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**HOCQUARD v. THE QUEEN, SHIP "NEWPORT."**

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RETURN to an Order of the Honourable The House of Commons,  
dated 26 July 1858 ;—for,

A COPY "of a MEMORIAL and INCLOSURE addressed to the Lords Commissioners of Her Majesty's Treasury, on the 28th day of May 1858, by Messrs. *Pinto, Perez & Co.*, of Crutched Friars, in the City of London, in reference to the Judgment of the Judicial Committee of the Privy Council on the Appeal of HOCQUARD v. THE QUEEN, Ship "Newport," from the Vice-Admiralty Court of *St. Helena*, and of the REPLY thereto:"

"And, ACCOUNT of the EXPENSES incurred by the Crown in respect of the said Appeal."

Treasury Chambers, }  
29 July 1858. }

GEO. A. HAMILTON.

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To the Right Honourable the Lords Commissioners of Her Majesty's Treasury.

The humble Memorial of Manuel Perez Lozano, José Maria Perez, and Manuel Perez, the Younger, of Crutched Friars, in the City of London, Merchants, trading under the Firm of *Pinto, Perez & Co.*,

Showeth,

THAT your memorialist, Manuel Perez Lozano, is a native of Spain, but became a naturalised British subject about 20 years since; and your memorialists, José Maria Perez and Manuel Perez, the younger, are natural born British subjects.

That your memorialists and their predecessors, under the firm of *Pinto, Perez & Co.*, have been carrying on business as general merchants in the city of London since the year 1815, during the last 25 years of which time your memorialist, Manuel Perez Lozano, has been a member thereof; and no imputation whatever has been cast upon the credit, or honour, or character, of the said firm, or any member of it, until in the recent case of the ship "Newport" they were unjustly accused by officers of the Crown of participating in the odious traffic in slaves.

That your memorialists desire now respectfully to call the attention of your Lordships to the facts of that case, and to the great and grievous injury and wrong which they have sustained in consequence of the proceedings taken at the instance of the Crown in connexion therewith.

In the month of April 1854, the British vessel "Newport" was chartered by your memorialists to proceed on a voyage to the Portuguese territory, on the west coast of Africa, with a cargo of lawful goods of English manufacture, purchased by the orders and on account of Senor Francisco Antonio Flores, residing at Loanda, in the said territory, and consigned to him, and to bring back to the United Kingdom a return cargo of the lawful produce of Africa, both the outward and the homeward cargoes being duly insured. The whole of the outward cargo was distinctly specified in the manifest, and was such as is constantly exported from this country to the west coast of Africa for the purpose of lawful commerce with the natives. Both ship and cargo were regularly cleared at the Custom House in London; and in the month of June 1854, the vessel, furnished with every necessary document, sailed on her voyage.

In the prosecution of that voyage the "Newport" had arrived near Ambriz, the first port mentioned in her charter, on or about the 21st of the following month

month of September; and while she was still on her voyage, and before any communication had taken place with the shore, she was boarded by a lieutenant and boat's crew of Her Majesty's ship "Philomel," to whom the ship's papers were shown, and every information was furnished by the master relative to the ship, her cargo, and her voyage; but nevertheless the vessel and cargo were seized by John M'Dowal Skene, Esq., the commander of the "Philomel," on the avowed ground that she had not a Custom House certificate for some cask-staves for palm-oil forming part of her cargo, which certificate is only required in cases where a bond has to be previously given to the Custom House, and with respect to which it was stated by the Judicial Committee of the Privy Council in their judgment hereinafter referred to, "it is at least very doubtful whether any bond could have been demanded [by the Custom House]; but at all events it was not demanded." The ship and cargo were afterwards carried to St. Helena for adjudication in the Vice-Admiralty Court there.

The "Newport" arrived at St. Helena, in custody of the captors, on the 8th October 1854, and was proceeded against in the Vice-Admiralty Court in that island, on the charge that she was engaged in the slave trade. On the 20th of November following, the vessel was condemned as prize, and your memorialists, as shippers and alleged owners of the cargo, were condemned by the same decree at the prayer of the captors in penalties to the amount of 12,915 *l.* 17 *s.* 6 *d.*

This decree was made without any notice to your memorialists, or any attempt to affect them with notice, and before they had even heard of the seizure of the vessel; and thus behind their backs, at the instigation of officers of the Crown, your memorialists were branded as participators in the illegal traffic in slaves.

A sentence of such a nature, adjudging your memorialists to have committed an act declared to be felony in this country, and punishable by transportation, and with the inevitable consequence, in case of conviction, of the forfeiture of all their goods, was necessarily calculated to paralyse the commercial credit as well as to blast the character of your memorialists.

Mr. Solomon, the Judge of the Vice-Admiralty Court at St. Helena, who made this decree, addressed a letter to the Earl of Clarendon, stating the grounds on which his judgment was founded, and saying that there must have been a guilty knowledge on the part of your memorialists that the cargo would be applied for the purposes of slave traffic. This letter was in itself a cruel libel on your memorialists, and it was printed and distributed amongst the Parliamentary Papers for the year 1855, and afterwards received a still wider publication by being reprinted and introduced by the Crown officers into the Proceedings of Appeal hereafter mentioned.

An appeal to the Queen in Council from the sentence at St. Helena was immediately interposed by the master of the "Newport" on behalf of himself and the owners of the vessel, and on behalf also of your memorialists. This appeal was referred, as usual, to the Judicial Committee of the Privy Council, when the Queen's Proctor appeared thereto on behalf of the Crown and the captors as respondents; and after the necessary documents had been obtained from St. Helena, an unavoidable cause of delay, your memorialists intervened in the appeal for the protection of their own interests, and caused the same to be prosecuted with all the despatch in their power.

With the view of satisfying the respondents of the *bona fides* of the transaction, and of the injustice of the imputations cast upon your memorialists, they pleaded at the earliest moment a simple statement of facts connected with the voyage, adducing various documents in support of their allegations, and they availed themselves of the earliest opportunity of giving their own evidence upon oath, and of submitting themselves and their clerks to the fullest and most searching cross-examination on the part of the respondents.

The respondents then applied for a postponement of the further proceedings on the appeal, founded on assertions that, if time were allowed them to obtain evidence from abroad, they could establish a case which would justify the decree against your memorialists.

After another long interval of about eight months, during which your memorialists were compelled to lie under the ruinous and illegal sentence of the Vice-Admiralty Court at St. Helena, deliberately adopted and defended by the officers of the Crown in this country, a fact which speedily became known in  
foreign

foreign countries, a plea was filed in the early part of 1857 on behalf of the respondents, which was endorsed as an "Allegation on the part of the Crown," and was extensively circulated in print, and which averred in effect that your memorialists had long been privy to and engaged in slave-trading adventures, and more particularly that they had knowingly and wilfully shipped the cargo in question of the "Newport" in violation of the statute 5 Geo. 4, c. 113, for the purpose of its being employed in the slave trade, an act which by that statute is declared to be felony.

This "plea" was extensively circulated in print, was transmitted to several newspapers for publication; and the tenor of it was, by some influence unknown to your memorialists, made known in foreign countries with which they had commercial connexions, to the grievous injury of your memorialists, and with the most disastrous effects upon their commercial credit and reputation.

Your memorialists instantly met in the appeal these utterly untrue and most injurious charges by an emphatic denial of each and every of them, by the production of further evidence conclusively proving the falsity of them, and by submitting themselves and their clerks a second time to a lengthened cross-examination at the hands of the respondents.

In the month of June 1857, a new application for delay was made by the Crown officers, founded on an affidavit to the effect that three further witnesses were about to arrive from abroad to substantiate the case on the part of the respondent; and thus, to the great disappointment and increased injury of your memorialists, the conclusion of the cause and the vindication which they confidently anticipated at the hands of the Court of Appeal were again indefinitely postponed.

Your memorialists may here mention that of the three expected witnesses, to secure whose evidence the respondents had obtained this new delay so injurious to your memorialists, one was not examined at all; another had been in previous personal communication with the respondents, and might therefore have been examined before; whilst the third, a person named Monteiro, who, as he himself admitted, was engaged in the slave trade, avowed, in his examination, that he was to receive 1,200*l.*, in addition to his expenses, for coming from Africa to be a witness for the Crown, as a "recompense for what he might lose by being called away unexpectedly." Of this person's evidence it is sufficient to say that it was discredited by the Judicial Committee of the Privy Council.

At length, in the month of December 1857, the appeal came on for hearing before the Judicial Committee of the Privy Council, and was fully argued on the part of your memorialists by the present Lord Chancellor, then Sir Frederick Thesiger, Mr. Forsyth, *q. c.*, and Dr. Twiss, *q. c.*; and on the part of the Crown, by the Queen's Advocate, and the then Attorney-general, Sir Richard Bethell.

Sixty days then elapsed between the close of the hearing and the delivery of judgment by the Court; and during all this further period your memorialists were forced to remain subject to the obloquy of such charges, and the cruel injury resulting therefrom. At length, on the 3d February, in the present year, the Judicial Committee of the Privy Council delivered their well-considered judgment, which your memorialists annex hereto, and to which they humbly pray the careful attention of your Lordships.

Your memorialists may, however, here shortly state, that by that judgment they are absolutely and entirely acquitted of every charge brought against them by the officers of the Crown, and they crave leave to mention the following points as judicially determined in their favour:

1. That there was no concealment and no irregularity of any kind in respect to either the ship or cargo.

2. That the sentence at St. Helena was founded mainly, if not entirely, on the affidavit of a lieutenant of H. M. S. "Philomel," who, to use the language of the Judicial Committee of the Privy Council, swore positively to facts which, from his subsequent examination (in the cause of the appeal), it appears he did not know at all.

3. That the sentence as respects your memorialists was preceded by "irregularities" on the part of the Court and the captors for which there "is no excuse,

## 4 PAPERS IN REFERENCE TO THE APPEAL OF

excuse, and by the non-observance of rules in themselves positive and essential to the due administration of justice."

4. That "the seizure was made without any sufficient cause."

5. That "if we look at the *evidentia rei* in the particular transaction, not the least circumstance of suspicion is discovered."

6. That "no suspicion can attach, after the evidence is examined, to any of the articles of the cargo."

7. That "the result is, in their Lordships' opinion, that the respondents have entirely failed, by the additional evidence, to bring home any charge against Pinto, Perez & Company, with respect to the shipment in question; and that, on the contrary, the effect of such evidence is to exonerate these gentlemen entirely from any guilty knowledge of an illegal purpose."

"The sentence complained of must be reversed."

"Pinto, Perez & Company have been condemned in very heavy penalties, on the ground of having committed an offence which might have subjected them, in this country, to a prosecution for felony. Whatever injury, however, they have sustained (and it may probably be, as they represented, very serious) it is not of a character for which damages can be awarded in a Court of Admiralty; but to the cost of all the proceedings, both in St. Helena and in this country, they are fully entitled.

"Their Lordships desire to guard themselves against being supposed to imply by this judgment any censure of the course which it has been thought proper, on the part of the Crown, to adopt in this case. When the attitude assumed by this country towards foreign States on the subject of the slave trade is considered, it may justly have been thought the duty of the British Government, when their own subjects were alleged to be implicated in such a traffic, to have the matter sifted to the very bottom, and not to spare, as they appear not to have spared, any trouble or expense in order to discover the guilt, if guilt existed, and to bring the offenders, if offenders there were, to justice. This course may have been necessary, as it was strongly urged by the Attorney-general that it was necessary, for the vindication of the national honour in the eyes of the world; but their Lordships think that the national honour must be vindicated at the national expense, and that merchants, who having engaged only in a lawful adventure have been subjected to an unjust and illegal sentence, are entitled to be indemnified against its consequences, and against the costs which they have incurred in obtaining its reversal in relieving themselves from the heavy pecuniary loss which it inflicted, and from the deep stain which it cast upon their characters."

Your memorialists are advised that, although by the judgment of the Judicial Committee of the Privy Council above quoted, they are "entitled to be indemnified against the consequences of an unjust and illegal sentence, as having been subjected to it while engaged only in a lawful adventure," they have no remedy or redress for the injury they have sustained in a Court of Law, and that their only means of obtaining such redress is by an appeal to the justice and equity of the Crown, whose officers have caused the injury by the proceedings they have advised and adopted.

The effect of those proceedings has been analogous to that which would have been produced by a published libel upon the commercial credit and character of your memorialists, aggravated by the weight attached to charges made and perseveringly insisted upon for a period of three years by officers of the Crown; and although it is most painful to your memorialists to bring forward their private affairs, and to expose the extent of the injury they have sustained by what has been described by the Judicial Committee of the Privy Council as "an unjust and illegal sentence," the heavy pecuniary loss inflicted upon them by the proceedings in question, quite irrespective of the costs to which they were put in defending themselves, and which they will, under the judgment of the Judicial Committee, recover, compel them to appeal to your Lordships for justice and liberal consideration.

Your memorialists are ready and anxious to verify by affidavit the statement they are about to make as to the nature and extent of their pecuniary loss, and to prove it by the production of their books and vouchers, and by the evidence of witnesses of unimpeachable character and veracity.

Your

Your memorialists have suffered not only from the public accusations openly made, but also from private inquiries affecting the character and credit of their firm, set on foot by agents of the Crown. Their credit abroad has been shaken, their bills were refused in this country, their means of obtaining the command of money were crippled, and their mercantile operations were very seriously limited and embarrassed, solely by reason of, and as the consequence of, the proceedings in question.

To give an illustration of the mode in which they have been injured, your memorialists may state that for many years past they have been in the habit of receiving large consignments of goods from abroad, and also of purchasing lead and lead ore in Spain, on which large profits were made, and against which consignments and purchases bills of exchange were drawn upon them by their correspondents. But in consequence of the discredit thrown upon the character of their firm by the proceedings in the case of the "Newport," the acceptances of your memorialists were refused by bankers, including the Bank of England and others, and their bills, to a great extent, could not be discounted by the holders, who, in consequence thereof, gave orders abroad not to purchase bills on your memorialists. The result was, that a large amount of profitable business has passed out of their hands.

In addition to this, large sums of money entrusted to your memorialists as agents for several firms and companies abroad, were suddenly and hastily withdrawn from them; and, amongst others, your memorialists may mention the Oporto Wine Company, for whom they were managers in this country, and who, alarmed by the charges so pressed, as aforesaid, against them by the Crown, caused the management to be taken from them, and also withdrew from their hands a large sum of money, of which your memorialists had long had the use, paying interest for the same to the said company.

Your memorialists are most anxious not to exaggerate in any particular the injury which they have sustained, and are likely still to sustain; the latter they do not attempt to estimate; but the pecuniary loss to which they have been already subjected wholly and entirely in consequence of the proceedings taken by the officers of the Crown cannot be estimated at a less sum than 20,000*l.*

Your memorialists are aware that it may not be reasonable to expect your Lordships to compensate them for the anxiety and distress which have harassed and weighed them down during the three years of legal oppression; but they do feel convinced that your Lordships will be unwilling that any British merchants should be the innocent victims of a Government prosecution, or be without some redress for the actual proved pecuniary injury which they have sustained in consequence of such proceedings as have been above detailed, carried on in a persevering and persecuting spirit by the officers of the Crown.

Your memorialists therefore humbly pray that your Lordships will take the premises into consideration, and award to them such an amount of indemnity and compensation as to your Lordships' sense of justice and equity shall seem meet.

And your Memorialists will ever pray, &c.

London, 28 May 1858.

(signed) *Pinto, Perez & Co.*

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JUDGMENT of the Judicial Committee of the Privy Council on the Appeal of Hocquard *v.* the Queen, Ship "Newport," from the Vice-Admiralty Court of St. Helena, heard on the 1st, 2d, 3d, and 7th days of December 1857, delivered on the 3d day of February 1858.

Present:—Judge of the High Court of Admiralty, Lord Justice Knight Bruce, Chancellor of the Duchy of Cornwall, and Lord Justice Turner.

This case comes before the Court by appeal from a sentence of the Vice-Admiralty Court of St. Helena, dated the 20th of November 1854, by which the judge "pronounced the British brigantine or vessel called the 'Newport,' whereof C. J. F. Hocquard was master, to have been engaged, at the time of her seizure, in the slave trade, contrary to the provisions of the Act of 5 Geo. 4, c. 113, and as such or otherwise, subject to forfeiture to the Queen, and condemned the same accordingly. The judge, moreover, pronounced for the penalties

penalties due under the provisions of the said Act, that is to say, that the sum of 12,915 *l. 17 s. 6d.* is due by Pinto, Perez & Co., the shippers and owners of the goods, wares, and merchandise laden on board the said vessel, to wit, double the value of the goods, &c., and condemned Pinto, Perez & Co. in such penalties accordingly, and in costs, and ordered that the said goods, wares, and merchandise should be held in deposit until the said penalty and costs should be paid." (1 App. 103.)\*

The sentence is founded on an alleged breach of the provisions of the 5th Geo. 4, c. 113, and it is material, therefore, to state what are the provisions of that Act, and what construction has been put upon it by judicial authority.

The Act provides, by the 2d section, that all dealings in slaves (except in certain special cases provided for by the Act), shall be unlawful, and that it shall be unlawful for any person to let to hire, use, or employ any vessel for the purpose of such trade, or to ship or contract for the shipping of any goods on board of any vessel for the purpose of being employed in such trade.

By the 4th section, any ship so employed is subjected to condemnation, together with all property found on board the ship belonging to any owner or part owner of the ship.

By the 7th section it is provided that if any person shall wilfully and knowingly ship any goods on board of any ship to be employed in contravention of the objects of the Act, such person shall be subject to a penalty of double the value of the goods.

By the 10th section, persons guilty of the acts forbidden in the previous sections are declared to be guilty of felony; and,

By the 11th section, seamen serving on board any ships with a knowledge that they are to be employed contrary to the Act, are declared guilty of a misdemeanor.

By the 51st section, it is provided that the penalties may be sued for, either in any Court of Record in Great Britain, or in any Court of Record or Vice-Admiralty Court where the offence was committed, or where the offender may be found after the commission of such offence.

Although the penalties thus inflicted on shippers of goods are imposed, by the 7th section, only on such persons as shall wilfully and knowingly ship them for the purpose of contravening the Act, the words "knowingly and wilfully" are omitted in the 4th section; which applies to the letting to hire the ship to be employed for this purpose, and subjects the ship so employed to forfeiture.

A question, therefore, was naturally raised, whether such words were to be implied from the whole context of the Act with respect to the owner of the ship, and whether a ship employed in carrying such goods, though without the knowledge of the owner, was not subject to forfeiture, on the principle which is often found to prevail in cases of breach of the Revenue Laws.

This question came before the Judicial Committee in the case of *Barton v. The Queen* (2 Moore, P. C. 19), and it was then decided, after long deliberation, that in order to subject the ship to forfeiture, it was necessary to prove guilty knowledge on the part of the owner, and that the onus of proving such knowledge, both as to the owner of the ship, and as to the shipper of the goods, lay upon the seizors. In the case of *Del Campo v. The Queen* (2 Moore, 15), it was held that the cargo on board a ship employed in contravention of the Act, though shipped with a guilty knowledge, is not subject to forfeiture unless the goods belong to the owner of the ship.

In order, therefore, to sustain the sentence in the Court below, it must be shown, as to the ship, that she was employed in contravention of the object of the Act, and that she was so employed with the knowledge of the owner; and as to the shippers, that the goods had been shipped by them wilfully and knowingly, for the purpose of being so employed. Such being the law, what are the facts?

The "Newport" belonged to Le Sueur & Co., merchants, in Jersey. Messrs. Banner, Brothers & Co., of the City of London, ship brokers, were employed by the owners to make engagements for the ship. On the 21st of April 1854, Banner, Brothers & Co. agreed to charter her for a voyage to the west coast of Africa,

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\* No Appendix accompanied the copy of the Judgment which was forwarded to the Treasury by Messrs. Pinto, Perez & Co.

Africa, out and home, to Messrs. Pinto, Perez & Co., who are merchants of character in the City of London.

This charter-party is found in p. 21 of the first Appendix. It is made between John Le Sueur of the one part, and Pinto, Perez & Co. of the other part, and it is thereby agreed that the ship shall receive on board, in the River Thames, such lawful goods as the charterers shall send alongside, and shall proceed therewith to Ambriz, on the west coast of Africa, and thence, if required, to Loanda, and afterwards re-load, at either or both places, a cargo of lawful merchandize, and proceed therewith to London direct. The freight to be paid for the voyage out and home is 900 *l.*, of which 400 *l.* are to be paid on the ship sailing from London, and the remainder on the delivery of the return cargo.

The ship was thus chartered by Pinto, Perez & Co., on behalf of Mr. Francisco Flores, a Brazilian subject, resident at the Portuguese port of Loanda, on whose account they had received orders, through a Mr. Garrido, his clerk and agent, to purchase and ship a cargo, to be consigned to him at Ambriz or Loanda. Accordingly, between the date of this charter-party and the 8th of June following, they purchased and shipped a cargo on board the "Newport" for the account of Flores, the invoice value of which was 6,457 *l.* 18 *s.* 9 *d.*, being one-half of 12,915 *l.* 17 *s.* 6 *d.*, the amount of penalties in which they have been condemned.

The cargo consisted of Manchester goods, to the amount of above 4,000 *l.*, earthenware, hardware, muskets, and various miscellaneous articles, amongst which are the following:—

Forty-five casks for palm oil, 38 *l.* 1 *s.*

120 bundles new iron hoops, 42 *l.*

100 packs, (which we understand to be bundles of staves, to be made into casks), and which are described in the invoice, as "pipas abatidas," for palm oil, capable of containing 12,645 gallons. These packs are set at 80 *l.*

1,000 demijohns, 72 *l.* 18 *s.* 4 *d.*

(Invoice, 1 App. 5.)

This cargo was shipped in the port of London, under the inspection of the Custom-house authorities; the particulars of the cargo, to which we have adverted, were all specified in the ship's manifest, signed by the master. The ship was regularly cleared at the Custom-house, on the 9th June 1854, as appears by the certificate of the Custom-house officer (1 App. 26). The invoice, which specified the different goods, was entitled "Invoice of sundry merchandise, shipped from London to Ambriz and Loanda (Angola) by the ship 'Newport,' Captain Hocquard, by order of Mr. A. Garrido, to consignment, and for account and risk of Mr. F. A. Flores, of Loanda" (5). The manifest described the vessel as bound for Ambriz, and the cargo as shipped by Pinto, Perez & Co., and consigned to Flores. There was not the slightest attempt at concealment of any kind, and no irregularity whatever is suggested by the respondents to have been committed, unless the omission to give a bond with respect to the packs, to which we shall presently advert, can be considered to fall under this description.

Loanda is a Portuguese settlement, and Ambriz, at present, is also in the hands of the Portuguese Government. What was its condition at the time of this shipment does not appear very distinctly: some of the witnesses describe it as at that time in the possession of the Portuguese; others speak of it as in the occupation of an African chief. However this may be, it was apparently considered, by the Portuguese authorities, to be within their territory; for, on the 9th of June 1854, Mr. Vanzeller, the consul-general of Portugal in London, signed and delivered to Mr. Hocquard a certificate (1 App. 24), to be presented at the custom-house at Ambriz, of a declaration made by Hocquard, in compliance with the regulations of the laws of Portugal; and a letter was addressed by Mr. Vanzeller to a gentleman described as the administrator of the custom-house at Ambriz (1 App. 3). Although, therefore, it turns out that at that time there was no custom-house at Ambriz, the shippers (if they had no other knowledge of the matter) might well suppose that Ambriz was in the possession of the Portuguese, and that there was a custom-house there.

The ship, furnished with all these documents, set sail on her voyage under the command of Captain Hocquard, on the 9th or 10th of June 1854, and

arrived



arrived off the port of Ambriz on the 21st of September following, where she was boarded by an officer of Her Majesty's ship "Philomel"—a gentleman named Dalison. This officer examined the cargo and papers of the vessel, and was furnished by the master with every information relative to the ship, the cargo, and the voyage which she was then prosecuting. Mr. Dalison then left the ship, and she was soon afterwards seized by Captain Skene, the commander of the "Philomel," for being, as he alleged, engaged in the slave trade. Captain Skene informed the master that the only ground on which he suspected that the vessel was so engaged, was that there was a number of packs on board, for which he had no certificate from the custom-house of the port from which he had cleared outwards, stating that sufficient security had been given that the packs should be used only for the purpose of lawful commerce.

The "Newport" being a British vessel, seized by a British cruiser, a Court of Vice-Admiralty was the proper tribunal to adjudicate upon her; and Captain Skene, having removed to his own ship a certain number of her crew, and put on board three of his own men under the command of Lieutenant de Robeck, ordered the ship to be taken to St. Helena, as the nearest and most convenient port where there was a Court of Vice-Admiralty.

Lieutenant de Robeck sailed with her accordingly, and on the passage kept her for 24 hours off the port of Loanda, where Flores was residing. The master requested permission to communicate with his consignee; but this was refused, and no notice of the seizure was given to Flores by the captors.

The ship arrived at St. Helena on the 8th of October, and on the 16th, at the instance and on the affidavit of Lieutenant de Robeck, a monition was issued out of the Vice-Admiralty Court of St. Helena, the terms of which are material (1 App. 35).

The monition is issued against Hocquard, the master of the vessel, Francis Le Sueur and Philip Le Sueur, the owners thereof, and all persons in general who have or pretend to have any right, title, or interest in the said brigantine or vessel, her tackle, apparel, and furniture, and the cargo laden therein, and the parties so monished are to show cause why the ship and cargo are not liable to forfeiture and condemnation, and why the penalties due by law should not be pronounced for Le Sueur & Co., as the owners, are expressly named in the monition; but there is no mention of the name either of Pinto, Perez & Co., or of Flores.

Lieutenant de Robeck's affidavit, after verifying various papers found on board the ship, including the several documents already alluded to, stated, that Mr. Dalison, the officer originally sent on board the vessel, had reported that no certificate was found on board from the Custom-house of the port from which she had sailed, with respect to the water-casks, packs, or shooks, part of the cargo; and he stated that he knew Flores, the consignee of the cargo; that Flores was a notorious slave-dealer, and that he had no other occupation, calling, or profession, but that of a dealer in slaves, and of bartering with goods imported for slaves for exportation. Though Lieutenant de Robeck swore thus positively to these facts, he did not state how he had acquired a knowledge of them, and from his subsequent examination it appears that he did not know them at all, that he never saw nor was acquainted with either Garrido or Flores, nor ever saw anything of any slave establishments of theirs, and that he knew nothing of them except from the information of others (2 App. 157).

There is no mention of Pinto, Perez & Co. in this affidavit any more than in the monition, nor any statement that the defendant believed, or had the least reason to believe, that either Le Sueur & Co., or Pinto, Perez & Co., were in any manner privy to the illegal employment of the vessel. Hocquard, the master, had been deprived of all his papers, and had been refused all opportunity of communicating with Flores, his consignee; and, in this difficulty, he applied to Mr. Fowler, a proctor at St. Helena, to claim the ship for Le Sueur & Co., whom he knew to be the owners of the ship, and the cargo for Pinto, Perez & Co., whom he knew to be the shippers, and supposed to be the owners of the cargo.

On the 26th of October, accordingly, a claim was carried in by Fowler, which is styled the claim of Hocquard, the master, on behalf of himself and Le Sueur & Co., the owners of the "Newport," and on behalf of Pinto, Perez & Co., of London, merchants, as the shippers and sole owners of the cargo (1 App. 37).

In support of this claim he, on the same day, made an affidavit, in which he

went very fully into all the circumstances of the chartering of the vessel and the shipment of the cargo by Messrs. Pinto, Perez & Co.; he said, "that the cargo was shipped in London, under the eye and surveillance of the Customs authorities at the port;" "that the deponent had every reason to believe, and did at the time of making his affidavit believe, that the cargo was truly and solely for the purposes of lawful commerce, and that it was never contemplated nor intended by any parties or party whatever engaged, either in the fitting and chartering or freighting the said brigantine or vessel, or in the shipping or consigning the said cargo, or in the navigation or management of the said brigantine or vessel in the said voyage, that the said brigantine or vessel, or the said cargo, or any part or parcel thereof, should be engaged in, or used or devoted to, any other than the purpose of lawful traffic."

"That previous to his clearing from London, he made certain declarations, and signed certain documents, at the Custom-house of that port, relative to the voyage and cargo of the vessel, as is usual in such cases; that he relied entirely on the brokers to do whatever was necessary to procure all requisite documents from the Custom-house authorities, and that he had every reason to believe, and did believe, that every necessary declaration, bond, or document requisite and usual to be made, signed, or given to the Customs of the port from which a vessel clears outward with a cargo, had been made, signed, and given in the case of the said vessel, and that every necessary document or certificate, or ship's paper of any description, required to enable the vessel to proceed securely on her voyage, and to prove the nature of the traffic in which the vessel was engaged, was furnished to him, as master, on his clearing out as aforesaid, and was amongst the papers and documents delivered by him to Captain Skene, at the time of the seizure and detention of the vessel."

With respect to the packs, he stated that he was not aware of the particular purpose to which they were intended to be applied, but that they were put on board as part of the cargo, and not for the use of the vessel; and that he, the deponent, had no means, within his knowledge, of converting the said packs into water-casks, or casks of any description, even had he so desired (1 App. 39).

He said that the demijohns were not shipped for nor intended to be used on board the said vessel for the purpose of containing water, or for any other purpose whatever than that of being delivered, with the remainder of the cargo, according to the terms of the charter-party and bill of lading; and that he was informed by Captain Skene himself that the demijohns were articles of legal traffic, and that he did not rest anything on their being on board the said vessel.

He said that all the articles objected to were entered on the ship's manifest, and were, to the best of his belief, solely for the purposes of lawful trade; and were, as he was credibly informed, continually imported into Africa for the purpose of lawful trade.

With respect to the allegations in De Robeck's affidavit against Flores, the deponent stated that he knew not Flores, and that he was unable, therefore, either to admit or deny the allegations respecting him; that he had no further knowledge of the person to whom the vessel and cargo were consigned than the name of the party, gathered from his instructions and ship's papers.

He stated that he had made a former voyage, as master of the vessel, to the coast of Africa; had taken out a cargo of coals, and had brought back a cargo of palm oil; and that he believed that the vessel had always been employed in making voyages to and from London and the said coast, and had never been engaged in the slave trade; that he had been long acquainted with the owners of the brig; that they were shipowners and merchants of high reputation and unblemished character, both at Jersey and wherever their name is known, and that the deponent truly believed that they never had been, nor would they or any of them be engaged in carrying on, or aiding, abetting, or encouraging, the African or any other slave trade, under any pretence or for any reward or remuneration whatever; that he also knew, and was well acquainted with the house of Banner, Brothers & Co., and that they are brokers of long-established and wide-spread reputation, and that he had never heard of, nor had the slightest reason to suspect, their being connected in any transactions with, or which might in any way further the slave trade; that he also knew the house of Pinto, Perez & Co., the charterers of the said vessel, and that they have large transactions with the coast of Africa, and are continually receiving into

England

England from thence cargoes of the various productions of the country, and that the deponent had never, either directly or indirectly, heard that they were, or ever had been, concerned in the slave trade in any way whatever, and that the deponent verily believed they never had been nor were so concerned (1 App. 40).

It would be difficult to frame an affidavit, going more fully and distinctly into every part of the case than this, or one which, as far as the knowledge and belief of the deponent extend, more completely negatives all privity on the part either of Le Sueur & Co., or of Pinto, Perez & Co., to any unlawful use of the ship or cargo.

The affidavit of Hocquard was confirmed by the papers and letters found on board the ship, as far as any inference could be derived from them, and by the affidavit of De la More, the chief officer of the vessel, under the master, who stated that he was employed to receive on board the vessel the different packages then on board of, and forming part of the cargo of, the vessel, and that the whole of the cargo, and every part and parcel thereof, were regularly and duly shipped in London, and brought on board the said vessel in the ordinary manner; and that with every separate shipment thereof, he, the deponent, to the best of his recollection and belief, received a boat or shipping-note, bearing the Custom-house stamp, and that he had several of the said shipping-notes in his possession at the time of the seizure of the vessel, and had since delivered the same to the master of the vessel (1 App. 53).

There was, further, an affidavit by Mr. Pritchard, a Custom-house officer at St. Helena, by which, on behalf of the claimants, he deposed that it appeared to him, from the papers and documents found on board the ship, and brought in by the captors, that the provisions of the Act 16 & 17 Vict. c. 107, intituled, "An Act to consolidate and amend the Laws relating to the Customs of the United Kingdom, &c.," had been complied with, and that the vessel was duly cleared out from the port of London on the 9th June last, for Ambriz, on the west coast of Africa, with a cargo consisting, among various other articles, of 100 packs of staves, 1,000 demijohns, and 25 casks of muskets, all of which are entered on the manifest of the vessel (1 App. 52).

Lieutenant de Robeck made a second affidavit, verifying copies of certain letters and documents relating to Flores, which the judge admitted; though, from a subsequent explanation of the grounds of his judgment, he does not appear to have given them much weight.

On the 20th November 1854, the cause came on for hearing, and on the same day the sentence complained of was pronounced by the Court.

It is contended by the appellants that this sentence is not only entirely unwarranted by the evidence before the Court, but that it was pronounced in direct violation of the regulations contained in an Order in Council, issued under the authority of the 2 & 3 Will. 4, c. 51, by which order the proceedings of Vice-Admiralty Courts in cases of this description are, or ought to be, governed (*see* 4 Moore, P. C. C., 170).

One of these regulations provides, that if the owners or parties implicated are known, they shall be cited by name in the monition.

Pinto, Perez & Co. were known to be the shippers of the cargo. Flores was known to be the consignee and owner (this appears by De Robeck's examination, 2 App. 158); yet neither Pinto, Perez & Co., nor Flores are cited.

"If the monition contain the names of the owners or others, from whom penalties are sought to be recovered;" in other words, if such persons are known, the regulations provide that the monition shall be personally served on the parties; the object being obviously to secure due notice and opportunity of defending themselves, to the individuals liable to be affected by the judgment.

Here the names and residences, both of Pinto, Perez & Co., and Flores, were perfectly well known, yet there was no service upon them, and no notice of any sort given to them.

It is provided by the regulations that if it shall appear to the judge by affidavit that personal service cannot be effected on the parties, if any, named in the monition, by reason that they have personally absented themselves to avoid service, the judge is to pronounce his decree; but if he has reason to believe that the parties are *bond fide* ignorant thereof, he ought to reserve his judgment, so far as relates to the penalties sued for, and also as to the slaves and vessel if any doubt shall arise upon the evidence.

Here, there had been no attempt to serve either Pinto, Perez & Co., or  
Flores

Flores personally ; there was doubt, as to Flores, whether the transaction was illegal ; there was more than doubt as to Le Sueur, and Pinto, Perez & Co. ; yet the judge, instead of suspending his sentence, pronounces, on the same day on which the case is brought on, a decree of condemnation.

Finally, in the case of a monition citing all persons in general, and not describing any persons by name, no penalties against individuals can be pronounced for. Here, Pinto, Perez & Co. are not cited by name, yet the judge pronounces for penalties against them to the amount of nearly 13,000 *l*.

It is no excuse for these irregularities that the master, who had no authority at all to appear for Pinto, Perez & Co. in the state of ignorance in which he was, instructed a proctor to give in a claim for Pinto, Perez & Co., as sole owners of the goods. It was perfectly well known to the captors that Pinto, Perez & Co., were not the owners at all, and that the goods belonged to Flores, from whom all knowledge of the proceedings, as far as the captors were concerned, had been kept.

It is said that although Flores had no official notice of these proceedings, he was acquainted with them, and might have attended to protect his interests. It by no means appears that he had any opportunity of doing so. There is evidence, indeed, that by the 14th of October he had heard of the seizure of the "Newport," and that by the 10th of November he had heard, indirectly, that she had been taken to St. Helena ; but there is no communication between Loanda and St. Helena, except by cruisers, and on the 20th of November the sentence was pronounced. Flores had a right to rely on the observance by the Court of rules in themselves positive and essential to the due administration of justice, and the captors, who had kept him in ignorance of their proceedings, cannot very reasonably object that he did not appear to them.

It is contended, however, by the respondents, that the case has now assumed an entirely different aspect ; that any irregularities in the original proceedings are immaterial ; that it comes before their Lordships on new pleadings and new evidence ; and that there is now sufficient ground, both to affirm the original sentence, and to pronounce an original sentence of condemnation of the cargo, and of infliction of penalties upon Flores.

The case certainly comes before their Lordships in a very singular shape. In addition to the ordinary petition of appeal, and transcript of the original proceedings and evidence, we find, amongst the papers before us, a libel of appeal, supported by affidavits, on the part of Hocquard, as representing Le Sueur & Co., and Pinto, Perez & Co. ; an allegation on the part of Pinto, Perez & Co., as interveners ; a claim for the cargo by J. M. Perez, as attorney for Flores, praying restitution, with costs and damages ; a responsive allegation on the part of the Crown ; and a further allegation on the part of Pinto, Perez & Co. Upon these further pleadings, a vast mass of additional evidence, both oral and documentary, has been produced by both sides. Witnesses have been brought over by the Crown, at a great expense, from the Brazils, from Portugal, and from Africa ; every matter bearing upon the transaction has been the subject of investigation, besides many bearing upon it not at all, or but very remotely ; and the result is found in a second Appendix of 300 closely printed folio pages, in addition to the first Appendix of above 100. The costs of these proceedings, therefore, form a subject of consideration, not less important, perhaps, in a pecuniary point of view, than the matter itself in dispute.

The points to be determined, remain however, as against the original parties, the same as they were at first. As regards Le Sueur & Co., is it made out that the ship was employed with their knowledge in any manner in contravention of the statute of 5 Geo. 4, c. 113 ; as against Pinto, Perez & Co., is it made out that they shipped the goods in question, wilfully and knowingly, for the purpose of being so employed ?

The case attempted to be made by the respondents is this :—That Flores was, at the period of the transactions in question, and had been long previously, engaged in the slave trade ; that Garrido, his agent, had also been long engaged in the same traffic, partly on his own account, and afterwards on account of Flores ; that the employments of Flores and Garrido were notorious to everybody who had any trade with the west coast of Africa ; that Flores had, in truth, no other real trade ; that Ambriz was a port which had no trade except in slaves ; and it is argued, that under these circumstances, it must be presumed that the goods in question were intended to be employed in the slave trade, and

that Pinto, Perez & Co., and Le Sueur & Co., had notice of that fact. It is insisted further, that the cargo was of a character to excite suspicion, and that, although the Act under which a bond with respect to casks (or, as it is contended, packs, to be made into casks) is required, may not apply to this case, still that it was the practice of the Custom-house in London to require a bond in such cases, and of merchants to give it; and that the absence of such bond adds to the suspicion which the cargo itself is calculated to create.

It is useless to go in detail through the mass of the documents and depositions, in which there is much matter contained which cannot be regarded as evidence, and some evidence to which little credit can be given, except in so far as it is corroborated by other testimony or by circumstances. This observation applies more especially to Monteiro, who has been brought over from Africa by the Crown, in order to be a witness, and who states that he is to receive 1,200*l.*, in addition to his expenses, for coming. On this witness, as well from the account which he gives of himself, and from the letter which he admits having written to Garrido, as from the contradiction given to his evidence in several particulars, their Lordships are of opinion that they cannot place much reliance. A careful examination of the papers, after the long and very able discussion which the case underwent at the bar, has brought their Lordships to the following conclusions:

It is clear that, at a period antecedent to the date of the present transactions, both Flores and Garrido were largely engaged in the slave trade, and that, for several years before 1851, they were employed in the regular purchase and transmission of slaves from the west coast of Africa to a company of merchants at Rio de Janeiro. In 1851, however, strenuous efforts were made by the Brazilian Government to put down the traffic; and, as far as regards the Brazils, these efforts appear to have been attended with great success. British and Portuguese Commissioners were resident at Loanda for the purpose of enforcing the execution of the treaties relating to this subject. One of the gentlemen, who was the British Commissioner there for several years, Sir George Jackson, has been examined as a witness for the Crown in this case, and it appears from his evidence that, in 1851, he reported to his Government that the slave trade was most sensibly diminished, and that any occasional shipments of slaves had been principally from the south of Loanda (Ambriz is to the north of Loanda). In January 1853, the British Commissioners reported that the slave traffic was so far extinct that nothing but a change of policy on the part of Brazil could effect its revival to any considerable extent; and this opinion was shared by the Portuguese Commissioner (Valdez, 2 App. 152).

In the year 1853 there seems to have been some increase of the slave trade both north and south of Loanda, mentioned in the Commissioners' Report of 1854; but in February 1855—speaking, therefore, it is presumed, of what happened in the year 1854—they reported that such increase had been only momentary, and had entirely ceased.

It is said, however, and there is reason to believe that, although the trade with Rio was stopped, Flores, and Garrido as his agent, were, at different times after 1851, engaged in adventures of sending slaves to Cuba. So strong a suspicion, at all events, was entertained on that subject by the British authorities, that urgent remonstrances were addressed to the Portuguese Government against permitting him to remain in their territory in Africa, and in consequence, in the beginning of 1854, an order for his removal, within five months, was issued, which was served upon him in June 1854. He obtained a little delay in the execution of the order; but in February 1855 he quitted Africa, and their Lordships are not aware of any evidence to show that he has since been engaged in such transactions. In 1854 he obtained from the Portuguese Government a concession of large copper mines in Africa, which he began to work in 1855, and Sir George Jackson states that he has no reason to suppose that Garrido (the agent of Flores, who remains in Africa), has, since those mines began to be worked, been at all concerned in the traffic of slaves (2 App. 184). Unless the evidence of Monteiro be considered sufficient to establish the fact, there seems no distinct proof that, in or after the year 1854, Flores embarked in any adventure in slaves.

In order, however, to establish a case against this shipment, it is not sufficient to show that Flores had been engaged in the slave trade, and had not altogether abandoned it in 1854. It must be proved either that at that time he had no  
lawful

lawful trade, or that, from the port to which the cargo was addressed, or from the nature of the cargo itself, or from other circumstances, there is a presumption that this adventure was intended, not for his lawful traffic, but for his unlawful traffic. Now, not only are the propositions as to Flores' trade, and as to the port of consignment, and the nature of the cargo, not established, but the direct contrary is distinctly proved by the evidence; and so far from there being proof of any other circumstances to raise the presumption, the evidence tends directly to rebut it.

It is proved that Flores was engaged in lawful traffic to a large extent; his dealings of this kind increasing, as it seems, in proportion as the slave trade was suppressed. He had much correspondence with Pinto, Perez & Co., and received several consignments from them in the years 1854 and 1855. This correspondence is produced, and it all appears to bear reference only to lawful trade. Some of the articles ordered by him are such as could hardly be employed for any but lawful trade; one is a brick-making machine; another is an oil-press, which he proposes to establish for crushing ground-nuts, an article which seems to have acquired considerable importance in commerce since the great check given to the slave trade upon this coast.

With respect to the port of Ambriz, the witnesses on both sides agree that, at the date of the transactions in question, it was a port at which considerable lawful traffic was carried on; at which there were respectable European houses established for the purpose of carrying on such traffic; at which a cargo like that of the "Newport" might find a sale for the purposes of lawful traffic, and at which a legitimate cargo might be procured in return; and it is shown that for several years Flores himself had been in the habit of importing palm oil, elephants' teeth, and other African produce, from Ambriz into Loanda.

If, therefore, the real employment of Flores had been notorious in London, and known to these parties, how could it have affected their case? It never can be contended that, because a man has been engaged in the slave trade, he must not engage in lawful trade, or that all persons dealing with him must be presumed to be engaged in illegal traffic. The policy of the British Government appears to have been directed, on the contrary, to supplanting the slave trade by lawful commerce, and to inducing those who had been engaged in it, whether buyers or sellers of slaves, whether natives of Africa or foreigners, to abandon their old pursuits, and employ themselves and their capital in promoting the lawful commerce, and with it the civilisation of the country.

But, so far from the characters of Flores and Garrido being notorious in London, and known to all merchants there engaged in the African trade, not a single merchant, or other person resident in England, is produced as a witness on the part of the Crown to prove the fact, and there is much evidence the other way. Mr. Swanzy, who has been engaged in the African trade for 12 years, swears that he had never heard either of Garrido or Flores (2 App. 103). Mr. Williams, who was formerly a partner in the firm of Pinto, Perez & Co., who knows all their transactions as well, he says, as they know them themselves, and is still in some measure connected with the firm, swears that he never heard of Garrido, and never heard of Flores being engaged in the slave trade, or even that he was suspected of being so, till after the seizure of the "Newport" (108). Mr. Banner, who has been engaged, for about 14 years, as a ship-broker, in trade with the west coast of Africa, states that he had never heard, nor had the least suspicion, till after the seizure of the "Newport," that Flores was engaged in the slave trade. Slader, a clerk of Banner, deposes to the same effect, and so do Pargana and Boyd, who are clerks of Pinto, Perez & Co.

One of the firm of Le Sueur & Co. has been examined, and he states that he had never heard of either Flores or Garrido; and he denies in the most positive terms that he, or any of his firm, or his ship, since she belonged to them, has been ever engaged, directly or indirectly, in the slave trade, and he says that the whole transaction of chartering the ship on her last voyage was conducted by Banner & Co. (2 App. 89).

This statement is confirmed by Banner, who states that he had chartered the "Newport" 12 times between 1845 and 1854, upon African voyages, sometimes on account of the British Government, and sometimes to private persons. He states that, on the late occasion, the ship was chartered and the cargo shipped solely for the purposes of lawful commerce. The partners in the firm of Pinto, Perez & Co. have sworn to the same effect; and have also sworn

that, until after the seizure of the "Newport," they had no notice, knowledge, or suspicion that Flores was, or had been, engaged in the slave trade.

If we look at the *evidentia rei* in the particular transaction, not the least circumstance of suspicion is discovered. It is clear, from the depositions of the Crown witnesses, as well as of those of the appellants, that the cargo was of a character quite as well suited for lawful as for unlawful traffic. The staves are proved to have been second-hand staves, furnished by breaking up casks which had brought home palm oil, and to have been bought for the purpose of being so employed again, and not to be fit for carrying water (Turner, 88; Gregory, 278). So little interest was felt about them by the shippers, that the master was told, if he was pressed for room in his ship, to leave them out. No blame is to be imputed to either the owners of the ship or the shippers of the cargo for giving no bond in respect of them. It is, at least, very doubtful whether any bond could have been demanded; but, at all events, it was not demanded. The Custom-house officer who passed the goods says he should not have required a bond if he had observed them; "indeed, he has no doubt that he did observe them, but required no bond—not, according to his then judgment, considering such bond to be requisite" (2 App. 99).

From the evidence of all the Custom-house officers examined, it appears that the practice amongst them varied with respect to requiring such bonds, and, if there was any mistake in the matter, the allegation on the part of the Crown attributes it "to the error or neglect of the Custom-house officers on the spot."

With respect to the demijohns, it is proved that they are common articles of commerce in the African trade; that they are not used for the purposes of carrying water in slave ships, for which purpose they occupy too much room, but are used for carrying spirits into the interior of Africa: indeed, the evidence shows that it had been intended to fill these vessels with spirits on the voyage in question, but that on applying to the Custom-house it was found to be illegal to do so. When it is admitted that this ship was never intended to be employed in carrying slaves, and that the whole cargo was to be sold, and that these articles were part of the cargo, and not of the equipment of the vessel, no suspicion can attach, after the evidence is examined, to any of these articles.

The *bona fides* of the transaction is strongly confirmed by the other circumstances which appear in the case. The letters of Flores and Garrido show incidentally that Flores was employed in 1854 in procuring return cargoes in Africa for the ships which he was expecting from England. Insurances upon such ships and cargoes were effected to the amount of 20,000 l.; and amongst all the letters which have been produced, not one is pointed out containing any expression from which an inference of illegal traffic can be drawn.

The result is, in their Lordships' opinion, that the respondents have entirely failed, by the additional evidence, to bring home any charge either against Le Sueur & Co., or Pinto, Perez & Co., with respect to the shipment in question, and that, on the contrary, the effect of such evidence is to exonerate these gentlemen entirely from any guilty knowledge of an illegal purpose, even if there were reason to believe that, on the part of Flores, such purpose existed. Indeed, as against Le Sueur & Co. the allegation on the part of the Crown does not impute to them any such knowledge.

The sentence complained of must be reversed. Le Sueur & Co. have been subjected to serious loss; their ship has been sold, they have lost their return freight, the seizure was made without any sufficient cause, and they are clearly entitled to restitution, with costs and damages. If the captors have acted under the instructions of their Government, it is to the Government that they must look for their indemnity.

Pinto, Perez & Co. have been condemned in very heavy penalties, on the ground of having committed an offence which might have subjected them, in this country, to a prosecution for felony. Whatever injury, however, they have sustained (and it may probably be, as they represent, very serious), it is not of a character for which damages can be awarded in a Court of Admiralty; but to the costs of all the proceedings, both in St. Helena and in this country, they are fully entitled.

Their Lordships desire to guard themselves against being supposed to imply by this judgment, any censure of the course which it has been thought proper on the part of the Crown to adopt in this case. When the attitude assumed by this

this country towards foreign States, on the subject of the slave trade, is considered, it may justly have been thought the duty of the British Government, when their own subjects were alleged to be implicated in such a traffic, to have the matter sifted to the very bottom, and not to spare, as they appear not to have spared, any trouble or expense in order to discover the guilt, if guilt existed, and to bring the offenders, if offenders there were, to justice. This course may have been necessary, as it was strongly urged by the Attorney-general that it was necessary, for the vindication of the national honour in the eyes of the world; but their Lordships think that the national honour must be vindicated at the national expense, and that merchants who, having engaged only in a lawful adventure, have been subjected to an unjust and illegal sentence are entitled to be indemnified against its consequences, and against the costs which they have incurred in obtaining its reversal, in relieving themselves from the heavy pecuniary loss which it inflicted, and from the deep stain which it cast upon their characters.

The only remaining question is with respect to the cargo. The penalties, for which alone it was held in deposit, being no longer due, in consequence of the reversal of the sentence against Pinto, Perez & Co., it is of course that the cargo should be restored to Flores, the owner, unless a case for penalties, or condemnation, can be established against him. Their Lordships have already expressed their opinion that the respondents have failed to establish any such case, even if, on the present proceedings, it was competent to them so to do. The cargo, therefore, with the proceeds of such part as has been sold, must be restored to him; but, considering that he has not availed himself of the opportunity which he had of exculpating himself, by his own affidavit or examination (as J. M. Perez, his attorney, has attempted to do on his behalf), from all guilty intention in this transaction, and that his course of trade previously exposes this particular adventure, as regards him, to some suspicion, their Lordships think that justice will be done to him by simple restitution of the cargo, and of the proceeds of such part as has been sold, without costs or damages.

They will make a report to Her Majesty in conformity with the opinion which they have expressed.

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Sir *Charles Trevelyan* to Messrs. *Pinto, Perez & Co.*, Crutched Friars; dated Treasury Chambers, 23 June 1858.

Gentlemen,

I AM directed by the Lords Commissioners of Her Majesty's Treasury to acquaint you, that my Lords have carefully considered your memorial of the 28th ultimo, praying for compensation on account of the seizure and detention, at St. Helena, of the British brigantine "Newport," by Her Majesty's ship "Philomel," in September 1854, and they are of opinion that you have no claim upon the Government for any indemnity or compensation.

Messrs. *Pinto, Perez & Co.*,  
Crutched Friars.

I am, &c.  
(signed) *C. E. Trevelyan.*

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THE "NEWPORT."

Sir,

Doctors' Commons, 28 July 1858.

I HAVE the honour to acknowledge the receipt of your letter of yesterday's date, transmitting copy of an Order from the House of Commons, dated the 26th inst., and requesting that the return required by that Order may, so far as I can render the same, be prepared and transmitted to you with the least possible delay, for the purpose of being laid before the House of Commons.

In reply, I have the honour to state, that the case is not concluded, and therefore the expenses incurred by the Crown, in respect of the said appeal, cannot be ascertained at present.

Geo. A. Hamilton, Esq.,  
&c. &c. &c.

I have, &c.  
(signed) *F. H. Dyke.*

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HOCQUARD v. THE QUEEN,  
SHIP "NEWPORT."

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COPY of a MEMORIAL and ENCLOSURE addressed to the Lords Commissioners of Her Majesty's Treasury, on the 28th May 1858, by Messrs. *Pinto, Perez & Co.*, in reference to the Judgment of the Judicial Committee of the Privy Council on the Appeal of HOCQUARD v. THE QUEEN, SHIP "Newport," from the Vice-Admiralty Court of *St. Helena*, and of the Reply thereto; &c.

(*Mr. Crawford.*)

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*Ordered, by The House of Commons, to be Printed,  
7 February 1859.*

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*Under 3 oz.*