

AFRICANS TAKEN IN THE AMISTAD.

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

TRANSMITTING

The information required by the resolution of the House of Representatives of the 23d ultimo, in relation to the Africans taken in the vessel called the Amistad, &c.

APRIL 15, 1840.

Read, and laid upon the table.

To the House of Representatives :

I communicate to the House of Representatives a report from the Secretary of State, with documents containing the information called for by their resolution of the 23d instant.

M. VAN BUREN.

WASHINGTON, *March 31, 1840.*

DEPARTMENT OF STATE,
Washington, March 31, 1840.

The Secretary of State, to whom has been referred a resolution of the House of Representatives of the 23d instant, requesting the President to communicate to that House, "if not incompatible with the public interest, copies of any demand made by the minister or other diplomatic representative of Spain in this country, of the surrender to him of the Africans taken in, or belonging to, the vessel called the *Amistad*; and of all correspondence between this Government and the said minister or diplomatic representative, and with any other foreign Government or minister thereof, relating thereto; also, copies of all instructions from the Department of State to the district attorney of the United States in the judicial district of Connecticut, and all reports of the said district attorney to the said department relating to that subject;" has the honor to lay before the President, copies of all the correspondence and papers on the records and files of this department relative thereto, except a recent correspondence with the Spanish minister in regard to testimony prepared to be furnished in the future investigation of the cause of the *Amistad* before the tribunals of the United States.

JOHN FORSYTH.

To the PRESIDENT.

Blair & Rives, printers.

LIST OF PAPERS.

- Mr. Calderon to Mr. Forsyth, 6th September, 1839, and translation.
 Mr. Forsyth to Mr. Calderon, 16th September, 1839.
 Mr. Calderon to Mr. Forsyth, 17th September, 1839, and translation.
 Mr. Forsyth to Mr. Calderon, 23d September, 1839.
 Mr. Calderon to Mr. Forsyth, 29th September, 1839, and translation.
 Chevalier de Argaiz to Mr. Forsyth, 3d October, 1839, and translation.
 Mr. Forsyth to Chevalier de Argaiz, 24th October, 1839.
 Chevalier de Argaiz to Mr. Forsyth, 5th November, 1839, and translation.
 Acting Secretary of State to Chevalier de Argaiz, 22d November, 1839.
 Chevalier de Argaiz to Mr. Forsyth, 26th November, 1839, and translation.
 Chevalier de Argaiz to Mr. Forsyth, 29th November, 1839, and translation.
 Mr. Forsyth to Chevalier de Argaiz, 12th December, 1839.
 Chevalier de Argaiz to Mr. Forsyth, 25th December, 1839, and translation.
 Chevalier de Argaiz to Mr. Forsyth, 30th December, 1839, and translation.
 Mr. Forsyth to Chevalier de Argaiz, 6th January, 1840.
 Mr. Holabird to Mr. Forsyth, 5th September, 1839.
 Mr. Holabird to Mr. Forsyth, 9th September, 1839.
 Mr. Forsyth to Mr. Holabird, 11th September, 1839.
 Mr. Holabird to Mr. Forsyth, 21st September, 1839.
 Mr. Forsyth to Mr. Holabird, 23d September, 1839.
 Mr. Holabird to Mr. Forsyth, 13th October, 1839.
 Mr. Holabird to Mr. Forsyth, 5th November, 1839, enclosures and translation.
 Mr. Holabird to Mr. Forsyth, 14th November, 1839.
 Acting Secretary to Mr. Holabird, 18th November, 1839.
 Mr. Forsyth to Mr. Holabird, 6th January, 1840 : extracts.
 Mr. Holabird to Mr. Forsyth, 11th January, 1840 : extracts.
 Mr. Forsyth to Mr. Holabird, 12th January, 1840 : extracts.
 Mr. Forsyth to Mr. Holabird, 17th January, 1840.
 Opinion of the Attorney General.
 Messrs. Staples and Sedgwick to the President, 13th September, 1839.
 Mr. Forsyth to Mr. Butler, 24th October, 1839.
 Mr. Butler to Mr. Forsyth, 28th October, 1839, and enclosures.
 Mr. Forsyth to Mr. Butler, 9th November, 1839.
 Mr. Butler to Mr. Forsyth, 18th November, 1839.
 Department of State to Navy Department, 2d January, 1840 : memorandum.
 Mr. Paulding to Mr. Forsyth, 3d January, 1840.
 Mr. Forsyth to Mr. Paulding, 7th January, 1840, and enclosure.

Mr. Calderon de la Barca to Mr. Forsyth.

NUEVA YORK, 6 de Setiembre de 1839.

El infrascrito, enviado extraordinario y ministro plenipotenciario de S. M. Católica, la Reyna de España, tiene el honor de llamar la atención del Señor Don Juan Forsyth, Secretario de Estado del Gobierno General de los Estados Unidos, á un suceso reciente y notorio del que S. E. tendrá ya, sin duda, noticia; y con motivo del cual es el imperioso deber del que suscribe reclamar la observancia del derecho de gentes y de los tratados vigentes entre los Estados Unidos y España. Se trata de la captura de la goleta Española *Amistad*.

Esta embarcacion salió de la Habana el 28 de Junio último, con destino á Guanaja, en las inmediaciones de Puerto Principe, capitaneada por su dueño Don Ramon Ferrer, y cargada de varias mercancías y 53 negros esclavos; y antes de dar la vela obtuvo su alijo en la aduana, el permiso necesario de las autoridades competentes para el transporte de los negros, pasaportes y cuantos documentos se requieren por la legislación Española para navegar y hacer constar la legitimidad de la propiedad; circunstancia sumamente importante, en el sentir del infrascrito.

En la noche del 30 del mismo mes, ó hacia el amanecer del dia siguiente, los esclavos se sublevaron, dieron muerte al capitán á un esclavo suyo, y á dos marineros y solo dejaron malheridos y maltratados á dos blancos, Don José Ruiz y Don Pedro Montes; el primero dueño de 49 esclavos que habia comprado en la Habana; y el segundo de los otros 4, á fin de que dirigiesen el buque y enderezasen su rumbo á la costa de Africa. Montes valiendose del conocimiento nautico que poseia, y favorecido por la Divina Providencia, logró guiar la embarcacion á estas costas, y fue abordado por varios barcos de cuyos capitanes comparon provisiones los negros; pero á quienes no parece le pudiese ser posible manifestar su apurada situacion á causa de la vigilancia con que era observado, hasta que su buena ventura le trajo á la sonda de Long Island, donde la *Amistad* fué detenida por el bergantin de guerra Americano, Washington, Capitan Thomas A. Gedney; quien instruido del caso, sugeto á los negros, y los condujo, con el buque, á New London, en el Estado de Connecticut.

La conducta observada por este oficial y sus subalternos con los desgraciados Españoles ha sido la que debia esperarse de caballeros y de los empleados de una nacion culta y amiga de la España, cuya augusta Soberana, y su Gobierno la apreciarán como merece, y que será correspondida, en occurrencias iguales, por los Españoles, en todos tiempos, en extremo agradecidos á los beneficios que reciben.

Despues de este acto de humanidad ya no quedaba mas para completarle que el dejar en libertad al buque, y enviar los negros á ser juzgados por el tribunal competente y por las violadas leyes de la nacion cuyos subditos son. El infrascrito se complace en creer que así habria sucedido si el Gobierno Federal hubiese podido interponer su autoridad en el momento, como la habia talvez interpuesto en el corto tiempo que ha transcurrido desde el dia que se verificó el suceso hasta el en que llegó á noticia del que suscribe por conducto fidedigno.

Entretanto, sin embargo el buque *Amistad* ha sido entregado al marescal de los Estados Unidos en New-Haven; el cual, en union con el juez del distrito, A. T. Judson, procedió á formar causa y á adoptar resoluciones en consecuencia de las primeras declaraciones: y segun se participa al

infrascrito por el consul de S. M. en Boston, que se ha dirigido al sitio donde esto acontecia, los oficiales del Washington al servicio de los Estados Unidos, han presentado á este tribunal incompetente una peticion, que ha sido admitida por el, reclamando una suma por derecho de *salvage*; la cual el infrascrito, con presencia de los tratados vigentes, cree que no se les debe bajo tal concepto.

Tales son los hechos con cuyos pormenores accesorios se abstiene el infrascrito de molestar la atencion del Señor Forsyth; por suponerle circunstanciadamente enterado de ellos, y por que poco ó ningun peso añadirían á la justicia con que, en desempeño de su obligacion, cree deber pedir, como en efecto pide:

1.º Que el buque sea inmediatamente entregado á su dueño, con todos los objetos que en él se encontraron al tiempo de su captura por el Washington; sin exigirseles cosa alguna por salvamento ó *salvage*, ni mas gastos que los que especifica el tratado de 1795 en su artículo 1.º.

2.º Que se declare que ningun tribunal en los Estados Unidos tiene derecho para formar causa ó imponer pena á los subditos Españoles, por crímenes cometidos abordo de un buque Español, y en las aguas del territorio Español.

3.º Que se envíen los negros á la Hebaña, ó se pongan á la disposicion de las autoridades competentes de aquella parte de los dominios de S. M. Católica, para ser juzgados por las leyes Españolas que han quebrantado; conservandolos en custodia hasta que asi se verifique, para evitar su evasion: y

4.º Que, si por la intervencion que las autoridades de Connecticut han tomado en este asunto, se difiriese la solicitada entrega de la embarcacion y de los esclavos, se indemnice á los amos de aquella y de estos de los daños y perjuicios que se les inoguen.

El infrascrito invoa, en apoyo de esta su reclamacion, el derecho de gentes; las estipulaciones de los tratados; y la buena correspondencia que exigen las relaciones de amistad existentes, para mutua ventaja, entre ambos paises.

El infrascrito creeria hacer una ofensa al Señor Forsyth en detenerse, un solo instante, á traerle á la memoria las disposiciones bien sabidas de S. S. de la ley de las naciones en la materia de que se trata; y no menos ocioso le parece enumerar los varios casos en que, en observancia de aquella, han sido enviados por otros Gobiernos á los Estados Unidos para ser aqui juzgados con arreglo á sus leyes, no solo los ciudadanos de ellos que han cometido algun crimen en alta mar, mas los estrangeros cuando le han perpetrado en buques Americanos.

Respecto á las estipulaciones existentes entre esta Republica y España, el infrascrito cree que bastar para apoyar su demanda los artículos 8, 9, y 10 del tratado de 1795; que quedaron en toda su fuerza y vigor por la declaracion *ad hoc* del artículo 12 del tratado de 1819; dicen así:

“Artículo 8. Cuando los subditos y habitantes de la una de las dos partes contratantes, con sus buques, bien sean públicos ó de guerra, bien particulares ó mercantiles, se viesen obligados por una tempestad, por escapar de piratas ó de enemigos, ó por cualquiera otra necesidad urgente, á buscar refugio y abrigo en alguno de los rios, bahias, radas, ó puertos de una de las dos partes, serán recibidos y tratados con humanidad, y gozarán de todo favor, proteccion, y socorro; y les será licito proveerse de refrescos viveres, y demas cosas necesarias para su sustento, para componer sus buques, y continuar su viage, todo mediante un precio equitativo; y no se

les detendrá ó impedirá de modo alguno el salir de dichos puertos ó radas, antes bien podrán retirarse y partir, como y cuando les pareciere sin ningún obstáculo ó impedimento.

“ARTICULO 9. Todos los buques y mercaderías de cualquiera naturaleza que sean, que se hubiesen quitado á algunos piratas en alta mar, y se traigasen á algun puerto de una de las dos potencias, se entregarán allí á los oficiales ó empleados en dicho puerto, á fin de que los guarden y restituyan íntegramente á su verdadero propietario luego que hiciere constar debida y plenamente que era su legítima propiedad.

“ARTICULO 10. En el caso de que un buque perteneciente á una de las dos partes contratantes naufragase, varase, ó sufriese alguna avería en las costas ó en los dominios de la otra, se socorrerá á los subditos ó ciudadanos respectivos, así á sus personas como á sus buques y efectos, del mismo modo que se haría con los habitantes del país donde suceda la desgracia, y pagarán solo las mismas cargas y derechos que se hubieran exigido de dichos habitantes en semejante caso. Y si fuese necesario para componer el buque que se descargue el cargamento en todo ó en parte, no pagarán impuesto alguno, carga, ó derecho de lo que se vuelva á embarcar para ser exportado.”

El crimen de que se trata á quedar sin castigo es de aquellos que pueden perturbar el sosiego interior y la seguridad de la isla de Cuba, donde los ciudadanos Americanos no solo trafican, sino que poseen propiedades territoriales que benefician con los brazos de sus esclavos Africanos. Alentados estos por la impunidad, que no dejaria de llegar á su noticia por el conducto de sus amigos, intentarían, con frecuencia, amotinarse en las repetidas veces que, á cada hora, son trasportados por mar de un punto á otro de la isla, y para impedirlo seria preciso aumentar, á mucha costa, las precauciones. Si por otra parte fuesen sentenciados á la pena de los piratas y de los asesinos por el tribunal que, sin facultades suficientes ha tomado sobre si el juzgarlos, su suplicio no produciria el saludable efecto que por este terrible y doloroso, medio se proponen las leyes cual es el de evitar la perpetracion de crímenes semejantes. En tal caso, la indemnizacion que formalmente pido para los amos seria una tenue compensacion; porque si la propiedad que daría, como debe quedar, á salvo la vindicta publica seria burlada. El temor de la repeticion de estos actos se apoderaria, como es natural, del animo de los habitantes de las islas de Cuba y Puerto Rico; en vez de la armonia y cordialidad que reyna entre ellos, y los ciudadanos de la Union, no seria de extrañar, ni habria motivo de queja, que se fomentasen los sentimientos contrarios tan nocivos á los intereses mutuos. Quien podria mirar con benevolencia al vecino que promoviese ó patrocinase la discordia en las familias? ni como podria decirse que obraria como amigo el que tal hiciese?

El infrascrito no teme que se tache de infundado ó exagerado este recelo. Nadie ignora la existencia de un número considerable de ciudadanos que, impulsados por un celo que á él no le incumbe calificar, emplean todos los recursos del saber y de la riqueza para obtener á cualquier precio la emancipacion de los esclavos. Muchos de estos ó persuadidos de la filantropia de su designio, ó con la mascara de ella, no se detienen en pagar la hospitalidad que reciben seduciendo á los esclavos, (á los hábiles sobre todo en algun oficio,) á que abandonen á sus dueños, y los embarcan en sus buques en donde ó los mantienen en mas duro cautiverio, ó los conducen á estos Estados para darles la libertad; apoderandose así de la propiedad ajena y

cometiendo un hurto, de proposito deliberado ó creyendo erroneamente hacer una buena accion; sin que le quede al arruinado propietario Español mas recurso que el de acudir, á fuerza de gastos, á los tribunales de un pais estrangero en donde, en muchos partes, oponé la opinion pública obstaculos insuperables al logro de la justicia, en este punto. Prueba de ello es, entre otros muchos, el caso del piloto Juan Smith del bergantin *Swiftsure*, que escondió y se trajo al negro cocinero de la posada en que vivia, y sobre el cual el infrascrito escribió al Señor Secretario de Estado en 19 de Noviembre de 1836, y vuelve hoy á tratar en nota separada. Prueba es igualmente del fundamento de los temores que expresa, la exaltacion que esta ocurrencia ha producido en el público, el lenguaje con que algunos de los periodicos han dado cuenta de ella, y los esfuerzos que muchos ciudadanos han principiado á hacer para abogar en defensa de los amotinados esclavos de la *Amistad*, á cuyo efecto han escogido jurisconsultos de nota en Boston, New Haven, y New York.

Los Americanos gozan en las islas mencionadas de buena acogida y amparo. El Gobierno Español, protegiendo sus propiedades, ordenaria, al momento, la extradicion de los esclavos del Sur que alli se refugiasen, y observador fiel de los tratados reclama, el cumplimiento de estos é igual buena correspondencia de una nacion vecina y aliada á la cual da constantes pruebas del justo aprecio que hace de su amistad.

El infrascrito, rogando al Señor Secretario de Estado de los Estados Unidos, Don Juan Forsyth, que eleve esta nota á la consideracion del Señor Presidente, aprovecha esta ocasion para reiterarle las veras de su alta consideracion.

A. CALDERON DE LA BARCA.

Señor Don JUAN FORSYTH,

Secretario de Estado de los Estados Unidos.

Mr. Calderon to Mr. Forsyth.

[TRANSLATION.]

NEW YORK, September 6, 1839.

"The undersigned, envoy extraordinary and minister plenipotentiary of Her Catholic Majesty the Queen of Spain, has the honor of calling the attention of the honorable John Forsyth, Secretary of State of the United States, to a recent and very public occurrence of which, no doubt, Mr. Forsyth is already informed, and in consequence of which it is the imperious duty of the undersigned to claim an observance of the law of nations, and of the treaties existing between the United States and Spain. The occurrence alluded to is the capture of the Spanish schooner "*Amistad*."

This vessel sailed from Havana on the 28th of June, bound to Guanaja, in the vicinity of Porto Principe, under the command of her owner, Don Ramon Ferrer, laden with sundry merchandise, and with fifty-three negro slaves on board; and, previous to her departure, she obtained her clearance (*quijo*) from the custom-house, the necessary permit from the authorities for the transportation of the negroes, a passport, and all the other documents required by the laws of Spain for navigating a vessel and for proving

ownership of property: a circumstance particularly important in the opinion of the undersigned.

During the night of the 30th of said month, or about daybreak on the following day, the slaves rose upon the crew, and killed the captain, a slave of his, and two sailors—sparing only two persons, after ill-treating and wounding them, namely, Don José Ruiz and Don Pedro Montes; of whom the former was owner of forty-nine of the slaves, and the latter of the other four. These they retained, that they might navigate the vessel and take her to the coast of Africa. Montes, availing himself of his knowledge of nautical affairs, and under favor of Divine Providence, succeeded in directing the vessel to these shores. He was spoken by various vessels, from the captains of which the negroes bought provisions, but to whom, it seems, he was unable to make known his distress, being closely watched. At length, by good fortune, he reached Long Island sound, where the "Amistad" was detained by the American brig-of-war "Washington," Captain Gedney, who, on learning the circumstances of the case, secured the negroes, and took them, with the vessel, to New London, in the State of Connecticut.

The conduct of that commander and his subalterns towards the unfortunate Spaniards has been that which was to be expected from gentlemen, and from officers in the service of an enlightened nation friendly to Spain. That conduct will be appreciated as it deserves by my august sovereign, and by the Spanish Government, and will be reciprocated on similar occasions by the Spaniards—a people ever grateful for benefits received.

The act of humanity thus performed would have been complete, had the vessel at the same time been set at liberty, and the negroes sent to be tried by the proper tribunal, and by the violated laws of the country of which they are subjects. The undersigned is willing to believe that such would have been the case, had the General Government been able to interpose its authority in the first instance, as it has probably done during the short interval between the occurrence of this affair and the period when the undersigned received an authentic statement of the facts.

In the mean time, however, the schooner "Amistad" has been delivered up to the United States marshal in New Haven, who, in conjunction with the district judge, A. T. Judson, has instituted proceedings in the case, and adopted resolutions founded on the declarations first received; and, according to information from Her Majesty's consul for Boston, who repaired to the scene of this occurrence, the officers of the "Washington," in the service of the United States, have presented to that incompetent tribunal a petition, which has been admitted, claiming salvage: a claim which, in view of the existing treaties, the undersigned conceives cannot be allowed in the sense in which it is made.

Having related the principal facts, the undersigned will not trouble Mr. Forsyth with the details, as well because he presumes that he is fully acquainted with them, as because they would add little or no weight to the justice with which the undersigned, in discharge of his duty, is induced to ask—

- 1st. That the vessel be immediately delivered up to her owner, together with every article found on board at the time of her capture by the Washington, without any payment being exacted on the score of salvage, nor any charges made, other than those specified in the treaty of 1795, article 1st.
- 2d. That it be declared that no tribunal in the United States has the right to institute proceedings against, or to impose penalties upon, the subjects of

Spain, for crimes committed on board a Spanish vessel, and in the waters of the Spanish territory.

3d. That the negroes be conveyed to Havana, or be placed at the disposal of the proper authorities in that part of Her Majesty's dominions, in order to their being tried by the Spanish laws which they have violated; and that, in the mean time, they be kept in safe custody, in order to prevent their evasion.

4th. That if, in consequence of the intervention of the authorities of Connecticut, there should be any delay in the desired delivery of the vessel and the slaves, the owners both of the latter and of the former be indemnified for the injury that may accrue to them.

In support of these claims, the undersigned invokes the law of nations, the stipulations of existing treaties, and those good feelings so necessary to the maintenance of the friendly relations that subsist between the two countries, and are so interesting to both.

The undersigned would be apprehensive of offending Mr. Forsyth by supposing it in the least degree necessary to bring to his recollection his own well-known construction (*disposiciones*) of the law of nations in a case analogous to the one under consideration; and he deems it equally unnecessary to enumerate the several cases in which, in obedience to that law, not only American citizens who have committed some crime on the high sea have been sent by other Governments to the United States in order to their being tried according to the laws of said States, but even foreigners who have offended against the laws on board of American vessels.

In respect to the stipulations subsisting between this republic and Spain, the undersigned conceives that, in support of his pretensions, he cannot do better than to cite the 8th, 9th, and 10th articles of the treaty of 1795, which articles continued in full force by the declaration *ad hoc* contained in the 12th article of the treaty of 1819, namely:

"ART. 8. In case the subjects and inhabitants of either party, with their shipping, whether public and of war, or private and of merchants, be forced, through stress of weather, *pursuit of pirates or enemies, or any other urgent necessity*, for seeking of shelter and harbor, to retreat and enter into any of the rivers, bays, roads, or ports, belonging to the other party, they shall be received and treated with all humanity, and enjoy all favor, protection and help; and they shall be permitted to refresh and provide themselves, *at reasonable rates*, with victuals and all things needful for the subsistence of their persons, or reparation of their ships, and prosecution of their voyage; *and they shall no ways be hindered from returning out of the said ports or roads*, but may remove and depart when and whither they please, without any let or hindrance.

"ART. 9. All ships and *merchandise, of what nature soever, which shall be rescued out of the hands of any pirates or robbers on the high seas*, shall be brought into some port of either State, and shall be delivered to the custody of the officers of that port, in order to *be taken care of, and restored entire* to the true proprietor, as soon as due and sufficient proof shall be made concerning the property thereof.

"ART. 10. When any vessel of either party shall be wrecked, foundered, or otherwise damaged, on the coasts or within the dominion of the other, their respective subjects or citizens shall receive, as well for themselves as for their vessels and effects, *the same assistance which would be due to the inhabitants of the country where the damage happens, and shall pay the*

same charges and dues only as the said inhabitants would be subject to pay in a like case; and if the operations of repair should require that the whole or any part of the cargo be unladen, they shall pay no duties, charges, or fees, on the part which they shall relade and carry away."

The crime in question is one of those which, if permitted to pass unpunished, would endanger the internal tranquillity and the safety of the island of Cuba, where the citizens of the United States not only carry on a considerable trade, but where they possess territorial properties which they cultivate with the labor of African slaves. These, on learning that the crime alluded to had been committed with impunity, (and their friends would not fail to acquaint them with the fact,) would lose none of the opportunities for attempting revolt and evasion, which are afforded by the frequent and daily necessity of conveying negroes by sea from one quarter of the island to another; and to guard against this, it would be necessary to use additional precautions at a great expense. If, on the other hand, they should be condemned by the incompetent tribunal that has taken upon itself to try them as pirates and assassins, the infliction of capital punishment in this case would not be attended with the salutary effects had in view by the law when it resorts to this painful and terrible alternative, namely, to prevent the commission of similar offences. In such case, the indemnification I officially ask for the owners would be a very slender compensation; for, if the property remained unimpaired, as it would remain, the satisfaction due to the public would not be accorded. The dread of a repetition of these acts might be expected to take possession of the minds of the people residing in the islands of Cuba and Porto-Rico; and, in lieu of the harmony and good feeling subsisting between them and the citizens of the United States, it would not be surprising, nor would it afford a cause for complaint, if sentiments were awakened of a different nature, and highly prejudicial to the interests of both parties. How can the man who promotes or advocates discord in families expect to be regarded with benevolence? or how can he who acts in such a manner pretend to the title of friend?

The undersigned does not apprehend that the fears herein expressed by him will be deemed exaggerated or unfounded. No one is ignorant of the existence of a considerable number of persons who, prompted by a zeal which it does not belong to him to qualify, are employing all the means which knowledge and wealth can afford for effecting, at any price, the emancipation of the slaves. Many of them, either because they are persuaded of the philanthropy of their designs, or assuming this virtue as a cloak, have no hesitation in repaying the hospitality they receive by the seduction of the slaves of their host, especially if they are skilful in any trade. Having induced them to abandon their masters, they ship them on board some vessel, where they retain them in a worse state of captivity than before, or send them to the United States to be set at liberty: thus appropriating to themselves the property of another, and deliberately committing a theft, while, perhaps, they believe that they are performing a meritorious act. In the mean time, the only resource of the ruined Spanish proprietor is to apply, at an enormous expense, to the tribunals of a foreign country, where, in many places, public opinion throws in the way of the applicant for justice, in matters of this nature, insuperable obstacles. Of the many cases that might be referred to, in proof of the justice of this remark, one is that of John Smith, mate of the brig *Swiftsure*, who concealed

and brought away with him a negro who was cook in the hotel where he was staying; upon which subject the undersigned wrote to the Secretary of State on the 19th of November, 1836, and now addresses him again in a separate communication. That the fears of the undersigned are not without foundation, is also evident from the excitement which this occurrence has produced in the public mind, from the language used by some of the public papers in relating it, and from the exertions that many persons have commenced making in favor of the revolted slaves of the "Amistad," for whose defence they have engaged some of the most able counsellors of Boston, New Haven, and New York.

In the islands above mentioned, the citizens of the United States have always met with a favorable reception and kind treatment. The Spanish Government, for the protection of their property, would immediately accord the extradition of any slaves that might take refuge there from the southern States. Being itself exact in the observance of treaties, it claims the more justly the execution of them, and a reciprocal good correspondence, from a nation, the ally and neighbor of Spain, to whom so many proofs have been afforded of the high degree in which her friendship is esteemed.

The undersigned requests Mr. Forsyth, the Secretary of State of the United States, to submit this note to the consideration of the President; and takes this opportunity of renewing to him the assurances of his distinguished consideration.

A. CALDERON DE LA BARCA.

Hon. J. FORSYTH,
Secretary of State.

Mr. Forsyth to Mr. Calderon.

DEPARTMENT OF STATE,
Washington, September 16, 1839.

SIR: I have the honor to acknowledge the receipt, at this department, of your note of the 6th instant, regarding the case of the Spanish schooner "Amistad" and cargo, together with the negroes found on board that vessel. Your letter was immediately forwarded to the President of the United States for his consideration, and no time will be needlessly lost, after his decision upon the demand it prefers shall have reached me, in communicating to you his views upon the subject.

Accept, sir, the renewed assurance of my high consideration.

JOHN FORSYTH.

DON ANGEL CALDERON DE LA BARCA, &c.

Mr. Calderon to Mr. Forsyth.

NUEVA YORK, Setiembre 17 de 1839.

MUY SENOR MIO: Acabo de tener el honor de recibir la carta de V. S. de 16 del actual, acusandome el recibo de mi nota del 6, relativa á la Amistad; y me apresuro á avisarselo á V. S. para su conocimiento y por tener el

gusto de reiterarle las seguridades de mi alta consideracion y personal aprecio.

A. CALDEDON DE LA BARCA.

Al honorable JOHN FORSYTH.

Mr. Calderon to Mr. Forsyth.

[TRANSLATION.]

NEW YORK, *September 17, 1839.*

SIR: I have just had the honor to receive your letter of the 16th instant, acknowledging the receipt of my note of the 6th, relative to the *Amistad*, and I hasten to inform you of it; at the same time, repeating the assurances of my high consideration.

A. CALDERON DE LA BARCA.

To the Hon. J. FORSYTH,
Secretary of State.

Mr. Forsyth to Mr. Calderon.

DEPARTMENT OF STATE,
Washington, September 23, 1839.

SIR: In the examination of the case of the Spanish schooner "*Amistad*," the only evidence at present within reach of this department is that presented by the ship's papers, and the proceedings of the court of inquiry held by a district judge of Connecticut, on board the schooner, at the time the negroes in whose possession she was found were imprisoned for the alleged murder of the captain and mate of the vessel. If you have any other authentic documents relating to the question, or evidence of facts which can be useful to a proper understanding of it, I have the honor to request, by the direction of the President, that you will communicate them to me with as little delay as practicable.

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

JOHN FORSYTH,

Don A. CALDERON DE LA BARCA, &c. &c. &c.,
New York.

Mr. Calderon to Mr. Forsyth.

NUEVA YORK, 29 de Setiembre de 1839.

MUY SENOR MIO: A la hora misma de ir á embarcarme en el bote de Albany, con el objeto de pasar á poner en manos de S. E. el Señor Presidente mis recredenciales, y presentarle á mi sucesor, el Señor Don Pedro Alcantara Argaiz, recibí la carta de V. S. de 23 del que expira, en la que me

pregunta si puso algunos otros documentos autenticos, relativos al caso de la goleta *Amistad*, que los hallados abordo de dicho buque, y actualmente depositados en el tribunal de Connecticut, que entiende en este negocio.

En contestacion, me apresuro á manifestar á V. S. ahora que tengo tiempo para ello, y bien que ya el tratar oficialmente de aquel caso incumba al Señor de Argaiz, que no hay en poder de la legacion de S. M., documentos algunos mas que la declaracion jurada de Montes y Ruiz; puesto que los papeles del buque, de cuya legitimidad no parece haya motivo de dudar, están en el tribunal mencionado; y aun no hay tiempo para que halla llegado la noticia del suceso á la Habana.

Rogando á V. S. excuse mi involuntaria tardanza en contestarle, tengo la honra de reiterarle las veras de mi mas alta consideracion y personal aprecio.

A. CALDERON DE LA BARCA.

Honorable JOHN FORSYTH,
Secretary of State.

Mr. Calderon to Mr. Forsyth.

[TRANSLATION.]

NEW YORK, *September 29, 1839.*

SIR: At the very hour in which I was about to embark in the steamboat Albany, for the purpose of placing my credentials in the hands of his excellency the President, and of presenting to him my successor Don Pedro de Alcantara Argaiz, I received your letter of the 23d instant, in which you ask me whether I possess any other authentic documents relative to the case of the schooner *Amistad*, besides those found on board the said vessel, and now deposited in the court of Connecticut, which takes cognizance of that affair.

In reply, I hasten to assure you, now that I have time for that purpose, although the official conduct of that case belongs to Señor Argaiz, that there are not in the possession of the legation of Her Majesty any documents, besides the declaration on oath of Montes and Ruiz; inasmuch as the papers of the vessel, of the lawfulness of which there appears to be no reason for doubt, are in the court above mentioned; and there is as yet not time enough for the news of the occurrence to have reached Havana.

I entreat you, sir, to excuse my involuntary delay in replying to you, and I have the honor of repeating to you the assurances of my high consideration and personal esteem.

A. CALDERON DE LA BARCA.

Honorable JOHN FORSYTH,
Secretary of State.

Chevalier de Argaiz to Mr. Forsyth.

NUEVA YORK, 3 de Octubre de 1839.

El infrascrito, enviado extraordinario y ministro plenipotenciario de S. M. Católica, tiene la honra de principiar su correspondencia oficial con V.

E. solicitando un acto de justicia, que, no mezclandose de ningun modo con la cuestion principal, aun no resuelta por el gabinete, relativa á los negros que se hallaron en la goleta Amistad á su arrivo á estas costas, no duda hallará en V. E. la acogida que le hacen esperar todos los actos anteriores emanados de esa secretaria del cargo de V. E. dictados siempre por los principios de rectitud y de reciproca amistad.

El vice-consul de S. M. en Boston, en escrito del 24 de Setiembre ultimo, dice, entre otras cosas:

“Puesto que de los papeles de la goleta consta, que tanto ella, como el cargamento, son esclusivamente propiedad Española, extraño parece que el tribunal de New London no haya dispuesto ya la entrega de uno y otra, ó bien á sus dueños si se hallasen presentes, ó á mi, como su agente nato en esta parte de la Union, conforme á uno de los articulos del tratado que con ella tenemos vigente. La dilacion en la entrega no seria para los propietarios de tanta consecuencia, si el buque, para evitar su completo desbarate, no exigiese pronto reparo, y si una gran parte del cargamento no reclamase por su mal estado que se procede á su venta.”

Al elevar al conocimiento de V. E. esta reclamacion, que ha hecho á la legacion Española el citado vice-consul, no duda el abajo firmado que V. E. se servirá apreciarla, y tomar los ordenes del Señor Presidente á fin de que una resolucion favorable y pronta pueda desminuir los perjuicios que experimentan los representados por el vice-consul.

El abajo firmado se aprovecha de esta ocasion para ofrecer á V. E. las seguridades de su muy distinguida consideración.

EL CAVALLERO PEDRO ALCANTARA ARGAIZ.

Al Hon. JOHN FORSYTH,

Secretario de Estado de los Estados Unidos.

Chevalier de Argaiz to Mr. Forsyth.

[TRANSLATION.]

NEW YORK, October 3, 1839.

The undersigned, envoy extraordinary and minister plenipotentiary of Her Catholic Majesty, has the honor of commencing his official correspondence with you, sir, by soliciting an act of justice, which, not being in any way connected with the principal question as yet remaining unsettled by the cabinet, relative to the negroes found on board the schooner Amistad on her arrival on these coasts, he does not doubt will be received by you in the manner which he has every reason to expect, from the circumstance that all preceding acts of the department under your charge have been dictated by the principles of rectitude and friendly reciprocity.

Her Majesty's vice-consul at Boston, under date of the 24th of September last, says, among other things:

“As it appears from the papers of the schooner that she, as well as her cargo, are exclusively Spanish property, it seems strange that the court of New London has not yet ordered the delivery of one or both to the owners, if they are present, or to me, as their agent, born in that part of the Union, agreeably to the articles of the treaty now in force between the two countries. The delay in the delivery would not be of so much consequence to

the proprietors, if the vessel did not require immediate repairs, in order to preserve her from complete destruction, and if it were not material that a large portion of the cargo should be sold on account of its bad condition."

In submitting to you, sir, this solicitation, which has been addressed by the said vice consul to the Spanish legation, the undersigned doubts not that you will see the propriety of it, and will obtain directions from the President, to the effect that the injuries which the persons represented by the vice consul might otherwise sustain, may be lessened by means of a speedy determination of the question.

The undersigned avails himself of this occasion to offer you, sir, the assurances of his most distinguished consideration.

THE CAVALLERO PEDRO ALCANTARA ARGAIZ.

Hon. JOHN FORSYTH,
Secretary of State.

Mr. Forsyth to the Chevalier de Argaiz.

DEPARTMENT OF STATE,
Washington, October 24, 1839.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note addressed to him on the 22d instant by the Chevalier de Argaiz, envoy extraordinary and minister plenipotentiary of Her Catholic Majesty, protesting against the arrest, and imprisonment at New York, of two Spanish subjects, Jose Ruiz and Pedro Montes, and asking the interposition of the Executive in procuring their liberation, and indemnity for the losses and injury they may have sustained.

It appears, from the documents accompanying the note of the Chevalier de Argaiz, that the two Spanish subjects referred to were arrested on process issuing from the superior court of the city of New York, at the suit of, and upon affidavits made by, certain colored men, natives of Africa, for the purpose of securing their appearance before the proper tribunal, to answer for wrongs alleged to have been inflicted by them upon the persons of said Africans; and, consequently, that the occurrence constitutes a simple case of resort by individuals against others to the judicial courts of the country, which are equally open to all without distinction, and to which it belongs exclusively to decide, as well upon the rights of the complainant to demand the interposition of their authority, as upon the liability of the defendant to give redress for the wrong alleged to have been committed by him. This being the only light in which the subject can be viewed, and the constitution and laws having secured the judicial power against all interference on the part of the Executive authority, the President, to whom the Chevalier de Argaiz's note has been communicated, has instructed the undersigned to state, that the agency of this Government to obtain the release of Messrs. Ruiz and Montes cannot be afforded in the manner requested by him. The laws of the State of New York, of which the constitution and laws of the United States and their treaties with foreign Powers form a part, afford to Messrs. Ruiz and Montes all the necessary means to procure their release from imprisonment, and to obtain any indemnity to which they may be justly entitled, and therefore would render unnecessary any agency on the part of this department for those purposes; but, inasmuch as the imprisonment of

those persons connects itself with another occurrence which has been brought under the President's consideration, in consequence of a correspondence between the Spanish legation and this department, instructions (of which a copy is enclosed) have been given to the attorney of the United States for the district of New York to put himself in communication with those gentlemen, to offer them his advice (and his aid, if necessary) as to any measure which it may be proper for them to adopt to procure their release, and such indemnity as may be due to them, under our laws, for their arrest and detention.

The documents enclosed in the Chevalier de Argaiz's note are, agreeably to his request, herewith returned; and the undersigned avails himself of this occasion to renew to the Chevalier de Argaiz the assurance of his high consideration.

JOHN FORSYTH.

The Chevalier de ARGAIZ, &c., &c., &c.

The Chevalier de Argaiz to Mr. Forsyth.

NUEVA YORK, 5 de Noviembre de 1839.

El infrascrito, enviado extraordinario y ministro plenipotenciario de S. M. Católica, tiene la honra de acusar al Señor Secretario de Estado del Gobierno General de la Union el recibo de su nota del 24 del proximo pasado Octubre; en la cual, sirviendose contestar á la de aquél de 22 del mismo, le manifiesta S. S. las razones que han movido al Señor Presidente para ordenarle haga saber al infrascrito que la accion del Gobierno, para obtener la libertad de los subditos Españoles, Montes y Ruiz, no puede ser concedida del modo que dicho ministro la pedia. Pero que como la prision de estas personas se relaciona palpablemente con otra ocurrencia que ha sido sometida á la consideracion del Presidente, en consecuencia de una correspondencia entre la legacion de España y el Departamento de Estado, se habian dado instrucciones (de las cuales S. S. le incluia copia) al attorney de los Estados Unidos en el distrito de Nueva York, á fin de que, poniendose en comunicacion con aquellos Señores, les ofreciese su consejo (y su ayuda, si necesario fuese) en cualquiera medida que pareciese propio adoptar para obtener su libertad, &c.

Aunque esta contestacion no satisfizo enteramente al deseo, que impedido por su deber, y fundado en los tratados vigentes, manifestó el abajo firmado, en su escrito del 22 de Octubre, la recibió, sin embargo, con gusto y agradecimiento; con gusto, por que vió en ella que el Señor Secretario de Estado no negaba las razones que aquel tuvo la honra de exponer en aquel escrito; con agradecimiento, por ver que habian sido acogidos con benevolencia los sentimientos que le habian excitado á pedir, con urgencia, una pronta respuesta.

En vista de esto, el infrascrito se trasladó inmediatamente á Nueva York, en donde visitó el 29 del ultimo al attorney de los Estados Unidos, con quien tuvo una larga conferencia, de la que si bien salió prendado de la afabilidad y cortesia del Señor Butler, no tuvo la dicha de quedar satisfecho en cuanto al asunto principal; pues este oficial de justicia le manifestó no hallaba otro medio de obtener la libertad de Ruiz (habiendola ya obtenido Montes) que

esperar el fallo del tribunal ó tribunales, contra cuya jurisdiccion habia ya, precisamente, protestado el abajo firmado.

Cuando el Gobierno Español acaba en estos mismos dias de dar una prueba al de la Union, de la rigidez con que observa sus tratados, y del respeto con que considera la jurisdiccion de estos tribunales, remitiendo al Señor Presidente desde la Habana, los autos originales seguidos contra Mr. Abraham Wendell, capitan del bergantin Kremlin, por haber maltratado á su primer piloto Mr. Guillermo Bell: cuando el infrascrito estaba persuadido de que todo cuanto manifestó al Señor Secretario de Estado en las dos conferencias, que precedieron á su nota del 22 de Octubre ultimo, y las indicaciones hechas en esta, bastarian á su alta é ilustrada penetracion para convencerle del derecho que asiste á su reclamacion; cuando esta persuasion no ha podido menos de robustecerse, al ver que el Señor Secretario de Estado no ha tratado en su contestacion de rebatirlas, y si solo de explicar el curso que siguen las causas civiles antes estos tribunales, para de ello sacar la consecuencia de que la accion del Gobierno no se puede conceder del modo que el representante de S. M. C. la solicitaba; preciso es reforza los argumentos á riesgo de ser molesto.

Conocido es de todo el mundo que un tribunal no puede juzgar delitos, ni *factus cometidas* en otros paises ú otras jurisdicciones, y bajo otras leyes, cuya aplicacion no le está encomendada: tambien lo es, que no pueden admitirse ante un tribunal demandas de esclavos contra sus dueños ó señores. Pero aun si todo esto no fuese bien notorio, no se encuentra para el caso presente el artículo 7º del tratado de 1795? Qué dice este? Que en el caso que un ciudadano Americano contraiga deudas ó *cometa ofensus* en los dominios de M. C., ó un Español en los Estados Unidos, se procederá al arresto y demas del modo que esta establecido, &c. Lo cual, como dijo el ministro de España en su anexo á la nota del 22, y lo prueba el hecho antes citado; relativo al proceso de Mr. Wendell, prueba, que ninguna de las dos partes contratantes pudo, ni quiso renunciar á su respectiva jurisdiccion. Y estando tan claramente probada la incompetencia de los tribunales de los Estados Unidos en el caso actual, no existe en esta Republica Federal un poder que asi lo declare é interponga su accion para hacer cesar la irregularidad y la incompetencia? Imposible parece, pero desgraciadamente asi sucede.

Por tanto el enviado extraordinario y ministro plenipotenciario de S. M. C. al ver que su anterior protesta no ha obtenido el resultado que el se prometia, la renueva, haciendo responsable á este Gobierno de las consecuencias que este asunto tuviese; y pregunta al Señor Secretario de Estado del Gobierno de la Union, si este se encuentra con la autoridad y fuerza suficiente para llevar á debido cumplimiento el tratado de 1795. En el caso contrario, no puede existir tratado ninguno, que solo oblique á la otra parte.

El infrascrito se lisonjea con la esperanza de obtener una pronta contestacion, por exigirlo asi la cuestion, y la libertad de un subdito Español, que padece una injusta é ilegal prision; y al mismo tiempo renueva al Señor Secretario de Estado las seguridades de su mas perfecta consideracion.

EL CABALLERO DE ARGAIZ.

Al Honorable Señor JOHN FORSYTH, &c.

The Chevalier de Argaiz to Mr. Forsyth.

[TRANSLATION.]

NEW YORK, *November 5, 1839.*

The undersigned, envoy extraordinary and minister plenipotentiary of Her Catholic Majesty, has the honor of acknowledging the reception of the note from the Secretary of State of the General Government of the Union, dated the 24th of October, in which that gentleman, in reply to one of the 22d of the same month, shows the reasons which induced the President to order information to be communicated to the undersigned that the Government could not act as the undersigned had requested, for the purpose of obtaining the liberty of the Spanish subjects Montes and Ruiz; but that, as the imprisonment of those persons was evidently connected with another occurrence, which had been submitted to the consideration of the President, in consequence of a correspondence between the Spanish legation and the Department of State, instructions (of which a copy was enclosed) had been given to the attorney of the United States for the district of New York, to the effect that he should offer to those persons his advice and assistance (if needed) with regard to the most proper means of obtaining their liberty.

Although this answer did not entirely satisfy the desire expressed by the undersigned in his note of October 22d, to which he was impelled by the sense of his duty and by the terms of existing treaties, yet he received it with pleasure and with thanks: with pleasure, because he saw that the Secretary of State did not refuse to admit the reasons which the undersigned had the honor to state in that note; and with thanks, because he saw that the sentiments which had urged him to request with warmth a prompt reply, had been kindly interpreted. The undersigned, in consequence, went immediately to New York, where he visited, on the 29th ultimo, the attorney of the United States, with whom he had a long conversation, which left him delighted with the affability and courtesy of Mr. Butler, although he did not have the happiness to remain satisfied as to the principal matter, as that officer of justice declared that he could find no other means of obtaining the liberty of Ruiz (Montes being already free) than by waiting the determination of the court or courts, against the jurisdiction of which the undersigned had already especially protested.

Considering that the Spanish Government has, just within these few days past, given to that of the United States a proof of the strictness with which it observes treaties, and of the respect which it bears to the jurisdiction of the courts of this country, by sending from Havana the original documents of the prosecution against Mr. Abraham Wendell, the captain of the brig Franklin, for maltreatment of his mate, William Bell; that the undersigned is well persuaded that what he has said to the Secretary of State, in the two conferences preceding his note of October 22d, and the indications contained therein, would have been sufficient to convince one so enlightened and discriminating of the justice of his claim; that this persuasion has gained strength, from the circumstance that the Secretary of State has made no attempt in his answer to oppose those arguments, but has confined himself to endeavoring to explain the course of civil causes in the courts of this country, in order to show that the Government of the United States could not interfere in the manner in which Her Catholic Majesty's representative

requested ; it becomes necessary to advance further arguments, at the risk of being importunate.

It is allowed by the whole world that a court cannot take cognizance of crimes or *delinquencies* committed in other countries, or other jurisdictions, and under other laws, the application of which is not intrusted to it ; as, also, that petitions or accusations of slaves against their masters cannot be admitted in a court. If, however, all this were not well known and established, does not the seventh article of the treaty of 1795 apply to this case ? What says that article ? It says that, in case an American citizen should contract debts or *commit offences* in the dominions of His Catholic Majesty, or a Spaniard in the United States, the proceedings for his arrest and all others against him shall be conducted in the manner already established, &c. &c. All of which, as the Spanish minister said in his note of the 22d, and also the circumstances above mentioned relative to the prosecution of Mr. Wendell, prove that neither of the two contracting parties could or wished to renounce their respective jurisdiction. And as the incompetence of the courts of the United States, with regard to this matter, is so clearly demonstrated, is there no power in the Federal Government to declare it so, and to interpose its authority to put down the irregularity of these proceedings, which the court is not competent to perform ? It seems impossible that there should be no such power ; but, unfortunately, there is none.

Her Catholic Majesty's envoy extraordinary and minister plenipotentiary, nevertheless, seeing that his previous protest did not produce the result which he expected, renews it now, declaring this Government responsible for the consequences which may grow out of this affair ; and he asks the Secretary of State whether or not he possesses sufficient authority and force to carry into fulfilment the treaty of 1795 ? If he has not, then there can be no treaty binding on the other party.

The undersigned flatters himself that he will obtain a speedy reply, as required by the nature of the case and the rights of a Spanish subject, who is suffering an unjust and unlawful imprisonment ; and he, at the same time, repeats to the Secretary of State the assurances of his most high consideration.

THE CHEVALIER DE ARGAIZ.

To the Hon. JOHN FORSYTH,
Secretary of State.

Acting Secretary of State to the Chevalier de Argaiz.

DEPARTMENT OF STATE,
Washington, November 22, 1839.

Upon the receipt of the note addressed, on the 5th instant, to this department, by the Chevalier de Argaiz, envoy extraordinary and minister plenipotentiary of Spain, in relation to the arrest of Mr. Ruiz, in a civil suit against him before a court of law in New York, the undersigned, acting Secretary of State, transmitted, by order of the President, to the attorney of the United States for the district of New York, directions again to inquire into the circumstances of the case, and to report his opinion as to the authority of the United States Government to interfere in behalf of Mr. Ruiz, for the purpose of procuring his release from imprisonment, as requested by the Chevalier de Argaiz.

The undersigned, having received the report of the district attorney, hastens to communicate the enclosed copy of it to the Chevalier de Argaiz; and avails himself of this opportunity to offer him renewed assurances of his distinguished consideration.

A. VAIL,

Acting Secretary of State.

The Chevalier DE ARGAIZ, &c., &c., &c.

The Chevalier de Argaiz to Mr. Forsyth.

WASHINGTON, 26 de Noviembre de 1839.

La nueva dilacion que el tribunal de Connecticut acaba de acordar señalando el dia 7 de Enero del año proximo venidero para la vista del asunto de la goleta Amistad, pone al abajo firmado, enviado extraordinario y ministro plenipotenciario de S. M. C., en la precision de recordar al Señor Secretario de Estado del Gobierno General de la Union sus anteriores reclamaciones.

La primera que hizo su antecesor, en 6 de Setiembre proximo pasado, solo ha merecido en contestacion se acusase su recibo con fecha del 16 de mismo. En las contestaciones que S. S., se ha servido dar á las del abajo firmado sus fechas 22 de Octubre y 5 de Noviembre últimos, S. S. no ha tenido á bien rebatir los argumentos en que él las apoyaba.

Los que ahora se propone presentar no seran menos poderosos, y espera sean tales que S. S. no pueda negar la justicia de ellos.

El abajo firmado tiene la honra de preguntar, en que ley, acta, ó estatuto, funda el tribunal su competencia para entender en este asunto?

La contestacion no puede ser dudosa: en ninguna ley, ni acta, ni estatuto. Por que si alguna existiese, esta, ó debió ser, anterior ó posterior al tratado de 1795; si era anterior, es claro que quedó anulada, por que un tratado es ley de las superiores del estado, ó el tratado ni hubiera podido firmarse, ni ratificarse, ni sancionarse por los cuerpos legislativos. Si posterior al tratado, los cuerpos legislativos, al redactarla, discutirla, y votarla, hubieran tenido presente que se oponia á un tratado vigente que era ya ley de la Union. Luego es decir que en el actual estado de la legislacion, este asunto ni puede ni debe decidirse por el derecho comun, sino por el internacional.

Fundado, sin duda, en este convencimiento, el antecesor al que suscribe reclamó, en 6 de Setiembre último, la restitution de la goleta, con todo su cargamento; y si el Gobierno General de la Union hubiese resuelto este negocio gubernativamente, poco hubieran tardado los propietarios de ella en hacer uso del derecho que les concede aquél tratado; del que resulta debió devolverseles el buque y sus mercancias de *cualquiera naturaleza que fuesen*; por que, como dice el artículo 8º, se han visto obligados, por escapar de enemigos, (que los tenian á bordo del mismo buque,) y era entonces *necesidad urgente* á buscar refugio y abrigo en las costas de estos Estados, en donde debieron, segun los estipulados en el mismo artículo "ser recibidos y tratados con *humanidad*, y gozar de todo *favor, proteccion, y socorro*," en donde no se les debió *detener, ni impedir de modo alguno el salir de dichos puertos ó radas, antes bien debieron poder retirarse, como y cuando les pareciere, sin ningun obstaculo ni impedimento.*

Mas habiendo sucedido muy diferentemente ha resultado: 1º. Que el tratado de 1795 no ha recibido su egecucion, como la legacion de S. M. C.

lo ha solicitado, resultando de aqui que la vindicta pública no se halla aun satisfecha ; por que es preciso no olvidar que la legacion de España no pide la extradicion de esclavos, sino la de asesinos. 2º. Que se han inogado grandes perjuicios á los propietarios, no siendo el menor la prision que esta padeciendo Don Jose Ruiz, á pesar de las reclamaciones hechas sobre este punto, las que, sino han sido enteramente desoidas, no han tenido á lo menos el favorable resultado que debia esperarse, resultando de ello que la dignidad de la nacion Española se encuentra ofendida ; y sobre cuyos perjuicios, el infrascrito se reserva úsar de su derecho en ocasion oportuna ; aunque jamas las indemnizaciones pueden debidamente recompensar los males fisicos y morales que en el hombre honrado producen las persecuciones y los bejamenes ocasionados por el fanatismo.

Resulta pues de todo esto que un tribunal de uno de los de esta federacion se ha amparado de un asunto que no le compete ; que no puede existir ley ninguna anterior ni posterior al tratado en la que pueda fundar una sentencia legal ; que este tribunal, con las repetidas dilaciones que decreta, contribuye á dilatar la satisfaccion que la vindicta pública reclama ; que, por consiguiente, solo puede resolverse por el derecho internacional, y por tauto gubernativamente ; que para resolverlo asi existe un tratado cuya aplicacion ha reclamado la España ; que de haberse retardado esta resolucion, han resultado perjuicios que exigen indemnizaciones, y cuyo derecho se reserva el infrascrito para ocasion oportuna.

El infrascrito puede sin indiscrecion asegurar que esta misma es la opinion del gabinete, quien poseyendo ya los datos necesarios y aun indispensables, puede en el dia obrar gubernativamente en este asunto, apoyandose en el estado actual de la legislacion, y sin aguardar la decision de ningun tribunal.

No hacerlo asi podria dar lugar á explicaciones muy complicadas sobre la reciprocidad en la egecucion y cumplimiento de los tratados.

El infrascrito se lisongea con la esperanza de que S. E. el Señor Presidente tomará en su alta consideracion esta comunicacion, á la que espera una pronta respuesta, con el nuevo testimonio de la escrupulosidad y respeto con que esta nacion sabe cumplir los tratados que la unen con las demas naciones.

Si, contra esta esperanza, la decision no fuese cual el infrascrito la reclama, no puede este menos de hacer responsable al Gobierno General de la Union de toda y cualquiera consecuencia que la dilacion pueda producir.

El infrascrito tiene la honra de renovar al Señor Forsyth, Secretario de Estado del Gobierno General de la Union, los sentimientos de su mas perfecta consideracion.

EL CABALLERO DE ARGAIZ.

Al Hon. Señor JUAN FORSYTH,
Secretario de Estado de los Estados Unidos.

The Chevalier de Argaiz to Mr. Forsyth.

[TRANSLATION.]

WASHINGTON, *November 26, 1839.*

The new delay which the court in Connecticut has just granted, fixing the 7th of January next for the trial of the case of the schooner *Amistad*,

places the undersigned envoy extraordinary and minister plenipotentiary of Her Catholic Majesty under the necessity of repeating to the Secretary of State of the General Government of the United States his former complaints.

To the first complaint, made by his predecessor, on the 6th of September last, nothing more than an acknowledgment of its receipt was thought necessary, which was made on the 16th of the same month. In the answers which the Secretary was pleased to give to the notes of the undersigned, of the 22d of October and the 5th of November last, that gentleman did not think proper to combat the arguments advanced. Those which the undersigned now proposes to present will be no less powerful, and he hopes will be such that the Secretary will not be able to deny their justice.

The undersigned has the honor to ask in what law, act, or statute, does the said court base its right to take cognizance of the present case?

There can be no doubt as to the reply: On no law, act, or statute. For, if any such existed, it is, or should be, anterior or posterior to the treaty of 1795. If anterior, it clearly became annulled, because a treaty is one of the superior laws of the State, or the treaty should never have been signed, or ratified, or sanctioned by the legislative bodies. If posterior to the treaty, the legislative bodies, in drawing it up, discussing it, and voting on it, must have seen that it was at variance with a subsisting treaty, which was already a law of the Union. All which serves to show that, in the existing state of the laws, this affair cannot and should not be decided by the common law, but by the international law.

The predecessor of the undersigned, resting no doubt upon this conviction, demanded, on the 6th of September last, the restitution of the schooner, with all her cargo; and, if the General Government of the Union had decided this matter of itself, (*gubernativamente*,) the owners would have soon availed themselves of the right allowed them by the treaty, according to which the vessel and her goods, of *whatever nature they may be*, should be restored; for they had been, as the 8th article says, forced in order to escape from enemies, (who kept them prisoners on board of the vessel herself,) and there was, therefore, an urgent necessity to seek refuge and shelter on the coasts of the United States, where they should have been, agreeably to the stipulations of the same article, "received and treated with all humanity, and enjoy all favor, protection, and help;" and where they were in no ways to be hindered from returning out of the said ports or roads, but to be allowed to remove and depart when and whither they pleased, without any let or hindrance.

Very different, however, have been the results; for, in the first place, the treaty of 1795 has not been executed, as the legation of Her Catholic Majesty has solicited; and the public vengeance has not been satisfied, for be it recollected that the legation of Spain does not demand the delivery of slaves, but of assassins. Secondly, great injury has been done to the owners; not the least being the imprisonment which Don José Ruiz is now undergoing, notwithstanding the complaints made on that subject, which, if not entirely disregarded, have at least not produced the favorable results which might have been expected; and the dignity of the Spanish nation has thus been offended. With respect to which injuries, the undersigned will, on a proper occasion, use his right; although no indemnifications can fully recompense for the evils, physical and moral, which the persecutions and vexations occasioned by fanaticism may cause to an honorable man.

Thus it appears that a court of one of the States of the confederacy has assumed the direction of an affair over which it has no jurisdiction; that there can be no law, either anterior or posterior to the treaty, upon which a legal sentence can be based; that this court, by the repeated delays which it orders, contributes to delay the satisfaction demanded by public justice; and that, in consequence, the affair should only be determined by reference to international right, and, therefore, by the exercise of the power of the Government, (*gubernativamente*;) that, for its determination, the treaty exists to which Spain appeals; that, from the delay on this determination, have proceeded injuries requiring indemnification, to demand which the undersigned reserves the exercise of his right for a future occasion. The undersigned may, without indiscretion, declare that this must be the opinion of the cabinet, which, possessing already the necessary and even indispensable powers, may immediately act (*gubernativamente*) in this matter, in virtue of the actual state of the law, and without awaiting the decision of any court. Not to do so, may give rise to very complicated explanations with regard to reciprocity in the execution and fulfilment of treaties.

The undersigned flatters himself with the hope that his excellency the President will take into his high consideration this communication, to which the undersigned hopes for a speedy answer, as a new proof of the scrupulousness and respect with which this nation fulfils the treaties existing with other nations. If, contrary to this hope, the decision should not be such as the undersigned asks, he can only declare the General Government of the Union responsible for all and every consequence which the delay may produce. The undersigned avails himself of this opportunity to repeat to the Secretary of State the assurances, &c.

THE CHEVALIER DE ARGAIZ.

Hon. JOHN FORSYTH,
Secretary of State.

The Chevalier de Argaiz to Mr. Forsyth.

WASHINGTON, 29 de Noviembre de 1839.

Con el oficio de 22 del actual, del S^r. A. Vail, encargado del despacho del Departamento de Estado, recibió el abajo firmado la copia del informe, que, por orden del S^r. Presidente, se pidió al attorney de los Estados Unidos en New York.

Aunque no es el animo del enviado extraordinario de S. M. C. entrar ahora en una polémica sobre este asunto con el expresado attorney, no puede menos de manifestar vé de muy diferente manera que el esta cuestion de la prision del S^r. Don José Ruiz, y de demostrar al mismo tiempo hasta donde lo permitan sus razones, que el Gobierno General de la Union está obligado á conceder al dicho Ruiz mas *favor*, *proteccion*, y *socorro*, que hasta aqui le ha concedido, y que se ha reducido á mandar á dicho attorney le *ofrezca sus consejos*, (y su ayuda, si necesario fuese;) es decir que le ha concedido un abogado *gratis*, como lo conceden todos los tribunales á los acusados, que, por falta de medios, no pueden defenderse.

Tomando este asunto desde su origen, hay que considerar la situacion de Ruiz á su llegada á los Estados Unidos. Embarcado en la goleta Amistad en el puerto de la Habana, para conducir unos negros de su propiedad á

Guanaja, provisto de los documentos que exigen la ley y las ordenanzas, dió la vela en la tarde del 28 de Junio ultimo; en la del 29 de 30 del mismo se amotinan los negros, asesinan al capitán y á su cocinero, que era un negro; dos marineros blancos, únicos de la tripulación, huyen en el bote; es maltratado y herido Montes, á quien como á Ruiz salva la vida la misma necesidad que los negros tienen de salvar la suya, y los obligan á gobernar el buque, que en vez de dirigir al este, como los amotinados querían, llegan á las costas de los Estados Unidos, y un buque de la Union los conduce á New London.

Al llegar Montes y Ruiz á estos Estados reclaman la protección que les concede el derecho internacional, y el enviado extraordinario y ministro plenipotenciario de S. M. C., el Sr. Calderon de la Barca, así lo pide al Gobierno de la Union, en 6 de Setiembre ultimo, apoyándose en el tratado de 1795.

Este tratado, en su artículo 8º, dice: "Cuando los subditos y habitantes de la una de las dos partes contratantes, con sus buques, bien sean públicos ó de guerra, bien particulares ó mercantiles, se viesen obligados por una tempestad por escapar de piratas ó de enemigos, ó por cualquiera otra necesidad urgente, á buscar refugio y abrigo en alguno de los ríos, bahías, radas, ó puertos de una de las dos partes, seran recibidos y tratados con humanidad, y gozaran de todo favor, protección, y socorro, y les será lícito proveerse de refrescos viveres, y demas cosas necesarias para su sustento, para componer sus buques, y continuar su viage, todo mediante un precio equitativo; y no se les detendra ó impedira de modo alguno el salir de dichos puertos ó radas, antes bien podran retirarse y partir como y cuando les pareciere, sin ningun obstaculo ó impedimento."

Han encontrado acaso Montes y Ruiz en estos Estados *todo favor, protección, y socorro? Se les ha detenidos, ó no? Se les ha impedido de algun modo, ó no, el salir de estos puertos ó radas? Han podido retirarse y partir como y cuando les haya parecido, sin ningun obstaculo ó impedimento?* La prision de New York puede responder á estas cuestiones.

En vano se dira que la prision de Montes y Ruiz nada tiene que ver con los tratados; pues es consecuencia de una demanda civil. Quien ó quienes la han entablado? En la realidad, toda la nacion federal lo sabe, pero legalmente la demanda ha sido presentado por tres hombres, que declarando han sido vendidos en Africa, demuestran el estado de esclavitud en que allí se hallaban; luego, si en su propio país eran esclavos, de donde les viene hallarse ahora en la plenitud de los derechos civiles? Ademas pesa sobre ellos una acusacion criminal, y en todo país civilizado estuvieron siempre suspendidos los expresados derechos para semejantes acusados.

Pero hay mas, aún; suponiendo que estos negros estén en este país en aptitud de entablar demandas civiles, vuelvase á abrir el tratado de 1795, y lease su artículo 7º, en el dice: "Y en los casos de aprehension, detencion, ó arresto, bien sea por deudas contraídas ú ofensas cometidas por algun ciudadano ó subdito de una de las partes contratantes en la jurisdiccion de la otra, se procedera unicamente por orden y autoridad de la justicia, y segun los tramites ordinarios seguidos en semejantes casos." Si las faltas alegadas por los negros, contra las que presentan su demanda, son ciertas, solo pudieron ser cometidas antes que ellos fuesen dueños del buque Amistad; esto es en la isla de Cuba ó en sus aguas; luego el juzgarlas es, segun el sentido y la letra de esta estipulacion, de la competencia y jurisdiccion de aquella isla, y de ningun modo de la jurisdiccion de los tribunales de estos

Estados; y en este punto es en el que el abajo firmado difiere totalmente de la opinion del attorney de los Estados Unidos en New York.

Aqui se presenta ahora bien claro y sencillo el caso de la prision y persecuciones que padece el Sór. Ruiz. Este debió, segun el articulo 8º, encontrar en los Estados Unidos *favor, proteccion, y socorro*, y encontró una carcel en la que gime desde el 17 de Octubre ultimo; *no se le pudo detener ni impedir de modo alguno el salir de estos puertos ó radas*, antes bien tenia derecho para *retirarse* y partir cuando *le pareciese, sin ningun obstaculo* ni impedimento. Y, no es impedimento el intentarle una causa civil, en la que es sabido que los demandantes son los que menos parte tienen? No es *obstaculo* una carcel ó una fianza que se le exige?

Y el Gobierno General de la Union, conociendo que "como en cierto modo el arresto de aquellas personas tiene el mismo conexon con otra ocurrencia que ha sido elevada á la consideracion del Presidente, en consecuencia de una correspondencia entre la legacion de España y el Departamento de Estado," cree haber llenado su deber con "dar instrucciones al attorney de los Estados Unidos en el distrito de New York, para que entre en comunicacion con Ruiz, y le ofrezca sus consejos (y su ayuda, si necesario fuese) en cualquiera medida propia para procurarle su libertad?" Lo que, como queda dicho, equivale á darle un abogado gratis.

Tan lejosos esta resolucion de satisfacer al representante de S. M. C., que no puede menos de declarar que en su corto saber y entender el Gobierno General de la Union, para cumplir con las clausulas estipuladas en el tratado, se halla obligado á defender de oficio al expresado Ruiz, dando por él la fianza que se le exige, proporcionandole de este modo su libertad, y colocandolo en la posicion que le asegura el tratado de 1795; asi lo reclama el abajo firmado, enviado extraordinario y ministro plenipotenciario de S. M. C., fundandose en la letra y sentido de las estipulaciones de aquel.

El infrascrito renueva al Sór. Forsyth, Secretario de Estado del Gobierno General de la Union, las seguridades de su alta consideracion.

EL CABALLERO ARGAIZ.

Al Hon. Sór. JUAN FORSYTH,
Secretario de Estado de los Estados Unidos.

The Chevalier de Argaiz to Mr. Forsyth.

[TRANSLATION]

WASHINGTON, November 29, 1839.

The undersigned received on the 22d instant, with the note from Mr. Vail, the acting Secretary of State, the copy of the opinion which had been asked from the attorney of the United States at New York, by order of the President.

Although the envoy extraordinary of Her Catholic Majesty does not intend to enter, at present, into a discussion (*polemica*) with regard to this affair, he cannot still do less than declare that he views the question of the imprisonment of Don Jose Ruiz in a very different light; and to demonstrate, at the same time, so far as reasoning will go, that the Government of the United States is bound to extend to the said Ruiz more favor, protection, and assistance, than it has as yet granted him, which has been no more than directing the abovementioned attorney to offer him his advice, (and assistance if there should be occasion;) that is to say, the Government has

given him an attorney *gratis*, as all courts allow to those accused persons who, from want of means, cannot defend themselves. Taking this affair from its commencement, the situation of Ruiz on his arrival in the United States is to be considered. Having embarked in the schooner *Amistad*, at the port of Havana, for the purpose of carrying some negroes belonging to him, to Guanaja, and being provided with the documents required by the law and the ordinances, he set sail on the 28th of June last; on the night of the 29-30th of the same month, the negroes rebel; they assassinate the captain, and his cook, a negro man; two white sailors alone, of the crew, escape in the boat; Montes is wounded and ill-treated, though his life, as well as that of Ruiz, is spared, from the mere necessity on the part of the negroes to save themselves; and they are obliged to manage the vessel, which, instead of steering to the eastward, as the mutineers wished, they brought to the coasts of the United States; and a vessel belonging to the Union carries them into New London.

On their arrival in the United States, Montes and Ruiz claimed the protection allowed them by the international law; and the envoy extraordinary and minister plenipotentiary of Her Catholic Majesty, Señor Calderon de la Barca, made a request to that effect to the Government of the Union, on the 6th of September last, based upon the provisions of the treaty of 1795.

This treaty, in its 8th article, says: "In case the subjects and inhabitants of either party, with their shipping, whether public and of war, or private and of merchants, be forced, through stress of weather, pursuit of pirates or enemies, or any other urgent necessity for seeking of shelter and harbor, to retreat and enter into any of the rivers, bays, roads, or ports, belonging to the other party, they shall be received and treated with all humanity, and enjoy all favor, protection, and help; and they shall be permitted to refresh, and provide themselves, at reasonable rates, with victuals and all things needful for the subsistence of their persons, or reparation of their ships, and prosecution of their voyage; and they shall no ways be hindered from returning out of the said ports or roads, but may remove and depart when and whither they please, without any let or hindrance." Now, have Montes and Ruiz received in the United States "*all favor, protection, and help?*" Have they not been detained and hindered from returning out of the ports or roads of the United States? Have they been allowed to remove and depart when and how they pleased, without any let or hindrance? The prison of New York can answer all these questions.

It is in vain to say that the imprisonment of Montes and Ruiz has no connexion with treaties, as it is in consequence of a civil prosecution. Who has set on foot this prosecution? The whole nation knows the prosecution has been set on foot legally by three men, who, by their declaration that they have been sold in Africa, prove the state of slavery in which they were in that country. Now, if they were slaves in their own country, how do they come to be here in the enjoyment of civil rights? Moreover, a criminal accusation is now hanging over them; and in every civilized country the said rights would be always suspended with respect to persons lying under such accusations.

But even supposing these negroes to be in the United States competent to begin civil prosecutions; let the treaty of 1795 be opened, and in its 7th article it will be seen that, "in all cases of seizure, detention, or arrest for debts contracted, or offences committed, by any citizen or subject of the

one party, within the jurisdiction of the other, the same shall be made and prosecuted by order and authority of law only, and according to the regular course of proceeding usual in such cases." If the delinquencies against which the negroes complain, and on account of which they are now prosecuting, have been really committed, they were committed before the negroes became masters of the schooner *Amistad*—that is to say, in the island of Cuba, or in its waters; and, therefore, according to the letter and the spirit of this stipulation, they should come under the jurisdiction of that island, and by no means under that of the courts of these States; and on this point it is that the undersigned differs entirely in opinion from the attorney of the United States for the district of New York.

The case of the imprisonment and persecutions to which Señor Ruiz has been subjected has now been presented in a clear light. Señor Ruiz should, agreeably to the 8th article of the treaty, have found "favor, protection, and help" in the United States; and he found a prison, in which he has been suffering since the 17th of October last. *He was not to be detained or hindered in any way from returning out of these ports or roads*, but, on the contrary, *had the right to remove and depart whenever he pleased, without any let or hindrance*. Now, is it no *hindrance* to set on foot a civil prosecution against him, when it is well known that the plaintiffs have no part in it? Is not an imprisonment, or the bail that is required, a *hindrance*?

And does the General Government of the Union, while knowing that "the imprisonment of those persons connects itself with another occurrence which has been brought under the President's consideration, in consequence of a correspondence between the Spanish legation and the Department of State," conceive that it has done its duty by giving instructions to the attorney of the United States for the district of New York to put himself in communication with Ruiz, and to offer him his advice (and his aid, if necessary) as to any measure which it may be proper for him to adopt in order to procure his release, which, as I have before observed, amounts to nothing more than giving him an attorney gratis?

The representative of Her Catholic Majesty is so far from being satisfied with this resolution, that he cannot avoid declaring that, according to his imperfect knowledge and understanding, the General Government is bound, in compliance with the stipulations of the treaty, to defend the said Ruiz officially, by giving for him the bail required, and setting him at liberty, so as to place him in the position assured to him by the treaty of 1795. This the undersigned, envoy extraordinary and minister plenipotentiary of Her Catholic Majesty now demands in virtue of the letter and sense of the stipulations of that treaty.

The undersigned renews to Mr. Forsyth, Secretary of State of the General Government of the Union, the assurances of his high consideration.

THE CHEVALIER DE ARGAIZ.

HON. JOHN FORSYTH,
Secretary of State.

Mr. Forsyth to the Chevalier de Argaiz.

DEPARTMENT OF STATE,
Washington, December 12, 1839.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of two notes addressed to him on the 1st and 26th

of last month, by the Chevalier de Argaiz, envoy extraordinary and minister plenipotentiary of Spain; the one complaining of delay in the decision of the Government of the United States on his application for the surrender of the schooner *Amistad*, her cargo, and the negroes found on board; and the other, claiming the agency of the Executive in the defence of Don José Ruiz, in a civil suit against him, now pending before a court of law in the city of New York, and the security of the United States in a bail-bond for his release from arrest in the suit referred to.

In the note which the undersigned addressed to Mr. Calderon de la Barca on the 16th September last, he stated that the application for the delivery of the "*Amistad*," and the property found on board, had been submitted for the consideration of the President, and that his decision would, as soon as received, be communicated to the Spanish legation. In another note, of the 23d of the same month, calling for evidence deemed useful in the examination of the questions arising from the case of the "*Amistad*," the minister of Spain might have found a proof that his application was receiving all the notice and respect which was due to the source from which it emanated; and it was hoped that, in the various conversations which have since taken place with the Chevalier de Argaiz at this department, on the same subject, he would have discovered additional evidence of the desire of the United States Government to do justice to the demand and representations addressed to it in the name of that of Spain, as fully and as promptly as the peculiar character of the claim admitted. From the repeated communications of the Chevalier de Argaiz, pressing for the disposal of the question; from his reiterated offer of suggestions as to the course by which he deems it incumbent upon this Government to arrive at a final decision; and from the arguments in support of those suggestions, which the undersigned does not perceive the utility of combating at the present stage of the transaction; the Government of the United States cannot but perceive with regret that the Chevalier de Argaiz has not formed an accurate conception of the true character of the question, nor of the rules by which, under the constitutional institutions of the country, the examination of it must be conducted; nor a correct appreciation of the friendly disposition towards Her Catholic Majesty's Government, with which that examination was so promptly entered upon. In connexion with one of the points in the Chevalier de Argaiz's last note, the undersigned will assure him that, whatever be, in the end, the disposal of the question, it will be in consequence of a decision emanating from no other source than the Government of the United States; and that, if the agency of the judicial authority shall have been employed in conducting the investigation of the case, it is because the judiciary is, by the organic law of the land, a portion, though an independent one, of that Government.

As to the delay which already has attended, and still may attend, a final decision, and which the Chevalier de Argaiz considers as a legitimate subject of complaint, it arises from causes which the undersigned believes that it would serve no useful purpose to discuss at this time, further than to say that they are beyond the control of this department, and that it is not apprehended that they will affect the course which the Government of the United States may think it fit ultimately to adopt.

The undersigned indulges the hope that, upon a review of the circumstances of the case, and of the questions it involves, the Chevalier de Argaiz will agree with him in thinking that the delay which has already occurred is

not more than commensurate with the importance of those questions; that such delay is not uncommon in the proceedings and deliberations of Governments desirous of taking equal justice as the guide of their actions; and that the caution which it has been found necessary to observe in the instance under consideration, is yet far from having occasioned such procrastination as it has been the lot of the United States frequently to encounter in their intercourse with the Government of Spain.

With regard to the imprisonment of Don José Ruiz, it is again the misfortune of this Government to have been entirely misapprehended by the Chevalier de Argaiz, in the agency it has had in this, an entirely private concern of a Spanish subject. It was no more the intention of this department, in what has already been done, to draw the Chevalier de Argaiz into a polemical discussion with the attorney of the United States for the district of New York, than to supply Don José Ruiz, *gratis*, with counsel in the suit in which he had been made a party. The offer made to that person of the advice and assistance of the district attorney, was a favor—an entirely gratuitous one—since it was not the province of the United States to interfere in a private litigation between subjects of a foreign state, for which Mr. Ruiz is indebted to the desire of this Government to treat with due respect the application made in his behalf in the name of Her Catholic Majesty, and not to any right he ever had to be protected against alleged demands of individuals against him or his property.

And in communicating to the Chevalier de Argaiz the legal opinion of the district attorney, this department had no other object or expectation than to produce in his mind, by arguments founded upon the laws both of this country and of Spain, a conviction that this Government can no more grant the request set up in behalf of Don José Ruiz, than it could undertake to decide upon the legality of the claim preferred against him by the plaintiffs in the suit which occasioned his imprisonment.

In support of his application for Executive intervention in the liberation of Don José Ruiz, the Chevalier de Argaiz quotes the 7th article of the treaty of 1795 between the United States and Spain; and then puts the following questions, which the undersigned will answer by stating the facts as they have come to his knowledge:

Have Messrs. Montes and Ruiz received in the United States “all favor, protection, and help?”

Have they been detained, or not?

Have they, or not, in any manner been prevented from leaving the ports or roads of the United States?

Have they been allowed to remove or depart when and as they pleased, without any let or hindrance?

Messrs. Ruiz and Montes were first found near the coast of the United States, deprived of their property and of their freedom, suffering from lawless violence in their persons, and in imminent and constant danger of being deprived of their lives also. They were found in this distressing and perilous situation by officers of the United States, who, moved towards them by sympathetic feeling, which subsequently became, as it were, national, immediately rescued them from personal danger, restored them to freedom, secured their oppressors that they might abide the consequences of the acts of violence perpetrated upon them, and placed under the safeguard of the laws all the property which they claimed as their own, to remain in safety until the competent authority could examine their title to it, and pronounce

upon the question of ownership, agreeably to the provisions of the 9th article of the treaty of 1795.

From the moment of their liberation, they were left perfectly free to remain in the United States, to visit any part of the country, or to depart from it, without let or hindrance, as their business or inclination might suggest. Their property was under the protection of this Government, and its authority acknowledged by the legation of Her Catholic Majesty; and if they chose to continue in the State into which they were first conducted, or to travel into other States, they remained under the ordinary protection of the laws of the United States, the benefits of which have not been, and will not be, denied to them. And in proof of this, one of them, Don Pedro Montes, is no longer within American jurisdiction.

All the stipulations in the 7th article of the treaty have been fulfilled by the agents of the United States, in all that regards the personal rights of those two Spanish subjects, with a promptitude, fidelity, and kindness, in which they were supported and approved by public sentiment, so far as it lay in their power to enforce them; and no cause of dissatisfaction would have arisen in that respect, had they not deferred availing themselves of their freedom to leave the country until arrested, at the suit of individuals, alleging against them private claims, which constitutes, in the eye of the law of the land, liabilities; the extent and validity of which can only be determined by a court of competent jurisdiction. To such a court, and for such a purpose, the plaintiffs have resorted; and if the proceedings of that court have been according to law, and the same as if the parties defending were citizens of the United States, nothing is perceived in those proceedings which can be justly made a subject of complaint against the Government of the United States, under existing treaties. Among the powers within the competency of the court before which the case is pending, is that of releasing the defendant from actual imprisonment, upon his giving the usual security, not for the payment of the damages claimed by the plaintiffs, but merely for his appearance to abide the decision of the court. If Mr. Ruiz, relying upon other protection, has declined availing himself of the only one which the law provides and places within his own reach, the hardship he suffers, and of which the Chevalier de Argaiz complains in his behalf, is in some degree voluntary, and can only be made to cease when he shall himself apply the proper remedy, or when the tribunal shall, by due course of legal proceedings, have arrived at a judgment, which the undersigned has no doubt will ultimately answer all the demands of justice. If the proceedings against Mr. Ruiz shall be found to have been unwarranted by the existing law, all the meddling persons who can be shown to have been parties to his imprisonment are answerable to him, by the laws of the country; and proper remuneration will be, no doubt, obtained, if he chooses to resort to the tribunals to enforce his claims upon them.

The undersigned cannot conclude this communication without calling the attention of the Chevalier de Argaiz to the fact, that, with the single exception of the vexatious detention to which Messrs. Montes and Ruiz have been subjected in consequence of the civil suit instituted against them, all the proceedings in the matter, on the part of both the executive and judicial branches of the Government, have had their foundation in the assumption that those persons alone were the parties aggrieved; and

that their claim to the surrender of the property was founded in fact and in justice. This circumstance alone, independently of those above stated, should, in the opinion of the undersigned, have been sufficient to convince the Chevalier de Argaiz that the condition of Messrs. Ruiz and Montes had, like the interposition of Her Catholic Majesty's Government in their behalf, found every proper degree of favor and consideration at the hands of the United States Government.

The undersigned avails himself of the occasion to renew to the Chevalier de Argaiz assurances of his distinguished consideration.

JOHN FORSYTH.

The Chevalier DE ARGAIZ, &c.

The Chevalier de Argaiz to Mr. Forsyth.

WASHINGTON, 25 de Diciembre de 1839.

El abajo firmado tiene la honra de acusar el recibo de la nota que, con fecha 12 del corriente, le ha pasado el Señor Secretario de Estado del Gobierno de la Union, y á cuyo contenido seria ocioso contestar, supuesto que el Señor Secretario de Estado no descubre haya utilidad, en el presente estado de la transaccion, en combatir los argumentos alegados por el abajo firmado. Mas la delicadeza de este no le permite desoir algunas insinuaciones que aquella contiene; y difícil le será, talvez, no alegar aun algun nuevo argumento en apoyo de sus reclamaciones.

A dos partes viene á reducirse la contestacion que el Señor Forsyth dá á las reclamaciones del infrascrito, la primera se refiere al asunto de la demanda hecha para la entrega de la goleta Amistad; y la segunda á la situacion actual de Don José Ruiz.

Al tratar el primer punto, el Señor Forsyth se sirve recordar lo que dijo á esta legacion en sus comunicaciones de 16 y 23 de Setiembre ultimo, y apoyando en su contenido, dice "que el ministro de España hubiera alli encontrado una prueba de que su demanda estaba recibiendo todo el examen y respeto que era debido al origen de qué emanaba, y era de esperar que el Caballero Argaiz, en las varias conversaciones tenidas en este departamento sobre el mismo asunto, hubiera descubierto una nueva evidencia del deseo de los Estados Unidos de hacer justicia á la demanda y representacion que le habia sido dirigida en nombre de S. M. C."

Sensible y doloroso es para el abajo firmado que S. S. haya olvidado que desde el 6 de Setiembre la legacion de España, confiada en su buena causa, y en la alta opinion que le merece la imparcial justicia del Gobierno de los Estados Unidos, no tan solo no dió ningun otro paso, sino que hasta cierto punto comprometió su deber descuidando los intereses de subditos Españoles; y si una vez el infrascrito en 3 de Octubre reclamó el cargamento de la goleta, por que era de facil deterioro, tuvo cuidado de decir en aquél escrito "al solicitar un acto de justicia que no se mezclaba de ningun modo con la cuestion principal, aun no resuelta por el gabinete, relativa á los negros que se hallaban en la goleta;" todo lo cual prueba que el infrascrito no hubiera molestado al Gobierno de la Union con sus urgentes reclamaciones, si los dos Españoles (que S. S. dice en su nota del 12 "fueron encontrados en esta angustiada y peligrosa situacion por oficiales de los Estados Unidos, quienes, movidos por simpáticos sentimientos que llegaron á ser nacion-

ales") no hubiesen sido victimas de una intriga, que el mismo Señor Forstyth calificó con exactitud en la conferencia que tuvo con el infrascrito el 21 de Octubre ultimo. Esta explicacion, que el infrascrito ha creído indispensable, seria sin duda bastante para convencer de nuevo al Señor Secretario de Estado de los deseos que animaron al Señor Argaiz hasta el 19 de Octubre ultimo, y á los que con sentimiento le hizo renunciar la prision de aquéllos dos Españoles.

El Señor Secretario dice tambien, que "no puede sino percibir con sentimiento que el Caballero de Argaiz no ha formado un puntual conocimiento del verdadero caracter de la cuestion, ni de las reglas por las cuales, bajo las instituciones constitucionales del pais, el examen de ella debe considerarse." Es posible que el infrascrito no forme ese puntual conocimiento, desde que este asunto ha entrado en el distrito de las sutilezas legales, no habiendo él seguido la carrera de las leyes: pero tiene la persuasion de que si la tripulacion de la goleta Amistad se hubiese compuesto de hombres blancos, el tribunal, ó la corporacion á quien el Gobierno de la Union hubiese encargado el examen de la cuestion, siguiendo las reglas por las cuales, bajo las instituciones constitucionales del pais, debe conducirse, se hubiera limitado á averiguar el hecho de los asesinatos del 30 de Junio: y no comprende el privilegio de que gozan los negros, para que se abra un interminable juicio, en el que deponen todo el que quiere, y hasta se hace venir con este objeto de la Habana a un Dr. Ingles, quien acusa al Gobierno Español de no cumplir los tratados, y calumnia al Captain-General de la isla de Cuba acusandole de *soborno* y de *cohecho*.

Con gusto recibe el infrascrito la seguridad que mas adelante le dá el Señor Secretario de Estado, de que "cualquiera que sea en fin la resolucion de la cuestion, esta será en consecuencia de una decision emanada del Gobierno, y no de ningun otro origen;" y no duda que aquella sea conforme á la opinion que confidencialmente se le hizo conocer el 19 de Noviembre en ese departamento, la cual encontró fundada en la de un sabio jurisconsulto, y se le aseguro habia sido adoptada por el gabinete.

El infrascrito, como ya deja manifestado, estaria, y estaba muy dispuesto á no quejarse de la dilacion que ya ha ocurrido, y á "encontrarla," si necesario fuese, "muy conmensurada con la importancia de las cuestiones," si los motivos de desagrado que la expresada dilacion ha causado no hubiesen venido á agriar la misma cuestion, ó por mejor decir las buenas disposiciones de que se hallaban animados, tanto esta administracion, como el infrascrito, y la misma que este espera hacer renacer, si llega á convencer al Señor Secretario de Estado de que solo un deber, que ha creído imperioso, le ha podido excitar á ser talvez importuno, cuando su caracter personal es mas bien prudente y concilliado.

No le consta al infrascrito, ni está en sus facultades, evitar las dilaciones, que las reclamaciones de los Estados Unidos hayan encontrado en Madrid; sin embargo la resolucion que ha recaido sobre la que ultimamente hizo en la Habana la fragata de guerra Boston de estos Estados, no ha experimentado tal suerte; por la comunicacion que hizo aquel Capitan General al Gobierno fue en 14 de Enero ultimo, y ya hace cosa de dos meses que los autos seguidos ante aquél tribunal, están en manos de este Gobierno, y eso que segun tiene entendido el infrascrito, las faltas que á ellos dieron motivo, fueron cometidas dentro del mismo puerto, aunque no puede asegurarlo positivamente; y si esto fuese cierto, segun la opinion de respetables jurisconsultos, podria ser de la competencia de aquél tribunal entender en ellas.

Pero si ha sido asi, el Gobierno de S. M. C. ha preferido sin duda renunciar á este derecho, dando en ello al de la Union un nuevo testimonio de sus buenas disposiciones á estrechar mas y mas los vinculos de amistad que felizmente los unen.

El Señor Secretario de Estado pasa en seguida, en su citada nota, á tratar del segundo punto; esto es, del arresto de los Señores Montes y Ruiz; y pretende que la asistencia del señor attorney de los Estados Unidos en el distrito de Nueva York es un favor enteramente gratuito, por el cual Ruiz es deudor del deseo del Gobierno de la Union, de tratar con el debido respeto la peticion hecha á su favor, en nombre de S. M. C. El infrascrito ha pretendido demostrar que el expresado Gobierno estaba en la obligacion de colocar á Ruiz en la posicion que le asegura el artículo 8º del tratado de 1795. Desgraciadamente, las razones que para demostrarlo ha presentado no han sido bastante poderosas para trasladar su convencimiento al del Señor Secretario de Estado; asi como tampoco este le convence diciendole que "ninguna causa de disgusto se hubiera elevado en este asunto si ellos no hubieran diferido aprovecharse de su libertad de dejar este pais hasta el momento de su aresto," &c.

Seguramente no hubieran ellos permanecido tanto tiempo en este pais, y lo habrian abandonado con perjuicio de todos sus intereses, si hubieran podido prever que ni aun respetando las leyes del pais y conduciendose honradamente estaban exentos de las persecuciones de una atroz intriga, (y no es el infrascrito el primero que asi ha calificado esta persecucion;) ó si se hubiesen imaginado, que por supuestas faltas cometidas en su pais, ó bajo bandera nacional, los encerrarían en una carcel, ó les exigirían una enorme fianza. Pero creyeron, muy al contrario, (y ya pocos Españoles podían persuadirselo,) que no infringiendo ninguna ley, ni ningún reglamento de policia, gozarian en esta republica de su libertad individual. Y, señor, á quien no escandalizará la demanda que se ha presentado contra ellos? Y por quienes? Además de todo lo que acerca de esto tiene dicho el infrascrito, añadirá ahora, que los demandantes (si lo son los negros) puede decirse que moral y legalmente no están en los Estados Unidos. No están moral y legalmente en los Estados Unidos, por que el tribunal de Connecticut no ha declarado aun si es ó no competente para juzgarlos, si se declaró incompetente, declarará que estan cubiertos con la bandera Española; y en este caso se hallan fisicamente bajo la custodia de un Gobierno amigo, pero moral y legalmente fuera del territorio y jurisdiccion de los Estados Unidos, y mientras duce esta duda, ningún juez pudo admitir la demanda. Si este argumento es de algun valor para el Señor Secretario de Estado del Gobierno de la Union, el abajo firmado le suplica incline el animo del Señor Presidente fin de que se sirva ordenar se presente de oficio ante el tribunal de Nuev York una protesta fundada en este argumento.

El infrascrito se lisongea con la esperanza de que el Señor Secretario de Estado de la Union conocerá lo, sensible que le és á aquél molestar de nuevo su atención con este asunto, como igualmente la obligacion que le impele ello. Si la persecucion que padece el Señor Ruiz fuese hija de sus faltas, su conducta en estos Estados hubiese merecido un arresto, el infrascrito hubiera dejado abandonado á sus propios medios de defensa, y jamas habria causado la atención del Señor Secretario de Estado.

Pero desgraciadamente este suceso está muy ligado con el de la gol Amistad, para que sin cargar con una grave responsabilidad el infrascrito dejase de hacer todo cuanto el sentimiento de su deber le ordena.

El infrascrito aprovecha esta ocasion para renovar al Señor Secretario de Estado del Gobierno Federal de la Union las seguridades de su mas alta consideracion.

EL CABALLERO DE ARGAIZ.

Al Honorable Señor JOHN FORSYTH,
Secretario de Estado de los Estados Unidos.

The Chevalier de Argaiz to Mr. Forsyth.

[TRANSLATION.]

WASHINGTON, December 25, 1839.

The undersigned has the honor to acknowledge the receipt of the note addressed to him under date of the 12th instant, by the Secretary of State of the Government of the Union, to which it would be superfluous (*ocioso*) to reply, inasmuch as the Secretary of State does not seem to have considered it requisite, in the present situation of the affair, to combat the arguments adduced by the undersigned. The delicacy of the undersigned does not, however, allow him to pass over (*desoir*) certain insinuations (remarks) contained in the said note; and it will, perhaps, be difficult for him to avoid adducing some new argument in support of his demands.

Mr. Forsyth's answer to the demands of the undersigned may be considered as referring, first, to the business of the demand for the delivery of the schooner *Amistad*; and, secondly, to the actual situation of Don José Ruiz.

With regard to the first subject, Mr. Forsyth recalls to mind what he said to this legation in his communications of the 16th and 23d of September last; and, referring to these, he says that "the minister of Spain might have therein found a proof that his application was receiving all the notice and respect due to the source from which it emanated; and it was hoped that the Chevalier Argaiz would, in the various conversations held with him at this department on the same affair, have discovered additional evidence of the desire of the United States to do justice to the demand and representation addressed to them in the name of her Catholic Majesty."

The undersigned regrets exceedingly that the Secretary of State should have already forgotten that, since the 6th of September, the Spanish legation, confiding in the goodness of its cause, and on the high opinion which it entertains of the impartial justice of the Government of the United States, took no other measure whatsoever, but even, to a certain extent, ran the risk of subjecting itself to the charge of neglecting the interests of Spanish subjects. The undersigned did, indeed, on the 3d of October, request that the cargo of the schooner should be delivered to him, as it might easily be injured; but he took care, at the same time, to say in his note that "he solicited an act of justice, which did not at all interfere with the main question, as yet undetermined by the cabinet, relative to the negroes who were found in the schooner;" all which clearly proves that the undersigned would not have troubled the Government of the Union with his urgent demands, if the two Spaniards (who, as the Secretary of State, in his note of the 12th, says "were found in this distressing and perilous situation by officers of the United States, who, moved by sympathetic feelings, which

subsequently became national") had not been the victims of an intrigue, as accurately shown by Mr. Forsyth, in the conference which he had with the undersigned on the 21st of October last.

This explanation, which the undersigned has considered indispensable, will doubtless serve again to convince the Secretary of State of the desires which animated Señor Argaiiz until the 19th of October last, and which he was obliged with regret to relinquish, in consequence of the imprisonment of the two Spaniards above mentioned.

The Secretary of State, however, says that "he cannot but perceive with regret that the Chevalier de Argaiiz has not formed an accurate conception of the true character of the question, nor of the rules by which, under the constitutional institutions of this country, the examination of it must be conducted." Possibly the undersigned may not have formed such an accurate conception of this affair, since it has been carried within the circle of legal subtleties, as he has not pursued the profession of the law; but he is well persuaded that, if the crew of the Amistad had been composed of white men, the court, or the corporation to which the Government of the Union might have submitted the examination of the question, would have observed the rules by which it should be conducted under the constitutional institutions of the country, and would have limited itself to the ascertainment of the facts of the murders committed on the 30th of June; and the undersigned does not comprehend the privilege enjoyed by negroes, in favor of whom an interminable suit is commenced, in which every thing is decided by every person who pleases; and, for that object, an English doctor, who accuses the Spanish Government of not complying with its treaties, and calumniate the Captain General of the island of Cuba, by charging him with bribery.

The undersigned with pleasure receives the assurance given to him by the Secretary of State, in a subsequent part of the note, "that, whatever may be the final settlement of the question, it will be in consequence of a decision emanating from the Government, and not from any other source;" and he doubts not such decision will be conformable with the opinion which was confidentially communicated to him at the Department of State on the 19th of November, as founded on that of a learned lawyer, and which he was assured had been adopted by the cabinet.

The undersigned, as he has already declared, would be, and is, fully disposed not to complain of the delay which has occurred, and, if necessary, to "*think it commensurate with the importance of the questions.*" If the causes of dissatisfaction consequent upon this delay had not exacerbated the question, or, rather, the dispositions of the undersigned as well as of the administration, which the undersigned hopes to see restored to their former harmony, if he can succeed in convincing the Secretary of State that nothing but a sense of duty, which he considers imperious, would have excited him to be at times importunate, while in his personal character, he is more prudent and conciliatory.

The undersigned cannot and has no power to remove the delays to which the claims of the United States are subjected in Madrid. The decision with regard to the demand lately made by the sloop of war Boston, at Havana, was not, however, thus delayed. The communication addressed by the Captain General of that island to the Government was made on the 14th of January last, and the documents of that trial have now been in the hands of this Government about two months; and, as the under-

signed learns, though he cannot assert it positively, the circumstances which led to that trial were committed in that port itself. If they were there committed, the courts of Cuba would, according to the opinion of learned lawyers, have the right to take cognizance of them; and if they were so committed, the Government of Her Catholic Majesty has doubtless preferred renouncing this right, and thus giving to that of the United States a new proof of its disposition to strengthen farther the bonds of friendship which fortunately unite the two nations.

The Secretary of State, in his abovementioned note, then goes on to treat the second part of the subject—that is to say, the seizure of Messrs. Ruiz and Montes; and alleges that the assistance given by the attorney of the United States for the district of New York was a favor entirely gratuitous, afforded to Ruiz in consequence of the desire, on the part of the Government of the Union, to give due respect to the petition in his favor made in the name of Her Catholic Majesty. The undersigned has endeavored to show that the Government of this Union was under the obligation to place Ruiz in such a position as should assure the fulfilment of the 8th article of the treaty of 1795. Unfortunately, the reasons assigned with this view have not been sufficiently powerful to produce conviction in the mind of the Secretary of State; nor is the undersigned more convinced by the declaration of the Secretary of State, that “no cause of dissatisfaction would have arisen in this affair, had they not deferred availing themselves of this liberty, to leave the country until the moment of their arrest,” &c. Certainly they would not have remained in the country so long; and they would have abandoned it, to the injury of their interests, had they been able to foresee that, though respecting the laws and conducting themselves honorably, they were not exempt from the persecutions of an atrocious intrigue, (and the undersigned is not the first who has thus styled this persecution,) as if they could have imagined that, for supposed delinquencies committed in their own country, or under their own national flag, they would have been confined in a prison, or required to give enormous bail. They, however, believed the contrary; (what few Spaniards can now persuade themselves of;) that, while infringing no law or police regulation, they would enjoy their individual liberty in this republic. And, sir, who will not be shocked at the complaint preferred against them? By whom is it preferred? The undersigned, in addition to all that he has said on this subject, will now add, that the complainants (if the negroes be the complainants) may be considered, morally and legally, as not being in the United States. They are morally and legally not in the United States, because the court of Connecticut has not declared whether or not it is competent to try them. If it should declare itself incompetent, it declares that they are under the cover of the Spanish flag; and, in that case, they are physically under the protection of a friendly Government, but morally and legally out of the territory and jurisdiction of the United States; and, so long as a doubt remains on this subject, no judge can admit the complaint. If this argument be of any value with the Secretary of State of the Government of the Union, the undersigned entreats him to prevail on the President to cause a protest, founded upon this argument, to be officially addressed to the court of New York.

The undersigned flatters himself with the hope that the Secretary of State of the Union will conceive how painful it is to him to trouble that gentleman again about this affair, and will also see that he is under the obligation to do so. If the persecution under which Señor Ruiz is suffer-

ing were the consequence of his own faults, if his conduct in these United States had been such as to render his arrest just, the undersigned would have abandoned him to his own means of defence, and would never have intruded upon the attention of the Secretary of State.

But, unfortunately, this affair is so closely allied to that of the Amistad, that the undersigned cannot, without a heavy responsibility, refrain from doing whatever his sense of duty dictates.

The undersigned avails himself of this opportunity to repeat to the Secretary of State of the Federal Government of the Union the assurances of his very high consideration.

THE CHEVALIER DE ARGAIZ.

Hon. JOHN FORSYTH,
Secretary of State.

The Chevalier de Argaiz to Mr. Forsyth.

WASHINGTON, 30 de Diciembre de 1839.

MUY SEÑOR MIO: En la conversacion que tuve con V. S. antes de ayer mañana, me enteré de cuanto se sirvió decirme acerca de la posibilidad de que el tribunal de Connecticut pronunciase en su sesion del 7 de Enero proximo su incompetencia, ó bien la restitucion de la goleta Amistad, su cargamento, y negros hallados á su bordo: en seguida, manifesté V. S. la necesidad de que la legacion de S. M. C. tomase sus disposiciones para hacerse cargo de aquellos, tan luego como el tribunal pronunciase su sentencia ó resolusion; y aunque yo tuve la honra de exponerle la imposibilidad en qué dicha legacion se halla de poder trasladar á los expresados negros á la Habana, me parece conveniente hacer presente á V. S. que—

Considerando que la goleta Amistad no puede hacer la navegacion por su mal estado, y la total carencia de tripulacion:

Considerando lo difícil que seria proporcionar un buque de los Estados Unidos que quisiese encargarse de llevar los negros á la Habana:

Considerando igualmente que estos negros han alegado ante el tribunal de Connecticut no ser esclavos, y que el mejor medio de probar su alegato es colocarlos ante los tribunales de la Habana:

Desiendo, al propio tiempo, librar al Gobierno de la Union del embarazo de tener en prision á los expresados negros:

Me atrevo á suplicar á V. S. tenga á bien disponer el animo del Señor Presidente, afin de qué se sirva resolver se conceda al Gobierno de S. M. C. la proteccion que como buen amigo reclama en esta ocasion del de los Estados de la Union, reducida á poner á disposicion del Capitan General de isla de Cuba los negros hallados á bordo de aquella goleta, que tiene reclamados la legacion de España, transportandolos en un buque de estos Estados. El Gobierno de S. M. C., me atrevo á asegurar, recibirá este acto generoso como un favor muy particular, que servirá á estrechar los lazos de buena y reciproca amistad que felizmente reyna entre las dos naciones.

Yo, por mi parte, no dejaré de manifestar, confiado en la benevolencia de V. S. que será bien dichoso si puedo anunciar á mi Gobierno este nuevo testimonio de amistad, por el que desde ahora le doy anticipadamente las gracias.

Con este motivo, reitero á V. S. las seguridades de mi distinguida consideracion.

EL CABALLERO DE ARGAIZ.

Al honorable Señor JOHN FORSYTH.

The Chevalier de Argaiz to Mr. Forsyth.

[TRANSLATION.]

WASHINGTON, *December 30, 1839.*

SIR: In the conversation which I had with you on the morning of the day before yesterday, you mentioned the possibility that the court of Connecticut might, at its meeting on the 7th of January next, declare itself incompetent, or order the restitution of the schooner *Amistad*, with her cargo, and the negroes found on board of her; and you then showed me that it would be necessary for the legation of Her Catholic Majesty to take charge of them as soon as the court should have pronounced its sentence or resolution; and, although I had the honor to state to you that this legation could not possibly transfer the said negroes to Havana, still it appears proper for me now to declare that—

Considering that the schooner *Amistad* cannot make a voyage, on account of the bad condition in which she is, of her being entirely without a crew;

Considering that it would be difficult to find a vessel of the United States willing to take charge of these negroes, and to transport them to Havana; and, also, that these negroes have declared before the court of Connecticut that they are not slaves, and that the best means of testing the truth of their allegation is to bring them before the courts of Havana:

Being at the same time desirous to free the Government of the United States from the trouble of keeping the said negroes in prison, I venture to request you to prevail upon the President to allow to the Government of Her Catholic Majesty the assistance which it asks under the present circumstances from that of the United States, by placing the negroes found on board of the said schooner, and claimed by this legation, at the disposition of the Captain General of the island of Cuba, transporting them thither in a ship belonging to the United States. Her Catholic Majesty's Government, I venture to assert, will receive this act of generosity as a most particular favor, which would serve to strengthen the bonds of good and reciprocal friendship now happily reigning between the two nations.

I, for my own part, confiding in your kindness, do not hesitate to declare that I shall be most happy to be able to announce to my Government this new proof of friendship, for which I now, by anticipation, give thanks.

I repeat to you, sir, the assurances of my distinguished consideration,

THE CHEVALIER DE ARGAIZ.

Hon. J. FORSYTH, *Secretary of State.*

Mr. Forsyth to the Chevalier de Argaiz.

DEPARTMENT OF STATE,
Washington, January 6, 1840.

SIR: I have the honor to acknowledge the receipt of your note of the 30th ultimo, in which, anticipating an early decision by the circuit court of Connecticut in the case of the schooner "*Amistad*," you request that, as a particular favor to the Spanish Government, the President may be pleased, in the event of the decision of the court being favorable to the application of the Spanish legation for the surrender of the vessel, and the negroes and pro-

perty found on board, to place the negroes at the disposition of the Captain General of Cuba, and to grant the use of a vessel of the United States for the purpose of conveying them to that island.

Having laid your note before the President, I am instructed to state to you that, in the event of the decision of the circuit court of Connecticut, in the case referred to, being such as anticipated, the schooner "Amistad," which you represent as not being in a condition to go to sea, will, with such goods as were found on board, be delivered to any persons whom you may designate; and that, animated by that spirit of accommodation and reciprocal convenience which the President is anxious should ever characterize the relations between the two Governments, he will cause the necessary orders to be given for a vessel of the United States to be held in readiness to receive the negroes and convey them to Cuba, with instructions to the commander to deliver them to the Captain General of the island. The President has the more readily been inclined to accede to your request in this particular; on account of one of the leading motives which prompted you to make it: that the negroes, having asserted before the court of Connecticut that they are not slaves, may have an opportunity of proving the truth of their allegation before the proper tribunals of the island of Cuba, by whose laws alone, taken in connexion with circumstances occurring before the arrival of the negroes in the United States, the question of their condition can be legally decided. With a view to facilitate any steps which the authorities of Cuba may think fit to institute in the matter, by unquestionable testimony, as to the circumstances attending the arrival of the negroes in the United States, and the proceedings in our courts consequent thereon, the President has thought proper further to order that a complete record of those proceedings be prepared and forwarded to the Captain General of Cuba, by the officer who shall have charge of the negroes; and that Lieutenants Gedney and Meade, by whose agency, chiefly, those people were brought within our jurisdiction, shall proceed in the same vessel, for the purpose of offering to the local authorities their testimony, and the benefit of the knowledge they possess of the circumstances of the case. To aid those officers in the performance of the duty thus to be assigned to them, I request that you will furnish them, through this department, with letters of introduction to such of the colonial authorities as you may think proper; and, inasmuch as that for the purpose of their intended visit to Cuba they may be withdrawn from the discharge of their ordinary duties, I request further that you will express to the proper quarter the desire of the President that, if their testimony shall appear useful or important, it may be taken with as little delay as practicable, that they may be enabled soon to return to the United States.

Be pleased to accept the renewed assurances of my distinguished consideration.

JOHN FORSYTH.

The Chevalier DE ARGAIZ, &c., &c., &c.

Mr. Holabird to Mr. Forysth.

[EXTRACT.]

DISTRICT OF CONNECTICUT,
Office of District Attorney, Winchester, September 5, 1839.

SIR: You are undoubtedly apprized of the fact that the marshal of this district has in custody the Spanish schooner "Amistad," with her cargo

and 41 blacks, supposed to be slaves. A court of inquiry has been holden by the district judge of this district on board the schooner, and the blacks indicted for the murder of the captain and mate. It appears from the evidence that the blacks (slaves) were taken on board the schooner at a port in the island of Cuba, to transport to another port in the same island; when from seven to ten leagues out, they murdered the captain and mate, and took possession of the schooner, (27th or 28th of June.) On the 26th of August last they were discovered off Montauk point by the crew of the surveying brig Washington, commanded by Lieutenant Gedney, and by him boarded and brought into the port of New London, in this district. The blacks were committed, and are now in the jail at New Haven. The schooner and cargo have been libelled by Lieutenant Gedney and crew for salvage. The next term of our circuit court sits on the 17th instant, at which time I suppose it will be my duty to bring them to trial, unless they are in some other way disposed of. Should you have any instructions to give on the subject, I should like to receive them as soon as may be.

I am, very respectfully, your obedient servant,

W. S. HOLABIRD,
United States District Attorney.

HON. JOHN FORSYTH,
Secretary of State.

Mr. Holabird to Mr. Forsyth.

[EXTRACTS.]

"HARTFORD, (CONN.) *September 9, 1839.*

"SIR: I wrote you a few days since on the subject of the blacks taken on board the Spanish schooner 'Amistad.' Since then, I have made a further examination of the law on the subject of the jurisdiction of our courts, which has brought me fully to the conclusion that the courts neither of this nor of any other district in the United States can take cognizance of any offence they have committed, as the offence by them committed was done and committed on board a vessel belonging exclusively to citizens of a foreign State, on the high seas, and on and against subjects of a foreign State: and they (the blacks) not being citizens of the United States, the vessel having a national character at the time the offence was committed. I refer you to the case of the *United States vs. Palmer et al.*, 3 Wheat., p. 610; *United States vs. Pirates*, 5 Wheat., p. 195; and the more recent case of the *United States vs. Henry Kessler*, Baldwin, C. C. Rep. 15.

"I would respectfully inquire, sir, whether there are no treaty stipulations with the Government of Spain that would authorize our Government to deliver them up to the Spanish authorities; and, if so, whether it could be done before our court sits?"

Mr. Forsyth to Mr. Holabird.

DEPARTMENT OF STATE,
Washington, September 11, 1839.

SIR: Since the receipt of your letter of the 5th instant relative to the case of the Spanish schooner "Amistad," brought into the port of New Lon-

don on the 26th ultimo, by Lieutenant Gedney, of the surveying brig Washington, a communication has been addressed to this department by the minister of Her Catholic Majesty, claiming the vessel, cargo, and blacks on board as Spanish property, and demanding its immediate release. Mr. Calderon's application will be immediately transmitted to the President for his decision upon it, with which you will be made acquainted without unnecessary delay. In the mean time you will take care that no proceeding of your circuit court, or of any other judicial tribunal, places the vessel, cargo, or slaves beyond the control of the Federal Executive.

I am, sir, your obedient servant,

JOHN FORSYTH.

WM. S. HOLABIRD, Esq.,

United States Attorney for the district of Conn., Winchester.

Mr. Holabird to Mr. Forsyth.

DISTRICT OF CONNECTICUT,
Circuit Court, Hartford, September 21, 1839.

SIR: Your instructions on the subject of the negroes brought in in the Amistad was duly received on the day the session of the court commenced, and the contents thereof communicated to the court. As the court did not charge the grand jury at the opening of the court, I thought it my duty, and deemed it, as the matter stood, advisable to file bills of indictment against the negroes, and did so, for the murder of the captain and cook of the schooner, and also for piracy; also, with a view of carrying out your instructions, filed a libel in the district court against the negroes, in behalf of the United States, averring the fact that Her Catholic Majesty the Queen of Spain had demanded of the Government the surrendering, &c.; and also alleging that they were imported in violation of the law of 1819, prohibiting the importation of negroes from Africa, &c.; praying the court to decree that the marshal hold them subject to the order of the Federal Executive on the *one* claim or the *other*, as the facts should be found and warrant. Dons Pedro Montes and José Ruiz have also filed claims for such portions of the negroes and cargo as respectively belonged to them; the Spanish consul also filed a claim in behalf of the representatives of Captain Ferrer, deceased, for the schooner, and part of the cargo. A writ of *habeas corpus* was then prayed out in this court, in behalf of the negroes, by Tappan, &c. The grand jury, after two days of investigation, came into court with a finding of facts, to wit: That the schooner was owned by Captain Ferrer, a Spanish subject; sailed from Havana for the port of Guanaja, in the island of Cuba; third day out, the negroes murdered the captain and cook, and took possession of the schooner, &c.; and requested the court to charge them on the law, applicable to that state of facts. The court charged that they had jurisdiction of any offence they (the negroes) may have committed on board of that vessel. The *habeas corpus* has been under discussion the last two days. They take the ground that the district court has not jurisdiction; that the Federal Executive is not authorized to surrender the blacks, under the treaty stipulations with Spain, nor as fugitives from justice, under international law. The court probably entertain

doubts, as they have requested the case re-argued. The court will probably decide the question on Monday next.

I hope, sir, in case the Executive makes any order on the subject of the negroes, that you will give me early notice of it.

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

W. S. HOLABIRD,
United States District Attorney.

HON. JOHN FORSYTH,
Secretary of State.

Mr. Forsyth to Mr. Holabird.

DEPARTMENT OF STATE,
Washington, September 23, 1839.

SIR: It is necessary to a just decision on the various points presenting themselves for the President's consideration, in the case of the Spanish schooner "Amistad," that this department should be furnished with a copy of the ship's papers, together with a transcript of the proceedings of the court of inquiry held by the district judge on board the vessel, to which you refer in your letter of the 5th instant, and on which the blacks were imprisoned for the alleged murder of the captain and mate. I have, therefore, to request that you will transmit to me, with as little delay as practicable, copies of the papers, and of the evidence aforementioned.

I am, sir, your obedient servant,

JOHN FORSYTH.

W. S. HOLABIRD, Esq.,
U. S. Attorney for the Dist. of Conn., Hartford.

Mr. Holabird to Mr. Forsyth.

DISTRICT OF CONNECTICUT,
Office of District Attorney, Winchester, October 13, 1839.

SIR: Yours of the 23d ultimo, requesting copies of the papers of the "Amistad," together with a transcript of the proceedings of the court of inquiry held by the district judge on board the schooner, did not reach me until the 7th instant; since which time I have used every reasonable endeavor to possess myself of the papers of said schooner, without yet being able to obtain them, they having been retained by José Ruiz. I hope soon to be able to comply with your request.

The facts regarding the matter were not as fully disclosed at the court of inquiry as they afterwards were before the grand jury, at the circuit court.

On the 22d instant, in pursuance of the order of the court, I intend to make a particular examination of the place where the schooner lay when taken possession of by Lieutenant Gedney.

I am, sir, your obedient servant,

W. S. HOLABIRD,
U. S. District Attorney.

HON. JOHN FORSYTH,
Secretary of State.

Mr. Holabird to Mr. Forsyth.

NEW HAVEN, *November 5, 1839.*

SIR: I herewith send you copies of the papers found on board the Spanish schooner *Amistad* at the time she was taken. Also, a copy of the first warrant on which the blacks were committed.

You will find, by reference to my several letters written you since the commencement of the United States circuit court, on the 17th day of September last, an account of the proceedings which have been had on the matter. As a final decision is to be had on the third Tuesday of instant November, allow me to suggest that, if there is any action to be had on the part of the Government, with reference to the blacks, it is important that we be informed, either officially or unofficially, before the session of the court. As directed by the court, I have made an examination of the place where the *Amistad* lay at the time she was taken, and find her lying *clearly and decidedly* upon the high seas. She lay a little withinside of Montauk Point, in $3\frac{1}{2}$ to 4 fathoms water, and about three-fourths of a mile distance from the shore, there being no harbor, bay, or inlet, to protect her in the least.

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

W. S. HOLABIRD,
U. S. District Attorney Conn. Dist.

Hon. JOHN FORSYTH,
Secretary of State, Washington City.

COPIA DE LOS PAPELES ENCONTRADOS A BORDO DE LA AMISTAD.

Passport for J. Ruiz.

TENENCIA DE GOBIERNO DE PUERTO PRINCIPE,
14 de Junio de 1839.

Filiacion.	
Estatura - -	Concedo licencia á Don José Ruiz Carrios, vecino y del comercio de esta ciudad, para que en la goleta Española titulada <i>Amistad</i> , su patron Don Ramon Ferrer, se dirija á la Habana, con objeto de diligenciar asuntos de comercio, llevando su equipage, debiendo presentarse al juez territorial respectivo.
Edad - - -	
Color - - -	
Ojos - - -	
Nariz - - -	
Boca - - -	
Pelo - - -	
Cejas - - -	
Barba - - -	
Señales particulares	

Anotada : Guanaja, y Junio 15 de 1839.

VASQUES.

HABANA, *26 de Junio de 1839.*

Embarquese por marina en la goleta costera *Amistad*, del patron Ramon Ferrer.

P. A. D. A. Y.

JUAN RIVAS.

HABANA, y Junio 27 de 1839.

Se presentó el contenido en esta licencia y pasa á su destino. Espeleta—Derecho dos reales—una rubrica. Comandancia de Matriculas. Pasa en la goleta Amistad á la Guanaja, patron Ferrer.

MARTINEZ.

Passport for P. Montes.

TENENCIA DE GOBIERNO DE PUERTO PRINCIPE,
30 de Abril de 1839.

Filiacion.

Estatura - -
Edad - -
Color - -
Ojos - -
Nariz - -
Boca - -
Pelo - -
Cejas - -
Barba - -
Señales particulares

Concedo licencia á Don Pedro Montes, vecino y del comercio de esta ciudad, para que pase á la de Mantanzas en la goleta Amistad, su patron Don Ramon Ferrer, llevando su equipage, debiendo presentarse al juez territorial respectivo.

notada : Habana, 25 de Junio de 1839.

VASQUEZ.

HABANA, y Junio 27 de 1839.

Se presentó el contenido en esa licencia, y paso á su destino. Espeleta—Derecho dos reales—una rubrica. Comandancia de Matriculas. Pasa en la goleta Amistad a la Guanaja, patron Ferrer.

MARTINEZ.

Passport for 49 slaves belonging to J. Ruiz.

N. HABANA, 26 de Junio de 1839.

Filiacion.

Estatura - -
Edad - -
Color - -
Pelo - -
Frente - -
Cejas - -
Ojos - -
Nariz - -
Boca - -
Barba - -
Señales particulares

Concedo licencia á cuarenta y nueve negros ladinos, nombrados Antonio, Simon, Lucas, José, Pedro, Martin, Manuel, Andres, Eduardo, Celedonio, Bartolo, Ramon, Agustin, Evaristo, Casimiro, Melchor, Gabriel, Santorion, Escolastico, Pascual, Estanslao, Desiderio, Nicolas, Esteban, Tomas, Cosme, Luis, Bartolo, Julian, Frederico, Salustiano, Ladislao, Celestino, Epifaneo, Tiburio, Venancio, Felipe, Francisco, Hipolito, Benito, Ysidoro, Vicente, Dionisio, Apoloneo, Esequiel, Leon, Julio, Hipolito, y Zenon, de la propiedad de Don José Ruiz, para que pasen á Puerto Principe por mar, debiendo presentarse con esta al juez territorial respectivo.

Espeleta—Derecho dos reales—una rubrica. Comandancia de Matriculas. Pasan en la goleta Amistad á la Guanaja, patron Ferrer.
Habaña, y Junio 27 de 1839. MARTINEZ.

Passport for three slaves belonging to P. Montes.

N. HABANA, 22 de Junio de 1839.

Filiacion.		
Estatura	-	-
Edad	-	-
Color	-	-
Pelo	-	-
Frente	-	-
Cejas	-	-
Ojos	-	-
Nariz	-	-
Boca	-	-
Barba	-	-
Señales particulares		

Concedo licencia á tres negras ladinas, nombradas Juana, Francisca, y Josefa, de la propiedad de Don Pedro Montes, para que pasen á Puerto Principe por mar, debiendo presentarse con esta al juez territorial respectivo.

Espeleta—Derecho dos reales—una rubrica. Comandancia de Matriculas. Pasan en la goleta Amistad, á la Guanaja, patron Ferrer.
Habaña, y Junio 27 de 1839. MARTINEZ.

Protection for Celestino Ferrer.

Comandancia de Matriculas.

El mulato Celestino Ferrer, de la propiedad del matriculo José Ramon Ferrer, puede navegar en la goleta Amistad, que patronea su referido dueño, para atender á su servicio, sin perjuicio de llevar la correspondiente tripulacion.

Habaña, 17 de Julio de 1838—De los Andes, Agosto 17 de 1838; Octubre 22 de 1838; Diciembre 7 de 1838; Enero 19 de 1839; Febrero 25 de 1839; Abril 13 de 1839; Mayo 18 de 1839; Junio 27 de 1839.

Protection for Jacinto Verdagne.

Numero 9—folio 9—Lista No. 20 de Habiles Forasteros, Distrito de la Guanaja.

Don Nicolas de la Victoria, subdelegado de Cayo Romano, y ayudante interino de marina y matriculas del distrito y puerto de la Guanaja, certifico que Jacinto Verdagné, hijo de Francisco y de Esperanza Mayas, natural de Valasco de Mar, y vecino de la Guanaja, C. A. R.; estatura pequeña, ojos azules, pelo rubio, barba poca, color rosado, de edad de 22 años, estado soltero, se matriculó y alistó en clase de hombre de mar, en cinco de Diciem-

bre de 1825. En cuya virtud debe gozar las libertades, privilegios, y exenciones, concedidas por S. M., y conforme estan declaradas á sus reales consejos, cancellerias, audiencias, y justicias de todos los reynos y dominios. A cuyo efecto, le doy la presente en la Guanaja, á 1º de Febrero de 1839.

NICOLAS DE LA VICTORIA.

Abril 13 de 1839 ; Mayo 18 de 1839 ; Junio 27 de 1839.

Register of the Amistad, her clearance and passport, by all the authorities, for the crew and passengers, vessel, &c.

Folio 29, Lista 2a, Provincia de la Habana.

Don Antonio Gaston y Navarrete, caballero con cruz y placa de la real y militar orden de San Hermegildo, condecorado con las cruces de distincion de la Marina y Chiclana, capitán de navio de la real armada, comandante militar de las matriculas de esta provincia, y presidente del gremio de mercantes y pescadores por S. M., &c.: Concedo licencia al patron Ramon Ferrer, para que con la gotela Amistad, de porte de 45 toneladas y de la propiedad del patron, pueda hacer viage desde este puerto al de la Guanaja, con los compañeros Manuel Antonio Padilla, Jacinte Verdagné, Gabriel Matutes, el mulato Celestino, dos pasajeros por el Gobierno, sirviendo la presente para el termino de un viage, debiendo presentarse á los comandantes subdelegados militares de marina, ó cabos de matriculas, y á falta de estos á los cabos celadores, capitanes, tenientes, de partido, ó justicias ordinarios, á fin de que á continuacion anosen las entradas y salidas de los puertos á que transitare, y de no efectuarlo será castigado por la primera vez con la multa de cien pesos, y por la segunda ademas privado de patronear ningun buque, sino pudiese pagar la multa se comutará con un año de campaña en los buques de guerra, segun esta dispuesto por oficio del Señor Comandante General de este apostadero; y cumplida se ha de presentar á refrendarla, dando siempre noticia de cuantas novedades ocurran, debiendo observar con la mayor exactitud no llevar á su bordo ningun individuo sin escepcion de personas que no este incluso en la licencia.

Habana, 18 de Mayo de 1837 —Gratis—Gaston—Pase por Rs. Rs.—Santin—Pase por el buque abanzado—Geraldino—gratis.—Habana 18 de Mayo de 1839.—Pase por el castillo del Moro—Gratis—R. una rubrica—Comandancia de Matriculas—Lleva cuatro pasajeros mas por el Gobierno.—Habana 19 de Mayo, 1839.—De los Andes.

AYUDANCIA DE MARINA Y MATRICULAS.

Presentose el contenido patron sin novedad, y en los propios terminos se despacha para su destino, dejando en esta enfermo al compañero Gabriel Matutes, y tres pasajeros por el Gobierno.—Guanaja, Junio 15 de 1839. P. A. D. A. Y.—Juan Rivas—una rubrica—gratis—N. 3052—Page seis reales por derecho de toneladas. Habana, y Junio 21 de 1839. Ynt. Yune—Ve. Bo. Santin—una rubrica. Habana, y Junio 26 de 1839. Presentose Geraldino, gratis. Habana, y Junio 27 de 1839.—Presentose sin novedad—Martinez, Comandante de Matriculas.

Regresa á la Guanaja el patron y compañeros de esta licencia y cincuenta y cuatro pasajeros por el Gobierno. Habana, 27 de Junio de 1839.—Gaston—Pase por Rs. Rs.—Santin—Pase por el buque avanzado—Geraldino—gratis. Habana, 27 de Junio de 1839—Pase por el castillo del Moro—una rubrica, gratis—R.

Permit of the custom-house for shipping goods.

Administracion General de rentas reales maritimas de la siempre fidelissima ciudad de la Habana.—Permitase embarcar á Don Pedro Montes en la goleta Amistad, su patron Ferrer, con destino á Puerto Principe, los generos y efectos, siguientes: 190 piezas de muselina; 26 dhas. de listado; 3 dhas. de dril amarillo; cuatro dhas. yerbillas; 2 dhas. estopillas de colores; 1 dha. olan de Paris negro; 20 dhas. olancitos; 11 dozenas medias de muger; 2 dhas. cinturones; 4 dhas. panielos de olan batista; doce dhas. id. de olancito; 12 dhas. panielos de seda; siete dhas. medias de colores; dos dhas. peyneticas; 2 dhas. forforos; $\frac{1}{2}$ ar. jabon; $\frac{1}{2}$ id. de aqua Colonia; seis ar. polvos de rape; 2 qqs. jamon; 2 sacos arroz; 600 mancuanas cebollas; una suela; 4 camisas de olan batista, y 2 estampas viagraficas, que presentará en la Administracion de su destino libres de derechos, en cuya consecuencia no se le pondrá embarazo por los ministros de rentas en su conduccion. Habana, 26 de Junio de 1839.—Santin—Espedita—una rubrica. Cumplida—Agustini.

Otro permiso en los mismos terminos á Don Francisco Estrada, para embarcar 2 caxas machetes, 1 romana.

Otro á Don Alexandro Bastian, para 2 fardos de coti, conteniendo 15 piezas.

Otro á Don Ramon Ferrer, para 15 quintales tasajo, 15 caberas de suela, 6 barriles aceytunas, 2 qqs. jamon.

Otro al mismo, para 50 botejas aceyte, 20 caxas fideos.

Otro á Don Saturnino Carrias, para 200 caxas fideos de Cadiz.

Otro a Anglada Rivas y Ca., para 12 baquetas de Campeche, 20 dozenas caxas betun, 2 sillas de montar.

Otro á Don José de Armas, para 1 caja con 6 cuadros; 1 caxon con libros que contiene el Año Cristiano, Conversaciones con Trabajadores.

Otro á Don José Ramon de Aquiechi, para 1 caja con 70 planchas de cobre; 150 tornillos de cobre; 2 ar. de clavos de cobre; 7 lingotes de fierro y 1 boca de fornalla.

Otro á Don Ramon Bernejo, para 1 huacal de loza; 11 caxas de cristales y loza.

Otro á Ruiz de Villa, Martinez, y Ca., para 1 caja con 4 escopetas fulminantes; 1 id. cinco tomos del Instructor.

Otro á Don Antonio Brunet, para 25 sacos garvanzos; 25 caxas pasas; 20 caxas de jabon; 2 sacos arroz; 3 tercios tasajo; 50 esquifaciones.

Otro á Don José Ramon Aquiechi, para 6 tambores de fierro para trapiche; 8 coronas; 6 guijos; 1 cajon con 200 cuñas; 3 balderos de fierro.

Otro á Don Luis Cerunda, para 2 juegos de panillas; 3 dozenas de fornalla; 21 lingotes y 150 tornillos de bronce.

Otro á Don Tiburcio Sandoval, para 1 estriche de azucar para entregar al Señor Oidor Sandoval.

Otro á Don Ramon Bermejo, para 14 piezas de ruan; 4 piezas de olandas; 4 docenas de quitasoles; 30 piezas de muselinas de 10 yardas, y 2 docenas de medias medias.

Otro á Torriente Hermanos, para 10 docenas agarraderas de vidrio; 39½ millares agujas; 48 rollitos alambre; 45 botellas de escencia; 48 planos de Puerto Principe, de media caña; 13 id. sin media caña.

Otro á Don José Antonio Telleria, para 75 listados; 48 platillas; 30 estopillas clarines; 1 id. pañuelos negros; 7 id. olan de Paris; 8 docenas pañuelos de olan; 4 id. quitasoles de gineas; 2 id. de seda; 6 docenas pañuelos de Madras; 40 docenas cinta de hiladillo; 40 libras hilo; 20 piezas cintas catalanas; 6 mantas de punto.

Otro á Don José Valle, para 10 docenas marroquines; 5 docenas becerras; 5 sillas de montar; 2 docenas bocados; 2 gruesas bolas; 4 pares bocinas; 2 pares estribos; 6 pares de sopauderas; 1 dozana abauicos de fierro; 200 pies barilla; 2 juegos resoltes; 9 docenas clavos; 14 paquetes hilaza; 6 juegos cerchos; 20 cáberas de suela.

Otro á Don Ramon Bermejo, para 24 piezas de listados; 600 varas de punta; 40 piezas de olan batista; 800 varas de olando rayada; 4 piezas de cubria; 2 id. de merino; 12 docenas de abauicos; 100 libros de hilo; 30 cortes de tunico; 6 mosquiteros; 6 piezas de razo; 12 docenas medias medias; 18 id. de mantas; 7 id. de cucharas; 1 caja de quinvalleria; 12 docenas de pañuelos; 12 id. de floreros; 6 piezas bramante; 12 id. de creas; 40 tomos de libros de diccionarios, matematicas, autores Latinos, y Amigos de los Niños.

Otro á Arpe y Saca, para 90 piezas platillas; 2 victoria; 9 dril; 34 estopillas; 4 rengues; 54 zarasas; 5 puntas de bobinet; 14 musolina; 67 listado; 24 boletilla; 148 cintas de seda; 10 olan batista; 45 olancitos; 2 merinaque; 1 cotin; 4 ruan; 1 dozana chales; 1 dozana abanicos; 2 id. guantes; 1 id. camisas; 52 id. cinta de hiladillo; 50 id. hilo de carretes; 2 toallas; 1½ id. paraguas; 10½ id. aqua de Colonia; 6 docenas aceyte; 6 id. pernes; 29 cortes musolina; 16 mantas burato; 4 id. seda; 15 alfombra; 1 paquete cotores; 1 silla de monta; 2 ar. bacalas.

[TRANSLATION.]

PAPERS FOUND ON BOARD THE AMISTAD.

Passport for J. Ruiz.

OFFICE OF THE LIEUTENANT GOVERNOR OF PUERTO PRINCIPE,
June 14, 1839.

Description.	
Height	-
Age	-
Complexion	-
Eyes	-
Nose	-
Mouth	-
Skin	-
Eyebrows	-
Beard	-
Particular marks	-

I grant permission to Don Jose Ruiz Carrios, an inhabitant of this city, engaged to go to Havana on commercial business, carrying his baggage, in the Spanish schooner Amistad, Captain Don Ramon Ferrer, he being required to present himself before the respective territorial judges.

Noted: Guanaja, June 15, 1839.

VASQUEZ.

HAVANA, *June 26*; 1839.

He is to embark in the coasting schooner *Amistad*, Captain Don Ramon Ferrer.

P. A. D. A. Y.

JUAN RIVAS.

HAVANA, *June 27*, 1839.

The person named in this passport presented himself and proceeded on his business. Espeleta—Duty two reals—one stamp. Comandancia de Matriculas. He goes in the schooner *Amistad*, Captain Don Ramon Ferrer, to Guanaja. MARTINEZ.

Passport for P. Montes.

OFFICE OF THE LIEUTENANT GOVERNOR OF PUERTO PRINCIPE,
April 30, 1839.

Description.	
Height - -	I grant permission to Don Pedro Montes, an inhabitant of this city, engaged in trade, to go to the city of Matanzas, with his baggage, in the schooner <i>Amistad</i> , Captain Don Ramon Ferrer, he being required to present himself before the respective territorial judges.
Age - - -	
Complexion - -	
Eyes - - -	
Nose - - -	
Mouth - - -	
Skin - - -	
Eyebrows - -	
Beard - - -	
Particular marks	
Noted: Havana, <i>June 25</i> , 1839.	

HAVANA, *June 27*, 1839.

The person named in this passport presented himself and proceeded on his business. Espeleta—Duty two reals—one signature. Comandancia de Matriculas. He goes in the schooner *Amistad*, Captain Ramon Ferrer, to Guanaja. MARTINEZ.

*Passport for 49 slaves belonging to J. Ruiz.*HAVANA, *June 26*, 1839.

Description.	
Height - -	I grant permission to forty-nine sound negroes, named Antonio, Simon, Lucas, Jose, Pedro, Martin, Manuel, Andres, Edward, Celedonio, Bartolo, Ramon, Agustin, Evanisto, Casimiro, Melchior, Gabriel, Santorion, Escolastico, Pascual, Estanislao, Desiderio, Nicolas, Esteban, Tomas, Cosme, Luis, Bartolo, Julian, Frederico, Salustiano, Ladislao, Celestino, Epifaneo, Tiburcio, Venducio, Felipe, Hipolito, Benito, Isidoro, Vicente, Dionisio, Apoloneo, Fsequiel, Leon, Julio, Hipolito, and Zenon, all belonging to Don José Ruiz, to go to Puerto Principe by sea, they being required to present themselves before the respective territorial judges.
Age - - -	
Complexion - -	
Eyes - - -	
Nose - - -	
Mouth - - -	
Skin - - -	
Eyebrows - -	
Beard - - -	
Particular marks	

Espeleta—Duty two reals—one stamp. Comandancia de Matriculas.
They go in the schooner Amistad, Captain Ramon Ferrer, to Guanaja.
Havana, June 27, 1839. MARTINEZ.

Passport for three slaves belonging to P. Montes.

HAVANA, June 22, 1839.

Description.	
Height -	
Age -	
Complexion -	
Eyes -	
Nose -	
Mouth -	
Skin -	
Eyebrows -	
Beard -	
Particular marks	

I grant permission to three sound negro women, named Juana, Francisca, and Josefa, belonging to Don Pedro Montes, to go to Puerto Principe by sea, they being required to present themselves before the respective territorial judges.

Espeleta—Duty one real—one signature. Comandancia de Matriculas.
They go in the schooner Amistad, Captain Ferrer, to Guanaja.
Havana, June 27, 1839. MARTINEZ.

Protection for Celestino Ferrer.

COMANDANCIA DE MATRICULAS.

The mulatto Celestino Ferrer, belonging to the registered Captain Don Ramon Ferrer, has leave to sail in the schooner Amistad, commanded by his said master, in order to wait on him; the proper crew being, however, taken.

Havana, July 17, 1838; October 22, 1838; December 7, 1838; January 19, 1839; February 25, 1839; April 13, 1839; May 18, 1839; June 27, 1839.

Protection for Jacinto Verdagns.

No. 9—Sheet 9—List 2 of Naturalized Foreigners—DISTRICT OF GUANAJA.

I, Don Nicolas de la Victoria, sub-delegate of Cayo Romano, and acting adjutant of marine and registration of the district and port of Guanaja, do certify that Jacinto Verdagne, son of Francisco and Esperanza Mayas, a native of Valasco de Mar, and an inhabitant of Guanaja; of small stature, eyes blue, skin ruddy, little beard, color rosy, aged 22 years, unmarried, was registered and placed on the list of seamen on the 5th of December, 1825. In virtue whereof, he is to enjoy the liberties, privileges, and exemptions, grant-

ed by Her Majesty, and as set forth to her royal councillors, chancellors, audiencias, and courts of justice of all her kingdoms and dominions. In faith whereof, I give these presents in Guanaja, on the 1st of February, 1839.

NICOLAS DE LA VICTORIA.

April 13, 1839; May 18, 1839; June 27, 1839.

Register of the Amistad, her clearance and passport, by all the authorities, for the crew and passengers, vessel, &c.

Sheet 29—List 2d—PROVINCE OF HAVANA.

I, Don Antonio Gaston y Navarrete, knight with cross and hilt of the royal and military order of San Hermengildo, decorated also with the crosses of distinction of the navy and of Chiclana, captain of a ship in the royal navy, military commandant of registration of this province, and president of the corps of merchants and fishermen for Her Majesty, &c. &c., do grant permission to Captain Ramon Ferrer to sail in the schooner Amistad, of the burden of 45 tons, and belonging to the captain, from this port, to that of Guanaja, with his man Manuel Antonio Padilla, Jacinto Verdagne, Gabriel Matutis, the mulatto Celestino, two passengers for the Government: this being to serve until the termination of one voyage; he being required to present himself to the commandants military, subdelegates of the marine, and chiefs of registration, or in want of these to the chief of the stamps, captains, lieutenants of partidos, and ordinary judges, that they may hereupon note the arrival and departure at the ports in which the vessel may be, under penalty for the first offence of a fine of one hundred dollars, and for the second to be moreover deprived of the power of commanding any vessel, unless upon payment of the fine of commutation, with one year's service in a ship of war, as officially ordered by the commandant general of this station; and after complying with the above, he is to present it for countersignature, always giving notice of any particular occurrences, and being most careful to take no person on board, without exception, who is not included in this permission.

Havana, May 18, 1838—gratis—Gaston. Pass—Santin. Pass for the vessel advanced—Geraldino—gratis. Havana, May 18, 1839—Pass by the Moro Castle—gratis—one signature. Comandancia de Matriculas—Carries four passengers more for the Government. Havana, May 19, 1839—de los Andes.

OFFICE OF THE ADJUTANT OF MARINE AND REGISTRATION.

The captain herein named appeared with no remark to make; and every thing being in proper terms, he sets off for his destination, leaving his man Gabriel Matutis, and three passengers for the Government, at this place sick. Guanaja, June 15, 1839—P. A. D. A. Y.—Juan Rivas—one stamp—gratis. No. 3052—paid six reals tonnage duty. Havana, June 21, 1839.—Int. Yune—Good—Sañtin—one stamp. Havana, June 26, 1839—presented himself—Geraldino—gratis. Havana, June 27, 1839—appeared in order. Martinez—Comandancia de Matriculas.

The captain and crew mentioned in this passport, and fifty-four passengers for the Governemnt, returned to Guanaja. Havana, June 27, 1839—Gaston—Pass—Santin. Pass by the guard vessel—Geraldino—gratis. Havana, June 27, 1839—pass by the Moro Castle—one stamp—gratis.

Permits of the Custom-house for shipping goods.

General administration of royal maritime revenues of the ever faithful city of Havana.—Don Pedro Montes may put on board the schooner Amistad, Captain Ramon Ferrer, bound for Puerto Principe, the following goods and effects, viz: 190 pieces of muslin; 26 pieces of striped muslin; 3 pieces of yellow drilling; 4 pieces of yerbillas; 2 pieces of colored cambric; 1 piece of black Paris Hollands; 20 pieces of olancitos; 11 dozen of women's stockings; 2 dozen belts; 4 dozen cambric handkerchiefs; 12 dozen olancitos; $\frac{1}{2}$ dozen silk handkerchiefs; 7 dozen colored stockings; 2 dozen little combs; 2 dozen forforas; $\frac{1}{2}$ arroba of soap; $\frac{1}{2}$ arroba of Cologne water; 6 arrobas of rappee snuff; 2 quintals of bacon; 2 bags rice; 600 strings of onions; 1 hide; 4 cambric shirts, and two maps, which he is to present at the administration of the place to which he is bound, free from duty; and on so doing, is not to be required to pay duties of transport. Havana, June 26, 1839—Santin—issued—one stamp. Complied with—Agustini.

Another permit in the same terms to Don Francisco Estrada, to put on board 2 cases of cane knives and 1 steelyard.

Another to Don Alexandro Bastian, for 2 bales of cotton stuff, containing 15 pieces.

Another to Don Ramon Ferrer, for 15 quintals of junk; 15 hides; 6 barrels of olives, and 2 quintals of bacon.

Another to the same, for 50 bottles of oil, and 20 cases of macaroni.

Another to Don Saturnin Carrias, for 200 boxes of Cadiz macaroni.

Another to Anglada Rivas & Co. for 12 bales of logwood; 20 dozen boxes of blacking, and 2 saddles.

Another to Don Jose de Armas, for one box, with 6 pictures; one box of books, containing the Christian Year and Conversations with Laborers.

Another to Don Jose Ramon de Aguijechi, for one box, containing 70 plates of copper; 150 copper screws; 2 arrobas copper nails; 7 bars of iron, and one boca de fornalla.

Another to Don Ramon Bermejo, for one earthenware jar and 11 boxes of glass and earthenware.

Another to Ruiz de Villa Martinez & Co. for one box with 4 percussion guns, and one box containing five volumes of the Instructor.

Another to Don Antonio Burnet, for 25 bags of beans; 25 boxes of raisins; 20 boxes of soap; 2 bags of rice; 5 bundles of junk, and 50 esquifaciones.

Another to Don Jose Ramon Aguijechi, for 6 irons for sugar mills; 8 coronas; 6 quijos; 200 wedges; 3 iron kettles.

Another to Don Luis Cerunda, for 2 sets of parrillas; 3 dozen forrallas; 21 bolts and 150 screws of brass.

Another to Don Tibercio Sandoval, for one package of sugar, to be delivered to the Auditor Sandoval.

Another to Don Ramon Bermejo, for 14 pieces of Rouen; 4 pieces of Hollands; 4 dozen of parasols; 30 pieces of muslin, of 10 yards each, and 2 dozen stockings.

Another to Torriente Brothers, for 10 dozen glass knobs ; 39,500 needles ; 48 rolls of wire ; 45 bottles of essence ; 46 plans of Puerto Principe ; 13 other plans.

Another to Don Jose Antonio Telleria, for 75 striped pieces ; 48 platillas ; 30 pieces of cambric ; 1 piece of black handkerchiefs ; 7 of Paris cambric ; 8 dozen cambric handkerchiefs ; 4 dozen umbrellas, of gingham ; 2 dozen silk umbrellas ; 6 dozen Madras handkerchiefs ; 40 dozen rolls of ribbon ; 40 pounds of thread ; 20 pieces of Catalonia ribbons ; 6 net work cloaks.

Another to Don Jose Valle, for 10 dozen pieces of morocco ; 5 dozen of calf skin ; 5 saddles ; 2 dozen bits ; 2 gruesas bolas ; 4 pair bocinas ; 2 pair of stirrups ; 6 pair of leather springs ; 1 dozen avanicos de fierro ; 2 pair of springs ; 200 feet of barilla ; 9 dozen nails ; 14 packages of hilaza ; 6 pair of cerchas ; 20 cabezas de suela.

Another to Don Ramon Vernejo, for 24 pieces of striped stuff ; 600 yards of punta ; 40 pieces of cambric ; 800 yards of striped cambric ; 4 pieces of bombazine ; 2 pieces of merino ; 12 dozen of fans ; 100 pounds of thread ; 30 dress patterns ; 6 mosquito nets ; 6 pieces of satin ; 12 dozen pairs of stockings ; 18 dozen blankets ; 7 dozen spoons ; 1 box of hardware ; 12 dozen handkerchiefs ; 12 dozen flower vases ; 6 pieces of bramante ; 12 pieces of creas ; 40 volumes of books, such as dictionaries, books of mathematics, Greek and Latin authors, and the Children's Friend.

Another to Arpe & Saca, for 90 pieces of platillas ; 2 of victorias ; 9 of drill ; 34 of cambric ; 4 of gauze ; 54 of calico ; 5 of bobbinet ; 14 of muslin ; 67 of striped muslin ; 24 of coletilla ; 148 of silk ribbon ; 10 of cambric ; 45 of olancitos ; 2 merin aque ; 1 of ticking ; 4 of Rouen ; 1 dozen shawls ; 1 dozen fans ; 2 dozen gloves ; 1 dozen shirts ; 52 dozen ribbons ; 50 dozen of thread ; 2 of towels ; 1½ dozen umbrellas ; 10½ dozen bottles of Cologne water ; 6 dozen bottles of oil ; 6 dozen combs ; 29 muslin dresses ; 16 woollen blankets ; 4 silk do. ; 15 carpets ; 1 package of buttons ; a saddle, and 2 arrobas of codfish.

To the Marshal of the district of Connecticut, greeting :

Whereas, upon the complaint and information of the United States by William S. Holabird, district attorney of the United States for said district against Simon, Lucas, Joseph, Peter, Martin, Manuel, Andrew, Edward, Caledonio, Bartholomew, Raymond, Augustin, Evaristo, Casimir, Melchior, Gabriel, Santorion, Escolastico, Paschal, Stanislaus, Desiderio, Nicholas, Stephen, Thomas, Cosme, Louis, Bartholomew, Julian, Frederick, Sallustiano, Ladislao, Celestino, Epiphaneo, Tiburcio, Venducio, Philip, Hypolite, Benito, Isidore, Vincent, Dionysius, Apoloneo, Ezekiel, Leon, Julius, Hypolite, and Zenon, for the murder of Ramon Ferrer, on the 25th day of June, 1839, on the high seas, within the admiralty and maritime jurisdiction of the United States, it was ordered and adjudged by the undersigned that they, against whom said information and complaint was made, stand committed to appear before the circuit court of the United States for the district of Connecticut, to be holden at Hartford, in said district, on the 17th day of September, 1839, to answer to the said crime of murder, as set forth in said information and complaint.

You are therefore commanded to take the said persons named as above, and charged with said crime, and them safely keep in the jail in New Haven, in said district, and them have before the circuit court of the United States, to be holden at Hartford, in said district, on the 17th day of September, A. D. 1839. Hereof fail not, &c.

Dated at New London, August 29, 1839.

ANDREW P. JUDSON,

Judge of the United States for the district of Connecticut.

DISTRICT OF CONNECTICUT, ss.

Then I proceeded to arrest the within-named persons, but found they did not answer to the names set forth in this warrant, they being the names given them at Havana for the purpose of shipment, but found them to answer to the following names, to wit: Cinque, Barnah 1st, Jarpru, Demurah, Forrie 1st, Thumah, Wolwah, Tooch, Couomah, Choolay, Barnah 2d, Boali, Cabbah, Poomah, Rimbo, Pua, Bang-te-ah, Saah Coulu, Poule, Morrah, Yalonie, Nahquoe, Quahto, Lesse, Cen, Forrie 2d, Kennah, Larmance, Fajanah, Faah, Yahboy, Fahquanah, Berrie, Fawnie, Chackamaso, Gahbow, and Fasa, I therefore took the abovenamed persons into custody, and them committed to the custody and keeping of the jailer at New Haven, in said district; and left with the said jailer a true and attested copy of this warrant; and now, on this 17th of September, 1839, have them in my custody at Hartford, as within, except Fasa, who died September 3d, Faah, who died September 11th, and Wolwah, who died September 14, 1839.

NEW LONDON, August 29, 1839.

Attest:

NORRIS WILCOX,

United States Marshal for the district of Connecticut.

MARSHAL'S OFFICE, November 1, 1839.

The foregoing is a true copy of the original warrant, with my doings thereon endorsed.

Attest:

N. WILCOX, *Marshal.*

To the Marshal of the district of Connecticut, greeting:

Whereas; upon the complaint and information of the United States by William S. Holabird, Esq., district attorney of the United States for said district, against Simon and others, for the murder of Ramon Ferrer, on the 25th day of June, 1839, on the high seas, within the admiralty and maritime jurisdiction of the United States, it was ordered and adjudged that they, the said Simon and others, stand committed to appear before the circuit court of the United States for the district of Connecticut, to be holden at Hartford, in said district, on the 17th day of September, 1839, to answer to the crime as set forth in said complaint: and whereas Joanna, Frances, Ann, Josephine, and Anthony, witnesses for the United States in said information and complaint, were ordered by the undersigned severally to become recognised to the United States, with surety in the sum of one hundred dollars, to appear before said circuit court at the time and place above named, as witnesses to testify to the charge set forth in said complaint and informa-

tion; and they, and each of them, having neglected to become recognised as aforesaid, you are, therefore, commanded to take the said Joanna, Frances, Ann, Josephine, and Anthony, and them safely keep in the jail in New Haven in said district, and them have before the circuit court of the United States, to be holden at Hartford, in said district, on the 17th day of September, 1839. Hereof fail not, &c.

Dated at New London, August 29, 1839.

ANDREW P. JUDSON,
Judge of the U. S. for the District of Connecticut.

DISTRICT OF CONNECTICUT, ss:

Then I took into custody the within-named persons answering to the following names, to wit: Antonio, Time, Kine, Mahgra, and Carrii, and them committed into the custody and keeping of the keeper of the jail in New Haven, in said district of Connecticut; and left with said jailer a true and attested copy of this warrant; and now, on this 17th day of September, A. D. 1839, them have in my custody at Hartford, as within I am directed.

Attest:

NORRIS WILCOX,
U. S. Marshal for District of Connecticut.

NEW LONDON, August 29, 1839.

MARSHAL'S OFFICE, NEW HAVEN,
November 1, 1839.

The foregoing is a true copy of the original, with my doings thereon endorsed.

Attest:

N. WILCOX, *Marshal.*

Mr. Holabird to Mr. Forsyth.

DISTRICT OF CONNECTICUT,
Office of Dist. Att'y, Winchester, November 14, 1839.

SIR: I am under the necessity of asking for authority to draw on the marshal of the district for a reasonable sum, to enable me to employ assistant counsel in the case of the Amistad and negroes. My health is feeble; and if the matter is not disposed of by the Executive before our court sits, much is to be done. The fees allowed to the district attorney in this district are so small, that should I surrender all that could be taxed to my assistant counsel, it would not be considered really as any compensation. I named this subject to the President, at Albany; who remarked that, in case I found it necessary, I could make the application to you.

I am, sir, with great respect, your obedient servant,

W. S. HOLABIRD.

HON. JOHN FORSYTH,
Secretary of State.

Acting Secretary of State to Mr. Holabird.

DEPARTMENT OF STATE,
Washington, November 18, 1839.

SIR: Your letter of the 14th instant was, last evening, received at this department. The President, to whom it has been submitted, has in-

structed me to authorize you to employ an assistant counsel in the case of the Amistad, whose compensation, not to exceed two hundred dollars, will be determined by this department.

I am, sir, your obedient servant,

A. VAIL,
Acting Secretary of State.

W. S. HOLABIRD, Esq.,
Att'y U. S. for Dist. of Conn., New Haven.

Mr. Forsyth to Mr. Holabird.

DEPARTMENT OF STATE,

Washington, January 6, 1840.

SIR: YOUR letter of the 20th ultimo was duly received, and has been laid before the President. The Spanish minister having applied to this department for the use of a vessel of the United States, in the event of the decision of the circuit court in the case of the Amistad being favorable to his former application, to convey the negroes to Cuba, for the purpose of being delivered over to the authorities of that island, the President has, agreeably to your suggestion, taken in connexion with the request of the Spanish minister, ordered a vessel to be in readiness to receive the negroes from the custody of the marshal as soon as their delivery shall have been ordered by the court. As the request of the Spanish minister for the delivery of the negroes to the authorities of Cuba has, for one of its objects, that those people should have an opportunity of proving, before the tribunals of the island, the truth of the allegations made in their behalf in the course of the proceedings before the circuit court that they are not slaves, the President, desirous of affording the Spanish courts every facility that may be derived from this country towards a fair and full investigation of all the circumstances, and particularly of the allegation referred to with regard to the real condition of the negroes, has directed that Lieutenants Gedney and Meade be directed to proceed to Cuba, for the purpose of giving their testimony in any proceedings that may be instituted there in the premises; and that complete records of all those which have been had before the circuit court of your district, including the evidence taken in the cause, be, with the same view, furnished to the Spanish colonial authorities. In obedience to this last mentioned order, you will cause to be prepared an authentic copy of the records of the court in the case, and of all the documents and evidence connected with it, so as to have it ready to be handed over to the commander of the vessel which is to take out the negroes, who will be instructed as to the disposition he is to make of them.

With regard to the schooner Amistad, which the Spanish minister represents not to be in a condition to be sent to sea, and the goods found on board as part of her cargo, as the presumption is that the court will decree the same disposition of them as of the negroes, they are to remain in the custody of the marshal, to be delivered over to such person as the Spanish minister may appoint; subject, however, in case of their being sold in the United States, to the legal demands of the custom-house upon them.

I am, sir, your obedient servant,

JOHN FORSYTH.

W. S. HOLABIRD, Esq.,
Att'y U. S. for Dist. of Conn., New Haven.

Mr. Holabird to Mr. Forsyth.

NEW HAVEN, *January 11, 1840.*

Sir: Lieutenant Paine has shown me the Executive warrant to the marshal of this district for the delivery of the negroes of the Amistad, in which it is stated that they are now holden in custody under a process from the "circuit court;" and also, in his instructions, the same term is used. They are not holden under any order of the circuit court, but under an order from the *district court*, and should have been so stated in the warrant and instructions. Should the pretended friends of the negroes obtain a writ of habeas corpus, the marshal could not justify under that warrant.

The marshal wishes me to inquire whether, in the event of a decree by the court requiring him to release the negroes, or in case of an appeal by the adverse party, it is expected the Executive warrant will be executed; and requests your instructions on that subject.

I have deemed it my duty to despatch a messenger asking a correction of the aforesaid errors in the warrant and instructions, and your additional instructions on the points aforesaid, as requested by the marshal.

We are progressing with the trial. The evidence is all in, and the case will probably be submitted to the court to-day; and a decision will undoubtedly be had by the time the bearer will be able to return to this place.

In great haste, I am, sir, your obedient servant,

W. S. HOLABIRD,
United States District Attorney.

HON. JOHN FORSYTH,
Secretary of State.

Mr. Forsyth to Mr. Holabird.

[CONFIDENTIAL.]

DEPARTMENT OF STATE, *January 12, 1840.*

Sir: Your letter of the 11th instant has just been received. The order for the delivery of the negroes of the Amistad is herewith returned, corrected agreeably to your suggestion. With reference to the inquiry from the marshal, to which you allude, I have to state, by direction of the President, that, if the decision of the court is such as is anticipated, the order of the President is to be carried into execution, unless an appeal shall actually have been interposed. You are not to take it for granted that it will be interposed. And if, on the contrary, the decision of the court is different, you are to take out an appeal, and allow things to remain as they are until the appeal shall have been decided.

I am, sir, your obedient servant,

JOHN FORSYTH.

W. S. HOLABIRD, Esq.,
Attorney U. S., for Dist. of Connecticut.

Mr. Forsyth to Mr. Holabird.

DEPARTMENT OF STATE,
Washington, January 17, 1840.

SIR: The instructions in my communication of the 12th instant, in relation to the case of the *Amistad*, the decision of which has been received at this department, would probably supersede the necessity of any further directions as to the course left for you to pursue. For fear, however, that that communication should not have reached you, I have to acquaint you with the desire of the President that you take the necessary measures to carry the case, by appeal, to the circuit court, both on that branch of the decision which relates to the negroes, and that which grants salvage on the vessel and the goods found on board. That part which concerns the slave Antonio is not to be disturbed; and instructions will be forwarded to you, designating the parties to whom he is to be delivered up.

From information which has reached this department, there appears to be a disposition on the part of the parties interested in the vessel and cargo either to sell the property, and deposite the proceeds to abide the final issue of the case, or to ask the delivery of it on bond, to answer the same contingency. With a view to save the property from further loss by deterioration, you are desired to countenance any movement that may be made in this regard by the proper persons, taking care that the rights of all be effectually and equally protected; but no proposition, in this particular, is to be made by you without further instructions from this department, which will be given if the Spanish minister shall request them.

I am, sir, your obedient servant,

JOHN FORSYTH.

W. S. HOLABIRD, Esq., *Attorney*
U. S. District of Connecticut, New Haven.

Opinion of the Attorney General.

ATTORNEY GENERAL'S OFFICE, 1839.

SIR: I have the honor to acknowledge the receipt of yours of the 24th of September, in which, by direction of the President, you refer to this office the letter of the Spanish minister of the 6th of September, addressed to you; also, the letter of Seth P. Staples and Theodore Sedgwick, jr., Esqs., who have been engaged as counsel for the negroes taken on board the schooner *Amistad*, addressed to the President of the United States; and asking my opinion upon the different legal questions presented by these papers.

I have given to the subject all the consideration which its importance demands; and now present to you, and through you to the President, the result of my reflections upon the whole subject.

The following is the statement of facts contained in your communication: "The *Amistad* is a Spanish vessel; was regularly cleared from Havana, a Spanish port in Cuba, to Guanaja, in the neighborhood of Puerto Principe, another Spanish port; that her papers were regular; that the cargo consisted of merchandise and slaves, and was duly manifested as belonging to Don José Ruiz and Don Pedro Montes; that the negroes, after being at sea a few days, rose upon the white persons on board; that the captain, his slave, and two seamen, were killed, and the vessel taken possession of by the negroes; that two white Spaniards, after being

wounded, were compelled to assist in navigating the vessel, the negroes intending to carry her to the coast of Africa; that the Spaniards contrived by altering the course of steering at night, to keep her on the coast of the United States; that, on seeing land off New York, they came to the coast, and some of the negroes landed to procure water and provisions; that, being on the point of leaving the coast, the *Amistad* was visited by a boat from Captain Gedney's vessel, and that one of the Spaniards, claiming protection from the officer commanding the boat, the vessel and cargo, and all the persons on board, were sent into New London for examination, and such proceedings as the law of nations and of the United States warranted and required."

In the intercourse and transactions between nations, it has been found indispensable that due faith and credit should be given by each to the official acts of the public functionaries of others. Hence the sentences of prize courts under the laws of nations, or admiralty, and exchequer or other revenue courts, under the municipal law, are considered as conclusive as to the proprietary interest in, and title to, the thing in question; nor can the same be examined into in the judicial tribunals of another country. Nor is this confined to judicial proceedings. The acts of other officers of a foreign nation, in the discharge of their ordinary duties, are entitled to the like respect. And the principle seems to be universally admitted, that, whenever power or jurisdiction is delegated to any public officer or tribunal, and its exercise is confided to his or their discretion, the acts done in the exercise of that discretion, and within the authority conferred, are binding as to the subject-matter; and this is true, whether the officer or tribunal be legislative, executive, judicial, or special.—Wheaton's *Elements of International Law*, page 121; 6th Peters, page 729.

Were this otherwise, all confidence and comity would cease to exist among nations; and that code of international law, which now contributes so much to the peace, prosperity, and harmony of the world, would no longer regulate and control the conduct of nations. Besides, in this case, were the Government of the United States to permit itself to go behind the papers of the schooner *Amistad*, it would place itself in the embarrassing condition of judging upon the Spanish laws, their force, effect, and their application to the case under consideration.

This embarrassment and inconvenience ought not to be incurred. Nor is it believed a foreign nation would look with composure upon such a proceeding, where the interests of its own subjects or citizens were deeply concerned. In addition to this, the United States would necessarily place itself in the position of judging and deciding upon the meaning and effect of a treaty between Spain and Great Britain, to which the United States is not a party. It is true, by the treaty between Great Britain and Spain, the slave trade is prohibited to the subjects of each; but the parties to this treaty or agreement are the proper judges of any infraction of it, and they have created special tribunals to decide questions arising under the treaty; nor does it belong to any other nation to adjudicate upon it, or to enforce it. As, then, this vessel cleared out from one Spanish port to another Spanish port, with papers regularly authenticated by the proper officers at Havana, evidencing that these negroes were slaves, and that the destination of the vessel was to another Spanish port, I cannot see any legal principle upon which the Government of the United States would be authorized to go into an investigation for the purpose

of ascertaining whether the facts stated in those papers by the Spanish officers are true or not. Suppose, however, that the evidence contained in these papers should not be entitled to all the effect I have given it; would that change or alter the course which should be pursued by the Government? I think it would not; and a reference to the principles of international law, as approved and sanctioned by our judicial tribunals, will clearly show it. In the case of the *Antelope*, (10 Wheaton, page 66,) this subject was fully examined, and the opinion of the Supreme Court of the United States establishes the following points:

1. That, however unjust and unnatural the slave trade may be, it is not contrary to the law of nations.

2. That, having been sanctioned by the usage and consent of almost all civilized nations, it could not be pronounced illegal, except so far as each nation may have made it so by its own acts or laws; and these could only operate upon itself, its own subjects or citizens; and, of course, the trade would remain lawful to those whose Government had not forbidden it.

3. That the right of bringing in and adjudicating upon the case of a vessel charged with being engaged in the slave trade, even where the vessel belongs to a nation which has prohibited the trade, cannot exist. The courts of no country execute the penal laws of another, and the course of the American Government on the subject of visitation and search would decide any case in which that right had been exercised by an American cruiser, on the vessel of a foreign nation not violating our municipal laws, against the captors.

It follows, that a foreign vessel engaged in the African slave trade, captured on the high seas in time of peace, by an American cruiser, and brought in for adjudication, would be restored.

The opinions here expressed go far beyond the present case; they embrace cases where the negroes never have been within the territorial limits of the nation of which the claimant is a citizen. In this case, the negroes were in the island of Cuba, a portion of the dominions of Spain; they were there recognised and treated as property by the Spanish authorities of the island. And after this, in their transmission from the port of Havana to another Spanish port, the occurrence took place which has given rise to this investigation. This vessel was not engaged in the slave trade; she was employed lawfully in removing these negroes, as slaves, from one part of the Spanish dominions to another, precisely in the same way that slaves are removed, by sea, from one slave State to another in our own country. I consider the facts as stated, so far as this Government is concerned, as establishing a right of ownership to the negroes in question, in the persons in whose behalf the minister of Spain has made a demand upon the Government of the United States.

Under the statement of facts, another inquiry which presents itself, is, What power does the Government of the United States possess, or what jurisdiction has it for the purpose of trial and punishment, over the persons of these men of color, who are charged with having risen upon the captain and crew, and murdered the captain and part of the crew, and took the vessel under their own control?

If these acts, according to the principles of international law, or under the acts of the Congress of the United States, constitute or amount to piracy, then jurisdiction to try and punish belongs to the United States.

The question arises, Do these acts constitute piracy ?

“ Piracy is defined to be the offence of depredating on the seas, without being authorized by any sovereign State, or with commissions from different sovereigns, at war with each other.” “ Pirates being the common enemies of all mankind, and all nations having an equal interest in their apprehension and punishment, they may be lawfully captured on the high seas by the armed vessels of any particular State, and brought within its territorial jurisdiction for trial by its tribunals.”—Wheaton’s Elements of International Law, page 113.

Chancellor Kent, in his Commentaries, (vol. 1, page 183,) says, “ Piracy is robbery, or a forcible depredation, on the high seas, without lawful authority, and done *animo furandi*, and in the spirit and intention of universal hostility. It is the same offence at sea with robbery on land ; and all the writers on the law of nations, and on the maritime law of Europe, agree in this definition of piracy. Pirates have been regarded by all civilized nations as the enemies of the human race, and the most atrocious violators of the universal law of society. They are everywhere pursued and punished with death ; and the severity with which the law has unadverted upon this crime arises from its enormity and danger, the cruelty that accompanies it, the necessity of checking it, the difficulty of detection, and the facility with which robberies may be committed upon pacific traders in the solitude of the ocean. Every nation has a right to attack and exterminate them, without any declaration of war ; for though pirates may form a loose and temporary association among themselves, and re-establish, in some degree, those laws of justice which they have violated with the rest of the world, yet they are not considered as a national body, or entitled to the laws of war, as one of the community of nations. They acquire no rights by conquest, and the law of nations and the municipal law of every country authorize the true owner to reclaim his property taken by pirates, wherever it can be found ; and they do not recognise any title to be derived from an act of piracy. The principle, that a *piratis et latronibus capta dominium non mutant* is the received opinion of ancient civilians, and modern writers on general jurisprudence ; and the same doctrine was maintained in the English courts of common law prior to the great modern improvements made in the science of the law of nations.”

In the case of the United States against Smith, (5 Wheaton, page 153,) the Supreme Court of the United States clearly recognise the foregoing description and definitions of piracy, and state, *that the defendant in that case, and his associates, were, at the time of committing the offence, freebooters upon the sea, not under the acknowledged authority, or deriving protection from, the flag or commission of any Government ; and, therefore, the defendant was subject to trial within the United States.* From this language it may clearly be inferred that, had the vessel been sailing under the authority and flag of any particular Government, the defendant would *not have been* subject to trial in any court of the United States ; but that his case would have been exclusively within the jurisdiction of the tribunals of that State under whose commission, authority, or flag he was navigating his vessel. And in the case of the United States *vs.* Palmer, (3 Wheaton, page 610,) the Supreme Court of the United States expressly decided that the crime of robbery committed by a person on the high seas, on board of a ship belonging exclusively to subjects of a foreign

State, on persons in a vessel belonging exclusively to subjects of a foreign State, was not piracy under the act of Congress approved on the 30th of April, 1790, and was not punishable in the courts of the United States. In the case now before me, the vessel is a Spanish vessel, belonging exclusively to Spaniards, navigated by Spaniards, and sailing under Spanish papers and flag, from one Spanish port to another. It therefore follows, unquestionably, that any offence committed on board is cognizable before the Spanish tribunals, and not elsewhere.

These two points being disposed of—1st. That the Government of the United States is to consider these negroes as the property of the individuals in whose behalf the Spanish minister has put up a claim; 2d. That the United States cannot proceed against them criminally;—the only remaining inquiry is, what is to be done with the vessel and cargo? the negroes being a part of the latter.

A case like the present is not embraced by any of the legal provisions contained in the different acts of Congress, so as to justify this Government, in any of its departments, to act upon it for the purpose of transporting these negroes to Africa. In the construction of the different acts of Congress in relation to the "slave trade," it is to be observed that the statutes operate only where our municipal jurisdiction might be applied, consistently with the general theory of international law, to the persons of our citizens or to foreigners on board of American vessels.—1 Kent's Commentaries, page 182; 3 Wheaton, page 610.

And, it may be added, that those acts would operate, of course, upon all persons who might violate them within the limits of the United States. But the claimants of these negroes have violated none of our laws. They are within the limits of the United States, to be sure, with their own consent; but that consent resulted from, and was produced by, circumstances so imperious and overruling in their nature, as to have left them no choice. They have not come within our territories with the view or intention of violating the laws of the United States; nor had they, before their arrival within the waters of the United States, been guilty of an infraction of them. They have not introduced these negroes into the United States for the purpose of sale, or holding them in servitude within the United States; so far from any illegal intention or design to violate the laws of the United States being established upon the claimants, the case clearly shows that not only no violation of our laws has been committed, but no such violation was in contemplation. It therefore appears to me that this subject must be disposed of upon principles of international law and the existing treaties between Spain and the United States.

It would scarcely be doubted that, under the law of nations, property rescued from pirates or robbers by a vessel belonging to a friendly Power, and brought into a port of that friendly Power, would be restored to the rightful owners; and this, without any treaty stipulation.

The 9th article of the treaty between Spain and the United States, dated 27th October, 1795, (which has been continued in force by a subsequent treaty,) is as follows: "All ships and merchandise of what nature soever, which shall be rescued out of the hands of any pirates or robbers on the high seas, shall be brought into some port of either State, and shall be delivered to the custody of the officers of that port, in order to be taken care of, and restored entire to the true proprietor, as soon as due and sufficient proof shall be made concerning the property thereof."

This makes the case much stronger in favor of the Spanish claimants. There can be no difference, in reason, whether the vessel be captured on the high seas, or within our own waters or ports; because, if captured on the high seas, they are to be brought into port and delivered into the custody of the appropriate public officers; and if captured after having already come into a port, they should be treated in like manner. It therefore seems to me that this case is clearly within the spirit and meaning of the 9th article, and that the vessel and cargo should be restored entire, so far as practicable.

My opinion further is, that the proper mode of executing this article of the treaty, in the present case, would be for the President of the United States to issue his order, directed to the marshal in whose custody the vessel and cargo are, to deliver the same to such persons as may be designated by the Spanish minister to receive them. The reasons which operate in favor of a delivery to the order of the Spanish minister are—

1. The owners of the vessel and cargo are not all in this country, and, of course, a delivery cannot be made to them.

2. This has become a subject of discussion between the two Governments, and, in such a case, the restoration should be made to that agent of the Government who is authorized to make, and through whom the demand is made.

3. These negroes are charged with an infraction of the Spanish laws; therefore, it is proper that they should be surrendered to the public functionaries of that Government, that if the laws of Spain have been violated, they may not escape punishment.

4. These negroes deny that they are slaves; if they should be delivered to the claimants, no opportunity may be afforded for the assertion of their right to freedom. For these reasons, it seems to me that a delivery to the Spanish minister is the only safe course for this Government to pursue.

I have the honor to be, with great respect, your humble servant.

HON. JOHN FORSYTH,
Secretary of State.

Messrs. Staples and Sedgwick to the President of the United States.

NEW YORK, *September 13, 1839.*

SIR: We have been engaged as counsel of the Africans brought in by the Spanish vessel, the *Amistad*; and, in that capacity, take the liberty of addressing you this letter.

These Africans are now under indictment in the circuit court of the second circuit on a charge of piracy, and their defence to this accusation must be established before that tribunal. But we are given to understand, from authority not to be doubted, that a demand has already been made upon the Federal Government, by the Spanish minister, that these negroes be surrendered to the authorities of his country; and it is on this account that we now address you.

We are also informed that these slaves are claimed under the 9th article of the treaty of 1795, between this country and Spain, by which all ships and merchandise rescued out of the hands of pirates and robbers on

the high seas are to be restored to the true proprietor, upon due and sufficient proof.

We now apply to you, sir, for the purpose of requesting that no order may be made by the Executive until the facts necessary to authorize its interposition are established by the judicial authority in the ordinary course of justice. We submit that this is the true construction of the treaty; that it is not a mere matter of Executive discretion; but that, before the Government enforces the demand of the Spanish claimant, that demand must be substantiated in a court of justice.

It appears to us manifest that the treaty could never have meant to have submitted conflicting rights of property to mere official discretion, but that it was intended to subject them to the same tribunals which, in all other cases, guard and maintain our civil rights. Reference to the 7th article, in our opinion, will confirm this position.

It will be recollected that, if we adopt this as the true construction of the treaty, should any occasion ever arise when our citizens shall claim the benefit of this section, Spain would be at liberty to give it the same interpretation; and that the rights of our citizens will be subjected to the control of subordinate ministerial agents, without any of those safeguards which courts of justice present for the establishment of truth and the maintenance of rights. We submit, further, that it never could be intended that the Executive of the Union should be harassed by the investigation of claims of this nature, and yet, assuredly, if the construction contended for be correct, such must be the result; for, if *he* is to issue the order upon due and sufficient proof, the proof must be sufficient to *his* mind.

We further submit that, in regard to the Executive, there are no rules of evidence nor course of proceeding established; and that, in all such cases, unless the claimant be directed to the courts of justice, the conduct of the affair must, of necessity, be uncertain, vague, and not such as is calculated to inspire confidence in the public or the parties. We can find nothing in the treaty to warrant the delivery of these individuals as offenders; and the Executive of the Union has never thought itself obliged, under the law of nations, to accede to demands of this nature.

These suggestions are of great force in this case, because we, with great confidence, assert, that neither according to the law of this, nor that of their own country, can the pretended owners of these Africans establish any legal title to them as slaves.

These negroes were, it is admitted, carried into Cuba, contrary to the provisions of the treaty between Spain and Great Britain of 1817, and of the orders made in conformity therewith; orders which have been repeated, at different times, to as late a date as the 4th November, 1838, by which the trade is expressly prohibited; and if they had been taken on board the slaver, they would have been unquestionably emancipated.

They were bought by the present claimants, Messrs. Ruiz and Montes, either directly from the slaver, or under circumstances which must, beyond doubt, have apprized them that they were illegally introduced into the Havana; and on this state of facts we, with great respect, insist that the purchasers of Africans illegally introduced into the dependencies of a country which has prohibited the slave trade, and who make the purchase with knowledge of this fact, can acquire no right. We put the matter on the Spanish law; and we affirm that Messrs. Ruiz and Montes have no title, under that law, to these Africans.

If this be so, then these negroes have only obeyed the dictates of self-defence. They have liberated themselves from illegal restraint, and it is superfluous to say that Messrs. Ruiz and Montes have no claim whatever under the treaty.

It is this question, sir, fraught with the deepest interest, that we pray you to submit for adjudication to the tribunals of the land. It is this question that we pray may not be decided in the recesses of the cabinet, where these unfriended men can have no counsel and can produce no proof, but in the halls of Justice, with the safeguards that she throws around the unfriended and the oppressed.

And, sir, if you should not be satisfied with the considerations here presented, we then submit that we are contending for a right upon a construction of a treaty; that this point, at least, should be presented to the courts of justice; and, should you decide to grant an order surrendering these Africans, we beg that you will direct such notice of it to be given, as may enable us to test the question as we shall be advised, by habeas corpus or otherwise.

We have only, sir, to add, that we have perfect confidence that you will decide in this matter with a single regard to the interests of justice and the honor of the country, and that we are, with the greatest respect, your most obedient servants,

SETH P. STAPLES.

THEODORE SEDGWICK, JR.

MARTIN VAN BUREN, Esq.,

President of the United States.

The Secretary of State to Mr. Butler.

DEPARTMENT OF STATE,

Washington, October 24, 1839.

SIR: The Spanish minister has applied to this department for its interposition in procuring the release from arrest of José Ruiz and Pedro Montes, two Spanish subjects, arrested and imprisoned at the suit of certain Africans. As this appears to be a civil suit before the ordinary local courts of law, the interference asked by the Spanish minister cannot, of course, be afforded; but as the case obviously grows out of the arrival of the Amistad, and the landing of the Africans on board, within our jurisdiction, now under consideration, the President, thinking that your agency might be useful to Messrs. Ruiz and Montes, desires you to put yourself in communication with those gentlemen, and to offer them your advice (and your aid, if necessary) as to any measure which it may be proper for them to take to obtain their release, and any indemnity to which, under our laws, they may be entitled for their arrest and detention.

I am, sir, your obedient servant,

JOHN FORSYTH.

B. F. BUTLER, Esq.,

Att'y U. S. for South. Dist. of New York.

Mr. Butler to the Secretary of State.

UNITED STATES DISTRICT ATTORNEY'S OFFICE,

New York, October 28, 1839.

SIR: Enclosed I have the honor to hand you copies of letters this day addressed by me to Mr. José Ruiz, and to his attorney and counsel, Mr.

Purroy, in compliance with the instructions contained in your letter of the 24th instant. I need not, I hope, assure you that all the aid which it may be in my power to render to Mr. Ruiz, and also to Mr. Montes, (who has been discharged from arrest,) should he need my services, will be promptly afforded.

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

B. F. BUTLER,
United States Attorney.

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

—
UNITED STATES DISTRICT ATTORNEY'S OFFICE,
New York, October 28, 1839.

SIR: Enclosed is a letter, offering to Mr. Ruiz any advice and aid in my power in relation to his arrest and imprisonment in this city, written by me pursuant to instructions this day received from the Secretary of State of the United States.

I transmit it to you, because I understand that you are counsel for Mr. Ruiz in the suit brought against him, and I will thank you to cause it to be conveyed to him without delay. I am instructed to make the like offer in respect to Mr. Montes; but deem it unnecessary to do so, because I perceive, by the public prints, that he has been discharged from arrest. As you are also counsel for Mr. Montes, I will be greatly obliged to you, should I be mistaken in this impression, and should he need my services, for information to that effect.

Very respectfully, your obedient servant,

B. F. BUTLER,
United States Attorney.

JOHN B. PURROY, Esq.,
Counsellor at Law, New York.

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UNITED STATES DISTRICT ATTORNEY'S OFFICE,
New York, October 28, 1839.

SIR: By a communication this day received by me from the Secretary of State of the United States, I am informed that the Spanish minister has applied to the Department of State for its interposition in the matter of your imprisonment in this city. As the suit against you appears to be one of a civil nature, before the local courts of law, the Government of the United States cannot interfere in the manner requested; but I have been instructed by the Secretary to put myself in communication with you, and to offer you any advice and aid which may be in my power, and which may be necessary and proper to obtain your release, and any indemnity to which, under our laws, you may be entitled for your arrest and detention. This offer I have now the honor to make; and whenever I may be called on in your behalf, I will give such attention as may be in my power to your interests.

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

B. F. BUTLER,
United States Attorney.

Mr. JOSE RUIZ, *New York.*

Acting Secretary of State to Mr. Butler.

DEPARTMENT OF STATE,
Washington, November 9, 1839.

SIR: I transmit to you, by direction of the President, the translation of another note from the Spanish minister, respecting the arrest of Ruiz and Montes. It is the desire of the President that you should inform this department of the state of the proceedings in that case; and state whether there is, within your knowledge, any thing that the Government can further do on this branch of the subject.

I am, sir, respectfully, your obedient servant,

A. VAIL,
Acting Secretary of State.

B. F. BUTLER, Esq., *Attorney U. S.,*
for Southern Dist. of New York.

Enclosure.—Note of the Chevalier de Argaiz, of the 5th November, 1839.

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Mr. Butler to Mr. Vail.

U. S. DISTRICT ATTORNEY'S OFFICE,
New York, November 18, 1839.

SIR: In reply to the inquiries made in your letter of the 9th instant, I have the honor to make the following statement:

On the day after the interview with the Spanish minister, referred to in his letter of the 5th of November, I visited Mr. Ruiz at the jail, and obtained from him all the material facts of his case. Immediately after this, I had a conference with Mr. Purroy, the counsel of Mr. Ruiz, by whom the application for the discharge of the defendants had been made and argued before the State courts, and received from him a copy of the papers, and a full statement of his proceedings.

In my subsequent reflections on the subject, and upon connecting the statements of Mr. Purroy with some facts stated to me by Mr. Ruiz, I thought it advisable to inquire into the laws of Cuba, in relation to several particulars which had not been adverted to in the papers and argument, and so informed Mr. Purroy. Fortunately, we obtained the assistance of a very competent Spanish lawyer, recently from Havana, where he had been for many years a judge, from whom we received the needed information. It did not, however, enable us to see any new ground for again asking for the discharge of the defendant; and it was therefore decided by Mr. Purroy and myself that the only course to be pursued, whether Mr. Ruiz gave bail to the actions, or remained in prison, was to require the plaintiffs to file their declarations, and to proceed to trial at the earliest possible day. This we shall accordingly do; and if the facts communicated to me by Mr. Ruiz shall be proved, (as I think they may be,) it is not at all probable that the plaintiffs can succeed in obtaining a verdict; indeed, I think it exceedingly doubtful whether it is in the power of the plaintiffs to produce sufficient evidence on their part to put the defendant to the necessity of a defence.

Under these circumstances, and as the bail which would be required in the three suits pending against Mr. Ruiz would not exceed \$1,000, and as I cannot think it probable that any further suits would be instituted

against him, I have thought that he had better give the bail, which could be easily procured, and, with the concurrence of Mr. Purroy, have so advised. Mr. Ruiz, however, for various reasons, and, among others, under the hope that his deliverance might be effected through the intervention of the Government of the United States on the application of the Spanish minister, has hitherto declined giving bail, and is, therefore, yet in prison.

In regard to the question, whether the Government can do any thing farther on this branch of the subject, I can only reply, that, after a very careful consideration of the facts, and of the views submitted to me by the Spanish minister, I cannot see that any further step can at present be taken by the United States for the benefit of Mr. Ruiz. It does not appear to me that any question has yet arisen under the treaty with Spain; because, although it is an admitted general principle, that neither the courts of this State, nor those of the United States, can take jurisdiction of criminal offences committed by foreigners within the territory of a foreign State, yet it is equally settled in this country, that our courts will take cognizance of *civil* actions between foreigners transiently within our jurisdiction, founded upon contracts or other transactions made or had in a foreign State, provided, by the laws of such foreign State, the like civil action could have been brought in the courts of that State. It was precisely to this last point that I called the attention of the Spanish lawyer, whom we consulted; and, as he informed me that it was competent for a person, having a capacity to sue, in the courts of Cuba, to maintain a *civil* action for assault and false imprisonment, I could not doubt the capacity of our courts to entertain the like suit. Whether the personal relations between the parties to the present actions are such as to prevent the maintaining of any such suit, is a question which involves the whole merits of the controversy, and which the judges have already decided cannot be settled *in limine*.

Should any question bearing on this point, or on any other involved in the case, arise upon the trial, under the treaty with Spain, it will, of course, be distinctly presented by me; and, if the decision be adverse, I shall advise the proper measures to carry it to the higher tribunals, and ultimately, if needful, to the Supreme Court of the United States, under the 25th section of the judiciary act of 1789.

I am, sir, &c.,

B. F. BUTLER,
United States Attorney.

TO AARON VAIL, Esq.,
*Acting Secretary of State United States,
Washington City.*

Memorandum from the Department of State to the Secretary of the Navy.

DEPARTMENT OF STATE, *January 2, 1840.*

The vessel destined to convey the negroes of the Amistad to Cuba, to be ordered to anchor off the port of New Haven, Connecticut, as early as the 10th of January next, and be in readiness to receive said negroes from the marshal of the United States, and proceed with them to the Havana, under instructions to be hereafter transmitted.

Lieutenants Gedney and Meade to be ordered to hold themselves in readiness to proceed in the same vessel, for the purpose of affording their testimony in any proceedings that may be ordered by the authorities of Cuba in the matter.

These orders should be given with special instructions that they are not to be communicated to any one.

The Secretary of the Navy to the Secretary of State.

NAVY DEPARTMENT, *January 3, 1840.*

SIR: I have the honor to state that, in pursuance of the memorandum sent by you to this department, the United States schooner Grampus, Lieutenant Commanding John S. Paine, has been ordered to proceed to the bay of New Haven, to receive the negroes captured in the Amistad. The Grampus will probably be at the point designated a day or two before the 10th instant, and will there await her final instructions in regard to the negroes.

Lieutenants Gedney and Meade have been ordered to take passage in the Grampus for Havana, to give testimony there respecting the capture of the Amistad.

I am, very respectfully, your obedient servant,

J. K. PAULDING.

Hon. JOHN FORSYTH,
Secretary of State.

The Secretary of State to the Secretary of the Navy.

DEPARTMENT OF STATE,
Washington, January 7, 1840.

SIR: I have received your letter of the 3d instant, stating that, agreeably to a memorandum furnished you from this department, orders had been given to Lieutenant Commanding John S. Paine, of the schooner Grampus, to proceed off the port of New Haven, and be in readiness to receive on board his vessel the negroes of the Spanish schooner Amistad, for the purpose of conveying them to Cuba, in the event of their delivery being adjudged by the circuit court, before whom the case is pending. It will be expedient for Lieutenant Paine, on his arrival off New Haven, to place himself in communication with Mr. W. S. Holabird, the attorney of the United States for the district of Connecticut, to whom corresponding instructions have been given, in order that he may receive the earliest information of the decision of the court, and advise with him as to the mode of carrying it into effect. I enclose an order from the President to the marshal of the district, directing him to place the negroes at the disposition of Lieutenant Paine, who, on being informed of the decision of the court, will serve it upon the marshal. Lieutenant Paine will likewise receive from the district attorney an authenticated copy of the records, documents, and evidence in the case, which he will convey to Cuba, to be used by the authorities of the island in any proceedings which they may institute in relation to it. - On his arrival at Havana, he will give notice of it to the consul, with the enclosed letter, explanatory of the object of his visit; and will, in every re-

spect, conform with such suggestions as he may receive from him with regard to the delivery of the negroes and papers to the authorities of the island. In a letter addressed by this department to the Spanish minister, his interference with the authorities of Cuba has been requested, in order that such testimony as it may be desirable to obtain from Lieutenants Gedney and Meade be taken as speedily as possible.

It is hoped, therefore, that those officers will be detained but a short time at Havana, and that they may return in the *Grampus*, if it shall suit the convenience of the Navy Department to afford them a passage home in that vessel.

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

JOHN FORSYTH.

HON. JAMES K. PAULDING,
Secretary of the Navy.

The marshal of the United States for the district of Connecticut will deliver over to Lieutenant John S. Paine, of the United States navy, and aid in conveying on board the schooner *Grampus*, under his command, all the negroes, late of the Spanish schooner *Amistad*, in his custody, under process now pending before the circuit court of the United States for the district of Connecticut. For so doing, this order will be his warrant.

Given under my hand, at the city of Washington, this 7th day of January, A. D. 1840.

M. VAN BUREN.

By the President :

JOHN FORSYTH, *Secretary of State.*

(To be annexed to Doc. 185.)

SPANISH SCHOONER L'AMISTAD.

JULY 2, 1840.

Laid before the House by the chairman of the Committee on Foreign Affairs.

WASHINGTON, 22 de Octubre, de 1839.

El infrascrito, enviado extraordinario y ministro plenipotenciario de S. M. Católica tiene, la honra de recordar à S. S. el Señor Secretario de Estado del Gobierno General de la Union, que su antecesor le pasó una nota su fecha 6 de Setiembre ultimo, en la cual refirió el suceso entonces reciente y notorio, de la captura de la goleta Amistad, manifestó su agradecimiento por la conducta observada por el Capitan Thomas A. Gedney, y demas oficiales del bergantin de guerra Washington, y pasó en seguida a hacer su reclamacion, devida en cuatro puntos, apoyandse en el tratado vigente de 1775, y mas particularmente en los articulos 3, 9, y 10 de dicho tratado, que quedaron en toda su fuerza y vigor por la declaracion, ad hoc, del articulo 12 del tratado de 1819. Seria ocioso, y aun molesto, repetir en este escrito los cuatro dichos puntos, y el tenor de estos tres articulos. Añadiré aquel ministro varias consideraciones politicas de mucho peso, si su reclamacion hubiese podido necesitar de mas apoyo que el claro é innegable derecho que le concedia el tratado. Desde aquel momento hasta el 27 de Setiembre, dia en que cesó en sus funciones; no dió mas paso en este asunto. La misma conducta observaba el infrascrito, y se proponia observar, esperando con confianza la resolucion definition de este Gobierno, que podia si dilatarse, pero jamas temerse no fuese en un todo aneglada à la justicia. Doloroso le es, por tanto, al abajo firmado verse obligado à cambiar su marcha y el Señor Secretario de Estado se persuadirá facilmente, que para ello debe haber mediado algun nuevo incidente. Este del que ya han hablado los periodicos de New York, y posteriormente los demas de estos Estados ha sido el aprisionamiento de los Señores Don José Ruiz y Don Pedro Montes en la carcel publica de Nueva York. Adjunta hallará S. S. copia de siete documentos relativos à este acontecimiento y son los siguientes:

Nos. 1, 2, y 3.—Declaraciones de tres hombres de color apresados en la goleta Amistad.

Nos. 4 y 5.—Juramento de los Señores Lewis Tappan y George R. Barker.

Nos. 6 y 7.—Antos de prision firmados por Theodore Sedgwick, jun., Joseph Hoxie, y C. A. Clinton, clerk.

Cuya devolucion reclama el abajo firmado, despues que S. S. se haya enterado de su contenido ú ordenado sa car copia de ellos.

Facil seria demostrar la ilegalidad de este arresto, cuyo anto ha sido tal vez arrancado por supresa del attorney; del mismo modo que seria facil demostrar la ignorancia del juramentado Tappan, al asegurar que el Ruiz es conocido por el nombre de Pipi (en Ingles pai pai) cuando en toda España sera como todos los Josés conocido por el diminutivo de Pepe; y de

agui resulta haber sido preso *un Pepe* en vez de *un Pipi*, lo que no creo permite la ley. En cuanto à las declaraciones de los hombres de color, seria aun mucho mas facil demostrar la poca exactitud; mas este no es el animo del representante de S. M. C. quien, suponiendo por un instante, fuesen exactas las quejas que ellos presentan, pregunta? De don de le viene à ningun tribunal extranjero la facultad de juzgar delitos ó faltas, cometidos fuera de su jurisdiccion? Cuands se cometieron estas? La goleta Amistad dió la vela de la Havana, el 28 de Junio à las 4 de la tarde, en la noche del 30 del mismo mes, los deponentes eran ya dueños del buque, y Ruiz y Montes sino sus esclavos à lo menos sus cautivos. Luego si estos han cometido faltas si les han hecho ofensas, ó ha sido en la Habana, ó en los dos primeros dias de navegacion y en ambos casos, sola à los tribunales que administran justicia en nombre de S. M. C. es à los que pertenece juzgarlas, pues si se han cometido es solamente bajo su jurisdiccion. Debe observarse ademas que los tres hombres de color, en la identidad de sus declaraciones, que no parece sino haber sido dictadas por uno mismo, declaran su estado de esclavitud, confesando fueron vendidos, y cuando se ha considerado à un esclavo en ningun pays, ni en ninguna epoca de la historia en el goce de los derechos civiles? Gran responsabilidad debe pesar sobre la autoridad judicial que ha ordenado en este caso, la prision de estos dos subditos Españoles!

No cree el Ministro de S. M. la Reyna de España sea necesario à la sabia penetracion del Señor Secretario de Estado del Gobierno Général de la Union, mas que esta sencilla indicacion, para convencerse de qué aqui se ha querido armar un proceso civil à dos Españoles que estan bajo la proteccion de este Gobierno, proteccion que ellos mismos han querido venir à buscar y con que fin? Con el de embrollar la cuestion principal, esto es la del crimen cometido en la goleta Amistad; sobre la cual, la legacion de S. M. hizo su reclamacion en 6 de Setiembre ultimo, y el actual Ministro de S. M. Catolico la reproduce ahora aña diendo que solo puede reconocer en los tribunales de estos Estados la facultad de averiguar el hecho esto es si en la d'ho goleta hubo en la noche del 30 de Junio, insurreccion motin asesinatos. Probado este hecho (que el Infrascrito cree lo esté ya) al poder ejecutivo, le corresponde el cumplimiento del Tratado, en el qué tan claramente se halla estipulado lo que debe hacerse en este caso, que no parece sino que redactarlo se tuvo ya previsto.

En vista pues de todo lo en puesto el abajo firmado Ministro de S. M. Catolico se vé en la dura precision de protestar altamente y con toda la energia necesaria contra el auto de prision decretado contra, Don José ó Joseph ó Pepe Ruiz, y Don Pedro Montes, y pide, que usando el Poder Ejecutivo de la Union de los Medios que las leyes, y muy particularmente la del habeas corpus les ofrezcan; disponga la inmediata libertad de dichos dos Españoles con el resarcimiento de daños y perjincios que por este auto se les hubiere irrogado.

Y en cuanto à la cuestion principal cual es la devolucion de la goleta Amistad con todo su cargamento, espera que el Gobierno haya tomado en consideracion la nota de 6 de Setiembre, y se lisengea de su feliz resultado confiado en la reclitud del gabinete, y en su escrupulosidad en el cumplimiento de los tratados.

En los momentos en que el corazon de la augusta Regna Gobernadora se gozaba el ver el termino de la guerra civil, y asegurado el trono de su Augusta Hija, le estaba reservado à su Ministro en los Estados el dolorozo

deber de acibarar su regocijo participando la como lo hizo con fecha del 19, el desagradable incidente que ha motivado esta comunicacion. El deseo de calmar la inquietud que esta noticia pueda causar à S. M. unido al de aliviar la suerte de los dos presos, excitan al abajo firmado à suplicar à S. S. el Señor Secretario de Estado, se sirva tomar en su alta consideracion cuante deja enpuesto y facilitarle con una pronta contestacion el medio de satisfacer tan justos deseos los que quedarian completamente cumplidos, si fuese tan feliz que pudiese transmitirla à su gobierno por el paquete que de be dar la vela para el Havre, en 1 de Noviembre proximo.

El infrascrito se aprovecha de esta ocasion para reiterar à S. S. al honorable Señor John Forsyth, las seguridades de su perfectisima consideracion.

PEDRO ALCANTARA DE ARGAIZ.

Al honorable Señor JOHN FORSYTH,
Secretario de los Estados Unidos.

[Anexo à la nota de 22 de Octubre, 1839.]

El Ministro Plenipotenciario de S. M. C. para demostrar aun mas claramente, la falta de jurisdiccion del tribunal de Neuva York en el caso de que ha hablado en su nota de 22 Octubre de 1839, apelará à una parte del articulo 7 del tratado de 1795, dice asi: "Y en los casos de aprehension detencion ó arresto, bièn sea por deudas contrahidas à *ofensas cometidas* por algun ciudadano ó subdito de una de las partes contratantes *en la jurisdiccion de la otra*, se procederá unicamente por orden y autoridad de la justicia y segun los tramites ordinarios seguidos en semejantes casos." *Expressio minus est exclusio alterius.* Es claro que las altas partes contratantes no pudieron ni quisieron, ceder la jurisdiccion de sus respectivos territorios, y asi las ofensas de qué se quejan, los negros al tribunal de Neuva York, han debido no ser escuchadas, por no haber sido cometidas en su jurisdiccion.

Translation of a note from the Spanish envoy Argaiz.

WASHINGTON, October 22, 1839.

The undersigned, envoy extraordinary and minister plenipotentiary of her Catholic Majesty, has the honor to remind the honorable Secretary of State of the Federal Government of the Union, that the predecessor of the undersigned addressed to the Secretary, on the 6th of September last, a note, in which he related the occurrence (then recent and universally known) of the capture of the schooner Amistad. He expressed his satisfaction at the conduct of Captain Thomas Gedney and other officers of the brig of war Washington, and then proceeded to state his demand, under four heads, as made in virtue of the existing treaty of 1795, and especially of the eighth and tenth articles thereof, which remain in full force and vigor by the declaration to that effect in the twelfth article of the treaty of 1819. It would be an unnecessary and tedious labor to repeat those four heads or points, and those three articles, in the present note. The minister added many other political observations of much weight, though his demand did not appear to need any other support than that which it derived from the clear and undeniable right allowed by the treaty. From that period to the 27th

of September, the day on which his functions ceased, he did nothing more in this affair. The undersigned observed the same conduct; and he proposed to persevere in it, confidently expecting the definitive resolution of this Government, which might indeed be delayed, though there could be no fear that the affair would not be settled conformably, in all respects, with justice. The undersigned, however, with the utmost regret, finds himself obliged to change his course; and the Secretary of State will be easily persuaded that he could only have been induced to do so by some unexpected occurrence. This occurrence, which the newspapers of New York, and subsequently, those of other parts of the United States have already made public, was the imprisonment of Don Jose Ruiz and Don Pedro Montes in the common jail of New York. You will find hereunto annexed copies of seven papers relative to this occurrence, which are, Nos. 1, 2, and 3, depositions of three men of color, taken on board the schooner *Amistad*—4 and 5, affidavit of Messrs. Lewis Tappan and Geo. R. Barker—6 and 7, orders for imprisonment, signed by Theodore Sedgwick, jr., attorney, Joseph Hoxie, C. A. Clinton, clerk; which papers the undersigned requests the honorable Secretary will return, so soon as he shall have examined them, or had copies made from them.

It would be easy to demonstrate the illegality of these arrests, the orders for which have been possibly obtained from the attorney by surprise; as it would, also, be easy to show the ignorance of the declarant, Tappan, in declaring that Ruiz is known by the name of Pipi, whereas he would have been known and distinguished throughout Spain, as all other Joses are, by the diminutive of Pepe; and thus it appears that a *Pepe* has been imprisoned instead of a *Pipi*, which, I believe, the law does not permit. With regard to the testimony of the men of color, it would be still easier to prove how far they are from accurate; but this is not the object of her Catholic Majesty's representative, who, supposing for a moment that the complaints made by these persons were accurate, asks how a foreign court comes to have the right of taking cognizance of crimes or faults committed out of its jurisdiction? When were these acts committed? The schooner *Amistad* sailed from Havana on the 28th of June, at 4 o'clock in the afternoon; on the night of the 30th of the same month, the deponents were masters of the vessel, and Ruiz and Montez were, if not their slaves, at least their prisoners. Now, whether the last named persons have committed wrongs, or have themselves been wronged, either in Havana, or within two days' sail of that place—in any of these cases, the courts administering justice in the name of her Catholic Majesty alone have the right to take cognizance of them; since, if those acts were committed, they were committed entirely and only under the jurisdiction of these courts. It should, moreover, be observed that the three men of color in their depositions, which are so identical as to appear to have been dictated by one and the same individual, declare their state of slavery by confessing that they have been sold. Now, when, in what country, at what period of history, has a slave been considered as enjoying civil rights? How much responsibility must rest on the judicial authority which has ordered, in such a case, the imprisonment of these Spanish subjects.

Her Catholic Majesty's minister does not consider it necessary to do more than point out these circumstances to one of so much sagacity and penetration as the honorable Secretary of State of the Federal Government of the Union, in order to convince himself that an attempt has been in this case

made to institute a civil proceeding against two Spaniards who are under the protection of this Government, a protection under which they themselves endeavored to come and place themselves. And what is the object? it is to complicate the main question, that is to say, the question of the crime committed on board the schooner *Amistad*, upon which her Catholic Majesty's legation made its complaint on the 6th of September last, and on which the present minister of her Catholic Majesty is now treating; that minister adds moreover, that he can admit no other right on the part of the courts of this country than that of ascertaining the fact whether or not insurrection, mutiny, and murders, were committed on the night of the 30th of June, on board the said schooner. The fact of the commission of such acts being proved (and the undersigned conceives that it has been so), the Executive Power has only to fulfil the treaty, wherein all that should be done in this case, is so clearly expressed, that its occurrence would seem to have been foreseen when that treaty was drawn up.

Under all the circumstances herein set forth, the undersigned, minister of her Catholic Majesty, finds himself under the disagreeable necessity of protesting fully and with all necessary energy, against the order issued for the imprisonment of Don Jose Ruiz, and Don Pedro Montes, and he asks the Executive Power of the Union to use all the means which it derives from the laws, most especially from the law of *habeas corpus*, and thus direct the said Spaniards to be liberated, and to be indemnified for the losses and injuries which they have sustained from this act.

With regard to the main question, that is to say, to the restoration of the schooner *Amistad*, and her whole cargo, the undersigned hopes that the Government will have taken into consideration the note of September 6th; and he flatters himself that the result will be favorable to his wishes, from his confidence in the rectitude of the cabinet, and the scrupulousness with which treaties are fulfilled by it.

At the moment when the heart of the august Queen Governess is filled with delight on account of the termination of a civil war, and the assurance of the throne of her august daughter, her minister in the United States has to perform the painful duty of diminishing her happiness by communicating to her as he did by letter on the 19th instant, the disagreeable event which forms the subject of this communication. The desire of calming the disquiet which this news may occasion in the mind of her Majesty, together with that of alleviating the lot of the two prisoners, urge the undersigned to entreat you, Mr. Secretary of State, to take into consideration what he has here set forth, and to afford him the means, in a prompt reply, of satisfying those just desires, which will be completely done if he is able to transmit such a reply to his Government, by the packet sailing for Havre on the 1st of November next.

The undersigned avails himself of this occasion to repeat to the honorable Mr. John Forsyth the assurances of his most perfect consideration.

PEDRO ALCANTARA DE ARGAIZ.

Hon. JOHN FORSYTH,
Secretary of State, United States.

[Annexed to the note of October 22, 1839.]

Her Catholic Majesty's minister plenipotentiary, in order to show still more clearly that the court of New York has not jurisdiction in the case of

which he spoke in his note of October 22, 1839, will refer to a part of the seventh article of the treaty of 1795: the words of that article are: "And in all cases of seizure, detention, or arrest for debts contracted, or *offences committed* by any citizen or subject of the one party *within the jurisdiction* of the other, the same shall be made and prosecuted by order and authority of law only, and according to the regular course of proceedings usual in such cases."

Expresio unius est exclusio alterius. It is clear that the high contracting parties neither could have ceded, nor have wished to cede, the jurisdiction of her respective territories, and thus the complaints of offences brought by the negroes before the court of New York, should not have been listened to, as the alleged offences were not committed within the jurisdiction of that court.