

**A REPORT**  
OF THE  
**TRIAL OF THE SPANISH PIRATES,**  
BEFORE THE  
**United States Circuit Court.**

With an Appendix containing several Documents never before  
published,

AND A CORRECT LIKENESS OF EACH.





Class Law

Book \_\_\_\_\_









PEDRO GIBERT, *Captain.*

(CONVICTED.)

Born in Catalonia.—Married.—Age, 38.



BERNARDO DE SOTO, 1st *Mate*.

(CONVICTED.)

Born in Corunna.—Married.—Age, 28.



THE  
LIFE OF  
JAMES  
MILN  
BY  
JAMES  
MILN

# A REPORT

OF THE

# TRIAL

OF PEDRO GIBERT, BERNARDO DE SOTO, FRANCISCO RUIZ,  
NICOLA COSTA, ANTONIO FERRER, MANUEL BOYGA,  
DOMINGO DE GUZMAN, JUAN ANTONIO PORTANA,  
MANUEL CASTILLO, ANGEL GARCIA, JOSE VE-  
LAZQUEZ, AND JUAN MONTENEGRO alias  
JOSE BASILIO DE CASTRO,

BEFORE THE

**United States Circuit Court,**  
ON AN INDICTMENT CHARGING THEM WITH THE  
COMMISSION OF AN ACT OF

## PIRACY,

ON BOARD THE

**BRIG MEXICAN, OF SALEM;**

CONTAINING A FULL STATEMENT OF THE TESTIMONY, AND THE  
ARGUMENTS OF THE COUNSEL ON BOTH SIDES, THE CHARGE  
OF THE COURT, PRONOUNCED BY THE HON. JUDGE  
STORY, AND THE VERDICT OF THE JURY.

WITH AN APPENDIX CONTAINING SEVERAL DOCUMENTS NEVER BEFORE PUBLISHED.

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BY A CONGRESSIONAL STENOGRAPHER.

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(A. C. 75)*

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T. C. GREAVES, and W. DRAPER,

In the Clerk's Office of the District Court of Massachusetts.

NOTE.

It was the intention of the reporter of this trial to have given the testimony of the witnesses and the arguments of counsel as nearly *verbatim* as possible. The extreme length, however, to which the cross-examination ran, and the unprecedented manner in which it was conducted, rendered it impossible for him, with any hope of remuneration for his labor, to adhere to his original design. He has been taught by previous experience that the public prefer a pamphlet to a volume; and has therefore permitted himself on the present occasion to condense some parts of the evidence, and to exercise a discretion with regard to the arguments of counsel, giving only such parts of the latter as he considered most important, eloquent, or interesting. It is believed, however, that nothing material in relation to any part of the case will be found to have been omitted.

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## INTRODUCTION.

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EARLY in the month of June last, intelligence reached this country, that his Britannic Majesty's brig of war *Curlew*, Capt. Trotter, while cruising off the coast of Africa for slavers, had fallen in with, and captured, the Spanish schooner *Panda*, and that several of the crew of that vessel had been identified as the individuals who robbed the brig *Mexican*, of Salem, on the 2d of September, while on her voyage from that port to Rio Janeiro. A part only of the crew, it was stated, had been secured and taken to England; the remainder having escaped to the shore, where they were protected by the natives.

On the 26th of August, the British gun-brig *Savage* arrived in the harbor of Salem, having on board the prisoners named in the title page of this report. Her commander, Lieutenant Loney, waited upon the authorities of Salem, and after the usual formalities, surrendered his charge into their hands; stating that the English government waived their right to try and punish the prisoners, in favor of the United States, against whom the principal offence had been committed.

A primary examination was held in the Town Hall at Salem, his Honor Judge Davis, presiding; and the prisoners were directed to be transferred to the jail at Boston, there to await their trial at the October term of the United States Circuit Court. This was done, and on the 23d of October they were brought

up at Boston, arraigned, furnished with copies, in Spanish and English, of the indictment found against them, and allowed three days to consider and determine upon their pleas. At the expiration of that time, they again appeared before the court, and severally pleaded "Not Guilty." Their pleas were then recorded, and the 11th of November appointed as the day of trial.

## R E P O R T .

*Boston, November 11th, 1834.*

*United States Circuit Court.*

Present,

Hon. JOSEPH STORY, of the U. S. Supreme Court,  
Hon. JOHN DAVIS, District Judge,  
*Andrew Dunlap, Esq.* District Attorney, for the Government,  
*Messrs. D. L. Child and G. S. Hillard*, for the prisoners,  
*Stephen Badlam, Esq.* sworn interpreter,

THE UNITED STATES *v.* PEDRO GIBERT *et al.*

The Court opened at nine o'clock.

One hundred and fifty jurors were in attendance, under the *venire* previously issued.

Captain Gibert, and his mate Bernardo de Soto, through the medium of their senior counsel, Mr. Child, availed themselves largely of their right to object to the jurors, as called by the Clerk; challenging the full number (twenty) allowed by law. The following individuals were eventually selected, impannelled and sworn:

Jeremiah Washburn, Charles Hudson, Leavitt Corbett, John Beals, Joseph Kelley, Anthony Kelley, Isaac Wise, Thacher R. Raymond, Charles Lawrence, William Knight, Peter Brigham and Jacob H. Bates.

The Clerk then read the indictment, of which the following is a copy:

### UNITED STATES OF AMERICA.

*District of Massachusetts, to wit,*

AT a Circuit Court of the United States of America for the first Circuit, begun and holden at Boston, within and for the District of Massachusetts, on the fifteenth day of October, in the year of our Lord one thousand eight hundred and thirty-four, the jurors for the said United States, within and for the said District of Massachusetts, upon their oath present that Pedro Gibert, late of Boston, in said District, Master mariner, Bernardo de Soto, Francisco Ruiz, Nicola Costa, Antonio Ferrer, Manuel Boyga, Domingo de Guzman, Juan Antonio Portana, Manuel Castillo, Angel Garcia, Jose Velazquez, late of Boston in said District, mariners, and Juan Montenegro, late of Boston in said District, mariner, otherwise called Jose Basilio de Castro, late of Boston in said District, mariner, on the twentieth day of September, in the year of our Lord one thousand eight hundred and thirty-two, upon the high sea within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State, with force and arms did feloniously and piratically set upon, board, break and enter a certain merchant brig of the United States, called the Mexican, then and there belonging and appertaining to Joseph Peabody, then being a citizen of the United States, and then and there piratically and feloniously did assault John Groves Butman, then and

there being in and on board said brig, and then and there being the Master of said brig, and then and there being a citizen of the United States, and then and there being in the peace of God and the said United States, and did then and there in and on board said brig upon the high sea, within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State, put the said John Groves Butman in great bodily fear and danger of his life; and ten boxes, each containing two thousand dollars of the value of two thousand dollars, and all of the value of twenty thousand dollars; of the goods, chattels, monies and property of the said Joseph Peabody, then and there being in and laden on board said brig upon the high sea within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State, and then and there being under the care, custody and in the possession of the said John Groves Butman, with force and arms from the care, custody and possession of the said John Groves Butman, they the said Pedro Gibert, Bernardo de Soto, Francisco Ruiz, Nicola Costa, Antonio Ferrer, Manuel Boyga, Domingo de Guzman, Juan Antonio Portana, Manuel Castillo, Angel Garcia, Jose Velazquez, Juan Montenegro, otherwise called Jose Basilio de Castro, then and there in the said brig upon the high sea within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State, piratically, feloniously, violently and against the will of the said John Groves Butman, did steal, rob, take and carry away in the presence of the said John Groves Butman, against the peace and dignity of the said United States, and contrary to the form of the Statutes of the said United States in such case made and provided.

And the jurors aforesaid upon their oath aforesaid do further present that afterwards, to wit, on the twenty-seventh day of August, in the year of our Lord one thousand eight hundred and thirty-four, the said Pedro Gibert, Bernardo de Soto, Francisco Ruiz, Nicola Costa, Antonio Ferrer, Manuel Boyga, Domingo de Guzman, Juan Antonio Portana, Manuel Castillo, Angel Garcia, Jose Velazquez, Juan Montenegro, otherwise called Jose Basilio de Castro, were first brought into Salem in the said District of Massachusetts, and that the said District of Massachusetts is the District into which the said Pedro Gibert, Bernardo de Soto, Francisco Ruiz, Nicola Costa, Antonio Ferrer, Manuel Boyga, Domingo de Guzman, Juan Antonio Portana, Manuel Castillo, Angel Garcia, Jose Velazquez, Juan Montenegro, otherwise called Jose Basilio de Castro, were first brought after the commission of the crime aforesaid.

And the jurors aforesaid upon their oath aforesaid do further present that the said Pedro Gibert, late of Boston in said District, Master mariner, Bernardo de Soto, Francisco Ruiz, Nicola Costa, Antonio Ferrer, Manuel Boyga, Domingo de Guzman, Juan Antonio Portana, Manuel Castillo, Angel Garcia, Jose Velazquez, late of Boston in said District, mariners, and Juan Montenegro, late of Boston in said District, mariner, otherwise called Jose Basilio de Castro; on the twentieth day of September, in the year of our Lord one thousand eight hundred and thirty-two, upon the high sea, within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State, with force and arms did piratically and feloniously set upon, board, break and enter a certain merchant brig of the United States, called the Mexican, then and there belonging and appertaining to Joseph Peabody, then being a citizen of the United States, and then and there piratically and feloniously did assault John Groves Butman, then and there being in and on board said brig, and then and there being the master of said brig, and Benjamin Brown Reed, John Rogers Nichols, Giacomo Ardisone, Israel Luscomb, Frederic Trask, Theodore Siesbittel, Benjamin Larcom, John Battis, Thomas Fuller, Thomas Charles Henry Ridgely, John Lewis, Benjamin Daniels, then and there being the mariners of said brig, and then and there being in and on board said brig, and in the peace of God and the said United States, then and there being, and did then and there in and on board said brig upon the high sea within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State, put the said Butman, Read, Rogers, Nichols, Ardisone, Luscomb, Trask, Siesbittel, Larcom, Battis, Fuller, Ridgely, Lewis, Daniels, in great bodily fear and danger of their lives, and ten boxes, each containing two thousand dollars of the value of two thousand dollars, and all of the value of twenty thousand dollars, of the goods, chattels, monies and property of the said Joseph Peabody, then and there being in and laden on board the said brig upon the high sea, within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State, and then and there being under the care, custody, and in the possession of the said Butman, the master of the said brig, and the said Read, Nichols, Ardisone, Luscomb, Trask, Siesbittel, Larcom, Battis, Fuller, Ridgely, Lewis, Daniels, the mariners of the said brig, they, the said Pedro Gibert, Bernardo de Soto, Francisco Ruiz, Nicola Costa, Antonio Ferrer, Manuel Boyga, Domingo de Guzman, Juan Antonio Portana, Manuel Castillo, Angel Garcia, Jose Velazquez, Juan Montenegro, otherwise called Jose Basilio de Castro, then and there in the said brig, upon the high sea, within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State, piratically, feloniously, violently, and in the presence and against the will of the said Butman, the master of the said brig, and the said Read, Nichols, Ardisone, Luscomb, Trask, Siesbittel, Larcom, Battis, Fuller, Ridgely, Lewis, Daniels, the mariners of said brig, did steal, rob, take and carry away against the peace and dignity of the said United States, and contrary to the form of the Statutes of the United States, in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present that afterwards, to wit, on the twenty-seventh day of August, in the year of our Lord one thousand eight hundred and thirty-four, the said Pedro Gibert, Bernardo de Soto, Francisco Ruiz, Nicola Costa, Antonio Ferrer, Manuel Boyga, Domingo de Guzman, Juan Antonio Portana, Manuel Cas-

tillo, Angel Garcia, Jose Velazquez, Juan Montenegro, otherwise called Jose Basilio de Castro, were first brought into Salem, in the said District of Massachusetts, and that the said District of Massachusetts is the District into which the said Pedro Gibert, Bernardo de Soto, Francisco Ruiz, Nicola Costa, Antonio Ferrer, Manuel Boyga, Domingo de Guzman, Juan Antonio Portana, Manuel Castillo, Angel Garcia, Jose Velazquez, Juan Montenegro, otherwise called Jose Basilio de Castro, were first brought after the commission of the crime aforesaid.

A TRUE BILL.

ISAAC STEVENS, { Foreman of the  
Grand Jury.

ANDREW DUNLAP, { Attorney of the United States  
for the  
District of Massachusetts.

A True Copy,

ATTEST,

FRANCIS BASSETT, { Clerk of  
the Court.

Mr. Child, one of the counsel for the prisoners, addressed the Court in relation to a motion which he had formerly made respecting the log-book of the *Panda*, (the alleged piratical schooner) and read an affidavit from the mate of the *Panda* and others, stating that the log-book was in the possession of certain parties in Portsmouth, England; that the manifestos of the cargo, &c. of the *Panda* were also at the Havana, and might be had by sending for them. Mr. C. requested time in order that these necessary documents might be procured.

The Court overruled this motion, on the ground that it could issue no process which would be effective in procuring the papers alluded to; it had no authority in Great Britain. On a former occasion, it had also been stated by an English officer, who would appear as a witness, and who was one of those who boarded the *Panda*, that the log-book of that vessel had never been discovered.

Another motion of Mr. Child, to have the prisoners tried separately, was also overruled.

Mr. Dunlap, for the government, then addressed the jury, as follows:

*Gentlemen of the Jury*,—This is a solemn, and also an unusual scene. Here are twelve men, strangers to our country and to our language, indicted for a heinous offence, and now before you for life or death. They are indicted for a daring crime, and a flagrant violation of the laws, not only of this, but of every other civilized people. They are accused of piracy, which is an offence punishable by all nations, as well as by the particular government against which it has been committed. I shall first, gentlemen, give you an outline of the commission of the act with which the prisoners are charged, and then briefly state to you the law in relation to such act.

The brig Mexican, said Mr. D., belonging to Salem, and owned by one of the most eminent merchants of that place, having on board a valuable cargo and twenty thousand dollars in specie, sailed from Salem for Rio Janeiro on the 29th of August, 1832, under the command of Capt. Butman. While quietly pursuing her voyage over the common pathway of nations, and having arrived in 33 deg. N. lat. and 34, 30, W. lon. she fell in with a suspicious looking vessel from which she made many efforts, but unsuccessfully, to escape. This vessel, a schooner, having come up with the *Mexican*, fired a gun, and the captain of the latter, seeing that the schooner was armed with one long and two small

guns, and that her decks were crowded with men, felt himself obliged to submit, and accordingly hove to. He was then hailed, and ordered to come on board the strange vessel, which mandate he obeyed in his own boat; but on reaching the schooner, five men jumped into the boat and ordered it to be rowed back to the brig. On arriving on board the brig, they directed the captain to accompany them into the cabin, where, brandishing their knives, threatening and beating him, they compelled him to acknowledge and give up the money which was in his possession. A communication was then made with their companions on board the schooner, who sent a launch and carried away the treasure. The party on board the Mexican then left, after confining the crew below, breaking the compasses, and destroying the rigging and tackle. They also set fire to the camboose, in which they placed a tub of combustibles, and lowered the mainsail in such a way that it would speedily ignite. A short time afterwards, however, the captain contrived to get upon deck, and extinguished the fire before it had caught the mainsail. They then repaired their damages as well as they were able, and returned to Salem, where they arrived on the 2d of October. Information of what had taken place, was immediately disseminated throughout this and other countries, and reached the coast of Africa, where Capt. Trotter, commanding the British brig of war *Curlew*, was then cruising. Circumstances led that gentleman to believe that the schooner *Panda*, then lying in the river Nazareth, was the vessel which had captured the Mexican. He immediately, therefore, proceeded to take measures against her. These measures resulted in the capture of the *Panda*, but the escape, for the time, of her crew. No ship's papers or log-book were found on board of her, although diligently sought for; and, owing to some accident, she shortly afterwards blew up, thereby killing several of the *Curlew's* men. Capt. Trotter then sailed to other ports, still making efforts to discover the crew of the *Panda*, and at last succeeded in arresting the individuals now present.

One of these men, named *Perez*, had been received as States' evidence, and two other persons, Portuguese, who had served on board the *Panda*, but had not been concerned in the robbery of the Mexican, would also appear and give their testimony.

In the course of the above outline, Mr. Dunlap paid a high compliment to the British government and navy, for the perseverance manifested in ferreting out the individuals concerned in this act of piracy, and for the feelings of courtesy and good will which had dictated the transfer of the prisoners to this country, instead of at once subjecting them, as might have been justly done, to trial and punishment in England. Mr. D. then cited to the jury the law of the United States in relation to piracy.

The Court then proceeded to call the witnesses on the part of the Government.

*Joseph Peabody*—Is the sole owner of the brig *Mexican*: Mr. P. produced her bill of lading of last voyage, by which it appeared that he had shipped on board the said brig, on the 27th of August, 1832, ten boxes, each containing \$2000.

The brig sailed from Salem on the 29th of August, 1832. The next time he saw her was forty-two days after that period. Has frequently



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ANTONIO FERRER, *Cook.*

(ACQUITTED.)

Born in Havana.—Age, 27.



**JUAN MONTENEGRO**, alias **JOSE BASILIO DE CASTRO**, *Ordinary Seaman*.

(CONVICTED.)

Born in Ferrol.—Unmarried.—Age, 23.

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made the voyage from Salem to Havana, and believes that a vessel sailing from the former place, on the 29th of August, for Rio Janeiro, would be likely to meet another sailing on the 20th from the latter place, in lat. 33, lon. 34-30, the point at which the piracy was committed.

*Capt. John Groves Bulman*—Is master of the brig Mexican, of Salem. Sailed from that port on the twenty-ninth of August, 1832. Had on board \$20,000, in ten boxes, containing \$2,000 each. On the twentieth of September, fell in, lat. 33, lon. 34½, with a schooner. Saw her about four in the morning—she looked like a Baltimore clipper—had a low, long, straight hull—when it became quite light, found her on our weather quarter, standing from us. She then tacked and passed to windward of us—between nine and ten she was on our weather bow. About ten, tacked and endeavored to escape from her—did not like her looks—saw a man at the mast-head looking out—thought her a very suspicious looking vessel. About ten minutes after we tacked, he set his square-sail, and came directly down upon us—when within gun-shot he fired a gun—we then hove to. Firing a gun is the usual signal to heave to. He then ran right to windward, and hailed us—came within thirty or forty yards—saw a great number of men on board, and that he had two long guns. There was also something covered up amidships, but can't say whether it was a gun or not—asked where we were from and whither we were bound—told him—he then asked what our cargo was—said it was saltpetre and tea.

He then ordered me to come on board the schooner. The crew of the schooner were on deck at this time—I should think in number they amounted to about fifty or sixty men—lowered my boat, ordered four men into her, went in myself, and rowed towards the schooner—we scered for the gangway, but were directed to go towards the fore-chains. I did so, and held on by the chains, when five of the schooner's men jumped into the boat, and ordered me to row back to the brig. When we got on board the brig, they directed me to go into the cabin, which I did, and two or three of them followed. When I reached the cabin, two of them presented their knives to my breast, and demanded the money that was on board the vessel—I was alarmed, and told them where it was. The money was in the run, under the cabin—called my mate to come and get the money—he came down, and some of the crew with him. The pirates then ordered them to get the money up immediately—beating them with the handles of their knives, because they did not work fast enough. The boxes containing the money were marked P, and were handed on deck as they were got up from the run. The knives used by the pirates were large, and about three inches from the point were double edged. The schooner was lying to windward, and about thirty yards from us, at the time. The men in the cabin said I had more money, and went searching about, overhauling our chests and berths—one of them said if they found more money, they would cut my throat immediately. They then went to another part of the vessel, and left me alone—in a few minutes I attempted to go on deck to see what was doing, but one of them drove me back—a short time afterwards, another came down, and insisted that I had more money—he had my speaking-trumpet in his hand, and beat me with it severely. A short time after, saw the boat going towards the schooner, with the boxes—saw them out of the cabin window—the boat was their own. In about fifteen minutes, saw a boat full of them coming back again—think there were about twelve in all—heard them jump on deck, close

the cabin doors and the after-hatchway—heard a great noise, as if the yards were coming down—could hear the *main boom* flying from side to side. The crew during this time were below, most of them in the cabin—forecastle hatch was fastened. Heard them heave a spar off, which I had lashed to the davits—smelled smoke shortly afterwards. I then saw them, from the cabin window, go to their vessel—they had my boat and one of my spars with them. They hoisted in their own boat, and I suppose scuttled mine, as she filled with water immediately after they cast her off. The schooner then made sail from the brig. When they were at a sufficient distance, I got up out of the cabin skylight, which they had neglected to fasten—found every thing in disorder, the rigging, yards, &c. flying about—all the running-rigging and halliards were cut away. The sails were also cut to pieces—the mainsail was hanging over the caboose, the roof of which was on fire—found a tub of tarred rope-yarns in the caboose—if we had not come upon deck at this moment, the caboose would have set the mainsail on fire, and then nothing could have saved the vessel. The mainsail was cut into strips—could not swear that any of the men now present were those who boarded the Mexican—saw and recognized a man who landed with these prisoners—saw him at the Town Hall, at Salem. The man to whom I allude recently committed suicide in jail. He was one of the two who drew their knives on me in the cabin.

**CROSS-EXAMINED.** The schooner was about one hundred and fifty tons burthen, was of the Baltimore build. There are many of this sort of vessels engaged in the Havana and African trade. The guns were of brass, and think they were long twelve pounders.

*Benjamin Brown Read* sworn. Is mate of the Mexican—fell in with the schooner between two and three in the morning. At four, A. M. came on deck, and was told of the circumstance by the second mate—when he told me this, I asked him if he could still see the vessel he spoke of—he said, No—I asked him for the glass, went with it on the forecastle and saw the schooner. She was then standing towards us—went below and called the captain—thought she might want to hail us—Captain came up and staid till daylight. The schooner was then coming up with us rapidly—we shortly saw her plainly—she appeared to be full of men—Capt. Butman at first thought they were not men, but the dead-eyes of the lower rigging—went about our work as usual, not paying much attention to the schooner. At half past seven, however, finding that she lay a great deal nearer to the wind than we could, and that she sailed almost as fast again as we did, we began to notice her movements, and Capt. Butman said he should like to tack and try to get away from her—we did so, and stood to the west for half an hour. Captain and I then went below and consulted as to whether it would be best to stow the money away. We suspected this vessel from the number of men she had on board, and from her manœuvres.

I told the captain I thought it would be of no use to attempt to hide the money, as all our crew knew that it was on board. While we were talking, the second mate came down, and said the schooner was chasing us. We went on deck, and the second mate said the schooner had just fired a gun; we saw the smoke, and she was just then setting her square-sail. We consulted what was best to be done, and at last thought it best to heave to, knowing it would be of no use to attempt an escape. Capt. Butman ordered the colors to be hoisted and the main-topsail backed. Very shortly after, she was within hail of us—saw the men

very thick upon her fore-castle, from which we were hailed, and asked the usual questions; saw a man, from the first, on the topgallant-yard of the schooner, looking out. The questions were asked in broken English.

The witness here made the same statements as were previously made by the captain, of the pirates being on board, and continued—

Saw knives under the sleeves of their jackets when they came on deck—they drew them—they were long, Spanish knives. One of them directed the captain to go down into the cabin, and followed him with two others. Captain had not been down long, before he called to me and told me to bring all hands aft. This I did; and the three men then came up from the cabin, pointed their knives at us, and directed us to go down one at a time. When all the crew were in the cabin, the three men came down also, and told us to get up the money quickly—they struck us with their knives, because they thought we were not quick enough—we could not get the money up quicker, in consequence of being flustered and alarmed by their conduct. As fast as the boxes were brought up, they were carried up on deck. After they were all got up, one of the pirates hailed the schooner, and said there was plenty of money on board the brig, and also said something about the launch: immediately afterwards saw the launch coming from the schooner—should think there might be ten or more men in her. The launch passed the cabin windows: when it came alongside the brig, the money was put in, and carried on board the schooner.

One of the men who came on board first, and who appeared to be an officer, quitted the brig and went in the launch, leaving four men behind him. These four ransacked every place in the vessel, seeking for more money. One of them (the boatswain) told me to go forward, kicked me into the fore-castle, and placed a man to keep me there. I was there a few moments, when the boatswain came back, and asked me where my watch was, but before I had time to tell him, he had it out of my pocket. He then asked me where my money was. It was hidden, but I told him if he would let me go, I would bring it. He directed me to send a man for it, which I did: he took the money, and told me to stay in the fore-castle. I passed backwards and forwards, between decks, from the fore-castle to the cabin. In the latter place, I heard the boatswain asking the captain for his chronometer. Captain said he had none. Boatswain then caught up the speaking-trumpet, and gave the captain such a blow as broke it almost to pieces. He then ordered me on deck, and kicked me down again into the fore-castle, and told me not to come up. Staid a few moments: he then called me up, took me aft, and pitched me into the cabin. I staid there till they had left. The crew were all fastened below. Saw the pirates launching our yards into the water; heard the topsail-yard coming down, and that they were cutting the rigging—they used an axe. Staid till all was quiet; saw the boat go to the schooner for the last time; saw them hoist our yards on board, and then make sail. Waited till I thought they would not see us; then got out through the cabin skylight; found everything cut to pieces, and the boom going from side to side. The caboose was on fire, and in the inside found a barrel containing a quantity of tarred rope-yarn, and a pot of tar. The sail rested on the caboose. If we had not got out when we did, the mainsail would have soon been on fire. Should not think the fire could have been extinguished. Have seen some of the men since. Two of them I am sure were on board our brig, and am also confident respecting another one.

The witness here went up to and laid his hand upon Francisco Ruiz and Manuel Boyga. The interpreter translated to the prisoners what the witness had stated, and they both strongly denied that they had ever been on board the Mexican.

*Witness continued*—Do not see here the third person he had spoken of. Saw him at Salem, when prisoners were examined there.

*Cross-examined.* Do not remember how Ruiz was dressed. He had on a jacket; cannot recollect what was the color, or what he had on his head—cannot call to mind the dress of Boyga. The schooner's guns were short guns. Among the men who came on board from the schooner was the boatswain; was about five feet in height, stout, and wore large whiskers; had a bunch on his nose.

Here the Court adjourned.

### WEDNESDAY.

The Court assembled this and every other morning during the trial, at nine o'clock.

*Captain Butman*, cross-examined. Have heard that there were other pirates about the Western Islands. Piratical vessels are usually clipper-built schooners, with raking masts. A Baltimore Clipper is a long, low vessel, with very raking masts and very large sails.

*Benjamin Larcom* sworn. Was one of the crew of the Mexican when she was boarded by the pirates. Saw one of them at Salem some time ago.

[The witness here went up, placed his hand upon Ruiz the carpenter, and said, I believe this is the man.]

If he (witness) was right, Ruiz came to the brig in the first party from the schooner.

*CROSS-EXAMINED.* I was in our boat when she went the first time to the schooner. Staid where I was to bail the boat—heard a noise on deck—thought they were murdering the crew—drew the boat ahead of the brig, and hid myself there—did not see any of the pirates but the five who came in our boat. The boatswain of the schooner was among them—he might be from five feet four to five feet six inches high—was of a dark complexion—think he had straight hair—do not remember the shape of his nose—think he wore a blue jacket—he was a middle sized man, not very stout. When I saw Ruiz at Salem, did not tell any one at the time that I recognized him. Think there might be about sixty men on board the schooner when we were boarded by them. She was about one-eighth of a mile from us at the time. Cannot tell what sort of a head the schooner had. The first mate's watch is from four till eight.

[The Counsel for the prisoners here called upon the witness to look the prisoner Ruiz in the face, and say upon his oath whether that was one of the men who came on board the Mexican.] Witness said he could not swear to him.

*By the District Attorney.* Recognized the prisoner Ruiz, the moment I saw him at Salem. Captain and mate only had given their

testimony at Salem. No one had been examined before I saw them. Never spoke to any one in the street about him.

*John Battis* called.

Mr. Child here moved the Court that the position of the prisoners be changed as each witness for the Government was called, in order that they (the witnesses) might not give any information to each other as to the order in which the prisoners sat. The witnesses were kept in a room by themselves, and brought into Court singly. The motion of Mr. Child was overruled by the Court.

The examination of Battis was then proceeded with.

He said he recognized in the Court two of the pirates on board the Mexican. On being directed to point them out, he placed his hand on Ruiz and Boyga. First saw Ruiz at the companion-way of the Mexican. Saw him next standing guard at the fore-castle; do not know who he was guarding in particular; all the crew were below.

CROSS-EXAMINED. I was seventeen years of age at the time the Mexican was boarded. Was the Captain's boy. First saw the schooner in the mate's watch, at four o'clock. She was going to the southward. Weather was clear—it was star-light. Five men came on board from the schooner in our boat. Three men went below with the Captain in the cabin, and two remained on deck—these two were Ruiz and Boyga. Have not talked with the crew of the Mexican about these men in particular. First recognized them on board the *Savage* at Salem. Told a great many that I recognized them—cannot tell who in particular, there were so many. Went on board the *Savage* of my own accord—went with a great number of persons. A boat was shoving off for the *Savage*, and I jumped into her. None of the crew of the Mexican were with me—neither the captain or mate were with me. There was only one person I knew among those in the boat—there were a great many I knew on board the *Savage*. Did not tell them that I knew these men in particular—merely said that I recognized some of them. When the prisoners were on board our brig, I looked up out of the fore-castle at them, and one of them said, 'come up, we won't hurt you.' This was two years ago. I can swear positively to the men I have pointed out.

The witness was again directed to look steadily at Ruiz and Boyga.

I was alarmed when the pirates began to abuse us, and when I saw their knives; was not much afraid before. Should think there were fifty men on board the schooner. I believe she had a carved head, painted white—could not exactly say what it was. She was painted black with a white streak. Think she was within thirty or forty yards at the time of the robbery. The knives were about a foot long, sharp at both edges all the way. Ruiz had on a tarpaulin hat; cannot say whether he had a jacket or not; he had on duck pantaloons and a checked shirt. Remember the boatswain—should think he was about five feet high. He had a straight nose, with a bunch on the right side of it; had no whiskers, and was not very stout.

*Thomas Fuller*, another of the crew of the Mexican, identified Ruiz. When directed by the Court to point him out, he went up to him and struck him rather rudely upon the shoulder. Ruiz immediately started

up, and protested indignantly and with much gesticulation against such conduct. He ought not, he said, to be thus treated in the tribunal. The rest of the prisoners also arose from their seats, and evinced much excitement. They were at last pacified by the interpreter, and the examination proceeded. The witness continued—

Recollect Ruiz perfectly well. Saw him beat our steward with a batten—this was on the forward deck; saw him stationed by the fore-scuttle. Went with our captain in the boat. Saw the pirates in our cabin and fore-peak—saw six or eight pirates on deck—Ruiz among them, and another with him, five feet two or three inches in height, dark complexion, long nose, had a crooked Roman nose; had on a white felt hat; had jacket, but don't know the color. Schooner when she hove to was one-eighth of a mile distant; large sized guns; did not notice her figure-head. Am used to the sea. Schooner was about 150 tons burthen. Know nothing of statements Captain Butman put in papers. Have read them. The pirates came on board about nine, and staid till two or three. Was at the time much confused and frightened. Guns on board schooner were brass; am not certain they were yellow and shone. Think there were guns amidships. Thought at the time there were forty or fifty men on board schooner. Was particular at time to notice number. Her deck full of men. Was in second mate's watch at the time. When first saw schooner she was coming under our bow; her direction was between south and west. Think Ruiz had on a blue jacket and cap; when he came on board, told his comrades to get something. Pirates hailed us in good English; could understand them readily; language rather foreign accent. First saw the men on deck of Mexican; saw them afterwards in gaol. First recognized Ruiz the day he was brought up here; mentioned it to no person. Mr. Dunlap told me not to say any thing about it, should I recognize them. Went to the gaol. Recognized none there. None could come to the window except the boy. Do not feel any resentment against Ruiz more than the rest.

*Benjamin Daniels* called. Was one of the crew of the Mexican when she was boarded; have seen some of the pirates since; saw them in this Court-House yesterday—not, however, for the first time. Saw them at a previous examination. [Witness here pointed out Ruiz.] Can't tell in what part of our vessel I saw him; saw him several times; am sure Ruiz is the man; he came on board in our boat with the first party; I was not in the boat with them.

CROSS-EXAMINED. I was not in Salem when they were brought to that place; saw them in this Court-House the second time they were brought in—some of the crew of the Mexican were with me. I then recognized the man I have pointed out. Did not mention to any person that I had recognized them. There were some persons near me whom I knew. Was told by the District Attorney not to mention to any person that I had recognized any one. I was told so in the District Attorney's office; all the crew of the Mexican were present; the same thing was told to them. I told the District Attorney that I had recognized this man. I went into another room with District Attorney. First saw schooner at two o'clock; was in captain's watch which is from twelve till four. Second mate saw her first. When she hove to, was about one-eighth of a mile from us; her deck was much crowded;

there were many men on the forecastle; should think there were about thirty or forty on board the schooner.

[Witness was here told to look at Ruiz. He did so.]

He said he felt sure that that man was one of those who robbed the Mexican. Saw a man among them called the boatswain; can't recollect how he was dressed, except that he had a dark jacket. Schooner had a billet head. Do not know what sort of a nose the boatswain had. Boatswain had whiskers. Quite sure schooner had billet head. Cannot tell what dress Ruiz wore, or whereabouts in the brig I saw him; he was driving us round the deck with the others. Two of the pirates remained on deck, and three remained below. Was much frightened and flustered; feel confident, nevertheless, that Ruez was one of the men who boarded us. Am aware that his life depends on the result of this trial.

*Thomas Charles Henry Ridgly* (colored man) was cook on board the Mexican, when she was robbed—think I have seen two of the men since who committed the robbery—I was lying along some spars in such a position that I could see all who came on board—the pirates did not disturb me at first.

Ridgly here pointed out the black cook of the Panda (Antonio Ferrer) and Manuel Boyga, as the individuals he recognized.

Ferrer, he said, was on board the schooner, and Boyga came in the boat to the Mexican. The former (Ferrer) was on the top-gallant yard of the schooner, which was sometimes very near to the Mexican—not further from her than the distance from one side of the court to the other. She would come near and then fall off again. The schooner sometimes comes so near the brig that he could see the tattooing on Ferrer's face.

A part of this tattooing was very perceptible, consisting of deep scars drawn perpendicularly down the prisoner's cheeks. This part or the evidence of Ridgly being translated to Ferrer, the latter rose up and looking at the witness, said, very satirically, "You must have very fine eyes." This observation of Ferrer excited much laughter among the rest of the prisoners.

*Ridgly*—CROSS-EXAMINED. Pirates were aboard, I think, about four hours. Can't say particularly. Had no watch. Was at the examination, at Salem—said there that I recognized them.

*John Lewis* (colored) was the steward of the Mexican. I have seen some of the pirates since the robbery.

Witness here went up to Ruiz, the carpenter, and laid his hand upon his shoulder, and said, this is one of them.

Ruiz beat him on the half deck with an oak batten, because he would not show him where the money was.

CROSS-EXAMINED. If I should see any of the others, don't think I should know them—probably might know the boatswain—think the schooner was about six times her length from us—should think the crew of the schooner consisted of thirty or forty men—I speak from

my own knowledge—never talked with any person about the number of men aboard of her—cannot read—never saw the statement made by Capt. Butman—weather was hazy early in the morning—did not see her guns—don't remember her head.

*Joseph Perez*, one of the crew of the *Panda* at the time the robbery was committed on board the Mexican, and who had turned State's evidence, was next examined. Previously to being placed on the stand, he was informed by the court that if he told "the truth, the whole truth, and nothing but the truth," he would not himself be proceeded against; but that if he spoke in any respect falsely, he would forfeit all claims to favor, and be considered in the same light as the prisoners at the bar. He was then sworn upon a Bible, authenticated by the Catholic bishop of this place, and permitted, through the medium of the interpreter, to commence his testimony.

He was born, he said, at *Marguerita*—is twenty-two years of age—was last in the *Havana*, two years and nine months since—he shipped at that time on board the *Panda*, Capt. Gibert—Bernardo de Soto was mate, and the prisoners now present formed part of the crew—there were thirty men in all. Francisco Ruiz was carpenter of the schooner. When they passed the *Moro Castle*, in sailing from the harbor, they were hailed and asked what schooner, and where bound, &c. The reply was, "The *Panda*, to St. Thomas." This was on the 20th or 26th of August.

Mr. Child here begged the court to notice that he called for the log-book, that being the best evidence of the time of the sailing of the vessel. The witness continued—

On the outward passage, they spoke first a corvette, and then an American brig—that brig was the Mexican—we spoke her on the 25th of September—first saw her at four in the morning—she was heading to the southward—it was the second mate's watch—the captain was asleep at the time, but got up shortly after we saw her, and ordered the schooner to go about, and stand for the brig as soon as it became more light—brig altered her course and stood for the westward—brig had all sails set at half past six o'clock—witness was in the foretop—captain asked, where away?—witness replied, about a league off to windward of the American brig—discovered also a schooner—being eight in the morning, the American brig altered her course, and stood south as at first—the wind was moderate, and the sea smooth—the *Panda* then set her squaresail and steered for the brig—when they neared her, a sailor went forward and fired a musket—the brig then hove to, and hoisted the American flag—the schooner hoisted the Columbian flag—they sung out to the brig in English, and inquired where she came from, and where she was bound—the reply was, "from Boston, into Rio Janeiro,"—a sailor who spoke English hailed the brig—the boat of the brig came to the schooner with four men and one officer—came to the larboard side of the schooner.

Mr. Child here took an objection to the interpreter, Mr. Badlam, which was overruled by the court. Two gentlemen, he said, who stood by Mr.

Badlam, and assisted him, had been, although not sworn, the real interpreters for the last hour. Mr. Dunlap said that Mr. Badlam had interpreted in the courts for several years, and had always given satisfaction; he (Mr. D.) should insist on the rights of government, and that Mr. Badlam continue to perform his duty. After much conversation, the objection of Mr. Child was overruled, and the witness proceeded.

The boat of the brig approached the schooner opposite the mainmast—the third mate, the boatswain, the carpenter, and one sailor then jumped into her, and proceeded to the brig.

The witness was here asked if any of these four men were now in the court, upon which he pointed out Ruiz. The latter immediately started from his seat, shook his fist at Perez, and, in loud and passionate tones, declared him a *traitor*, a *liar*, and a *rogue*.

The third mate ran away at Nazareth, the boatswain died at Fernando Po, and the sailor, named Manuel Delgado, died in gaol at Boston. The people of the brig went below in the fore-castle. The third mate then took up the speaking-trumpet, and sung out to the captain, "There is plenty of what you want, and what you are looking for; there are \$20,000 on board, in *ten boxes*, by the ship's papers." The boatswain also held up a handful of dollars, which he afterwards threw into the sea. The captain said, "Very well, very well, let her be well searched, and bring it all on board."

Mr. Child here said he wished to be understood by the court, that he objected to proceeding any further with this interpreter, and after some discussion, it was finally agreed that Messrs. Sheldon and Peyton, gentlemen well acquainted with the Spanish language, and to whom Mr. Badlam had frequently referred during the proceedings, should be sworn to assist him. This was accordingly done, and Perez continued:—

They brought ten boxes of money from the brig—saw it with my own eyes, from the foretop—it was brought by the American boat, which was towed by that of the schooner—the boats then returned to the brig, and came off again shortly afterwards with two spars, a keg of butter, and some fowls. They then went back again on board the brig, cut away the halyards and sails, and let the yards run down—one of the schooner's men also got up into the top and "stabbed the belly of the maintopsail." Witness looked so much at the brig that captain Gibert was angry with him, and sent another man into the maintop to keep a look out with him. Shortly after this, saw a sail, and sung out to the captain, who asked where she was—I said astern of the American brig, and so near that I could see her three masts. On the fore-castle of the American brig, saw one of the schooner's men keeping guard, with a handspike in his hand. Captain sung out, "Take them out of the fore-castle, and shut them up in the cabin." The third mate had a sword, the other men knives—they chased the brig's crew into the cabin, and shut them up under a padlock—witness heard it said afterwards that a smoke was made to suffocate them. After the hatches were all shut, the schooner's men started from the brig for their own vessel, carried the brig's boat with them, and scuttled her

when they reached the schooner. They then hoisted in their own boat, pointed a gun at the brig, and stood away across her bows—brig was heading north-west—schooner hauled her wind to avoid the ship which they last saw, and which they believed to be a man-of-war. The boxes taken from the brig were marked with a letter—cannot say whether it was a P or a D. The witness here gave an account of the different places the Panda touched at till she reached the river Nazareth, on the coast of Africa, where he was put on shore to take care of some slaves that had been purchased. The schooner went to Prince's Island, from which she came shortly afterwards in great haste, and was run on shore at Cape Lopez, near the river Nazareth. Witness acted as the captain's servant, and when the captain arrived at Nazareth, he set the table for him in a room above stairs. He there heard the captain and boatswain talking together. The former said he had been obliged to fly from Prince's Island in consequence of news of the American brig affair having reached that place. He had purchased \$250 worth of provisions, but had come away without them. The captain came from Prince's Islands in February, and remained at Nazareth four months, at the expiration of which time the English came up the river in boats. As soon as they were seen, the carpenter (Ruiz) went into the cabin of the Panda, took up the after scuttle, and put a match to a keg or bag of gunpowder. The crew then went on shore, and the carpenter followed soon after in a canoe, taking with him the ship's papers. They all went to the barracks, (huts where they kept the slaves.) The English took the schooner off with them to sea, but returned in fifteen days, when the English commander came on shore and demanded of the African king that he should give up at least the captain and carpenter of the Panda, if none others of the crew. The king, however, refused, and the English then began to fire upon the town from the pivot gun of the Panda. This gun was a twelve or sixteen pounder, (brass,) and she had besides two small carronades. During the firing, the schooner took fire. The English went away in three days. After this, the money taken from the Mexican was hid in a barrel on the beach, on the right hand side—did not know, at the time, whether all the money was hidden, because an order came from the captain to go into the *bush*, for the English were coming in their boats—they afterwards took the money up and buried it again at Cape Lopez—they went for it again in a few days, by order of the captain—five of them went, all now present—witness was one of the number—he and Castillo dug up the money, and the others began to count it—witness told them they had no time to count the money, to which they replied that they had the captain's orders to count out \$5000, and leave it there for him—we left the \$5000, and took away \$6000, which was all that remained—this sum was divided among us—it was divided in a two-story house, and in a dark room—we were obliged to use a lantern—before the money was divided, we were told that the captain was going to divide it, and that if each man did not go and get his "share there would be the devil to pay." Witness was not taken, but surrendered himself voluntarily at Fernando Po. The boatswain, four seamen and himself went to Fernando Po—three of them are now in court, Delgado cut his throat in this city, and the boatswain died—they were taken from Fernando Po, towards the Island of Ascension, where they found the rest of the prisoners. He and four more were taken to England in a schooner—the rest followed in the Curlew, and from England they were all brought to the United States, in His Britannic Majesty's brig-of-war Savage. The court adjourned.

## THURSDAY MORNING, 9 o'clock.

*Perez*—CROSS-EXAMINED. The *Panda's* cargo consisted of new rum, about 30 bales of cloth, 250 muskets, 250 barrels of powder, 1 barrel of knives, 1 box necklaces, box of entlasses, box of flints, 2 boxes of axes,—shipped for \$20 per month, as an ordinary. The seamen had \$25—cannot read or write—does not know what course the *Panda* was steering when she fell in with the Mexican—does not understand navigation—pivot gun of the *Panda* was placed abaft the mainmast—he is sure of this—has two eyes and can see—color of iron guns was black—after the crew of the brig was driven into the cabin, Guzman was sent to keep a look out in the maintop—I was in the foretop—the cook (Antonio Ferrer) was not sent to look out, but staid in his galley—cook was never sent abaft to look out—schooner had a billet-head, but it was changed for an awkward picce of wood—they altered her rig, and made her a two-topsail instead of a foretopsail schooner—she took no spare yards from Havana—she left that place as a foretopsail schooner—the alteration was made four or five days after we left the Mexican—crew of the *Panda* brought from the Mexican money and the two yards—the *Panda* ran away from the sail seen just after robbing the Mexican—saw two sails while engaged with the brig—first was an hermaphrodite brig—when they had done with the Mexican, this vessel was out of sight.

They then saw a ship, and this was the vessel from which they ran away. They ran away in an opposite direction from that in which the ship was coming. The *Panda* was hauled on the wind. They crowded all the sail they could upon her. They lost sight of the ship about four in the afternoon. It was thought on board that she was a ship of war. Does not know whether the ship chased them or not. Saw the captain of the *Panda* take a pistol away from the third mate, which he had brought from the Mexican, and throw it overboard, saying he wanted no such a thing on board his vessel; only wanted money. Did not see the watch brought on board by the boatswain—heard he brought one, and a piece of duck. They took four oars out of the brig's boat, and then scuttled her with an axe. Those who went on board the American brig at first, were armed; the third mate with a sword, and the rest with long Spanish knives—the blades of these knives were ground very sharp, like daggers. The Spanish sailors usually scoop out a little of the back part of the knife near the point, and then sharpen the point. It is customary to give the men jack-knives, but they bring their own long knives in their bags—the knives are not sharpened all along the back.

The witness here pointed out those of the prisoners who went on board the Mexican, who were now present in court, and said that the rest were dead.

They were thirteen in all. As fast as they came from the schooner the captain sent others in their place. Capt. Gibert hailed the American brig, and ordered his men to take her crew from the forecabin and shut them up in the cabin. Does not know who shut them down. Castillo told me that a smoke was made to suffocate them. Did not see any fire. The boatswain was about the size of this man, [pointing to the interpreter] had a sear on his nose; wound had been large, but was healed when I saw it. Don't remember whether his nose was straight or crooked. It was not a negro's nose, [pointing to Ferrer's] but a

long nose. His hair was black and curly. If boatswain were alive, every one would know him by the cut across his nose. He was about the middle size. Sometimes wore a straw hat, sometimes a cap. Generally wore a light felt hat, with low round crown. Never saw other felt hats on board the schooner. Don't know what shoes he wore at the time. Sometimes wore yellow, and sometimes black shoes. Crew wore shoes of both colors. Yellow shoes are made of untanned skin. Shoes sold for six and eight rials [equal to seventy-five cents and one dollar] in Havana. Don't remember what shoes Boyga wore. The officers wore black shoes; one or two of the men also had black shoes. Do not remember whether the boatswain wore a jacket or not, on the day of the robbery. He was a poor man, and could not afford to wear a jacket at sea. The sailors on board Guineamen seldom wear jackets, but take one with them, usually, in case they should go ashore at any port. Does not know what color the jackets were that the sailors wore, as he did not look particularly at their backs. Does not remember whether any of the crew wore monkey jackets when they went on board the Mexican. Boatswain had a jacket, black. Ruiz, the carpenter, had a pair of Nankin trowsers—think he had a cap on. The day they boarded the Mexican, the captain ordered them to shift about; some to wear hats, and some to wear caps. Witness cannot read Spanish.

To a question from Mr. Child, how then he could distinguish the letter on the boxes brought from the Mexican, he replied, because he knew four letters of the alphabet, P, D, O and U. Mr. C. here presented him with the alphabet, for the purpose of testing his knowledge in this particular, when he designated most of the letters correctly. The indictment (in Spanish) was then placed before him, and he read, with difficulty, a small portion of it.

Perez here, however, having been under the hands of Mr. Child for several hours, became impressed with the idea that the questions he was asked were put with a view to make him criminate himself, and got into a state of great excitement. He spoke in loud and rapid tones, struck his breast and the rail of the stand in which he was placed several times with great violence, and said he wanted to tell how the captain had divided the money, and made him and others take it. His (Perez's) object was to exculpate himself. The court was thrown into great confusion, and was unable, for a considerable time, to stop the voice of the witness. He was at last taken out, and being in a state of great exhaustion, refreshment was procured for him.

The Court remarked that if the witness imagined he was criminating himself, in answering the questions of Mr. Child, that delusion ought to be removed from his mind.

Mr. Child objected, on the ground that if the witness was under the impression alluded to, he was still bound to speak the truth, and he (Mr. C.) thought that, possessing as the counsel for the prisoners did, such feeble materials for the defence, having no witnesses, they ought to be allowed the benefit of any thing that might fall from the witness under the existing state of his mind.

The District Attorney said the honor of the government had been pledged to the witness that if he spoke the truth, no harm should result to him. He (the District Attorney) thought it therefore his duty, both as regarded himself and the government, to do away any such delusion as that which now rested on the mind of the witness.

Mr. Child here expressed himself very strongly in relation to the officer for the government and the court. He said he had never witnessed such an exercise of the power of the powerful against the weak, and stated that, from the most careful examination, he had become convinced of the innocence of the prisoners, and believed them to be victims of one of the vilest plots that had ever been invented.

Mr. Dunlap said he should not suffer personal feelings to influence him in this matter. It had been his desire upon this, as on all other occasions, to give the prisoners a fair trial, and he left the counsel for the prisoners to say whether if he (Mr. D.) had been disposed to have taken advantage against them, he had not had an opportunity of doing so. He did not deny the right of counsel to question the witness, or even to lay traps to catch him—to see if he had spoken falsely; but he did wish the witness to understand that this was not done by the government, who had pledged itself to bear him harmless. If the impressions under which the witness was laboring, were not cleared up, he would believe that he was dealing with a faithless government; the anchor which bound him to the government would be broken, and he would act and speak accordingly.

After much further discussion, it was agreed that the witness should be apprized of the true state of the case, which was accordingly done, and the cross-examination then proceeded.

Left the brig at eleven or twelve o'clock—first went aboard of her about eight—nothing was said of the money taken from her till after the English took the schooner—carried it away then from the place where it was first buried. There were only \$11,000 of the remainder, the captain had \$4,000 in his trunk, the rest had been spent for provisions and other articles.

The captain brought from Prince's Island a patent lever watch and a dressing-case, the two cost \$800. The dressing-case contained a silver wash basin—he also brought two bales of tobacco—all was bought with the money taken from the Mexican.

When the Panda left Havana she had not on board so much as a quarter of a cent—witness was captain's servant, and overhauled every thing belonging to him thoroughly. The mate had \$15, which he kept in his own hands. Capt. Gibert also brought from Prince's Island two bales of handkerchiefs, two frock coats, which cost \$26 each, a piece of Guinea cloth, and some black and green paint. The paint, cloth, and one of the frock coats were intended as a present for the African king. The \$4,000 in the captain's trunk were buried in the yard of the negro interpreter, when the English came up in their boats and took the schooner. Is certain the \$4,000 were buried in the interpreter's yard, because he (witness) assisted in taking it there himself. Castillo helped me carry

it—it was too heavy for one or even two persons to carry. Boyga, Castillo, Guzman and myself, afterwards went to Cape Lopez for the \$11,000, which we had carried there and buried when the English came up the river Nazareth in their boats. I took the bags out, and the others counted the money. Made as much haste as possible, as the musquitoes were biting my hands. \$5000 were buried for the captain. Boyga and Guzman buried the \$5000. The money was in canvas bags, and buried about half a yard deep. The money was dug up four or five days after it had been carried to Cape Lopez. It was buried at first before the schooner was taken, and remained buried till after the English took her. The captain then sent word that all hands should run away, as the English were coming after them. Took the money with them at that time and went to Cape Lopez. Was so afraid of being taken prisoner that forgot the day of the month or week. Never was a prisoner before. The reason he was so alarmed was that he never was caught in so dirty a scrape as robbery and piracy before. The money that was buried at Nazareth remained there about four months. Part of it was carried off and buried among the mountains. Never heard of this money afterwards, as I and five others got on board a boat and started for Fernando Po. Before reaching the last named place threw all the money overboard. Was persuaded to do this by the boatswain; he said that if we carried it with us it would prove our condemnation. The money was divided by Capt. Gibert. He gave the mate \$2,400; I received only \$250. The Captain called me to him; he was sitting on the floor with the money by his side. He said he gave me money to buy clothes with, and that I might go; as I had been wanting to go for some time. When I saw the captain he had a knife in his bosom. Think he intended to kill all who refused to take their share of the money. He gave the boatswain \$500; Garcia \$400; Castillo \$250; Montenegro \$250; and Delgado \$300. Don't know whether others of the crew got any or not. All who went in the boat with witness to Fernando Po had their money in bags. Placed the money in the bottom of the boat for ballast.

When first landed on the beach at Nazareth, the third mate ran away. Captain sent him \$1000. The carpenter carried the money to him. Sent it to the negro interpreter's hut, whither third mate had fled. Afterwards saw the money in the hut; saw the mate there also, who said that the captain had sent the money to him. When the schooner was run ashore at Nazareth, the captain told them if they were captured by the English to say they belonged to a Spanish brig that had been cast away. All the wages he ever received from Capt. Gibert was a month's advance before he left Havana. Has served on board the Panda for nine months and a half; has no doubt if he had not taken his share of the division he would have been stabbed.

Captain had \$4000 in his trunk, \$2000 which was left for him at Cape Lopez, and what remained of the \$6000 which were divided among witness and others. Does not know how much remained of the \$6000. There was no rule of division among the crew of the Panda. The captain was sole owner of the vessel and did as he liked. Angel Garcia had \$400, and witness only \$250, he supposes because the former was a working man and he (witness) only a boy. At Fernando Po told about the money that was hid at Cape Lopez and in the interpreter's yard. Witness and five others went in a boat from Nazareth to Fernando Po—all changed their names. Stopped at Camerone on the way—there was

an English ship trading there—went on board of her, and said they belonged to a vessel that had been cast away; said this, that they might not be suspected of having money. It was the captain who ordered the Panda to be blown up in the river Nazareth. When the carpenter came ashore from her in the canoe, he (the captain) asked why she had not been blown up; earpenter said he did not know why an explosion had not taken place. The captain and mate asked him why he had not bursted a barrel of powder over the deck, loaded a gun, tied a fish-line to the lock and pulled it when he came off in the canoe. The cabin scuttle leads down into the magazine.

Sixty negroes had been bought with the cargo of the Panda, and the remainder had been sent off to buy more. Captain said he intended to take 450. The natives were against the English. Captain of the Panda asked the African king to let a guard of negroes stand upon the beach, armed with muskets, to prevent the English from landing. When witness reached Fernando Po, was asked if he belonged to the Panda, and said, no; but when they put him under oath he confessed. All the rest denied until the boatswain being confronted with a Portuguese, confessed. They were then examined before Governor Nichols, the Captain of the English boat that brought them to Fernando Po, and some clerks. When witness told them about the \$20,000 taken from the Mexican, one of the clerks, who had an American paper in his hand, said, "very true, very true,"—was eight days at Fernando Po before he was taken into custody—hove the money that was divided among them by Captain Gibert overboard on their passage to Fernando Po. Told the governor of it, and he went in a steamboat, with negro divers, and got it up again. Before he (witness) left Nazareth, a Portuguese pilot-boat left that place, to coax Capt. Gibert to Prince's Island that he might be caught—does not know where the newspaper that he saw was printed—thinks in England.

They told him if he did not tell all about the matter he would be hung—and then his heart failed him, and he confessed—Delgado also confessed a short time afterwards. The governor told Delgado he need not be afraid, for he (the governor) would write to England and get his pardon. Captain Trotter was present at these examinations. The rest of the crew were in the hospital—witness was in the hospital when the boatswain of the Panda died. Presents or money were never offered to Delgado to make him confess. His own fear made him tell all—he was told if he spoke truly he might get off with a short imprisonment.—[The Court here adjourned.]

#### FRIDAY MORNING—9 o'clock.

Mr. Child apologized at the opening of the Court this morning for the strong language which he used yesterday, in relation to the Court and the District Attorney. The apology was received by the Court, and the latter replied that he should never think of the matter again. The examination of the government witness, *Perez*, then continued.

He said he wanted to tell that he did not come here bribed by any one, and he wished to know from the prisoners where they got the money which was divided among them, if they did not get it from the American brig. Domingo Guzman, he said, had confessed on board the English vessel, that they had robbed two vessels, one besides the Mexican; in the former, however, they got no money. Does not know

of any inducements being held out to Delgado, to make him confess. He confessed without the English saying a word to him. When Delgado saw the corpse of the boatswain, he did not say—God forgive me for the false witness I have borne against you. Witness does not remember whether he said at Fernando Po that he could not read or write—said so at Salem.

Mr. Child here gave him the indictment to read, and he read a part of it with greater facility than he did the previous day. Mr. Child then wished him to write. The Court objected, saying that the counsel for the prisoners had no right to put the witness to this test. At the instance of the District Attorney, however, the experiment was permitted to be made, under the proviso that the witness should not be called upon to write his own name, as many men could write that, who could write nothing else. Perez then came down from the stand and took up the pen, reiterating the assertion that he could not write. He was asked, he said, by the government at Fernando Po to sign his name to the deposition he made there, but he could not do it, and was therefore told to make his mark. The witness here made an effort to write, but finding he could not, threw down the pen in despair. The Court wished it to be understood that this trial of the witness, although permitted, could not be legally called for by the prisoner's counsel.

CROSS-EXAMINATION CONTINUED. Did not distrust Capt. Trotter's promises to me at Fernando Po, and say I only made my mark that I might thereafter disavow it as my signature. When in England was asked by Capt. Gibert and the mate, when in the prison in England, if he (witness) had signed his deposition at Fernando Po—said he had made his mark, and they then said, "No matter, you must deny every thing." Has conversed with the black cook of the Panda, Antonio Ferrer. Told the cook at Plymouth while they were confined on board a seventy-four there, that the captain wanted him (Percz) to deny every thing, so that he (the captain) might himself turn State's evidence, and hang all the crew. Captain and mate tried several times to induce him to deny every thing. Was not so frightened when taken before the inquisition at Fernando Po, as to say anything. "No! it was a lie to say that he did so." Out of ten words of English can perhaps understand five—was in Salem when the crew of the Mexican testified—saw the captain and cook of that vessel—heard them talking and could not understand them—saw them making signs and pointing out the prisoners whom they knew—thinks he recognized the captain of the Mexican—believes he was one of those who came alongside the schooner in the brig's boat—never confessed at Salem, was only asked to identify his mark at the bottom of the deposition he made at Fernando Po—this was before the Americans were examined—did not recognize any others but the captain, there were so many white people present, and white people are so much like each other. I remained in the foretop during the robbery of the schooner—from about six in the morning till six in the afternoon—went down to breakfast about eight—have been three voyages to the Coast of Africa as cabin boy. The vessel in which the captain and mate went from Nazareth was afterwards a prize to the Curlew—believes she was given up afterwards as a bad prize—don't know whether she was taken because she had pirates on board.—



WILLIAM COOPER (1791-1868)  
Portrait of William Cooper, 1840s  
by John R. Smith



NICOLA COSTA, *Cabin Boy*.

(ACQUITTED.)

Born in Catalonia.—Age, 17.

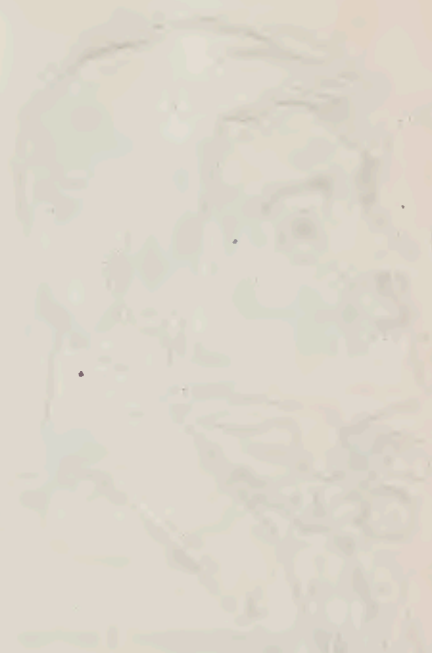
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JUAN ANTONIO PORTANA, *Ordinary Seaman.*

(ACQUITTED.)

Born in Carthagená.—Unmarried.—Age, 20.



THE NATIONAL ARCHIVE  
COLLECTION

OF THE PRESIDENT OF THE UNITED STATES

She was released in England about twelve or thirteen days before we left for America—does not know whether Capt. Trotter told when we reached England that he had pirates on board—saw some English newspapers, never read them—none of the crew of the *Panda* except himself were ever permitted to go at large—Castillo went in the boat once, to carry an officer on shore. Capt. Trotter did not put the mate and captain of the *Panda* in irons. They were all shut up in a room together. After some time an order came for them to be permitted to walk the deck. Delgado was with witness, was handcuffed to him when they came ashore at Salem. Capt. Gibert used to go on deck in his chains—any of the prisoners might do this. When Castillo went on shore with the mate, could not have escaped if he had wished—they were guarded when on board a seventy-four at Plymouth.

The vessel lay in the stream and was never moved into the harbor—never heard of any one offering to assist them to escape, never. They were not permitted to speak to any one except in the presence of a sentinel. On board the *Panda* was a sailor who could speak English, his name was Perico—he was a fat white man, does not know his country—he died on board the schooner. Perico was a Spaniard, but had sailed on board an American brig. The powder of the *Panda* was stowed in her hold at Havana—witness has not been concerned in the war between Spain and her colonies. Has been on board both Danish and French merchantmen. Does not know who was the commander of the Spanish forces during the Columbian war. Never knew General Morillo. Never served on board any man-of-war.

The witness, shortly after this, on seeing some papers between Messrs Hillard and Child, the counsel for the prisoners, expressed a fear that something was going wrong; but on being informed by the interpreter that the two gentlemen were connected in the case, he became satisfied. He was directed to be removed for a few minutes, and on his return the cross-examination proceeded, but he soon lost all patience, and with much gesticulation and energy, protested that he would not answer any more questions, being certain that they were dictated by the prisoners. He was at last, however, induced to continue his statements.

Was on board a Spanish schooner as cabin boy during the war between Spain and Columbia. During the time of Morillo was taken prisoner in a brig called the *Eagle* and carried into Havana. Brig was taken because she had slaves on board. Nicholas Costa was cabin boy on board the *Eagle*, and afterwards on board the *Panda*. Black boy (Antonio Ferrer) belonged to Maracaibo—never told him to say he was a slave. Don't know whether he is a slave or not. Knew him to be an African, by the marks on his face. Have heard others say that he was a slave. His name is put in the roll as born in the Havana. Was not aware when I shipped that the *Panda* was going a piratical cruise. All vessels leaving Havana for the coast of Africa are examined by the General of Marines. *Panda* and crew were not examined—don't know reason why she was not. Delgado came from Spain in company with witness. If he (witness) had known the Captain of the *Panda*, would sooner have stayed on shore and eaten dirt than have gone with him. Did not know *Panda* had any guns on board when I shipped. When she was in river Nazareth, carpenter carried all her papers on shore and gave them to the captain. Never knew what became of them after-

wards. When *Panda* left Havana, bore a Spanish flag. Her papers were all good as far as witness knows. Can't tell whether *Panda* was or was not boarded by officers when off Havana. An English ship was robbed by the crew of the *Panda* previously to the robbery of the Mexican. Most implicit obedience was paid to Capt. Gibert by the crew of the *Panda*. Don't think the crew feared him, but obeyed all his orders. The English corvette was robbed about eight days after we left Havana—chased her some time before we came up with her. On coming up, Capt. Gibert hailed the English captain and ordered him to come on board. The latter said his boat leaked so badly, would not be able to keep her afloat. Capt. Gibert again told the English captain to come on board quickly. The English then launched their boat, and the captain, boatswain and two men came on board the schooner. The corvette was robbed of five goats, one cheese, several cases of preserves, cordials, &c. and two half coils of rigging. No other piracy was committed after the robbery of the Mexican. Capt. Gibert often expressed a wish to sink a Spanish vessel lying at Petty Sestos. Made preparations, but did not do it, because the sea ran so high. Never received any money in England from Capt. Trotter—the Spanish consul at Plymouth tried to make me confess that I had been bribed.

Did not get a good deal of rum at Fernando Po—had no money to get it—never confessed that I was drunk at the time I made my deposition, and the scoundrel who says I was is a liar! Prisoners at Fernando Po confessed that they had robbed an English corvette as well as the Mexican, and that they took away from her several monkey jackets, shirts, and the cabin curtains—can't tell exactly the size of the boxes of dollars taken from the Mexican, the bags contained about a thousand dollars each, and were made of something like velvet—thinks that a musket was fired to make the Mexican heave to—the boat from the brig came on the larboard side of the gangway.

The court here intimated to Mr. Child that the witness was laboring under a severe pain in the breast, and hoped that that gentleman would not continue the cross-examination longer than was absolutely necessary.

Witness proceeded—was a close prisoner at Fernando Po—was at large and carried the prisoners their food—when the money was taken out of the boxes it was put into bags made of dark coarse linen, these bags rotted, and others were made to receive the money—the boxes were thrown overboard when emptied—does not know what sort of wood the boxes were made of—captain took the money up and shook it round in bags, to see if there was any yellow money among it—did not go close to the boxes, but thought I saw something black like iron round the edge of each—they were counting the money all the time witness was in the foretop—It was all spread out on the companion way—does not know if they were counting it after he came down from the foretop—does not know how much Governor Nichols got up with his negro divers.

*By Mr. Dunlap.* Does not know who buried the \$11,000, but he (witness) went with others and dug it up—was kept so long in the top of the schooner, during the robbery of the Mexican, as a punishment—does not know what became of the log-book of the *Panda* after it was carried on shore—the papers brought by the carpenter when he came off from the *Panda* in a canoe were put into a tin box—they were wet.

The witness could not for some time be made to understand what the log-book was, but its use was at last satisfactorily explained to him.

He then stated that while the schooner was lying in the river Nazareth, after her return from Prince's Island he heard the mate say that he had been up all one night making a false log-book, because there was an English corvette in sight, and he wished to make her captain believe that they had come a different way from what they had really done. When witness was a boy was sent to school—was at school about eight months, but ran away and went to sea—was about eighteen years of age at this time—they were trying to make him read printed letters, when he was at school, which he could do a little now.

CROSS-EXAMINED. Was sitting before the door of a negro hut, before which the mate and boatswain were walking, when I heard the conversation about the log-book.

*Captain Butman* recalled. *By Dunlap.* While the men from the Panda were going in my boat to the brig, one of them asked me where I said the vessel was from; he asked me in broken English.

*George H. Quentin*, the English Naval Officer, was next called. Is an officer in the Royal Navy of Great Britain; holds the rank of Master's Assistant (i. e. midshipman.) Came to the United States in the *Savage*, an English ten gun brig. All the prisoners now present came with him. Arrived at Salem on the 22d August. Was previously in the *Curlew*, commanded by Henry Dundas Trotter; have belonged to her two and a half years; left the Cape of Good Hope in January, 1832, for the Coast of Africa. Arrived at Prince's Island about March. While there, received information, in May, 1833, of the robbery of the brig *Mexican*, by a vessel answering the description of a schooner then lying in the river Nazareth. Sailed immediately for the latter place, and arrived there 4th of June. Three boats, containing in all forty men and commanded by Capt. Trotter, went up the river. Just after daylight got sight of her at anchor; pulled in shore, to avoid being seen; when we came within a mile of her, hoisted the British colors. Soon as they saw us, they all took to their boats, and made for the shore, excepting one man, and he soon after left in a canoe. Capt. Trotter chased them with his own boat only, but could not come up with them, and therefore returned to the schooner, which we found on fire. I was the first that boarded her. The first thing we did was to put out the fire, which we found in the magazine below the cabin floor. Saw nothing but smoke coming out of the cabin. One of our men went down and found a quantity of cotton and brimstone burning, also a slow match ignited and communicating with the magazine. The magazine contained fourteen or sixteen quarter-casks of powder. The next thing we did was to look for the ship's papers and log-book. Did not find them. We then bent the schooner's sails, and went up the river. Had the vessel in our possession ten or twelve days; she was a long, low, two topsail schooner; she was sharp, and her masts raked a great deal; her figure-head was cut off; no name on her stern; her deck was that of a slaver, with a grated hatchway. Tried to get possession of the crew, but could not. When we left the river, we took an inventory of every thing there was on board—then sailed for Cape Lopez, where the schooner blew up. It was supposed that a spark of fire got into the magazine. We lost two officers and two men. She had a long brass pivot gun abaft the

mainmast, and two short carronades—a six and a nine pounder. We got one of the Panda's crew before we left the river, (Simon Domingo, the Portuguese.) We took four Portuguese afterwards; one of them (Antonio Silvera) and the man first taken (Domingo,) came with me in the Savage, and are now in Boston. A boat was sent up to the African king, and he promised to give the prisoners up. When we went for them the next morning, the Prince came down and said they should be brought to us as soon as 'the sun had gone to dinner,' (12 o'clock.) The men, however, were never sent. We secured five of the Panda's crew at Fernando Po—and the captain, the boy (Costa,) Velazquez and cook, at Cape Lopez. They were kept on board the Curlew during the cruise, and then sent to England. Four or five were apprehended at St. Thomas. The prisoners were taken first to Plymouth, and lastly to Portsmouth, from which place they were brought to the United States.

CROSS-EXAMINED. The Esperanza was taken on suspicion of aiding the crew of the Panda. I have heard that she carried some of the prisoners and their money to Fernando Po. Two or three of the crew of the Esperanza were taken to Portsmouth, and some landed elsewhere. Don't know whether the vessel was libelled in England; don't know whether she has been discharged; it was in the newspapers that she had; Captain Trotter afterwards told me that it was false; don't know why the crew was discharged and the vessel brought in; don't know whether she was announced as a pirate. The Curlew had been in commission about four years; don't know where she has been all that time. The Esperanza carried the English flag and pennant some time after her capture. It is customary to hoist the English flag when we take a prize, but not the pennant. No English officer has a right to hoist the pennant on any prize—never saw it done in any other case. Don't think the arrival of the prisoners was announced in England. Some of them were in irons on board the Curlew. Two of them went ashore with me in a boat—Castillo and Garcia were the men. One of our men was with them when I left the boat, but got drunk while I was away. Castillo and Garcia might have run away if they liked, but I think they would been speedily retaken, as they did not know the language. I gave them something to drink; they rowed me ashore. Don't think Perez was in the boat; there were only two of the prisoners, and they were the men whom I have mentioned. Remember going to the river Bona in the Curlew. Some of the prisoners were on board the Esperanza, and others on board the Curlew. The mate, the carpenter, and three others were in irons. Captain of the Panda did some translations for Captain Trotter; Captain Trotter might have regaled him with wine and brandy. When we were in the river Bona, the Esperanza got aground rather less than a mile from the shore; a great many of our hands had gone up the river in boats; fourteen or fifteen only remained on board. Don't know whether all the prisoners were on board her at the time. They assisted our men readily in getting her afloat again. Do not think the prisoners outnumbered our men. While at Nazareth, consider we were in some danger from the natives—can't tell whether it was by the intercession of the captain and mate of the Panda that Captain Trotter was not killed. A search was made to find the money taken from the Mexican, but it was unsuccessful. Capt. Trotter recovered \$683 of it at Cape Lopez. Spanish dollars are current on the coast of Africa, but the natives prefer goods. They will take old clothes, empty bottles, or any thing else in preference to money. Slaves are bought with money. Believe dollars are current

all along the coast. I know of no place where slaves cannot be purchased for money, excepting in the interior. The natives take the dollars to the English merchants, and get goods.

The principal object of the *Curlew* was the capture of slavers. Four years is not an extraordinary cruise for such a vessel as the *Curlew*. Crew did not murmur. The *Curlew* re-fitted at the Isle of Ascension. All the men belonging to the *Curlew* and *Panda* were sent ashore. Prisoners were guarded by sentinels; they were allowed to go into the skirts of the town. Don't know whether prisoners were in irons; did not see irons on them; did not see them go ashore. Saw the captain and mate of the *Panda* in irons on board the *Curlew*. Does not know whether the sentinels were placed to guard the English crew as well as the prisoners. Cannot say whether there was any part of the crew of the *Curlew* appointed especially to perform guard duty.

Ascension is a small island, perhaps 14 or 15 miles in circumference. *Curlew's* people were mostly employed about the vessel; some allowed to go ashore when they chose; don't know what they did on shore. There were about four hundred soldiers in the town—also a few boats belonging to the island, and our own boat lying on the beach. A sentry was stationed at the end of the wharf. No boats in any other part of the town; there are no boats owned by the inhabitants; a guard from the garrison is constantly stationed over the boats; wharf forms part of the fortifications. Captain Trotter did not cruise after a prize to replace the *Panda*, that I know of. He (Captain Trotter) could not return to England without orders; am sure of this; did not show me his sailing orders; was not accustomed to do so. Think there are about four hundred inhabitants in Ascension; they reside in two parts of the island. Prisoners could not have procured a boat to leave the island, unless they cut down a tree and made one for themselves. Prisoners never tried to escape, to my knowledge. Once, while in Cape Lopez, we had more prisoners than men of our own; there was then some appearance of a rising among the prisoners; never at any other time.

While at Cape Lopez, captain Trotter and some of our men were taken prisoners by the African king—were taken on Sunday and kept till Wednesday—it required considerable negotiation to get them free—captain T. was never anxious on account of the capture of the *Panda* or the *Esperanza*—witness was in Fernando Po when Percz was examined—captain Trotter, in company with the surgeon and interpreter, examined all the prisoners—no offers or promises were made to any one, to induce them to testify against the crew of the *Panda*—Captain T. said nothing about his liability to respond for the loss of the *Panda*; *Panda's* cargo consisted of 60 or 70 bags of rice and farina together, 16 or 17 qr casks of powder, 2 casks of American bread, a few barrels of pork and beef, and a small quantity of other provisions; a few muskets, one pair of pistols, and some cutlasses were also found on board—saw the inventory made out—captain T. took \$20 from the mate of the *Panda*; also a watch, and a diamond ring of small value—don't know that he took any thing else from the mate—think he took some papers away from the *Panda*; don't know positively—had before thought they were all missing—could find none when we first went on board—think captain T. transmitted all the money taken from the *Panda* or her crew to the Treasurer of the Navy—no division was made of it—had there been, should have received a share—don't know where money is usually sent that is taken in prizes—think an English vessel arrived at Ascension while there—don't know her name—she was commanded by

captain Warren. The cook (Ferrer) had no inducement offered him to make him testify—don't know Jose Perez's state as regards intoxication, while he was examined—know nothing of the boatswain's death—four prisoners were taken by captain Trotter in river Nazareth; one died, don't recollect his name, and one deserted—one was discharged; don't know where we were at the time—another was also discharged, because he was sick, and it was thought he would not live long—don't know why the other prisoner deserted—prisoners were never urged by captain Trotter to give their depositions, that I know of—never heard the cause of the boatswain's death—don't know where the men were examined—all British vessels of war at Prince's Island are stationed in what is called West Bay. The court adjourned.

#### SATURDAY MORNING, 9 o'clock.

CROSS-EXAMINATION of *George H. Quentin* continued. Found a U. S. ensign and pennant on board the *Panda*, when she was captured; also two Spanish and one French ensign—there was another, but I do not remember of what nation. There was no firing at the *Panda*—a musket or two was discharged at the men who left her in a canoe, and that was all—the fire was not returned—have no knowledge of any feeling of hostility existing on the part of the crew of the *Panda* towards the English—the guns of the *Panda* were never fired at the negro canoes—I remember some of our men being flogged, but it was for insolence and drunkenness—am sure that the pivot gun was not fired at the negro canoes—the men broached a cask of *rum*, of which there were eight or nine casks on board—there were also some other articles and some round, cannister, grape and chain shot; shot of this kind is not usually carried by the slavers—don't remember any straw carpeting on board the *Panda*—the inventory and duplicate taken on board the *Panda* were both destroyed—the officers killed on board the *Panda*, by the explosion, were named Perey and Johnson—the gunner, a marine and a mulatto boy, were also killed—there were perhaps twenty-five persons on board the *Panda*, when she blew up—I believe the gunner and Perry died from the length of time they were in the water—don't know that they were drawn out by the *Panda*'s men, nor that the natives wished to destroy them—never heard that the *Panda*'s men assisted—was between the brig *Curlew* and the schooner when the explosion took place—was going to the latter—heard the explosion, and saw that she had gone down—found part of our men on board a small schooner that lay near, and took them on board the *Curlew*.

We here understood Mr. Child as asking a question of the witness, and the court as remarking "that the gentleman had answered that question before."

*Mr. Child.* We do not know *gentle* or *simple* here.

*Judge Story.* If there is aught exceptionable in my usage of the word *gentleman*, I will use the word man, although I consider that *all present* are entitled to the former appellation.

The CROSS-EXAMINATION continued. Witness does not know whether the powder which was placed in the cabin to blow up the vessel was in a bag or not—saw a bag hauled up—also a match still burning; the name of the man who first went down is Trumbull; know nothing of Trumbull's having refused to swear that there was a match in the cabin—did not find a swivel on board the *Panda*—it is usual to place

the national flag of a prize under that of her captor—it was not done in the case of the *Esperanza*. There is a Spanish consul at Plymouth—can't say whether he is a Spaniard or an Englishman—do not know that he is connected in any way with captain Trotter, or that captain Gibert and his mate wrote to the Consul General in London—do not know of any letters being intercepted—can't remember whether the Consul at Plymouth had a foreign accent—only saw him five minutes—he came on board in a citizen's dress—don't know of the Portuguese Consul's doing any thing for the prisoners, or of any communication having passed between him and the Consul General in Spain—never heard anything of the prisoners expecting to be tried in London, or of their demanding a trial—know of no pirates about the Cape de Verd Islands—heard something of one being off St. Thomas—captain Trotter is in an ill state of health—has had a fever several times. Did not hail the boats of the *Panda* before firing, because could not get near enough—have no knowledge of captain Trotter's having the protest of captain Gibert—the diamond ring taken by captain Trotter, from the mate of the *Panda*, bore the initials B. S.—don't know whether these letters are the initials of the *mate* and his *wife*—there was no hair round the ring on the outside—was not present when captain T. took the *mate's* watch—don't know whether the slaves on board the *Esperanza* had free papers—was not present at their examination—know nothing of attempts to frighten them by pointing guns at them—a mark was placed on the *Esperanza*, at which the crew of the *Curlew* practised firing—the passage of the *Curlew* home was retarded in consequence of having to wait for orders—do not know whether captain Trotter proposed to give up the *Esperanza* to her owners—don't know whether our arrival was announced.

Mr. Child here showed the witness an English paper, and asked him if it did not contain an announcement of the *Curlew's* arrival. The witness said it did.

Two of the crew of the *Esperanza* were brought to England, the boatswain and cook; also one or two others—do not know what has become of them, or whether they were discharged.

Some discussion here took place between Mr. Child and the District Attorney. Mr. C. said that he observed a disposition on the part of the officer of the Government 'to restrict the prisoners.'

*Dunlap*. Scarcely knew what Mr. Child meant by 'restricting the prisoners.' He believed the other counsel (Mr. Hillard) would not say what Mr. Child had said.

*Mr. Hillard* was perfectly satisfied with the conduct of the District Attorney on this as on all other occasions, and should always feel happy in being opposed to the gentleman.

The examination of Mr. Quentin closed here.

*Simon Domingo*, the Portuguese who gave himself up to the English at Nazareth, was next called.

[Messrs. Peyton and Taveres were here sworn as interpreters. Witness was also sworn on a copy of the Scriptures, authenticated by the Catholic Bishop of Boston.]

He stated the various voyages he had made until he arrived at Prince's Island, where he shipped on board the *Panda*, on the 9th February, 1833.

[The witness also identified the captain, and mate, and the remainder of the prisoners.]

Went with the *Panda* from Prince's Island to the river Nazareth. When arrived there, came to an anchor, and lay there for four months, 'doing nothing.' They had previously traded for negroes. Soon as they came to anchor, the captain and officers all went ashore, and witness saw no more of them on board. The schooner was afterwards set on fire and sunk. She was boarded by the English in four boats. The carpenter tried to set her on fire, and the crew all took to their boats and went ashore. The carpenter was the last man on board, and went ashore in a canoe; does not know how the carpenter meant to set the vessel on fire; saw him take fire from the galley; got scared, and went into the boats; went on shore, and staid some time on the beach—afterwards returned to the *Panda*, of which the English had then possession. When witness joined the *Panda*, she was under the Spanish flag. Has heard all the prisoners say that the *Panda* came from Havana.

CROSS-EXAMINED. Was never in the Cape de Verd Islands. Was four months on board the *Panda*. Heard some of the prisoners confess to the captain of the English brig; know of no inducement held out to them to make them confess; some of them are here who confessed; does not know whether their confession was written down; was below at the time.

[Mr. Child asked him how then, if he was below, could he know any thing of the matter. Witness then said he was standing alongside of the prisoners, when they confessed.]

*Mr. Dunlap* wished the last question repeated to the witness, apprehending some misunderstanding on his part.

*Mr. Child* objected; but his objection was overruled by the Court, and the matter being explained to Domingo, he then stated that *all* were below when the confession was made.

Don't know what time confession was made; some confessed on shore at Fernando Po; one only on board the brig—the rest denied it. The one who confessed on board the brig was a small mulatto, named Domingo Guzman. He is now present.

[Witness here pointed out Guzman.]

The confession was made to the captain of the *Curlew* in the cabin. The prisoners were called in singly; was present in irons; heard all that was said; was called in to interpret what I could, as Captain Trotter did not understand the Indian language; confession was written down by Captain Trotter; witness thinks so because he (Captain T.) was writing at the time—don't know positively, as cannot read. Did not see Guzman sign any writing; don't know that Captain T. asked him to sign; never saw him sign it afterwards. Being on shore at Fernando Po, heard the other prisoners confess before Guzman made *his* confession. All the others, five in number, confessed together. Know all their names. They are Montenegro, Garcia, Castillo, Perez, and Delgado. All refused to state any thing at first, but told all after-

wards. Witness thinks the confession of Perez was written down, as all the English were writing at the time. Remember seeing the justice writing, but don't know what he wrote. Plenty of people present. Know Captain Trotter was present. All the prisoners were in one room, but called up singly to be examined. Perez confessed first and boatswain next; did not see boatswain sign any thing; all were sworn by the justice before confessing. Castillo next confessed. Two of those who confessed are dead—the boatswain and Delgado. During the four months that witness was on board the Panda, never heard any thing said of the robbery of the Mexican. Went on shore at Nazareth by Captain Trotter's orders, to search for the hidden money. Two of the prisoners guided us. Found no money. Prisoners were accompanied by an English officer, to whom they were obedient; they shewed him the place where it was first buried, but could not tell where it had been taken to. The English Captain got some money, but don't know how much; took it away from Captain Gibert, at Cape Lopez; the money was in a small bag—don't know how much there was of it; don't know what became of it after Captain took it; don't remember seeing any division of it on board the brig among the British crew. Witness was a prisoner, but not in irons. Never shipped for wages on board the Curlew, nor did any work, excepting little jobs for the men, for which he got a few coppers. When first went aboard the Panda did not know of any money being on board; never saw it till it came on board the brig. Don't know whether Custom House officers came on board at Prince's Island, for she set sail the very day he came on board. Think she had been lying about a month at Prince's Island. There were several other vessels lying at Prince's Island at the same time. Heard that the Curlew was on the other side of the island. Saw a steam vessel of war near the island.

Does not know the consignee of the Panda at Prince's Island. Does not know whether the Governor of the island was the consignee. Captain Gibert was frequently at the Governor's house. Bernardo de Soto was sick and told me he had been lodging at the Governor's house. Every thing that came on board the Panda came from the Governor's. When the Panda left Prince's Island she went straight to Cape Lopez, and thence to the river Nazareth. When they sailed from Prince's Island, a Custom House boat came and took the guard away; never saw but one guard. The Panda was not chased from Prince's Island to Cape Lopez. When she reached the latter place she came to an anchor the first day and got under way the second, upon which occasion she touched on the bar—she did so by accident. She was not pursued by any vessel at this time. Captain went on shore and took his trunk with him; does not know what it contained, but two negroes carried it for him. Third mate was aboard at this time, and had a quarrel with the boatswain, whom he stabbed in the arm. The former went on shore shortly afterwards and witness never saw him again; believes he went away in a Liverpool brig that was trading for *palm-oil* and *ivory*—saw the mate go on board in the brig's boat; this was before the English took the Panda. They did not fire on the Panda when they took her; all the firing that took place was in the evening when the Panda was surrounded by natives in their canoes. The English fired the pivot gun at them; the gun had no shot in it—nothing but powder and wadding; it was fired by Captain Trotter's orders. Captain T. did not flog any one for firing the gun; there were some men flogged after the Panda had got out of the river—but they were flogged

because they had been drunk. When the English boats were seen coming, the carpenter of the Panda said he would blow her up, and one of his comrades said, 'yes, blow her up, blow her up'; there was much confusion on board, and all the crew ran for the boat. Saw the carpenter with a keg of powder and a chunk of fire, but the English were so close that he could not use them, and threw them overboard; he then got into a canoe and went ashore. Not sure as to the number of the English—thinks there were about thirty; they went ashore the same day to pursue the crew of the Panda; did not go after them themselves but sent the negroes who were standing armed on the beach; there was a great number of negroes; don't know how many; they extended all along the beach.

Captain Trotter went to the king two or three times to demand the prisoners. Schooner at this time was at anchor in the river Nazareth. Captain T. went to the king in a row boat. Don't know how far it was to the king's residence; it took from eight in the morning until two in the afternoon to get there. Don't know how many went with Captain T. to demand men of the king. Captain went in his gig; all in the gig but Captain and witness were natives. Always found the negroes under arms. At last went with the crew to take the prisoners by force. Don't know that the natives were excited against the English. King and crew of the Panda had gone into the country. Witness did not go on shore when the negroes were on the beach; could see them and their arms from schooner. Don't know that Captain Gibert and men interceded with the king not to hurt the English. Heard Captain Trotter say, that the king always told him that the prisoners had fled into the country. When the Panda was blown up, part of the English were saved in their own small boats, and some of them by the crew of a small vessel belonging to Prince's Island. When the Panda was taken, she was not hailed by the English, but they came directly on board of her. Don't know that Captain Trotter was desirous of restoring the Panda to Captain Gibert, or the Esperanza to her owners; he had no intention of restoring either. Captain T. took the Esperanza to England; she was taken because they had suspicions of her being accessory with the pirates, and because she had transported some of them from one place to another. Don't know whether she proved a good prize or not. The Esperanza was taken up to London by her boatswain after she arrived in England; don't know what was done with her. Captain and three of the Esperanza's crew were liberated, and went on shore at Bona. Witness went to England in the Curlew. The Panda's men on the passage to England, were some of them in irons and some not; all were aft together. Captain Gibert was in irons a part of the time—don't know how long. Always put on irons when the Curlew put into any Portuguese port for refreshments. Captain Gibert during the passage to England wrote occasionally for Captain Trotter. Witness was always separated from the rest of the prisoners on the passage. Did some trifling work for the English officers; was paid for it. The prisoners were allowed to walk the deck during the day; at night were all put in irons, and sentries placed over them. Don't know that the prisoners were allowed to go on shore; witness never did after he was first taken.

Cannot tell how long Curlew cruised after prisoners were taken—she made several cruises; did not go into port often. Can't tell whether Captain Trotter cruised for the purpose of taking a vessel to replace the Panda. Captain Trotter was sick when he took the Spanish Captain

and went to Fernando Po for the recovery of his health; was sick several times on the passage home; from the time he commenced to look for the prisoners, was always ill by spells. Do not know whether Captain Trotter has Captain Gibert's protest. The Curlew stopped at Ascension, and all the crew went ashore except those who stayed to keep watch. Prisoners were all put on shore; they were not in irons; they were allowed to range over the island during the day; at night they were put in barracks and sentinels placed over them; marines with muskets guarded the tents. Perez had no ardent spirit given to him, nor the sailors either; all the liquor he saw distributed on board the Curlew was given at dinner--and then it was not raw, but mixed with water. Perez was not on board the brig, but in the schooner. Was not in Fernando Po when the boatswain died; did not arrive until a month afterwards.

*Mr. Child* expressed a wish to learn something from the witness respecting the decease of the boatswain, notwithstanding the latter had stated that he was not at Fernando Po at the time, the Court remarked that any statement under such circumstances could be but hearsay, and would not be evidence.

When Perez came on board the brig he was put in irons; was afterwards liberated and employed in carrying food to prisoners; never heard of his having received any presents, or having been threatened with punishment to induce him to confess. He did not receive part of the money taken from Captain Gibert; only one dollar was given him for bread money. Captain Trotter offered the same to any man who would not demand his share of the bread. The English crew were not called up to take their share of any money. Captain Gibert went on shore when the Panda reached Nazareth, and came again in two months; he was sick on board five days; when he recovered, he went on shore again, and did not come on board any more. Thinks Captain went on board once after that when witness was on shore, but is not certain. Panda had nothing on board when taken but provisions and water; she had no straw mats nor palm oil; there were plenty of muskets and pistols on board--also rice, farina, four or five barrels of rum, and some bread; does not know how many flags there were on board. The interpreter on board the brig was an Italian; spoke Spanish, Portuguese and English. Witness has not been in the Patriot service against Spain; has not cruised on board a privateer against Spain; does not know how old he is; did not sail out of St. Bartholemew in a Colonial privateer, nor ever served on board a privateer that destroyed twenty-eight Spanish vessels; never was carried a prisoner to Valencia.

*Captain Butman*, commander of the Mexican, was here allowed to take the stand for the purpose of correcting a mistake which he said existed in the statement published by him at Salem. It was an error of the printer. The printed statement read thus--'was soon in gunshot; fired a gun, hoisted Patriot colors, and backed main-top-sail'--while in the manuscript of Captain Butman it was--'hoisted Patriot colors, and we, finding we could not escape, backed our main-topsail.' In the printed statement the schooner was represented as backing her main-topsail, whereas the brig in reality had done so. Witness discovered this error at the time, but was busy and did not deem it of any consequence.

[The Court here adjourned, to meet at the Lecture-room of the Masonic Temple, on Monday morning, at nine o' clock.]

MONDAY MORNING, Nov. 16, 9 o'clock.

*Anastasio Sivera* called. Was born at St. Patricks, in the Brazils; is twenty-three years of age. Shipped on board the *Panda* on the 9th of February, 1833.

[The witness here identified Captain Gibert, the mate, and the rest of the prisoners.]

She sailed half an hour after he went on board. Went first to Cape Lopez in her; thence to Nazareth. They ran her ashore at Cape Lopez, intending to burn her—upon which occasion they put witness and three other Portuguese on shore. The vessel was got off afterwards, and went up the river. Witness belonged to her four months after that, during all which time she lay in the river. After she had been there some little time, Captain Gibert came to Cape Lopez, and sent witness and others on board again. Captain and mate lived on shore, as did part of the crew—only eight or nine remained on board. Did not see the cargo she brought from Havana, but know she took in slaves, because saw them. When the English boats came up the river on the 4th of June, 1833, the carpenter told all to get into the boat and go ashore, as he was about to set fire to the schooner. Carpenter was last man who left the schooner. When witness went ashore, went to the barracoon where the Captain was; staid there one day; the Captain turned him and the rest of the Portuguese off, saying he could not support them. Witness went to a negro hut, and staid there nine or ten days. The schooner was taken out of the river, but returned at the end of twelve or fifteen days. There was a Portuguese schooner lying there; witness went on board and asked Captain to give him passage to Prince's Island; Captain said he would. Captain Trotter was on board at the time; took him prisoner, and ordered him to be put on board the schooner *Panda*. Captain Trotter came there shortly afterwards himself, and commenced firing on the town; at the second gun, the schooner blew up. Witness and some others were then put on board a small Portuguese sloop that lay near, and were from thence removed on board the *Curlew*. When witness went ashore from the *Panda*, at the time the carpenter was going to set her on fire, Simon Domingo went with him up the country, but said he should return to the schooner again. Don't know whether he did so, but never saw him afterwards. Witness was in Prince's Island a month and a half on board the brig in which he came from the Brazils. Cannot tell exactly how long the *Panda* had been there—thinks over fifteen days. She was in three or four days before witness knew it. She came in in the month of January, but don't know on what day. Shipped on board the *Panda* for the voyage out and back to Havana, and was to receive one hundred and twenty dollars. Don't know what the other Portuguese shipped for, but one of them was to have received the same as himself. The *Panda* was a two-topsail schooner, long and slim; she had a brass pivot gun abaft the mainmast, and two iron carronades; she had no swivel on board; she had no regular head, but a *sort* of a billet-head. It was a long slim piece of wood, turned up at the end.

Mr. Child objected to the interpretation given by Mr. Peyton, in re-

tation to the words 'long and slim.' The other interpreter, Mr. Taveres, being referred to, confirmed the statement of his colleague.

The head was not carved. There was a difference in the schooner's sails—her main-topsail being larger than her fore-topsail; both were made of duck, but that of the latter was whiter than the former; her yards also aft were smaller than forward; there was nothing else peculiar about her; her masts raked aft; she had a crew of twelve men when witness went on board her at Prince's Island, and he saw seven others afterwards at the barracoons. A Custom House boat took the guard ashore just as witness went on board the Panda. Does not know who was the consignee of the Panda, but thinks it was the Governor (Ferrera) of Prince's Island. Heard the mate was sick and lodged in one of the Governor's houses. Has heard say the island was five leagues across. English men-of-war and English merchantmen go to the port on the west of the island. When witness was taken there on board the English brig Flora, there were an English frigate and a brig-of-war lying there. Did not see a steam vessel there. Did not see any thing brought on board the Panda while lying there. Were not chased on the voyage to Cape Lopez. There was no report at Prince's Island before he left of the robbery of the Mexican. When passing to leeward of Cape Lopez, the schooner touched bottom—but they passed a gun forward and she got off. They then came to anchor in deep water, and lay there two days. Heard mate, boatswain and third mate talking together; they said the vessel was not seaworthy and that they should run her ashore and burn her; they put witness and the other Portuguese on shore, whither the Captain had gone previously. Saw them take out a great many articles from the vessel, such as muskets, pistols, swords, liquors, &c. but no money.

There was a negro pilot on board when we touched on the bar, but he was not on board when the vessel went up the river. Don't know whether she then had a pilot. When the schooner was run ashore and Captain saw it, he came and got her off again. She was under sail, and the Captain on board, when she touched on the bar; she touched before we came to an anchor—don't know whether it was by accident or design. Witness is certain the vessel was run ashore afterwards, because he saw them run out a warp to the beach. She touched on the bar at nine or ten o'clock in the morning; came to anchor in the afternoon, and the next day the Captain went on shore; the following day the chain cable was slipped, and the vessel ran on beach; they did not weigh the anchor, saying they had no time to do it; the schooner was not pumped out same day—but next day, carpenter, and third mate went on board, and on sounding pumps found four feet of water in her hold. In consequence of driving she set in shore. Only saw schooner aground one day; don't know how she was got off; was aground one day to my knowledge. One gun (a carronade) was fired for a negro pilot just before coming to anchor; pilot came on board and took charge of the schooner. Witness went ashore when schooner was aground at Cape Lopez. Pilot came on board before coming to anchor; brought vessel to good anchorage and there left her. Third mate went to give notice to Captain that vessel was aground, and witness went with him; found Captain at Nazareth; Captain went on board schooner in a boat same afternoon; he did not do any thing to get the schooner off; all witness saw him do was to get her on. Witness did not go on board again after schooner got into the river. Don't know what hap-

opened on board the schooner when coming in, as he was twenty days on shore at Nazareth, taking care of slaves. Witness had heard that the schooner had 'come round'—did not know what day she came. Did not see the pilot, nor any thing happen to third mate. Third mate went away in an English hermaphrodite brig; don't know whether brig left in February or March; did not see him at the barracks afterwards. Don't know how long we stayed at Prince's Island. Third mate quarrelled with boatswain same day schooner went ashore; did not hear their dispute, and don't know the cause of quarrel. Saw the boatswain afterwards at the barracks; told me he had a small wound, (don't know where wound was) which third mate gave him with a knife; can't say whether third mate went away on account of the quarrel, nor whether he carried any money with him; never knew him have any money. Vessel third mate went in was bound to Annabon: don't know what she traded in; never saw her trade in any thing but bread. Never was on board; knew nothing of her trade or of her cargo.

*Mr. Child* wished to inquire further into the trade of the brig.

*Mr. Dunlap* said, the English did not trade in slaves; they did not dare to do it; knew too well the penalty if taken in possession of slaves.

*Mr. Child* remarked, that the District Attorney only spoke according to law.

*Mr. Dunlap* replied, that he hoped he should *always* so *speak*, and the discussion here ceased, the question being 'ruled out' by the Court.

Witness continued. Don't know the name of the pilot at Cape Lopez. There was a negro on shore named Jose Murie; don't know that he was a pilot; he was not the pilot that came on board the schooner.

*Mr. Child* asked, whether witness knew that two pilots came on board the schooner, one at Nazareth and one at Cape Lopez.

*The Court* said, witness had already answered that question three times.

*Mr. Child* said, he only wanted to refresh the memory of the witness, and waived the answer.

Witness does not know that pilots are furnished by negro king for vessels in the river. Stayed on board the schooner till she was taken by the English. She had on board at the time, water, rice, rum, beef, pork, farina, bread, biscuit, cocoa, beans and pease. Don't recollect any thing else. There were some mats like hearth-rugs. Some of crew had twenty mats—some more, some less. Suppose they were to trade with at Havana. Mats are used on the coast to sleep on—for various purposes in other countries; are about eight feet wide and seven or eight feet long; made of straw; form part of trade with negroes; some are fine, some coarse; never saw any fine ones on board the schooner; don't know how many were on board.

There were two barrels of mackerel on board the Panda. Was told that much of her cargo had been landed before she came to Princes Island. Saw one pipe of rum on board, which was emptied into small casks. Was present when the English made their attack. When first saw them they were very close. Does not know the reason that the carpenter did not set fire to the schooner; from fear, or some other cause, he jumped into a canoe and went ashore, taking with him the ship's papers. Saw him go from the galley with fire, but is not sure

whether it was a match or a brand of fire. Thought at the time if it was a match it must be a slow one, such as is used for discharging cannon. Before the English came on board, they fired one or two muskets.

*Mr. Child* said, that the witness had said more than one or two; he understood him one, two or three. *Mr. C.* was found to be correct.

Witness was on shore. Can't tell whether the muskets were fired at the schooner, or the canoe in which the carpenter came off. Can't tell whether the English hailed before firing. They came up in row-boats very slowly and silently. The schooner was lying in a bight, and they did not show themselves till they got round the point, and then they were close on the vessel. One of the boats had the Union Jack hoisted. Can't say that more than two or three muskets were fired. Those were all he heard. The day the English went on board the *Panda*, they fired one cannon in the morning, and another between eight and nine in the evening. Cannot swear that they did not fire twenty muskets when they boarded her.

Witness here stated the ports to which he went with the English man-of-war, on board which he had been placed. Among the rest, he mentioned the river Bona, where the English sent their boats up. The last place he went to was Fernando Po, where the English captain got possession of five of the prisoners. They put witness on shore here, and the brig went in search of Capt. Gibert. Remained on shore thirty-four or thirty-five days, and was then sent to England in a transport—Perez, Delgado, Garcia, Montenegro and Castillo went with him.

Does not know whether any efforts were made by Capt. Trotter to get testimony, nor whether she was long out after Capt. Gibert was taken. Witness never worked on board the English brig. Was a prisoner. When any were put in irons, he was usually the first. On the passage home, they were usually called up in the day time, and set to work like the rest of the sailors. While witness was on board the *Curlew*, was three days in irons, and when removed to the *Flora*, slept one night in them, but was released as soon as vessel got to sea.

Witness here again mentioned the several places at which the brig he was on board of touched, and said that whenever they came into port at these places, or went ashore, the prisoners were usually put in irons, but were released when the vessel got again to sea.

The first land they made in England was St. Michael's. They were then put into the fore-castle, with a sentry over them. On reaching their destination, the prisoners on board the *Esperanza* were not put in irons. Never heard Perez say anything of the testimony he had given or was to give. Whenever he heard Perez talking, he always cleared out. Did not want to hear his conversation, because he was always talking about his father and mother.

The interpreter here explained that whenever the Spaniards quarrelled, they always spoke disrespectfully of each other's parents.

Perez used vulgar language, but never heard him say he had told lies about the crew of the *Panda*. Has heard him and others say that

they had robbed an American brig, and Perez has said in witness's presence, he would always stick to it.

Witness gave the Spanish in which Perez had expressed himself, and it was Englished by the interpreter as above. Mr. Child objected to the interpretation, saying that the words "*Lo que yo he confesado en Fernando Po, siempre he de confesar,*" meant "that which I confessed at Fernando Po, I am, or must always confess." Messrs. Taveres and Badlam, the assistant interpreters, were referred to, and decided in favor of the interpretation of Mr. Peyton. The Court, therefore, considered the matter settled; Judge Story remarking to Mr. Child, that "all three of the gentlemen, (the interpreters) or perhaps he ought to say 'the men'\* were against him."

*Witness continued*—Percz said he confessed what he did because it was the truth. Some of the rest also confessed. Witness first heard of the robbery of the Mexican from one of the Portuguese, who shipped at Princes Island, and was told of it by the carpenter. Was present when Perez confessed at Sierra Leone. They were all sworn, and then placed in a corner by themselves. The justice was in a high seat, and others below him writing. Perez's confession only was taken. They wanted to take the confession of the other prisoners, but they made too much noise. Some of them said, when Perez was making his confession, "It's true," and others, "It's a lie." The crew were sometimes angry with Perez, and sometimes he with them. Often called each other rascals. Know of no inducement used to make them confess. Did not give witness anything, not so much as a shirt, which he would never have had, except for the good nature of the English sailors. Does not know of any gun being pointed at the colored men to make them confess. Was not at confession at Fernando Po. The interpreter there was an old Spanish sailor, and sometimes the captain of an English barque. Was not present when Perez gave his deposition at Fernando Po. Captain of the Curlew, the governor, and the captain of the English barque were present. Some of the prisoners were examined, and confessed. Does not know whether they were sworn. Governor went and asked them if they had robbed the brig, and they said, Yes. Three of the prisoners now present said it was true, but at first they denied it. Every one present that day confessed, and laid the blame on the captain and officers. Captain Gibert did not pay witness any wages. All he had was ten dollars when he shipped, which he wanted to buy necessaries, and pay what he owed on Princes Island. This was given him at governor's house. Never heard any one say the schooner was a piratical vessel. English did not call them pirates till they heard of the robbery of the American brig. Does not know long it was after they took the Panda that they heard of the robbery of the Mexican. Might be fifty or sixty days after. When English captain came on shore at Nazareth, the beach was crowded with armed negroes. Saw Capt. Trotter go to the king's house. All the Spaniards went back into the country. Does not know that negroes wished to kill Capt. T. They posted themselves in the road where he would pass to regain his boat. Does not know why they were armed.

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\* Alluding to Mr. Child having objected to Judge Story's application of the term *gentleman* to Mr. Quentin, the British officer.

There were a great many of them. Can't tell whether the king ordered Capt. Gibert to retire into the country, or whether he sent him there under a guard. Never heard the captain ask the king for a boat, in order that he might go and demand his vessel from the English. Saw Capt. Gibert go into the woods. Captain went one way, and men another. Was within fifty steps of them. There was then no guard with the captain. Never saw the English give wine or rum to Perez: never heard him say so; or that it was all a lie that he had told; or that he would rather take the lot of the prisoners than be a witness. When sent on board the schooner Panda, after she was taken, the English captain asked me whether I had come all the way from Havana in her, or whether I embarked at Prince's Island. Found Simon Domingo on board, but don't know how he got there.

The fore-topsail of the Panda was a little darker than the main-topsail. Noticed this when first went aboard. The fore-topmast and fore-topgallantmast were a 1 in one stick. Has seen some schooners with the main-topsail larger than the fore-topsail, and *vice versa*. 'Tis all according to captain's notion. Don't know what has been done with the Esperanza. Three of her crew were taken to England. There was some talk of sending them on to America, but from interference on the part of the consul, it was not done. They were not in irons. Don't know whether any of the money taken from the Mexican was ever found. Does not know whether Capt. Trotter took any money from Capt. Gibert, or whether he got Capt. G's. protest. Witness was present when boatswain died. Ruiz was not in same room with boatswain. He was present when boatswain died. Witness was in same room. Don't know whether Perez saw body of boatswain. Never heard Perez say anything over the body or about boatswain. So long since don't recollect. The only difference between the main-topmast and fore-topmast of schooner was, one had more *hoistage* than the other. Two of the Panda's crew wore white shoes, some wore black ones, some went barefooted. Don't know what shoes were in their bags. When on coast of Africa, it is customary for those who wish to wear shoes to do so, and those who do not to go without, same as in their own country. Nicolas Costa wore black shoes, Castillo and Delgado white ones. Don't know what others wore. Have not conversed with any one, in this or any other country, as to what should testify on trial. Don't know that any of prisoners had offers of liberty, or that any had offers of money, or clothes, or conveyance to their own country if they would testify.

Francis Salles, interpreter of the Spanish and Portuguese languages. Have conversed in England with some persons. Don't know who. Thinks he conversed in jail with Spanish consul. Don't know certain that it was the consul. Conversation was about the boatswain's death. Did not see the Portuguese consul in Portsmouth. Has been prisoner almost seventeen months. His father has been dead about fourteen years, and his mother about sixteen or eighteen years.

The examination of Silvira terminated here.

The Court, this morning, paid a handsome compliment to Mr. Peyton, the interpreter, and expressed themselves highly obliged by the efficient services which that gentleman had already rendered. Mr. P. is an individual calculated to excite much interest in the mind of an observer. He has evidently, although modest and unassuming in demeanor, seen much of the world, and been familiar with "broils and battles."



FRANCISCO RUIZ, *Carpenter.*

(CONVICTED.)

Born in Santander.—Unmarried.—Age, 32.



MANUEL CASTILLO, *Ordinary Seaman.*

(CONVICTED.)

Born in Lima.—Unmarried.—Age, 33.



We understand that he has been a naval officer, both in the Spanish and American service, and that he lost his left arm in an engagement with an English man-of-war, off the coast of Africa.

*Capt. Jeremiah Briggs* called.—Have commanded a merchantman thirty-two years. Is almost five years since went last voyage. Voyages have been generally to the East Indies. Have been to Rio, and other South American ports. It is customary, when hailed, if from Salem, to answer from Boston, as Boston is a port more known than Salem, particularly to foreign navigators.

Here a "General Chart of the Atlantic Ocean" was shown witness on which had been traced the track of the Mexican, as made from day to day, while on the voyage, and also the supposed track of the Panda, and the point where the robbery was committed. These marks were identified by the mate of the Mexican.

Witness was never on the coast of Guinea.

*Mr. Dunlap* then put the following question:—Suppose a clipper, bound for the coast of Africa, to sail from the Havana on the 20th of August; and such a vessel as the Mexican, a dull sailer, to start from Salem the 29th, for Rio Janeiro; would they be likely to meet, and if so, where?

*Mr. Briggs*.—They would be more likely to meet in lat. 33, lon. 34-30, (the place where the Mexican was robbed) than at any other spot on the chart. The schooner would have to sail about one thousand miles more than the other. The route to the East Indies and the Brazils, is the same as to Rio.

*Mr. Dunlap*.—Suppose the vessels started, the Mexican on the 29th, and the clipper on the 26th, would they then be likely to meet?

*Mr. Briggs*.—I think, if there were no difference in their rates of sailing, the brig ought to be ahead of the schooner. If they met, however, at all, they would meet at the point above stated, (lat. 30, lon. 34-30).

CROSS-EXAMINED. Never made the voyage to Africa, but has been in sight of the coast of Guinea. Know the different rates of sailing between a clipper and such vessels as the Mexican. It would depend greatly on the wind; but the schooner, in a light wind, and sailing on the wind, would beat the brig one half. In a strong wind and a fresh sea, going free, the schooner would not beat the brig so much. The latter would, perhaps, go nine knots, and the former eleven. It is customary to answer, "Boston," when hailed by a foreign vessel, as Boston is better known than the smaller ports. If this were not done, much trouble must be taken by way of explanation. I don't mean to say that it is invariably so. Know only by my own experience. Should think a vessel would pass through the Bahama Channel in four or five days. The current is so strong, it would bring a vessel out without any wind.

#### TUESDAY MORNING.—9 o'clock.

*Capt. Benj. Rich* called.—A vessel sailing from Salem to S. America or the East Indies, would cross the line at 22 or 26 lon.; not lower than 27. In going from Salem, she would steer to the east as far as lon. 30 or 35. A fast vessel would not go so far before she would haul to take

the trade winds. A vessel sailing from the Havana on the 20th of August, would pass out of the gulf of Florida, and keep the gulf stream till she arrived near Cape Hatteras; she would then strike off to the east, keeping a little north, and as she approached our coast, could not be a great distance from any vessel which left Salem on the 29th of August.

*Mr. Dunlap.*—Suppose the clipper sailed from the Havana on the 26th, and the brig on the 29th, would they still be likely to meet, or not?

*Capt. Rich.*—They would come near each other, because at that season of the year, the clipper would get along very fast. The winds in August are light, and would give her great advantage over the brig.

**CROSS-EXAMINED.** The runs made by merchantmen depend entirely upon the winds they may happen to have. The Liverpool packets make up from about one hundred to one hundred and twenty miles per day. Their average rate of sailing is one hundred and twenty miles in summer, and one hundred and sixty or one hundred and seventy in winter. The passage from New York to Liverpool is made, during the summer, in from twenty-seven to thirty-three days. But the yards of the packet ships are squarer than those of ordinary merchantmen, and they carry a heavier crew. As an average, it may be said that the former sail a knot an hour faster than the latter. A clipper will, in summer, make a passage in a third less time than one of our merchantmen; but in the winter there will be little difference in the sailing of the two vessels. In general, a clipper may be said to sail, in light winds, fifty per cent faster than a merchantman.

*Captains George Budd, Joseph Bacon, Jellison, and Devens* were next examined, and all agreed in the probability of the *Panda* falling in with the Mexican in lat. 33, lon. 34.30. *Capt. Budd*, who has been twenty-four years an officer in the U. S. Navy, and has been many times at the Havana, gave a full description of the build and rates of sailing of clippers. We understood him to say, also, that if two merchantmen had sailed from the ports of Havana and Salem, at the periods named as the dates of sailing of the *Panda* and Mexican, they (the merchantmen) would have arrived at the place where the Mexican was robbed within two or three days of each other. If *Capt. Budd's* opinion be correct, it leaves only two or three days to be got up by the superior sailing of the clipper.

*W. H. Peyton*, the interpreter, examined.—The tonnage of American and Spanish vessels is different. Ninety-five tons Spanish, is equal to about one hundred and twenty American. Have been three voyages from Havana to Africa. Was before the mast on first voyage; second, I was third mate, and third voyage I was mate. Think the *Panda* and Mexican would meet, lat. 32, lon. 37. Never went further north, in my voyages, than 32 N. Have gone through the Bahama Channel in eight and in nine days. Ordinary passage is eight days. Continue to about 28½ north lat., then shape course to eastward, and stand northward to get clear of trade winds. Baffling or variable winds blow from all points of compass. Do not blow from any particular point in the month of August. Think more from south-west than any other point. Variable winds prevail to 28, 33 and 34, N. lat. In summer, they sometimes

blow from N. W. and S. W. When in latitude of trade winds, frequently find variable winds. In foggy weather, often pass between islands without seeing them. Should reach lat. 32 in lon. 37; then, bearing south, for Cape de Verds, should have leading winds. Passage from point above stated to Cape de Verds, is eighteen or twenty days. Tide sets in towards the main at the Cape de Verds. A strong current running between the islands and the main, makes it a dangerous navigation. Current caused by the rivers emptying there. Vessels are obliged to keep from the land. Witness here traced the course of vessels along the coast from the Cape de Verds. Distance from the point (lat. 32, lon. 37) to Cape de Verds is thirty or thirty-two days' sail. Have not always passed in same track. Sometimes little to the south. Never to the north. Have run from Havana to Cape Monte in fifty-seven days. Navigators generally run between the coast and the Cape de Verds. Calms are prevalent, and towards evening squalls, especially in the rainy seasons. Squally weather, if the wind is not too strong, accelerates the voyage. Have always found calms in that region. Don't know the cause. Calms extend all along the coast. When on the line, have known it calm thirty days. Winds are more prevalent than calms. Vessel running through this track, will sail from twenty-four to one hundred and eighty miles in twenty-four hours; average is fifty or sixty miles per diem. Have known current to set a vessel back thirty miles in a day. Currents are frequent all along the coast. Some are stronger than others. Calms extend from the equator to 12 N. lat. and from 5 E. to 20 W. lon. Don't know average rate of vessels sailing in the Atlantic. In good breezes, will run twelve knots per hour, at other times five, three, and more or less, according to the wind. Average after passing Bahama, may be eight or nine knots. Should think a passage, in a sharp built vessel, from Havana to the point of southing, (lat. 32, lon. 37) might be made in twenty-eight days. Once made passage, in a 24 gun ship, from Havana to the African coast, in seventy days: passage from above point to coast, in thirty or thirty-two days, and from gulf of Bahama to the same point, eighteen days; from Havana till clear of Channel, about seven days. Spanish dollars are current on the whole coast of Africa. Money is less valued at Annabon than other places on the coast. Not so much trade there as at other places. Sailed from coast of Africa on the 6th of June, 1832. Arrived at Havana, and staid there till December; then went away again. Saw the schooner *Panda* in the Man-of-war grounds, off Havana, taking in powder. It was in the month of August. Knew her by her rig. She was a *two-topsail* schooner; had a fore and main-topsail when in Havana. Was a mile distant when saw her: was in the town. Set her down as a Baltimore clipper. Masts raked aft about fifteen or twenty degrees; the rig very low. Thought she was very deeply laden. Did not go on board. Am well acquainted with vessels in the African trade. Have known the trade since 1822. Vessels witness went in took on board rum, tobacco, dry goods, handkerchiefs, muskets, powder, flints, cutlasses, pistols,--and the first vessel he went in had on board five or six hundred Spanish dollars. Don't know tonnage of the *Panda*. It is difficult to determine the tonnage of vessels, by merely seeing them in the water. Might vary, in an estimate, fifty tons. On second voyage, carried, as cargo, seven hundred pipes of rum and sixty-four thousand Spanish dollars; on third voyage, took on board twenty pipes rum. Never carried trinkets, &c. to trade with. The owner of the vessel had an agent on the coast, whom we found prepared with a cargo of slaves

on our arrival. Vessels always hailed when passing the Moro Castle. An officer always comes on board, to take the vessel's *pass*. Vessels always hailed on coming in. Passes are only for Spanish vessels. American vessels are only hailed, and suffered to proceed. Passes are given by the General of Marines, and are signed by the Governor. Don't know contents of pass: never read one. Vessel could not pass the castle; it is a place of great strength. Have known vessels stopp'd. Vessels in the African trade ship their men on board. A large number are employed to fit and load the vessel, and from these a crew is selected. Before sailing, the crew must all go before the general of marines, for examination, to see that none belong to men-of-war; this rule is invariably observed.

Vessels sailing to African coast always take spare spars on board;—generally a topmast, jib-boom, flying-jib-boom, main-yard, topsail-yard, and spare rough spars, large enough for yards, &c. In rough weather, spars are frequently carried away. It is a common practice to carry money on board. Once knew a vessel stopped at the castle, and cargo examined, and boxes on board, marked "money," found to contain only "brickbats." Sailors wear both black and white shoes. White shoes are made of goat-skin; cost four, five, six and seven rials per pair. Color of shoes is not white, but yellow; this is the prevailing kind of shoes among Spanish sailors. They sometimes black their shoes when they go ashore. Black leather shoes are rare among African sailors.

Nepo and Petty Sestos are eight or ten miles distant from each other. It is easy to tell a brass gun from an iron one. I should have no doubt as to whether a pivot gun was abaft or before the mainmast, if I saw it. People in a state of fright might mistake. It is customary for Spanish sailors to carry knives: they are like our carving knives. Believe captains of vessels in the African trade usually carry swords, but not the other officers. At the distance of a quarter of a mile, think I could tell a swivel shot from a gun shot, by the smoke.

*By Mr. Dunlap.*—Knew the Panda when she came from Spain. Saw her going to the harbor as I was coming out. She was then called the *Ligéra*. No Guineaman ever has her name painted on her stern. The Panda was a two topsail schooner first time I saw her.

Mr. Child took an objection to the manner in which he thought the District Attorney was endeavoring to condense the evidence of the witness. He said the government officer put him in mind of the "cloud compeller"—Jupiter, compressing the clouds in the hollow of his hand. He (Mr. C.) begged that the clouds, in this case, might not be compressed, but permitted to gather gradually.

Mr. Dunlap now produced a letter he had received from Mr. Child, and stated that it called for certain documents in his possession, relating to the prisoners, viz. Capt. Gibert's protest, instructions from his owners, passport of the Panda, invoice of her cargo, Moro *pasa*, &c.—and, among other papers, the depositions of the prisoners at Fernando Po. He (Mr. D.) had never felt at liberty to use such evidence against prisoners as depositions taken previously to an existing trial. He did not wish to introduce such evidence; but the senior counsel for the prisoners had called for it, and he (Mr. D.) was willing to give it. He warned the gentleman, however, not to repeat his call.

Mr. Child was desirous of having the papers, and afterwards introducing such of them as he pleased: but to this the District Attorney would not consent. He was unwilling that they should be put in at all, unless they were put into the cause.

Mr. Child, at the suggestion of the Court, agreed to take time for consideration before coming to a decision upon the subject. He afterwards received the papers.

The papers to which we have above alluded, (excepting, of course, the depositions made at Fernando Po) were then read. We gathered from them, that the *Panda*, owned by certain persons in the Havana, and furnished with the usual articles of traffic for the African coast, left that port, upon a regular slaving voyage, on the 20th of August. The instructions to the captain form a curious document. They contain the fullest directions for the safe keeping and landing of his human cargo, and authorised him to deviate, as he might think fit, from his direct course. Secrecy and the utmost precaution were enjoined on his return to the Havana, and he was recommended, if he failed to effect a landing at several places named, to sail as a *pis aller* at once into Matanzas, hoist French colors, and say, if hailed, that he had come in ballast from St. Thomas.

Mr. Dunlap here intimated that the case was closed in behalf of the government.

The Counsel for the defence then proceeded to call their witnesses.

*Baptista Arana* and *Santiago Elonza* were first examined. The former took the stand.

Has been mate and captain many years. Commands a brig now lying in this harbor. Has been four voyages from Cadiz to Lima, one to Porto Rico, and three to the coast of Africa. [The witness here produced the chart which he had used in the African voyages.] In sailing from Havana to coast of Africa, has been as far as 34 N. lat. and 51.19 W. lon. Usual route in August and September is as far north as 28 to 30. The prevailing winds are southwest and south-southwest, and sometimes northeast. Usual length of voyage from Havana to Cape Monte, is forty-five to fifty days: have been fifty-five days on the passage. At 30 to 36 W. lon. and 29 or 30 N. lat. a vessel begins to haul to the south. There are six degrees difference in longitude between Cadiz and Greenwich: English reckon longitude from Greenwich, and Spanish from Cadiz. Passage from Havana to where vessels take a southerly course, is about thirty or thirty-one days: from this point, take a southerly tack, and passage may be seventeen, twenty, or twenty-two days. Currents frequently run very strong, and the weather is first squally and then calm. Distance from Havana to Cape Monte is four thousand two hundred and eighty miles, by the above route. Passage through the Bahama Channel, about three and a half or four days. After leaving Channel, the course we run is to 28 or 29 N. lat., after which, the passage is then six or seven days to the point of southing. Common merchantmen would not run so quickly. The difference would be

from one half to two and a half knots per hour. Distance from Havana to point of southing, is one thousand three hundred and eighty miles. Have measured it by ship's reckoning. General point of southing is 36.19 lon., 29.30 lat. Have cruised on the coast of Africa, and am well acquainted with vessels trading from Havana to the coast. Always take specie on board: generally smuggle it. Never knew vessel to go without specie on board. Specie is not entered on account of the duties. Some vessels carry ten, some fifteen, some twenty thousand dollars; the amount of specie carried, depends on what part of the coast the vessel trades to. Money is valued more on some parts than others. The usual articles of cargo are handkerchiefs and cottons of various kinds, &c. Vessels do not generally carry more than eight thousand dollars. They generally take spare spars on board; are provided with a stock of the best provisions, such as beef, pork, &c.; take but little bread, as it spoils on the coast, owing to the heat of the weather. Am acquainted at Prince's Island. On the west side of the island there is a port for British vessels of war. Vessels are not always in this port: they are, however, rarely all absent from it. There were two at anchor when witness was there, viz. a brig and a schooner.

Know Francisco Ferrari. When there last, the captain of an English man-of-war acted as governor, and when absent, Ferrari acted in his stead. Distance from one port to the other is about twenty-five miles. Was at Port Antonio in 1830. About twelve vessels in port at that time. All small vessels, excepting an American brig and my own. I am acquainted with the custom-house regulations of the island, as regards specie. Two guards come on board and stay till night, then leave and return next morning.

In the course of the examination of this witness, Mr. Child interrogated him as to the manner of conducting the trade on the African coast—the manner of fitting out the vessels—the armament, cargo, &c.

*Mr. Dunlap* asked him, if he had not been in the slave trade.

*Mr. Child* objected to the question as irrelevant.

*Judge Story* did not think so, as the query concerned the gentleman's (he begged pardon) the witness's character.

*Mr. Dunlap* again put his question, when the witness replied, that when he could not get *ivory*, he had certainly dealt in *slaves*.

*Arana's* examination here terminated.

The court adjourned.

#### WEDNESDAY MORNING.—9 o'clock.

At the opening of the court this morning, the District Attorney stated that an officer had called upon him last evening, and asked his opinion whether or not he had done wrong in permitting an individual to speak to one of the jurors in his (the officer's) presence; the conversation relating wholly to a cargo of fish, and having no connexion with the present case. *Mr. Dunlap* said he did not mention this from any desire to subject the officer to punishment or reprimand, but simply from a desire

that the Court should express such an opinion as would serve for the future regulation of the matter; both jurors and officers at present believing that they were justified in acting as above mentioned.

The Court stated that there were some cases in which it would be unjust, cruel, and against the interests of justice, to refuse a certain degree of liberty to jurors. [In the present case, a juror had been taken ill, and had sent for and been visited by a physician.] The permission of the Court ought, however, to be obtained, whenever possible, as it was of the utmost importance, during a capital trial, that jurors should be kept from intercourse with any but the individuals of their own number.

After some remarks from Messrs. Dunlap and Child, it was agreed that the jurors in the present case should be permitted to have intercourse with their friends, and to send written instructions for the regulation of their affairs, providing always that such interviews and instructions take place and be given in the presence of their colleagues and the officer to whose care they had been entrusted.

Capt. *Arana*, one of the witnesses for the prisoners, whose testimony terminated yesterday, was then recalled by Mr. Child, for the purpose of ascertaining whether he thought it likely that the *Panda* and Mexican could meet at the point where the latter was robbed. The witness stated that, should they do so, it would be a miracle; as the clipper, sailing so much faster than the Mexican, ought to be greatly ahead of that vessel. The weather in the months of August and September would be favorable for the schooner's passage from Havana. The worst weather she would have would be off the Bermudas.

*Santiago Elorza*.—Has followed the sea five years, and has been an officer three years. Has been one voyage to Africa from the Havana, and one from Cadiz. There is a great difference between the sailing of clippers and ordinary merchantmen. The former is built entirely for sailing, and the latter for burthen. Has seen eleven and a half knots got out of a clipper, while the brig he is in now, would not go, with the same wind, more than six, or six and a half. A clipper will, on an average, sail one third faster than a merchant vessel.

Mr. Child, giving the dates upon which the *Panda* and Mexican had sailed, then asked if these vessels would be likely to meet.

The witness first replied in the affirmative. Mr. Child thought the question had been misunderstood, and on its being again, and very distinctly, put by the Court, Elorza replied that they would *not* be likely to meet, because the schooner ought to be much ahead of the brig.

Witness has gone from Havana to the Cape de Verd Islands in thirty days. The vessels would cross each other's track; but the brig would cross the line in from 25 to 28 west, while the schooner would be in 12°. Never saw any very heavy weather in the months of August and September, in the track from Havana to where the Mexican was robbed.

Is well acquainted with the currency on the African coast. Spanish dollars are current there—even doubloons and ounces will pass. Has been on the coast as far as Congo, and thirty leagues up the river. Petty Sestos and Nyphoo are not the same places. Vessels going from the Havana always carry specie. If they had a full cargo, fitted for traffic with the natives, they would carry about one or two thousand dollars. Witness in one of his voyages had a full cargo, and after having purchased with it what he wanted, he still had a part remaining; and had, besides, four thousand dollars in his trunk, belonging to the vessel. He did not take all this money from the Havana, but received a part of it from the negroes of the coast, in payment for articles sold to them. Vessels of this kind, however, usually carry a portion of spare specie. It is five thousand two hundred and eighty miles from Havana to Cape Monte. In his last voyage to Africa, he went as far as  $34^{\circ}$  north and lon.  $45$  (Greenwich). He was in lon.  $34$  or  $35^{\circ}$  when he began to go south, [the very longitude in which the Mexican was robbed] and in lat. about  $30$ . It requires three or four days to get out of the Bahama Channel. Witness is acquainted with Capt. Gibert; who bears a good character in Havana, among the most respectable mercantile houses. Has also heard *Bernardo de Soto* spoken well of by captains and merchants. Does not know whether Capt. Gibert has any property. Knows that *de Soto* owned a schooner in '32, and that he sold her. Afterwards, heard that he had bought the *Panda*, and gone out in her. In '27, Capt. Gibert was concerned in a mercantile house; thinks the goods in their warehouse might be worth from eight to ten thousand dollars.

CROSS-EXAMINED. By being in the African trade, I mean to say that I have been the slave trade; "and," exclaimed the witness, energetically, "the English themselves sell slaves."

*Capt. Joseph Smith.*—Has been twenty-five years in the Navy of the United States, as a midshipman, lieutenant and master-commandant.

Capt. Smith here examined the course of the Mexican, as marked on her chart, and said that she must be a dull sailer not to have got farther in twenty days than  $33$ — $34.30$ .

He should think the difference of sailing between such a vessel and a clipper, in a light wind, would be twenty-five per cent. In rough weather, it would not be so much; not more than ten per cent. In August and September, the winds, in the latitude in question, are westerly and southerly. In making the passage from Havana to Africa, the clipper would, probably, get out of the Gulf Stream in three days, and go north as far as lat.  $30$  or  $35$ , [place where Mexican was robbed] in order to get a favorable wind. The clipper would reach the above latitude in about six days from Havana. Do not think the schooner and brig could meet. In thirty-one days from leaving the Havana, should think the *Panda* would be at the Cape de Verd Islands, *if she kept her direct course, and took advantage of favorable winds*. Don't think it impossible that the *Panda* and Mexican should have met; but improbable, if they both made the best of their time.

CROSS-EXAMINED. If the vessels should meet, it would be about where the Mexican was met by the pirate.

*Capt. Bethune.*—Has been ten or twelve years acquainted with nautical matters. Does not know much about clippers, but should think

there was twenty or twenty-five per cent difference between their rate of sailing and that of merchantmen. The trade winds extend to 28 or 30. Then come the variable winds. I should keep north as far as Cape Hatteras, or perhaps a degree farther, were I bound to the coast of Africa. It is mere matter of opinion, whether the Panda and Mexican would meet; but I should think it probable that they would.

*Edward H. Faucon.* I have been to sea twelve years. I am master of a vessel, and in the employ of Bryant & Sturgis. I do not know the difference in sailing between a clipper and merchantman, excepting by reputation. I should think there would be thirty per cent difference in favor of the clipper. I should think from what I see of the Mexican's track, that she was a dull sailer, and there would be full a difference of one third, between her and a Baltimore clipper, in smooth water. The meeting of the Panda and Mexican, the one sailing on the 20th from Havana, and the other from Salem, on the 29th, would be very improbable, but not impossible. I should think the Panda would be at the Cape de Verds by the 20th of September. To pass through the Bahama Channel, and reach 30 N., would occupy, in my opinion, about five days.

CROSS-EXAMINED. My opinion that the vessels would not meet, is based upon the supposition that neither would meet with any accident or hindrance.

*Samuel Austin Turner.* I have been six years a midshipman in the United States Navy. Have made voyages to the East Indies. Know the Mexican. Should think, in a royal breeze, she would run six knots, while a clipper would sail one third faster. In a fresh, fair wind, the difference would be smaller—perhaps none at all. Don't think the brig would ever have the advantage of the clipper. Never sailed in a clipper, nor through the Bahama Channel. Do not think the Mexican and Panda would meet—the one sailing on the 20th and the other on the 29th of August. Am of opinion they would be one hundred miles apart. At the time they are said to have met, the Panda would have been near the Cape de Verds. Think the distance from the affirmed point of meeting to the Cape de Verds is eighteen hundred miles. I wish to be understood as meaning that the schooner would be one hundred miles to the eastward of the brig, when the latter crossed her track.

CROSS-EXAMINED. *By Mr. Dunlap.*—My opinion is predicated on the belief that both vessels made the best of their way.

*W. S. Bruce.*—Is somewhat acquainted with *Bernardo de Soto*. Has resided several years at the Havana, and his knowledge of the prisoner commenced in the fall of '31. De Soto was then captain of the Spanish brig *Leon*, from Philadelphia to Havana. During one of his voyages from Philadelphia to the latter place, he saved and brought in the crew and passengers of the American ship *Minerva*, which had taken fire. The passengers were thirty or forty in number, (chiefly Irish) going to New Orleans or Mobile. De Soto's conduct was very highly spoken of at the time in Havana, and he was presented with a piece of plate, by the merchants of New Orleans. Don't know that any one has asked him (de Soto) to become a witness against rest of prisoners. District Attorney did not request me to go to him. Did not intimate to me his wish or willingness that de Soto should be a witness. Should not have conjectured anything of the kind from the District Attorney's conver-

sation. Formed my opinion of the District Attorney's wishes from what was told me by a third person. That person was Charles W. Story. I told *de Soto* that he had better become a witness.

*Mr. Dunlap.*—Had you ever conversed with me before you saw *de Soto*?

*Witness.*—Yes, both before and afterwards.

*Mr. D.*—Recollect yourself.

*Witness.*—You did not say anything particular the first time.

*Mr. D.*—Did you ever converse with me more than once?

*Witness.*—No.

*Mr. D.*—Did you not, upon that occasion, state to me what had passed between yourself and *de Soto*?

*Witness.*—Yes.

*Mr. D.*—Then, of course, sir, you never conversed with me before you saw *de Soto*.

In reply to a question from *Mr. Hillard*, as to the state of public opinion in Havana, in relation to persons engaged in the slave trade, the witness said that the being so engaged was not considered to disparage any man's character.

*Mr. Child* then called *Isaac A. Coolidge*, *Charles Sumner*, *James Benjamin*, and *Stephen Badlam*.

*Isaac A. Coolidge*, the under keeper of the jail, was asked to identify the colored men, *Ridgly* and *Lewis*, of the Mexican, as the persons who called at the jail and stated that they recognized one of the prisoners. *Mr. C.* was unable to swear to the parties.

*Charles Sumner.*—Saw *Ridgly* in court, either at the time the prisoners were arraigned, or when they were brought up to receive copies of the indictment against them. *Ridgly* was near the crier's desk, with a crowd round him, gesticulating much, and pointing with his finger. Heard him say "there's one!" (designating some person near the marshal). The prisoners had, at this time, left the court, and a party of mutineers [we presume the crew of the *Merrimack*] had taken their place. *Ridgly* still continued pointing, and selected one of the mutineers, saying, "that's one, that's one." He appeared much excited.

CROSS-EXAMINED. The prisoners were in the room when *Ridgly* first pointed. They were at the bar, and other persons were sitting beside the marshal. *Ridgly* was by the crier's box. When he pointed, he pointed in the same range as the bar. The crier's box is in the same range, or a little further back. Watched *Ridgly's* finger, and saw that he pointed away from the bar. Was conversing with another gentleman at the time he [witness] saw this.

*James Benjamin.*—Saw *Ridgly* in court the first day the prisoners were brought in. Witness was talking with *Mr. Sumner*. Saw *Ridgly* making himself very conspicuous. Thought he was one of the crew of the Mexican. Was a long time before he could understand what he was saying, and when he [witness] did so, the prisoners now present had left the court. Saw *Ridgly* point to one of a party of mutineers, who were then sitting in front of the bar, and say, "I see you! You don't know me now, d——n you, but you will know me soon." Can't

remember the exact words used by Ridgely, but believes they were the above. Supposed him then to be a witness in the case of the mutineers, and immediately left the court.

*Stephen Badlam.*—Has had a conversation with *Joseph Perez*, the government witness. About the 1st of October last, was requested by the District Attorney to accompany him to the jail for the purpose of interpreting between him and the prisoners. Witness and the District Attorney went into a room under the court, and directed the turnkey to bring in Perez. This was done, and witness then stated to the prisoner that the gentleman present, Mr. Dunlap, was the Attorney for the District, and had called, as the time of trial was approaching, to have some conversation with him. When I told Perez this, (continued Mr. Badlam) he declared that "all he had previously said was false; that he had had a good deal of wine given to him, and had been told that if he became a witness, he would not be considered in the light of the other prisoners, but be kept as a witness." He, by this time, appeared much out of humor, and said rapidly, as if in a passion, "I will not be a witness any longer, but will take my chance with the others." I think he said that "the English had deceived him, by telling him that he would not be kept a prisoner, while, in reality, he was now as much a prisoner as the others." I think, when he said this, he did not refer to any individuals in this country, but to the English. I cannot swear that he mentioned the English, but it is my impression that he did so. I have no doubt, myself, upon this point. I told Mr. Dunlap what the prisoner had said, and Mr. D. replied, "Very well, he may do as he pleases; if he does not like to be a witness, we can do without him." Perez then cooled down, did not appear in such a passion as previously, and said that "when he went before the judge, he would tell the whole truth."

*Mr. Dunlap.*—Said he should be happy to state anything within his knowledge in relation to this matter; indeed, he considered such a course to be his duty. After having had, with *Perez*, the conversation just alluded to by Mr. Badlam, and having noticed the state of his [*Perez's*] mind, he did not think it safe to leave the case for the government in its then state. He had, therefore, caused *Nicola Costa* to be brought in, and after telling him that he was under no obligation to state anything, and that all he [the D. Attorney] could promise him was, that nothing he might say should be used against him, asked if he was willing to become a witness for the United States. The prisoner's reply was, "that they were all innocent, and that no robbery had ever been committed by them upon the Mexican." I then, said Mr. D., called in *Domingo de Guzman*, and afterwards *Antonio Ferrer*, [the black cook] but found them both in the same story as *Costa*. As a last resort, I then sent for *Bernardo de Soto*, the mate, but succeeded as ill with him as with the others. I was influenced in sending for *Costa* and *de Guzman*, by considerations as to their youth; as regarded the black, by compassion for his ignorance and degraded condition; and I selected *de Soto* in consequence of his having performed the act of humanity which has been alluded to [saving the persons on board the *Minerva*].

Mr. Child said the District Attorney had been influenced, in this affair, by the honorable feelings he supposed him to possess, and begged him to accept his (Mr. C's.) sincere thanks for the course pursued.

Mr. Donlap, in reply to Mr. Child, said that when the offer of becoming a witness was made to de Soto, the latter returned, for answer, that he was willing to testify, but could only do so to his own innocence. He (Mr. D.) thought de Soto answered evasively, and, therefore, immediately ceased conversing with him.

*E. G. Prescott, Esq.* next called.—Was in court when the prisoners were brought up to receive their indictments. Saw Ridgly upon that occasion. He (Mr. P.) was standing in front of the crier's desk. Some one pushed against him; turned round and saw it was the black. Asked him what he did inside the bar, when Ridgly replied "that he was one of the crew of the Mexican, and wanted to look at the d——d rascals and see if he knew any of them." Witness made way for him, and asked him several questions. He pointed out several of the prisoners, and afterwards shook his fist at them, saying, in a loud tone, "d——n you, it's my turn now." He was in a state of excitement.

*Ebenezer Prescott*, an officer of the court, corroborated the evidence of the previous witness, and said that Ridgly was intoxicated at the time. He saw Mr. Somner and others talking to him a short time after, and not thinking it proper that he should be questioned in his then state, he (witness) went and told Mr. Donlap.

*Henry Homer*.—Said Ridgly was one half or two thirds drunk. Saw many people round him; among others, Mr. Child, who was listening and speaking to him. Heard one of the bystanders say to Mr. Child, "It won't do you any good, for he is pointing to the prisoners." Ridgly did not point to the mutineers.

*James Benjamin*, recalled.—Ridgly did point, at first, to the prisoners, but afterwards at the mutineers. Some one standing by corrected him, telling him that "he was mistaken; the prisoners had gone out." A certain prisoner had gone out at this time. I went away with the impression that Ridgly was a witness against the mutineers.

The court here adjourned. Mr. Hilliard intimated his intention to commence his argument on the morrow.

#### THURSDAY MORNING.—9 o'clock.

The first witness called this morning by the counsel for the prisoners, was *Daniel F. Hale*, who stated that he was a passenger, in the year 1831, on board the American ship *Minerva*, from New York to New Orleans.

The witness said that the *Minerva*, in the course of her voyage, ran aground on the Bahama bank, and would, in all probability, have been lost, with all her crew and passengers, had it not been for the exertions of *Bernardo de Soto*, the captain of a Spanish brig, which providentially hove in sight, took them on board, and carried them safely into the Havana. They were seventy-two in all. Believes they could not possibly have been saved, had they not been assisted by *De Soto*, as the *Minerva* had a cargo of lime, which would have taken fire on coming in contact

with the water, and the vessel had already sprung aleak. An American ship, the *Chariot*, after having ascertained their situation, continued their voyage without attempting to succor them; on her arrival she reported a vessel on the Bahama bank. *De Soto* treated them very kindly while on board his brig.

*Samuel Sandford* next called. Witness examined the invoice of the cargo with which the *Panda* sailed from Havana, and valued it at \$10,000.

*Mr. Child* produced a Lloyd's List of 12th August, 1832, which stated that a piratical schooner, having on board thirty men, had been seen in lat. 30 long. 22.

*Mr. Hillard* then rose and commenced his argument for the defence, which was in substance as follows :

*Gentlemen of the Jury*—You are called upon to-day to exercise your vocation in a case of the most peculiar nature ; in a case, a parallel to which we should seek for in vain in the criminal annals of this, and I had almost said, in those of any other state or country. It is a serious thing, gentlemen, to sit in judgment, for life or death, upon a single individual. The performance of such a duty requires the most unclouded state of the understanding, the most unwearied attention to facts, and the strictest self-examination, lest, through rashness, inadvertency, or prejudice, we pass sentence upon the innocent, and commit a judicial murder. If these considerations are of importance in relation to a solitary individual, how much greater must be their importance in the present case. You are not now called upon to decide the fate of *one*, but of *twelve* persons. The lives of twelve men are in your hands. By your verdict will it be determined, whether the individuals who now sit before you, in the fullness of life and strength, continue to exist, or whether they shall taste the bitterness of death—the ignominious death of the gallows. This Court now presents the extraordinary spectacle, of a number of prisoners tallying precisely with that of the jurors. They are opposed to you, as it were, man for man, and your verdict will decide individually and collectively their fate.

Under these circumstances, gentlemen, it becomes you to approach this trial with something like a religious consciousness of the imperfections of our nature, and our liability to error; it becomes you also to lay aside every thing that may have a tendency to darken your understandings, or obscure the day light of truth. The men before you have a host of prejudices to encounter. Notwithstanding the just and benevolent maxim of the law, “that every man shall be held innocent till proved to be guilty,” we are too apt to believe an individual criminal merely because he is accused. No sooner do we see him *here*, than we discern the mark of Cain upon his forehead. Men are frequently tried under circumstances only slightly presumptive of their guilt, but the simple fact of their being brought up for trial, too often pleads more strongly against them, than the most eloquent prosecuting officer. And this feeling operates against a prisoner, exactly in accordance with the magnitude of the crime of which he is accused. In cases of robbery, or larceny, the evil is not great; but let him be charged with murder, and the case is widely different. The imagination then plays us tricks; gives to the countenance and eye of the prisoner a new expression. We see guilt written in every lineament of his visage, and translate

the look of conscious innocence into ruffian hardihood, or callous indifference.

These men, gentlemen, are accused of the crime of *Piracy*, and are consequently viewed with horror as robbers and murderers. Let me entreat you to lay aside all prepossessions of this kind, and not suppose, because the prisoners are accused, that they are guilty. There is not a man perhaps who has looked upon these individuals, but has said in his heart, "Why, they can't be innocent; what hardened villains they are." And doubtless, if a phrenologist had examined them, he would have decided them to possess the *bumps* indicative of these propensities, which have filled the world with violence and blood. I venture, however, to say that the men before you differ only in the color of their skins, from the most respectable crew that ever sailed out of the port of Boston. Prejudices exist, too, in relation to the place from which they come. We are too apt to suppose the Havana a mere nest of pirates, and to believe that the same sun which, in some countries, so speedily ripens and brings to perfection the productions of the vegetable world, induces similar precocity and redundancy of crime.

Even Spain, with its romantic associations, has but a sorry reputation among us; our imagination usually paints a Spanish sailor with the bloody knife in his hand. And yet we have heard this day related a striking instance of Spanish humanity. A vessel, in circumstances of extreme peril, lay aground on the Bahama bank. Her crew and passengers (many of the latter, women and children) awaited death from the two most opposite elements, fire and water. While in this situation, one of our own ships, like the Levite and Priest in the Scriptures, passed by and left the sufferers unnoticed. But another man, like the good Samaritan in the parable to which I have alluded, saw and rescued them. And this man, was he a Yankee? an American? No! he was a Spaniard! and his name was Bernardo de Soto!

Mr. H. here alluded to the circumstances under which the prisoners had come to this country. They had been brought here, he said, with a sort of *eclat*, much to their disadvantage. A vast apparatus seemed to have been put in motion against them. England, the queen of the ocean, had stretched forth her arm against them, and every man, from the Lords of the Admiralty down to the youngest Midshipman on board the *Curlew*, seemed to have decided upon their fate. We were too likely to be influenced by these circumstances, and imagine that England would not have taken so much trouble; would not have sent the *Savage*, with Lieut. Loney, to this country, unless the prisoners had been guilty. It was but courtesy, it would appear, to hang them after all this; blood seemed necessary to cement the bond of union between the two nations.

Mr. H. begged that it might not be supposed, however, that in speaking thus, he had any intention of reflecting upon England, or the English Navy. Those who had lived in the days of Collingwood and Nelson, could never have aught but respectful feelings in relation to the latter, (the Navy,) and with respect to the former, (England,) despite her scribblers, he did believe that there existed, among the respectable class of people in this country, a deeply rooted feeling of regard for their father land. Knowing that this feeling of respect and regard existed in favor of England, he was desirous of cautioning the jury on this head, as she (England) had been the principal agent in this matter.

The manner in which the defence had been managed, also required some explanation. The long and tedious examinations which had taken place, were not agreeable to them, (the counsel,) and would not have been persisted in, could they have had evidence of their own. But they had not this evidence; they were like a naked and unarmed man opposed to a full armed man. They had first to wrest from their adversary his weapons, and *then* fight him. All they could do was to endeavor to find out chasms in the government evidence. They were obliged to try it as sailors did a chain cable, first by extreme pressure upon every inch, and then by ringing it to see if it was sound. And they would have failed in their duty had they not done this. Had they not acted thus, and had the prisoners been convicted, that conviction would have been a thing they never could have got over. The forms and countenances of these men, said Mr. H., would have dogged our noon-day steps, haunted our midnight slumbers, and we never again should have known peace.

If the individuals before you gentlemen, are innocent, is there not something in their condition calculated to touch the heart? They are here, after a long confinement, with scarcely a rag or scrap of testimony in their favor.

They are in a foreign country, far from their friends, and now on trial for their lives, before a Court to whose forms and language they are strangers. They are sailors, who do not understand forms. They have not even the advantage of the law which says the accused shall be confronted with their accusers. Their accusers are far distant. I have said, too, that they do not understand our language; such is the case. The very words I am now using, fall, it is true, upon their ears, but they awaken no corresponding feelings in their souls. I look in vain for that in their countenances which to an advocate is at once his strongest stimulant, and his best reward.

Mr. H. now entered upon the facts of the case, and into a review of the evidence adduced by the government. He said the government was bound to prove that a piracy had been committed by the prisoners, singly and individually. In adverting to the testimony of the Captain and crew of the Mexican, he remarked that such evidence was always to be received with suspicion. Sailors were creatures of feeling, and when under the influence of revenge, or any other exciting cause, they would go a great way. They did not *reflect*, but *felt*. There were remarkable instances of this. One was to be found in the case of Capt. Toby, and the other in that of Otis. In both cases the crew swore falsely.

The Court objected to Mr. Hilliard's allusion to Otis, saying that that one had not been disposed of. A reprieve had been granted to Otis only for the purpose of affording time to the Executive to receive information from the Court.

Mr. H. continued. Some of the prisoners had been identified by the crew of the Mexican. Now it was well known, that no evidence was so liable to objection, as that relating to identity. Nothing changed more than the human countenance when exposed to the influence of a tropical sun or strong excitement. The records of the Courts proved this. The Captain thought he recollected a dead man, (Delgado,) one of those who held their knives to his throat in the cabin. It seemed to him (Mr. H.) that if the Captain could identify any one, it would be more likely to be one of those who came with him in the

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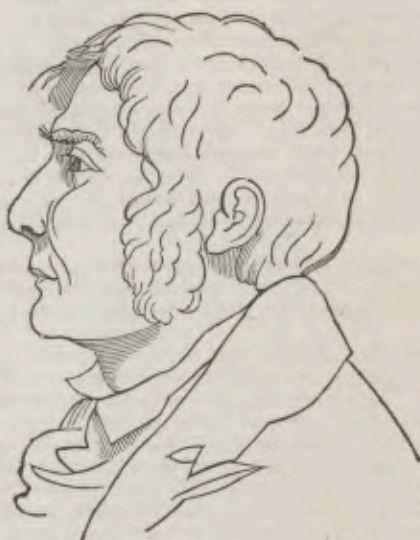
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MANUEL BOYGA, *Seaman.*

(CONVICTED.)

Born in St. Lucar.—Unmarried.—Age, 40.



ANGEL GARCIA, *Seaman.*

(CONVICTED.)

Born in Carthagená.—Unmarried.—Age, 29.

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boat, in the open sea, when his mind was undisturbed, than one of those who assaulted him in the cabin, where the light was necessarily in some degree obscured. The Captain could give no description of their dress; in fact he identified nothing. But it was different with the mate; he never forgot any thing; he said he could remember all the messmates he had ever seen or known; and that having once seen a face, he never forgot it. Yet, in spite of this, he recollected nothing of the dress of the individuals who boarded the Mexican, except that one man had cowhide shoes, and of these shoes he told the binding. Was it possible a man could be so minute in his observation as to be able to tell the binding of a pair of shoes, and yet not be able to particularize any other article of dress? Not be able to tell something about the jackets, &c. of the other men?

Mr. H. then went on to allude to the great similarity in the appearance of Spanish sailors, their universal swarthy complexion, &c.; to the evidence of the boy *Battis*, who when on board the brig *Savage*, at Salem, although he said he at that time recognised two of the prisoners, never mentioned the circumstance to any of the numerous friends and companions who were about him; to the improbability of the cook of the Mexican (Ridgely) being able to distinguish the scars on the face of *Ferrer*, the cook of the schooner, whom the former stated he saw on the fore-top-gallant yard; to the fact that Perez had since stated that he (cook) was not there at all; to the little weight to be attached to the testimony of Perez [Mr. H. referred to Perez's statements to Mr. Badlam in the gaol, where he (Perez) declared "that all he had previously said was a lie"]; to the many inconsistencies in Perez's evidence, and that of other witnesses; and finally to the circumstance of all the crew having identified *Boyga* as having been on board the Mexican, while Perez stated that *Boyga* did not go on board at all.

Mr. Dunlap disputed this statement of Mr. Hillard, and maintained at first that Perez had said he saw *Boyga* on board. On referring, however, to his minutes, Mr. D. found that Perez had not said whether *Boyga* did or did not go on board.

Mr. Hillard also adverted to the conduct of Ridgely, when the prisoners were brought into Court to be arraigned, and then took an entirely different ground of defence. Supposing, he said, what he himself did not believe to be the case, that the crew of the *Panda* robbed the Mexican, it remained to fix the relative degrees of guilt of the prisoners. Mr. H. went largely and eloquently into this part of his subject, contending that the *Panda* had been fitted out for a slaving voyage, for which alone, doubtless, many of the crew had shipped; and that if she had robbed the Mexican, only those who had been engaged in the robbery could be punished for it.

He supposed the case, that the captain, when a few days out, on the voyage to Africa, had yielded to the temptation and committed the act of piracy charged upon him, would it be just to punish more than himself and the men who immediately aided and assisted him in the act? It was necessary for the government to prove intention on the part of the others, when they sailed from Havana. Would they punish, for example, the cook, in the galley of the schooner, the cabin boy, setting his table in the cabin, or Perez, who had been sent aloft to look out, and could not come down again without transgressing the rules of the vessel? Mr. H., after speaking for some time longer upon this view of

the matter, and citing authorities in support of his opinion, concluded by making an eloquent and pathetic appeal to the jury, on behalf of the boy Costa, and the black (Ferrer.)

If, gentlemen, said he, you deem with me, that the crew of the *Panda* (supposing her to have robbed the Mexican) were merely servants of the captain, you cannot convict them. But if you do not agree with me, then all that remains for me to do, is to address a few words to you in the way of mercy. It does not seem to me that the good of society requires the death of all these men, the sacrifice of such a hecatomb of human victims, or that the sword of the law should fall till it is clogged with massacre. *Antonio Ferrer* is plainly but a servant. He is set down as a free black in the ship's papers, but that is no proof that he is free. Were he a slave, he would in all probability be represented as free, and this for obvious reasons. He is in all probability a slave, and a native African, as the tattooing on his face proves beyond a doubt. At any rate, he is but a servant. Now will you make misfortune pay the penalty of guilt? Do not, I entreat you, lightly condemn this man to death. Do not throw him in to make up the dozen. The regard for human life is one of the most prominent proofs of a civilized state of society. The Sultan of Turkey may place women in sacks and throw them into the Bosphorus, without exciting more than an hour's additional conversation at Constantinople. But in our country it is different. You well remember the excitement produced by the abduction and death of a single individual; the convulsion which ensued, the effect of which will long be felt in our political institutions. You will ever find that the more a nation becomes civilized, the greater becomes the regard for human life. There is in the eye, the form, and heaven-directed countenance of man, something holy, that forbids he should be rudely touched.

The instinct of life is great. The light of the sun, even in chains, is pleasant; and life, though supported but by the damp exhalations of a dungeon, is desirable. Often, too, we cling with added tenacity to life in proportion as we are deprived of all that makes existence to be coveted.

"The weariest and most loathed worldly life,  
That age, ache, penury and imprisonment  
Can lay on Nature, is a Paradise  
To that we fear of Death."

Death is a fearful thing. The mere mention of it sometimes blanches the cheek, and sends the fearful blood to the heart. It is a solemn thing to break into the "bloody house of life." Do not, because this man is but an African, imagine that his existence is valueless. He is no drift weed on the ocean of life. There are in his bosom the same social sympathies that animate our own. He has nerves to feel pain, and a heart to throb with human affections, even as you have. His life, to establish the law, or to further the ends of justice, is not required. Taken, it is to us of no value; given to him, it is above the price of rubies.

And *Costa*, the cabin boy, only fifteen years of age when this crime was committed—shall he die? Shall the sword fall upon his neck? Some of you are advanced in years—you may have children. Suppose he news had reached you, that your son was under trial for his life, in a foreign country—(and every cabin boy who leaves this port may be placed in the situation of this prisoner)—suppose you were told that he had been executed, because his captain and officers had violated the

laws of a distant land; what would be your feelings? I cannot tell, but I believe the feelings of all of you would be the same, and that you would exclaim, with the Hebrew, "My son! my son! would to God I had died for thee." This boy *has* a father; let the form of that father rise up before you, and plead in your hearts for his offspring. Perhaps he has a mother, and a home. Think of the lengthened shadow that must have been cast over that home by his absence. Think of his mother, during those hours of wretchedness, when she has felt hope darkening into disappointment, next into anxiety, and from anxiety into despair. How often may she have stretched forth her hands in supplication, and asked, even the winds of heaven, to bring her tidings of him who was away? Let the supplications of that mother touch your hearts, and shield their object from the law.

I have thus, continued Mr. Hillard, endeavored to impress upon you, that you are not to judge of these men in a mass. Condemn not, I beseech you, a single one of them, unless you see upon his hands the red spot of guilt. It is my interest, as a member of society, as much as it is yours, that the guilty should be punished. Where the sin lies, there let the axe fall; but be sure that the crime has been committed, ere you inflict the penalty. You never can be called to perform a more serious duty than the present. The time will come, when this world will be as nothing to you; when its opinions, its struggles, and its varied interests, will hold no more place in your thoughts, than last year's clouds; when memory, invested with preternatural power, will array before your mental gaze every action of your past lives. Then, gentlemen, at that awful moment, believe me, this verdict will not be forgotten; and if you have given it without due conviction of its justice, it will lie with the weight of mountains upon your souls. Let me conjure you, then, as you revere the majesty of truth; let me entreat you, as you venerate that Being in whose presence you must one day stand, to come to this trial with minds "swept and garnished." Judge by the law and the facts before you; grant nothing to prejudice; let no bias warp your minds. I do not ask you to give a verdict in behalf of the prisoners, but in behalf of *truth*. Such a verdict as, in the closing scenes of this mortal existence, will inflict no convulsive spasms of remorse upon your souls.

#### FRIDAY MORNING—9 o'clock.

Mr. Child commenced his argument for the defence.

Any question, he said, which involves the life of a human being, should be approached by those who were to decide his fate, with deep feelings of religious awe. How much ought those feelings to operate on the present occasion! The Jury are called upon to decide a case of as much consequence as any ever decided by twelve men, since the institution of this form of trial. They are placed in a situation most awfully responsible. They were made the vicegerents of God, and the lives and destinies of twelve fellow beings, twelve of the sons of God were placed at their disposal. By their decision these persons might be made to suffer, not only the pangs of the parting of soul and body, but that in a manner of all others the most revolting. They have here before them a most extraordinary spectacle. One of these very persons before them, now arraigned for life or death, had once

saved the lives of those who made this prosecution. Yes! the English officer by whom they were captured was once indebted for his life to the leader of these men. Mr. *Quentin* on the stand had stated, he had no doubt that when Capt. Trotter was in the hands of the negro king he was saved by the interposition of Capt. Gibert. The Jury could find nothing in the whole course of the trial that went to show that these men were the dangerous and bloodthirsty miscreants set forth in the charges brought against them. They (the Jury) had been told there was much blood shed, and many slaughtered on both sides, at their capture. Was not this a total misrepresentation?

Mr. Child next alluded to the statement of Perez, that he could not read or write, when it was proved on the stand that he could do the former. Here was a manifest falsehood. When asked to write, also, what was his conduct. Notwithstanding he said he could not write he handled his pen in the most clerkly manner, and with as much grace as the most experienced writers in this city. This document, said Mr. Child, which I hold in my hand, though not a finished piece of chirography, yet evinces some of the first elements of letters, so well drawn, and so smoothly cut, that I think, had we pressed the matter, we might have obtained from him a very beautiful and satisfactory specimen of writing. I will now call your attention to some inconsistencies in his testimony relating to himself. He states that he could not recollect what was done at Nazareth, because he was so frightened at the idea of being made a prisoner; while in another part of his evidence he tells you he was once carried a prisoner into Havana, and gives as a reason, "because they had slaves on board the vessel." Gentlemen, I do not state this as having any bearing on the case, but only to show you how such testimony ought to bear.

This witness has also stated, that upon one occasion when Captain Gibert saw an English Frigate, he (Capt. G.) ordered all the knives to be taken away from the crew and concealed, yet says, in the course of his testimony, that it is the custom for all Spanish sailors to carry long knives. How can you reconcile all these opposing statements. It appears evident to me that the whole aim of Perez was to give a deeper hue to the crime with which these prisoners were charged. The carrying of knives by Spanish sailors could excite no suspicion in the breast of any one, if it was a customary thing. We cannot account for such evidence in any other way than by believing that he feared, should these men be discharged, that his own imprisonment might be protracted. Perez also tells you, gentlemen, that the carpenter stove the American boat with something heavy, like a piece of wood; and afterwards he states that it was done with an axe, which was carried on board to scuttle the brig with. Now, is not such an instrument as an axe wholly unfit for such a purpose as the scuttling of a vessel? Again, this witness tells you he does not know who shut the men below on board the brig, and yet he tells you he could see the padlock with which the scuttle was fastened, but does not know who shut it down. And Capt. Butman in his printed statement says, that the scuttle never was shut. On another occasion he tells you he was aloft to see all that was done on board the Mexican, and afterwards gives this as a reason for not seeing any thing. He also says, that, when in the top, he could not see what shoes the boatswain wore; yet he could plainly see a padlock on board the Mexican. [The court here remarked, that Perez said he could not see the padlock, but was told about it by others. This was also confirmed by Mr. Peyton,

the interpreter, who was present.] Mr. Child continued, Perez also gives the distance of the two vessels as the reason for not recognizing any of the crew of the Mexican. Is not this wholly inconsistent with his opposite statements? How does he account to you for having been confined in the top so long? He tells you he was put there for a punishment. This was a curious mode of punishment. A person under punishment sent aloft to look out, and give notice of the approach of any vessel which might perchance surprise them while in the commission of a daring robbery! Why, how easily might he have betrayed them? I think you will be convinced, on a moment's reflection, that this could not have been the case. Mr. Child here, in allusion to the length of the cross-examinations said, I may have trespassed, gentlemen, upon your patience; I may have been more minute in minor particulars than prudence would seem to dictate; if we had been possessed of any other resort this would not have been the case. But, as it was, we could obtain not a ray of light, excepting by the strictest scrutiny and closest examination. Mr. C. continued, Perez tells you at first, that the men on board wore both black and white shoes; and afterwards, that he saw no black shoes on board, and, still further, that the officers wore black shoes. Again, he says that the boatswain was a poor man and could not afford to wear a jacket; and afterwards he tells you that the boatswain had a black monkey jacket. How can you reconcile statements, given in testimony, so directly contrary in point of fact? Why, this witness seems to me to think it a luxury to lie; yes, he seems to *luxuriate* in these equivocal statements and falsehoods. I do not think we can account for his conduct in any other way, unless, indeed, he be insane; and if that is the case; if this poor, unfortunate individual is suffering under the visitation of God, whereby he is deprived of reason, then that is a sufficient reason for rejecting his whole testimony.

We next, continued Mr. Child, come to the division of the money, concerning which this witness informs you there was no rule or principle adopted. Now, I would ask, if it is probable that men would act thus carelessly respecting the darling object of their souls; to obtain which they had forfeited their honor, their reputation and their very lives? The money, says Perez, was found in bags like velvet. How does this agree with another of his statements, that the bags were made of dark, coarse linen? He also tells you that he is but twenty-two years of age; and the next moment states that he was a cabin-boy during the wars of Morillo.

Mr. Child next commented at some length on the statements made by Perez in relation to the confessions at Fernando Po, and upon the probability of his having perjured himself by the suppression of important truths.

I will now, said Mr. C., call your attention to another class of this witness's testimony. He has stated that the carpenter put fire to a bag of powder in the hold. Would the witness himself be willing to try this experiment? Would the carpenter have succeeded in such an attempt, and made his escape to the shore in safety? Is it not more probable he would have been in another world before reaching his boat? But he (the witness) has stated to you subsequently, that he is not positive it was a bag, "that the powder was in a keg or a bag."

Mr. C. here adverted to many contradictory statements which he said had been made by Perez, in relation to the removal of the eleven

thousand dollars at Nazareth, the attack on the English corvette by the schooner, and the money sent by Capt. G. to the second mate after the latter had absconded. He also stated the probability that the division of money on the coast, mentioned by Perez, was nothing more than the payment of wages to the crew, and said it was very doubtful that a false log-book had ever been made by the mate. If such a log-book had been made, he added, why had it never been presented by the prisoners to prove their innocence of the crime with which they were charged?

Mr. C. then proceeded to compare the evidence of Perez with that of the other witnesses, and remarked that it was easier for witnesses to adhere to one falsehood, than for a number of witnesses to adhere to one course of evidence without detection. Here, said Mr. Child, I would advert for a moment to the difference between the statements of Perez and those of Capt. Butman. The former has told you that, at the time of the capture of the Mexican, a musket shot was fired from the Panda; while the latter tells you "that the schooner gave chase, fired a *gun* to leeward, and hoisted patriot colors." And, in connection with this matter, the district attorney asked, was the gun shot?

Mr. Child next alluded to the statement made by Capt. Butman in his log-book, that there were 60 or 70 men on board the schooner, and that she had two brass ten-pounders; while Perez said there were but 30 men on board, and both he and the other witness, Quentin, affirmed positively that the guns were iron. Perez also said there was but one man and the third mate on board the Panda who spoke English, and that the former of the two did not go on board the *Mexican*; while the crew of the last-named vessel declared that several of the pirates spoke English fluently.

The conduct also of Capt. Trotter, continued Mr. C., did not show that he considered the prisoners pirates. He never kept them in chains long enough to keep up the farce, if it was a farce, and even employed Capt. Gibert as his amanuensis, regaling him with wine, and treating him in every way as a companion.

And why was there no announcement made in England of the arrival of these prisoners, or of the tragical death of the officers blown up in the schooner at Nazareth? Why, too, were they not tried in England for driving so hard a bargain with the English corvette, in the purchase of her spars?

It has just occurred to me, gentlemen, said Mr. C. and I think the statement made by Domingo is worthy of your serious consideration, that Capt. T. ever after the capture of the Panda was subject to sudden fits of illness, &c. from which he had not recovered when the Curlew arrived in England. This, gentlemen, whatever effect it may have on your minds, has given me many serious reflections.

In reference to the consul at Plymouth, Mr. C. also remarked, it was his opinion that if that consul had been a Spaniard and indifferent to Capt. T. instead of being an Englishman and his friend, he would have demanded a trial of the prisoners in England, for the alleged robbery of the English corvette.

The Court here, at the request of Mr. Child, adjourned.

## SATURDAY MORNING—9 o'clock.

Mr. Child continued his argument.

The capture of the *Panda* doubtless had not been effected without great loss and bloodshed on both sides, and no announcement had been made of this, on the arrival of the *Curlew* in England. He put it to the Jury whether these were the common actions of men.

Mr. C. here wished to read some extracts from "Colhett's Parliamentary Tables," by which he said he could show what kind of men had found their way into the British Navy. He could show the names of upwards of 3000 Lieutenants, many of them veterans in the service, who had been superseded by beardless youths.

The Court remarked, that any established work of science could he quoted in evidence, but the mere opinions of a writer, relative to the conduct of a government, or of individuals, could not be admitted.

Mr. C. continued. Had an announcement been made of the loss of life consequent upon the capture of the *Panda*, a Court of Inquiry would have been held upon the subject. But no announcement had been made. Mr. C. also intimated the probability of Captain Trotter having yielded in some way to the influence of corruption. Bacon, one of the greatest men that England ever produced, had taken a bribe of one thousand pounds, and why might not a similar course be pursued by Captain Trotter? Could we, said Mr. C. bring some men before us, who were at Prince's Island at the same time with the schooner, I think we could prove to you, that the *Panda* was there searched by British officers, and declared not to be the one which committed the robbery.

Mr. Dunlap here begged Mr. Child to suppress any further remarks on this subject, or he should be obliged to disclose some facts that would prove fatal to the prisoners. Mr. D. said he possessed evidence to show that an American vessel arrived at Prince's Island about May, 1833, bringing intelligence of the robbery; and that upon the intelligence becoming known, the *Panda* immediately fled.

Mr. Child continued: Mr. Quentin had testified, that a seaman named Turnbull, took the match from a bag of powder, in the *Panda's* magazine. In connection with this statement, he, (Mr. C.) wished the Jury to bear in mind, that this same man had been disgraced in the British service. And here I would ask, said Mr. C. why, if this money was left on the coast of Africa, has it never been traced? You have been told, also, that dollars are not current on the coast of Africa. Such an assertion, I think you must know is false, as all travellers positively assert, that Spanish dollars are current all over Africa. Their value, doubtless, differs in different parts of the coast, as the inhabitants may be found more or less in want of other articles. And the money was buried! How is it that it remains secreted to this very day, with a fleet of British vessels on the coast? How is it that it is still in possession of the natives, notwithstanding the powerful arms of the British Navy, headed by Capt. Henry D. Trotter? Why, also, were not the watch, the wash-basin, and the dressing-case, all of so much value, ever discovered?

Gentlemen, I never, in the whole course of my practice, heard of any thing which appeared so utterly moonshine, as these stories which have been told you. I do not say they are so—but they may be, for all we know to the contrary. Do you believe, gentlemen, that Captain Trotter ever thought this money was taken piratically? It was said, the money belonged to Mr. Peabody, and if so, would it not have been the interest of Captain Trotter to have found it? He would have undoubtedly received a large reward on restoration to the owner, and also a reward from his government, for having captured a pirate. Quentin tells you that he supposes the money was taken, and sent to the Treasury of the Navy. This, you must be aware, would never have been the case, but that it would, as prize-money, have been divided among the crew. Proceeding on this point, gentlemen, I shall endeavor to show you, that a good and honest log-book was taken, with the other papers, from on board the *Panda*, and was either destroyed, or remains in the hands of Captain Trotter.

Quentin also tells us of an American flag or ensign, which was found on board the schooner. Why, I would ask, has it never been produced, as well as the many trifling articles taken from Captain Gibert? These stories remind me of nothing so much as some old wives' legends, or tales of the nursery, about pots of money buried, or a treasure at the end of a rainbow. I put it to you, gentlemen, whether it would be consistent with your duty, to take the lives of twelve men on such grounds as these. Gentlemen, there never was such a case of piracy since the beginning of time. And is it a fact that Quentin did not know that the log-book or any of the papers were missing? Doubtless all the books and papers fell into the same hands. I have no doubt that the log-book is now in the hands of the prosecutors. The schooner has ever been known as a two-topsail schooner; as such, she was known in August, 1832, in Havana, and also in Cadiz, in 1833. It is no crime to sail in a Baltimore clipper; if it were so, many of our most valued nautical-men would, long ere this, have suffered on the scaffold. The question before you is, not whether the pirate was a clipper, but whether she fully answers the description given of the *Panda*.

Perez tells you there was no money on board the *Panda*. It appears quite improbable to me that he should know any thing about it. Are you convinced of the probability, that the captain and mate should set out on a journey like this, without a cent of money in their pockets? That you must believe Perez has perjured himself, is, I think, reduced to a certainty, by the evidence of Badlam. I think you must be also convinced that the schooner had money on board, and if so—if she had from two to five thousand dollars on board, that fact proves the voyage to have been an honest one. It has also been proved, that the Captain paid money to the men at Nazareth. This money was doubtless shipped for the voyage at Havana; and is it likely he would have discharged Silvera, with the assurance that he could no longer support him, if he, (the Captain) had possessed such a sum of money as he is said to have stolen from the Mexican? In cases of piracy, said Mr. Child, I consider it just as important, in order to convict individuals of the crime, that the money should be produced, as that in case of murder, the *body* should be found. As regards the money found at Nazareth, you have no testimony in relation to that, but the testimony of Perez, and he in one place tells you that eleven thousand dollars were buried, and in another, that he is not certain of it.

Mr. Child here argued, at considerable length, on the improbability

of the *Panda* falling in with the Mexican, and read to the Jury a table of calculations, which he had made, for the purpose of showing that the schooner must have been greatly ahead of the brig at the time the robbery was committed.

With reference to the prisoners being engaged in the slave trade, Mr. C. said, that before that circumstance was suffered to operate against them, the Government should itself be certain that it came into Court with clean hands. It was undeniable, that however objectionable this traffic might be to New Englanders, the whole country at present participated in it. So late even as 1833, a direct trade in slaves had been carried on on the Mississippi. The Constitution had also virtually given a license to this branch of traffic for twenty years; and although it had been since abolished, the English and Danes had had greatly the start of us, in that particular. Charles the Fifth, too, of Germany, had done more to stop the slave trade, and to ameliorate the condition of slaves, than had ever been done by the Federal Government since the period of its formation.

Mr. Child then urged strongly upon the Jury, that even if the officers of the *Panda* were guilty, they were not to convict the *crew*, unless participation and previous intention could be proved against them;—and concluded by saying, that the king's crown, the judge's robe, or the marshal's truncheon, did not become those elevated individuals half so much, as mercy would become them (the Jury,) upon the present occasion.

Many of the quotations made by Mr. Child from the testimony of the witnesses, were objected to by the Court, and by the District Attorney, as incorrect. We have, however, given Mr. C's. statements, in most instances, as he made them, leaving our readers to decide as to their accuracy, by a reference to the preceding pages of this report.

#### MONDAY MORNING,—9 o'clock.

Mr. Child this morning read a statement to the court to the effect that a piratical schooner, answering the description of the *Panda*, but clearly not that vessel, had been seen in the latitude of Cape de Verdes, and had chased and fired into the ship *Cæsar*, bound to Demerara.

MR. DUNLAP, for the Government, then rose and addressed the Jury. It now becomes my duty, gentlemen, said he, on the fourteenth day since the commencement of this trial, to address to you the closing argument for the prosecution. The labors of this case have been unexampled. We can find no parallel to them in the history of the judicial proceedings of this country. None of us have as yet, however, broke down under them, although many times the body has been weary and the heart sick and faint. Still I do not know that these labors ought to be to us a subject of regret, when we consider the great importance of the case now to be decided. It is important, inasmuch as it involves the lives of twelve men, and the interests of public justice, not only in this, but in every other civilized country.

It is of consequence, not only to our own citizens, but to "all those who go down to the sea in ships," that, when removed from the protection of their friends and neighbors, they should yet be safe—protected by the moral influence of the law, spreading over the wide expanse of ocean, and extending from one continent to the other.

When then, I say, you consider the momentous nature of this trial,—that it is connected with the interests of every nautical people, I think I am justified in the remark that the labors of the cause ought not to be regretted. Not only should we dismiss from our minds all thoughts of the labor we have undergone, but every, the slightest, personal feeling, calculated to bias our minds, or impede the ends of justice. We should come to the decision of this case with pure hearts, and minds freed from all feelings of anger or irritation, however much the course pursued for the defence has been calculated to produce them. We should come bearing in mind the great maxim of the law, “That every person is presumed to be innocent until he is proved to be guilty,” but with a resolution also, should the guilt of the individuals before us be proved, to do our duty. The prisoners have had a fair and noble trial. If they are far from their friends; if the forms of this court are new to them, yet have they had privileges, which in their own country they could not have had. They have been furnished with copies of the charges against them, in order that they might know what those charges were. They have had individuals acquainted with their own language to instruct them in matters of right; they have had counsel of their own selection; they have had the privilege of choosing their own Jury, from a large number of citizens collected from all parts of the vicinity (and if ever there was a mode more calculated to secure the proper administration of justice, it is that adopted by us in this particular); they have had the advantage of the purse of the government to procure any testimony within the process of the court; all witnesses whose testimony they desired are in attendance at the government expense; and they have had counsel to aid them, not only in relation to the law and the examination of witnesses, but also to urge all matters as well of testimony as of the law, to the Jury. Have they not then had all the privileges which the mildest system of laws could extend to them? Had this case, which has already occupied the attention of this court twelve days, at an average of six or seven hours per day, been tried at the Old Bailey, it would have been decided between the rising and the setting of the sun. This is not all; besides the indulgences already stated, they have had the benefit of a most laborious, ingenious, and talented defence. The junior counsel, who opened this case, did it with ability and feeling; and presented, in my opinion, every point for the prisoners of which the case was susceptible. His address was decked with all the graces of a brilliant imagination; and with all the attractions of the most persuasive eloquence. But the most refined and elaborate texture of reasoning, is too often like the most beautiful fabric of art, necessarily composed of the faintest materials. And if the defence be inconclusive to establish the innocence of the prisoners, I may remark, (to use the words of Lord Bacon, on a similar occasion,) that the fault is in the stuff, and not in the workman. The closing counsel brought to the cause, his untiring zeal, his great industry, his various and profound learning; and exhibited a labor, and I had almost said, a *desperation*, which I think must have satisfied you, gentlemen, that the cause pressed heavily on him, and that he was fully conscious of the weight of the load,—the dead lift,—he had undertaken to carry.

But, gentlemen, all the indulgences I have enumerated have been granted, not to facilitate the escape of guilt, but to afford protection to the innocent; else were our laws a mockery, and our courts of justice but a theatre, where the prize of eloquence is to be won, and where,

instead of protection of the rights of our citizens, guilt might, more than in any other place, revel in crime, and defy discovery. \* \* \* \* \* If the prisoners are innocent, none of you, gentlemen, I am sure, will regret the length of time, and the great labor which has attended this investigation; on the other hand, if they are guilty, and it shall become your solemn duty to render that verdict, which will consign them to chains and the scaffold, will it not be a satisfaction to you, that you have heard all that could be said in their behalf; and that could enable them, if innocent, to prove that innocence. My duty in this case is plain. The counsel for the defence have had *their* duty to perform; and they have done it manfully. A duty has also been assigned to me. I have given a pledge to my country, that if I possess any talents, those talents shall be exerted to the utmost in the discharge of my duty. I have taken an oath to this effect, and I must not be found recreant to that pledge,—mindful of that oath. Yet you shall hear from me no rash expressions of anger against the prisoners. It is not my duty to excite prejudices against them; but calmly, and with a firm step, to progress through the merits of this case.

In pursuing this course, I shall endeavor, as much as possible, to simplify this transaction—to clear it from the mass of words, beneath which it has been, doubtless unintentionally, buried. Mr. D. after these introductory remarks, proceeded at once to the facts of the case.

He commenced by stating that there would be no doubt that the Mexican had been robbed in lat. 33, lon. 34, by pirates; the great question was, whether the Captain and crew of the *Panda* were the individuals who committed that robbery. Let us, said Mr. D. examine the evidence bearing upon this subject. There was a schooner, named the *Panda*, in the harbor of Havana, on the 12th of August, 1832. She sailed thence on the 20th or 26th of August, commanded by Captain Gilbert, and manned by a crew, part of whom were the prisoners at the bar. All this was undeniable; it was proved by the Custom House documents, and also by the testimony of Perez and Guzman. Perez says, that she sailed on the 20th or 26th, and the ship's papers and *Moro Pass*, &c. being dated the 18th, all induce us to believe that the 20th August was the day on which she commenced her voyage. Now the track of the Mexican is before us, marked by the mate of that vessel till the day of the robbery. The *Panda* sailed on the 20th or 26th, from Havana, her track lies directly over the spot where the Mexican was met, and you have the testimony of Mr. Peabody, the owner of the vessel, now a merchant, but formerly a practical seaman, that the two vessels would be likely to meet. The next testimony upon this point is that of Mr. Briggs, who has been a captain for thirty-two years, and who informs you that the *Panda* would probably come as far north as 37 deg. and that she would be more likely to meet the Mexican in 33, 34 1-2 than at any other point on the chart. We have, then, captain Rich, who says that the latitude just mentioned, is the spot where the vessels would meet. He tells you, that were he bound for the coast of Africa, he should come north as far as Cape Hatteras. We then have captain Budd, an officer in the U. S. navy, who has commanded two sloops of war on the Havana station; he agrees with captain Rich, and the line indicating the course of the *Panda*, which he traced with his finger on the chart, passed over the very place where the robbery was committed.

Mr. D. also cited the evidence given by captains Bethune, Faulkner, Bacon, and Devens, to the same effect, and continued: Now we have

witnesses from the Mexican, and one, from the Panda herself, who swear that the prisoners are the persons who committed the robbery. What sort of a vessel was the Panda? She was a clipper schooner, with raking masts, painted black, with a white streak, and her armament consisted of two small guns, and one large pivot gun. And what does captain Butman tell you? Why, that the piratical vessel was a clipper, painted black, with a white streak, that she had two small guns, and something like a gun covered up amidships, and that she was about one hundred and fifty tons burthen. With respect to the latter item, (the amount of tonnage,) allowances must be made for the state of alarm into which captain Butman was thrown, and Mr. Peyton has told you how difficult a matter it is to judge of the tonnage of a vessel; he has told you that himself and messmates were, in one instance, unable to decide, within fifty or sixty tons, the amount of burthen even of the vessel in which they were sailing.

Then with regard to the schooner's armament. The Panda had two small guns, and one pivot gun. Perez said, the small guns were six and nine pounders, and Mr. Quentin, a Naval officer, made a similar mistake in his estimate of their calibre. Captain Butman, however, described the guns as "neither long nor short," and a singular corroboration of his opinion has come out in the course of this investigation. In the roll of equipage of the Panda, read a few days ago, the small guns are represented as *gunnades*, and these pieces are, as Captain Butman said, neither "long nor short guns." Is not this proof of Captain Butman's accuracy, of far greater importance than the mistake which he made in relation to the metal of the guns? A mistake, too, very easily made; for who has seen guns at sea in the same state of brightness as those exhibited in a park of artillery? And who has not noticed the dark and bronzed state of the guns which lie in our Navy Yard. Mr. D. here referred to the perfect agreement which existed between the testimony of the crew of the Mexican and the witness Perez, in relation to the colours of the Panda. Reed the mate stated, that when the piratical vessel came up with them, she hoisted Patriot colours. And Perez says, that when they fired a gun for the American brig to heave to, they hoisted the Columbian flag. The description given by Captain Butman of the manœuvres of the piratical vessel at the time of the Mexican's capture, also correspond with Perez's account of the movements of the Panda at the same period. There are also numerous other coincidences between the testimony of the crew of the Mexican, and that given by Perez. The mate of the Mexican says, that the pirates took from them some spars, butter and fowls, and Perez makes the same statements from his observation while in the main-top of the schooner. He also says, that he saw smoke proceeding from the galley of the Mexican, and Captain Butman tells you that his vessel was attempted to be set on fire. You have also the coincidence from the witnesses in both vessels, that all this took place on the 20th September. Perez mentions the 20th, as the day on which the Panda captured the American brig, and the log-book of the Mexican tells you that she was robbed on that day. Well, the Panda proceeds on her voyage to the coast of Africa, and in a few days after the period of the robbery, changes her rig, with the spars and duck taken from the Mexican; she also changes her paint. On her arrival at her destination, she stays a short time in the river Nazareth, and then proceeds to Prince's Island, first removing her figure head, and substituting an awkward piece of wood; and the next thing we hear of her is, that she

has fled from Prince's Island, because the news of the robbery of the Mexican had reached that place. Her officers then propose running her on shore and destroying her. Now, why, if they had done nothing wrong, destroy their vessel? What was the burying of the money for either?—why put *that* into the care of the negroes? If they had brought it from the Havana with them, they would have kept it in its proper place, under the guns of their vessel. And if they were not pirates, what had they to fear from a cruiser of his Britannic Majesty's Navy.

The English boats came up with the Union Jack hoisted; that flag which was the protection of honest men, but the terror of pirates—the flag of the queen of the ocean! But these men preferred to destroy their vessel and place themselves under the protection of the negroes, rather than submit to the search of a lawfully commissioned cruiser of the greatest naval power in the world. They had nothing to fear even on the score of their being slavers, because no vessel can be captured unless she have slaves on board, which the Panda had not at the time she was taken. And what became of them after they left the vessel? Why they sought refuge among the negroes and in the forest. How different was the conduct of the Portuguese, who shipped at Prince's Island, and had no concern with the robbery. One of them went on board the Panda immediately after the English had taken possession of her, and the other sought a passage home in a vessel lying very near the Panda. Mr. Dunlap then adverted to the instructions of the captain of the Panda, and expressed his belief that the whole affair was a regular piratical and slaving speculation, on the part of certain individuals in the Havana. He mentioned many circumstances in support of this opinion; among the rest, that the Panda had not a sufficient cargo to purchase the number of slaves (450) she was going for, and that the wages of the crew also were \$1000 per month. Mr. Peyton informed the Court that slaves on the coast of Africa could be purchased for \$12 each.

Mr. Dunlap then adverted to the alleged contradictions in the evidence of Perez. He said the statement of this witness, "that he had not been drunk, and had not had rum given him," was not contradicted by the statement he made, in gaol, to Mr. Badlam. He told Mr. Badlam, that, on that occasion, he had had *wine* given to him; but never acknowledged that he received rum, or that he had been drunk. The witness's state of mind, too, when he said this should be taken into consideration. He believed he had been dealt faithfully with by the government, and under this impression made use of words attributed to him. At the conclusion of the interview, however, he stated, that "when before the judge he would tell the truth," thus clearly intimating that his previous statement about the wine was a falsehood. In relation to Perez's declaration, that he could not read or write, he had used the words in their common acceptance, and meant to say that he could not read as others did, with any degree of fluency.

If, Mr. D. said, Perez had declared he could read, and had given no better specimen than he did in the Court, (reading or rather spelling two lines in five minutes,) the counsel for the prisoners could have accused him of laying claim to a qualification which he did not possess. But, even admitting that Perez had said previously that he could not read, and that in contradiction of that assertion he *did* read in Court, this circumstance would be one of the strongest proofs that

he had testified truly. It would prove, that however bad he was in other respects, whatever falsehoods he might have stated elsewhere, he had come into court upon the present occasion, with a full knowledge of his precarious situation; with the conviction, that his life depended upon his veracity; and with a determination to tell the truth, even should he contradict any thing he might have previously stated. How easy would it have been for him, when asked by the counsel for the defence "if he could read," to have replied in the negative.

Mr. D. next proceeded to the consideration of the question, "whether the whole of the prisoners were implicated, supposing the captain and officers to be guilty." In relation to this question, he said there was one circumstance which removed all doubts that the whole crew were co-partners in the crime; which extinguished at once in his bosom, the hope he had so fondly cherished in favor of Ferrer, the cook, and Costa, the cabin boy. This damning circumstance was the fact, that not a single individual of the crew had ever mentioned the robbery to the Portuguese, who were so many months their companions. This unnatural silence proved that they were all equally implicated in the crime, and all felt the necessity of keeping the secret; that they had east in their lot with their officers, and were bound together as a band of brothers, by a common sense of guilt and danger, the captain being, like Byron's Conrad, the master-spirit of the whole—"one formed to lead the guilty, guilt's worst instrument."

Mr. D. next alluded to the evidence of the nautical gentlemen, who were brought forward by the counsel for the defence, and pointed out the numerous instances in which they, although called in behalf of the prisoners, corroborated the evidence of the government witnesses. He then referred to the fact, that almost all piracies were now committed by slavers, slavery being the only pretence on which a piratical vessel could now-a-days be fitted out; and concluded by passing an eloquent eulogium upon Capt. Trotter, and the English Navy generally, for the gallantry with which they, upon all occasions, risked their lives in behalf of the general weal.

#### TUESDAY MORNING,—9 o'clock.

Judge Story commenced his charge to the Jury at a little after nine this morning. The court room was much crowded, and among those present, we observed a considerable number of ladies. This important and protracted case, the learned judge said, was now, he hoped, drawing to a close. As regarded its duration, and the extraordinary nature of the circumstances developed, it was without parallel in the history of our courts. Great diligence and exertion had been used to bring out facts: those facts were now before the jury, and it was for them to decide as to the guilt or innocence of the prisoners. The prisoners all pleaded not guilty, and he felt sure, that in a case like this, he need not say much to the jury in relation to the necessity of using deliberation and caution in the formation of their judgment; on the one side, the lives of the prisoners were in their hands, and, on the other, the preservation of public justice. The lives of the prisoners were dear to them, and the due and fit administration of justice was not the less dear to the country. The case had been argued for the defence with great elaborateness, ingenuity and eloquence; and the reply of the district attorney was marked with equal diligence, moderation and can-

dor. Little more remained, then, for the court but to sum up the facts, and present to the jury the most important elements contained in the testimony which had been adduced before them. He wished the jury to understand (the case having, as he said before, been argued so elaborately and in detail), that they were not to take the facts he gave them as *all* the facts, but only as the most important ones. As the case, for the most part, turned on a question of fact, it was for the jury to decide upon it in that respect. The suggestions about to be made by him were only so made for the purpose of assisting them in coming to correct results; and if, in the course of the remarks he was about to make, he should happen to differ in any way from them, they were to follow the dictates of their own minds and consciences, without being influenced by any observations or opinions expressed by him. They were to use their own judgment.

Many things had been brought into the present case which he regretted; but the counsel for the defence had undoubtedly done right in omitting nothing that might have occurred to their minds as likely to be of benefit to the prisoners. [The learned judge, we presume, alluded to the numerous cases quoted by Mr. Child from the law books, for the purpose of proving how liable evidence of identity was to error. Among the cases cited by Mr. C. was the Salem one of witchcraft.] The jury had had many cases read to them, to show the difficulty of deciding upon the identity of individuals. Some of these might be founded in fact, or they might, for aught any one could say to the contrary, be figments of the brain. They were the common-places of the law, and had been cited before him for the same purposes as now, in almost every criminal trial in which he had been engaged. If they went for any thing, they went to establish two things, viz. 1st, that, unless the body were found, there ought to be no conviction; 2d, that, because men had testified falsely, or had been mistaken as to identity, that therefore testimony ought not to be taken. Now these positions were absurd. If no conviction ought to take place unless the body of a murdered person could be found, what was to be done in cases of murder at sea, where the body was thrown overboard and buried beneath the broad ocean?

The cases of murder were numerous, and were they to be told that a jury had no right to convict, because the body could not be produced from the depths of the sea? Men had been convicted on false testimony; and what then? Are we to say that jurors shall never convict, because men have been found base and wicked enough to perjure themselves, for the purpose of taking away the life of a fellow being? No one, surely, will contend for doctrines of this kind. If they were admitted, our courts would be useless, not only in criminal but civil cases, and instead of being here to-day, the law ought to prescribe that there should be no courts, no administration of justice throughout our country. Human testimony is almost the only thing upon which we can rely in this world; and he who undertakes to shake our faith in it, undertakes to shake our faith in every thing on earth, and I had almost said, in heaven. Where would be the consolations of Christianity, which are based on human testimony? How could we support our claims to property, or claims of any other kind, but by human testimony? The only purpose for which these cases ought ever to be called before a jury was in the way of caution; and if they were urged farther than this, it was an urging of the jury to betray their duty. He regretted to see them introduced into an Amer-

ican court, because our tribunals were not characterized by a thirst after blood; on the contrary, if we had any thing of which we could justly boast, it was that, in our code of laws, there were few capital crimes, and that the administration of that code was conducted with the severest and most punctilious caution. It had been objected to us that we were even over-merciful.

There was another topic on which he must say a few words, and that was the remarks which had been made in relation to the manner in which the prisoners had been brought here, and upon the circumstances of their capture. He should feel himself unworthy of the station he occupied, if he did not advert to this topic, because, if he rightly understood the prisoner's counsel, an attempt had been made to throw a great deal of doubt over the motives and actions of Capt. Trotter, and even of the British government itself, for having sent the case to this country. The British government, on this occasion, finding persons in England in custody of one of her own officers, and accused of piracy on an American vessel, chose to send those persons here, where the best evidence could be obtained, and where the greatest facilities and advantages for their trial were to be found. Over piracy, all nations exercise equal jurisdiction, and the British government might justly have exercised it in this case; but they preferred that the offenders should be tried by the citizens of that country against whom the offence had been committed. And I may say that this conduct of the British government can scarcely receive too much praise from an American citizen.

How could this cause have been decided in England. None of the crew of the Mexican, nor her owner, were there. How could the evidence heard before this court, and which occupied its attention during the three first days of the trial, have been heard in England? Let them look, too, at the conduct of Capt. Trotter. He was an officer of the British navy, stationed on the coast of Africa, with directions to use his exertions in suppressing the slave trade. He was there discharging the particular duty which had been assigned to him, and was under no obligation to trouble himself about pirates. But he receives information of the robbery of the American brig, and that the pirate is supposed to be on the African coast, and immediately goes in quest of her. What motive could this gallant officer have had to interfere in this matter, but a sense of justice, and a desire to protect the rights of the whole world? He had nothing to gain, and he might encounter a great deal of peril, obloquy and responsibility. Under these circumstances Capt. Trotter does interfere. He goes in search of the pirate. And you know, gentlemen, said the learned judge, it was no ordinary peril he encountered. Mr. Quentin has stated facts sufficient to prove to you the danger of the undertaking, even when the crew of the *Parada* were not on board to make resistance. Had the crew remained on board, and used the means in their possession, the loss of lives among the British, they being in open boats, must necessarily have been great.

Now what inducement had Capt. Trotter to encounter all this, but a high sense of public duty, not merely to his own country, but to the commercial world. It is said that there was something mysterious about the conduct of this brave officer. I have never observed any thing of the kind, gentlemen, during this trial: it remains for you to say whether any thing of the kind exists. His station was on the African



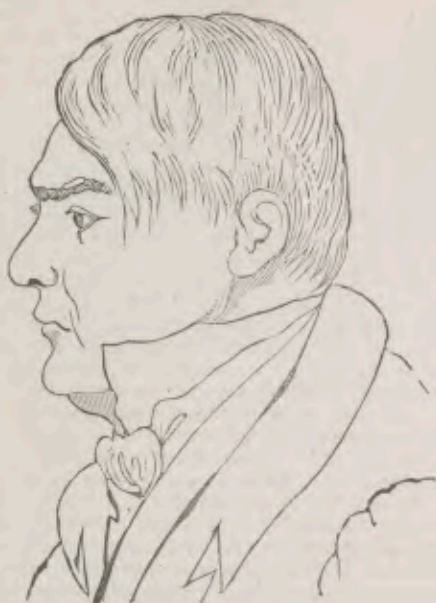
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JOSE VELASQUEZ, *Seaman.*

(ACQUITTED.)

Born in Malaga.—Unmarried.—Age, 30.



DOMINGO GUZMAN, (an Indian,) *Ord. Seaman.*

(ACQUITTED.)

Born in Manilla.—Unmarried.—Age, 20.



Portrait of a woman, possibly a queen, with a crown and a long, flowing dress. The text below the portrait is faint and illegible, but appears to be a caption or a title.

coast, and he could not leave it without orders from home.\* He made the capture, and communicated it, where he was in duty bound to do, to the heads of the admiralty. *We know that he did this, because we find that the British government taking cognizance of his act, and sending the prisoners to be tried here with reference to it.* Suggestions had been thrown out, and questions asked, as to whether money had not been divided among the crew of the Curlew. This question no person could misunderstand for a moment. Now he must say, as an individual, that, on the most careful examination, he had found nothing as done by Capt Trotter, that a man in his situation might not fairly do. The learned judge farther stated, in reference to this matter, that if, in this first instance of national reciprocity, British officers found themselves accused without sufficient reason, it would be, as it was the first, most assuredly the last time they would expose themselves to such consequences. It was, however, possible that Capt. Trotter might have acted with perfect propriety, and yet the prisoners be innocent of the crime imputed to them. On the other hand, Capt. Trotter might have done wrong, and the prisoners, notwithstanding, be guilty. The jury were to bear in mind that Capt. Trotter's conduct, was a matter separate from the guilt or innocence of the prisoners. With respect to the capture of the *Esperanza*, the rule of law was that a *probable* cause would justify taking possession of her; and if this could be proved, no damages could be recovered. Damages could only follow a wanton and manifestly improper seizure.

Judge Story then passed from this topic, to the merits of the case between the government and the prisoners. He admonished the jury that if there remained a reasonable doubt in their minds, as to the guilt of the prisoners, they were to give them (the prisoners) the benefit of it. It must, however, be a reasonable, and not a vain and trifling doubt. The present case, he said, might be divided into three questions: first, Was the Mexican robbed? Secondly, was that robbery, if committed, committed by the *Panda*? Thirdly, If robbed by the *Panda*, were all the prisoners present implicated in the crime? With regard to the first question, there could be no doubt. No one attempted to deny that the Mexican was robbed in lat. 33, lon. 34½; and that, after the specie had been taken from her, her crew were placed below, and attempted to be destroyed by fire. It was obvious that the individuals, whoever they were, after committing the robbery, had resolved upon consummating their crime by the sacrifice of every one of the crew, by the murder of those against whom they could have no angry feeling, and whom they had never before seen. It was a horrible crime; but the horror which it excited was not, at the present time, to weigh an atom against these prisoners, in the minds of the jury. They (the jury) were were first to see if the prisoners were guilty.

The learned judge then proceeded to the consideration of the remaining questions into which he had divided the case, viz: Whether the *Panda* was the vessel that robbed the Mexican, and if she was, whether all the prisoners on board her were equally guilty?

He went over the whole of the evidence bearing upon the first point, and finally summed up in a manner that could not but have proved conclusive in the mind of every one as to the guilt of the prisoners. Upon the last question, however, he expressed himself decidedly in

\*In allusion to the remarks of Mr. Child as to the length of Capt. Trotter's cruise and no announcement having been made in the papers of his capture.

their favor. Only those of the crew, he said, could be convicted, who were proved to have participated in the crime. The mere fact of their being on board the *Paola* was not sufficient to condemn them.

With reference to the good characters given by some of the witnesses of Capt. Gibert, the Judge said that a good character certainly availed much, but numerous instances were on record of men, long held in high estimation, suddenly committing the greatest and most horrible crimes. With regard to De Soto, the generous act performed by that individual was fully estimated by every person in the Court. I stand humbled before you, Gentlemen, said the Judge, by a fact brought out in the course of the testimony you have heard; the fact of an American ship passing by and leaving American citizens to perish in sight of their countrymen. We have had from the Counsel for the defence an eloquent allusion to the parable of the Priest and the Levite, and never from the days of our Saviour till now can that parable have been more fully illustrated than by the fact to which I have alluded. The American passed by the sufferers, the Spaniard stopped and saved them. But the prisoner's guilt must outweigh all these considerations. We cannot dispense mercy. That is the attribute of a higher power. You and I, Gentlemen, are bound to do our duty according to law, and we should be false to our oaths, our country and our God, if we were to shut our eyes to the force of the testimony before us.

The concluding part of the charge was very favorable to Portana, Velasquez and Ferrier. No participation whatever, Judge S. remarked, was proved against the first—the only circumstance against the second was the statement of Perez, that he was with him (Perez) when the money was buried; and the 3d, Ferrier, was evidently a servant and an African. Although set down in the ship's papers as free, that fact was by no means conclusive. Vessels going on a slaving voyage would never carry a native African with them *as a slave*, because that circumstance would subject them to capture by the English or other cruisers. There was therefore every reason to believe that Ferrier, although described as a free black, was in reality a slave.

Judge S. concluded at 15 minutes past 3 o'clock, and after the reading by Mr. Child of several proposed instructions to the jury, only one or two of which could be complied with, the case was given to the jury, and the Court adjourned till to-morrow morning at 11 o'clock.

The learned Judge in the course of his charge, made the following remarks in relation to the slave trade. This inhuman traffic, he said, had long been the reproach of Christendom. It had been carried on with as much zeal by England and America as by the French and Spanish. And although Christianity had blessed us with its light for 1800 years, it was only until very lately that this species of commerce had been wholly abolished. He could not agree in the remarks which had been made by both Counsel for the defence, upon the conduct of the United States as connected with this matter. The Constitution had never sanctioned the slave trade. It met an existing state of things, and passed an act taxing the trade, and enabling Congress to prohibit it altogether at the expiration of 20 years. It did this in '88, and in 1806 a prospective act was passed, to take effect in January, 1807, declaring the slave trade forever abolished in this country. He was not aware that the traffic had been carried on during the first 20 years by more than one or two of the Southern States. Congress could do no more than it did at the time of the formation of the Constitution. They wished to have prohibited the traffic at once, but there

were opposing interests to be reunited, and they had no other alternative than to sacrifice the Constitution, or submit to a limited evil.—They had many prejudices to overcome, and had they not secured the Constitution by a temporary sacrifice of their wishes, they never would have been able to have destroyed the slave trade at all. Let it be known, then, that America made the first step in this matter. She did what she could in '88, while England did not stir till years afterwards, and then, when Pitt and Wilberforce exerted themselves upon the subject, the bill which they introduced fell dead in the House of Commons. Even Pitt, the Prime Minister of England, with all his popularity, could not break down the prejudices of his countrymen, and nothing effectual was done in England till the year 1807, while in 1806, America, by the prospective act which she had passed, abolished the slave trade throughout all the States, thenceforth and forever. To America, then, is due the credit of having, while yet a child, and possessing but the elements of Government, looked forward to the time when a traffic in her fellow men should no longer disgrace her annals.

#### WEDNESDAY MORNING, 9 o'clock.

The Court assembled this morning at 11 o'clock, and after the lapse of about half an hour the Jury came in with their verdict.

*Clerk.*—Gentlemen of the Jury, have you agreed upon your verdict?

*Jury.*—We have.

*Clerk.*—Who shall speak for you?

*Jury.*—Our foreman.

The prisoners were then directed severally to rise as soon as called and receive the verdict of the jury. The Captain, *Pedro Gibert*, was the first named. He arose, raised his hand, and regarded the jury with a firm countenance and steady eye.

*Clerk.*—Jurors look upon the prisoner; prisoner look upon the jurors. How say you, Gentlemen, is the prisoner at the bar, *Pedro Gibert*, guilty or not guilty?

*Foreman.*—GUILTY.

The same verdict was pronounced against *de Soto*, (the mate,) *Ruiz*, (the carpenter,) *Boyga*, *Castillo*, *Garcia* and *Montenegro*. But *Costa*, (the cabin boy,) *Ferrer*, (the negro,) *Guzman*, *Portana*, and *Velasquez*, were declared NOT GUILTY.

After having declared the verdict of the Jury, the Foreman read to the Court the following recommendation to mercy:

"The sympathies of the Jury have been strongly moved in behalf of *Bernardo de Soto*, on account of his generous, noble, and self-sacrificing conduct in saving the lives of more than 70 human beings, constituting the passengers and crew of the ship *Minerva*; and they desire that his case should be presented to the merciful consideration of the Government."

Judge Story replied that the wish of the jury would certainly be complied with both by the Court and the prosecuting officer.

The appearance and demeanor of Captain Gibert are the same as when we first saw him; his eye is undimmed, and decision and command yet sit upon his features. We did not discern the smallest alteration of color or countenance when the verdict of the jury was communicated to him; he merely slightly bowed, and resumed his seat. With *de Soto* the case was different. He is much altered; has become thinner, and his countenance this morning was expressive of the deepest despondency. When informed of the contents of the paper read by the foreman of the jury, he appeared much affected, and while being removed from the Court covered his face with his handkerchief. May the recommendation of the jury in favor of this individual be successful. May the 72 lives he has saved plead "trumpet-tongued" in behalf of his own.

Immediately after the delivery of the verdict, the acquitted prisoners, on motion of Mr. Hillard, were directed to be discharged, upon which several of the others loudly and angrily expressed their dissatisfaction at the result of the trial. Castilo (a *half-caste*, with an extremely mild and pleasing countenance,) pointed towards heaven, and called upon the Almighty to bear witness that he was innocent; *Ruiz* uttered some words with great vehemence; and *Garcia* said "all were in the same ship; and it was strange that some should be permitted to escape while others were punished." Most of them on leaving the Court uttered some invective against "the *picaro* who had sworn their lives away."

On *Costa*, the cabin boy, (now 19) being declared "Not Guilty" some degree of approbation was manifested by the audience, but instantly checked by the judge, who directed the officers to take into custody every one expressing either assent or dissent. We certainly think the sympathy expressed in favor of *Costa* very ill placed, for although we have not deemed ourselves at liberty to mention the fact earlier, his conduct during the whole trial has been characterized by the most reckless effrontery and indecorum. Even when standing up to receive the verdict of the jury, his face bore an impudent smile, and he evinced the most total disregard of the mercy which had been extended towards him.

The jury were shortly afterwards discharged; the learned judge thanking them for the great patience and attention they had exhibited throughout this painful trial, and hoping they would find, in the approbation of their fellow citizens, and in the testimony of their own consciences, that reward which always resulted from the performance of an act of duty.

The Court adjourned till Monday next at 10 o'clock.

We deem it proper at the conclusion of this trial to be very explicit in relation to the change of interpreters which took place at a certain stage of the proceedings—Mr. Peyton being substituted for Mr. Bad-

lam. For this end then we state, that the Court were very desirous that Mr. Badlam should continue his services as interpreter, bearing ample testimony to the ability with which he had performed this duty on many previous occasions. Also, that the change was eventually made, principally at Mr. B's own repeated request, he stating that, although well acquainted generally with the Spanish language, he was *not* conversant with Spanish naval terms, which could be perfectly known in that, or in fact in *any* language, only by a person accustomed to the sea. Mr. Peyton, as we have before stated, has been many years an officer on board Spanish vessels, and to this circumstance is doubtless to be attributed the facility he displayed in communicating with the witnesses and prisoners, and which was of such great service to the Court, the jury, and all concerned.

## APPENDIX.

### INSTRUCTIONS FOR PETER GIBERT,

#### CAPTAIN AND MASTER OF THE SPANISH SCHOONER PANDA.

You being about to sail on a voyage agreed upon between us, the following are the principal points which you are to observe during said voyage, in order that the result may correspond with our wishes, which are the following:—

1. You are authorized, from the time of your sailing, to pursue such a course as may appear to you to be best, first consulting the first mate, Bernardo de Soto.

2. Upon your arrival at the place of your destination, you will use all diligence in your power in the purchasing and shipment of your cargo, which, from the selected and abundant invoice of your outward cargo, we have no doubt will be a fine one.

3. You will take particular care that there be observed on board, between the officers and men, the greatest subordination and best order, adopting the necessary measures for keeping up good harmony among all.

4. Neatness and cleanliness being particular objects of interest, you will take the greatest pains that they be observed on board, and that the officers contribute their care and zeal to effect this object.

5. You will avoid, as much as possible, meeting with any sail, particularly if there be any appearance of her being a suspicious one; therefore, you will have kept a good look-out from mast-head, charging them with the greatest vigilance, particularly in dangerous places.

6. On your return to this island, the places for standing in shore will be the following:—  
1st. Should your route be between Cape St. Antonio and Cape Catocha, avoiding making the first, also the two Caymans, the great and lesser, and the Isle of Pines, nearing as much as possible the coast of said Cape Catocha, when you will stand off until you consider yourself in the latitude of Bayahonda, Cabanas, or Guagibon, or to either of these three places, you will direct course, taking the nearest, and set a French flag on the fore-top, and give immediate information, if at the first place, to Don Antonio Marzau, or to Don Domingo and Don Ramon Arozarena; to Don Joachim Pelaez, at the second place; and at the third place, to Don Joachim Garcia, with whom you are acquainted.

2d. By the old channel, passing between the Caycos and Mariguana, or well to the north of Crooked Island, in order not to make the Rogues, come to the Cove of Camaricoa; or, if it should be at the close of the evening when you near the coast, and not seeing any suspicious sail, enter at night in the very port of Matanzas, with the greatest silence, saying that you are from St Thomas in ballast, and give immediate information to Don Simon de Jimeno, whose directions you will obey the same as if our own.

If you should come to Camaricoa, you will hoist (in time that the sentry at the summit may see it) the French flag on the fore-top, in the manner I have before directed, and immediately give information to Don Francisco Garcia, or to Don Fulgenia Garcia y Saex, (this last named is Captain of the Division) they will tell you what you ought to do, for they are already advised in regard to it.

7. Immediately upon your arrival, at whatever place it may be, you are to give proper notice of the place where your cargo is, stating the number of *Bulks*\* you have brought, &c.

8. In case of extremity, and you cannot escape the chase of an enemy, you will disembark wherever you can; for, in extreme cases, there is no other way to do than to use your best judgment to save the voyage.

We have no further instructions to give you, but that, in an unforeseen event, you are authorized to follow the dictates of your best judgment and prudence, first procuring, if need be, the opinion of the other officers.

[The above instructions are unsigned.]

\* In Spanish, "*Bultos*." Bulks, or any large bundle, of no determinate quantity, stated by Mr. Peyton, one of the interpreters, to mean *Negroes*, and to be a disguised term used by slave dealers in the Havana.

\* Mr. Badlam stated to the Court that he supposed it to mean *Negroes*, but did not feel authorized to use that term in the translation.

## THE PROTEST.

The following is the translation of a document found among other papers, at Nazareth, when the prisoners were captured by the British. It purports to be the Protest of Captain Gilbert, claiming damages for the destruction of the schooner Panda, and the loss of the cargo, &c.

(Copy.)

I protest damages, costs, injuries and deteriorations, and as much as in right belongs to me, against —, captain of His Britannic Majesty's brig called the —, which protest I make in my capacity of captain and master of the Spanish schooner called the Panda, the property of Bernardo Soto, of the Havana, the same being made with the mate and crew of my vessel, for the reason that it could not be made at this time, in this place, in any other manner, and is as follows:—

Being in this port of Nazareth, from the Havana, in lawful trade in ivory, gum, wax, transacting my business on shore, as is the custom of this place, and by reason of the scarcity of these articles, having been long time detained here to my great prejudice, by reason of the sickness of the greater part of my people, and being thus situated, I determined, for greater safety, to order the schooner to the river of said port, in order to be less subject to squalls. When on the 4th day of June, of the year 1833, there appeared, at about 9 A. M. three boats full of men, who fired into the schooner. In consequence of which, the few people that were on board, left her, concluding that the aforesaid boats intended to take her; for, if they only meant to search her, one boat would have been sufficient, as is according to the usual custom. They took her, and carried her away. They found nothing on board that was unlawful. Nine days afterwards, which was on the 13th of same month, we discovered the schooner standing into this port, where she came to anchor. The captain of the prize came on shore, accompanied by another person, and presented themselves before the king, stating that they came to demand the captain of the Spanish schooner as a prisoner, together with the mate and crew, and also the cargo. When the king heard this, he immediately gave orders to have myself and all my people taken away from the town. Then the captain of the prize threatened the king that if he did not deliver me up, with my crew and cargo, he would destroy the town. The king reproved him, and said, that he might do what he pleased, but he would not deliver up the people whom he demanded. With this answer they returned on board. Upon quitting the low situation where we were, we descried the brig that convoyed the boats standing off shore. On the 14th of the same month, the schooner came in as near to the shore as she could, and on the 15th opened a fire with the guns, and at the third fire of the pivot gun, we observed from the shore much fire and smoke issuing from the stern of the schooner, and she sunk.

For which reasons, I protest against —, captain of His Britannic Majesty's brig of war —, in form as before stated at the beginning of this protest, in order that they make satisfaction for the value of the voyage, with the proceeds in the Havana, my wages, and the wages of the officers and men, as stated in the following form:—

Value of the schooner, with her provisions, stores, and one month's advance wages to all hands,	\$11,000
Value of the cargo,	12,000
	<hr/>
	23,000
Profit on the sales in said port of the cargo sold to foreigners, at cost 50 per cent,	11,500
	<hr/>
	34,500
10 per cent allowed me, as master, on the capital and profits, my wages 8½ months due,	850
1st mate, at \$80 per month,	680
2d mate,	70
Boatswain,	70
Keeper of stores and arms,	40
Carpenter,	40
Cooper,	40
Cook,	40
Cabin boy,	17
Steward,	30
10 marines, each 24	2,040
10 ordinary seamen 20	1,700
	<hr/>
Amounting in all to	\$42,719½

In testimony whereof, ratifying the same at the first place I may arrive at, and giving it a suitable direction, we sign the same, those who can write, and those who cannot write, making a cross.

Done at Nazareth, this — day of June, in the year 1833.

[Here follow several signatures and crosses.]

