

Report No. 142.

HOUSE OF REPRESENTATIVES.

P. J. FARNHAM AND JED FRYE.

MARCH 3, 1849.

Mr. MARSH, from the Committee on Foreign Affairs, made the following

REPORT:

The Committee on Foreign Affairs, to whom was referred the memorial of Putnam J. Farnham and Jed Frye, report:

The memorialists are merchants, residing, respectively, in Salem, Massachusetts, and the city of New York, and have long been jointly engaged in traffic with various foreign countries, and especially with the west coast of Africa. In March, 1840, they despatched the American bark Jones, a vessel of not far from three hundred tons burthen, with a valuable assorted cargo, which, together with the vessel, belonged wholly to them, upon a trading voyage to that coast. The vessel sailed from Boston, where she was regularly cleared, and after trading at various ports on the African coast, and exchanging a part of her cargo for African products, she proceeded to St. Helena, and arrived there about the 24th of August, 1840. She was immediately entered at the custom-house and her manifest handed in, her register and other ship's papers being, in pursuance of the requisitions of the act of Congress of the 28th of February, 1803, deposited by the captain with Mr. Carroll, the United States consular commercial agent. A part of the original cargo was then landed; and after spending about three weeks in selling and exchanging these goods, the master was preparing to return to the African coast for further trade, when the vessel was seized and taken out of his possession by Lieutenant Littlehales, then in command of the Dolphin, a British national armed vessel, for the following causes and upon the following pretexs:

The crew were shipped for "Montevideo, or other ports north of the the thirty-sixth parallel of south latitude." Being averse to returning from St. Helena to the coast of Africa, they insisted that they were shipped for a voyage to ports on the American coast

north of the thirty-sixth degree of south latitude, refused to obey the orders of the master, and claimed the protection of the American commercial agent, who decided that they must abide by the shipping articles, which embraced *all* ports north of 36° south latitude. They then addressed themselves to Lieutenant Littlehales. That officer chose to adopt their construction of the shipping articles, (which, however, he does not appear to have ever seen,) and resolved to interfere in behalf of the oppressed mariners, they, to use his own words, "having come to me for protection and assistance, such having been denied them by Mr. Carroll." As the only means of extending to them effectual "protection," under color of legal authority, Lieutenant Littlehales determined to seize the vessel, "as having slave equipments on board whilst at anchor in British waters;" and this purpose he carried into immediate execution, under circumstances of unnecessary and revolting oppression, which are fully detailed in the memorial, as well as in the letters of Mr. Everett and Mr. Bancroft, herewith submitted.

It is, indeed, *possible* that the mutineers may have excited in the mind of Lieutenant Littlehales suspicions that the vessel had been or was designed to be engaged in the slave trade; but those suspicions, if such, in fact, were ever entertained, must have been, and unquestionably were, completely dispelled by the search, which utterly failed to produce a tittle of evidence to show the illegal character of the voyage, and, on the contrary, most clearly established its lawful and innocent purposes.

There can be no doubt (unless we ascribe something to a narrow commercial jealousy) that the original motive for action on the part of Lieutenant Littlehales, was the desire to interfere in behalf of the crew; a matter of which, however unfairly they may have been dealt by, *he* had no jurisdiction; as little doubt that he detained the vessel, after the search had shown that there was no foundation for the charge on which she was seized; not because he believed that she was chargeable with any violation of the laws of nations or of Great Britain, but because he hoped, by availing himself of some technical advantage, to shield himself from personal responsibility, and possibly, through the favor of some unjust judge, to secure an allowance of costs of seizure against the vessel.

In the further prosecution of this iniquitous purpose, he declined the jurisdiction of the local tribunals of the island of St. Helena, which were fully competent to try the issues, and ordered the vessel with her cargo (a considerable part of which had been laid in, in the course of a lawful and public trade at St. Helena) to Sierra Leone, for trial in the admiralty court, and refused to permit the master and supercargo to proceed in her to the port to which she was ordered, or even to go on board the ship. The obvious motive for this refusal was to deprive the officers of the vessel of an opportunity of appearing in her behalf in the admiralty court, and thereby to secure to himself the advantages of an *ex parte* trial, besides which, he denied the master and supercargo their clothing,

money, and other personal effects, and treated them in other respects with gross contumely and insult.

The case being brought before the admiralty court at Sierra Leone, upon an *ex parte* hearing, the judge declared, in pronouncing his decree, that the evidence had "literally produced nothing which can by possibility affect the character of this vessel," that the reasons assigned for not instituting proceedings in the courts at St. Helena were not satisfactory, that he had searched in vain to find "some probable cause of seizure," that he "*never saw a case so free even from suspicion,*" and, finally, that, "upon her alleged equipment for the slave trade, costs would, to a certainty, have been given against the seizor." The restoration of the ship and cargo to her owners was, of course, decreed. But, by a lucky after thought, Lieutenant Littlehales put the seizure upon another ground also, namely, that, contrary to a British statute, she was found in British waters (the harbor of St. Helena) without having her ship's papers on board. The British statute cannot be intended to apply to vessels which are actually in port, and have been duly entered at the custom-house, as of course they can be, only upon the production of regular papers, especially when they are bound, as are all American vessels, to deposit their papers with the consul. The whole evidence of a violation of the British law in this particular was that, to a rude, imperious, and, under the circumstances, illegal demand for his papers, made by Lieutenant Littlehales, not on board the ship, but upon an accidental meeting *in the street*, the master made a hasty or an evasive reply, and yet the judge, upon this showing alone, as a mode of testifying the "inclination of the court to discountenance opposition to constituted authorities," awarded costs to the captor.

The officers of the ship being deprived of an opportunity of appearing before the court, or of taking an appeal, by the refusal of the captor to allow them to go to Sierra Leone in the vessel, the whole proceedings were *ex parte*, and without any notice to the master or the owner. Pursuant to the decree of the court, the ship and cargo, which are represented to have been worth not less than seventy thousand dollars, were sold at auction for about twenty thousand dollars; the cargo for the costs, and the vessel, (which had been detained to answer an appeal vexatiously entered, but never prosecuted, by Lieutenant Littlehales,) because she was unclaimed by the owners, who appear to have been, for a long time, ignorant not only of the proceedings of the court, but of the port to which she had been taken. The British government now offers to pay the proceeds of the sale, deducting costs, to the owners, but only upon condition that the claimants relinquish all demands for further damages.

The claim of the memorialists for redress has been made the subject of several communications between the American and British governments. The most plausible ground on which reparation is refused by Great Britain is the *technical* objection that the sale and sacrifice of the vessel and cargo were the necessary consequences of the neglect of the memorialists to appear before the admiralty

court at Sierra Leone, and appeal from the decree by which costs were awarded to the captor. Without entering upon any discussion as to the generally binding character of admiralty proceedings *in rem*, it is a sufficient answer to this argument to remark that, by the refusal of Lieutenant Littlehales to suffer the master and supercargo to proceed to Sierra Leone on board their own vessel, by his omission, for two *full* years, to report to his government the capture of the barque, and by the neglect of the court at Sierra Leone to return the proceedings of that tribunal, for the like period, the owners of the vessel have been improperly deprived of an opportunity of appearing in court or entering an appeal; and that the captor, or the British government, which has put itself in his place by avowing and justifying his act, cannot fairly take advantage of his wrong. Neither can it be said that the memorialists, as in other cases of private wrong, have a remedy at law against the tortfeasor. The tortious act was committed by a British naval officer, in actual command of a ship of war, by overpowering force, and his government has avowed and justified, and thereby assumed the exclusive responsibility for, his acts.

But the whole question has been argued with so much force and ability by Mr. Everett (whose letter remained three years unanswered) and by Mr. Bancroft, that the committee choose rather to refer to the official correspondence herewith submitted, than to discuss the matter further.

It is notorious that American vessels engaged in the African trade have been for many years subjected to detentions, searches, and other vexatious interruptions of their lawful business, by British cruisers, of so aggravated a character and so frequent occurrence as to have seriously interfered with the prosecution and the profits of what might otherwise be an advantageous commerce. It is by no means the purpose of the committee to charge the British government with the intention of opposing obstacles to a free commerce with the coast of Africa, and thereby securing the advantages of that trade exclusively to British subjects; but there is too much reason to believe that seizures, detentions, and other interruptions of American vessels have been sometimes instigated by persons interested in obstructing American commerce with that coast. It is the interest as well as the duty of all the powers concerned in the suppression of the African slave trade to discountenance all acts of their officers which may tend to excite a suspicion that they deliberately and systematically connive at these violations of national comity and national law, and to see that full redress be made in all cases where their naval officers exceed or abuse the great authority with which they are necessarily invested upon that station, and the rather, because the hope of prize money of itself forms a strong inducement to make seizure in every doubtful case.

On the other hand, the government of the United States is under a solemn obligation to protect the citizens of this Union, at whatever hazard, in the exercise of their lawful callings, both within our more appropriate jurisdiction, and in their commerce with foreign nations. In the deliberate judgment of the committee, th

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present case is one of the strongest in which the American government has ever been called upon to discharge that obligation. In the history of our intercourse with civilized nations, they know few instances of more wanton and unprovoked outrage upon American commerce than this case exhibits, and they believe that the honor and interest of the nation demand that the government should insist upon the most full and ample pecuniary redress to the memorialists, if not upon reparation for this indignity to our flag by the condign punishment of the offender.

The committee recommend the adoption of the following resolutions:

Resolved, That the seizure of the American barque Jones, at St. Helena, in the year 1840, by an officer of her Britannic Majesty's navy, while the vessel was engaged in a lawful trading voyage, was an outrage upon the rights of the subjects of a friendly power, and that the British government ought to make satisfaction to the party aggrieved thereby.

Resolved, That it is the duty of the government of the United States to renew the demand for redress to the owners of the barque Jones, and strenuously to urge the same.

To the Senate and House of Representatives of the United States in Congress convened:

The memorial of P. J. Farnham & Co., merchants and native born citizens of the United States; Putnam J. Farnham one of said firm residing in Salem, in the State of Massachusetts, and Jed Frye, another of said firm, in the city of New-York,

RESPECTFULLY SHOWETH:

Your memorialists, for twenty years last past, have been engaged in business as shipping merchants, and during that period have been the owners of numerous vessels, and have paid large amounts of duties to the government of the United States, and have traded extensively with foreign countries, and especially on the western coast of Africa.

That on or about the twelfth day of March, eighteen hundred and forty, the American barque "Jones," a vessel of about two hundred and seventy-one tons, and belonging to your memorialists, cleared at the port of Boston, and immediately sailed for the western coast of Africa, having on board of her a valuable cargo of assorted merchandize, also belonging to your memorialists. That after trading at different places along the western coast of Africa, and exchanging a considerable portion of the original cargo for the products of the African coast, the said barque "Jones," on or about the 24th day of August, in the same year, arrived at the island of St. Helena.

That the purposes for which said vessel went into St. Helena were those of trade, and immediately upon her arrival, the master, James Gilbert, entered his vessel at the custom-house and handed

in his manifest according to the laws of England and of St. Helena, and then, in pursuance of the laws of the United States, he deposited his ship's register and other papers with Mr. Carroll, the United States commercial agent. That he then landed a part of his original cargo, and for about three weeks was engaged in selling and exchanging the same. That at the expiration of this time and when about to set sail and return to the western coast of Africa for the purposes of further trade before returning to the United States, the said barque "Jones" was seized by one Lieutenant Littlehales, then being in command of a British armed vessel called the Dolphin. That the said barque was seized on the alleged ground that she had been fitted out for the slave trade. That the seizure, the details of which are fully set forth in the accompanying documents, while it was entirely illegal and without the slightest grounds, was made under circumstances peculiarly oppressive, and marked by a harshness of treatment and superciliousness of manner which, if tolerated by the British government, would and ought to put an end to trade and intercourse with that nation. The outlines of this seizure are ably and graphically set forth in the following extract from a communication from the American minister now at London to Lord Palmerston:

"The ship's crew, who had hoped to visit the ports north of the thirty-sixth parallel on the American side of the Atlantic ocean, mutinied and applied to the American commercial agent. He decided they must abide by their shipping articles. They then applied to Lieutenant Littlehales. 'Having come to me,' these are the very words of Littlehales, 'for protection and assistance, such having been denied them by Mr. Carroll,' the British lieutenant extended to them his protection. He demanded of the captain of the 'Jones,' on shore at St. Helena, to see the ship's papers, a demand which was illegal and which the captain very properly refused. He searched the ship and found there the ship's log book, the only ship's papers which, by the laws of the United States, could have properly been on board of her at the time. He seized the ship, to use his own words, '*as having slave equipments on board whilst at anchor in British waters.*' He struck the flag of the United States, which had been flying at the mizen-peak of the 'Jones,' and hoisted in its place the device of the 'Dolphin.' To a respectful letter of the master of the barque he sent no reply. A letter from the commercial agent of the United States, the representative of the American government, he superciliously returned unopened. He took no means of making inquiries of the collector of the port, who could have given him all necessary information. He broke up the voyage before trial or condemnation of the vessel, by giving the men 'leave to absent themselves from the Jones as they pleased,' and even negotiated in behalf of the mutineers for 'a passage in a vessel to America.' Though he still lingered in St. Helena for two or three days, he not only did not take with him to Sierra Leone the captain and supercargo, who, if the vessel was amenable to a British tribunal, were amenable also, but he issued an order, such is his own statement, that 'they could not

be admitted' on board their own vessel. He declined the jurisdiction of the courts of record at St. Helena, and having sent on shore for the ship's chronometer, took that and the barque and her cargo, and the clothes of the officers and their money, and sailed with them to Sierra Leone with three volunteer witnesses selected from the barque's complement. Arriving at Sierra Leone, he invoked the name and authority of his sovereign, the queen, against the barque 'Jones,' where there was none to appear in behalf of her owners. Lieutenant Littlehales selected his own place of trial, his court, his judge and his witnesses. The judge declared himself 'not satisfied with the explanation for not instituting proceedings in the court at St. Helena.' On the declaration of the crew, which seems to be relied on as a justification for Littlehales's original interference, the judge declared 'that not even the most distant allusion is made by the seamen, whose names are affixed to that paper, that the vessel had been or was about to be engaged in the slave trade.' On the alleged slave equipments he gives his judgment that 'not a single article of equipment is established against her.' On the evidence of the voluntary witnesses, whose disinterestedness he does not consider certain, he adjudged 'that their evidence has literally produced nothing which can by possibility affect the character of this vessel.' After the most anxious consideration of the case his 'opinion is fixed and immutable.' He failed in his search for 'some probable cause of seizure.' 'I never saw a case,' such are his remarkable words, 'so free even from suspicion.' He pronounced the barque to be restored will all her cargo. With regard to the costs, he owned that 'on her alleged equipment for the slave trade, costs would to a certainty have been given against the seizor;' but avowing 'the inclination of the court to discountenance opposition to constituted authorities,' he lost the opportunity of winning a good name for himself as a thoroughly honest judge by ordering the captain his costs.

"The captor could do the owners of the barque 'Jones' but one more injury, it was to make an appeal without the intention to prosecute it. He did so. The vessel was detained for costs and to answer an appeal. In a very few days the marshal began the sale of the cargo, which was almost sacrificed. At last, the ship itself, which would have gone to ruin at the wharf in Africa, was sold at almost a total loss."

Your memorialists would further state, that when the barque "Jones" was seized at St. Helena, as aforesaid, there were on board about ten thousand dollars of silver, a valuable collection of ivory, and other products of the African coast, together with a portion of the original cargo, which, with the value of the vessel, amounted altogether to nearly or quite seventy thousand dollars.

That there was paid into court at Sierra Leone some eighteen or nineteen thousand dollars, being the entire nett amount of the vessel and cargo, so great was the sacrifice. This sum the British government have intimated their willingness to pay over to your memorialists, provided your memorialists will withdraw all claim for the destruction and sacrifice of the remainder of their property.

This your memorialists have declined to do, and failing, as they have done, to obtain redress from the British government, through the ordinary and customary channels of negotiation, they now present themselves before the Congress of the United States, and respectfully ask that their hands be compensated for the losses they have sustained.

By the decision of the British court at Sierra Leone, there was not even grounds for suspicion that the vessel was fitted out for the slave trade. The British judge declared that he never saw a case "so free from suspicion." And well he might so declare, for during a period of nearly twenty years your memorialists have been engaged in a lawful trade to the coast of Africa. During that time they have employed many vessels, and have contributed in some degree towards the advancement of that important scheme of American philanthropy, the building up of a republic of free colored men on that coast. They have carried back many an emancipated black man to the land of his fathers, but they never carried a slave from there.

Your memorialists, while engaged in a lawful trade, and while in the port of a friendly nation, have by violence and wrong, and contrary to the laws of England herself, been deprived and robbed of their property.

If under such circumstances the government of the United States fails to protect her citizens, and neglects to make compensation herself, or to compel the nation doing the wrong to make such compensation, there will be no safety in the prosecution of the foreign commerce of the Union, and American citizens may be driven away and deprived of any trade wherein their enterprise or industry may interfere with the business or gains of the subjects of the British queen.

Your memorialists, therefore, respectfully ask that your honorable body will be pleased to pass a law, granting compensation for the losses, so sustained, out of the treasury of the United States, and that your memorialists transfer their claim against the British government directly to the United States; or if any doubts should arise as to such a course, then you will be pleased to order that any funds belonging to citizens of England in the treasury of the United States, either granted to them for losses or any other course, or a sufficient amount of such funds be withheld and set off, until the British government shall make such compensation to your memorialists, or for such other or further relief, as may be meet in the premises.

P. J. FARNHAM & CO.

NOVEMBER 20, 1848.

STATE OF NEW YORK, }
City and County. } ss.

Jed Frye, one of the firm of P. J. Farnham & Co., the memorialists, being duly sworn, deposeseth and saith, that he has read the

foregoing memorial, and that the same is true to the best of his knowledge and belief. That he has been a member of said firm for twenty years past, and that neither directly nor indirectly has he, this deponent, nor to the best of his knowledge and belief, has his partner, P. J. Farnham, or any other partner been in any way concerned in the slave trade. That the vessels belonging to P. J. Farnham & Co., have been frequently employed by the Colonization Society, to carry from the United States free people of color to the infant republic of Liberia, but never to carry away from any African port, or any other port or place, any African or other slave. That the barque Jones was fitted out solely for carrying on a legitimate trade, and without the slightest intention or remotest design; without the shadow of a shade of purpose, either directly or indirectly, of engaging in the slave trade.

JED FRYE.

Subscribed and sworn to, this 22d day of November, 1848.
Before me,

JAMES S. PHELPS,
Commissioner of Deeds.

Mr. Everett to the Earl of Aberdeen.

46 GROSVENOR PLACE, May 18, 1843.

MY LORD: The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America, has the honor to acknowledge the receipt of the note of the Earl of Aberdeen, her Majesty's principal secretary of state for foreign affairs, of the 2d of March, relative to the seizure of the bark "Jones," an American vessel, in the port of St. Helena, on the 12th of September, 1840. The undersigned would in vain seek to conceal the disappointment and regret with which, after a delay of such extraordinary duration, the causes of which remain wholly unexplained, he has received a communication on this subject of a nature so unsatisfactory.

The case of the "Jones" was first committed to the consideration of Viscount Palmerston by Mr. Stevenson on the 16th of April, 1841. The undersigned infers, from Lord Aberdeen's letter of the 31st of December, 1841, that more than four months elapsed from the time when Lord Palmerston's attention was first called to the subject by Mr. Stevenson, before his lordship moved the board of admiralty to institute an inquiry into the case.

One of the first objects which engaged the attention of the undersigned, on arriving in London, was to invite the attention of Lord Aberdeen to the case of the "Jones," and the other cases referred to in Mr. Stevenson's note of the 16th April; and the undersigned has great satisfaction in acknowledging the promptitude with which his communications have been attended to, as far as Lord Aberdeen is concerned. But his lordship will recollect that

when, on the 16th September last, the undersigned addressed a note to Lord Aberdeen, transmitting additional papers on the subject of the capture of the "Jones," and requesting to be furnished with a report of the proceedings at Sierra Leone in reference to that vessel, his lordship, under date of the 6th of October, informed the undersigned, in reply, that this report had not been received, nearly two years having then elapsed since the decision of the vice admiralty court at Sierra Leone had been given in the case. It is only after a lapse of five months longer that the government of the United States receive, through his lordship's note to the undersigned, of the 2d March, their first information of the grounds on which a valuable vessel, with her cargo, the property of American citizens, is, while at anchor in a British port and under the protection of the civil jurisdiction of her Majesty's colonial authorities, seized by a subaltern naval officer, and sent, without her captain or supercargo, to a distant tribunal for an *ex parte* adjudication. In the interval, two of the annual volumes, purporting to contain a list of the vessels detained and captured by her Majesty's cruisers employed for the suppression of the slave trade, and adjudicated in the courts of mixed commission and vice admiralty in the course of the year, had been submitted to parliament by her Majesty's command, and printed, in neither of which is there any report from Mr. Littlehales, or the court at Sierra Leone, relative to the capture and trial of this vessel. The undersigned is aware of the length of time required for the transmission of intelligence to and from the African seas. The average length of the voyage from St. Helena or Sierra Leone to London may be two months. But while this circumstance shows that some delay is unavoidable, it aggravates the injury of any delay which is unnecessary. The judgment of the court at Sierra Leone was rendered on the 18th of November, 1840. The decree of costs to the captors was made on the 4th of December following, and the report of these decisions might have been received in London, if promptly transmitted, two years ago. So lately as the 5th of last October they appear not to have been received by her Majesty's government. The undersigned will have occasion in the course of this note to point out the ruinous consequences of this delay to the interest of the owners of the "Jones." He now feels it his duty, in advance, to protest against it, and to represent it to the Earl of Aberdeen as a distinct cause of grave and serious complaint.

The task of the undersigned, in establishing the character of the seizure of the "Jones," is rendered easy by the decree of the court of Sierra Leone in favor of the owners. In the absence of all defence by counsel or testimony, without even a representative of their rights, in a trial on which no witnesses were heard but those whom the captors had thought fit to select from the ship's company was likely to effect her condemnation, and with an anxious desire on the part of the judge, as he admits, to give judgment for the captors; under all these inauspicious circumstances, the opinion of the court was clearly and strongly in favor of the vessel on both the grounds on which she was seized, viz., being in the waters of a

British possession without a national character, and being equipped for the slave trade.

It might have been expected, under these circumstances, that a decision would have been given by the court which would mitigate, as far as possible, to the owners of the vessel the loss to which they were subjected by the groundless seizure of their property. So far, however, is this from being the case, that by throwing upon them the costs of the proceedings, a judgment, nominally in their favor, is made in reality to amount almost to a decree of confiscation. No account of the costs appears among the papers transmitted to the undersigned with Lord Aberdeen's note of the 2d of March; but their amount may be conjectured from the fact that a sum of less than 8,000 dollars is reported in his lordship's note to be all that remained from the sale of a valuable vessel and cargo.

The grounds of this decision are, that Lieutenant Littlehales was authorized (Geo. IV. chap. 113, sec. 43) to visit and search the "Jones;" that this visit and search were resisted by the master of that vessel; and that, therefore, if there was error on the part of the captors, the master of the "Jones" is responsible for the consequences.

The undersigned is disposed, in the outset, wholly to question the legality of Mr. Littlehales's proceedings. The summary powers confided to her majesty's cruising officers for the suppression of the slave trade, large and dangerous at best, must have been conferred for the purpose of being exercised upon the high seas. It cannot have been the intention of Parliament, or of any department of her majesty's executive government, in the judgment of the undersigned, to clothe those officers with power of proceeding without legal process against the rights and property of peaceful traders in port. If the "Jones," being regularly entered at the custom-house of St. Helena, and consequently within the jurisdiction of that colony, incurred in the mind of Lieutenant Littlehales the just suspicion of being engaged in the slave trade, it was his duty (the undersigned apprehends) to lodge an information on oath before a magistrate, under whose warrant the proper legal proceedings would have been had. If this course had been pursued, the master and owners of the "Jones" would have enjoyed—what every man in a civilized country is entitled to—the protection of the laws to which he owes obedience. As abundant proof of the nationality of the vessel and the legality of her voyage existed in St. Helena, it may well be supposed that her prompt acquittal would have followed the institution of the suit.

Instead of this, as the undersigned believes, *the only legal and equitable procedure*, Lieutenant Littlehales took forcible possession of a regularly entered vessel, refused to inform her master on what grounds he proceeded, overturned and ransacked her cargo for four days, and then on the most extraordinary pretence, that her Majesty's court of vice admiralty at St. Helena was illegally constituted, ordered her, without her master or supercargo, to the coast of Africa. The undersigned repeats, that he believes this whole pro-

cedure to be as illegal as it was unjust and oppressive. Inasmuch, however, as there are ample means of establishing the right of the owners of the "Jones" to indemnity on broader grounds, the undersigned waives for the present this view of the case.

The 5 Geo. IV., c. 113, s. 43, being the law under which the judge at Sierra Leone decreed costs to the captors, refers exclusively to the seizure of vessels concerned in the slave trade, and the persons held as slaves which may be found in them. It has no reference to the nationality of vessels. To the search necessary to ascertain whether the vessel was equipped for the slave trade, no resistance is even alleged to have been made in the case of the "Jones." None could have been made. The vessel lay under the guns of the "Dolphin," an armed force sent by Mr. Littlehales had possession of her; her master was excluded from the quarterdeck of his own ship at the point of the bayonet. As the court at Sierra Leone professed to adjudicate the case exclusively under the 5 Geo. IV., c. 113, s. 43, and as the search authorized by the provisions of that law was not, as it could not have been, resisted, the ground on which costs were decreed to the captors wholly fails.

It is true the "Jones" was charged by the captors with another offence, viz: "in being found in British waters without any national character, having no ship's papers on board, in contravention of 2 and 3 Vict., c. 73. But that statute creates no such offence. It is also an act for the suppression of the slave trade. It empowers her majesty's officers to seize Portuguese vessels concerned in the slave trade, and "other vessels engaged in the slave trade, not being justly entitled to claim the protection of the flag of any state or nation." Nothing is perceived by the undersigned in the statute which makes it *ipso facto* a crime to be in British waters without papers establishing a national character. The act evidently refers exclusively to vessels navigating the sea, concerned in the slave trade.

If the "Jones," while in a British jurisdiction, was reasonably suspected of being equipped for the slave trade, she was of course subject to search by competent authority, whatever her nationality. That search was made by Mr. Littlehales, though, as the undersigned has already observed, in his opinion without authority. But the search was made without resistance; and if the 2 and 3 Vict., c. 73, is the only foundation on which the "Jones" is charged with a separate offence, for which a distinct search of papers was required, he feels authorized to pronounce it wholly unsupported.

The facts of the case are these: It is proved by the judgment of the court at Sierra Leone that the "Jones" was *bona fide* an American ship; her captain and crew, with one exception, American; her voyage an ordinary trading voyage. She had been, while on the coast of Africa, before arriving at St. Helena, boarded, and for two hours examined and searched by a party from the "Waterwitch," and permitted to proceed on her voyage; and the judge at Sierra Leone, anxious, as he admitted himself, to decide for the captors, and in the absence of all defence, expressed himself in this remarkable manner: "I have carefully reviewed the grounds upon

which I gave a sentence of restoration in this case. I did so with a view of discovering, if possible, some probable cause of seizure as regards this vessel's alleged equipment for the slave trade, *but I confess that I never saw a case so free from suspicion.*"

Such was the "Jones" when, on the 24th of August, 1840, for the purpose of lawful commerce, she came to anchor in St. Helena roads. Having a portion of her cargo to dispose of, she was regularly entered at the custom house. This could not be done without satisfying the collector of her national character, and depositing the manifest of her cargo at the custom-house. An attempt was made before the court at Sierra Leone to deny that any proof of nationality was given to the collector. An affidavit was made by Mr. Pike, an admiralty passenger on board of the "Dolphin," in which he states that he accompanied Lieutenant Littlehales to the custom-house at St. Helena, who asked to see the papers of the "Jones," but was told by a clerk that no papers of that vessel had been brought there. "I am not informed (says the judge) why application was not made to the collector, who is a responsible officer, instead of a verbal demand made to a subordinate officer of his department. I am not satisfied with this explanation." And the judge afterwards adds: "I presume that the requisites of the law were duly complied with, such as the production of the register for reporting and entering the ship; after which, upon the payment of the tonnage due, it would, as a matter of course, be returned to the master.

No exception can be taken to this reasonable conclusion of the court. If Lieutenant Littlehales went to the office of the collector to see the ship's papers, he went to a quarter where they could not reasonably be expected nor legally kept. The manifest of the inward cargo must have been by law at the custom-house; the register and other papers must have been, and were, deposited with the American consul. In that portion of Mr. Littlehales's letter to the secretary of the admiralty, of 16th August, 1842, which has been communicated to the undersigned, Mr. Littlehales says nothing of any such inquiry; nor does he in any part of his statement intimate the least doubt of the nationality of the vessel.

The "Jones" having thus legally entered the port of St. Helena, remained for about three weeks discharging and taking in cargo. During this time controversies and ill-feeling sprung up between Captain Gilbert on the one side, and his mate and some of the crew on the other; and, apparently, by way of avenging themselves on the master for real or supposed wrongs, the vessel was denounced by the latter to Mr. Littlehales as being concerned in the slave trade. The undersigned does not stop to inquire into the truth of the insinuations and charges of various kinds made by the mate and his disaffected associates against the master of the "Jones" and the character of her voyage, partly because they are immaterial to the case in its present aspects, but still more because the vessel is so amply and honorably acquitted by the vice-admiralty court at Sierra Leone, not merely of all guilt, but of all reasonable suspicion. In fact, the improbability that a vessel

equipped for the slave trade would deliberately enter a British port, and voluntarily lie there for some time by the side of a British cruiser, is so great as of itself to create just doubts of the good faith of an officer who would capture her on that ground, especially when the court before which she is proceeded against pronounces her free from the slightest suspicion.

Lieutenant Littlehales, however, in the face of this improbability considered it his duty, though not acting under the municipal authorities, to take cognizance of the case. Late in the afternoon of Saturday, the 12th September, he met Captain Gilbert, the master of the "Jones," in company with Mr. Carroll, the American consul, in the streets of St. Helena. Captain Gilbert did not then know Mr. Littlehales, but was informed by the American consul who he was. According to Captain Gilbert's statement on oath, this officer, thus made known to him, abruptly requested to see his *manifest*. Captain Gilbert inquired the motive of this demand. The request was repeated by Mr. Littlehales, and Captain Gilbert again inquired his motive for making it. To this, Mr. Littlehales rejoined, that if Captain Gilbert "complied with his request, it would save much trouble to both parties." Upon this, Captain Gilbert said to Lieutenant Littlehales, "there is a custom-house at St. Helena," meaning that the custom-house was the legal place of deposit for the manifest of every duly entered vessel. Upon this remark of Captain Gilbert, Mr. Littlehales suddenly turned away and went to the sea-side. Such is Captain Gilbert's statement on oath, corroborated by the American consul, and highly probable in itself, because conforming to what must have been the natural object of Mr. Littlehales's inquiry, and the conditions of the law.

Mr. Littlehales, in commenting upon Captain Gilbert's statement, in his letter to the secretary of the admiralty, says: "I cannot but again request their lordships' attention to that part of the statement which describes as a reason why the papers could not be shown, because they were unattainable, being at the *custom-house*, which was closed; whereas, immediately afterwards, on board his own vessel, the master refused to produce the papers to Mr. Murray, stating *then* that they were in the consul's office, in whose presence he had declined to show them to me, though I was in my proper uniform, contrary to the assertion made on that subject."

But Mr. Littlehales here misquotes Captain Gilbert's statement, which is, not that "papers" were demanded of him, but that the "manifest" was demanded; and not that they could not be got at, because they were at the custom-house, which was closed, but that (in effect) the manifest was not in his possession, because it was necessarily at the custom-house. Lord Aberdeen will observe that this is not a difference of recollection between Mr. Littlehales and Captain Gilbert as to what occurred on the occasion in question, but a misquotation by Mr. Littlehales of that part of Captain Gilbert's affidavit.

The contradiction between Captain Gilbert's statement in the street to Mr. Littlehales, and his statement on board the "Jones"

shortly afterwards, when "the papers" were demanded by Mr. Murray, rests on this misquotation, and vanishes as soon as Captain Gilbert's statement, as he really made it, is adverted to. He told Mr. Littlehales in the street that his "manifest" was at the custom-house. The law required it to be there; and, in the words of the court at Sierra Leone, "it is to be presumed that the requisites of the law were duly complied with." Captain Gilbert swears that he deposited it there, and there is not the slightest reason to doubt it. He told Mr. Murray on board the vessel, shortly after, that the ship's papers (meaning register, list of crew and shipping articles, and bill of health) were at the consul's office. There the law of the United States, resembling in this point that of Great Britain, required them to be, and there they were.

It is on these facts that the charge of resisting the search is grounded by the vice admiralty court of Sierra Leone. The undersigned thinks he should waste the time of Lord Aberdeen and his own by dwelling on its futility. He will only observe, in this connexion, that Captain Gilbert had not the least motive to conceal his papers. The undersigned has seen authenticated copies of them; they are in all respects legal and regular; and the entire course of procedure by Captain Gilbert was not merely within the law, but such as the law made requisite. After the register has been deposited with the consul, it cannot be withdrawn by the master till he exhibits a certificate of clearance. The demand of Mr. Littlehales to have the register produced on board the ship was one that could not, in strict legality, be complied with. The only place where Mr. Littlehales could legally have seen it, was the consul's office; and there he did not apply.

Some importance seems to be attached to the fact that Mr. William Carroll, the American consular agent, had not been formally recognized as such. As he was duly commissioned by the government of the United States, it was not the less the duty of every American shipmaster to deposit his papers in his office. Mr. Carroll had been, as long ago as the 15th of February, 1833, duly recognized in his consulate capacity by the court of directors of the East India Company, within whose territories the island of St. Helena was at that time included, nor had his competency to act officially in that capacity ever been called in question till this occasion. The attempt to deprive the "Jones," in her hour of peril, of the official protection of the American consul, by divesting him of the character in which he had been originally recognized by the legal sovereign of the island, and in which he had acted unquestioned for seven years, forms one of the least satisfactory incidents of the transaction, extraordinary and oppressive in all its parts, on which it is the painful duty of the undersigned to dwell.

Armed possession was taken of the "Jones" on Saturday evening, the 12th September, and her master, as has already been seen, having hastened on board, replied to the demand for his papers that they were at the consul's office, adding that if the boarding officer would wait until Monday he would exhibit his papers, and give every information as to his voyage. Leaving his vessel in the

hands of the captors, he returned on shore. The following day, *Sunday*, the search commenced by an armed party from the "Dolphin," and of course without resistance. The captain was on shore—the mate treacherously enlisted in the service of the captors. On Monday, the 14th, the search proceeded with vigor; and on this day, according to the oath of the captain, the American ensign floating at the mizen-head was struck, and a white flag with the device of the Dolphin substituted. This assertion is denied by Mr. Littlehales. In reference to his denial of this and other facts of alleged violence and outrage, Lord Aberdeen recognizes the justice of a remark, made by the undersigned in his note of the 16th September last, to the effect that motives to exaggerate and misrepresent must be admitted to exist on both sides in these controversies; but still Lord Aberdeen observes that he cannot "hesitate to give full weight to a distinct and emphatic denial, such as is opposed by Lieutenant Littlehales, to the charges contained in Captain Gilbert's protest." The undersigned would willingly avoid the necessity of giving an opinion on an issue of veracity between two individuals both alike personally unknown to him. But the observation of Lord Aberdeen just cited compels the undersigned to say, that he sees nothing in the conduct of Lieutenant Littlehales in this whole affair, on the admitted facts of the case, which entitled his word to be believed in preference to the oath of Captain Gilbert, or any other respectable American shipmaster.

On Monday morning, in fulfilment of his promise, Captain Gilbert went in a boat toward the ship with the supercargo, and was forbidden to come on board by the armed guard. This is asserted by him on oath—is confirmed by the oaths of the supercargo and of the boatman who rowed the boat, (an inhabitant of St. Helena,) and by the depositions subsequently taken in America of one of the seamen of the "Jones," who witnessed the scene, and describes it with great particularity. The undersigned does not know whether Mr. Littlehales is to be understood as denying the main fact. It is remarked, indeed, in Lord Aberdeen's note of March 2, apparently on the authority of some statement of Mr. Littlehales, which has not been communicated to the undersigned, that "he (Lieutenant Littlehales) took the precaution, usual in such cases, to place a guard on board to prevent communication with the shore; not interdicting to the master and supercargo free ingress and egress, but desiring that the master whenever he came on board should be requested to produce the ship's papers." But in the letter to the secretary of the admiralty of the 16th August, 1842, Mr. Littlehales, while he gives a distinct and positive denial to the assertion that the master and supercargo were ever threatened with death, or violence of any description, or spoken improperly to, admits that they were "told that they could not be admitted, and referred to the 'Dolphin.'" On what grounds Lieutenant Littlehales was able to give this "distinct and positive denial," that no one of his armed seamen or marines had ever uttered a threat or an improper word over the side of the "Jones," while forbidding the master, at the

point of the bayonet, to board her, does not appear, nor is it material to the main issue.

Captain Gilbert made a second attempt to go on board his vessel on Monday, *with a view to satisfy* the captors of the nationality of the "Jones," and with the same want of success. Thus dispossessed of his ship and excluded from her, he applied, as his next resort, to the American consul. The consul, the same day, addressed a letter to Mr. Littlehales, reciting the leading facts of the case, describing the vessel as the "barque 'Jones,' of New York, United States of America," and inquiring on what ground he had proceeded in taking possession of her. This letter, written in his official character, and in the performance of his official duty, and for the purpose of making an inquiry in all respects reasonable and legitimate, Mr. Littlehales refused to receive, on the ground that Mr. Carroll was not recognized as the American consul; a point on which the undersigned has already given the necessary explanation. Mr. Littlehales having declined to receive the letter of Mr. Carroll, a letter of corresponding purport was addressed to him by Captain Gilbert himself. No technical objection, as in the case of the consul, existed to the reception of a letter from an American shipmaster in a British port, anxiously inquiring by what right he was dispossessed of his property, and ready, as he affirms, and there is not the slightest reason to doubt, to give Mr. Littlehales whatever information was required. But to this letter, though couched in the most respectful language, no answer was returned.

Captain Gilbert, then, in company with the supercargo and consul, waited on the collector of the port at his office, *exhibited to him the ship's register and all her other papers, and minutely stated to him the character of the voyage;* and with this information the collector professed himself entirely satisfied. After this interview, Captain Gilbert addressed a letter to the collector, as having the legal control of every vessel duly entered and in port, invoking his official protection. To this appeal the answer returned was that the collector had been informed by Mr. Littlehales that the "Jones" was detained by him. At the same time the collector called on Captain Gilbert to pay his port and other duties, one item of which was for the clearance of the vessel.

On Tuesday, the 15th; and Wednesday, the 16th, the overhauling and examination of the cargo of the "Jones" went on. During all this time Mr. Littlehales had never in any way stated to Captain Gilbert the ground of his proceedings, nor the motive for the detention and search of the vessel. On the 16th, Captain Gilbert, having been ready for sea at the time of his seizure, repaired to the office of the collector, exhibited his *outward* manifest, and demanded a clearance, to which by law he was entitled; but it was refused on the ground that he (the collector) had been informed by Mr. Littlehales that he had detained a vessel with the words "Jones, of New York," painted on her stern. Captain Gilbert then addressed a letter to the collector, reminding him that on his arrival and entry his papers had been duly exhibited to the satisfaction of him, the collector; asserting the nationality of the ship;

begging him to inform Lieutenant Littlehales of these facts, and to assure him that if he had detained the "Jones" from any doubts of her nationality, in consequence of not seeing the papers, they should be exhibited to him at any time or place, or to any one authorised to inspect them. At this same time a letter was written by Captain Gilbert to Major General Middlemore, governor of St. Helena, enclosed to the colonial secretary in order to its being forwarded to the governor, invoking his excellency's protection. The letter of Captain Gilbert to the governor was accompanied by another of similar purport from the American consul. These letters were not answered till after the "Jones" had sailed. The collector then informed Captain Gilbert that he should transmit the whole correspondence to the commissioners of customs at London; and in their office (if this promise was fulfilled) the letter may doubtless now be found to confirm the statement of their contents here given.

On the 17th, Captain Gilbert received a letter from the collector, in answer to his earnest request that he would give Mr. Littlehales the information which he himself possessed of the character of the "Jones," which the collector simply declined doing. Captain Gilbert then renewed the application for his clearance, *the fee for which meantime had been demanded and received*, and it was refused. Perceiving preparations on board the "Jones" for sailing, and denied access to her himself, Captain Gilbert again wrote a pressing but respectful letter to the collector, begging him to give to Mr. Littlehales information of the character of the vessel. On the 18th, it was found in the morning that the "Jones" had sailed, taking with her a prize crew from the "Dolphin," the mate, steward and cook of the "Jones," whose evidence it was thought would convict her of being concerned in the slave trade, and leaving behind the rest of the ship's company, the master and supercargo, to find their way to the United States. The "Jones" sailed to Sierra Leone, was proceeded against in the vice-admiralty court, and promptly and in the most honorable manner acquitted, the judge declaring that he had never seen a case so free from suspicion.

The undersigned has already referred to the pretext on which the cause was removed from St. Helena to Sierra Leone. It is as well calculated as the act itself to excite astonishment. It was that Lieutenant Littlehales entertained doubts whether the vice-admiralty court at St. Helena was legally constituted; and these doubts appear to have been shared by the colonial secretary of that island. No intimation as to the foundation of these doubts is given. The court at Sierra Leone justly pronounces itself unsatisfied with this explanation. Such, and such only, is the reason assigned by a subaltern naval officer for sending away a valuable vessel of a friendly power from the jurisdiction to whose protection she was entitled, where the legal proofs of her national character were deposited, and where those interested in her defence, being forcibly excluded by him from the vessel, were left behind. It is not for the undersigned to comment on the power with which the cruising officers of Great Britain, of the lowest rank, may be clothed, but he confesses he had not supposed that it extended to an inquiry into the

constitution of her Majesty's courts of vice-admiralty; and when, as in the present instance, that power is exerted to the signal injury and oppression of American citizens, it is the duty of the undersigned to protest against it.

Not the least extraordinary step in this part of the case is the leaving the master, supercargo, and the greater part of the crew behind. Whether they staid voluntarily or were excluded from the ship, is in this point of view immaterial. Lieutenant Littlehales captured the "Jones" under suspicion of being engaged in the slave trade. To the same extent he must have suspected her captain and crew of being concerned in that criminal traffic. If it was his duty to seize the ship, it was doubly his duty to arrest and detain the men, that they too might be proceeded against. A suggestion having been apparently made to that effect, during the trial at Sierra Leone, the prize-master, Mr. Murray, mate of the "Dolphin," accounted for the circumstance by declaring on oath that he neither knew himself, nor verily believed that the commander nor any of the officers of the "Dolphin" were aware that the master and crew of the "Jones" would be amenable to a criminal prosecution, in the event of the "Jones" being condemned for having been engaged in the slave trade. Under whatever degree of ignorance the mate of the "Dolphin" might labor, it would seem impossible that an officer commanding one of her Majesty's ships of war on the African station could be uninformed that within the British dominions, and by the provisions of the act 5 Geo. IV., 113, (the very act under which the "Jones" was proceeded against,) it is a highly penal offence to be engaged in the slave trade.

The "Jones" sailed, as has been seen, from St. Helena on the 18th of September, and proceeded to Sierra Leone. On the 5th of October she was libelled by the captors of the vice-admiralty court in that settlement; and on the 19th of November acquitted in the most full and satisfactory manner. The question of costs was reserved; and by a subsequent decree, on the ground that search was resisted, costs were given for the captors.

Not satisfied with getting costs in a case where, without counsel or witnesses, on a purely *ex parte* trial, it had been declared by the judge that they had detained a vessel under circumstances the least suspicious ever known to the court, the captors appealed from the decision by which the restitution of the vessel was decreed. There is too much reason to think that the object of this appeal (which does not appear ever to have been prosecuted) was to keep the property still within the reach of the captors for a selfish and corrupt purpose. On this point, and the means by which, as is alleged on oath by the cook of the "Jones," (the only person who could be cognizant of the facts, and whose testimony is within reach of the owners,) the undersigned forbears to enlarge, as he has already transmitted to Lord Aberdeen the documents relative to this point of the case, with his note of the 16th of September; and Lord Aberdeen has intimated to the undersigned that further inquiry has been ordered.

But this vexatious appeal was not needed to carry into effect the

objects imputed to the captors. There was, of course, no one at Sierra Leone to take possession of the property on the part of the owners. The judge, in his decree of costs to the captors, had intimated that if the owners were dissatisfied with his decision, they had their remedy by appeal to a higher court; and Lord Aberdeen in his note of the 2d of March repeats the suggestion. But in consequence of the conduct of Mr. Littlehales, in excluding from the "Jones" the master and supercargo, and taking her to a place where the owners had no representative; of his neglect for two years to make a report to her majesty's government of the capture; and of a similar neglect of the court at Sierra Leone for two years to make report of the proceedings in the trial, the owners received no authentic information of the fate of their vessel till the time in which an appeal can be taken had expired. Had Lieutenant Littlehales, or the court at Sierra Leone, made prompt report of their proceedings, it would have reached London in season to enable Lord Palmerston to answer Mr. Stevenson's note of 16th of April, 1841, the day he received it. But their delay, of which no explanation has been made, has rendered the remedy by appeal as illusory as, under any circumstances, it must have been tedious and incomplete.

Of the operation, if not the design, of the appeal by the captors, proof was afforded in the course of the year 1841. The supercargo having found his way to Liberia, and meeting there with Mr. Paine, the commander of a United States vessel of war on the African station, requested him if he should look into Sierra Leone to send home the "Jones," or any valuables belonging to her, which the authorities of Sierra Leone might deliver up. Mr. Paine, on arriving at Sierra Leone, applied to the acting governor for this purpose, and was told that the property could not be surrendered except on paying costs and giving bonds to abide the result of the appeal. The undersigned transmits, with this note, a copy of a letter from Mr. Paine, (whose name is favorably known to Lord Aberdeen in connexion with the suppression of the slave trade,) from which the above statement is derived; and a letter of explanation from the owners of the "Jones," not now needed to vindicate the character of that vessel, but which may be of use in acquainting Lord Aberdeen more particularly with the sort of information in which Mr. Littlehales thought it safe to proceed.

This appeal was never prosecuted by the captors; and, after the time in which the owners might have appealed had expired, the vessel and property were successively brought to the hammer. Out of the ruins of a valuable ship and cargo, against which not a reasonable suspicion existed, a sum amounting to about an eighth part of what she would have been worth had she been permitted to pursue her lawful voyage, is now held subject to the order of the owners in the registry of the vice-admiralty court at Sierra Leone.

Lord Aberdeen, in reciting the history of the case in his note of 2d March, observes that "the judge at Sierra Leone stated the opinion of the court that, upon the circumstances which had been

now adduced before it, the barque "Jones" must be presumed to have had a national character." If Lord Aberdeen intended by this expression that the circumstances which led the court to admit the national character of the "Jones" were then *first* adduced on behalf of the vessel, the undersigned is persuaded that on a review of the facts Lord Aberdeen will perceive that such was not the case. There was no evidence before the court, except what the captors brought with them and chose to adduce. The court decided in favor of her nationality, on the ground that it appeared from her log-book that she was detained and thoroughly searched by the "Water Witch" a few weeks before, (which log-book was delivered to the captors at St. Helena,) and from the circumstance that the vessel could not have been admitted to entry at St. Helena but on satisfactory proof of her nationality submitted to the collector. Some corroborating circumstances are also mentioned by the judge, but none which must not have been known at St. Helena.

Unavoidably long as this note is, the undersigned has forborne to comment on several points of extreme hardship in this case. He confidently hopes that on a reconsideration Lord Aberdeen will feel himself warranted in so modifying his first view of the subject as to move her majesty's government to make full indemnification for the loss sustained by the owners of the "Jones." They are accused of no neglect or wrong but that of resisting the search, and this resistance is alleged to consist in the refusal of the master to exhibit the papers establishing the nationality of his vessel.

The undersigned thinks that he has proved that no such refusal took place; that they had been exhibited to the constituted authorities of the jurisdiction where he was; that when demanded on Saturday, 12th of September, 1840, on board his ship, (the only place where they could legally be demanded by a cruising officer,) they were on deposit at the office of the American consul; and that the captain offered, if the boarding officer would wait till Monday, to procure and exhibit the papers and give all satisfaction as to the vessel and her voyage; that he was twice prevented by an armed guard from coming on board his vessel on Monday for that purpose; that his respectful letter to Mr. Littlehales, inquiring the cause of his detention, remained unanswered, although it was the right of Captain Gilbert to receive this information, and the duty of Mr. Littlehales to give it to him in an authentic form; and that the persevering efforts of Captain Gilbert and the American consul for three successive days to obtain the protection of the civil authorities, to which he was entitled on every principle of the law of nations, of justice, and humanity, were unavailing.

Lord Aberdeen will not fail to consider that, though the technical offence of being in British waters without papers is charged by Mr. Littlehales against the "Jones," under the evident belief (which the undersigned presumes to be wholly erroneous) that such want of papers is of itself a cause of capture, Lieutenant Littlehales nowhere affirms that he really entertained any doubt of her nationality; nor with the proof afforded by her log-book and by her admission to entry, is there even a probability that he did

doubt it; a consideration that makes his demands for papers at best vexatious.

Above all, Lord Aberdeen will reflect that Captain Gilbert could have no motive for refusing to exhibit his papers; that he had, on the contrary, every motive to exhibit them to Mr. Littlehales; that he did fully exhibit them to the collector in the progress of the affair at St. Helena; and that all the substantial parts of his account, besides being in themselves probable and coherent in the statement, are confirmed by depositions independently taken in the United States, and on the coast of Africa; and opposed by nothing but Mr. Littlehales's report, not on oath, and in one, and that the most important point, self contradictory.

The undersigned dwells with great satisfaction on the encouragement which Lord Aberdeen has already held out that he will reconsider the case. The undersigned attaches an importance to the final decision of her Majesty's government far beyond the value of the interests directly involved in the case of the "Jones;" and he cannot but fear that, if no further relief is afforded to the owners of the vessel than that which is tendered in Lord Aberdeen's note of the 2d March, a degree of discontent will be produced on the part of the government and people of the United States of a character greatly to be deprecated.

The undersigned avails himself of this opportunity to renew to Lord Aberdeen his assurance of his highest consideration.

EDWARD EVERETT.

The Right Hon. the EARL OF ABERDEEN, K. T., &c.

90 EATON SQUARE, *November 26, 1846.*

The undersigned, &c., has been particularly instructed to call the attention of Viscount Palmerston, &c., to the as yet *unanswered* communications of Mr. Everett to Lord Aberdeen of the 18th May, 1843, and 14th June, 1844, on the pending claims of American citizens upon her Britannic Majesty's government, for losses and injuries sustained by them in consequence of the unwarrantable seizure of the barque "Jones," at St. Helena, in September, 1840, by Lieutenant Littlehales, of her Majesty's brigantine "Dolphin." More than six years have passed away since the improper act by which American citizens were unduly subjected to losses and injuries. More than three years have elapsed since the letter of Mr. Everett to the Earl of Aberdeen presented this subject in a point of view so forcible and cogent, and may it not be added, so conclusive, that the favorable action of her Majesty's government was confidently anticipated.

Further delay would but increase the injury that has already been suffered too long to remain without reparation. In compliance with his instructions, the undersigned asks an early and

definite reply to the two notes of Mr. Everett above referred to, urging this claim upon the justice of her Majesty's government.

The undersigned, &c.

GEORGE BANCROFT.

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

Mr. Bancroft to Lord Palmerston.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America, has had the honor on the 9th instant, to receive the reply of Viscount Palmerston, her Britannic Majesty's principal Secretary of State for foreign affairs, to the demand made four years ago by the American government for redress on account of losses sustained by the owners of the American barque "Jones," in consequence of the unwarrantable seizure of that vessel at St. Helena in the year 1840, by Lieutenant Littlehales, commanding her majesty's brigantine "Dolphin."

The common interest and happiness ask for the definitive settlement of such international claims. The note of Lord Palmerston has been read with the earnest desire to find it so complete as to command or to justify acquiescence in his decision. But Lord Palmerston has failed to take into consideration facts and points of law on which the question depends. It becomes, therefore, the duty of the American government still to insist on redress. The unanswered, and as it is believed, the conclusive grounds of the demand are few and simple. They will be stated concisely and may be easily weighed.

The barque "Jones" having shipped a crew for Montevideo, or other ports north of the thirty-sixth parallel of south latitude, sailed from Boston in March 1840, in perfect order, with all necessary papers, on her lawful voyage to ports north of the parallel named. On the 14th of June, she arrived at Ambriz, and disposed of part of her cargo, purchasing ivory. From Ambriz she sailed to Loando. On the second day of July, while on her way to Loando, she was boarded by a British cruiser, the "Water Witch," and the boarding officer found no cause for her detention. On the 3d she reached Loando. Remaining at Loando about a month, making further sales of her cargo, and taking in pea-nut oil and ballast, she returned to Ambriz in August. On the 8th of August she sailed for St. Helena, where she arrived on the 24th. The master immediately entered his vessel at the custom-house, and handed in his manifest according to the laws of the place; he then deposited his ship's register and other papers with Mr. Carroll the United States commercial agent, as he was bound to do under a heavy penalty by the second section of the act of Congress of 28th February, 1803, chap. 9, 1803.

“The ship’s crew, who had hoped to visit the ports north of the thirty-sixth parallel on the American side of the Atlantic ocean, mutinied and applied to the American commercial agent. He decided they must abide by their shipping articles. They then applied to Lieutenant Littlehales. ‘Having come to me,’ these are the very words of Littlehales, ‘for protection and assistance, such having been denied them by Mr. Carroll,’ the British lieutenant extended to them his protection. He demanded of the captain of the ‘Jones,’ on shore at St. Helena, to see the ship’s papers, a demand which was illegal and which the captain very properly refused. He searched the ship and found there the ship’s log book, the only ship’s papers which, by the laws of the United States, could have properly been on board of her at the time. He seized the ship, to use his own words, ‘*as having slave equipments on board whilst at anchor in British waters.*’ He struck the flag of the United States, which had been flying at the mizen-peak of the ‘Jones,’ and hoisted in its place the device of the ‘Dolphin.’ To a respectful letter of the master of the barque he sent no reply. A letter from the commercial agent of the United States, the representative of the American government, he superciliously returned unopened. He took no means of making inquiries of the collector of the port, who could have given him all necessary information. He broke up the voyage before trial or condemnation of the vessel, by giving the men ‘leave to absent themselves from the Jones as they pleased,’ and even negotiated in behalf of the mutineers for ‘a passage in a vessel to America.’ Though he still lingered in St. Helena for two or three days, he not only did not take with him to Sierra Leone the captain and supercargo, who, if the vessel was amenable to a British tribunal, were amenable also, but he issued an order, such is his own statement, that ‘they could not be admitted’ on board their own vessel. He declined the jurisdiction of the courts of record at St. Helena, and having sent on shore for the ship’s chronometer, took that and the barque and her cargo, and the clothes of the officers and their money, and sailed with them to Sierra Leone with three volunteer witnesses selected from the barque’s complement. Arriving at Sierra Leone, he invoked the name and authority of his sovereign, the queen, against the barque ‘Jones,’ where there was none to appear in behalf of her owners. Lieutenant Littlehales selected his own place of trial, his court, his judge and his witnesses. The judge declared himself ‘not satisfied with the explanation for not instituting proceedings in the court at St. Helena.’ On the declaration of the crew, which seems to be relied on as a justification for Littlehales’s original interference, the judge declared ‘that not even the most distant allusion is made by the seamen, whose names are affixed to that paper, that the vessel had been or was about to be engaged in the slave trade.’ On the alleged slave equipments he gives his judgment that ‘not a single article of equipment is established against her.’ On the evidence of the voluntary witnesses, whose disinterestedness he does not consider certain, he adjudged ‘that their evidence has literally produced nothing which can by possibility affect the

character of this vessel.' After the most anxious consideration of the case his 'opinion is fixed and immutable.' He failed in his search for 'some probable cause of seizure.' 'I never saw a case,' such are his remarkable words, 'so free even from suspicion.' He pronounced the barque to be restored will all her cargo. With regard to the costs, he owned that 'on her alleged equipment for the slave trade, costs would to a certainty have been given against the seizer,' but avowing 'the inclination of the court to discountenance opposition to constituted authorities,' he lost the opportunity of winning a good name for himself as a thoroughly honest judge by ordering the captain his costs.

"The captor could do the owners of the barque 'Jones' but one more injury, it was to make an appeal without the intention to prosecute it. He did so. The vessel was detained for costs and to answer an appeal. In a very few days the marshal began the sale of the cargo, which was almost sacrificed. At last, the ship itself, which would have gone to ruin at the wharf in Africa, was sold at almost a total loss."

In this case of the barque "Jones" the United States have preferred and do still prefer, a demand for redress from the British government, on four distinct and separate grounds, to each of which the British government must be able to give a satisfactory negative before the American government can withdraw its demand.

FIRST.—The seizure of an American vessel in British waters, on the alleged ground of having slave equipments on board, is not warranted by the law of nations.

SECOND.—The carrying of the barque "Jones" from St. Helena to Sierra Leone was directly contrary to the British statute under which the seizure was made.

THIRD.—There was no probable cause for the seizure, on the ground of slave equipments being on board the barque "Jones."

FOURTH.—The circumstances of the case were so marked with oppression, that an equitable claim for indemnity exists.

On the fourth ground Lord Palmerston appears aware of the equity of the claim; and if his opinions are rightly understood, he has reluctantly rejected it, though animated by "an earnest wish to find some proper and tenable ground, on which to rest a grant of compensation."

But on the ground alleged in justification of the seizure there existed no probable cause. On this head the judgment of the vice-admiralty court at Sierra Leone is explicit: "I have looked over the report of the commissioners of survey with the utmost care," says the judge, "but after most anxious perusal of its contents, *with the view* of discovering sufficient grounds of seizure, in the alleged equipment of this vessel, and of *protecting* the captors in the performance of an important and difficult duty, I am bound to confess, that this charge has not been proved." "My opinion," says he again in his judgment, "is fixed and immutable that there was *nothing* in this vessel's equipment that could justify sentence of condemnation;" and he adds, "I have carefully re-

viewed the grounds on which I gave a sentence of restoration in this case, I did so *with the view of discovering, if possible, some probable cause of seizure as regards this vessel's alleged equipment for the slave trade, but I confess I never saw a case so free from suspicion.*"

It having been impossible for the judge to *discover a probable cause of seizure*, on the ground alleged, indemnity is due for whatever losses the owners have suffered in consequence of that seizure.

Here, then, is a tenable ground for granting compensation. But the carrying of the barque "Jones" from St. Helena to Sierra Leone created another ground for compensation, which is not only proper and tenable; but, as it would seem, unanswerable. The vessel was seized at St. Helena under the act of the 5th George IV., cap. 113. When the barque "Jones" reached Sierra Leone, the judge observed, "I am not satisfied with the explanation given for not instituting proceedings against the vessel in the vice-admiralty court at St. Helena, instead of conducting her to this port for that purpose." The judge was right in expressing his dissatisfaction, for the conduct of Lieutenant Littlehales was directly in the teeth of the statute itself, which in its fifty-first section declares that all seizures of ships, vessels, or boats, slaves, or persons treated, dealt with, carried, kept, or detained as slaves, goods or effects, subject to forfeiture under this act, shall and may be sued for, prosecuted and recovered in any court of record in Great Britain, or in any court of record or vice-admiralty in any port of his Majesty's dominions, *in or nearest to which such seizures may be made*; or to which such ships or vessels, slaves or persons treated as slaves as aforesaid, goods or effects, (*if seized at sea, or without the limits of any British jurisdiction*) may most conveniently be carried for trial. *All seizures under the act shall and may be prosecuted in any court of record in any part of her majesty's dominions IN OR NEAREST to which such seizures may be made.* The English language cannot be more explicit. To justify Lieutenant Littlehales in carrying the "Jones" to Sierra Leone, it is not enough to show that there was no court of vice-admiralty in St. Helena; there certainly must have been a *court of record*.

Lord Palmerston must perceive, then, that the conduct of Lieutenant Littlehales in this respect, instead of being "perfectly right," was directly in violation of the express provisions of the statute under which the seizure was made.

This view of the case cannot fail to present itself to Lord Palmerston as decisive in its character; for, had the prosecution been instituted in a court of record at St. Helena, the voyage of the barque "Jones" might have suffered from interruption, but would not have been wholly broken up. But the great and commanding reason why compensation is due from her Majesty's government to the owners of the barque "Jones," for losses in consequence of her seizure, is, that the seizure and following prosecution, though made in the queen's name, were not justifiable by the laws of nations, and were against the rights of her owners, who were citizens of the United States. The vessel was an American vessel in

British waters, and as such was not amenable to any British tribunals for any breach of English municipal law by its owners or navigators, unless that breach was committed within the dominions of the British crown. This plea is urged with the more confidence, because it is offered to a statesman of long experience in public law, and too thoroughly conversant with its principles to fail to weigh rightly its validity. England, like America, is a commercial country, and has a common interest that the law of nations in this respect should be inviolate.

It is not pretended that any wrong was done by the owners of the barque "Jones" at St. Helena. She was regularly entered at the custom-house there, and lay in the roads for three weeks publicly trading, according to the laws of the land. The slave equipments which 'imagination, or the longing for prize money, conjured up, were certainly not obtained in St. Helena. The five and a half pair of handcuffs, which Lord Palmerston calls "slave irons," were brought from Boston, being a not unusual precaution against crimes at sea. The two Portuguese, of whom no one here knows anything, not even their names, and of whom, therefore, it is so easy to suspect everything, went in the "Jones" only as passengers, and only from Loando to Ambriz. The letter of the owners to Wilson and Savage, the worthy American missionaries at Liberia, who had invited commerce with that infant republic of emancipated Africans, an invitation which only the excess of credulous suspicion could have interpreted into an invitation to trade in slaves, was not penned within British jurisdiction. The boards, or, as Lord Palmerston calls them, "the spare planks available for laying down a slave deck;" the New England salt fish, or, as Lord Palmerston calls it, the "other food of the description given to slaves," but which is a common article of food with New England men of all conditions; the very few wooden spoons, scarce enough for the crew; the water casks, which but little exceeded the number required by American law; the matting, which, when light was let into the hold, was found to be not bundles of mats, but long matted bags; all these, to use the words of the vice-admiralty judge of Sierra Leone, "were the remains of a valuable cargo shipped in America." If there were slave equipments, they were not got together in St. Helena. Whatever was done rightly or wrongly about these things, was done rightly or wrongly out of her Majesty's dominions. Need Lord Palmerston be told that the queen, on whose justice the undersigned relies for redress, had no jurisdiction in the case?

On this point, the law of nations is well ascertained and not disputed. "Laws of trade and navigation," says Wheaton, vol. II., p. 159, who, in this, does but repeat the recognized and undisputed rule, "Laws of trade and navigation cannot affect foreigners, beyond the territorial limits of the State, but they are binding upon its citizens wherever they may be. Thus offences against the laws of a State, prohibiting or regulating any particular traffic, may be punished by its tribunals, when committed by its citizens in whatever place; but, if committed by foreigners, such offences can only

be thus punished when committed within the territory of the State, or on board of its vessels in some place not within the jurisdiction of any other State."

When, therefore, the officers of the "Dolphin," in the queen's name, seized the American barque "Jones," the seizure was tainted with illegality from the beginning; and the government of the United States invites her Majesty's government to disclaim and to redress the act.

The two nations should reciprocally do each other justice. Let not a wrong on either side remain unatoned. In the spirit of amity the government of the United States presses this demand, that the people of the United States may know that when her Majesty's subordinate officers act rashly, unjustly, or illegally, a remedy may always be found by a friendly nation in an appeal to the justice of the sovereign.

Thus has the undersigned placed before Lord Palmerston the grounds on which the government of the United States rests their demand for redress, in the case of the barque "Jones." But the note of Lord Palmerston contains remarks, not affecting the main decision, yet requiring some notice. Lord Palmerston expresses it as the opinion of her Majesty's government, that it was the duty of Gilbert, the master of the barque "Jones," "*not to have abandoned his vessel,*" but "*that he ought to have gone to Sierra Leone.*" Her Majesty's government must have forgotten that the crew of the "Jones" was dismissed by Littlehales, on the ground of their having "*been cajoled and deceived,*" and that, by Littlehales's order, Gilbert was kept out of his own ship. It is Littlehales's own statement, "*that the master and supercargo were told they could not be admitted;*" and while Mr. Murray at Sierra Leone evasively swore that there was "*time*" for them to have got on board, he takes care not to say that they had *opportunity* to do so. The only question on the subject is, whether Littlehales's order to keep them from their own ship was executed with or without extraordinary violence. That they were kept out of it is undeniable; and, under such circumstances, to censure them for not having gone in it to Sierra Leone, would be mockery. Lord Palmerston appears willing to leave the impression that the barque "Jones" had "*false papers,*" or "*two sets of papers.*" There is no allegation, by any person whatever, that there were two sets of any papers affecting the character of the vessel. The mate, having none to cross question him, does indeed speak of false and incorrect shipping articles, headed Ambriz, and shown to a Portuguese man of war; but there existed no motive for having false articles; the fair and genuine ones were just what the barque wanted; and the mate probably saw only some clearance, or other documents from some public office at Ambriz. As to the papers establishing the character of the vessel, such as the ship's register, clearance, and proof of ownership, *no one*, let it be borne in mind, *has ever pretended that they were either false or double*; and their correctness is in every respect vouched for; or implied by, the clearance at the Boston custom-house, by the visit

of the British vessel of war "Water Witch," by the St. Helena custom-house, which otherwise would not have admitted the ship to entry, and by Mr. Carroll, the United States commercial agent, whose position gave him the custody of the papers; and his testimony on this point is, by American law, conclusive in American courts of justice, and before the American government. It is true Lord Palmerston appears to deny the public character of Mr. Carroll, who had been duly recognized by the directors of the East India Company, and, for more than seven years, had been attending to the duties of his post. If he does so deny Mr. Carroll's public character, Lord Palmerston misapprehends Mr. Carroll's relation to the American government. The exequatur is but the recognition of a consul, not his appointment, and in the interim between his appointment and his exequatur, though he cannot exercise consular jurisdiction, he may yet act as commercial agent; and in that capacity, not only in his degree represent his country, but is by law, and by his instructions, required to perform certain duties towards American citizens and the American government.

Lord Palmerston expresses "very serious doubts" as to the "sentence" of acquittal given by the vice admiralty judge in Sierra Leone. But the sentence of acquittal was given; and the undersigned is persuaded her Majesty's secretary of state will not call in question the decision made in her Majesty's name.

It is quite too late to say that the barque "Jones" was of a "very suspicious" character. The owners of that vessel have sustained losses of property; their good name is unblemished, and has a right to be held sacred. The clear and unequivocal sentence of the British court precludes every branch of the British executive department from questioning their innocence. Lord Palmerston is good enough indirectly to invite the opinion of the undersigned himself on "the validity of the grounds" on which the vessel was seized. The undersigned, writing as if in the presence of his own country and of Great Britain, will express his opinions. The barque "Jones" sailed from Boston, a port that does not fit out slave-ships; she came from a land that makes the African slave trade piracy, and came openly prepared for a lawful voyage; she took out papers every way correct; she shipped her men on no unusual wages, and in no unusual form; she kept a regular and unimpeached log book of every day of her proceedings; her voyage was conducted on the ascetic principle not known among slavers, of total abstinence from ardent spirits; she put into St. Helena, a British port, and remained there three weeks—a port which, if she had been a slaver, she would have avoided; she had discontented mariners, and yet they made not the least allusion to any connexion with the slave trade; she was examined at St. Helena for slave equipments, and none were found; her volunteer mutineers were interrogated, and they had nothing to say against her character. So that the undersigned thinks the connexion of the barque "Jones" with the slave trade, is what is called "infinitely improbable," and that any present doubts on the subject rest only on the shadows of unsubstantial suspicions.

The unreserved judgment of the court must on this point bind the British government. But Lord Palmerston doubtless desires to be well informed on this subject, and will be pleased to hear that the undersigned has made inquiries into the characters of Messrs. Farnham and Frye, the owners of the "Jones." They have that integrity which is the grace of mercantile pursuits, and which the minister of a commercial nation will not surely despise. They are men of ingenuousness of character and purity of life. They have been engaged in the African trade for eighteen years; the names of the vessels they have employed in the trade are well known; and, while they never have engaged in the slave trade, such is the great confidence reposed in them that their vessels have been selected by philanthropists as passenger ships to carry emancipated Africans to the black man's republic in Liberia.

Once more the undersigned commends this case to Lord Palmerston as one entitled to be redressed. It is the great object of the undersigned, during his residence near her Britannic Majesty, to promote the interests and the happiness of both nations. This is the wish of the President of the United States, and it is his own purpose and desire. He will have succeeded in promoting both, if he prevails on her Majesty's government to adjust the losses sustained by the owners of the barque "Jones," in such a manner as will establish the confidence of his country in the justice of Great Britain.

The undersigned has the honor to renew to Viscount Palmerston the assurance of his distinguished consideration.

GEORGE BANCROFT.

AMERICAN LEGATION, December 17, 1847.

Lord Palmerston to Mr. Bancroft.

The undersigned, her Majesty's principal Secretary of State for Foreign Affairs, has the honor to acknowledge the receipt of the note dated the 17th December last, which Mr. Bancroft, envoy extraordinary and minister plenipotentiary of the United States of America, has addressed to the undersigned in reply to his note dated the 9th of the same month, in the case of the American barque "Jones."

Mr. Bancroft, in his present note, again urges the right of the owners of the "Jones" to look to her Majesty's government for compensation for their losses, in consequence of the seizure of the "Jones," at St. Helena, in 1840, by Lieutenant Littlehales, commanding her Majesty's brigantine "Dolphin;" and Mr. Bancroft observes that the United States have preferred, and do still prefer, a demand for redress from the British government in this case, on four distinct and separate grounds, to each of which the British government must be able to give a satisfactory negative before the American government can withdraw its demands.

These grounds are:

First. That the seizure of an American vessel in British waters, on the illegal ground of having slave equipments on board, is not warranted by the law of nations.

Secondly. That the carrying of the barque "Jones" from St. Helena to Sierra Leone was directly contrary to the British statute under which the seizure was made.

Thirdly. That there was no probable cause for the seizure on the ground of the slave equipments being on board the barque "Jones."

Fourthly. That the circumstances of the case were so marked with oppression that an equitable claim for idemnity exists.

The undersigned, having duly considered these several grounds of claim, and having weighed the renewed arguments and observations which Mr. Bancroft has brought forward in support of his demand, regrets that he does not find in them anything which would justify her Majesty's government in taking any other view of the case than that which the undersigned communicated to Mr. Bancroft in his note of the 9th of December.

With respect to the first ground stated by Mr. Bancroft, namely, that the seizure of an American vessel in British waters for having slave equipments on board is not warranted by the law of nations, the undersigned would beg to observe, that this position does not seem applicable to the present case. For it cannot be denied that her Majesty is, by the admitted law of nations, entitled to enforce British law within British jurisdiction, and to exercise sovereign powers within her own dominions; and as the "Jones" was seized within British jurisdiction, on a charge of having violated a British law, the seizure was therefore perfectly justifiable by the law of nations.

With regard to the right of Great Britain to establish what laws she pleases, as applicable to foreign vessels entering into ports within the Queen's dominions, on that point no doubt whatever can exist; and nothing is claimed for Great Britain in this respect which is not equally conceded to, and exercised by, every other independent state. It is perfectly competent to Great Britain to establish within her own dominions, as it is to the United States to establish within theirs, whatever rules and regulations may be thought fit as to the entry of foreign vessels. It is the undoubted right of Great Britain to say, that any vessel whatsoever, and to whomsoever belonging, shall, if engaged in the slave trade, be seized and confiscated in any British port into which she may enter. Or, if Great Britain should think fit to prohibit foreign vessels employed in any other trade from entering her ports, no foreign state could dispute her right to establish such a prohibition. The enacting and the enforcing such laws is an exercise of that undoubted right of sovereignty which belongs to every independent state, and the free exercise of which can only be limited by treaty. These exertions of national sovereignty are so notorious, and of such every day practice, that the undersigned does not feel it necessary

to support his opinion on this matter by quotations from the writings of eminent jurists with which Mr. Bancroft is himself familiar.

The second ground of objection advanced by Mr. Bancroft is, that the carrying of the barque "Jones" from St. Helena to Sierra Leone was contrary to the British statute under which the seizure was made; and Mr. Bancroft here adverts to the 51st section of the act of the 5th Geo. IV., cap. 113, which provides that all seizures of ships, &c., subject to seizure under that act, shall and may be sued for, prosecuted, and recovered, in any court of record or vice admiralty court in Great Britain, or in any court of record or vice admiralty court in any part of his Majesty's dominions in or nearest to which such seizures may be made, &c.; and Mr. Bancroft argues therefrom that it is not enough to show that there was no court of vice admiralty in St. Helena, for there must have been a court of record there; and that, consequently, Lieutenant Littlehales, in declining the jurisdiction of the court of record in St. Helena, acted in violation of the express provisions of the statute under which the seizure was made. With reference to this ground of objection, the undersigned begs leave to remind Mr. Bancroft that the "Jones" was seized upon two grounds.

First, under the act of the 2d and 3d Victoria, c. 73, for being found in British waters without having ship's papers on board, and for being therefore without any national character.

Secondly, under the act 5 Geo. IV., cap. 113, for being engaged in, and for being equipped for slave trade.

Now, by the statute law, a captor can only try the first question in a court of vice admiralty. But the captor in the present case had a right to avail himself of either or both the above mentioned grounds of legal proceedings, and he considered that the non-production of papers, and the probability that there was a double set, justified him in bringing the "Jones" to adjudication on that ground; accordingly, there being no court of vice admiralty at St. Helena, and a court of record being only competent to try one and not both the above mentioned questions, he took the vessel to the nearest vice admiralty court, namely, the court at St. Helena, and in that court, accordingly, he libelled the vessel, both under the statute of the 2d and 3d Victoria, and under that of the 5th Geo. IV. The undersigned, therefore conceives that, under the circumstances of the case, this course of proceeding was not a violation of the statute of the 5th Geo. IV., but was the best means by which the captor could lawfully bring to adjudication a vessel circumstanced as was the "Jones." But, even if it were admitted for the sake of argument, that there was an error in this course of proceeding, still it is a well known maxim of the law, that an objection to jurisdiction ought to be taken in the first instance, and this objection ought, therefore, to have been urged at Sierra Leone. But no such objection was taken in that court, nor was any appeal afterwards prosecuted, whereby such objection might still have been urged; and it is too late now, when the whole case has been for-

mally adjudicated, for the parties interested to put forward a technical objection, which was never urged in due time and season.

With respect to Mr. Bancroft's third objection, namely, that there was no probable cause for the seizure of the "Jones," on the ground of slave equipments being on board of her, the undersigned beg leave to refer to the decree of the court at Sierra Leone, as a sufficient answer to that objection. The court was of opinion that there was not sufficient ground for condemnation, and, therefore, decreed the restitution of the vessel. But the court, after mature deliberation, gave the captors their expenses, which it could not have done if it had entertained the opinion which has been stated by Mr. Bancroft; and the undersigned cannot, with reference to this part of Mr. Bancroft's note, refrain from expressing his regret that Mr. Bancroft should have thought fit to mix up with his legal argument on the case, a reflection wholly unfounded and undeserved upon the character and integrity of a British judicial officer.

The undersigned now comes to the fourth and last ground stated by Mr. Bancroft, namely, that the circumstances of the case were so marked with oppression, that at all events there is an equitable claim for indemnity; and here again, the undersigned regrets to be under the necessity of stating his dissent from the argument and conclusion of Mr. Bancroft. The undersigned cannot admit that there is any ground for the claim, either on international law, in equity, or in precedent. He apprehends it to be an indisputable principle, in regard to seizures of this description, that wherever the subject of one State claims compensation for an act committed by a subject of another State, such claimant must have recourse to the tribunals competent to give him redress; that if he omits to take such measures, he has no right to call for the interposition of the State to do that which, by ordinary care and diligence, he might have done for himself; and that, *à fortiori*, there is no claim in equity where the matter has been disposed of and dismissed by the formal decision of a competent court, whose duty it was, if the circumstances required it, to give the claimant full indemnity for any loss which he might have sustained.

It appears, indeed, to the undersigned, that the circumstances of the case under discussion are remarkably strong against the claim now preferred. For there was neglect on the part of the owners to obtain indemnity by the ordinary course of law, if they were entitled to it.

There has been a formal adjudication by a competent court, and there has been no appeal. Yet the claimants had ample opportunities to assert their rights, either in the court below, or by an appeal from the decision of that court to the judicial committee of her Majesty's privy council. In conclusion, then, the undersigned has the honor to state that, for the foregoing reasons, and under all the circumstances of the case, he regrets that his duty obliges him to state to Mr. Bancroft, that her Majesty's government cannot ad-

mit the validity of the arguments which Mr. Bancroft has brought forward in support of the claim of Messrs. Farnham and Frye.

The undersigned avails himself of this occasion to renew to Mr. Bancroft the assurance of his highest consideration.

PALMERSTON.

FOREIGN OFFICE,
March 16, 1848.