

SPANISH SLAVE SHIP FENIX.

JANUARY 18, 1831.

Referred to the Committee of Ways and Means.

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

TRANSMITTING

*Documents in relation to certain captives on board the Spanish slave vessel, called the Fenix.*

January 15, 1831.

*To the House of Representatives.*

I submit to the consideration of Congress the accompanying report and documents from the Navy Department, in relation to the capture of the Spanish slave vessel, called the Fenix, and recommend that suitable legislative provision be made for the maintenance of the unfortunate captives, pending the legislation which has grown out of the case.

ANDREW JACKSON.

NAVY DEPARTMENT,

January 14, 1831.

SIR: I have the honor to enclose sundry communications relative to the Spanish slave vessel, called the Fenix, captured by the United States' schooner Shark, and carried into the port of New Orleans. They are accompanied by the decision of the district judge, ordering the marshal to take charge of the slaves found on board, at the public expense; and also the opinion of the Attorney General of the United States, that their case is not provided for by the act of the 3d of March, 1819, and will therefore require legislative provision by Congress, for which purpose the papers are respectfully submitted.

I have the honor to be,  
Very respectfully,  
Your obedient servant,

JNO. BRANCH.

The PRESIDENT of the United States,

DEPARTMENT OF STATE,

*Washington, 13th January, 1831.*

The Secretary of State has the honor to transmit, herewith, to the Secretary of the Navy, agreeably to the request in his note of the 11th instant, the papers returned to this department by that of the Navy on the 21st of August last year, in the case of the Spanish slave vessel Fenix, together with the copy of the opinion of the Attorney General of the United States in that case; which copy accompanied the papers in question on their return to this office.

OFFICE OF THE U. S. DISTRICT ATTORNEY,

*New Orleans, 20th July, 1830.*

SIR: The Spanish schooner Fenix has arrived here as a prize to the U. S. schooner Grampus, under circumstances which you will find detailed in the accompanying copies of a letter of Lieut. I. Mayo, and of the declaration of the master, &c., of the American brig Kremlin. I have libelled the vessel under the provisions of the 2d and 4th sections of the act of the 3d March, 1819, chap. 200, but am much embarrassed as regards the course to be pursued with the slaves found on board of her. They are at present, to the number of seventy four, in possession of the marshal of this district, who had received them from the officer who brought in the Fenix. I have not libelled them, because, even if they could be considered as cargo, they would not be liable to condemnation under the statute above referred to. They have been claimed by the owners of the vessel, who have prayed for restitution, with costs and damages; and a claim will probably be also interposed by the Spanish consul, acting on behalf of his Government, on the ground of forfeiture for a violation of the laws of Spain. The slave trade is not absolutely forbidden to Spanish subjects by the treaty between Spain and Great Britain, and, as I understand, by laws passed in pursuance of that treaty. I have not been able to procure, at present, a copy of that treaty or of the laws, but believe that vessels engaged in the trade, with the slaves on board, are subject to capture by vessels of either nation, and are condemned by a mixed commission sitting in Havana.

But this is an offence of which our courts cannot entertain cognizance. In the case of the Antelope, reported in 10 Wheaton, page 114, it was declared by the supreme court, that the right of bringing in for adjudication, in time of peace, vessels engaged in the slave trade, did not exist, even when the vessel belonged to a nation which had forbidden the trade. The case of the Fenix differs from that of the Antelope in these particulars: 1st. The latter vessel was found hovering on our coast with the intention of landing the slaves that were on board. 2d. American citizens had been engaged in transporting them from foreign parts, in contravention of the laws of the United States. 3d. A portion of the slaves were brought into the jurisdiction of the United States without the consent or fault of the owners or their agents. Here the only offence charged is a piratical aggression, or rather an attempt to commit one, and the statute does not involve the cargo in the forfeiture. All the persons found on board (the slaves excepted) are Spaniards, and there is no evidence of any of our citizens being interested in the vessel or her cargo. She was captured at a dis-

tance from our coast; and there can be no cause to suspect any intended violation of our laws against the introduction of slaves. Should the vessel be condemned for the alleged piratical aggression, or should the court decide that there was a justifiable cause for detention, the slaves having been brought within the jurisdiction of the United States through the fault of the master, a question will present itself of considerable difficulty. Can a Spanish subject, engaged in a trade prohibited by the laws of his country, set up a title to property of this peculiar character, acquired in violation of their laws? and if he cannot, what disposition is to be made of the negroes when the court shall have dismissed the claim? I shall await your instructions on this subject, and am, very respectfully, your obedient servant,

JNO. SLIDELL.

To the HON. MARTIN VAN BUREN,  
*Secretary of State, Washington.*

U. STATES' SCHOONER GRAMPUS,  
*Off Cape Hayti, St. Domingo, June 5, 1830.*

*Circumstances leading to and attending the seizure of the Fenix.*

At 1 o'clock, P. M. 5th June, highlands off cape Hayti in sight, discovered a brig under a press of sail standing to the westward; made sail in chase. At 1 30, P. M. discovered a long low foretopsail schooner on the starboard beam of the brig (the Grampus being upon the brig's larboard beam) not far off, and standing for her. Upon seeing us, the schooner immediately jibed, and stood off from the brig to the northward, making all sail. At 2, P. M. spoke the American brig Kremlin, C. J. Hall, master, of Boston, from Antwerp, who expressed great joy at our timely coming up, saying that the schooner in sight had been dogging him for some time, and at last came close to him, and peremptorily ordered him to send his boat on board, &c., (as will be seen in Captain Hall's affidavit.) I immediately filled away, and made all sail in chase of the schooner. At 3, P. M. within musket shot of her, hoisted the American ensign; and fired three guns before she would show her colors; by this time close on board of her, when she hoisted Spanish colors, and backed her topsail, but continued to shoot ahead, evidently intending to tack to windward. Hailed, and ordered her to lower her sails immediately, or I would fire into her. Seeing that, she yet wished to escape by getting to windward, nor was it until I fired a shot close under her counter, which threw the water on board of her, that she hauled down her jib, and lowered her mainsail. Despatched a lieutenant with an armed crew, took out her commander and fourteen of her men, (she having a crew of twenty men and eighty-two slaves.) She is called the Finis or Fenix, an American built vessel of 90½ tons, Spanish; one gun of a large caliber, on a circle amidships, with small arms, &c. for twenty men, and well supplied with ammunition. Reports to have sailed fourteen months since from the Havana, all of which time her commander reports having been upon the coast of Africa. This I much question: we know that most piracies, recently committed, have been by vessels engaged in this traffic.

In conformity to the instructions contained in the second section of  
"an act to protect the commerce of the United States, and punish the crime

of piracy," to detain and bring to trial a vessel of her character, caught under such circumstances.

It is very certain that the slave trade has become a pretext, and most piracies recently have been committed by the slavers.

ISAAC MAYO,  
*Com'dg U. S. schooner Grampus.*

U. S. SCHOONER GRAMPUS,  
*Off Cape Hayti, St. Domingo, June 4, 1830.*

Mr. C. J. Hall, master of brig Kremlin, of Boston, from Antwerp, bound to Cuba, certifies as follows, viz:

I, Christopher J. Hall, master of the abovenamed brig, do hereby certify upon oath, that, on Thursday, June 3, 1830, off Cape Cabron, island of St. Domingo, at daylight in the morning, a suspicious looking foretopsail schooner hove in sight, and from that hour until the following day at 10 o'clock, A. M. continued to dog me, making and shortening sail evidently with an intention to keep near me, ultimately approaching within speaking distance, and showing every symptom of hostility, his men being at a long gun, mounted amidships. I called all hands, and cleared away my three guns for action, distributing my small arms among my crew, being under a firm conviction that his intention was to attack me; as he peremptorily ordered me to send my boat on board, I observed to him that my boat was leaky, and I could not send her; he having all the while shown no colors. And I further certify it to be my positive belief, that nothing but my show of resistance prevented his attacking me. He then said, I will send my boat to you. My vessel is high sided, and I did not shorten sail for him. He ultimately hoisted Spanish colors, crossed my bow, and luffed off until 1 o'clock, P. M. when he jibed, and stood again towards me. At this moment I discovered a vessel standing for me, which I believed to be a cruiser, and was soon after spoken by the U. S. schooner Grampus. I gave to her commander my impressions that she was a suspicious vessel, and we parted company.

To the truth of the foregoing statement, I hereby make oath in presence of

Sworn before { ISAAC MAYO, *com'dg U. S. schr. Grampus.*  
G. C. COOPER, *Purser do.*  
ISRAEL ISRAEL, *Vice Consul for Cape Hayti.*  
C. J. HALL, *Master brig Kremlin.*

I, Shubail A. Thomas, chief mate, and Oliver L. Chase, second mate, of brig Kremlin, certify that the foregoing statement is true.

S A. THOMAS,  
O. L. CHASE.

In presence of O. S. GLISSON, midshipman.

I certify that the foregoing is a true copy of the original.

RICH'D H. MORRIS,  
*Lieut. U. S. schr. Grampus.*  
WM. WHELAN,  
*Actg. Surgeon U. S. schr. Grampus*  
J. P. WILSON.

U. S. SHIP ERIE,

*Pensacola, July 11, 1830.*

SIR: I have the honor to apprise you of the arrival at this port, for supplies, of the Spanish schooner Fenix, in the care of Lieut. J. P. Wilson, charged by Lieut. Comdt. Mayo of an attempt to depredate on the American brig Kremlin, of Boston, but which was prevented by the opportune appearance of the U. S. schooner Grampus, under his command. The accompanying communication of Lieut. Mayo, and the affidavit of the master and officers of the Kremlin, will make you acquainted with all the facts in the case, and which, in my mind, conclusively establish the charges made. If you will advert to the instructions under which each of my squadron sails, relatively to the present point, you will perceive that I have been particular in almost requiring, as a pre requisite to a justifiable capture of a vessel thus charged, the commission of the overt act—the section of the law under which the capture is made authorizing a greater latitude. Conformably with your instructions of the 3d September, 1829, I have despatched the prize to New Orleans, escorted by Captain Newton, in the Natchez, to the mouth of the river Mississippi, which he will pass in his intended cruise on the coast of Mexico. The small size of this vessel, and her crowded state, make it necessary she should arrive at New Orleans as early as possible. I have directed Lieut. Wilson to place the prize in tow of a steamboat, that he may be enabled to ascend the river without difficulty. Advices are received from the captain of the slaver, that the hermaphrodite brig Manzanres (which had depredated on the American ship Candau last fall) was on the coast of Africa at the period of his departure. Doubtless Lieut. Comdt. Stringham, in the Falmouth, will be at the east end of the island of Cuba at the time of her arrival there, and I trust will be so fortunate as to send her in to me. The promptness with which Lieut. Comdt. Mayo has repaired to the assistance of the brig Kremlin, calls forth my warmest approbation, and I trust will meet with the same reception at the department. Lieut. Wilson is also entitled to commendation for his attention to the poor creatures under his charge, and the able performance of his general duties. I have furnished the slaves with fresh provisions in the quantities which their state rendered judicious, and which has already had a tendency to improve their condition and promote their comfort. To the prisoners I have also sent fresh bread, beef, and vegetables. That portion of the officers and men belonging to the prize schooner Fenix, now on board the Grampus, I will send in that vessel, which I look daily for, to New Orleans, as soon as possible.

I have the honor to be,

Very respectfully,

Your obedient servant,

J. D. ELLIOTT.

To the Hon. JOHN BRANCH,

*Sec'y of the Navy, Washington city.*

[The communication and affidavit referred to in the above letter, are duplicates of those appended to the letter of the District Attorney of Louisiana.]

[ Doc. No. 54. ]

PENSACOLA, *August 8, 1830.*

SIR: On the 11th ultimo, I had the honor to apprise you of my movements in relation to the piratical schooner Fenix, destined for New Orleans, (one of the ports named in your general instructions,) but which touched here for supplies. At the period of the capture by the schr. Grampus, the brig on which she had attempted the outrage was destined for New Orleans, but has subsequently put into Havana, and will most probably take in a cargo there. A commission has, however, been sent, by which the deposition of the captain and officer can be had, and I have instructed Capt. Rose, in the Erie, to touch off the harbor, and bring them to me at this place, or have them forwarded to New Orleans.

I have the honor to be,  
Very respectfully,  
Your obedient servant,

J. D. ELLIOTT.

To the Hon. JOHN BRANCH,  
*Sec'y of the Navy, Washington city.*

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OFFICE OF U. S. DISTRICT ATTORNEY,  
*New Orleans, 16th July, 1830.*

SIR: I have your letters of the 11th instant, with the accompanying documents relating to the capture of the Spanish schooner Fenix.

Lieutenant Wilson has not yet arrived here with his prize; and, upon inquiry at the custom house, I find that the brig Kremlin, upon which vessel the attempted piratical aggression is said to have been made, has not been reported there: they may both be daily expected. From an examination of the papers furnished by you, I do not think that a condemnation of the schooner can be expected; although, under all the circumstances of the case, there seems to have been sufficient ground for her detention. When her crew shall be examined, it is probable, that we will be enabled to prove from declarations of the captain, or from other sources, the piratical intention with which the Kremlin was pursued and approached, or some previous acts of piracy committed by them on board of her; such proofs would entitle the captors to a decree of condemnation under the 2d and 4th sections of the act of 3d March, 1819. I shall libel the vessel immediately on her arrival, as I think this the more prudent course to pursue for the protection of the capturing officer; the facts represented being such as, in my opinion, will entitle him in any court to costs, &c. for a justifiable seizure. The character of the trade in which the vessel was engaged, (it being prohibited by the laws of Spain,) may perhaps deter the owners from intereering in the claim.

I am, very respectfully,  
Your obedient servant,

JOHN SLIDELL.

To J. D. ELLIOTT, Esq.  
*Commanding U. S. squadron, Pensacola.*

NEW ORLEANS, *July 21, 1830.*

SIR: I reached here in the Fenix early on the morning of the 19th, and immediately delivered all the papers to the United States' District Attorney. In the course of the day, the prisoners, vessel, and slaves were given in charge of the marshal. Yesterday a hearing was had before the United States' district judge, and the prisoners set at liberty, he not considering the evidence sufficiently strong to authorize a full committal for trial: the vessel, however, has been libelled by the district attorney, and, strange as it may appear, the slaves by the owners of the vessel; they had an agent here before I arrived. This person, a captain Barclay, was at Key West when I arrived there; left there for Havana the day I sailed for Pensacola, and reached here the day before me; he was, it seems, on his way to Pensacola when my arrival stopped him. The judge seems to be of opinion that the owners of the slaves can hold them if they give good security. The district attorney has written to the Secretary of State concerning the business, and advised me to address a note to the Spanish consul here, which I did; a copy of which I have sent Lieutenant Commandant Mayo.

How the crew can be set at liberty, the vessel libelled for piracy by the United States, and the slaves by the owners of the vessel, are things which I, Sir, cannot explain.

Under this state of things, I hope you will perceive, Sir, I could not effect a valuation of the vessel and cargo; but I shall endeavor, as far as I am concerned, to make my conduct meet your approbation.

The Kremlin has not yet arrived; and if she should not arrive in a few days, I will give in my testimony, and return to Pensacola unless I receive different directions from you.

I am, Sir,

Very respectfully,

Your obedient servant,

J. P. WILSON.

Commodore JESSE D. ELLIOTT,

*Com'dg U. S. naval forces in the West Indies, Pensacola.*

NEW ORLEANS, *July 27, 1830.*

SIR: I had the honor of addressing you yesterday by mail, and in my letter stated the various conflicting positions in which the affair of the Fenix seemed to be placed, viz: that the vessel had been libelled for piracy, the crew set at liberty, and the negroes libelled by the owners; but as they have not been willing to give the security required, the negroes still remain, and, I presume, will remain, in the hands of the marshal.

In the opinion of the judge, the evidence was not sufficient to inflict any punishment upon the captain and crew, the only penalty in such cases being the forfeiture of the vessel; and the district attorney has hopes of condemning her.

The question still remaining, it seems, is, whether the negroes are free, or whether they revert to the owners of the vessel. Instructions on this head are required from Washington; and the district attorney has written to the Secretary of State for that purpose.

My object in addressing the Spanish consul was to prevent his giving any assistance to the owners of the vessel.

The Kremlin has not yet arrived, but I think must be up in the course of to-day.

I am, Sir,  
 Very respectfully,  
 Your obedient servant,  
 J. P. WILSON,  
*Lieut. U. S. Navy.*

Com. JESSE D. ELLIOTT,  
*Comd'g U. S. naval forces in the West Indies.*

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PENSACOLA, *August 9, 1830.*

SIR: The two communications, herewith accompanied, are those to which Lieut. Wilson refers in his letter of the 22d ultimo, and are intended to accompany my letter of the 8th instant, numbered 62.

I have the honor to be,  
 Very respectfully,  
 Your obedient servant,  
 J. D. ELLIOTT.

To the Hon. JOHN BRANCH,  
*Secretary of the Navy, Washington city.*

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NEW ORLEANS, *July 20, 1830.*

SIR: I have the honor to inform you of the arrival here of the Spanish slave vessel Fenix, under my charge, which vessel was taken possession of on the 4th of June last by the United States' schooner Grampus, for an alleged piratical attempt on the American brig Kremlin, of Boston.

The Fenix, when captured, had on board 82 slaves, and was direct from the coast of Africa.

As the captain and crew of the vessel have violated the laws of Spain by being engaged in this horrible traffic, I make this communication that you may take such steps as you may think proper against them.

I am, Sir,  
 Very respectfully,  
 Your obedient servant,  
 J. P. WILSON,  
*Lieut. U. S. Navy.*

To Don ANTONIO ARGOTI VILLALOTON,  
*Spanish Consul, New Orleans.*

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SPANISH CONSUL'S OFFICE,  
*New Orleans, July 23, 1830.*

SIR: Yesterday afternoon I found at the post office the letter, which, under date of the 20th, you have done me the honor of addressing me. You



inform me in it, of your arrival in the port with the Spanish slave vessel *Fenix*, captured by the United States' schooner *Granpus*, on the 4th of June last, for an alleged piratical attempt on the American brig *Kremlin*, and discovered to be direct from the coast of Africa, with eighty-two slaves on board; and it is in consequence of her being engaged in this reprobated trade, by which the captain and crew have violated the laws of Spain, that you have thought fit to make this report to me, in order that I may take such steps against them as I may consider proper and necessary.

As it appears that the charge of piracy was without the least foundation, the law office here having proceeded to the release and unqualified enlargement of the prisoners, I have to regret that they have not been carried to a Spanish port, to be tried by their national tribunal for the other offence against the Spanish laws, which could certainly have been fixed upon them. Such appears to be the practice of the officers of the British navy, as I have just seen that the Spanish brig *Amelia*, having on board one hundred and thirty slaves from the coast of Africa, has been carried to Havana by the British sloop of war *Victor*, bringing thus the offenders within the jurisdiction of the court, whose duty it is to avenge the violated laws of Spain.

I will transmit a copy of your letter to the minister of His Catholic Majesty with the Government of the United States, and also to the Captain General of the island of Cuba, and await the instructions upon the subject.

I remain with great respect,

Sir, your obedient servant,

ANTONIO ARGOTI VILLALOTON.

To J. P. WILSON, Esq.

*Lieutenant of the U. S. Navy, New Orleans.*

OFFICE OF THE ATTORNEY GENERAL, U. S.

18th August, 1830.

SIR: Your communication of the 16th instant has been duly received, with the accompanying documents. You ask my official opinion, whether the Africans found on board the Spanish vessel, called the *Fenix*, lately captured by the United States' schooner *Granpus*, and brought into the port of New Orleans, come within the provisions of the act of the 3d March, 1819, prohibiting the slave trade, and, if so, what steps should be taken by the department on the subject?

In reply, I have to state to you that this case is not, in my opinion, within the provisions of the act referred to. It is the case of a Spanish vessel, manned and navigated by Spaniards, found on the high seas at a distance from our shores, and which, though engaged in the slave trade, cannot, therefore, for that cause, be amenable to our tribunals. She is equally exempt, notwithstanding the laws of Spain have prohibited the trade, since our courts do not execute the penal laws of another country.

Thus much was settled in the case of the *Antelope*, in which so much was left unsettled, from a conflict of opinion between the judges. The great question on which the court divided, was, whether, under the circumstances of that case, our judicial tribunals were bound to restore. Restoration took place in conformity to the decree of the circuit court, which, in consequence of this division, was necessarily affirmed; but no principle in relation to this question was settled in the appellate tribunal.

It seems to me, Sir, considering that such is the unsettled state of the law on this subject, that these Africans cannot with propriety be delivered up to any person claiming property in them, until the validity of such claim, and our obligation to deliver them, shall have been affirmed by the Supreme Court of the United States. The vessel was properly sent in for adjudication, under the act of the 3d March, 1819, "to protect the commerce of the United States, and to punish the crime of piracy." The Africans found on board are therefore rightfully in the possession of the court; whether they can be delivered to a claimant whose title to them is deduced from a traffic which is equally forbidden by the laws of his own country, and of ours, is a question which ought, I think, under the circumstances, to be referred to the highest judicial tribunal.

This course is not, however, without difficulty; the Africans must be supported pending the litigation, and, if the claim be repelled, must be disposed of in some manner which will be consistent with their rights and with the principles of humanity. Not coming within the provisions of the act of 1819, first referred to, the fund which is placed under the control of the President by that act and subsequent acts cannot be applied to these objects; still I apprehend it will be the duty of the district attorney to pursue the course suggested. Much expense may be saved by giving out these Africans on well secured bonds for their forthcoming. If restored, it will probably be on payment of costs and expenses by the claimant; and should the claim be repelled, and the final disposal of these persons devolve upon the Government, Congress will no doubt, in the mean time, provide the funds necessary for the performance of a duty which will be equally enjoined by justice and humanity. Such an appropriation was made in 1829, in the case of the Africans wrecked on the coast of Florida, who were equally without the provisions of any existing law; and there is no reason to apprehend a refusal to provide for the present case. The papers accompanying your communication are returned.

I am respectfully, Sir,

Your obedient servant,

JNO. MACPHERSON BERRIEN.

To the SECRETARY of the Navy.

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WASHINGTON, *January 5, 1831.*

DEAR SIR: You will of course recollect the case to which the enclosed letter relates, and which ought to have been addressed to you. I have advised the writer that I have communicated it to you.

Yours truly,

JNO. MACPHERSON BERRIEN.

To the Hon. JOHN BRANCH.

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NEW ORLEANS, *Dec. 20, 1830.*

May I be permitted to solicit the attention of the Hon. the Attorney General of the United States to the propriety of having an act passed this session of Congress to meet the case of the Africans lately sent into this port by the United States' schooner *Grampus*. According to the opinion,

as given to our district attorney, the Fenix, the vessel on board of which the Africans were, was properly sent in for adjudication under the act of the 3d March, 1819, though the case did not come within the law of 1818. My disbursements have been considerable; and if I understood the Hon. the Secretary of the Navy, he required an appropriation to justify their payment.

With high consideration and respect,

Your obedient servant,

JOHN NICHOLSON,

*U. S. Marshal.*

To the Hon. JOHN MACPHERSON BERRIEN,  
*Attorney General of the United States.*

*Court of the United States, Eastern District of Louisiana.*

SPECIAL COURT.

FRIDAY, 30th July, 1830.

Present, Honorable Samuel H. Harper.

*Ex. parte.*

Sundry African negroes brought into this port in the schooner Fenix, captured by the United States' schooner Grampus for an alleged piratical aggression committed on the American brig Kremlin. The Africans, by Alfred Heuner, Esq., claim the benefit of the writ of *habeas corpus*, and pray to be liberated, alleging that they are free men. This application is opposed by the district attorney. O. F. Benluigaine, deputy marshal, in obedience to the writ of *habeas corpus* issued in this case, appeared, and showed for cause that the negroes were delivered to him by lieutenant Wilson of the United States' Navy, prize master of the schooner Fenix, and that he was further instructed by the district attorney of the United States to take charge of the said negroes.

On this application, the court delivered its opinion as follows. "I have considered this cause with great solicitude, because it is a new one, so far as I know, in the United States, and because it greatly embarrasses the executive officer of this court, on account of expense and responsibility. In virtue of a law of the United States, the officers of the Navy are *instructed* to capture *all vessels* guilty of piratical aggressions, without regard to what may be on board, whether *negroes* or any thing else. Under these instructions the Fenix was captured, having 82 negroes on board, said to be from Africa, and bound to the island of Cuba, as is alleged. The negroes being on board were *necessarily* brought with the vessel into this port, and delivered by the captors, together with the Fenix and her crew, to the marshal. The vessel has been libelled by the United States, and application made at the same time by the district attorney, in his official capacity, to the proper department of the Government for his instructions relative to the further disposition of the negroes. Under these circumstances, what was the duty of the marshal? Had he a right to put them on shore, and set them at liberty? If he had that right, the *captors* might also have exercised it when they made the capture; but suppose they had been set at liberty, and it should turn out in investigation that the original possessor is either an American citizen or a resident of the United States, or that the capture was made in our waters, or that they were actually destined to one of our own ports, or that the Government

should declare itself competent to take charge of them under all the circumstances, in either of these cases they would be proper subjects for transportation to Africa, and, therefore, such premature discharge of them would have been an improper act, and for the same reasons it would have been improper to *deliver* them to any one until better advised. Pending the time necessary to ascertain all the facts and circumstances attending their capture, and also the requisite time to learn the determination of the Government of the United States in relation to them, can they be legally discharged by virtue of a writ of *habeas corpus*, their *original and present confinement* arising from the necessity of the case? If they become, *ipso facto*, free from the circumstance of their being landed in the United States, negroes *confessedly* brought here for *sale* from a foreign country would be equally entitled to be set at liberty; but the Government has determined that such should not be set free, but should be sent to Africa. The act of Congress of 1807 permitted the States respectively to regulate the manner of disposing of people of color brought into them contrary to law, and Louisiana, being a slaveholding State, under that act *sold* such persons. But the act of 1819 forbids the exercise of that right, and declares that all such shall be transported to Africa. The *policy*, then, of the Government is, that no people of that description shall remain in the country. It is, therefore, clear in my mind that foreign negroes, however introduced, cannot be set free *here*, nor can they be legally sold in this country under any circumstances; it follows, then, that they must in *all cases* either be sent home, or in some way be excluded from the United States. Besides, the Louisiana legislature, at the last session, passed a law declaring that all free persons of color, arriving in the State after the year 1825, should be compelled to leave it. If the court of the United States, sitting in Louisiana, were to declare these Africans to be free, and set them at liberty in the State, would not such act be in derogation of State rights? In any event they would be excluded from the State, and where would they go? Other States perhaps have similar laws; and thus they would be hunted like wild beasts from one extremity of the Union to the other. At such treatment humanity revolts; compared with which, slavery would be a blessing.

In any view of this subject, I think that which ought to have been done has been done, and that the marshal is bound, *ex officio*, to retain them at the expense of the Government (in the first instance) until further or otherwise instructed.

CLERK'S OFFICE, UNITED STATES' DISTRICT COURT,

*New Orleans, July 31, 1830.*

I certify the foregoing to be a true copy of the original opinion of record in my office.

Witness my hand and the seal of the court, the day and year above written.

T. W. LEA, *Clerk.*