Consulate of The United States of America.

The Consul of The United States of America,
to The minister and Secretary of State for Home
and Foreign affairs —

The Undersigned, Consul of The United States of America, presents his due respects to Hoi Excellency The Minister and Secretary of State for Home and Foreign affairs, and acknowledges the receipt of two communications from his Predecessor in Office dated on 15th Inst. in answer to statements addressed to him on the 14th and 15th relative to the unlawful seizure of some property on board the American Ship Panther, and the subsequent illegal imprisonment of William Austin the master thereof. The Undersigned has observed by the said communications, that his statements had been transmitted, one to the Department of the Treasury, and the other to the Department of Justice, and regrets that an appeal to the government touching the liberty of an American Citizen, did not seem to merit a more prompt attention, and that a direction was given to it, not such, as he had flattered himself would have resulted from the feeling nature of the facts specified in it.

Having now waited three days

a decision upon this affair, which has assum-
a more serious aspect than it was at first presen-
ed. The Undersigned considers it his duty to re-
new with some urgency, his original applicati
and to shew that an outrage has been committed
against the United States, by certain officers acti
under the authority of this Government, which ca-
cannot be reconciled with that Spirit of amity,
towards the american nation, which the Emperor
has more than once been pleased to profess throug
the Secretary of State, in his official correspon-
dence with the Undersigned.

It appears, that by the established
laws of this Empire, a vessel cleared at a foreign
port directly for Rio de Janeiro, must be entered
at the Custom house in full — that the cargo may
be wholly landed or landed in part, by paying
the established duties, or be exported by paying
a small transit duty — that after the landing of
the whole of the cargo, or of such part as is intend-
-ed to be landed, it becomes the duty of the Guarda-
-mor to require the master to appear before him,
and to notify him that his vessel is to be visited
at a specified time and to inform him that he
must give notice "to all persons on board having
merchandize under their charge, that search is to be
made at the designated hour, when they are to appear

and declare, together with the master, that they have nothing more to be discharged — that it then becomes the duty of the Guarda-Mor to go on board the vessel and there to repeat this notification, in order that innocent individuals may not be taken by surprize — that if the master and other persons thus warned, then declare, that there is nothing more to be landed, the search is to be made, and if any articles should be found, they are to be forfeited, because there would then appear to be a deliberate and manifest intention to defraud the revenue, and the master, presumed to be guilty of connivance, is liable to the forfeiture of an amount equal to the value of the articles seized.

It further appears, that a transient vessel, not cleared directly for the port may be entered in <u>Sanguia</u> or <u>in full</u>, at the option of the consignee — that if she enters in <u>Sanguia</u>, she may by permission, usually granted, land goods & embark produce or other property, as in the other case, but is not liable to a visit, such as vessels entered <u>in full</u> are liable to, and she may export without the payment of any duty, such part of her cargo, as shall not have been landed — But, if she be entered <u>in full</u>, she stands upon precisely the same footing, as a vessel cleared directly for the Port.

The Ship in question, as has been already stated, was intended to be entered in <u>Sanguia</u>

but by a mistake was entered in full, by which means she became liable to the customary search, and to all the forfeitures in case of non-compliance with the laws, to which vessels purposely entered in full were liable; but, to no other, for there does no Appear to be in the Laws, which are dictated by pure Justice and an honourable liberality, any principle so absurd and wicked, as would subject the innocent victim of a mistake, to a greater punishment than a wilful violator of their provisions would be subject. Now, the master has declared upon oath that he never received from the Guarda-Mor, the first notice required by Law, and it follows as a necessary consequence, that the visit of the Guarda-Mor, for the purpose of searching the ship, on Saturday the 12th Inst. was improper and premature, because the pre-requisites of the law, which it was his business to see fulfilled, had not been complied with. But, admitting for the sake of argument, that this officer, with the view of accommodation had so far relaxed in the rigid fulfilment of duties which he was bound, and perhaps sworn faithfully to execute, as to make this visit without a compliance with the pre-requisites of the law, and waving for the present, the established and immutable principle of law and equity that "no man can profit by his own wrong", let us see, what was the result of his visit, after he went on board.

he then as he was obliged to do, interrogated the master as to the landing of his cargo, and the master informed him, that his dollars had not been landed. The Guarda-Mon, then finding that the vessel was not prepared for a search, acted as it behoved him to do which was to declare that the dollars must be landed before the vessel could be searched and then return on shore. Up to this period of the transaction, it cannot be pretended that any forfeiture had been incurred, because the Law is so just, as to declare that no penalty shall attach until suspicion shall be confirmed by a false declaration of the master: that is until articles shall have been found on board, which the master had declared were not on board. The Letter of the Law is as clear, as the Spirit of it is wise humane and just, and it is impossible to render it so obscure, as to pervert its meaning in such a way as could give the least shadow of a pretence for the subsequent proceedings especially to one, who was acting under the authority of a Ambassador, bound to understand the laws which he is appointed to execute. The subsequent conduct then of the Guarda-Mon, in entering that vessel and taking away by force & night, property which had not been forfeited, was illegal and arbitrary, and not only in opposition to the common obligations of hospitality and equity, — in

contravention of the laws of nations — but even in
direct violation of the municipal laws of the coun

The ground upon which this tyranni ca
proceeding against the property of a citizen of a frie
=ly nation, is pretended to be justified by some of the
parties concerned in the transaction, (for all do not
justify it) as the undersigned has been informed
is, that the guards of the Custom House placed o
board the ship, had signed a paper inadvertent
or fraudulently, declaring that the money had
been landed — thus invoking the error a unfaithful
ness of the agents of the Custom House to suppor
an accusation which was to eventuate in the benefit
of some of its officers. If the individuals employed
by that Institution, within and without its walls,
could but for a moment be supposed capable
of corruption, what monstrous results might
not flow from the collusions and iniquitous
combinations, to which the lust of prosecuting the
property of unsuspecting strangers, ignorant of the laws
and language of the country might give rise, if it
were permitted to avail of such evidence against that of the master!? Morality
shudders at the contemplation. But, thanks to
Heaven, and the Justness of the laws in this case,
even this fragile ground of justification gives way
to the face of truth and equity, for admitting even
for the sake of argument, that the guards had not

ver guilty of error or fraud, and that in point of
act, 8000 dollars had been landed and that there
ere according to the confession of the master, still
board, 8000 dollars which had not been previ-
usly ~~boarded~~ manifested, the master by the law
the land, had a right to enter them & any sub-
equent period, and they were not liable to for-
feiture, until after a declaration, that they were
not on board. As to any surmises of a fraudu-
lent intention, it is for the Almighty alone
to search the hearts of man, and not within the
Province of any earthly Judge, and even if it were,
it would be a strange feature in the policy of a
commercial nation, that money in coin, which
all people invite to their shores, should be liable to
seizure because it was brought into the country by
a foreigner. If the foregoing reasoning be in confor-
mity with the general principles of universal law,
and the particular provisions of the municipal laws
found in the Forals of Oporto and Lisbon now used
in Brasil as the Undersigned flatters himself it is
~~also~~, it follows, that all proceedings subsequently found-
ed upon the illegal seizure of this property, were
equally illegal arbitrary and unjust. The Judge of the
Custom House who had in his possession the 8000 dollars
seized, took upon himself, for that reason it is dis-

ficult to conceive, to overstep the limits of his auth
rity, lay unlawfully demands duty of the master of the
vessel an additional security of double the amount
of the penalty to which he would have been subject
after conviction of premeditated fraud. Exorbitant
and oppressive bail, even when left discretionary
with a Judge, is always reprehensible but when
demanded in direct violation of the letter of the law
is an act which can only be atoned for in a pecu
country, by impeachment, seeing that all laws mu
be strictly construed in favour of the accused, and a
stretch of power on the side opposed to mercy, render
a Judge liable to imputations not favourable to
his Integrity and Uprightness.

As to the act of depriving a ship, law
fully armed to protect the flag under which she
sails, of her means of defence, without notice that
she must disarm, the proceeding is so presumptuous
on the part of those who took upon themselves the
responsibility, that the Undersigned, can hardly
express his astonishment, greatly excited as it has
been by the previous conduct of the officers in ques-
tion, who, during the whole progress of this affair, ha
conducted themselves, as it would appear, in a man
ner indicative of an authority and prerogatives
not often committed to the administrators of
the affairs of a custom house — In regard to the
bundle of canes and trunk of merchandize, they can
not be considered as forfeited, seeing that the

Guarda-Mor, omitted to comply with the pre-
requisites of the Law, by directing the master
to notify the persons on board, that they must
declare what property they had in the Ship not
yet landed; for had this been done, the said
articles could not have been hazarded, inasmuch
as the owners who had no intention of landing
them here, would have paid the transit duty
upon their exportation — and to deprive them
thus of their property, would be, to permit the
Guarda-Mor "to profit by his own wrong." Per-
sons who wrest the Law, to answer private pur-
poses, must be compelled to adhere to its strict
letter.

With this detailed statement of this un-
pleasant case, and omitting for the present, any
notice of the declaration made in the public streets
by the Guarda-Mor, that it was the intention
of the authorities to seize the Ship Panther. The
Undersigned will close this appeal to the Justice
of the Emperor, fully relying, that steps will be
taken for the prompt liberation of the master —
a full surrender of the property unjustly seized
— and a complete indemnification to the owners
of the vessel, for her unlawful detention. The
Undersigned also, in addition to this redress, feels

assured, that such additional measures will b
resorted to by Thi Imperial Majesty as will gi
an assurance to the world that the harmony e
isting between two nations, destined by their geogr
phical position, and a common spirit of liberty
to be Perpetual Friends, will not be suffere
to be disturbed by the avarice or sordid passio
of individuals, whose duty it is to consult the
good of their Country, in preference to their private
advantage. Rio de Janeiro. July. 18. 1823.

Thos Tudy Taylor
Consul.