating, honest nature. The American who withholds his esteem from any man—particularly from a man of *real* frankness of character—on account of his want of polish of manner, is an idiot ; at any rate, he is not fit for an American citizen, and ought to live at some “polished” court. But frankness may be affected ; and when this is the case, no surer indication exists than that which it affords of an insincere, designing character. That this truth is not belied in the present instance, we shall presently see. One part of the demonstration is here given by Mr. Everett. We have his word for the *apparent* ingenuousness of the man. I also was once taken by it. It only remains to inquire whether this candor be real or simulated.

Upon this point I find, in the parliamentary papers above referred to, a fact which precludes all necessity for further research. It is an *official* illustration of the sincerity of the individual ; and it speaks volumes, not only in regard to this particular person, but to the game of imposture—of downright *humbug*, of the coarsest and grossest kind—coarser and grosser than ever was played off by “thimble-rig” gentry upon clownish boobies—which he and many others have been so long playing off, to their exceeding profit, upon the British public. It happens to bear too directly upon the very point of the “strong personal feeling on the subject,” adduced by Mr. Everett in justification of “any excess of zeal” displayed by Mr. K. “in the execution of his duties,” towards the American consul.

To this illustrative *official fact* I bespeak the closest attention. Although it be, as we have seen, no part of Mr. Kennedy’s “duties as *commissioner*,” to hold any communication with the American consul, yet it does constitute a part of his duty, as an *agent* of his Government, and as a *man*, to deal honestly with it in the communications which he makes to it, whether these be made in pursuance of its instructions, or as manifestations of the spontaneous impulses of his zeal.

On the 20th March, 1839, Mr. Kennedy addresses to Lord Palmerston a long despatch (signed also by Mr. Dalrymple) of suggestions, terminating with one to this effect : that the slave-trade can scarcely be checked “unless the British Government be prepared to enforce a *sort of blockade*, which, for other reasons, might be far from desirable.” This despatch winds up with one of the formulary lamentations which belong, perhaps, to what the Westminster Review refers to, as part of the matter whereof these despatches are made up, by the denomination “official *cant*.” It is as follows : “Feeling *unable* to express our *sense* of the continuance of such murderous enormities, we can but point them out to your lordship, in the conviction that some steps, such as we have suggested, will be taken in proper time,” &c.

Just one month before, under date February 20th, Mr. Kennedy had written to his lordship as follows :

“On the 4th January, the American brig *Comet*, Captain Dickson, which sailed from this port on the 18th September last for the Cape Verde islands, with stores, &c., for the slave-ships, returned in ballast, and was entered *as consigned to the English house here of Drake & Co*. On calling upon one of the partners of that house for an explanation, we were assured that this was done without their being consulted on the subject, and that they had no interest whatever in the vessel, or in her last voyage.”

Note well the impression which this leaves, and manifestly was designed

to make, upon the mind. A vessel freighted with slave-trade merchandise to the Cape Verdes returns in ballast, and is "entered as consigned" to an *English* house! Startled at so extraordinary an event—so dire a portent—Mr. Kennedy loses no time in calling that house to account; and his bosom is relieved from the dreadful suspense, by the assurance that no ground existed for the horrible suspicion that *they* could possibly have consented to afford such countenance to the slave-trade as to permit an American vessel to be put under their wing, as consignees, on her return in ballast from the Cape Verdes, after actually carrying there a cargo for the use of the slave-traders.

Now who—excepting those to whom a residence at Havana has laid open the whole game of miserable imposture,—who could believe that the very house here named is the very house above all others distinguished for the extent to which it is engaged in business of this kind? Who would for a moment suspect the possibility of the fact that, "English house" as it is, or as Mr. Kennedy on this *got up* occasion calls it—to the surprise, doubtless, of every British subject at Havana, who may learn the fact of his having so called it: for though, among its many partners, it had *one* of that description, yet the head of the house (Mr. Drake) is a Spanish subject, born in the island, and among its wealthiest landed and slave proprietors,—this very house was *at that very period* receiving and despatching more of those "American vessels suspected of being engaged in the slave-trade" than any other house of any other nation in Havana; and that this has been uninterruptedly the case *throughout the whole period* for which Mr. Everett was furnished by the commissary-judge with their estimates? Who could believe it possible that the fact of their being received and despatched by that house was daily put before the eye of the world in the daily papers, and weekly in the weekly shipping-list and price current; which, by every vessel, was despatched by every merchant to his correspondents in England, and every part of the world: this fact thus constituting an integral part of the announcement of the arrival and clearance of those vessels, on the face of the very publications from which the British commissioners' lists of arrivals and clearances are made up? Who could suppose that, by taking up Mr. Everett's report, and adding to the names contained in the four annual lists therein presented "as the only approximate estimates that have been, or probably *now* can be, made" in regard to occurrences that have escaped being irretrievably buried in oblivion solely through the timely vigilance of British commissioners,—*who* could suppose it possible that, by taking up those lists, and adding to the mere *names* which they present the *truth under this head*, a result such as the following would be produced?

List for 1836.—Of the *five* vessels named therein, *one*, the *Fanny Butler*, came consigned to, and was despatched by Drake & Co., under "arrangements" effected by them, or through their instrumentality.

List for 1837.—Of the *ten* vessels named, *three*, the *Perry*, (*Peri*), *Teazer*, and *Iramura*, (*Tahmira*), belong to the same category. To these three is to be added a *fourth*, the *Mary*, which is omitted from the list, together with two others, the *Joseph Hand* and *Hyperion*; the former of which occupied the same relation to *Ferdinand Clark*, (an American friend of Mr. Kennedy, of whom we shall come to see something presently,) and the latter to *Manegat*, a Spanish merchant.*

* On reference to the consular return in the Department of State, it appears that the barque *Mary*, of Baltimore, arrived September 1st from Baltimore, laden with flour, and cleared Sep

Of these *four* vessels which fell to the share of Drake & Co. in the year 1837, *two* were despatched without any sale having, *ostensibly* at least, taken place. The other two, the *Teazer* and the *Tahmira*, were—as Mr. Everett would have ascertained by a dip into the record, (*supra*, LIV and LV,)—sold to American purchasers before being despatched: one by a bill of sale executed by Drake & Co. as attorneys; and both, in pursuance of “arrangements” effected through their instrumentality as consignees. It is a singular coincidence, too, that, in one of these cases of sale, the purchaser (possibly the *real* one—possibly, also, only an *ostensible* one) was the very same Captain *Joshua Wells Littig*, who, on a subsequent occasion, figures as captain and owner in the case singled out by Dr. R. R. Madden (appendix B) from the mass of overwhelming proofs against the consul, collected during *his* three years’ *espionage* at Havana.

List for 1838.—In this year, the proportion seems to have diminished. Of the nineteen vessels named on the list, *two* only (the *Dolphin* and *Clara*) appear to have fallen to the share of the selected bankers of her Britannic Majesty’s commissary judge;—at least, this is the number of those *overtly* consigned to them; for that *one* other (the *Venus*) was really so consigned, though not published as being so, we shall presently see; and we may infer, therefore, that this *may* have been the case in regard to more than one. Of these two, one was despatched (just as the *Kite* and others subsequently were, under Mr. Everett’s supervision) without any sale having, *ostensibly* at least, taken place. And here is another singular coincidence: this was the schooner *Clara*, the first of the American vessels which arrived last year at New York in charge of a British prize-master, in consequence of having been boarded, searched, and captured, on the coast of Africa, on her way there, by one of her Britannic Majesty’s cruisers.*

To these must be added a *third*, (the schooner *Euphrates*, of Baltimore,) which, as appears from the consular return, arrived November 16 from Baltimore, with “flour, cocon, &c.,” and cleared December 7 with “merchandise” for Africa. This name does not appear on the “estimate” presented by Mr. Everett for this year. Its place is filled by the *William Savin*, a schooner which appears from the consular return to have arrived from

tember 26th for the Cape Verdes, “in ballast;” that the schooner *Joseph Hand*, of Baltimore, arrived September 4th from Savannah, laden with rice and flour, and cleared October 22 for Africa, with “merchandise;” and that the schooner *Hyperion*, of Baltimore, arrived December 8 from New Orleans, laden with flour, and cleared December 28 for San Tomé, with “merchandise, powder, &c.”

The omission of these names is to be accounted for, perhaps, by the circumstance that the first clearance took place the day before Mr. Kennedy’s arrival at Havana, (though, to be sure, Dr. Madden was there,) and the last only three months after; consequently, before he had had time to qualify himself thoroughly for diving deep into this region of mystery, in quest of materials for “approximative estimates.” Had the *Mary*, or the *Joseph Hand*, cleared subsequently to the formation of the intimacy which, as we shall presently see, was cultivated by him with the “English house of Drake & Co.,” and also with the American merchant, Ferdinand Clark, the omission of these two, at least of the three vessels, might have been accounted for by the probability of his having received, in regard to them, (as, at a subsequent period, Mr. Everett did in regard to the *Kite* and others,) a satisfactory assurance “that there was no suspicion of abuse or illicit trade.”

* Since writing the above, I have learned that the same fate has befallen one of Mr. Everett’s “two or three” (four) innocents—the schooner *Hero*; except so far as that, instead of being taken to New York, she was let go, through a freak of the *Linnæus*, that amused himself for a while in worrying her. (See my No. 154, November 28, 1840.) It would seem, from the protest of Captain McConnell, that her being spared the trouble of a trip to New York was caused by the merest trifle in the world. Had she happened not to have any “hams” on board, there is no knowing what would have become of her or of her crew, who were destined to be turned ashore on the African coast.

Baltimore laden with flour, and to have cleared in ballast for Bahia, Brazil. From this substitution, it is to be inferred (the intimacy of her Britannic Majesty's commissary-judge, with his bankers, having, as we shall presently see, at that period come fully into play) that, in regard to the *Euphrates*, consigned to them, and avowedly cleared with "merchandise" for Africa, "there was no suspicion of abuse or illicit trade;" and that the reverse was the case in regard to the schooner which the master saw fit to report at the consulate as cleared "in ballast" for Brazil.

List for 1839.—Here the proportion becomes greater than ever. The heading of the list announces twenty-two names; it contains one short of that number. Of the twenty-one names, *four*—the *Joseph* (Jack) *Wilding*, the *Hound*, *Lark*, and *Cutter Campbell*—stood in this relation to "the English house of Drake & Co.," or rather, one-half of the four belong to it under the name it possessed at the period when Mr. Kennedy designated it as such in his despatch of February 20, 1838; and the other half under the new name of "Drake, Brothers & Co.," which it assumed on the expiration of the then existing partnership, and the retirement of the British subject, who is presently to be mentioned as Mr. Kennedy's particular friend and source of information.

Nor are these all: two others are to be added, which do not appear on Mr. Everett's "estimate;" making the entire number (of those overtly consigned to the house) *six*—the *George A. Brook* and the *Wasp*. The former, as the consular return shows, arrived January 13, in ballast, from Nassau, New Providence; and cleared March 1, with merchandise, for Rio Pongo, Africa. The *Wasp* is a Baltimore schooner, which arrived from Baltimore on the same day, (November 13,) with another Baltimore schooner, the *Centipede*. Both were reported as bringing flour and lard, and both as being cleared with "assorted cargoes" for Africa: the latter, on the 14th December, for Gallinas; the former, on the 25th, for Cape Mesurado. The *Wasp* being not upon the "estimate," whilst the *Centipede* is, it may be inferred that the difference was caused by the excellent opportunities of knowledge enjoyed by the commissary-judge, in reference to the precise intentions with which the former was despatched; the whole "arrangement" in regard to her having been the work of the commissary-judge's friends. The same inference does not, however, apply to the distinction made by him between the *Asp* and the *Hornet*; the former of which is embraced in the "estimate," and the latter omitted, though both Baltimore schooners, which, as the consular return shows, arrived from Baltimore at the same period, with the same cargoes, were consigned to the same individual, (an American newly established at Havana, who has become, in regard to this particular branch of business, a dangerous rival of Mr. Kennedy's friend,) and cleared within a fortnight of each other, November 16 and December 3, with the very same cargoes, "tobacco, rice, &c.," for the very same place, "Rio Bras, Africa."

Nor have we done yet. On the "estimate," the name *Hound* appears but once. It belonged, however, as the consular return shows, to *two* Baltimore schooners which cleared for Africa: the one, of 122 tons burden by her register; the other, of 159 tons. The former (which, from her position on the "estimate," is the one there meant) arrived March 24th, from the British port of Nassau, New Providence, bringing "specie and ballast." She cleared June 12th, with an "assorted cargo," for Lagos, Africa, under Alexander Hanna, master, in place of J. B. Comer, the master who brought

her from Nassau. Just such a substitution as occurred in the case (*supra*, XL) of the Vienna clipper *Kite*, which, in consequence of there being "no suspicion of abuse or illicit trade," disappointed, as did the other three of his "two or three vessels," Mr. Everett's desire for an opportunity to exercise the powers with which he was clothed, in a manner that should prove to the world that he, at least, is a man of whom it cannot be said even that "he seems to give way to apprehensions of personal violence." This "Hound" was consigned to and despatched by the "English house of Drake & Co.;" for both events happened prior to the dissolution of the firm.

The *other* "Hound" came straight from Baltimore, on the 13th September, in ballast, and cleared on the 21st of the same month, with an "assorted cargo," "for the coast of Africa." Both these events happened after the dissolution of the firm. And by whom was *she* received, and all needful "arrangements" made in regard to her? Why, by the very British merchant whose connexion with the house of Drake & Co. had constituted Mr. Kennedy's sole pretext for calling it an English house; and who, on his retirement from that house, had established a house of his own, to which, in all probability, (owing to the close personal intimacy that had long subsisted between them, and subsists, doubtless, to this very hour—rendered but the closer and more compact by the lapse of time,) was transferred the distinction of being Mr. Kennedy's bankers!

Before taking leave of the point to which the foregoing details belong, I must state one further particular, whereof I have been reminded by one of those details, and the force of which will not be lost upon the reader. It is seen that the first *Hound* came from the *British* port of *Nassau*. Now, the individual in the United States who is generally known at Havana to be by far the most actively engaged in the business of sending to his correspondents at that port vessels "for sale, freight, or charter," according as opportunity may occur, is said to be a native of New Providence, where, possibly, he may still have a domicile, and be considered a British subject. His only correspondents at Havana, so far as I possess any grounds of belief, are those to whom this *Hound* came consigned, and at whose house—for he has often visited Havana—it cannot possibly but have happened (*infra*, LXV) that he has often been seen by Mr. Kennedy; and it may have happened that an interchange of "frank" salutations has more than once taken place between them. Or, rather, "the English house of Drake & Co." were his correspondents; for this may have ceased to be the case, in consequence of his business having, as that of Mr. Kennedy probably has, followed Mr. K.'s friend into his new house. An indication that this has occurred is afforded by the circumstance of the second of the two *Hounds* coming consigned to this new house. I have not the means at hand of ascertaining who was her owner, (her register would tell;) but, judging from appearances, and from the extent to which this individual has been engaged in the business, it is highly probable that he was the owner of both schooners. And I will add, it is highly probable, also, that he was concerned in the Vienna clippers *Seminole* and *Kite*, if not in the other two vessels despatched for Africa during Mr. Everett's period of a little over two months; and, likewise, to a reasonable extent in the six vessels, including three Baltimore schooners, sold during the same term.

LXV. Startling and impressive as these facts may be, they afford but a very faint idea of the reality.

On the occurrence of the necessity for the removal of my consulate in

1835, (*supra*, LVI,) Mr. Smith obtained rooms for it in the house occupied by Messrs. Charles Drake & Co., as their commercial establishment, and as the residence of the head of the house and of its numerous clerks. An apartment in the same house, the door of which fronted that of the consulate, and was approached by the same staircase, had been long occupied by the British commissioners as their office; as it continued to be until some time after the arrival of Mr. Kennedy, when it was given up for a cheaper apartment over the fish market—the assigned reason being the highness of the rent. During the period when we were thus under-tenants of Messrs. Drake & Co., the office of the British commission was daily visited by its secretary, Mr. Jackson; and the house was habitually frequented by himself and the commissioners, as visitors and guests of its inmates. The same honor was extended also, not unfrequently, to my consulate; though, owing chiefly to the difference between the leisure allowed by the duties of the commission and those with which I was charged, it was never reciprocated by me, and seldom, if at all, by the vice-consul.

Mr. Kennedy having, shortly after his arrival, become a personal enemy of the British consul, (who, down to that time, had, I believe, been the banker of the commissioners, as he was known to be their mainstay in all matters where information, sagacity, judgment, and discretion, or general benevolence and good temper, were called for,) changed his banker, and conferred the distinction upon Messrs. Drake & Co. On this account, and also as the daily associate and intimate of the *one* British subject, whose association with the house as a partner constituted his ground for designating the house as “the *English* house of Drake & Co.”—Mr. Kennedy, notwithstanding the removal of his office, continued to be a very frequent visitor there; sometimes, perhaps, for the purpose of learning, without the trouble attendant upon the perusal of a Spanish newspaper, or in anticipation of its publication, the current “ship news” of the hour, and also such news and “rumors” as it is not customary there to put into the papers, and which, for this reason, obtain but the more active oral circulation. Such, at least, was the general impression among the foreign residents at Havana in regard to one of the motives for Mr. K.’s frequent visits to the gentleman in question. Certain it is, that if he be, as Mr. Everett says he is, “a person of superior talent,” his talent could not have been better evinced than in this selection of a source from which to obtain, at any moment, with the least possible expenditure of toil or time, all the news of the hour, foreign or domestic, commercial, maritime, or political. In regard, particularly, to the topic of inquiry most interesting to him “in the execution of his duties as commissioner,” which, at the same time, was the subject of all others upon which, from his Wilberforce-training, (of which Mr. Everett informs us,) and the force of habit, “he has a strong personal feeling,”—what selection of an informant, and of an intimate domestic associate, could have been more happy than that of the British partner in the house which enjoyed not only the honor of being Mr. Kennedy’s bankers, but the largest share also—by far the largest share—in the profits attending the business of providing those “American vessels suspected of being engaged in the slave-trade,” of the names of which Mr. K.’s periodical lists were to be in part made up?

I have averred the fact—I here reaffirm it: that, at the very period when he went to interrogate them in regard to the possibility of its being true that the *Comet*, on returning from carrying a cargo for the slave-trade to the Cape Verdes, was consigned to an English house, these selected bankers

of her Britannic Majesty's commissary-judge were reaping by far the largest share of the profits accruing from these "arrangements," (*supra*, XLVIII;) they received, and sold, and despatched more of these American vessels intended to be transferred on the coast to slave-traders, than any other house in Havana. This was notorious. It was stamped every Saturday upon the face of the weekly shipping-list; and, had it not been stamped there, it would not have been the less notorious. It was not less known to every one, than the fact that sales of this kind took place. They *knew* what others could only *surmise*. In regard to every vessel that came consigned to them, and was despatched for Africa, they were parties to the transaction, in regard to the particulars or the nature of which no consul is clothed with authority to ask to be informed by any one, whether consignee or captain; and concerning which, any such pretension on his part would be scouted by both. They knew whether the vessel was despatched, as the *Comet* and others were, solely to carry cargo and to return a *bona fide* American vessel; or whether she went to be transferred on the coast. All this was positively known to them, and all Havana knew that it was so.

To the details above given (*supra*, LXIV) in illustration of this truth, it might seem superfluous to add any thing. The reader will, however, be of a very different opinion when he comes to feel the force of the fact which will now be presented to him. In regard to a supply of materials for meeting the imputations contained in the report, whether these come upon me directly, or by reflection from eulogiums upon the British commissioner, (that is to say, the *present* commissioner; for, to the efficacy of the eulogistic matter upon him, even reflections upon his predecessor are made to contribute,) I cannot but be esteemed singularly fortunate. Had Mr. Everett chanced to omit to inform us of Mr. K.'s ingenuousness, or of the "strong personal feeling" which justifies "any excess of zeal" into which he may, by less charitable minds, (towards British commissioners,) be considered to have been betrayed,—had either of these omissions chanced to occur, how impossible it would have been for me to bring thus vividly to the reader's mind the illustration of the purity of that ingenuousness, and the intensity of that "personal feeling," which he is now possessed of! And, supposing neither omission to have occurred, how great must have been the difficulty of finding an equally apposite illustration, but for the extraordinary concurrence of two such accidents as—*first*, that of Mr. Kennedy's being led by his evil star to select this very house, of all others, for so gross an exposure of the game of humbug which he and those who employ him find it to their joint account to keep up; and, *secondly*, that which caused this exposure to be contained in the very volume of parliamentary papers which chances to have been officially transmitted to Government in crimination of me! Nor does this singularly good fortune stop here. We have already seen other instances of it; more yet are to come, for the report is *full* of them. As specimens of the ordinary mode in which I have omitted all that I ought to have done—*specimens* in what way selected, and to what effect upon the reader's mind, will come under consideration hereafter—Mr. Everett produces to him two cases, and two cases *only*, for the reason solely that "it is, of course, unnecessary to lengthen this report by examining the details of each particular case." These two cases are those of the ship *Venus* and the schooner *Washington*.

The reader of the report will not have forgotten the impression made upon his mind by the first of these cases, as stated and commented upon by

Mr. Everett. Nor will he have forgotten that among these impressions is a positive one—that the *Venus* being used merely to enable him “to form an opinion with greater distinctness and certainty,” her case is a fair sample of all the rest as named in the long “estimates,” previously presented to him, of “the number of American vessels employed in the slave trade at the Havana.”

And now for my good fortune once more. To whom did this ship come consigned? Will the reader believe it possible that chance should so far favor me as to make it turn out that this *one* name, thus casually taken from the *forty-five*, for the mere purpose of the “greater distinctness and certainty” attendant upon having an *individual* instead of a *genus* before the mind’s eye, is the name of a vessel that came consigned to Mr. Kennedy’s bankers? No; it does not so turn out! On consulting the weekly shipping list, the *Venus* appears to have been consigned to the Spanish house of Mazorra, which, as Mr. Everett informs us, “has obtained an unenviable notoriety by its extensive dealings in the slave-trade.” Fortune frowns, then. Not at all! The brig *Comet*, though “entered as consigned to the English house of Drake & Co.,” proved not to be so in truth. The master, being in the habit, perhaps, of consigning himself to that house, only intended to do so this time, and made report accordingly to the boarding-officer, or news-collector;—at any rate, the consignment, whether in consequence of Mr. K.’s prompt interrogatory, or of some other cause, did not become perfected by their acceptance of it. Now, precisely the same blunder or inaccuracy that Mr. K.’s vigilance proved the means of enabling him to correct in regard to the brig *Comet*, occurred, and escaped correction, in regard to the ship *Venus*. Though “entered” as consigned to Mazorra, she was consigned to Mr. Kennedy’s bankers. To them did she come entrusted. Mazorra was the purchaser for whom she was intended. This was no secret; it was the common talk of the city. But the house to whom she came intrusted (the house that had to make, and did make, all the “arrangements”) to finger the money, or give trust on their responsibility, “*guarantee*” is the technical term; it implies an additional $2\frac{1}{2}$ per cent. on the amount of sale,) to pocket the commissions, and to despatch her under the American flag to the place agreed on for delivery;—the house which had to do all this, and which did it all, were Mr. Kennedy’s bankers! The very gold which he received in exchange for the next bill drawn upon his Government for the salary earned—so richly earned—as, to all the good people of England, Scotland, and Ireland, who helped to pay it, and who have been repaid by a perusal of the parliamentary papers, it will doubtless appear to have been—by his vigilance in regard to “the American brig *Comet*, Captain Dick-on,” was, perhaps, the identical gold pocketed by his bankers, as their commissions for the services rendered, in the face of all Havana, in arranging for the sale and transfer of the *Venus*, upon terms and conditions mutually satisfactory to the house, which Mr. Everett tells us—having probably obtained the information from the only source left him, (*supra*, LII to LXI.) Mr. Kennedy—“has obtained an unenviable notoriety by its extensive dealings in the slave-trade.”

But, (it might be said,) however notorious the fact, that these bankers of his had by far the greatest share of any house in Havana of these “arrangements” to make, and however impossible that Mr. Kennedy should have been ignorant of a fact of this nature, yet might he possibly have been kept in ignorance of their agency in this particular case. Grant so gross an im-

probability to be as possible as you please ; nay, that it is exceedingly *probable*;—still, the probability, however great you make it, is of no avail. It melts away into nothing under the beams of light from that invaluable volume of parliamentary papers.

In the "extract" therein given from a despatch of "her Majesty's commissioners to Viscount Palmerston," under date "Havana, January 19, 1839," the following passage occurs :

"In the despatch dated the 22d August last, from her Majesty's commissioners at this place, your lordship was informed of the arrival here of the American ship *Venus*, built at Baltimore, expressly for the slave-trade; and of her departure shortly after for the coast of Africa. The *Venus* sailed hence under the American flag, with several American citizens on board ; but, in the ship's articles, of which a glance, in bravado, was afforded her Majesty's commissary-judge, (Mr. Kennedy,) it was expressly stipulated that she was to be taken to Bahia, there to be transferred to the Portuguese flag."

Here, then, is the proof, twice over, that Mr. Kennedy's attention was given to this individual case, at the time the vessel arrived for sale ; and, consequently, that he was not ignorant of any particular in regard to her, that was commonly known to others. But *where* was it, by *whom* was it, that "a glance, in bravado, was afforded" Mr. Kennedy, at the ship's articles ? Take into consideration, on the one hand, his intimacy with his bankers ; on the other, the relation in which they stood toward the vessel ;—and *where* can this incident be so likely to have occurred as at their counting-house ?—their counting-house, where he may have found himself in company with the master, who was to take her to Bahia, and whose property the articles were. From whom can such an act of "frank" familiarity appear so likely to have proceeded, as from one of the partners, or, perhaps, one of the higher clerks ? Surely this cannot have occurred at the house which the *Venus* was "entered as consigned" to—the house of Mazorra ! Until farther light be shed upon the point, no mind can resist the conclusion, that, not only was Mr. Kennedy aware of the relation in which his bankers stood towards the *Venus*, but that relation was *there* and by *them* made the subject of "bravado," friendly and "frank, though not very polished."

Having been led to refer to matter contained under the heading "extract," in this volume of parliamentary papers upon the slave trade officially transmitted, on account of its bearing upon me, I must not pretermit the occasion for giving a caution in regard to the use which appears to be made of this heading at the Foreign Office—at least under its present chief, Lord Viscount Palmerston ; and in regard to the communications addressed to him on the subject of the slave-trade. Other volumes of the same kind, or "extracts" in manuscript even, may be communicated from the same source, and for the same purpose ; and, without the caution which I am about to give, great injustice might unconsciously be done me.

The word *extract*, as every one knows and *feels*, conveys the idea of one unbroken continuous portion of the matter written, exactly as it was written. Where no intimation to the contrary is given, it is taken for granted that this is the character of any matter perused under that head. It is unnecessary to enlarge upon the effects (it would be impossible to assign limits to them) which may be produced upon the unconscious reader by deviations from the rule of right, which the meaning universally attached to the

word renders imperative upon every man who uses it. It is scarcely less unnecessary to point out the truth, that (with respect to the particular subject of the slave trade, above all others) the means of playing upon the feelings, and misleading the understanding of the public, in Great Britain and elsewhere, exist in such excessive superabundance, that it is the very last, perhaps, in regard to which any reader, however low his estimate of the moral tone of those upon whom it might depend, would suspect a resort to such an artifice.

And yet it is resorted to—to what “*precise extent*” I cannot, of course, say; in making up, at the Foreign Office, matter to be published under this head in the parliamentary papers relative to the slave-trade. Nay, the license stops not here. One would suppose that, in all conscience, this allowed latitude enough in the cooking up of dishes to the tastes for which they are intended. But it is not so. Not only is the liberty exercised of striking out superfluous words and otherwise emending the matter in point of mere style, (for some instances of which, see my despatch No. 153, communicating my last correspondence with the British commissioners;) but this liberty is carried so far as to emend the *matter* also;—to the extent, too, of *making the opinion of the writer apply specially to an individual in regard to whom it was not expressed!* And, worse still, an individual *in regard to whom, it is positively known* to those engaged in the emendation, *at the time they are so engaged*, that the opinion manufactured by this process is not, *was* not at the time the writer wrote, and *could not be*, entertained by him!! And, worse still, an individual in regard to whom the noble head of the Foreign Office has a direct *personal* interest in parading such an opinion, from that particular source, before the public eye!!!

If this be truth, every one who may be called upon to read an “extract,” or a “paper” of any sort—parliamentary or otherwise—coming from or through the Foreign Office at London, whilst under the control of Lord Viscount Palmerston, is entitled to know it. Occupying the relations to the noble lord which the game that is playing under his direction has caused him to establish between us, I am entitled to have it known, not only on account of its direct bearing, but on account also of its incidental bearings; not only with reference to “papers,” but as a general indication—an indication both of the spirit in which the game is played, and of the necessity that this spirit should not lie dormant. That it is truth—*literal* truth—I solemnly aver. I aver it upon my own knowledge, so far as it is possible for a truth of this nature to be known to any one without having the Foreign Office at his command. This I aver; and I challenge denial of the literal, exact truth, in any one point or tittle, of what I have stated.

A fit captain, this—is he not?—to receive and lay before the purblind zealots, whose appetites they are paid to forage and cater for, a “despatch” of such matter as Lieutenant Kennedy’s vigilance in regard to “the American brig *Comet*, Captain Dickson!”*

* Nor is it of his *own* vigilance only, that Lieutenant Kennedy provides proofs to be “*presented to both Houses of Parliament by command of her Majesty*,” and, through them, to the “good people,” who are not left in the same blissful ignorance as the fat footman in a late English caricature, who asks the other fat footman, (whose face presents a likeness that cannot have failed to strike all who have been members of the House of Commons in 1835, or the years immediately preceding,) “James, what is *taxes*?” He despatches from Havana like matter in regard to the efficaciousness of the vigilance displayed by his captain. A specimen of it is presented in the same invaluable volume of parliamentary papers, in a despatch dated “Havana, December 24, 1838,” not two months apart from that transmitting the February fruit

LXVI. The "English house," to which the American brig *Comet*, Captain Dickson, was "entered as consigned," is not the only house in regard to which daily illustrations have been presented to all eyes at Havana, of the depth of Mr. Kennedy's "strong personal feeling on the subject," no less than of the pure ingenuousness which, blended with his "superior talent," makes him "in wit, a man; simplicity, a child." There is an American house, also: the house to which the American schooner *Washington* was "entered as consigned," and was consigned—the house of *Ferdinand Clark*.

The case of the *Washington* is the second of the two cases, selected—no, taken haphazard—by Mr. Everett, merely for sake of the advantage to his reader in having an individual object under contemplation. This case, which was instantly reported by me to Government, (a circumstance which, trifling though it be, the reader of the report may possibly experience some surprise at learning,) without any intermeddling on the part of British commissioners, is the *one* solitary case in which I ever had the slightest reason to suspect that a vessel "engaged in the slave-trade," in the sense wherein all readers (except Mr. Everett) will understand the words—that is to say, in *carrying slaves*—had on board an American document of any description, or any document purporting that she was an American vessel, by ownership or otherwise.

This schooner (my recollection of the particulars is refreshed by a perusal of my communication to the department under date May 22, 1838) arrived in September, 1837, from Savannah, consigned to Ferdinand Clark, by her master and sole owner, Frederick Neill, an intimate friend of Clark's, who has regularly traded to Havana for a long period, and is a constant associate of him and his clique; the most disreputable foreigners in Havana, by far: as any one who will take the trouble to dip into report No. 707, of the House of Representatives at the last session, will see must be the case.

Neill appointed as master Charles Ghetty, a naturalized citizen of the United States, who had come out from New York as mate of the schooner *Thomas H. Smith* of that port. After doing so, he departed for the United States, having executed to Clark a power of attorney, authorizing him to sell her or dispose of her in any way. After being about a month in port, the schooner was despatched by Clark, who first substituted as attorney, with power to sell, a Spanish friend of his. She was reported by the master at the consulate as cleared for Matanzas; but as her cargo was at the same time reported as consisting of "powder and merchandise," the strong presumption was, that this was "an assorted cargo," destined—as those of the *Kite*, *Seminole*, and others (*supra*, XXXVI) avowedly were—for the coast of Africa; and that Clark had sold the vessel, deliverable there, or had arranged to sell her there; or, at least, intended she should be sold there, if opportunity offered.

In May, 1838, some circumstances, which will come under consideration hereafter, having satisfied me that this vessel had returned from the coast, bringing slaves, *with her American register on board*, I succeeded in

opened by the *Comet*. This December product embodies a statement—a blunder from beginning to end—in regard to events connecting the brig *Thomas* with the United States sloop of war *Ontario*, and closes with the following *argumentum ad hominem*: "These measures have no doubt been adopted in consequence of your lordship's representations."

For a demonstration of the utter falsity of this "no doubt," and that the wine is in all respects equal to that of the *Comet* vintage, I refer to appendix C.

frightening her then ostensible consignee and owner, a Spaniard named Ealo, who, as well as his brother, was a particular friend of Clark's, (see House report above referred to, pp. 25, 459,) into delivering up the register and crew-list. This he did, despite the most strenuous advice from Clark; who, as Ealo told me, gave him the benefit of his legal lore, in the most positive assurances (assurances which, except in one single *incidental* particular, were perfectly well founded) that it was not in my power to seize the vessel, or to effect any thing against him; that I possessed no authority to interfere in any way, and he might safely defy me. That Clark did use the most earnest endeavors to this end, I entertained no doubt. Had no other motive existed, his hatred for me, his insatiable desire to injure me and thwart me in any possible way, would have been sufficient. But no one who considers for a moment the position in which he was placed by the voyage thus planned and effected by him, can doubt for a moment that, independently of his "strong personal feeling" towards me, he would be most anxious to prevent the papers from coming into my possession. Even if he had intended making no further use of them (a supposition contradicted by the fact of the inquiry in regard to the possibility of putting the vessel under the American flag—the very thing which awakened my suspicion that the register was in their possession,) it would still have been all-important to his friend Captain Neill, and to himself as a "man of business," that the papers should be by him privately transmitted to the States.

That Clark had an interest in this slave-voyage, (I mean in the very slaves brought back in the schooner,) I did not doubt. Nor could such a doubt rest upon any mind, apprized of these circumstances, and connecting them with the notorious, proverbial, unscrupulousness in regard to money-making, which, at the time of my arrival at Havana in 1834, had already made his name a long-established by-word among his own countrymen and all other foreigners there.

Well: this individual was not only sought out as an acquaintance and friend by *Dr. Richard Robert Madden*, in order that this learned and literary doctor and traveller might enlist under his banner as a volunteer in the crusade against my character, (see House report, No. 707, p. 328,) but he obtained, at a still earlier period, the yet higher distinction of becoming the associate, and the honored guest at the dinner-table of her Britannic Majesty's commissary-judge, J. KENNEDY, Esq., ex-M. P. for the BOROUGH OF TIVERTON.

With an exception—which, owing to the delicate domestic nature of its cause, I will not enter into the particulars of—Ferdinand Clark is (unless, owing to Mr. Everett's association with him, which may have been purely *official*, in the discharge of his duties with respect to the obtainment of "information,"—strict truth requires that his name be not omitted) the only American associate of Mr. Kennedy, that I ever heard of, at Havana! How far he may be indebted for this distinction to the affection which they in common bear for me, or how far to the affection which they together bear for the British consul, Mr. Tolmé, (now, to the great satisfaction of his friends no less than of his enemies, and owing to causes which will be touched upon presently, British consul no longer,) who incurred Clark's hate by refusing to listen to his abuse of me, or how far to other points of congeniality, I leave to be determined by those who know them both,—or who know either one; for the knowledge of *one* will suffice. In regard to Clark's character, I will add to the materials contained in the House docu-

ment above mentioned, a reference to one witness who cannot (House report, No. 707, p. 197) be supposed to have any very strong bias in my favor,—Mr. Zachariah Jellison, of Boston. In my letter to him contained in the document just referred to, (p. 231,) I allude to certain "facts" which had been stated to me, in illustration of his (Mr. J.'s) character. One of those facts constituted a striking proof of probity in a pecuniary point of view; another, a strong indication of a delicacy of feeling not to be met with in every man. The latter was as follows: Mr. Jellison, who is a Boston merchant, (Clark also is originally from that place, and still calls himself "a citizen of Boston,"—though it is said he dare not now (House report, p. 170) trust his person within reach of its law—being at Havana on mercantile business, had occasion to engage a vessel. The only suitable one then offering was in the hands of Ferdinand Clark as consignee; but, such was Mr. Jellison's disgust for his character, that, although accustomed to transact in proper person all business in which he engaged, he could not bring himself to have any communication with Clark; and accomplished his purpose through the instrumentality of a clerk of a German merchant. Such is the fact, as stated to me, so far as my recollection serves. Mr. Jellison could tell whether it be accurately stated; and, also, what were the grounds of the disgust so strongly manifested.

From an incident which has occurred since my departure from Havana, it would seem that the friendship between Messrs. Kennedy and Clark has so ripened into intimacy, as to cause the latter to avail himself of the superior literary qualifications of the former, for the emendation of his writings—at least so far as they regard "Consul Trist." On the return of the vice-consul, (Mr. Smith,) to Havana, in June last, from attending court in Baltimore, he found there a new subject of the merriment habitually afforded by Clark to the British residents, (the *Americans* being, as I stated in a former communication, too much ashamed of him as a countryman to enjoy their share of the spectacle,) in the shape of a pamphlet against me, which he had written, and was circulating in manuscript, that it might be enjoyed by some, previously to being trusted to the perils of the sea, on its way to our country for publication.

In Mr. Smith's first letter, dated four days after his arrival, he mentions this manuscript, and incidentally mentions also the following circumstance, together with the source—an absolutely unquestionable one—from which he obtained it: "Mr. ——— told me that Clark requested Mr. Kennedy, to examine it and correct it. After perusing it, he sent it to Clark, and advised him to burn it." From the non-appearance of the pamphlet, it would seem that this friendly advice has been followed: contrary to the wish of every lover of sport, and of every person friendly to me. For these thought that nothing could operate so strongly in my favor as such an outpouring, before the public eye of our country, of the soul of this *enemy* of Mr. Trist, and *friend* of Mr. Kennedy.

The reader's mind will now be satiated with proofs of the ingenuousness of Mr. Kennedy's character, "and particularly" of the sincerity and habitual intensity of his "strong *personal* feeling on the subject of slavery," (*a fortiori*, the *slave-trade*), "independently of any considerations of expediency or policy:" a feeling which, having been "derived in part from the influence of Mr. Wilberforce, who was his relative, and, in early life, his guardian," "seems to account naturally for any excess of zeal which he may

have shown in the execution of his duties as commissioner, *and particularly* in his correspondence with the consul.”*

LXVII. I will now bestow some consideration on another touch of Mr. Everett's pencil, in this sketch of character, serving to show how reprehensible the consul must have been in not meeting with becoming courtesy “any excess of zeal, so naturally accounted for.”

The operation of this natural cause upon the reader's mind does not limit itself to the affording a satisfactory explanation of “any excess of zeal.” In a pupil of Wilberforce—and such a pupil, too!—what more natural than the desire to exchange, solely with a view to the indulgence of his “strong personal feeling,” a field so barren as the House of Commons,—where the harvest has been reaped, and every grain has been gleaned,—for one offering so boundless a scope for philanthropic exertion as Havana?—what stronger proof of his being engaged at this place purely in a *labor of love*, which ought to have commanded for his zeal the respect, if not the admiration and sympathy of the consul, than the very fact of his using the opportunity presented by the necessities of Lord Palmerston for purchasing of him the possession of such a field for a labor of that kind?

Is this the impression of the reader?

Alas! it is like the rest: all an illusion, which vanishes the instant that prose is substituted for poetry,—that stubborn facts take the place of pretty fancies.

Mr. Kennedy must have experienced some constraint in his colloquies with Mr. Everett. He cannot have proved so frankly communicative as—shortly after his arrival, at least—he habitually had been to others, and, among them, to myself: for I, too, have enjoyed the honor of receiving “information” from his lips; and have experienced some surprise—owing, doubtless, to my *American* want of familiarity with what, in parliamentary practice, appears to be technically called “*a regular job*”—at the frankness with which the various incidents to a “job” are spoken of, as things of course, among those whom an education on the other side of the water has familiarized with such occurrences.

But I will first give a sketch of the personal relations between us, which “serve naturally to account” for the fact that the ingenuousness of his nature cannot have lain dormant with respect to myself; and to afford a strong presumption, therefore, that if Mr. Everett has found himself under the necessity to “report” to the department commentaries of his own upon communications from me, of which it had long been in possession, instead of “information” collected by him at Havana, this empty-handedness cannot but have arisen from the one cause—that the zeal of the commissary-judge and of all his associates had proved so barren of all fruit as to afford against me no matter of crimination that could vie in plausibility with even the case of “the American brig *Comet*, Captain Dickson,” considered as proof of his faithful vigilance.

* As a proof of the intensity of this feeling, the companionship between Messrs. Kennedy and Clark cannot be estimated at any thing like its full worth, except by being considered in connexion with another fact, as notorious to all Havana as a fact can possibly be. The constant associate and *most* bosom friend of Clark is a man who, for murdering a domestic slave by tying him (or her—I did not learn the sex) up by the arms, and leaving him in this condition all night, so that mortification and death ensued,—narrowly escaped hanging at Surinam, and was banished by sentence of court from that country. This piece of *slave* history was first brought in a precise, definite shape, to Havana, by Mr. Kennedy's present colleague, the British arbitrator, who had resided at Surinam—[See documents of the House of Representatives, at the last session, report No. 707, p. 92.]

Mr. Kennedy arrived at Havana in the fall of 1837, and some time after took a house near to my own. He there experienced soon a heavy domestic affliction ; in consequence of which, and of the impression made upon me by his "frank, though not very polished manners," my cordiality—such as, by those who know me, it may be known to be—was extended to him. I was not long in being struck with his communicativeness in regard to points which, whatever their other bearings might be, tended to make the hearer aware of his importance, and particularly in regard to his *influence at court*. With respect to this object, however, their efficacy was all thrown away upon me ; and the only effect produced was surprise, and a preparation to hear without surprise or incredulity, other particulars of the same nature, which he was reported to have communicated to other persons. As part of this effect, my incredulity gave way in regard to the justness of the rumor, which had preceded his arrival, and which was currently believed among his countrymen—though then regarded by me as a malevolent invention, or malicious deduction from insufficient grounds—that his appointment had been the result of "a regular job," and had been made without any reference to his fitness : a purely commercial operation, in which a situation had been bartered for an office, with a salary and pension attached.

Of the incidents thus imparted to me as an American stranger—an acquaintance of to-day—one had a bearing upon the point now under consideration. In connexion with a desire expressed by him to see our country, he gave me to understand that he had expected to visit it in the capacity of British minister ;—this "was the height of his ambition," but matters stood in the way of its gratification. During this period it was, that, in one of his despatches, (August 22, 1838,) which has appeared in the parliamentary papers, I unconsciously experienced the honor of being mentioned as "a gentleman of high character, as well as of considerable reading and observation." The particular purpose for which I was introduced on the occasion, I cannot (never having seen the despatch) say ; were it before me, I might perhaps discern, and point out something "very like" the tail of a "Comet."* It was yet earlier in the same period that the following incident—serving to show that "any excess of zeal" into which his "strong personal feeling" may have betrayed him with respect to an occurrence in January 1839, was at least not entirely of a crude, unpremeditated kind—one day occurred at his house, on the occasion of one of the few visits I ever made there. Taking up a volume of parliamentary papers containing my correspondence of November, 1836, with his predecessor in office and Doctor R. R. Madden—who, to judge from its peculiarities, was the writer of the letter addressed to, and returned by, me—Mr. K. observed, in his "frank" way, and apparently in a *feeling* way : "I find your name here ;" and proceeded to intimate, in words which I cannot positively recall, but which were very friendly, and even *coaxing*, that *he* hoped to get along better with me. Their drift was not lost upon me. I understood it perfectly well. It amounted to this : just receive our communications—can't you ?—and reply to them, for instance, as the French consul did, at the

* I now have before me a long "extract" from this despatch, which proves to be worse even than I conjectured : for it contains a sheer "*fabrication*," of the grossest and most calumnious kind—not against myself only, but embracing the American merchants also, *en masse*, in the shape of a report of conversations which never occurred.—[See appendix G.] I bespeak particular attention to it.

period when *you* treated our commission so cavalierly—[See appendix D.] This is all we ask ; it will answer our purpose, which is to satisfy the good folks at home. It will be a feather in my cap there, and in the cap of him who appointed me, that I should have been able to manage your American spirit better than that fellow S—, whom I cordially detest, and who hates and ridicules me, because Lord Palmerston found it necessary to disappoint his expectations. We shall be excellent friends, and you shall be no loser by it : for it shall be my care to speak of you as you deserve ; and this will appear in the parliamentary papers, and *tell* everywhere. Come now, be conformable, when an occasion shall offer for displaying our zeal, and edifying thereby those who call for such things. Just receive our communications, and reply to them civilly. If you put in a touch or two of humbug, deploring that it is not in your power (as we all know) to control these abuses, “ nefarious infringements of the rights of humanity,” and so forth,—so much the better. If you will but play this part, all will go well with you. We will get along together most quietly and amicably. All troublesome discussion will be transferred to Washington,—for which place, any communications we may address to you are really intended, and where they must directly find their way, at any rate. It will end in your Government’s becoming a party to the right of search ; and we will enjoy, in common, the advantage of figuring in the business by which this is brought about.

I must not be understood to say that all this, or any part of it, was expressed in so many words. But this was the plain, obvious drift of what was said—the manifest intention of the friendly and coaxing appeal to my amiability ; an intention rendered altogether *indubitable* by all the circumstances in which we stood. Such, at least, was the impression made upon me. Thus much I can positively aver to be an absolute fact. What the averment may be worth, and what the fact may be worth, it belongs to those who know me, morally and intellectually, to judge. Without any such knowledge even, no one can, I think, give his attention to the subject, and fail to perceive that this amicable intimation could not have had any other meaning in it. The great all-comprehensive object for which the whole game is playing, whether at head-quarters or at the outposts, is, *to satisfy the enthusiasts* who have run mad upon this particular subject, and can see nothing else, think of nothing else, dream of nothing else. Their demand for displays of zeal in regard to it *must be satisfied*. This is the one condition upon which their support can be obtained ; and without their support, no ministry can stand. Of all feathers in the cap of any minister, none in their eyes could be comparable to that of extorting from the United States the right of search : a thing in itself so *desirable* upon *other* grounds. Every incident, whether true or false, which can be made subservient, whether really or apparently only, to this end, is, on account of that conduciveness alone, worth its weight in gold. Meanwhile, too, the immediate effect produced by it is the very effect for which the great object is striven for : *zeal is displayed, and the greed of the enthusiasts is for the moment appeased*. They chuckle, and all hands chuckle, each after his own fashion. The “ good people” are taxed—commissary-judges and all the *et ceteras* wax fat on their sinecures, whilst they providentially lay by crumbs wherewith to eke out the “ mere pittance” which awaits them in the shape of a pension ; ministers receive the support of the otherwise “ impracticable” zealots, and enjoy, besides, “ patronage,” which enables them to conciliate other “ im-

practicables," and, in case of need, when ousted by their constituents from the indispensable seat in Parliament, to afford an M. P. of "strong personal feeling on the subject" a proper field for its indulgence, "in consideration (as Mr. Everett expresses it) of his having vacated his seat for the borough of Tiverton, in order to make room for Lord Palmerston."*

Had the design which this intimation purported been frankly and explicitly stated, I should have replied by pointing out the conclusive ground against my permitting myself to take the proposed part in the game, or to be made in any manner the instrument of a practical recognition and establishment of their right to take part in the execution of American laws upon American citizens. I should have told him that I could not, and would not, recognise any such pretension if addressed to me; and that if it were reiterated, I should deem it my duty to consider it a deliberate insult, and to repel it and rebuke it in the best way I was able. He might make to his own Government such communications as he pleased, and that Government might make them the grounds of communications to mine; and my Government might recognise or repel the pretension, just as it might see fit. All this

* Of the time to which the "good people" are taxed for all these valuable ends, and of the extent to which these ends are thereby effected, an idea is afforded by the following extract from *McCulloch's Dictionary of Commerce*, article *Sierra Leone*, giving the amount of *patronage* expended down to the year 1830:

"*Expenses incurred on account of Sierra Leone.*—The pecuniary expense occasioned by this colony, and our unsuccessful efforts to suppress the foreign slave-trade, have been altogether enormous. Mr. Keith Douglass is reported to have stated in his place in the House of Commons, in July, 1831, that down to the year 1824 the *civil* expenses of Sierra Leone amounted to £2,268,000; and that the same expenses had amounted from 1824 to 1830, to £1,082,000. The naval expenses from 1807 to 1824, had been £1,630,000. The payment to Spain and Portugal, to induce them to relinquish the slave-trade, amounted to £1,230,000. The expenses on account of captured slaves were £533,092. The expenses incurred on account of the mixed-commission courts were £198,000. Altogether, this establishment has cost the country nearly £8,000,000!"

Eight millions of pounds sterling!—only about forty millions of dollars! and of these forty millions, one million only, pensions excluded, had, in the long period of thirteen years, (from 1817, when they were first established, down to 1830, when this statement was made,) fallen to the share of the British halves of three or four mixed-commission courts, consisting each of a commissary-judge, an arbitrator, and a secretary! And this million increased by the addition of about \$650,000 only, for the nine years from 1830 to 1839!

"Here, (says the Westminster Review for June, 1840, in an article which shows that there are in England men able to *think* on this subject, and who are not afraid to speak out,) is a result, after thirty years' negotiation, after paying £940,000 (\$1,700,000) in prize money, £330,000 (\$1,650,000) for mixed-commission courts, (where judges appeal to the dice box for their decisions,) after gallant actions between flying slave-traders and British men of war. All done for the sake of the poor negro, in the sacred cause of humanity!" To which, in regard to the very point now under consideration—the sincerity of commissary-judge zeal—it subsequently adds:

"We will not stop to inquire how Mr. Macaulay has been seven years in finding out that the result of the system he had been administering was fresh triumph to the slave-traders, and the increased misery of their victims. We will not suppose for a moment that the discussions in the House of Lords, in January and March, 1838, had any effect in precipitating the discovery he has made, though they certainly might have conveyed a vague idea to his mind that the time was approaching when the office of her Majesty's commissary-judge at Sierra Leone would be found out to be both useless and expensive; that, in fact, some change was wanted in the system; and the public naturally looked to their well-paid judges to decide what that change should be."

I find this article so replete with accurate information and enlightened views on the whole subject, no less than on the point now under consideration, that I annex it entire. [Appendix E.] It is entitled to attention, in our country particularly, from the disclosures it contains of the spirit manifested by commissary-judges and others; the suggestions in regard to the exercise of British power, with reference to the black subject, by which they seek to recommend themselves to favor with their employers;—suggestions which are met by the reviewers in a manner affording proof of the cheering fact, that sanity in regard to this subject is not extinct in the British mind; that men are not wanting there, who dare refuse to substitute crude fancies, engendered by time-serving, self-seeking cant, for those principles which, by universal consent among the good and the wise of all countries and all ages, the peace and welfare of mankind require to be held at all times paramount, inviolate, sacred.

was no concern of mine as American consul at Havana. But, as such, my view of my own duty was perfectly clear; and this was, not to admit it for an instant, in any imaginable shape in which it could be advanced. And such an acknowledgment could not but be practically involved in my course, if I went so far even as to permit myself to be used as the passive recipient of any matter from them on the subject of contraventions of American law.

Such would have been my reply, had the purpose been explicitly stated. [This view of my duty will be fully considered hereafter, in connexion with the opposite view entered by Mr. Everett.] It was not thus stated, however; but, on the contrary, only intimated, in the shape of a *hope* expressed in a manner importing an indefinite purpose, which it was not intended then to propose for consideration. I waited for him to proceed, but he threw down the book and dropped the subject.

Another trait in Mr. Kennedy's character, which gradually developed itself, (in company, too, with the anxiety to apprise people of his *influence*), is *malignity*—malignity of the pettiest and most miserable kind—which found its present gratification in boasts of the full fruition that awaited it, in the removal from employment of those who had stirred it up. And this effect it required no hurricane to produce. This spirit, the manifestations of which to the eyes of others had long afforded not unfrequent topics of conversation among his own countrymen and other foreign residents at Havana, (who compose, all told, but the smallest of village circles,) was finally indulged in his intercourse with me to an extent, and towards an object, that proved the immediate cause of an icy coldness on my part, as the precursor of the fire that was to kindle in his bosom.

That object was Mr. Toliné, the British consul; who, take him all in all, is decidedly one of the finest characters I have ever known. A *British merchant* in the high sense of the term; a *really* "frank" man—frank in manner, frank in soul; one in whom, to a sound judgment, quick sagacity, extensive and accurate information, mature experience of the world, enlarged and liberal views on all subjects, are united one of the most amiable and social of dispositions, and one of the most benevolent of hearts; a man ever ready and prompt to render service to others, incessantly engaged in so doing; a man who inculcates upon those around him, by his constant, unvarying *practice*, which repeated ingratitude even does not shake, that most difficult (to most men, at least) of all precepts to act up to—the precept to *return good for evil*. The devoted, affectionate husband and father; the warm, constant friend; the hospitable host, who welcomes all to whatever he has, and makes that welcome felt by the *sparkles of heart*, which are ever dancing in his eye; the delightful companion, in whose cheerful and mirthful fellowship cares are forgotten and time flies; the favorite of all the consular body, of the British navy, of the American navy, of all the navies that ever send a ship to the port; the *looked up to* by his colleagues, whom all consult and take counsel of, and with whom all feel at home, for he is master of all their languages; a man whose character is in nothing so defective as in its extreme amiability and kindness; that tenderness for the feelings of others, which will not allow him to meet their advances with repulses, and consequently exposes him to the imputation, with those who do not know him, of congeniality with persons who are unfit to approach him.*

* The most remarkable instance of this was in regard to Ferdinand Clark, who, particularly

Such is the man whom Mr. Kennedy, having begun by a most gracious tender of his "patronage," and an offer to procure for him the sinecure in the mixed-commission, next in value to his own, has ended by displacing from the post (a most burdensome one it was to a man of *his* nature) which he graced; the interval between the first conception of his hate, and the first boast of the effect that was to follow, and this consummation of that boast, having been filled up with petty personal insult and attempted annoyance, conveyed in an official form, on every opportunity for which an official pretext could be found; all arising, of course, as did every thing else of the same kind towards other British functionaries, for whom he conceived an affection from "excess of zeal," caused by his "strong *personal* feeling on the subject of slavery, independently of any considerations of expediency or policy." The extent to which his indulgences in this miserable pleasure were carried, was such as could not but reflect disgrace upon any Government under which it could possibly occur with impunity, from any one public servant towards another. Nor could such impunity have attended it in this instance, had not the "job"-engendered influence, of which he made boast, in truth existed. In ascribing to that influence, solely, the recent accomplishment of his old annunciation of Mr. Tolmé's removal, I may, however, be doing injustice to that of Dr. R. R. Madden, and that of Dr. M's. friend, by whom Mr. Tolmé has recently been supplanted, and who enjoys the further advantage of being the successor of Dr. Madden in the sinecure specially created for his accommodation, now merged in the office of consul, as all these sinecures might have been, with immense advantage—while Mr. Tolmé was consul, at least—to any object requiring for its accomplishment judgment, sagacity, talent, probity, and freedom from cant.

The incidents in regard to Mr. Tolmé which I have adverted to as the cause of the icy coldness assumed by me towards Mr. Kennedy, I will now state. Each constitutes in itself a fair specimen of the man; and the latter affords a just idea of the sense in which it is true that his manners are "frank," and of the extent to which it is true that they are "not very polished."

Late in 1838, or early in 1839, I was one afternoon honored by a visit from Mr. Kennedy, accompanied by one of his children, a boy of about the same age with my youngest boy. My family were all out, having gone on a visit to that of Mr. Tolmé,—with whom, as is perfectly well known among the foreign residents at Havana, and as was perfectly well known to Mr. Kennedy, I have been on terms of close intimacy from the moment almost of my arrival there; for I at once saw and felt them to be just the same sort of people that I had been accustomed to all my life—courteous, warm-hearted, frank, unsophisticated, unpretending, as any family in Virginia. Whilst I was alone in my parlor with Mr. Kennedy, he took occasion to introduce a new subject of conversation, by the following remark: "It is mortifying to an Englishman to see the consideration which the American consul enjoys, and which the French consul also enjoys, whilst the British consul is a

as an introducer of American strangers in whose eyes he wished to acquire consequence, made it a practice to inflict his leaden stupidity and vulgarity upon the family circle. It was borne with, until an occasion on which he ventured to make it the theatre for his habitual abuse and falsehoods against "our consul." He then, as long after I learned from one of the family, received a rebuke, which made him Mr. Tolmé's enemy, and caused *him* too, in concert with his friend, to exult publicly in the certainty of his removal.

clerk* in a second or third rate Spanish house." The drift of this was apparent. I was now to be favored with the same sort of frank discourse in regard to Mr. Tolmé, of which I had heard from others; and I was informed too of Mr. Kennedy's determination, engendered, it seems, by a wound to *national* sensibility, to get Mr. Tolmé removed. I therefore checked him, by remarking, in a tone wherein emotion was suppressed as well as I could, (Mr. K. was in my own parlor,) that he had been misinformed; [the British merchant above referred to, *supra*, L.XV., as Mr. K.'s main dependence for information was a known enemy of Mr. Tolmé, with whom he held no intercourse;] that no consul at Havana was held in higher estimation than the British consul, or had greater influence with the authorities, or could accomplish more for his countrymen whenever occasion required such influence to be used; and few so much. This remark produced the desired effect, and the subject was dropped. I will here add, (and the whole consular corps will bear witness to it,) the truth, that there was not a single one among them equally competent with Mr. Tolmé in this respect; and that this was known to all Havana. There are very few such men as Mr. Tolmé to be met with anywhere—very few to compare with him, take him all in all, in the elements which are requisite to form an efficient public officer, in any branch of service, or any grade of such branch. As a consul, particularly, he possessed all the advantages that could arise from his being a thorough-bred merchant as well as gentleman. With regard to the point of languages alone, he is the only man I know at Havana perfectly at home in the four languages spoken there—Spanish, German, French, and English. In a word, I have in the course of my life met with but few, very few men, who could compare with him, so far as I am capable of judging, in the qualifications for a diplomatic station of any grade. There is not a single point in which, judged by any standard I have ever known, they are not decidedly of a high order.

The second incident occurred at my tea-table the same evening. Whilst we were sitting round it, my little boy, about six years of age, chatting with Mr. K.'s child, was telling of some sport he had had with Pancho (the Spanish for Frank,) Tolmé, a child of the same age, and a remarkably fine one. Mr. K., on hearing the name, repeated it with a sneer, and added, "pretty company, master Browse!"

This is the last time he ever sate at my table; or, so far as I can recollect, ever was my guest in any way.

I will close this chapter with a statement of "the precise" particulars of the "job," which resulted in his coming to Havana, though its results cannot properly be said to have been limited to that event. Of these particulars, I cannot, of course, possess a personal knowledge. But I am satisfied as to their being derived from accurate sources; and they are in perfect keeping with the knowledge which I possess of the man from personal intercourse.

* The point here so delicately touched upon was simply this: Mr. Tolmé had been at the head of one of the most flourishing houses in Havana, which transacted a large exchange business. This caused it to be prostrated by the commercial hurricane of 1837. Bills to a large amount drawn upon our country were returned upon its hands, and it stopped payment. As a means of doing justice to its creditors, an arrangement was made with a wealthy Spanish merchant, whose capital gave it solidity, and enabled its business to be carried on. Its name was changed from C. D. Tolmé & Co. to F. Goyri & Co., and Mr. Tolmé became a subordinate partner, instead of the head: upon terms of inferiority, too, which by some were deemed humiliating, but in my eyes did him high honor. The sacrifice of personal feeling thus made to duty, as a debtor, as a husband, as a father, the father of a circle of twelve lovely children, is what Mr. Kennedy thus generously and delicately alluded to, in calling Mr. Tolmé "a clerk in a second or third rate Spanish house," whilst speaking of him to his friend, in that friend's house.

At the general election in 1835, Lord Palmerston's constituents refused to return him to his seat in the House of Commons. It became in consequence necessary that he should buy one, and buy it *on credit*—for, though he expected to become minister, he had not yet any place at his disposal. The cheapest seat he could procure on trust—some say the only one—was that of Mr. Kennedy, who accordingly “let him in,” as it is termed in parliamentary technicals, for the borough of Tiverton. Lord Palmerston soon became minister, and Mr. K. presented the *post obit*. It was not the only one, it seems; for the “in consideration,” as Mr. Everett expresses it, was not quickly forthcoming; Mr. Kennedy wanted a judgeship in India. I have not learned whether this was his first choice, or his second only—whether it came before or after the wish and expectation, of which he informed me personally, to be sent to Washington as envoy extraordinary and minister plenipotentiary. It is probable, however, as we shall presently see grounds for believing, that India was his first choice; for the desire to go there was fifteen years old. Be this as it may, the judgeship was one of the things for which he “stood out.” None of these “in considerations,” however, were obtainable—an indefinite promise proves sometimes a very disappointing sort of property. Finally, a vacancy occurred in the post of commissary-judge at Havana, which was accepted by Mr. Kennedy; not, however, by any means as a fully satisfactory “in consideration,” but merely as a choice of evils—as something less undesirable than farther expectation and suspense, under all the uncertainties with which ministerial existence is beset, looking round the horizon from India to North America.

The way this vacancy happened to occur was this: The then occupant of the post was in England, on a short leave of absence. That leave of absence expired towards the end of 1836, leaving the object for which it had been asked yet unaccomplished. Family affairs rendered it impossible that he should leave England immediately. This was known to Lord Palmerston, who, about the middle of December, 1836, told him that he must return immediately to Havana, or resign; giving as the reason of this necessity, the circumstance that Dr. R. R. Madden, (then *locum tenens* of the toilsome post of arbitrator,) and the other British member of the mixed commission, were quarrelling so as to render the presence of the commissary-judge, without loss of time, absolutely indispensable. This alternative compelled the commissary judge, very unwillingly, to resign.

The vacancy being thus created, a negotiation was opened with Mr. Kennedy for taking up the *post obit* note, which had been due about a twelve-month; ever since the demise—official, I mean—of Lord Palmerston's predecessor. The offer was altogether unsatisfactory; but after holding out two months more, during which sundry modifications were introduced into the original terms of the appointment, and a condition or two annexed, Mr. Kennedy finally became commissary-judge. That is to say, in *commission*, for he did not become so in *function* until towards the close of the year—some nine months after his predecessor had been compelled to resign—owing to the necessity of the instant presence of the judge at Havana, to secure “public service” from the detriment occasioned by the quarrelling of Dr. Madden with his colleague.

One of the conditions made with Lord Palmerston by Mr. Kennedy, as the latter stated to my informant—not the British consul, though a gentleman for whose veracity I will vouch—was a provision against possible disagreements. He had doubtless heard about the quarrelling which required

the immediate presence of the judge; and, as a provident man, he provided against it by the condition—"that, in case he could not agree with any of his colleagues, steps should be taken for their removal."

That this statement of Mr. Kennedy's was an unexaggerated statement of fact, subsequent events pretty clearly show. First, he quarrelled with the arbitrator, Mr. Schenley; and he was removed from Havana. Second, he quarrelled with Lieutenant Jenkins, of the British navy, a very gentlemanly and amiable officer, in charge of a British receiving-ship at Havana; and he was summarily removed. Third, he quarrelled with Dr. Finley, a British physician, who received a small salary in connexion with the commission; and his employment was discontinued. And, fourth, he quarrelled with the consul; and he has been ousted. The above is not the order in which the enmities were conceived, or the threats of removal made public, but the order in which the fulfilment of those threats has occurred. On the other hand, he has agreed with the secretary, and he has not been removed, but, on the contrary, has been properly rewarded for his arduous labors, by a large increase of salary; owing solely to Mr. Kennedy's amiability and generosity towards those with whom he can "agree." And thus has been afforded to the consul's family a doubly impressive proof of what they have lost by his failing to evince a due sense of the value of the "patrouage" so graciously and spontaneously tendered to them.

LXVIII. The fact that Mr. Kennedy had wished to be sent to Washington, has been introduced by me as evidence in regard to the accuracy of the sketch of his character adduced by Mr. Everett as testimony against me. It will not escape notice, however, that my evidence operates both ways: for there is no knowing what he may have expected to be able to accomplish at Washington, in regard to the subject upon which, as a pupil of Wilberforce, "he has a strong personal feeling." He may have considered our country a still better field than Havana, even, for disburdening his bosom of "any excess of zeal" that may have oppressed it. And hence may have arisen, "independently of any considerations of policy or expediency," in regard to such mundane matters as outfits and salaries—for, though the commissary-judge is not indifferently well off in this respect, the minister is better off still—his desire for the Washington location. With respect, therefore, to any effect to be produced by my evidence, I must rest satisfied with the balance, whatever this may prove to be, which shall result from weighing against each other the two probabilities in regard to the motive for Mr. K.'s desire to be sent to Washington. Should the scale turn in favor of the supposition that our country was selected as the better field of the two for expending "any excess of zeal," and not at all on account of the merely mundane advantages just adverted to, the balance will be against me; and I shall experience the consequences which so many others have experienced before me, of having adduced evidence that works against myself.

The same considerations apply to the judgeship to India. By an ordinary man troubled with no "excess of zeal" arising from Wilberforce-influence over his infant mind, such a mission might have been desired solely with a view to an "India fortune." But, that the exercise afforded by a judgeship taken in the climate of Bengal promises relief to any one tormented with this sort of flatulence, is known to everybody. "British India!" who that has read so much as a weekly village newspaper, but is aware what a sovereign thing its atmosphere must be for such kinds of

complaint! What newspaper can you take up, at any point of the globe, but contains proof of the fact? Here is the National Intelligencer of yesterday:—Behold! what—on the very subject, too, of the laws which Judge Kennedy would have helped to administer—it contains at the head of a column:

“From foreign papers, received from our European correspondent.

“At the meeting on Monday, of the British India Society, Mr. Garrison said: There were no less than one million of slaves in India, besides one hundred and fifty millions of the native inhabitants, who were crushed down to the earth, without the means of education or moral improvement. Till the English nation gave redress to India, English rebukes would fall powerless on the slaveholders of America; for you must have clean hands before you rebuke another nation.”—(Hear.)

“Mr. O’Connell arraigned the East India Company of neglect of their duty—he arraigned them of injustice to England, and of tyranny to India. He arraigned them, first, of monopoly; secondly, for their defective police, amounting to a non-administration of justice; thirdly, for the enormous iniquity of their resumption laws; and, lastly, for the wholesale plunder of their system of land revenue. He did not forget slavery in the catalogue, but he left that to be dealt with by the British and Foreign Anti-Slavery Society, whose province it was. They had a monopoly of the opium trade; they cultivated for their own benefit that horrible and destructive poison, which was one great cause why this country was actually engaged in another war.—(Hear.) The inhabitants of India perished for want of food, yet the East India Company compelled those unfortunate people to sow the poppy on their lands, and then bought it at the lowest possible price, to sell to the Chinese and other natives at the highest. Salt was produced in abundance by Providence, but the company made it a monopoly. As to the police, what the thief spares, the officer takes away. Under the resumption laws, no less than eight hundred estates had been forfeited. But the giant evil of all was the land revenue. True, the natives were acknowledged to have a right in the land. Oh, yes, certainly they had. The company would not commit such an injustice as to take the land from them. But there was this little fact, that they had the right of laying whatever rent they please upon it.—(Hear.) There were thirty-six millions of acres, capable of producing all the wants and superfluities of life, which were a waste and a desert, abandoned to wild beasts, and there were millions of laborers ready and anxious to cultivate them. But capital was not there, for capital would not flourish where there was no fixity in the land tenures. Let not England be a sharer in these crimes of the Company.”—[Atlas.]

What a field for “any excess of zeal!” All my evidence, then, may, when fairly weighed, turn against me. I must therefore do my best to guard against such an accident. To this use I shall put Mr. Kennedy’s farewell speech to the constituents whom, “in consideration,” he has made over to Lord Palmerston: thereby securing to them, at no remote period from the transfer, the proud distinction of being the constituents of “Lord Viscount Palmerston, her Majesty’s principal Secretary of State for Foreign Affairs.”

Whatever may be now thought of my temerity in adducing evidence so calculated to work against me as the Washington mission and the Bengal judgeship, Mr. Kennedy’s valedictory will justify it, and prove it to be the boldness of true courage, not the rashness of foolhardiness. On such an

occasion as this, whatever is uppermost in a man's thoughts (unless it happen to be shame at what he has been about, or something else not to be boasted of) is sure to come out. A farewell communing with beloved constituents:—what an occasion to make the living waters gush from the rock,—to make the pent-up soul pour out from its inmost springs! What a moment for a picture of that "labor of love," the resistless attractions of which could alone tear him from them!

Do we find any thing like this in the valedictory? If not:—then, alas! nothing like it can have been in the man. I have the speech in print before me. After telling his hearers of the services rendered by him in two Parliaments, although "had *he* thought that life was given us merely for selfish gratifications, he had had the good fortune" (a *demifortune* from India) "to have had sufficient in his power to enjoy even honorable retirement in literary leisure, to say nothing of that kind of existence enjoyed by many of those gentry in the town," &c.; he adds, "he came among them now, he hoped, without any *call for explanation or apology* for the past, so also without any necessity to advert to questions at present occupying public attention." But, nevertheless, "he could not resist saying that he still continued to entertain every opinion he had ever maintained,—(cheers)—one who had little to hope for and less to fear—one who had run a rapid and almost unresisted course over what had engaged in vain the anxious thoughts and laborious exertions of a thousand competitors, and who at length retired from public life at an age when most others of his mediocrity were only dreaming of attaining at some future period the same envied distinctions—such a one might well be warranted in expressing an opinion, even if found erroneous in forming it."

The speech concludes with a passage that elicited "*cheers which lasted many minutes,*" and which contains all that he said about his Havana mission. This is as follows:

"But he would not diverge further into politics. He believed his course with them closed forever: his term of service abroad, including leave of absence for health, or private reasons, could not be considered less than fifteen years, and he had already seen enough of public life to know that he had not sufficient nerve of body or mind to encounter it further. Often had he trudged his weary way from the House of Commons with an aching head and an aching heart, sick unto death of the disregard there of the people's interests, and convinced of how out of place there was one who had no other pretensions to his seat than the confidence of those who sent him. He did not think that in fifteen years he should be any better able to undertake the like duties, though undoubtedly he might hope to come back with a knowledge of languages, with a knowledge of persons, and the march of events besides, with other advantages in his favor, of which, as he had before found the want, he might then proportionably avail himself. But he had fought his fight; and was now content to be resigned to those other duties which it had pleased Providence to impose upon him. He knew that in going to a strange climate, of which he had no experience—to a strange people, of whom he had no knowledge—to a new state of society, to be exposed to diseases of which we have no idea, to perils by land and perils by water—he might be said to be going with his life in his hand. But he knew also that in all the relations of life it had always been his aim to do to others as he would that they, under similar circumstances, should do to him—(cheers.) He felt that he had always attempted to do his duty to his

fellow-men, individually and collectively ; and he was proud to think so the more, from their continued regards."

We find here nothing of the Wilberforce pupil,—nothing that indicates "any excess of zeal" on *the* subject,—nothing of that which could not have failed to come out on the occasion, had zeal been there at all : except, indeed, of the "Comet" kind. (*supra*, LXIV.)

But if the speech contains no Havana ebullitions, it is not altogether destitute of India fervor. If he could not warm under the prospect of the Cuba sun, the retrospect at that of Hindostan stirred up his blood and his eloquence. The judgship—the judgship made itself felt. If it could not be named, "the East India Company" could be. If it would not do to talk of the disappointment, the cause at least of that disappointment might receive its due. Accordingly, he cannot find a local topic to begin his speech with, but it directly reminds him of Bengal. "Their conduct reminded him of another corporation, the East India Company. When he was called to the bar, fifteen years since, he had asked permission, for family reasons, to practise his profession in India." This permission was refused. But what was the consequence? Why, in the first place, Mr. Kennedy, instead of going to India, "for family reasons," and there making the *little* "fortune" collected for him—a *real* "India fortune"—remained at London, drinking brown stout, and playing the Mæcenas to venders of choice paintings by old masters, and to engravers of rare things "in the possession of James Kennedy, Esquire,"—people who knew the way to his heart and his purse, and gave proof of their knowledge by parading his name as that of the patron of a costly publication devoted to the fine arts. A consequence of this consequence was, that the India fortune, instead of waxing larger, waned smaller ; until it called for an eking out in the shape of an "in consideration." Neither of these consequences is touched upon in the speech : unless the hope that he appears "among them now, without any call for explanation or apology for the past," is to be considered as a delicate allusion to their knowledge of the pecuniary necessity for his discontinuing his unrequited attendance to their interests in Parliament. But one consequence which he does speak of, and makes boast of, is that which befel the East India Company. They had refused to provide him with a profitable place in their employ, when "his only motive was to join his father and other relations." Well, they had reaped the fruits of their hard-heartedness ; and he had at least had the comfort of revenging himself upon them with his own hand,—no, his own *vote*. Notwithstanding the services rendered to the company by his father, his own claims were disregarded.

"Two young barristers were allowed to go, who were called to the bar the term after himself, who had no other claim than relationship to some of the directors. (*Shame.*) He did not, however, care for the refusal, as his only motive was to join his father and other relations. But he had reason to congratulate himself on the result, as he had since had the honor of sitting in two Parliaments for Tiverton, and had thus been enabled to join in a vote for an act of the Legislature, by which the most obnoxious powers of the company were forever destroyed. (*Cheers.*")

Such is Mr. Kennedy ! The reader now knows him,—so far, at least, as a number of traits no greater than that which I have presented constitutes ground for an "approximative estimate" of a man's character. Lest, however, they should be deemed insufficient, I will make one addition to them ; and, to avoid imposing any further on the reader's patience, this shall be a specimen of the act of condensation, so far as I am capable of practising

it. I will sum up Mr. K.'s character, according to my conception of it, in a few words, by stating what I believe him capable of in regard to any two men occupying, with respect to him and to each other, the positions held by Mr. Everett and myself respectively. With regard to any two such men, I believe him—those to whom I have been known through life will say what such a belief is worth—I believe him capable of using every imaginable means that might, by any possibility, prove conducive to the ruin of the object of his hate,—capable of resorting to every artifice whereby the mind of the man whose report might, to all practical intents, prove to be the sentence of acquittal or of condemnation, could be poisoned and his judgment bewildered,—capable even of instilling into his heart, if possible, a desire to supplant the man in regard to whom that sentence was to be rendered. This I believe Mr. Kennedy to be capable of. Let me not be so far misunderstood as to be supposed to intimate that any such desire has been awakened,—that Mr. Everett, occupying this fearful relation towards any fellow-man, is capable of harboring for an instant the thought of coveting the post held by him. Were there no other restraint, policy alone would deter me from bringing a charge at which the community in the midst of whom his life has been passed would kindle with indignation—to a man rising up to bear testimony against me as a calumniator. But this is not the only restraint upon me. Justice forbids that I should, without full proof, believe any man capable of nurturing in his bosom a weed so foul. I had rather see the brother of my heart—American citizen though he be—the captain of a slaver, than believe that in his bosom a reptile so accursed could find aught to keep it alive,—that if, at a moment when the sentinel slumbered, it had contrived to creep in, he would hesitate to tear it out, even if his heartstrings should come with it.

LXIX. "The mixed commission" is now disposed of; and I will bid farewell to the first section of the report, which has given me such tedious occupation, by asking of the reader the favor to re-peruse it, and to recall—if such a thing be *possible*, to him or to any man, after he shall have acquired a true insight into the *nature* of "this practice which appears to have commenced in the year 1836," and shall have become apprized of the *facts* adduced by me in regard to Mr. Everett's sources of information,—those which he failed to use, as well as those which he did use,—to recall, in all their freshness, the impressions made by its first perusal; above all, the deep sense with which he was penetrated, by the air of mystery and hopeless conjecture diffused over the entire subject by the sentence—

"I have thought it proper to insert these lists, as the *only approximative estimates* that have been, or *probably now can be*, made of the precise extent of the abuse in question."

SEC. II.—*Second section of the report examined.*

I. We have at length reached the second of the two heads under which the "information" obtained by Mr. Everett is reported. And here, as we pause to take breath, we must use the opportunity to make an "estimate" of the amount of labor requisite for levelling the whole ridge, after the same fashion as we have dealt with the first of the fifteen mountains whereof it consists—or rather consisted, for "*now*" they number fourteen only. One has disappeared, and light fills the space before occupied by such substantial things as "estimates," and such vacancies as caverns of doubt and mystery, together with all the other matters, solid and hollow, which we have seen.

The information contained under the first of the fifteen heads occupies $5\frac{1}{2}$ pages of the manuscript. Deducting therefrom the three pages vertically filled with the narrow "lists"—as, adopting the English of the British commissioners, I shall take the liberty to call them—there remain $2\frac{1}{2}$ pages, which are filled both vertically and horizontally, as is the case throughout the rest of the report; for, no further "estimates" of names appear in its composition. Add to these $2\frac{1}{2}$ the $1\frac{1}{2}$ occupied by other matters which have been brought out from other parts of the report, to be considered in connexion with the matter at the moment under consideration, and we have *four* pages as the sum total of what we have been at work upon. These four have required an expenditure of labor represented by the number 257, which is at the head of the page immediately preceding that on which I am now writing. The report contains just 72 pages. Ascertained by the rule-of-three, the whole number of pages I should have to write would consequently be 4,626. It is obvious, therefore, that, on my own account no less than that of the reader, my mode of operating must be changed. The pickaxe must be thrown aside, and gunpowder be used instead. Instead of stopping to demonstrate fully the nature of every pebble, its composition, and analogies, I must content myself with laying bare the bowels of each mountain at a point or two, and leave the reader to judge of its composition by the specimens thus presented to him. The pickaxe process is the true one for exact, positive knowledge; but, sometimes, owing to other causes besides those which operated on Mr. Everett, we must "*now*," for the present moment, at least, rest content with "approximative estimates."

II. The "information" now to be considered is presented under the title—"Forms in which our navigation is employed to cover the slave-trade." And here we are at once struck with the affluence of language whereof this short sentence gives proof. If, as in regard to "mixed commission" and to "estimate," the precise word does not always come to him, on the other hand, his vocabulary proves generally so rich as to obviate all necessity for awkward repetitions. Here is a proof of it in the word "*navigation*" as a synonyme of "*flag*." Of the latter word, the reader is doubtless tired. Has he not had distinctly impressed upon his mind (*supra*, sec. 1, XLII to XLV) the fact, that our "*flag*" has been used "to cover *this traffic*"—that is to say, as is shown by the context, in the very same sentence, "the trade in *slaves*;" and has he not had all possible information given him in regard to "the precise *extent* to which the national *flag* has been employed to cover the slave-trade?" And now, when Mr. Everett is merely intent upon gratifying, *en passant*, any little idle curiosity he may experience on so trivial a point as the "forms" in which the "*flag*" is thus used, what awkward tautology would it not be to introduce again that eternal word "*flag*?" Accordingly, here is the word "*navigation*," just as good a word, filling its place. Nay, it is—"now," at least; that is to say, *here*, in this place—a decidedly better word; for, the steering clear of the rock, tautology, is not the only benefit attending its use. The section is a short one, only about a page long, and the reader might, therefore, chance to get to the end of it before the impression received from its heading had been lost in a crowd of others. Suppose, now, that the word *flag* had stood there instead of "*navigation*," what would have been the consequence? Why, one consequence might have been to recall vividly the impression received at the very outset of the report—to bring clearly and distinctly to his mind the fact that the *flag* had covered the trade in slaves—that American ves-

sels had been employed in carrying slaves: another consequence, perhaps, to excite a *definite* curiosity on the subject—to awaken a precise desire to understand clearly, distinctly, perfectly, “the precise” *nature* of the whole operation involving this use of the *flag*. These were possible consequences. A third, which, had they occurred, would inevitably have attended them, is, that the definite curiosity thus awakened would have remained totally unsatisfied; the jumble that follows would have proved totally unsatisfactory. He might peruse it as often as he pleased, and at the end of his labor find himself possessor of nothing but the vaguest of “approximative estimates” in regard to what he wanted. Though the jumble could not have failed to puzzle him, it would have afforded a sufficient insight into the matter to satisfy him that an abuse had existed; that our flag had been used in a way violating the spirit of our laws, perhaps their letter. He would have been sensible, too, that it produced an *impression* harmonizing with that previously received—an impression that these vessels carrying slaves were American vessels, provided with American documents, and carrying the American flag; that, to enable them thus to carry slaves, and to enter the port of Havana as Portuguese vessels, there was a sort of sham sale, which did not make them the less truly American vessels that at sea might have assumed, and after thus entering port might resume, their American character whenever they pleased. Of a very decided impression of this sort, he would have become conscious. But, upon weighing and considering the precise import of the various averments, so far as this is susceptible of precise ascertainment, he would have perceived that they do not involve a single distinct averment, and do not collectively amount to a distinct averment, that the flag has been used in the manner he had previously been led to believe—an averment that these sham Portuguese vessels were truly American vessels. He will perceive clearly that, were the whole sworn to by any man, it would not constitute ground for a distinct charge against him that he had sworn to the fact that American vessels, or vessels under the “national flag,” had been used in “this traffic,” meaning thereby “the trade in slaves.”—(*Supra*, sec. 1, XLII to XLV.)

III. Having made the reader aware of being in this labyrinth, I must help him out of it.

“*Forms!*” Modest, unambitious, unattractive title, this, under which to produce the very quintessence of the whole matter treated of! But, possibly, Mr. Everett is a metaphysician of the by-gone time, when such things as “substantial forms” were kenneed of. Such, at least, will be the inference of any lawyer-reader of the report, when he comes to perceive that, under so immaterial a name, and within so small a compass, is condensed all the “information” in regard to the precise *nature* of those acts which make up the sum and substance of “this practice” of employing American vessels in the slave-trade, with respect to the “precise extent” of which Mr. Everett has evinced so earnest a solicitude that his readers should, without loss of time, become fully apprized, so far, at least, as “approximative estimates” could effect this important end. And, perceiving this—perceiving that this unpretending name is appropriated to the expository matter which is to enable him to judge “as to the precise extent” to which the law may have been violated, either in letter or in spirit, which is to enable him to judge how far those violations are of a nature necessarily to imply connivance on the part of the consul abroad, or of the authorities at home; or how far new legislative provisions and additional execu-

tive authority may be requisite for the purpose of giving effect to those already in existence—perceiving all this, the reader will consider the modesty of the title altogether inappropriate to the occasion, unless, indeed, it be justified by the smallness of the “precise extent” of the information comprised under it.

Referring to what is contained on the subject in a previous part of this examination, (*supra*, sec. 1, XLII to XLV,) I will here avail myself of the nature of the matter before us, for the purpose of illustration. The reader is already apprized that the American flag is *not* employed to cover the slave-trade; and that the abuse whereby the liberty of that flag is perverted to objects subservient to the slave trade, consists of two acts—the one of which, agreeably to our existing laws, is perfectly lawful, under all circumstances; and the other, lawful under some circumstances, though under others it constitutes an offence—to wit: the act of carrying goods to the coast of Africa for the slave-traders, and the act of taking vessels there for sale or for delivery to those same traders. The reader is also apprized of the truth—if his mind be not fully satisfied on this point, it will become so upon his availing himself of the information which any intelligent lawyer or merchant can give him—that, in the existing state of the law, these acts are, to all practical intents, absolutely undistinguishable. The more he inquires into and discusses the subject, the more clearly will he perceive that, supposing the law to remain what it now is with reference to these acts, they would continue to be, to all practical intents, absolutely undistinguishable to the eye of any consul at Havana, whatever might be the extent to which he should, by law, become invested with mere *authority* in regard to the subject. And he will perceive, too, that, if a complete circuit court of the United States were established at Havana, with clerk and deputy clerks to issue its process, marshal and deputy marshals to execute that process, and juries, grand and petit, to discharge their respective functions, the same truth would apply with full force to it likewise, unless, indeed, the marshal should be backed by a *posse* in addition to his deputies; that is to say, unless the present inhabitants of Havana should, by some process or other, be evaporated, and an American population be made to supply the void. And even under this supposition, the American lawyer will see no reason to doubt that, leaving the law as it now stands, the acts might still, to a considerable extent, if not altogether, continue to be practically undistinguishable from each other, and our circuit court prove a no less useless establishment than the “mixed commission.” Let us now take up Mr. Everett’s information under this head.

IV. “*The vessel is built and equipped in some American port, commonly that of Baltimore, and cleared as an American ship for the Havana.*”

Even this conveys totally erroneous impressions. It conveys the idea that the whole thing is arranged prior to the departure of the vessel from the United States—prior even to her being built—that every such proceeding, having but this one manifest end in view, necessarily carries this fact stamped upon its face at every step, from beginning to end. Now, this presents the whole subject under a totally fallacious aspect; one from which the grossest injustice to the government officers in our ports, particularly, cannot fail to result.

That a portion of the vessels thus sent to Havana, and from Havana to the coast, are built expressly for the slave-trade, there can be no doubt. But there exists, as is known to every one who ever gave his attention to the

subject, a general and long standing practice under which these operations might be, and have been, cloaked. Our country is a ship-building country. Vessels of every description constitute a part of its exports for sale. Baltimore, in particular, is the ship-yard for fleet-vessels, schooners and others. She has, ever since our national existence began, been celebrated as such; and has supplied vessels of this description not only to foreign countries, but to other ports in our own country—those of ship-building New England not excepted.

Connect this fact, now, with our law, and see what the operation will be. The law forbids the building or equipping of any vessel in the design that she shall be employed in the slave-trade, whether by the builder, or any person into whose hands she may pass. But it does not forbid the building of sharp and fleet vessels, a description of vessels for which there is at all times more or less demand for legitimate uses; and the possession of which, under particular emergencies, among the vast variety of those that commerce is constantly liable to, on small scales and on great scales, is in the highest degree advantageous. Nor does it forbid the *selling* of a vessel for the slave-trade, or the fitting her in order to make her saleable for that purpose: provided she have left the United States without the intent of selling her for that purpose having been definitely and completely formed. Beyond this point the provisions of American law leave the American citizen at perfect liberty to do as he pleases. The consequence is, that this liberty is by some abused; the spirit of the law is violated; and under the cloak afforded by this very abuse, its provisions also are violated. Vessels are built without any intention to violate the law; they are despatched without any such intention; they go north, south, east, and west; they make voyages between ports in our own country, and between those ports and foreign ports in Europe and America, and Africa, in the British West Indies and the Spanish West Indies. Finally, after being for a greater or a less time used in this manner, the purpose for which she was built or bought is accomplished, or the necessities of the owner oblige him to sell, or a tempting price induces him to sell. She is found to be suited for a slaver; the bargain is struck; and after being fitted for the purpose, or without being so fitted, as the parties may agree, she is sold and transferred at Havana, or taken to the coast to be there transferred.

All this takes place without the infraction of a single provision of the law, in the exercise of an absolute legal right. And the knowledge that it all may so take place, and does so take place, is used in those cases in which the illicit intention exists, from the outset, to cover up that intention with the same appearances. The vessel, instead of being despatched from Baltimore to Havana, is sent to some northern or southern port in our own country, or to the British West Indies, and goes thence to Havana. And there she is sold, or takes in a cargo for our country, or for Africa, or elsewhere. A glance at the consular returns will make all this apparent; and these devices are so perfectly obvious, and so inevitably effectual, as the means of concealing an illicit intention, that the clearing of a sharp vessel at the Baltimore custom-house, for Havana, would afford a presumption to any mind conversant with the subject that no intention existed to sell on that voyage at least; and a yet stronger presumption, that, if such intention did exist, the vessel was in a state to defy scrutiny, and the business had been so managed as to preclude all necessity for a resort to expedients for evading judicial investigation into the intention of the party.

The persons engaged in this business are not such bunglers as the reader of the report would be led to infer. It is well known that they act under good legal advice in regard to what the law forbids, and what may be done without contravening its provisions. With respect, particularly, to Mr. Everett's averment, that "the vessel is built *and equipped* in some American port," I doubt very much the accuracy of his information in regard to her equipment; as every one will, I think, who considers for a moment the motives for and against such equipment within our jurisdiction. At the time of their departure from Havana, under his eye, the Vienna clippers *Seminole* and *Kite*—to say nothing of the two other vessels (the seizure of one of which, the schooner *Hero*, on the coast of Africa, by a British cruiser, I have just learnt)—may, for aught he knew, or could possibly know, unless he had exercised the authority with which he may, for aught I know, have been invested—have been "equipped," wholly or in part, for carrying slaves. But should this be ascertained by some British cruiser to have been the fact with respect to both these vessels, it would by no means follow, with respect to either of them, that her slave-deck, or the plank for making it, or her copper-boiler, or any other of the things, which, under the treaty between their two majesties, authorizes the detention of Spanish vessels by a British man-of-war, had been put on board in the port of Vienna, where they would have subjected her to inevitable seizure the instant the fact was suspected by any one, who, from the desire of gain or any other motive, might see fit to denounce her—and not in the harbor of Havana, where her situation in this respect was the very reverse—where neither power nor authority to any such effect existed, except in those from whom she was sure of enjoying every security which could possibly be extended to her, where the most notorious and conclusive facts would have presented no obstacle whatever to the most solemn acts, executive or judicial, establishing the very reverse of what all knew to be true.

V. "If it be the object merely to send out a cargo of merchandise suitable for the market, the American character of the vessel is retained; and after discharging on the coast, she takes some other direction."

This is in continuation of the sentence above quoted. We see here the idea kept up, of a continuous plan of proceeding, commencing in the United States; which idea is here kept up, to be transferred, without the slightest break, to the next sentence, and so on to the end of the section: thus serving to present to the reader's mind one unbroken chain, beginning with the building and equipping of the vessel in the United States, and her return to the harbor of Havana, after landing a cargo of slaves on the coast of the island.

This sentence, even when considered in connexion with all the rest, conveys the idea that *the American character of the vessel is retained*, on her departure for Africa, in those cases *only* when the sole object of her going there is to take out a cargo, land it, and go about her business in some other direction. Agreeably to this idea, then, there is no ground for a distinction, either "formal or material," between the vessels named in the "approximative estimates" of the preceding section. *There*, we are told that those lists of *American* vessels employed in the slave-trade consist in part, and without discrimination, (the ground of distinction being "rather formal than material,") but in part only, of vessels "not intended to bring back cargoes of slaves;" and *here* we are given to understand that those lists consist wholly of such vessels: for it is only when she goes for the

purpose merely of landing a cargo of merchandise that a vessel retains her American character, on her departure from Havana.

VI. Does this, then, constitute the only abuse of the flag? Far from it. How then is it abused in other ways, besides? Why, does not Mr. Everett tell us? in the very next sentence:

"If it be intended that she shall return to Havana with a cargo of slaves, a sale, real or fictitious, is made to an individual of some other nation, commonly a Portuguese; the contract to take effect after the arrival of the vessel on the coast of Africa. The American crew is discharged, and a crew composed of foreigners is substituted for it; a single American remaining to personate the American captain, in case the ship should be visited during her outward passage."

Is it not all perfectly clear? The vessel is now started for the coast of Africa. Can any reader experience any difficulty in saying how the whole thing has been managed; and particularly, in answering the question, *whether she has gone as an American vessel; whether "the American character of the vessel is retained?"* If any such difficulty be experienced by him, he must be at least as dull of comprehension as I am.

Persons of this degree of dullness will, moreover, be apt to fancy they see in all this some contrivance, whereby American citizens are enabled to employ vessels owned by them in carrying slaves, by means of a sham sale: for Mr. E. tells us that it is "a sale, *real or fictitious.*" For the benefit of all such, therefore, I will explain the matter in the way I understand it; promising, first of all, that, for *this* imputation, at least, upon our country, no grounds exist that I know of,—the only American citizen I have ever had the slightest reason to suspect of being engaged in the slave-trade being Mr. Kennedy's friend, Don Fernando Clark.—(*Supra*, sec. 1, LXVI.)

VII. When it is intended that an American vessel, purchased at Havana for the slave-trade, shall go to the coast without the protection of the American flag, a sale, not *fictitious* but *real*, takes place, and she is divested of her American character; as happened in regard to the vessels sold whilst Mr. Everett had charge of the consulate.

When it is intended that a vessel thus purchased shall make the voyage to the coast *with* the protection of the American flag, "the American character of the vessel is retained;" and, as indispensable to its retention, *no* sale, either "real or fictitious, is made to an individual of some other nation." With reference to a case of this sort, the idea of a *fictitious* sale to a *foreigner* is a flagrant absurdity—flagrantly incompatible with the very object in view. So far from any possible motive existing for a sham sale of the sort, it is absolutely indispensable that the *real* sale (if one have, as I suppose it has, occurred) be not avowed.

Sometimes the vessel departs without any sale of any kind, or any change of any kind, having (ostensibly at least) occurred; she takes in her loading, "assorted cargo," with lumber, plank, and spars, to boot, or whatever else the master sees fit to receive on board. He makes known at the consulate such part of his loading as he sees fit, receives his register, and sets sail. Each of Mr. Everett's four cases was, so far as he could know, a case of this kind.—(*Supra*, sec. 1, XLVIII.)

Sometimes the secret bargain (which I am supposing to have taken place) requires that the vessel be put under a new master, and no ostensible change beyond this, (*supra*, *ib.*;) as, from the consular return, is seen to have occurred in regard to one of Mr. E.'s four vessels, the *Kite*; and as, from the

protest of Captain McConnell, recently transmitted, appears to have occurred in regard to another of those vessels, the *Hero*, seized on the coast of Africa, (whilst on the voyage for which she departed by Mr. E.'s consent,) by her Britannic Majesty's brig *Lynx*. This change of masters is not noted on the return; but this probably is owing to mere oversight: for no motive, unless, indeed, it may have been the fear of exciting Mr. Everett's scrutiny, could have existed for not having the change endorsed upon the register at the consulate, according to custom.

Sometimes the arrangement requires (*supra*, *ib.*) that the vessel be sold to the new master. In such case, if he be not (as I am supposing to be the fact) the real purchaser, the sale is, of course, a fictitious one. But this fictitious sale is made, not "to an individual of some other nation," but the very reverse. None other than an American citizen can personate the purchaser. The very object in view renders it absolutely necessary that the sale be made "to an individual of [no] other nation."

This is the form that such arrangements used to assume, until, finding that a bill of sale from the consulate was not respected at all as an American document by her Britannic Majesty's cruisers, and that I could not be induced to depart from my practice in regard to the register, (*supra*, sec. 1, XLVIII, 2,) it was deemed indispensable to avoid making any sale whatever at the consulate, "real or fictitious," of any vessel intended for a voyage to the coast, whether for the mere purpose of carrying out a cargo of merchandise, or for the further purpose of being transferred after landing such cargo. This change was made the subject of "bravado"—not friendly, as that made to Mr. Kennedy perhaps was (*supra*, sec. 1, LXV)—to me, through my clerk. He was told that, as the consul would not agree to let the registers go with the vessels, they had found out *where* to apply, when they wanted such an arrangement made. And the quarter was indicated to him. It was the house of Mr. Kennedy's bankers, (*supra*, *ib.*) In confirmation of which indication, the fact appears that, of the *six* American vessels consigned to that house, which were despatched for the coast in 1839, and the *one* consigned to the new house of Mr. K.'s most intimate friend, making *seven* in all, *one* only was sold; and she had to go to New Orleans in quest of a new register, which she failed to obtain. All the others were despatched, as happened in the case of Mr. Everett's *four*, without any change of the sort. The practice of making it had, for the reason above stated, been discontinued. By what house those four were chartered, or the other "arrangement," whatever it may have been, was made, I am not informed. But it would be easy to make, by means of the rule-of-three, an "approximative estimate" on the subject; the only error in which would be occasioned by the inroad into the dominions of Mr. K.'s friends, effected since 1839, by the American rival formerly alluded to.

Such is the manner in which "the American character of the vessel is retained" for her voyage to the coast, whether she go there solely for the purpose of carrying a cargo of merchandise, or for the further purpose of being transferred "to an individual of some other nation," that she may then "return to Havana with a cargo of slaves."

Is there any thing in all this at all difficult to understand? Is there any thing which any merchant of our country (any man at all conversant with "our navigation") would not know, *a priori*, to be the mode, the only possible mode, in which the protection of our flag could be retained to a "vessel built and equipped in some American port," on her voyage from Havana to

Africa? Does it contain any mystery, to account for the fact, that "a person of superior talent," aided by at least one other such person, who had passed years at Havana, devoting himself to this very subject, should spend over two months in studying that subject on the same spot; and on his return, produce such a thing as this which we now have before us, as an explanation for the benefit of the uninitiated?

VIII. Before I pursue the thread of this explanation any further, I must go back, to examine the nature of a knot presented in the first of the two last quotations.—(*Supra*, V.)

Mr. Everett there tells us that, "after discharging on the coast, she takes *some other direction*." Why did he not at least *add*, and *sometimes returns to Havana in ballast*? In regard to his American vessel sent to the coast, in the design "that she shall return to the Havana with a cargo of slaves," and for this purpose prepared, by means of "a sale, real or *fictitious*," to some foreigner, "commonly Portuguese," Mr. Everett tells us, a few lines lower down, that, "on the coast of Africa the flag is changed," and then, that, after landing her slave cargo on the coast of Cuba, she "enters the port of Havana as a Portuguese vessel returning *in ballast* from the coast of Africa."

Thus much from Mr. Everett on this point. On the other hand, we have from the British commissioners, through Lord Palmerston, abundance of names of *American* vessels "suspected of being engaged in the slave-trade, returning *in ballast* from the coast of Africa."

Now, bring these two facts together, and what is the plain inference? What can it be, other than that these *American* vessels, denounced by the British commissioners, are the same identical vessels to which Mr. Everett refers in this, his explanation of the way in which "American vessels are employed in the slave-trade;" the same identical vessels that he speaks of as entering the port "as Portuguese vessels returning *in ballast*," after landing their cargoes of slaves on the coast of Cuba? Can any one resist this conclusion, from the joint (no, the concurrent and harmonizing, without being joint) testimony, thus coming together from these two distant sources?

Who that feels the damning power of this testimony would dream of such facts as those which I will now lay before him? Who, after being told of them, could believe in the possibility of their existence if all possible doubt in regard to it were not precluded?

First, of these vessels—the vessels in regard to which Mr. Everett reports: "If it be the object merely to send out a cargo of merchandise suitable for the market, the American character of the vessel is retained, and after discharging on the coast, she takes *some other direction*:" a portion *do return to Havana, in ballast, from the coast of Africa*.

Second. This truth was known to Mr. Everett. He knew it of his own personal knowledge. He remained at Havana a little over two months; and during that short period two instances occurred under his eye—that eye which was so anxiously watching for incidents worthy of note by one specially selected and trusted by his country to obtain for her the whole truth of the matter, under every aspect in which it could present itself to a faithful and fearless inquirer, in regard to whom there was no fear of his "giving way to apprehensions of personal violence." The consular return shows that, in the month of June, *three* American vessels arrived *in ballast* from the coast of Africa. The last of these is the ship *Crawford*, of New

York. She reported at the consulate on the 25th, the tenth day after Mr. Everett's departure on his return. The other two are the brig *Caballero*, of Baltimore, and schooner *Hudson*, of Mystic; which reported respectively on the 13th and 15th of June, (the last being the day on which Mr. Everett sailed from Havana;) and had, in all probability, each arrived the day previous to that on which she was reported. In regard to the *Hudson*, indeed, as the day on which she reported was a Monday, it is quite probable that she entered port, and was known to every one in the city to have done so, on Saturday, the 13th of June.*

These vessels chance, too, (see first section of the report,) to be on the last of the "estimates of American vessels employed in the slave-trade at the Havana;" vessels, the names of which, as "no returns have, of course, been published (by her Majesty's command) for the present year," Mr. Everett had to get an "approximative estimate" of the best way he was able, (*supra*, sec. 1, XXXIII.) *To neither of these arrivals is there the remotest allusion in the report.* Some of the bearings of this fact will come under consideration hereafter. Here, I wish to rivet the reader's attention upon it, in the bearing which it has upon the point now under contemplation—upon Mr. Everett's "some other direction," and the inferential *consequences* just pointed out.

Third. Thus much in regard to what Mr. Everett knew, of his own personal knowledge. To the truth *thus* known to him, is to be added another truth, which could not but have been known to him as well as truth possibly can be known to any man, by means of "information" derived from others—a notorious truth—a truth no less notorious than the existence of the slave-trade—a truth which every American resident, every British resident, every German resident, every foreign resident of any nation whatsoever, which the entire population of Havana, knows and will bear witness to—a truth which, with the one single exception (*supra*, sec. 1, LXVI) afforded by Mr. Kennedy's friend, Don Fernando Clark, defies all that Mr. Kennedy is capable of. This truth is, the fact that the *only American vessels that ever returned to Havana from the coast of Africa, either "in ballast," or otherwise, are such vessels as Mr. Everett here reports as "taking some other direction"*—vessels that have gone there for the sole purpose of carrying merchandise. Of the vessels returning to the port of Havana, in the mode described by him, after landing slaves on the coast of Cuba, not a single case (with the one exception just stated) has ever occurred, in regard to which any one at Havana believed, or had the slightest ground for believing or suspecting, that the vessel was an American vessel, or that she carried any document of any kind, purporting that she possessed that character.

IX. "*The American crew is discharged, and a crew composed of foreigners is substituted for it; a single American remaining, to personate the American captain in case the ship should be visited on her outward voyage.*"

* An examination of the files of newspapers at the State Department, has served to convert this probability into a certainty. There are two papers, and two papers only, published at Havana—both daily papers, that appear every day in the year—the *Diario* and the *Lucero*. Both are taken at the consulate, and transmitted to Washington. In both I find the arrival of the *Caballero* on the 11th, and the *Hudson* on the 13th of June, announced on the mornings of the following days respectively, (as they had been in the evening "slip" that daily issues from both presses,) under the "*port-news*," as follows:

"From Corisco, in 26 days, American brig *El Caballero*, Buffington master, in ballast."

"From Bahia Cabinda, in 34 days, American schooner *Hudson*, Cliff master, in ballast."

In some cases, the whole of the American crew remain on board, and are entered on the roll as passengers."

Entered on the roll as passengers! This truly is laughable. If ever cart was put before the horse, surely it is here. Not only do the American crew go out as *passengers*, but they are *entered on the roll as such*, in order that, "in case the ship should be visited," the fact of their being mere passengers may stare the boarding officer in the face! *Entered on the roll as passengers!!* For what *purpose*? To what conceivable *end* is all this trouble taken? Does the nationality of the *passengers* on board a vessel affect the nationality of the *vessel*? An American crew, entered as crew—granted. This would constitute a corroboration of the proof afforded by American documents, that the vessel was entitled to respect as an American vessel. But a set of American mariners, captain and all, "entered as passengers," to enable the vessel to pass for American! Why, such a story as this, "Jack," in his merriest mood, would not venture to tell to the rawest "marine!"

No, no; it is a clear case of putting the cart before the horse. The "*foreigners*" it is that go "as passengers," (they are not "*entered on the roll*" as such, though, for the reason that, on an American crew-list, no name has any business to be, except those of the master, mates, and men,) and "the whole of the American crew remain on board" as *crew*,—as the American crew belonging to the American vessel, and whose business it is to "carry" (as they express it) her, and her cargo and passengers, to the place of destination.

Suppose, for instance, that a private understanding had existed that the clipper "Kite," (*supra*, sec. 1, XXXVI,) or the clipper *Seminole*, or any other of Mr. Everett's four innocent vessels—one of which has been very cruelly treated by her Britannic Majesty's brig *Lynx*—should, after discharging her "assorted cargo" on the coast, find a good purchaser there. Or suppose that, without any such understanding, a number of Spanish, or Portuguese, or other foreign mariners, had taken passage in her for "Kibendo," to join some slaver expecting them there, or to take the chance for high wages, in case their services should be wanted, through mortality among the crews on that deadly coast. This may very well have happened without Mr. Everett's knowledge, or that of any one else, except the parties. And if, before the sailing of the vessel, it had become matter of public notoriety, he might have experienced some difficulty in finding, in American law, any provision conferring upon him, or any one else, any authority to interfere in the matter; or any restriction upon the captain's liberty to take as many passengers as he pleased—sailors or gentlemen. The only existing restrictions in this respect, that I know of, are those regarding slave-passengers, and those limiting the number of free passengers, brought to our country. But I am wandering from my point. Suppose, then, that such a thing—whether lawful or unlawful—had occurred, with or without Mr. Everett's knowledge; would any possible motive have existed to induce Captain Haynie, or any other of the four captains, to cause himself and crew to be "entered on the roll as passengers?"

But, it seems, in other cases, "the American crew is discharged," and foreigners are shipped in their place—"a single American remaining to personate the captain." This is unquestionably true; and the event described is one that happens every day, in all parts of the world, on occasions where no illicit intention of any kind exists, in the exercise by American

ship-masters of their unquestionable legal rights,—rights which, like all others, may be abused. And this is another point in regard to which the efficacy of British law has, by British navy-officers, been extended over American vessels. Not only have British midshipmen and quartermasters found sufficient ground for seizing American vessels in the fact of their having on board “prohibited articles”—(such as a Spanish vessel is, by treaty, and consequent ordinance of her Catholic Majesty, prohibited to carry—thereby extending Anglo-Spanish treaty-made law over American vessels—not only have they found fault with American vessels for having foreign mariners on board as passengers to the coast; but they have found fault also with their having such sailors on board as crew. “An American vessel has no business with any but American sailors.” This is British law with regard to British ships; and, by extension, to American ships also. With respect to the latter, however, the rule (so far, at least, as Congress possess the right to determine what the rule shall be) is different. Under the laws of *Congress*, an American shipmaster has a right to employ foreign sailors to the amount of *one-third* of his crew at all times; (*practically*, by means of false protections, this right in regard to *one-third* is made to cover two-thirds; which is supposed to be about the average rate at which foreign sailors are employed in our vessels;) and at all times, except *one*, to the amount of his whole *crew*. That one occasion is, when the vessel enters a port of the United States. At this time, two-thirds of her crew must consist of American citizens, (practically speaking, “protected men,”) or she will be subject to foreign tonnage duties. This is the only restriction upon his right to employ as many foreign sailors as he pleases; and this restriction applies only to the one occasion. Beyond this, the laws of Congress leave the master at perfect liberty to compose his crew entirely of foreigners, whenever, from necessity or from choice, he sees fit so to do. So far as a legislative intention can be evinced by words, the intention of Congress is, that, with the one exception of the *master*, (who must at all times be an American citizen,) the crew of an American vessel may, at the free option of those interested, (subject to no influence beyond that afforded by the foreign tonnage *duty*,) consist at all times of foreigners, in part or wholly, as they may see fit.

And how is this liberty used? With the utmost freedom all the world over. It is used hundreds of times where there is no illicit intention, for one where its exercise may be induced by a motive of this kind. This is matter of perfect notoriety every where. And how is the right abused at Havana? Here, again, will the case of the clipper *Kite* come into use for the purpose of illustration.

X. We have seen (*supra*, sec. 1, XXXV and XLVIII) that, for some cause or other, it did not suit Captain Martin to go to the coast, and he appointed Captain Haynie in his stead. Suppose, now, that Captain Martin, on his arrival at Havana, intending to sell the Vienna clipper *Kite*, and expecting to find a purchaser for her, (perhaps having partially concluded a bargain with one,) had discharged her crew—just as was done by the captains of the Baltimore clippers *Blanche*, from Baltimore, *Light*, from Boston, and *Wasp*, from Nassau, and of each of the other three vessels sold, as we learn from the consular return; for the report makes no mention of them during Mr. Everett’s residence at Havana. Or suppose that, finding the prospect for an immediate sale a dull one, he had, on this account, deemed it advisable to discharge his crew, wholly or in part. Or suppose

that, after he had found a freight for the coast of Africa, his crew, although bound to the vessel for a term of time, had made known their aversion to going to that deadly climate, and that he, as a humane man, and through calculation also, had been willing to let them, or a portion of them, off, and take in their stead foreign sailors inured to tropical climates, who would not be apt to occasion trouble and disaster by falling sick, and dying upon his hands, or those of the new captain rather. Or suppose that, after he had found this freight, his crew, unwilling to go there, had appealed to the consul to say whether they were bound to go the voyage; and that he had ascertained from the shipping articles that they were not.

Under either of the former suppositions, the American crew would have been voluntarily discharged. Under the last, also, (had "Consul Trist" been at Havana) the same thing would have happened, voluntarily or involuntarily, on the part of Captain Martin, or his substitute, Captain Haynie: for, is it not "notorious," that ever since he first appeared at Havana, he has been a mere "sailor's consul?" And if Captain Martin had stood out against giving the men their discharge, insisting that "a consul has no right to interfere" between a master and his crew, and upon his own birth-right, "to have the whole matter adjourned to the courts of the United States, where his men would have justice done them if he had wronged them," (and if they ever got there, and could catch him there,) would not the consul have contrived, by means of his "secret underhand influence with the Captain General," to compel Captain Martin to give the discharge?

So, at any rate, the crew would have been discharged; and another crew, under Captain Haynie, would have to be got, or the *Kite* would have to lie idle, instead of taking her "assorted cargo" to the coast. What would have happened then?

I cannot say what would have happened in this case; for "Consul Trist" was not there. But I can say what would have happened had he been there: the *Kite* would have gone without a crew, or gone with a crew of foreigners, with the exception of a mate or two perhaps, to help Captain Haynie.

Upon masters and mates, I have exercised no authority in regard to going to the coast; but, upon sailors, I have exercised an absolute control in this respect. It is the only *usurpation* of which I have been guilty. How was this done?

In the first place, a legal pretext for the exercise of this control over American sailors was afforded by the fact, that no such sailor can be lawfully discharged, except into my hands; and by the additional fact, that the law is so worded as apparently to intend that every sailor so discharged shall go straight to our country. He cannot ship on any other voyage than one of this kind. If he do, his two months' wages extra, which have been paid into the consul's hands, cannot be delivered to him.*

In the next place, the means of effectually exercising it were afforded by the relations in which I stood towards the one licensed shipping-master of

* The words of the law (act of February 29, 1803) are: two-thirds thereof to be paid by such consul to each seaman or mariner so discharged, upon his engagement on board of any vessel to return to the United States.

Of course this rigor of construction was confined to cases of vessels destined to Africa. The interests of our navigation, and of the sailors, demanded that it should be. But it could not be, without giving rise to acts flagrantly inconsistent with the pretext on which the rule rested: inconsistencies that served to aggravate the discontent occasioned by it.

the port. A sufficiently full view of this whole subject is afforded by the documents (p. 358 to 398) accompanying report No. 707 of the House of Representatives at the last session. There will be found the testimony of Mr. Shaler, in regard to the prevalence of desertion among our sailors, and its consequences, among which was the practice of "engaging in the slave-trade;" and there will be found, also, the means whereby desertion was broken up, and a control over the sailor acquired through the shipping-master.

One of the points of understanding between that shipping-master and myself was, that, in no case, under any pretext whatever, should an American sailor be shipped in any vessel destined for the coast of Africa, whether American or not, or whether suspicious or not. The rule, no doubt, proved harsh in its operation in many cases; but it obviously was the only security against their being seduced, both at Havana and on the coast, into engaging in the slave-trade. The masters were up in arms against me on this account; and the sailors themselves often enraged beyond measure. But I stood firm; and the shipping-master proved faithful to his promise, which, I firmly believe, was never, in a single instance, violated.

This is all perfectly well known to the vice-consul, Mr. John A. Smith, of Newburyport, "an aged and highly respected citizen of Massachusetts," as Mr. Everett calls him; and as, on reference to the House document just mentioned, (pp. 237 and 292,) he will be seen to be. Mr. Smith, indeed, knows a great deal more about it than I do; for, while I know only the general fact, together with a few of the occurrences arising under this rule, all those occurrences took place with him, owing to the immediate contact in which he was placed with every sailor who came to the office. He has repeatedly mentioned to me the indignation of the sailors at not being allowed to use the liberty, which belonged to them, of shipping in any vessel they pleased, and for any part of the world they pleased; and he has several times told me of their offering to make me a present of their extra wages, if I would only consent to the shipping master's allowing them to do as they had a mind to. One case of the sort has become impressed on my mind by the circumstances connected with it. The offer was made by several of the crew of the brig *Kremlin*, during their tedious detention at Havana: the very men, probably, who, not being allowed to ship for Africa, returned to New York; and there were induced to furnish Messrs. John Peters & Co. with the affidavits produced by Captain Wendell. (House report No. 707, pp. 28 and 45.) I recollect other instances of the offer; but not the times and occasions, which Mr. Smith's memory would doubtless furnish in regard to some of them. The general fact, however, will command ready belief from any one at all conversant with the sailor-character, and possessing a knowledge of the recklessness with which, to gratify a momentary whim, they will, even when their object is mere gain, throw away a greater amount of money in hand than the pursuit on which they are intent can possibly hold out any rational promise of securing to them.

The only deviation from this rule that ever occurred, was in regard to the two surviving victims, in the case of dastardly ruffianism and calculating villainy combined, the details of which are given in my No. 149. Those two sailors, on being released from jail late in the fall, expressed the strongest aversion to returning upon our coast at that season; and they grounded it upon their unfitness in every respect—debilitated by recent confinement, without work or exercise in that sweltering climate, and

unprovided with suitable clothing—to encounter the exposure of a single voyage to the north; and still more to earn a subsistence, struggling through the winter under such exposure. Some American vessel was going to the Cape Verdes, which was in want of men; and, if I would consent to their shipping in her, they would be earning in comfort, during the cold season, money enough to supply the loss of their effects, instead of being exposed to be laid up for the winter, and crippled for life with rheumatism, as would be the case if they were compelled to go north. This was first communicated to me by the vice-consul, and then repeated in his presence by the men themselves; and their reasons proved too strong to be resisted. I cannot here specify the vessel in which they shipped; nor state whether she turned out to be one which went merely to carry a cargo of merchandise, or one which went to be herself sold or delivered on the coast. Were I at Havana, I could positively state her name, at least; for, since I succeeded in establishing the system in regard to sailors, which has prevailed for some time, not one has ever been lawfully discharged there, or has come upon my hands in any way, with respect to whom the means do not exist in my office of stating in what vessel he left the port, and when. (See House report No. 797, p. 397.)

American sailors going out to the coast “as passengers!” “*Entered on the roll as passengers!*” No, no, Mr. Everett, you have studied in vain: that is clear. You have not even acquired so much as an “approximate estimate” of a just notion of the matter. If American sailors go out to the coast in any vessel, whether the object of her voyage be merely to deliver a cargo there, or to be herself delivered there, they go as *crew*; and, if there be any sailor passengers in the case, ’tis the foreigners who are the passengers. If any American sailor goes on such a voyage, he goes because he belongs to the vessel; because he has not been discharged; because the pretext for the consul’s *usurpation* has not been afforded; because he has not had a chance to “play the Tacon” in the case, as Mr. Kennedy’s friend, Don Fernando Clark, says that he is ever desirous of doing. If an American crew go in a case of the kind that Mr. Everett is explaining (so far as his two months’ study has qualified him for so doing) the nature of, they go *not* “entered on the roll” as *passengers*, but entered on the *crew-list* as *crew*; they go for the express purpose that this *crew-list*, brought with them from an American custom-house, may be exhibited when the *crew* are called for, “in case the ship should be visited during her outward passage.”

XI. Mr. Everett having, in this fashion, explained all about the operation, starts his vessel for the coast; where he pursues her, to accompany her on her way back, until she is safely moored once more in the harbor of Havana.

“On the arrival of the ship on the coast of Africa, the flag is changed; the American captain is put on board some other vessel, if not registered as a passenger in the Portuguese documents; and the ship, after taking in her slave-cargo, returns under Portuguese colors to the island. Here she lands her cargo at some convenient point on the coast, and then enters the Havana as a Portuguese vessel returning in ballast from the coast of Africa.”

The impression produced by this passage, in its connexion with what

* *Roll* is the foreign term corresponding to the document called by American law, *list of crew*; and by American usage, *crew-list*.

precedes it, has already been under contemplation, (*supra*, VIII.) It only requires now to be considered in itself. Under this aspect, it requires little else than illustration, by means of a case or two, "in order to form an opinion with greater distinctness and certainty," concerning the legal bearings of such occurrences.

In the first place we have the fact, that, in a case of this kind, (that is to say, when the vessel is despatched in the *intention* that she shall bring back slaves,) the vessel does, on her arrival on the coast, *change her flag*. This means—or, at least, the *fact* is (though some readers of the report, if not fully apprized of it before, might chance to obtain only a glimmering insight into it,)—that she is there *sold*, or is there *delivered*, in pursuance of a sale covertly effected at Havana, or somewhere else; and is there *divested of her American character in every respect*. This sale, or delivery and divestiture, take place at some port on the coast of Africa, or in the Cape Verde islands, or elsewhere, according to the bargain which may be there made, or may have been made at Havana, or at some other port in the West Indies, Spanish, British, French, or Danish, or in the United States, or in some other part of the world. Upon its occurrence, the American captain, together with the American sailors, (who have gone in her as her *crew*, not as her *passengers*,) if there be any, leaves her, taking her American papers with him; and she remains in the possession of the foreign captain and sailors whom she may have taken out as passengers, or of the purchaser, or the purchaser's resident agent on the coast. (The Havana slave-traders are known to every one to have resident agents every where—London and Sierra Leone, (see my despatch No. 153,) and many places besides. I have learnt, in conversation with a British navy officer, that one of these agents at Sierra Leone is as publicly known in that capacity as the commissary judge is in his.) The place of the American documents (the retention of which on board could answer no other practical purpose than that of serving to secure capital punishment to every man caught in the vessel after she had taken a single slave on board) is supplied by others which have been provided for her—of some nation (commonly Spanish or Portuguese) whose laws against the slave-trade are not so severe as ours, and less certain of being executed upon any man arraigned under them, who can, in conformity with the principles which govern their administration, be convicted. This change having taken place, the vessel takes in her slaves, who are landed in the manner stated by Mr. Everett; after which she enters the port of Havana, or some other port in the island of Cuba, or of Puerto Rico, under the flag corresponding to the documents which she carries. On her entrance into port, if it be Havana, she is "most carefully examined, to ascertain if her papers be correct, and her proceedings lawful."* So, at least, it would appear from the correspondence (appendix F,) in January, 1839, between the British commissioners and the Captain General, for a knowledge of which I am indebted to the volume of parliamentary papers, already often referred to.

* These words are in a report from the captain of the port to the Captain General. They immediately precede the following: "Therefore, I can assure your Excellency that no such vessels [slavers] ever pass the Moro!" An "approximative estimate," this, which to some eyes may seem no less wide of the truth than the impressions conveyed by certain others. The report from which these words are copied will come under consideration hereafter, with reference to Mr. Everett's "estimate" of the extent to which my "apprehensions of personal violence" have caused me to exaggerate the practical difficulties of procuring the execution of American law to be effected by Spanish authorities at Havana.

Such is the course of proceeding in such cases. That every case of the kind involves a gross violation of the spirit, if not necessarily an infraction of the provisions (*supra*, sec. 1, XLVII,) of American law, is obvious. But it will be no less obvious to any one qualified, by his studies and pursuits, to judge rightly and justly on the point, that the acts involved in these cases are of such a nature, that, considered with reference, not only to any authority with which an American consul is clothed, but with reference to any with which he possibly could be clothed, they do not require any connivance on his part. Nay, more. Any man conversant with the principles which govern the application of American law, whether by the discharge of executive functions, or of judicial functions even, would perceive at a glance, that, supposing a circuit court of the United States to be organized at Havana, under a treaty with Spain, and to be surrounded by all the officers that could be created for the object, the whole judicial and executive apparatus would (the provisions of our law remaining what they now are) prove as useless, except to those receiving the salaries, as "the mixed commission" has proved to be ever since its organization; and this, independently of all hindrances to the fulfilment of its object, that might arise from the character of the population, and its feelings on this particular subject.

XII. One of the effects produced by Mr. Everett's mode of explaining the operation is, as we have seen, the impression that this vessel, thus returning to port in ballast, after landing a cargo of slaves, is the same *American* vessel that sailed for Africa. Another of these effects—a minor one, a very diminutive one in comparison with the other, but in itself of no small importance—is, the impression of the identity—if not in national character, at least in substance—of the vessel which thus returns, with the vessel which departed. *The* vessel goes, and *the* vessel returns. Whether her national character be changed or not, she is, physically at least, the same identical vessel. This identity exists for any imaginable purpose. It is a *fact*, ready for use in any way in which such a fact is susceptible of being used.

This impression, however, is totally erroneous. The fact exists not, except for one single purpose; and this is, "news,"—mere *talk*:—"rumor," as Mr. Kennedy called it, in the first communication with which he honored me; avoiding, through "excess of" *modesty*, the more consequential word "information," which Mr. Everett has deemed to be the correct word to use, in describing the offence committed by me in declining to receive the matter thus bounteously proffered. This is the only purpose for which the fact exists. And if it has an existence for this purpose, even, it is only because no motive exists for smothering it entirely—because the parties know that no inconvenience can possibly result to them.

Does any man conversant with shipping and with maritime affairs require to be told this? Does any such person require to be informed, that if, immediately on the arrival of a vessel in port, every particular concerning her becomes known to the whole city, (and this, too, in a country where the press is so vigilantly guarded, that even a notice of the removal of a man's shop from one door to another cannot be published without the censor's express consent,) it can only be because the parties take pleasure in making it known? Is he not fully aware that there are a thousand devices which may be successfully resorted to—even where the local authorities are intent upon penetrating them, instead of being ready to report offi-

cially "*that no such vessels ever pass the Moro*"—for concealing any particular respecting a vessel, and especially for disguising *her*?

A vessel enters the port of Havana—nay, she is signalled. What vessel is it? Why, it is the Spanish or Portuguese schooner *Arrogante*, or *Veloz*—late the American clipper *Bold*, or *Swift*, which sailed from here with an "assorted cargo" for the coast. She was, no doubt, sold here, deliverable there, (as every one knew, from her make alone, that she probably was;) for she has just landed a cargo of so many slaves at Mariel, or Bahia Honda, for the house of Don ———.

Suppose that the innocent *Kite*, or any other of Mr. Everett's "two or three" [four] innocents, although they sailed without "any suspicion of abuse or illicit trade," had chanced to find a liberal purchaser among the coast agents of the Havana houses, or had chanced to find such a purchaser at Havana, who had made it a condition that the delivery should take place at Kibendo. And suppose, moreover, that Mr. Everett, having remained long enough at Havana, had learnt, one morning, the "rumor" that the schooner which had just entered port under the Spanish or Portuguese flag, and had on her entrance been, as every vessel is, "most carefully examined to ascertain if her papers be correct, and her proceedings lawful," was the clipper *Kite*, which, by his leave, had sailed for Kibendo. What would have been the natural inference, but that the parties were so well guarded from all lawful interferences, that they cared not a straw whether he, or the whole world, knew the fact that this Spanish or Portuguese vessel was late the *Kite*, of Vienna? That cases of this kind occurred during his stay there—not of vessels despatched under his superintendence, (for he did not stay long enough,) but of other vessels, known to every one to have been *American* vessels at the time of their departure, (and consequently presenting the same identical grounds for action on his part as could have been presented by the *Kite*)—I entertain no doubt whatever. I have not the slightest doubt that, on inquiry at Havana, this will prove to have been the fact. Mr. Everett's report makes, it is true, no mention of any such cases. But neither does it mention any cases of sale of vessels, though the consular return shows that six took place. Nor does he make mention of the return "in ballast, from the coast," of the *Caballero* and the *Hudson*.

These cases, in their most material bearing, will come under consideration presently. Here they may be used for the purpose of illustration. Suppose, then, that instead of these vessels entering "*in ballast*" as the American vessels *Caballero* and *Hudson*, thereby affording to every mind at Havana (though no reader of the report (*supra*, VIII) would fancy any such thing) proof conclusive that they had *truly* come "*in ballast*" all the way from the coast, two Portuguese or Spanish vessels had entered "*in ballast*," which every one could tell him had been the *Caballero* and *Hudson*. What grounds for inference, in regard to the possibility of legal action in the matter, would have been afforded by the so easy obtainment of this "*information*?" And supposing him to have been more fortunate than I proved in a similar application, and to have secured, through the "*zeal*" of Mr. Kennedy, not only some "*indication* of proof," but *full proof* of this fact; what ground would it have constituted for the exercise of consular functions, either ordinary or extraordinary?

XIII. Although aware that I have already deviated widely from the labor-saving rule prescribed to myself at the moment of engaging in the

examination of this section, I cannot bear to bid adieu to it until I have bestowed a special notice upon the only point which has not received one.

"The American captain," Mr. Everett informs us, (*supra*, XI,) is, after the change of flag, "put on board some other vessel, if not registered as a passenger in the Portuguese documents." In other words, American captains make it a practice to return from the coast of Africa in vessels carrying slaves. To what end? Can it be for the purpose of exhibiting the American documents, "in case the ship should be visited" on this voyage also? Can the reader divine any other purpose? Can he fail to receive such an impression?

Now, in regard to this impression, I aver, that, except in the one case, (*supra*, sec. 1, LXVI.) wherein the "arrangements" were made by Mr. Kennedy's friend, Don Fernando Clark, I have never had any ground for entertaining it. Nor does my testimony on this point want for corroboration from other sources.

First. We have the fact that no such documents have ever been found by a British cruiser on board of any vessel carrying slaves. The only possible motive for having them on board would have been to exhibit them to a cruiser of that nation, in the hope that they might protect the vessel from seizure. Well, not only has no such exhibition ever occurred, but no such document has ever been found, on searching the vessel.

Second. We have the fact—without a knowledge of which the full force of the first cannot be felt—that British cruisers have not hesitated to search and to seize American vessels, although they had *not* any slaves on board, and although they were manifestly engaged in a business contravening in no way the laws of their own country; a business which the navy of that country possessed no authority to interfere with, and which the Chief Magistrate of that country possessed no authority to order its navy to interfere with. So far from its being possible that the utter want of occurrences of the first kind can have been caused by any excess of delicacy on the part of British cruisers towards the American flag, the notorious events of the last two or three years conclusively prove the direct reverse. They conclusively prove that the American flag and the American register are together utterly ineffectual to protect a vessel from search and capture; that they are treated with utter contempt, although the vessel be one merely carrying—as, by the laws of her country, she possesses an absolute right to do—a cargo of merchandise for sale or for delivery on the coast; although she be a vessel which not only has not a slave on board, but, in regard to which no such intention exists, and in regard to which the fact that no such intention can exist is made manifest by the results of that *detention* and *search* which it would be the height of audacity in any lord high admiral of any foreign navy to exercise upon any American vessel, even though he should possess an absolute knowledge of the fact, that, in contravention of the laws of her country, she was laden with slaves.*

Such being the course, the habitual course, for several years past, of British cruisers towards American vessels on the coast of Africa, and elsewhere also, how could it possibly be that a practice such as that which the reader of the report will understand from the passage to exist, could have any existence, and yet have failed to be brought to light by the vigilance of

* The point has been thus decided by the Supreme Court of the United States, as well as by the highest court in Great Britain. In both instances, too, the decision has been given under circumstances in which every thing existed that possibly could conspire to impart weight to it.

those cruisers? How could it possibly be that not a single instance should ever have occurred of the production, or of the discovery, of any such document in a vessel having a single slave on board?

Having disposed of the impression produced by Mr. E.'s mode of stating the fact, I will myself, after reaffirming that the only instance in which I ever had ground to suspect any such use of an American document of any kind was the one instantly reported by me (*supra*, sec. 1, LXVI) in the case of the Washington, state my belief that some instances have occurred of an American captain returning from Africa as a passenger in a slaver, after disposing of his vessel there, either in that same vessel or in a different one. I do not know of any such instance. I would not have permitted any captain to make such a disclosure to me without first apprizing him of what, in my view of the law, was the legal bearing of such an act; and that I should deem it my duty to denounce him to our Government. But such instances have doubtless occurred. They have arisen from a notion which is prevalent among them, and is not confined to the more ignorant and reckless of the class, that no man commits any offences against our laws by coming from the coast of Africa in a slaver as a passenger; provided he really be a mere passenger, unconnected with the vessel in any way, and possessed of no documents evincing an illicit intent. They consider it to be a right of any American mariner, who, in consequence of the sale of his vessel, or any other cause, chances to be on the coast of Africa, and wishes not to be delayed there, to take passage in the first vessel that offers for any part of the world he chooses to go to, even though she be a slaver. Learning that such a notion prevailed, I have done every thing in my power to eradicate it by making known my belief, that, even supposing such a right to exist, and to be admitted by the courts, it could not be exercised by an American citizen without jeopardizing his life. That the mere fact of his having made a voyage in a vessel having slaves on board, would prove hanging matter; for, however true it might be that he was a mere passenger, it would be next to impossible to satisfy a jury that this had been the case. This would unquestionably happen if I were one of them.

SEC. III.—*Third section of the report examined.*

I. After this lucid exposition of the facts of the case, Mr. Everett next takes up his law-books. Having thus clearly explained, *first*, "the precise extent" (so far as ascertainable by means of "approximative estimates") to which "American vessels have been employed in the slave trade," and "the flag of the United States has been used for the purpose of covering this traffic," meaning thereby "the trade in slaves," (*supra*, sec. 1, XLII to XLV,) and, *secondly*, the precise nature of the practice thus denominated, he comes, in the *third* place, to give the provisions of our law in regard to the acts which he has ascertained to have been thus extensively committed.

And here, too, does the reader of the report find corroboration of the impressions previously received by him. Even in this succinct and apparently marked statement of the mere law is contained "information" (not the less instructive for being indirect) in regard to the matter of fact, with reference to which the law is adduced:

"The entire illegality of these proceedings under the existing laws of the United States is sufficiently apparent."

Such is the simple introduction to the naked summary of the law, (without a single word of comment,) whereof the section consists. Determined not to prejudice his reader, Mr. Everett just sums up the law to him; and

leaves it to himself to make the application. Nothing certainly could be fairer than such a course of proceeding.

But the effect may not, perhaps, correspond with the intention. Here, too, impressions may be produced which it was not designed to convey. Mr. Everett, apparently, is no lawyer: indications to this effect are copiously scattered throughout the report. Had he been so, he would have been aware of an effect that might attend a portion of his naked statement of mere matter of law.

"The entire illegality of these *proceedings*" is what Mr. Everett is going to show, by simply reading the law. *What "proceedings?"* Why, of course, the proceedings which Mr. Everett has ascertained to have been carrying on "of late years to a considerable extent at the Havana;" the proceedings in regard to "the precise extent" of which he has been enabled to obtain "approximative estimates" from "the mixed commission," but for whose vigilance the whole thing would be irretrievably lost in oblivion. These are the proceedings to which Mr. Everett manifestly refers. They constitute the matter of fact in regard to which he is now going to quote the matter of law that is apposite thereto.

Let the reader attend. If from inattention, or any other cause, he have failed to obtain a distinct and clear insight into the matter of fact already laid before him, here will be the place to recover from the consequences of his neglect. The law to be quoted is to consist solely of those provisions which Mr. Everett, on studying it with express reference to the matter of fact ascertained by him, and to that solely, has found to be apposite thereto. He is going to give us those provisions only which exist with reference to those "proceedings" of which he has been informing us. If you (the reader) chance not to have become possessed of a perfectly clear and precise notion of them, this is not the case with Mr. Everett. He does possess it. It constitutes the very ground of his legal researches—the chart by which he has navigated. If he has engaged in the toilsome task of exploring the law, he has done so with the one definite object in view, to ascertain what may be contained therein that belongs to the matter of fact that he has secured. If he has gone into the shoe-store, his only purpose was to get a pair of shoes for himself. The pair that he brings out fit him, you may be sure. The matter of law that he produces, fits his matter of fact.

Here, then, is the place to attend; for, if you have obtained a clear insight into the nature of "these proceedings," the accuracy of that insight will be tested and corroborated. If you have failed to do so, all deficiencies may be supplied by your giving good heed to the nature of the acts to which the legal provisions relate.

II. Mr. Everett begins, at the beginning, with the act of March 22, 1794.

The title of this act is: "*An act to prohibit the carrying on the slave-trade from the United States to any foreign place or country.*" It contains four sections. The two first establish the prohibition and the penalties against building or preparing in, or despatching from, any part of the United States, any vessel "for the purpose of carrying on any trade or traffic in slaves." This prohibition attaches to all persons and all vessels, foreign as well as domestic. The third section contains a provision for enforcing it against foreign vessels. In the fourth section, the law having thus provided against the departure of vessels fitted for the purpose within our jurisdiction, adds, as a further provision against the act itself, of receiving on board or transporting slaves, when committed by *citizens of the United States*, a penalty of two hundred dollars for every slave so received or transported.

In Mr. Everett's exposition, (which occupies just double the space of the foregoing statement,) the order observed in the act is broken up, the whole matter is fused together, and the distinction just italicised is altogether obliterated. The matter contained in the third section is introduced last; and matter placed by the Legislature in the only place it could occupy consistently with its intention, or with intelligibility, is transposed, so as to find itself between the prohibition and penalties of the first two sections and the supplemental provision on the same point contained in the third; there fulfilling the purpose of confounding the whole together. The effect is to make it appear that the penalty which the law attaches to *the act of taking slaves on board*, when done by *a citizen of the United States*, is attached to every vessel despatched in contravention of the prohibition. The impression produced is, that this penalty follows the vessel wherever she may go; whether she be or be not at the time of being so despatched, or afterwards become, a foreign vessel. And here also, therefore, is the general effect of the report promoted. Here also is the sense of illegality, and connivance, and omission to enforce penalties, produced by it throughout against the consul, deepened by means of this little mistake in stating the law.

Mr. Everett then gives the judicial constructions upon this act. The first of these, when considered—by any other mind than his—with reference to the point upon which he is intent, serves only to show how very strong a presumption is afforded by the mere fact of a vessel's having been allowed to depart from any port in the United States, that, if despatched with an illicit intent, this intent has been concealed in a manner to defy all that official duty or public spirit, or the desire of gain, or all three motives united, could prompt men to, either as officers, as citizens, or as informers, when they could act under every possible advantage.

First, the law enacts that the vessel shall be forfeit, and that very heavy fines in addition shall be imposed—the informer to get one half of the whole. Next, the courts decide that, in order to incur this forfeiture and fine, it is not necessary that the vessel should be completely fitted and ready for sea; if the preparations have but proceeded far enough to evince the intention, this is sufficient.

What more could Dr. Madden himself ask? In a subsequent part of the report, Mr. Everett says: "That the *Venus*, for example, was building for a piratical expedition, was probably as notorious at Baltimore, while she was on the stocks, as it was at the Havana, after she had taken in her outward cargo."* This was the belief also—at least the pretended belief—of Dr. Madden and his colleagues, with respect to every vessel that came from Baltimore. If that belief was real, how are we to account for the fact that "zeal" did not prompt Dr. Madden, or either of his co-laborers, to take up his residence for awhile at Baltimore? where his axe might be laid on to this upas at its very root; and where, besides the indulgence which "strong personal feeling" would find in such exercise, a golden harvest awaited him in the shape of forfeitures; a single one of which would bring more into his purse, than all the "catch-penny" mushrooms (see House report No. 707, pp. 332—342) that ever sprouted from his hot-bed brain. Dr. Madden took the trouble to travel all the way from Boston to Washington solely for the

* The money which it was in the power of any man to make by merely going before the grand jury, or to the district attorney, or any of the officers of the law, and stating this "notorious" truth, could not have fallen short of fifteen thousand, and might have amounted to over twenty thousand, dollars!

purpose of obtaining the removal of "Consul Trist." This, indeed, seems to have been the only object for which our country was honored by him with a visit. Having found it hopeless, why did he not stop at Baltimore on his return north, and sojourn there for the short space requisite to afford him an opportunity to give to the world the demonstration of the truth and justice of the sweeping charge against the officers and the inhabitants of Baltimore, which is now endorsed by Mr. Everett; but which, despite this *American* endorsement, may seem to them not the less, on this account, absurd and calumnious? That the Doctor could not have been deterred from such a mode of indulging "any excess of zeal" on the subject, by any excess of delicacy in regard to pretensions to interfere in the execution of American law, is conclusively proved by his course, no less than that of his colleagues. Besides, to this extent he possessed an absolute right to interfere. For this one purpose, he, or any one else who chooses, becomes, *ipso facto*, by the mere volition to be so, a functionary of the American Government—a minister of American law—possessing as perfect authority to denounce infractions of the law as is vested in the Chief Justice of the United States to sit on the bench and expound the law.

The next point of judicial construction referred to by Mr. Everett, is one with respect to which occurs one of the minor indications, so copiously afforded by the report, of the spirit in which it is written.

"This practice" at Havana, in regard to which Mr. Everett is now giving an exposition of the law, consists in part of the sale of vessels.—(Six instances of such sales, as the consular return informs us—for the report does not intimate any thing of the sort—occurred during Mr. Everett's two months at Havana.) Not only has the consul allowed Baltimore clippers to be sold at Havana, when it was manifest that they were purchased for the slave-trade, but he has failed to apply the law to them after they were sold, and put under foreign flags for that trade. And yet, they were still forfeit under the law. Here is a decision (case of the *Plattsburg*) in point: "*Circumstances of a pretended transfer to a Spanish subject, and the commencement of a new voyage in a Spanish port, held not to be sufficient to break the continuity of the original adventure, and to avoid the forfeiture.*"

Thus is the point laid down in *all* the law-books in the original volume of reports, and in every *digest* and *index*. The case was this: In 1820, a Baltimore-built schooner was seized on the coast of Africa by the United States ship *Cyane*, under circumstances which, notwithstanding her being documented as a Spanish vessel belonging to the port of St. Jago de Cuba, were deemed sufficient by the commander to warrant him in considering her, and treating her, as an *American* vessel in disguise. *Upon this point the whole question turned.* She was claimed by the ostensible Spanish owner residing at St. Jago, where she had been documented; and the decision adverse to that claim, pronounced by the Supreme Court, is founded entirely on the fact, that the transfer to the Spanish claimant was a *pretended* transfer, and that the vessel consequently was, at the time of seizure, an *American* vessel in disguise. The court were in possession of conclusive proof that she had been despatched from Baltimore for the purpose of being employed in the slave-trade. But this was seen to be an altogether nugatory ground for resisting the claim of the ostensible Spanish owner; and hence the labored argument which the opinion contains for arriving, by means of the facts before the court, at the conclusion that he was an ostensible owner

only—that he had merely lent his name—that the vessel continued to be the property of the same American owner by whom she had been despatched from Baltimore, with the illicit intent of which the proof was before the court. The proposition which the whole reasoning is devoted to establishing, is the proposition that the transfer was a merely *pretended* transfer. Upon this proposition, and upon it alone, does the decision rest. And this fact is rendered striking to a very remarkable degree by the very remarkable argument by means of which the conclusion is reached.

Who, then, would suppose—unless it be one who has followed me in my examination of the report thus far, and who perceives the bearing of the suppression upon the consul—who would suppose it possible, that, in Mr. Everett's exposition of this point of law, all mention is omitted of this, the only thing that gave it existence?—the only thing which prevented the decision from being directly the reverse of what it proved to be—the only thing which prevented the restitution of the vessel to the claimant, and an irresistible title on his part to indemnity from Congress, and an irresistible title on the part of his Government to satisfaction from ours for an act of its officer, which the same Supreme Court, at the very same term, pronounced to be utterly repugnant to the law of nations!

But for this one thing, the decision would have been—the very ground on which it is made to rest proves conclusively that it *must* have been; that it could not *possibly* have been any thing else—in substance as follows: *However conclusively it may be established that an American vessel has sailed from a port in the United States equipped for a slave voyage, yet if her national character have become changed by a sale to a subject of Spain or of any other nation, and the substitution of Spanish documents for her American documents; in such case—unless CONCLUSIVE grounds exist for pronouncing such sale to have been a merely "PRETENDED transfer"—no authority over such vessel belongs to this court, or to the Government of the United States. She has ceased to be amenable to its authority for the forfeiture incurred by acts prior to such divestiture of her American character.*

Such, in substance, must have been the decision—the labored argument by which the decision given in the case is justified—the proposition which it is the sole object of that argument to establish, in order that the decision may be rested upon it; every thing conspires to preclude the possibility of doubt upon the subject.

Well, the decision is so stated by Mr. Everett as to make the very reverse of this appear. Instead of giving what the court did decide, he gives as their decision the direct reverse of what that decision shows that they would have decided. For this purpose nothing was requisite but the omission of the word "*pretended*," and accordingly this word is omitted—a word which, as I have already stated, stares you in the face at the head of the report of the case by Wheaton, and in every digest and every index where the decision is mentioned.

Nor is this all. The decision is so stated as to produce the impression that it had express reference to the personal penalty incurred by the parties in the United States, by whom a vessel, thus *really* (as he states it) sold abroad, had been despatched from our country. That such would be the decision in a case of this kind, there can be no doubt. If the parties could be got at—if, after a vessel had been sold abroad for the slave-trade, this fact could be judicially proved, and together with it the fact that she had been

despatched from our country in that intent—the parties would no doubt be adjudged to have incurred the penalty. But this decision involved nothing of the sort. The case consisted solely of a claim on behalf of the ostensible Spanish owner for the restitution of his vessel. The decision responded to that claim, by declaring the vessel forfeit, and had no express reference to any personal liability incurred by “the parties in the United States” by whom she had been despatched. The statement that it turned upon such points, added to the effect produced by the omission of the word “pretended,” serves, however, to promote the efficacy of this exposition of the law, considered as apposite to the practices which the consul has failed to apply the law to; and to help prepare the reader’s mind for duly appreciating the justice of the comments, which are to follow, upon the consul’s omissions. Here, the reader cannot well fail to say to himself, without any prompting: It seems, then, that in cases of such transfers (not “pretended transfer”) as have been occurring at Havana, the parties have been brought to justice in our country. Why, then, has it not happened in regard to them also? This question I will here touch, *en passant*, by referring to the cases which occurred during the two months when the consulate was intrusted to Mr. Everett, specially with a view to this very subject; and bidding the reader inquire after the steps taken by him “to bring the parties to justice,” and the results by which they have been attended.

Before taking leave of this case of the *Plattsburg*, I will reaffirm, with express reference to it, what I have so often stated already, (*supra*, sec. 1, XLVI, &c.) that, with the single exception of that of the *Washington*, (*supra*, *ib.*) no case has ever occurred, in which I had the slightest reason to suspect that any American citizen continued to hold any interest whatsoever in any vessel sold at Havana to foreigners, or in any vessel engaged in the slave-trade, or despatched from Havana for the purpose of being so engaged after an ostensible change of her national character.

III. Mr. Everett having given this account of the judicial constructions and applications of the prohibitions contained in the act of 1794, opens the statutes once more, to give the substance of the act of April 20, 1818. Here the same process of fusion, &c., occurs. He speaks of it as if the prohibitions established by it were identically the same as those of which he has been giving the judicial interpretation and application; and its sole object and effect, to increase the penalties.

“By the act of April 20, 1818, the penalties imposed by the one just quoted are considerably increased; the persons convicted of offending against its provisions (of the one just quoted) being subjected to a fine of not more than five, nor less than one thousand dollars, and imprisonment for not more than seven, nor less than three years.”

The impression made is, that these penalties attach to the only act which, *thus far*, in this exposition of the law, has been prominently brought before the reader’s eye; that is to say, the act of building or equipping vessels for the slave-trade. In truth, this penalty of fine and imprisonment jointly is attached to the act of taking on board and transporting slaves; and to the act of despatching a vessel “with intent to employ” her in that business: words, the substitution for which, of the words “with intent that she should be employed,” would cause any indictment to be quashed.

IV. Mr. Everett closes the section, by giving in immediate connexion with the passage last quoted, and, through it, with all the expositional matter that precedes it,—

"Finally, by the act of May 15, 1820, the offence of being engaged in the slave-trade is declared to be PIRACY, and the persons convicted of it are subjected to the punishment of DEATH."

The first thing to be noticed in this passage is the impression caused by it, that this name *piracy*, and punishment, *death*, are but a continuation of the *increase of penalty* for violating the prohibitions which have been stated by Mr. Everett, both as expressed by the law and as interpreted and applied by the courts. This impression will be seen to be carefully kept up throughout the report by means of the words "piratical pursuits" and "piratical practices," introduced on all convenient occasions.

V. But there is another thing to be noticed in the effect produced by it, of a far more important character. What is the task that Mr. Everett is here engaged in? What part of his duty is he here fulfilling? He is giving us the law. The law, about what? Why, about "these proceedings," (*supra*, l.) What "*proceedings*?" Why, the proceedings which he has ascertained to have been carrying on "of late years to a considerable extent at the Havana." Having ascertained the nature of these proceedings, he has looked into the law to ascertain what it may contain that is apposite to them; and, having accomplished this also, he is now taking his reader over the same course, first conducting him over the conquests effected by means of "approximative estimates," and other appliances, in this region where mystery erst did reign, and yet disputes empire; and then making known to him the provisions contained in the American code, which he has ascertained to be precisely suited to the nature and condition of the conquered territories, (*supra*, l.)

"Engaged in the slave-trade!" Here, for the first time in this section, does this old acquaintance of ours show his face. All right, too; for, had he made his appearance sooner, the section would have constituted a clear specimen of anti-climax. Only think! what the effect would have been, if, in marshalling his facts to be marched into court, after each had been fitted with the vestment provided for it by law, Mr. Everett had not shown his familiarity with tactics by using the "reverse order" appropriate to occasions of the sort. As we have Mr. Everett in court, let us avail ourselves of the opportunity to secure the benefit of his testimony. For this purpose, but one thing is requisite: this is, that what he gives as a matter of *belief* on his part should be converted into matter of *knowledge*. He has ascertained things to his satisfaction, but still he could not swear to them in the mode that is requisite to make a man's testimony available for "bringing parties to justice." That he firmly believes in every thing set forth in the report is indubitable; but this will not answer; matters of belief are not allowed to go to the jury. This, however, is the only change required to adapt that matter to such use; and this change is a change, not in the matter itself, but simply in the mental state that exists with regard to it. I *believe* that the sun shines. I *know* that the sun shines. The fact referred to is the same in both cases; the only difference is in the mind of the speaker. The same is true with respect to these two averments: I *believe* that a large number of American vessels have been "employed in the slave-trade." I *know* that a large number of American vessels have been "employed in the slave-trade." This change, then, is the only change requisite for making the "information" obtained by Mr. Everett at Havana, the *belief* whereof his report is the expression, available in a court of justice. Well, suppose this change to occur, and the facts *believed in* to become facts *known*; leav-

ing those facts still, in themselves, the same identical facts. Suppose, moreover, the captain of one of these vessels to be on his trial, under an indictment for *piracy*. Witness (Mr. Everett) testifies, that, to his own positive knowledge, the prisoner was, in the year 1838, engaged in the slave-trade; for he was in command of one of nineteen "American vessels employed in the slave-trade at the Havana" during that year. After giving this testimony, witness withdraws. Before the trial concludes, however, he is summoned again. It has occurred to prisoner's counsel, that possibly the signification attached in witness's mind to the words used by him might be a peculiar one. This must be ascertained; otherwise, the life of an innocent man might be judicially taken, in consequence of a mere peculiarity of idiom.

Counsel. "State, if you please, to the jury, what you mean by a vessel's being *employed in the slave-trade*, or a captain's being *engaged in the slave-trade*."

Witness. "I mean the acts prohibited by the law of Congress of May 15, 1820."

Counsel. "Do you never use the phrase in any other sense?"

Witness. "Why, possibly I may; but this is one of the senses in which I use it; and this is the sense in which I use it on this occasion. To prove it, I will read a short extract from a confidential report recently made by me to Government on this very subject. In that report, after giving (so far as I had been able to ascertain it by means of 'approximative estimates,' obtained from 'the mixed commission organized at Havana for the purpose of superintending the execution of the treaties for suppressing 'the traffic in slaves') the 'precise extent' to which 'American vessels had been employed in the slave-trade,' for each year since the commencement of the practice in 1836, I refer to the provisions contained in our code against the acts thus ascertained by me to have been committed. Among those references is the following:

"Finally, by the act of May 15, 1820, the offence of being engaged in the slave-trade is declared to be *piracy*, and the persons convicted of it are subjected to the punishment of *death*."

"This is copied verbatim, literatim, et punctuatim, from my report. I underscored the words *piracy* and *death*, just as they are here, in order that there might be no misunderstanding in regard to the acts referred to by me. It proves that I then knew and stated precisely the same thing that I now know and state."

Prosecuting attorney. "The weight of this fact will not be lost upon the jury. You see, gentlemen, the proof that the witness understands perfectly well what he says; and that the cross-questioning of my ingenious friend on the other side has only served to bring out the additional fact, that this testimony, in itself so perfectly clear and to the point, could not possibly have been induced by malice against the prisoner, or any motive whatsoever bearing upon this individual case. Here is the law, gentlemen; you may read it for yourselves. It is a very short one. You will see that the part of it relating to the painful subject now under consideration does not contain one syllable about any other act than that with which the prisoner stands charged, to wit: the act of receiving and transporting in his vessel slaves obtained on the coast of Africa."

Leaving it to the reader to judge for himself how far any distinction which could be drawn between the testimony here supposed to be given in court and that which is actually borne by the report against Consul Trist

"would be, perhaps, rather formal than material," I will dispense with the witness's further attendance.

VI. Having examined Mr. Everett's exposition of the law, considered both as an exposition of *law*, and also as one of the forms in which the *material result* of his researches into facts—into the precise *nature* of "this practice," that has so extensively prevailed at Havana—is produced, I will now change the point of view. Having contemplated it under both these aspects—as direct matter of law, and as indirect, though not the less effective, testimony in regard to matter of fact—let us turn to a third aspect, and bestow some attention upon it when considered with reference to his *practice*.

We have already seen that the consular returns put us in possession of many facts which were deemed too trivial for a place in the report; and that this is true even of the return for the half year embracing the period during which the consulate was intrusted to Mr. Everett, specially with a view to the subject upon which he has reported all the "information" which it was in his power to obtain. That period was but a short one, and it might very well have chanced to prove as barren of interesting incidents as the reader of the report will take for granted that it did prove. But it was otherwise ordered. It was ordered that the cause of truth should not be without aid from even that speck of time.

On a former occasion (*supra*, sec. 1, XLI) I announced my intention to take up for consideration, in a future one, some of the facts for which I was indebted to the last semi-annual consular return. With a view to this task, I have made a number of notes, all of which might be used to advantage; but the necessity of making as rapid headway as possible in my labor compels me to restrict myself to a portion only.

VII. We have seen that, of the prohibitions contained in our code respecting practices conducive to the slave-trade, the only one distinctly brought into view in Mr. Everett's exposition of the law, is (*supra*, II) the prohibition against supplying vessels for the slave-trade. We have seen also the judicial interpretation given to this prohibition, and the anxiety evinced by Mr. E. (*ibid.*) that the wide scope thereby given to it should not escape the reader's notice. Prior to this, we have seen (*supra*, sec. 1, XVI, *et passim*) Mr. Everett's reason for considering the denomination "American vessels employed in the slave trade" appropriate to any such vessel despatched for Africa, though merely for the purpose of carrying merchandise to the factories; and that, consequently, any error which might be occasioned by such use of the denomination in making up a list of names showing the extent to which the national flag has been used "to cover the traffic in slaves," would be "rather formal than material."

At the close of his report, as we have also seen, he mentions the desire by which he had been animated, during his stay at Havana, "to find some opportunity for ascertaining, by experiment, how far it would be practicable to bring the individuals concerned in the abuse of our flag to justice."

The "opportunity" thus desired cannot but be considered as having reference particularly to the contraventions of law, thus particularly indicated in the formally expository and explanatory parts of the report—those parts wherein the extent and the nature of "the abuse of our flag" is stated, (so far as it was in Mr. Everett's "power" to obtain information regarding them,) and the legal prohibitions which have been contravened are set forth. True, in subsequent parts of the report very gross instances of such abuse are introduced. But this is merely for the purpose of illus-

trating "the precise extent" to which the consul's connivance has been carried. It was for no such purpose as that of setting up the standard whereby Mr. Everett's administration was to be judged,—no such purpose as that of intimating, that if his course should present no such flagrant instances of connivance, he should consider his measure of duty filled. *His* standard was the law. His duty was to fulfil the law, regardless of consequences,—“personal violence,” or what not. His measure of duty would remain in his own eyes empty, if a single prohibition of the law were contravened without being followed by the punishment of the offenders; or, at least, by every possible effort on his part “to bring them to justice.”

When therefore we are told by him, “but although two or three vessels were cleared for the coast of Africa under our flag, I was explicitly assured by the acting consul, (a gentleman of undoubted veracity and honor,) in regard to *each*, that there was no suspicion of abuse or illicit trade,” we are constrained to consider ourselves “explicitly assured” by Mr. Everett, *first*, in regard to “*each*” of these vessels, that he was perfectly satisfied she carried no merchandise that might “be employed at the factories on the coast in purchasing slaves;” and, *secondly*, in regard to “*each*” of all the rest of the American vessels that arrived or departed during his stay, that she was equally free from all “suspicion of abuse” of any kind. In a word, that not a single case occurred presenting any ground whatsoever for suspecting a contravention of American law in any particular.

VIII. Upon the value of this assurance, as an illustration of the spirit in which the report is written, it is not my purpose to enlarge. I will leave it to the reader to form an “approximative estimate” of it for himself as well as he may be able, after connecting with it the omission of all mention in the report of such incidents as some of those which have already been furnished him, and adding thereto those now to be stated.

My purpose here is to use Mr. Everett as a witness, not against himself, but in behalf of truth. It is to let her course have the benefit of his testimony—his testimony to the facts.

First. That during a period of a little over two months, the consulate was in the charge of an able, vigilant, zealous, and fearless officer of the Government, specially commissioned for this express purpose,—who desired ardently “to find an opportunity,”—who “had determined, if any suspicious case should present itself,” to pounce upon it,—who “inquired daily at the consulate into this and every other point of interest,”—who had put himself also in close communication with the “mixed commission.”

Second. That during this same period the cases now to be stated occurred.

Third. That in not a single one of those cases was the slightest opportunity afforded for taking a single step towards bringing anybody to justice, either at Havana or in the United States; nor even for making a single *feint* of the kind,—even for securing the advantage indicated in the following passage: “Indeed the knowledge by the public, that such efforts had been and would be in all cases made, would be of itself a powerful check upon the continuance of these illicit proceedings, whatever might be the result of the attempt to stop them in any particular case.” (See section V, of the report—*Case of the Venus.*)

IX. Mr. Everett's “two or three vessels cleared under our flag, for the coast of Africa.”—As these are the only cases which were deemed worthy of mention in the report, we will begin with them.

One of the points in regard to every such vessel, presented by Mr. Everett's definition, (*supra*, VII.) is, the *innocence of the purpose to which the cargo is destined*.

The consular return proves the "precise extent" of the number signified by the phrase "two or three," in this one of its senses, to be *four*.

We possess, then, Mr. E.'s testimony to the fact, that in a period of two months and eleven days *four* American vessels may depart from Havana for the coast of Africa, free from all "suspicion of *abuse*," even in regard to the *purpose* for which the merchandise carried by them is ultimately *destined*,—that this number may depart without affording to the most vigilant and fearless officer so much as an opportunity to make a *feint*.

The longest of Mr. E.'s "estimates"—that for 1839—contains *twenty-one* names. The avowment prefixed to it, however, announces *twenty-two*. Let us, therefore, take this as the true "number of American vessels employed in the slave-trade at the Havana" in 1839; or, substituting for Mr. Everett's phrase, the phrase of the commissioners, the true number "*suspected of being*" so employed. Now, if 71 days give 4 innocent vessels, 365 days will give 21 innocent vessels. This at least is the nearest possible "approximative estimate," leaving out fractions. If we insist upon knowing "the precise extent," we shall have $20\frac{1}{2}$ as the exact number of innocent vessels—innocent, in the emphatic sense in this place belonging to the term—which, agreeably to Mr. Everett's testimony, may be cleared for Africa in a twelvemonth: vessels not only innocent in that emphatic sense, but so clearly and manifestly free from all suspicion of *abuse* of any kind, as not to afford the slightest pretext for so much as a *feint*, by way of imparting to "the public" (at Havana and every where) a knowledge of the consul's determination to fulfil his duty, regardless of consequences.

Comparing this number with the highest number of *suspected*—according to British commissioner English—vessels, or—according to Mr. E.'s English, (*supra*, sec. 1, LXII)—*ascertained* guilty vessels, we have $20\frac{1}{2}$ to set against 21 or 22, according as the error in Mr. E.'s report may belong to the heading of the list, or to the list itself.

X. Nor is this all that these cases go to prove. Thus much is proved by the naked fact, that this number of American vessels cleared for Africa during Mr. E.'s residence at Havana. If, in pity of its nakedness, we clothe it with the particulars furnished by the consular return, we shall see it become endowed with new power to establish for us many other points of interest.

First. In regard to the *cargo*. The details presented on a former occasion (*supra*, sec. 1, XXXVI) prove that a cargo may be reported by the master as an "assorted cargo," for a place on the coast which is a noted slave-mart, without affording any ground whatever for suspecting that the case comes under any of the categories defined by Mr. Everett, nor consequently for any step to evince the vigilance of the consul.

Secondly. In regard to the *class of the vessel*. One of the four was a brig; the rest schooners. One of these belonged to New Orleans, and may have been Baltimore-built. The other two were Baltimore—no, "Vienna"—clippers, from the Chesapeake bay. Here, then, is another point of detail which Mr. Everett's testimony serves to establish no less firmly than it does the naked fact itself. Of the $20\frac{1}{2}$ vessels which may annually clear from Havana for the coast of Africa, under circumstances defying all that zeal, vigilance, and fearlessness can effect, even when combined with an ardent

desire "to find an opportunity," *three-fourths* may be southern schooners, and a full *half* clippers from Vienna, if not from Baltimore.

XI. *Sale of vessels during Mr. Everett's residence at Havana.*—Besides the foregoing particulars in regard to the "two or three vessels" mentioned in the report as having cleared for Africa, we are indebted to the consular return, both for the naked fact that six vessels were sold at Havana, and for some particulars respecting them also.

The sale of vessels for the slave trade, is, as we have seen, (*supra*, VII,) the point, above all others, in respect to which the object of Mr. Everett's anxious desire and sleepless vigilance was definite and precise. The prohibition on this subject, in all the latitude given to it by judicial interpretation, is the thing, of all others, which he wanted to find a single contravention of. With reference to it, especially, did the determination which nerved his bosom exist in a perfectly distinct, clear, and precise state. On other points, possibly, it was only a general determination; which, as sometimes happens, might, when the moment for action came, prove somewhat vague, indefinite, or misty. But on this point nothing of the sort was possible. Only let him find, with reference to the prohibitions contained in the act of 1794, as they had been interpreted and applied (*supra*, II) by our courts, a single "suspicious case," and he would at least "ascertain, by experiment, how far it might be practicable to bring the individuals concerned in the abuse of our flag to justice."

If Mr. Everett did not take a single step for bringing anybody to justice, either at Havana or in our country—or even for making so much as a *feint* (*supra*, VIII) for the purpose of striking a salutary terror, and all other purposes to which it might conduce—it only serves to show that not the slightest pretext for any such course was afforded by any one of the six cases of sale that occurred under his eye. "Each" was subjected to the most searching scrutiny; and it was ascertained, "in regard to each, that there was no suspicion of abuse:" meaning by abuse any infraction of the spirit of the act of 1794, as interpreted by the courts.

What were those vessels? What was their class? What ports did they belong to? What ports were they from?

These questions are answered by the same consular return to which we are indebted for a notification of the fact of any sale having occurred. Leaving out of the question all others than Baltimore (or Vienna) vessels, although we have seen that even Mystick schooners are suited to the purpose, at least, of carrying "assorted cargoes;" and leaving out of view, also, all the vessels in port at the time of Mr. E.'s arrival, we find among the vessels which arrived during his stay the following Baltimore and Vienna clippers:

1. Schooner O'Kelly, from Nassau, in ballast.
2. Schooner Blanche, from Baltimore, cargo.
3. Brig Midas, from Baltimore, cargo.
4. Schooner Seminole, from New Orleans, cargo.
5. Schooner Kite, from New Orleans, cargo.
6. Schooner Light, from Boston, cargo.
7. Schooner Guatemala Packet, from Belize, cargo.
8. Schooner Emily Jane, from Nassau, in ballast.
9. Schooner George Washington, from St. Thomas, in ballast.
10. Brig Opelousas, from Savannah, cargo.
11. Schooner Hope, from Baltimore, cargo.

12. Schooner Wasp, from Nassau, in ballast.
13. Schooner Patapsco, from Baltimore, cargo.
14. Schooner Magnolia, from Boston, cargo.
15. Brig Caballero, from Corisco, in ballast.

Of these fifteen vessels, three were sold, to wit: the 2d, 6th, and 12th on the list. All the rest cleared with cargoes for various ports in the United States, with the exception of the *Emily Jane*, which, having arrived from Nassau in ballast, cleared in the same condition for Baltimore.

The other three vessels sold did not, at the time of sale at least, belong to the port of Baltimore, though they may perhaps have been built there. They were the schooners *Elizabeth*, of St. Augustine, and *Laura*, of New Orleans, and sloop *Lark*, of Appalachicola.

Of the three Baltimore vessels sold, one is seen to have come direct from Baltimore, another from Boston, and the third from the British port of Nassau; from which also had come the clippers *O'Kelly* and *Emily Jane*, both also in ballast. That some of the vessels sold were purchased for the slave-trade, and that others on the list had been built expressly for sale to any one who wanted a Baltimore clipper for any purpose, and had gone to Havana to seek a purchaser, is altogether indubitable.

Be this as it may, we have, in this table, when connected with Mr. Everett's exposition of the wish that animated him during his sojourn at Havana, his testimony to the fact that clippers may be sold without affording the slightest pretext for taking any step towards bringing any one to justice under the act of 1794, (or even the act of 1820, which increases the penalty to *death*;) nor for so much as making a demonstration (as a military man would say) to that effect. Nor is this the only point established by the testimony now before us. By adding to it the result of a single application of the rule-of-three, to ascertain the rate per annum at which sales thus barren of any thing in the shape of "an opportunity" may occur, that rate will be nearly thirty-one, a higher number considerably than is afforded by any recent twelvemonth.

XII. Nor is Mr. Everett's the only testimony on this point. The consulate was found by him in the charge of a Boston merchant, whose character he gives in the words (*supra*, sec. 1, LV) "a gentleman of undoubted veracity and honor." This gentleman, on transmitting to Washington, agreeably to my request, the private letters which arrived for me at Havana after my departure, and also the documents which I wrote to him for, did me the additional favor to accompany them with a few lines from himself. One of these letters bears date "Havana, 2d June, 1840," (just two months after Mr. Everett's arrival there,) and was received by me at Washington on the 17th of the same month. It mentions the enclosure in it, (a letter from my family;) and after saying that he does not hear of either myself or Mr. Smith, except from report that we are in Baltimore, he adds, with respect to Havana:

"Vessels are still brought here from Baltimore, and sold to foreigners, and sent to Africa; and American vessels are taken up quite frequently to take goods there; some of them sharp vessels, and might be suspected of being sold, deliverable there. But there is no case which is susceptible of proof; and, if there was, I cannot see how you could stop them by retaining their papers without running a great hazard of subjecting yourself to suits in America from the owners. Why not demand bonds in the United States, that such vessel shall not be employed in the African trade? I suppose,

however, that could scarcely be. I shall endeavor not to compromit you, although I feel a strong desire to stop this disgraceful trade.

"I remain yours,

"JOHN MORLAND."

My next letter from Mr. Morland, under date of 13th June, 1840, was brought by Mr. Everett. It contains the following passages:

"We had heard here of your arrest (in the Wendell case) before your letter reached me, with the addition that you had been imprisoned. Of course a suit was expected; but I am surprised to learn that such damages can be *claimed*, so as to render it inconvenient to procure bail. All this, in my opinion, will prove the worse for Wendell, in the result of his suit."

"T———† has despatched five out of seven clippers to Africa, since the 1st of January.

"Mr. Everett goes to-morrow *via* Charleston, and will take this. I know not what he had done here, as he has not communicated to me any information he has received. I have stated any and every thing that I thought would be of any service; but he will carry back, I believe, nothing of importance that will be new at Washington."

From this it would seem that Mr. Everett did not dive with impunity into the region of mystery explored by him in quest of materials for "approximative estimates." (*Supra*, sec. 1, LXIX, *et passim*.) A portion of its atmosphere appears to have clung to him. The cloud doubtless served some useful purpose; although, had Mr. Morland's desire to see the subject properly regulated by Government been a less earnest one, Mr. Everett's wrapper might have acted injuriously also as an effectual repellent of "any and every thing" which Mr. Morland could give in the shape of information or suggestion. It would seem, also, that Falstaff is not the only man who ever knew things by instinct. At least, had the belief expressed in the last words of the passage been the result of absolute foreknowledge of every word now contained in the then embryo report, it could not have been truer than the report proves it to have been.

XIII. *Arrival of American vessels from the coast of Africa.*—This is another head under which to introduce facts (disclosed by the consular return) in the connexion (*supra*, VI to VIII) which converts them into a part of Mr. Everett's testimony, and serves the useful purpose of imparting to that testimony a precise and determinate character, in addition to the positive one that belongs to it independently of any matters of mere detail embraced by it.

The return direct from Corisco and Kabenda, on the coast of Africa, as reported by the masters of the Baltimore brig Caballero, and of the Mystick schooner Hudson, has been already adverted to (*supra*, sec. 2, VIII) in connexion with the damning impression against Consul Trist, to which the omission of all mention of these events in the report contributes its mite.

In corroboration of the statement contained, with respect to these vessels,

* This, of course, has reference to the *suits* just spoken of; to which he, as an old experienced American merchant, knew that I should be subjected by his acts in the discharge of the duties of my office. I will add, that, knowing his feelings on the subject, and the peculiar advantages which he enjoyed both for information and for zealous suggestions, I had committed the office to his charge, leaving him free to act in all respects as he might see fit, without any restriction whatever, or the slightest intimation to take care and not compromit me.

† The person referred to on a former occasion (*supra*, sec. 1, LXIV) as the rival in this branch of business, of Mr. Kennedy's bankers.

(and to the ship Crawford, of New York, which arrived from the coast on the tenth day after Mr. Everett's departure from Havana,) in the consular return, and also as supplemental thereto, we have the following note:

"Lord Palmerston to Mr. Stevenson.

"The undersigned, her Majesty's principal Secretary of State for Foreign Affairs, has the honor to transmit to Mr. Stevenson, envoy extraordinary and minister plenipotentiary from the United States of America, the accompanying extract of a despatch from her Majesty's commissioners at the Havana, by which it appears that on the 12th June the American brig 'Caballero,' on the 13th June the American brig 'Hudson,' and on the 24th June the American ship 'Crawford,' arrived at the Havana, in ballast, from the coast of Africa, supposed to have been there engaged in slave-trade."

"The undersigned requests that Mr. Stevenson will communicate this paper to the Government of the United States.

"The undersigned avails himself of this opportunity to renew to Mr. Stevenson the assurance of his distinguished consideration.

"PALMERSTON.

"FOREIGN OFFICE, September 10, 1840."

XIV. Two other names have to be added to Mr. Everett's testimony under this head, and then I will lay it down, to take up another.

First, we have the George Washington, a Baltimore clipper, whose name we have already seen (*supra*, XI) on the list of vessels belonging to that port, which came in during Mr. E.'s short sojourn. She arrived on the 12th of May, in ballast, from St. Thomas, a port not unfrequently touched at by vessels on their return from Africa. She, however, is not one of the commissioner's "suspected," or of Mr. Everett's "employed" vessels, for the name does not occur among the recent clearances, affording the requisite ground for the use of the terms respectively, according as the averment may

* *Cross-purposes* here! My Lord Viscount was too quick on the trigger this time. If this be a specimen of his shooting, one might as well be "the gentlemen opposite," as "the friend;" and no wonder he should be called after the bandaged god. Really, it is laughable! "Sick unto death," to adopt Mr. Kennedy's phrase, (*supra*, sec. 1, LXVII) so eloquently descriptive of the condition to which he has been brought so often by "the disregard of the people's interest" evinced by the House of Commons. Sick unto nausea as it makes one to look on such a miserable game of imposture, one cannot help smiling at least at this move.

Why, her Britannic Majesty's commissary judge at Havana had reported no such thing to Lord Palmerston this time, as that the American vessels on his list were even "suspected of being engaged in the slave-trade." This is altogether a hasty inference of the noble Viscount's; and he must be allowed "an opportunity" to correct it. Is he not aware that "Consul Trist" was not then at Havana, and that Mr. Everett *was* there, anxiously desiring, and most vigilantly watching for "an opportunity" to pounce upon any "suspicious case that might present itself?"

Shocking negligence this! Let the principal Secretary of State, or the under secretary, (who wrote the note, to be signed by the principal,) look at the judge's despatch again, and notice the newly-devised heading put to the list of arrivals from the coast. It reads thus:

"During the month of June, the following vessels arrived from the coast of Africa; the two first, it is reported, having landed slaves at Puerto Rico."

Now, the two first are the Spanish schooners *Constancia* and *Feliza*. Surely, if there be any truth in the law maxim, the inclusion of these amounted to an exclusion of the rest. Surely, this heading (particularly when compared with former headings) amounted to an averment, as distinct as averment can be, unless expressed in a positive shape, (which might have been too gross for the occasion,) that these three American vessels were (like the four which departed for Africa at the same period) absolutely free from all "suspicion of abuse or illicit trade."

Besides, does not the judge give notice, too, that this time he has been at no trouble in procuring the names of the American vessels? inasmuch as their arrivals "are published without scruple, even in the Diario."

come from the commissioner, or from Mr. Everett. (This proves clearly, that if she be from Africa, she must have gone there from some other port than Havana; and, accordingly, on consulting the consular return, we find that this Baltimore clipper, when last at Havana, from Norfolk, with tobacco, cleared for Norfolk, with fruit, on the 2d December, 1839.)

Next, we have the New Orleans schooner Lone. This vessel, it will be remembered, stands second on the list of clearances given by Mr. Everett in corroboration (*supra*, sec. 1, XXXIII) of the accuracy of the British commissioners' estimate of the number of "American vessels employed in the slave trade at the Havana," from the 1st of January to the 1st of June, 1840. The consular return shows that she made her appearance at Havana on the 15th of May, just one month before Mr. Everett's departure, and was reported by the master as being "from sea, with a cargo of dry goods and rum." She had doubtless been driven back by storm and disaster, or frightened back by some British man-of-war.

This completes the list of cases; showing, *first*, that, in the space of less than one month (15th of May to 13th of June) three vessels, despatched from Havana for the coast of Africa since the beginning of the year, may return to that port without affording "an opportunity," (*supra*, VII and VIII;) and, *second*, that this lack of "opportunity" may exist, despite the fact that these three vessels are on the "estimate" for the period during which they sailed; and despite the further fact that they constitute a full half of the whole number estimated for that period. Of the remaining half of the six, the "Crawford" returned, as we have seen, after Mr. Everett's departure; (had it been delayed a few days, she might perhaps have afforded the desired "opportunity;") and the remaining two (the "Plant" and "Audubon") appear to have followed the invariable rule for vessels despatched without intention to bring back slaves, which, as we have seen, (*supra*, sec. 2, VIII,) is to "take some other direction."

Possibly, however, they may have been sold or delivered on the coast. And this brings us to the last sort of cases which could afford "an opportunity" to bring any one to justice under the act of 1794, as interpreted by the courts; (*supra*, VI and VII.)

XV. *Vessels entering Havana in ballast, after landing negroes from Africa.*

Besides the *American* vessels which did not "take some other direction," but returned straight to Havana, and entered *in ballast*, though they had *not* landed negroes on the coast of Cuba, or any where else, there were, among the arrivals during Mr. Everett's stay at Havana, a number of Spanish and Portuguese vessels, which thus entered after they had landed slaves.

The only names that I can give are the two for which I am indebted to Lord Palmerston's note to Mr. Stevenson, (*supra*, XIII,) the *Constancia* and the *Feliza*. How long they had been Spanish vessels, and whether they were American built, I have it not in my power now to state, even in the way in which one may state as a fact a thing which he knows that it would be impossible judicially to establish. But for the strong presumption to the contrary afforded by other cases, I should consider it next to certain that these vessels never had been American, and that this fact had been ascertained beyond question by Mr. Everett, in the process whereby his mind had become satisfied that they afforded no possible opportunity for taking any step, either at Havana or in our country, towards bringing anybody to justice.

I have stated, on a former occasion, that I entertain no doubt whatever in regard to there having arrived, during Mr. Everett's stay at Havana, vessels engaged in the slave-trade, which had, on the coast of Africa, changed their flag from the American to the Spanish or Portuguese. I have no doubt that, on inquiry at Havana, this will prove to be the fact; although, not having thought in time of making the inquiry, I am not prepared positively to aver it.

Accident, however, has so far favored me on this point, as well as many others, as to put it in my power to aver one that answers the present purpose quite as well. This is the fact, that, within a few days—so few perhaps as eight or ten, and certainly not over eighteen—several Baltimore vessels returned to Havana under the Spanish or Portuguese flag, direct from the coast of Africa, where they had just been divested of their American character. This fact was stated in a letter—upon which I cannot at the moment lay my hand—from the acting consul, written about the end of March, and received by me in Baltimore, while attending court there as a witness. The cases were mentioned as very flagrant ones.

On Mr. Everett's arrival, the 3d of April, these vessels were in port, and presented so many fresh cases of abuse. They were, as all these things are, known to everybody; and even without any assistance from the "mixed commission," (*supra*, sec. 1, LVIII to LXI,) or so much as asking a single question on the subject, he could not well have failed to hear what had been their American names.

This is no less certain than the fact, that, after hearing all that rumor had to say on the subject, he instantly set to work, and left nothing undone that possibly could be done, by the aid of "the mixed commission" or otherwise, with a view to bringing the parties to justice, if not at Havana, at least at home; and though this should appear hopeless, then with a view to finding any, the least possible, speck of *terra firma*, in the shape of a pretext for what, in the art-of-war technicals, is termed a "demonstration;" (*supra*, VI and VII.)

Having brought the certainty of this truth home to the reader, I will here leave him to meditate as long as he pleases upon the curiosities afforded by the interior structure of mountain No. 3.

SEC. IV.—*Fourth section of the report examined.*

I. Having, by means of the processes which we have been engaged in studying "the precise" nature of, duly impressed the reader, first with "the precise extent" of the abuse,—and then with its *form*,—and finally with the provisions found in our code appropriate to the matter of fact obtained by him at Havana, the reporter proceeds in the operation of unpacking the "information" collected in that region of mystery.

The next bale is labelled—Sec. IV. *Course pursued by the consul at the Havana in regard to American vessels engaged in the slave-trade.*

In order to awaken due attention to "the precise" utilities of the wares now to be produced, and at the same time to refresh the recollection of whomever it may concern with respect to "the precise" properties of those already exhibited, so that no one may fail to perceive the appropriateness of each to all, and all to each, the operation in this instance is preceded by the following short discourse:

"Such being the extent to which the flag of the United States has been

used for the purpose of covering an illicit trade in slaves, and such being the severity of the existing legislation against that abuse, the serious and important question arises:—How has it happened that the consular authorities on the island, and particularly at the Havana, which has been the principal seat of the abuse, have not interfered to prevent it?"

Attention being thus aroused, the reporter proceeds, *first*, to state what might be expected to be contained in the present package; and *next*, to produce what it does contain:—

"The first and most natural supposition would perhaps be, that the trade has been carried on so secretly as to have escaped the knowledge of the consular authorities."

Matter to justify this natural supposition is not, however, drawn forth—as possibly the reader may, by the impression produced upon his mind by the opening sentence of the report, have been rendered sagacious enough to foresee. This he will assuredly do, unless "the matter of public notoriety" there given have been utterly thrown away upon him. Whether he foresees it or not, however, this is what happens:—

"But this supposition is precluded by acknowledged facts. It is agreed on all hands that the arrival and departure of the vessels engaged in the slave-trade are matters of public notoriety."

This is the matter that first comes forth. It consists, we see, of an avowal of a general fact. With respect to the precise meaning of this avowal in its application to *American* vessels, it is, of course, needless for the reporter to enter into details, which could serve no other purpose than "to lengthen this report." Facts cannot be stated exactly as they are, in every minute particular, every time they are adverted to. The notion that this could be done is manifestly the cause which has contributed most to the conversion of the beautiful English, in which Bentham wrote when a youth, into that "Benthamee" language which has made his writings sealed books to all who hate labor. Something must be left to the intelligence of the reader. At the very outset of a report, or work of any kind, it is very well to impress strongly upon your reader the meaning you attach to the leading words and phrases you have occasion to use. But to go beyond this would render style too prolix, and reports too *lengthy*. The reader must be left to recall, as well as he may, the impressions first made upon his mind. If he take care to do so, he will, in every instance, understand the precise meaning of his author. If he do not use this precaution, why, the misconception that may ensue is the fruit of his own carelessness, not the fault of the writer.

Deferring to this view of the subject, I will here limit myself to requesting the reader to connect the foregoing passage with the impressions made by former ones—to note well the result; and then to compare that result with those which have attended the examination of the report thus far.

II. The next thing produced is a piece of testimony from Consul Trist himself.

"The consul at the Havana remarks, in a letter to the British commissioners, that 'the slave-trade is a matter which every one who feels any curiosity on the subject knows all about; and that, although destitute of such curiosity, he cannot, if he possess the use of his ear, and understand any language spoken at the Havana, avoid hearing the news of the day or hour, of which it always constitutes the most piquant topic.' The same idea is repeated in various forms, whenever the occasion calls it forth,

throughout the whole correspondence of the consul with the British commissioners, and with the Department of State."

And here let us pause to consider the *connexion* in which this piece of testimony is introduced,—to become fully impressed with the bearings given to it by that connexion. The subject under consideration is—the abuse of the *American* flag, the employment of *American* vessels in the slave-trade. This is the subject, in regard to which the consul is brought up as a witness. What is "the precise" nature of the facts which his language is here quoted to prove the notoriety of? To answer this question, it would be requisite to go over again the whole ground that has been under examination,—to note every impression thus far made by the report. Let it, then, all be passed in review by the reader; and he will become distinctly aware of the application here given to my words.

Am I a lunatic? That I am at least a *sort* of madman, has, I know, been inferred by some at Havana, from my course with reference to the protection of sailors, and with reference also to the doctrine and practice in regard to the putting of vessels under the American flag. (*Supra*, sec. 1, LV.) But, surely, they have fallen short of rendering full justice to the truth. That I am fit for no other over-dress but a straight jacket, is certain; or else, the application here given to my words by Mr. Everett is a purely fanciful one. If I ever uttered any such words in any such sense as that given to them by the connexion in which he places them—then am I, beyond all doubt, stark-mad.

Grant that, not *fifty-seven* only, but *a thousand*, American vessels have, with my open connivance, been "employed in the slave-trade at the Havana," in the sense in which every reader of the report will understand Mr. Everett's averments; the sense in which I have *demonstrated* (*supra*, sec. 1, XLIII) that every reader *must* understand them. Grant that I am myself steeped to the lips in the slave-trade, as the owner of such vessels; but that I should put upon paper, under my own signature, the fact that these averments are true!

Who can believe in the possibility of such a thing? Who, the instant it is suggested to his mind, can, for the life of him, help positively believing that it never can have happened, and never did happen? And who is it that has power enough over his mind to shake off such a belief until its hold shall have been loosened by the conclusive proof which alone possesses virtue adequate to such an occasion? Would any ambiguity of language, any doubtfulness of the meaning of mere words, suffice for a purpose of this kind? Grant that the language used by me were ever so uncertain of import: would this constitute ground for believing it to have been used in the sense here ascribed to it—the sense which the application here made of it by Mr. Everett amounts to an averment on his part that it was used in?

III. But no such uncertainty of import does exist. Let the reader (hearing in mind the impressions received by him from the report, and the meaning which *they* impart to every thing adduced in corroboration of the averments whereby they are produced) peruse the context from which Mr. Everett's quotation is torn. Let him peruse, not the entire letter, but so much only as a page or two. Let him but glance over that part of it only, and he will see plainly that my language does *not* mean any such thing as Mr. Everett's use of it makes it mean.

The passage is embraced in a demonstration of the disingenuousness of the communication addressed to me by the commissioners; of the utter fal-

sity of the alleged pretex^ts—the only ones which their ingenuity had been able to contrive—for making that communication. The demonstration consisted in part of the fact stated in the quotation here produced by Mr. Everett. Does this fact, as stated by me, of itself amount to the same thing as *his* fact—that fact which his report has served to build up in the reader's mind, and which my words are produced to impart still further solidity to? Do I, here or elsewhere, say what he has assured (*supra*, sec. 1, XLIII) his reader of as “a matter of public notoriety,” that American vessels are employed in *carrying slaves*; that the American flag “is used to cover this traffic;” meaning “the trade in slaves?”

If the fact, as stated by me, does not of itself amount to any such thing, is the context of a nature to make it do so? No! Its nature is directly the reverse of this. An American vessel had been taken to the coast of Africa, and there delivered to slave-traders, who had brought her back to Havana a Portuguese vessel, laden with slaves. This was the occasion seized by the British commissioners for addressing to me a letter, the pretext for which was contained in its opening sentence: “As it may possibly not have come to your knowledge, we think it right to make you acquainted with the *report* prevalent in this place,” &c.

To this I replied instantly, in a manner calculated, if any thing could have such an effect, to put them up to their mettle, by requesting that they would give me the benefit of their peculiar means and opportunities (the reader will recollect that, according to Mr. Everett, [*supra*, sec. 1, LX,] they reside at Havana for the purpose of exercising a superintendence over the whole subject,) by furnishing me with any matter in the shape of proof, or of *indication* of proof, which might be of any use to the Government of the United States.

It turned out that they had nothing more to give me besides the “report;” excepting, indeed, some *suggestions*. In commenting upon this, I used the following language:

“Under the general aspect belonging to the subject, then, any such proceeding on your part as an offer to make me acquainted with a “rumor,” or a “report,” is upon its very face a manifest absurdity, if no worse. It would be the same if the matter of your communication consisted of substantial *facts*, instead of “*reports*,” unless, indeed, you were prepared to furnish or to indicate some portion or other of that matter of evidence or proof which can alone impart to facts a legal existence, which alone could “enable” (as the British Government desires to be, through my instrumentality, in regard to British merchants and manufacturers) the authorities of any country to use these facts, were they ever so *notorious*, as a basis of action. Without such preparation on your part, any such proceeding would be an absurd farce; and if the disposition were wanting, it would be a despicable mockery.

“Now it is a matter of fact known to every man in Havana, and which defies contradiction—for not one can be found bold enough to give it—that no such disposition did exist, or could exist, on your part. If your facts were of the most conclusive kind, and you had a dozen respectable witnesses to each, you would not *dare* to name one of them. Nay, had the individual from whom your information was derived been known to me, (and circumstances so plainly pointed him out, that the presumption was too strong to permit a doubt to rest on the mind of a single individual acquainted with the parties,) and had he been summoned by me as a witness, he would have been sure as such to know nothing on the subject.”

The individual here alluded to was Mr. Kennedy's banker and intimate personal friend; the partner in the house (*supra*, sec. 1, XLV) to whom this very vessel had come *really* consigned, on her arrival, as an American vessel. In immediate connexion with the foregoing, comes the passage from which Mr. Everett's extract is taken. It is a statement of the general truth, the notoriety, of the slave-trade itself, and the equal notoriety of the fact that no one could be got who would give any testimony on the subject, or even *dare* to so much as *indicate*, for judicial use either at-Havana or elsewhere, any witness: the word "dare" being used by me with reference, not to the personal bravery of the person, but to his regard to the safety of his witness. This is a point which will come under consideration hereafter, in connexion with Mr. Everett's denial of the correctness of my impression. The weight so justly due to his opinion and testimony on this, as on every other point, will be seen to have heavy odds to contend with. Here, I will only point out that it conflicts with the *practice* of the commissary judge on this occasion; when a single word from him would have sufficed to enable me, on his authority, to call upon one who knew all about any infraction of American law that might have occurred in the case. The passage is as follows:

"This is so notorious here, that no one having the least pretension to character for candor would venture to dispute it. The slave trade is a matter which every one who feels any curiosity on the subject knows all about. Nay, although destitute of such curiosity, he cannot, if he possess the use of his ears and understand any language spoken at Havana, avoid hearing the news of the day, or hour, of which it always constitutes the most piquant topic. To make sure of exact accuracy, is a task which, on this subject, as on every other, is attended with trouble and difficulty in various degrees. But the particulars, no one can avoid hearing. And yet, although every body knows all about the slave-trade, no one so knows any thing about it that the testimony that he could or would give in a court of justice, or for any judicial purpose, upon any point connected with it, would be worth a straw."

IV. This corroboration from my own lips, of all the impressions which the reader has been receiving, having been produced by Mr. Everett, he reiterates that it does establish the fact of the notoriety of the justness of all those impressions; and then—

"The question returns, why the consular authority has not been employed to prevent them, or, where that could not be done, to bring the persons engaged in them to punishment."

Before we set out to follow Mr. Everett in his discussion of this question, let us revert for a moment to the remarks (*supra*, sec. 1, V to VII) upon the nature of this inquiry, and the requisites to the affirmative answer which the report gives. We have now reached, it seems, the matter which he has to present in fulfilment of the last of these requisites. How the others have been fulfilled, I leave it to the reader, who may have favored me with his attention through my toilsome and weary task, to say.

V. Having thus stated the question, Mr. Everett proceeds to state my reply, and to rejoin thereto—

"The reason given by the consul in various passages of his correspondence for not interfering, is, that although the character and destination of the vessels engaged in the slave trade are notorious, it is not practicable to obtain such evidence of them as would be a sufficient basis for legal pro-

ceedings. In a passage immediately following the one just quoted from a letter to the British commissioners, the consul 'remarks that although everybody at the Havana knows all about the slave-trade, no one so knows any thing about it that the testimony he could or would give in a court of justice, or for any judicial purpose, upon any point connected with it, would be worth a straw.'

The impression here produced is, that having been formally arraigned upon this charge, and having engaged in a formal defence, I have admitted the truth of all that the reader of the report thus far believes in; and that all that I have been able to say is, that "the consular authority has not been employed to prevent them, or, where that could not be done, to bring the persons engaged in them to punishment," because, in the nature of things "it is (*is*, not *was*, in those particular cases) not practicable to obtain such evidence of them as would be a sufficient basis for legal proceedings." This implies, that I have admitted the existence of ample consular authority for the purposes specified,—including, of course, that of coercing evidence, provided only it were in the nature of things practicable to obtain it.

Such is the impression. Now, it is of a piece with all the rest. In the first place, this is the first occasion on which I have been called upon to defend myself upon this subject. (A more favorable opportunity, so far as one could be rendered so by the spirit of the attack, could certainly not have been desired.) The only ground for any such idea as that of my having previously engaged in this task consists in an occasional remark, spontaneously made in my communications to the department, invariably, almost, written in great haste, under the extreme pressure occasioned by the war from all quarters, petty and great, which for years past has afforded me incessant occupation, without a single moment's respite.

In the next place, with regard to any admission of the truth of what the reader of the report (who has not read any thing else) believes in, I need not, I think, say any thing to one who may have followed me in this examination.

In the third place, with regard to the existence of ample consular authority for the purposes specified, instead of any admission to that effect, I give a flat denial. This, however, is a point in regard to which Mr. Everett has not deemed it necessary to engage in an-exploration of the law. He has contented himself with taking for granted all that seemed requisite, and with including the whole in a sweeping assertion, express or implied, now and then, without descending to particulars. And most heartily do I congratulate myself on his having eschewed them; for I have had enough of his expositions of the law (*supra*, sec. 3, *passim*) to task my patience most cruelly.

Having corrected these erroneous impressions, I will now suppose my reply to be such as he gives for me, and follow him in his rejoinder. In doing so, let us divest ourselves as far as possible of all the impressions to which this examination has given rise—the impressions, I mean, which have become substituted for those made by the report. Let us suppose it to be in all respects the reverse of what it has been seen that it is; and upon this supposition give a favorable ear to what it has further to say.

SEC. V.—*Fifth section of the report examined.—Case of the Venus.*

I. Not only does Mr. Everett find in my writings the scrap of testimony above considered, (*supra*, II,) but he finds there also (see report, sec. 12) equally solid ground for the belief that one of the considerations "which

have had the greatest influence" over my official course is "apprehension of personal violence." This fear Mr. Everett believes, from all that he "witnessed, or could learn upon the spot," to be greatly exaggerated. In regard to another particular also, does he express, as the result of all the information he has been able to obtain on the spot, or elsewhere, the conviction that my views are greatly exaggerated. This particular is, the difficulty of obtaining the agency of the local authorities at Havana for the purpose of giving effect to the provisions of American law against the slave-trade.

This conviction on the part of Mr. Everett will be seen to exercise no small influence over the view taken by him of my course in regard to the *Venus*. On this account it is entitled to consideration. Nor is it on this account alone; for the question thus raised between us has a general bearing of far greater importance than any which it can possess upon the individual case before us. If, in truth, the difficulty in question has been exaggerated by me, this fact cannot but shed strong light upon my character generally, and, as a consequence, upon the motives by which I have been actuated throughout the whole business. If, on the contrary, the truth be that I have been guilty of no exaggeration, then the act of extenuating the difficulty, and in the same breath imputing such exaggeration to me, cannot fail to shed light upon the spirit in which the report is written, and to show that, on the particular subject now before us, there was a call for its development.

II. Between the two points in regard to which the exaggeration is imputed to me, there exists an intimate connexion. They constitute, indeed, but portions of one and the same thing, or rather the one thing considered under two different aspects—I mean the national character of the people to whom Havana belongs. This character is not a thing of yesterday; it has, in all its features, been hardening and confirming itself for ages; nay, for years that count by the thousand. Of this character some knowledge is afforded by books. But no man born and reared in our country can form any but the vaguest and most inadequate conception of the reality, until he has lived some time where that reality exists. Above all is this true with regard to the Government—the Government in all its manifestations, from the main stem to the minutest fibre of the outwardest leaf. The official elements of the national character, as they have been forming and hardening under the influence of time by the thousand years, are the same every where—in the throne and in the public officer of the lowest grade; and every where they constitute what no American citizen can form the most distant conception of, until he has them under his very eyes, and actually sees their workings and the results.

This advantage, the "opportunity" at least, has been enjoyed by Mr. Everett at Havana and elsewhere. In comparing the conviction on his part, which is adduced by him as testimony against me, with testimony from other sources, no allowance therefore can be made for deficiency on this score, if on any.

III. The points in question relate to the prevailing sentiment and disposition at Havana, in regard to the slave-trade, and to a result of that sentiment, as determined by the national character, under the two aspects. First, the personal danger which would be incurred by the man who should prove himself an *efficient* enemy of the trade, or evince the disposition so to prove himself. Second, the difficulty of obtaining the co-operation of the authorities towards a result of the kind.

I have expressed a decided opinion upon both points. My belief is that the danger and the difficulty both exist in an extreme degree—in a degree which could scarcely be surpassed.

In regard to the former, my belief was expressed, on the occasion referred to by Mr. Everett, with reference to the danger which the British commissioner knew that he would bring upon his informant by indicating him as a witness—a danger which that witness knew that he should be able to escape from in no other way than by quitting the country in which he had married and was settled, and had *landed* interests, together with all the concomitants. My belief thus expressed in the reality of the danger, has been deemed by Mr. Everett sufficient ground for the belief, on his part, that *fear* for my own person had constituted one of the chief motives by which my official course had been determined. To the personal imputation upon me insinuated into his reader's mind, I will reply, first, by referring to those who have known me from my boyhood to this hour, and to every American, and every Englishman, and every other man, at Havana; and, secondly, by stating the fact—a fact known to all Havana, and which cannot but have become known to Mr. Everett—that I had given, on this very subject, *proof* that no such fear could with justice be imputed to me. Whatever my omissions or my acts may have been, my course on all subjects, and on this subject above all others, (as brought up by the cases of the *Washington* and the *Thomas*, and other vessels of this description,) had been sufficient to carry home to every bosom at Havana the conviction that dread of the *knife* had as little power as the love of gold, or the fear of ruin by means of suits, or by means of plausible imputations upon my integrity, to make me swerve from such course as my poor judgment might indicate.

With regard to the former—the difficulty of obtaining the co-operation of the authorities—my conviction has been expressed, but not in the connexion here given to it by Mr. Everett. It has not been expressed in this connexion, for the reason that the idea of calling for such co-operation never presented itself to my mind in any other light than that of an absurdity in itself, without reference to what might or might not be the general disposition of the authorities on the subject. “One sovereign state cannot make use of the tribunals of another to enforce its penal laws.” Intimate as is the union subsisting between our States, and as are the relations which they bear to the General Government, this principle has been repeatedly asserted with respect to their laws. The same principle would have been sufficient to deter me from any such step as that of making, upon the authorities of Havana, however opposed to the slave-trade I might have known them to be, a call which could be answered in but one way—by referring me to that principle, or by drawing me into court, and there making me aware of the absurdity of my position.

But though not asserted in this connexion, the belief has been asserted by me, and I will examine the application made of it in the report. For this purpose, I will suppose that it had been asserted by me in this connexion—that I had assigned it as my only reason for not taking the steps which Mr. Everett conceives I ought to have taken.

IV. The thing here to be done, however, before proceeding any further, is to adduce testimony in defence of my belief—testimony to establish the fact that grounds the most solid exist for this belief; and thereby to free myself from the imputation of having presented to those who had not the same opportunities as have been enjoyed by me and by Mr. Everett, a greatly exag-

garated picture in regard to a point, whereon, from his rejoinder to my supposed reply, my defence would seem in a great measure to rest.

At first, I will point out the counter-testimony on this point, contained in the report itself. Having in the part of it now under consideration imputed this exaggeration to me, he has occasion in a subsequent part, (sec. 12,) to speak of the disposition of the local authorities on the subject in another point of view. It is there introduced with reference to a passage in one of my communications, which is construed by him into an apology for not having done my duty. Having construed an expression of my views of duty into an excuse for having omitted to do my duty, he asks, "is the American consul to be deterred from doing his duty, because an honest performance of it may not be agreeable to the local authorities?" In *this* connexion he introduces, as a part of the information brought by him from Havana, the fact, "It is well known that the local authorities of the island connive at the contraband trade in slaves, and are paid for so doing by the parties—in other words, they are *associates in the concern.*"

Leaving it to the reader to balance this fact, as evidence of the disposition which may exist in the authorities, in regard to giving their official agency, in cases of this description, against the testimony previously borne by the same writer to the fact of my having been guilty of exaggeration on the subject, I will introduce other testimony.

V. At the beginning of 1830, a piracy recently committed by an Havana slaver, on her way to the coast of Africa, upon the Boston ship *Candace*, pursuing her voyage to India, became the subject of a correspondence between my predecessor in office, the late William Shaler, Esq., who held also the post of Portuguese consul, and the Department of State, and Charles Bradbury, Esq. The following extracts from Mr. Shaler's letters will be found to shed strong light upon the justice of the imputation which I am here endeavoring to relieve myself from. I bespeak especial attention to them :

1. In January, 1830, after acknowledging the receipt of a despatch from the Secretary of State, he says: "In obedience to your orders, I will do every thing in my power to investigate the case in question, when Mr. Bradbury, or others of the concern of the plundered vessel, may furnish me with such evidence of the alleged fact as would authorize an application to the Captain General.

"There is no reason to believe that any pirate, unconnected with the African slave-trade, has been fitted out at Havana for so distant a cruise as the point where the ship *Candace* was robbed. But from what I have learned of the manner in which this trade is carried on here, it seems to me quite probable that the robbery in question may have been perpetrated by one of these desperadoes. Though no persons here, laying claim to general credit and commercial respectability, will avow a direct concern in the slave-trade, it nevertheless enjoys general protection and favor. A slave-trader once at anchor in any part of the island, is safe, and *sure of all the connivance necessary to entire impunity.* These vessels are publicly fitted out under the name of some obscure agent; they are well armed and manned, and, like privateers, are divided into numerous shares; the holders of which are held to no legal responsibility. They are exposed to no risk of capture until the slaves are embarked; and if they can escape the vigilance of the British cruisers, and arrive in a port of this island, no inquiries are made, their slaves are landed in safety, and they return coastwise to be re-equipped in

Havana, for another expedition. It is said they often interrob each other on the coast of Africa of slaves, and that packages of valuable merchandise have been landed from them on their return here, entered at the custom-house, and no embarrassing questions asked about them! The more desperate the character of the slaver, the greater is the credit of the shares of the vessel he commands. Under such circumstances, sir, and also taking into view the numerous technical subterfuges afforded by the forms of administration of this Government, it seems to me *very improbable that any thing satisfactory could result from any investigation of the case in question through the public authorities here.*"

2. A few days after, having received the desired papers from Mr. Bradbury, he says: "These documents appear to afford *satisfactory evidence* of the robbery in question *having been perpetrated by a slaver from this port.* But the mode of proceeding, in order to detect and bring the culprits to justice, was made, by your suggestion, a question of some difficulty of decision in my mind. I consulted, confidentially, with some respectable and experienced friends here, and satisfied myself that *no process of secret inquiry could lead to any useful result*, and that, without the connivance and aid of the executive here, any attempt at investigating this nefarious transaction must prove abortive. Therefore I waited on the Captain General this morning, and laid the whole case before him, which I explained in the utmost detail. The general expresses himself *satisfied from the evidence* that the robbery had been perpetrated *by a Guineaman from this port*; he thanked me for my prompt determination to lay the case before him *in extenso*, and assured me that he would *leave nothing within his power undone* to investigate it thoroughly, and bring the criminals to justice. In the mean time I shall, as I informed the general I would, see Captain Buffington,* and furnish all other evidence I can procure."

"Thus far the appearance of this business seems favorable. The Captain General may command the means of ferreting these rascals out of their most recondite corners. I have a good opinion of the character of General Vives; the honor of his Government is interested, and I am *well satisfied* with his manner, and the assurances he made me when I informed him that I confided the affair wholly to him. But I do not wish to encourage hopes that, after all, may be disappointed, for reasons which you will find in the following copy of my reply to the Secretary of State:

"I must request, sir, that *all our correspondence* on this subject be *confidential*: for I may have to express opinions that *ought not to be made public, as mine.*"

3. Three days after, Mr. S. writes to the Department of State: "Having at the same time received from Boston the depositions relative to the ship *Candace*, I availed myself of this occasion to lay them before his excellency, which appeared to me the most proper course in a case of this importance. I explained them in detail, and he expressed himself *satisfied* that the act of piracy *had been perpetrated* by some slave-trader from this port, and his determination to use his utmost endeavors to detect and bring the criminals to justice. I left with the General, 1. Mr. Bradbury's letter to Messrs. Silsbee and Gorham; 2. The letter of the Secretary of State to me; 3. The depositions proving the circumstances of the robbery, which were sent me by Mr. Bradbury. All which, after translation, were sent

* The captain, apparently, of the robbed ship, who was there in proper person as a witness.

back to me yesterday, with the assurance that the inquiry was begun, and that I should be informed of its progress.

"I am perfectly satisfied with the manner in which General Vives has taken up this investigation; and, with the evidence furnished, he certainly possesses the means of discovering the culprits: so that a favorable result of the inquiry ought to be expected. Yet, notwithstanding these circumstances, for the reasons contained in my last letter to the Secretary of State, I cannot suppress my apprehension that it will end abortively."

4. On the 17th of February Mr. Shaler informs Mr. Bradbury of a piece of unexpected good fortune, in the shape of judicial proof, conclusively corroborating the means of conviction previously deemed by him sufficient:

"Since my last, I have no information from the Government of the progress made in the investigation of the case of the robbery of the ship Candace; but I know, indirectly, that it is prosecuting in the Marine Department. But I met a person this morning, whom I had become acquainted with through some services which I did him in an insurance case some time since in New York, and who, I find, is extensively concerned in the African slave-trade, who informed me that a schooner of his had just arrived from the coast, called the —, by which he had learnt that the robbery in question was committed by a brig, which sailed from this port early in September last, called the *Manzanares*, and commanded by a Portuguese well known here; that one of the seamen of said brig came back from the coast, in the schooner, having deserted; and if the captain, officers, and crew of the schooner were interrogated, all the facts relating to the robbery would come out, as they were notorious on the coast. This person, whose name I was requested to suppress, said that, being largely concerned in the slave trade himself, and conducting it upon what he deemed honorable principles, he was desirous to see it cleared from this opprobrium, by the perpetrators being brought to justice.

"I went immediately to the Captain General, and communicated to him all these facts, which corroborate others less circumstantial, previously communicated. He took notes of them, and assured me that they should be duly attended to. I also communicated to him, confidentially, my informant's name. This Government have now within their power the means of discovering the guilty in this case; but I refrain from any further opinions, until I am officially informed as to what has been done."

5. Ten days later, Mr. Shaler writes to the Department of State: "I have had the good fortune to collect sufficient proof of the ship Candace having been robbed by a brig which cleared from this port for Africa, on the first of last September, called the *Manzanares*, commanded by a Portuguese, well known here, by the name of Abeco. This vessel was left on the coast of Africa by two vessels lately arrived here from thence, where the robbery in question was matter of public notoriety. My principal informant states that the aforesaid brig took from this port \$14,000 in specie, as cargo, but which was landed near Matanzas previous to proceeding on her voyage; that the second mate protested against the robbery, threatening to denounce them as pirates at the first port of arrival, and was in consequence put on board a Dutch vessel, which landed him in England, and that letters had been received from him, dated in London; that the utmost anarchy and disorder prevailed on board the pirate brig, where several murders had been already committed; in consequence of which he does not believe that she will ever return to this island."

"I communicated these facts to the Captain General, as I became acquainted with them, and have always received his assurance that they should be attended to, which was repeated yesterday; and I am also indirectly informed that the investigation is prosecuting with activity at the Marine. This Government have now the means of prosecuting these pirates to conviction."

6. On the 17th of March the Secretary of State is informed of the result:

"I have the honor to inform you, that I yesterday received a message from his excellency the Captain General, by his interpreter, stating that, after a *laborious examination of the officers and crews* of the two vessels lately arrived from the coast of Africa, which I had reported to him as sources of *certain evidence* respecting the robbery of the ship Candace, of Boston, no *evidence whatever* had been obtained, as they professed a total ignorance on all points on which they were interrogated. *The person who gave me the information, who is actually the owner of one of the vessels in question, came to me some time since, in great terror, to request that I would contradict what he had told me, as it had exposed him to imminent danger, even of his life.*

"Commodore Elliot having informed me that he had transmitted to the Navy Department all his official correspondence with this Government on the same subject, I have refrained from troubling you with a repetition of it, though he furnished me with copies as far as they could be made out.

"I take the liberty respectfully to remark, that, in my opinion, *whenever this Government is addressed in the same manner, results equally satisfactory will be obtained*; and that, while our naval forces on this station receive an intelligent and efficient direction, there will be nothing to apprehend from piracy."

VI. Such is the fragment of history which I have selected, to convey an idea of the true state of things at Havana, in regard to which I am charged by Mr. Everett with having presented greatly exaggerated views. A more striking illustration, the most fertile fancy and the most graphic pen might vainly tax their powers to produce. It would seem to be a product of art, culling, from all the cases which have happened, or which could have happened, the elements best calculated to be worked up into one condensed and impressive picture. It is during the Presidency of ANDREW JACKSON, the man with the "iron will," who had told the world that the rule of the American Government was to "ask nothing but what is right, and submit to nothing that is wrong." The consul was WILLIAM SHALER, the man who had taught the French how (they were at no distant day) to take Algiers; of iron nerve, of Turk-like gravity of aspect, of keenest sagacity, of inflexible determination, of dauntless resolution; the sojourner in every clime; the most experienced and the most distinguished consul our country ever had. The Captain General was VIVES, whom a long residence at Washington had imbued with the truth in regard to the power and the temper of our country; who knew, as well as man could know, what these were capable of. Above all, when directed by him, who, in the pursuit of *land* "pirates," had not allowed the walls of the Barrancas to stop him; and in visiting them with the doom of the law, recked not whether it was a scarlet-coated "pale-face," with his Britannic Majesty's parchment in pocket, or a blanket-wrapped red man, with merely his Britannic Majesty's silver medal about his neck, and Sheffield scalping-knife in his hand.

These are the prominent actors. The occasion, a piracy upon an American merchantman; a *piracy*, in the ancient, time-immemorial sense of the word, attaching to the deed of him who, by plunder committed upon defenceless wayfarers among the vast solitudes of the great highway of nations, becomes "*hostis humani generis*"—to the whole human race an outlaw, whom no country owns; whom all may seize and slay. See the commotion it excites! President of Boston Insurance Company, Representative of the people, Senator, Secretary of State, and Secretary of the Navy: the whole machinery of the Government is put in motion; its whole power brought to bear upon this one point.

On the other side, too, circumstances are propitious; propitious beyond the possibility of being more so. A vessel sails from Havana, fitted out and despatched upon a "branch of commercial business," to secure the monopoly of which it was but the other day that "the mistress of the seas" had been equally lavish of the terrors of her trident, and the milder potency of her gold; and which the merchant of benighted and prostrate Spain yet believes may be "conducted upon honorable principles." She is no sooner out of port than the captain robs his employers of the treasure intrusted to him, and lands it within sight, almost, of the city where they are reposing in unsuspecting reliance upon his good faith. He pursues his way; and a chance offering upon an American vessel, he turns pirate—thereby rendering the vessel, owned by men who fitted her out in no such design, a good prize to whomsoever may fall in with her; frustrating their plans, committing their good name with the public opinion which encompasses them, (for, though it sanctions slave-trading, it does not tolerate piracy,) and their fortune and their persons to the law. Here, then, is one class of enemies, who cannot but be desirous of his punishment. But the consequences do not stop here. His conduct is of a nature to raise up against him every man in the community who has an interest, direct or indirect, in the slave-trade. If his example spread, if it be seen that vessels, adapted in every respect to piratical pursuits, can with impunity be turned to such purposes, contrary to the intent of the owners, through the infidelity of the crew when beyond their control, there is an end to the trade, and to every trade, and every expectation in any way dependent upon it. This could not but have been instantly perceived and felt. No man interested in the trade but must have felt, whatever might have been the light in which piracy presented itself to his moral vision, that, like Mr. Shaler's acquaintance, he had a deep stake in seeing the trade "cleared from this opprobrium, by the perpetrators being brought to justice."

Such, necessarily, must have been the public sentiment on this point. We see its working in the spontaneous proffer of evidence from a man, himself engaged in a pursuit, which, though upheld by the public opinion, is severely denounced by the laws of his country: a man born and bred in a community, one of the most deeply-rooted habits of which is to shun, by every possible means, the danger and the responsibility of becoming a witness in any case, however trivial; and where but little odium, if any, attaches to the act of making one's testimony, when extorted, square with the same dictates of prudence, or of friendship, which enjoined its total suppression, if possible.

We see, too, that every imaginable circumstance is in the highest degree favorable to the working of this sentiment. Proof, sufficient to satisfy the mind of the Captain General, comes from Boston. As if it were ordained

that there should be no possibility of escape, witnesses arrive, by the dozen, to corroborate that proof to any conceivable extent. This overwhelming mass of testimony is pressed on by the whole weight of the American Government, acting directly from its topmost head through the consul and the commander of the naval forces on the station: thereby, on the one hand, imposing upon the authorities the necessity of acting under the deepest sense of responsibility; on the other hand, affording to them, and to every individual who might be involved in the proceedings, the best possible apology for a deviation from the course which public sentiment and habits of thought, of feeling, of action, might prescribe for ordinary occasions of judicial inquiry.

And what was the result? "After a laborious examination, no evidence whatever had been obtained!"

VII. To this testimony from my predecessor, I will add some from myself; given at a period when I could have no motive for the exaggeration imputed to me. The very first thing which claimed my attention on my arrival at Havana, to take charge of the consulate, in 1834, was another piracy, committed by another slaver, under precisely the same circumstances, upon another American vessel, the brig *Mexican* of Salem; which, after being robbed of \$30,000 and set on fire, was left in that condition, after every soul on board had been fastened down under the hatches, where they would have perished but for carelessness in those who had done the deed.

The following is an extract of a despatch written by me, May 3, 1834, enclosing a letter from the Comandante de Marina at Havana:

"This letter affords official proof of the armament and sailing of the suspected vessel. But, with regard to the practicability of effecting any thing further, I concur fully in the doubts expressed by Mr. Cleveland in his letter of the 17th March; in reply to that from the Department of State, instructing me to obtain information and proofs upon this subject. Extreme aversion to becoming involved in any way in matters not personally and immediately interesting to them, is one of the known characteristics of this people. This principle is strongly displayed in relation to all penal investigations. At the cry of murder, all eyes are averted from the scene, and all doors close; and those who chance to be near make the best speed they can from the place. As might be expected, the same motives act with peculiar force in relation to matters such as this. The most desperate ruffians that can be procured, are, of course, in the pay of those engaged in the slave-trade. Every one knows this; and knows that no man's life would be at all safe after his appearing against them as an informer. So well persuaded am I of this, that I should deem it a very cruel and unpardonable breach of personal confidence to communicate to my Government, even without his express sanction, the name of any individual who might have relied so far upon my discretion and honor as to put his life into my hands by making disclosures in relation to the doings of these gentry."

The intimation conveyed by me to the British commissioners, which has seemed to Mr. Everett to afford just ground (*supra*, III) for the imputation of rank personal poltroonery as one of the chief motives which had determined my official course, will be seen, therefore, to have been founded on a conviction several years old, which had arisen without any particular reference to "apprehensions of personal violence" against myself, and before they could well have had time to make me "give way" so entirely under their overpowering force.

VIII. This is not the only occasion on which the case of the *Mexican* elicited an expression of my views.

Contrary to incalculable probabilities in their favor, the pirate-crew happened to be taken. They were brought within our jurisdiction at Boston; and there, despite all the chances against conviction afforded by our law, they were convicted. This event afforded a fit subject for the workings of the sickly philanthropy of the day. A gentleman of the Boston bar, long distinguished for his ardor in the cause of abolitionism, evinced the consistency and ripeness of the views which directed his impulses on the subject, by becoming an enthusiast in behalf of these convicts, who had spiced their ordinary occupation (slave-trading) with an act of piracy and deliberate wholesale murder, so far as the intent could go. A strong feeling in their favor was excited in the public mind; and to such a pitch did it rise, that, if public report can be relied on, a lady made a winter journey to Washington for the express purpose of throwing herself at the President's feet to implore the exercise of his pardoning power.

To avert, if possible, the danger which seemed to threaten from this novel, and yet by no means surprising, fruit from such a tree, I wrote, under date December 27, 1834, a despatch containing the following passages:

"The last vessel from Boston has brought the news of the conviction of 'the Spanish pirates;' of the motion for a new trial, and its probable success, besides the probability of an appeal to the pardoning power of the President; arising from doubts in the public mind at Boston, as to the identity of the convicted with those who committed the piracy on the brig *Mexican*, and even as to the identity of the vessel to which the convicted belonged with the vessel by which the piracy was perpetrated. Under these circumstances, it becomes my duty to communicate, without loss of time, my own impressions on the subject. They are:

"*First.* That, *beyond all doubt*, the piracy was committed by the schooner *Panda*, Pedro Gibert master, and Bernardo de Soto mate. This is, and has long been, a fact of *general notoriety* here; as familiar to the mariners of the port, and those holding intercourse with them, as any that ever occurred on the coast of the island itself. Moreover, I have it *directly* from a gentleman of high character, well known to me, that *he* was told by the *chief owner of the Panda*, a resident in this city well known to him, who gave him an account of the whole cruise, that the piracy on the *Mexican* had been committed by the schooner *Panda*, Pedro Gibert master.

"In relating the affair, the owner aforesaid expressed great indignation at the act, which was but one of many outrageous deviations on the part of Captain Gibert from his instructions. To give information on such subjects, is, on account of the personal danger, and for other reasons, repugnant to the general feeling here; and it would be a breach of faith in me to communicate officially to my Government the name of either of my informants.

"*Secondly.* That the escape of these men *from the halter*, or that of any one of them, (except Bernardo de Soto, who will, I hope, be pardoned,) cannot possibly fail to be attended with infinite mischief, involving the loss of property, and of innocent lives, to an extent that no one can foresee. The example would have a far worse effect *than if the Panda had been regularly and notoriously fitted out for the express purpose of piracy.* In fitting crew and obtaining a crew for such a vessel, there are always difficulties to be encountered and precautions to be observed which do not exist in

regard to ships intended for slavers. This traffic is not only tolerated, but *approved*, by public opinion here. It is considered as respectable an investment of capital as can be made; and it attaches no stigma whatever even to the masters and crews immediately engaged in the active branch of the business. Unlike any other illicit trade, it is well known to carry with it the good wishes of the authorities themselves."

"Piracy is a crime the consequences of which are familiar to the mind of every seafaring man. He knows that, by shipping on board a *pirate*, he puts his head into a halter. To engage on board a *slaver*, is a very different affair. Against a Spaniard or Portuguese, if taken, the punishment is merely nominal; and the seamen of other nations are made to believe that it will be the same in regard to them, as was the case with seven native Americans whom I got out of a *slaver* here the other day. (They were young men, very good looking, and as neat and respectable in their appearance and deportment as you would see in the best packets; and, so far from showing a disposition to persevere in the business, they expressed their gratitude to me for having got them out of their scrape, when its nature was explained to them, and conducted themselves with the utmost propriety until I had shipped them in other vessels.) It is obvious, then, what must be the consequences, should the case of the *Panda* result in such a way as to show that a *slaver*, honestly fitted out and despatched as such by the owners, may, by the act of the crew, be converted with impunity into a *pirate*. Of the small proportion that can be taken, how many must escape for want of evidence! and if to these chances in their favor be added such an example as the escape of the culprits in a case like that of the *Panda*, wherein fortune has done all she could to bring them to the halter, and the whole history of which is as well known here as if it had happened in the very harbor, where can a merchantman be safe?

"I trust, therefore, that these fellows will, to a man, be hung, from whatever quarter, and to whatever extent, interest may be made in their behalf, with the single exception of Bernardo de Soto. His character heretofore has been very fair. He is known to have received the thanks of our Government for having saved the lives of a *whole American crew*, under circumstances of considerable risk to himself and ship, *after their vessel had been passed without any attempt to give them succor* by another American vessel. This act will be generally felt to give him a strong title to our clemency. The exception would, moreover, be *politic*. Merely as an exception, it would tend to allay the irritation and animosity against our countrymen, likely to be produced by the execution of several Spaniards by American authority. Coupled with the reason, (which should be introduced with great stress in the proclamation announcing it,) his pardon would strike the public mind here with great force indeed. Thus managed, the exhibition upon his fellow culprits of the terrors of the law, in *their utmost rigor*, will produce an effect here most striking and most salutary. The issue is looked for with intense anxiety by the whole seafaring class. Such an opportunity may never again present itself, on the one hand, to do good by firmness; on the other, to do mischief by mistaken humanity. I trust, therefore, I repeat, that there will be no faltering on the part of our Government."

To these passages I will add a further extract from the same despatch, which serves to prove that the difficulties wherein I have become involved, in regard to matters constituting the ground work of the American sailor

branch of the calumnies against me, are not of recent origin; this will be found in the appendix; (H.)

IX. We will now take up the report again. Having, as we have seen above, (*supra*, sec. 4, V,) stated my reply to his question to be, the inherent impracticability of obtaining evidence, Mr. Everett opens the present section as follows:

"In order to form an opinion with greater distinctness and certainty upon the validity of this reason, it may, perhaps, be useful to take a single case. I will use for this purpose that of the *Venus*, which has been rendered by accidental circumstances more notorious than any other."

I have, in a former place, stated (somewhat, perhaps, to the reader's surprise) the fact that the only two specimen-cases produced in the report, for the purpose of illustrating the nature of the fifty-seven cases, of which the names are given at the outset, are cases which had been deemed by myself, at the time of their occurrence, entitled to a special report; to which fact is to be added the further fact, that the "information" in regard to them, presented by Mr. Everett to the department on his return from Havana, consists exclusively and purely of comments upon communications of which it had long been in possession; comments, not upon the truth or the accuracy of any statements of facts therein contained, (which his researches at Havana might have qualified him for throwing light upon,) but simply and purely upon the sufficiency of reasons given by me, and the justness of the views of duty entertained by me.

The first of these two cases, we see, is merely *a* case—"a single case"—one of the 57. It is introduced merely on account of the greater distinctness and certainty with which the truth of a proposition may be judged of by considering it with reference to a particular individual, instead of a whole class. The proposition, with reference to the truth of which this individual, thus taken hap-hazard, is introduced, is, that it is not practicable to obtain evidence. Whether this be true, or the reverse of true, is the question which Mr. Everett enters into and discusses. He does not thus boldly state it, however. He is too well versed in the proprieties of such occasions, not to know "the indispensable necessity of a perfectly decorous language." Accordingly, before setting out in his inquiry, he calls it an inquiry into the "*validity* of a reason;" and having thus satisfied the requirement of decorum, he goes on to speculate as to whether it be true or false that the alleged impracticability exists.

The second of the two cases (see report, sec. 11, at the end) is introduced with reference to the same proposition, and yet a different one. The *Venus* here is introduced for the purpose of judging of "the *validity* of this reason;" in other words, as the inquiry shows, of judging as to the fact whether this alleged reason does or does not *exist*. The *Washington* there is introduced for the purpose of showing that, even supposing the *reason* to be *valid*—in other words, the *fact* of the impracticability of obtaining evidence to *exist*—as a general rule, yet it was not the reason by which the consul was governed: for, in this case, he had evidence in his hands, and yet failed to use it.

X. Not only is the fact, that the case of the *Venus* is taken merely as a case, averred in the first sentence of the above passage, but it is repeated in the second. And here, with the addition, too, that the cause of this distinction being conferred upon it consists solely in certain "accidental circumstances, which have rendered it more notorious than any other."

Now, what are the "accidental circumstances" here referred to? Why, the *accident* of this case having been singled out by the British commissary judge as the one case of all others suited to his purpose!—the one of all others best adapted to "official cant," as the Westminster Review calls the staple whereof commissary judge despatches are made up. This is the original accident, from which the rest are derived; and they, together, constitute the "accidental circumstances" which alone have given notoriety to this case—a notoriety in regard to which, therefore, the reader must take care to profit by the information here given by Mr. Everett, and beware not to fall into the error of supposing that it may possibly have been owing, in some measure, to some peculiarity in the case itself!

Before taking leave of this introduction of the case of the *Venus*, I will repeat the fact with regard to it, and to the other case, (of the *Washington*,) that they were made the subject of special communications from me. The former, indeed, was not reported until after the commissary judge had given me the benefit of his opportunities for catching "rumors" by the forelock. But that of the *Washington* had been reported some seven months before, without my having enjoyed any such advantage; for the judge, so far as I have any express reason to believe, has never to this day known so much as a rumor about it. I say *express* reason, with reference to his intimacy with Ferdinand Clark, (*supra*, sec. 1, LXVI,) from whom he may have learnt how ill I behaved to him, and his friend and law-client, Ealo.

XI. After thus stating the specimen-character of the case of the *Venus*, and the reason which causes it to be taken instead of any other of the 57 cases, the report enters upon a statement of the case itself, or rather of the *two* cases in one: for, before entering upon the inquiry into the validity of my reason with respect to *American* vessels, (which is the subject proposed by him [*supra*, sec. 4, V] for discussion,) Mr. Everett runs the two distinct cases (the case of the *Venus* as an *American* vessel, and the case of the same ship on her return to port as a Portuguese vessel) into one. In order, doubtless, that it may be properly prepared for dispassionately following Mr. Everett in his discussion of the point expressly proposed by him, the reader's mind is first filled with all manner of details concerning the slave-cargo brought by the vessel after she had been divested of her American character.

I have no objection whatever to meet every question started by him respecting the vessel, in either of the two cases presented by her. But every one who knows what reasoning means, and what the legitimate object of reasoning is, must have a decided objection to conducting any inquiry after this fashion. The story on which is founded the old adage respecting chickens before they are hatched, tells us that, but for the toss of the head, caused by the vision of the green gown, the contents of the pail which rested upon that head might, in due time, have assumed the shape of that green gown. But the thing which the pail contained at the time the event thus handed down took place, was not a green gown. It was milk. Suppose the disaster not to have occurred, and the vision to have become realized, by the conversion of milk into eggs, eggs into chickens, and so on to the end. Still would it be true that any one who, as a preliminary to the discussion of any point turning upon the properties of the contents of that pail, should mix up with the ideas appropriate thereto other ideas belonging to the matters which those contents had become successively turned into, would do any thing but promote the object of all reasoning.

Or, take a slaver, by way of illustration. One of the two cases of British vessels, owned, doubtless, by an Havana slave trader, stated in my despatch No. 153, is as follows :

"In March, 1838, the Portuguese brig *Arrogante*, captured by her British Majesty's brig *Snake*, was condemned as a slaver by the mixed commission at Sierra Leone. At this British port she was sold, purchased for British account, (on the face of the proceedings,) sent to London, there obtained a British register, with which, and under the British flag, she made her appearance at Havana, and thence proceeded to Vera Cruz. On her return to Havana, early in 1839, she was sold and put under Spanish colors, changing her name to *Iberia*, with which she sailed, and returned at the beginning of this year, after landing a cargo of slaves at Puerto Rico."

Now, suppose the question proposed (*supra*, sec. 4, V) for discussion with regard to the consul at Havana to be raised in connexion with the *Arrogante*, in respect to the British authorities at Sierra Leone or at London; could it conduce to any legitimate purpose of reasoning, to begin the discussion by a statement such as that now before us regarding the *Venus*?—a statement composed chiefly of details regarding the slaves landed by her at Puerto Rico!

Independently of the direct effect produced by the introduction of details of this nature into Mr. Everett's statement, there is an indirect one no less unfavorable to a just result from any reasoning upon the subject. Even those particulars in the statement which apply to the vessel at the time of her first visit to Havana from Baltimore as an American vessel, are modified to a most important extent, by the connexion thus given to them. Particulars which then could exist only in the shape of surmises, have now, through the influence of subsequent events, totally changed their character in this respect. They are no longer surmises; they are facts—facts which, although it may yet be impossible judicially to establish them, have, by the event, proved to be facts.

XII. Having given this caution to the reader, I will now state the case first to be considered—the case of the American ship *Venus*.—After disposing of what the report has to say relevant to it, I will next take up the case of the Portuguese ship *Duquesa de Braganza*.

On referring to the consular return, I find the name of the *Venus* next above that of the *St. Mary*, a New York ship of 444 tons, navigated by a crew of 17 men, which arrived from New York on the 5th August, 1838, with a cargo of "merchandise;" and cleared on the 11th with the same cargo, for New Orleans. The *Venus* is there set down as a Baltimore ship of 466 tons, navigated by a crew of 19 men, which arrived from Baltimore on the 3d August, with a cargo of "flour, bricks," &c., and cleared on the 23d, with a crew of 19 men, laden with "merchandise" for Africa, under Wm. M. Philips as master, in place of W. Wallace. (See the case of the *Kite* and others, *supra*, sec. 1, XXXV and XLVII.)

After stating the case in the mode above remarked upon, Mr. Everett says :

"On the first arrival of the *Venus* at the Havana, her character and destination were notorious to the whole population of the place, including, of course, the American consul, as the person particularly charged with the duty of observing every occurrence connected with the navigation of his country."

This, in one sense, is true.* She was currently spoken of, and currently believed to be a vessel intended for the slave-trade. But *when* it was intended that she should be put to that use—except, indeed, we use the words “employed in the slave-trade” in the third of the senses (*supra*, sec. 1, XLIV) which we have ascertained to belong to them in the report—is more than any one knew, or could possibly know, except from the parties immediately concerned, including (*supra*, sec. 1, LXV) Mr. Kennedy’s friends and bankers. She was a *ship*, to be sure, instead of being a brig or schooner, as Baltimore clippers generally are, and as was the case with all the innocent Baltimore vessels (*supra*, sec. 3, VI to XIV) that came under Mr. Everett’s eye at Havana. But there is no reason why a fleet ship may not be employed as well as a fleet brig or schooner, of half or quarter her size, solely for the purpose of carrying “assorted cargoes” to the coast. That ships of the fleetest kind have been built at Baltimore solely with a view to the advantage thereby secured in some branches of perfectly legitimate trade, is known all the world over. The *event* has proved that this ship was intended to carry but one such cargo under the American flag. But this proof has come, as from their nature proofs generally do, after the occurrence of the fact proved. It might have been intended that she should go to and fro a dozen times, carrying “assorted cargoes,” and returning in ballast, just as may happen with regard to the ship *Crawford*, or the Vienna clippers *Kite* and *Seminole*; unless it should happen to them also to be sold on the coast, or to be delivered there, in pursuance of a sale effected at Havana or elsewhere. This might have been the intention, for aught any one knew or could know—I am speaking of knowledge for legal purposes, not of rumors or impressions—to the contrary. And that such would have *become* the intention, had any necessity occurred for such a change in what *now* (after the event) is known to have been the intention, can be doubted by no one who allows his reason fair play on the subject.

XIII. With regard to the special application to the consul here made of the notoriety attending this case, a comparison of dates serves to show that without questioning in any manner the perfect justice of the view expressed in the above passage, in regard to the duty of the consular office, circumstances existed at this particular time of a nature to deprive the special application, in reference to this individual case, of a portion at least of its force. Supposing that it were not in my power to answer as satisfactorily as I think I shall, the questions put by Mr. Everett in regard to what he conceives to be my culpable omissions in this case, still the circumstances referred to would go to weaken in some measure the result.

The *Venus* arrived and departed precisely at the time when the tempest which had for years been brewing against me was at the height of its fury. It had begun to form from the instant on which I first set foot in

* The leading terms used in the report are employed, as we have seen (*supra*, sec. 1, XLIV, *et passim*) in such a variety of senses, and in senses so indefinite, that the meaning of its averments is generally a matter of more or less doubtfulness. “The precise *extent*” and nature of the knowledge here meant to be expressed by the word “notorious,” is a point upon which some light is shed by a subsequent passage in the report—(sec. 6.) “That the *Venus*, for example, was *building* for a piratical expedition, was probably as *notorious* at Baltimore, while she was *on the stocks*, as it was at the Havana after she had taken in her outward cargo.”

This, in an American city, within forty miles of the seat of Government of the nation: a place with a population of 100,000, any one of whom, independently of all other motives, could secure some \$15,000 or \$20,000 for himself, by merely watching her from the time when, “on the stocks,” she was *notoriously* a forfeit to him, and denouncing her when he saw that she was ready to sail!

the consulate, as will be seen on referring to report No. 707, p. 358, among the House documents of the last session. For one of the earlier notices of its cause, see appendix H to this examination.

That cause was the *condition of our sailors*—the class of men who, of all the human beings drawing breath under the American flag, is, to all practical intents, the most utterly helpless, the most utterly destitute of protection, in their feelings, their bodies, their lives; whose condition, physical and moral, is beyond comparison worse than that of the black slave in any portion of our country from Virginia to Louisiana, that I possess any knowledge of. This, I aver to be a truth; and I challenge investigation into it. I aver, that in regard to all that one human being can, in health or in sickness, suffer at the hands of another, in the shape of acts, or in the shape of omissions, the sailor in our merchant service is more helplessly and hopelessly dependent upon the individual character of the man in whose power he chances for the time to be, than the negro slave is in any corner of our land. Let the provisions of the law in regard to each be what they may, *his* is the worse condition; he is the one most destitute of all practical protection from either law or public opinion,—the one who can be, and who *is*, with absolute impunity, made to suffer most wrong; wrong in his body, wrong in his feelings, wrong in any and every way in which wrong can by man be done.

For an insight into this dreadful reality, I refer to the congressional document just cited. But all that can result from its perusal is but the faintest of glimmerings. By one who has not had the opportunities which I have had, a tolerably adequate conception of it could be formed only from the result of an inquiry such as those practised by the British Parliament; in which all classes of our fellow-citizens, navy officers, merchant captains, sailors, and passengers, should be called upon to tell what they have seen and do know.

Shortly after my arrival at Havana, a German physician long resident there, who had enjoyed every possible opportunity of observation, remarked to me, "Your captains here set no more value on a sick sailor than on a *rotten onion*." Applied to some of our ship-masters, this would be a libel, destitute of all shadow of truth; for we have a class whose characters, in this respect and all others, reflect the highest honor on their country. But we have, at the other extreme of the profession, men of whom no saying could be more literally true. And between these extremes there exists every variety of compound, partaking of the properties of both.

Another incident.—In July, 1839, Commodore Claxton, in the Constitution, touched at Havana for supplies, on his way to the Pacific. The yellow fever was raging at a fearful rate, sweeping off entire crews; and he hurried off after a stay of less than forty-eight hours. He did not leave his ship, which lay at a spot whence he could see what was going on in the harbor. The impression made upon him showed itself in the first words he uttered after the courteous greeting with which he received me: "My dear sir, are not your men too hard worked, and too much exposed here?"

The consequences of this state of things are such as might be anticipated. It is a state of things which necessarily aggravates itself, going on from bad to worse, so long as left to itself. The sailor becomes daily more and more debased and brutified, more and more reckless and ungovernable; and the trial consequently more and more severe, to which are subjected whatever elements of justice may exist in the character of the master who has to deal

with such beings. The consequences may be all summed up in a few words: masters on the one side, and men on the other, constitute two distinct classes, who are natural enemies, the one to the other; the relation between captain and crew is a state of war, which extinguishes every spark of good feeling, and puts an end to all the rules of justice in every bosom wherein such an effect can be produced. And if there be a single captain or a single sailor left, who does not on every occasion take every possible advantage, the one of the other, it is only because there are characters which can stand any test—characters so inherently strong as to resist every influence that can be exercised by the circumstances hourly operating upon them.

XIV. This is the state of things which I found at Havana on my arrival there, and my efforts to arrest which were the cause of the tempest that was raging around me in the height of its fury at the period when the *Venus* was at Havana. This state of things constitutes a more pressing evil, a more crying iniquity, than the slave trade would, were it now allowed by law. If this were the case, if it were now lawful for American ships to be employed in transporting slaves from Africa to Cuba, or elsewhere, and were the continuance of this the only alternative to the continuance of the treatment now daily and habitually experienced by the sailor on board those same ships, I believe that no just and honest man acquainted with both subjects would hesitate to pronounce the latter to be the more crying evil, and the deeper national disgrace of the two. I am fully aware how impolitic it is to avow such a belief; how harshly it grates upon the long-indulged feelings of many good men; and what an advantage it gives to those who, making a trade of philanthropy, give to their ware the shape and hue to suit the taste of the moment. Such an avowal would be impolitic in any man. In one circumstanced as I am, it is so in the highest degree; for it cannot fail to give color to imputations in regard to my views concerning slavery, and to the influence which these may have exercised upon my conduct, that do not justly attach to either. But it is my deliberate conviction, and I utter it.

Of the toil imposed upon me by this cause at this precise juncture—of the extent to which my time and my thoughts were unavoidably engrossed by the effects hourly produced by it, the incidents constantly springing up around me in all directions—none but those immediately about me at the time can have a conception. Independently of minor matters, I had upon my hands the case of the brig *Kremlin*, the case of the ship *William Engs*, and the case of the brig *Pearl*; the two former having arisen about the middle of July, and the last on the 1st of August, two days before the arrival of the *Venus*. The case of the *Pearl* is reported in my No. 149; of the others, an idea is afforded by the documents accompanying the House report above cited.

With all the incidents of these cases, I had to contend single handed, encompassed by a confederacy, headed by Messrs. Madden and Kennedy's friend Ferdinand Clark, which had for years boasted of its purpose to drive me from the office; and which in point of malignity, activity, and recklessness, is without a parallel. Apart from any auxiliary of the sort, three cases of this kind, coming upon a man in midsummer under the tropic, at a season when labor of every sort, mental especially, is suspended by all, and nothing else is actively at work save the yellow fever, would of themselves have sufficed to afford occupation to test somewhat severely any

powers of endurance. That which they did afford became a subject of hourly expostulation from all who took any interest in me. Not one among them but believed that the life I was leading—wherein it was manifest to every eye that every rule of the climate, even though deemed imperative upon its own children, was set at naught—would inevitably kill me. I myself believed this to be far from improbable. I felt it to be so. I felt the seeds of disease hourly developing themselves in my throbbing veins, despite all that abstinence and regimen could do to counteract the causes which gave them ascendancy. But I had made up my mind on the subject. I had resolved that nothing but death should give the victory to the villany arrayed against me.

Nor was this without an ally even under my own domestic roof; for there the fever established itself, and did its best to compel me to withdraw from the outdoor conflict, and leave the field in possession of Clark and his allies. With the exception of my wife and youngest child, all my family were away in the States. Our family physician, the only one known to me whom I had any confidence in, was there also. Under these circumstances, with many others to aggravate their influence, such as the absence and sickness of friends, the fever fastened on my wife; presenting to me the alternative, on the one hand, of trusting her life to men unknown to me, in whose professional skill I had a deep distrust, and particularly in regard to their inveterate prejudice against the medicine, (calomel,) the early use of which I had become thoroughly satisfied was, in many cases of this disease, indispensable to safety; on the other, of venturing upon the fearful step of treating the case myself. The latter plank was the one grasped by me, and it bore me safely to the shore. I gave the calomel; and when at the expiration of three days the fever was broken, and nothing remained but to watch the convalescence—a task of such delicacy that I knew myself incompetent to it—I called in a French physician, whom I had in the interim had time to satisfy myself about the general qualifications of; he pronounced the fever conquered, and the case to be in a state requiring nothing but the professional vigilance and tenderness on which life, in every case of yellow fever, continues for some time to hang.

It was during this convalescence that, late in the night of the 17th August, the fever which had, for several days, been warning me that I was to be the next patient, fulfilled the threat. Having no one near by whom the office could be performed, I rose with it upon me to weigh out for myself the same medicine which had proved so efficacious a few days before. And when the same physician came the next day, he found that nothing was requisite but to add the French remedy of leeches to the anglo-American one which had been resorted to. The symptoms indicated strong cerebral irritation; and to these he applied himself. He did it so effectually, that, on the fourth day following, aware of the thoughts from which my mind could not be diverted, he consented to my holding communication with my office. Accordingly, on that day, the 21st August, I received from the vice-consul the note given in my No. 149, informing me of the decision obtained against the sailor-victims of dastardly ruffianism in the case of the brig Pearl; a decision which, as I learnt some days after, the first time I was allowed to leave my house, Clark had been publicly exulting in as the cause of my illness.

XV. Such were the circumstances of the consul's position at the time the Venus was at Havana—circumstances which, were it now conclusively

proved that some opportunity had been presented by the case for the most effective exercise of consular authority, clearly and indisputably vested in the office, would go far to show that the opportunity might have occurred without the consul's being aware of it, and yet without remissness on his part. The supposition of such an occurrence is, however, at variance with the truth. No such opportunity was presented by the case; and, proverbially difficult as is the task of proving a negative, I am not altogether without the means of accomplishing it in this instance, through aid afforded by "the mixed commission:" in other words, the British commissary judge, Mr. Kennedy.

Some year or two since, Lord Brougham was reported to have, on the floor of Parliament, brought against the officers of the British navy employed in the suppression of the slave-trade the charge of allowing their vigilance to sleep in regard to slavers bound to the coast, in order that the chances might be multiplied of capturing vessels carrying slaves, and thereby securing for themselves the liberal head-money paid by the British people; and for all others concerned, the advantages which accrue to them, respectively, from such captures.

No motive of this kind can, however, be supposed to have actuated her Britannic Majesty's commissary judge at Havana. It would be altogether unpardonable to charge him with supineness, on any occasion, for useful effort presented by a vessel on her departure for Africa, in order that he, or any one else, might have a chance at her, be it for one purpose or another, with a view to money, or with a view to striking stage-effect, on her return from the coast with slaves. This would be to impute to him a deliberate participation, and that, too, of the very lowest kind, in all the consequences which might result. Without conclusive proof to the contrary, we are bound therefore to assume as unquestionable truth, that he is altogether incapable, and has not been guilty of any thing of the kind; that his vigilance has been most faithfully, constantly, and actively awake; and that, in no case of the sort, was any step ever omitted on his part, which, by any possibility, might conduce in ever so small a degree towards nipping in the bud the "nefarious proceeding."

This, if true in the general, cannot but have been true in the most special degree with respect to a case so remarkable as that of the *Venus*. That in this case, above all others, he must have been intent upon stopping at the very outset the career of so dangerous a vessel, is absolutely unquestionable. Why, then, was no step towards such a result taken by him? To this question there can be but one answer; and this is, that the case presented no such opportunity.

Such must be the answer in regard to every case of the sort; but in regard to this case in particular, it is peculiarly imperative. To feel this, we have only to consider—

First, the opportunities for obtaining information enjoyed by Mr. Kennedy. Independently of the general advantages in this respect, arising from the nature of his post, and the leisure allowed by the paucity of occasions (*supra*, sec. 1, LX) calling for the exercise of its proper functions, he enjoyed in this particular instance, as we have seen, (*ib.* LXV) all the special advantages that would ensue from a close personal intimacy with the house by and through whom the "arrangement" was made. Even admitting the correctness of my belief (*supra*, I to III) respecting the practical inutility of information thus obtained—owing to a due regard on the part of

Mr. K. for the life and the worldly interests of his informant; and if not for these, at least for the obligation attached to the mode wherein alone such information could have been obtained from that source—admitting this, still it cannot fail to be evident that the knowledge thus acquired must have afforded to Mr. Kennedy an immense advantage in the shape of an indirect use whereof it was susceptible. If he could not call his informants into court, he could at least apply the information received from them to the purpose of studying the matter referred to by Mr. Everett as “notorious;”—the purpose of analyzing the case, and watching its progress, with a view to detect any thing tangible which might appear upon its surface,—any thing which the commissary judge, without exposing those to whom he was indebted for his insight into the illicit game, might at the right moment pounce upon, and call upon the consul, or the local authorities, to lay hold of; thereby forcing upon them the alternative of seconding his honest zeal, or of incurring the responsibility of a refusal to do so.

Second. In regard to this last point, the course pursued by the commissary judge a few months after, upon the occasion presented by this very vessel, on her return to port after having been divested of her American character, proves conclusively that he was as little troubled as his predecessors had been with scruples in regard to taking steps of this kind towards the consul.

The demonstration therefore is, it seems to me, as perfect as a demonstration of this nature can be, that Mr. Kennedy, despite all the advantages enjoyed by him, was unable to discover any thing in the case which could, by any possibility, be made the ground of consular interposition.

XVI. We are now prepared to take the next step in following Mr. Everett. This brings us to the question—

“Was it not the duty of the consul to request of the local authorities the seizure of a vessel so situated, or at least to take such steps as might have appeared best fitted to establish by positive evidence the facts which common rumor had rendered notorious?”

This would seem to announce something in the shape of a fulfilment of the promised inquiry (*supra*, sec. 4, V) into the “validity of the reason” assigned by the consul; in other words, the promised refutation of the existence of that reason. The thing which the subject specially stated by the reporter as the subject of the present disquisition authorizes us here to expect is some matter of fact going to prove that, in the case selected by way of illustration, it was practicable to obtain “such evidence as would be a sufficient basis for legal proceedings.”

Instead of any thing of the sort, we have, as the sequence to the above question, another question in regard to what the consul would have done under a supposed case; that is, supposing the *Venus* to have been prepared and fitted out for a piratical cruise against vessels upon the high seas. And after answering this question, the report proceeds to the consideration of the events that occurred upon the return of the vessel when invested with a different national character.

We must therefore stop here for the present; and before allowing ourselves to be hurried off to other matters, give our attention to that comprised in the above question; or rather, in the two questions: for the sentence contains two which require to be separately considered.

The first amounts to a statement of Mr. Everett's belief that, had “the consular authority” (*supra*, sec. 4, IV and V) been faithfully exercised in

this case, it would have been done by "*requesting of the local authorities the seizure of a vessel so situated.*"

How situated? Let the reader go over Mr. Everett's statement of the case, and separate, if he can, the impression properly pertaining (*supra*, XI) to the subject now under consideration from those created by particulars which were then not in existence; and after doing so, reply to this question.

Let us, then, overlooking all the considerations which present themselves with reference to the step here suggested, suppose it to have been taken; what would have been the result? This is a matter in regard to which there is no difficulty whatever in arriving at an "approximative estimate." No such difficulty can be experienced by any one who—without any further knowledge of "the local authorities" than that which he cannot fail to derive from a perusal of the matter contained above, (*supra*, V,) to which may be added that contained in appendix F—shall exercise his judgment on the subject.

The Captain General would have referred the subject to the legal advisers, and they to the tribunals to whom it of right belonged; and the result would have been judicially to establish, in the most solemn manner, that there was no ground whatever for "suspicion of abuse or illicit trade;" that the vessel was engaged only to carry an "assorted cargo" to the coast; that the proceeding was an altogether vexatious one; that it had subjected the innocent parties to serious expense and detriment, for which they had a right to be indemnified.* And, *if requisite*, all this would have been substantiated by one or any number of innocent freighting voyages, carrying merchandise to the coast and returning, as happened in the cases (*supra*, sec. 3, VI to XIV) under Mr. Everett's eye; and those particulars which subse-

* In regard to the certainty of such a result, nothing need be added to the grounds of judgment above referred to; but with respect to the interest which would have been evinced therein by the confederacy against Consul Trist, under which Dr. Madden deemed himself honored in being allowed to act as a volunteer, the following extract (House report, 1839-40, No. 707, p. 472) serves to shed some interesting light. It relates to the case of the slaver *Thomas*, which occurred in December, 1838, and will come under consideration hereafter, in connexion with the most serious of all the charges brought by British agents against the American consul at Havana; which, however, has been deemed (*supra*, sec. 1, LIV) unworthy of mention in the report. No one acquainted at Havana would hesitate an instant in putting his finger upon Messrs. Madden and Kennedy's friend, Ferdinand Clark, as the "Boston gentleman at Havana," whom "excess of zeal" prompted to write the matter thus published, first at Boston and then at Charleston:

"We shall be obliged to establish a standing head for Consul Trist's delinquencies, if accounts of them continue to flow in upon us with as much rapidity as they have done for some weeks past. It will be seen by the annexed letter, taken from the Boston Atlas, that a little wholesome justice has reached the functionary from a *foreign source*."—(Charleston Courier, July 17, 1839.)

To the Editor of the Atlas:

SIR: I send you an extract of a letter from a Boston gentleman at Havana:

"Captain Howell has gained his suit against our American consul, which was tried in the Spanish court, for the detention of the vessel he commanded last summer, and also for damages arising from his personal imprisonment by N. P. Trist. * * * * The Spanish court, in giving in their verdict, state that the American consul exceeded the bounds of his authority in meddling with the Spanish flag; and that he is held liable for the same. The consul must sign the documents, and it will make him appear in no enviable character. It now remains to be seen what funds the consul has to indemnify the damages sustained by Captain Howell and his Spanish owners."

"Your paper of May 25th contained a long account of the imprisonment of American seamen at Havana, and the noble doings of the officers and crew of the United States sloop-of-war Boston to relieve their sufferings. It also expressed the desire of the American residents and shipmasters at Havana that our Government would investigate the acts of the consul. I would ask, Mr. Editor, if any thing has been done at Washington for the removal of so odious a character as N. P. Trist from the consulate?"

"AN AMERICAN."

quent events have supplied him with, to incorporate into the statement of the case presented by him as the ground for a just judgment upon my course on that occasion, would never have existed. Another result which would have followed upon the former is, that I should have got credit for what Mr. Everett terms "a well-intended effort to sustain the honor of the national flag and enforce the laws of the Union." Upon this point, I will say, (without meaning, however, to intimate that, had he been in my place, such credit would not have been earned and richly merited,) that, by *me*, it might have been obtained, but could not be merited. With a consistency corresponding to that which we have seen (*supra*, sec. 1, XXI) to exist between the conclusion of the report and its beginning, Mr. Everett, after stating, as he does in the passage now under consideration, that duty, too palpably and manifestly for doubt, demanded of me the step indicated by him, expresses, a few pages further on, (report, sec. 8,) his belief in a settled conviction on my part, uninfluenced by "indifference, or any more corrupt motive," that any steps which could be taken by me would prove futile. That conviction did and does exist. Nor was it confined to me; it was shared in, so far as I know, by every American, or other foreign merchant or resident, of the place; and it was entertained by each clearly and decidedly, in exact proportion to his acquaintance with the nature of consular authority, and with the rights and practices of the mercantile world. But it did not extend to a belief in the futility of such steps for *other* purposes than the pretended object for which they might be taken. However ineffectual they might have proved with regard to *it*, yet, as demonstrations of "any excess of zeal" on my part, their results could scarcely have failed to prove equally to the purpose as those attending similar demonstrations on the part of the commissary judge in the case of "the American brig *Comet*, Captain Dickson," (*supra*, sec. 1, LXIV.) and others affording like opportunities. Had my position been occupied by the most egregious knave that ever lived, his stupidity must have been at least equal to his folly, had he failed to see that the game of which the *Comet* affords a specimen might also be played by him. A sheet of paper and a few drops of ink each time was the only cost requisite for securing as many of its prizes as he might be covetous of. My blindness, however great it may have been, certainly was not so total as to prevent my seeing this; and, if no such "well intended efforts" were made by me, it was solely because I considered Commissary Judge & Co. fairly entitled to the monopoly of its profits; just as undeniably so as their Government had been in days of yore to those of supplying Cuba and the other Spanish islands with slaves.

If I put no such demonstrations upon paper, to serve as proofs to the world that "excess of zeal" might pour over from other bosoms besides those of a ward and pupil of Wilberforce, (*supra*, *ib.*) it was because, as a man, or as an officer of the American people, I deemed it alike unworthy of me to take any step which I knew could be attended with no other result than to put me in the eyes of all except purblind zealots—indeed, in their eyes also, and best of all—on a par with what the Westminster Review calls "official cant." The great English moralist of our time calls it "an epoch when puffery and quackery have reached a height unexampled in the annals of mankind," and speaking of an exemplar of a *man*, drawn by his own masterly hand, he calls him one "who has said to cant, begone!" This sentiment finds an echo in my bosom. As a man, or as a public servant, to indulge it—in the silent resolves of that bosom, if in no more obtrusive shapes—shall ever by my will.

XVII. Having thus considered the only definite suggestion made by Mr. Everett in regard to what ought to have been my course on the occasion, it remains to consider the second branch of the interrogatory, which comes in as a residuary provision, embracing all other possible measures than the one specified. It was my duty, if not to request the seizure of the vessel, "at least to take such steps as might have appeared best fitted to establish, by positive evidence, the facts which common rumor has rendered notorious."

On this head, as no intimation is conveyed of the nature of the steps referred to, I can reply no otherwise than in the same general way. I will do so by referring to the matter of this nature contained in the foregoing remarks, (*supra*, XIII to XV.)

In a subsequent part of the section, however, after the reader's mind has been filled with particulars furnished by subsequent events, when the vessel had been divested of her American character, and had actually been employed in carrying slaves—a fact, which, from its nature, must be felt by every one to make the most peremptory call for energetic effort upon any American functionary, in regard to any vessel supposed to possess a character giving him any shadow of authority over her—after this impression had been made, the point now before us is reproduced, and then a greater degree of definiteness is given to it. 'Tis no longer "such steps as might have appeared," &c., but the particular step, "an examination of her crew and papers." That is to say, after the attention has become engrossed by subsequent events, and among these the carrying of a slave cargo—which it is obvious to every one that no one on board could help knowing—the idea of an examination of the crew is first suggested! The suggestion, it is true, is verbally made to refer back to the first case. But what is the impression produced by it, placed where it is placed? Let the reader answer.

The consideration of the nature of this step, and the result which could have attended it, properly belongs to this place. But as it has to be examined in the connexion given to it in the report, I will avoid repetition by postponing the task till then.

XVIII. From this suggestion of the steps which ought to have been taken by the consul, the report dashes on, as I have already stated, (*supra*, XVI.) into a supposed case:

"Had the *Venus* been prepared and fitted out for a piratical voyage of a different character, would the consul, on being informed of the fact, by common rumor or in any other way, have hesitated to request her detention? I think not; and yet, under the existing laws of the United States, it is just as clearly the duty of the consul to detain a vessel intended for the slave-trade, as it would be to detain one for a piratical voyage, in the more ordinary acceptation of the terms."

And this is what is next offered to us in fulfilment of the promise to show that the consul's reason (*supra*, section 4, V) did not exist—that it was *not* impracticable for him to obtain judicial proof! What does it amount to? Does it convey to the reader any other "information" than that it is the consul's duty to do his duty? Does it fulfil in any manner the promise of information held out at the close of the preceding section, and the commencement of the present? Is it apposite to the point formally stated by the reporter, as the point on which he is going to adduce proofs in the shape of facts drawn from the case taken by him for the purpose of illustration? Does any other practical effect attend it than that of making upon the

reader's mind, by means of an imaginary case, the impression that a vessel intended for the slave-trade is to be viewed in the same light as a vessel intended for plunder and murder upon peaceable wayfarers upon the great deep, and inducing him to remain content with this analogy in place of the promised facts?

"It is the duty of the consul to detain a vessel intended for the slave-trade." Granted. But where are your proofs? What you have promised is, to show that the proofs were obtainable. What you here do is, to introduce a fictive case, for the purpose of illustrating that which requires no illustration—the duty of a consul under an assumed state of facts, gathered from events subsequent to the time with reference to which his line of duty is under consideration. The proposition just stated is one the truth of which would be as little disputed by Mr. Morland, "the acting consul, a gentleman of undoubted honor and veracity," as by Mr. Everett himself. But come to its practical application—to the steps which it would be practicable for a consul to take with reference to cases of this nature, and to the results with which such steps could be attended. Upon this point we have seen (*supra*, XVI) what would have occurred in the present case, had the step suggested by Mr. Everett been taken. We have seen, also, (*supra*, sec. 3, XII,) the feelings and the opinion, spontaneously expressed, under circumstances peculiarly entitling them to confidence, of this same acting consul—an aged American merchant; a *practical* man, in the highest sense of the term; one whom a long life, most actively devoted to commerce, has rendered perfectly conversant alike with mercantile pursuits and practices, with the legal rights on which they are founded, with the abuses whereof those rights are susceptible, and with all the practical bearings between these and the functions and authority of the consular office.

XIX. We have now to consider the second case presented by this vessel. The remarks in the report appropriate to this head begin with a statement of what was done by the British commissioners, on the occasion of her return to Havana, as the Portuguese ship Duquesa de Braganza:

"On this occasion the British commissioners at the Havana addressed a letter to the American consul, suggesting to him the expediency of taking some steps to ascertain her character; and stating, particularly, that an examination by him of the crew and papers might perhaps throw some light upon the subject."

In this statement, *two* letters from the commissioners are run into *one*. Besides this correction, a just view of the case requires a somewhat fuller exposition of the course pursued by the commissioners than that here given. Referring, for a full view of the subject, to the correspondence itself, and particularly to my final letter, in July of the same year, I will here confine myself to as small a space as possible.

On the 8th of January, 1839, the commissary judge (Mr. Kennedy) being at my office, in company with the friend and banker—his intimacy with whom (*supra*, sec. 1, LXV) affords so striking a proof of his "strong personal feeling"—the report was mentioned by one of them of the return of the *Venus* from Africa with a cargo of slaves, which had been landed on the coast. To some other details on the subject, Mr. ——— added that she was now a Portuguese vessel, under the name of *Duqueza de Braganza*. The mention of this proved evidently annoying, in a high degree, to Mr. Kennedy. He looked—for what reason, I could not divine—excessively disconcerted; and he relieved himself by putting on a buffoon, playful air:

"Oh! oh! oh! that was not to be told;" and, bowing to me, "You are to receive a letter on the subject."

That night this announcement was fulfilled, by the delivery of the following letter:

"HAVANA, July [January] 8, 1839.

"SIR: As it may possibly not have come to your knowledge, we think it right to make you acquainted with the report prevalent in this place respecting the ship "*Venus*," which arrived here the 4th August last from Baltimore, and sailed shortly after for the coast of Africa.

"This vessel, you will no doubt remember, arrived and sailed hence under American colors; under which, it is said, she took in a cargo of negro slaves, and has landed them, within the last few days, on this coast—about 860 in number. The report further states there are several American citizens implicated in this flagrant violation of the laws of the United States; and, as the "*Venus*" may be hourly expected in the harbor, we would respectfully suggest to you that such immediate steps may be taken, on her arrival, as may lead to the punishment of such offenders.

"The peculiar relationship in which the United States are placed with Great Britain, induces us more anxiously to hope you will participate in the feelings with which this communication is made."

On the morning of the 10th, my reply—which, owing to its length, and my other avocations, I had not been able to get copied in time for delivery on the preceding day—was left at the house of Mr. K.'s colleague.

On the same day it gave rise to the following incident—which I now take from a private letter written by me on the 12th, and received by the gentleman in our country, to whom it was addressed, on the 25th of the same month. It affords strong corroboration of the proofs abounding on the face of the whole proceeding, in regard to the spirit, the motives, and the great *object* of the game.

My clerk, having been sent to the counting-house of the leading American merchant of the city, mentioned, on his return, having met with Mr. Kennedy; who, taking my letter out of his pocket, asked if the labor of copying it had not proved tiresome? The penmanship was very good; but as to the rest, he would not say. "If they wont make the treaties, they must be shoved into them." Checking himself, he asked my clerk if he considered himself a British subject; and having received, for reply, that he was a native of Gibraltar, he added: "for it would not do to say so to a *Yankee*."

The letter which, having been thus taken by Mr. Kennedy from his pocket, elicited this spark of "excess of zeal" in regard to the obstinate Yankees, whose Government could not be *bribed*, (as British documents sometimes intimate that those of Spain and Portugal have been,) and must therefore be "*shoved*" into making treaties granting the right of search, the only true cure (see appendix G) for the slave-trade,—that letter closes with the following request:

"If requested to do so, he would doubtless cheerfully comply, as I trust that you will, with the request I now earnestly make of you, to oblige me, at the earliest possible moment, with all the information of any kind regarding persons, occurrences, or things, calculated to be of use to the Government of the United States in regard to the ship *Venus*, or any matter connected with her; and, particularly, the fact of her having taken in a cargo of ne-

groes whilst under the American flag, and the other fact, that there are several American citizens implicated in this violation of our laws, and who those citizens are. One of you, gentlemen, has enjoyed the advantage of pursuing his studies at the Temple; and I need not tell you, therefore, that the great object is to obtain such materials, in the shape of facts, or persons, or indications of either, as may be susceptible of use towards the conviction of every individual implicated. If materials of this kind cannot be furnished by you, I would thankfully receive any specific facts, although unconnected with names of persons, should you not be at liberty to divulge them, which your peculiar opportunities and command of time for the purpose may have brought to your knowledge."

Suppose, now, that the letter responded to by this request had been written by a man who, with or without "excess of zeal," had been sincerely desirous of "the punishment of such offenders," and truly disposed to cooperate towards such a result; could he possibly have desired a better opportunity of bringing into play any thing and every thing that could be made to bear upon the subject? The result proves that no such feeling actuated Mr. Kennedy. I say Mr. Kennedy, because he was the only actor in the business. The other commissioner had nothing to do with it, except so far as to sign his name to the letters, as is required by their instructions. His object was to provide materials for a new Comet despatch (*supra*, sec. 1, LXIV) of dazzling splendor, that might serve, first to satisfy the constantly pressing home demand for proofs of "excess of zeal," and ultimately, perhaps, to help shove the Yankees into treaties.

Accordingly, my request is replied to by "We beg to say we have already communicated as much of the *information*" (look back at his letter) "we possessed, as we felt ourselves at liberty to do."

But, if he was not "at liberty" to impart any further "information," he was perfectly at liberty to give advice; and this, too, in a reproachful manner. He had hoped that I would have deemed the "report" deserving of my "own immediate investigation, either through the Captain General, or by your own authority and the intervention of the commander of the American vessel of war now in the harbor.* Any such investigation on your part, by examination of the log-book and crew, could not have failed to elicit," &c.

XX. These reproachful suggestions having been endorsed by Mr. Everett, they require here to be noticed.

The measure suggested is, "an examination of the log-book and crew;" and this examination was to be accomplished in one of two ways: either by my own authority as American consul, aided by that of an officer of the American navy, or through the Captain General.

What was the vessel in regard to which this was to be done? A Portu-

* The vessel here referred to was the sloop-of-war *Boston*. Her commander was already fully occupied in "intervention" of another sort; which doubtless afforded more than one chuckle between Mr. Kennedy and his friend Ferdinand Clark—as the tool of the confederacy of Clark & Co. He, also, was addressing communications to Consul Trist. His second will be seen to bear date the day after Mr. Kennedy's second. Of the extent of the occupation afforded me by Clark through this one instrument, and the extent to which thereby was fulfilled the object of retarding me in the task of making to Government the communications called for by the attacks pouring in from all quarters, through the press and otherwise, some faint idea is afforded by the contents of the House document already often referred to.

Nor was this the only interruption which my task experienced at that precise juncture. The case of the *Thomas*—the very case which afterwards afforded the occasion embraced by the confederates (*supra*, XVI, note)—had just occurred.

guese ship, moored in the Spanish harbor of Havana! A ship which, whatever might be her real national character, (a point to come under consideration presently,) had been recognised by the authorities of the country as a *bona fide* Portuguese ship; after having been, on her entrance into port, subjected to rigid official scrutiny, (see appendix F,) "most carefully examined, to ascertain if her papers be correct, and her proceedings lawful."

This is the vessel in regard to which Mr. Kennedy—cornered by an unexpected invocation of his assistance towards enabling the American Government to bring to justice any individuals within reach of its authority—affects to believe that the American consul might, by his "own authority and the intervention of the commander" of an American sloop-of-war, enjoying the hospitality of the port, proceed to examine her "log-book and crew!"

But, says Mr. Kennedy, if not "*by your own authority,*" at least "*through the Captain General.*" And this, he affects to believe, could certainly not fail to bring out the whole truth of the matter!

Now, putting out of view for the moment, (as Mr. Kennedy is in the habit of doing at all moments,) the *principle* which opposed itself to any such step on my part—discarding all respect for the independence of the nation from which I held my *exequatur*—suppose that step to have been taken. Suppose that, taking advantage of the overpowering sense of national weakness which is known to bear down the authorities to whom I was accredited; that, availing myself of the fear of giving offence, which deters them from treating every such aggression in the mode in which every such aggression ought to be treated, I had addressed to the Captain General a communication on the subject of this vessel, stating as unquestionable and notorious fact all that report said about her, and requesting that her log-book and crew should be examined, and scrutiny in every other possible way take place.

Suppose this done; what would have been the result? The result, I mean, under the most favorable possible supposition; leaving out of view all the expedients that might have been resorted to (and would have been) in order to make me sensible of the nature of my position, by those legal advisers to whom the Captain General is by law obliged to refer every question presented to him. Suppose no call to have been made upon me, such as that which was made upon the British commissioners on an occasion analogous to this, (appendix I,) and the investigation to have been forthwith ordered.

Does any one suppose that the consul would have been allowed to conduct it? that the log-book and crew would have been subjected to his scrutiny? In what country on the face of the earth would the Government thus place itself at the feet of a foreign consul? If there be any such country, it is not Spain. By her laws, no human being, except those pointed out by the law, can be present at the examination of a witness in a common case of robbery or assault. The Captain General, ample as his power is, could not set this provision aside in a single instance. However strongly disposed, he would not dare do it; and if he were bold enough to have the will, that will would be powerless.

But there is no necessity for considering his impotence in this respect. Mr. Everett tells us that the authorities of Havana are "associates in the concern;" of course there would have been no motive for departing from the mode of proceeding enjoined by law. What, then, would have been

the practical result of this step on my part? Let the reader recur to Mr. Shaler's account (*supra*, V) of the "investigation" in regard to the piracy committed on the ship *Candace*, and then say whether Mr. Kennedy, or any other man who knew any thing of Havana, could believe that such a step on the part of the American consul could be attended with any other consequence than that of placing him on a par with her Britannic Majesty's commissary judge in regard to the possession of a correspondence with the Captain General, giving proof of "excess of zeal." This, as I have already intimated, (*supra*, XVI,) is a possession, in my eyes, infinitely worse than nothing.

No; I am mistaken. There is another consequence with which this step on this occasion would have been attended. Without it, the case seems to have afforded, in imagination at least, the means for "shoving" the Yankee *nation* into treaty-making. With it, the case would have afforded to Mr. Kennedy a further benefit in the shape of the triumphant proof that a Yankee *consul* might, by his wretched trickery, be "shoved" into acting a part in the miserable game of "official cant," which his starving countrymen may yet have their eyes opened to before it shall have fully served his purpose, by enabling him to return, on a fat fortune and pension, to "literary leisure," or to another seat in the House where he has so often been made "sick unto death by the disregard of the people's interests."

XXI. Having made known to the reader "the precise" course pursued on the occasion by the British commissioners, I will recur to Mr. Everett's statement of it, (*supra*, XIX.) Their suggestion is seen to have been, that an examination of her "*log-book* and crew" should take place. Mr. Everett states it to have been, "particularly, that an examination by him of the crew and *papers* might perhaps throw some light upon the subject." This variation was doubtless unpremeditated. But one consequence attending it is, to divest the application subsequently made of this suggestion to the case presented by the vessel, on her arrival from Baltimore, of the obvious absurdity which otherwise it would have carried upon its face. In commenting upon my course with reference to this suggestion, made in regard to the Portuguese vessel, Mr. Everett turns back, as we shall see, to the first case, to remark that if difficulties did exist with respect to the examination of *her* papers and crew, no such difficulties had existed with respect to such examination when the ship was an American vessel. Had he given "the precise" suggestion made by the commissioners, and used the word "*log-book*," instead of "*papers*," the inapplicability of that suggestion to the use made of it by him could not have failed to stare him in the face, and I should have been spared the trouble of answering the question to which it gives rise. Why did I not examine her "*papers*" when she was an American vessel? In this form the interrogatory possesses all the advantage which indefiniteness can impart to it, by conveying the idea that it may involve *something* which requires to be answered. Had it been, why I did not examine the *log-book*? the question would have answered itself. To examine the "*log-book*" of a vessel on her voyage from Baltimore to Havana, with a view to discover her connexion with the slave-trade!

XXII. The suggestion made by the commissioners having been thus stated by him, Mr. Everett continues:

"It does not appear, however, that any steps of this kind were taken."

This is true. For the reasons above given, (*supra*, XIX and XX,) and those which will appear in my reply to the views taken by Mr. Everett,

"no steps of this kind were taken." According to my belief of what was due to the independence and sovereignty of the nation on whose territory I was permitted to reside for the purpose expressed in the *exequatur* which I held from her, I had no right to address her functionaries on the subject. According to what was known at Havana—and to none better than to the commissary judge who made the suggestion—no such step, had it been taken by me—as with perfect impunity it might have been—could be attended with any other result than that above indicated, (*supra*, XX;) and I would not be forced into getting up any such miserable show as it would have amounted to.

But, although no step "of *this* kind" was taken, a step of a different kind was taken: the case was—as the reader of the report may perhaps think he might have been at least incidentally apprized—forthwith reported by me to Government, with such indications as might prove useful in the exercise of its power over the subject.

XXIII. To the fact that no such steps were taken, the report goes on to add in the same sentence:

"Although it is settled law, as has been remarked above, that taking the vessel to a foreign port, and there making sale of her to a foreigner, and commencing a new voyage, does not break the continuity of the original adventure, but leaves the parties engaged in it as fully subject to the penalties imposed by the law, as if the vessel had gone direct from the United States to the coast of Africa."

For what purpose is this interpretation of the act of 1794 (*supra*, sec. 3, II) here reproduced? What purpose can it serve, except to create a vague impression in harmony with all those which we have examined? For what purpose is this "settled law?" For the purpose of being applied by American tribunals, and acted upon by American functionaries, in cases where the vessel or the parties are within reach of the powers vested in them. Was there any obligation on the part of the Spanish functionaries to take part in the execution of that law, or to lend themselves to it in any way? And supposing such obligation to exist: would there have been any hope of action on their part except for the purpose of defeating its object? But no such obligation does exist: unless provided for by express treaty, it would not exist even with reference to a case of the most diabolical murder, presenting no motive for defeating the operation of American law, if the assassin, having got beyond American jurisdiction, had been openly boasting of the deed in the streets of Havana.

XXIV. In the same strain the report goes on: "It was, therefore, still a matter of high importance to ascertain her slave-trading character by sufficient evidence, supposing even that she had changed her national flag. It is quite doubtful, however, whether any bona fide sale had taken place; and, subsequently, whether she were not still liable to forfeiture as American. Certainly she had not had time, since she was recognised by the consul and cleared at the custom-house as American, to go to Bahia, where, it was understood, she was to procure her Portuguese papers."

First, we have here the importance of establishing "her slave-trading character by sufficient evidence." Is this remark really apposite to the subject before us? Was it so considered by the writer himself? If it were, it could only have been so through the belief, on his part, that this "sufficient evidence" might have been obtained by the instrumentality of those local authorities whom elsewhere he calls "associates in the concern." If

this belief really was entertained by him, it must have been at a moment in which he chanced to be prone to extreme credulity. To steel himself against any such weakness, the reader will have but to recur to the testimony of Mr. Shaler, (*supra*, V,) and to turn to that (appendix F) from the captain of the port, transmitted at this very period by the Captain-General to the British commissioners, as his reply to their denunciation of several vessels, of which the very ship now before us was one. The reader will there find enough to satisfy his mind that—except the advantage to the consul, accruing from such a proof of “zeal”—the only possible result of any such step as this for establishing “her slave trading character by *sufficient evidence*” would have been to secure to all persons implicated every advantage which could possibly result to them any where from the most solemn official acts, setting forth that the very reverse had been established, not by “*sufficient evidence*” merely, but in the most conclusive manner.

Next we have the *supposition*,—“supposing even that she had changed her national flag.” This expresses, as part of the result upon Mr. Everett’s mind of the “information” obtained by him at Havana, a doubt whether the vessel in question was not really at the time an American vessel. In this particular place, the idea is modified in some degree by what follows. But it is not the only place in the report where the impression is conveyed. I have already had occasion (*supra*, sec. 2, VIII) to point it out, and to state the truth in regard to it. With the single exception afforded by the commissary judge’s friend Ferdinand Clark, it is *totally destitute of foundation*. If Mr. Everett has discovered a single fact conflicting with this assertion, or a single human being who doubts its strict and absolute accuracy, his visits into the region of mystery, of which his opening chapter affords so vivid a conception, cannot, in this respect at least, be said to have been to no purpose.

XXV. With regard to the matter which here serves to qualify the idea, it amounts to this:—the vessel had cleared at the custom-house to go to Bahia, but she evidently had not had time to go to Bahia; consequently, it was quite doubtful whether any *bona fide* sale had taken place; *ergo*, it was doubtful whether she was not still liable to forfeiture as an American vessel.

This unquestionably would constitute a perfectly pertinent piece of reasoning for the condemnation of the vessel by an American court, had she been in the custody of its marshal; or for her seizure, if within the limits to which the power of seizure vested in officers of the American Government extends. With regard to the American consul at Havana, however, its pertinence is, to my mind at least, any thing but obvious; except, indeed, to the purpose of multiplying those impressions, of which so many have already been under examination. In its application to him, what is “the precise extent” of the meaning which this argument carries with it? Does it mean that he ought to have issued process for the seizure of the vessel thus forfeit, or supposed to be forfeit, to American law, despite her ostensible Portuguese character? Or does it mean that he ought to have presented this argument to the Captain General as the ground of a demand, or of a polite request, that the vessel should be seized?

The views which we shall presently come to in the report go to show that both these meanings were floating in the writer’s mind; that, at least, a sort of idea was present there amongst the rest, that, not having any marshal or posse to employ on the occasion, I ought to have proved that I did

not "give way to apprehensions of personal violence," by going on board and instituting the requisite "examination" in *propria persona*. The latter of the two meanings would, however, seem to be that which existed in the more definite and decided shape.

Let us, then, suppose it to be the one; and suppose the demand or request to have been made on that ground. Suppose, further, that the Captain General, and all the counsellors and judges, waiving all right to judge upon all the points involved in the argument, had recognised its force, and adopted it as the basis of their proceedings. The investigation is ordered; and its sole object is, to ascertain whether the probability shown by the argument to be so strong, be a certainty: in other words, whether a *bona fide* sale has taken place since the vessel left the port. Can any one who has given his attention to the grounds of judgment upon all questions of this nature, afforded by the matter (*supra*, IV to VIII) which Mr. Everett's charge of exaggeration rendered it necessary for me to adduce, doubt for a moment that the result would have been an *oficio* from the Captain General, informing me that, after the most minute investigation, it had been conclusively established that a *bona fide* sale *had* taken place?

Of the points involved in this argument, the main one is, the requisites to the divestiture of the American character of a vessel. What are Mr. Everett's ideas upon this point? Suppose he had been in my place, and had been called upon to state "the precise" requisites to such an event, in order that the crown law officers and the judges at Havana might possess some definite and precise rule to guide them in their investigation of, and judgment upon, the point whether or not the vessel had been duly divested of her American character. What his reply would have been, I cannot say. But I can state, in regard to the correlative point, what the American doctrine and practice are, in our country and all the world over; what they will continue to be, until the bill which passed the Senate at the last session shall become law; what it would have continued to be, no one can say how long, but for the stand taken by me, in the manner to be seen hereafter, against both the doctrine and the practice. They are, that a vessel of any nation may be purchased at any point on the globe, by an American citizen; and that the instant she is so purchased she becomes an American vessel, with right to hoist the American flag, and to navigate under it wherever she can float—just as much entitled to respect and protection as any *registered* vessel, with the same rights and privileges in every respect, except in regard to the one point, that she cannot be employed in our own *coasting*-trade, where she would be under the eye of the authorities of her country. The only requisite to all this is, a *bill of sale*, executed at home or abroad, setting forth that she is transferred to an American citizen, as his property. Such is the American rule upon the point, as the authorities of Havana (had they felt any curiosity to be informed of it) might have ascertained, if not from Mr. Everett, yet from any American ship-master in port. And had they called in to their aid Messrs. Madden and Kennedy's friend, Ferdinand Clark, he would have given them, besides, the benefit of his legal lore, by assuring them that it was an absolute right of every American citizen; and that Consul Trist, by disputing it, was only affecting "to play the Tacon;" for which he should receive his merited reward in the shape of removal from office, and of ruinous actions for damages.

XXVI. After the matter which we have just been examining, there comes a new paragraph, opening with the question:

"Was the consul, then, justifiable in not taking any steps to arrest the criminal career of this vessel, and particularly in not subjecting her crew and papers to examination, agreeably to the suggestion of the British commissioners, which, had it not been suggested by them, must, of course, have occurred to himself, as the first and most natural proceeding?"

This serves as the introduction to remarks upon one or two short extracts from my last letter to the British commissioners, which Mr. E. adduces as an exposition of my view of the subject. Before following him in these remarks, I will call attention to one fact, bearing most pointedly upon this query, in its connexion with the matter just examined:

"Was the consul then justifiable in not taking any steps to arrest the criminal career of this vessel?"

With regard to its bearing upon the consul, this question, if there be any justness in the views above presented, (particularly *supra*, XIX and XX,) substantially amounts to this: Was it not the consul's duty, taking advantage of the feebleness and timidity of the authorities to whom he was accredited, to trample their national independence under foot, in order that he might gain the vantage ground of seeming to take steps having such a result in view; whilst in truth, from what he knew, and what every body else at Havana knew, he would only be securing to himself whatever benefit might accrue from *getting up a show* of "zeal" worthy of the "*Comet*" (*supra*, sec. 1, LXIV) brand?

XXVII. But it has its bearing also upon the report itself, and one of a very different kind. What is the vessel with regard to which this question is propounded? What is "the precise" meaning, so far as it can be gathered from what precedes and follows, of the words "any steps?" What are the grounds on which those steps were to be taken?

Let the reader clear up, as well as he may, the ideas afforded by the report upon these points; upon the last particularly. And having done so, let him see whether the information he possesses on the subject can furnish a satisfactory answer to the question, *why no "steps to arrest the criminal career of this vessel" were taken by Mr. Everett?*

"The precise" point of time with reference to which the question put by him is propounded, is, when the vessel was in the harbor of Havana, recognised by the local authorities as a *bona fide* Portuguese vessel. This was in January, 1839. The ground on which "steps" were to be taken, consists of the provisions of the act of 1794, as interpreted by our courts—the forfeit character of the vessel, at any rate—the strong probability that no *bona fide* sale had taken place, and that consequently she still remained an American vessel. This ground is perdurable; it consists of elements which exist, not for one instant only, but for all time; most certainly the lapse of twelve or fifteen months would not affect their solidity in the slightest degree. If the vessel were to come within our jurisdiction, and were libelled in one of our courts, it would be so decided. Viewed with reference to this ground, therefore, the question applies—as is expressly indicated by the force of the word "*career*"—to the whole period during which that career was running under the consul's eye: that is to say, from January, 1839, to March, 1840, when he left Havana for the United States.

A fortnight after, Mr. Everett arrived there, specially clothed (as would seem from the general tone of the report) with authority to act on the subject, and specially desirous to find an opportunity for its exercise. Well, "the Venus, under her new name," was then there, "lying in the harbor

of Havana," as is seen from the history of the vessel down to the moment when Mr. Everett was at Havana—a history deemed by him (*supra*, XI) a proper preliminary for duly preparing the reader's mind for the consideration of the case presented by her first visit to Havana. To the fact of her being there, the history adds: "she has made several voyages not less successful than the first, and, from her beauty of construction and fast sailing, has always been an object of particular attention." With regard to these "several voyages," besides the first, I am under the impression—inasmuch as I do not recollect to have heard of any other down to the time of my departure—that she must, at the period of Mr. Everett's visit, have just returned on her second voyage. Be this as it may, the particulars just quoted from him constitute part of what his reader's mind has become stored with, to respond to the call for a meaning made by the word "career," on its occurrence in the query under consideration. They constitute part also of the meaning of the same word in the question, Did *the writer of the report* take any "steps to arrest the criminal career of this vessel?" If no such thing happened, let the reader ask himself—why? Let him ponder over all the views here presented in the report; the *grounds* for taking steps, and the *steps* which ought to have been taken; and, having done so, let him ask himself whether, among all those grounds and those steps, and the objects to be accomplished by those steps, there be a single *one*, with respect to which the ship in the harbor of Havana in April, 1840, presented a subject of action materially different from that presented by her in January, 1839? Was it not—*prima facie*, at least—identically the same subject? I was on the point of saying, with the single exception of her *crew*; but, for even this exception, there is no ground. Her crew, in April, 1840, might have been, and probably was, a different one from that of January, 1839; yet this could be ascertained only upon "examination." And, supposing the crew to have been totally changed, this change would not have affected the subject at all. The "settled law" was still the same. It was "still a matter of high importance to ascertain her slave-trading character by sufficient evidence;" and the examination of her new crew would have answered this purpose as well as that of the old. The ascertainment of this point must, indeed, have become the easier, in exact proportion to the number of the "several voyages" made by her in the interim. With regard to the point, "a *bona fide* sale," and to her being provided with genuine Portuguese papers, the same considerations apply with the same force. There, too, was the Captain General, to whom might be stated the fact, "that the vessel had notoriously been engaged in a piratical expedition, (now a number of piratical expeditions;) and that, though she now bore the Portuguese flag, it was doubtful whether she was not still American." In a word, there was, on the face of the subject, at least, no imaginable difference in any one of the particulars to which Mr. Everett's views are pertinent.

XXVIII. Making this question (*supra*, XXVI) his starting point, Mr. Everett proceeds to introduce a passage or two from my letter to the commissioners, as serving to give my view of the subject; that is to say, as being the amount of what has been or can be said by me in reply to the question:

"The commissioners had suggested that an examination might be made, 'through the Captain General, or by the consul's own authority, and the intervention of the American vessel of war then in the harbor.'

"The consul says, in reply, that 'supposing the jurisdiction of the American consul to be absolute in regard to every vessel entering the port of Ha-

vana under the American flag, it must evidently be restricted to them; that *had the Venus returned under the American flag, the course of the consul would have been so plain that perhaps no suggestion from the British commissioners would have been requisite to make him enter upon it.* That she was now under the Portuguese flag, and called the Duquesa de Braganza, was not less generally nor less surely known than that she had got back from Africa; and that he had obtained an official assurance of this change in the name and character of the vessel by inquiry of the captain of the port. Being thus informed, first by common rumor, and then on official authority, that the Venus had assumed the name and character of a Portuguese vessel, the consul seems to have supposed that, in consequence of that fact, all right of intervention or examination, even on his part, had entirely ceased; his authority in this respect being, in his opinion, limited to vessels bearing the American flag. He even intimates that he should have exposed himself to the danger of merited personal violence if he had gone on board a vessel, the character of which was not certainly known to him, for the purpose of ascertaining whether she were or were not American."

The matter here given as a continuous quotation from my letter, as my "reply" in my own words, is, in truth, a sort of summary. The matter produced therein is taken from various places; and even viewed as a mere statement, it is inaccurate. For instance, it represents me as having addressed to the local authorities a direct inquiry in regard to this ship, whereas, in truth, I took no such step; and my letter *most pointedly shows* that I deemed it irreconcilable with my duty towards them. Passing on from this apparent quotation to that portion of the above passage which is the reporter's own, we see that the last sentence does not purport to give my language, but embodies an *avertment* by the reporter in regard to the view expressed by me upon this point of "merited personal violence." How far the impression produced by it accords with the view really expressed by me, it will be for the reader to judge after receiving the following statement, the accuracy of which can be verified by a reference to my letter.

In the course of a demonstration of the utter futility of the suggestion made by the commissioners (*supra*, XX) in regard to "an examination of the log-book and crew," I consider the proceeding, under the various modifications of which it is susceptible, first, on my "own authority;" and secondly, "through the Captain General." With reference to the former, I state that the American consul could not on his own authority advance any pretension to engage in such examination, by going on board a vessel and demanding to see her papers, until he had ascertained the fact that she was an American; that, if he were to do so, he would richly earn a knocking down, "*unless* he ascended her side prepared to make a polite retiring bow on being informed that the vessel was not an American;" and that, consequently, his authority was in no way recognised to demand to see her papers, or to be on board for one purpose or another.

What is this but a simple and obvious application of the truth, "that every man's house is his castle?" a truth which every ship-master all the world over applies to his ship; as well he may, for it is peculiarly applicable to her—applicable in a double sense, as *his* house and as a part of the territory of his nation. In the latter point of view, she is, by the law of nations, so declared to be whilst on the high seas, towards all Powers of the earth; and when in a foreign port, towards all except the authorities of the

country in whose waters she floats. With regard to them does her sanctity, as a part of her country's territory, then become suspended; but it is with regard to them alone.

Suppose the case to have occurred; what would Mr. Everett have had the consul do? Suppose the latter to have gone on board, and after making his errand known, to have been politely told by the Portuguese captain that he did not know him, and politely requested to get back into his boat; would Mr. Everett have had the consul show his exemption from "apprehensions of personal violence" by insisting on being known, and upon the papers being produced to him? Suppose him to have given this proof of his powers; what then? Suppose the captain, being slow to anger and fond of a laugh, to have stood and laughed at the consular dignity, until, the consular patience being exhausted, the farce had ended in a quiet return to the shore; or, suppose the captain to have proved of a different disposition, and the consul to have been hauled over into his boat by a couple of sailors, after a knock-down from the fist of the captain; or say, (for the consul might have been no less athletic than valorous,) after first knocking down captain, and mates, and half the crew, but finally being overpowered by numbers.

In some such farce or tragedy as this must the proceeding inevitably have terminated, had the captain had any motive whatever for standing upon his right. Which of the two, the farce or the tragedy, would in the eyes of Mr. Everett have afforded the more creditable proof of fidelity to consular duty, I cannot pretend say. But there is one thing perfectly clear; by no known rule of law, local or international, would such an occurrence, either at Havana or at New York, afford ground for an action of assault and battery, or for a national demand of redress for the treatment experienced by the consul.

This is the view presented by me, though not so much in detail, to illustrate the flagrant absurdity of the idea of my pretending, by my "own authority," to proceed to "an examination of the log-book and crew" of a vessel lying in the port of Havana under the Portuguese flag. The reader will judge of its justness, and also how far it is truly represented by the impression made upon his mind by the statement in the report. This impression is, if I mistake not, first, that I have expressed the opinion that, by merely "going on board a vessel, the character of which was not certainly known to him," merely for the purpose of inquiry, a consul would incur danger of merited personal violence; and second, that my reason for not taking the step was, "the apprehension of personal violence," which, in a subsequent part of the report, is expressly attributed to me as one of the motives which have exercised "the greatest influence" over my course.

With regard to the latter point, it does not specially call for notice. With regard to the former, it is due to candor that I should call attention to the fact that, although this be the impression which the reader will doubtless feel to have been made upon his mind, yet the meaning of the language whereby it is conveyed is not *necessarily* such as to require such an interpretation. When we come carefully to weigh the words of which the sentence is made up, we find that, by means of the extensive import of the word "ascertaining," the reader might be put to fault for having so understood the averment. "For the purpose of *ascertaining*," may be used to express exactly the same thing as "for the purpose of *inquiring*;" but although a reader may chance to take this to be the meaning, it does not ne-

cessarily follow that this was the writer's intention. "The purpose of *ascertaining*," in the connexion here given to it, may mean not merely the purpose of *asking* whether the vessel be or be not American, but the purpose of *pushing the inquiry*; of authoritatively *demanding* to see the papers; peremptorily *insisting* upon their being produced, and taking every imaginable step for enforcing the demand. All this it *may* mean; and in this all-comprehensive sense of the word, the sentence does, therefore, among the various senses in which it may be understood, embrace the particular sense in which it truly expresses the opinion intimated by the consul in regard to what would have been the merited consequence of his getting up—in regard to any vessel showing a flag different from his own, and recognised by the local authorities as entitled to wear it—any such display of "zeal" as that of going on board to advance the pretention to "*ascertain*" by his "own authority" what documents she carried.

Before taking leave of this impression, I must remark, that not only does the passage in my letter not afford any ground for imputing to me any such opinion as the reader will have conceived to be the one expressed by me, but its tenor absolutely precludes any such supposition. I expressly say, in so many words, that the personal violence would have been merited, *unless* the consul had gone on board prepared to retire so soon as he had got through the farce of taking such a step for the sole purpose of being told on board what was known to the whole city, and was officially on record in the captaincy of the port.

As a part of the commissioners' suggestion (although a part which does not seem to have been deemed worthy of adoption in the report) was, that I should use the "intervention" of the commander of the sloop-of-war Boston, the subject ought not perhaps to be dismissed without alluding to the modification which such a display of "zeal" on my part might have received, by a call upon that officer to put a man-of-war's boat at my disposal for the expedition, or to proceed himself on board to demand an exhibition of her papers; and, in case of refusal, to make a prize of her under the guns of the Cabaña and other forts. A step of the kind had very recently been ventured upon by me, with regard to a vessel which was in consequence taken possession of by the commander of the Ontario; but she had first come under my authority by entering port as an American vessel, and being reported as such at the consulate. But even this measure, I now incline to think, was not reconcileable with the respect to which the sovereignty of every State is entitled in her own ports from national vessels enjoying her hospitality.

XXIX. The report proceeds:

"Without expressing any opinion how far this view of the subject may be correct, and supposing, with the consul, that his right of direct intervention on his own authority is restricted to vessels bearing the American flag, it does not seem to follow of necessity that there was nothing further to be done. By stating to the Captain General that the vessel had notoriously been engaged in a piratical expedition, and that, though she now bore the Portuguese flag, it was doubtful whether she was not still American, he might probably have obtained an order for her detention, and permission to examine her papers and crew."

The thing in this passage which presents the strongest title to attention is, the *fact* that, as the result of "every thing which (he) witnesses or *could*

learn on the spot,* Mr. Everett here explicitly avers his belief that the Captain General would have issued an order for the detention of the ship, and for *subjecting her papers and crew to examination BY ME!*

This certainly is *coming to the point*. An order subjecting her papers and crew to examination by the American consul! And this from the chief of those "local authorities," regarding whom, near the conclusion of the report, we have Mr. E.'s averment that "it is well known that they are associates in the concern!" If a single human being—possessing the least pretension to know aught of Havana, or of any part of the Spanish dominions, or of the Spanish Government in its practical operation on any and every subject, or of Spanish law in the abstract, considered without reference to the character of its functionaries—if any such human being can be found who will solemnly aver his concurrence in the belief here expressed by Mr. Everett, I will forthwith give up, throw my pen into the fire, and admit every impression made by this report to be fairly and justly made, and to accord perfectly with the truth. This I will do, if any such concurrence can be obtained even to the extent of an averment of belief in the *possibility* of that which Mr. Everett here avers his belief in the *probability* of; and this under circumstances wherein every thing that possibly can conspire to impart solemnity to the averment, and to make it impressive and conclusive upon the mind of the reader.

Nay, further:—Let any man of ordinary understanding and fair character, without any prior knowledge whatever of the Spanish people, or of any particular relevant to the point now before us,—let any such man first possess himself of the insight afforded by the case of the *Cundace*, (*supra*, V,) and by the official communication (appendix F) from the Captain General at this very period on this very subject; and having done so, let him say whether he can believe in the *possibility*—even had the laws of Spain presented no obstacle—of such an event as an order from the Captain General subjecting the papers and crew to my scrutiny. Let him say whether, if his life depended on it, he could do aught but firmly believe in its utter impossibility.

Admit the Captain General himself to have had no personal motive whatever for desiring to prevent the truth from becoming officially established; admit his disposition to have been decidedly and strongly the other way. Admit, further, that the laws of Spain had presented no hindrance whatever to such a proceeding, as an exercise of the power vested in her authorities, to the end of subjecting the vessel and persons thus under their jurisdiction and their protection to the scrutiny of a foreign consul, whose *exequatur*—made, by imperative law, the rule by which the Captain General is bound to abide—expressly says that the only function which he shall have any right to exercise consists in settling differences between mariners of his own nation, voluntarily submitted to his umpirage. Admit, that national pride had interposed no obstacle to such a practical acknowledgment that the functionaries and tribunals of the country could not be trusted with the investigation of such a subject; and that a foreign consul had a right to assume this fact as the ground of a request that *he* should be the man to conduct it. Admit all this, and how much nearer are you to the granting of such a request? Why, to all practical intents, about as much nearer as

* Report, sec. 12.—The words are used with reference to the exaggerated character of the "apprehensions of personal violence" to which the consul "seems to have given way." They apply, however, to every averment of belief in regard to Havana contained in the report.

the moon over our heads is nearer than we are to the remotest star that Herschel's telescope discloses.

Upon the supposition that all the above admissions are true, take the first step in the case: and where does it bring us? The Captain General (personally disposed to the subject as I have supposed him to be) refers my request to his legal adviser. This he is bound to do. He cannot help doing it. The President of the United States might just as well think of dispensing with the agency of Congress in regard to the preventing of American ships from carrying cargoes to the coast of Africa.

Well, then; the question is in the hands of the Auditor of War—the officer by whose opinion and advice the Captain General is bound to be governed, and must suit his action to, or send the question to Madrid. We have supposed that neither law nor national pride presented any obstacle: the request in itself is perfectly free from any real objection in a legal point of view. But is there any law of nature that compels the Auditor to think so? or to say so, even, if he does think so? The Auditor is a lawyer. How many legal points are there, on which it is physically impossible for them to express a difference which exists only in the words by means of which it is uttered? Is the Auditor one of the “associates in the concern,” or one who can be brought to give an opinion? Unless he also be proof against such temptation, good-bye then to the prospect of an examination by the consul. However favorable the real law may be to such a proceeding, the Auditor's law will be most clearly against it.

XXX. Does the reader desire an illustration? I will give him one. |

Among the mass of subjects whereby, at the period now under consideration, I was overwhelmed with labor to meet the charges and general denunciations pouring in upon Government, through the press and otherwise, against “the consul at Havana,” one of the most urgent was the case of the brig *Pearl*—the one which in the August of the preceding year had afforded (*supra*, XIV) to Mr. Kennedy's friend, Ferdinand Clark, ground for the exulting report ascribing my illness to terror at the prospect of the consequences to myself personally, which were to result from the decision obtained against the sailor-victims of cowardly rage and brutality on the part of the captain and his mates.

The marks of unbridled ruffianism exhibited by the heads and bodies of these men—one of whom, the noblest tar my eye ever rested upon, died a few days after—were so striking, that I had taken them before the Captain General, (see the detailed report of the case in my despatch No. 149,) in order that he might become, as he did become—though, as the result proved, to very little practical purpose—impressed with the necessity of putting some check upon such atrocities in the harbor of Havana. Having done this, my next step was to address him a letter, asking that if it were possible, I might be permitted to be present at the examination of the witnesses, and to put questions to them; and if this were irreconcilable with the law, then that I might “propose questions, to be put by the proper organ.” I knew what odds the sailors would, at best, have to contend against; and that but for some check of the sort, their chance of justice was absolutely desperate.

My letter having been passed by the Captain General to the Auditor of War for his opinion and advice, was replied to by his excellency in conformity with that which he received, to wit: “It cannot be permitted to the consul to be present at the examination of the witnesses, or any other step

of the proceedings, nor to interrogate the witnesses, nor to propose questions to be put to them; for this function belongs exclusively to the fiscal judge."

Such was the law declared to be—and no doubt truly—in a case that had occurred on board an American ship, between the American master and mates, and the American sailors. And in this same case (though it had really awakened his sympathy) he found himself under the necessity, a short time afterwards, of signing a sentence against these men, or of involving himself in a controversy with the bench and bar, so absolutely hopeless as to render the very idea of engaging in it preposterous to the last degree: a sentence which cannot have been the result of any pecuniary consideration, deserving attention from any of the higher members of the faculty; for, of the \$1,000 claimed of Government by the Boston owner of the vessel, as an indemnity for the actual loss sustained from the act of the consul, (who was beyond reach of a suit in our courts,) \$700 are claimed as "demurrage;" that is to say, loss caused by the detention of the vessel, in consequence of the proceedings at Havana; and the remaining \$300 only as having been paid "for counsel."

XXXI. The belief of Mr. Everett in regard to what would have been its result being disposed of, the proceeding suggested by him itself next claims our attention. This has already (*supra*, XX) been bestowed upon it as a suggestion of the British commissioners, with whom it originated. Our labor upon it, in the modified shape wherein it here presents itself, will be so much the shorter.

The course on my part, which, according to Mr. E.'s belief, would have been crowned with the substantial result of subjecting the papers and crew to my direct scrutiny, consists (*supra*, XXIX) simply in a statement to the Captain General of the two matters of fact—1st, "that the vessel had notoriously been engaged in a piratical expedition;" 2d, "that, though she now bore the Portuguese flag, it was doubtful whether she was not still American."

Here again (in the latter of these two facts) is the reader of the report presented with fresh matter to revive and corroborate the early-made impression (*supra*, sec. 1, XLIII, XLIV) that *American* vessels have been employed in bringing slaves to Cuba. Upon this point, referring to all I have already had occasion to say, (see, particularly, sec. 2, VIII,) I will only add, that, if any such averment as this had been made by me to the Captain General, and he had replied by requesting me to name a single individual in Havana, besides myself, who believed that the vessel "was still American," or who did not positively believe the direct reverse, I should have been sadly at a loss where to look for one. And had he asked me as a favor to state to him, confidentially and candidly, my own private conviction on the point, my only alternative to the utterance of a deliberate untruth would have been silence, or an avowal that my averment had been made only in a *diplomatic* way.

Had the Captain General (omitting all inquiry into the sincerity of my doubt, or for the *evidence* which I could adduce in its support, or into my right to call upon him in such a way, without being provided with any evidence) seen fit to dispel it at once, the means of doing so were, we have seen, (appendix F.) ready at hand. Nothing further was requisite than to embody in an official letter the fact that all vessels are, on their entrance into the harbor, "most carefully examined, to ascertain if their papers be correct, and their proceedings lawful;" and that this had occurred with respect to the vessel referred to by me."

In regard to the first of the two facts—the fact “that the vessel had notoriously been engaged in a piratical expedition”—suppose the averment to have been made by me, and to have been received in the most friendly spirit; what would have been the result? Supposing all the grave considerations presented by such a proceeding on the part of a foreign consul to have been overlooked, and the legal adviser to have been disposed to go directly to the point; what opinion and advice could it possibly have occurred to him to give, other than “the consul is to be requested to make known to your excellency the names of his informants, to the end that the proper proceedings may be forthwith instituted for investigating the subject in the strict and thorough manner due to its importance?”

Where is the man in Havana, or out of it, except the writer of the report, who believes that the Auditor’s “*consulta*,” or “*dictamen*,”—had it at once come to the point—would have been of any other tenor than this? If such a man be found, let him read the case of the Boston ship *Candace*, (*supra*, V.) and the matter contained in appendix F. If he require further light, give him the parliamentary papers on the slave-trade. Among numberless other things to the point, he will find there the reply of the Captain General (Tacon) to the British commissioners, on the subject of the denunciation of the carrying of slaves from Cuba to Texas. He will see that it accords perfectly with the instructions given with reference to analogous occasions by Lord Palmerston, her Britannic Majesty’s principal Secretary of State for Foreign Affairs.

When, two or three years back, the Secretary of State at the Hague, in his reply to a communication from the British minister, alluded to the slave-trade from Africa to the Mauritius, and stated (I speak from memory) that, since that island has become a British possession, her slave population had augmented immensely, what did Lord Palmerston do? He instructed the minister to request to be furnished with proofs that any slave had been introduced into the island. And this, in regard to a country where, as the recent publication of Mr. Buxton proves, the trade had been carried on “as plain as the sun at noon day!” Just so did General Tacon, as advised by his legal adviser. He asked for proofs—for at least some indication of them—which might be made a basis of official action.

More recently still, what did Lord Palmerston do with reference to a statement by the American consul at Havana, that British fabrics for the slave trade—shackles among the rest—were shipped from England to Havana? Why, he instructed the British commissioners to say to the consul, that her Britannic Majesty’s Government would feel most sincerely obliged to him for any information which might tend, “directly or indirectly, to enable” it to accomplish the conviction of “British subjects who may be concerned in promoting the slave-trade, BY FURNISHING BRITISH FABRICS!” And this instruction was written just after the appearance of Mr. Buxton’s work from the London press, giving the statistics of British slave-trade manufactures; among which is the fact, that in the county of Lancashire alone, goods “adapted *only* to the slave-trade” are annually manufactured to the value of *a million and a quarter of dollars*; and stating, with regard to the whole, “It is superfluous to quote authority for the facts just enumerated, as they are *notorious* to commercial men!”

XXXII. Such would have been the Auditor’s substitute for the result *believed* in by Mr. Everett. There is another aspect in which the remarks made by him on a subsequent occasion, (report, sec. 12,) in a far-off place

from the present—as the inconsistency which I shall point out between their respective contents serves to indicate—require that the course of proceeding here suggested by him be considered.

In a communication made by me to the department in May, 1838, speaking of the very step here suggested by Mr. Everett—the step of officially stating to the Captain General that a vessel in the harbor was known to have been engaged in bringing slaves to the island—I state that it could not have been viewed by him in any other light than that of a “wanton insult.” This is used by Mr. Everett as a text for the following discourse :

“It is well known that the local authorities of the island connive at the contraband trade in slaves, and are paid for so doing by the parties ; in other words, that they are associates in the concern. But, is the American consul to be deterred from doing his duty, because an honest performance of it may not be agreeable to the local authorities ? If the objection be valid in one case, it is of course valid in all, and the consul loses entirely the power of enforcing the laws in this particular. The regular duty of consular and diplomatic agents is to make representations to the local authorities, which must often, from the nature of the case, be very disagreeable ; and the precise reason why these agents are invested by the usage of nations with important privileges and exemptions is, that they may do their duty in this respect with entire freedom.”

The first task which this imposes upon me is to substantiate my averment, that such a step would have been a “wanton insult.” Is it an insult, be it merited or not, to address to the supreme magistrate of a country a communication alleging as matter of notorious fact a flagrant infraction of her municipal laws—laws, the strictest enforcement of which is specially enjoined upon him and all the subordinate authorities, whilst, on their part, the most faithful devotion to the injunction is professed ? Suppose a communication of this nature to have been addressed to the Captain General of Cuba by the Prime Minister at Madrid, in the name of his royal master ; would it not, even then, have been an insult ? Suppose a letter of this character to be, by command of the President, addressed by the Secretary of War to Major-General A., commanding on the Canada frontier ; or by the Secretary of the Navy to Commodore B., commanding in the Pacific ; would it, or would it not, be an insult ? And suppose that, instead of being from his royal master, such a communication had come to the Captain General from a consul—a foreign agent whose *exequatur*, permitting him, through the good will and pleasure of the sovereign,* to reside in the country, jealously defines the purposes for which alone that permission is granted ! And now for the qualification “wanton.” What is the meaning of this word when applied to an insult ? It may be used in various senses : one is, that the insult is given without just cause ; another, that it is given without any expectation of its leading to any useful result. This, the general meaning of the word when applied to any act, is the sense in which it was used by me on the occasion referred to, as is proved beyond the possibility of a doubt, even through inadvertence, by the context ; for it reads, “a wanton insult, by which I could not possibly have expected to effect any end whatever.” Is this fact, or is it not ? Is it true, or is it not true, that, by taking such a step, I could not possibly have expected to effect any end whatever ? Un-

* This is a point in regard to which the erroneous impressions conveyed by the report will come under consideration presently.

less, indeed, it were the end of securing to myself (*supra*, XX) whatever personal advantage might result from the step as a proof of "zeal." Does the reader believe that any other result than this could by any possibility have attended it? And supposing him to be not yet conclusively satisfied upon this point; is he not so, at least, in regard to the reality of my belief on it,—the reality of that belief which constitutes the only requisite to stamp such a step on the part of any one entertaining it an act of "wanton insult?" Proceeding from *me*, would it not have been wanton, and cowardly, and despicable to the last degree? In a word, would it not have been *CANT*? Would it have been any thing but sheer "official cant," indulged in, so far as the subject had bearings upon the duty of my country to the nation by whom I was recognised, at the expense of all that is due to good faith; and, so far as it regarded my duty as an officer or as a man, either to my own country or to the one where I resided, at the expense of all that is due to sincerity or to manliness in any of the elements in which manliness consists?

XXXIII. In regard to the homily (*supra*, XXXIII) which this opinion of mine has elicited from Mr. Everett, to demonstrate so recondite a truth as that an American consul ought not "to be deterred from doing his duty, because an honest performance of it may not be agreeable to the local authorities," I reply to it by saying that it has no manner of application to me. I have never, in any instance, been influenced, either in my acts or in my views of what my acts should be, by what might or might not "be agreeable to the local authorities." This has been proved on occasions without number, great and small. My course would have been far more agreeable to the local authorities, had I not troubled myself or them with measures to reform the state of things which I found prevalent there in regard to sailors, as it had been from the time when the port was first opened to foreign commerce. They did not at all like the trouble occasioned by my incessant communications to the Captain General, and by such cases as those of the brig *Kremlin* and brig *Pearl*. Still less did they relish the proceedings in regard to the brig *Thomas*. Never, since foreign consuls were first admitted at Havana, had the authorities, from the Captain General down—and not the authorities alone, but large masses of people besides—been so astounded and exasperated by any occurrence as they were by it.

All this goes to prove positively, that the "agreeable to the local authorities" was *not* the rule by which my acts were squared; consequently, if, on the occasion referred to, or on any other, I neither took spontaneously, nor would be "shoved" into taking, a step deemed by me—and, I may flatter myself, now deemed by the reader also—an act of "wanton insult," the motive which deterred me cannot possibly have been the fear of doing what might prove "very disagreeable." Even although I had never penetrated into the region of "approximative estimates" sufficiently far to have become aware that, as a rule of duty, "an American consul is not to be deterred from doing his duty, because an honest performance of it may not be agreeable to the local authorities," still would my course at Havana, as known to all Havana, conclusively prove that instinct had befriended me to such a degree that the profound moral precept here announced, had a mentor been ever at my side to inculcate it, and to point out how it was to be applied, could have done no better. But the truth of the matter is, that there was no occasion, with respect to this particular subject, for even instinct to fulfil the office of nerving the American consul against fear of the authorities. All the fear—and a melancholy truth it is—was on their side. It is their habit to fear.

They are constantly oppressed, as I have before remarked, with an overpowering sense of national weakness; and this has become a part of their nature, which shows itself on all occasions. Can any man—any American man, at least—read the treaty under which “the mixed commission” is organized, (*supra*, sec. 1, LIX and LX,) and wherein its functions are defined, and then read the communications which the British members of the commission make a practice of addressing to the Captain General, in order to provide materials for parliamentary-paper proofs of their vigilance and “excess of zeal,”—can any American citizen peruse those documents, and fail to be astounded that any Government claiming to be the sovereign organ of one of the nations of the earth, should for one instant put up with any thing of the sort? Can he fail to wonder how a Captain General, in whom centres, for that part of the globe, all the attributes of a nation's sovereignty and sovereignty, should permit such indignities to be offered to both by men residing on her territory by no other title than that which the treaty gives, and for no other purpose than that which it stipulates and defines? Can he require any further proof to satisfy his mind that the only rule of the “local authorities” at Havana, and of the Government at home, is, to pocket every thing, and quarrel with nobody?

This is but too true; and the American consul might, with perfect impunity, have ventured upon the act of “wanton insult” just as often as he wished to get up materials for a despatch of “Comet” zeal. He ought, for so doing, to have been instantly ordered out of the country, as any consul would be out of any country whose Government was not governed by the most timorous desire to avoid contention. But there was no danger of any such step. The Captain General and other authorities could, it is true, not have failed to see the proceeding in its true light; and, in the recesses of their bosoms, to resent it against our country as a mean abuse of her power, to insult them with impunity. And this feeling, secretly influencing them, might have found opportunities of indulgence, bearing upon her interests and those of her citizens. But, of any overt demonstration of it towards the consul, there would have been no danger. To shun contention would have been the only rule; and the *power* and the *right* undeniably possessed, as will presently be seen, by the Captain General, to treat the indignity as it deserved, would have remained as inert as the books in which they are written. With regard to himself, personally, the consul could have nothing to apprehend from taking such a step. All the gain from it, as a piece of cant and imposture, would have been so much clear gain. It would not have been attended with any practical effect of any sort to awaken animosity; and, with respect to the indignity conveyed by it, he would have been looked upon as a mere instrument—one who had no option but to do as he was bid; play second fiddle to the commissary judge, in order that the good folks at home might have no cause for complaint. If no rocks should be put in motion by the strain, at least would it serve one practical purpose—all would be satisfied that there, was no lack of “excess of zeal.”—(*Supra*, sec. 1, LXIV.)

XXXIV. Although I do not admit the appositeness of Mr. Everett's homily to my official course, there is one particular, in regard to which I am far from disputing its utility. Of the many proofs, in which the report abounds, of the spirit in which it is written, few can dispute the palm with that afforded by the means here used to impart “information” to the reader, to convey to him a just conception of the consular office; “the important

privileges and exemptions" attached to it; "the precise reason why" they are attached to it; and the consequent imperativeness of the obligation on a consul to fulfil the object of these high attributes, by a fearless discharge of his duty.

To spare the reader the trouble of looking back for the passage, I will here (after again averring and challenging investigation into the subject, that my course at Havana has, as is known to the whole city, established for me there a character the very reverse of that of poltroon, either in regard to the Captain General, or otherwise) copy it again:

"But is the American consul to be deterred from doing his duty, because an honest performance of it may not be agreeable to the local authorities? If the objection be valid in one case, it is of course valid in all, and the consul loses entirely the power of enforcing the laws in this particular. The regular duty of consular and diplomatic agents is to make representations to the local authorities, which must often, from the nature of the case, be very disagreeable; and the precise reason why these agents are invested, by the usage of nations, with important privileges and exemptions is, that they may do their duty in this respect with entire freedom."

I pray the reader to study this well. When he shall be perfectly satisfied that he is thoroughly imbued with the information conveyed by it in regard to the functions and attributes of the consular office, let him confirm his confidence in the accuracy of this information, by adding to it the fact that his informant did not begin his studies of the law of nations, as may perchance have happened in regard to the act of 1794, (*supra*, sec. 3, II.) and other parts of our law municipal, after his return from Havana; but, that he is a skilled diplomat—one who has for years represented the country at foreign courts, and among them that of Madrid; which serves to account for the intimate knowledge of Spanish character, individually and officially considered, that has enabled him to secure the cause of truth against the exaggerations (*supra*, I to III) of which I have been guilty.

To what do the words "these agents," as they occur towards the close of the above passage, refer? To "consular and diplomatic agents." They refer to both kinds of agents; to the consular as well as to the diplomatic, and to both in the same degree. What, then, are those "important privileges and exemptions" wherewith "these agents are invested;" and the fact of their being invested with which is adduced to prove the general proposition that an American consul is bound not to be afraid of the local authorities; and, at the same time, to show how wrong it was in our consul at Havana "to give way" to fear of the Captain General?

Here is the latest book on the subject: "Elements of International Law, by Henry Wheaton." What does it say upon this point? First, it tells us about

Diplomatic agents. "From the moment the public minister enters the territory of the State to which he is sent, during the time of his residence, and until he leaves the country, he is entitled to an *entire exemption* from the local jurisdiction, both civil and criminal. Representing the rights, interests, and dignity of the sovereign or state by whom he is delegated, his person is *sacred and inviolable*. To give a more lively idea of this complete exemption from the local jurisdiction, the fiction of *extra-territoriality* has been invented, by which the minister, though actually in a foreign country, is supposed still to remain within the territory of his own sovereign. He continues still subject to the laws of his own country, which govern his

personal *status* and rights of property, whether derived from contract, inheritance, or testament. His children born abroad are considered as natives. This exemption from the local laws and jurisdiction, is founded upon mutual utility growing out of the necessity that *public ministers* should be entirely independent of the local authority, in order to fulfil the duties of their mission. The act of sending the minister, on the one hand, and of receiving him, on the other, amounts to a tacit compact between the two States, that he shall be subject only to the authority of his own nation,"—(p. 176.)

Certainly, nothing further could be desired by the veriest hare that ever lived in the shape of a man; and all this, of course, holds equally good with regard to "consular agents." Let us see. To make assurance doubly sure, as we have the book in hand, let us look, to ascertain whether there may not possibly be some slight difference between the two classes of agents. Here we have it. Five pages more bring us to

Consular agents. "Consuls are not *public ministers*. Whatever protection they may be entitled to in the discharge of their official duties, and whatever special privileges may be conferred upon them by the *local laws* and usages, or by international *compact*, they are not entitled by the general law of nations to the peculiar immunities of ambassadors. No State is bound to permit the residence of foreign consuls, unless it has stipulated by convention to receive them. They are to be *approved* and *admitted* by the local sovereign; and, if guilty of illegal or improper conduct, are liable to have the *exequatur* which is granted them withdrawn, and may be *punished* by the laws of the State where they reside, or *sent back* to their own country, *at the discretion* of the Government which they have *offended*. In civil and criminal cases, they are subject to the local law in the same manner with *other* foreign residents *owing* a temporary *allegiance* to the State,"—(p. 181.)

XXXV. The reader now possesses grounds for a judgment of his own, as a substitute for the "information" conveyed by the report, respecting the identity between "consular and diplomatic agents," in regard to "important privileges and exemptions," and to all consequences which may be logically and equitably deduced therefrom.

As the subject has been introduced by the reporter, it may not be amiss to inquire into it a little further.

It is seen that the privileges of consuls depend jointly upon the "*local laws* and usages," and "*international compact*." The same thing is strictly true with regard to those "official duties," in the discharge of which they are entitled to "protection." The official duties of a consul, so far as these may involve any overt act on his part, particularly any such act bearing in any way upon the local authorities, consist simply in the functions, for the exercise of which he has been "admitted." Those functions, as defined by the local laws and usages, or by the international compact between his own country and that which admits him, constitute his official being.

What then are the functions of the American consul at Havana—the functions which he may rightfully discharge, without affording just ground for the exercise by the Captain General, or any other organ of the Government of Spain, whom she may see fit to clothe with authority for the purpose, of the right vested in it to use its "*discretion*," in the mode indicated by our text-book on international law?

I have not time here to go into an examination of the "*local laws and usages*" of Spain. But I can state that, of all the nations of Christendom

she is the one who has evinced the most constant and active jealousy of consular encroachment; and that the *exequatur* which the American consul holds from her, as the rule of his conduct, and as the rule which is imperative upon her functionaries in their intercourse with him, limits his functions to that of settling differences, voluntarily submitted to his arbitration, between mariners of his nation. Such is the character of the document by virtue of which alone he is recognised, by the Captain General and subordinate local authorities, as a foreign agent, permitted by their sovereign to reside among them. But, putting the *exequatur* entirely out of view, and with it the imperativeness of its limitations upon the functionaries of the sovereign from whom it issues, and giving to the principle whereby the American Government has by treaty a right to have the extent of the privileges of its consul determined—I mean “the most favored nation” principle—its fullest operation—it will still be manifest that those privileges constitute the rule by which it is his duty to abide; the rule by which it is the duty of his country—or “good faith” are words without meaning—to compel him to abide: even though he had the disposition to trample it under foot, and knew the fear of her displeasure to be sufficient to make the local authorities submit to the indignity as often as it might be his good pleasure to offer it, whether for the purpose of gaining credit by empty shows of “zeal,” (*supra*, XX,) or for any other. This is the rule which, if “good faith” be aught but empty words, is binding upon the American consul, the American Government, the American people. And whatever might be the result of an inquiry into “the precise extent” of those privileges, no inquiry of the sort can be requisite to satisfy any mind upon one point:—that, neither by any treaty stipulations that Spain can have entered into, nor by her local laws and usages, can those privileges possibly be such as to subject the Captain General of her most important possession to acts of “wanton insult,” such as I have proved (*supra*, XXXII) that this would have been; as I have proved that it would have been in the basest degree, wherein an insult can be wanton from the rankest compound of cowardice and hypocrisy in him who offers it—cowardly ill faith towards the nation from whom I held my *exequatur*, blended with deceit and imposture towards my own country.

But without any such trouble as would attend an inquiry into the laws and usages of Spain, we can obtain a tolerably precise insight into the subject by a dip into our own law. Here is “*Peters’s Digest of the Decisions of our Supreme and Circuit Courts*,” some of which have turned upon the attributes of the consular office. Under the head “*consuls*,” we find, among other points settled by the Supreme Court, the following:

“To watch over the rights and interests of their subjects, wherever the pursuits of commerce may draw them, or the vicissitudes of human affairs may force them, are the great objects for which consuls are deputed by their sovereigns.”

“It is not competent for a neutral consul, without the special authority of his Government, to interpose a claim on account of the violation of the territorial jurisdiction of his country.”

“A consul, though a public agent, is supposed to be clothed with authority only for *commercial* purposes. He has an undoubted right to interpose claims for the restitution of property belonging to the subjects of his own native country: but he is *not* entitled to be considered as a *minister* or *diplomatic agent* of his sovereign, intrusted, by virtue of his office, with authority to represent him in his negotiations with foreign States, or to vindicate his prerogatives.”

It so happens, too, that the case in which these points were settled arose out of a pretension advanced by a consul of Spain; who, of course, is, like the American consul at Havana, on the footing of those of "the most favored nation."

In the year 1815, a British vessel was brought into New York, by an American privateer. She had been captured, as was alleged, within the jurisdiction of Spain, whilst lying in her waters in the West Indies; a fact involving both an infraction of her municipal law, (which would have been taken cognizance of, and punished by the local authorities, had the offenders come within their reach,) and a flagrant violation of her sovereignty, which entitled her Government to demand of ours restitution of the property, and the punishment of those concerned.

A claim for the restitution of the vessel was put in by the Spanish consul at New York, before our admiralty court there. It happened, too, that the only representatives which Spain had in our country at the time were her consuls. This fact was urged by the counsel for the consul before the Supreme Court: "As to the authority by which the claim was interposed, the Spanish consul's was sufficient for that purpose; especially under the peculiar circumstances of the times, when, on account of the unsettled state of the Government of Spain, no minister from that country was received by our Government, but former consuls were continued in the exercise of their functions by its permission."

Notwithstanding this strong circumstance in favor of the validity of his interposition at such a juncture, if not on ordinary occasions, the points above quoted were given as the law. After saying that, if the consul had been specially authorized by his Government, his interposition would have been valid, the Supreme Court adds:

"We consider this claim as asserted by an *incompetent* person, and on *this ground* it ought to be dismissed."

XXXVI. Thus much, then, in regard to the high faculties, immunities, and other attributes of a consul, considered with reference to the authorities of the country to which he is accredited. He has not so much as the right to present before its tribunals a claim for the restitution of a vessel forcibly seized within the territorial limits of his country; and his incompetency to present such claim is a sufficient answer to it, precluding all inquiry into the truth of his allegation.

But there is another aspect under which the subject of consular faculties presents itself. They are to be considered also with reference to the enforcement of the laws of the country whose agent the consul is. Under this aspect also does the book before us afford matter that is apposite. Some of the decisions have turned upon questions respecting the agency of American consuls in regard to the provisions of American law. With respect to this view of the subject, the reader of the report, who should chance to possess no other information than the vague impressions afforded by its perusal, could not fail to be possessed of the belief that the nature of the consular office corresponds with the attributes ascribed to it, under the *diplomatic* aspect, (*supra*, XXXIV,) which we have just been contemplating. He would take for granted that its authority is absolute, and its powers plenary; that, with regard to this one class of functionaries, if to no other, the rule of American liberty has been totally extinguished; that, before a consul no American citizen can stand up, and say, "you possess no control over me, no right to interfere with my free-will on any subject, unless authority so to do has been vested in you by express law."

Of the correctness of this impression, an idea is afforded by the following points which are found among others in the book :

"*Query.* If a consul's certificate is evidence that a ship's register was deposited with him, according to the act of Congress of 1803."

"An information was brought to recover the penalty for not depositing with the consul the ship's register, on her arrival at the port of St. Thomas, agreeably to the act of Congress of 1803. *Held,* that the certificate of the consul was not *admissible* evidence to prove the *arrival* or *departure* of the vessel."

The case in which the latter point was settled, and the doubt expressed in regard to the former was started, occurred so recently as 1836, several years after the publication of the last consular instructions.

By the act of 1803, it is made imperative upon the master of every American vessel, on her arrival at a foreign port, to deposite her register and other papers with the consul ; and for failing so to do, he is subjected to the fine of \$500.

Suppose, now, an American vessel to arrive at a foreign port, and that the master sees fit not to present himself at the consulate. What course is the consul to take ? Is he to cause the master to be arrested by the local authorities, and compelled to produce his papers ? Or is he to call upon them to detain the vessel until this shall be done ? Let us open the consular instructions, (framed, it is to be observed, by one of the profoundest jurists and most experienced practitioners of the age :)

"It will be the duty of the consul, immediately on the arrival of an American vessel, should the master neglect to deliver his ship's papers, as is directed by the law, to apprize him of the necessity of so doing by showing him the law which requires it, and of the penalty he will incur by refusal or neglect."

Suppose the master to treat this notification with contempt : What next ?

"The consul shall send to this department a certificate of the fact, under the consular seal, with a proper description of the vessel, designating the port to which she belongs, and the place of abode of the master ; to the end that suit may be instituted for the recovery of the penalty."

The case before us shows that this happened at the port of St. Thomas, in the West Indies. The ship *Redwing* went there, and the master saw fit not to deposite his papers. He was sued for it in the district court at Boston. The consul's certificate was produced. The court decided that it "was not *admissible* to prove the arrival and departure of the ship from the port of St. Thomas." The defendant, in consequence, got a verdict and judgment in his favor. The case was carried up to the circuit court, where the judgment was affirmed. Judge *Story*, in giving the decision, remarked : "My late brother, Mr. Justice *Washington*, (a truly able and cautious judge,) admitted a consul's certificate to be evidence that the ship's register was deposited with him ; but he rejected it as to all other facts. I do not now meddle with this point, because it is not necessary to the decision of the case before the court. * * * * But where the certificate is merely negative of the non-deposite of the register, it would seem to establish only its own verity. It would afford no *presumption* of the arrival and departure of the vessel ; for it would be quite consistent with the fact, that the vessel never had arrived at the port. Indeed, the presumption from such non-deposite would be, that the vessel had never arrived at the port ; for the law will not presume a violation of his duty by the master."

Such is a specimen of the authority vested in American consuls to enforce compliance with the requirements of the law, when of the plainest, most positive, and most specific kind ; and such the result of the steps taken by them, in compliance with their "instructions" (in the few instances wherein these are precise) how to proceed, when those requirements are disregarded ! In this case, no human being entertained a doubt but that the law had been contravened. But the district court held that the consul's certificate could not be so much as admitted in evidence of that fact ; and the circuit court held that, if it had been admissible, it would go to prove that the vessel never had been to the port, her visit to which, in defiance of the law, had been the sole cause of the transmission of the certificate, and of the institution of the proceedings.

This can occasion no surprise to any one who knows what *law* means in a free country. But suppose the consul at Havana to have been clothed, in regard to the provisions of any enactment, with authority and power at all approaching to that vested in the courts for the purpose of securing fulfilment to the requirements of the law ; and suppose that a single case could have been adduced wherein his course could be shown to have afforded the plausible ground for imputation that would have been furnished by the fact of his having been influenced by any such refined considerations pertaining to the respect due to those general principles of law, which, as they constitute the sole security of the citizen against the arbitrary exercise of power, constitute an object which every free Government holds paramount to the fulfilment of the intention of the law in its application to any individual case, or even upon any particular subject in any number of cases !—suppose that a single instance could have been adduced by the reporter, showing a flagrant infraction of a precise, positive requirement of the law, such as occurred in this case ; and such an escape from its penalty, owing to views entertained by the consul with regard to the principles by which it was imperative upon him to be governed in the exercise of any power that might have been attached to his office !

A year or two before this case occurred at Boston, a similar case occurred in the Maine district. And there the defendant escaped the penalty, on the ground that though the words of the law are—"it shall be the duty of every master, on his arrival at a foreign port, to deposite his register," yet this does not mean that he shall do so "on his arrival at" such port, but only in case he makes up his mind to enter his vessel at the custom-house, to land or to take in cargo. If he goes into port merely to lie there, and, after doing so for a while, sails again, without having produced his papers to the consul, no contravention of the law has taken place. Agreeably to this decision, therefore, even supposing the consul to be clothed with authority and with the requisite power to take steps for enforcing compliance with the requirement of the law, it would be his duty to suspend the exercise of his power until the fact of the ship's being entered at the custom-house were known to him. If the first step prescribed in the exercise of his power were a call upon the master, such as is now directed by the "instructions," it would be sufficient for the master to say that he had not yet made up his mind whether he should, or should not, leave port as he came ; or that, having come in merely for supplies, or to wait for orders, he should sail so soon as he received them.

Suppose, now, that the ship *Redwing*, instead of being really an American vessel, had been one not entitled to wear the American flag ; that, after

lying one day, or one week, or longer, in the port of St. Thomas, she had sailed; and, upon being searched at sea by some American cruiser, had proved to be a pirate, or a Spanish vessel engaged in the slave-trade, without a single American document on board. Under the existing state of the subject, as determined by the law and the consular instructions, would such an occurrence as this constitute any ground for imputation upon the consul at St. Thomas? It surely would, in the eyes of the ignorant and the unreflecting. But would it in the eyes of any well-informed and just man? Nothing of the sort has ever occurred at Havana. No vessel has ever arrived at that port under the American flag, and sailed again without having first proved by her documents that she was entitled to wear it. (Of arrivals, indeed, there have, as will hereafter be seen, been some which gave rise to difficulties; but the vessels, though provided with documents *which would have been deemed good any where else*, did not get away under our flag.) But suppose that such cases had occurred; that vessels wearing our flag had, in various instances, come into the port of Havana under the pretext of wanting supplies, or of inquiring into the state of the market, or of waiting for orders, and that the masters had seen fit not to produce their papers; and that it had been subsequently ascertained that they were foreign vessels, which, for one purpose or another, had assumed the disguise. Let the reader make this supposition, and exercise his own candid judgment upon it, and he will form an idea respecting the responsibilities attaching to a consul from infractions and evasions of the law by those with whom his duties lie, which will better harmonize with justice than the impressions conveyed by the report.

XXXVII. After stating (*supra*, XXIX) what ought to have been the consul's course of proceeding, and what is his own belief in regard to the result which would have attended it, Mr. Everett proceeds:

"The consul *appears to suppose* that such an application to the Captain General would have been attended with great difficulties; and, particularly, that it would have been necessary, as a preliminary point, to establish by sufficient legal evidence the identity of the *Duqueza de Braganza* with the *Venus*; which, he thinks, could not have been done. In regard to this point, it seems to me that the consul exaggerates the difficulties of the case. I cannot conceive that it would have been at all embarrassing to have been called on for evidence, sufficient to warrant examination, that these two vessels were one and the same."

This, also, has reference to a passage in my letter to the British commissioners, wherein, to convey an idea of the extreme grossness of the absurdity—and, consequently, of the disingenuousness—of their pretended suggestion, I state that, had the subject been taken in hand by the authorities, and had it been an *object of any interest to the parties implicated* to prevent the *juridical establishment* of the identity of the ship then in port with the ship which had sailed some months before, they would not have failed to prevent it. *This* is what "the consul appears to suppose." He firmly believed it then, and firmly believes it now, to be unexaggerated truth. He believes that no candid man acquainted with Havana would hesitate to aver a similar belief; and that the reader himself—though he may possess no other knowledge bearing upon the point than that afforded by the facts which have been under contemplation—cannot refuse it his concurrence. He will decide for himself whether the reporter's inability to "conceive that it would have been at all embarrassing to have been called

on for evidence" be or be not worthy of its association with his facility of belief (*supra*, XXIX) on another point.

"Evidence sufficient to warrant *examination!*" By whom? To what effect? Let the ship *Candace* and Mr. Shaler answer. Was it "at all embarrassing" to him to be called on for evidence? Read the case again. Read appendix F again. Read any thing and every thing that has ever been written, serving to convey an idea of the truth. Let this be done; and then let the reader say whether, by comments such as these upon the views expressed by the consul—comments in which every peculiarity that distinguishes the people and the Government of Spain from the people and the Government of America, every thing that serves to make the tribunals of Havana different from the tribunals of Boston, is studiously kept out of view—the reporter be not trifling with him, and with every thing that ought not to be trifled with.

Suppose that a dozen, nay a hundred ship-masters, had stepped forward to testify to the identity of the vessel, and had been taken one after the other into the admiralty tribunal, and had there sworn to the fact; what would have been the result—that is, supposing it to have been an object with the parties to prevent the identity from being established? Let Mr. Shaler answer—let the daily results of proceedings, civil and criminal, in Spanish tribunals, answer.

Suppose that a hundred ship-masters had confidentially imparted to me their conviction, nay their knowledge, that the vessel was the same; does it follow that a single one of the hundred would have been willing to be summoned as a witness to that effect? Can any man who has read the *Candace* story believe that this would have been the case? and does any man think that it would have been reconcileable with good faith for me to name one of them without his consent; knowing, as I did, that without the remotest possibility of any good result, the consequence to him would be the alternative of committing perjury or telling the truth, under circumstances in which the only possible consequence of his doing the latter would be to make enemies, and jeopard both his life and all the worldly interests which might connect him with the country?

XXXVIII. The report proceeds:

"'But supposing even that this objection were surmounted,' says the consul, 'it must still be apparent that so interminable a succession of mountains lay behind, that the only consequence of my getting over the first would be to render the difficulty of retreat the more remarkable.'

"No intimation is given by the consul of the nature of this new chain of difficulties, which it would have been necessary to encounter after the removal of the one just alluded to; and it is, of course, impossible to judge how far his apprehensions in this respect were well founded. For myself I am unable to imagine what the difficulties alluded to could have been. The Captain General must either have granted or refused the proposed intervention. In the former case, the object would have been effected. In the latter, nothing worse could have happened than the failure of a well-intended effort to sustain the honor of the national flag, and enforce the laws of the Union."

Here then we have another averment from the reporter in regard to his state of belief. After studying the subject under the advantages afforded by all that he "witnessed or could learn on the spot," superadded to his previous knowledge of the national character, it is his solemn conviction

that the case presented no difficulty beyond that of establishing the identity of the Duquesa de Braganza with the Venus! Nay more: he is "unable to *imagine*" even any other difficulty which the case "*could*" have presented!!

One of two things, says Mr. Everett, "*must*" have happened: "the Captain General must either have granted or refused the proposed intervention." Had he pursued the former course, "the object would have been effected."

"The object:" what was it? In the precise words of the reporter, (*supra*, XXIV,) it was "to *ascertain* her slave-trading character by *sufficient evidence*." This, then, is "the object," the only requisite—the only *imaginable* requisite—to the fulfilment of which was the *ascertainment* of the *identity* of the ship which then lay in the harbor under a Portuguese name and the Portuguese flag (after having undergone the scrutiny of the constituted authorities, "to ascertain if her papers were correct and her proceedings lawful,") with the ship which had sailed some months before as the American ship Venus! The "*ascertainment* of her slave-trading character by *sufficient evidence*," is the thing which "would have been effected," had the consul but taken the step indicated in the report: the thing which the reader must firmly believe to have been not effected solely through the omission to take that step; or he can have placed no reliance upon the solemn asseveration of Mr. Everett in regard to his deliberate conviction—an asseveration made under circumstances in which no conceivable element is wanting, that possibly could conspire to afford the most positive assurance that it is advanced under the deepest sense of the injunction, "thou shalt not bear false witness!"

I must leave the subject to the reader.

XXXIX. With regard to the view here presented by Mr. Everett in respect to the worst possible consequence with which such a proceeding on my part could have been attended, even under the (to his mind) highly improbable supposition that the Captain General had "refused the proposed intervention," it has already (*supra*, XVI and XX) been under contemplation. The reader will require no further remarks from me to satisfy his mind that, so far as the consul was personally concerned, "nothing worse could have happened than" his securing to himself the advantage, such as it might be, of standing on a par with the commissary judge in regard to 'Comet' zeal.

The report proceeds:

"Nor does it appear at all probable, as the consul seems to apprehend, that the Captain General, had he even thought proper not to accede to such an application, would have considered the making of it an unwarrantable act, or have required the consul to 'point out the provision or the principle which authorizes a consul to exercise a surveillance over any other vessels than such as show his flag.' That ships often assume a character and show a flag which do not belong to them, is notorious every where, and at the Havana is unfortunately too much so to be questioned by any one. To exercise an inspection over foreign flags so far as to take care, if possible, that they are not used without authority by Americans as a cover for the violation of the laws of their own country—far from being a usurpation of power in a consul—is one of the duties regularly appertaining to his office; and it is difficult to imagine a case in which the propriety of such inspection could be less questionable than that of a vessel known to have

been engaged in a piratical expedition, which had been American, and of which the ostensible Portuguese character was, to say the least, extremely doubtful. The Captain General would certainly have had no right to regard an application for authority to ascertain the true character of such a vessel as offensive; and it would be doing him injustice to suppose, without evidence, that he would have done so."

Here again is matter to revive and confirm the oft-reproduced impression (*supra*, XXIV, and sec. 2, VIII) that American vessels have been engaged in the transportation of slaves, and have visited the port of Havana after landing them. To this I will reply, by referring to the reply which it has received on the numerous occasions on which it has already been requisite to meet it. I here reiterate that it is utterly destitute of all foundation; and that, of all notorious things at Havana, none is more notorious than this truth.

"That ships often assume a character and show a flag which do not belong to them, is notorious every where, and at the Havana is unfortunately too much so to be questioned by any one." What is "the precise" import imparted to this averment by the connexion in which it is introduced? It is, that it is matter of public notoriety at Havana that *American* ships "often" enter that port in disguise. This is its meaning. It has, it can have, no other. It will be so understood, it must be so understood, by every reader. I aver that the idea is totally destitute of all foundation in truth. I aver that, to the best of my knowledge and belief, not a single instance of the sort has ever occurred since I have been at Havana—not a single instance, except that (*supra*, sec. 1, LXVI) afforded by Mr. Kennedy's friend, Ferdinand Clark—in which any vessel that was *American*, in any sense of the term, entered the harbor under any foreign flag;—not a single instance in which a vessel showing a foreign flag was provided with any document of any kind, genuine or spurious, purporting that she was an American vessel. This is the truth; and, I repeat it, no truth is more notorious at Havana than it is.

Passing on to the next sentence, we find in it a vague statement of the duty and authority attached to the consular office in regard to "inspection over foreign flags;" and an application thereof to the case before us. As to this authority, we have already seen (*supra*, XXXVI) what it amounts to, even in regard to American vessels showing their own flag; and, as a consequence, in regard to vessels which might assume that flag without being entitled to wear it. But, admit the authority in regard to vessels showing "foreign flags" to be of a far different character. Admit that, though the authority vested in an American consul with regard to the documents of vessels visiting his port under the American flag be such as we have seen it to be, yet, in regard to vessels visiting it under a foreign flag, the case is far otherwise: here his authority is without limit, to take all requisite steps for ascertaining whether the vessel be entitled to wear the foreign flag. Admit this to be fact: suppose an act of Congress, expressly clothing him with power to that effect, in so many words; and suppose this power to be among those, the exercise of which is permitted by the express terms of his *exequatur*; would it not still be evident that, agreeably to the intention of Congress, no less than of the nation by whom the consul is admitted, a necessary qualification of the authority thus vested in him would be, that all steps taken by him should be consistent with the respect to which the authorities of that nation are entitled at his hands? Suppose this authority to have been among the powers and privileges expressly

agreed upon by compact between the two nations : and then say whether the course of proceeding here referred to by the vague generality "exercise an inspection" would have been at all free from the objections above (*supra*, XXXI to XXXIII) pointed out ; whether it would have amounted to aught else than a "wanton insult," in the precise sense wherein my use of the phrase has been justified.

XL. The passage concludes with an expression of the reporter's belief, not only that the Captain General "would certainly have had no *right* to regard as offensive" the act* of officially representing to him, as matter of public notoriety, the fact that the ship had been landing a cargo of slaves, in contravention of the laws which it was his duty vigilantly to enforce ; but, also, that "it would be doing the Captain General injustice to suppose, without evidence, that he would have" regarded it in any such light.

This latter point of belief is the thing alluded to by me (*supra*, XXXII) as presenting a flagrant inconsistency between the contents of the present part of the report and those of a subsequent and remote one. Here the reporter is intent upon impressing on the reader the truth that the case presented no difficulties whatever. Here, therefore, it would be doing "injustice" to the Captain General to "suppose" that he could have been guilty of such a thing as to call in question the perfect propriety of the proceeding. The idea that this might have happened is altogether a notion—a mere fiction of the consul's—indulged in at the sacrifice of *justice* to the Captain General. Near the conclusion of the report this very same notion comes again under consideration with regard to the very same step, and the very same parties—the Captain General and the consul. There, however, the question has a different bearing. The reporter is intent upon showing what a poltroon the consul is. Accordingly, the notion is there admitted to be no fiction ; it is endorsed as strict truth. The reporter—with express reference to the Captain General—bears testimony to the fact, "It is well known that the local authorities of the island connive at the contraband trade in slaves, and are paid for so doing by the parties ; in other words, that they are associates in the concern." What purpose is this testimony made to subserve ? It is used as an entering-wedge to the far-fetched moral truth embodied in the question—"But is the American consul to be deterred from doing his duty, because an honest performance of it may not be agreeable to the local authorities ?" And this in its turn serves to open the way for the solid "information" in regard to the identity between "consular and diplomatic agents ;" which, as we have seen, (*supra*, XXXIV,) is introduced to perfect the demonstration of the poltroonery that can alone account for the strange views taken by the consul of what it became him to do.

XLI. The next paragraph is the one containing the application referred to on a former occasion, (*supra*, XVII,) of a passage in my letter to the British commissioners. Speaking of the *Venus*, on the occasion of her first visit to Havana, Mr. Everett says :

"She bore the American flag, and was avowedly an American vessel. Whatever difficulties may have stood in the way of an examination of her

*In this particular place, the nature of the act which the Captain General would have had no right to regard as offensive, is covered up under the vague generality, "an application for authority to ascertain the true character of such a vessel." But, on recurring to "the precise" form previously indicated by the reporter, for the "application," it will be seen that the act, on my part, would have been precisely as here stated.

crew and papers, after her return from Africa, in consequence of her real or pretended change of national character, they did not exist at the time of her first arrival from Baltimore. In reference to her condition on her return from Africa, the consul says in his letter to the commissioners, that, 'had she entered the port under the American flag, his course would have been so plain, that perhaps no suggestions from the British commissioners would have been requisite to make him enter upon it.' On her arrival from Baltimore she did enter the port under the American flag. Why did not the consul, at that time, take the course which he himself declares to have been, under the circumstances in which the vessel was then placed, too plain for doubt?"

The manner in which my words are here made to bear witness against myself, is certainly apposite, to a degree that places it beyond the reach of criticism. The reporter seems to have been particularly struck with their force and adaptation to the purpose; for, though evidently averse to the trouble of making quotations, this one is twice introduced within the space of four or five pages, after being distinguished on the first occasion (*supra*, XXVIII) by the usual mark for inviting special attention to it. What is the purpose to which it is thus triumphantly put? Why, to show the flagrant inconsistency between my words and my acts;—to show that I have not acted up even to my own declarations in regard to what duty demanded of me. And is not "the object effected?" Let us see.

A ship enters the port of Havana, after landing on the coast of Cuba a cargo of slaves. This occurrence, if the ship were an American, would constitute a capital felony on the part of every man on board; whilst, from the very nature of the fact, it could not possibly but be known—*known* in the most positive and absolute sense of the word—to the entire crew, and to many persons besides. The fact is one of the very highest possible criminality; whilst, from its very nature, it is scarcely within the bounds of *possibility* that a *bona fide* inquiry of the subject, by examination of her papers and crew, should fail to establish the fact, if it had occurred. With reference to an occasion such as this, the consul—replying to an impertinent and disingenuous suggestion from the agents of a foreign Government, who had no shadow of right to make any suggestions to him in regard to the discharge of his duties—says that, had the vessel entered port as an American vessel, his course would have been too plain to require any suggestion from them. In other words, had such an offence against American law been committed, and had the vessel come within reach of his authority, it would have been his duty to act, and he would have acted, without their impertinent interference. This, as I also say to them, was known to all Havana; and none knew it better than they by whom the miserable farce was got up.

Well, this reply of mine is torn from its context, to be here produced. And for what purpose? For the purpose of giving point to the question, why the consul did not proceed to "an examination of the crew and papers" four or five months before: at a time when, instead of an occurrence of the nature of that just stated, no overt act of any kind had been committed! A time when, if any offence against American law had occurred—as subsequent events proved to have been the case—that offence consisted solely in an intention; an intention which, even when fulfilled, is not made by our law an act of piracy, (as, from the *free* use of the word, to which Mr. Everett's "zeal" prompts him, his readers would take for granted it does,) and which, for any juridical purpose, was known only to

parties who were beyond reach of any legal authority that could be exerted for ascertaining it, except that vested in persons by whom it would have been exerted in every possible way to afford them protection.

This is the occasion, when his reader's mind is fully occupied by all the impressions arising from subsequent facts, that Mr. Everett selects for starting the question, why an examination of the papers and crew did not take place at the time when the consul had, as Mr. E. states, full powers to effect it. "Whatever difficulties may have stood in the way of an examination of her crew and papers after her return from Africa, in consequence of her real or pretended* change of national character, they did not exist at the time of her first arrival from Baltimore."

XLII. But the question is put; and whether in or out of place, I will meet it. Referring to the matter contained above, (*supra*, XI to XV,) I will add thereto the only thing for which it appears to leave room, by making the supposition that the examination had taken place. This seems the best way to see clearly and distinctly what the proceeding would have amounted to; whether it could have been attended with any other result than one equally substantial and valuable with the proof of "zeal" despatched to Lord Palmerston (*supra*, sec. 1, LXIV) by the commissary judge in regard to "the American brig Comet, Captain Dickson," that had been "entered as consigned to the English house of Drake & Co."

First, "the papers." In regard to these, it is certainly true that no "difficulties stood in the way" of their examination. They were already in the consulate—such of them, at least, as the master is required to deposit there; and in regard to his obligation to produce which to the consul, we have had occasion (*supra*, XXXVI) to become informed of "the precise extent" of the authority vested by law in this officer. These consisted, as on reference to the law (act of 1803) will be seen, of her "*register, sea letter, and Mediterranean passport*;" probably, indeed, of the register only; for it is not obligatory to take out either of the two other documents for any vessel, and the omission to do so is now-a-days a common practice.

Besides these documents, which the law requires the production and deposit of at the consulate, and in regard to which, consequently, if the law were complied with, (as, in this instance, it was,) no "difficulties stood in the way" of their being examined, there were two others which may be considered as being embraced under the term "papers," to wit: the *crew-list* and the *shipping articles*, or contract with the crew.

The former was at the captaincy of the port, open to inspection. In regard to the latter—which is the document that was (*supra*, sec. 1, LXV) shown to Mr. Kennedy by way of friendly "bravado"—no authority is given by law to consuls to require its production on any occasion. The established doctrine on the point among our ship-masters accordingly is, that no such right is vested in a consul; and this doctrine governs their practice. It does so, even in cases where the crew, or a part of the crew, claim the protection of the consul on the ground that their contract has expired, and they are detained on board, to be forcibly taken on a voyage to which they have never consented. Even in regard to cases of this kind—where the production of the document is manifestly indispensable

* Here again is the impression conveyed which has so often called for correction. See particularly XXIV of the present section, and sec. 2, VIII.

to the discharge of that consular duty which is by far the most important of all that are or can be attached to the office—the doctrine is, that the shipping-articles are a “*private contract*,”* which the consul has no right to ask to see; and that any such pretension on his part is a usurpation, which, on the score of principle alone, every man who values the rights of his class is bound to treat with defiance. This doctrine has, so far as I know, been acquiesced in all the world over, ever since there has been such a thing as an American consul, until set at naught by “the consul at Havana;” and this acquiescence has contributed in a high degree to the state of things (*supra*, XIII) which has been going on year after year, from bad to worse,—a state of things to which the sailor-character (masters and men) has become moulded, and which now would require a generation or two to effect any thing like a radical change in, even if it were to receive all the attention to which it is entitled. The consul’s preposterous pretension at “usurpation” was treated with due contempt, until his temerity was carried to the length of actually taking steps “to involve American ship-masters in difficulties with the local authorities,” thereby pursuing a course directly contrary to his line of duty; the paramount duty of the office being, as is known to all, to give to “ship-masters” all possible protection against vexation in any shape, and, above all, against pretensions of the local functionaries to exercise authority over them.

* The following letter is the latest expression of the doctrine addressed to me. It is one of the enclosures in my despatch, (No. 150,) in part reply to the denunciations of a large meeting held at Boston, in August and September, 1839. The case arose from a brutal outrage by the master and chief mate of an American ship upon one of her crew, whom the master next contrived, by means of a falsehood, to get lodged in jail, whence he was immediately removed to the hospital, on account of the condition he was in. At the sight of it, some days after, Dr. Ballard, of Louisiana, actually shuddered, and an involuntary exclamation of horror burst from him. He has since declared that, in the whole course of his practice and observation among the plantations of the south, he has never seen any thing in the treatment of a slave to equal that of which the body of this sailor bore the proofs.

In consequence of the steps taken by me, a decree issued from the Captain General, requiring that the sailor should, as I had suggested, receive his discharge in the mode prescribed by American law, at the consulate. This exasperated the master beyond measure; so that I was apprehensive of a second edition of the *Wendell* case—to one, or to fifty more of which, as often as occasion should require, my mind was, however, unchangeably made up. Having, through want of legal proof as to who were the perpetrators, (such matters are not unfrequently managed with a view to this,) escaped the punishment with which he ought to have been visited, he was anxious to get the sailor back into his power, to wreak his vengeance upon him.

The letter expresses as clearly and forcibly as could be done by any writer, perhaps, in so small a space, the established doctrine in regard to consular and “local authority” interference between the “master” and “men” of an American ship; and among other points of the doctrine, the one respecting the sanctity of the “*private contract*.” It will be observed that the writer, lest these points should escape me, marked them by underscoring the most significant words.

“On board the *American ship New Orleans*, of Boston,
“Harbor of Havana, May 1, 1839.

“SIR: I last evening received yours of the 30th ultimo, in which you notify me that you shall be in readiness at your office, between the hours of 2 and 3 P. M. this day, to proceed in the business of discharging a seaman, named William Parker, *belonging to my ship*, in the mode prescribed by the laws of the *United States*, which I am *positively ordered* to do by the Captain General.

“I shall call at your office, between the hours of 2 and 3 P. M. this day, with *my private contract* with said seamen, and shall be ready to learn the *modes* prescribed by the laws of the *United States*, and obey them.

“I am yours,

“CHAS. W. BRADBURY.

“N. P. TRUST, Esq.,
“*Consul of the United States at Havana.*”

Of the temerity shown by me in this particular, one consequence has been to subject me, at Havana and at home, to endless denunciation and calumny in every shape that could be devised; and, among various other incidents, to that of the arrest of my person at the seat of Government, at the suit of a wretched, drunken desperado; who is an object of universal contempt and loathing among the decent men of his profession—which arrest was attended with the necessity of going to prison, or giving bail to the amount of \$30,000. Another consequence has been, that the doctrine became, to a sufficient practical intent, exploded at Havana, so soon as it was seen that the only advantage to be gained by a refusal to produce the shipping-articles on such occasions consisted in a delay of a few days, until I could obtain from those who had power to enforce compliance a decree requiring their production. A third consequence has been, the act of Congress of the 20th of July, 1840, in virtue of which it is now, by express letter of the law, the duty of a ship-master to produce the “private contract” on all such occasions.

But it is to be noted that *the obligation is expressly limited to such occasions*. And this is a fact of the utmost pertinence to the subject now under consideration: the nature and extent of consular authority. The law evinces in a very striking manner the intention, that the doctrine in regard to the sanctity of this document as a “private” one shall remain in force. In the communications made by me, (which gave rise to this law,) my suggestion in regard to this document was, that it should be made the duty of the master to *deposit it in the consulate, together with the register and other papers already required by law to be deposited there*. This, as a general practice, would obviously be by far the most convenient that could be suggested with a view to the particular object for which the provision is made. But it would go beyond that object: it would enable the consul, in every case of the demand of a sailor to be discharged, to ascertain on the spot, without trouble to any one, whether he be entitled thereto; but it would also put it in his power to examine the contract for the purpose of knowing the *business in which the vessel was to be engaged*, so far at least as this might be inferred from the contract with the crew. This consideration (which is one of those that actuated me in making the suggestion) is the only one that can possibly have prevented the adoption of the rule suggested by me, and caused the provisions which the law contains to be inserted in its stead. These provisions are, first, that it shall be the duty of the master to produce the *crew-list and shipping-articles* to the consul “whenever he may deem their contents necessary to enable him to discharge the duties imposed upon him by law *towards any mariner applying to him for his aid or assistance*,” and, second, “when any mariner shall complain that the voyage is continued contrary to his agreement, or that he has fulfilled his contract, the consul *may examine into the same by an inspection of the articles of agreement*.”

Such, then, agreeably to the old established doctrine, and to the modification which that doctrine has received from the last law on the subject, (a modification which goes precisely as far as the consul’s “usurpation” went, or as he ever dreamed of carrying it; for this was bad enough, in all conscience, and as much as any man in such a post could hope to bear up under the consequences of) is the nature and extent of the lawful authority with which a consul is now clothed in regard to “an inspection” of the crew-list and the shipping-contract. When a sailor complains that he is

detained contrary to his contract, then, and in that case, does it become the master's duty to produce these documents to the consul; then and in that case, and for this purpose, does the consul possess authority to read the contract, and acquire a knowledge of the voyage or voyages which it is in the contemplation of the owner or of his agent that the ship shall perform.

But our supposition is that Mr. Everett's views of consular authority are all correct: his powers are plenary, and the "papers" are all before him,—register, sea-letter, Mediterranean passport, crew-list, and shipping articles. The last—so Mr. Kennedy says, and so Mr. Everett repeats after him—"stipulated that the ship was to go to Bahia," whilst, instead of so doing, she went straight to Africa. But suppose both these points true. The ship is *now* at Havana. We are examining her papers before her departure. All* that the articles can tell us, therefore, is, that she is going to Bahia, in Brazil.

So much then for this part—the "papers" part of the only definite suggestion made by Mr. Everett to enable us to know what he means *supra*, XVII) by "such steps as might have appeared best fitted to *establish by positive evidence the facts* which common rumor had rendered notorious." So far as this part of the suggestion goes, the meaning of the phrase certainly might have been left in its original state of vagueness; and it was prudent to introduce the specification in this far-off place, where it ran no great risk of being collated with the description of its properties. Examine the "papers" of the ship, in order "to *establish by positive evidence the facts* which common rumor had rendered notorious!"

Second, the "crew."—It remains to consider this part of the suggestion. And here again the question starts up, what is "the precise extent" of consular authority in this regard? 'Tis absolutely *nothing*. By whom, in what way, for what purposes, can any man be, in our own country even, subjected to examination with regard to contraventions of its laws, either meditated or perpetrated? By none; those functionaries alone excepted who, by express law, are clothed with authority so to act;—in no other way, for no other purpose, than those defined by the law. What are the means that can be employed for bringing a man under examination? what is the *power* that exists for the purpose? in what way can this power be exerted? None other than that which is by law created—in no other way than is by law permitted.

*Mr. Kennedy, in his account of the matter to Lord Palmerston, under date January 19, 1839, (after the return of the ship from Africa,) says: "In the ship's articles, of which a glance, in bravado, was afforded her Majesty's commissary judge, (himself,) it was expressly stipulated that she was to be taken to Bahia, *there to be transferred to the Portuguese flag.*" If the document contained any such stipulation as this, it was certainly a most extraordinary ship's article. Let all the merchants and ship-masters in the United States be examined; and my life for it, not one of them can say he has ever seen a ship's articles containing either stipulation in regard to, or mention of, any such thing as the flag to which the vessel was to be transferred. What is the nature and the purpose of this document? 'Tis simply and purely a *contract with the crew*; an agreement binding them to go to such a place, or to serve for such or such a length of time, and there or then to be discharged. What possible motive can there be for inserting in it any thing about the intention of the master or owner in regard to the disposition of the vessel, even when this intention is a perfectly licit one? And when it is one which, if proven, would subject the vessel to seizure, and those concerned to punishment, what inconceivable fatuity would it not be to depart from the established, the invariable usage, for the mere sake of putting the proof in black and white upon a document which would be called for, amongst the rest, by any cruiser that might search the ship!

Without the most conclusive proof to the contrary, no one can believe but that this part of the "express stipulation" was a subsequent interpolation of the commissary judge's fancy; unless, indeed, the friendly "bravado" was at bottom a friendly hoax.

Is there an American citizen who does not know this? Is there one who—particularly if he were engaged or implicated in any contravention of the law—would not make it the rule of his conduct? Where is the law which, either expressly or by implication, subjects an American citizen to examination by a consul? Where is the law clothing this officer with authority to summon one before him, to issue a *subpœna*, or any other process, for the purpose; or, supposing the man in his presence to require of him, either as a suspected offender, or as a witness, to take an oath and answer his interrogatories? What authority is an American consul clothed with in regard to the administration of oaths and to the taking of testimony? His authority extends to this, and to nothing beyond: to administer an oath to a man who *voluntarily comes before him for the purpose of having his declaration taken and certified to*. In the words of the law, "They shall have right in the ports or places to which they are, or may be, severally appointed, of receiving the protests or declarations which such captains, masters, crews, passengers, and merchants, as are citizens of the United States, may respectively *choose* to make there; and, also, such as any foreigner may choose to make before them, relative to the personal interest of any citizen of the United States." (Act of April 14, 1792.) Under the operation of this enactment, it is, that if a mutiny, or murder, or other offence, is committed on board an American ship, and the master or crew "*choose*" to come before the consul to give their testimony, he is clothed with authority to administer the oath, which will make that testimony valid in the United States for any purpose which testimony of this kind can fulfil.* And, in discharging this function, he may (for it comes clearly within the spirit of the law creating it) "*examine*" the persons thus appearing before

* It is with reference to the exercise of this function that the consular instructions provide that "where piracy, mutiny, or any other offence against the laws of the United States, shall have been committed on board of any vessel of the United States coming into the consular district, it is the duty of the consul, after taking the *depositions*" (*ex vi termini*, testimony *voluntarily* given) "necessary to establish the facts, to apply to the local authorities for means of securing the offenders while they remain in port, and to provide the means of sending them, without delay, to the United States for trial."

This instruction must be understood as having reference to cases arising in the exercise of the authority with which the consul is clothed—the authority to *receive* testimony spontaneously proffered, or voluntarily given at his request. When, by means of proof thus obtained, he is satisfied that an offence has been committed, it becomes his duty to apply to the local authorities, on whom he is dependent for "means to secure the offenders."

An application of this kind is an appeal to the comity of the Government to whom it is addressed. Unless stipulated by treaty, a compliance with the request is matter not of obligation, but of pure courtesy; and, in the exercise of this courtesy, the authorities appealed to have an unquestionable right to use their own discretion in various ways; and, amongst the rest, to require to be satisfied that the exercise of their powers thus called for, is called for on solid and sufficient grounds, and not wantonly.

Spain, as is well known, is inundated with British merchandise, which (to the destruction alike of her domestic industry and of her public revenue) is forced upon her by systematised smuggling, regularly carried on under the very guns of Gibraltar, and beyond their range, under the security afforded by the "floating bulwarks" whose business it is to see that British commerce is not interfered with. Suppose one of the flagrant cases of this violation of Spanish law, which are, or were but a short time back, and doubtless are at this very moment, of daily occurrence, to be made the ground of such an application from the Spanish consul at Gibraltar to the local authorities at that place!

Another supposition: Suppose a treaty between our country and Spain, whereby, with special reference to our laws against the slave-trade, it is made the duty of the local authorities at Havana to give their best endeavors to comply with any request of the kind made by the American consul. Suppose, moreover, a case in which the consul has obtained voluntary testimony, conclusively establishing the requisite ground for such an application. The application is made. Will the offenders be secured? And, if secured, will they be forthcoming when the means shall have been provided by the consul for "sending them to the United States for trial?"

him : in other words, he may put such questions as the nature of the subject seems to require. But, even in such cases, he cannot interrogate them authoritatively ; they would be under no legal obligation to answer his interrogatories ; and it may be doubted even whether, if the point were raised, the mere fact of his having propounded a single question would not be held to invalidate the whole proceeding ; whether it would not be held to vitiate the testimony as a " declaration " received in virtue of this enactment, the only ground of his authority to discharge any function of the kind.

Such, then, is the authority with which an American consul is clothed in regard to the examination of crews, or of any other persons. It can scarcely be requisite to say, that any pretension to extend his authority beyond this narrow field would be resisted and defeated with a certainty exactly proportionate to the motive for defeating it which the nature of the case might present. No one acquainted with the American character, in any of its modifications, will require to be told this. No one acquainted with the character of our ship-masters but knows that it holds good of them, especially as a class ; and, above all, of that portion of them who engage in illicit practices. What does Mr. Jellison, of Boston, say, in explaining his reason for believing that I was not calculated to discharge the duties of the office " acceptably ? " " American ship-masters, whose business necessarily calls them into daily intercourse with all classes and conditions of men, and *who, of all others, perhaps, are, in their habits and feelings, the most strictly republican.*"* What reply would any one of this class make to a consul who should assume to summon him or his crew to come and submit to examination in regard to any illicit business in which he was supposed to be engaged, or in regard to any matter whatsoever, except one upon which it was his own good will and pleasure that their testimony should be *received* by the consul ? What would be his answer, even supposing him to be actuated by no other motive than the duty to stand up for the rights of his class, and to curb the spirit of usurpation in consuls, however manifested ?

But overlook all this, and suppose the crew to be in the presence of the consul. The master has proved complaisant, and the men willing. They are now in his office ; and there, though he has no marshal or other minister to prevent their turning their backs upon him and walking out so soon as they see fit, he requires them to swear, and they submit : the oath is

Certainly not, if, by any contrivance of the " associates in the concern," such a thing can be prevented. And what is it that cannot take place under Spanish law and Spanish practice ? Let the *Candace* story and Mr. Shaler answer. Let any man (except the writer of the report) who has any pretensions to knowledge on the subject, answer.

The matter introduced into this note is not immediately pertinent to the precise point now under consideration. But, whilst on the subject of the powers of the consular office—the subject of all others on which the reporter's views are perhaps most wide of the truth—I have thought it not amiss to show, that although to his mind the thirty-sixth article of the consular instructions may have seemed conclusive in regard to the fact that a consul has full power to carry every thing before him if he do but stand firm, and not " give way to apprehensions of personal violence," yet in truth it does not go a hair's breadth towards clothing him with authority, even to subject a crew to " examination."

The reporter, by acting on the rule of taking every thing for granted which seemed requisite to his views, has imposed upon me the toilsome task of proving negatives as the only alternative to meeting his assumptions with a naked contradiction. This would have been by far the more convenient process ; but it would have left the subject in a most unsatisfactory state to the reader, and the consequence might have been to render the labor requisite at a future time. It was better, therefore, to dispose of the matter once for all.

* House report No. 707, page 232, session 1839-40.

administered, whereby they bind themselves to "tell the truth, the whole truth, and nothing but the truth." Now, is it in the power of any one to force himself to believe that any thing will come of it? that the proceeding can be attended with any other beneficial result save that of affording proof of the consul's "zeal?" What will the crew know? And supposing them to know every thing—every thing that has been done, or that is intended to be done—what part of it will they tell? Will they not say precisely what the master has told them to say: whether this be merely the negative testimony, that they know nothing—that nothing has come to their knowledge evincing any illicit intention; or whether it be the positive testimony that they do actually know that the intention is solely to take an "assorted cargo" to the coast, and to come back in ballast in quest of another?

Suppose this done, and follow up the consequences, under the very worst that can happen to them. Is there a single day in the year—a single day, at least, on which our custom-houses are open—when false oaths are not taken by sailors and others with perfect impunity? But here is this whole crew returned to the United States. They are indicted for perjury: the offence known to every lawyer in the land to be the most difficult of all to convict a man of. Despite this difficulty, they are convicted. It is proved upon them that they positively knew all about the matter, and that their replies to the consul were wilful and deliberate falsehoods. The jury bring in a verdict of guilty. Motion in arrest of judgment. On what ground? The illegality of the consular proceeding: these men were required to give testimony by one who had no authority to do so; the oath administered to them was no oath at all for any legal purpose. The reason is conclusive, and the court decide accordingly.

XLIII. We have at length reached the concluding paragraph of the report. Its contents—whether they be viewed as testimony from the reporter in regard to the *nature* of the "practice" ascertained by him to have existed "of late years to a considerable extent at the Havana," or in whatever other light—are in perfect keeping with the matter already examined:

"The reasons given by the consul for not taking any steps to ascertain the true character of the *Venus*, on her return from Africa under the name of the *Duqueza de Braganza*, are, no doubt, substantially the same that influenced his conduct in other cases of a similar description. If the view that I have taken of the subject be correct, it seems to follow that the consul might without impropriety have made—or, rather, that it was his duty to make—stronger efforts than he has done, to check the piratical practices that have been carried on under his eye with the aid of the American flag. In all cases where the vessels engaged in them actually bore the American flag, he possessed an undoubted right to examine the papers and crew on his own authority. Where there had been an ostensible change of character, he had an equally undoubted right to request from the Captain General authority to ascertain by examination whether the apparent change was real or fraudulent."

Here, again, is the impression reproduced that *American* vessels have been engaged in the carrying of slaves. The reader is indirectly, but not the less positively, informed—with express reference to the "character of the *Venus* on her return from Africa," and with express reference to "the piratical practices that have been carried on under the consul's eye"—that there have been many cases "where the vessels engaged in them *actually bore the American flag*." He is informed that to "all these cases" are to

be added—as the remaining part of the “practice” which constitutes the “matter of public notoriety”—other cases, wherein, though “there had been an *ostensible* change of character,” there was reason to believe such change to be “*apparent*” only, and not “*real*.” In other words, the reader possesses Mr. Everett’s positive testimony to the fact that this notorious “practice” has consisted of two different modes of employing American vessels in the business denounced by our laws as *piracy*: first, openly and undisguisedly, the American character of the vessel being avowedly retained; second, under the contrivance of an “ostensible” change of her national character—leaving her “real” character unaffected, and of course resumable whenever convenient.

Such is the testimony given by the reporter—given without even so much as the qualification which would be imparted to it by the phrase, “from every thing that I witnessed or could learn on the spot”—given as positive fact, as “matter of public notoriety !” This testimony has already been replied to* by specific and precise averments of fact, presented in all the detail requisite to convey a full and perfect knowledge of the truth of the whole matter. I here face it again with an emphatic, solemn averment, that it is totally destitute of all foundation; that, so far as I know or believe, not a single instance of either kind—excepting the *one* already so often referred to as having arisen through the agency of Mr. Kennedy’s friend Ferdinand Clark—has ever occurred; and that I do not know of a single human being at Havana who entertains a contrary belief.

I aver, further, that not only is the testimony here given the direct reverse of the truth, but that, excepting those cases wherein I have acted, in the mode to be seen hereafter, no case of any kind has ever occurred at Havana affording ground for consular action of any sort. The contraventions of American law have *not* been carried to the point denounced by it as “*piracy*.” They have *not* possessed the characteristic to which alone it has rendered that term appropriate; and the existence of which will consequently be inferred and believed in by every reader who knows any thing about the law, unless he chance to be apprized also of the fact that the free use of the phrase “*piratical practices*,” to express the nature of the “*practice*” ascertained by Mr. Everett to have been “of late years matter of public notoriety,” is attributable to the same cause that is adduced by him in justification of any thing amiss which an American eye less impartial than his own may perchance see in the course pursued towards the consul by the present British commissary judge: “*excess of zeal*,” arising from “a strong personal feeling on the subject,” as contradistinguished from that sober use of the language of the law which might be expected in a report—particularly a “*confidential*” report—of “*information*” for the use of Government.

I have shown (*supra*, sec. 1, XLVII) precisely and fully in what the contravention consists: that it consists in the *sale of vessels* for the slave-trade, and in nothing beyond this; sales involving sometimes, but not always, an infraction of the provisions of the law, and at all times a violation of its spirit. I have shown, also, how the act of taking a vessel from Havana or any other foreign port to Africa, for sale there, or for delivery there in pursuance of a sale effected elsewhere, is, to all practical intents, undistinguishable from an exercise of the absolute right vested in every ship-

* See, particularly, sec. 1, XLVI to XLVIII, and sec. 2, VIII.

master to sail his vessel to that or any other part of the world, laden with whatever cargo he sees fit to take, as freight or venture. I will conclude my examination of the present division of the report, by a further illustration of the position of a consul in this respect, suggested by the provisions contained in a bill which will doubtless become a law during the present session of Congress. The subject is one on which so much misconception prevails—independently of that to which the report is calculated to give rise—that the cause of truth demands that it be placed in the strongest possible light.

During the last session, two bills from the Committee on Commerce were reported to the Senate by one of the representatives from the great navigating State of our Union. They both passed that body; and one has become a law. This one, as we have seen, (*supra*, XLII,) contains a provision, which, under the circumstances that gave rise to it, amounts to a refusal to adopt the rule that the *shipping-articles* shall be deposited together with the *register* and other documents at the consulate. It is a deliberately purposed restriction of the authority conferred upon the consul to demand a sight of that document, to the *one single case* of a complaint made to him by one of the parties to the contract embodied therein.

The other bill has in part for its object to “prevent the abuse of the flag of the United States,” in the manner which has been practised at Havana.

Among its enactments is one making it the duty of consuls, “as far as the local and international law will permit, to carry this act into execution.” Besides this general requirement, (which, from its very nature, gives rise to the necessity of precise instructions, to the framing of which none but an admiralty lawyer of high attainments can be competent,) there is a specific provision, under the terms of which authority is given to a consul; and it is made his duty to withhold a clearance from any vessel “if he has just reason to believe” that there is an intention to take her to Africa to be transferred to any one who will employ her in the slave-trade.

Under the existing law, “it shall be the duty of the consul, on the master’s producing to him a clearance from the proper officer of the port where his ship or vessel may be, to deliver to the said master all of his said papers. *Provided*, such master shall have complied with the provisions contained in this act, and those to which this act is a supplement.” The instructions upon the same point are: “The consul shall, without delay, deliver up the papers, and shall make an entry in his consular record of the time of such delivery.”

Under the new law, the consul will be clothed with authority to detain the papers “if he has just reason to believe,” as above stated. “Just reason to believe!” What does this mean? What is the meaning which will be given to the words by the courts and the juries of our country in any case wherein it may be necessary to determine what it practically amounts to? Suppose a suit brought against a consul, or the sureties on his official bond, demanding \$5,000, or \$10,000, or \$20,000 damages, on the ground of a wanton exercise of this power; on whom will the burden of proof lie? The demandant alleges that he is owner of the good ship *Swiftsure*; that, by charter-party, executed by his agent and her lawful master and commander John Speedwell, she had taken on board at the port of Havana a cargo of merchandise, for the delivery of which, on or before a certain day, (at Gallinas, on the coast of Africa, or at Bahia, in Brazil, or at Vera Cruz, or any where else you please,) the sum of \$10,000 was to be paid to his

correspondent at Havana, in sterling bills on London; that, upon the said master's producing his clearance from the custom-house at the American consulate, and demanding his papers, the said defendant, being consul as aforesaid, did refuse to deliver them; alleging, as his reason for said refusal, a certain rumor or report that said ship was destined to the coast of Africa, to be there delivered, in pursuance of a sale, to a certain Mazorra; which report was totally unfounded, having been invented and set afloat by some evil-minded person—probably by the said consul himself: for his enmity to his countrymen is “matter of public notoriety;” and against the said Speedwell in particular, he was known to entertain a spite, owing solely to his friendship and intimacy with a worthy American merchant of the place, who is on terms of intimacy with her Britannic Majesty's commissary judge at Havana for the suppression of the very traffic which the said consul pretended to believe the said ship intended for; that, in consequence of said refusal, the said Speedwell, rather than suffer all the loss and detriment to himself, his owner, and character, which was threatened by this wanton abuse of power, offered to give bond to the said consul in any amount he might name, that his vessel should not be employed in the slave-trade, or be sold or transferred on the coast of Africa; that this proposition being rejected, on the pretext that the said consul had no authority to accede to it, and that the bond, if given, could never be recovered, the said master was compelled to compound with the charterer, paying him the sum of \$5,000, rather than become involved in a ruinous law-suit in the tribunals of Havana, and to unlade the cargo; after doing which, no other freight offering, he had to take in ballast, and come to the United States, that his owner might seek redress from the Government and tribunals of his country.

Nor is this the only suit. Here is another from Ferdinand Clark, merchant, “a citizen of Boston,” (as he calls himself,) resident at Havana. He is the charterer, who, under a contract for the delivery of certain merchandise by a given day, at the point named, had purchased the same at a cost of \$30,000; upon which, had he effected the delivery—as he had secured the means of doing by taking up the good ship Swiftsure—he would have cleared cent. per cent. profit.

Suppose these suits brought: on whom will the burden of proof lie? Will every rule of American law, or of law in any country, be reversed, in order to cast it upon the demandants? Will they be required to prove that there was *not* any illicit intention on their part,—that the consul had *not* “just reason to believe?” No; the onus will rest upon him. He will be held to the proof that he had “just reason to believe;” and the words will be held to mean facts,—facts fully and conclusively established; and although a rumor or report is a fact, yet will it be held to be—even though he should get all Havana to swear that it was “matter of public notoriety,” believed in by every man in the place—not a fact of the description on which verdicts are given and judgments pronounced.

No one who knows what law means—or, I will say, what justice means—but will perceive, at a glance, that the number of combinations, of which the elements daily occurring in commercial transactions are susceptible as a perfectly solid—solid in law, and solid in justice even—ground for such a demand upon a consul, and upon the Government in the name of which he acts, is actually illimitable. I will add my firm belief, that no one acquainted at Havana, at the present day, would hesitate to express his conviction—founded upon what has been, not “of late years,” but for many, many

years, "matter of public notoriety"—that if there be among the residents of the place, foreign or domestic, a man capable of deliberately planning such a case, and getting it up, perfect in all its parts, "rumor" and all, as a *snare* for "the consul," whereby lust of gold and hate for the person might both be glinted at the same time, that man is the commissary judge's friend, Ferdinand Clark. And if there have been among the foreign residents, during the last four years, two men whose kindred malignity would find delight in giving all possible aid to the scheme, those two men are, first, Dr. Richard Robert Madden,* and, second, J. Kennedy, Esquire. I will even leave it to their own countrymen there to say if this belief, on my part, does them the slightest injustice.

SEC. VI.—*Twelfth section of the report examined.—Case of the Washington, alias Senhora da Boa Viagem.*

I. The reporter having, at the close of his fourth section, (*supra*, sec. 4, V.) stated the consul's reason "for not interfering," to wit: the impracticability of obtaining "such evidence as would be a sufficient basis for the legal proceedings," and having next, under the fifth head, discussed, in the manner we have seen, "the validity of this reason," dismisses the subject to enter upon others. In a subsequent part of the report, however, he recurs to it, in order to prove, by means of the case of the schooner *Washington*, "that the impossibility of finding evidence was not in all cases the consul's motive for not taking measures to enforce the laws." To avoid the necessity of repetition, I will, therefore, pass over the intermediate parts, to consider this one in the connexion to which it belongs.

II. And first let us bestow a thought upon the dissertation now before us, viewed as an indication of the spirit in which the report is got up—as evidence in regard to the disposition which the writer has brought to his task. This, as every reader must feel, is a point of the highest importance; for upon it depends in a great measure the general reliance due to the impressions conveyed by the report, whether these be created by the testimony borne by the writer, or by the views presented to him. What, then, is the spirit of which the dissertation here presented by him affords proof?

Among the charges which the report brings against me, one is, that I have been very presumptuous—I have taken upon myself to be influenced by considerations which belong exclusively to higher functionaries of the American people. What does the reporter himself here do? For what purpose was he employed by those functionaries? It was to proceed to Havana to take charge of the consulate during the absence of the consul; and whilst there, to collect all the information he could on the subject indicated to him. Did it constitute a part of the office intrusted to him that he should, on his return to Washington, favor the Secretary of State with *instruction* upon points of official duty? This is the function which here, and throughout the report, he fulfils. The "information" reported by him amounts to literally nothing at all. The report is made up of disquisitions and comments. Take these away, and what have you left? And even these consist almost exclusively of criticisms upon the abstract justness of the views of official duty presented in the communications addressed by the consul to the Secretary of State! Had those communications been put into the hands of the

* See House Report No. 707, p. 328, session 1839-'40.

reporter, as the recognized moral and political censor and director of the Executive department of the Government, with the request that he would enlighten the Secretary upon the right or the wrong of the views taken by the consul in regard to his duty, the reporter could not possibly have done better. Here is a despatch from the consul, under date May 22, 1838, written on a special occasion, which cannot but have caused it to receive attention. After it has been in the department upwards of two years, Mr. Everett takes it up. For what purpose? To point out a misstatement of fact, or to collate its contents in any manner with "information" obtained by the reporter at Havana or elsewhere? Not at all. It is taken up under the pretext of assisting the Secretary's understanding to a perception of the fact that the course on the part of the consul, therein detailed by himself, is flagrantly inconsistent with the reason therein given "for not taking measures to enforce the laws." And even this pretext is not adhered to; for what the reporter does is to show from the letter itself, without assistance from any thing else, except indeed his own moral sense, his own powers of ratiocination, and his own familiarity with the requisites for "a sufficient basis for legal proceedings" by consular authority at Havana, that the consul's course was, upon its very face, grossly and flagrantly culpable! The bearing of this demonstration upon the Secretary scarcely needs to be pointed out.

Was this portion of the "confidential" information imparted to the Secretary for his own special benefit and guidance on future occasions, or, on the present occasion, as a ground for forthwith dismissing "Consul Trist," and placing in the post one less prone to "give way under apprehensions of personal violence?" or is it to be viewed merely as a spontaneous and unpremeditated overpouring "excess of zeal," unconsciously imbibed at "the mixed commission," Wilberforce-pupil, fountain?—(*Supra*, sec. 1, LVIII to LXI and LXIV.)

III. Let us now examine into the particular merits of the lecture thus read to the Secretary of State for his own benefit and government, or for the benefit of whomsoever the "confidential" report might concern hereafter, should the Secretary fail to evince a due sense of its value and force.

The first thing to be noticed is an inaccuracy contained in the preface, by which the dissertation is introduced. The reporter, having previously stated that I had taken "charge of the Portuguese consulate," and used other expressions of like import, here states that, in regard to the present vessel, I "was called upon to act in both capacities, as *consul for Portugal* and the United States."

This subject will come under consideration hereafter. For the present, I will observe merely that these phrases convey an altogether erroneous impression. I never took "charge of the Portuguese consulate;" I never did any act as "consul for Portugal," or as "acting consul for Portugal." The commission was, as will be seen hereafter, tendered to me so soon as I had been appointed consul for the United States, and it was declined on the ground of the constitutional inhibition. No official act ever done by me was done in any other capacity than that of American consul. Of this, the reporter cannot but have been fully aware; and however unimportant the distinction may be in his eyes, he knew that it was not so in mine. He owed it to the reader, therefore, to place this fact distinctly before him, and at least to avoid the use of phrases calculated to convey the reverse impression.

IV. The next thing to be noticed is the omission of all mention of the

truth in one particular, the importance of which with regard to the consul will be felt by the reader the instant he becomes apprized thereof. The dissertation is so framed, that no human being perusing it would suspect the truth, that this case was instantly made the subject of a special communication from the consul to the Secretary of State, and that it is from this communication solely that the reporter knows any thing about the case—even so much as the fact of its having occurred! Not only is his reader not apprized of this truth, but he can scarcely fail to receive a positive impression to the contrary. After producing certain particulars of the case, as grounds for his criminating commentaries, occupying three pages, the reporter begins the fourth paragraph as follows: "In a letter to the department on this subject, the consul represents himself," &c. What reader would ever dream this "a letter" to be the letter whereby the department became immediately apprized of the case? Who would suspect it to be the letter but for which, probably, the department would never have learnt a syllable on the subject—the letter by means of which alone, certainly, Mr. Everett knew that such a case had ever occurred? I say certainly, for, although it be within the bounds of physical possibility that a knowledge of it may have been conveyed to him from Ferdinand Clark, either directly or through Ferdinand Clark's friend, "the mixed commission, yet it is morally certain that no such event ever occurred. What reader will receive any other impression than this: that the department, having been informed of the case from some other quarter, this "a letter upon this subject" is a lame apology for the consul to meet the woful necessity thus brought upon him? Let the reader answer.

V. I will now state the facts of the case, and then cursorily examine the views taken of it by Mr. Everett.

The Washington, a Baltimore schooner, was, in the manner already detailed, (*supra*, sec. 1, LXVI,) despatched in October, 1837, by Ferdinand Clark, from Havana to Matanzas, with a cargo for the coast of Africa. In May, 1838, a schooner, under the Portuguese flag, named *Senhora da Boa Viagem*—which doubtless had landed slaves on the coast of Cuba—arrived at Havana; where, after undergoing, on her entrance into port, the scrutiny of the local authorities in regard to her papers and all other particulars, (*supra*, sec. 2, XI, and appendix F,) she was officially reported as a Portuguese vessel, in ballast, from Africa. This occurred shortly after the suspension of the Portuguese consul. In consequence of which event, vessels of that nation again became dependent upon consuls of other Powers for any services they might need, as, until the appointment of a consul for Portugal the year previous, they had previously been, from the time of the decease of my predecessor in office, the late William Shaler, who had been commissioned and recognised as consul for Portugal, as well as the United States. Among the practices to which this dependence gave rise, one was, that such Portuguese ship-masters as chose to bring their papers to the American consulate for safekeeping were allowed to deposit them there.

This was done in the present instance; and the papers would have attracted no notice but for an incident which occurred some days after. The presumption was, that the vessel was some Baltimore schooner which had gone to the Cape Verdes, or some other Portuguese possession in that quarter, and had been there delivered and transferred to the flag, in pursuance of an arrangement made at Havana, or some other port in the West Indies. On inquiry, this presumption was verified. She was stated to be the ves-

sel which had been despatched by Clark seven months previous. It was understood, also, that her master on that occasion, a naturalized American citizen by the name of Ghetty, had recently made his appearance at Havana. About a week after her arrival, this person called at the consulate to inquire if the schooner could be again *put under the American flag*. This inquiry, connected with the character of the parties—that of Clark, in particular, having been, long before my first arrival at Havana, proverbial for the lowest cunning and dishonesty in every shape they can assume—awakened in me a suspicion that the American documents were still in their possession. This is the first, and, with one exception—which also was made the subject of an immediate communication to the department—the only occasion on which I ever had ground for any such belief; the invariable custom being to divest the vessel, before employing her in the business which, by our laws, is made a capital crime, entirely of her American character, and to transmit her documents to the United States for the cancellation of the bonds. This fact is just as notorious as any other connected with the subject. The suspicion caused me to inspect the Portuguese register; and this document served to confirm it. The register bore date in 1836, between one and two years prior to the time when the Washington had sailed with her American register. It evidently, therefore, had not been issued for her, and, considered with reference to her, was, whether genuine or fabricated, a false paper.

VI. My first impulse was to demand her seizure, upon the allegation that she was an American vessel navigating under the Portuguese flag, grounded upon this discrepancy between the date of her Portuguese register and the fact of her having since that date been at Havana as an American vessel. Upon reflection, however, I determined upon a different course. This was attended with the practically useful result of enabling me—although the parties were, in truth, beyond reach of any compulsion on my part, either direct or indirect—to obtain under the seal of confidence, and to transmit to Government, the whole truth of the matter: the American papers, together with an account of the manner in which the thing had been managed. The other would have been utterly futile. It would, indeed, have been attended, so far as I was personally concerned, with no small *éclat*; and have secured to me, in the eyes of all whom want of acquaintance with the subject might incapacitate for distinguishing substance from show, the real discharge of duty from empty parade simulating it, every advantage that could attend a brilliant proof of “excess of zeal” and of courage rising superior to “apprehensions of personal violence.” Beyond this, however, supposing my demand for the seizure of the vessel to have been acceded to, the only possible practical result would have been, first, to subject the parties to heavy expense in the tribunals of Havana, where the end of the matter could not possibly have failed to be a decision in their favor; and, second, to create an unanswerable claim, founded on that decision, for indemnity against the expense and detriment thus brought upon them. The certainty of such a decision, no person acquainted with Havana—I will even say, no person who has given me his attention thus far—can entertain a doubt of. That such would have been its proper legal consequence, is known to every man who possesses even the most ordinary popular knowledge upon the subject. Supposing the consul to be clothed with authority to call upon the tribunals of the country where he resides to institute a proceeding of this nature, it is manifest that he must abide by the result, such as it may be. If the adverse party obtain a decision in his favor, it necessarily results that he is

entitled to indemnity for all injury consequent upon the measure; and if—to use a sheriff technical—“the money can't be made out of the consul,” the Government in whose name he has undertaken—be it with or without authority—to act, is bound in justice to compensate for the consular inability. His conduct may have been ever so unwarranted and preposterous, and the result, so far as it may bear upon him, richly earned, still justice requires that they by whom he has been put in place should not allow others to suffer from the steps into which “excess of zeal” may have betrayed him. Were a case of the kind to occur in our country, this would inevitably be the doctrine and the practice in the event of a decision adverse to the consul, whatever might be the ground on which it had been rendered, whether this were the substantial merits of the case, or defect of testimony, or any other of the numerous causes, any one of which may effectually supply the place of judicial venality in producing a decision at variance with what every one knows to be the truth and justice of the matter, individually considered. For instance, in the case wherein, as we have seen, (*supra*, sec. 5, XXXV,) it was decided by our Supreme Court that the Spanish consul, in interposing a claim for the restitution of a vessel forcibly seized within the territorial limits of his nation, and carried away in violation alike of her laws and her sovereignty, had exceeded his legitimate authority,—in this case, (where the Supreme Court said, “We consider this claim as asserted by an *incompetent* person, and on this ground it ought to be dismissed,”) by whom were the costs and the damages paid? When the Spanish consul took his appeal from the circuit court, did this court hold itself exonerated with regard to him from the requirement of the law, that it “shall take good and sufficient security that the plaintiff in error shall prosecute his writ with effect, and answer all damages and costs if he fail to make his plea good?”

Whether upon the ground of the American consul being “an incompetent person” to institute such a proceeding; or upon the ground that the schooner in question had not been proven to be the same vessel as the *Washington*; or upon the ground that, though the same vessel, it had been proven to the satisfaction of the court that she had been sold and divested of her American character; or upon some other ground; the Havana tribunals would, as no human being who knows any thing of them can doubt, have brought the proceeding to a close by putting the consul in the wrong. Ferdinand Clark took the true view of the matter. In giving to his friend Ealo (the ostensible owner or husband of the schooner) the assurance whereby he sought to inspire him with courage to defy the consul, Clark, proverbially ignorant though he be, gave proof of a far more definite and accurate apprehension than is evinced by the reporter of the principles which necessarily govern subjects of this nature, even where they are exempt from all such influences as official venality or any particular affection on the part of the authorities, like that which, as we have seen, (*supra*, sec. 5, XL,) the reporter himself testifies to the existence of. It was perfectly true, as Clark assured Ealo, that the consul had no authority or power over the subject, and that he might, in all safety, be defied. Had Ealo taken this course, and had the consul acted upon his first impulse, the only possible evil consequence to the former would have been the certainty of present expense, to be counterbalanced only by a right to indemnity—a right which, though not less certain than the expense itself, would, like all other rights, be uncertain in its fulfilment. This is what the man was afraid of. This is what gave me the hold upon him whereby, despite all that Clark could do

to inspire him, I was enabled to extort the surrender of the American papers which I was satisfied were in their possession. What he dreaded was, not that an official decision of any kind could be obtained against him, but the mere event of being *drawn into court*—the mere necessity of signing his name upon the sheet of "*papel sellado*,"* that would be the fruit of the "expediente," (record,) the possible future size of which, if once begun, no one could fix a limit to. This is the calamity, at the prospect of which he was terrified, and rather than be subjected to which, had no other alternative presented itself, he would have preferred to lose the vessel at once, or to pay her full value.

VII. Mr. Everett's disquisitions on the subject turn chiefly upon two points—first, the legal value of the facts which were in my possession; second, the justness of the view taken by me of my official position towards the subject.

First: legal value of the facts in the consul's possession. Upon this point the report—after stating the facts in a manner which cannot fail to produce an impression harmonizing with that previously made (*supra*, sec. 5, I and XXXVII) in regard to the absence of all difficulty in putting them to juridical use—says:

"It was apparent, of course, that there had been no valid change of her national character, and that she was still American. She was therefore liable to forfeiture, and the captain who had returned in her to capital punishment.

"Here was positive evidence, available in a court of justice, and actually in the consul's possession, sufficient to condemn the vessel." And further on, "the consul, *although he held in his own hands documentary evidence sufficient to condemn her*, was still fully satisfied that any steps which he could have taken would have been ineffectual."

What was this "positive evidence" thus "actually in the consul's possession?" It consisted of two things: 1st, The Portuguese register, dated in 1836; 2d, The fact that the schooner carrying this register was an American-built vessel, which, in 1837, had been at Havana under the American flag, carrying a register and other documents showing that down to the latter date she had not yet been divested of her American character. This constituted the sum total of the matter of proof in my possession; for, it is to be borne in mind, the existence of the American document in the possession of the parties was a mere surmise of mine—a mere suspicion, which became verified under the seal of confidence, and never could have become verified in any other way. Indeed it never could have become verified even in this mode, could the Spanish owner or husband but have held firm under the exhortations of Ferdinand Clark, and not have "given way to apprehensions" of consular audacity.

In regard to these two elements of proof, it is to be observed of the first,

* *Stamped paper*, upon which all official proceedings are written. To *get one's name upon stamped paper* is a proverbial expression, signifying that a man's pecuniary ruin is sealed. Accordingly, one of the best established axioms of prudence is, to avoid it by all possible means. A few years ago, one of the first commercial houses of Havana, connected in a manner that enabled it to command one of the most powerful family influences in the country, was burglariously robbed of merchandise to the amount of several thousand dollars. The event became instantly known to all Havana. A large portion of the merchandise being discovered by the authorities, the house was called upon to come forward and identify it. It refused to do so, or to take any part in the proceedings! The certain loss was deemed a less evil than that of once putting their name, even in a case of this nature, upon "*papel sellado*."

that it was not in my legal custody ; of the second, that, considered with reference to the possibility of any official use of it at Havana, it really had no existence. The Portuguese register had been left at my office by the purely voluntary act of the master, and merely for safe-keeping. That master had a right to demand it at any moment ; and I had neither authority nor right to detain it. With respect to the identity of the vessel, it is unnecessary to add any thing to what has elsewhere (*supra*, sec. 5, XXXVII) been said.

But waiving all points of this nature, and supposing this matter of proof to be in court ; is it requisite to be a lawyer to know that it does *not* constitute "positive evidence sufficient to condemn" a vessel in any country ? Where is the law to any such effect ? Where is the country under whose law these two facts would have any operation beyond that, at farthest, of creating a presumption of some illicit proceeding which might, if proven, be sufficient to condemn the vessel ? Are not foreign-built vessels at this moment navigating under the American flag, at home and abroad, in all parts of the world, unprovided with any document save a bill of sale showing a transfer from the former foreign owner to some American citizen ? And has not this practice been sanctioned as lawful by organs of the law, of every class and grade, executive and judicial ? Suppose one of the numberless cases, daily occurring under this practice, to be as follows : A Spanish-built vessel, under the Spanish flag, visits Vera Cruz, or some other port of Mexico ; and departs as she came. In some other part of the world she is purchased by an American citizen, who, navigating her under the American flag, takes her to Vera Cruz seven months after her first visit to that port. An American register, bearing date prior to that period, having, by some means or other, come into the possession of this new owner, it is fraudulently exhibited by him as the document of his vessel. Admit this fact to be susceptible of juridical proof, by means of the date of the document and proof of the identity of the vessel ; would it constitute ground for any thing more than a presumption that she had been, or was to be, engaged in some illicit business, some cont. avention of law, which the document thus fraudulently used might be made to subserve ? And suppose this illicit business to be one in which the local authorities at Vera Cruz are "associates ;" and that, under this state of things, the Spanish consul, being clothed with authority to such effect, calls upon them to seize the vessel on the ground that she is a Spanish vessel navigating under the American flag ; would there be any reason to believe that the step could result in any thing but defeat ? But admit the authorities of Vera Cruz to be disposed to such an exercise of their power—admit them to be ready and eager to avail themselves of any pretext which may serve towards the confiscation of the vessel and cargo ; is the ground sufficient for that purpose ? Is there any known law, or principle of law, municipal or international, under which this register (associating with it the juridical proof of the identity which shows the use made of the document to be a fraudulent one) could be held and decided to constitute "documentary evidence sufficient to condemn her ?" Let those versed in the law answer. And this is the point which the reader of the report, who should place any reliance upon the writer's qualifications for the task here so gratuitously assumed by him, would take for granted is certain, clear, and obvious, beyond the possibility of a doubt ;—so clear and so obvious as to justify the imputation upon the consul conveyed by the sneering averment that he, "al-

though he held in his own hands documentary evidence sufficient to condemn her, was still fully satisfied that any steps which he could have taken would have been ineffectual!

VIII. But admit the law of the subject to be what the reporter here assumes it to be; admit that, at Boston, or elsewhere in our country, or in any country where the law is operative, the matter of proof in possession of the consul would be "sufficient to condemn the vessel." We are now not at Boston, but at Havana,—at a place where, according to the testimony of the reporter, the authorities are "associates" in the illicit business wherein, doubtless, this vessel has been engaged. This very fact, then, which at Boston would constitute the motive, of all others, for the most zealous and energetic exercise of every power vested in the authorities towards putting the law in force will at Havana constitute the motive, of all others, for every possible exertion to defeat its operation.

Viewed in the light of "information" from him; considered as his testimony in regard to the matter—testimony wherein is embodied the result of "every thing that I [he] witnessed or could learn upon the spot,"—the reporter's remarks under this head amount to—what? To a reiteration of the arguments of belief previously advanced by him respecting the case of the *Yeaus*. (*Supra*, sec. 5, *passim*.) They amount to a solemn assertion of his deliberate conviction that, had the consul but adopted the course which the reporter deems him so grossly culpable in not having pursued, the condemnation of the vessel would certainly have followed.

The labor already performed upon this portion of the fruits of the reporter's industry in possessing himself of the accurate information which should enable him to give—in the shape of his own beliefs and disbeliefs—aid to the judgments of those who have not enjoyed the same advantages for studying the character of the Spanish people and Government "upon the spot," both at Havana and Madrid,—this former labor precludes the necessity of a minute examination into the merits of his creed in its present application. Let us, however, in order that we may have clearly and distinctly before us its inevitable result, suppose the consul to have adopted the course indicated by the reporter's criminations.

The consul then addresses a letter to the Captain General, asking the seizure of this vessel. The request is based upon two grounds: *first*, that she is an American vessel navigating under the Portuguese flag; *second*, that it is matter of public notoriety that she has just landed slaves from Africa on the coast of Cuba. These are the two grounds, on *both* of which, agreeably to Mr. Everett's views, it was imperative upon the consul to place his application. The reason why, as a matter of principle, the latter would not have been used by me—even had I made the application—has already been fully considered, (*supra*, sec. 5, XXXII.) Viewed in the light of expediency alone, with reference to the result aimed at, it can scarcely be necessary to point out the effect it must have had upon any disposition which the authorities might have entertained to give their co operation, if requested, on the first ground alone.

Well, the step is taken;—there is no want of alacrity on the part of the authorities, no cavilling from the law advisers;—the vessel is forthwith seized, and the consul is requested to indicate his proofs. He produces the Portuguese register, and gives the names of a dozen ship-masters, who are willing to swear to the identity of the schooner—to the fact that she is the

same vessel which, seven months before, was in port under the American flag.*

The matter is now in court: the consul has been called upon to give security for costs and damages, and has done so. After six months, or twelve months, or one, two, three, or any number of years, the case is decided "in the first instance," (subject to appeal from one tribunal to another, until the last resort shall be reached at Madrid;) and the decision is to the following effect:

"This proceeding is founded on a demand made by an incompetent person; and, on this ground alone, it must be dismissed, as it would have been at an earlier period, but for the weighty considerations which seemed to require, and therefore to justify, a departure from the course dictated by strict legal principles.

"Desirous of sifting to the bottom a case which had been used by a foreign consul as a pretext for a charge of so serious a nature against the constituted authorities to which he is accredited, the powers of this tribunal have been exercised for subjecting it to the most searching and patient scrutiny. The result disproves in the most conclusive manner both the grounds upon which the consul's most extraordinary pretension was advanced.

"The first point inquired into was, the genuineness of the Portuguese register. This was conclusively established. Indeed, the fact of its genuineness was implied by the consul's own argument; for, had the document been a fabricated one, there could have been no motive for giving to it the date which, by his own showing, constituted the only ground for believing that the vessel had not been regularly nationalized. The Portuguese register having been proved to be genuine, it constituted *prima facie* proof that it had been regularly issued to the vessel carrying it. Still, there was a possibility of the truth of the fact assumed by the consul, that this document had been issued for some other vessel, and not for the one in question; which he avers was in this port, under the American flag, in October, 1837. Admitting this averment to be true, it would by no means suffice to support the inference deduced from it; for it would be requisite to prove also that the American documents exhibited on that occasion were not false documents; and that, supposing them genuine, they had not been fraudulently obtained for a vessel which, in reality, was at the time a Portuguese vessel. The averment, however, so far from being true, has been fully disproved. Upon this point—the identity of the vessel—a great mass of testimony has been taken, embracing that of the witnesses named by the consul. Their evidence, although strong enough in itself to excuse in some measure his precipitate proceeding, has been overborne by proofs the most conclusive, direct and indirect. A far greater number of witnesses—to whom also the American schooner Washington was well known whilst in this port, in October, 1837—have testified, in a manner to leave no doubt upon any mind, that they were previously acquainted with this Portuguese schooner at the Cape Verdes; and, in corroboration of their testimony, the fact has been fully proven that the Washington, after a sale made of her at Bona Vista, in January, 1838, (by an instrument which the parties were allowed time to procure from that place, where it had been left,) foundered

* This supposition conflicts directly with the truth. For the reasons above stated, (*supra*, sec. 5, XXXVII,) it is my firm conviction that it would have been utterly out of my power to indicate a single individual to testify to even this fact.

at sea on her voyage thence to Gallinas; the mate and one of the sailors having alone survived.

"The tribunal cannot dismiss the case without animadverting upon the recklessness with which the consul, not content with transcending his rightful powers to the flagrant extent inseparable from such a proceeding on his part, even if marked by the most delicate regard for his duty in other respects towards the functionaries of the nation from whom he holds his exequatur, has aggravated his misconduct in the highest possible degree by presuming to allege, as matter of public notoriety, the fact that the vessel in question had just landed slaves from Africa on the coast of this island; an occurrence in flagrant contravention of laws which its authorities, from the highest to the lowest, are most strictly and specially charged with the enforcement of. Overlooking the wantonly insulting character of this allegation, the tribunal invited the consul to indicate any proofs which might go to substantiate it. Not only has he failed to do so; but the 'report prevalent in this place,' on which he affects to have relied, has, upon the most searching scrutiny, proved to be destitute of all solid foundation. The imputation therefore stands on the record, branded as an atrocious calumny. It belongs to another department of the Government to decide whether it comports with its rights, or with the protection which it owes to its authorities, that a consul capable of thus abusing the residence allowed him for other purposes should be permitted to continue among them."

Such, according to the consul's belief, would have been the character of the result. Which of the two beliefs—the reporter's or the consul's—seems to the reader the more rational?

IX. The second of the points to which the reporter's animadversions pertain is, the view taken by me of my official position towards the subject. Upon this point he observes:

"On what principle of law or morals the consul could feel himself excused from performing his duty according to facts within his knowledge, because under other circumstances he might not have known the same facts, is not explained."

To whom is this addressed? By whom is it uttered? Upon what subject? Under what pretence?

'Tis addressed to the Secretary of State. The subject is, an official communication received by that Secretary two years before. 'Tis to this officer, and under these circumstances, that the intimation is conveyed! and by whom? By a person employed by that Secretary for the purposes above stated, (*supra*, II.) By one, who, in discharging the office thus committed to him, finds it necessary to animadvert upon the *presumption* evinced by the consul in permitting his official course to be influenced by considerations which belonged to a sphere above that occupied by him! 'Tis by this agent, so alive to the obligation upon public officers to confine themselves to their appointed sphere of action—nay, of thought even—that the language before us is held! And this, in a communication purporting to be a report of information collected at Havana in pursuance of his instructions! For what alleged purpose is the consul's letter taken up? For the purpose of showing from it, that, in this case at least, the impossibility of obtaining judicial proof did not exist. This is the alleged object and intent: and behold the use to which it is put! Supposing even the imputations here conveyed to have been well founded: would this have been a legitimate use of the opportunity extended to the reporter, of perusing the

communication addressed by the consul to the Secretary of State? Could he, or any other man, believe that this opportunity had been afforded him for any such purpose? Could he, or even one far less versed than he in the "principles of law and morals," believe this to be a proper use of the confidence reposed in him?

But overlooking all this, let the question, here in so unpresumptuous a manner propounded by the reporter, be considered in itself, without reference to the *animus*, of which it is so unequivocal, so flagrant, and so valuable an indication: "upon what principle of law or morals" is it, that official conduct in every department of Government, and in every branch of every department, executive and judicial, is daily and hourly based upon facts *officially* known, in contradistinction to facts which are known, but not *officially*? Upon what "principle of law or morals" is it, that juries every day respond "not guilty"—and are directed by the bench so to respond—in regard to criminals of every dye, deliberate and cold-blooded murderers amongst the rest, who are *known* to be guilty—the guilt of whom is doubted by no man on the jury, nor by any human being to whose *knowledge* the facts have come? Upon what "principle of law or morals," for instance, is it, that, in the case of the Redwing, (*supra*, sec. 5, XXXVI.) although it could be doubted by no one that the man charged with the contravening the law had done so, this offender escaped the penalty? Upon what principle was it, that though the consul's certificate was *known* to every individual on the jury, and although this knowledge could not but preclude all doubt from their minds in regard to the fact that the law had been violated, the culprit was nevertheless allowed to escape? For what purpose was that court constituted? Was it not created as an instrument for enforcing the law—for securing the application of the penalty in every instance where it should be incurred? And was not this purpose defeated—intentionally defeated, against *knowledge*—by the course pursued by the judge? Is it true, or is it not true—taking in their literal sense the words here used by the reporter with regard to the consul—that, in this case, the judge "*conceived he was at liberty to suppose himself (and to instruct every man on the jury to suppose himself) ignorant of the facts which he actually knew?*" Take the other case which we have had occasion to become acquainted with in examining (*supra*, sec. 5, XXXV) into the accuracy of the reporter's statement with respect to the attributes of the consular office. For what purpose does the Supreme Court of the United States exist? For the purpose, among others, of securing the observance of the law of nations, and redressing injuries suffered through violations of those laws. "On what principle of law or morals," then, is it, that the Supreme Court decided, that, although the Spanish consul should have conclusively proven that the facts were all as alleged by him, and that consequently the owners of the vessel and cargo, the restitution of which was demanded by him, had been forcibly despoiled of their property whilst under the protection of the laws of his country, in flagrant violation of those laws, and of the law of nations also,—yet, for the sole reason that he was not officially competent to interpose such a claim, "it must be dismissed;" the wrong must be left unredressed after years of suspense; the robbers remain in possession of their spoil; and he be subjected to heavy expense and damages in their favor? Considered with reference solely to the end for which the court exists, and without regard to the distinction between facts regularly and officially known, and facts not thus known, might not this case be ad-

duced as one wherein the court had "conceived it was at liberty to suppose itself ignorant of facts which it actually knew?"

And what is the pretext seized upon by the reporter for bringing this wretched sophism to bear upon the consul? It consists of nothing beyond the fact, that the view which the consul took of the case (as the department was instantly apprized—a truth which, though omitted by the reporter, the reader must not forget) as a ground for official action on his part, was governed by this distinction between facts officially known, and facts which are not so known. Grant that his application of the principle had been a mistaken one; and grant that it had belonged to the reporter, as a high functionary, clothed with revisory and censorial powers over the executive branch of the Government, to pass judgment upon the point; granting even this, would the sophism here wielded have constituted a proper instrument in the exercise of the high function? But, in point of fact, the one admission is no less at variance with the truth than the other; the consul's application of the principle was not a mistaken one. As the case then stood, the consul was not officially in possession of any ground of action with regard to it; no ground for such action officially existed. But, under a possible contingency, which the facts were perhaps susceptible of giving rise to, such ground would exist. Even then, any step which could be taken by him would prove entirely barren of useful result. Upon this point the consul—as his letter at the time shows, and as the reader will not require any further evidence than that already adduced to satisfy his mind—entertained an absolute conviction. Still, under the contingency referred to, the facts would constitute official ground for a proceeding on his part, which, on the face of it, at least, would not be a preposterous irregularity. Owing to the fact that there was not then at Havana any Portuguese consul, or any one clothed with authority to discharge his functions, the contingency itself could not actually occur in this case. The condition upon which, supposing a Portuguese consul to be present, its occurrence would depend, was, however, a point which the consul had it in his power to ascertain unofficially. He did so; and the result was such as to convince him that the case was not of a nature to give rise to the contingency, and that the juridical establishment of this fact could not fail instantly to result from the proceeding which had suggested itself to him, were he to enter upon it.

What was the nature of this contingency? It depended on the character of the Portuguese register—on its sufficiency to command for the vessel a recognition from those to whom it of right belonged to pronounce upon the point. Suppose the consul to have taken the step of demanding her seizure on the ground that she was an American vessel—the ground on which alone, supposing him clothed with full authority to make such a demand, it could be placed; what would have been the first point to be inquired into by the authorities? The genuineness of her Portuguese register. And suppose this point decided in her favor; would it not be conclusive against the demand, until its force should be destroyed by countervailing proof, of the most positive and unanswerable kind, establishing that the register, though genuine, had not been issued for the vessel carrying it? This is self-evident. To whom, then, does it belong to judge of the satisfactoriness of the papers of a vessel entering a foreign port? To the consul of her nation, if there be one; and if there be none, to the local authorities. In this case there was no consul; and the right rested solely with

the authorities, by whom it had been exercised. But, although it had been exercised, and the papers had by them been pronounced satisfactory, a possibility still existed that, had a consul been in place, they would have proved otherwise to him; in which event ground would have officially existed for the allegation contemplated by the American consul—an allegation resting upon the assumption that the Portuguese character, in which she had entered and had been recognised, did not belong to her. In such event alone would such ground have existed; and the possibility of the event constituted the only reason which could be assigned by the American consul for addressing to the local authorities an application involving a call upon them to exercise anew the authority in regard to the vessel's papers, which, in the absence of a consul of the nation from which they purported to emanate, resided in them exclusively. Had there been a Portuguese consul at the place, and had the documents proved satisfactory to him, and the vessel been recognised by him as one of his nation; would the consul of any other nation have possessed any right to make, or the local authorities any right to entertain, an application for proceedings founded upon the alleged fact that she was not so in truth? And if, in the absence of such consul, such application be made, what is the first question for the authorities? Can it be any other than the question, whether the documents carried by her are sufficient for her recognition by a Portuguese consul—by the functionary whose authority to pronounce upon the point now rests in themselves?

And this is precisely the point in regard to which the consul informed himself. And having ascertained that the question, if raised, could not fail—even without aid from the known disposition of the authorities on the subject—to be decided in the affirmative, what possible motive could he have to take the step, unless, indeed, he were actuated by the determination to avail himself, right or wrong, of the opportunity to give proof of “zeal?”

The subject, in itself, appears to me too simple a one to justify all this pains upon it, and so it may seem to the reader; but the use made of it by the reporter requires that I should leave nothing undone which may serve to put the truth in a strong light. Averring that I held in “my own hands documentary evidence sufficient to condemn the vessel,” he avers also that I conceived myself “at liberty to suppose myself ignorant of the facts which I actually knew.” Now, what are “the facts,” in regard to which any ground exists in truth for this averment? The sophism hid under it has already been exposed. But, putting this out of view, and considering it simply as an averment of fact, what are “the facts” in regard to which any ground for it is afforded by the truth of the matter? They reduce themselves to the *one* solitary fact, *the date of the Portuguese register*. This is the only point in regard to which I was governed by the distinction between official knowledge and unofficial knowledge; or, as the reporter expresses it, in regard to which I conceive myself at liberty to suppose myself ignorant of facts which I actually knew.

What was the sum total of the matter of fact, which—taking the word knowledge in the loose, unofficial sense, wherein it applies to every thing one hears and believes—had come to the consul's knowledge? I will recapitulate it. First, however, in order that its force and value, even under the most favorable circumstances, may be clearly seen, I will make a supposition:

Suppose, then, that the authority of the consular office, instead of being

of the exceedingly restricted kind which it has (*supra*, sec. 5, XXXV) been seen to be, is absolutely unlimited, for the purpose of bringing cases of this description before the tribunals, and for demanding their agency. In a word, there is a treaty between the two Governments, making it the duty of their respective tribunals to seize and condemn, or detain in custody and deliver up, any vessel which, upon being denounced by one of their consuls as a vessel of his nation navigating under a foreign flag, shall prove to be so. This the authorities of Havana are under treaty-obligation to do. Further, we will consider the subject apart from all facts of a practical nature relating to their official character generally, and their disposition towards this subject in particular. We will suppose them to be not only under the obligation so to act, but willing and ready to fulfil the obligation whenever called upon.

Could an arrangement of this nature between the two Governments supersede the rights of third parties, or affect in any mode or degree the obligations of the local authorities towards other foreign flags, under the established usages of commerce? Could it give to the Spanish consul at New York a general right to scrutinize the papers of vessels arriving at that port under the flags of other nations, in order to satisfy himself that the vessel, if Spanish built, was now provided with genuine documents corresponding to her new flag? Suppose him to know in regard to one of these vessels—and to be in possession of juridical proof of the fact—that she is Spanish built, and was under the Spanish flag within the last twelvemonth; would this suffice to give him such right of scrutiny? Would it not still belong to the consul of the nation whose flag and documents are now carried by her, to judge of the satisfactoriness of her papers? So long as recognised by him as a vessel of his nation, would it not be incumbent upon the Spanish consul, and the local authorities also, to respect the recognition, unless he were in possession of facts conflicting with its justness? Would the mere fact of the former national character of the vessel constitute a sufficient ground for officially calling in question the justness of the recognition, or even a sufficient motive for doubting it? These are questions which it can scarcely be requisite to answer in the negative. Suppose, then, that in a case of this precise kind, a fact is apparent on the face of the register now carried by the vessel, which, connected with the fact of her former national character, proves the register to have been fraudulently obtained; and suppose, also, that these two facts constitute a sufficient basis for official action on the part of the Spanish consul, founded on the assumption that the vessel still remains a vessel of his nation; under what contingency can the duty, or the right, devolve upon him to take such action? Can he make official use of the fact of the date of the register, unless this fact be officially known to him? And how can it become officially known to him, except in consequence of official action on the part of those to whom it belongs to take official cognizance of the document? How, indeed, in the regular course of things, can the fact come to his knowledge at all, except in consequence of such action? But suppose this to happen fortuitously, and the fact to be made official use of by him; and that its admissibility, as a ground of action on the part of the tribunal to which resort is had, be objected to on the ground of his incompetency to state the contents of a document in the custody of the agent of another nation, and not subject to the scrutiny of the consul thus pretending to make use of them; suppose this objection to be raised, and the disposition of the tribunal towards the subject to be ever so different from

that which prevails at Havana ; will any lawyer pronounce it to be so manifestly groundless that it would certainly be overruled? Would a decision confirming the objection, and, on this ground alone, rejecting from consideration facts which the court could not doubt the existence of—would such a decision present any approach, in point of apparent preposterousness, to those which are of daily occurrence in every country ; and which, considered apart from the rules of procedure, and with reference solely to the substantial ends of justice, or even to the substantive provisions of the law that are known to govern the subject, strike one as flagrant instances wherein the judicial power which exists for no other purpose than that of securing fulfilment to the substantive provisions of the law, is exercised to no other purpose than that of preventing their fulfilment ?

And now for the recapitulation of the facts which the case presented :

1. In October, 1836, the American schooner Washington clears from Havana, for Matanzas, with a cargo, and under circumstances affording a strong presumption that her destination is Africa, and that it is intended to sell her there, or to transfer her in pursuance of an agreement already made.

2. In May, 1837, a schooner arrives at Havana under the Portuguese flag, and after being, by the local authorities, " most carefully examined, to ascertain if her papers be correct, and her proceedings lawful," is reported by them as the Portuguese schooner Senhora da Boa Viagem, in ballast, from the coast of Africa ; a circumstance affording a presumption that she has brought slaves, which have been landed somewhere in the island of Cuba or Puerto Rico.

3. There being at the time no consul or acting consul for Portugal, the master of this vessel, after exhibiting his register at the custom-house, brings it to the American consulate, where, in pursuance of a custom which will be explained hereafter, the master of any foreign vessel, not having a consul at the place, is allowed to deposite his papers, and to have his acts regarding them certified to.

4. Some days after, the American vice-consul learns, as part of the news of the port, that this vessel was formerly the schooner Washington ; and thus the presumption, afforded seven or eight months before, by the circumstances under which that vessel departed, becomes confirmed.

Thus far the case presents no ground to suspect any contravention of American law, beyond that involved (*supra*, sec. 1, XLVII) in the sale of the vessel, under a knowledge of the use which was to be made of her. The established practice in cases of the kind leaves room for no other supposition than that she has been to some part of the Portuguese dominions, probably the Cape Verdes, (as afterwards proved to be the fact,) where her Portuguese documents have been obtained, and whence her American papers have been transmitted home.

5. This fact (that the vessel was formerly the Washington) is communicated by the vice-consul to the consul, together with the further fact, that the American master, under whose command the vessel sailed in October, 1836, has been to the consulate to inquire if she can be put under the American flag ; in other words, to propose that a transaction, known to be of common occurrence all the world over, (and to effect which, in the exercise of a right questioned by none except the consul at Havana, nothing

more would be requisite than to send the schooner to any other port in the United States, or elsewhere,) shall take place at Havana.*

6. This inquiry, under the circumstances attending it, awakens in the consul a suspicion that, contrary to what is universally known to be the invariable practice in cases of this nature, the American papers have not been transmitted home, but are still in the possession of the parties; that their object is to convert the schooner into an American vessel, by the ordinary process of a sale; and, having thus secured for her a recognition and clearance in this character, to navigate her with the American register. This suspicion causes the consul to examine the Portuguese register left at his office; and the date of the document proving to be about a year prior to the time when the vessel had first visited Havana, this fact serves to strengthen his suspicion.

7. The fact of their having the American documents in their possession is denied; but the consul, by alarming the owner with a prospect of expensive judicial proceedings, and, on the other hand, promising not to take advantage of any disclosures confidentially made to him, succeeds in extorting the surrender of the American papers, and in obtaining the truth of the matter; showing that, the plan of the parties having been to take the vessel to Lisbon in quest of a Portuguese register, the necessity of going there had been superseded by the offer of one for sale at the Cape Verdes.

Such is the sum total of "the facts," which—using the word knowledge in its unofficial sense, wherein it applies to all that one hears and believes—came to the consul's knowledge in regard to this case. Taking from the mass those contained in the last division—which never could have come to his knowledge, had he pursued any other course than that whereby they were obtained—what does the remainder amount to, as a basis for official action on his part? And of this remainder, what portion can be considered as officially known to him? Does it consist of aught beyond the proposal addressed to him, to permit a schooner, then in port and recognised by the local authorities as a properly documented Portuguese vessel, to be put under the American flag, by means of a process recognised every where as lawful—every where recognised as one whereby any American citizen possesses an absolute right to become the owner of any vessel, wherever built, or whatever may be her national character at the moment he proposes to buy her? And what portion is it that constitutes "the facts," in regard to which there exists any foundation in truth for the averment that the consul "conceived he was at liberty to suppose himself ignorant of the facts which he actually knew?" Does it consist of aught beyond the *one* fact—the date of the Portuguese register? Of all the matter-of-fact known to him, is there a single particle, except this, to which, under the view taken by him of the case, as a ground for his official action, the distinction between facts officially known and facts unofficially known was applied by him?

X. Scarcely less numerous than those which have made such heavy de-

*It will be demonstrated hereafter, (in refutation of charges brought by British agents, which could not possibly be true, unless the consul were one of the most basely sordid and venal of men; so basely sordid as to evince the utmost recklessness of consequences in the pursuit of even the most minute and petty gains,) that, to secure an *immense fortune*, nothing was requisite on his part but connivance, mere *connivance* in the most passive sense, at this practice of putting vessels under the American flag. This was the field for venality to display itself in; where its reward, in every individual instance, would have been a fee of dollars reckoned by the *thousand*.

mands upon our time and patience in the examination of former sections, are the points calling for remark, presented by the one now before us. Time, however, presses; and I must confine myself to a specimen or two.

We have seen (*supra*, IV) that the reporter refers to "a letter to the department," written by the consul, "upon this subject." For what purpose is this letter referred to? For the purpose of making it the text of a discourse, the opening paragraph of which is as follows:

"In a letter to the department upon this subject, the consul represents himself (while his course was still undecided) as telling the delinquent captain, who had returned in the vessel, and had had the effrontery to present himself at the consular office, that he (the consul) 'should be truly glad if it should prove not to be his duty to molest him.' Having satisfied himself in the way I have described that it was not his duty, he finds himself 'relieved from a disagreeable necessity.' These are expressions which are not usually employed by officers, empowered to enforce the laws, in conversation with criminals, and in reference to measures that are likely to bring them to justice."

Now, who could have supposed that the remarks here stated to have been addressed by the consul to "the delinquent captain" were addressed, not to him, but to Ealo, the then owner or husband of the vessel? On perusing this passage of the report, I took for granted that the language of my letter must be such as to mislead the reader in regard to this point. But, upon examining it, I find the fault to be with the reporter: my letter does not even admit of being so understood. Not that I mean to say that the misrepresentation is intentional; for I do not believe it to be so. But my language admits of but one construction; and the heedlessness with which a different one is put upon it by the reporter, and is then seized upon as a text for remarks such as those now before us, constitutes valuable proof, in confirmation of the many we have already had occasion to notice, of the spirit in which the report is written.

Nor is this the only impression at variance with the truth; which the passage conveys. This is the second time that the reporter mentions the return of the captain who had taken the vessel to Africa. Both times is the fact of his return associated with the averment that he had returned in this very vessel; in other words, he is averred by the reporter to have committed the offence denounced by our laws as piracy, and punished with death. And this the reader will, of course, take to be one of "the facts which the consul actually *knew*," and which, nevertheless, he "conceived he should be at liberty to suppose himself ignorant of!" Now, so far from then knowing this fact, the consul has never, to this day, heard it. He now considers it in a high degree probable; but his belief rests on the presumption afforded by the confirmation (at a time subsequent to that here referred to by the reporter) of his suspicion in regard to the American papers, and the details entered into by the captain, under the pledge which the consul gave him. Upon this point he was not questioned by the consul. Had the consul been aware of his intention to state the fact of his having returned in a vessel with slaves on board, he would have cautioned him against doing so. In regard to the mere fact of the captain's appearance at Havana, at the same period that the vessel returned there, this coincidence, so far from being conclusive of the point, really afforded but a very slight ground for belief in regard to it; especially when considered in connexion with the serious risk attending a return in such a vessel. That slavers do not present

the only opportunities of return from the coast of Africa, is known to every one. We have seen (*supra*, sec. 3, XIII) that even the reporter's short experience at Havana sufficed to show—though he deemed the fact unworthy of note—that, even of vessels returning from the coast direct to Havana, “in ballast,”—to say nothing of those which “take some other direction,”—a portion, at least, may be so entirely innocent as to deserve no mention whatever among the statistics or “approximative estimates” upon the subject. In the three vessels of this obscure kind, which, as we have seen, arrived at Havana within the space of a fortnight, in June last, there were perhaps some passengers; and among these passengers there may have been one or more American ship masters. There can be no doubt that this was the case, if, at the time of their departure from the coast, there chanced to be there any such ship-master whose vessel had recently been sold, and who felt disposed to return to Havana.

But suppose the fact of the captain's appearing at Havana at the same period that the vessel returned there to afford ever so strong a presumption that he had returned in her: what would be thought of the judge, who, upon the strength of this presumption, should, in his charge to the jury, speak of the fact of the captain's having so returned as “known,” and go on to argue on this assumption? And what does the reporter here do but this very thing? And what is the relation which he occupies to the consul,—what the bearing of the sophism upon the consul?

XI. The next paragraph—still commenting upon the “*a* letter”—is the one wherein is introduced the reporter's animadversion upon the consul's singular notion in regard to the “wanton insult,” (*supra*, sec. 5, XXXII,) and also the information furnished by him (*ib.* XXXIV) in regard to the attributes of the consular office, and their close affinity, if not identity, with those pertaining to the diplomatic character.

This resemblance, it will be recollected, furnishes to the reporter the basis for a demonstration of the recondite truth, that it is the duty of an “American consul” not “to be deterred from doing his duty, because an honest performance of it may not be agreeable to the local authorities.” Pursuing the train of thought thus commenced, he makes the averment which has already been examined,—that “the consul, although he held in his own hands documentary evidence sufficient to condemn the vessel, was still fully satisfied that any steps which he could have taken would have been ineffectual.” In connexion with this averment, he takes up a passage in my letter to the commissioners wherein I express strongly, but not too strongly for the truth,* the danger that would be incurred by any man who should show himself able and willing to give effective testimony towards having the case of the *Venus* juridically established; and having quoted my language expressive of the certainty with which any man—supposing the authorities desirous of enforcing the law—would seal his fate who should step forward *as a witness* to enable them to do so, the reporter closes this dissertation as follows:

“The consul proceeds to state, at considerable length, that the reason why the British commissioners have not been more active in denouncing infractions of the treaties is, concern for their personal safety; and that his

* (*Supra*, sec. 5, I to VIII.) To the matter there contained, may be added a reference to a despatch contained in the parliamentary papers from one of the British agents in Brazil, who says “the enemy of the slave-trade has to dread the assassin's knife even in the open day, and in the public gaze.”

own has been in some degree hazarded by the steps which he has at times taken in the discharge of his consular duty.

"From the strength of the language in which this particular consideration is expressed, it may be concluded that it is one of those which have had the greatest influence on the consul's mind. The apprehensions of personal violence, to which he seems to give way, appear to me, from every thing that I witnessed, or could learn upon the spot, to be greatly exaggerated, and are not, at all events, a proper motive of conduct. If the state of things be such at the Havana that an American consul really cannot perform his functions with safety, he should be withdrawn. While he remains he should do, prudently but fearlessly, what he knows to be his duty, and leave the consequences to be settled between the two Governments."

So far as regards the effect produced by it, this passage needs no comment. The reader cannot require to be told of the admiration—mingled, of course, with a due measure of contempt for the craven consul—due to the heroic standard of consular obligation thus incidentally set up by the reporter whilst engaged in "the precise" task of enlightening the Secretary of State upon the "principles of law and morals," gross and flagrant violations of which are apparent upon the face of a communication received by this pupil two years before. Nor need the reader be told that, besides its utility in this place, this standard serves the purpose also, at the conclusion of the report, of enabling the reader accurately to estimate the full loftiness of the chivalric contempt for "personal violence," under whose genial influence arose and was maintained, throughout the entire period of the reporter's residence at Havana, an ardent desire "to find an opportunity" for proving what an absolute contrast the reporter's character, in that point no less than others, presents to that of the hare-hearted consul.

But, though the purposes subserved by it be too obvious for comment, it is otherwise with regard to the process whereby it is raised. By what means is this accomplished? How is it that, in the twinkling of an eye, we have under contemplation a structure, which, as it has arisen under our gaze, has produced such effects? What is the germ-idea, the elementary thought, which has served to give the impulse to the cogitations that have resulted in this beautiful discovery? What is it that furnishes what might, by an uncharitable person, be called the pretext for the reporter's informing the Secretary of State that "If the state of things be such at the Havana that an American consul really cannot perform his functions with safety, he should be withdrawn?" What is the call for any such revelation? What the occasion for using it as a stepping stone to mount the highest stilts of gratuitous heroism, in order that the Secretary may have the benefit of "confidentially" learning that—according, at least, to the reporter's notions of duty—so long as the consul is not withdrawn, it is his duty to do his duty—even though he should know that assassination will be the consequence—and leave his murder as an affair to be settled between the two Governments? Than this, nothing could be more valorous. Bonaparte himself, exacting as he was, would have required nothing further—than the assurance of this principle being acted up to—from any officer. It would have satisfied him, not only in a consul, but in the leader of the most desperate "forlorn hope" that ever was selected to march up to a given point for the express purpose of being there blown into the air. But, under what pretext is it, that the Secretary of State is here indoctrinated with this

sublime principle? Let us see. We shall find that if ever there was a piece of gratuitous preaching, it is here.

On tracing up, step by step, this sublime theory to the alleged reason for its introduction here, we find the germ of this reason in the first sentence of the passage. That sentence relates to certain contents of the consul's last communication to the British commissioners; and it embodies, in the shape of one proposition, two averments. These it is necessary to consider separately. They are:

1st. That the consul charges the commissioners with not having been so active as they might have been "in *denouncing* infractions of the treaties."

2d. That he has stated the reason of this imputed supineness to be, their "concern for their personal safety."

Now, both these averments are entirely erroneous. Not only are they without foundation, but their vitiousness is not of this merely negative kind. They actively conflict with the truth; for they serve to obliterate a vitally important distinction—a distinction which not only was used by the consul, but actually constituted the very ground of his remarks,—the very essence of the matter of fact which the report here purports to present in a condensed form. I mean the distinction between *effective instrumentality* and "official cant"—as from the article in the Westminster Review, already referred to, it appears that some persons in England itself have at last discovered these doings of British commissioners to be. I mean the distinction between *doing* and *pretending*; between real action, and what children call "make-believe;" between taking a step which can be attended with the result for which it is professed to be taken, and taking a step which everybody knows to be insusceptible of any other consequence than that of deceiving people at a distance with a dupery show of "zeal."

This is a truth, to which I particularly bespeak the reader's attention. The reporter, professing to state what the consul has said to the British commissioners, states something essentially different from it,—nay, considering the distinction, with reference to which the consul spoke, something directly the reverse of what he said; and the thing thus substituted is made the pretext for imputing to the consul the most pitiable personal poltroonery; and this imputation, in its turn, is made to serve the purpose of bringing into view the sentiment of valorous devotion that would inspire the reporter, were he placed in the position which he represents the consul as magnifying the danger of, in order to give speciousness to his craven apology for omitting the discharge of duty!

But to the two specific points presented by the averments under consideration. It is untrue that the consul ever charged the commissioners with supineness, as is here stated; and it is untrue that any backwardness which he did impute to them was ever ascribed by him to personal fear.

In regard to the latter point, it has already come under notice; and nothing farther is requisite here than to repeat, that, though the words "would not dare," used by the consul with reference to the British commissioners, might seem to justify such an interpretation, yet the context conclusively shows that they had reference, *not* to the commissioners' "concern for *their* personal safety," but to their concern for the personal safety of *others*. They were used by the consul in a mere statement of the matter of fact—known to every one at Havana, and to none better than the very men who, for purposes of "official cant," had taken a step implying ignorance of it—that, although the commissioners could, without diffi-

culty, obtain information on the subject of the slave-trade, yet they would not dare name one of their informants, with a view to his being used as an instrument for juridically establishing the facts known to him. In regard to the truthfulness of this statement, is it requisite to add any thing to what has already been seen? And, if such necessity existed, would any thing remain to be done after adverting to the one fact, that, notwithstanding the "excess of zeal" with which the commissioners are so constantly overflowing, notwithstanding the extensiveness and notoriety of the slave-trade, and notwithstanding the relation which the reporter was made to understand that they occupy towards the subject, as the persons charged with "superintending the execution" of the provisions for suppressing the trade—notwithstanding all this, *not a single instance has ever yet occurred*, of the commissioners doing what the consul here said he knew they would not dare do?

But, admit that the consul had made upon the commissioners this imputation of personal fear: this fact would nowise affect the truth or untruth of the first of the two averments. And this is the point, of all others, to which I desire that attention be given. Admit that the consul had told the commissary judge he was personally a coward; and that he gave proof of it by his official supineness. It would not by any means follow, from the nature of the subject, that the supineness imputed to him must be supineness "*in denouncing infractions of the treaties.*" Judging even from the mere nature of the subject, it is unquestionably true, that the imputation of cowardice might have reference to some other branch or part of the commissary judge's duty. He might have been over active "*in denouncing,*" and yet remiss in all other things except "*denouncing.*" And some one, or all, of these other things, is what the consul's charge might have had reference to. And even though he had *not* brought the charge of cowardice, (which is the truth of the matter in the present instance,) yet, putting together the over-action "*in denouncing,*" and the under-action in other things, the consul might have considered the aggregate as a perfectly conclusive proof of insincerity on the part of the commissary-judge: in a word, as proof, that the judge was playing at him a game of "*official cant,*" by means of which to *humbug* his remote constituents.

This, the nature of the subject shows to be possible; and this is what, in point of fact, actually happened. The consul does not intimate, in any mode whatever, directly or indirectly, expressly or impliedly, reproachfully or praisefully, that the commissioners might have been "more active in denouncing infractions of the treaties." No such idea is to be found in his letter. The whole tenor of his letter proves that, according to the light in which the subject presented itself to his mind, it was literally *impossible* that any such idea should be entertained by him. Wherein is it that his letter shows him to have considered the course pursued by the British commissioners most radically and fundamentally wrong? It is in their taking upon themselves at all to do the very thing which the reporter here represents the consul as reproaching them with not having been sufficiently active in doing! It is in their not confining themselves to the functions assigned to them. It is in their trampling under foot the stipulations of the treaty which alone gave them their official existence, and under the solemn obligations of which they had accepted a residence at Havana. It is in their trampling under foot the stipulations of the treaty, and, with them, every rule of right which serves to guard the principle of national inde-

pendence. It is in this very point that their conduct appeared to the consul most fundamentally wrong, most flagrantly presumptuous and indecent, and most worthy of the scornful defiance with which their pretension, when extended to him, was met by him. We have already seen (*supra*, sec. 1, LX) for what purpose "the mixed commission" exists. We have seen this purpose to be, *not* what the reporter states it to be—*not* the general purpose of "superintending the execution of the treaties"—but the one specific purpose of discharging the judicial function in the very simplest form of which it is susceptible. (This is the truth. And this truth it is due to the consul to bear in mind, in judging between him, on the one hand, and the "*present*" British commissary judge, supported by Mr. Everett, on the other.) Such being the case, the British commissioners—according, at least, to the consul's notions, though not to those of the reporter—had no right to be in *any* degree "active in denouncing infractions of the treaties." They had no right to do any thing whatsoever beyond what it had been covenanted that they should have a right to do. If "infractions of the treaties" took place, those infractions constituted matter for discussion between the two Governments. *Here*, indeed, were true and proper occasions for the application of the reporter's principle of leaving things "to be settled between the two Governments."

The reader of the report would take for granted that what the reporter here calls "denouncing infractions of the treaties"—in other words, addressing to the Captain General communications, taking him and the other authorities to task for alleged contraventions of the prohibition which Spain had bound herself to enforce against the slave-trade—the reader, I say, would take for granted that this office of denunciation had been recognised by the consul as one legitimately belonging to the British commissioners; and that he had taunted them with cowardice for not being sufficiently active in fulfilling it. Now, the truth is directly the reverse of this. So far from his making any such acknowledgment, his whole view of the subject was based upon an utter denial of any such right of interference. This, whether the consul were right or wrong in the view taken by him, is incontrovertibly the truth of the matter in regard to what that view was. It is impossible, therefore, that any taunt from him should have been of the nature of the one stated by the reporter.

But there is one charge, which, when the commissary judge's pretension was extended from the local authorities to the consul, the consul did make against the actors in this game of "denouncing." And the charge was, not that they were not sufficiently "active," but that they were not at all *sincere*; that it was all deception, imposture, *lumbug*; "official cant," and nothing beyond. Had they been sincere, this would not have affected his opinion in regard to the inadmissibility of a pretension involving an utter disregard of international independence, and the obliteration of that sacred principle, by which alone the Government of the strongest nation is prevented from becoming the Government of every nation; but, still, the sincerity would have given it a title to be treated with respect. But they were not sincere. Conclusive proof of this truth was stamped on the very face of their acts; for, whilst *over*-"active in denouncing infractions of the treaties," as Mr. Everett terms it—whilst *over*-active in setting at naught the provisions of the treaty which alone gave them existence, by addressing communications to the Captain General, which the writers and all other persons knew to be nothing better than "official cant," for home

consumption—they confined themselves to this; they never ventured a line beyond it; they never indicated a single witness, or took a single step of any kind, serving to evince a desire to be really and truly instrumental in forcing upon the authorities the fulfilment of their obligations. What every one knew to be sheer "official cant," the commissary judge felt himself perfectly free to compound in any quantity. But to go beyond this was what he did not feel himself "at liberty" to do. "Active?" Yes, to any degree, in "denouncing infractions;" that is to say, in inditing proofs of "excess of zeal" for publication in the parliamentary papers. But here the activity stopped. Did his "excess of zeal" ever carry him beyond this point? He was there—so the reporter informs us—for the purpose of seeing to the fulfilment of the prohibition against the slave-trade; clothed, of course, with all the requisite authority to that effect. Did his "excess of zeal" ever impel him to go on board one of these vessels—as the reporter seems to think it was the duty of the consul to do—for the purpose of ascertaining in person "facts which common rumor had rendered notorious?" Did it ever impel him so far even as to indicate a single witness, who, by stepping forward and giving his testimony, would furnish a practical proof of the exaggeration imputed to the consul by the reporter?

No. He confined himself to "denouncing infractions;" to the miserable game, wherein national independence and the obligations of solemn stipulations were trampled under foot, to no possible end save that of practising deception, by a show of sham-service, upon those who, unless thus imposed upon, might see that his office was a sinecure. And it is to this fact—not to any want of activity in "denouncing"—that the consul pointed, when this game of "denouncing" was impudently turned against him, as a proof of its disingenuousness.

XII. It stands, then, as incontrovertible matter of fact, that the pretext used by the reporter for setting up before the reader *his* standard of fidelity to duty, in contrast with that by which the consul had been governed, is not merely fictitious, but in direct conflict with the true purport of the remarks from which that pretext is derived.

Immediately after the two averments just considered comes the third: "The consul states that his own [personal safety] has been in some degree hazarded by the steps which he has at times taken in the discharge of his consular duty."

From this, taken in connexion with the comments upon it, the reader cannot fail to receive the impression that the fact of his personal safety having been endangered, has been stated by the consul as an apology for omitting to "do, prudently and fearlessly, what he knows to be his duty." He cannot but receive the impression that the consul has, expressly or impliedly, admitted that "concern for his personal safety" actuated him in refusing to permit his course to be determined for him by the impertinent suggestions of these foreign dealers in "official cant." This impression is of the same nature with those received by the reader, (*supra*, sec. 1, LIX to LXI.) respecting "the mixed commission," and the purpose for which it exists; and all the other impressions which have been subjected to examination. No such admission, whether express or implied, has ever proceeded from the consul, either with reference to suggestions from the commissioners or otherwise. The fact that he had pursued a course which was attended with personal danger, a danger notorious to all Havana, and which every American and British, and other foreign resident, would testify to the notoriety of,

was adverted to by him, not as an excuse for not acting again in the same manner, but as one among other reasons which these foreign agents had for knowing that no prompting on their part was needed by him—as one among other facts which went to prove the wantonness and disingenuousness of their intermeddling. They knew, every one knew, that the course pursued by them upon the subject was a mere wanton trampling under foot of their first duty, of every thing like good faith, under the treaty which gave them existence; that it was not, and could not be, attended with any other result save that of satisfying, at the sacrifice of the true interests of the cause which they were paid to serve, the distant home-demand, from enthusiasts who could not distinguish sham from reality, for proofs of “excess of zeal;” that it was not *felt* by any, and was treated as insignificant humbug by all. They knew, every one knew, that the reverse of all this was true with regard to the consul; that, whilst he despised their game of “official cant,” and would neither condescend to imitate it nor be forced to join in it, he had acted in a manner which *was* felt, and which had been productive of deep and glowing resentment against him.

No. The sermon here preached by the reporter is a piece of gratuitous eloquence. The case yet remains to be adduced by him, wherein the consul has, through one consideration or another, failed “to do what he knows to be his duty.” And were such a case proven, the motive imputed to the consul, as one of those which “have exercised the greatest influence” over his official course, is one of the very last to which the dereliction would be ascribed by those amongst whom his official life has passed. Upon this point let them pronounce. Let his countrymen, let the foreign residents at Havana, in mass, pronounce upon it. Let them say whether, in his official conduct, or in his personal habits, particularly in regard to the hours and the places selected for taking the exercise which is indispensable to him, they have ever seen aught to justify the imputation upon our country, that she has sent there as her consul one prone to “give way to apprehensions of personal violence.”

No. The consul has never stated, nor intimated in any manner, by way of apology for his conduct, that “the state of things at Havana” is “such that an American consul cannot perform his functions with safety.” Nor has he ever made any statement susceptible of being so understood. Nor has his course afforded any ground for raising such a question. As applying to him, the foreign residents at Havana will, to a man, (with the exception only of the British commissary judge, and his friend Ferdinand Clark, and the intimates of that friend,) bear testimony to its utter injustice, its sheer gratuitousness, its direct conflict with the truth. And so far as regards the particular branch of “duty” here referred to by the reporter, the branch which consists in addressing insulting communications to the Captain General, (*supra*, sec. 5, XXXII.) the particular form of valor demanded by fidelity to it is a thing which one need not go far to find. In this day, when, according to Carlyle, cant has attained to a supremacy never before enjoyed by it, this description of bravery abounds every where. The parliamentary papers are rife with proofs, too, that its impulses may be indulged to any extent “at the Havana,” by British commissioners, without giving rise to any well-founded “concern for their personal safety.” And with this fact constantly before his eyes, the American consul, however prone to “give way to apprehensions of personal violence,” must have been an idiot as well as coward, not to perceive that, in this field, valor enjoys, even

“at the Havana,” the substantial advantage of utter exemption from any such inconvenient concomitant as personal risk in any shape. He must have been an idiot not to see that he, too, could address such communications to the Captain General as often as he might please, and yet be as secure from molestation as if he had not expended a single drop of ink in the creation of proofs of “zeal.”

But suppose the fact to be as the consul is represented by the reporter as stating it to be. Suppose it true, that, owing to the “state of things” in regard to a particular subject, at Havana, or any other foreign port frequented by American shipping, the duty of the consular office in regard to that subject cannot be discharged with safety. Suppose the risk to be so great as to render the consular functions in this particular practically impossible of execution: would the reporter’s heroic standard, even in this case, constitute a just and true practical rule for the Government? The case, as the matter now stands, is altogether a fictive one—a creation of the reporter’s own. It is not true that the state of things at Havana is such as to present to the Government the alternative of withdrawing its consul, or allowing him to omit the discharge of any functions pertaining to his office. Nor has it been thus represented by the consul. But the case might exist. Consuls might, under new laws and new treaties, be clothed with authority to act in a particular way with respect to vessels suspected of being engaged in the slave-trade; and the consul at Havana might represent the state of things there to be such, that the powers of the office on this subject could not be carried into effect; that the authorities were all “associates in the concern,” and that the only possible consequence of an attempt to “do, prudently but fearlessly, what he knows to be his duty,” would be the certain assassination of himself, or of any witnesses whom he might produce. Such a case might exist; and the Government might be fully satisfied of its existence—of the utter impracticability of carrying these powers into effect. What then? Would it necessarily follow, that the consul must be withdrawn? Is this the sole purpose for which the office exists? Are there no commercial interests to be attended to? Are there no sailors to be cared for? Let the state of things in this latter respect, as depicted in the communications of Mr. Shaler, and in the other documents recently published—let *this* “state of things” be contemplated, and then say, whether the determination to withdraw the consul, on the ground solely of the impracticability just stated, could proceed from any cause short of a recognition of “*the subject*” as not merely the paramount, but the one only proper, object of solicitude or concern. Could any motive be adequate to induce it, short of an “excess of zeal” so excessive as to obliterate all regard for every other claim of humanity, all regard for the right of the sailor to protection from his country, all regard for every earthly consideration save the one “duty” of keeping up a show, however empty, however ineffectual, however deceptive, for the sake of satisfying the demands of enthusiasts, to play upon whom constitutes one of the most honor-bringing and money-bringing trades that can be driven at the present day?

SEC. VII.—*Sixth section of the report examined: "The course pursued by the consul in regard to vessels under the American flag, in some degree sanctioned by the example of the revenue and prosecuting officers of the United States, and of the British Government."*

I. If, thus far, the reporter's justice appears to be characterized by sternness and rigor, we have now reached a portion of his work affording proof that it is tempered with mercy. Though unfaltering in his fidelity to the task assumed by him, (*supra*, sec. 6, II;) though determined that, if the Secretary of State fail to become duly enlightened on the "principles of law or morals," in regard to which he has evinced a want of proper instruction, it shall be his own fault;—the reporter is not-unwilling that the consul shall have the full benefit of every thing that can be adduced to palliate his misconduct. On the contrary, he indulges his generous disposition so far as to volunteer in this labor also; and if the space allotted to it be taken as the criterion, the interest with which it has been plied is not inferior to that excited in his bosom by any other of the topics embraced in his disquisitions.

Under the title above quoted is introduced a variety of matter, of fact and of speculation: partly suggested, as would seem by the reporter's own researches and meditations; partly taken—though without an intimation of its adopted character—from the consul's letter to the commissioners. I must confine myself to the original portion.

II. First, we have an apologetic comparison between the misconduct of the consul and that of sundry officers at the port of Baltimore:

"If the remarks which have now been made should appear in some degree to implicate the consul in a charge of neglecting his duty, it may be said, on the other hand, in his defence, that the same charge, whether well or ill-founded, must rest, with at least equal, if not greater weight, upon the revenue and prosecuting officers at the port of Baltimore. That the *Venus*, for example, was building for a piratical expedition, was probably as notorious at Baltimore while she was on the stocks, as it was at the Havana after she had taken in her outward cargo. She was liable by law to forfeiture; and the persons engaged in building and equipping her, to imprisonment and heavy penalties. Why did not the prosecuting officers libel her in the district court? Why did the collector permit her to clear out as an American vessel intended for lawful trade? It is to be presumed that the answer given to these questions would be, that it was impossible to procure any evidence of the illegal character of the vessel that would be available in a court of justice. A recent experiment seems to show that this supposed impossibility is far from being real.

"Though the effort of the prosecuting officers in the case alluded to did not terminate in the conviction of the parties indicted, the general result of the trial was not of a nature to encourage offenders to persevere in their illegal course. Still, if the prosecuting and revenue officers at Baltimore thought it necessary to acquiesce in the building, equipment, and clearance of this and other vessels notoriously intended for piratical expeditions, was the consul at the Havana bound to exercise a greater degree of vigilance? Might he not fairly consider it as settled, by the acquiescence of these officers, who had the same, or nearly the same, means for ascertaining the true character of these vessels which he had, that the case was beyond the reach of the existing laws?"

The thing here which first engages the attention, is the motive assigned for adverting to the misconduct of the officers at Baltimore. It is adduced "in defence" of the consul. "Upon what principle of law or morals" (*supra*, sec. 6, IX) it can be used for any such purpose "is not explained." Does the reader know of any—can he conceive any—which will make it available? Admit the view in which the consul's conduct has been presented by the reporter to be the just and true view of it; admit his "course" to have been the gross and flagrant "neglect of duty" which the reader has been made to believe: could it avail any thing "in *his* defence," to prove ever so clearly that other officers of the Government were in the same degree, or in a greater, obnoxious "to the same charge" of gross and flagrant neglect of *their* duty? No! And yet, the reader will feel that there is *something* in the topic here suggested; that it is not irrelevant, but apposite; that it is of a nature properly to influence the judgment to be passed upon the consul. Why so? Is it for the reason alleged by the reporter? Is it because the consul's course—supposing it to have been, in regard to matter of fact and matter of law, such as the reporter makes it—could be "sanctioned," or so much as palliated, by any degree of misconduct in others? What would "the *example* of the revenue and prosecuting officers of the United States and of the British Government" have to do with the consul's culpability? Nothing. In what, then, consists the apposite-ness of this topic to the inquiry in its bearing upon the consul? It consists in this: the topic embodies *testimony* against the *truth* of the view presented of the consul's course; it contains within it a presumption against the *fact* of the existence of a portion of those elements which are indispensable to constitute the omission to do his duty, charged against the consul. One of those elements is, the fact that the contraventions of law—whatever they may have been—were under the consul's control. Another, that they were by him known to be so. The former is assumed by the reporter, throughout his dissertations. Against this assumed fact, the truth here adverted to by the reporter (the non-prevention of these abuses by others besides the consul) militates. This is its true bearing and operation. It goes, not to "sanction," but to *disprove*. It has no power to extenuate the culpability of the omission imputed to the consul. If the state of facts, a belief in which has been built up in the reader's mind, had in truth existed; if the abuse had been of the kind represented, and the consul had possessed the powers and the grounds for their exercise alleged by the reporter,—the "example" of others would have no effect, and ought to have no effect, towards palliating the misconduct of the consul. This cannot but be felt by the reader; and, viewing the subject under the aspect in which it is presented to him, he cannot fail to ascribe the use of this unsatisfactory ground of "defence" to excess of generosity on the part of the reporter. But the instant it is presented in its true bearing—the instant the point is clearly and distinctly brought before him—he cannot fail to be sensible of its force. In the fact that the non-fulfilment of the same legal prohibitions is of common occurrence elsewhere, both in America and in England, he cannot fail to perceive ground for distrusting the accuracy and justness of the view attributing the fact of their not having been enforced by the consul to sheer omission faithfully to exercise the powers vested in him. He will perceive that, even supposing these powers to be seemingly adequate to the object, (it has been seen that in truth they amount to nothing at all,) the mere fact of the inefficacy of the provisions existing for the effectuation of the same

object at home would constitute a strong *prima facie* argument against the justice of any such view of the failure, as connected with the discharge of consular functions. He will perceive, too, that this mere fact does constitute a very substantial ground for a belief, on the part of the consul, that the contraventions thus notoriously occurring are beyond control by the means already provided for their prevention. All this he will become aware of; and the effect of the consideration of the topic under this, its true aspect, will be very different from that produced by the use made of it by the reporter.

Mr. Everett avers—indirectly, but not the less positively—in regard to the “prosecuting and revenue officers at Baltimore,” that they “thought it *necessary to acquiesce* in the building, equipment, and clearance of this and other vessels notoriously intended for piratical expeditions.” The justness of this charge I am very far from believing in; and my skepticism will, if I mistake not, be shared in by every one who possesses a knowledge of the subject, even if it extend not beyond that afforded by the perusal of my examination of former parts of this report. Indeed, I cannot see how any one can fail to see on its very face the highest improbability. What really was notorious at Baltimore, and every where, is, that of the vessels built there, (and in other parts of our country,) a portion were sold abroad for the slave-trade; and that some of these were built in this design. This fact is a very different one from the fact averred by the reporter. By means of the expression “*piratical expeditions*”—which figures throughout the report—he conveys an impression for which, as has already been shown, there is no foundation in truth. In place of the contravention of law which really is “matter of public notoriety,” he substitutes one of a far graver type—of the gravest possible type; which, so far from being matter of notoriety, is known—so far as it is in the nature of a negative to be known—to every one *not* to have occurred. This substitution, however, is but a comparatively insignificant part of the fallacy involved in the averment. Its essence consists in the individuality given to the vessels referred to. Not only is truth violated by calling them (with express reference to the contravention of American law alleged to be connected with them) vessels “intended for piratical expeditions,” but it is further violated—and in a far more essential point—by individualizing them; by speaking of “*this* and other vessels” as the objects of the notoriety—as the particular vessels “notoriously intended for piratical expeditions.” By means of this process, the reader is presented with “cases” which it is manifest that no human being could possibly believe to be “beyond the reach of the existing laws,” at Baltimore, or any where within American jurisdiction.

This deceptive shape being given to the notoriety which exists in regard to the matter, the reporter proceeds to make the application to the consul: “Was the consul bound to exercise a greater degree of vigilance? Might he not fairly consider it as settled, by the acquiescence of these officers, (*who had the same, or nearly the same, means for ascertaining the true character of these vessels which he had.*) that the case was beyond the reach of the existing laws?”

Such is the aspect under which the subject is presented! And this, too, by way of “defence” of the consul!! If the topic, in its bearing upon the officers at Baltimore, is made to undergo the preparation we have just seen, it is not for use there, but at Havana. The labor is performed, not for the purpose of assailing them; but of defending the consul. If they are held up

to view as officers of the law who "thought it *necessary to acquiesce*" in its flagrant violation, in *cases* where its violation was *notorious*, the trouble of thus introducing them to notice is taken, not for its own sake, but as a means to an end: the end of sheltering the consul under cover of the position, that *he* could scarcely be "bound" to do otherwise than follow the "example" thus set him! And is not the end fulfilled? Who is it that can fail to recognise the inherent force of the argument? Who could fail to admit its conclusiveness as a vindication, were it but applicable; that is to say, were not its virtue neutralized by the supplemental fact, which, unfortunately for the consul, the reporter's habit of perfect accuracy could not allow him—anxious though he be to defend his client—to omit informing the reader of? I mean the fact stated in the italicised part of the last quotation, which, to make it more distinct, I have marked also as a parenthesis. This fact is entitled to the reader's special attention. From the general purport of the comparison instituted between the consul and the officers at Baltimore, it would naturally have been inferred that they are upon a par in regard to the means and appliances for evincing that "vigilance" which they are represented as having proved themselves so deficient in. At any rate, supposing a difference to exist between them in this respect, the reader would not have been likely to take for granted that the advantage lay on the side of the consul. Indeed, at the outset he is given to understand the reverse; for he is told that the charge of neglect of duty "must rest with *at least equal*, if not *greater*, weight" upon them. The truth, however, appears to be otherwise; so, at least, is the reader told at the conclusion. Having been informed of "the precise extent," so far as ascertainable by means of "approximative estimates," to which "American vessels have been employed in the slave-trade;" and how, at Baltimore, these vessels, even before being launched, were individually objects of notoriety as being "intended for piratical expeditions;" the reader is now informed in regard to the comparative "means" possessed at the two places (Havana and Baltimore) "for *ascertaining* the true character of these vessels;" that is to say, for its absolute *ascertainment*, in the juridical sense of the word, as contradistinguished from the *notoriety*, or unofficial knowledge, already existing beyond the possibility of addition. Upon this point, he is told that the "revenue and prosecuting officers" at an American port, where the jurisdiction of American tribunals is absolute, and their authority supported by the whole physical power of the country, are equally well provided, "or *nearly so*," as the consul at Havana!

And this is the consul's "defence," as managed by this volunteer advocate! What are "the means" possessed respectively by the two parties here compared? What are the means which are *not* possessed by the revenue and prosecuting officers? What are the means which *are* possessed by the consul? Let the reply be given by any one qualified to examine into the law, and to state what it is.

III. Nor is this the only matter of "defence" adduced in behalf of the consul. In continuation of the above-quoted passage, the reporter proceeds to say:

"Such, whether right or wrong, seems to have been the consul's conclusion. He has, accordingly, on several occasions recommended, in his correspondence with the Department of State, the passage of new laws upon the subject; and, in the course of the last year, transmitted drafts of two bills, which have been communicated to a committee of the Senate, and employed

as a part of the materials for the bill now before Congress. What the operation of this bill, should it become a law, will be, remains to be seen. For myself, I must confess, that the existing laws, as detailed above, appear to me clear and well adapted to the purpose in view. The penalties are certainly as severe as the strongest friend to that purpose could desire them to be; and I incline to doubt whether any new provisions will add much to the efficiency of the existing ones. These, if enforced, would be effectual. If they cannot be enforced, it must be because public opinion is not yet ripe, even for the present legislation; and, in that case, to make the laws more severe, would really weaken them, by increasing the difficulty of enforcement. Nevertheless, the interest taken by the consul in the passage of a new law upon the subject serves, in connexion with other circumstances, to show that his omission to take any active measures for the enforcement of the existing laws has not been owing to indifference, neglect, or any more corrupt motive, but to a settled conviction, well or ill founded, that all such attempts must necessarily prove ineffectual; and such was also, no doubt, the motive of the prosecuting officers at Baltimore in pursuing a similar course."

What is the impression—so far, at least, as regards the client, and not the advocate—made by this part of the defence? Is it in any way favorable to the former? Is it, in any way, otherwise than positively unfavorable to him? From this array of the veriest truisms of legislative science against the suggestions made by me, can the reader avoid taking for granted that those suggestions are downright absurdities, sheer nonsense, founded on the grossest fallacies—too gross to permit them to be viewed, except through excess of generosity, as evidences of any real "interest" in the subject? Such fallacies, for instance, as, that, to secure the *enforcement* of laws, all you have to do is, to *increase the penalties!* "The existing laws, as detailed above, [how detailed, see *supra*, sec. 3,] appear to me clear and well adapted to the purpose in view. The penalties are certainly as severe as the strongest friend could desire them to be;" *ergo*, all new provisions would be supererogatory! If the law fail to be enforced, the failure can arise from no other cause than that public opinion is not ripe for it; *ergo*, to make the laws more severe would really weaken them!

However incompetent I may be to the task of devising legal provisions on the subject, the proof of disqualification contained in those submitted by me does certainly not extend to the point implied by these remarks. They do not evince ignorance of the trite truths here marshalled forth in the form of a commentary upon them. Neither do they, or "the bill now before Congress," aim at securing the *enforcement* of laws by the cunning device of increasing the severity of the penalties. (To secure the *observance* of the laws by such means might have been their object, but it is not.) Nor do they involve any such absurd contradiction as the idea of "making the penalties more severe," when already, as the reporter has formerly taken occasion (*supra*, sec. 3, IV and V) to inform us, "the punishment is *death*." His remarks, so far as they turn upon this point, are no less gratuitous than trite. They are absolutely so. Had they constituted a demonstration of the absurdity of the idea of "squaring the circle," they would not have been more uncalled for. My object obviously is, not "to make the penalties more severe," but to strike at the root of the particular abuses in question, by establishing practical securities against contraventions of the law which *have become habitual*, which constitute everywhere *the daily practice*, and which

are at the bottom of those abuses. The truth is, that there is not a single provision of our laws regarding ships and seamen but what is daily and hourly set at naught, as a matter of course, as a thing of practice and of habit. This is a general truth, whereof the contraventions now under consideration constitute but individual instances. These have occurred in the course of what is *established practice* with respect to the particulars involved in them; and the only effectual remedy is, to strike at *the practice*; to infuse vitality into legislative provisions which have been inert from the time when they were put upon the statute-book; at least, which have been conformed to only as the general rule, and have been contravened with perfect impunity, whenever there was occasion to contravene them.

I repeat, that the provisions of our laws for the regulation of our navigation and the classes of our citizens connected therewith are so much dead letter. There is not *one* but is so; and I challenge a single specification conflicting with the assertion. A glance at the laws will show that such a state of things implies *the habitual commission of perjury*. Oaths have been established and relied upon as the security for the fulfilment of the intentions of the law. Oaths have to be taken, and are taken, at every step and turn. Special provision has been made for the *punishment* of false swearing. The penalty is very severe. But no special provision has been made for its *detection*—for noticing it when it occurs, and bringing it to punishment. The practical result is such as might be anticipated: a “custom-house oath” has come to be considered no oath at all; false swearing has become habitual, and this to such a degree, and for so long a period back, that none but a Draco would think of now enforcing, without due warning, the penalties attached to the act. To do so would be, to all intents and purposes, to pass an *ex post facto* law of the cruelest kind—a law bearing in the severest manner upon thousands of men, whom the law itself has tempted, by the strongest inducements, to commit themselves by what the law has allowed to become considered as an empty formula, having neither consequences nor meaning attached to it. To make good this assertion, I will state what the *law* is, and what the *established practice* is, upon one or two fundamental points—points to which the law has attached the utmost importance; upon which, indeed, rests the entire system for the regulation of our commercial marine. The specimens will suffice for forming a conception of the state of things that has been brought about by the operation of laws which, whilst they present at every step the strongest temptations to commit the offence of perjury, have allowed the penalties to remain dormant.

IV. Before I proceed to show this radical inoperativeness of our law, I will revert to Mr. Everett's assertion (so far as he is able to see) of its absolute sufficiency, and the total superfluity of any further legislation.

In the limited view taken by him of the subject—in the mere definition of the acts prohibited, and the severity of the penalties—this sufficiency might exist without in the least affecting the question in regard to the necessity for further legislation, under a more enlarged view of the subject: with reference, for example, to practices, under the cloak of which the law might be successfully contravened, despite its precise and comprehensive prohibitions, and its severe penalties. But how stands the fact in regard to “the existing laws,” even in this restricted view of the question as to their adequacy? Mr. Everett seems not to be very conversant with those niceties of the law which constitute the very essence of penal prohibitions—

upon which their entire virtue depends—when considered with reference to their enforcement. To every such person the law always seems plain; and its operation, if it be but faithfully administered, indubitable. He sees nothing to amend or to improve upon, where the lawyer sees defects the most fatal. The following notice of a recent judicial decision is taken from the *Baltimore Sun*, of August 10, 1840. On seeing it, I formed the intention to write to New York for fuller information on the subject; but owing to the multifariousness of the matters claiming my attention, the intention has remained unfulfilled. I give it, therefore, as I find it in the newspaper; though I deem it probable that the precise points involved in the decision are not stated with entire accuracy:

“**IMPORTANT DECISION.**—In the case of the schooner *Catharine*, seized by a British cruiser on the coast of Africa, for being intended for the slave-trade, Judge Betts, of the United States court, in New York, decided that a vessel fitted out for the slave-trade in the United States, and sent to a foreign port for the purpose of being there sold to another party, with a view to the prosecution of that trade, if seized while making the preliminary voyage, (as was the case with the *Catharine*,) the seizure does not come within the statute under which this forfeiture was sought. The court ordered the libel to be discharged, on the ground that the capture was illegal; and ordered the vessel to be delivered up to the claimant.”

From this it appears that, at the very period when Mr. Everett was engaged in *reporting* for the instruction of the Secretary of State his demonstration of the completeness and perfection of “the existing laws as detailed above;” and of the consequent futility of the idea that their object could be promoted in any possible way by further legislation, as had been crudely suggested by the consul, and inconsiderately supposed possible by the Secretary, and by the committee of the Senate,—at this very period the district court at the commercial emporium of our country, in the case of a vessel notoriously intended for the slave-trade, and brought to that port under circumstances which had made her an object of general attention, was arriving at the conclusion that the case did not come within the law under which the vessel had been libelled!

But it may be said the failure was owing, perhaps, to the fault of the prosecuting officers, in prosecuting under the wrong law: if so, how lamentable! that Mr. Everett should not have been there to direct them, by pointing out the law, which is “clear, and well adapted to the purpose in view.”

Was this, it may be asked, a case in which Judge Betts “conceived (*supra*, sec. 3, LX.) he was at liberty to suppose himself ignorant of facts which he knew.”

V. I will now take up our laws for the regulation of navigation and seamen.

The crew list oath.—“Before a clearance be granted to any vessel bound on a foreign voyage, the master thereof shall deliver to the collector of the customs a list, containing the names, places of birth and residence, and a description, of the persons who compose his ship’s company; to which list the *oath* or affirmation of the captain shall be annexed, *that the said list contains the names of his crew, together with the places of their birth and residence, AS FAR AS HE CAN ASCERTAIN them,*” &c. (Act of February 28, 1803.)

By a subsequent act (March 1, 1817) every such vessel is, on her return to the United States, subject to a heavy discrimination in tonnage duty,

(commonly called "foreign tonnage,") "unless the officers, and *at least two-thirds of the crew,*" be American citizens. (Which citizenship must be "proved to the satisfaction of the collector;" whose duty, moreover, is to require this satisfactory proof in regard, not only to the present crew, but to the "whole voyage:" that is to say, during the entire absence of the vessel. Thus is *he*, for his share of the operation of the law, presented with the alternative of being easily satisfied with the proof, or of proving the immediate cause whereby the owner shall be subjected to a heavy exaction.)

In the latter provision, probably, originated the column found in the crew-list now in use, headed "*of what country citizens or subjects:*" a column in which the words "United States" must be written on a number of lines bearing the requisite proportion to the number of names on the list; or else the forfeit of 50 cents a ton must be paid.

And what is the practical operation? The master, upon whom it is imperative to take the oath, previously ascertains—what? that two-thirds of his crew are "*protected men.*" Frequently—I believe I may say generally—he does not ascertain even this; but takes the word of the shipping-master for it: the shipping-master being the person whose vocation it is to procure sailors for vessels wanting them, and to get them to sign the "shipping-articles," as the contract is termed. (Indeed, the whole of the proceeding, so studiously devised, and so strictly enjoined by the law, is ordinarily so conducted as to amount to *nothing at all.* On this point, let inquiry be made at the custom-houses; and let a few crew-lists, as they have issued from those offices, be inspected.) But even where the master does "ascertain" for himself the fact that the men are "*protected men,*" constitutes, in—so far as my means of judging extend—at least nine cases out of ten, the sum total of what he does ascertain.

And what is a "*protected man?*" In the strictly *lawful* sense of the term, it would, at best, mean any man who has obtained what, among our mariners, is called a "*protection;*" that is to say, the certificate of citizenship recited in the act of May 28, 1796. The process, even as laid down in the act for obtaining this certificate, presents a very remarkable omission. What it really is in point of fact, and how far it involves any hindrance to the certificate's being improperly obtained, can be easily ascertained on inquiry at the custom-houses. Thus much of the meaning of the term, in the sense implying conformity with the law. It remains to consider what it *practically* means. In this sense, a "*protected man*" means any man who has a "*protection*" in his pocket, obtained by himself or by some other man. Indeed, it is a thing of daily occurrence that the protected man has not his protection in his pocket, and has never seen it. The shipping-master, on handing the shipping articles to the captain, hands in, at the same time, the requisite legal proportion of protections; and they are put away together in the captain's desk. These documents are known to be a common article of sale or barter in sailor boarding-houses—sometimes parted with for a glass of grog; often lost; and a provident landlord, or shipping-master, is seldom without a supply on hand. (So, at least, may one gather from sailors. The exact truth of the matter might easily be ascertained, if it were deemed worth while to institute the inquiry.) For the precise and comprehensive definition of the acts involved in this practice, and the severe penalty attached to them—imprisonment at hard labor not less than three years, or fine not less than \$500—see the act of March 3, 1813.

Such, then, is the ground of this distinction between the two classes of sailors—the citizen class, and the non citizen class—the class from which two-thirds of the crew must be obtained, and the class from which one-third of the crew may be taken! Of the whole number of *sailors* (exclusive of “officers”) employed in our shipping, the portion consisting of those who truly are citizens, native or adopted, is, I believe, generally estimated at from one-fourth to one-third; and this, taking into the account the fishing vessels, whose crews consist almost entirely of citizens—generally native citizens. That the number does not approximate to two-thirds, is matter of absolute notoriety: known to every ship master, every ship-owner, every merchant, in our country. Go on board one of our merchantmen, and ask the master to tell you truly how many American citizens he has among his crew. And then look at the crew-list which the law has required him to swear to. This is the state of facts under which the law prescribes the oath above recited! Read it. The ship master must hold himself in readiness to take it whenever his vessel is ready for sea; or he must give up his profession, and see his wife and children starve! It must be taken, or the ship-owners’ vessels must rot at the wharves!

Is habitual perjury here, or is it not? Is habitual subornation of perjury here, or is it not? I pass on to another oath.

VI. *The crew-list bond.*—By the act of February 28, 1803, the master must give a bond of \$400, which is to become forfeit unless, on getting back to our country, he produces to the boarding-officer every man who has gone abroad with him as part of his crew. The law prescribes the strictest measures of vigilance for the enforcement of this condition. What these amount to in practice, may be ascertained on inquiry: the general belief is, that they are absolutely a dead letter. The law is, however, far from being absolutely inoperative: it produces a daily harvest of false oaths.

The forfeiture of the bond is avoided, if the man whom the master fails to produce to the boarding-officer shall have been *discharged* abroad with the consul’s consent, or if he have *died*, or if he have *absconded*, or if he have been *impressed*.

The condition attached to the *discharge* of the sailor abroad is highly advantageous to him—eminently necessary to his interests. But the same law says that he shall not be discharged before the consul, without the master’s subjecting his owner to the tax of three month’s wages over and above those earned by the sailor; a tax which in every individual instance amounts to a sum varying from about \$45 to \$90. What is the consequence? The sailor is discharged *without* the consul’s consent. He “*absconds*.” (For a picture of the practices which, to the oppression and destruction of the sailor, have grown up under the operation of this provision, as its immediate and most influential cause, see *House report* No. 707, 1839 and ’40.) But this absconding must be established by “satisfactory proof” to the collector. How is this done? By means of an *oath*. The established practice is, for the master, before leaving port on his return to the United States, to present himself at the consulate and make oath that his men have absconded. The consul may happen to know better. He may not only be aware of the frequency, the *regularity*, of this process for evading the law; but he may *know*, in the individual case, that the men have not absconded. Still, the master *demand*s that the oath be administered to him; and the consul must administer it, give the certificate, and receive his fee in peace; or take, instead, *war* (of course, on other grounds) from the entire class of

masters whose men are given to absconding in preference to receiving their discharge and wages, with a large amount of extra pay besides; an exaction, by the way, which is so oppressive ('tis now done away with by the act of 1840) that among the sailors themselves 'tis generally deemed unfair and dishonest to avail themselves of it, or to refuse lending themselves to the legal fraud by means of which alone it can be evaded, by consenting to be "logged" (entered on the log-book) as deserters.

It would require many pages to convey a tolerably adequate conception of the enormous evils arising from this one cause: evils involving habitual perjury, habitual subornation of perjury, by the employers of the class of men who commit it, and habitual connivance at perjury and at the utter disregard, both in its letter and in its spirit, of this provision for the security of the sailor. To all practical intents, a ship-master is as absolutely free from all obligation to account for his men as he would be if the subject had never been legislated on. Read the law; and then form a conception of what this one fact implies!

VII. *The register oath.*—Upon no subject acted on by Congress has more solicitude, more anxious care, been bestowed, than is evinced throughout the statute-book, beginning with the first session of the first Congress, in regard to the registry of vessels.

Before a register can be granted to any vessel, the oath prescribed in the 4th section of the act of December 31, 1792, must be taken by the owner, or one of the owners; who must specify, in regard to any other owner or owners, "his, her, or their name or names, and place or places of abode." A part of the oath is, that the appearer, or the persons thus named by the appearer, "is, or are, the *only* owner or owners;"—also, that "he, she, or they, is, or are, citizens of the United States." As if this were not explicit and comprehensive enough, another part of the oath is, "*that there is no subject or citizen of any foreign prince or State, directly or indirectly, by way of trust, confidence, or otherwise, interested in such ship or vessel, or in the profits or issues thereof.*"

This oath must be renewed every time the vessel arrives at any port of the United States from a foreign voyage. If the port be one at which the owner, or one of the part owners, does not reside, then must the master make "oath to the like effect."

So strict and guarded is the law, that, not only can "no subject or citizen of any foreign prince or State" be in any way interested in an American vessel, but any American citizen "who usually resides in a foreign country" is alike excluded, "during the continuance of such residence, unless such citizen be in the capacity of a consul of the United States, or an agent for, and partner in, some house of trade consisting of citizens of the United States, *actually carrying on trade within the said States.*"

Such is the law, and such the *oath*; and thus frequently must the security afforded by that oath be revived. And what does it all amount to in practice? It amounts to this: any body, resident or non-resident, citizen or foreigner, "*holds a vessel in another's name,*" whenever occasion requires. On this point, no proof can be requisite beyond that afforded by the following extract from the *New York Journal of Commerce*, of June 29, 1840. It speaks volumes. Here is a statement published in the leading commercial paper of our commercial emporium. What fact does it disclose? "*The American ship Victoria,*" owned in part by "*two English merchants of Liverpool!*" Does this fact elicit a word of comment? Does

it attract attention in any quarter? No: no more than the names "John Nokes" and "Ezra Stokes," in a lawyer's book of forms. Are the editors, is a single one of their merchant-readers, (to say nothing of commercial lawyers and officers of the law) ignorant of the fact, that no English merchant can, without perjury being committed, be one of the "owners" of an American ship? No! How, then, can this statement pass without remark? There is but one possible answer: the practice is so common a one, so familiar to those conversant with the law which it contravenes, that this feature of the case passed unnoticed. Just as, in reading an account of a "bloody affray" with bowie knives in a region where almost every man carries this implement, no one familiarised with the practice has his attention engaged by the violation of law involved in the mere fact that any bowie-knives were there for the combatants to make use of.

[From the Journal of Commerce.]

"LYNCH LAW IN LIVERPOOL.—The Liverpool Albion contains a brief sketch of a *lynch* on the American ship *Victoria*, as she was about proceeding on her voyage, having cleared for New York. A dispute had arisen among the owners, two of whom are English merchants of Liverpool. One of them, Mr. Sharp, ordered the captain not to depart with the ship; but the captain declined recognising the owners in Liverpool, and insisted on proceeding on his voyage, according to his instructions from his American owner in Charleston. The ship was warping down to Prince's dock gates, when Mr. Sharp sent on board seventy men, who mounted tumultuously on the yards, and cut loose all her sails, and the sails came tumbling down on the heads of the captain and crew. The pier and ships in the neighborhood were soon covered with spectators, who cheered on the work according as it progressed to suit their fancy of national rights. At one period, by virtue of handspikes, &c., the captain and his crew (the latter stood bravely by him) succeeded in clearing the decks of the intruders.

"Mr. Sharp personally directed his men, who then took possession of an old brig which was hauling into another dock at the time, and by the use of chains secured the two vessels together, so that they would jam at the gates. The captain was also much embarrassed by Sharp's men cutting his warps; but he reached the gates, where both vessels were firmly wedged in. A number of the policemen and dock-masters went on board to reduce the tumult, but all their authority was lost in the confusion. The tide now became ebb, so that the gates could not be opened. In the evening, a company of American mates, not caring to know the merits of the case, regarding only the American flag, went on board at an appointed hour, and in twenty minutes every sail was again in its place, and the ship ready for sea. Sharp's men assembled in great numbers, discovering that the ship could go out in the night-tide. The captain applied to the civil authorities, who furnished him with fifty armed men to protect his vessel from any attack. The captain had a steamer ready to tow him *down*, while Sharp had two steamers, and an ample force with grappling irons, to hitch on and tow him *up* the river.

"The police were in this case too formidable a body to attack, and so the ship went unmolested to sea that night.

"The dock and harbor-masters were arraigned to render an account of the disorder in the dock, but the authorities allowed Mr. Sharp's conduct to pass unnoticed.

"The writer of the above was an eye-witness to the whole affair, and so can corroborate the statement of the Albion. He recommends it to the consideration of such English tory papers as the John Bull and Liverpool Mail, which are now so much troubled about American mobs. The story, as published in the Albion, was hardly copied into any other English print, so choice are they all of England's good name."

VIII. Such, then, is the law; and such the practice under that law. And this, in our own country: it is at the very doors of its tribunals that these practices have arisen, and prevailed, as "matter of public notoriety," for years and tens of years, until they have acquired the force of settled habit.

Does this state of things serve to make good Mr. Everett's *report* in regard to the utter superfluity of new legislation? Does it serve to substantiate the imputation cast by him upon the consul? an imputation which, though not expressed in set terms, is not the less plainly, and far more effectually, conveyed by what he does utter. I mean the imputation of endeavoring to cover up, under a shallow pretence of "interest in the subject"—evinced by absurd suggestions of improvements in the law, when the law is already perfect—his gross misconduct in not exercising the powers vested in him. The latter is expressly asserted; and so, in the shape of a commentary upon them, is the absurdity of the suggestions. And the inference in regard to the consul's motive, is one which Mr. Everett might well afford to leave as an exercise for the sagacity of his reader; particularly as its utterance in the course of a "defence" of the consul might seem somewhat out of place.

Does, I again ask, the state of things here shown to prevail go to justify this insinuated imputation? Would it be altogether superfluous to break up this wide-spread and settled habit of false swearing, and of covering vessels under fictitious ownership; of setting the law at naught in its most fundamental and carefully devised provisions? Even in their direct bearing upon the particular "object in view," which Mr. Everett *reports* "the existing laws" to be perfectly adequate to, who can fail to see that such habits must necessarily have a most unfavorable operation? If it be considered venal to swear falsely, and, in utter contempt of the most precise and earnest provisions of the law, to "cover" a ship for one purpose, who shall undertake to fix the limit to the blamelessness of the practice? If, agreeably to the standard of right and wrong which the country has permitted to become established among the classes of its citizens connected with its mercantile marine, a merchant or ship-master may sell his vessel, or an interest in her, to a British owner, and keep her under the American flag for the purpose of evading tonnage and import duties levied on foreign bottoms, who shall say that the same course must not be pursued by another merchant or ship-master for the purpose of effecting a good sale of his vessel, deliverable on the coast of Africa? And if the imperativeness of the law be such that its most fundamental and vital provisions for the regulation of the subject can be, and daily are, set at naught for one purpose, who can fail to see that the cause must be so radical a one as to require a radical remedy?

It remains to bring into view the particular wherein the provisions for restricting the use of our flag have been (and this with the express sanction of our courts) most completely and thoroughly set at naught. This will be done under a separate title. It will be seen that the topic has bearings of the highest importance upon the imputations against me.

NEAR EVERETTESVILLE,
Albemarle county, Va., February 21, 1841.

SIR: As it contains matter which I deem it desirable to lay before you at as early a moment as possible, I take the liberty to transmit, in its present incomplete state, (4½ sheets,) a letter commenced by me on the day before yesterday, on the subject of the correspondence between Mr. Everett and the British commissary judge at Havana. The remainder will follow as soon as practicable.

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

HON JOHN FORSYTH,
Secretary of State.

NEAR EVERETTESVILLE,
Albemarle county, Va., February 27, 1841.

SIR: I have the honor to transmit now some pages (from 19 to 40, both inclusive) in continuation of those enclosed in my note of the 21st instant.

The affection of my head, which had very perceptibly abated for a day or two, is again, I regret to say, as bad as ever; and pain in the chest, attended with cough, has become added to it. I daily feel more and more as if I had broken myself down by work.

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

HON. JOHN FORSYTH,
Secretary of State.

NEAR EVERETTESVILLE,
Albemarle county, Va., February 19, 1841.

SIR: Referring to my letter of the 13th instant, I now take up the other series of papers, to wit: the despatch of Mr. Kennedy, the British commissary judge at Havana, to Lord Palmerston, enclosing the correspondence between himself and Mr. A. H. Everett.

These documents do, I confess, take me by surprise. Considered simply as a supplement to Mr. Everett's report, without adverting to their particular character, they surprise me in coming from the quarter to which we are indebted for them, instead of coming from him. Considered in themselves, they surprise me more still. Not that I had failed to become aware of Mr. Everett's having placed himself in close communication with Mr. Kennedy, or "the mixed commission," as this personage is by him called. My *Examination of the Report* (sec. 1, LII to LXIX, particularly LVIII to LXI) will show that it had sufficed to enlighten me abundantly, if not fully, upon this point. Still, although it came fraught with internal evidence to my mind that such a communication had been established, I had not the remotest conception of the form which is now seen to have been given to it. The report contains no mention of a written correspondence; no intimation calculated to suggest the idea of any thing in black and white. Mr. Everett, in his *strait*, (see *Examination*, sec. 1, LII,) had found himself

under the necessity of having recourse to "the mixed commission;" and had been referred to the parliamentary papers, as containing "all the information in the possession of this commission," (still the "commission.") What possible meaning could be conveyed by all this, to the mind of any reader, except that the communication in which Mr. E. had thus placed himself with "the mixed commission," as a source of "information," had been, however close and intimate, of an informal kind? And how could this impression fail to be corroborated—to the extent even of taking for granted that the communication had been purely *oral*—by the absence of all allusion to any written correspondence, of the remotest intimation that any thing of the sort had occurred?

Instead of this being the fact, lo, and behold! not only a written correspondence, but a regular *negotiation*. Besides the character of a "functionary of a higher grade," commissioned to investigate the consul's conduct, in which Mr. Everett has appeared to the eye of Havana generally, he has presented himself to "the mixed commission" (Mr. Kennedy) in that of an international negotiator; a special envoy, deputed to disavow the course of the consul, to disclaim all participation (or "*reciprocity*," as Mr. K. calls it) in the "opinion entertained by Mr. Trist, on his being warranted to refuse communications from the British commissioners;" "a functionary of a higher class," despatched to crave, directly through the very dignitary upon whom the unwarrantable insult had been perpetrated, the forgiveness of his Government! This character, to be sure, is disclaimed by Mr. Everett. But the contrition having been, with gracious condescension—nay, in a positively "frank and friendly spirit," (see Mr. E.'s letter of thanks) accepted by "the mixed commission," this personage has no idea of its being turned into what is vulgarly termed "a Scotch gift;" he meets the disclaimer by the averment, "*I certainly understood you to assure me, in express words, that whatever opinions Mr. Trist entertained, on his being warranted to refuse communications from the British commissioners on the subject of slave-trade, those opinions were NOT RECIPROCATED by your Government.*"

This assertion in regard to the assurance given him "in express words," the commissary judge proceeds to corroborate, by pointing out a positive and flagrant *untruth* (I do not know what may be the accepted diplomatic name for the thing) asserted by Mr. Everett, in his attempt at explaining away. "You now say," pursues the judge, "Mr. Trist justified his refusal on the ground of FORM. But, in his letter to the commissioners of the 29th November, 1836, he made no objection whatever as to form. On the contrary," &c. &c.

The judge speaks the truth. Mr. Trist did not "justify" (to use the judge's word, inappropriate though it be, for the consul never used any implying an acknowledgment that he was in any way amenable to the *judgment* of British commissioners or British agents of any grade) "his refusal on the ground of FORM." He PLACED his refusal on the ground of PRINCIPLE.

This topic will be found discussed in the *Examination*. I will here simply state the principal points:—1st. The exclusive *execution* of the laws of a State by herself, is a no less essential and vital part of her sovereignty and independence than is their exclusive *enactment*; therefore, whatever might be the laws of the United States for the government of their citizens on this or any other subject, the British Government had no right to take

part in their execution, directly or indirectly. 2d. Whatever right she might possess on the subject, and whatever might be the extent to which this right was infringed by the contraventions of American law by American citizens, the consul and the commissioners were not in any sense organs of communication between the two Governments. If the British had any thing to say to the American Government, on this or any other subject, proper organs existed for the purpose. 3d. The observance of this cardinal principle was rendered the more imperative by the existing state of the relations between the two Governments on this particular subject. The American Government, after repeated negotiations, had recently refused in the most peremptory manner to even *consider* any proposition for an arrangement whereby the British Government should become invested with authority to take cognizance of the contraventions of American law which might be committed by American citizens in this regard. 4th. Viewed in its bearings upon this state of things, the pretension advanced by the British commissioners was neither more nor less than an attempt to accomplish, by trampling under foot the vital principle of national independence, what the American Government had so peremptorily refused its consent to—an attempt practically to establish the right of the British Government, by its agents at foreign ports, (established, too, for other purposes, and recognised for those purposes only,) to take cognizance of offences against American law, by instructing and directing (under the pretence of conveying information) American consuls in the discharge of their duties. 5th. This pretension became the more impudent and despicable when reviewed under another aspect, to wit: as a part of the game of *lumbag*, whereby the holders of fat sinecures, trembling lest they should be discontinued on the ground of their absolute sinecure character, sought to keep up an empty show of usefulness, which could impose only upon dupes at a distance, by means of the grossest and most flagrant disregard of the treaties whereby their functions were defined, and by virtue of which alone they existed.

Referring to the *Examination*, and to my correspondence with these commissioners, I will here take leave of the subject, by repeating that what the judge says is true; so clearly, so obviously, so flagrantly true, as to render the second position assumed by the American negotiator pitiable to the last possible degree. I will add, that the predicament wherein he thus placed himself, affords a key to much that is contained in the report; the studied pains taken throughout, to secure the reader's concurrence in the false views presented of the consul's entire position and course, and especially in those relating to his position towards the commissioners; to the official character wherewith they are invested, and to the point at issue between them. In the *Examination* will be seen to what lengths he has ventured, both in the way of suppression and of positive misstatement. Having irretrievably committed himself in the manner now seen, the only chance of escape from the merited consequences, in the eyes of his Government and country, consisted in diverting attention from the attitude in which his doings had placed her. This could be done only by means of a highly-charged picture, exhibiting the consul in the most unfavorable contrast with the commissary judge; and producing a general and vague impression that the former was thoroughly in the wrong, and the latter thoroughly in the right.

One thing more I must point out in regard to this point: the remarkable fact that the misstatement here exposed by the judge is repeated by Mr.

Everett in his report. His "view" of my course required that he should approve of it with regard to a former commissioner, and disapprove of it in respect to the present one. There was but one way to reconcile the approbation and disapprobation: by persisting in the misstatement that my refusal had been placed "on the ground of form!" By putting me in the right "so far," another object was attained: the misrepresentations and censure which follow were rendered the more candid, and plausible, and effective.

Such, then, is the character of this negotiation, viewed under its most general aspect. I will now examine it somewhat in detail.

One note-worthy feature in it consists in the indications of *by-play* between the negotiators. The *improvisatore* of Italy are, I believe, sometimes suspected of rehearsing what they give to the public as the spontaneous efflux of their thoughts. If the letters before us be not improvisations in the same sense, it can scarcely be said that they are free from all indications of having undergone the process of rehearsal. Important as these may be, as evidences of the spirit by which the parties are actuated, I cannot now spare time to dwell upon them; and I will pass on to other points.

Mr. Everett begins and closes his letter of June 1st* with outpourings of gratitude "for the information contained in it," (Mr. Kennedy's letter of May 28, five days after their interview,) "and for the *frank and friendly tone* in which it is written."

The "frank and friendly tone" consists, doubtless, in the graciousness with which the *disavowal* on the part of our Government is accepted, and with which the high functionary*—magnanimously disclaiming all "inclination to stand forward as Mr. Trist's accuser"—condescends to "*acknowledge* that the United States Government does not, owing to the constitution of the Government, possess that control over the acts of individual citizens which some others may possess; and therefore that it would be unjust to charge upon that Government the criminality of individuals." To which gracious acknowledgment of the imbecility of Mr. Everett's Government in one particular, is graciously added a lecture upon the precise nature and the "proportionate" imperativeness of its duty in another particular.

"But the United States Government *has* control over its officers; and, in proportion to the want of power over lawless individuals, ought those officers to be careful not to compromise the Government by their conduct.

"In equal proportion ought the Government to guard against being compromised by the acts of its officers, and adopt a becoming comportment towards them when departing clearly and wilfully from the honorable course of their public duty."

"Frank and friendly" are weak terms for expressing the sense inspired by such a "tone" as this. "Paternal" was the word. His gracious Majesty, King George the III, would have found it difficult to be more amiable to one of his liege subjects, craving to appear in his august presence on behalf of his other lieges in America, ere they became "rebels." Truly,

* This letter is sent enclosed in one of June 5th, having "been kept back until I could ascertain the proper mode of transmitting it to you," and is not received by Mr. K. until June 8th; though prior to June 5th, Mr. E. receives Mr. K.'s "supplementary note" of the 4th, desiring a certain "verbal correction" to be made in his letter of the 1st.

† For the nature of his functions, and the purposes for which he has a right to exist at Havana, see *Examination of Mr. E.'s Report*, Sec. 1, LIX to LXXI.

what shall I call it? In *one* point of view, I may, perhaps, say—*farcical*. Truly farcical, then, as this may seem—in all eyes at least except Mr. Everett's—it possesses a very substantial value: as a specimen, I mean, of the unobtrusive spirit of the meek functionary, who, simply for discharging his duty under the treaty which gives him a right of residence at Havana as member of a judicial tribunal created for a very limited and specific object, met with wanton insult at the hands of the American consul!

In regard to the "information" conveyed in company with this "frank and friendly tone"—that part of it at least which Mr. Everett says "will be of great use to me in preparing my report" (for this can scarcely be understood to refer to the "information" embodied in the lecture upon the imbecility, &c., of Mr. E.'s Government)—I meet it by pronouncing it to be a distillation of the rankest falsehood, in a menstruum of *personal* malice and revenge the most envenomed; one which had been concocting and simmering for years in the writer's bosom, when Mr. Everett became its "thankful" recipient. This is very "undiplomatic" language. But it is the language of *truth*; and I will make it good.

Referring on this point to the facts stated in my *Examination of Mr. Everett's Report*, (sec. 1, LXIII to LXVIII.) I will here begin by *discrediting* this "frank and friendly" informant. I will prove him to be one on whose most deliberate assurances no earthly reliance can be placed; and, worse still, one capable of deliberately "bearing false witness" through mere personal hate,—of deliberately concocting, and deliberately bringing against his "neighbor," the most damning charges, whilst he knows their falsehood. This is strong language. What if I make it good? It shall be made good from his own lips—under his own hand. Two short extracts from his own despatches, and the thing is done; so done that no power, short of that which can change the laws of the human mind, can undo it.

First extract. In this letter—after giving certain statements in regard to American vessels, which, under the name of "estimates," and with other modifications of language pointed out in my *Examination*, have been incorporated in Mr. E.'s report—the commissary judge proceeds to the consideration of the consul's "*motives*." In the course of his remarks upon the subject he says: "We can only judge of men's motives by their actions,* and there are some of a nature which, to attempt to deny, or to explain away, would be an imputation on our understandings." The word "some" refers, of course, to "*motives*," not to "actions;" for, applied to the latter, it would make nonsense; there being no such thing as an action "of a nature" not to be denied. The sentence means, then, that there are some acts which suffice of themselves to indicate the only possible motive from which they can have sprung; and this, so unerringly and so clearly, that "to attempt to deny or explain away" the *motive* would be absurd. This is his rule. By this rule, and the application he makes of it, he stands convicted.

The application is made, as will be seen from the following extract, to

* True—when viewed, not disjointedly, but *together*, as *one complete whole*. Thus viewed, a line of conduct may be of a nature to absolutely disprove the motive which might be indicated by disjointed parts. In this respect, I have given a great advantage to Mr. Kennedy. I was fully aware of it from the outset; and I know him to be capable—so far as the *will* goes—of turning it to the best use. It remains to be seen whether truth—which means the *whole* truth—will have power to foil and confound him.

what, speaking of me, he calls "*taking upon himself to act as Portuguese consul.*" This averment is untrue; for I never acted as *Portuguese consul*. The same remark applies to the incidental averments: such as my being "in close contact with the slave dealers, and in their fullest confidence;" which he, and all other men at Havana, *know*, so far as a negative admits of being known, to be utterly false. All these averments are, however, most ~~precious~~ precious to me: the stronger, the blacker, the picture of my villainy, the better, as the reader shall see. For the present, I wish him to consider the averments apart from any question as to their truth; to give his attention solely to the *import* of what Mr. Kennedy *says*; in order that he may understand it clearly, precisely, fully. The consideration of its truth will come up afterwards. My present object is to *discredit* him as a witness. This step will consist in making him contradict himself. The next, in examining the circumstances and influences under which he has thus borne contradictory testimony.

"The next question," says Mr. K., "that arises on this view of his conduct, as to the motives that influenced him, is sufficiently explained by our meanwhile finding Mr. Trist *in close contact with the slave-dealers, and in their fullest confidence.* This was by *his taking upon himself to act as Portuguese consul*, in which capacity it was *notorious* he had no interest to serve but those of the slave traders, Portugal having no trade whatever with this island, and only lending her flag for this illicit traffic in return for a high duty on the transfer of foreign vessels to that flag—no less than 15 per cent. on the nominal purchase-money.

"The late Portuguese consul, M. Fernandez, who had been only a few months appointed consul, began his duties by acting upon the opinion that he ought to enforce the laws of Portugal against fictitious transfers of vessels to the Portuguese flag.*

"He therefore refused to pass several slave vessels which had no just claim to sail under that flag; and it was for this offence only, upon the complaints and under the influence of slave-dealers, that he was suspended from his office. *This was at the latter end of 1837, or beginning of 1838, and the first person to whom the slave-dealers then turned their eyes, and, above all persons, found willing to lend himself to their schemes, was the United States consul.*"†

After a couple of pages of details, consisting chiefly of fabrications and distortions of his own, Mr. Kennedy proceeds:

"Passing by these, then, still we have it before us, that, in 1838, there were upwards of one hundred slave vessels on which Mr. Trist received the consular fees! *The amount of those fees* it is impossible for any one to say, who was not likely to be in possession of such knowledge. But we may be sure that as the slave-traders had it in their power to pay well in proportion to the assistance and protection they received on the one hand,

*In one breath, Portugal *lends* the use of her flag for the consideration of 15 per cent. on the amount of a nominal sale. In the next breath, the laws of Portugal forbid *fictitious* transfers to her flag!

†The slave-dealers did not turn their eyes to me. I never had a word to say to them, or to any among them. It was, as this writer knew, at the request of M. Fernandez, the gentleman named by him in terms of praise, by way of contrast—a contrast which is made still stronger by other facts, which are sheer fabrications—that, as American consul, I certified to the declarations and signatures to crew-lists and custom-house certificates of Portuguese vessels, and allowed their sailors to be discharged before me; as, by the regulations of the port—regulations established at my express solicitation—they were required to be, before some consul.

so, on the other, any person interfering in such matters, and with such characters, would insist on being bribed in proportion to the disgracefulness of the duties he undertook, and to undertake which he was under no sort of obligation."

Such, then, are the main features of the picture, drawn on the 28th day of May, 1840. Such is Mr. Kennedy's *testimony*, given on that day, in regard to what had, during a period commencing "at the latter end of 1837, or beginning of 1838,"* been the consul's position and course; his actions and relations; the motive by which he obviously was governed, the only possible motive by which he could be influenced.

Turn we now to another picture from the same hand.

The office for which Mr. Kennedy had sold to Lord Palmerston (see Examination, sec. 1, LXVII) his seat in the House of Commons, or rather which he had reluctantly received in payment, being, so far as regarded the purpose for which it existed, as defined in the treaty creating it, an *absolute sinecure*, it was indispensable that he should *be at something*. The precise nature of this something, and the necessity for it, I will explain hereafter. Here I will state, merely, that it consisted in collecting and in *fabricating* materials for "despatches" to appear in the "parliamentary papers," where they would subserve various ends, direct and incidental: among the rest, that of *imposture* upon the British public;† the portion of it, at least, which might be disposed to quarrel with expensive sinecure establishments. In one of these despatches, Mr. Kennedy has occasion to mention my name—to which he added my character, as *then* understood by him—in connexion with the untruths which he was engaged in working up into matter for parliamentary-paper *humbug*, or, as the Westminster Review has recently termed it, "official cant." It is mentioned in the following passage; the entire substance of which is no less false (see my *Examination of Mr. E.'s Report*, appendix G) than, agreeably to the above picture, that part of it is which states my "character." I will repeat, however, that the point now under consideration requires that the attention of the reader be given exclusively to the *import* of what Mr. Kennedy states, apart from its truth or untruth—to the precise *meaning* of what he utters, considered as his testimony. Here it is:

"On the subject of vessels going equipped under the American flag to the coast of Africa, there to be pretended to be transferred for the first time to some Portuguese or Spanish owner, I have had several conversations with the *American consul at this place*; A GENTLEMAN OF HIGH CHARACTER,

* This date of its commencement is, in another passage, reaffirmed, with the addition of its duration, which is spoken of as yet continuing. "In this capacity he has been acting for nearly if not full *two years*. Confining myself, however, only to one year," &c.

Now, the truth of the matter—as is known to all Havana, and to this *Argus* above all other men—is, that the suspension of the Portuguese consul took place *late in April, 1838*. The true duration of the period was, *from that time until the end of the same year*. This is matter of absolute notoriety. Why is the period so lengthened out? Because this was indispensable to give color to his story as to corrupt motive. Had he stated the precise facts, it would have been clear that this could not be my motive. The subject will be resumed in another place.

† Various cheering indications have appeared of late, that this game is beginning to be seen into on the other side of the Atlantic, as it has been all the while at Havana. As an instance, I will refer to one contained in the "Anti-slavery Reporter" for January, 1841. Mr. Birney, recently returned from England—where, if he associated with *some* who are mere *mercenaries* in the cause to which they give lip-service, whilst feathering their nests, must have associated also with others whose zeal, however misdirected, is at least honest and disinterested—speaks, it may be hoped, the sentiment of the latter, when he pronounces the zeal of the place-holders, the *ins* and the *outs*, to be hollow pretence.

and of considerable reading and observation. I regret, however, to say, that I have received only the most discouraging replies on every point relating to the prohibited traffic, and to add, that this seems to be the general feeling here of the American community. They all seem to declare that it would seem to be a question not to be entered on, of inquiring into their equipments, as interfering with their trade, not knowing how far such interferences might be led to extend; and that England may as well think of closing up the workshops of Birmingham—where, they say, the bolts and shackles are manufactured—as call on America to forbid the sailing of vessels equipped with them.”*

Now, *what is the date of this despatch?* On what day of what year was this testimony given in regard to the character of the American consul? At what precise juncture was he thus officially reported as “*a gentleman of high character?*” It was on the 22d day of August, 1838: *between eight and nine months AFTER* the day on which, according to the testimony borne by the same witness in May, 1840, the consul had commenced under his eye the career of flagrant and unmitigated villany therein depicted!

Have I made good my words so far? Is there here contradiction? Is the contradiction of a nature to admit of its being in any possible way reconciled or “explained away?” Let the testimony last given by the witness be again read; let every word of it be weighed; let the averments regarding the position and course of the consul—regarding the essential, the obvious nature of his conduct—be measured in their exact length and breadth: and then let the reader say whether, supposing what is averred to be true, it be *possible* that it should not have been known to witness long prior to the 22d day of August, 1838. Is the testimony, or is it not, of a nature to preclude all necessity for any thing additional to its very self, to establish the utter *impossibility* that what is here uttered in May, 1840, should be true; nay, should be then *believed* by witness, and not have been believed in August, 1838?

Of course, he will say (as, indeed, if I recollect right, he has said in his despatch of August, or September, 1839, *transmitting my hostile reply to his communication*) that he had then mistaken my character. But can such trifling avail? Difficult as it is known to be, legally to convict a man of perjury, could such an assertion as this avail to save any witness who, under similar circumstances, should have given such testimony as this, from a verdict for wilful and deliberate perjury? Is not the testimony, *as given*, essentially of a nature to preclude the possibility of his not having been aware in August, 1838, of the notorious villany on the part of the consul now testified to? But suppose the testimony to have been more cunningly worded; suppose it to have been so skilfully drawn up as to admit of such a possibility; would not the improbability still be so great, that nothing short of the most conclusive proof could suffice to preponderate

* This monstrous fabrication—which cannot be read attentively without seeing that its studied vagueness makes downright *nonsense* of it—is Mr. K.’s mode of stating a fact: the fact that he had found “the general feeling of the American community here” (aye! and every where else) decidedly opposed to American citizens being placed under the tender guardianship of the British navy and British commissary judges, by a grant of the *right of search*—the great panacea constantly urged by him as the only possible cure for the disease. This is what they, to a man, spurned at the bare suggestion of. With this fact as a key to it, the nonsense of the passage may be turned into sense. For a full exposure of the fabrication, see the appendix above referred to.

against it? Could it be otherwise than absolutely indispensable that witness should establish, beyond the possibility of doubt, one of two things: either that he was, in August, 1838, ignorant of the fact of my being what he calls "acting Portuguese consul," or, that he was then ignorant of the essential nature of the employment now described by him as essentially, flagrantly, notoriously infamous?

The fact of conflict of testimony being established, the next point is, *the circumstances under which the testimony was given in the two instances.*

This inquiry has two bearings. The first, and most important, is upon the point now before us: the disqualification of Mr. E.'s "frank and friendly" informant *to be a witness*: the proof that he is a man capable of deliberately uttering grossly contradictory testimony—testimony to *exalt* the character of his "neighbor," (literally "neighbor," in the most emphatic sense, with respect to testimony, to opportunities of knowledge,) and testimony to *kill* the same character; and capable of doing this through malice and revenge. In this bearing, the inquiry is important to me under a general and all-comprehensive aspect; one that embraces all that has been uttered, or can be uttered, by this man, against me. In the other, it is so in a special and limited degree; for the circumstances under which the testimony has been borne being ascertained, a judgment may be formed as to which of the two contraries is the more likely to be an expression of the true belief of the witness—of the *effect* produced upon his mind by the state of facts in the midst of which he has been placed. However great his *moral* disqualification to be a source of truth, the effect really produced upon his understanding and judgment, provided it can be satisfactorily ascertained apart from any reliance upon his veracity, is, *as a fact*, worth knowing. Every fact is worth knowing: for, constituting, as it does, an integral part of the one harmonious whole, in the irreconcilableness of which every thing else consists our sole security against the innumerable progeny of the Father of lies, there is no telling what its importance may not be.

What, then, are the circumstances under which this testimony is given? A "change has come over the spirit of his dream," since the hour when the consul—despite his being "acting Portuguese consul," and despite also his open advocacy of the flagrant violation of the laws of his country against the slave-trade—was esteemed by this "pupil of Wilberforce" to be "a

* Upon the former point, this very despatch of August 22, 1838, contains the following: "I regret to have also to inform your lordship that, during the suspension of the Portuguese consul, as I have previously stated, the American consul has been acting *pro tempore* in that character; thus unquestionably giving a certain degree of effect to the abuse of the flag of his republic, under its association with the slave-trade, and the pretended transfers to other owners on the coast of Africa."

Besides serving to establish the point in question, this passage is valuable in other respects. "A certain degree of effect," is all the wrong that he could then see in it! And all that he did see, whatever this might be in its details, was perfectly compatible with the conduct besting a "gentleman of high character!" Compare this with the picture drawn in 1840. But the passage is, together with the other quoted from the same despatch, chiefly valuable under a more general aspect: as an indication of the *spirit* in which these missives of "official cant," as the Westminster Review calls them, have been concocted. Who, except a purblind zealot, eager after parliamentary-paper proofs of official zeal and efficiency, can fail to see, stamped upon the face of this very despatch, the impossibility that the writer should have been giving utterance to the truth, or even to his serious belief? A "pupil of Wilberforce"—one in whom, according to Mr. Everett, (see Examination, sec. I, LXIV) "any excess of zeal displayed towards the consul is to be excused on the score of his strong personal feeling on the subject of slavery;" such a man really to believe the facts here stated by him in regard to the consul's views in favor of the violation of the laws of his country on the subject of the slave-trade, and yet believe him to be a "gentleman of high character!"

gentleman of high character." What cause produced it? Has the accused, meanwhile, misbehaved in any way to witness? Have any incidents occurred to awaken rancor or animosity? O, no! nothing of the sort! Or rather, though incidents of this nature have occurred, they have failed to produce their effect. Listen: He "*begins*" his testimony "*by declaring*"—and he calls Mr. Everett to bear him witness that he did so begin it when first given—that his bosom harbors "no inclination to stand forward as Mr. Trist's accuser."* To be sure, he "could not but understand Mr. T.'s language and conduct to be *designedly insulting*." But he is above harboring malice, or even animosity, on such grounds. 'Tis only as an abstraction that Mr. Trist is an object of any "inclination" on the part of the witness. 'Tis in regard only to Mr. T.'s "conduct on *public* questions,"† considered in the abstract, and with reference solely to the responsibility thereby incurred by the Government whose functionary he is, that witness, in his public capacity—as one whose functions require him to canvass the grounds of that responsibility, and to hold the American Government to it—entertains any "inclination."

In further proof that this "insulting conduct" does not weigh upon his mind at all, it is reverted to in the course of the letter. The connexion in which it is reproduced is most noteworthy. It is brought in at the close of the picture of ineffable villainy, above considered; brought in as a *climax*, as an "aggravation;" the highest of all conceivable aggravations. Having completed his picture, the judge lays down his rule for finding out motives; and subjoins to it this mention anew of the "insult:"

"We can only judge of men's motives by their actions; and there are some of a nature which, to attempt to deny or to explain away, would be an imputation upon our understandings. *From persons committing such acts, however, we cannot be surprised to find ANY AGGRAVATION of their conduct, EVEN though in the shape of senseless, unprovoked, and undistinguishing insult.*"

Here, then, is Mr. Kennedy's Ossa for his Pelion. Up it is heaved, and there it rests. And yet, believe me, the "insult" does not rankle in his bosom. Has he not, at the very outset, put himself to the trouble of advertising to the insult, for the sole purpose of precluding any such supposition? Has he not, before engaging in his task, "*begun by declaring*" that it would be altogether erroneous? "*Murder will out,*" however. So will the truth in other shapes, endeavor as you will to smother it; nor is "wine" necessary to send it forth. Mind has its laws as well as matter; and it is unsafe to trifle with them. Make such declarations as you deem requisite in regard to the effect which any cause has produced upon your mind; but take care that they be true: else, the consequences may be awkward. If they be not true, ten to one you will, sooner or later, utter something that cannot fail to make the matter infinitely worse than if you had not "*begun by declaring,*" or had even come out "*frankly*" with the truth. "*My daughter and my ducats!*" exclaims Shylock, in his agony. Why does not Shylock,

* This declaration, in its connexion with the general "spirit" and substance of the letter, doubtless constituted the most forcible part of the proof which so deeply impressed Mr. E. with the sincerity, the candor, the "frankness," of Mr. K.'s nature.

† The perfect sincerity of this is proved by his producing in his second letter—not, to be sure, till it has been *fished for* by Mr. E.—a worn out calumny, originally concocted by Dr. Madden, in regard to the "*Emancipado woman,*" in my *personal* charge as a private individual. The subject will be considered hereafter.

when first he introduces himself, "begin by declaring" that, personally, he cares not for money? Because Shakspeare did not purpose to make Shylock a *hypocrite*, in addition to his other amiable qualities.

It is most noteworthy, too, that this is a purely spontaneous *outburst*; a *gush* of thought and of feeling. Between it, and what precedes, there is no *logical* connexion of any sort. The sentence contains, it is true, a "however;" and this denotes a connexion of the kind. If none can be discovered, the word is nonsensical. And so it is: no such connexion exists. All the grammarians and metaphysicians living may be challenged to the task: as well might AEsop's cock have endeavored to discover a mineralogical connexion between his diamond and the matter out of which it turned up, as he was scratching away. The sentence introduces a totally new and distinct subject; just as distinct as Ossa was from Pelion, before it was heaved up into place. The only assignable metaphysical cause of its being here consists in the simple *fact*, that it was uppermost in the writer's mind, oppressed it, and *had to come out*. This would be true, even if it had been barely mentioned. But, how flagrant is the truth made by the thought uttered in regard to the subject! In the ardor kindled by his labor of love, Caution falls asleep, and Mr. Kennedy's "frankness" comes into play: "declarings" are forgotten,—the fountains unlock,—and his inmost soul pours forth its waters of sweetness. Lo! the "insult"—the "insult"—"aggravation of aggravations."

I call particular attention to this; for, trivial as it may be in all points of view save one, in that one it is of the very highest importance. It is of utter insignificance whether the commissary judge be a good writer or a bad writer; one who knows or who does not know when to put the word "however" in a sentence. But it is of the utmost consequence to know whether he be in the habit of speaking the truth; whether his "declaring" a fact be any reason for any one's believing it.

Thus far, we have nothing beyond Mr. Kennedy's mention of the "insulting language and conduct;" his two references thereto;—the first, for the purpose of deliberately "declaring; the second, for no deliberate purpose whatever, but merely as an unpremeditated outburst, whereby is brought to light, without his intending it, the measure, according to his own private estimate thereof, of the heinousness of the consul's conduct towards him. It remains to inquire into what this conduct has consisted of. What is the precise character of the matter of fact thus referred to by witness? Let us be informed of it; and also of any other incidents which may have occurred between him and the accused, of a nature to effect the "inclination" of one man towards another.

Referring for a number of incidents* of this description to my *Examination of Mr. Everett's Report*, (sec. 1, LXIII to LXIX, particularly LXVII,) I will

* Repeating the remark there made, that personal incidents cease to be personalities in the justly-reproachful sense of the term, when adduced in the cause of truth, and solely as means for shedding light upon the value of testimony, I will here add one or two more.

Mr. Kennedy having, shortly after his arrival at Havana, become a widower, experienced not long subsequently a disappointment in a matrimonial project, under circumstances which were of a nature to afford some ground for the idea that the disappointment was in some measure attributable to my estimate of the desirableness of the honor which he proposed to confer. That such, doubtless, must have been my estimate of it, subsequent events went fully to confirm. In regard to the influence likely to be exercised by such a fact, upon his "inclination" towards me, I will state that he has rendered himself proverbial among his own countrymen at Havana, as a most conceited and self-important personage. Of all the men whom I have met with in the course of my life, but two or three can vie with him in this respect.

here confine myself to the main point, the *official* conduct "designedly insulting." Has any such thing occurred? Yes; if to rebuke, in the very severest manner you know how, an attempt, impudently persisted in after the fairest warning, to make you a passive instrument in a game wherein audacious pretension is the means, and rank imposture is the end—if this be to offer insult, then is it most true that insult has been designedly offered by me. Why did I offer it? Ask my *character*. I am now forty years of age. Ask those who have known me from boyhood, whether I be prone to offer insult; or even, when insult is offered to me, to view it uncharitably. There are cases in which, as society is now constituted, I deem it imperative upon a man not to pass over the misconduct of others towards him. But the conviction of my judgment, in regard to what is commonly meant by *resentment* at insult, (or injury in any shape,) is, that it is a feeling unworthy of, I will not say a Christian, but a mere man, a rational being; that no provocation, be its kind or degree what it may, can render it otherwise than "foolishness" to inflict pain in any shape upon a wrong-doer, merely that the pain may be suffered; and that in this sense of the word, to *resent* an insult is as truly irrational as it is to resent the conduct of a horse that has kicked you, or the position of a stone against which you have stumbled. Such is my conviction; and by this conviction has it been my endeavor to regulate my habit of thought and of feeling towards my fellow-men. With what success, let those pronounce who are acquainted with my character.

But cases are not wanting; they are, unfortunately, but too numerous in all the relations of life, official and private, in which, though no feeling of resentment be entertained, it is requisite, for ends very different from the indulgence of any such feeling, that indignity be rebuked, *resented*, and this too by the person who is made the immediate object of it, though he

The last incident between us occurred in March, 1839; and arose out of a sale of furniture which took place at my house upon the departure of my family from the country. The sale was conducted by my clerk, (Mr. Crusoe,) and was attended by Mr. Kennedy, who became the purchaser of several articles. Upon being delivered at his house a day or two after, by the person sent for them, they elicited from him a note to Mr. Crusoe, which (in consequence of some intervening circumstances, too tedious to be here detailed) was deemed by me to be designedly insulting to myself. It was instantly replied to by Mr. C., under my dictation. Next day Mr. Kennedy visited my office in a state of such agitation, that though I happened to be at the moment walking up and down the room, he at once sank into a chair before I had time to invite him to be seated. The following dialogue ensued:

Mr. K. "Your clerk has been writing me a saucy note, *repeating my language*, in which there is neither *wit* nor"—(stammering, and leaving the sentence unfinished.) "To be sure, there were some expressions in my note which might as well have been left out."

Mr. T. "Precisely, sir. Mr. Crusoe's note was written under my direction, as the proper mode of meeting what I considered intentional disrespect to myself."

Mr. K. "I give you my word that I *had no idea of your seeing the note*. So far from any such feeling on my part, I attended the sale, and took the articles which I bought; not that I wanted them, but solely because I considered it neighborly and friendly, and doing as I would be done by."

Mr. T. "Of course, after such an assurance it cannot be necessary for me to say that I regret so to have misconceived you; and that I wish Mr. C.'s note to be considered as if it had not been written, as it certainly would not have been but for the light in which I viewed yours, for it gives me no pleasure to hurt the feelings of any one."

Shortly after his departure my clerk returned to the office, (from which he chanced to be absent during the interview,) and mentioned to me that, having met Mr. Kennedy in the street, the latter, shaking his riding whip at him, had exclaimed, "So, so, Mr. Crusoe, in writing to me you address me *Mr. Kennedy*, do you!" I will dismiss the subject by saying, that this irrelevant application of the word "*Mister*" had certainly been a very unpremeditated and unconscious part of the severity of the return made for the unprovoked insolence of Mr. K.'s note.

may know that it is not intended for him, and that he is used merely as a channel for communicating it to the quarter intended. Such a case might arise from the misconduct of the commander of a national ship of one State towards a national ship of another State; making it the duty of the commander of the latter—though he might be the least blood thirsty of men, and the most patient and forgiving—to pour a broadside into the aggressor, and to do so in the most effectual way possible.

Such a case was presented by the course of the commissary judge towards me in my official capacity. I adopted it because it was forced upon me: forced upon me, at least, as the alternative to truckling to an audacious pretension. I adopted it, knowing, and most glad to know, *that the object now secured by it could not but be secured by it*; that, in proportion to the ire which should be kindled by the “designedly insulting language” of my rebuke, would be the certainty of its proving *the means to a glorious end*, the end of forcing upon the attention of my country a subject which was being trifled with, and which is too serious a one to be trifled with. Too sacred is the word, for the subject is *national independence*; and national independence is, by universal consent among philosophers, and statesmen, and jurists, of every age and country, the principle, in the maintenance of which, *before all others*, mankind are interested. The position in which I found myself was a very peculiar one—a most extraordinary one. It presented an alternative, under which I saw plainly (to others it belongs to decide whether I saw correctly) that I must either permit myself to be made a passive tool in a gross and flagrant sacrifice of this principle, or take upon myself a responsibility of a very high and most extraordinary character; and, in so doing, stir up against myself every evil passion which can instigate to the fabrication of reckless calumny out of plausible grounds of imputation. In regard to my position towards the British commissary judge, the former of these alternatives was *peace*—the latter, *war*. If I would but act reasonably, and allow the rights of my country to be trampled under foot, I might, for aught he cared, be steeped to the lips in the slave-trade, and go unscathed. Nay, be— if I would allow it—his most honored and courted friend; to whose “high character” it would ever be his delight to bear testimony. But, if I would *not* be reasonable, and was so headstrong as to choose war, war I should have, and to my heart’s content. War was my election. I adopted it with a knowledge of what awaited me in the shape of cunning misrepresentation and reckless calumny. But occasions arise in which a man must do what he thinks right, though these are to be the consequences; or do what he thinks wrong, to escape them. All this will be explained, and made good, as we proceed.

The first thing to be explained is, *the position of the commissary judge*: the position, which was the immediate cause of the move on his part that was met by me in the way which will be seen; and that was thus met—so far as the irritating tone and matter of my letter are concerned—in *the express design of bringing about the issue which is now joined*; or, if not actually joined, is at least inevitable: the issue as to what *national independence* means. This issue is to settle whether the meaning of the words be such that a British commissary judge, established at Havana for the discharge of specific functions stipulated by treaty between Spain and Great Britain, has a right to take part in the administration of the laws of the United States of America, either by addressing letters to American consuls, or under cover of any other device. And this point—little and insignifi-

cant as it may in itself be—can scarcely come to be settled without something happening which may have the effect of giving birth to some such prodigy as a “State rights school” among the family of nations: a party, throughout Christendom, which shall contend for giving a positive character to what has hitherto been but too truly a mere abstraction; for making that a living rule of life which has been a vague generality; in a word, for ascertaining definitely, precisely, practically, in what national independence consists, so that the principle shall not be trampled under foot by any one State without its becoming manifest to all that it is so trampled under foot, and eliciting the question proper to all violations of recognised rules of conduct.

By treaty between Great Britain and Spain, the Government of the latter contracted the obligation to pass laws forbidding the slave-trade to its subjects. It also granted the *right of search*; and British cruisers became authorized to detain vessels which might be found equipped in the manner specified, and to take them for adjudication before courts, established for the purpose, under the name of “mixed commissions,” at Sierra Leone, Havana, and other points. Their functions, as defined by the treaty, or their function rather, (its oneness being so perfect as to forbid the use of the word in its ordinary form,) consists simply in deciding the question of fact, whether the vessel had slaves on board at the time of capture, or was equipped in the mode forbidden by the treaty. The “mixed commission” which exists for this purpose at Havana, consists of two judges; the one British, the other, Spanish; to whom are associated two arbitrators, to the one or the other of whom—determined by lot—the decision is referred in case of disagreement between the judges. The British commissary judge has also a clerk, or, as he is styled, secretary, attached to him.*

In 1837, the post of commissary judge at Havana was (see Examination of Mr. Everett's Report, sec. 1, LXVII) received by Mr. Kennedy, in exchange—or rather was accepted as an unsatisfactory payment—for his seat in the House of Commons as member for the borough of Tiverton, kindly vacated by him for the accommodation of Lord Palmerston, whom his constituents had refused to elect. The post of commissary judge—together with the whole of the costly establishment connected with it—was an absolute sinecure, so far as regarded the purpose for which it existed; as defined by the treaty, it was indispensable, on various accounts, that the judge, lacking cases, should *be at something*. The fact that he and his associates were sinecurists, in the absolute sense of the word, must be covered up under a show of service and usefulness; which, however empty and contemptible in the eyes of the few to whom the truth was known, might answer the purpose of imposing on the distant many; and thereby provide the minister at home, who held *his* post from this very sinecurist by the tenure of patronage service, with a safeguard against the charge of keeping up an expensive establishment which had nothing to do.

The only mode of effecting this indispensable object was, by trampling under foot the treaty, by virtue of which they existed; and for the purpose stipulated in which, alone, they had a right of residence at Havana. *De-*

* To these three sinecures, as at Havana they have long been, a fourth was added some years ago for the special benefit of Dr. Madden, who would else (upon his being superseded as a *locum tenens* of the post of *arbitrator*, in the “arrangements” consequent upon the appointment of Mr. Kennedy) have been “thrown out of *employment*”—using the word in its best sense: that of *salary-receiving*, with nothing to do.

spatches must be forthcoming for publication in the parliamentary papers; and what sort of material for a despatch would be the fact that they had *nothing to do!* "My Lord: We have the honor to inform your lordship that, during the six months ending the — day of — last, no case has been brought before the mixed commission at this place." How would this read? What sort of parliamentary-paper proof of "zeal and efficiency" would it constitute? Materials for something better calculated to satisfy the demand must therefore be found somewhere; else the sinecurists might chance to go by the board, and not be allowed to remain long enough to earn the "retiring pension" for life, as the reward of "years of arduous toil," passed in the luxurious sloth of a fat West India sinecure, laying up wherewith to eke out the retiring pension. But how? If the field of duty defined by the treaty afford no materials, how can they be found? A fig for the treaty! Here we are: Her Britannic Majesty's Commissary Judge & Co.; and the Spanish Government *dare* not say a word against any thing we may choose to do. Who does Queen Christina depend on? How long would she keep Don Carlos out of Madrid, if *we* did not provide the means?

* It was scarcely to be expected that this correspondence between the commissary judge and Mr. Everett would afford proof upon this point. And yet it so happens; and in a way, too, that is no a little ludicrous.

Emboldened by the "frank and friendly tone" of Mr. Kennedy's letter, Mr. Everett ventures to ask the favor of some further "information;" and, in doing so, is indiscreet enough to particularize the "points." One of these is—

1. *The method of proceeding in your commission, and the number of cases that have been brought before it, with their results.*"

Now, this is too bad: Mr. Everett should at least take care not to tread on one's corns. Lo! Hear Mr. Kennedy in reply:

"With regard to the 1th question, I beg to refer you to the several volumes of slave-trade papers, printed by order of the House of Commons, which you inform me you had.* *I have no list of the cases made out; and, not exactly knowing whether you wish to confine your inquiries to this commission, or to include (as indeed would be only fair) the labors of the three others: Sierra Leone, Rio Janeiro, Surinam, would prefer your taking your information from those papers, from which alone I could furnish you any respecting them.*"

And this is Mr. K.'s mode of meeting the question, as to "the method of proceeding of your commission; the number of cases that have been brought before it, with their results!" Though "frank and friendly" enough to engage in the task of making for Mr. Everett's accommodation "a succinct summary of the facts" (see Mr. K.'s despatch to Lord Palmerston, enclosing copy of the correspondence) contained in the parliamentary papers already in Mr. E.'s possession, *so far as these regard the misdeeds of "Mr. consul Trist,"* Mr. commissary judge eschews such a piece of work as that of preparing "a succinct summary" in relation to the nature and extent of his own "labors." "No list of cases made out!" How many lines would it fill, Mr. commissary! Besides, Mr. Everett is solicitous for "information" in regard to the precise nature of your functions. Perhaps, though simple in your eyes, it may be in itself so intricate as to require a little assistance from you to comprehend it. If Mr. E. required such aid in regard to mere "facts" respecting the consul, surely it is uncharitable to deny it on a point like this. Besides, again, he wants "the results." Perhaps these may involve some "facts" against the consul, which Mr. E. may be unequal to the task of making for himself "a succinct summary" of.

But the great beauty of the reply lies unquestionably in the *parenthesis*, ("as indeed would be only fair.") Lo! the conscience-stricken sinecurist. He talks in his sleep; or, rather, dreams whilst writing. "Only fair!" He fancies himself before a committee of investigation of the House of Commons. "You must not say my office is a sinecure: this would be to take an *unfair* view of the subject. You must include the labors of the three others." O! truth: what a very Marplot you are. You *will* be breaking in (or out) at moments when we have no business with you.

* On reference to Mr. Everett's report (see Examination, sec. 1) it will be seen that it produces the impression that he had been indebted for these papers to "the mixed commission" as he there calls Mr. Kennedy. It would seem from this, that he had approached "the mixed commission" ready armed with "all the information in their possession!" A variety of questions here suggest themselves. But I have not time for them.

* One-half the space occupied by which "summary" is filled by Mr. Kennedy's testimony as to what he conscientiously believes in regard to the *motives* of the consul! Mr. K.'s memory is a short one. He writes to Mr. E. on the 28th May; gets "a verbal correction" made in his letter some days after; and, in writing to Lord Palmerston on the 15th of June, forgets the nature and contents of this corrected letter!

Besides, has not our Government paid British money—money *made* by British “operatives”—to King Ferdinand and his courtiers, as the price of a treaty-obligation to pass laws forbidding the slave trade to Spanish subjects? and is it not notorious that these laws are contravened with no less impunity than attends the violation of the laws on all other subjects; subjects which have been legislated upon freely, and, to some extent, in accordance with the habits and the sentiment of the people; and not under a contract, in which our gold has been paid as the legislative motive? How, then—apart, even, from the dread inspired by the British trident—will the Government which thus fails to enforce these laws, (just as if they were no better than any other laws; just as if their enforcement were no more obligatory and no more easy than the enforcement of the laws against defrauding the royal customs, highway robbery, and murder, and other such trivialities*)—how will it *dare* to whisper a syllable, in the shape of rebuke or complaint, against aught that we may see fit to do? Besides, it will be apparent to all eyes *here*—and of course to those of the authorities themselves—that what we do is intended only for effect at home: a little diplomatic *humbug*, to appear in the parliamentary papers, and satisfy the folk there who demand proofs of “zeal.”

Materials for “despatches,” accordingly, were found. The staple was furnished by the *daily newspapers* and *weekly shipping-list and price-current*. It consisted of the names of all vessels published as cleared for, or arriving from, Africa; to which names was prefixed the heading, “Vessels engaged in the slave-trade,” or, as subsequently modified, “vessels *suspected* of being engaged in the slave-trade.” When a vessel had brought slaves from Africa, and had smuggled them in on the coast—which always became known as the most piquant rumor of the port, very soon after it happened—this fact was, of course, made to figure in the despatch, set off by such epithets as would afford conclusive proof of the “zeal” of the writers. But this *parade of espionage*, whatever air of mystery might be thrown around the “information” thus communicated, was not altogether sufficient. It still occurred to some ill-natured person in Parliament, or out of it—even though he should not be aware of the fact that these revelations were conveyed much more promptly in the shipping-list, weekly sent to London and every other port in Christendom—to inquire whether this “information” could not be obtained at a cheaper rate than some twenty thousand dollars per annum (besides retiring pensions) for the support of Commissary Judge & Co. He might ask whether the British consul might not possibly be adequate to such a task. Materials of another description must, consequently, be provided; something which it might seem to be not altogether within the province of consular authority to create, and which (to those who did not know, or did not care, for what *stipulated* purpose “her Majesty’s com-

* For the state of Spain generally in regard to the observance and the maintenance of law, see particularly an article on that country which has appeared within the last two years in one of the four British Reviews (the Westminster, I think.) Among the facts there stated, one is, that the commander-in-chief of the army, travelling near Madrid, was stopped and robbed; another, that the same mishap befel the ambassador of the autocrat of all the Russias, who was left pretty much *in puris*: a circumstance that added a great zest to the “accident,” as a topic of merit with his Majesty King Ferdinand. And this is the country whose Government was paid—paid in money (as British writers tauntingly say)—to pass laws forbidding the slave-trade to its subjects, and enjoining it upon its authorities to enforce the prohibition! This is the country in regard to which enthusiasts in Great Britain were to be *humbugged* by proofs of zeal and efficiency on the part of British agents, in the shape of letters to its functionaries, taking them to task for alleged contraventions of this prohibition!

missioners" had been admitted to a residence at Havana, and had any right to exist there) might seem to arise in the discharge of commissioner functions.

This supplementary matter consisted chiefly of communications addressed to the Captain General, indirectly but plainly charging him with connivance at contraventions of laws, which, as the highest functionary of the country, it was his duty to enforce to the best of his ability, but nowise under the dictation or censorship of any foreign agent of any grade, let alone a British commissary judge; communications of such a nature that no Government, but one whose sole rule is *to pocket every thing, and quarrel with nobody*, would permit its functionaries of any grade to receive from any foreign agents placed among them for the purpose for which alone these commissioners had a right to be upon Spanish territory. Communications to the consuls of foreign Powers were also brought into play. The first of these which was addressed to me was in October, 1836, during my absence on a visit to our country, and was received by me on my return, late in the following month. At the same period, a similar communication was addressed to the consul general of France. His Government had entered into a treaty with Great Britain similar to that under which the British commissary judge and his appendages resided at Havana; a fact which might be supposed (although erroneously, as I conceive) to give some color to the pretension of these Anglo Spanish agents to disregard, with respect to the French consul, the limits of the field of duty assigned to them. However this may be, he accepted their communication, and gave in return a piece of the same material—"official cant," as the Westminster Review has recently denominated the staple of these slave-trade despatches for the parliamentary papers. This was behaving "like a gentleman," and in accordance with the most approved rules for "diplomatic intercourse," as doubtless Mr. Everett will be ready to certify, upon grounds which will be considered in my examination of his report.

It would have been "*prudent*" in me to pursue the same course; thereby *would all responsibility have been avoid-d.* Of this, it required no diplomatic training to make me aware. But I happen to be American-born and American-"raised;" and the "State-rights" idea wherewith we are all, more or less deeply, according to circumstances, imbued, has—

[The conclusion of this letter has not been received at the Department of State.]