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IN THE DEPARTMENT OF STATE.

CLAIM

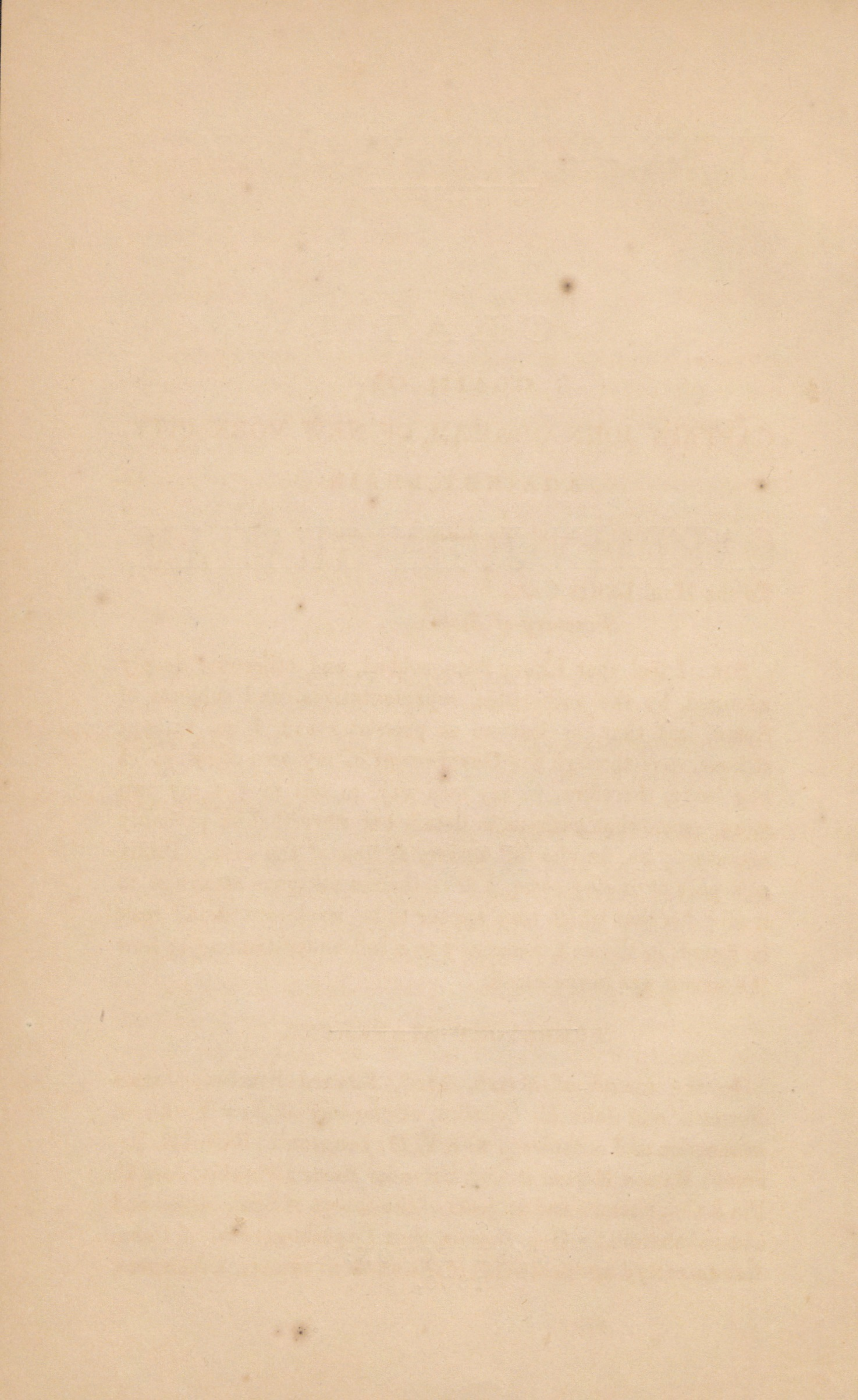
OF

CAPTAIN JOHN GRAHAM,

OF NEW YORK CITY,

AGAINST SPAIN.

WASHINGTON:
1860.



CLAIM OF
CAPTAIN JOHN GRAHAM, OF NEW YORK CITY,
AGAINST SPAIN.

To the Hon. LEWIS CASS,
Secretary of State :

SIR: I feel that I have been robbed, and otherwise deeply wronged, by the authorities, representatives, and subjects of Spain, and that, as matters at present stand, I am without redress, save through the Government of my own country. I beg leave, therefore, in my own way, to tell to you my own story—somewhat perhaps in detail, but nevertheless probably necessarily so, for the full understanding of the case. Prolix as a part of it may seem, I nevertheless ask your attention to it all ; for that which may appear to be irrelevant detail may be found, in the end, necessary to a full understanding of how the wrong was perpetrated.

PREFATORY STATEMENT.

In the month of March, 1856, Edward Stucken, James Nesmith, and John M. Ceballos, of the city of New York ; in connection and conspiracy with Y. M. Zangroniz ; Rafael R. Torrecas ; Ramon Herera & Co. ; Salvador Sama ; Pecabia, Jose P. Pla & Co. ; citizens and subjects of the Queen of Spain, aided and abetted thereto by Gen Concha, then Captain-general of Cuba, fraudulently dispossessed me of the whole of two ocean steamers,

their tackle, apparel, and furniture, and the one-third part of another steamer, its tackle, apparel, and furniture; which three steamships, together, cost me the sum of five hundred and twenty thousand seven hundred and seventeen dollars, (\$520,717,) and were worth fully that sum. [See Appendix, A.]

Having pursued all the legal remedies for redress against the said Stucken, Nesmith, and Ceballos, under the laws of the United States, without success in adequately obtaining compensation for such wrongs and injuries, I now respectfully, address to you a truthful history of the facts and circumstances connected with the transactions of which I complain, and on account of which I respectfully ask the interference of my Government for redress against Spain.

NARRATIVE OF FACTS.

Before proceeding to a direct narrative of the facts and circumstances, constituting the most stupendous fraud ever perpetrated by a number of individuals combined against another, I crave a moment's indulgence in the recital of a brief personal history of myself.

I am a born-citizen of the State of New York. Sent to sea at the age of twelve, I passed through every grade of my profession, till I stood upon the quarter-deck of a ship in the India trade—a commander, not yet twenty-one years old.

Early in this period of active sea-life—in the year 1843—I lay in the Bay of Gibraltar, in command of a ship, close to the United States frigate “Missouri.” The fire which broke out in the engine-room of that magnificent war-vessel, and burned her to the water's edge, is a matter of history, still fresh in the public memory.

It will not be necessary for me to say that all a sailor and commander could do to save the frigate and her crew, I did, and did it with all my might. [See Appendix, B.]

Among other services which it was my privilege to render, I averted the horrors of an explosion, by flooding the magazine

after it was surrounded by flames, and after the gunner had reported that he and his mates could not get in to drown it. This act, more than rewarded by the thanks which Commodore Newton gave me in the presence of the Governor of Gibraltar, and the Spanish General Concha, (afterward Captain-general of Cuba,) led to an acquaintance which, while honorable and agreeable, had within it the germ of a great misfortune to me, as will appear further on in my narrative.

Ten years of labor as master and owner, in voyages to China, Brazil, Columbia, Peru, Chile, Spain, France, England, the West and the East Indies, Portugal, Turkey, Greece, Morocco, Egypt, California—all over the globe, indeed—brought so large a reward, that I retired from business in 1852 with a fortune of nearly six hundred thousand dollars.

It is without egotism, and only in explanation of the rapidity with which I accumulated this estate, that I mention the fact, that at one time I had one ship in China, and ten at anchor in the harbor of San Francisco, nearly every one of whose cargoes I had myself purchased personally, or by agents specifically instructed by me.

A year and a half of idleness on shore, and heavy losses in trade, decided me to return again to the sea.

I conceived the project of a new ocean steamship line between New York, Havana, and Cadiz in Spain, in connection with a line from Havana to Vera Cruz in Mexico, and in the spring of 1854 set vigorously at work to accomplish it. I built the "Ocean Bird," a steamship of 1,700 tons—as stanch, fleet and beautiful a vessel as ever sailed out of the bay of New York. Fully equipped, she cost me \$248,717. [See Appendix, A.] I also purchased, rebuilt, and refurnished the steamship "St. Lawrence" at an expense of \$102,000, and the steamship "United States," at an expense of \$170,000.

When these three vessels were completed, after an aggregate expenditure of \$520,717, my means were exhausted, and I was in debt.

I then sailed for Havana with the "United States," and was

invited by the Captain-general Concha, to his palace, [see Appendix, D,] and laid before him my plan of a steamship line between New York, Havana, and Cadiz, in connection with one to Mexico. He kindly interested himself in the object of my visit, and introduced me to wealthy Spaniards in the city desirous of purchasing steamships for the same purpose, and I at once opened a negotiation for the sale of two-thirds of the "United States." The sale was finally made, after a delay as costly as it was tedious; during which time I had many interviews with General Concha, who seemed to be interested in the purchase, and I understand was. Then the purchasers proposed, that as none but Spanish citizens could hold, in their own name, interests in ships sailing under the Spanish flag, that I would allow my one-third interest to stand in the name of one of their friends, a merchant of Havana, to which proposition I assented, and the ship was placed under the Spanish flag.

I then returned to New York, accompanied by their agent, who was empowered to examine and approve of the two other ships, the "Ocean Bird" and the "St. Lawrence".

Upon his favorable report, the Spaniards commenced a negotiation for the purchase of the "Ocean Bird," and to hasten it to a conclusion, I took her to Havana, as they requested me to do.

Sailors can judge of her qualities, when I say, she made the trip, under my command, in four days and two hours. There, in Havana, she was again thoroughly examined by the Spanish experts in marine architecture, and approved.

She was accepted, and the formalities of a sale and delivery were entered upon; and at the same time, I was solicited to bring out the "St. Lawrence," for which they promised to pay me \$120,000.

At this juncture—i. e. November, 1855—I returned with the "Ocean Bird" to New York.

From March to November is a long time for the owner of three large steamships, out of employment, in debt, and daily rolling up current expenses.

The necessity of borrowing money became imperative, not only for the purpose of perfecting the sale, which I had initiated, but for the retention of my property against the demands of creditors.

Seventy thousand dollars would have disembarrassed all the steamers ; but to be entirely easy and free, while bringing my negotiation with the Havana merchants and authorities to a conclusion, I determined to borrow one hundred thousand dollars, upon the pledge of one, or at most two, of the ships.

Accordingly, I applied for a loan to Mr. Mortimer Livingston ; to Duncan, Sherman & Co. ; to D. & A. Kingsland ; and to one or two other reputable American houses ; but by a combination of circumstances, unfortunately, as they subsequently proved fatal to me, I finally fell into the hands of one James Nesmith and Edward Stucken, merchants and money-lenders, of the city of New York.

The history of this fatality is as follows : On the last day of November, 1855, Mr. Richard Poillon, a shipwright of the firm of C. & R. Poillon, to whom the " Ocean Bird " was indebted, and to whom I had given a mortgage in the shape of a bill of sale, suggested to me that I had better apply to said Nesmith to negotiate a loan, and informed me, that he had made an appointment for me to meet that person on the following day. Pursuant to this advice, I went to Nesmith's office and asked him if he could negotiate a loan for me of \$100,000 for four months.

He was not certain about it ; money was scarce and high ; he would see about it—and appointed an interview with me the next day, at his own office. Before the hour arrived, the place of meeting was changed by Mr. Nesmith to the office of Welcome R. Beebe, his own lawyer. In the conversation which there ensued between Nesmith and myself, in the presence of Beebe, I offered to pay handsomely for the use of the money I wanted. When asked how high I was willing to go, I replied, " A thousand dollars a month." Nesmith very promptly told me, that that interest would not do at all. I offered

\$10,000 for the use of the \$100,000 for four months. In reply to this, he shrugged his shoulders and said, that if I wanted the money I would have to go higher than that.

To protract the negotiation, the amount of money necessary to disembarass the three ships was then made a subject of inquiry, and at last of debate, between Beebe, Nesmith, myself, and my book-keeper, who was present. Nothing was accomplished at this interview—but a future meeting was agreed upon for the Monday following. At this interview, I was informed, that I could not possibly obtain the loan unless I offered better terms than I had already done.

At this very moment there was an execution against me, in the sheriff's hands, for \$6,700 which had been levied upon the "St. Lawrence." Under this writ the steamer had been advertised for sale at the Merchants' Exchange, and the sale was to take place this very Monday, when I was thus urged to "better terms." I could hear the tramp of the sheriff's feet in the passage. The pressure upon me, in a mercantile sense, was becoming mortal. The money I must have; but this "shave," forced upon me by Nesmith and his legal accomplice, was so unendurable to my habits of business, and to all my feelings, that the negotiation again slipped off upon a discussion of the sum I needed, and a preparation by me of a written statement of the claims pressing upon the vessels. Their amount was under \$70,000. The next day, the 4th of December, 1855, I again went to that law office and saw Mr. Nesmith, who briefly informed me, that I could get the money from Stucken for four months, upon terms which Beebe would state to me, and immediately left. Beebe came shortly after, and in a few words informed me, that I must be "prepared for heavy terms." I told him to let me hear the worst. He replied, "You must pay, for the use of \$100,000 for four months, twenty thousand dollars."

Interrupting my outcry of horror at such usury—"Stop!" said Beebe; "that is not all, you will have to pay, besides, \$5,000 to the party who has influenced the loan."

I flatly rejected the terms, and was swinging out of the office when the lawyer detained me with his touch, and reminded me, that the sale of the "St. Lawrence" had been postponed to that very day, in order to permit this negotiation for a loan to mature; that the sale could not, and would not, be postponed one day longer. In the extremity of my needs, I offered him, fifteen thousand dollars. He reminded me, that the sheriff was down stairs, waiting for my decision, and argued to me, that the loss consequent upon a forced sale of the "St. Lawrence," would be far greater than the "shave" demanded of me by Stucken.

The terms were so hard, that I could not face them, and I turned to go away. He followed me, and voluntarily gave me another day's grace, and postponed the sale of the ship to Wednesday, the 5th.

Immediately on leaving this office, I went to Mr. Mortimer Livingston, and in a few moments, arranged with him upon just terms, for the loan of \$100,000.

The next day came. One o'clock was the hour appointed for the sale. Twelve struck! An accident (*i. e.* a death in his family) prevented the consummation of my arrangement with Mr. Livingston. Time passed, and pressed too: I was forced to a decision. To avoid the sacrifice of the ship, I ran to Beebe's office, and told him, that, hard as his terms were, I accepted them.

He expressed his delight, and hurried out to inform the parties for whom he had been working, and returned quickly with Nesmith, who produced for my execution, three bills of sale—one for the "Ocean Bird," one for the "St. Lawrence," and one for the one-third part of the "United States." I had proposed to mortgage the ships, and not sell them, and objected to execute these bills of sale. Beebe assured me, that they were merely forms, always customary in such transactions, and were nothing but mortgages, when qualified by the lender's contract to reconvey to the borrower. Under this advice, I signed two of the bills—Poillon (ostensibly the owner of the

“Ocean Bird,” but only her mortgagee) signed the other. Nesmith hurried out with all three of them, and soon reappeared with Stucken’s check for \$6,700. The sheriff was paid, and the “St. Lawrence” released from his custody.

Stucken was, to this moment, a stranger to me. I called at his banking office, and asked for the balance of my loan—\$93,300. After suitable preliminaries of politeness, he informed me, that Nesmith had given him a list of the debts of the three ships, and he said, that he should like to have them paid from the amount. Irregular as the request was, I acceded to it in good faith.

He also requested, that, as he was a banker, I should leave the money on deposit with him, subject to my draft. To this I also generously assented.

The next day I went to the office of Mr. Beebe, with a prepared draft of the contract to reconvey the ships which it had been agreed that Stucken should execute to me.

Beebe objected to it, as too hazardous for his client, for the reason, that it recited the loan of \$100,000 for four months, and the reservation of \$20,000 interest for that time—a confession of the usury of the transaction.

He erased the recitals, and left my draft a simple agreement to deliver me the ships, when I paid Stucken \$120,000.

In this form he retained it, to be engrossed by his clerk, and promised to have it executed by Stucken, and sent to the office of my attorney, B. F. Dunning, that evening or the next morning. The next morning I went for it; it was not there; I went to Stucken’s for it. He blandly informed me, that his lawyers did not quite like to have the contract to re-convey run to me, and begged me to have another man’s name than my own inserted in the agreement. Already weary, before I had hardly commenced threading this well prepared maze of wrong, but shackled and restrained by debt, I went in silence to Beebe’s office, and there found Nesmith and Beebe, and another lawyer named Lane, acting for Stucken. They represented, that though they had entire confidence I would never

plead usury against the loan, yet it was not safe, on the whole to have the contract to reconvey run to the borrower; that it was necessary to cover the transaction with another man's name. I finally gave way to their importunities, and consented, that the reconveyance of the ships should be to William H. Aspinwall; and his name was accepted.

But, before the pen was dipped in the ink for Stucken to sign the contract, Beebe demanded the immediate payment of the \$5,000 bonus to the parties who had influenced the loan. I had promised to pay this after my return from Cuba, and after the sale of my ships. But, as I saw, that its immediate payment was the condition upon which alone I could get the contract to reconvey signed, I consented to draw a check upon Stucken for the amount, if Beebe would give me his word of honor, that the the contract would be executed without further delay. He did so. The contract was accordingly drawn up on the spot, and in the same terms as the preceding one, saving that Wm. H. Aspinwall's name was in it, instead of mine, and the sum I was to pay to get back the ships \$125,000 instead of \$120,000—the commission of \$5,000 having been added in.

The contract was to be at my attorney's office the next day, executed and complete. I went for it; it was not there. Justly irritated, I went to Stucken, and demanded the reason of the delay. He said he wished to understand why \$105,000 was mentioned as the amount of the loan, when he had only agreed to loan \$100,000.

Beebe's variation of the amount, for the sake of getting instant hold of his bonus, was explained to him by me, as it undoubtedly had been by Beebe himself. Being apparently satisfied with my explanation, Stucken promised to sign the contract, and without delay send it to my attorney that afternoon.

On the subsequent Monday, I went to my attorney's for this contract to re-convey. He astonished me with the information that Beebe proposed another change in it; that instead of run-

ing from Stucken to Wm. H. Aspinwall, it should run from Nesmith and Lane. [See Appendix, F.]

Let me jump to the conclusion. Engrossed with getting the *St. Lawrence* ready to go to Cuba, and feeling acutely, that the four months of my loan was rapidly running its term away, I consented to the insertion of these men's names into the title to my hard-earned property. A new contract was accordingly drawn and ready for execution—but Beebe had yet another change to propose.

He desired me to substitute a client of his, Cornelius Poillon, of the firm of C. & R. Poillon, in the place of William H. Aspinwall, as the party to whom the ships were to be reconveyed. I consented to do this. The contract was signed at last, and delivered to my attorney; but not until I was on board and ready to proceed to Havana to sell the "*St. Lawrence*."

Feeling freed now of the risks which had so long surrounded me, I cheerfully steamed on, and arrived at Cuba on the 2d January, 1856.

At this moment appeared the first manifestation of a purpose, undoubtedly long meditated by Stucken and Nesmith, to grasp all three of the ships under the bills of sale. They permitted the "*St. Lawrence*" to go to Cuba under a mortgage debt, payable to Guion, Boardman & Co., engine builders, which they were bound, and had agreed to pay, out of the loan and the money which was in their hands for that purpose—knowing well that her creditors would send out intelligence of their claims, and that this would defeat my efforts to sell her. Such was the result—a result which was confirmed, effectually, by the machinations in Havana, of Stucken's agent at that port, a man named Frederic Busing. His efforts to thwart a sale of the "*St. Lawrence*" were unceasing, though quiet.

For two months, I vainly struggled against the treachery of his agent, who was instructed to waste, as far as he could, my four months of grace. The first of March came. Busing now threw off the veil with which he had covered the part he had been playing, by proclaiming, that I had no title whatever, by

which I could convey the ship, and openly obstructed me. I denounced him, and declared my intention as well as my necessity, to take the ship immediately back to New York, and there sell her. He thereupon, employed an influence with the consul to prevent me from sailing, and actually succeeded in making that functionary deny me the papers necessary to the voyage. I could not move the ship from the harbor of Havana. [See Appendix, G.]

But the 5th day of April, which would ripen my bills of sale into irrevocable deeds, was coming fast upon me. I was forced to abandon all hope of selling the "St. Lawrence" to the Spaniards. Their fears and suspicions had been so successfully aroused, that they were unwilling to consummate the purchase of that vessel, till they were fully satisfied of its safety.

But the "Ocean Bird" was free, and I substituted her, in this weary negotiation, in the place of the "St. Lawrence." Now I was successful. On the 9th of March I contracted with R. R. Toreces; Ramon, Herrera & Co.; Y. M. Zangroniz; Salvador Sama; J. P. Pla, and Picabia & Co., to sell them the "Ocean Bird" for the sum of \$250,000, [see Appendix, H,] \$110,000 of which was to be paid on the delivery of the vessel in New York to Mr. Zangroniz—the balance to be secured by a mortgage on the ship. Not an hour of my fast waning days of grace did I lose.

On the 13th, I was a passenger in the steamship "Cahawba," accompanied by Zangroniz, with his captain, Viademonte, his officers and crew, [see Appendix, I,] to whom I could make instant delivery of the sold ship. We arrived in New York on the 18th. Immediately we went to the "Ocean Bird," and on her deck I delivered, and Zangroniz took conditional possession of the ship, though he had not as yet paid me one dollar of the purchase money. I had taken him on board the vessel in order to secure and consummate the agreement of sale made at Havana.

Then, I went to the office of Stucken, and perhaps with excess of heat, charged him with his perfidy; and with a satis-

faction, that perhaps was defiant, I informed him, that I had made a sale of the "Ocean Bird" which would put me in funds to the amount of \$110,000, and finished with demanding an account forthwith, of the payments he had made out of the balance of the \$100,000 loan left with him on deposit. He earnestly protested his innocence of either a wish or an effort to thwart me in the sale of the "St. Lawrence" at Havana, and courteously promised to have the account ready for me on the "following day."

Accordingly, on that day, I went for it. It was not made out. Of course, a conversation ensued, in which Stucken found the courage to declare to me, that the \$110,000 cash, which Zangroniz was to pay me, would not be sufficient to pay him for his advances under my bills of sale. I was amazed at this betrayal of the game he was playing. I well knew, that his declaration was utterly false, and closed my interview with impatiently demanding my account. I called for it the next day; it was not prepared. I again insisted upon an immediate settlement.

I went once more for this account; and excuse was ready for its not being made out, and the deliberate purpose to absorb the \$110,000 I was to receive from Zangroniz and yet leave me in debt, was again betrayed by Stucken. There was betrayed also, at this interview, a purpose to inflexibly demand the payment of the whole sum claimed, and a determination not to take a part of it; for when I offered, in the event of Zangroniz's purchase money of \$110,000 proving insufficient to pay my account, to let the title to the "St. Lawrence" stand in Stucken's name, he stiffly replied, "No, sir; I will have the whole of my demand or none!" Days went by—I vainly demanding a settlement of my account, and Stucken as often promising it, and as often breaking his promise. [See Appendix, J.]

In the mean time, Zangroniz, the agent of the Spanish purchasers, stood impatiently, with his money in his hands, urging me to perfect my title, and to perfect

my sale of the "Ocean Bird." I offered Stucken a bond, with undoubted security, conditioned to pay him what should be found due from me on final settlement, if he would only convey the "Ocean Bird" to Zangroniz. He refused utterly—and hopeless of persuading him to do anything that was just and fair, I appealed to the law. I commenced an action in the Superior Court of the city of New York, in which I had no choice but to set forth the usurious nature of his loan to me, and to show, that the bills of sale by which he held my ships were void. Upon my prayer he was enjoined from disposing of the ships, which he had begun to threaten to sell at auction, in order, as he pretended, to "get rid" of them.

Stucken instantly woke up to a sense of his danger. A settlement with me was urged, and entered upon with zeal. [See Appendix, K.]

At this moment, an interlocutory order of the Court, always customary and of no significance to the merits of the controversy, released Stucken from his fears, and suggested a sale by him of the ships, as a solution of the difficulty, and a final finish of an affair which had become troublesome. In Stucken's answer to my bill for an injunction, he denied under oath, all the equities of my case, and swore, that I had sold the ships outright to him, and that the transaction between us was, in no sense whatever, a loan, but was an absolute sale. His oath, balancing my oath, by the practice of the court in all such cases, the injunction which had been granted me, restraining him from selling the ships, was dissolved, although the main suit went on.

The negotiation for a settlement was abruptly broken off. Nesmith then offered, that if I would pay him \$10,000 he would get Zangroniz to increase his cash payment upon the "Ocean Bird" to such an amount as would cover all Stucken's claims. [See Appendix, L.]

Zangroniz now got closeted with Nesmith and Stucken, and, unable to resist the opportunity presented for the commission of a stupendous fraud, the fruits of which would mainly enure to him and his principals—with all speed, drove a

bargain with Nesmith and Stucken, not only for the sale of one of the ships, the "Ocean Bird," as I had done for the sum of \$250,000, but for the sale of all three of them, for the paltry and reckless consideration of \$189,000. [See Appendix, M.]

Before this iniquitous sale was consummated, I served written notices, [see Appendix, N] upon Stucken and Nesmith, not to sell, and upon Zangroniz, Ceballos, Toreces, Sama, and all the other Spaniards, not to buy. But buy they did; and they, and their partners in Havana above named, now hold my vessels, with full and unquestionable knowledge of my title, and of Stucken's want of title. They knew of the fraud, took part in its concoction, were eager parties to it, and reaped, and now enjoy its fruits.

The harmony of this history, if not its continuity, requires that I should relate how these Spaniards, with their confederates, got possession of the "Ocean Bird" after the perpetration of this monstrous fraud. In order to make a delivery of her, a sailor was found to swear to an account for unpaid wages of \$74.47. I had the fellow's receipt for the amount, as having been paid by me, in my pocket at the time. Beebe brought a suit on this claim—sprung a judgment on me by default—took out an execution, and persuaded the Deputy United States Marshal, Thompson, to transcend his duties and seize the "Ocean Bird" by violence. Under the authority of that writ, with a gang of armed men at his heels, he boarded the ship in her dock, and drove my officers and men ashore. The fellow was paid \$569.84 for this foul work—placing and leaving the ship in possession of Zangroniz and Viademonte, who had not paid me one dollar for her—and who then ran away with her to Havana. [See Appendix, O.]

The St. Lawrence was seized, in a like manner, about a week after, in the harbor of Havana, by the Spaniards before mentioned, and my officers and crew driven out of her. [See page 63 of the complainant's printed testimony, and Appendix P.]

Two-thirds of the "United States" I had already sold. The history of the other third is soon told. The laws of Spain

require, that vessels under her flags should be owned by Spanish subjects; and when I sold those two-thirds, I acceded to the request of my vendees, that the other third should stand in the name of Toreces. It stands there yet. He disregarded an order from me, subsequently given, to transfer the share to a mercantile house in Havana, [see Appendix, Q] and Stucken claimed to be the fountain of the title to the one-third of this ship, as well as the whole of the other two.

Nothing, now, was left to me but law. The suit already instituted in the City Court was urged. But, wrapped up in the defence, was a surprise not only upon me, but upon the whole commercial community. At the end of the uncommonly fertile professional delays which clogged the suit, it was sprung, and with effect. Stucken made an affidavit, that he was an accredited consul of some German principality—the Duke of Saxe-Weimar; and his counsel thereupon moved for the dismissal of the suit, upon the ground, that the United States laws conferred exclusive jurisdiction, in cases affecting these official persons, upon the Federal Courts. My just claim was therefore thrown out of the State Court, and in order to maintain a suit against Stucken, I had actually to remove with my family into another State, and there take up my residence. This done, I commenced a suit in equity against him in the Circuit Court of the United States for the Southern district of New York.

I thank God, that I have survived the delays and vexations of the defence made to this suit. Its history I will not give. A part of it is contained in a printed bound book of testimony of fearful size. My counsel, Charles O'Connor Esq., told the story of the usury, and stated the law which forfeited both the principal and interest of the sum I had borrowed; but immediately relinquished, in my name and at my instance, the great advantage I legally had over my adversary, and bound me, also at my instance, to a deduction of every dollar that Stucken had really advanced for me, as will fully appear by the argument of Mr. O'Connor accompanying this statement.

The suit so commenced against Stucken, was heard by Judge Nelson, who subsequently, on the 6th of October, 1859, pronounced, in my favor, the decree of the Circuit Court upon the points raised in the suit.

This decree—certified in full, appears in the Appendix, marked “R,”—and establishes my rights fully to the vessels. It declares that I am entitled to be restored to my interest in and possession of all the said steamships, or, in lieu thereof, to the value of the same, and fixes that value of my then interest, after deducting what had been paid me, including all the proper interest, outlays, costs, and charges of the wronging parties, at two hundred thousand dollars, with interest at the rate of seven per cent. from the 6th of May, 1856, with ten hundred and twenty-four dollars and fifty cents costs—which principal, costs and interest, computed to the time of docketing the decree, (15th November, 1859,) amounted, clear of all deductions, to the aggregate sum of two hundred and fifty thousand three hundred and sixty-nine dollars and seventy cents, (\$250,369.70,) as will appear by reference to the certified copy of the decree annexed. [Appendix, R.]

This decree of the Circuit Court of the United States, to which I call the Honorable Secretary's close attention, left the Spaniards without the shadow of a title to the ships they had so fraudently got possession of. They were mine, to take wherever I could find them. Accordingly, on the 9th day of January last, the “Ocean Bird” having come into the port of New York—I went on board of her and demanded her as my property, under this decree of the United States Court; alleging at the same time, that she had been originally stolen from me. Her Spanish captain, Viademonte, at once surrenderd her, and went ashore with his officers and men and their baggage and all their personal effects. He was the same captain who had commanded her on behalf of the Spaniards, out of the port of New York to Havana, when originally run away with by them, as I have before stated. He knew, that the ship was mine, and that he and those he represented had obtained possession of her

by fraud. And he quietly, and without objection—indeed, assenting to my rights, placed me again in possession of my property. [See Appendix, S.]

Soon after my being thus repossessed of her, she was libelled, by the employees of the Spaniards, at the instance of the Spanish consul, and Ceballos, her consignee, with the view to regain, for the Spaniards, possession of the ship by means of another fraud. Under the advice of counsel, I bonded her in all of these mock libel suits, so as to secure myself in the possession, under the provisions of the statute. Viademonte, at the instance of the Spanish consul, executed similar bonds in these same mock suits, and then obtained from the lawyers who had libelled the ship, (in fact, his own agents,) a stipulation, that he might take possession of her. On this stipulation, his counsel entered a “rule of course” in the District Court, that the “Ocean Bird” should be delivered up to his client. I was not a party to the stipulation, and was not bound by the rule. The whole proceeding represented but one interest, and was a fraudulent contrivance on the part of the Spanish consul, to regain possession of the ship for the Spaniards. These libels were colorable, and not real. Viademonte’s counsel, aware of the hollowness of the whole thing, made several hasty *ex parte* applications to Judge Betts to confer upon Viademonte’s claim a preference over mine. The Court of course refused. The Spaniards, having thus failed in their applications to the court, to get possession of my ship, determined upon the use of force, conjoined with fraud.

The United States marshal, Rynders, had been, in the beginning, the 9th of January, 1860, hired by the Spanish consul and Viademonte, to lend his brutality and recklessness to the authority of the office, which his conduct has dishonored, and at midnight to effect a landing, with a superior force, on the deck of my ship. [See his letter, Appendix BB.] He attempted this crime, night after night, heading the Spanish crew and a gang of armed desperadoes, conspicuous among whom was the Spanish consul; and in the midst of his profane fury, proclaimed, that he was empowered

to dispossess me by a writ of the United States District Court. The Spanish Consul and vice-consul, one or both together, were always present with him; and on every one of those occasions, I called him on board, and assured him, that if he would show me the writ I would yield obedience to it. Of course, the hired desperado had no writ; the pretence of one was a fraud, which the Spanish consul, with his Spaniards, had suggested, and with him was now carrying out. Force, thus attempted; failed, but brought with it to them, the lesson that I was a law-abiding man, and suggested an attack in a new form.

Perceiving the long-suffering patience with which I had relied upon *law* for the redress of my wrongs, and the unvarying respect with which, sailor-like, I had treated its forms, from the very commencement of this, the tragedy of my life, these conspirators, including the Spanish consul, then prompted a sure and bloodless capture of the ship by a feigning of a legal process. Accompanied by George W. Morton, the deputy clerk of the U. S. District Court, Rynders, the marshal, on the 12th of January, 1860, at two o'clock in the afternoon, came up over the side of the "Ocean Bird," and saluting me on the deck, said: "Captain Graham, I have an order from the court which requires you to go on shore and yield up the possession of this ship." Astounded at this intelligence, I said to Morton: "Sir, you are the deputy clerk of the U. S. District Court; tell me if this is so." He replied, "Captain Graham, it is;" and thereupon, drew a paper from his pocket, which he read, and which, as well as I can now recollect, was in these words, or in substance to the same effect:

"To Isaiah Rynders, United States marshal: you are hereby commanded to take possession of the steamship "Ocean Bird," and retain her and keep her in your custody until the further order of the court;" and then, suddenly, handing the document to me, he said: "Read for yourself, sir." I took the paper in my hand, but before my confused sight had settled steadily upon it, Rynders said: "Now, Graham, go

ashore. I received this ship from you," and seizing my hand, he gave me the grip of the masonic brotherhood, and added, with a solemn appeal to God, "I will keep this ship for you, sir—no Spaniard, no man shall put his foot on her deck, save you and your friends, unless by the special order of the court; and I will surrender her to you as soon as my process is made secure, which will, no doubt, be by a decision to-morrow, for the question will then be argued." I urged, that at least, myself and clerk should be permitted to remain aboard the ship. "You must go, Graham," he said, "but in keeping possession of the vessel I will be governed entirely by the order of the court." Morton confirmed all of Rynders' representations and echoed his promises. But for the confirmatory statements of Morton, I would have placed no confidence in Rynders, whom I knew to be a man wholly reckless, void of truth and conscience, and fit only for bad purposes. In the meantime, he had put the paper which he had read to me into his pocket. Then taking me, in a friendly manner, by the arm, he urged me toward the gangway, saying, "Come, Graham, get into my carriage, and I will take you anywhere in the city that you wish to go." I went; for I believed that I was obeying the mandate of a United States court, communicated through United States officers—one of whom (Morton) I supposed to be honest. I was a sailor, and not a lawyer. We alighted from the carriage at the City Hall.

Honorable and just men can conceive the emotions with which I there learned, that my trust in my country's laws and her public functionaries had been taken advantage of to make me the victim of one of the grossest and most cruel frauds upon the long calendar of New York crime. [See Appendix, T.] No such order as Morton had read to me had ever been made by the court to dispossess me; no order whatever had been made by the court upon the numerous applications for advantage urged by the Spanish claimant for possession—no decision was to be given upon my right of possession. Judge Nelson's decree had settled that forever. No. But a pretended, or counter-

feit writ of a court of justice, falsely interpreted and represented to me, had been used by two of its officers—one, at least, the instrument of the Spanish consul—to accomplish a possession, equivalent, in my mind, to an act of robbery, which, committed on the high seas, would have been piracy by the common law of both England and America, and by the law of nations. [See affidavit of R. L. Joice, Esq., Appendix, U.]

Thus, it will be seen, that the Spanish subjects, Cubans, in order to gain and keep possession of the steamship “Ocean Bird,” with the other two steamships theretofore fraudulently obtained from me, by the direction and active assistance of the Spanish consul, invaded our national court of justice, perverted its forms, abused its process, suborned its officers, set at defiance its decrees and judgments, and, through such officers, perpetrated, in the seizure and carrying away of the “Ocean Bird,” an act, seeming to me, equivalent to robbery and piracy; an act, however denominated, which I submit is an offence against our nation, a just cause of war on the part of the Government of the United States against Spain, and should be followed, immediately, by a demand upon the Spanish Government for full and ample indemnity for the property thus taken from me.

Upon going back to the ship, (after having thus been defrauded of possession,) I found her deck covered with a posse of armed men, and two cannon actually placed in range, to sweep the dock for her protection. As I went over the side, five deputies of the United States marshal confronted me, with pistols in their hands, and ordered me on shore, on pain of being shot dead if I refused to go. They seized me and thrust me to the gangway. Personal resistance was useless, and I was obliged to submit.

Under the protection of one hundred and seventy-five policemen, lent by Superintendent Pillsbury to this outrage, Rynders and the Spanish consul marched the Spanish captain

and crew on board the vessel, and she was hauled into the stream.

Viademonte, the captain, cunningly affected timid reluctance to take the command of the ship, well knowing, that the taking and carrying away the vessel was a felony of the gravest character, and a political offense which might involve himself and his associates in Havana in utter ruin, and his country in a war with the United States. Accordingly, the mate was invested by the Spanish consul with the powers and temporary rank of captain, and was thus, technically, burdened with the responsibility of the offense against the law of nations and of the laws, dignity, and honor of the United States, which was then committed.

Thus forcibly and fraudulently dispossessed of my ship, I resorted to the only remedy left me, as I thought: a replevin suit in a State court. My bonds were prepared and approved; and the writ was ready for service by the sheriff, at the hour of ten on Monday morning, the 16th day of January, 1860. But at 9 o'clock that morning, she went down the bay of New York, (the Spanish consul, Marshal Rynders and his posse, on board,) in tow of a steam-tug. I instantly chartered another tug, accompanied by the sheriff, with the writ of replevin, and pursued her. [Appendix, V.] At the Narrows, I met the Spanish consul, Rynders and his deputies, returning. The "Ocean Bird" was then under her own steam. I knew her great speed, and aware of the fruitlessness of a chase, turned about and came back.

Thus, this noble ship, which cost me \$248,717, was lost to me—taken from me, as it were, by an act of piracy, in our own port, by the Spanish consul, and his band of Spaniards, with the aid of a hired employee of my own Government.

The success which crowned this perfectly organized fraud threw off the disguise which had partially covered some of the actors in it. Within a few hours after my return, baffled and empty-handed, to the city, I learned, what numbers knew before—that a meeting had been held on Sunday night, the

15th, at the lodgings of the Spaniard Ceballos, at which he, the Spanish consul, Rynders, and their confederates arranged the details of the plan to run away with the ship—a plan so well executed the next morning. The vigor and hurry of their action were inspired by a knowledge of my successful application for a writ of replevin, and by a purpose to anticipate and nullify the action of a court of justice, which, they well knew, would restore and confirm to me the valuable property with which they had determined to abscond.

At this very moment, these three steamships, employed upon the route which I had projected, are coining money for the men whom the decree of the United States Court (to be seen in the Appendix hereto) virtually pronounces to be robbers.

To the authorities which at Washington are entrusted with the care of the rights of American citizens, in the relations of the Republic with foreign powers, it is not necessary for me to say, that it would be worse than useless for me to go to Cuba, and, on the enrolled decree of the United States Circuit Court, or upon any other conclusive ground of right, commence an action in a Spanish tribunal for the recovery of my ships or of their value. My life in Havana would not be safe, for a single hour, on such an errand.

I am, therefore, without remedy. Of my own resources and personal power and action, I stand helpless. Stung, even as I am, as a man, by the deepest sense of wrong and outrage, I cannot move one step toward the recovery of my property. Nothing is left me but my right as an American citizen to claim the justice and protection of my government, and to ask, that the power and authority of the "Stars and Stripes," under which I have sailed all my life, shall secure me redress for this most flagrant of wrongs, and vindicate my rights as an American citizen.

I therefore ask of the Honorable the Secretary of State of the United States, a dispassionate and careful consideration of the wrongs and injuries I have sustained at the hands of these Spaniards, by the direct agency and authority of the Spanish

authorities and representatives of Spain, as detailed in the foregoing narrative, and to solicit, through him, such action on the part of the government of the United States, as shall cause Spain to indemnify and compensate me for the wrongs and injuries so committed by its subjects, by the aid and instrumentality of its own representatives, against my person, honor, character, and property.

In making such demand for compensation from the Spanish government, I desire especially to call the attention of the honorable Secretary of State to the following considerations, deduced from the narrative, viz:

First: The sale of two thirds of the steamship "United States" was made at the invitation and instance of General Concha, Captain-general of Cuba, to Noriego, Olmo & Co., subjects of the Queen of Spain, on the 24th day of July, 1855, for the sum of \$90,666. The other third part of said ship which I retained, and still of right own, was transferred by me without consideration, to Rafael R. Toreces, for the sole and only purpose of complying with the Spanish law, that the title to vessels sailing under the Spanish flag should be in the name of its subjects. This one-third part of said ship, of the value of \$45,000, I have demanded to have reconveyed to me by the said Toreces, and such demand refused by him. Without government aid I am utterly powerless to compel such retransfer. To the wrong done me, in this regard, the authorities of Cuba are parties.

Secondly: The unlawful abandonment and breaking of the contract for the sale and purchase of the "Ocean Bird" made with me on the 9th day of March, 1856, for \$250,000, by all the parties above named, except Noriega, Olma & Co.; their subsequent fraudulent purchase of Stucken, after due and legal notice; and finally, their collusion with the Spanish consul, their chief advisor, agent, and instrument, residing in the city of New York, and with the marshal for the Southern district of New York, and seizure, capture, and taking away of said ship out of the jurisdiction of the United States, by the aid

and at the instance of the Spanish Consul, is another cause for interference, in my behalf, on the part of the United States; being of itself, equivalent to an act of robbery and piracy, committed by the authorities of Spain in our own ports; and—

Lastly, the seizure in Havana, on the 6th day of May, 1856, and keeping of her ever since by them, of the steamship “St. Lawrence,” without any contract of sale or purchase thereof, or any right whatever, derived from me, is such a violation of my rights as can only be reached and redressed by the Government of the United States.

In making this claim upon the Spanish Government, I ask, first, that I may be compensated for the difference between the actual value of the property and the amount heretofore paid by the Spaniards for it. The claim, therefore, as made, stands thus :

The aggregate cost and value of the three ships is...	\$520,717
The Spaniards paid me, on account of the	
ship “United States”.....	\$90,666
They paid Stucken.....	189,000
and have taken the whole of my three	
ships.	<hr/>
Total paid by the Spaniards.....	279,666
Leaving a balance due me of.....	<hr/> \$241,051
with interest, at 7 per cent., from the	
6th of May, 1856.	

The amount of \$189,000, paid by the Spaniards to Stucken, was paid to him, under the fraudulent sale, as hereinbefore stated. The balance of two hundred and forty-one thousand and fifty-one dollars, (\$241,051,) with interest from the sixth of May, 1856, I now claim as my just and equitable due, and due also by every principle of equity, as regards the Spaniards themselves. I claim also, at the same time, in addition, the fullest indemnity for the damages which these lawless and piratical proceedings have otherwise occasioned me; damages destructive, to an inconceivable degree, of my peace, interests,

and character, in ways almost unspeakable. And I claim, that it is due to myself, as a citizen, as well as to the honor of the United States, that my Government should demand from Spain the fullest satisfaction for me.

In making this statement, I have recited, in my own way, an undisguised narrative of facts, somewhat in detail, (perhaps too much so,) in order, that the Department of State may have a plain outline, in sailor's phrase, of the whole subject before them, and draw therefrom, their own conclusions. I may have, and probably *have*, omitted some or many things I ought to have stated; amplified where I ought only to have hinted, or merely hinted where I ought to have enlarged: if so, these defects and omissions can be supplied hereafter.

An American sailor, I have been wronged and robbed; and the representatives and authorities of Spain have been the agents and instruments of the wrong. Without Spanish authority, connivance, bribery, venality, and deceit, it could not have been effected; and Spanish subjects, (with whom Spanish authorities are interested,) now possess and enjoy my property, the earnings of an honorable, adventurous and hard-toiling life.

An American citizen, I respectfully claim the power and authority of my own Government to effect for me redress.

I will hereafter supply such further proofs, facts, or explanations as may be necessary, for the information of the Government, together with an argument, if necessary, in support of my demands; and I request the Government to communicate with the Hon. Charles Naylor, of the city of Washington, on the subject, who is authorized to act for and represent me and to receive any communications that may be addressed to me in this behalf.

With the highest respect, I have the honor to be,

Your obedient servant,

JOHN GRAHAM.

WASHINGTON, D. C., *May* 23, 1860.

POSTSCRIPT.—At the time the Spanish consul, (January, 1860,) with his band of Spaniards, seized and ran away with my ship, the “Ocean Bird,” from the port of New York, there were several letters published by me, in the newspapers of New York. Believing, that these may add to a better understanding of the case, I have reproduced, and now annex them hereto, in chronological order—marked, respectively, X, Y, Z, and AA.

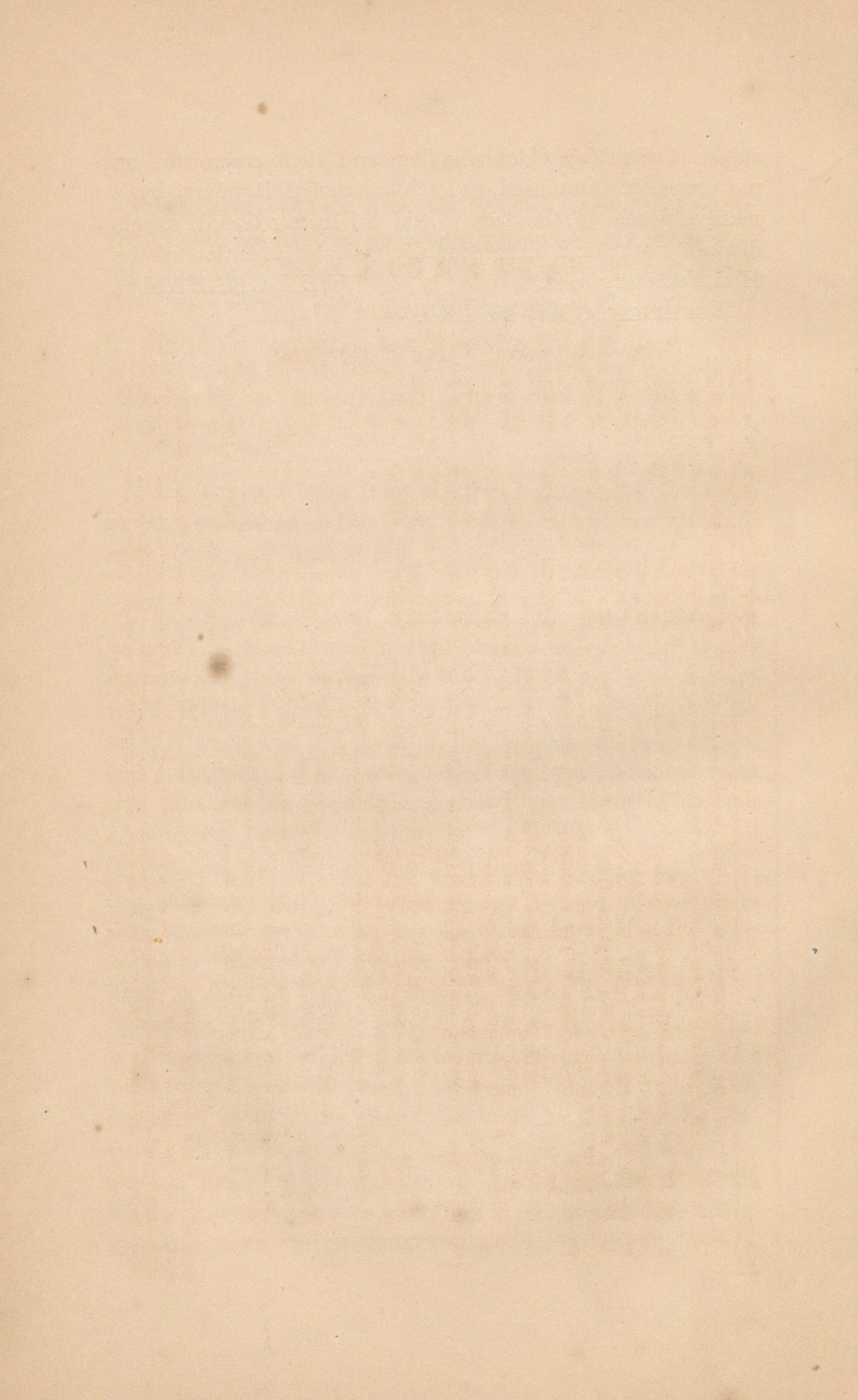
I also annex a letter from Marshal Rynders, on the same subject, published in the New York Herald of the 22d January, 1860, and marked BB.

I publish this letter of Rynders, in full—notwithstanding its many falsehoods and misrepresentations—in order, that it may be seen, (as mentioned in the body of my statement, to which this is a postscript,) by his own admissions, that he acted with, and as the agent of, the Spanish consul, captain, and consignee, and at the request of the Spanish consul, went with him and his Spaniards, at nearly midnight of the 9th of January, 1860, for the purpose forcibly to dispossess me of my ship, the “Ocean Bird,” without any legal authority, or pretence of legal authority, and to aid the Spaniards to seize and run away with her from that port; that this purpose was followed up by him, and them, from day to day, until, in the end, they, the Spanish consul and his band of Spaniards, did lawlessly seize and run away with her. This is the substance of his letter. His object in writing and publishing it was to justify or excuse himself; and false, therefore, as are many of his assertions, he nevertheless distinctly shows, in substance, that the Spanish consul, representing Spain in this transaction, was at the bottom of the whole movement—its contriver, instigator, active operator—in a word, the principal in the act of piracy (for in sub-

stance it was this) which was then and there committed on my property. Confused, as is this letter of Rynders, by a mass of falsehood, the fact to which I have referred, stands distinctly out; and I respectfully call the attention of the Hon. Secretary to it.

JOHN GRAHAM.

WASHINGTON, May 23, 1860.



APPENDIX.

A.—Appraised Value of the Ships.

PAGE	BY	OCEAN BIRD.	U. STATES.	S. LAW'CE
4	Jacob A. Westervelt, steamship builder and owner.....	\$225,000	\$160,000	\$90,000
17	George Law, steamship owner.....	220,000	155,000
		to 230,000	to 165,000
83	H. W. Johnson, steamship owner.....	230,000	150,000	85,000
2	Edward Mills, steamship owner.....	225,000
99	George Miln, steamship owner.....	275,000	175,000	87,500
71	William Boardman, of the Neptune Iron Works, steamship { owner and engine builder.....	225,000 to 230,000	165,000	90,000
21	T. F. Secor, of the Allaire Works, steamship owner and engine builder.....	230,000	160,000	90,000
10	George N. Quintard, of the Morgan Iron Works, and steamship owner and engine builder.....	160,000	85,000
8	William H. Merry, marine inspector.....	230,000	150,000
77	John Munro, steamship captain.....	240,000	165,000	85,000
184	R. Poillon, shipwright, and one of the defendants in the suit....	225,000	150,000	85,000
	Sum total.....	2,332,500	1,595,000	697,500
	Mean of all the appraisements.....	233,250	159,500	87,187
	Deduct $\frac{2}{3}$ of the appraised valuation of steamship U. States.....			106,333
	Amount claimed.....			373,604
	With interest from April 1, 1856, and damages to the extent of.....			20,000
	Cost of Ocean Bird, as per Exhibit 8 $\frac{1}{2}$	248,717		
	Cost of the United States and St. Lawrence, as per bills render- ed after the repairs in the fall of 1855.....		170,000	102,000
	Cost of the three ships, as per bill.....			\$520,717
	Mean of all the appraisements.....			479,937
	Difference between cost and appraisements.....			40,780

B.

Copy of letter from Rodman M. Price, Governor of the State of New Jersey, to Hon. H. M. Fuller.

Trenton, May 16, 1856.

MY DEAR FULLER: I beg to introduce to you, Captain John Graham, who has a claim before Congress, referred to the Committee on Foreign Affairs, of which you are a member, and to ask for him your courtesy and kind attention during his stay in Washington.

I know nothing of the merits of his claim, but beg that you will give it every attention and consideration. I have great personal regard for Captain Graham, and feel under peculiar obligations to him for the aid and assistance he rendered the officers and crew of the United States steam frigate *Missouri*, in the Bay of Gibraltar, in 1843. It was upon the deck of that burning ship that I first met Captain Graham. He was then in command of a barque, at anchor near the *Missouri*, and came as soon as the fire was discovered, to render what assistance he could, at great personal risk, and danger to himself and boat's crew. He remained with us until we were driven overboard. His boat assisted to save the lives of our people, and his barque afforded a refuge for them. He also himself saved the chronometers of the ship, and picked up a number of our people from the water. His noble and generous and humane conduct on the occasion has always been spoken of with admiration. I have only had the pleasure of meeting him two or three times, since the occurrence, and it affords me infinite satisfaction to give him, at his request, this letter of introduction, to you, and others of the committee.

Any civility, or attention, shown him, will place me under increased obligations.

May I ask that you will introduce him to those members of the committee, to whom I am known—as a gentleman, in whom I feel great interest—viz: Hon. Messrs. Bayly, Clingman, Aiken, Thurston.

I have written to Mr. Pennington.

Remaining truly your friend,

RODMAN M. PRICE.

D.

Copy of Letter from William H. Robertson, United States Consul at Havana.

Captain Graham :

DEAR SIR: At ten o'clock, the Captain-general will be pleased to see you, and I will accompany you.

Respectfully yours,

WM. H. ROBERTSON.

10th March, 1855, 8 o'clock.

E.

Messrs. Zangroniz & Bros.' Letter to Messrs. Duncan, Sherman & Co., at Havana, August 1, 1855.

Havana, August 1, 1855.

These lines will be handed to you by Mr. John Graham, who tells us he is an acquaintance of yours. With our intervention, he has sold his steamer, "United States," to our friends, the Messrs. Noriega, Olmo & Co., who intend to put it, after it has undergone the necessary repairs, on the line to Mexico, for which we have a privilege that we are going to make use of, in company with other friends. Mr. Graham asks of us to give you information about Messrs. Noriega, Olmo & Co.: we fulfill that desire of his by telling you that it is one of the first and best Spanish houses of our city. It is very respectable, and disposes of a strong capital. Their partners in this business are likewise amongst the richest and most influential men of the place, such as Mr. Sama, Messrs. Martiz & Torices, &c., &c. Mr. Graham has kept for himself an interest of one-third in this affair; but, as our laws do not allow foreigners to own shares in Spanish vessels, he has been obliged to put his in the name of our friend, Mr. Julian Casal, of the respectable concern of Messrs. Guttiniez & Casal.

From what we see in the documents of sale, Mr. Graham has named your bank as the one in which are to be deposited the drafts that are to be given in payment of the said steamer "United States." After due delivery has been made of it, he will enter into arrangements with you on that subject, which in no way concerns the purchasers.

We have the honor of being your obedient servants,

ZANGRONIZ & BROTHERS.

Messrs. Duncan, Sherman & Co., New York.

F.

Exhibit No. 22, on the part of Complainants, October 26, 1857.

C. W. NEWTON, UNITED STATES EXAMINER.

This memorandum, made this sixth day of December, A. D. 1855, between James Nesmith and Thaddeus H. Lane, of the city of New York, of the first part, and Cornelius Poillon, of said city, of the second part, witnesseth: Whereas, Lewis H. Meyer and Edward Stucken are the owners of one-third of the steamship "United States" and the whole of the steamship "Ocean Bird" and "St. Lawrence," and whereas Cornelius Poillon is desirous of having the right to purchase the said steamships at any time within four months from the date hereof, for the price or sum of one hundred and twenty-five thousand dollars, and is also desirous of having the right of sending the steamer "St. Lawrence" to Cuba:

Now, therefore, in consideration of the premises, and of the sum of one dollar to each of us in hand paid, the receipt whereof is hereby acknowledged, the said parties of the first part, for themselves, their heirs and assigns, jointly and severally covenant and agree to and with the party of the second part, his heirs and assigns, that the said Lewis H. Meyer and Edward Stucken will within twenty days from the date hereof, enter into a written contract or agreement with the said Cornelius Poillon, that they, said Meyer and Stucken, will, at any time within four months from the date hereof, and upon the payment of the sum of one hundred and twenty-five thousand dollars, and such additional sum as shall necessarily be expended by the said Meyer and Stucken in the care, custody, sale, or keeping of said steamships, or either of them, transfer and convey the said steamships, or either of them, in such shares and proportions, and to such person or persons as the said Poillon or his assigns shall direct. And further, that the said Meyer and Stucken, in and by the said contract, will permit and allow the said Cornelius Poillon or his assigns, to take the said steamer "St. Lawrence" to Cuba, but the same to be at his or their own risk and expense, and that they will, upon payment to them or to their assigns, of the sum of not less than ninety thousand dollars, transfer and convey the said steamship St. Lawrence to such person or persons as he, the said Poillon, or his assigns shall direct; and the said parties of

the first part further covenant and agree that the said Meyer and Stucken shall, in and by the said contract, agree to deduct from the purchase money any sum less than one hundred and five thousand dollars, which they shall not have paid for the consideration money, or otherwise become liable for.

And further, that at the time of any such conveyance to said Poillon or his assigns, or to such person as he shall direct, the said steamships, and each of them, shall be clear of any liens and incumbrances which shall have been voluntarily incurred by the said Meyer and Stucken, during said time.

In testimony whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.

Sealed and delivered }
in presence of }

(The words "Cornelius Poillon," in the first page, being written over erasure, where they occur twice, and the word "Poillon," and "Cornelius Poillon" when they occur on 2d page, being written over an erasure.)

THADDEUS H. LANE.

J. W. DELANO,

Witness for Thaddeus H. Lane and James Nesmith.

G.

Havana, March 7, 1856.

DEAR SIRs: According to what Captain Graham stated, he has but a very meager prospect of selling the St. Lawrence, and he intends to make his trip to New York, in her. He will in three days, make a written application to us to this effect, and we shall then peremptorily refuse allowing the ship to be taken out of this harbor, guiding ourselves strictly by the instructions contained in a letter of the 11th February, of your Mr. Stucken to our Mr. Busing.

Your obedient servants,

BUSING, STAHRMER & CO.

Messrs. Meyer & Stucken, New York.

H.

SUPERIOR COURT OF THE CITY OF NEW YORK.

Examination of Ignatius M. Zangroniz, a witness, produced, sworn, and examined before me the undersigned, one of the Justices of this Court, this 29th day of April, 1856, pursuant to the order hereto annexed. [Extract.]

And now the said Ignatius M. Zangroniz, being by me first duly sworn, did depose and say :

Q. Where do you reside? A. At Havana, in Cuba.

Q. When do you expect to leave this country for Cuba? A. In two or three days.

Q. Do you know Captain Graham, the plaintiff in this action? A. Yes.

Q. Do you know Mr. Lane, Mr. Nesmith, and Mr. Stucken, of this city? A. I have seen all of these gentlemen, two or three times.

Q. Do you know the steamship called Ocean Bird? A. Yes, sir.

Q. Did you ever make a bargain with Captain Graham, to purchase that steamship? A. I made a bargain in reference to that vessel; made a bargain as stated in our contract—the contract is written.

Q. Was this a bargain to purchase? A. The fulfillment of the contract might have brought us to the purchase of the vessel.

Q. What was the stipulated price of the steamship? A. There were several conditions. The price was on conditions, and as there were ten or twelve conditions, I cannot keep the amount in mind. I remember the price, as stipulated in one of them, to be \$250,000, conditionally.

Q. Was any other price fixed or stipulated in the contract? A. I don't remember that there was any other price.

Q. Was this contract made in good faith, and with intent on your part to carry it out, and fulfill its terms and conditions?

A. Yes, sir, every one of them. I came out to New York for that purpose, and prepared to fulfill it.

Q. How long have you been waiting in New York to fulfill that contract on your part? A. I came here on the 18th of March, last, and I was ready on the 19th to fulfill my part, and have ever since been ready.

Q. Do you intend to hold Captain Graham responsible for not fulfilling that contract? A. Oh, certainly, sir.

Q. Did you ever go to Mr. Stucken's office, at the request of any person? A. I went twice; once to deliver a letter of credit, and the second time to take it back.

I.

Havana, March 15, 1856.

DEAR SIRs: Referring to our last respects of the 9th inst., we avail ourselves of this opportunity to inform you that Captain Graham, accompanied by Mr. Ignatius Zangroniz, and Captain Frances C. Vilar, left, day before yesterday, for New-York. Their object, as we have just been told, is to buy there, for a company here formed, the steamships Ocean Bird and St. Lawrence. The first vessel, with the Mexico, (late United States,) are intended to ply between this port and Cadiz, as mail packets, whereas, the St. Lawrence is to take the place of the Mexico, now running to Sisal and Vera Cruz.

The whole is as yet kept a secret, and Captain Graham has behaved toward us in such a manner, that he has not even advised us of his actually leaving Havana. He applied to the American consul for a permit to clear the St. Lawrence out, and as that gentleman had an interdiction from us, Captain Graham could of course not achieve his pretended object.

We hear that the aforementioned Spanish captain will take the Ocean Bird immediately to this port.

Very respectfully, your obedient servants,

BUSING, STAHLER & CO.

Messrs. Meyer & Stucken, New York.

J.

Exhibit D, page 146, of the Complainant's Testimony.

77, Broad street, New York, March 20, 1856.

DEAR SIR: When in Havana, I agreed with you for the purchase of the steamer Ocean Bird, for the sum of \$250,000, upon the terms and conditions contained in the contract which we executed the 9th of the present month, it was in the in-

tention and with the good understanding that as soon as we arrived at this port, and upon payment to the creditors of the above mentioned vessel, of the \$100,000, the residue of the ready money agreed upon, you would proceed without loss of time, to make the transfer of the title of ownership to Mr. Rafael R. Torices. It is three days already that we have been here, and as I am disposed on my part to perform all that belongs to me, to perform by the terms of the contract referred to, I find myself under the necessity of requiring that you also fulfil that part, to the fulfillment of which you bound yourself.

Under this impression, and in order to avoid the losses which a longer delay will occasion those whom I represent, I beg you to proceed, with as brief a delay as possible, to the perfecting of documents, and whatever else may be necessary to put me in charge of the Ocean Bird, and look after her immediate departure.

Please acknowledge the receipt of this, and inform me in reply of your intentions.

Yours, &c.,

Y. M. ZANGRONIZ.

John Graham, Esq.

K.

Exhibit No. 7 on the part of the Complainant, page 91.

March 29, 1860.

DEAR SIR: I think I have arranged the whole matter, with your Spanish friends, both to your and our own satisfaction.

I regret exceedingly, not seeing you this afternoon, but have arranged with your clerk to meet you here, at your office, to-morrow, (Sunday,) at 11 o'clock, A. M. It is of great importance that I should then meet you, as the affair must be closed with these Spanish gentlemen (so they insist) by 10 A. M. Monday.

If you wish to see me to-night, I reside at 173 West Twenty-fourth street.

Your obedient servant,

THAD. H. LANE.

Captain Graham.

L.

NOTE.—This letter shows that Zangroniz colluded with Stucken to rob Graham of the ships.

New York, May 3, 1856.

GENTLEMEN: In reply to yours of the 30th ultimo, I beg to say that I am ready to purchase the steamers Ocean Bird, St. Lawrence, and the third part of the steamer Mexico, formerly United States, upon the following conditions:

1st. I will pay for the Ocean Bird, one hundred and thirty thousand dollars, payable \$96,750 in cash, and the balance in approved paper, to your satisfaction, at six months, subject to conditions hereinafter stated.

2d. I will pay for the St. Lawrence, fifty thousand dollars, payable in satisfactory paper, at six months, subject to conditions hereinafter stated.

3d. I will pay for the third part of the Mexico thirteen thousand five hundred dollars, payable in satisfactory paper, at six months, subject to conditions hereinafter stated.

4th. The payment of the money, and the delivery of the notes for each, shall take place when I receive the steamers Ocean Bird and St. Lawrence, respectively, and a clean unincumbered title, and the bills of sale for the said steamers. And which bills of sale, shall contain the usual covenants, including covenants that the said steamers are free from all incumbrances, and liens, and a guaranty for my quiet possession and full covenants of warranty, and satisfactory bond for quiet possession, and the fulfillment of the covenants, and I am also to receive the true and legal title to the one third part of the Mexico.

5th. This sale embraces all the rigging, machinery, engines, furniture, tackle, anchors, and apparel.

6th. The sum of three thousand six hundred and fifty dollars, is to be deducted from the cash, to be paid for the Ocean Bird, for furniture, bedding, &c., that have been removed from that steamer, and to meet the necessary repair to the boilers.

7th. The notes are to be without interest, and if paid, the legal discount is to be deducted from the unexpired period.

8th. Meyer & Stucken shall advertise, in two of the principal commercial journals, that Mr. John Graham has had no right or interest in the steamers, since the 5th of December last, and that all sales, and contracts made by him in relation to the same, are void, and without authority.

9th. I am to withdraw all claims and attachments against

the interest Mr. John Graham claims to represent in the steamer Mexico, as a condition for the sale of the Ocean Bird.

10th. The answer to this is to be given before five o'clock to day, otherwise it is to be in no way binding upon me, and in case you accept this, a satisfactory bond will be given to me for the fulfillment of its provisions.

I am yours, respectfully,

Y. M. ZANGRONIZ.

Messrs. Meyer & Stucken.

New York, May 3, 1856.

DEAR SIR: We regret very much that we cannot accede to the proposition contained in your letter of this date.

Very respectfully yours,

MEYER & STUCKEN.

Y. M. Zangroniz, Esq., present.

NOTE.—This proposition was, three days afterwards, May 6th, accepted and completed, by a title from Stucken's selling the ships, for \$4,500 less than Zangroniz offered for them, in the proposition.—[See exhibit "M" and decree of court, exhibit "R," following.]

M.

Extract from answer of Stucken to Graham's Bill of Complaint.

"And this defendant says: That before the commencement of this suit, and on or about the sixth day of May, in the year one thousand eight hundred and fifty-six, the said Meyer & Stucken actually and absolutely, in good faith, sold and disposed of the said Ocean Bird to Don Rafael Rodrique Torices, for the price of one hundred and twenty-seven thousand five hundred dollars, and the St. Lawrence to Juan M. Picabia and Jose Pla for the price of fifty-three thousand dollars; and what right, title or interest they had in the one-third part of the steamer United States to Juan M. Picabia and Jose Pla, for the price of eight thousand five hundred dollars."

N.

Copy of written notices, page 198 of complainant's printed testimony, served on Stucken, Nesmith, Zangroniz, Ceballos, Sama, and others.

SIR: You will please take notice that I am the owner of the steamships Ocean Bird and St. Lawrence, also one-third part of the steamship United States, or Mexico, and that I shall hold you responsible for any interference with said steamships, or either of them.

Yours, &c.,

JOHN GRAHAM.

New York, May 2, 1856.

O.

February 1, 1858.—Mr. Lane, counsel for defendant, produces as a witness, Joseph Thompson, who, being duly sworn, says:

Q. Where do you reside, what is your business, and how long have you been engaged in such business?

A. I am deputy United States marshal, and have been so for the past sixteen years, and reside in the city of New York.

Q. Do you know the steamer Ocean Bird; and, if so, did you have any process against her in May, 1856?

A. I did know her. I had two processes against her: one in a case entitled Ford *vs.* Graham, and the other was that of Jacob Shaffer *vs.* steamship Ocean Bird, which was a monition.

Q. Did you take possession of the Ocean Bird under these processes? If so, state where you found her, and what you did with her.

A. I did. She was lying at the foot of North Moore street when she was first levied upon by the execution. I think it was about May, 1856—the early part—when I first levied upon her. After having levied upon her, under this execution of Ford *vs.* Graham, she was removed by Mr. Graham, or by his orders, to the foot of Eighth or Ninth street, East river. Mr. Lane then called at the United States marshal's office, and stated that she had been removed from where she had

been lying, at the foot of North Moore street, to Eighth or Ninth street, and stated that he believed she was going to be taken away by Mr. Graham, and requested me to retake possession of her, and to take sufficient men with me for that purpose, and to bring her back to the foot of North Moore street, and keep a sufficient force on board to prevent Mr. Graham taking her away. I immediately proceeded, with five of the officers attached to the office, to where the Ocean Bird was lying. I there found several men on board, who claimed to have been put there by Mr. Graham. I showed them my process—to wit: the execution, and the additional process, to wit: the monition. I stated to them that she was in the custody of the United States marshal, and that she had been taken away from North Moore street without his consent, and requested all of them to go on shore. I think there were some eight, ten, or twelve men on board, who claimed to be Captain Graham's men, put there by his direction, as they stated. They consulted together some time, and in about half an hour left the vessel. We then took possession of her, and took her around to the foot of North Moore street, North river, from whence she had been removed. By direction of Mr. Lane, I left four men on board to take charge of the steamer, and see that she was not removed. In addition to these four men, Mr. Lane directed some policemen to remain on board and watch the vessel. How many days they remained I do not know. Our men kept charge of her for fifteen days and nights. The suit was then, I believe, discontinued by Mr. Lane, and the fees of the marshal and the men, &c., were paid by him, and the steamer was then delivered up to Messrs. Meyer & Stucken.

P.

Exhibit No. 37, on the part of the Defendant, July 22, 1857.

Comte por este documento que hemos recibido de los Señores Busing, Stahmer y Co., de este comercio, agentes de los Señores Meyer y Stucken, de New York, un documento de renta, fecha en New York el dia cinco de Diciembre de 1855, en el que comta que. Y John Graham, de la ciudad de New York, ha rendido á los antes mencionados Señores Meyer y Stucken su interes de una tercera parte en el vapor que fué

bajo la bandera Americana en la denominacion de United States, hoy español, nombrado Mejico, de lo que daremos cuenta á New York por el primer vapor que salga para este puerto á las personas á quienes concierna esta negocio. Y al efecto firmamos este por duplicado en la Habana á veinte y tres de Mayo de mil ocho cientos cincuenta y seis.

J. M. PICABIA Y CO.

Exhibit No. 38, on the part of the Defendant, July 22, 1857.

Por el presente certificamos que hemos recibido de los Señores Busing, Strahmer y Co., de este comercio, agentes de los Señores Meyer y Stucken, de New York, propietarios esto del vapor Americana St. Lawrence, surto en esta fecha en esta bayha dicho vapor, con todos sus enceres y utiles, segun nota de inventario, de cuya en trega damos cuenta por el primer vapor que salga para New York, á la persona ó personas á quienes concierna este negocio. Y para que comte firmamos esto por duplicado en la Habana á veinte y tres de Mayo de mil ocho cientos cincuenta y seis.

J. M. PICABIA Y CO.

Q.

Don Rafael R. Toreces, on page 141 of the complainant's printed testimony, says: "I know the steamer called Mexico, lately called the United States. I held the legal title to one-third part of this steamer, for Captain Graham. This legal title was represented by nine certificates, of five thousand dollars each. Those nine certificates represented his one-third interest in the steamer. I gave no consideration for them, but held them because Captain Graham requested me to do so. I was afterwards requested by Captain Graham's agent, Mr. Miln, to transfer this title, by the delivery or transfer of those certificates, to the house of Drake and Co., of Havana, which I declined to do, on account of having heard from my agent, Mr. Zangroniz, that Meyer and Stucken claimed to be the owners of this one-third interest. I afterwards conveyed this one-third interest to other parties—J. M. Picabia & Co. I think this transfer was by the order of the agent of Meyer & Stucken—Mr. Busing, as I understood. I received no consideration for this transfer, but did it, solely, pursuant to the order and wishes of this agent of Meyer and Stucken."

R.

Circuit Court of the United States, in and for the Southern District of New York, in the second circuit.

At a special term of the Circuit Court of the United States, in and for the Southern District of New York, in the second circuit, held in the city of New York, on the — day of May, as yet of April term, in the year one thousand eight hundred and fifty-nine.

Present: the Hon. SAMUEL NELSON, Associate Justice, &c.

JOHN GRAHAM

vs.

EDWARD STUCKEN, CORNELIUS POILLON, AND RICHARD POILLON.

This cause came on to be heard on the pleadings and proofs therein, and after hearing Messrs. O'Connor, Cutting, and Williams, of counsel for the plaintiff, and Messrs. Brady, Dean, and Lane, of counsel for the defendant, Edward Stucken, the bill of complaint having been taken as confessed by the said Cornelius Poillon and Richard Poillon, and the court having duly considered the same:

It is now ordered, adjudged, and declared, that at the time of the execution and delivery of the three several bills of sale, next hereinafter and in the pleadings mentioned, the complainant was the owner of the steamship "St. Lawrence," and of a third part, share, or interest of, in, or to the steamship "United States," otherwise called "the Mexico," and that he was also the equitable owner of the steamship "Ocean Bird," but that the legal title to the said last mentioned steamship was at the last mentioned time vested in the defendaant, Richard Poillon, by virtue of an instrument bearing date on the first day of November, in the year 1855, executed and delivered to him by the complainant, for the purpose of securing to the defendants, Cornelius and Richard Poillon, certain claims and demands which it appears by the proofs have since been paid to them, and are now satisfied and extinguished.

And it is further ordered, adjudged, and declared, that the bill of sale of the said steamship "Ocean Bird," bearing date the fifth day of December, in the year 1855, executed by the said Richard Poillon, to Lewis H. Meyer and Edward Stucken, in the pleadings and proofs particularly mentioned, and also

the bill of sale of the said steamship "St. Lawrence," in the said pleadings and proofs also particularly mentioned, bearing date the sixth day of December, in the year last mentioned, but which was in fact executed and acknowledged by the complainant on the fifth day of December aforesaid, and on the last mentioned day was delivered by him to the said Lewis H. Meyer and Edward Stucken; and also the bill of sale of the aforesaid one-third part, share, or interest of the said complainant, of, in, and to the aforesaid steamship "United States," otherwise called the "Mexico," executed to the said Lewis H. Meyer and Edward Stucken, in the pleadings and proofs also mentioned, were, and each of them was made and executed by or in behalf of the complainant, and were by him delivered or caused to be delivered to the said Lewis H. Meyer and Edward Stucken, and were by them accepted and received as and for securities for the repayment of the loan of one hundred thousand dollars, agreed to be made by the said Lewis H. Meyer and Edward Stucken to the said complainant, as in the bill of complaint is particularly alleged and set forth, and of the usurious premium for the loan, or forbearance thereof hereinafter mentioned, and the said bills of sale were not, nor was any of them made, executed or delivered, nor were or was the same, or any of them received or accepted as and for conveyances of the said steamships, or any of them, or of any part, share, or interest therein, upon any sale thereof to the said Lewis H. Meyer and Edward Stucken.

And it is further ordered, adjudged, and declared, that at the time of the agreement to make said loan, the complainant did agree to and with the said Lewis H. Meyer and Edward Stucken, who were then copartners in the city of New York, carrying on business under the firm name of Meyer & Stucken, to pay to them, and the said Lewis H. Meyer and Edward Stucken did at the same time agree to and with the said complainant to take, reserve, and receive from him for such loan, and for the forbearance thereof for the period of four months, from the fifth day of December aforesaid, by way of interest thereon, a greater sum than at the rate of seven dollars upon one hundred dollars for one year, in violation of the statutes of the State of New York, in such case made and provided; and that the aforesaid agreement of loan was and is usurious and void, and that the aforesaid bills of sale, and each of them, were and was given to and accepted by the said Lewis H. Meyer and Edward Stucken as securities for the repayment of the said loan, and the payment of the said usurious premium to the

said Meyer and Stucken for the forbearance of the aforesaid sum of money, were and are, and each of them is, also void and of no effect, and that they ought to be surrendered to the complainant.

And it appearing to the court upon the proofs in the cause, that on or about the sixth day of May, in the year 1856, the said Lewis H. Meyer and Edward Stucken did, by instruments purporting to be bills of sale or conveyances of the aforesaid steamships "Ocean Bird" and "St. Lawrence" and one third part, share or interest of, in or to the said steamship "United States" otherwise called the "Mexico," sell, transfer and deliver to one Rafael R. Torices of Havana in the island of Cuba, the said two steamships called the "Ocean Bird" and "St. Lawrence," and the aforesaid share or interest in the steamship called the United States, and that the said three steamships are beyond the jurisdiction of this court, and cannot be restored by the said Meyer and Stucken to the complainant:

It is further ordered, adjudged and declared that the said Lewis H. Meyer and Edward Stucken are chargeable with and ought to account to the complainant for a fair value of the said steamships at the time they assumed to dispose of them as aforesaid: And it appearing to the court that the fair value at the time last aforesaid of the steamships "Ocean Bird," "St. Lawrence" and one third part, share or interest of, in or to the steamship "United States" together, was the sum of three hundred and forty-five thousand three hundred and thirty-five dollars and sixty-five cents, lawful money of the United States of America.

And it further appearing to the court that the said Lewis H. Meyer and Edward Stucken have, since the date and delivery to them of the alleged bills of sale of the said steamships, that is to say, since the said fifth day of December inclusive, paid, laid out and expended divers sums of money, to and for the use of the said complainant, or in and about the payment of liens and incumbrances on the said ships, and in and about the repairs, supplies and necessary and proper expenditures for and upon the said ships, and for the safeguard, protection, and preservation thereof, which sums, with legal interest thereon, adjusted to with all proper additions, rebate and allowances to the time of the transfer and delivery of the steamships by the said Lewis H. Meyer and Edward Stucken to the said Torices, amounted to the sum of one hundred and forty-five thousand three hundred and thirty-five dollars and sixty-five cents of like money: And whereas the complainant has offered

to allow and pay, and now does offer to pay and allow to the said Lewis H. Meyer and Edward Stucken, all sums of money that are justly and equitably due by him to them with legal interest thereon as aforesaid: And whereas, the said Edward Stucken claims the benefit of all the moneys so paid, laid out and expended:

Now, therefore, it is ordered, adjudged, and decreed, and this court, by virtue of the authority in it vested, doth order, adjudge, and decree, that the aforesaid loan of money so as aforesaid made by the said Meyer and Stucken to the complainant, was and is usurious and utterly void, and that the aforesaid bills of sale of the said steamships "Ocean Bird" and "St. Lawrence," and of one-third part, share, or interest of, in, or to the said steamship "United States," were and each of them was made and delivered to the said Lewis H. Meyer and Edward Stucken, and were by them accepted and received as and for securities for the aforesaid unlawful loan of money, and for the forbearance thereof, and for no other use or purpose, and upon no other agreement whatever, and that the said bills of sale were and are, and each of them is, void and of none effect.

And it is further ordered, adjudged, and decreed, that the said Edward Stucken do surrender to the complainant the aforesaid three bills of sale, so accepted and received by them from him as aforesaid, and that the said bills of sale be canceled.

And it appearing to the court that the said steamships are beyond the United States and cannot be reached by any process to be issued out of this court, and are not within the power or control of the defendant, it is further ordered and adjudged that the complainant is entitled to recover from the said Meyer & Stucken the fair value of the said steamships, after deducting therefrom and allowing to the said Meyer & Stucken the just and equitable allowances due to them as aforesaid.

And it is further ordered, adjudged, and decreed, and this court doth order, adjudge and decree, that the said Edward Stucken, (the said Lewis H. Meyer, at the time of the commencement of this action, having been before [beyond] the jurisdiction of this court, to wit, in Europe, and in consequence was not served with process, or made a party to this suit,) out of the assets, property, and effects of the firm or copartnership of Meyer & Stucken, and out of his own individual assets, property, and effects, do pay unto the said complainant the balance of such value as aforesaid, after allowing and deducting from such value the sum of one hundred and forty-five

thousand three hundred and thirty-five dollars and sixty-five cents, being the amount of the aforesaid allowances to the said Lewis H. Meyer and Edward Stucken, which balance amounts to the sum of two hundred thousand dollars, together with interest on the said balance at the rate of seven per cent. per annum from and after the sixth day of May, in the year one thousand eight hundred and fifty-six.

And it is further ordered, adjudged, and decreed, that the complainant have execution according to the course and practice of this court, for the last mentioned sum, with interest thereon from the last mentioned date, with the costs of this suit to be taxed, which said costs having been taxed at the sum of ten hundred and twenty-four dollars and fifty cents, and said interest having been duly computed down to the day of docketing this judgment, to wit, the fifteenth day of November, one thousand eight hundred and fifty-nine, amounts to the sum of forty-nine thousand three hundred and forty-five dollars and twenty cents, making, in the aggregate, the sum of two hundred and fifty thousand three hundred and sixty-nine dollars and seventy cents.

S. NELSON.

A copy.

KENNETH G. WHITE, *Clerk*.

Fees \$2 50.

S.

*Affidavit of witnesses to the surrender of the steamship to
Captain Graham.*

United States District Court, Southern District of New York,
City and County of New York, ss:

Charles F. Henningsen, Henry Bolton, Theodosius A. Fowler, and William H. J. Stratton, being each respectively, duly sworn, depose and say, and each for himself says: that he was present, on Monday last, when John Graham took possession of the steamship "Ocean Bird;" that it is not true, as has been reported in the newspapers, that said Graham took such possession by force or violence, but on the contrary thereof, that said Graham went on board and demanded possession of said steamship of the person who claimed to be captain and master thereof, to wit, one Jose Viademonte, claiming her as his own property; that said Viademonte at once and without

cavil surrendered said steamship, her tackle, apparel, and furniture to said Graham, and left the same with his men; that not one word was uttered by said Graham, or any person with him, in anywise of a threatening character, nor was any violent or discourteous word uttered to said captain or any person on board said steamship; nor was there, on the part of said Graham, or anyone with him, any act done or demonstration made that pointed to or indicated any violent intention on his or their part; that said Graham has ever since been in peaceable possession of said steamship, her tackle, apparel, and furniture.

C. F. HENNINGSEN.

HY. BOLTON.

W. H. J. STRATTON.

T. A. FOWLER.

Severally subscribed and sworn to before me, this 12th day of January, 1860.

[L.S.]

THO. SADLER, *Notary Public*.

T.

Metropolitan Police District, Precinct No. 11,
New York, February 12, 1860.

Captain Graham—

DEAR SIR: In pursuance of your request, I embrace the present occasion to furnish you with a brief written statement of the difficulties connected with the steamship "Ocean Bird," so far as they came under my observation.

On the evening of the 9th January, (Monday,) Mr. Eppes, of the Neptune Works, called on me in your behalf, and said that you was in peaceable possession of your ships at the foot of Tenth st., but that you was fearful of an attack by a gang of outlaws that night, and demanded the protection of the police. This seemed to me to be reasonable, and I sent a squad of six men, with instructions to protect the ship, and permit no one to go on board without your permission.

About midnight, a gang of about forty or fifty vicious looking men made their appearance on the dock, headed by the celebrated "Captain" Rynders, and attempted to go on board the ship, but were prevented by the officers. Marshal Rynders, was however, invited, and went on board, where I have reason to know he was treated with marked courtesy and

politeness. He finally left, uttering deep and terrible threats, emphasized with a profusion of oaths that would have "taken the rag" off a soldier of Flanders.

All was quiet during the remainder of the night, and on Tuesday, Rynders again made his appearance, with several writs of libel, which he served, taking formal possession of the ship, and placing a man on board as ship-keeper, yourself and friends still remaining on board.

That evening I received a written demand from you for additional protection, stating that you had received information, which you deemed reliable, that an attack would be made on your ships that night, and that you deemed your property and life were in danger. I accordingly detailed a force of sixteen men for that duty, and accompanied them to the dock. The weather being cold and stormy, the policemen were requested to come on board the ship, by yourself and the deputy marshal, who was present, as it would not only conduce to the comfort of the men, but enable them to render more adequate protection to the ship. They accordingly went on board, and the night passed quietly.

The next day (Wednesday) you took the necessary measures to bond the ship, which, as I understood, had the effect of discharging her from the libels, and consequently the custody of the marshal ceased.

Nothing of importance occurred during the day; but as you assured me you was fearful of danger from the parties who had threatened you, the guard of police was continued on board. About 12 o'clock that night, Marshal Rynders again made his appearance on board, and with threats and imprecations, ordered everybody on shore, under pain of being "licked" or thrown overboard. You refused to go ashore. He then ordered the policemen ashore; but I ordered them to stand fast till commanded by me to go ashore, which they did. I then told Rynders that if he had any process that gave authority to seize the ships and clear its deck in that summary manner, and at that unusual hour of the night, I should readily yield, so far as I was concerned, and aid him in his execution, as far as was consistent with my duties as an officer of the peace; but without such process I denied his authority then, and told him that, although I knew he was the United States marshal of this District, his office gave him no power in the premises, nor could he legally exercise any except such as was conferred on him by a mandate of the United States Court, or some Judge thereof. He then exhibited some papers which,

on examination, I found to be the old defunct writs of libel which had been satisfied the day before. I told him I should not recognize them as valid. He then swore furiously, and again ordered every one ashore. Of course not a man moved. He then demanded if I intended to resist the authority of the United States. I said, "No sir, but I shall not go ashore, and I shall *endeavor* not to be thrown overboard." He replied "I am United States marshal, I represent the United States, you have resisted me, and are guilty of treason." I replied that I was an officer of the great State of New York, that I bore her broad shield upon my breast, and regretted any seeming disagreement between Federal and State authority; but I did not apprehend any "conflict" that I could not "repress" in a few minutes." Upon this, Rynders became terribly beligerent; said he could "lick" any four "sons of bitches" on board, including Captain Graham; made an attempt to get his coat off, and asked if they would give him a "fair show." Before fighting, however, he went into the cabin, for the fifth or sixth time, and "took a drink." When he came out, he could not find anybody to fight with him, and so his wrath boiled over again in a flood of terrible threats and oaths. He finally left, saying that he would go to the Navy Yard, and have force enough there before morning to "blow all hands to hell." He did not come back, however, that night, and so we were saved that unpleasant journey.

On Thursday, I was summoned before the general and deputy superintendents of police, where I found Rynders and the Spanish claimants of the ship, who of course, had represented their own side of the case. After much conversation, pro and con, it was finally determined to hold the ship in the possession of the police, until the right of possession could be settled by the Courts. Thus matters passed until Saturday the 19th of January, when a large police force was directed to assemble at the dock at the foot of Tenth street by the General superintendent, who, with the deputy, were present. About ten o'clock, Rynders again appeared, accompanied by the Spanish vice consul, the agent of the pretended claimants, the Spanish Captain and crew, and several lawyers, who of course urged the interests of their clients; and then and there the ship was delivered over to the custody of the Spaniards by Marshal Rynders, with the aid of the police, without any process or vestige of authority, as he (Rynders) himself repeatedly averred.

Thus was consummated, in my humble judgment, one of the

most unmitigated of outrages; and I did not fail to protest against it, so far as the participation of the police was concerned, but to no purpose.

It may be proper, in conclusion, to say, that Marshal Rynders declared, that the ships should not sail until after the following Monday, so that you might avail yourself of such legal redress as the courts would afford. But early Monday morning, before any process could be obtained, steam was got up and the ship run out of port. Marshal Rynders, I am informed, accompanied her down the bay.

Thus I have given you, as briefly as I could, and to the best of my recollection, the main points in the controversy connected with the Ocean Bird, so far as I was involved in them. And I will take occasion here to add, that it seems to me if your counsel had been as vigilant and attentive to your interests as the counsel of the other side were, the result might have been different. But whether it is really a lawyer's business, whether it is strictly professional, for eminent members of the bar to run around police headquarters or station houses, to accomplish by police interference, what the United States court refused to do, I do not pretend to know.

Yours, very respectfully,

PETER SQUIRES.

CITY AND COUNTY OF NEW YORK, ss:

Peter Squires, of said city and county, hereby duly sworn, says, that the foregoing statement subscribed by him, is in all respects true, as he now recollects the same, and as he verily believes.

PETER SQUIRES.

Sworn before me, this 8th day of May, 1860,

FRANCIS P. JOHNSON,

Commissioner of Deeds.

U.

Affidavit of R. L. Joice.

City and County of New York,
Southern District of New York ss.

Rodman L. Joice, of said city and county, being duly sworn, says, that he is an attorney and counsellor at law of the Supreme Court of the United States, and of the State of New York; that on Friday, the 18th day of May instant, he exam-

ined the records of the District Court of the Southern District of New York, for the month of January 1860, kept by the clerk of said court, for the purpose of ascertaining if any order or decree had been entered with said clerk, in any suit pending in said District Court, directing the marshal of said District to dispossess Captain John Graham of the steamship "Ocean Bird," and to deliver her over to any other person. That he found several orders entered with said clerk in relation to said steamship "Ocean Bird," but none, in his judgment, which authorized the said marshal to dispossess said Captain Graham, and to deliver her over to any other person. That while this deponent was so examining said records, he had a conversation with George F. Betts Esq., the clerk of said District Court, who stated in substance to this deponent, that no such order had been entered in relation to said steamship during said month of January.

R. L. JOICE.

Subscribed and sworn to before
me, this 21st day of May 1860.

CHAS. W. NEWTON,
U. S. Commissioner for the Southern District of New York.

V.

New York Supreme Court.

JOHN GRAHAM,	} <i>City and County of New York, ss.</i>
<i>vs</i>	
JOSE DE VIADEMONTÉ.	

Hugh Crombie, of said city and county, being duly sworn, deposes and says, that he is one of the deputies of the sheriff of the city and county of New York, and was such deputy sheriff on the 16th day of January last past.

That on said 16th day of January, a process in the nature of a writ of replevin, in the above entitled action, was issued to the sheriff of the city and county of New York, commanding him to take, and deliver to John Graham, the above named plaintiff, the steamship Ocean Bird, then in possession of the above named defendant, and unlawfully withheld by him from the said plaintiff. That said process was placed in this deponent's hands, on said 16th day of January, by the said sheriff, for immediate execution.

That immediately upon the receipt of said process, together

with the bond or undertaking of the said plaintiff, and his sureties, which was duly approved as required by statute, I proceeded with the sheriff's posse and the plaintiff to the East river, where said steamship was understood to be lying, for the purpose of executing said process. On arriving at said place, on East river, we found that said steamship Ocean Bird had been taken in tow of a steam-tug a short time previous, and was then being towed down the bay and out to sea. Immediately on learning the fact, the plaintiff in said action chartered another steam-tug, and we at once started in pursuit, but on arriving at the Narrows, we found the said Ocean Bird under her own steam, and out of reach of our pursuit.

We gave up the chase, and returned to the city.

H. CROMBIE.

Sworn to before me this 26th day of April, 1860.

F. W. LOW, *Commissioner of Deeds.*

X.

Steamship Ocean Bird, Jan. 11, 1860.

Captain Squires, 11th Ward Police.

DEAR SIR: I am at present in peaceable possession of my ship, but I have received information from reliable sources, that a formidable force is being organised to dispossess me to-night; therefore deeming not only my property in danger, but my life also, I beg that you will send me at once all your disposable force, with orders to keep the peace, and protect my life and property.

Yours, respectfully,

JOHN GRAHAM.

Y.

To the Editor of the New York Express :

I have been sadly libelled by the Spanish consul and the law reporters, through the columns of the various newspapers of this city. I do not say this to complain. I will leave complaining to my libellers. It will better fit them than me as soon as my leisure will permit me to attend to the matter. It is fair to that part of the public who may take an interest in

the matter that the facts as they really exist should be known. They are as follows :—The steamship *Ocean Bird* was built by me at the city of New York. I have never parted with my title, nor have I ever voluntarily parted with possession of that vessel. She was taken from my possession by force under an apparent title, which title has since been, by a decree of the United States Circuit Court in equity, declared to be void for fraud. This vessel has been absent from this city ever since she was taken from my possession. I lately heard she had come to this port. I was advised by my counsel to replevy her as my property, and that it would be proper to demand her of the captain before proceeding to take her under a writ of replevin. I accordingly went on board on Monday last, and demanded the vessel of her captain, Viademonte, and stated to him in brief the nature of my title to her, and the manner in which she was taken from me. He at once yielded to my request, placed the vessel at my disposal without a word of cavil or objection, and withdrew with his men, their baggage and other articles of personal property. After this it was impossible to replevy, for the property was absolutely in my possession. I therefore held it until I was, as I believe, wrongfully dispossessed by the marshal of the United States, under a pretended order of the Court. I have not used, or offered to use, any violence ; no threat or imitation that pointed to a violent act, has been uttered by me or by any one in my interest to my knowledge or belief. Some days after the surrender of the vessel to me, some of the mechanics and other persons who had claims against the ship filed libels against her to secure their liens. I at once gave bonds to the marshal, to release her under the act of Congress. After this, Captain Viademonte also filed similar bonds, and procured from the proctor of the libellants a stipulation that the vessel might be surrendered to him. Under that stipulation, the counsel for Captain Viademonte entered “a rule of course” that the vessel be delivered up. This rule, however, is only of force between the libellants and Captain Viademonte, and does not and cannot, in the slightest degree, affect my right in the premises. Indeed his counsel, as I am informed, made two or three *ex parte* applications to the Court to obtain a rule or order giving his claim preference over mine, but the Court absolutely refused in any manner to interfere between us. Thus the matter stands.

JOHN GRAHAM.

Z.

[From the New York Herald of January 17, 1860.]

To the Editor of the Herald :

SIR: The communication which appeared in yesterday morning's Herald is so extraordinary in its nature that I think it right to say a few words in reply to it. Captain Viademonte has, it seems to me, endeavored to avail himself of the improbability of my statement contained in your impression of Friday last, to deny that he did so voluntarily, upon my demand, surrender the steamship to me. A few facts will perhaps relieve that statement of its apparent improbability. These facts are as follows:

I went to Cuba in the winter of 1856 with the steamship St. Lawrence, for the purpose of selling her, or a portion of her, to a company before that time formed at that place for the purpose of establishing a line of steamers from New York, Cadiz and Mexico, via Havana. The plan was, to put all three of my steamships into this line, and to effect this I was either to sell the whole of one of them, or a portion of all of them, to this company. The result was, that I sold the whole of the Ocean Bird for the sum of \$250,000, and was to receive \$110,000 in cash, with which I intended to pay off the loan I had received from Meyer & Stucken.

This loan from Meyer & Stucken, though the bargain was that they should loan me \$100,000 for four months, and were to receive \$25,000 for the use of the money—yet, in fact, I had never received from them, up to that time, but about \$65,000. The \$110,000, therefore, was an ample sum for this purpose. After completing the sale of the Ocean Bird, I started for New York, where she was then lying, and at which place I was to deliver her to J. M. Zangroniz, the agent of the company, Captain Viademonte and other officers, and a crew. These gentlemen and their crew were to receive the ship at New York, and sail her to Cuba. While at Cuba, and while negotiating this sale, I was greatly annoyed by the agents of Meyer and Stucken, the purpose, as it was apparent to the company, as well as myself, being to thwart a sale. These efforts were of so extravagant a character as to give me the entire sympathy of all disinterested persons with whom I came in contact. I believe Captain Viademonte deeply sympathized with me through it all—even after the company's agent had

repudiated the purchase of me, and bought of Meyer & Stucken all three of my vessels at a sum of over \$65,000 less than the company had contracted to give me for one of them.

I think no one will doubt that the agent of the company, when he took title of these vessels from Meyer & Stucken, relied very much upon the warranty of title contained in their bills of sale. Meyer & Stucken, although they have since gone into liquidation, were then reported to be persons of great wealth. It is not improbable that the present severe depression in the value of steamship property had the effect to make it an object for this company to be put into a position in which they could fall back upon this warranty so as to recover thereunder of Meyer & Stucken the value of this and the other two steamships; and it is not impossible that it was not until after Captain Viademonte had learned of the insolvency of that house that he changed his mind, and desired to regain his possession of the steamship. However this may be, it is true that he did surrender the ship to me on my demand, and thus placed it out of my power to replevy. In witness of this, I herewith send you an affidavit, made by the four gentlemen who were with me at the time, which will speak for itself.

When I was in quiet possession of the vessel, I thought it as much my duty to retain possession of her as of any other article of my property. So thought Captain Rynders—for when he came up to execute the process sued out by the mechanics against the vessel, he served the process on me, and informed me that he would place two deputies on board, who might remain with me, and that when the processes were secured by bonding, it would be his duty to leave her in my possession, as he found her. It is true that I have lost possession of the ship. It was my purpose to resist no one in possession, or any one having a legal process or an apparent right to dispossess me. This was well known to the deputies on board, as well as to Marshal Rynders—for on several occasions, in the night, Captain Rynders, with a gang of persons all unknown to me, attempted to get me out of possession of the ship. On all of these occasions I called Captain R. on board, and when I asked for his process (which he was loud in proclaiming he had) he, on every occasion, failed to produce it. It thus became well known to Captain R. that his word would not be taken upon this point. And he then had recourse to a deception, which I have only to blame my deference to legal functionaries for being successful.

On Thursday, about two o'clock in the afternoon, Captain

Rynders came on board with Mr. Geo. W. Morton, the deputy clerk of the United States District Court, and stated to me that he had an order from the Court which required me to go on shore and yield up exclusive possession of the ship to him. I was not satisfied with this statement, and turned to Mr. Morton and said to him: "You are the clerk of the Court; tell me if this is so." He replied, "Captain Graham, it is." He then drew from his pocket a paper, and read, as near as I can recollect, "Isaiah Rynders, you are hereby commanded to take possession," and handed the paper to me, saying, "Read for yourself." I took the paper in my hands, and before I had time to glance at it, Captain Rynders said, "Now Captain Graham, go on shore; I receive the ship from you;" and taking my hand, he gave it the grip of the Masonic fraternity, of which we are both members, and added, with the most solemn appeal to his Maker, "I will hold this ship for you; no man shall put his foot on board save yourself and your friends, without the special of the Court, and I will surrender her to you as soon as my process is secured, which will no doubt be to-morrow, as the question is then to be argued." To all this Mr. Morton assented. Mr. Morton then took my arm and said:—"Now, Captain Graham, obey the Court; get into my carriage and I will drive you anywhere you wish to go in town." I then ordered my crew on shore, and left with my friends. I got into the carriage with Mr. Morton, and came down to the hall with him, where I soon learned that I had been sadly imposed upon, and that no such order, or any order, had been entered, and that the whole was a device to get Captain Viademonte and his crew in possession of the ship. I soon discovered that Captain R. had placed a number of armed men on board, with one or two cannons, with orders to shoot down me or any person in my employment, if they attempted to go on board.

This idle bravado, of course, could have no effect, as I had before determined to resist no law or apparent right. I waited on Friday to know whether the Court would make any order as to her possession. When I learned on Friday at twelve o'clock, that the Court had absolutely refused to interfere between the Spanish claimant and myself, I went on board, but was met by several of the deputy marshals, and at least four revolvers were pointed at my head, threatening to shoot me dead if I did not go on shore; I went on shore, and thus the vessel was kept possession of by the deputies during the day, and at night I returned to my home at Connecticut; on Sat-

urday afternoon, when I returned to New York, I learned that Messrs. Evarts and Rynders, with one hundred and seventy-five policemen, specially detailed for the purpose, had, at ten o'clock on that day, escorted the reluctant Captain Viademonte, with his crew, on board of the ship, and had left twelve policemen and a small bevy of deputy marshals to hold them in possession, the captain protesting that he would not resist if I should again demand possession. On account of this it was thought prudent by Messrs. Evarts and Rynders to withdraw the captain, and place the mate in charge, under deputy marshal O'Keefe and other deputies, placed on board by Capt. Rynders, with the twelve special policemen, detailed by the Board of Police Commissioners.

I had been told that the counsel for Captain Viademonte were quite willing I should replevy the ship upon giving good sureties, and that she would not leave this port for three days. Having had enough of the United States marshal and deputy clerk, I immediately set about having papers prepared in the Supreme Court to replevy her, and had my bonds duly prepared and approved, and was ready to have them served before ten o'clock this morning. This matter of replevying not having been kept as any secret by me, Captain Viademonte and his friends heard of it, and at nine o'clock I understand the ship was towed into the stream and sailed for Cuba, with several of the gallant officers placed on board by Marshal Rynders.

Thus the matter now stands.

JOHN GRAHAM.

*Affidavit of witnesses to the surrender of the steamship to
Captain Graham.*

Charles F. Henningsen, Henry Bolton, Theodosius A. Fowler, and William H. J. Stratton, being each respectively duly sworn, depose and say, and each for himself says, that he was present on Monday last when John Graham took possession of the steamship Ocean Bird; that it is not true, as has been reported in the newspapers, that said Graham took possession by force or violence; but on the contrary thereof, that said Graham went on board and demanded possession of said steamship of the person who claimed to be captain and master thereof, to wit: one Jose M. de Viademonte, claiming her as his own property; that said Viademonte at once, and without cavil, surrendered said steamship, her tackle, apparel, and furniture,

to said Graham, and left the same with his men; that not one word was uttered by said Graham, or any person with him, in anywise of a threatening character, nor was any violent or discourteous word uttered to said captain, or any person on board said steamship; nor was there on the part of said Graham, or any one with him, any act done, or demonstrations made, that pointed to or indicated any violent intention on his or their part; that said Graham has ever since been in peaceable possession of said steamship, her tackle, apparel and furniture.

C. F. HENNINGSEN.

HY. BOLTON.

W. H. J. STRATTON.

T. A. FOWLER.

Severally subscribed and sworn to before me, this 12th day of January, 1860.

THOS. SADLER, *Public Notary.*

AA.

[From the New York Herald, January 22, 1860.]

Our readers are already familiar with the facts of the attempted seizure of the steamship "Ocean Bird," and her subsequent delivery by the United States marshal to Captain Viademonte through the intervention of the Spanish Consul at this port and the order of the United States District Court. We have published letters upon the subject from the Captain of the steamer and Captain Graham, and now present a statement of the matter furnished by Captain Rynders:

To the Editor of the New York Herald:

I have seen in the Herald and Tribune of the 17th instant a card from Captain Graham, which grossly misrepresents, as far as I am concerned, the facts in relation to the steamer Ocean Bird: and I had also read statements in several newspapers, previous to the publication of Captain Graham's card, which were false in every essential point. I therefore deem it but justice to myself, and to the office which I hold, and in order to give reliable information to all who may feel an interest in such matters, to give a statement of the facts as they occurred within my knowledge. In doing this I shall not notice in detail the contemptible insinuations and slanders which characterize the statements alluded to, but shall confine myself as briefly to the necessary facts as the circumstances of the case

will admit of. I have purposely delayed making any statement until this time, in order that I may have an opportunity of answering all the misrepresentations and statements that might be made with reference to this matter; and henceforth it is not my intention to notice or reply to any further scurrilous communications, as I deem them unworthy of notice.

On Monday morning, the 9th instant, about 10, Captain John Graham called at my office in Chambers street, and handed me what purported to be a writ of replevin. I took the paper, and read that part which required John Graham to give bail before I executed the writ. I told Captain Graham that he should give me the requisite bail before I would execute it. He asked me for the writ, and I handed it back to him, as I supposed, for the purpose of procuring the necessary bail. The same day he called upon me again, and as I was busy with other matters, I referred him to my first deputy, Joseph Thompson, Esq; who, I said, would see the business properly attended to. He went to Mr. Thompson and asked what the requisite bail was, and was told that \$100,000 bail would be required. He then wanted to know of my deputy if \$25,000 would answer, and was informed that nothing short of \$100,000 bail would be taken. He left the office a second time, and from his particular inquiry about the amount of bail, we supposed that he had gone to procure it. I did not see him again until late that evening. About half past nine or ten o'clock the same evening I was called upon by the Spanish consul and Mr. Ceballos, the consignee of the Spanish steamer Ocean Bird. I was requested to go to the foot of Tenth street, East river, on board of the steamer, which they alleged, had been forcibly seized and taken from Captain Viademonte, and himself and crew put ashore by a mob of "pirates," as some of them designated them, and they requested the United States authorities to reinstate the Spanish captain and crew on board the steamer. I told them I would go with them. I accordingly went with them to the steamer at the foot of Tenth street, and found the Spanish crew upon the dock, and the steamer in possession of a crowd of men to the number of fifty or sixty. I then went on board, and on going up the gangway to the upper deck, I was stopped by Mr. Bolton, who took hold of me, and we had a scuffle, after which he let go of me. I was afterwards told that this Bolton had been a fillibuster under General Walker, and that others of the same character were on board; but none of the others interfered with me in the slightest degree.

I then went upon deck, where I found an acquaintance who seemed to have charge of the men who had taken possession of the steamer. This person was J. H. Munn, and I asked him how he came to be there. He replied, that he had been applied to by Captain Graham, to engage a crowd of men to go on board the Ocean Bird, take possession of her, and do it forcibly if required, and he has since said that Captain Graham told him I was to stand by him in this matter, and that Judge Nelson had advised him to take this course in obtaining possession of the steamer.

I endeavored to put the crew on board, that they might have some place to sleep that night, but Graham's men resisted their attempt to go on board. I then advised the crew to go away, because they stood shivering in the cold. I then went ashore, leaving two of my officers in charge of the steamer, to prevent her from being removed from the wharf, should Graham's men attempt to do so.

On Tuesday I received two or three monitions or processes from the United States Court, against the Ocean Bird, and immediately went on board and served them, and notified Captain Graham that I now held possession of the vessel under process of the United States Court. He then asked me if I had the power to put him ashore; I told him I had if I chose to do it. He requested me to leave him on board. He remained on board, with my permission, until Wednesday evening. At half-past ten o'clock on Wednesday night, one of my officers in charge of the vessel came after me and wished me to go on board the steamer, alleging that Captain Graham and his men had interfered with him in the discharge of his duty, and also stated that a squad of fifteen or twenty policemen had come on board the vessel, against the consent of my officers. I called upon Captain Carpenter—I stated the whole case to him, and he gave me an order to Captain Squiers to render me assistance should I require it. I delivered the order to Captain Squiers, and he peremptorily refused to obey it. I then asked him to take his men on shore and leave me in possession of the steamer, which he also refused. He further stated, that if I attempted to put Captain Graham or his men on shore, he would resist me with all the force he had with him, if Captain Graham required it. After some further conversation I went on shore, leaving my officers on board.

On Thursday morning the Court met, and I received a specific order to take the vessel in my custody, and hold her until further orders. I went to the vessel, and invited George W.

Morton, Esq., United States commissioner, to go with me on board the steamer, which he did. I found Captain Graham in the cabin, and not wishing to have any further conversation with him I sent word to his men, by my officer, O'Keefe, that I wished them to leave the vessel as soon as convenient, which they did very quietly. I then requested Mr. Morton to tell Captain Graham that I desired him to leave the vessel quietly, without any disturbance or parade about it. He inquired of Mr. Morton whether the order of the Court required him to do this, and Mr. Morton asked me for the order, and showed it to Captain Graham. Up to this time I had not spoken a word to Captain Graham, but communicated my wishes through Mr. Morton, who appeared to be very friendly with him. While I was waiting for Captain Graham to get ready, a gang of rough looking men came down upon the wharf, and were about coming on board the steamer, when they were forbidden to do so. I asked them who directed them to come there, and they replied that Captain Graham had sent for them, and that they were to be paid for taking charge of the vessel. They said they wanted their money, and they would not leave, as he had promised it to them. Captain Graham came from the cabin and told them that they would be paid, and that he did not want them at that time, but intimated to them to be ready when he should want them. They then left. At the solicitation of Mr. Morton I went into the cabin, and Captain Graham requested me to let him remain on board, which I refused. He then left the vessel and rode away in my carriage, Mr. Morton accompanying him. Mr. George W. Morton, United States Commissioner, was present all the time, and heard every word that passed between Captain Graham and myself, and he can bear witness, if called upon, that I made no promise of any kind to Captain Graham, and that his assertion that I made a solemn appeal to my Maker that I would allow no man to be put on board the steamer except Captain Graham and his friends, is a gross misrepresentation of the true facts. The best evidence of the truth of my assertion is that I was at that moment in the act of putting him on shore. Captain Graham also states that when he took the paper in his hand I said "Now, Captain Graham, go on shore; I receive the ship from you." I said nothing about receiving the ship from him, as I did not consider that he had legal possession of the vessel at any rate. His allusions to what he calls masonic grips, &c., is in character with his other statements, and will no doubt be duly ap-

preciated by every honorable member of the masonic fraternity.

On Friday about noon, as I am informed, Captain Graham and friend came upon the wharf opposite the steamer, and asked Mr. O'Keefe if he could come on board, and was told he could not. He went away, and in a few minutes after, a crowd of fighting men came upon the wharf opposite the steamer, and another party went upon the wharf on the other side of the steamer, so that she was surrounded. The party on the lower wharf let go or slacked her lines, and this caused the vessel to swing alongside the other pier, and thereby affording Captain Graham's crowd an opportunity to jump on board and take forcible possession of the vessel, if they had been permitted; but his men were forbidden to come on board, and were told that it would be a violation of the law, and they had the good sense not to pursue it further. Captain Graham had by this time got on board and was ordered immediately on shore or take the consequences, and he acted with prudence and great discretion and obeyed the order.

It was rumored that a crowd of Graham's men would again attempt to take possession on Friday night, and a police force, added to that already on board, were prepared to prevent any violation of the law. It was expected that on Saturday morning all the processes I held against the steamer would be cancelled, and I would therefore deliver her up.

At the expected hour I went to the foot of Tenth street and found the dock strongly guarded by the police, who were stationed there under the direction of Captain Carpenter to prevent a breach of the peace. Captain Graham did not appear to assert his claim, and the Spanish captain and crew quietly took possession of their vessel, after having been unlawfully prevented from doing so for a week.

After the captain and crew had taken possession of the steamer, the Spanish consul, the consignee, and others interested, said it would be better to have the ship taken to the navy yard, where she would be protected by the marine force until she was ready. Captain Carpenter, of the police, assured them it was not necessary; they persisted in their request; when I told them I still held the vessel upon one process, and that I would not permit her to leave the wharf, as I considered it a disgrace to the United States, as well as the municipal authorities and our country at large, to acknowledge, by removing the ship from her dock where she was undergoing repairs, by fears of a mob, thereby acknowledging that there was no law

nor authority in this country to protect us in our legal rights. "Of what use," said I, "is there of United States marshal, deputy marshals or a Metropolitan police, when we can be driven from the heart of the city by a lawless band of men? I said I would keep the vessel where she was until Monday morning, and, if necessary, stay on board and help defend her myself. This seemed to satisfy the captain and his friends, and the ship was left in charge of the officers, and a few policemen to assist them if necessary.

On Sunday the vessel was got ready for sea, and I was requested to let her go; but as I had promised to keep her until Monday, I would not permit her to go.

On Sunday I received a notice from a person, who stated that he was from the harbor master's office, notifying me that the berth in which the Ocean Bird was lying was required for another vessel. I then informed the persons in charge of the vessel that I would relinquish all claim on Monday morning, and that they might proceed to sea if they chose to do so. On Monday morning I went up to withdraw my men, but at the request of the Spanish consul and consignee they went down the bay with her. I went as far as the Battery.

I have thus truly stated all the essential facts of this matter to the best of my recollection; and for the further information of the public, I will add that the Ocean Bird is now owned in Havana, and has been for about two years past. She was purchased by her present owners for one hundred and thirty thousand dollars, as I am reliably informed; she came here last August under the command of Captain Viademonte, who had in his possession her register and other necessary papers, which he deposited with the Spanish consul, which is customary with captains arriving in foreign ports. She came for the purpose of making extensive repairs, and has expended among our merchants and mechanics nearly \$70,000, and her bills have all been promptly paid, as I am informed. During the period that she has been in this port, Captain Graham has had ample time and opportunity to institute any legal claim he may have against the vessel; but during that time he has never presented, to my knowledge, any claim whatever, until last Monday, the 9th inst., within two days of the time for the steamer's departure for Cuba, and all the necessary repairs about being completed. He then goes on board with fifty or sixty hired men, some of them armed, and without legal authority turns the captain and crew ashore, and would not even permit the mechanics to finish the jobs upon which he found them at work.

And after all this he coolly and deliberately states in a card to the public that he took peaceable possession of the steamer, notwithstanding the public contradiction of Captain Viademonte; and what is equally surprising to me, a captain of the Metropolitan police asserts that Graham had peaceable possession of the steamer. If our government can afford no protection against violence and injustice to the owners of foreign vessels when in our ports, what protection can we justly claim for our merchant vessels when abroad?

Respectfully, yours,

ISAIAH RYNDERS.

BB.

To the Editor of the New York Times:

As the press is the principal medium by which the people are made acquainted with matters that concern the public, and, when ably and impartially wielded, gives character and tone to the community, exposes fraud, and honors integrity, therefore I send to you a brief statement of my reasons for taking possession of the steamship Ocean Bird, at noon, on the 9th instant, trusting that you will publish this statement, and also the decree of the United States Circuit Court, which was rendered in my favor, in October, 1859, and published, on the 6th of that month, in many of the daily papers, thereby giving your readers an opportunity of awarding right where justice points its due.

A communication appeared in the last Sunday's Herald, over the signature of Isaiah Rynders, in relation to my steamship Ocean Bird, and the manner in which I was deprived of her. Your readers would not give me credit for much local learning, if I were to presume that any one at all familiar with the history of the writer of that communication would be likely to take any of his statements as a fair exposition of the truth. But, notwithstanding their source, I think there are one or two points touched upon in the article upon which neither of my former communications have been sufficiently explicit.

It is intimated, although not distinctly said, that the present claimants of that ship are *bona fide* owners—that they purchased her at her fair value, without notice of the defective title. Nothing can be further from the truth. This ship, and my other two, the St. Lawrence and the United States, are

still claimed by the same party or a company of persons in Cuba, to whom, in the winter of 1855, I bargained to sell the Ocean Bird for the sum of \$250,000, and who sent this same Capt. Viademonte with others to New York with me to take possession of her, under that purchase.

They were, during the whole negotiation which led to that purchase, perfectly acquainted with my relations to Meyer & Stucken, and with their relations to my steamships. Had those persons stood fairly by their contract while in New York, Meyer & Stucken would have been compelled to surrender all claim upon the ships on my paying the sum loaned upon them, together with the *bonus* of \$25,000. All of which I was desirous to pay, and intended to pay out of the purchase money of the Ocean Bird. But finding that Meyer & Stucken had bills of sale, which bills of sale were subsequently decreed void, for fraud, of all the steamships, which were absolute upon their faces, (for such was the form in which I secured them for their proposed loan to me,) they were induced to join with Meyer & Stucken to defraud me out of the whole of them.

They purchased from Meyer & Stucken, for \$190,000 the three steamships which had cost me and were worth half a million of dollars. While this negotiation was going on between the agents of these Spanish gentlemen and Meyer & Stucken, I became aware that some scheme prejudicial to my rights was on foot, and, therefore, through my attorney, served written notices upon all of them, of the facts as they existed, and warning them that if they in anywise interfered with these steamships, I should hold them each and their principals responsible for all damages that I might sustain in the premises.

In the face of all this, they completed their arrangements with Meyer & Stucken, and were privies, if not parties, to the forcible and stealthy possession then taken of the Ocean Bird, and the getting her out of the pale of our laws.

The other two steamships were already at Cuba, and easily fell into the hands of these Cuban confederates.

It was, no doubt, a knowledge of these facts that led Capt. Viademonte to surrender the Ocean Bird to me upon my first demand. Indeed, there is some reason to suppose that the surrender (for the demand, and a replevin suit if refused, must have been anticipated,) was made with a view to prevent the replevin suit, anticipating, through the mock suits by which Capt. Rynders was smuggled on board, that possession would be regained, and the vessel got away without giving the bond, which, in the event of my replevying her, would have been

necessary, for her value. Such a plan is quite in keeping with all the proceedings of these Cuban gentlemen in relation to these steamships, and perhaps not entirely contrary to the habits of the country to which they belong. At all events, such was the result, and it is a familiar principle that a party is chargeable with intending to do what he actually performs.

The probability of this view is not a little enhanced by the conduct of the parties, and particularly of Capt. Rynders, as detailed by himself; and at the hazard of insulting his understanding by assuming to believe his word, let us look for a moment at his conduct as narrated by himself.

On Monday evening, he tells us, "at 9½ or 10 o'clock, he was requested to go on board the ship and reinstate the Spanish captain and his crew." It seems from his statement, that it was the "United States authorities" that were invoked in his person, to do this act. The Captain goes, not as a marshal, not as the "United States authorities," for he had no process, he went as Isaiah Rynders simply, not even as captain of the Empire Club. He went at midnight, for he had been told that "Capt. Viademonte had been put on shore by a mob of pirates." He finds "the ship in the possession of Capt. Graham and fifty or sixty of his men. He endeavored to put the Spanish crew on board that they might have a place to sleep," (they had not slept on board since they arrived in New York.) He is resisted, and finally advises the shivering crew to retire. He finally departs from the scene of action, "leaving two of his officers on board to keep Capt. Graham from removing the vessel." Thus far the actions and doings of Rynders were without process or color of process of law. At law, a party in possession is *prima facie* owner of the property, and his possession can only be disturbed by due process of law. Capt. Rynders admits he found one in possession; that he had no process of any kind whatsoever. One is at a loss to know what excuse can be offered for this high-handed proceeding. It is to be regretted that a public officer should thus attempt to play off his official character upon a people so submissive to the law that they forget that it is the *process*, and not the *person*, that the law requires them to obey. But the attempt in the present case utterly failed. Captain Rynders failed to obtain for himself the obedience which would readily have been acceded to the humblest, who might be armed with a legal process. He did, however, attempt to come on board with his gang; his process was demanded, but failing to produce it, he sought to enforce his authority by his revolver. This

was equally futile, for every one knew the Captain would be the last man to pull a trigger, when any one was looking on, and as neither darkness or any winding purlieu of the sixth ward concealed his person, he seemed content with the flourish and the threat.

This effort was succeeded on the following day by a no less venal prostitution of assumed official conduct. Libels were filed against the ship by the procurement of the Spanish captain and his advisers, upon claims, payment of which had not only been provided, but which, in any view, could not rationally be pretended to be liens. With these "monitions," which Captain Rynders claims were placed in his hands on Tuesday, he comes on board. Had these processes been issued upon valid claims, they only gave the captain authority to *arrest* and *detain* the ship within the jurisdiction. He had at least but a lien, he had no right to exclusive possession. All this he well knew. He made no attempt to dispossess me on Tuesday, until after midnight; nor yet on Wednesday did he dispute my possession, until after the hour of midnight. On Thursday morning the processes were all handed to me, and the bonds duly approved by the Judge and served on the marshal. This, by the express provisions of the act of March 3, 1847, suspends the process and discharges the property from the arrest. From that time Marshal Rynders had no color of authority to set a foot upon the deck of that vessel. But it is after this that he enacts, if for a moment we assume to credit his statements, his highest exploits of valor. It was after this that he, with the aid of 175 policemen, puts the Spanish captain and crew on board and escorts them into the stream.

The case then stands thus: I was in peaceable possession of that vessel from Monday at 12 o'clock, to Thursday at 2, when I was induced to go on shore and yield up possession of the ship to Captain Rynders, by a pretense as bald of truth as devoid of honor, and as maliciously wicked as any that has ever tended to give Captain Rynders the indisputable character which is now so universally conceded to him. I shall not here repeat what I stated in my communication of the 17th instant. I will only add that no such order was ever made or entered as that under which Captain Rynders claims to have acted. No lawyer will assert that there was any power of jurisdiction in the court to make any such order or any order in the premises, and if there was the slightest color for saying that any order whatever had been made which Captain Rynders or Mr. G. W. Morton might claim to have believed conferred such au-

thority on Captain Rynders, no one will doubt that it would have long ago been paraded in the public papers. After I had been thus got on shore, Captain Rynders put the ship in possession of armed men, who held her with threats of assassination in case I, or any one on my behalf, ever stepped a foot on board, until, under the mock protection of a police force of 175 men, the Spanish captain and crew were marched on board under the command of Captain Rynders and his men, and the vessel pushed into the stream to get her beyond the reach of laws.

I wish to know, sir, if the public have no stake in this matter? If Captain Rynders had not been clothed with the habiliments of office, he could not have achieved this act of lawless violence. It is that the public presume their officers are acting under process of law that makes them quick to yield to the most arbitrary and lawless act of apparent official power. Had Isaiah Rynders been only the captain of the Empire Club, I should now have been in possession of my steamship, but he has availed himself of the prestige of an office—always honorable till it was his—to deprive me of my property. It is idle to tell me that he is liable to respond in damages to the full amount of the value of the vessel. To be *liable* and to be *responsible* are two quite distinct matters.

Another inquiry also suggests itself to me: How came it that 175 policemen were specially detailed to deprive me of my property? Are the Police Commissioners the servants of the Federal officers? Are they the servants of Isaiah Rynders, acting without process of law, and in direct violation of law and order—acting, not as marshal, but as captain? We were told, when the new police organization took place, that the purpose was to decentralize power—to place the police of the city in more responsible and reliable hands than those of a single man who should chance to be “counted in” Mayor at some charter election. What political influence was brought to bear, and upon what question, that it should result in taking from me by force a ship I had built and paid for, and never sold? Will you tell the public, sir?

Very respectfully,

JOHN GRAHAM.

NEW YORK, *Saturday, January 27, 1860.*