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The Creole Case

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The Creole Case

A Thesis

Submitted to the Graduate Faculty of the
Louisiana State University in
New Orleans
in partial fulfillment of the
requirements for the degree of
Master of Arts

in

The Department of History

by
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B. S., Merrimack College, 1961
M. S., University of New Hampshire, 1963
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ABSTRACT

On November 7, 1841, the slaves on board the American brig Creole bound from Richmond, Virginia, to New Orleans, rose in revolt and forced the crew to sail the vessel to the British port of Nassau in the Bahamas. There the authorities imprisoned 19 of those involved in the mutiny but freed the remaining blacks. Later, after receiving instructions from London, the 19 mutineers were also liberated despite the angry protests of southerners in the United States.

The Creole incident became the subject of acrimonious debate in both houses of Congress and resulted in the breaking of the "gag" rule: the self imposed regulation by which the House of Representatives attempted to avoid the time-consuming and disruptive debates which inevitably accompanied the introduction of the topic of slavery. Additionally the Creole case threatened to jeopardize the attempt of Lord Ashburton, the British special envoy, to solve many of the problems which were sources of tension between Great Britain and the United States.

As a result of the Creole mutiny, several insurance suits were filed. During the trials, held in New Orleans, Judah P. Benjamin wrote a rather remarkable brief in which he argued on behalf of the "municipal" theory of slavery before the bar of a southern court. Most of the owners of the Creole slaves were blocked at the local level in their attempts to recover damages for the loss of their property. They were forced

to turn to the federal government for aid and were eventually reimbursed when their claims were accepted according to the terms of the Anglo-American Claims Convention of 1853.

The Creole mutiny was the largest and perhaps the only successful revolt among United States blacks, yet, despite the recent burgeoning of black history and literature, the Creole case has received little attention. Most volumes concerned with slavery and slave revolts scarcely mention the Creole case and its dramatic qualities and historical importance remain virtually ignored.

INTRODUCTION

Historians have paid scant attention to one of the more dramatic occurrences in the history of American Negro slavery--the mutiny of the slaves on board the brig Creole in 1841. A few articles have been written concerning various aspects of the historically important reverberations resulting from the Creole incident; but there has been no attempt to describe the event in detail or to place it in a proper historical perspective. It is not surprising to find that most survey texts of American history reserve but a single line for the Creole case, but it is astonishing that most volumes concerned specifically with slavery, slave revolts or black history scarcely mention the Creole case at all. The authors of such books seem either totally unaware of the Creole mutiny or unappreciative of its dramatic qualities and historical importance.

The basic facts of the case are that the American brig Creole, bound from Richmond, Virginia, to New Orleans with a cargo of tobacco and 138 Negro slaves, was seized by a portion of that "cargo" (as slaves were then classified) and forced into the British port of Nassau, in the Bahamas. The British authorities, after an examination of the facts, freed the blacks and sent the Creole on to its destination, considerably lightened of "cargo."

The Creole incident served to further polarize public opinion concerning the continued existence of slavery in the United States and to

expose to view, once again, the ever widening gulf between antislavery and proslavery elements in Congress. Additionally, the Creole case threatened to undermine further the already delicate relationship existing between the United States and Great Britain and to jeopardize the mission of Lord Ashburton, the British plenipotentiary assigned the task of attempting to find solutions to all the outstanding sources of disagreement between his government and that of the United States. Lord Ashburton had hoped to lessen the tensions between the two nations, but the Creole case proved to be his bête noire and endangered the success of his mission. President Tyler, a Virginian, wished to protect the interests of his state in the interstate slave trade and refused to discuss the settlement of any other problems until some accommodation was made concerning the Creole.

Irate southerners vehemently denounced the freeing of the Creole slaves and demanded their return. Northern abolitionists praised the British action and ridiculed southern demands for war with England. In Congress, where the so-called "gag" rule had imposed upon the House of Representatives a vow of silence concerning the institution of slavery, the Creole case was instrumental in bringing about the reintroduction of that topic, and reinstituted a debate which was to last until the advent of the Civil War.

This essay is envisaged primarily as an examination of Creole case materials available in the New Orleans area. However, some materials not available locally were utilized. These included personal property tax records from Halifax County, Virginia, and the city of Richmond, as well as materials from the National Archives and Records Service in Washington. Of the materials available locally, those examined included

the records of the Commercial Court of New Orleans and the Louisiana Supreme Court, several briefs prepared for presentation at insurance trials relating to the Creole case, the newspaper files of the New Orleans Public Library and the record books of both the Notarial Archives and Register of Conveyances of Orleans parish. The reports of the American consulate at Nassau, on microfilm in the library of the Louisiana State University in New Orleans, proved to be a gold mine of information concerning the mutiny on board the Creole and the events which took place in Nassau harbor.

I

MUTINY AND FREEDOM

The United States brig Creole left Richmond on Monday, October 25, 1841 with a cargo of tobacco and nearly one hundred Negro slaves. The vessel was only a year old but had been involved in the interstate slave trade ever since she had been built.¹ The captain, Robert Ensor, was a Virginian who had been engaged in transporting slaves from Richmond and Norfolk to New Orleans for the previous five years.² Zephaniah C. Gifford, the first mate, had thirteen years experience at sea, part of which time had been spent on another vessel plying the interstate slave route from Richmond to New Orleans.³ Second mate was Lucius Stevens.

The greater part of the slaves had been loaded on board the brig on October 20 and one or two more a day had been added until the 25th, when, at midnight, the Creole left Richmond in tow of the steamer Ben Shepherd. Two more slaves were taken on board about two miles below Richmond and the brig continued in tow of the steamer until eight o'clock in the morning, when she cast off and made sail. She worked down the James River during the daylight hours for the next two days, anchoring each night. On October 27 she had reached Day's Point, where the captain left the brig and took the steamer to Norfolk. Three more slaves were put on board at Day's Point. On the 28th the Creole reached Newport News, where Captain Ensor rejoined the ship and brought on board 33 more slaves, raising the ship's total to 138, including three infants.

During the next day, the vessel was under way for a total of only three hours because of unfavorable winds, and came to anchor at night off Sewel's Point. On the 30th, a Saturday, the brig reached Linhaven Bay, part of Hampton Roads, where she anchored for the night in company with the brigs Orleans and Long Island and several other sail. The next day, with the wind from the southeast, the Creole got under way and proceeded out to sea.⁴

In addition to her three officers, the Creole carried a crew of seven, six able seamen and a combination cook and steward, William Devereaux, "a free colored man."⁵ The captain's wife, daughter and niece were on board, as were four other white passengers: Theophilus McCargo, William Henry Merritt, John R. Hewell, and Jacob Leitener. McCargo was the son of Thomas McCargo, one of the principal owners of the slaves on board. Merritt had been previously the first mate of the brig Orleans, also active in the interstate slave trade between Richmond and New Orleans, and had agreed to take general charge of the slaves in return for his passage. Hewell was in charge of the McCargo slaves, as the younger McCargo was considered too inexperienced to handle large numbers of blacks. Leitener, a Prussian by birth, acted as assistant to the steward.⁶

Twenty-six of the slaves on board were owned jointly by Thomas McCargo of Halifax County, Virginia, and William H. Goodwin of Richmond.⁷ McCargo owned an additional 19 slaves outright. George W. Apperson of Richmond and Sherman Johnson of New Orleans, partners in the firm of Johnson and Apperson, owned 23 of the Creole slaves while James Andrews and Charles Hatcher of New Orleans owned eight.⁸ John Hagan, also of

New Orleans, claimed ownership of nine slaves and P. Rotchford, of New Orleans, owned two female slaves and a child.⁹ Edward Lockett of Richmond, the other major owner in addition to McCargo, claimed ownership of 41 slaves.¹⁰ Names of the owners of nine slaves included on various manifests were not listed (see Appendix).

Slave women on the ship were put in the after hold and the men in the fore hold, with the boxes of tobacco in between. The slaves were neither chained nor manacled and were allowed to come on deck day or night. The men were, however, forbidden to go into the after hold at night, where the women were kept.¹¹ While in port the captain was in charge of the slaves, but as soon as the ship put out to sea Merritt and Hewell together were placed in charge.¹²

After rounding Cape Hatteras, the Creole took a course nearly due south for the island of Abaco in the Bahamas. At noon on Sunday, November 7, her position was 28° 30' north latitude and 76° west longitude or about 275 statute miles due east of present day Cape Kennedy and 150 statute miles northeast of Marsh Harbor on Abaco Island.¹³ By eight o'clock that evening, Captain Ensor, unwilling to risk running aground on Abaco in the dark, had ordered the ship hove to.¹⁴ The night was pleasant, clear and starlit.¹⁵

Shortly after 9 p.m., when the passengers and most of the crew were asleep, Elijah Morris, one of the slaves belonging to Thomas McCargo, approached the first mate, Gifford. He informed the officer that one of the slaves was in the hold with the women, contrary to the rules of the ship. Gifford immediately called Merritt and together the two approached the main hatch leading down to the forward hold.¹⁶ They inquired of two or three slaves relaxing about the deck if any one was

down in the hold with the women. Receiving an affirmative reply, Merritt got a match and lantern and climbed down the ladder into the hold. When he lit the lantern he found Madison Washington, another slave owned by McCargo, standing at his back. Merritt then inquired, "Is it possible that you are down here?--You are the last person I should expect to find here, and that would disobey the orders of the ship." Washington merely replied, "Yes Sir it is I," and then proceeded to make his way on deck despite the combined resistance of both Gifford and Merritt, the latter being somewhat hampered by the lantern which he held in one hand.¹⁷

After reaching the deck, Washington, who was described as a powerful man, shoved Gifford to the deck, and immediately Morris fired a pistol at the first mate, the ball of which grazed the back of Gifford's head. The mate struggled to his feet and ran back to the cabin to arouse the captain and the crew. Washington pursued him to the cabin door shouting, "Come on boys, We have commenced, we must go through with it." Gifford ran down into the cabin to give the alarm, shouting that he had been shot and that the slaves had risen. After awakening the captain, Gifford ran back on deck where he was immediately attacked by the blacks who now surrounded the cabin. He received several blows from the sticks and clubs which the mutineers had grabbed up and his clothes were slashed across the breast by a large butcher knife. He was forced to retreat to the rigging and climbed up to the main top (a platform about a third of the way up the mainmast) where he remained during the remainder of the fight.¹⁸

Captain Ensor had been stretched out fully clothed on the floor of the cabin when Gifford made his dramatic entrance. He had decided

not to retire for the evening but to take a brief nap prior to getting underway early the next morning.¹⁹ He rose quickly and ran to the fore-castle to rouse the crew. From there Ensor ran on deck, his bowie knife in hand, to attempt to regain control of his ship. The blacks, who had surrounded the cabin, threw water down the skylight to extinguish the cabin lights and, armed with knives, handspikes and clubs, they began shouting, "kill them when they come up, kill the damn captain, kill the damn sons of bitches."²⁰

As soon as Ensor appeared on deck he was surrounded by the mutineers and the bowie knife wrested from his hand. He was then stabbed several times with his own blade by Benjamin Johnson, one of the slaves owned by Edward Lockett. The captain crawled to the starboard scuppers where he lay bleeding profusely. He later managed to pull himself up the rigging to the maintop.²¹ There he joined Gifford, gasping weakly, "Mr. Gifford I am stabbed and I believe I am dying." Ensor soon fainted from loss of blood and Gifford lashed him fast to the mainmast to prevent him from falling overboard, as the vessel was then rolling heavily. Gifford could hear the struggle continuing below and the voices of the mutineers crying, "Kill the son of a bitch, kill every white person on board, don't save one."²²

Merritt, while still in the hold, had heard the discharge of the pistol and resulting commotion on deck. He quickly extinguished his lantern and attempted to get back on deck and to the cabin. As soon as he emerged from the hold he was grasped from the rear by one of the mutineers who held him by the shoulders while another aimed a blow at his head with a piece of wood. Two more followed close behind screaming,

"Kill him by God." But as the blow was struck, Merritt twisted away and it found its mark instead on the head of the black who was holding him from behind. Merritt then ran to the cabin in time to see the captain make his way on deck.²³

John Hewell had meanwhile grabbed a musket from the stateroom of the second mate, Stevens. Brandishing it, he went to the door of the cabin where he held the mutineers at bay by waving the muzzle back and forth. One of the blacks threw a handspike at Hewell, who then fired. No damage was done, as the weapon had only been loaded with powder, and the gun was immediately snatched from his hands by the blacks. Hewell then picked up the handspike previously thrown at him and held it as if it were another musket. The mutineers fell back and Hewell advanced on deck. Upon perceiving that he was not holding another gun, the blacks rushed upon him, pulling the handspike from his hands as Ben Johnson sank the bowie knife deep into his chest. The slave driver staggered and half fell into the cabin, gasping "My God they have killed me."²⁴ He grasped one side of the cabin table and said weakly, "I am stabbed." Hewell then sidled haltingly away from the table and fell to the floor, apparently helpless. Shortly afterwards he managed to crawl to his stateroom and pull himself into his berth. Theophilus McCargo, who shared the stateroom with Hewell, heard him gasp "the damn'd Negroes has at last killed me."²⁵

For his part, Jacob Leitener had heard Gifford shout that he had been shot and a short time later the captain ordering Devereaux, Stevens, and himself to turn out before they all got killed. Peering out of his stateroom door, Leitener saw Hewell stagger back into the cabin covered with blood and rushed to aid the wounded man. He saw Hewell lying in his

bunk and heard the blood running out of the berth. Hewell's request for a little water went unheeded. The blacks were now pushing into the cabin and Leitener was forced to dash to his own stateroom in an attempt to hide. While McCargo watched helplessly, Hewell slowly bled to death.²⁶

Merritt had meanwhile reached the cabin but found no safety there. He attempted to get through the skylight, but the noise on deck dissuaded him and he tried to secrete himself in one of the after berths. He was covered over with bedclothes by several of the female cabin slaves, two of whom sat on the bed to hide him.²⁷

Blair Curtis, one of the sailors, had been awakened by the captain's cries to the crew to go on deck. He and his shipmates hastened to comply and joined the fight on deck. Curtis grabbed up a handspike and succeeded in knocking down one or two of the mutineers, but was seized from behind by a black who attempted to take the handspike away from him. Another sailor, named Antonio, knocked down the black who was grappling with Curtis and the sailors retreated to the cabin with the mutineers in pursuit.²⁸

Stevens, the second mate, had stood his watch prior to the mutiny and had been relieved by Gifford. He had gone to his stateroom, where he was awakened later by the first mate's cry, "there is a mutiny on deck and I am shot." The captain called to Stevens, who rose and prepared to go on deck. As he emerged from the stateroom he lost sight of Gifford and the captain and shortly afterwards Blair Curtis rushed into the cabin with four of the blacks at his heels. Curtis was knocked to the floor of the cabin and the mutineers attacked Stevens shouting, "The Captain, Mate, and Mr. Hewell are dead and now we will have that long tall son of a bitch the second mate."²⁹

Stevens and Curtis retreated to the mate's stateroom where they attempted to hide. They heard several of the crew crying for mercy and watched as the blacks entered the cabin and began searching the staterooms. The starboard staterooms were examined first and the blacks soon discovered the captain's wife, daughter and niece. Mrs. Ensor begged for her life and for those of the two children. Elijah Morris replied, "We will not hurt you, but that damn'd captain and mate we will have by God."³⁰ Another of the blacks ordered, "Let them alone for the last, we want the second mate, and the ship will be ours."³¹ One of the blacks pointed to the door to Stevens' stateroom saying, "that is his room," whereupon the musket, now in the possession of the insurgents, was pointed at the door and the occupants ordered to come out. As Stevens opened the door, the gun was fired, but he was able to strike the muzzle aside and he and Curtis made a break for the cabin door. Stevens was struck with a piece of the flagstaff and slashed at with a knife, but he managed to reach the deck and climb to the foreroyal yard, where he remained until the next morning.³² As Curtis made his dash for safety, he was struck a blow on the head which stunned him, but he was somehow able to reach the deck. In a dazed condition he started to climb into the rigging, when one of the blacks asked, "Who is that going up?" Curtis gave his name and was ordered to come down. When one of the mutineers assured him that he would not be hurt, he climbed down and was brought to the cabin.³³

Jacques Lecompte, another of the seamen, had remained at the wheel while the fight was in progress. Several of the blacks advanced to kill him but were dissuaded by Madison Washington, who said that "he was a Frenchman and could not speak English."³⁴ Francis Foxwell,

another of the crew on deck when the mutiny broke out, was asked by Andrew Jackson, one of the slaves, where he might go for safety. Foxwell told him to climb up into the rigging, which he did, moaning all the time that he was afraid he would fall. Foxwell, after reflecting upon the soundness of the advice he had just given, quickly followed Jackson into the rigging, where they remained throughout the night.³⁵

The mutineers had forced one of the sailors to bring in the bowsprit lantern, hung there to signal the presence of the Creole to passing ships. With the lantern they proceeded to make a careful examination of the remaining staterooms.³⁶ Jacob Leitener had been joined in his stateroom by Devereaux, the steward, and Lewis, a McCargo slave, who had been a steward's assistant during the voyage. They were soon discovered and Washington ordered them to be taken to the hold. As Leitener reached the deck, Elijah Morris emerged from the cabin shouting, "Kill every God damn white person on board and if no-one else will, I will." Leitener, who knew Morris, asked if he meant to kill him. Morris replied, "No," and ordered Leitener sent to the afterhold.³⁷

McCargo had remained in his stateroom and watched as the blacks entered the cabin area. Among them he could identify Ben Johnson, Elijah Morris, Madison Washington and another named Jim. Johnson carried a long knife covered with blood. As the mutineers approached the door of his stateroom, McCargo came out, took the arm of the black he knew as Jim, and asked if they intended to kill him. Jim asked if it was McCargo and upon being informed that it was he turned to the others and said, "Boys don't hurt him." Lewis, who had been in the room with Leitener, and whom the blacks had freed, also interceded for young McCargo. Morris and Ben Johnson ordered that he be taken to the hold

with the rest of the prisoners. Seeing the body of Hewell in the berth, they ordered it taken up on deck.³⁸

Merritt had meanwhile remained concealed in the berth and listened as the search of the cabin area continued. He heard voices calling, "Where is Merritt? Bring him out. Merritt shan't live, Merritt shan't live by God." The two woman who were concealing him became frightened and left. Merritt then crawled under the mattress but was soon discovered and hauled out. Threatened by Ben Johnson and Elijah Morris, who stood over him with knives, Merritt told them that he had been a mate on board a ship and could navigate. In exchange for his life, he promised to take them to any port they desired. Madison Washington ordered them to leave Merritt alone and to permit him and the prisoner to confer.³⁹

During the conversation Washington expressed the desire to go to Liberia. Merritt informed him that there were not sufficient provisions on board for such a voyage. Ben Johnson and another of the leaders, whose name was listed as Dr. Ruffin, wanted to be taken to one of the British islands. They refused to go anywhere but where "Mr. Lumpkins' negroes went last year." They were alluding to the shipwreck of the schooner Hermosa the previous summer on the island of Abaco. The slaves on board that vessel had been taken into Nassau by the English wreckers and freed by the British authorities. As a result of the discussion, the mutineers decided to proceed to the port of Nassau on the island of New Providence. It was agreed to spare Merritt's life in return for his aid in navigating the Creole to the British port.⁴⁰

Leitener, who had been confined in the afterhold, was called up and brought to the cabin. The blacks had now assumed complete control of the Creole and wished to celebrate the successful completion of the

mutiny. Leitener, who had assisted the steward, was asked if he knew where the liquor was kept. He said, "Yes," and brought out four bottles of brandy, a jug of whiskey, and a demijohn of maderia. The blacks quickly exhausted the supply of liquor and then called for bread and apples, which Leitener supplied to them. At this time Ben Johnson was sitting in the cabin with the captain's bowie knife, covered with blood and bragging, according to Leitener, that "he had sent some of them to hell this night with his knife." Several others, Leitener later related, were rummaging through the passengers' trunks, taking whatever they felt they needed.⁴¹

In the meantime, Madison Washington had been leading a search of the deck to ascertain the whereabouts of the captain and the rest of the crew. About 4:30 in the morning someone spied Gifford in the maintop and reported the fact to Washington. The blacks quickly gathered at the foot of the mainmast. Gifford had by this time spent several hours on his perch. He had watched as four of the blacks had brought Hewell's body on deck and thrown it overboard.⁴² He had observed Washington as he led the search of the vessel, and now looked down apprehensively as the mutineers gathered around the mast and peered up at him. He was ordered to come down with the threat that "if he did not come down they would shoot him down." After hastily clambering down to the deck, Gifford was informed by Washington that they wanted him to assist in landing them on a British island (Gifford later claimed that they wanted to land on Abaco). Ben Johnson placed the musket against Gifford's chest and Washington told the first mate that if he did not agree to help them, he would be thrown overboard. Gifford quickly agreed to aid them and then told Washington that the captain was aloft in the maintop.

The blacks ordered the captain down but he was helpless from the loss of blood and could not comply.⁴³

At the same moment Stevens was discovered in the foreroyal yard and Elijah Morris and several others ordered him to descend, saying "Come down you damn son of a bitch. Receive your message. That is the very one we want." Stevens came down hesitantly and when he reached the foretop, he paused and asked why they wanted to kill him. Morris replied, "Damn you, the best thing for you is to come down and receive your message." Stevens climbed down and upon reaching the deck, begged for five minutes to talk to them. He promised to bring them to an English port in three days if only they would spare his life. Then, hearing Gifford talking to some of the mutineers on the poop deck, he asked permission to go to the first mate, thinking that Gifford was bargaining with them and that he might include himself in the bargain.

Stevens was brought before Gifford, who suggested that the second mate be allowed to resume his duties. The blacks refused to permit him to do so and Gifford then ordered Stevens to take a bottle of water to the captain. As the second mate started to make the climb to the maintop, he was observed by Madison Washington and Elijah Morris, who were apparently not informed of his mission. They shouted, "Come down you son of a bitch" and Stevens hastily complied. After consultation with Gifford, the mutineers permitted Stevens to take the water to the captain. Shortly thereafter, Washington ordered them to rig a sling and with the help of one of the sailors Stevens assisted the captain to the deck. Both Stevens and the captain were then locked in the forehold and a guard placed at the hatch to watch them.⁴⁴

The crew was ordered to make sail by one group of the blacks but the order was hastily countermanded by another segment of the mutineers. The puzzled crew did not know whom to obey. A hasty conference was held and Madison Washington, Elijah Morris, Ben Johnson and Dr. Ruffin were selected as leaders. The ship was placed in the hands of Gifford and Merritt for safe passage to Nassau harbor. The sailors were allowed to pursue their regular routine, but under the careful scrutiny of the blacks.⁴⁵

After the conference, the sails were again set and the ship got underway for Nassau. Not all the blacks had been involved in the mutiny and less than a score could be identified as having taken an active part, with Washington, Morris, Johnson and Ruffin being chief among these.⁴⁶ Some of the blacks had joined the mutineers the morning after the revolt, and it is possible that only a dozen or so may have taken part in the actual fighting.⁴⁷ At one point Madison Washington was forced to climb down into the hold and threaten to throw overboard some of the slaves unless they would come on deck to help work the ship.⁴⁸

The captain's wife, who had been imprisoned in the afterhold with the rest of the passengers, was allowed to go to the forehold to minister to her husband, while wounded sailors were brought to the cabin to have their wounds dressed by the blacks.⁴⁹ At about 11 o'clock, Stevens was allowed to come on deck to assist Gifford in taking an observation to determine their position. At 5 o'clock that evening, the blacks permitted the captain to be brought to the cabin for better care.⁵⁰

Stevens, once again the object of the mutineers' special attention, had been ordered below by Ben Johnson shortly after the second mate had aided Gifford in determining the ship's position. Johnson advised him

that he "had better go below and stay there or you will be thrown overboard as there are a number of bad negroes on board." A short while later, Elijah Morris came to the grating of the forehatch where Stevens was imprisoned and said, "Stevens, I do not want to see you hurt, but they talk strong of heaving you overboard tonight." Stevens requested that Morris see Madison Washington on his behalf, and soon after he was ordered to come up and assume his duties as second mate. About 9 o'clock that evening, just prior to making the Abaco light, as Stevens was walking the quarter deck alone, he was shot at and heard the ball whistle past him. Gifford immediately came out of the cabin and ordered the second mate to go aloft and see if he could see the Abaco light, at the same time getting himself out of danger. As Stevens climbed into the rigging, he could see the black who had fired at him (later identified as Ben Johnson) reloading the pistol. The second mate clambered hastily out of range, while the wielder of the pistol and a companion laughed at his haste. After remaining aloft for some time, Stevens climbed back down and was apparently not bothered again.⁵¹

The mutineers remained separated from the rest of the blacks and stationed themselves at various parts of the ship to watch for any attempt on the part of the crew to retake the ship. Guards were placed to watch the prisoners in the fore and after holds. The four leaders, Washington, Ruffin, Morris and Johnson, took turns watching the officers. Ruffin and George Portlock knew the letters of the compass and Pompey Garrison had made the trip to New Orleans previously. There was no chance for the officers to change the direction of the vessel and they were not even permitted to communicate with each other except to give orders regarding the working of the ship. Once, when Ruffin saw Merritt

writing the ship's position and the time on the slate kept near the wheel, he forced Merritt to erase the notation lest it be used as a means of communication.⁵²

The mutineers were not only suspicious of the crew and passengers, but also of the blacks who had not taken part in the mutiny, and maintained strict order amongst them. A new cook was appointed for the other blacks, since Madison Washington had been cook previously, and they ate at their regular places while the mutineers ate in the cabin. Elijah Morris, when asked, shortly after the fighting had ceased, if they intended to kill the whites said, "No, I expect we shall rise again among ourselves but the white people shall not be hurt."⁵³ It is difficult to say whether this statement was in reference to a division within the ranks of the mutineers themselves, as evidenced by Elijah Morris' remark to the second mate ("Stevens, I do not want to see you hurt, but they talk strong of heaving you overboard tonight."), or merely to the suspicion with which the mutineers viewed the other blacks. In any event those who had not taken part in the mutiny appeared to be afraid of the mutineers and stayed away from them as much as possible during the voyage to Nassau.⁵⁴

II

On Tuesday, November 9, the second day after the mutiny, the Creole was met by the pilot boat about one mile outside of the Nassau light-house. The pilot and his crew were blacks and immediately mingled with the mutineers, telling them that they were now free and could go on shore as they pleased. As the ship entered the harbor, Madison Washington collected all the weapons, knives and pistols and threw them overboard with the exception of one pistol and the musket.¹ Merritt ordered the jack flown at half mast to show there was a mutiny on board. When Dr. Ruffin observed that the pennant had only been raised to half mast he demanded to know the reason. Merritt called the sailor he had ordered to raise the jack and as Ruffin cursed at Merritt, he in turn cursed the sailor, in a face saving gesture, and ordered the pennant hoisted to the mast head immediately.²

They entered the harbor about 8 o'clock in the morning. As the quarantine officer came alongside, Gifford jumped into his boat, informed him of the situation and asked to be taken ashore. He further requested that the ship have no communication with the shore until he returned. The quarantine officer conducted Gifford to the residence of the American consul, John Bacon, and then returned to watch the ship.³

The consul and Gifford then hastened to the Government House and obtained an interview with the Governor General of the Bahamas. Sir Francis Cockburn. After Gifford had related the details of the mutiny,

Consul Bacon requested that the governor take measures to prevent the "slaves" from escaping and to have "murderers secured." Sir Francis explained that he did not think he was authorized to interfere with the "passengers," as he called the blacks, but he felt that under the circumstances he would be able to take some measures to prevent their coming ashore, at least until the "murderers" could be identified and arrested. As for the rest of the blacks they must be and would be treated as passengers. While this conversation was taking place the harbor master reported the arrival of the Creole to the governor, stipulating that she had come into port with 135 passengers. The governor called the consul's attention to the fact that the report referred to 135 passengers. Gifford's statement was then taken down in writing and a message was dispatched to the attorney general requesting his opinion on what course should be adopted by the governor with regard to the Creole. Bacon was then requested to make formal written application for assistance and then he and Gifford were dismissed with the assurance that after consultation with the attorney general the governor would inform them of his decision.⁴

After leaving Government House, Bacon dispatched a formal letter to the governor asking only that the slaves on board the Creole not be allowed to land until an investigation had been made.⁵ Consul Bacon later testified:

I did not enlarge this request at this time for fear of jeopard[iz]ing his compliance, for I well knew, both from the conversation I had with the Governor at this time, and from the opinions of many of the officers of the government, and also of private individuals, which I had frequently heard expressed, that it would be deemed a violation of the laws of Great Britain, in any manner to molest or prevent slaves from obtaining their freedom, if once within the jurisdiction of the Colony, no matter in what manner they

might arrive or be brought within their jurisdiction, and therefore that a request in writing to forward the vessel on her destination with the residue of the slaves on board, would have been deemed inadmissible.⁶

Gifford was instructed by the consul to return to the Creole and take charge. The consul in the meantime requested Dr. Chipman, a surgeon, to go on board and then made arrangements to receive the wounded as they came ashore.⁷ As Bacon was preparing to depart for the ship himself, he received a note from the colonial secretary informing him that the governor had ordered a military party to board the brig.⁸ The consul then left for the vessel and upon reaching the Creole: "found two or three white citizens, several Custom-House officers, a colored pilot and his colored crew aboard, [as well as] a large number of the male and female slaves on the forward deck of the vessel apparently in a very quiet state."⁹

Bacon was still on board when the guard, promised by the governor, arrived to take charge of the brig. The guard consisted of twenty privates, a corporal and a sergeant under the command of a lieutenant. All of the guard were blacks with the exception of the officer, Lieutenant Mends.¹⁰ The four ringleaders, Madison Washington, Elijah Morris, Dr. Ruffin and Ben Johnson, were bound and placed in the brig's longboat, where they remained until they were taken ashore three days later.¹¹

After assuring himself that no "colored persons" were to leave or board the vessel, that the whites were free to come and go as they pleased and that any persons he designated could come on board the Creole, the consul returned to shore with Captain Ensor and two wounded crewmen. Shortly thereafter Bacon received a verbal message from the

governor, requesting him to attend the governor and the Council, then in session. When the consul arrived at Government House, Governor Cockburn read to him the results of the Council's deliberation. They were:

1. That the courts of law in the colony had no jurisdiction over the alleged offences.
2. That since a charge of murder had been lodged, an investigation should take place in order that the guilty parties not be allowed to go at large. Therefore an investigation ought to be conducted and the guilty parties detained until it was decided whether they should "be delivered over to the American government or not, and, if not how otherwise be disposed of."
3. That as soon as the investigation had been completed, "all the persons on board of the Creole, not implicated in any of the offences alleged to have been committed on board of that vessel, must be released from further restraint."
4. That a detailed account of what had transpired "should be transmitted to the British Minister at Washington."¹²

Bacon asked for a copy of the results of the deliberation of the Council and was furnished one later that day. He then returned to the Creole in the company of Robert Duncome, police magistrate and John James Burnside, justice of the peace and surveyor general of the colony. An examination of witnesses was begun and continued all day and into the evening. The next day, Wednesday, November 10, the examination of witnesses was resumed and continued throughout this day as well. Further examination was postponed until Friday in consequence of the illness of

the captain, "it being deemed proper by the magistrates that at this stage . . . the captain should be next examined."¹³

It was obvious to the Americans that the officials of the colony would not assist them in forwarding the slaves to New Orleans. They resolved to formulate a plan to take over the brig and sail her to the protection of an American warship.

Captain Woodside, master of the American bark Louisa lying dismasted in the harbor, came on board the Creole a few hours after she reached Nassau. It was agreed that he and several of his crew, along with the second mate and four men from the American brig Congress, would join in an attempt to seize the Creole from the British officers then in command of her. Their intention was to sail the Creole and her cargo to either Indian or Stirrup Key where a United States vessel of war was known to be cruising.¹⁴

Consul Bacon, who arranged the plan, was hopeful that the guard would be removed from the Creole as soon as the mutineers were identified and taken into custody. With a small force he would then be able to subdue the remaining blacks and take possession of the vessel. The consul promised to provide return passage from the Key to anyone who would assist the Creole's crew in sailing the vessel to the protection of the American warship. Both Gifford and Captain Ensor approved of the plan and Gifford agreed to assume command of the Creole.¹⁵

Frequent conferences were held every day on the subject and the entire plan was arranged. Attempts were made to purchase arms in Nassau but no dealer would sell to them. "On Thursday afternoon, in company with Mr. Gifford and Mr. Merritt," Bacon was later to report, "we called at three places where such articles were kept for sale--two by colored

people and one by a white man--and enquired for muskets and pistols but could not obtain any."¹⁶ Within hours, everyone in Nassau knew the officers of the Creole and when they walked in the streets, the inhabitants of both races would say, "there goes one of the damned pirates and slavers."¹⁷ After this unsuccessful attempt to obtain weapons, the conspirators resolved to continue through with the plan and to make the attempt after the mutineers and the guard had been removed from the ship.¹⁸ Their plans were upset, however, by the actions taken by the British authorities on Friday.

About 9 o'clock on Friday morning, Duncome, the police magistrate, called at the office of the American consul to inform him that the examination of witnesses aboard the Creole was about to recommence. He added that the suspects were to be brought before the witnesses for the purpose of identification and would then be escorted ashore by the troops. Duncome indicated that the governor had authorized this procedure. Bacon was surprised at the rather hasty conclusion of the examination of witnesses. The authorities showed no inclination to delay, even long enough to obtain Captain Ensor's deposition and those of the wounded crewmen, ostensibly the excuse for delaying the examination until Friday.¹⁹

As he walked toward the harbor, the consul was informed by several inhabitants of the island that "the slaves on board the Creole were to be rescued and brought on shore by the blacks of the island."²⁰ They pointed to a launch which lay about halfway between the shore and the Creole and indicated that it and other boats nearby would be used in the attempted liberation. A rather large crowd had collected on the shore and Bacon, by now somewhat alarmed, rushed off to inform the

governor of the purported attempt to board the vessel. When Bacon returned to his office to address a communication to the governor, he found Gifford waiting for him. The mate reported that a large collection of boats filled with blacks had surrounded the Creole and that those on board this small fleet carried clubs and were threatening the crew of the brig. Bacon replied that he had returned to his office for the specific purpose of communicating these facts to the governor and hoped to solicit that official's aid in protecting the Creole.²¹ The consul then dispatched the following note to the governor:

Sir: On proceeding to go on board the brig Creole, with the magistrates this morning, I saw a large collection of persons on the shore nearest the vessel, and many in boats; and was, at the same time, informed that the moment the troops should be withdrawn from the brig, an attempt would be made to board her by force. I was further informed an attempt had already been made. I have, therefore, to request your excellency will take such measures as you may deem proper for the protection of the said vessel and cargo.

The above facts I have every reason to believe correct; and did not accompany the magistrates, that I might communicate the same to your excellency.

I have the honor to be, Sir, very respectfully, your most obedient servant.

John F. Bacon
United States Consul²²

The views of witnesses concerning the events of that Friday differ considerably. After completing his note to the governor, Bacon presumably sent Gifford back to the Creole and summoned Creasy, the mate of the brig Congress. Creasy, who had been included in the original plan to seize the Creole, was asked to "go on board the brig . . . with four of his best men and report that they had been sent by the American consul." The men embarked, taking with them several muskets. A short while later they returned to report that they had been refused permission to go on board and had been threatened with being fired upon if

they attempted to do so.²³ Captain Woodside, in general agreement with the consul, claims to have been on board the Creole during the incident. Despite his attempt to convince the British officer of the legitimacy of the errand, the five men from the Congress were ordered away from the Creole.²⁴

Gifford's version of the event is slightly different. He asserts that while still on shore with the consul he saw Captain Woodside, with a group of men, row from the Congress toward the Creole. Gifford watched as the boat stopped and then returned to the shore. Captain Woodside then reported to the consul and Gifford that he had been to the Creole but that the British officer in command would not let he and his men come on board.²⁵

The crew of the Creole later described the attempt to capture the brig as follows:

Muskets and cutlasses were obtained from the brig Congress. . . . The arms were wrapped in the American flag, and concealed in the bottom of the boat, as said boat approached the Creole. A negro in a boat, who had watched the loading of the boat, followed her, and gave the alarm to the officer in command on the Creole. As the boat came up to the Creole, the officer called to them, 'Keep off, or I will fire into you.' His company of twenty-four men were then all standing on deck, and drawn up in line fronting Captain Woodside's boat, and were ready with loaded muskets and fixed bayonets for an engagement. Captain Woodside was forced to withdraw, and the plan was prevented from being executed, the said British officer remaining in command of the Creole.²⁶

It is thus difficult to determine just what part Captain Woodside played in the abortive attempt to take the Creole but it is obvious that the plans of the Americans had been upset by the sudden announcement that the investigation was to be terminated that day. Their scheme was rendered impracticable by the presence of the small boats surrounding

the brig and it became imperative for the plotters to forego their original plan and to attempt a hasty and rather haphazard seizure instead or see the blacks liberated by the "mob."

The Americans were convinced that the mob was under the control of the government officials and that it was being utilized to overawe the crew of the Creole: "the general talk on shore was that the civil authorities on shore had hired all the boats, etc. to take possession of the Creole and liberate the slaves on board."²⁷ Captain Woodside states that soon after he went on board the Creole at 10 o'clock on Friday morning, the Reverend Mr. Poole, chaplain of the garrison, and the Reverend Mr. Aldridge, an Episcopal clergyman, came on board and entered into conversation with the slaves. "They appeared to be giving them directions and instructions as he noticed the female slaves to be putting on their bonnets and making preparations to leave the vessel." Woodside claims that he heard Poole say "he was going to England and it was requested he should know all about this business so that he could represent the thing." Woodside was on board when the two magistrates, Burnside and Duncome, came aboard accompanied by a police sergeant, William Daltzell, who acted as their clerk.²⁸

Both Stevens, the second mate of the Creole, and Merritt believed that the boats surrounding the brig were under the command of the black pilot who had first brought the vessel into the harbor. At one time he came alongside and demanded of one of the magistrates, "Come, get thro' your business on board, we want to commence ours." The magistrate replied, "We won't be long, we are only waiting for some one from the shore."²⁹ He then warned Stevens that he "had better take care of his money, if he had any; that it was impossible to prevent the slaves from

being taken off and if any resistance was made there would be blood spilled."³⁰ When Merritt inquired of one of the magistrates, what was the significance of the boats filled with men armed with clubs, he was told, that "as soon as the troops were removed they would probably come on board when there would probably be bloodshed."³¹ Such talk frightened the crew and the white passengers so that "each one went to secure his own clothing and effects." They were apparently more worried about being robbed than afraid of being injured: "One of the passengers put on four pair of pantaloons, another put on two suits. They locked their trunks and put them in the staterooms and took care of everything they had."³²

There is no reason to doubt that the community was greatly interested in the Creole and those it carried. The sympathies of the inhabitants were with the slaves and it is highly likely that the unsuccessful attempt to purchase arms had alerted both the authorities and the inhabitants to the existence of a plot to seize the Creole. The abrupt termination of the investigation was perhaps motivated by the desire of the authorities to avoid a confrontation between the American sailors and members of the local populace intent on freeing the Creole slaves.

Shortly after the abortive attempt to reinforce the Creole, Consul Bacon received an answer from the governor to his request for aid in protecting the brig from the mob. The governor expressed his doubt "that any of her Majesty's subjects would act so improperly as to attempt to board, by force, the American brig Creole," but should such an eventuality arise, he was "quite ready to use every authorized means of preventing it."³³ At the same time Bacon was informed that the governor and his council were then in session and that they would soon wish to see him. In about half an hour his attendance was duly requested.

Governor Cockburn informed the consul that no doubt he was aware that there was considerable excitement concerning the Creole and that many exaggerated accounts were circulating. The governor expressed the opinion that the "large collection of colored people" could not commit any of the acts the consul had charged them with. Bacon replied that at any rate the officers and crew of the brig were quite alarmed and concerned for their safety and that of the slaves on board. Sir Francis then asserted that the slaves were passengers and that he would treat them as such, to which sentiment the governor's council indicated its agreement. Bacon attempted to contradict the governor saying, "they were slaves, and, under the circumstances, as much a portion of the cargo as the tobacco on board."³⁴

The governor countered with the statement that he was aware that Bacon had attempted to send a "large amount of arms and ammunition on board with some men," and that the decision had been made to send the attorney general, George C. Anderson, to the Creole with instructions to prevent any violence on the part of those surrounding the vessel. Anderson was ordered to remove those implicated in the murder along with the troops guarding them and to see that no obstruction was placed in the way of the passengers landing. Bacon left without making any remark which might have been construed as acquiescing in the decisions of the governor and his council. Gifford and Woodside were waiting for him at the Customs House dock and Bacon advised them to go on board the Creole immediately. The mate was told to "protest against every act of the attorney general and those with him, that would have a tendency to deprive him of control of the slaves."³⁵

There are two distinct views, one British and one American, concerning the events which took place on board the Creole that day. According to the American version, Captain Woodside and Gifford followed the attorney general's boat and reported watching him approach the small boats clustered around the Creole. They then heard him direct the occupants to throw away their clubs. The attorney general ordered them to refrain from any acts of violence. He told them that as soon as the prisoners and the troops were removed to the quarter deck, they could come alongside and take those ashore who wished to go. A number of clubs were then thrown overboard and the attorney general proceeded to the Creole.³⁶

After his arrival on board, Attorney General Anderson questioned Jacob Leitener, who identified another of the mutineers, bringing to 19 the total number of prisoners. Merritt later stated that during this procedure he had attempted to persuade some of the slaves to continue on to New Orleans. While doing so, he overheard several other white men who were "persuading them to go ashore, suggesting that if they went to New Orleans they would probably be punished." Merritt was convinced that a number of the slaves would have continued to New Orleans but were persuaded to go ashore, although they had not the slightest intention of doing so at the time.³⁷

When the questioning of Leitener was completed, Attorney General Anderson ordered the troops to escort the prisoners to the quarter deck where he addressed them as follows:

Men there are 19 of you who have been identified as having been engaged in the murder of Mr. Hewell, and in an attempt to kill the Captain and others. You will be detained and lodged in prison for a time, in order

that we may communicate with the English Government, and ascertain whether your trial shall take place here or elsewhere.³⁸

The prisoners were then informed that "if any of them wished to see the depositions of the passengers and crew, he would attend at the gaol to read them or have them furnished with copies, or if they wanted evidence taken he would attend to that also." The remaining blacks were then assembled and the attorney general addressed them saying:

My friends, you have been detained on board the Creole for the purpose of ascertaining the individuals who were concerned with the mutiny and murder. They have been identified, and will be detained; the rest of you are free, and at liberty to go on shore, and wherever you please.³⁹

Merritt then requested the attorney general "to inform those who desired to continue the voyage that they could do so." Anderson refused but granted Merritt permission to inform them of their alternative. Merritt then announced that all those who wished to remain on board could do so.⁴⁰

The testimony of the Americans is somewhat contradictory concerning the attorney general's next actions. One version states that he left the brig, pulled a short distance away and then stopped to watch the proceedings. At a signal from one of the officials, the surrounding craft closed with a rush. The remaining blacks hastily left the Creole, most simply climbing over the rails, while many of the women were assisted down the after gang-way by one of the magistrates. The boats then pulled away from the ship and joined the attorney general, who shook the hands of many of the liberated blacks. Three cheers were given and the boats continued to shore.⁴⁴ All of the Creole blacks not implicated in the mutiny were freed at this time with the exception of five who, as Consul Bacon put it, "refused to accept their liberty at such a price and in such a manner."⁴²

In contrast to the claim that Anderson had left the Creole prior to the signal being given to the surrounding boats, Gifford maintains that it was the attorney general himself who gave the signal for the boats to approach.⁴³ Leitener's⁴⁴ deposition supports this contention, but McCargo⁴⁵ and Stevens⁴⁶ insist that it was one of the other magistrates or officials, and Merritt⁴⁷ specifically names Burnside. Foxwell,⁴⁸ one of the sailors, on the other hand, thought it was a British officer, and Curtis⁴⁹ felt that there had been a spontaneous break for the boats on the part of the blacks.

Gifford also claims to have protested the actions of the attorney general, saying, "We have been once nearly killed by these slaves, and we see from your people that they want to show fight and we want to be protected, vessel, crew, and cargo. I protest against any of these boats coming alongside of the brig, or the slaves going on shore from the brig." The attorney general was then supposed to have replied, "You had better not object to it; you had better let them go quietly on shore; if you object, I am afraid there will be bloodshed."⁵⁰ Gifford's claim is supported by Theophilus McCargo.⁵¹ However, none of the depositions taken at Nassau indicate that Gifford made any such objection. Captain Woodside, moreover, suggests that Gifford and the crew had been "much intimidated."⁵² "Fearing the least opposition would probably have cost them their lives [they] made none to the slaves going on shore."⁵³ Lieutenant Hamilton, one of the British officials, testified later that after the slaves had been given permission to leave, Captain Woodside came to him and said: "If I had been Merritt, I would not have acted as he has done, but would have protested against their leaving the vessel."⁵⁴

Consul Bacon had remained ashore after ordering Gifford and Woodside to report aboard the Creole to protest the acts of the attorney general. About one hour later he reported seeing a large crowd, numbering between one and two thousand individuals, gathered around the public buildings. Among them he saw the slaves of the Creole going into the office of John Pinder, the inspector general of police. Pinder later informed Bacon that he had registered the names of the slaves and their occupations. The consul could not make his way through the crowd and consequently left in the company of Mr. Hamilton, the pilot of the port, who told him that he had orders from the governor not to take the brig out while the slaves were aboard. It would have been in vain, Hamilton told him, to expect that the slaves would have been permitted to leave. About an hour later Bacon also observed the troops and the prisoners coming ashore.⁵⁵

Gifford and Woodside reported to the consul later that evening, and informed him of the events which had taken place on board the Creole that day. The next day, Saturday, Bacon took depositions from Woodside, Merritt, Gifford and Stevens, in which they described how the slaves had been liberated.⁵⁶ Early Monday morning the consul dispatched a communication to the governor protesting against "the proceedings of her Majesty's officers, in liberating the slaves on land" and requesting that the 19 prisoners "might be forwarded to the United States in the brig Creole."⁵⁷

Governor Cockburn sent back a rather stiffly worded reply expressing his disappointment with the contents of the consul's letter. As to the statement in Bacon's letter concerning the acts of the attorney general while on board the Creole, Sir Francis stated that the consul's

version did not agree with the official report of the attorney general, a copy of which he included. As far as the governor was concerned the report made it quite clear that neither the attorney general nor any other official had anything to do with either the blacks leaving the Creole or their landing on shore. Governor Cockburn denied Bacon's request to send the prisoners to the United States on board the Creole, saying:

With respect to your request, that the nineteen persons who appear to have been implicated in the murder and other violences committed on board the Creole, when at sea, should be delivered over to you for the purpose of being secured and sent to America for trial, I can only refer you to the document already furnished to you by my order in Council, and by which it was already determined that the parties referred to should be detained here until instructions should be received on the subject from Her Majesty's government.⁵⁸

As can be inferred from Governor Cockburn's reply, the British version of the events which took place on board the Creole differs markedly from that of the Americans. Attorney General Anderson, in his report, corroborates the claim that there were several boats gathered about the Creole. He states that he visited each of the boats, not one or two as suggested by Woodside and Gifford, and found them "without arms," except for about a dozen "stout cudgels," which he had the individuals throw overboard. After reporting aboard the Creole, Anderson states that he carried out his examination and then separated those to be imprisoned from the rest of the blacks. He advised the prisoners that they were to be held until further information was received from the British government concerning their deposition. Anderson claims that he turned to Gifford and informed him, that "as far as the authorities of the island were concerned, all restrictions on the movement of the other persons on board the vessel were removed." He requested that the mate assemble

them on deck so that he might communicate the fact to them. According to Anderson, Gifford replied "that it was not his desire to detain on board his vessel any one of the persons (shipped as slaves) who did not wish to remain, and that they had his permission to quit her if they thought proper to do so." Additionally Gifford expressed the fear that those in the boats might commit some act of violence if the military were withdrawn, but Anderson assured him that the authorities would protect him against any violation of the law.⁵⁹

The attorney general claims to have then addressed the remaining people on board, informing them that the investigation was concluded and that "as far as the authorities of the island were concerned all restrictions on their movement were removed." He had no sooner concluded, he states, when "a white man who [he] was informed was a passenger of the name of Merritt addressed the people who had been shipped as slaves and told them that they were at perfect liberty to go on shore if they pleased, information which they appeared to receive with great pleasure and a general intimation of their intention to avail themselves of it."⁶⁰ Merritt later denied that he had made such a statement and maintained that he had informed the blacks that they might "stay on board" not "go on shore."⁶¹ Anderson, however, insists that Merritt had indeed made the statement and that, moreover, it was done in the presence of the chief mate, Gifford. The attorney general also claims that Gifford had declared to him and to several others "his perfect acquiescence in the measure and refused (tho' urged to do so by the Master of another American vessel who happened to be on board) to forbid the approach of the boats, several of which on signs from the negroes on board the Creole,

had been bro't near the vessel for the purpose of receiving them." Anderson states that he then left the Creole, prior to any of the slaves disembarking.⁶² In testimony taken later under a commission, the attorney general denied that he had mingled with the fleet of boats shaking hands and congratulating the blacks, or that the boats near the Creole were under his command. He denied further that he had told Gifford, "he had better make no objection or there might be bloodshed" or that he had used the words "you are free and at liberty to go on shore, and wherever you please," as had been stated in the New Orleans Protest. Anderson maintains that he had refrained from using such language purposely since he did not wish to intimate that there was any interference exerted on the part of the authorities on the island to enable the blacks to go ashore.⁶³

All the testimony of the British officials, taken under a commission and introduced later at the insurance trials held in New Orleans, supports the statements made by the attorney general concerning his actions, the remarks he made while on board the Creole, and Merritt's speech to the blacks. All those testifying are unanimous in declaring that the blacks left the brig voluntarily, without inducement or encouragement from the authorities. Their testimony contradicts the statements of the American witnesses regarding the number of boats around the Creole and the assertion that the magistrates had assisted the blacks into the boats.⁶⁴

Moreover, they are all of the opinion that the crew of the Creole were anxious to see not only the mutineers leave the ship, but the rest of the blacks as well. In contrast to the Americans' claim that they

had intended to capture the vessel and bring the blacks to New Orleans, the British assert that the whites on board seemed eager to be rid of their entire "black cargo."

Lieutenant Hamilton, the branch pilot, and a magistrate at Nassau, attest to the fact that Gifford had expressly stated that he had no desire to prevent the blacks from landing and in fact had expressed his determination not to go to sea again with them on board.⁶⁵ John Pinder, the inspector general of police, states that both mates of the Creole had told him of their wish to get rid of the blacks, as they considered their lives in danger "while the colored passengers continued on board, and declared that they would not proceed on the voyage with them." Pinder claims further that Stevens had informed him "that the chief mate and himself [Stevens] had told the colored persons, previous to his [Pinder's] going on board, that they could not be carried from this port contrary to their wish."⁶⁶ William Daltzell, a police sergeant who had acted as clerk in the taking of depositions, asserts that he "distinctly heard Mr. Gifford, Mr. Stevens and Mr. Merritt state, on the quarter deck of the brig, that they would not stop [stay] on board with the colored passengers if the authorities took away the military guard, as they did not consider themselves safe." Daltzell further states that "Mr. Gifford, the first mate, never did, by any means whatsoever, endeavor to hinder the colored passengers from leaving the vessel, but appeared more satisfied to be left on board by himself with the white passengers and the crew of the vessel."⁶⁷

Major Cobbe, of the 2nd British West India Regiment, states that there were not fifty boats filled with Negroes around the brig, as had

been suggested by the Americans, and that:

The number of boats, excluding those belonging to officers and persons in official capacities on board of the brig, did not exceed five, if there were so many. There was one large launch, and three boats were lying off about her, no boat having been allowed to come alongside except those which had brought persons officially occupied on board.⁶⁸

The impression left by the testimony of the American witnesses is that many of the blacks left the Creole only as a result of threats upon their lives, and that the five slaves who chose to remain on board had to secrete themselves in order to avoid being forcibly driven ashore. Of these five slaves, three were women, one a young girl of 13, and the last a nine-year-old boy, the son of one of the women. According to McCargo, all five had hidden themselves, either in the hold or the cabin.⁶⁹ Two of the five, who had been cabin servants on the voyage from Richmond, appeared to Gifford to be crying and did not know what to do. "One of them was a woman, perhaps thirty years of age, named Rachel Glover; the other, Mary, a mulatto girl, about thirteen years of age; the other two women had been in the hold all the voyage, and remained in the hold until all the others had left the vessel, saying that they did not wish such freedom as there was there."⁷⁰ The Americans were of the opinion that "many of the male slaves and nearly all of the female slaves, would have remained on the vessel and come to New Orleans, had it not been for the commands of the magistrates and interference [of the authorities]."⁷¹

British testimony contradicts this impression. Lieutenant Hamilton states that "as soon as the boats came alongside, they ordered that no person should come on board, and that the colored people jumped and scrambled into the boats as fast as they could, without a word being

spoken to them." Hamilton also claims that the five who remained on board were not hidden at all, and that "some of the people in the boats asked them, if they also were not coming."⁷² Major Cobbe states that it was false "that the slaves who returned to New Orleans, were obliged to secret themselves, inasmuch as he himself saw three of them, after all the others had left the vessel, upon deck, and before the guard and prisoners had been removed, and who were as much at liberty to go on shore as the other negroes, had they so desired."⁷³

Attorney General Anderson states in his report that "the inspector general of police, at the request of the mate remained on board of the Creole until the prisoners were removed, by which time, as that officer has informed me, only three or four of the persons shipped as slaves remained on board, and these expressing their determination to return with the vessel to America."⁷⁴ Gifford himself indicates that the blacks on shore knew that the five were on board and tried to get them to come ashore. "The black pilot, for one, took great interest in getting them on shore."⁷⁵

When the Creole first entered Nassau harbor, she was anchored just within the bar at the west end of the harbor, quite close to the northern shore and about a mile from the public buildings. According to the crew, the anchorage was a dangerous one "in case of a Northwest wind, and a place where vessels never remain if possible to prevent it."⁷⁶ The brig having remained there for three days, Consul Bacon felt it advisable to see the harbor-master, Mr. Tulford and request that the ship's position be changed. On November 12, the fourth day the Creole was in port, he visited Tulford, and stated that in his judgment:

spoken to them." Hamilton also claims that the five who remained on board were not hidden at all, and that "some of the people in the boats asked them, if they also were not coming."⁷² Major Cobbe states that it was false "that the slaves who returned to New Orleans, were obliged to secret themselves, inasmuch as he himself saw three of them, after all the others had left the vessel, upon deck, and before the guard and prisoners had been removed, and who were as much at liberty to go on shore as the other negroes, had they so desired."⁷³

Attorney General Anderson states in his report that "the inspector general of police, at the request of the mate remained on board of the Creole until the prisoners were removed, by which time, as that officer has informed me, only three or four of the persons shipped as slaves remained on board, and these expressing their determination to return with the vessel to America."⁷⁴ Gifford himself indicates that the blacks on shore knew that the five were on board and tried to get them to come ashore. "The black pilot, for one, took great interest in getting them on shore."⁷⁵

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the Creole was not anchored in a proper place, that in case of a north-west wind she would be in great danger of being driven on the rocks. He replied, 'It was so;' and on my request, promised immediately to have her warped further up the harbor, to a better situation. This not being done agreeably to his promise, I subsequently inquired of him, why he had not performed his promise. He replied, that it would have been worth his life or his commission, (I cannot be positive which), but on Saturday, the 13th November, 1841, he did it [after the slaves had been freed].⁷⁷

The new position of the Creole seemed to have proven equally unsatisfactory. Gifford claims that he had seen the Creole slaves about Nassau for several days after they were liberated. He talked with several of them and testified that they all expressed a desire to come to New Orleans, but were hindered from doing so because of a fear of the inhabitants of the island. One or two expressed a wish to be smuggled on board but the brig now lay "within half a gun shot of the barracks, just at the mouth of the fort" and the sentry could observe any activity in the vicinity of the ship.⁷⁸ Nevertheless, Merritt claims to have devised a plan to pick up several of the slaves below the barracks, out of sight of the fort, and bring them to the Creole in one of the small boats. However, when he went to pick them up, they said they were afraid and had been threatened by the islanders. According to Merritt, "they cried and expressed a wish to go on board--Many asked [him] to write a letter to Mr. McCargo which [he] declined doing. They then told [Merritt] to tell him they would come to New Orleans by the first opportunity."⁷⁹

Gifford claims to have received a letter on Monday the 15th, addressed to Captain Ensor, but delivered to him as master of the Creole in the Captain's absence.⁸⁰ As if adding insult to injury the letter "demanded the immediate delivery of the baggage of 54 slaves of the

Creole, and threatened proceedings at law unless the demand was immediately complied with."⁸¹ Gifford adds that he answered the letter refusing the demand, whereupon the attorney general sent an officer on board who ordered the baggage brought on shore. Gifford again refused but a Customs Officer "carried all the baggage of the negroes ashore, and a bale of blankets which had never been opened."⁸² Consul Bacon relates a somewhat different version of this story. He claims to have counseled Gifford to give in rather than to attempt to contest fifty-four legal suits at a cost of three guineas each. The consul advised him that the court would be one of inferior jurisdiction from which no appeal could be made and that the juries, as far as he had observed, "were mostly comprised of colored people, never having seen more than two white persons on a jury at a time."⁸³

The next day, Tuesday the 16th, Gifford, in company with the consul, attempted to sell a portion of the ship's provisions to help pay the expenses incurred by their stay at Nassau. They now had more provisions than were necessary for the rest of the voyage. They consisted primarily of beef, pork and navy bread. The collector of customs refused to grant them permission to land the goods unless the Creole slaves were listed as passengers on the customs records. Gifford and the consul refused to do so and they were, in turn, refused permission to land the provisions.⁸⁴

Bacon states that shortly after the blacks had been freed, he was informed that a schooner, the Francis Cockburn, owned by John Pinder, was to sail for Jamaica in a few days with certain emigrants as they were called.⁸⁵ Gifford claims that the vessel had been advertised in the paper and that passage was free. He asserts further that he had

been told by the American consul and a Mr. Stark, an agent for the Baltimore and Boston Insurance companies, that the vessel had been "put up by the authorities at Nassau, to carry the slaves who came on board the Creole to Jamaica, and such was the general understanding among all whom he conversed with on shore."⁸⁶ The ship had not yet left when the Creole cleared Nassau, but Bacon reports that the ship sailed on November 18 for Jamaica with between forty or fifty of the Creole slaves on board. He adds that, subsequently, another vessel sailed for the same destination shortly afterwards, with more of the slaves from the Creole.⁸⁷ Attorney General Anderson denies that the vessel had been put up by the officers of the colonial government or that he had had a hand in obtaining the baggage of the blacks. He adds that a number of those who had arrived on the Creole were still in Nassau and that others had left for Jamaica, he believed, but he knew nothing for certain on the latter point.⁸⁸

The Creole cleared Nassau on Thursday, November 18 bound for New Orleans. Captain Ensor and another member of the crew named Charles were left behind. Two other seamen stranded at Nassau shipped aboard the Creole for the voyage and aided the short handed crew in working the ship.⁸⁹ The brig made the southwest Pass at the mouth of the Mississippi on December 1 at 7 o'clock in the morning. She crossed over the bar in tow of the steamboat Shark and reached New Orleans on December 2.⁹⁰

III

News of the mutiny quickly circulated throughout the city of New Orleans. The newspaper Le Courrier de la Louisiane carried a brief account of the mutiny along with extracts from the log book of the Creole and from a letter of Consul Bacon to the editor of the New York Journal of Commerce. The Courrier labeled the events that had occurred on board the Creole "a fair comment on the doings in the case of Amistad" and suggested that the government of the United States could "remonstrate with an ill grace against the course pursued by the magistrates of Nassau, after what has been done by American judges at New London." This was in reference to the freeing by an American court of African slaves who had siezed control of a Spanish slaveship and brought her into American waters. The editors of the Courrier went on to urge that southerners should not remain silent nor "submit to outrages that threatened the overthrow of their social institutions." The article also hinted that the mutiny on board the Creole might have been planned before the vessel left Richmond.¹

The Daily Picayune carried a more detailed account of the revolt and indicated that the slaves had been advised as to the ship's course and given directions on how to undertake the mutiny by a Baptist minister at Norfolk, named Bourne. Gifford, the article related, had learned at Nassau "that Bourne had formerly resided there, and had absconded, leaving his family. He is an Englishman, and about forty years of age." That the "entire scheme was resolved upon before the brig left Richmond

is evident," the article concluded, "from the fact that the negroes boasted at Nassau that they expected to encounter the brigs Long Island and Orleans, which sailed from Richmond in company with the Creole, with cargoes of slaves. . . . Both of those vessels, however, are safe in port."²

The Commercial Bulletin on the same day carried a similar story concerning Bourne, along with the full text of Consul Bacon's letter to the New York Journal of Commerce. Its editors called the revolt a "shocking outrage . . . which . . . cannot fail to excite in our community a profound sensation. The circumstances of the mutiny and massacre, are of themselves sufficient to harrow up the feelings to the highest pitch." "But," they maintained, "when in addition to the causes of excitement, the inhuman proceedings of the British are brought into view, there is no telling where will be the limit of the public exasperation." The editorial continued pugnaciously, "It cannot be that our government will longer submit with tame acquiescence to such gross and oft repeated invasions of our national rights. Remonstrance and expostulation has been tried long enough. If Great Britain will not listen to the voice of reason, resort must be made to some other mode of bringing her to her senses." After acknowledging that Congress was about to convene and expressing the hope that an amicable solution might be attained by that body, the article concluded darkly that "the present controversy wears an aspect more menacing than any dispute that for years past has threatened a rupture of our peaceful relations with Great Britain."³

The Courrier de la Louisiane adopted an even more belligerent tone:

that insolent and intolerable meddler, John Bull, must be held responsible. And should he persist in his outrageous course, there can be no other alternative left, but for the American Eagle to make such a noise about his ears, as will awaken him from his fancied security; considerably lighten the British exchequer; arrest the practical proceedings of fanatics on both sides of the water; and punish the hypocrites, whose end and aim is the destruction of Southern prosperity --American liberty and independence.⁴

The Louisiana Advertiser displayed an equally threatening attitude.

"This affair of the Creole is the cap-sheaf of British aggression upon American rights," it proclaimed. "It strikes at the root of our intercourse with Great Britain, and overturns at one blow all our relations, amicable and commercial. If it be not properly discountenanced . . . there can be but one course for the United States to pursue--a course that the pride, honor and dignity of the nation will sternly demand the execution of."⁵

Although the Advertiser seemed unwilling to specify what that course might be, the Bee had no doubt of the policy to pursue:

The refusal of the British authorities to deliver wretches implicated in this atrocious transaction, to the jurisdiction of the country in which they are held as slaves, adds another item to the dark catalogue of outrages upon American rights committed by the English Government. It will, we trust, form an important future in the deliberations of Congress in the subject of the grievances which American property and American citizens have suffered through the arrogance and despotism of the minions of the British Crown. The trite adage that there is a point beyond which forbearance ceases to become a virtue, was never more applicable than to the tame and spiritless manner in which our diplomatic intercourse with Great Britain in regard to her haughty assumptions of power over the flag and property of this confederacy, has been conducted. Better a dozen wars with all their attendant horrors, than the everlasting reproach of pusillanimously submitting to encroachment and tyranny which become more odious and exacting in proportion to the humility with which they are endured.⁶

The New Orleans press constantly made comparisons between the cases of the Amistad and that of the Creole. In two separate articles the Commercial Bulletin examined the legal differences in the two cases and reviewed the history of British policy in the West Indies concerning slave ships wrecked or driven into port there by storms. The Bulletin felt that there was a "marked difference" between the two: "In the Armistead [sic] case her traffic was forbidden by the superior laws of Spain, [she was engaged in the illegal international slave trade] and it was by those laws, fairly exhibited and proven in our courts, that the Africans were set free. But in the case of the Creole, the slaves were being transported on an American bottom, under the flag and according to the laws of this union."⁷

The second article in the Bulletin quoted the following paragraph from the Mobile Register and Journal:

The right to protect slaves who have killed their masters, and run into British islands with a stolen vessel, is but another form of the principle already announced by the British government: that her own statutes abolishing slavery, control the law of nations, and put out of the pale of the comity, not to say the justice, due civilized nations, both the property of slave owners, and the flag that covers such property.⁸

The comment went on to review the status of negotiations between Great Britain and the United States concerning such cases. As the author of the editorial noted, the brigs Comet and Encomium had been wrecked in the Bahamas prior to the passage of the British Emancipation act, yet the slaves on board both vessels had been freed. In both cases the British government had agreed to indemnify the owners for their loss. But in the case of the schooner Enterprise, which had been forced to seek refuge at Port Hamilton in Bermuda during a storm,

subsequent to the passage of the Emancipation Act, the British refused to reimburse the owners for the loss of their slaves. Again, in the summer of 1841, the same procedure was adopted when the brig Hermosa, with which the Creole blacks were familiar, was wrecked on the island of Abaco. The slaves were freed and the owners were refused indemnity by the British government.

The writer of the article then attempted to point out the difference between the Amistad case and the Creole incident:

Some persons speaking hastily, have treated this case as like, in some respects to that of the Amistad. But they are essentially different in this important fact--that the Amistad negroes were not held to service lawfully in the country under whose flag they sailed, when they seized the vessel and brought her into American Waters. The advocates of these negroes went before the courts to show, that they were not slaves by the law of Spain . . . [nor] by the laws of the local jurisdiction from which they came. Here [in the case of the Creole] it is the assumption merely that the negroes are free, by force of the local laws into which they brought themselves by felony against the law of their own sovereign.⁹

Here, then, was clearly indicated a fundamental question as to the interpretation of laws pertaining to slavery. The British government and most abolitionists held to the "municipal theory of slavery." This contended that slavery was protected only by the force of local laws, and once a slave was removed from the physical boundaries of the state or nation wherein those laws were in force, he was no longer subject to them and was free. Ships of a state or nation engaged in lawfully transporting slaves from one port to another would be free from British interference unless they came under the jurisdiction of the municipal laws of a British port or a British possession. This of course did not apply to ships engaged in the illegal "international slave trade,"

which could be stopped, searched and impounded wherever found in international or British waters.

Advocates of the municipal theory of slavery maintained that vessels such as the Creole came under the jurisdiction of British laws once they entered a British port. Many abolitionists went one step further and insisted that a slave on board a vessel on the high seas came under the jurisdiction of the nation whose flag the vessel flew and not that of the slave state from which the voyage originated. Since the United States had no national law explicitly protecting slavery, a slave would be free once he came under United States rather than local or slave state jurisdiction. Thus a slave on the high seas on a vessel flying the United States flag was in this opinion a free man.

The position of the United States government was in decided contrast to that of the abolitionists. Secretary of State Daniel Webster articulated this view in a letter to Lord Ashburton, dated August 1, 1842. Webster maintained that a "vessel on the high seas, beyond the distance of a marine league from the shore, is regarded as part of the territory of the nation to which she belongs, and subjected exclusively to the jurisdiction of that nation." He insisted that national law "could not adversely affect property or persons brought into territorial waters" and since domestic slavery was sanctioned by the Constitution of the United States, the British officials could not interfere to change the relationships of those on board American vessels.¹⁰

The Daily Picayune on January 12 printed a report from a correspondent in Jamaica, where many of the blacks from the Creole had settled:

The arrival of the negroes; who were on board the Creole, gave great satisfaction to the abolitionists, who are composed

of the government party in the island. The conduct of these murderers is applauded as heroic; and they base their defense on law on the assumption which must be startling to American ears. It is this: the track of American vessels, sailing from a northern port into the Gulf of Mexico when opposite the "Hole in the Wall" [a well known mariners landmark] is British ground and that negroes, held in bondage, when arriving at that point, are absolutely free by the laws of Great Britain, and are held justified in rising upon those having them in control. This is a new proposition to our citizens and if the government at home sustains such a claim, there will be another boundary question; which must call for a more speedy settlement than any we are adjusting now [an allusion to the unsettled northern boundary between Maine and Canada].¹¹

The Picayune reported the highlights of a discussion held in the House of Lords on January 14, in which the British government's intention to free the Creole mutineers was made known. The decision was based on the lack of an extradition treaty between the two nations. The action was described by the newspaper as "holding out inducements to our colored population to engage in acts of insubordination and deeds of Blood. . . . It is a covert approval of the most heinous crimes."¹² A reader in the Commercial Bulletin called for an embargo on "articles of English growth or manufacture," while the editors condemned the British cabinet's decision as a "pretext . . . for screening from punishment a gang of murderers." They warned Britain against "wantonly sporting with the feelings, and tampering upon the rights of a magnanimous and powerful nation," and stated that England was "not wise to provoke an adversary so likely to prove an acceptable auxiliary to the host of starving malcontents in her manufacturing districts, that famine and misrule are driving to madness and to insurrection."¹³

In March the Picayune quoted an editorial which had appeared in the Washington Globe, the official Democratic party voice and outlet

for President John Tyler's administration:

Our position briefly is, that illegal force, murdering violence, can give no jurisdiction to England over property or persons belonging to the United States; that the Creole, under the circumstances, was as much within the jurisdiction of the United States as if within our own waters. Neither the slaves on board of her nor the murderers were amenable to the British laws or British seizure; when, therefore, the officers at Nassau entered this vessel, and took from thence the forty mutineers and murderers, they committed as gross an outrage on the sovereignty of the United States, as if they had sent an expedition to the shores of Virginia, and taken them from a jail in Norfolk. The whole question is one of mere power; and the nation that cannot enforce its own rights, it may be assured, will never have them respected by other nations.¹⁴

Congressman Joshua Giddings of Ohio on March 21, 1842, presented to the House a series of resolutions concerning the Creole and affirming the municipal theory of slavery.¹⁵ The resolutions were calculated to infuriate the proslavery element of Congress and to goad them into actions which might result in the repeal of the so-called "gag rule": resolutions prohibiting the reading of antislavery petitions in the House chamber.

Proslavery reaction was immediate, the House by a large majority censuring Giddings the next day. Southern Whigs and northern and southern Democrats united to discipline the Whig congressman from the Western Reserve.¹⁶ Giddings, given no chance to defend himself, resigned and returned to his constituency to file immediately for reelection.¹⁷ The Whig party organization worked actively to defeat Giddings in order to enforce party discipline, viewing Giddings' action in presenting the resolutions as a threat to the unity of the party by dividing it into antislavery and proslavery elements. The Democrats were happy to

encourage this intraparty discord, supporting the vote of censure and opposing Giddings' re-election. Giddings was returned, however, with a resounding mandate, but with a smaller majority than that won in his previous election.¹⁸

The Daily Picayune published a copy of the Giddings resolutions and predicted passage of the censure resolution proposed by John Botts of Virginia.¹⁹ When censure was indeed voted the Picayune exulted that Giddings had been "summarily disposed of." The Washington Globe was again quoted extensively, repeating that publication's erroneous report that Giddings had refused to say anything in his defense, when as a matter of fact he had been denied such a privilege:

At first Giddings pretended a wish to speak of his resolutions and himself; but although pressed on all sides to come forward and declare the grounds on which he was disposed to place himself, he concluded that to go home unheard would best accomplish his purpose; he therefore determined to resign and go home, and to assail the Congress of the Union, as the best plan of compassing his designs: he would thus at once make himself a martyr, go home to his district, and appeal there for consolation. This would give him notoriety. His resignation would be immediately followed by a re-election: he would come back with eclat, again to insult Congress; and what no doubt will be an agreeable accompaniment, he will come back with about nine hundred dollars mileage money! to console him for the sacrifice of his comfort in making this journey to Ohio and back again.²⁰

The Picayune also noticed Giddings' re-election by observing that "Giddings, the abolitionist, passed through Pittsburg on the 7th, on his way to Washington, to resume his seat in Congress. We cherish no particular feeling of malice towards Giddings; our worst wish is that he may go home and find that the color of his wife and children is as black as the doctrines he advocates."²¹ And it later returned to the attack with another observation:

The man Giddings seems determined to make a fuss, at all hazards. The Charleston Courier says he will renew his resolutions approving of the conduct of the Creole negroes in mutiny and murder, and maintaining that Great Britain ought not to be called on to surrender them, or make compensation for them. Some have expressed already a determination to adhere, with as much pertinacity as Mr. G. himself to their own previous course and censure him again. He will then, it is supposed, return to Ashtabula county, Ohio, and be again elected. His majority at the late election, after all the boasting as to the support of his constituents, was two thousand less than at his previous election. At the same rate of decrease he would be sent back but twice more.²²

Giddings did introduce his resolutions once again but despite the Picayune's prediction, he was not censured. The Whig party, obviously impressed by Giddings' mandate and unwilling to destroy the party by exacerbating internal differences, merely allowed him to express his opinions as he willed. Despite the protests of angry southerners he was permitted to introduce antislavery petitions at will and for all intents and purposes the gag rule ceased to operate.²³

IV

During all this commotion at home, Consul John Bacon at Nassau had been left in the dark concerning the State Department position on the Creole. On March 8, 1842, he wrote to Webster complaining "I am without any advice from your Department since the 1st July last, and am yet to learn whether my communication and documents in the case of the Brig Creole have been received."¹

Bacon had been given additional reason to feel confused when Timothy Darling, a native of Calais, Maine, had arrived on March 1, 1842, announcing that he had been appointed consul.² Bacon had assumed his duties in July, 1840, and had been consul for less than two years when he was thus abruptly replaced. There seems to have been no stigma attached to Bacon's service as consul, since he was reappointed to his old post at Nassau in 1845.³ But his abrupt dismissal in 1842 caused some comment. An anonymous contributor to the Southern Quarterly Review wondered about Bacon's recall:

It was a removal astonishing, because it took place soon after Mr. Bacon's praiseworthy and efficient exertions in the case of the brig Creole. Will the friends of Mr. Tyler explain the equivocal circumstances connected with this removal? Can they inform the public why it was done? Was it to operate as a punishment upon this officer for his presumptuous conduct in seeking to bring to punishment the mutineers of this vessel: or as a lesson of humility to the gasconade of Great Britain? or was it affected through the influence of American Statesmen, as a peace-offering to the large abolition influence existing North of Mason and Dixon's line?⁴

Darling assumed his duties on March 30. That same day Governor Cockburn advised him that his own instructions forbade surrender of the mutineers to the American authorities. Governor Cockburn added that the law officers of the Crown were of the opinion that the only charge which could be brought against the prisoners was that of piracy. However, even this charge they felt could not be proven. The governor concluded by suggesting that if the consul wished to advance the charge of piracy a special session of the Admiralty Court would be called and every facility would be afforded him for preferring the accusation.⁵

Darling was unsure of the proper path to pursue and simply replied by asking that the governor keep the accused in confinement until he had had time to consult with the State Department.⁶ Governor Cockburn refused, stating that he did not feel that his instructions allowed him to hold the blacks in confinement for this purpose. In more direct response to Darling's request, Cockburn announced his convening of the Admiralty Court and repeated his comments as to its availability for the consul's charges.⁷

As Darling saw it, he was left with but two alternatives: the first was to decline preferring the accusation of piracy, in which case the prisoners would be freed immediately; the second was to prefer the charge in the hope of gaining time to communicate with his government and to receive their instructions.⁸

He chose the latter alternative, primarily because he did not wish to assume the responsibility of the immediate liberation of the prisoners. Additionally, because the governor had promised him the use of all available facilities, Darling "had reason to believe that time

necessary to procure the only witnesses by whom the charge of piracy would possibly be sustained would be granted, if there existed any real desire on the part of the government to bring these persons to justice." Lastly, Darling felt that if time were granted for procuring witnesses and the United States government disapproved of his actions, all further proceedings could easily be stopped.⁹ He therefore informed Governor Cockburn that he wished to avail himself of the proffered assistance of the attorney general "in endeavoring to bring to justice the persons now confined in jail in this town for felonious acts committed by them on board the American Brig Creole."¹⁰

Darling furnished the attorney general with the depositions sworn to by the officers, crew, and passengers of the Creole. Three of the female cabin passengers who had been slaves on board the Creole and were still living on the island were examined, but nothing material was learned from their statements. There was no possibility of obtaining a bill of indictment with such testimony and the consul requested that the prisoners be remanded until the regular session of the court on June 28, grounding such a motion on the several affidavits and depositions taken before the British authorities and himself. This, he hoped, would give him time to bring various witnesses from the United States.¹¹

On the morning of April 16, 1842, when the prisoners were brought before the special session of the Admiralty Court the attorney general moved for remanding of the prisoners and adjournment of the court until its regular session. The court took the motion under advisement and adjourned for a brief time to examine the papers presented by the attorney general. After a short consultation the chief justice delivered their opinion. As Darling reported them, the principal points were:

1'st These persons held in bondage as slaves, had a natural and inalienable right to regain their freedom in the manner they did.

2'nd This court had no jurisdiction of the offences, 'Mutiny and Murder,' when committed by aliens on board a vessel belonging to a foreign Government.

3'rd The crime of piracy defined,--In this case the Chief Justice remarked that the only testimony which went to prove the charge of piracy was contained in the deposition of Jacob Leitnier [sic], and that with regard to this man it appeared that he was one of the persons who signed the protest at New Orleans--(this however was not the case--) and that if all the persons who signed that protest were present to give their testimony, he should feel it to be his duty to charge the jury not to believe them upon their oath.¹²

Darling then added: "After this declaration from the court it is perhaps needless to add that the motion of the attorney general was rejected, and the prisoners set free by proclamation." In conclusion the consul stated that he hoped his part in the affair would not meet with censure, especially considering the peculiar circumstances under which he was forced to act.¹³

Despite the sensational aspect of the Creole mutiny and the initial hysterical response of the South, the case was quickly dropped by the newspapers in New Orleans. The Picayune announced the dismissal of the charges against the 19 mutineers with a brief statement: "Captain Barker of the brig Morning Star, at Wilmington, N. C., from Nassau N. P., states that previous to his sailing, at a special court of Oyer and Terminer, at Nassau, the nineteen mutineers and murderers of the Creole were brought up and discharged by proclamation, with liberty to go where they pleased."¹⁴

The actions of the colonial authorities in freeing the Creole blacks and later the mutineers created a problem for Lord Ashburton. He had left England in early 1842 on a special mission to America. He

had hoped to settle many of the problems causing tension between the United States and Great Britain, including settlement of the Canadian-American boundary along the St. Johns River in Maine; the lack of an extradition treaty between the two nations; and the problem of the right to search vessels flying the United States flag but suspected of being engaged in transporting slaves illegally from Africa.

Upon reaching Washington Ashburton found President Tyler considerably irritated over the Creole case, which quickly became a thorn in Lord Ashburton's side. He wrote to Lord Aberdeen, British secretary of state for foreign affairs, stating: "The President as a Virginian, has a strong opinion about [the] Creole case and is not a little disposed to be obstinate on the subject."¹⁵ The president wanted a promise that in the case of a like mutiny in the future, the slaves involved would be returned to the United States. Ashburton was unable to make that promise, since Lord Aberdeen had earlier made it clear that no such guarantee would be given. In late May, 1842, he had written to Ashburton, saying:

Touching on the Creole affair, I very much fear it will be impossible to give any positive security against repetition of the same kind of proceeding. It is quite clear, that driven by stress of weather, or forcibly brought within British jurisdiction, the slaves must at once be free. In a British port, we could not place them at the mercy of the American Consul for an hour.¹⁶

Aberdeen had considered suggesting that Ashburton propose an extradition treaty with a clause concerning mutineers. The difficulty of identifying attempts of slaves to win their freedom as mutiny precluded any real hope that any such clause could be embodied within the treaty. Lord Aberdeen indicated that such a treaty would "require an Act of

Parliament to carry it into effect" and he doubted that "with such a provision as this it would meet with the necessary assent of the two houses."¹⁷

Tyler became even more obdurate. Until he received some satisfaction concerning the Creole, he refused to enter into an agreement concerning a cruising convention, by which United States naval vessels would aid British ships in patrolling the coast of Africa to help in the suppression of the international slave trade. The success of Ashburton's entire mission appeared to hinge upon giving the president some assurances concerning future cases like the Creole. In a letter addressed to Lord Aberdeen on June 29, 1842, he complained:

you will see that I am in a somewhat awkward position, and you My Dear Lord, have not contributed much to get me out of it. I have given up my dream of making a popular Treaty which would have exhibited us to the Disturbers at Paris as on terms of undisturbable amity with our Brethren in America, and I am only looking to make my exit if possible without the loss of my Boundary and cruising Conventions.¹⁸

Webster was well aware that he could not demand the return of the Creole mutineers as felons since the United States and Great Britain had never signed an extradition treaty. He also knew that in the light of established British policy it would be equally futile to request the return of the Creole blacks as escaped slaves. He therefore based his demand for the return of the mutineers and reparation for the other blacks on the well recognized principle that local authorities should render assistance to vessels in distress, belonging to a friendly nation. In January, 1842, he wrote to Lord Ashburton contending "that comity under the law of nations obliged local authorities to assist the master and crew of a vessel brought into port by mutineers in

regaining control of the vessel and property (not excluding slaves) and in resuming their lawful voyage." He maintained that the authorities in Nassau "had created a situation which required reparation for damages and security for correct future conduct."¹⁹ In a letter to Edward Everett, American ambassador to the Court of Saint James's, Webster attempted to clarify the American position:

We did not make any demand for fugitive slaves; no such thing: we well knew that when slaves get on British ground they are free. Nor did we ask England to enter into any stipulation by treaty, which should interfere with this general principle of English law. Nor do we, in the absence of treaty provisions, demand the surrender of fugitives from justice. . . . But all this is quite remote from what we hold to be our right, according to the laws and usages of nations in such cases as that of the 'Creole'. . . . I deem it indispensable to the quieting of excited apprehensions, allaying resentments, and giving just security for the future, that some regular stipulation be entered into, or at least some authentic declaration given, that the British Colonial authorities shall be made to respect the rules which usually regulate the intercourse of friendly States their citizens and subjects.²⁰

Directly involved with the case of the Creole was the security of ships operating in the Bahama channel. Rough seas often drove American vessels into British ports or cast them up on British beaches as had been the situation in the cases of the Comet, Encomium and Hermosa. In these instances the slave cargoes were irrevocably lost to their owners. In a letter to Lord Ashburton dated August 1, 1842, Webster argued:

If . . . vessels of the United States, pursuing lawful voyages from port to port along their own shore, are driven by stress of weather, or carried by unlawful force into English ports, the government of the United States cannot consent that the local authorities in those ports shall take advantage of such misfortunes, and enter them for the purpose of interfering with the conditions of persons or things on board, as established by their own laws.²¹

Webster then suggested:

If your Lordship has no authority to enter into a stipulation by treaty for the prevention of such occurrences hereafter . . . you may still be so far acquainted with the sentiments of your government as to be able to engage that instructions shall be given to the local authorities in the islands, which shall lead them to regulate their conduct in conformity with rights of citizens of the United States.²²

The Creole had proven to be a disturbing issue to Lord Ashburton and his exasperation was humorously expressed in a note accompanying some thoughts on the case, which he sent to Webster: "My Dear Mr. Webster. Using the words of Walter Scott when he sent one of his works to his publisher--I send you my Creole--D--n her.--"²³

Ashburton in a later communication hinted that perhaps the delicate question could only be settled in London. He did promise, however "that instructions shall be given to the governor of her Majesty's colonies on the southern borders of the United States to execute their own laws with careful attention to the wish of their government to maintain good neighborhood, and that there shall be no officious interference with American vessels driven by accident or by violence into those ports."²⁴ That Ashburton had the authority to make such a promise is doubtful.²⁵

Both Webster and Ashburton were quite anxious to conclude the treaty between their respective nations and were probably willing to make statements and accept vague concessions that otherwise might have been considered unsatisfactory. Webster had been attempting to walk the fine line between southern slaveholders and northern abolitionists and at the same time conclude a successful treaty with Great Britain, even though hampered by the obstinacy of President Tyler. In the end

he satisfied no one. While southerners considered him a tool of the abolitionists and as "sanctioning the views of the British ministry," northerners felt he had "sold himself to slavery and the south."²⁶ As for Ashburton, his difficulties in settling the Creole case are evident from his statement, "My great plague was the Creole."²⁷

Although debate continued at the national level, of more immediate concern to the owners of the Creole slaves was the question of remuneration for the loss of their investments. The Creole slaves had been insured by four New Orleans insurance companies: The Merchants' Insurance Company of New Orleans, the Fireman's Insurance Company of New Orleans, the Ocean Insurance Company, and the New Orleans Insurance Company.

Thomas McCargo of Halifax County, Virginia, had insured 26 slaves with the New Orleans Insurance Company for a total of \$20,800 or \$800 per slave.¹ The company refused to reimburse McCargo for the loss of his slaves and he took the case to court.² On December 22, 1842, the Daily Picayune announced that the McCargo insurance case had been in progress for two days before Judge Watts and the Commercial Court and on December 30 it reported that the trial had been concluded the previous day with McCargo being awarded the full amount.³ Actually the jury made a \$2400 deduction from the full amount claimed. Four of the slaves McCargo had insured were involved in the mutiny and the jury felt he should share the loss with the insurance company. Thus a deduction of \$1600, half the cost of the four slaves, was made. An additional \$800 was subtracted from the total awarded, representing the value of one slave who had returned to New Orleans on board the Creole.⁴ The insurance company appealed the decision and Judge Charles Watts of the Commercial Court signed the appeal, returnable in the Louisiana Supreme Court on the third Monday of February, 1844.⁵

On January 3, 1843, a second case came before Judge Watts. McCargo was again the plaintiff and sought to recover \$15,200 from the Merchants' Insurance Company, the insurance on 19 slaves valued at \$800 apiece.⁶ Balie Peyton and Isaac W. Smith, the lawyers for the plaintiff, argued that the loss of the slaves had been occasioned by the interference of the British authorities in Nassau while Thomas Slidell, Judah P. Benjamin and Francis B. Conrad, for the defendants, maintained that the slaves had deserted, and since the policy contained a special clause warranting the insurance company free from the responsibility of payment in case of suicide, desertion or natural death, the defendants should not be forced to pay. When Judge Watts made his charge to the jury he urged them to consider only whether the loss was due to one of the risks assumed by the company or by reason of the special exception, as the defense maintained. He further instructed them that the special clause, the most important word of which was "desertion," did not exempt the company from liability as concerned mutiny or insurrection.⁷

Judge Watts explained that when the Creole entered Nassau harbor the authorities were bound, in his opinion, to recognize the relations of persons on board as they existed according to the laws of the United States. No foreign power, he insisted, had any right to control or affect the relations of persons on board the Creole. If those on board were prevented from reasserting control over the blacks by the actions of the British authorities then the jury was to consider the act as one of foreign intervention in which case the insurance company would be held liable. Moreover, if the captain and crew had failed to attempt restoration of their control of the slaves once in Nassau because

of fear that British authority would resist such action and punish them for it, this comprised passive rather than direct interference but was still to be considered a "positive restraint" and could be construed as foreign interference. Finally the judge expressed the hope that members of the jury would consider the case solely on its merits and would ignore the appeals which had been made to their emotions.⁸

The jury returned a verdict in favor of McCargo for \$14,400, rejecting the \$800 claim made for one of the slaves who had continued on to New Orleans on board the Creole. The defendants filed a bill of exceptions and an appeal was allowed returnable in the Supreme Court in February, 1844.⁹

On January 17, 1843, a similar case was heard by Judge Watts, in which Edward Lockett of Richmond, Virginia, brought suit against the Merchants' Insurance Company for \$10,000, insurance on 15 slaves from Richmond to New Orleans.¹⁰ The case was submitted to a jury comprised of nine of the 12 men who had tried the McCargo case against the Merchants' Insurance Company.¹¹ Since the policies were the same in both instances the jury immediately rendered a verdict in favor of the plaintiff for \$9,333.33, subtracting \$666.33 for one slave who had returned to New Orleans.¹²

On the same day, Judge Watts sat on a second case involving Lockett. This was a suit filed against the Fireman's Insurance Company of New Orleans for \$20,000, insurance on 26 slaves.¹³ Whereas the other insurance companies had united in commissioning testimony from various individuals and officials at Nassau, the Firemen's Insurance Company in this instance obtained the depositions from three witnesses at Nassau, which

was all the testimony they offered at the trial.¹⁴ The three witnesses, John James Burnside, surveyor general of the Bahamas, William Daltzell, sergeant in the police force of New Providence, and Robert Duncome, police magistrate of the island of New Providence, gave essentially the same version as to what had occurred after the Creole reached Nassau. They maintained that the authorities had made no effort to coerce the slaves into going ashore, and claimed additionally that at no time had the captain or crew been threatened or intimidated by any official or representative of the colony.¹⁵ The plaintiff, represented by the firm of Peyton and Smith, submitted as evidence a group of cross interrogations which had been presented in all the Creole insurance cases.¹⁶ The questions appeared to be aimed at demonstrating the antislavery attitude of the officials at Nassau and at proving that there was active participation on the part of the British officials in the freeing of the Creole slaves.¹⁷ When the case was turned over to the jury on January 21, they were unable to reach a verdict and were dismissed.¹⁸

During a retrial which began on March 8, the jury was informed that the 19 mutineers had been freed by the British authorities at Nassau.¹⁹ In his charge to the jury Judge Watts observed that "the case had been treated as if it was a law suit between the Governments of the United States and Great Britain or as a law suit between the plaintiff and Government of Great Britain, and their passions and feelings had been strongly appealed to in this point of view."²⁰

Since the insurance policy contained a clause warranting the company free from liability for insurrection, Peyton and Smith attempted to prove that the loss was occasioned by the interference of the British

authorities and not by the revolt of the slaves.²¹ Randell Hunt, Henry Lockett and W. C. Micou, lawyers for the insurance company, insisted that the mutiny or insurrection was indeed the cause of loss. The judge instructed the jury that if they believed that a mutiny had occurred and that the slaves or any part of them had obtained control of the vessel and entirely released themselves from all subordination, this was considered to be a capture by mutiny and a total loss of all the slaves. If this were the case, the jury should find for the insurance company regardless of the role the British had played. If, however, the slaves had at any time subsequent to the mutiny been returned to the control of their owners and had then been liberated by the British authorities, they should find for Lockett. He further instructed the jury to consider a mutiny to be attributable to all the slaves, not only to those taking an active part in the uprising. Concerning the role of the British, Watts ruled, it was to be considered that British policy instantly subjected to British intervention all slaves on board an American ship entering a British port.²²

The jury, apparently confused by the charge of the judge, found for the defendants, the insurance company, while also finding that the plaintiff's slaves were set at liberty by the interference of the British authorities.²³ The plaintiff objected to such a verdict and asked for a new trial on the contention that the decision actually found for both defendant and plaintiff.²⁴ Judge Watts, in denying motion for a new trial, states:

That part of the verdict of the jury which speaks of British interference must be considered wholly in relation to the obligation and duties of the British government

under the law of nations. . . . I have no hesitation in expressing the most decided opinion that as between plaintiff and defendants on the special contract of insurance the slaves must be considered as lost by mutiny but that as regards the owners and the question between the two governments it is to be considered that they were lost by British interference because the British authorities at Nassau instead of acting in accordance with their duties and obligations under the law of nations and rendering assistance as they were bound to do, did in violation of the law of nations apply their municipal law in order to liberate the slaves.²⁵

The case was then appealed to the Louisiana Supreme Court.

Three suits filed against the Ocean Insurance Company were argued before Judge Watts between February 6 and 14, 1843, and submitted to the same jury. James Andrews and Charles Hatcher of New Orleans had insured eight slaves for \$3300; Sherman Johnson of New Orleans had insured 23 slaves for \$15,000; and John Hagan, also of New Orleans, had insured nine slaves for \$6,500.²⁶ Like the policies issued by both the New Orleans and the Firemen's Insurance Companies, those issued by the Ocean Insurance Company contained a clause protecting the insured against foreign intervention but warranting the company free from liability for insurrection.²⁷ These cases were argued on the same bases as the others and the jury found for the insurance company in all three instances,²⁸ leading various plaintiffs to appeal thier cases to the Louisiana Supreme Court.

In the Supreme Court trials a rather remarkable brief for the defendant was prepared by the law firm of Slidell, Benjamin, and Conrad in the case of Edward Lockett vs the Merchants' Insurance Company.²⁹ Louis Gruss ascribes authorship of this brief to Judah P. Benjamin, later a noted United States senator and cabinet member of the Confederate government. The tone of the brief more nearly reflects the attitude of

a great number of northerners who opposed slavery, rather than that generally ascribed to most southerners concerning that institution.³⁰ Benjamin maintained that the Creole had deviated from its prescribed course from Richmond to Norfolk, making several unauthorized stops to take on slaves during its passage down the James River. In addition the vessel had been anchored in Hampton Roads rather than at Norfolk, where several McCargo slaves had been placed on board. The McCargo slaves it was noted were insured from the port of Norfolk and not the roadstead.³¹

Moreover, Benjamin maintained, the Creole was unseaworthy. The absence of the captain at certain times while the vessel was descending the James River was considered sufficient cause to declare the ship unseaworthy. In addition the Creole was rendered unseaworthy by reason of the lack of sufficient arms and neglect of proper precautions to preserve discipline and order among the slaves.³² The number of slaves carried on board the Creole Benjamin stated, constituted a dangerous overcrowding of such a small vessel and comprised "an excessive cargo viewed both on the score of humanity and of safety."³³ Quoting an act of Congress regulating passenger ships and vessels which forbade the carrying of more than two passengers for every five tons, Benjamin asserted that "this act of Congress was based upon considerations of humanity, and it was deemed necessary to enact such a law, although our country has always been disposed to encourage the immigration of foreigners. Will this court be disposed to recognize one standard of humanity for the white and another for the Negro?"³⁴

Benjamin found it difficult to believe that the slaves had not been locked in at night, especially when one considered "the nature

of the slave and his ever wakeful and active longing after liberty."³⁵
 To the assertion made by the plaintiff's lawyers that the slaves were controlled by moral force, Benjamin replied:

By the moral force of whom? Of the overseer? . . . the argument is a mere falacy. Negroes on land are greatly controlled by moral force; but . . . [that force springs] from the ever watchful guardianship of the laws, from the security of our penal code concerning slaves, which are based throughout upon a sound view of the discontented and revengeful temperament of the slave; from the fear of a white population, who though not present and at hand at each plantation, can in a few hours be summoned, in all the superiority of discipline, of intelligence and armament, to reduce them to subjection and take the forfeit of their lives. . . . Once upon the ocean, this moral force, save only the mere past habit of subjection, almost entirely disappears. The passions of the slave on the solitary ocean, released from the jealous and powerful restraints of the law, know no discouragement but the physical force of the few individuals, who unsustained by all those aids which on land are ready at the first alarm of insurrection, stand, man to man, and arm to arm, between the slave and his liberty.³⁶

Benjamin's attitude toward slavery was no less enlightened than that of many individuals throughout the nation who were willing to recognize the humanity of the black but not his equality. The document is certainly not free of racist opinions but, considering the time and circumstances, the brief is a remarkable statement of what could be labelled a liberal southern position.

What is a slave? [Benjamin asked]. He is a human being. He has feelings and passions and intellect. His heart, like the white man's, swells with love, burns with jealousy, aches with sorrow, pines under restraint and discomfort, boils with revenge, and ever cherishes the desire for liberty.

His passions and feelings in some respects may not be as fervid and as delicate as those of the white man, nor his intellect as acute; but passions and feelings he has, and in some respects they are more violent, and consequently more dangerous, from the very circumstances that his mind is comparatively weak and unenlightened. Considering the character of the slave, and the peculiar passions which, generated by nature, are strengthened and stimulated by his condition,

he is prone to revolt in the very nature of things, and ever ready to conquer his liberty where a probable chance presents itself. . . . Will anyone deny that the bloody and disastrous insurrection of the Creole was the result of the inherent qualities of the slaves themselves, roused, not only by their condition of servitude, but stimulated by the removal from their friends and homes, for the purpose of sale by their owners in an unknown land?³⁷

Benjamin was prepared to advance arguments which would be distinctly unpopular with many of his fellow southerners.

We hold these positions to be incontrovertible--

First, that slavery is against the laws of nature, and

Second, that although it is sanctioned by the law of nations, it is so sanctioned as a local or municipal institution, of binding force within the limits of the nation that chooses to establish it, and on the vessels of such nation on the high seas, but as having no force or binding effect beyond the jurisdiction of such nation.

The position, that slavery is a contravention of the law of nature, is established by the concurrent authority of statute law, of writers on national law, and of adjudications of courts of justice, from the era of Justinian to the present day. . . .

It will be in vain for the plaintiff to attempt to impair the force of these authorities, or escape their application by appeals to sectional feeling; or by insinuating that the decisions were influenced by the well known hostility entertained in the countries where these decisions were rendered to the peculiar institutions of the south.³⁸

Benjamin was attempting to demonstrate that the so-called interference of the British authorities was not illegal and that according to the law of nations they had no legal obligation to return the slaves. Not only was there no extradition treaty in existence between Great Britain and the United States at the time of the incident, but more important, Benjamin insisted, the British had a definite moral commitment to freedom, sanctioned by the law of nations, which forbade the return of the slaves. In order to substantiate his point he was willing to introduce the municipal theory of slavery into a southern courtroom.

The Creole reached the port of Nassau, a port of a power by whose laws slavery is not tolerated, in the possession of black persons, masters of their own movements, under no physical control, who had succeeded by force of arms in overpowering their owners, and were seeking a refuge from slavery. . . . [Their] freedom was acquired by their escape from slavery into a free country. The means of escape cannot affect the consequence resulting from it.³⁹

The opinions expressed by Benjamin concerning slavery were certainly not typical of those of most southerners. He recognized that his arguments would not meet with popular approval and in concluding his presentation he remarked:

We hope it may not be deemed disrespectful or indecorous in us to state that we are perfectly aware that there are portions of our argument that may clash with preconceived prejudices or may grate harshly on the ear of those who, led away by the public voice, or swayed by the interest which in this part of the Union is felt in some of the questions discussed, listen with impatience to anything which their precious opinions are shaken or destroyed. But it is not with the judiciary of our country that we need fear the influence of such causes in disturbing their judgement, or affecting their decisions on the rights of parties. On them we rely with confidence--.⁴⁰

By suggesting that there were both moral and legal sanctions for the British action in freeing the Creole slaves, Benjamin was attempting to circumvent the clause contained within the insurance policies which held the company liable for payment in case of foreign intervention. Despite the obvious intent of the council for the defense, the brief remains a remarkable and unusual document.

An extensive brief was filed for the owners of the slaves by Peyton and Smith.⁴¹ They attempted to demonstrate that the slaves had not completed a successful revolt upon reaching Nassau and it was the British intervention which had caused the loss of the slaves. The fanciful allusions which embellished their arguments were meant to arouse

indignation against Great Britain. They hoped that by painting a picture of "The British Lion and his black whelps" triumphing "over the American Eagle" they could prejudice the court's decision.⁴²

Stripped of all the rhetoric, the legal question reduces to whether or not the insurance policies included a clause warranting the insurer free from liability in the case of insurrection or mutiny. The policies issued by the New Orleans Insurance Company, Ocean Insurance Company and Firemen's Insurance Company did include such phrasing, while that of the Merchants' Insurance Company did not. Thus the defense was simple in the case of the first three and their lawyers merely claimed that the mutiny of the slaves rendered the policy nonoperative. In regard to the policies issued by the Merchants' Insurance Company, the defense attempted to make use of a clause warranting the company free from liability by reason of desertion and to equate the terms "desetion" and "mutiny." The plaintiffs, on the other hand, attempted to place the blame on the British since all the policies contained a clause protecting the policy holder from loss due to foreign intervention, restraint of princes, or emancipation by a foreign power.

The insurance cases came before the Louisiana Supreme Court in February, 1845. A three-member panel headed by Judge Henry Adams Bullard, a scion of the Massachusetts Adams family, rendered their decision the following month. After weighing the evidence in the case of McCargo vs the New Orleans Insurance Company, Judge Bullard reversed the decision of the lower court which had found for McCargo. The judge had seen through the verbiage to the essential point, the existence of the warranty clause concerning mutiny:

Whatever act or event produced that result [the escape of the slaves] is to be considered as the cause of the loss, and that is our only enquiry; and from the best consideration we have been able to give the whole case, we conclude that the insurrection of the slaves was the cause of breaking up the voyage, and prevented that part of the cargo, which consisted of slaves, from reaching the port of New Orleans; and consequently, that the defendants are not liable on the policy in this case.⁴³

Judge Bullard used the same reasoning in the cases of Andrews and Hatcher vs the Ocean Insurance Company, Sherman Johnson vs the same, and John Hagan vs the same. The verdicts of the Commercial Court which had found for the company were upheld by the higher court.⁴⁴ In the case of Edward Lockett vs the Firemen's Insurance Company of New Orleans, Judge Bullard again ruled in favor of the insurance company "for the reasons stated in the case of McCargo vs the New Orleans Insurance Company."⁴⁵

In the case of McCargo vs the Merchants' Insurance Company, Bullard dismissed the argument that the ship was unseaworthy because of a lack of proper precautions to keep the slaves in a subservient state. He felt that this question had been examined thoroughly in the lower court and he was "not prepared to say that, in this respect, there was any error."⁴⁶

With regard to the moral argument advanced by the defense and expressed in Benjamin's brief, Judge Bullard commented that he could concur with some of the opinions expressed, but this did not alter the fact that the policies issued by the Merchants' Insurance Company lacked a clause protecting the company from having to assume the responsibility for losses incurred due to mutiny or insurrection. Bullard agreed that "losses occasioned by the revolt of slaves as well as suicide through

despair, ought to be at the risk of the assured, both being attributable essentially to the same cause, and springing from the same motive, the desire inherent in the subject to escape from a state of slavery."⁴⁷ He observed, however, that the sources quoted in support of the argument were speaking of the African slave trade, and in his opinion the commerce between the states of the Union rested upon a "different basis." He considered the domestic slave trade to be "very different from that trade which is now reprobated by the common voice of Christendom, by which the natives of Africa were reduced for the first time to a servile condition, and when their resistance might be regarded as anything but criminal."⁴⁸ The court ruled that insofar as the loss, in its opinion, had been occasioned by the insurrection and this had not been specifically warranted against, the owners were entitled to recover. The same ruling was handed down in the case of Lockett vs the Merchants' Insurance Company.⁴⁹

In an application for rehearing filed in the cases of Lockett vs the Merchants' Insurance Company and McCargo vs the same, Benjamin questioned Judge Bullard's assertion that there was a difference between the foreign slave trade and the interstate slave trade. Such difference, he suggested, must rest in the manner in which jurisprudence would regard the two types of slave trade if both now legally existed, or in the varying disposition of the slaves to revolt under dissimilar conditions. As for the first point, he found it difficult to perceive how insurers could be held responsible for the revolt of domestic slaves and not for the rebellion of African slaves whose tendency to rebel Judge Bullard had described as inherent. "In the domestic slave trade," Benjamin asked, "is this cause less inherent because criminal?"⁵⁰

Concerning the second point, the disposition of the slave to revolt, Benjamin was willing to concede that this might be stronger "in the case of the new made slave, than in the slave who is born so, or who has long been in that condition." He insisted, however, that one could not pretend "that the desire of liberty is extinguished in the latter. The statute book of every slave-holding State in the Union rebukes such pretention."⁵¹ Benjamin then asked:

Is all the legislation of Louisiana with regard to the police of our slave population, an idle legislation, based upon visionary apprehension, upon unmanly and unreasonable fear? Certainly not. The passionate desire for liberty exists in the bosom of every slave--whether the recent captive, or him to whom bondage has become a habit, or was his destiny from birth . . . Negroes born free may be more ripe for revolt than negroes born in a state of slavery, and still if the revolt does actually take place, it really seems to us that no sound distinction can be made as to the result on the policy of insurance.⁵²

Bullard denied the appeal, stating that counsel was mistaken if they had supposed he had "meant to make the difference between the African slave trade . . . and the commerce between the States of this Union in slaves, to consist in the desire, in a greater or less degree inherent in such persons to escape from restraint and become free."⁵³ Bullard placed himself entirely on a legal rather than a moral footing in expressing what he considered to be the difference between the two types of slave trade. "The natives of Africa," Judge Bullard insisted, "were guilty of no crime, when they resisted the attempt of the slaver to subject them to a servile condition." Whereas, "Under the constitution of the United States, slaves in those states where that institution, slavery, is permitted, are legitimate property, and if the mutineers on board the Creole had escaped into a non-slaveholding State, the master

might have reclaimed them, and they might have been punished for the murder committed on board."⁵⁴

Of the seven insurance suits, the owners of the slaves won only two. Blocked at the local level, those owners involved in the five remaining suits were forced to turn to the federal government and seek its aid in recovering their losses. In an attempt to settle these and numerous other claims by citizens of the two nations, a convention was concluded between the United States and Great Britain on February 8, 1853. N. G. Upham and Edmond Hernby were chosen as the American and British commissioners, respectively, and empowered to hear the various cases and render a decision as to their acceptability. Joshua Bates, an American then residing in London, was appointed as umpire to render a final decision in the eventuality that the commissioners were unable to agree. Two agents were named to present the several claims. Martin Van Buren, then touring in Florence, was offered the American position but declined. General John A. Thomas of New York was then appointed to the position and James Hanner was named British agent.⁵⁵

When the Creole claims were submitted the commissioners were unable to reach an agreement and the case was referred to the umpire for decision. On January 9, 1855, Bates awarded the sum of \$110,333 in full reparation, including interest to January 15, 1855. All the owners of the Creole slaves who had lost their suits before the Louisiana courts were reimbursed, as was the Merchants' Insurance company for the sums paid out to Edward Lockett and Thomas McCargo.⁵⁶

Bates accepted the American version of the events pertaining to the loss of the Creole slaves. He ruled that they had been "forcibly taken

from the custody of the master of the Creole and lost to the claimants."⁵⁷ Although admitting that slavery was "odious and contrary to the principle of justice and humanity," he nevertheless recognized that it could be established by law and thus could not be considered contrary to the law of nations.⁵⁸ Bates maintained that the Creole had been on a peaceful voyage protected by the laws of the United States and she had the right to seek shelter in any port of a friendly nation "in case of distress or unavoidable necessity."⁵⁹ He was of the opinion that such a vessel retained her rights even though in the port of a foreign nation. Bates insisted that since the slaves would appear to have been perfectly quiet when they reached Nassau the authorities should have seen that the rights of the owners were protected, rights which he felt could not "be abrogated or varied either by the emancipation act or any other act of the British Parliament."⁶⁰ All "the authorities could lawfully do was to comply with the request of the American consul, and keep the mutineers in custody until a conveyance could be found for sending them to the United States."⁶¹ He stated that the municipal law of England could not "authorize a magistrate to violate the law of nations by invading with an armed force the vessel of a friendly nation that has committed no offense."⁶² In conclusion, Bates ruled that the "conduct of the authorities at Nassau was in violation of the established law of nations" and as such "the claimants are justly entitled to compensation for their losses."⁶³

Despite the fact that it had taken fourteen years to settle the various litigations stemming from the Creole case, the public had quickly lost interest in the affair. Probably very few noticed that it was

included among the cases settled by the Claims Commission. Initially considerable attention had been lavished on the Creole case by the newspapers but it had soon lost its appeal. With the exception of a few brief items the case was scarcely mentioned in the New Orleans papers. As a news item it was dead and as an historical event it was largely forgotten.

The Creole mutiny was the only successful slave revolt among black inhabitants of the United States. Although great numbers of slaves at one time or another made their way to freedom, either singly or in groups, no large scale attempt other than that on board the Creole was ever carried through to a successful conclusion. Unlike all the other uprisings in the United States, in which large numbers of blacks attempted to win their freedom, the mutiny on the Creole had some hope of success. Its having taken place at sea and in the vicinity of a British possession rendered the attempt at least possible. Other insurrections led by Nat Turner, Denmark Vesey, Gabriel Prosser and others had no real hope of victory, surrounded as they were by a hostile white populace in control of both the judiciary and constabulary. These attempts were no less heroic for having failed, but it is surprising that they have received so much notice while the one completely successful revolt of blacks in the United States has attracted such little attention.⁶⁴

Madison Washington, the leader of the Creole revolt,⁶⁵ personifies the "heroic figure" as much as Turner, Vesey and Prosser; yet he has been almost forgotten as a symbol of the desire for freedom among blacks and as an outstanding example of the black hero. The incident of the Creole inspired Frederick Douglass to write a short story based on the

life of Washington but it apparently never attained great popularity.⁶⁶ Despite the present day burgeoning of black literature the tendency is to forget or ignore both Washington and the Creole case. Yet the Creole deserves a great deal of attention, if only as an example of the neglected history of blacks in America. But, moreover, in consideration of its importance in the breaking of the Congressional "gag rule" and its influence on the Webster-Ashburton negotiations, it should receive mention in any textbook of American history.

APPENDIX

List of Slaves Carried by the Creole

	NAME	OWNER	INSURED BY	SEX	AGE
1.	Caroline Anderson	Thomas McCargo	New Orleans	Female	16
2.	Andrew Bankhead	Thomas McCargo	New Orleans	Male	25
3.	Lucy Belam (or Beldin)	Sherman Johnson	Ocean	Female	24
4.	Adelaide Bell	Andrews and Hatcher	Ocean	Female	8
5.	Hester Bell	Andrews and Hatcher	Ocean	Female	25
6.	Lewis Bernard	Andrews and Hatcher	Ocean	Male	19
7.	Horace Beverly**	Edward Lockett	Firemen's	Male	19
8.	A. Bird	Edward Lockett	Firemen's	Male	35
9.	Ben Blair	Thomas McCargo	New Orleans	Male	15
10.	Mary Ann Boam			Female	17
11.	George Brett	Sherman Johnson	Ocean	Male	19
12.	¹ Harry Brown**	Thomas McCargo	Merchants'	Male	21
13.	Nelly Brown	Edward Lockett	Merchants'	Female	18
14.	James Bruce	Thomas McCargo	New Orleans	Male	18
15.	William Bryant			Male	23

	NAME	OWNER	INSURED BY	SEX	AGE
16.	George Burton** (or Burdon)	Sherman Johnson	Ocean	Male	19
17.	Benjamin Butler	Sherman Johnson	Ocean	Male	16
18.	Richard Butler**	Thomas McCargo	Merchants'	Male	23
19.	² Adam Carney**	Sherman Johnson	Ocean	Male	25
20.	C. Carter	Edward Lockett	Firemen's	Male	16
21.	Lewis Carter	Thomas McCargo	Merchants'	Male	18
22.	Lucy Carter	Edward Lockett	Merchants'	Female	17
23.	R. Carter	Edward Lockett	Firemen's	Male	17
24.	L. Clarke	Edward Lockett	Merchants'	Female	10
25.	William Clarke	Edward Lockett	Firemen's	Male	17
26.	³ Mary Collins*	Sherman Johnson	Ocean	Female	13
27.	William Coopers	Sherman Johnson	Ocean	Male	16
28.	M. Corbin	Edward Lockett	Merchants'	Female	17
29.	Agnes Crow	Edward Lockett	Merchants'	Female	15
30.	Elizabeth Cullen	Thomas McCargo	Merchants'	Female	14
31.	Harriett Curling	Sherman Johnson	Ocean	Female	16
32.	Fanny Davis	Sherman Johnson	Ocean	Female	16

	NAME	OWNER	INSURED BY	SEX	AGE
33.	Gilbert Dawley	Sherman Johnson	Ocean	Male	18
34.	William Denby	Thomas McCargo	New Orleans	Male	18
35.	D. Dorsey	Edward Lockett	Firemen's	Male	23
36.	L. Ellis	Edward Lockett	Merchants'	Female	16
37.	Rebecca Evens (or Evans)	Thomas McCargo	Merchants'	Female	30
38.	Frankey Ferguson	Thomas McCargo	Merchants'	Female	40
39.	Ann Fields	Thomas McCargo	Merchants'	Female	17
40.	Rheuben Foster	John Hagan	Ocean	Male	18
41.	Julia Ann Francis	Edward Lockett	Merchants'	Female	16
42.	Lucy French	Sherman Johnson	Ocean	Female	21
43.	H. Gaines	Edward Lockett	Firemen's	Male	25
44.	Milla Gaines	Thomas McCargo	Merchants'	Female	15
45.	H. Garrett	Edward Lockett	Firemen's	Male	30
46.	Pompey Garrison**	Thomas McCargo	New Orleans	Male	19
47.	B. (or R.) Gibson	Edward Lockett	Firemen's	Male	17
48.	⁴ Isak Glover*	Thomas McCargo	New Orleans	Male	9
49.	⁵ Rachel Glover*	Thomas McCargo	Merchants'	Female	24

	NAME	OWNER	INSURED BY	SEX	AGE
50.	Wiley Glover***	Thomas McCargo	New Orleans	Male	22
51.	L. Gordon	Edward Lockett	Merchants'	Female	17
52.	⁶ George Grandy**			Male	26
53.	Henry Grigsby	Edward Lockett	Firemen's	Male	8
54.	Lucy Grigsby	Edward Lockett	Merchants'	Female	26
55.	E. J. Hardister	Edward Lockett	Merchants'	Female	28
56.	Jacob Haywood	Thomas McCargo	New Orleans	Male	17
57.	Mary Hilliard	Thomas McCargo	New Orleans	Female	20
58.	Rachel Henley	Andrews and Hatcher	Ocean	Female	37
59.	Albert Henning	John Hagan	Ocean	Male	9
60.	Cloe Howell			Female	18
61.	James Irvine	Edward Lockett	Firemen's	Male	23
62.	Andrew Jackson	Thomas McCargo	New Orleans	Male	24.
63.	William Jenkins**	Thomas McCargo	New Orleans	Male	21
64.	Milla Jewett	Thomas McCargo	Merchants'	Female	26
65.	Benjamin Johnson**			Male	23
66.	Milinda Joiner			Female	21

	NAME	OWNER	INSURED BY	SEX	AGE
67.	An Infant				
68.	Charlotte Jones	Thomas McCargo	Merchants'	Female	10
69.	J. Jones	Edward Lockett	Firemen's	Male	22
70.	Phil Jones**	Edward Lockett	Firemen's	Male	17
71.	Rachel Jones	John Hagan	Ocean	Female	17
72.	Dick (or Nick) King	Edward Lockett	Firemen's	Male	25
73.	Israel King	John Hagan	Ocean	Male	18
74.	Roddy King	John Hagan	Ocean	Female	18
75.	Ruben Knight*** (or Bright)	Sherman Johnson	Ocean	Male	11
76.	Robert Lasey (or Casey)	Edward Lockett	Firemen's	Male	19
77., 78.	Margaret Latimore & Child	Sherman Johnson	Ocean	Female	18
79., 80.	Mary Ann Lawson & Child	Sherman Johnson	Ocean	Female	18
81.	Arrene Lester	Edward Lockett	Merchants'	Female	15
82.	Harriett Lewis	John Hagan	Ocean	Female	17
83.	John Lindsey	Thomas McCargo	New Orleans	Male	21
84.	Mary Lloyd	Edward Lockett	Merchants'	Female	10
85.	Myer Long	Thomas McCargo	New Orleans	Male	17

	NAME	OWNER	INSURED BY	SEX	AGE
86.	Lewis Lowry	Thomas McCargo	New Orleans	Male	21
87.	Leonora Milton	Sherman Johnson	Ocean	Female	9
88.	Bill Moore	Edward Lockett	Firemen's	Male	20
89.	C. Moore	Edward Lockett	Merchants'	Female	19
90.	Elija Morris**	Thomas McCargo	New Orleans	Female	23
91.	⁷ Elizabeth Murdough*	Sherman Johnson	Ocean	Female	18
92.	Charles Oliver	Thomas McCargo	New Orleans	Male	18
93.	H. Overton	Edward Lockett	Firemen's	Male	33
94.	P. Page	Edward Lockett	Firemen's	Female	17
95.	Ellen (or Eliza) Palmer	Thomas McCargo	Merchants'	Female	20
96.	David Parker	Thomas McCargo	New Orleans	Male	18
97.	William Parker	John Hagan	Ocean	Male	20
98.	Marshall Pendleton***	Thomas McCargo	New Orleans	Male	22
99.	Jourdan (or Jordan) Phillips***	John Hagan	Ocean	Male	21
100.	George Portlock**	Thomas McCargo	New Orleans	Male	21
101.	Rob Pullen	Edward Lockett	Firemen's	Male	22
102.	Julia Ray (or Rey)	Andrews and Hatcher	Ocean	Female	13

	NAME	OWNER	INSURED BY	SEX	AGE
103.	M. Richardson	John Hagan	Ocean	Female	18
104.	Ginkins Robinson	Edward Lockett	Firemen's	Male	25
105.	Mary Ann Robinson			Female	17
106.	Monroe Robinson	Thomas McCargo	Merchants'	Male	24
107.	Pinky Robinson	Thomas McCargo	Merchants'	Female	16
108.	Benn Ross	Edward Lockett	Firemen's	Male	17
109.	Dr. Ruffin**	Edward Lockett	Firemen's	Male	25
110.	Argyle Sales	Sherman Johnson	Ocean	Male	16
111.	⁸ Mary E. Scroggins*	Thomas McCargo	Merchants'	Female	18
112.	William Scott	Thomas McCargo	New Orleans	Male	10
113.	Violet Scott	Andrews and Hatcher	Ocean	Female	26
114.	Martha Seatherbury (or Leatherbury)	Andrews and Hatcher	Ocean	Female	13
115.	Lylla Shields	Andrews and Hatcher	Ocean	Female	11
116.	Susan Shields			Female	28
117.	Warner Smith**	Thomas McCargo	Merchants'	Male	24
118.	Alsey Smith	Thomas McCargo	Merchants'	Female	13
119.	Peter Smallwood**	Edward Lockett	Firemen's	Male	23

	NAME	OWNER	INSURED BY	SEX	AGE
120.	Edmond Tallafiro	Thomas McCargo	New Orleans	Male	21
121.	Martha Thompson	Thomas McCargo	Merchants'	Female	22
122.	Addison Tyler**	Edward Lockett	Firemen's	Male	23
123.	Nelson Walker	Edward Lockett	Firemen's	Male	18
124.	Madison Washington**	Thomas McCargo	New Orleans	Male	22
125.	Sarah Washington	Edward Lockett	Merchants'	Female	15
126.	Henry White	Thomas McCargo	New Orleans	Male	23
127.	Monroe White			Male	10
128.	P. White	Edward Lockett	Firemen's	Male	18
129.	Winny Wiley	Sherman Johnson	Ocean	Male	16
130.	Margaret Williams			Female	9
131.	William Wilks	Thomas McCargo	New Orleans	Male	26
132.	Ann Wilson	Thomas McCargo	Merchants'	Female	15
133.	Hester Wilson	Sherman Johnson	Ocean	Female	13
134.	Melvina Wilson	Sherman Johnson	Ocean	Female	18
135.	H. (or D.) Wood	Edward Lockett	Firemen's	Male	22
136.	America Woodis**(or Woodhouse)	Sherman Johnson	Ocean	Male	23
137.	Mahalia Yancy	Thomas McCargo	Merchants'	Female	14

NAME	OWNER	INSURED BY	SEX	AGE
138. ⁹ Robert Lumpkins**	McCargo		Male	

*Returned to New Orleans on board the Creole.

**One of the 19 blacks originally implicated in the mutiny.

***Later identified as having taken part in the mutiny but not one of the original 19.

¹The list of the mutineers furnished by the attorney general at Nassau, a copy of which appears at the end of the brief of Thomas McCargo vs The Merchants Insurance Company, identifies Walter Brown as one of the mutineers. However, on page two of the same brief he is identified as Henry Brown. On the manifests included within the Supreme Court records he is listed as Harry Brown.

²Died of natural causes in prison.

³Identified as having returned to New Orleans; Robinson's Reports, 217; tabular statement at end of brief of Thomas McCargo vs The Merchants' Insurance Company; Andrews and Hatcher vs The Ocean Insurance Company, Supreme Court File Number 5213, p. 22.

⁴Identified as having returned to New Orleans: Robinson's Reports, 217; tabular statement at end of brief of Thomas McCargo vs The Merchants' Insurance Company; Andrews and Hatcher vs The Ocean Insurance Company, Supreme Court File Number 5213, p. 35.

⁵Ibid.

⁶Died of wounds received during the mutiny.

⁷Identified as having returned to New Orleans: Andrews and Hatcher vs The Ocean Insurance Company, Supreme Court File Number 5213, p. 35.

⁸Identified as having returned to New Orleans; Robinson's Reports, 353; tabular statement at end of brief of Thomas McCargo vs The Merchants' Insurance Company; Andrews and Hatcher vs The Ocean Insurance Company, Supreme Court File Number 5213, p. 35.

⁹Robert Lumpkins is not listed on any of the various manifests contained within the Supreme Court records but is listed as one of the original 19 mutineers in the list located at the end of the brief of Thomas McCargo vs The Merchants' Insurance Company. Also, on page two of that brief Lumpkins is listed as one of the McCargo slaves who were engaged in the mutiny.

NOTES

I

¹Bureau of Marine and Navigation (Record Group 41), (National Archives, Washington, D. C.).

The Creole was built in 1840 and enrolled at the port of Richmond, Virginia on November 14, 1840. She was 95 feet in length, 25 feet six inches in breadth, eight feet nine inches in depth, and weighed 187 and 25/95 tons. On October 26, 1842 her documents were surrendered because the "vessel [had been] wrecked."

²Thomas McCargo vs Merchant's Insurance Company, Edward Lockett vs the Same, Answer of Peyton and Smith, for the Plaintiffs to the Brief of the Defendants [sic], in Briefs of Cases Brought Against Insurance Companies in the Supreme Court of Louisiana Regarding Slaves Who Gained Their Freedom by Landing on British Soil (New Orleans, 1842), 29-30 (Tulane University Library, New Orleans).

³Andrews and Hatcher vs the Ocean Insurance Company, Commercial Court of New Orleans File Number 4413, Louisiana Supreme Court File Number 5213, p. 24 (Office of the Clerk of the Supreme Court of Louisiana).

⁴Thomas McCargo vs Merchant's Insurance Company, Edward Lockett vs The Same, Answer of Peyton and Smith, in Briefs of Cases, 26-27; Edward Lockett vs The Merchants' Insurance Company, Brief for Defendants, in Briefs of Cases, 4-5.

⁵ New Orleans Protest of the Officers and Crew of the American Brig Creole, from the New Orleans Louisiana Advertiser, December 8, 1841, in the Boston Liberator, December 31, 1841. The original, badly faded, is located in the Notarial Record Book of William Young Lewis for the Years 1841-1842 (Notarial Archives, Civil District Court Building, New Orleans, Louisiana).

⁶ Ibid.; Andrews and Hatcher vs the Ocean Insurance Company, Supreme Court File Number 5213, p. 26; Deposition of William Henry Merritt, before John F. Bacon, United States Consul, Nassau, Bahamas, Report Number 39, November 30, 1841, Consular Reports, Nassau, Bahamas [Hereafter cited as Consular Reports] (microfilm copies, Louisiana State University in New Orleans).

There are three sets of depositions contained within Report Number 39. Two sets pertain to the mutiny on board the Creole, one series sworn before Consul Bacon and the other before the British authorities. The two series of depositions differ only in detail and are therefore considered as a single unit. Footnote reference to them will consist of the name of the deponent followed by the words "Nassau Depositions." The third set of depositions pertains to the events which transpired on the day the blacks were freed. Reference to these depositions will consist of the name of the deponent followed by the words "Second Nassau Depositions."

⁷ Memorial of William H. Goodwin, in Records of the Claims Convention with Great Britain of February 8, 1853, Record Group 76, Docket Number 12, Claims Against Great Britain (National Archives).

Although McCargo appears as the sole claimant in a suit brought against a New Orleans insurance company, it appears from this memorial that he was in partnership with Goodwin and later signed over his portion of the claim to Goodwin for a sum of money.

Solomon Northup who was born a free man in New York state, was captured and sold into slavery in 1841. He records being driven through the streets of Richmond to a slave pen run by a "Mr. Goodin." The enclosure was located somewhere between the railroad and the river. It is possible that Goodin may have been William Harris Goodwin, McCargo's partner. Northup states that Goodin was about 50 years old and Goodwin testified later in a suit involving McCargo that his age was "about fifty years." See Solomon Northup, Twelve Years a Slave, edited by Sue Eakin and Joseph Logsdon (Baton Rouge, 1968), 41; Hugh Davis vs Thomas McCargo, Commercial Court of New Orleans File Number 8067, Louisiana Supreme Court File Number 1044, p. 25 (Office of the Clerk of the Supreme Court of Louisiana).

⁸ Memorial of George W. Apperson, in Records of the Claims Convention with Great Britain of February 8, 1853 (National Archives).

Sherman Johnson also appeared as a sole claimant in a New Orleans insurance suit, but he was a partner in the firm of Johnson and Apperson of which Apperson became the surviving partner.

⁹ Memorial of P. Rotchford, in ibid. Rotchford apparently did not file suit against his insurance company, as no record of such could be found. He later, however, presented a claim for \$1200 and asked for remuneration from the Claims Commission.

¹⁰Memorial of Edward Lockett, in ibid. In the records of the New Orleans insurance suits, Edward Lockett is listed as a citizen of Richmond, Virginia, but in his memorial to the Claims Commission his place of residence was given as Savannah, Georgia. Among the conveyance records of Orleans parish are several entries listing an Edward Lockett as one of the parties involved in various transfers and sales of slaves. The first entry, dated May 31, 1841, gives Lockett's address as Virginia. All other entries listed him as a resident of New Orleans. The last entry is dated January 28, 1852. See Book Number 30, p. 305 and Book Number 57, p. 340 (Office of the Register of Conveyances, Civil District Court Building, New Orleans).

It is possible that Lockett moved to New Orleans in 1842, shortly after the Creole mutiny, in order to be on hand for the insurance trials. He may have removed to Savannah after 1852 and filed his memorial to the Claims Commission from that city. The dates of the various entries in the conveyance records would seem to bear this out.

¹¹New Orleans Protest, Boston Liberator, December 31, 1841.

¹²Thomas McCargo vs Merchants' Insurance Company, Edward Lockett vs The Same, Answer of Peyton and Smith, in Briefs of Cases, 29.

Solomon Northup was shipped as a slave from Richmond to New Orleans on board the brig Orleans in May, 1841, at which time it is possible that William H. Merritt was on board as one of the mates, a position he had held for a year and a half previous to his trip on board the Creole. Andrews and Hatcher vs the Ocean Insurance Company, Supreme Court File Number 5213, p. 36; Northup, Twelve Years a Slave, 41.

¹³ Zephaniah C. Gifford, Nassau Depositions.

¹⁴ New Orleans Protest, Boston Liberator, December 31, 1841. The position of the Creole at the time of the mutiny was estimated to be 27°46' north latitude and 75°20' west longitude, or about 130 statute miles northeast of Marsh Harbor, Abaco Island. According to the New Orleans Protest, the captain thought their position to be much closer to Abaco than it actually was. It was for this reason that they hove to for the night.

¹⁵ Andrews and Hatcher vs the Ocean Insurance Company, Supreme Court File Number 5213, p. 26.

¹⁶ Gifford, Nassau Depositions.

¹⁷ Merritt, Nassau Depositions.

¹⁸ Gifford, Nassau Depositions.

¹⁹ Lucius Stevens, Nassau Depositions; Thomas McCargo vs Merchant's Insurance Company, Edward Lockett vs The Same, Answer of Peyton and Smith, in Briefs of Cases, 34.

²⁰ Lucius Stevens, Nassau Depositions; Merritt M. Robinson, Robinson's Reports: Reports of Cases Argued and Determined in the Supreme Court of Louisiana (New Orleans, 1845), 208 (Louisiana State Supreme Court Library, New Orleans).

²¹ New Orleans Protest, Boston Liberator, December 31, 1841.

²² Gifford, Nassau Depositions.

- ²³Merritt, Nassau Depositions.
- ²⁴Blair Curtis, Nassau Depositions.
- ²⁵McCargo, Stevens, Nassau Depositions.
- ²⁶McCargo, Leitener, Nassau Depositions.
- ²⁷Merritt, Nassau Depositions.
- ²⁸Curtis, Nassau Depositions.
- ²⁹Stevens, Nassau Depositions.
- ³⁰McCargo, Nassau Depositions.
- ³¹Stevens, Nassau Depositions.
- ³²Stevens, Curtis, Nassau Depositions.
- ³³Curtis, Nassau Depositions.
- ³⁴New Orleans Protest, Boston Liberator, December, 31, 1841.
- ³⁵ibid.; Thomas McCargo vs Merchant's Insurance Company, Edward Lockett vs The Same, Answer of Peyton and Smith, in Briefs of Cases, 36.
- ³⁶Merritt, Nassau Depositions.
- ³⁷Leitener, Nassau Depositions.
- ³⁸McCargo, Nassau Depositions.
- ³⁹Merritt, Nassau Depositions.

⁴⁰Ibid.

⁴¹Leitener, Nassau Depositions.

⁴²Gifford testified later, that when Hewell's body was brought on deck "they cut his head off as near as they could with a knife (he was then dead); and the one who cut his head off stated--'We will separate the old son of a bitch somehow.'" Robinson's Reports, 208.

⁴³Gifford, Nassau Depositions.

⁴⁴Stevens, Nassau Depositions.

⁴⁵Merritt, Nassau Depositions.

⁴⁶Nineteen of the blacks were identified at Nassau, but an additional six were identified later during the insurance trials at New Orleans. Their names are listed along with the original nineteen in a note at the end of the brief of Thomas McCargo vs the Merchants' Insurance Company, in Briefs of Cases, [8].

⁴⁷Thomas McCargo vs Merchant's Insurance Company, Edward Lockett vs The Same, Answer of Peyton and Smith, in Briefs of Cases, 38.

⁴⁸Curtis, Nassau Depositions.

⁴⁹New Orleans Protest, Boston Liberator, December 31, 1841; Gifford, Stevens, Nassau Depositions.

⁵⁰Stevens, Nassau Depositions.

⁵¹Ibid.

⁵²Gifford, Merritt, Nassau Depositions; New Orleans Protest, Boston Liberator, December 31, 1841.

⁵³New Orleans Protest, Boston Liberator, December 31, 1841.

⁵⁴Ibid.; Thomas McCargo vs Merchant's Insurance Company, Edward Lockett vs The Same, Answer of Peyton and Smith, in Briefs of Cases, 39-40.

II

¹New Orleans Protest, Boston Liberator, December 31, 1841; Robinson's Reports, 209-210. The exact number of pistols in the blacks' possession is uncertain. Gifford claimed that there were three (Robinson's Reports, 210), while most of the other witnesses were uncertain as to the number. It seems likely from the testimony that the blacks had but one pistol initially, the one which was fired at Gifford. Theophilus McCargo, in the New Orleans Protest, was credited with having two pistols in his possession, one of which he fired at the blacks. No mention of them was made in the Nassau Depositions, but if the statement in the New Orleans Protest is true, these pistols might have been taken by the blacks and seen later, by Gifford, in their possession.

²Andrews and Hatcher vs the Ocean Insurance Company, Supreme Court File Number 5213, p. 23.

³Robinson's Reports, 210.

⁴Ibid., 225.

⁵Document A, Report Number 39, November 30, 1841, Consular Reports.

⁶Robinson's Reports, 225.

⁷Ibid., 224.

⁸Ibid., 225; Document B, Report Number 39, Consular Reports.

⁹Robinson's Reports, 224.

¹⁰Ibid.

¹¹Ibid., 210.

¹²Ibid., 235; Document C, Report Number 39, Consular Reports.

¹³Robinson's Reports, 226. Gifford stated that it was the day after their arrival that the magistrates came on board. That would have been Wednesday, November 10, and the New Orleans Protest agrees with this statement. However, Consul Bacon asserted that examination was begun the same day and the dates of the deposition sworn before the British authorities bear him out.

¹⁴New Orleans Protest, Boston Liberator, December 31, 1841.

¹⁵Robinson's Reports, 232-233.

¹⁶Ibid., 233.

¹⁷Ibid., 213.

¹⁸Ibid., 214.

¹⁹Ibid., 226.

- ²⁰Ibid., 227.
- ²¹Ibid., 227-228.
- ²²Ibid., 236; Document D, Report Number 39, Consular Reports.
- ²³Robinson's Reports, 238.
- ²⁴William Woodside, Second Nassau Depositions.
- ²⁵Robinson's Reports, 214.
- ²⁶New Orleans Protest, Boston Liberator, December 31, 1841.
- ²⁷Robinson's Reports, 211.
- ²⁸Woodside, Second Nassau Depositions.
- ²⁹Stevens, Merritt, Second Nassau Depositions.
- ³⁰Stevens, Second Nassau Depositions.
- ³¹Merritt, Second Nassau Depositions.
- ³²Robinson's Reports, 212.
- ³³Ibid., 276; Document E, Report Number 39, Consular Reports.
- ³⁴Robinson's Reports, 229.
- ³⁵Ibid.
- ³⁶Woodside, Gifford, Second Nassau Depositions.
- ³⁷Merritt, Second Nassau Depositions.

³⁸New Orleans Protest, Boston Liberator, December 31, 1841.

³⁹Ibid., Both Gifford and Woodside, in their Nassau Depositions, reversed the order of the attorney general's speeches, but the wording is essentially that of the Protest.

⁴⁰Merritt, Second Nassau Depositions.

⁴¹New Orleans Protest, Boston Liberator, December 31, 1841.

⁴²Report Number 38, September 21, 1841, Consular Reports.

⁴³Robinson's Reports, 212.

⁴⁴Ibid., 221, Leitener thought he was the "English Consul," but identified the man who had signalled the boats as the same individual who had addressed the blacks.

⁴⁵Ibid., 224.

⁴⁶Ibid., 223.

⁴⁷Ibid., 222.

⁴⁸Ibid., 223.

⁴⁹Ibid.

⁵⁰Ibid., 212.

⁵¹Ibid., 224.

⁵²Woodside, Second Nassau Depositions.

⁵³Included within Report Number 39, Consular Reports, was a protest of the officers and crew of the Creole similar to that of the New Orleans Protest. This document will be cited hereafter as the Nassau Protest.

⁵⁴Robinson's Reports, 254.

⁵⁵Ibid., 230.

⁵⁶Ibid.

⁵⁷Ibid., 236-237; Document F, Report Number 39, Consular Reports.

⁵⁸Robinson's Reports, 237-238; Document G, Report Number 39, Consular Reports.

⁵⁹Robinson's Reports, 238-239; Document G, Report Number 29, Consular Reports.

⁶⁰Robinson's Reports, 238-239.

⁶¹Ibid., 258.

⁶²Ibid., 239; Document G, Report Number 39, Consular Reports.

⁶³Robinson's Reports, 259.

⁶⁴Ibid., 253-257.

⁶⁵Ibid., 254.

⁶⁶Ibid., 254-255.

⁶⁷Ibid., 255.

⁶⁸Ibid., 256. The claim had been made in the New Orleans Protest that the Creole had been surrounded by a fleet of some fifty boats.

⁶⁹Ibid., 224.

⁷⁰Ibid., 217.

⁷¹New Orleans Protest, Boston Liberator, December 31, 1841.

⁷²Robinson's Reports, 254.

⁷³Ibid., 257.

⁷⁴Ibid., 239; Document G, Report Number 39, Consular Reports.

⁷⁵Robinson's Reports, 216-217.

⁷⁶Ibid., 213; Nassau Protest, Consular Reports.

⁷⁷Robinson's Reports, 233.

⁷⁸Ibid., 216.

⁷⁹Andrews and Hatcher vs Ocean Insurance Company, Supreme Court File Number 5213, p. 28.

⁸⁰Robinson's Reports, 215.

⁸¹Ibid., 230.

⁸²Ibid., 215.

⁸³Ibid., 230-231.

⁸⁴Ibid., 215-216, 231.

⁸⁵Ibid., 230.

⁸⁶Ibid., 216.

⁸⁷Ibid., 230.

⁸⁸Ibid., 253.

⁸⁹Ibid., 216-217, 231. The New Orleans Protest says the brig left on the 18th but all other evidence contradicts this statement.

⁹⁰New Orleans Protest, Boston Liberator, December 31, 1841.

III

¹New Orleans Le Courrier de la Louisiane, December 2, 1841.

²New Orleans Daily Picayune, December 3, 1841.

³New Orleans Commercial Bulletin, December 3, 1841.

⁴New Orleans Le Courrier de la Louisiane, December 3, 1841.

⁵Quoted in Boston Liberator, December 31, 1841.

⁶New Orleans Bee, December 3, 1841.

⁷New Orleans Commercial Bulletin, December 4, 1841.

⁸Ibid., December 9, 1841.

⁹Ibid.

¹⁰Daniel Webster, The Writings and Speeches of Daniel Webster (18 vols., Boston, 1903), XI, 306; Clyde Augustus Dunaway, "Webster," in Samuel Flagg Bemis and James Brown Scott, eds., The American Secretaries of State and their Diplomacy (10 vols., New York, 1927-29), V, 34.

¹¹Ibid., January 12, 1842.

¹²Ibid., March 24, 1842.

¹³Ibid.

¹⁴Ibid., March 27, 1842.

¹⁵Congressional Globe, 27 Cong. 2 Sess., 342.

¹⁶James M. McPherson, "The Fight Against the Gag Rule: Joshua Leavitt and Antislavery Insurgency in the Whig Party," Journal of Negro History, XLVIII (July, 1963), 192.

¹⁷Ibid., 193; Gilbert Barnes, The Antislavery Impulse: 1830-1844 (Gloucester, Massachusetts, 1957), 188.

¹⁸McPherson, "The Fight Against the Gag Rule," 193-194; Barnes, The Antislavery Impulse, 288.

¹⁹New Orleans Daily Picayune, March 31, 1842.

²⁰Ibid., April 1, 1842.

²¹Ibid., May 11, 1842.

²²Ibid., May 18, 1842.

- ²³McPherson, "The Fight Against the Gag Rule," 194.

IV

¹Report Number 47, March 8, 1842, Consular Reports.

²Report Number 4, March 30, 1842, Consular Reports.

³Report Number 2, September 15, 1845, Consular Reports.

⁴"The Creole Case," unsigned article in Southern Quarterly Review, II (July, 1842), 67.

⁵Report Number 5, March 30, 1842, Consular Reports.

⁶Ibid., Document D.

⁷Ibid., Document E.

⁸Ibid., March 30, 1842.

⁹Ibid.

¹⁰Ibid., Document F.

¹¹New Orleans Daily Picayune, May 5, 1842.

¹²Report Number 5, March 30, 1842, Consular Reports.

¹³Ibid. Samuel Flagg Bemis is in error when he records that the "British colonial authorities hung the identified murderers." See Samuel Flagg Bemis, A Diplomatic History of the United States (New York, 1950), 265.

¹⁴Ibid.

¹⁵William Devereaux Jones, "The Influence of Slavery on the Webster-Ashburton Negotiations," Journal of Southern History, XXII (February, 1956), 49.

¹⁶Ibid., 50.

¹⁷Ibid., 51.

¹⁸Ibid.

¹⁹Dunaway, "Webster," 34-35.

²⁰Ibid., 35-36.

²¹Ibid., 36.

²²Ibid., 36-37.

²³C. H. Van Tyne, ed., The Letters of Daniel Webster (New York, 1902), 272.

²⁴Dunaway, "Webster," 34-35.

²⁵William Devereux Jones suggests that "the only possible authority he might have found in making this promise was a rather vague statement in Aberdeen's private letter of May 26 that 'We shall certainly do nothing to encourage mutiny either among slaves or freemen.'" Jones, "The Influence of Slavery on the Webster Ashburton Negotiations," Journal of Southern History, XXII (February, 1956), 53.

²⁶"The Creole Case," Southern Quarterly Review, II (July, 1842), 66-67.

²⁷Jones, "The Influence of Slavery on the Webster Ashburton Negotiations," 52.

V

¹Thomas McCargo owned a rather extensive plantation in Halifax County, Virginia. According to the county tax records he paid taxes on 22 slaves above the age of 12 and owned a dozen horses. See Halifax County Personal Property Tax Records for 1841 (Virginia State Library, Richmond).

In 1842 McCargo apparently ran into financial difficulty as a result of the loss of the Creole slaves. He was forced to put up as security against his debts his entire estate, consisting of nearly 1200 acres of land, plantation buildings, a mill, 32 slaves, nine horses, herds of various farm animals, and all his household furniture. See Halifax County Deed Book Number 48, September 29, 1842 (Virginia State Library, Richmond).

There are several records of sales and transfers of slaves by Thomas McCargo among the conveyance records of Orleans parish. The first entry is dated May 26, 1841 and gives McCargo's address as Richmond, Virginia. Others give his residence as merely Virginia, but by March 4, 1843 he was listed as a resident of New Orleans. The last entry is dated April 14, 1846. See Book Number 29, p. 281; Book Number 34, p. 305; and Book Number 39, p. 613 (Office of the Register of Conveyances, Civil District Court Building, New Orleans).

²The records of this case, Commercial Court File Number 4409, have not been located. This was the first of the insurance cases to come to trial and it is unfortunate that it is the only one of the several cases whose lower court records are missing.

The Commercial Court of New Orleans, before whose bar the cases were heard, had been established by legislative act in 1839. The act did not specify that the court would handle cases of a commercial nature but merely that it would exercise concurrent jurisdiction with the parish court of the city of Orleans. See Greiner's Digest: Louisiana Digest Embracing the Laws of the Legislature of a General Nature, Enacted from the Years 1804-1841, Inclusive, and in force at this last period; also An Abstract of the Decisions on the Statutory Laws Arranged under the Appropriate Articles in the Digest (New Orleans, 1841), 100-101 (Louisiana State Supreme Court Library, New Orleans).

When the court system was reorganized in 1846 the Commercial Court ceased to exist and its docket was assumed by the Fourth District Court. This latter court did handle commercial cases primarily, as it had a "Preference Docket" on which were carried commercial cases, which were given priority over other cases on the "Ordinary Docket." Since its successor handled, by preference, cases of a commercial nature it can be assumed that the Commercial Court did also, and hence its name. See Act Number 43, Sections 12 and 14, Acts of the State of Louisiana, 1846 (New Orleans Public Library).

³New Orleans Daily Picayune, December 22, 30, 1842.

⁴Thomas McCargo vs New Orleans Insurance Company, Edward Lockett vs Firemen's Insurance Company, Brief of Peyton and Smith for the

Plaintiffs, in Briefs of Cases, 56.

⁵Thomas McCargo vs The New Orleans Insurance Company, Commercial Court of New Orleans File Number 4409, Louisiana Supreme Court File Number 5146 (Office of the Clerk of the Supreme Court of Louisiana).

⁶Thomas McCargo vs The Merchants' Insurance Company, Commercial Court of New Orleans File Number 4408, Louisiana Supreme Court File Number 5123, p. 1 (Office of the Clerk of the Supreme Court of Louisiana).

⁷Ibid., 11.

⁸Ibid., 24-30.

⁹Thomas McCargo vs Merchants' Insurance Company, Brief of the Plaintiff, Briefs of Cases, 10.

¹⁰Edward Lockett vs the Merchants' Insurance Company, Commercial Court of New Orleans File Number 4410, Louisiana Supreme Court File Number 5164, pp. 1-4 (Office of the Clerk of the Supreme Court of Louisiana).

¹¹Ibid., 17.

¹²Edward Lockett vs Merchants' Insurance Company, Brief of the Plaintiff, in Briefs of Cases, 10. According to the court record, these questions and the answers to them were printed in pamphlet form, but they have not been located as of yet.

¹³Edward Lockett vs The Firemen's Insurance Company of New Orleans, Commercial Court of New Orleans File Number 4411, Louisiana Supreme Court File Number 5214, p. 1-2 (Office of the Clerk of the Supreme Court of Louisiana).

¹⁴Edward Lockett vs the Firemen's Insurance Company, Brief of the Plaintiff, in Briefs of Cases, 4.

¹⁵Edward Lockett vs The Firemen's Insurance Company of New Orleans, Louisiana Supreme Court File Number 5214, pp. 22-24. Duncome's testimony is not included in the court record.

¹⁶Ibid., 23.

¹⁷Ibid., 22-42.

¹⁸Ibid., 44.

¹⁹Ibid., 49.

²⁰Ibid., 50.

²¹Ibid., 11-15, copy of insurance policy.

²²Ibid., 50-60.

²³Ibid., 66.

²⁴Ibid.

²⁵Ibid., 70-71.

²⁶Andrews and Hatcher vs The Ocean Insurance Company, Supreme Court File Number 5213; Sherman Johnson vs The Ocean Insurance Company, Commercial Court File Number 4414, Louisiana Supreme Court File Number 5219; John Hagan vs The Ocean Insurance Company, Commercial Court File Number 4419, Louisiana Supreme Court File Number 5218 (Office of the Clerk of the Supreme Court of Louisiana).

²⁷Andrews and Hatcher vs The Ocean Insurance Company, Supreme Court File Number 5213, pp. 1819.

²⁸Ibid., 56.

²⁹Edward Lockett vs The Merchants' Insurance Company, Brief for the Defendants, in Briefs of Cases, 1-76.

³⁰Louis Gruss, "Judah Philip Benjamin," Louisiana Historical Quarterly, XIX (October, 1936), 1023.

³¹Edward Lockett vs The Merchants' Insurance Company, Brief for the Defendants, in Briefs of Cases, 1-15.

³²Ibid., 15.

³³Ibid., 18.

³⁴Ibid., 20.

³⁵Ibid.

³⁶Ibid., 21.

³⁷Ibid., 27-28.

³⁸Ibid., 52, 59.

³⁹Ibid., 63, 65.

⁴⁰Ibid., 75-76.

⁴¹Thomas McCargo vs Merchant's Insurance Company, Edward Lockett vs The Same, Answer of Peyton and Smith, in Briefs of Cases, 1-106.

⁴²Ibid., 82.

⁴³Robinson's Reports, 331-332.

⁴⁴Ibid., 332-334.

⁴⁵Ibid., 332-333.

⁴⁶Ibid., 336.

⁴⁷Ibid., 337-338.

⁴⁸Ibid., 338.

⁴⁹Ibid., 348.

⁵⁰Ibid., 351.

⁵¹Ibid.

⁵²Ibid., 351-352.

⁵³Ibid., 353-354.

⁵⁴Ibid., 354.

⁵⁵U. S. Sen. Exec. Doc. 103, 34 Cong., 1 Sess., 1855. Joshua Bates (1788-1864) was born at Weymouth, Massachusetts near Boston. After the War of 1812, he was dispatched to Europe as the general agent of one of the more prosperous Boston Merchants. He made London his home where he became active in financial and banking matters and later was senior partner in the banking house of Baring. In 1852, Bates donated \$50,000 toward the purchase of books for the new library of the city of Boston.

He later donated nearly 27,000 volumes valued in excess of his original gift. When the Boston Public Library was opened in 1854 the large hall of the building was named Bates Hall after its benefactor, Dictionary of National Biography (22 vols., London, 1949-50), I, 1318-1319.

⁵⁶U. S. Sen. Exec. Doc. 103, 34 Cong., 1 Sess., 1855, p. 52.

⁵⁷Ibid., 244.

⁵⁸Ibid.

⁵⁹Ibid.

⁶⁰Ibid.

⁶¹Ibid.

⁶²Ibid., 245.

⁶³Ibid. Richard Henry Dana, Jr., later criticized Bates' decision. He conceded that local authorities should give aid to a ship captain in enforcing his rights over the passengers and crew of his vessel, but provided that those rights were of a character generally recognized by all nations and not prohibited by local law. He questioned, however, whether local authorities should be forced to aid the master especially when such aid entailed enforcing a law or relationship which they considered to be "against common rights and public morals." Dana felt that in such an event the local authorities should be able to "decline to lend force to compel" the continuance of such laws or relationships. The only basis he found acceptable for Bates' decision to recognize

the claim of the Creole was that the authorities had demonstrated "an active and officious, though not forcible, intervention . . . to encourage the negroes in leaving the vessel," and in discouraging "the master from using such means as he had to prevent it." See Henry Wheaton, Elements of International Law, a literal reproduction of the 1866 edition of Richard Henry Dana, edited by George Grafton Wilson, vol. 19 of The Classics of International Law, edited by James Brown Scott (26 vols., London, 1936), 139.

⁶⁴ Probably the most extensive treatment of the Creole case was included in Henry Wilson's History of the Rise and Fall of the Slave Power in America (3 vols., Boston, n.d.), I, 443-452. Samuel Ringgold Ward also included a short description of the Creole case in his Autobiography of a Fugitive Negro, in The American Negro, His History and Literature Series (New York, 1968), 166-168.

⁶⁵ Andrews and Hatcher vs The Ocean Insurance Company, Supreme Court File Number 5213, p. 24.

⁶⁶ Frederick Douglass, "The Heroic Slave," in Autographs for Freedom, edited by Julia Griffiths (Boston, 1853). A brief excerpt from "The Heroic Slave," was included in The Negro Caravan, eds. Sterling A. Brown and Harry P. Davis (New York, 1941), 17-27.

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